

PUBLIC

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

| | | |
|--|---|-----------------|
| In the Matter of |) | PUBLIC |
| Altria Group, Inc. and JUUL Labs, Inc. |) | DOCKET NO. 9393 |
| Respondents. |) | |

NON-PARTY SHEETZ, INC.’S RENEWED MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.45 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R § 3.45(b), non-party Sheetz, Inc. (“Sheetz”) renews its motion for *in camera* treatment and respectfully requests an order requiring that the highly confidential and competitively sensitive portions of two documents sought to be introduced as exhibits in this matter be afforded full *in camera* treatment for a period of five years. The Commission issued an Order on May 26, 2021 (the “May 26 Order” or “Order”) granting *in camera* treatment for ten of Sheetz’s proposed *in camera* documents and denying *in camera* treatment without prejudice for two of Sheetz’s proposed documents. Sheetz now renews its motion for *in camera* treatment with respect to those two documents, PX7019/RX0083 and PX8000/RX0082.

Sheetz’s renewed motion is fully supported by the Affidavit of Paul Crozier, Category Manager of Cigarettes & Tobacco at Sheetz, (the “Crozier *In Camera* Declaration”), attached as **Exhibit A**, which provides additional details about the documents for which Sheetz is seeking *in camera* treatment, such as the measures that Sheetz has taken to protect the confidentiality of the documents and competitive harm Sheetz would suffer if these documents were made publicly available. Rule 3.45(b) provides that *in camera* protection is appropriate where “public disclosure will likely result in a clearly defined, serious injury to the person, partnership or

PUBLIC

corporation requesting *in camera* treatment.” 16 C.F.R. § 3.45(b). Stated differently, *in camera* treatment is warranted where the information is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 1980 FTC LEXIS 99, at *10 (Mar. 10, 1980). Sheetz has substantially reduced the number of proposed redactions for PX7019/RX0083 (deposition transcript) and PX8000/RX0082 (declaration) in light of the Commission’s guidance set forth in the May 26 Order such that the information sought to be protected now is narrow and would result in serious competitive injury if disclosed.

I. Documents for Which *In Camera* Treatment is Requested

Sheetz seeks *in camera* treatment for portions of PX7019/RX0083 and PX8000/RX0082, described in the chart below that contain highly sensitive, confidential information and, if made public, would cause irreparable harm to Sheetz. Copies of these two documents are attached to the Crozier *In Camera* Declaration as Exhibits **B1.–B2.**¹

| <i>In Camera</i> Exhibit No. | Plaintiff Exhibit No. | Defendant Exhibit No. | Bates – Begin | Date | Document Name |
|-------------------------------------|------------------------------|------------------------------|----------------------|-------------|--|
| B-1 | PX7019 | RX0083 | - | 1/19/2021 | Deposition Transcript of Paul Crozier (January 19, 2021) |
| B-2 | PX8000 | RX0082 | - | 3/17/2020 | Declaration: Paul Crozier (Sheetz, Inc.) |

Sheetz seeks *in camera* treatment in order to protect Sheetz’s confidential and competitively sensitive information as set forth fully in its original motion for *in camera* treatment and below.

¹ The same applies here with respect to the re-numbering of exhibits. The original Exhibits C1.–C12. are available in Sheetz’s May 7 filing but not re-included herein.

PUBLIC

PX7019/RX0083 is Paul Crozier’s deposition transcript in this matter. Sheetz requests that the following portions of Paul Crozier’s deposition transcript be redacted: 16:4; 30:6; 30:11; 31:1; 31:12-13; 32:4; 32:10; 32:20; 36:19; 36:23; 38:13-14; 45:21-22; 54:5; 54:12; 54:14; 55:6-9; 60:7-61:16; 64:1-17; 73:4-5; 74:8-22; 79:19-22; 79:24-80:3; 80:9-11; 82:20; 82:25; 83:2; 83:6; 84:9-10; 92:10; 103:22-24; 141:24; 142:8; 142:14; 142:23; 145:15-16; 148:14; 152:9; 167:7-8; 167:25; 168:2-3; 168:6-25; 171:7. These portions of the deposition transcript reference documents Sheetz intends to keep confidential and similar sales, pricing, margin, and customer information, which would meet the *in camera* standard if contained in a standalone document. *See In re Basic Research*, 2006 FTC LEXIS 14, at *4 (Jan. 25, 2006) *citing In re Aspen Tech., Inc.*, 2004 FTC LEXIS 56, at *5–6 (May 5, 2004) (“Respondent’s request for *in camera* treatment shall be made only for those pages of documents or of deposition transcripts that contain information that meets the *in camera* standard.”); *In re Union Oil Co. of Calif.*, 2005 FTC LEXIS 9, at *1 (Jan. 19, 2005) (granting *in camera* treatment where parties sought it only “for narrowly tailored portions of deposition testimony”).

PX8000/RX0082 is the full, unannotated version of Paul Crozier’s March 17, 2020 Declaration in this matter. Portions of paragraphs 4, 5, 7, 9, 12, 14, and 22 contain sensitive information such as, *inter alia*, Sheetz price increases, net profits, margins, marketing and pricing strategies, that warrant redaction. Documents including information related to a non-party’s financial condition, pricing strategies, and techniques for marketing and advertising its products may be entitled to *in camera* treatment. *See In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55, at *20 (FTC April 4, 2017).

PUBLIC

II. The Commission's May 26 Order

On May 26, 2021, the Commission issued an Order ruling on all of the non-parties' motions for *in camera* treatment. With respect to Sheetz's exhibit PX7019/RX0083, the Order described Sheetz's initial designation of testimony as overbroad. In accordance with the guidance provided in the Order, Sheetz removed the proposed redactions from the examples that the Commission indicated would not qualify for *in camera* treatment as well as redactions that, while derived from confidential documents, were general in nature.

With respect to PX8000/RX0082, Sheetz also heeded the Commission's guidance on the proposed redactions of Crozier's 2020 declaration, and pared down the redactions to portions of only paragraphs 4, 5, 7, 9, 12, 14, and 22 and kept the redactions as narrow as possible—*e.g.*, by redacting only a specific percentage or sales number rather than an entire sentence. As above, where Sheetz was determining close calls as to what would qualify for *in camera* treatment, it erred on the side of not proposing the redaction, in line with the Commission's caution of overbreadth.

III. The Confidential Documents Are Secret and Material Such that Disclosure Would Result in Serious Injury to Sheetz

As set forth fully in its original motion, the confidential information contained in these two documents warrants protection through *in camera* treatment and redactions because the information is both secret and material to Sheetz's business and would seriously injure Sheetz if disclosed to the public. The public has relatively little interest in the sensitive, narrowly redacted information, and Sheetz's third-party status weighs in favor of granting *in camera* status to the these two documents as a matter of policy and encouraging cooperation of non-parties Commission proceedings.

PUBLIC

CONCLUSION

For the reasons set forth above and in the accompanying Crozier *In Camera* Declaration, Sheetz respectfully requests that the Commission grant *in camera* treatment for the two documents as outlined above.

Dated: May 31, 2021

Respectfully submitted,

By: /s/ Brandon M. Santos
Brandon M. Santos
Casey Erin Lucier
McGuireWoods LLP
800 East Canal Street
Richmond, VA 23219
(804) 775-1000
bsantos@mcguirewoods.com
clucier@mcguirewoods.com

Attorneys for Sheetz, Inc.

PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2021, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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

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

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

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

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

Counsel for Respondent JUUL Labs, Inc.

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

Michael Lovinger
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Ave., NW
Washington, DC 20580
Telephone: (202) 326-2539
Email: mlovinger@ftc.gov

PUBLIC

JMMoses@wlrk.com
KSchwartz@wlrk.com
ALGoodman@wlrk.com

Counsel Supporting the Complaint

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

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

Counsel for Respondent Altria Group, Inc.

By: /s/ Brandon M. Santos

Brandon M. Santos

Attorney for Sheetz, Inc.

PUBLIC

CERTIFICATE OF ELECTRONIC FILING

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

May 31, 2021

By: /s/ Brandon M. Santos

Brandon M. Santos

Attorney for Sheetz, Inc.

Exhibit A

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF AMINISTRATIVE LAW JUDGES**

| | | |
|--|---|-----------------|
| In the Matter of |) | PUBLIC |
| |) | |
| Altria Group, Inc. and JUUL Labs, Inc. |) | DOCKET NO. 9393 |
| |) | |
| Respondents. |) | |

**DECLARATION OF PAUL CROZIER IN SUPPORT
OF NON-PARTY SHEETZ, INC.’S
MOTION FOR *IN CAMERA* TREATMENT**

I, Paul Crozier, hereby declare as follows:

1. I am the Category Manager for Cigarettes and Tobacco at Sheetz, Inc. (“Sheetz”). I make this declaration in support of Non-Party Sheetz’s Motion for *In Camera* Treatment (the “Motion”). Because of my current position, I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.
2. Sheetz was founded in 1952 and is based in Altoona, Pennsylvania. Sheetz operates as a privately owned chain of convenience stores that are known for their award-winning made-to-order foods, quality gasoline, and selection of cigarettes and tobacco products. Sheetz owns and operates more than 600 stores located in Pennsylvania, Maryland, Virginia, West Virginia, Ohio, and North Carolina.
3. I joined Sheetz in 2004 and have held a number of positions in marketing and sales before July 2016 when I became the Category Manager for Cigarettes and Tobacco. In my current position, I have profit and loss responsibility for Sheetz’s cigarettes, tobacco, lottery, and CBD products. I also manage the Retail Space Team at Sheetz, which is responsible for preparing planograms for all of Sheetz’s locations. In addition to my role at Sheetz, I serve as

a Board Member and Officer of the National Association of Tobacco Outlets, a trade association organized to enhance the common business interests of all tobacco retailers.

4. I have reviewed the documents Sheetz produced in response to subpoenas issued by the Federal Trade Commission (“FTC”) and Respondent Altria Group, Inc. (“Altria”). I have also reviewed the documents that Sheetz seeks *in camera* treatment for, the “Confidential Documents”¹—documents that the FTC and Respondents Altria and JUUL Labs, Inc. may seek to introduce as evidence in the administrative hearing in this matter.

5. Given my position at Sheetz, I am familiar with the type of information contained in the Confidential Documents and its competitive significance to Sheetz’s business. Based on my review of the documents, my knowledge of Sheetz’s business, and my familiarity with the confidentiality protection afforded this type of information by Sheetz, the disclosure of the Confidential Documents to the public and to competitors of Sheetz would cause serious competitive injury to Sheetz. As set forth in its Motion, Sheetz seeks either partial or full *in camera* protection of the Confidential Documents because they contain competitively sensitive and confidential business information.

6. Sheetz sells a wide variety of cigarettes, vaping devices, and other tobacco products at its convenience stores. These products, which comprise our tobacco category, are an important driver of foot traffic at Sheetz stores. Although the tobacco category is one of Sheetz’s lower margin products, it brings in consumers who often purchase higher margin products like food and drinks. As a retailer of tobacco products, Sheetz depends on its ability to compete with other retailers and negotiate with manufacturers. To do so, Sheetz uses

¹ Partial *in camera* treatment requested: PX3113, RX1126, PX3115, PX3116/RX1134, PX7019, RX0083, PX8000, and RX0082. Full *in camera* treatment requested: PX3117, PX3119, RX1135, RX1136, RX1145, RX1146, and DX1127.

confidential models and analyses to determine which manufacturers' products are the highest grossing, and to evaluate buying demographics and sales—all of which are critical to its business development and competition strategies.

7. The public disclosure of the Confidential Documents would reveal pricing, sales and margin information. Sheetz has invested significant resources to market and place the products, in the manner which is reflected in the Confidential Documents, such that this business information constitutes substantial competitive value to Sheetz.

8. This proprietary information is not publicly available and Sheetz has devoted its resources to protecting the confidentiality of the information in the Confidential Documents. Sheetz generally limits the distribution of this information to a restricted group of Sheetz employees. Specifically, only senior level management (e.g., at the VP or EVP level) has access to detailed sales data (especially margin information) and even those individuals do not routinely have access to detailed data regarding other geographic areas or categories outside of each individual's area of supervision. The software programs used to create the reports found within the Confidential Information is restricted to a select group of users, and Sheetz takes care to limit the distribution of such data by email to prevent distribution beyond the authorized users. Sheetz also does not provide or sell margin data to Nielsen or any other retail measurement services as an added layer of protection to its confidential information. The Confidential Documents for which full *in camera* treatment is sought were never shared outside of Sheetz or are based on Sheetz data that was not shared outside of Sheetz except as required by the subpoenas in this matter. Also, in producing the Confidential Documents to the FTC and Altria, Sheetz designated all of this information "Confidential" under the Protective Order in this proceeding.

9. In the category that I manage, Cigarettes and Tobacco products, pricing and margins have been very stable for several years for e-cigarette items. Products in the vaping market in particular are not as sensitive to price increases or taxes as other products. Vapor products have not had as many manufacturer cost increases or taxes during this time period, as compared to cigarettes, for example. For this reason, pricing data that is several years old is still relevant to Sheetz's business strategy.

10. Sheetz is a party to multiple Non-Disclosure Agreements ("NDA") with cigarette and vapor manufacturers. Those NDAs also restrict Sheetz's ability to publicly disclose certain information contained within the Confidential Documents.

11. Sheetz is also a signatory to Retailer Understanding Forms ("RUF") in which a manufacturer will offer Sheetz a promotional payment in order to place its products in a certain location in Sheetz stores. These RUFs are sensitive because all manufacturers are competing for shelf and promotional space. Disclosure of the terms of a specific RUF, including the amount of a participation payment paid by one manufacturer to Sheetz, will give competing manufacturers access to information they would not otherwise have an unfair advantage and undermine Sheetz's bargaining position in ongoing and future negotiations, since manufacturers would have a baseline figure off which to negotiate.

12. Given the consistency in pricing in the vaping market, the Confidential Documents reflecting pricing information are unlikely to decrease in confidentiality over time and thus, indefinite protection from public disclosure is appropriate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed May 7, 2021 at Carrolltown, Pennsylvania.

A handwritten signature in black ink, appearing to read "Paul Crozier", written in a cursive style.

Paul Crozier

Exhibit B-1

Confidential – Partially Redacted

Paul Crozier Confidential
01/19/2021

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CONFIDENTIAL

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

Case No. 9393
Civil Action No. 14-cv-126-SS

ALTRIA GROUP, INC., :

Plaintiff, :

vs. :

JUUL LABS, INC., :

Defendant. :

DEPOSITION UNDER ORAL EXAMINATION OF:
PAUL CROZIER
January 19, 2021

REPORTED BY: JENNIFER L. WIELAGE, CCR, RPR, CRR

JOB # 336847

Paul Crozier Confidential

01/19/2021

2 to 5

Page 2

1 TRANSCRIPT of the remote deposition of the
 2 above-named witness, called for Oral Examination in
 3 the above-entitled matter, said deposition being
 4 taken pursuant to Federal Court Rules, by and before
 5 JENNIFER L. WIELAGE, Certified Shorthand Reporter and
 6 Notary Public, License No. XI01916, on Tuesday,
 7 January 19, 2021, commencing at 9:00 EST in the
 8 forenoon.
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 4

I N D E X

W I T N E S S

Testimony of:

| | |
|--------------------------------|----------|
| 6 PAUL CROZIER | PAGE NO. |
| 7 EXAMINATION BY MR. MOSES: | 7 |
| 8 EXAMINATION BY MR. LOVINGER: | 102 |
| 9 EXAMINATION BY MR. MOSES: | 159 |

E X H I B I T S

| 13 NUMBER | DESCRIPTION | PAGE |
|------------|--|------|
| 14 Exhibit | Declaration | 11 |
| 15 DX-1121 | Exhibit | 16 |
| 16 DX-1122 | Exhibit | 18 |
| 17 DX1129 | Paragraphs Declaration with Annotations | 42 |
| 18 DX1126 | Exhibit | 48 |
| 19 DX-1127 | Exhibit | 50 |
| 20 DX1128 | Exhibit | 59 |
| 21 DX1135 | Exhibit | |
| 22 | Sheetz's Retail Volume Shares By Brand Device, Sheetz's Pod-Based Vaporizers June 2017 Through July 2020 | |
| 23 | | |
| 24 | | |
| 25 | | |

Page 3

1 A P P E A R A N C E S :
 2 FEDERAL TRADE COMMISSION
 3 600 Pennsylvania Avenue, NW
 4 Washington, D.C. 20580
 5 BY: MICHAEL LOVINGER, ESQ.
 6 mlovinger@ftc.gov
 7 BY: MICHAEL BLEVINS, ESQ.
 8 mblevins@ftc.gov
 9 Attorneys for Claimant
 10 WACHTELL LIPTON ROSEN & KATZ
 11 51 W. 52nd Street
 12 New York, New York 10019
 13 (212) 403-1000
 14 BY: JONATHAN M. MOSES, ESQ.
 15 jnmoses@wlrk.com
 16 BY: ADAM SOWLATI, ESQ.
 17 asowlati@wlrk.com
 18 Attorneys for Altria
 19 WILKINSON STEKLOFF
 20 2001 M Street, NW
 21 10th Floor,
 22 Washington, D.C. 20036
 23 BY: ALISON ZOSCHAK, ESQ.
 24 azoschak@wilkinson.com
 25 Attorneys for Defendant, Altria Group
 CLEARY GOTTLIEB STEEN & HAMILTON
 2112 Pennsylvania Avenue, NW
 Washington, D.C. 20037
 BY: JEREMY J. CALSYN, ESQ.
 jcalsyn@cgsh.com
 Attorneys for Respondent, JUUL Labs, Inc.
 McGUIRE WOODS
 Gateway Plaza
 800 East Canal Street
 Richmond, Virginia 23219
 BY: BRANDON M. SANTOS, ESQ.
 bsantos@mcguirewoods.com
 Attorneys for Sheetz, Inc., Paul Crozier
 ALSO PRESENT - DANIEL MACOM, Tech Support

Page 5

| 1 Exhibit | Sheetz's Retail Volume Shares By Brand | 59 |
|----------------------------------|--|------|
| 2 DX1136 | Cartridge, Sheetz's Pod-Based Vaporizers January 2017 to July 2020 | |
| 3 | | |
| 4 Exhibit | Planogram | 68 |
| 5 DX1130 | Exhibit | 68 |
| 6 DX1131 | Planogram in January 2018 | 71 |
| 7 DX1132 | Exhibit | 82 |
| 8 DX-1134 | Exhibit | 83 |
| 9 DX-1146 | Exhibit | 97 |
| 10 DX1145 | Exhibit | 105 |
| 11 SHEETZ5784 through SHEETZ5785 | Exhibit | 118 |
| 12 PX3118 | Exhibit | 119 |
| 13 DX8000 | Exhibit | 135 |
| 14 SHEETZ00000024 | Exhibit | 137 |
| 15 PX3115 | Exhibit | 146 |
| 16 PX9080 | Exhibit | 151 |
| 17 PX9081 | Exhibit | 152 |
| 18 PX9081 | Exhibit | 155 |
| 19 PX3121 | Exhibit | |
| 20 PX3120 | Exhibit | |
| 21 | | |
| 22 | PREVIOUSLY MARKED EXHIBITS | |
| 23 | | |
| 24 NUMBER | DESCRIPTION | PAGE |
| 25 | | |

Paul Crozier Confidential

01/19/2021

6 to 9

| | |
|--|--|
| <p style="text-align: right;">Page 6</p> <p>1 DEPOSITION SUPPORT INDEX</p> <p>2 DIRECTION TO WITNESS NOT TO ANSWER</p> <p>3 Page Line</p> <p>4 REQUEST FOR PRODUCTION OF DOCUMENTS</p> <p>5 Page Line</p> <p>6</p> <p>7 STIPULATIONS</p> <p>8 Page Line</p> <p>9</p> <p>10 QUESTION MARKED</p> <p>11 Page Line</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> | <p style="text-align: right;">Page 8</p> <p>1 Wachtell firm in New York, and I represent Altria and</p> <p>2 we appreciate your time this morning.</p> <p>3 All the counsel put their --</p> <p>4 identified themselves already with the court</p> <p>5 reporter, so I'll just ask you to state and spell</p> <p>6 your full name for the record.</p> <p>7 A. Paul Crozier, P-a-u-l, C-r-o-z-i-e-r.</p> <p>8 Q. And Mr. Crozier, we're going to ask</p> <p>9 you some questions this morning and -- and then I</p> <p>10 think the FTC is going to have some questions for you</p> <p>11 and just all we need from you is to give your best</p> <p>12 and most complete answers to those questions.</p> <p>13 Is that okay with you?</p> <p>14 A. Yep.</p> <p>15 Q. And do you understand that you're</p> <p>16 testifying under oath just as if you were in a</p> <p>17 courtroom at a trial?</p> <p>18 A. Yes.</p> <p>19 Q. It's important in depositions, and</p> <p>20 particularly important in this virtual setting, that</p> <p>21 we not talk over each other. So would you -- I'm</p> <p>22 going to ask a question, let me finish and then I'll</p> <p>23 let you answer. Is that okay?</p> <p>24 A. Yeah.</p> <p>25 Q. It's important, and you're doing a</p> |
| <p style="text-align: right;">Page 7</p> <p>1</p> <p>2</p> <p>3</p> <p>4 THE COURT REPORTER: The attorneys</p> <p>5 participating in this deposition acknowledge that I</p> <p>6 am not physically present in the deposition room and</p> <p>7 that I will be reporting this deposition remotely,</p> <p>8 pursuant to Federal Rule of Civil Procedure 29.</p> <p>9 They further acknowledge that, in</p> <p>10 lieu of an oath administered in person, the witness</p> <p>11 will verbally declare his testimony in this matter is</p> <p>12 under penalty of perjury. The parties and their</p> <p>13 counsel consent to this arrangement and waive any</p> <p>14 objections to this manner of reporting.</p> <p>15 Please indicate if there are any</p> <p>16 objections.</p> <p>17 I will now swear in the witness.</p> <p>18 PAUL CROZIER,</p> <p>19 242 Sheetz Way, Claysburg, PA 16625, having been</p> <p>20 first duly sworn according to law, testifies as</p> <p>21 follows:</p> <p>22 EXAMINATION BY MR. MOSES:</p> <p>23 Q. Thank you. Good morning,</p> <p>24 Mr. Crozier. Thank you for joining all of us here.</p> <p>25 My name is Jonathan Moses. I'm an attorney at the</p> | <p style="text-align: right;">Page 9</p> <p>1 good job of it already, but if you could answer</p> <p>2 verbally. No shakes of the heads or nods. Is that</p> <p>3 okay?</p> <p>4 A. Yes.</p> <p>5 Q. If a question is unclear, let me know</p> <p>6 and I'll try to rephrase it. Is that okay?</p> <p>7 A. Yeah.</p> <p>8 Q. I'm going to try to formulate my</p> <p>9 questions the best I can, but counsel, either for the</p> <p>10 FTC or your -- or your own counsel may -- may have an</p> <p>11 objection to the way I framed my question. Unless I</p> <p>12 change it, you should still answer the question.</p> <p>13 Is that okay?</p> <p>14 A. Yeah.</p> <p>15 Q. Okay. Your counsel may from time to</p> <p>16 time ask you not to answer a question, if I ask you</p> <p>17 something that's privileged and of course you should</p> <p>18 follow the direction of your counsel.</p> <p>19 Is that all right?</p> <p>20 A. Yes.</p> <p>21 Q. And obviously, we're going to try to</p> <p>22 go as quickly as possible this morning, but I'm sure</p> <p>23 we're going to take some breaks. If at any time you</p> <p>24 need a break, just -- just let us know and as long as</p> <p>25 a question is not pending or even if a question is</p> |

Paul Crozier Confidential

01/19/2021

10 to 13

Page 10

1 pending, and if you really need to go, we'll go ahead
 2 and take a break. Is that okay?
 3 A. Yes.
 4 Q. Great. And as we go through the
 5 deposition, if anything that you didn't remember when
 6 I asked a question comes to your mind, just let us
 7 know because, obviously, we want to get your complete
 8 and most truthful testimony.
 9 Is that okay?
 10 A. Yes.
 11 Q. Great. Is there anything that might
 12 affect your ability to give complete and truthful
 13 testimony today?
 14 A. No.
 15 Q. Great. So Mr. Crozier, you prepared
 16 a declaration -- or signed a declaration in
 17 connection with this matter; isn't that correct?
 18 A. Yeah.
 19 Q. Okay, great. So my plan today is
 20 just to go through it and ask some questions based on
 21 your statements in there. So I think just to -- for
 22 sake of good order, let's -- good order, let's mark
 23 that declaration. It's DX111 -- we've premarked it as
 24 DX1121.
 25 My colleague, Mr. Sowlati, is going

Page 11

1 to put it in the -- the Box for people to download.
 2 If you have a hardcopy handy, that may be useful
 3 because we're going to be going back to it from time
 4 to time.
 5 MR. SOWLATI: The document is
 6 loading.
 7 (Exhibit DX-1121, Declaration, was
 8 marked for Identification by the court reporter.)
 9 BY MR. MOSES:
 10 Q. Have you had a chance to review that
 11 document, DX1121?
 12 A. Yes, I have it open.
 13 Q. And is this the declaration you
 14 signed in this matter?
 15 A. Yeah.
 16 Q. And if we go to page 5, is that your
 17 signature indicating that it was signed --
 18 A. Yes.
 19 Q. -- the 17th of March?
 20 A. Yeah.
 21 Q. Great. How did you come to
 22 prepare -- come to sign this declaration?
 23 A. The FTC had reached out, I believe,
 24 through our counsel, Gary Zimmerman, for thoughts on
 25 the JUUL/Altria investment.

Page 12

1 Q. Okay. And did you -- what happened
 2 next?
 3 A. We had a series of discussions with
 4 the Federal Trade Commission where they asked
 5 questions and I answered them and then the last step
 6 was signing this declaration.
 7 Q. And who did you speak with at the
 8 FTC?
 9 A. I don't remember everybody who was on
 10 the -- the calls, but Michael Lovinger, I believe,
 11 was on all the calls.
 12 Q. And here he is again this morning.
 13 How many calls did you have?
 14 A. I think we had three or four, if I
 15 remember correctly, over a span of a few months.
 16 Q. Okay. And so when did the first call
 17 happen?
 18 A. That I do not recall off the top of
 19 my head. I know I signed this in March. I think it
 20 had been four months or so before that, but I don't
 21 remember the exact date of the first call.
 22 Q. Do you recall what topics the FTC
 23 raised with you?
 24 A. They asked a lot about like the
 25 current state of the vapor industry. I remember that

Page 13

1 was one of the big topics and then kind of when --
 2 some questions related to MarkTen, so it was
 3 MarkTen/JUUL-type questions and then overall category
 4 questions.
 5 Q. What did you tell them about the
 6 current state of the vapor industry?
 7 A. If I remember correctly, we had
 8 talked about kind of who was in the lead of the
 9 category at the time, percentage of sales, percentage
 10 of units, kind of went through that, if that makes
 11 sense. So the different vendors and then how much
 12 each had as a share of the category.
 13 Q. Did you ever tell them that -- did
 14 you tell them that -- strike that.
 15 Did you ever suggest to them that the
 16 current -- the state of the current industry -- did
 17 you discuss with them your view on how competitive
 18 the industry -- the industry is right now?
 19 MR. SANTOS: Object to the form.
 20 A. Yeah, we -- yes.
 21 BY MR. MOSES:
 22 Q. Okay. And what did you tell them in
 23 that regard?
 24 A. If I remember correctly, we talked
 25 about the -- kind of how -- I'm trying to think

Page 14

1 specifically. We talked about the percentage of
 2 sales, so JUUL had been a leader and I think was and
 3 still is in a lot of ways a leader of the category,
 4 and then how some entrants into the category like
 5 NJOY had changed that landscape a little bit.
 6 So NJOY was growing in terms of sales
 7 and Reynolds was another one. So we talked about all
 8 the different players, but I think I remember talking
 9 specifically about how NJOY had grown as a percentage
 10 of the category.
 11 Q. And did you tell them that you view
 12 the market as increasingly competitive?
 13 A. Yes.
 14 Q. And you said you also talked about
 15 MarkTen and JUUL.
 16 When you talk about MarkTen, do
 17 you -- what do you mean?
 18 A. MarkTen would be any product that had
 19 the MarkTen name.
 20 So MarkTen Elite and then the MarkTen
 21 cigalike product.
 22 Q. Okay. Did you talk about both the
 23 cigalike product and the Elite product -- the pod
 24 product?
 25 A. Yeah, I believe.

Page 15

1 Q. Strike that. Thank you for
 2 answering. Just to clarify is Elite a pod product?
 3 A. Yes.
 4 Q. And are the other MarkTen products
 5 cigalike products?
 6 A. Yes.
 7 Q. Were the other MarkTen products
 8 cigalike products?
 9 A. Sorry, yes.
 10 Q. Thank you. Did they ask you whether
 11 or not the removal of the MarkTen products from the
 12 vapor category made that category less competitive?
 13 MR. SANTOS: Object to form.
 14 A. I'm sorry. Say that again.
 15 BY MR. MOSES:
 16 Q. Did the FTC ask you whether or not
 17 the removal of the MarkTen products from the vapor
 18 category made that category less competitive?
 19 MR. LOVINGER: Object to form.
 20 A. I believe they did.
 21 BY MR. MOSES:
 22 Q. And what did you tell them?
 23 A. I don't -- I think I indicated that I
 24 didn't believe it did because -- I'm trying to
 25 remember specifically. Sorry -- I think I said it

Page 16

1 wasn't -- it didn't strike me that way because of the
 2 other products on the market had changed, so like
 3 NJOY had been a pretty small player in the category
 4 but had grown to, I think, almost █ percent of the
 5 category after that. So the dynamics had changed
 6 where like JUUL didn't pick up the share that left
 7 the market when MarkTen came out, if that makes
 8 sense.
 9 Q. Are there topics you recall raising
 10 with them that -- strike that.
 11 Did they prepare the first draft of
 12 your declaration. That is -- the "they" being the
 13 FTC?
 14 A. Yes.
 15 Q. And if we go to tab -- my Tab 2, but
 16 for your purposes DX-1122, which my colleague is
 17 going to again put in the Box --
 18 MR. SOWLATI: Okay. That should be
 19 loaded.
 20 MR. MOSES: Not yet.
 21 It's not loaded yet. Maybe you could
 22 share it on the screen, Adam.
 23 THE REPORTER: Off the record, 9:13.
 24 (Exhibit DX-1122, Email, was marked
 25 for Identification by the court reporter.)

Page 17

1 BY MR. MOSES:
 2 Q. Mr. Crozier, this is a document that
 3 we've premarked DX-1122, and it's an email from
 4 Mr. Lovinger to Gary Zimmerman, dated February 14,
 5 2020, and then attached to it is a draft of the
 6 declaration.
 7 MR. MOSES: And Adam, if you could
 8 just flip through it for -- give Mr. Crozier a chance
 9 to check it out.
 10 Q. Okay. Is this -- do you -- is this
 11 email consistent with your recollection that the FTC
 12 drafted the declaration?
 13 A. Yeah.
 14 MR. LOVINGER: Object to form.
 15 BY MR. MOSES:
 16 Q. And who is Mr. Zimmerman again?
 17 A. He's our legal counsel at Sheetz.
 18 Q. And is it fair to say that the FTC
 19 chose the precise wording of your declaration?
 20 MR. LOVINGER: Object to form.
 21 A. Yeah, I mean as far as I -- you know,
 22 in terms of they interviewed me and then typed up the
 23 document and then I reviewed the document, if that's
 24 what you mean.
 25

Paul Crozier Confidential

01/19/2021

18 to 21

Page 18

1 BY MR. MOSES:
 2 Q. Are there topics you -- you raised
 3 with them -- that you discussed with them that ended
 4 up not being reflected in the declaration?
 5 A. I don't recall any of those items
 6 being admitted.
 7 Q. Have you had discussions with them
 8 since?
 9 A. Since the signed declaration, no, not
 10 to my knowledge. I don't remember having any email
 11 since that point.
 12 Q. Do you ever remember ever having any
 13 nonemail interaction; any interactions with them
 14 since?
 15 A. No.
 16 Q. Okay. Thank you. Now, I want to
 17 show you another document premarked, which is DX1129.
 18 I'm going to put this in Box as well.
 19 (Exhibit DX1129, Paragraphs
 20 Declaration with Annotations, was marked for
 21 Identification by the court reporter.)
 22 MR. SOWLATI: Yeah, this one worked.
 23 BY MR. MOSES:
 24 Q. Take a moment to look at DX1129,
 25 which appears to be certain paragraphs from your

Page 19

1 declaration with annotations.
 2 Am I understanding what the document
 3 is correctly?
 4 A. Yes.
 5 Q. And what is this document?
 6 A. That document -- essentially, it's my
 7 statement to -- or declaration to the FTC, and then I
 8 added some like footnote information, essentially
 9 sourced it.
 10 Q. So the words under the "entrant" --
 11 the -- strike that.
 12 So the information following the
 13 paragraphs, is that information you inserted into the
 14 document?
 15 A. Correct.
 16 Q. And those are your words?
 17 A. Yes.
 18 Q. Great. So I'm going to be referring
 19 to this from time to time as well.
 20 So I think it would be handy to keep
 21 that readily accessible, and if you have a hardcopy,
 22 all the better.
 23 So let's go to Paragraph 1 of your
 24 declaration, if you have that handy. We're going to
 25 go back to DX1121.

Page 20

1 And just looking at Paragraph 1, you
 2 say: I'm the category manager for cigarettes and
 3 tobacco at Sheetz, a role that I've held since July
 4 2016. As category manager, I have profit and loss
 5 responsibility for tobacco and lottery and CBT
 6 products. I also manage the team at Sheetz which is
 7 responsible for planning agreements for all Sheetz
 8 locations and then you also note your board
 9 membership at the National Association of Tobacco
 10 Outlets. And then below that, you give you know that
 11 you've been at Sheetz since 2004 and that you've held
 12 a number of positions prior to your current role and
 13 that you graduated from Penn State.
 14 Is Paragraph 1 accurate in terms of
 15 your current responsibilities at Sheetz?
 16 A. Yes.
 17 Q. And you mentioned that you are
 18 responsible -- you have profit and loss
 19 responsibility for, among other things tobacco
 20 products. What are tobacco products?
 21 A. When we say "tobacco" at Sheetz,
 22 we -- that means e-cigarettes, cigars, Snuff, vapor
 23 products.
 24 Q. Everything -- everything that a
 25 nicotine consumer might be interested in other than

Page 21

1 cigarettes. Is that fair to say?
 2 A. Correct, yes.
 3 Q. You said that you had some -- you had
 4 other roles prior to July 2016.
 5 Could you just briefly let us know
 6 what those were?
 7 A. Prior to July of 2016, I was the
 8 retail space manager, which was a position that now
 9 reports into me that manages the planogram side of
 10 our business, which is where products go in the
 11 store, how they're laid out on the shelves.
 12 Also, under that position is the
 13 responsibility for lottery sales across six states we
 14 operate in, and I had that position from 2011 to
 15 2016.
 16 Prior to that, I was a planogram
 17 analyst, which reports into the retail space manager.
 18 I believe that was 20 -- 2007 to 2011 and that is,
 19 you know, more of the administrative role of making
 20 planogram changes for different category resets.
 21 Do you want me to go back further
 22 than that?
 23 Q. Sure. Why not? What prior to that?
 24 A. This gets interesting because I had a
 25 bunch of different jobs, but I -- prior to that, I

Paul Crozier Confidential

01/19/2021

22 to 25

Page 22

1 had worked in our distribution finance department. I
 2 was probably there for four months, and then prior to
 3 that, I worked in our distribution center as a
 4 customer service rep probably for six months, and
 5 then prior to that, I was an administrative assistant
 6 from 2005 to 2006.
 7 And prior to that, I was a temporary
 8 office associate for about 11 months, which is how I
 9 came into Sheetz. So, essentially, from 2004 to
 10 2007, I kind of had numerous positions between
 11 marketing and purchasing to sum that up.
 12 Q. And what year did you graduate Penn
 13 State?
 14 A. 2003.
 15 Q. So was Sheetz effectively your --
 16 your main -- your first employer?
 17 A. Yeah, yes.
 18 Q. You've had a nice career there.
 19 Congratulations.
 20 Now, you say that you have P&L
 21 responsibility for, among other things, tobacco
 22 products in Paragraph 1.
 23 Do you see that?
 24 A. Yes.
 25 Q. What does it mean to have P&L

Page 23

1 responsibility?
 2 A. So when you have a budget you're
 3 given every year and you help construct that. But
 4 it's your sales goals for the year, so we have a P&L
 5 that comes out weekly that shows profit and margin.
 6 So, essentially, that's our P&L and I have
 7 responsibility for hitting sales targets, unit
 8 targets, margin targets, margin percent. So all that
 9 kind of comes together for category goals that I have
 10 responsibility for what's listed in Paragraph 1.
 11 Q. Okay. And as part of that
 12 responsibility, do you also get to decide what
 13 products in the category to carry?
 14 A. Yes.
 15 Q. And what do you think about when you
 16 decide what to carry?
 17 A. We look at consumer insights or, you
 18 know, as a company look at consumer insights, market
 19 trends. Vendors can provide those sometimes or you
 20 just read like industry trade magazines,
 21 publications, things like that, provide directional
 22 insight into what you might want to carry and also a
 23 review of what products are not going or selling
 24 that's in your current assortment.
 25 Q. So does the quality of the product

Page 24

1 matter in terms of what you carry?
 2 A. Yes.
 3 Q. Okay. And does the consumer interest
 4 in the product matter in terms of what you carry?
 5 A. Yes.
 6 Q. And you talked about hitting certain
 7 P&L goals and you described them.
 8 Just to dig into that a little bit,
 9 how do you go about setting prices for the products
 10 you carry in that tobacco products category?
 11 A. For tobacco products like Snuff,
 12 Moist smokeless tobacco, you look at where
 13 competitors are in terms of the retail. You consider
 14 market share. You also consider your margin goals,
 15 margin percent goals, so you have to factor that in
 16 to where you end up setting your pricing and that's
 17 similar with the other categories. Cigars, that's
 18 not as common because a lot of the products are
 19 pre-priced. There's a little bit of pre-pricing in
 20 e-cigarettes too with -- at sometimes vendors will do
 21 a 99 cent marked product. But essentially, you're
 22 looking at your margin percent to your goals and what
 23 competition is doing.
 24 Q. So is it fair to say that in setting
 25 the prices for e-vapor products, you consider more

Page 25

1 than the manufacturer's suggested retail price?
 2 A. Yes.
 3 Q. And is it also fair to say that a
 4 higher margin is a more attractive product for you as
 5 the P&L owner at Sheetz in this category?
 6 A. Yes.
 7 MR. LOVINGER: Object to form.
 8 BY MR. MOSES:
 9 Q. And you described some of the factors
 10 you took into account in terms of Snuff and Moist. I
 11 just want to make sure, are those same factors such
 12 as competing with convenience stores, your target
 13 margins and selling -- consumer interest, factors you
 14 take into consideration in setting e-vapor prices?
 15 A. Yes.
 16 MR. LOVINGER: Objection to form.
 17 BY MR. MOSES:
 18 Q. Now, you mentioned that from time to
 19 time the manufacturer might have particular offers
 20 and you referred to one at 99 cents.
 21 Is that a reference to an offer that
 22 NJOY made?
 23 A. Yes.
 24 Q. And are those known sometimes as
 25 promotions?

Paul Crozier Confidential

01/19/2021

26 to 29

Page 26

1 A. Yes.

2 Q. How do you set promotions for e-vapor

3 products?

4 A. Generally, the vendors reach out

5 monthly or quarterly and say they have this type of

6 promotion they want to run with you, temporary

7 discount offers, whether it's on a two items there

8 are a single purchase to --

9 (Technical problem.)

10 (A discussion was held off the

11 record.)

12 BY MR. MOSES:

13 Q. Mr. Crozier, when we had that

14 technical interruption, I was asking you how you set

15 promotions for e-vapor products and you were

16 explaining how vendors would reach out monthly or

17 quarterly and maybe you can just elaborate on that a

18 little bit.

19 A. Yeah, a vendor would reach out about

20 whether it's a single discount on a single item, so a

21 device may be certain dollars off, device meaning a

22 battery. And then another type of offer would be

23 like a two-pack offer where you buy two of something

24 and save a certain amount.

25 Q. And when the -- when the

Page 27

1 manufacturers run promotions, do they give Sheetz

2 funds to cover the cost of those promotions?

3 A. Yes.

4 Q. So are promotion dollars part of your

5 P&L and margin as well?

6 A. Yeah. So the way its promotion

7 dollars work is they would pull down your sales

8 dollars. So if you were selling something \$2 off a

9 \$10 item, it would make your sales dollars for that

10 item \$8 but your margin dollars would stay whole

11 because the vendor would pay you the \$2 after the

12 fact or you could accrue for it, in accounting terms.

13 Q. Now, what is the -- you mentioned

14 this, but just so we get -- change the topic here.

15 What is the retail space team at Sheetz?

16 A. Retail space team is a team of about

17 four to five people that lay out where products go in

18 the store.

19 So if you look at a set of cooler

20 doors where each product fits on the shelf from left

21 to right, up and down, that's the responsibility of

22 that team, laying out specifically where products go

23 on a particular shelf.

24 Q. And you mentioned the term

25 "planogram." What is a planogram?

Page 28

1 A. A planogram is a picture reference of

2 that, so the front page shows pictures of products

3 and then the back page shows like a schematic look at

4 what's on each shelf.

5 Q. And how are planograms developed?

6 A. The planogram analyst works in

7 conjunction with the category manager and they

8 discuss how to lay the product out given certain

9 rules, merchandising principles, I guess you could

10 say. And then it's done in a planogram software

11 called JDA Space Planning.

12 Q. What are those merchandising

13 principles that you're referencing?

14 A. So anything from contract

15 considerations to sales considerations. So looking

16 at unit movement to determine the number of facings

17 you want to have on the fixture and then contracts in

18 terms of the position on the top of the fixture, the

19 amount of the fixture that's given to a pro -- or

20 organization.

21 Q. By the way, when you said that

22 promotion dollars are part of your margin -- strike

23 that. Let's move on. So if you go to Paragraph 3 of

24 your declaration, and I'm going to look at Paragraphs

25 3 and 4.

Page 29

1 In Paragraph 3, you describe Sheetz

2 and the number of stores it has and the locations of

3 those stores.

4 Does that remain an accurate

5 description of Sheetz and the number of stores it has

6 and locations?

7 A. Yeah.

8 Q. And what sort of -- you mentioned

9 that you sell, among other things, tobacco products.

10 What sort of tobacco products does Sheetz sell?

11 A. We have Snuff, smokeless tobacco,

12 cigars. We have e-cigarettes. I mean that's -- we

13 have what's referred to as scrap tobacco or -- you

14 know, like what baseball players use, the loose

15 chewing tobacco I guess is another way to say it.

16 Those are the main components of the tobacco

17 category.

18 Q. Do you sell other -- have you heard

19 the phrase "innovative tobacco products"?

20 A. Yes.

21 Q. Okay. What are those?

22 A. Those are -- that would be vapor

23 products and then also now nicotine pouches, so it's

24 like a powder in a pouch with nicotine infused in it;

25 sold in a can. That is also considered ITP.

Page 30

1 Q. And do you sell those as well?

2 A. Yes.

3 Q. And what percent of Sheetz's sales in

4 this tobacco category are e-vapor products?

5 A. Currently, I believe vapor is about

6 █ percent of tobacco sales, excluding cigarettes.

7 Q. And was that similarly the case in

8 2018?

9 A. I don't recall -- I think it was a

10 little higher back then, but it was still, I believe,

11 in the █ percent range.

12 Q. If you go to 1129, which is your

13 annotation, and go to Paragraph 16 --

14 A. Okay.

15 Q. -- and this is a paragraph -- this is

16 a paragraph where you talked about the growth of JUUL

17 and the growth of vapor sales more generally.

18 Do you see that?

19 A. Yes.

20 Q. Okay. And does this -- can you

21 elaborate here on the market trends that you saw in

22 '17 and '18 -- 2017 and 2018 in the e-vapor category?

23 A. In the -- back in 2017, we saw a lot

24 of growth of the JUUL product, which had a higher

25 retail which made the revenue kind of balloon, as you

Page 31

1 see there, █

2 Q. And prior to that, was the e-vapor

3 category relatively flat or stagnant?

4 A. Yeah, it was a much smaller part of

5 the business.

6 Q. So going back to Paragraph 4 for a

7 second of your declaration, you say: Sheetz sells a

8 wide variety of cigarettes, vaping devices and other

9 tobacco products at its convenience stores. These

10 products which comprise our tobacco category and are,

11 excuse me, an important driver of foot traffic at

12 Sheetz stores accounting for approximately █

13 █

14 Although the tobacco category is one of Sheetz's

15 lower margin products, it brings in consumers who

16 often purchase higher margin products like food and

17 drinks.

18 Did I read that correctly?

19 A. Yes.

20 Q. And why are products -- you write

21 there that tobacco products is one of Sheetz's lower

22 margin products.

23 Why is that the case?

24 A. If you think about cigarette prices,

25 the cost of the product is higher so the retail is

Page 32

1 higher, but if you have a product that is roughly --

2 I'm just going to kind of ballpark the numbers here,

3 but if the retail is like 8.30 and you're making a

4 margin of █, that cost is roughly █, that

5 margin over the retail is going to give you a lower

6 percent. As compared to selling a hotdog for 99

7 cents where the cost is 30 cents, but you made 60

8 cents in margin.

9 So one, you make 60 percent margin

10 and the other you make █ percent -- █ percent

11 margin but the actual dollar value is higher.

12 Q. Is it true in the vape area as

13 well -- when you're referencing a product that sells

14 for 8.30, was that in reference to a pack of

15 cigarettes?

16 A. Yes.

17 Q. Is it also true in the vape area that

18 it's generally lower margin?

19 A. No. Vapor has higher margins than

20 cigarettes. I think we're roughly around ballpark █

21 percent margin on vapor products, so vapor over index

22 is total tobacco category margin percent.

23 Q. And does that make vapor a more

24 attractive product for you?

25 A. It is an attractive product because

Page 33

1 of the higher margin, yes.

2 Q. And am I correct -- and how did

3 JUUL -- how does -- how does JUUL compare in terms of

4 margins?

5 A. JUUL -- I mean I don't -- I no longer

6 manage the category, but JUUL, at the time when I

7 directly managed the category, had the highest margin

8 of any product.

9 Q. And did that make that product more

10 attractive to you as a P&L -- as the person

11 responsible at the time for P&L for the tobacco

12 category?

13 A. Yes.

14 Q. And how did JUUL's margins compare to

15 the MarkTen products at the time in 2018?

16 A. The MarkTen products had a lower

17 margin. Their cost structure was lower as well. I

18 don't remember, off the top of my head, the specific

19 margin differences, but it was less for MarkTen.

20 Q. And did that, all things being equal,

21 make the MarkTen products less attractive to you as

22 the manager responsible for P&L in this tobacco

23 category?

24 MR. LOVINGER: Objection to form.

25 A. I wouldn't say they were less

Page 34

1 attractive. It was just a different type of
 2 consumer.
 3 Q. What do you mean it was a different
 4 type of consumer?
 5 A. So the way I kind of viewed MarkTen
 6 was a lower cost product. Maybe that's somebody
 7 looking to get into the category. It was also a
 8 round product, cigalike, so that might have appealed
 9 to somebody looking to switch from cigarettes and
 10 wanting still a round-type device. And I think those
 11 two things were a different type of segment compared
 12 to JUUL.
 13 Q. So in your talking in that answer
 14 about the MarkTen cigalike product?
 15 A. Yes.
 16 Q. And we'll refer this a little more
 17 later, but do you recall that the pod-type products
 18 eventually supplanted cigalike products in your
 19 stores?
 20 A. Yes.
 21 MR. LOVINGER: Object to form.
 22 BY MR. MOSES:
 23 Q. And were there differences between
 24 the pod products and the cigalike products?
 25 A. Yes.

Page 35

1 Q. And what were they?
 2 A. Pod-type product is -- it clicks into
 3 the battery and then a cigalike product generally the
 4 pod or flavor portion screws into a battery, which is
 5 the same way you'd charge it, to that threading on
 6 the battery.
 7 Q. And I've heard some folks say that
 8 the cigalike product was less attractive to those
 9 interested to converting from cigarettes because it
 10 maintained the stigma of smoking.
 11 Have you ever heard folks say that?
 12 MR. LOVINGER: Object to form.
 13 A. If I do, it wasn't that often. I
 14 mean, I -- it makes sense, but I can't recall that
 15 being a product concern.
 16 Q. Did you -- do you have a view as to
 17 why the pod products came more attractive to
 18 consumers?
 19 A. I think a lot of it came down to use
 20 of use in terms of what I was talking about when you
 21 have a device -- like the cigalike, you would have to
 22 screw on the cartridge and screw it off and that
 23 would be -- you'd have to take it on and off and
 24 charge it.
 25 With a product like JUUL, that was a

Page 36

1 pod product. You could charge it on the opposite end
 2 of the cartridge so the cartridge could stay on. So
 3 it was more convenient.
 4 Q. Okay. Let's go on to Paragraphs 5
 5 and 6 of your declaration.
 6 You write: The cigarette industry in
 7 the United States is comprised of three main players,
 8 Altria, RJ Reynolds and ITG. And you described them
 9 a little bit. Going to Paragraph 6, you say, the
 10 cigarette industry has been seen a steady decline in
 11 unit volumes over a number of years due to higher
 12 taxes, fewer smokers, diversion to vapor products,
 13 increased poly use.
 14 And then you write in Paragraph 7,
 15 just to continue: In recent years the rate of
 16 decline in traditional cigarettes had been
 17 approximately 3 to 5 percent in terms of unit sales,
 18 however, the rate of decline of unit sales at Sheetz
 19 increased to approximately █ percent in 2017 and █
 20 percent in 2018 during the time when JUUL was gaining
 21 popularity and when some states raised excise taxes,
 22 the unit rate of decline at Sheetz stabilized in 2019
 23 to approximately █ percent, at least partially due to
 24 more aggressive promotions by cigarette
 25 manufacturers.

Page 37

1 Do you see those paragraphs?
 2 A. Yes.
 3 Q. In Paragraph 6, you talk about
 4 diversion to vapor products decreasing cigarette
 5 volumes.
 6 What did you mean by that?
 7 A. I guess people that were smoking
 8 cigarettes and trying e-vapor products, and whether
 9 they converted or used both, it threw down the volume
 10 for cigarette products.
 11 Q. And what was the significance of
 12 converting adult tobacco cigarette users to vapor
 13 products in terms of the success of this category?
 14 A. In terms of profitability, there was
 15 more margin to be made in selling a pack of, say,
 16 JUUL pods or a vapor device than selling a pack of
 17 cigarettes.
 18 Q. And was that the primary group of
 19 consumers to which these products were intended to
 20 appeal?
 21 MR. LOVINGER: Object to form.
 22 A. Yeah, I'd be speculating as to like
 23 what the manufacturer intended to target, but as far
 24 as, generally speaking, that was where most of it
 25 came from was cigarette smokers.

Page 38

1 You had some smokeless tobacco
 2 consumers using vapor products as well.
 3 BY MR. MOSES:
 4 Q. And would it have a great ability to
 5 convert smokers to vapor products, make their
 6 product -- make an e-vapor product more successful?
 7 MR. LOVINGER: Object to form.
 8 A. Yeah and that would be because the
 9 use would be similar, you know, an inhaled nicotine
 10 product.
 11 BY MR. MOSES:
 12 Q. Now, you say in Paragraph 7 that the
 13 rate of decline in cigarettes increased to █ percent
 14 and █ percent after JUUL's introduction.
 15 Do you see that?
 16 A. Yes.
 17 Q. And was that increase due in part to
 18 JUUL's better ability to convert smokers to cigarette
 19 smokers?
 20 MR. LOVINGER: Object to form.
 21 A. It would be in part, but also in
 22 there I have some state excise taxes were raised. So
 23 in 2016, West Virginia and Pennsylvania both had
 24 significant excise tax increases that threw down
 25 cigarette volume in the subsequent year.

Page 39

1 So that's why I said it was both
 2 things.
 3 So we had -- we saw people converting
 4 to vapor products, JUUL, and also, you know, the
 5 taxes raised the cost of the cigarettes, cost, retail
 6 structure went up so that also made units decline in
 7 those years.
 8 Q. And how did JUUL -- why was JUUL able
 9 to have better success at converting smokers than the
 10 e-vapor products than it did in the market before it
 11 gained popularity?
 12 MR. SANTOS: Object to form.
 13 MR. LOVINGER: Object to form.
 14 A. Yeah, I would be kind of speculating
 15 as to why certain consumers preferred JUUL over other
 16 products if I were to answer that.
 17 Q. Now, if you go to Paragraph 8 of
 18 your -- of your declaration, you say: Sheetz
 19 conducted a study that showed that at least 30
 20 percent of smokers who tried JUUL did not return to
 21 smoking traditional cigarettes. This suggests that
 22 the growth in the rate of decline of traditional
 23 cigarette sales was caused, at least in part, by the
 24 growth in vapor products.
 25 Do you see that?

Page 40

1 A. Yes.
 2 Q. And would you agree that it was
 3 caused, in part, by the growth of JUUL?
 4 A. Yes.
 5 Q. Did you discuss this study with
 6 Mr. Lovinger or anyone else at the FTC?
 7 A. I did.
 8 Q. Okay. And what did you tell them
 9 about it?
 10 A. What we did was look at the purchase
 11 kind of pattern of smokers, so people -- we have a
 12 program called the My Sheetz Card, which is a loyalty
 13 card program. That when people purchase products and
 14 swipe a card, we can say that they are smokers or
 15 have a history of buying cigarette products, and then
 16 we kind of looked at that group of customers that
 17 then tried different vapor products and then saw --
 18 tried to ascertain did they go back to smoking
 19 cigarettes or make a hundred percent switch going
 20 forward.
 21 And what we did find was that a good
 22 30 percent of the people that were in the smoker
 23 group that tried JUUL did not return to smoking
 24 traditional cigarettes with the caveat that they
 25 weren't going back to buying cigarettes and just not

Page 41

1 swiping their card. I mean there's always that --
 2 it's not -- it wasn't a scientific-type survey. We
 3 were just looking at scan swipes associated with
 4 cards and products.
 5 Q. Why did you conduct this study?
 6 A. We were curious to see the like
 7 conversion rates for smokers to different brands, so
 8 we looked at MarkTen and JUUL. I think MarkTen was
 9 around 20 some percent in the -- in the study and
 10 JUUL was 30 percent. And the reason we looked at
 11 those, because they were the leading two brands in
 12 the category.
 13 Q. Why was conversion important to you?
 14 A. Again, that goes back to the margin
 15 discussion.
 16 So in part -- that's part of it, so
 17 if you have people leaving cigarettes to go to vapor,
 18 you would get more penny profit out of those
 19 purchases. And then also, if you were concerned
 20 about high cigarette volume decline, it makes sense
 21 to track where people are going. If a cigarette
 22 consumer is leaving the store altogether or just
 23 moving around the category, we would -- we were
 24 trying to figure out that at the time, so if a
 25 consumer was moving from cigarettes to a different

Page 42

1 category, that's a different discussion than they
 2 were leaving the category altogether or our store
 3 frankly.
 4 Q. And all things being equal, a product
 5 that had a greater success at converting would be
 6 more attractive to you?
 7 MR. LOVINGER: Object to form.
 8 A. If the product had a higher margin
 9 percent and penny profit, yes, that would be
 10 appealing to a category manager, yes.
 11 Q. Okay. So let's look at a document,
 12 which I believe is related to the study. This is
 13 DX1126.
 14 (Exhibit DX1126, Email, was marked
 15 for Identification by the court reporter.)
 16 MR. MOSES: I believe that's loaded.
 17 Q. And this is an email from Stephen
 18 Toomey to you, hey, Croz, below is the e-cig
 19 conversion you were looking for. Let me know if you
 20 need anything further. Who is Mr. Toomey?
 21 A. He's a statistical analyst at Sheetz.
 22 Q. And is this the study you were
 23 referencing a moment ago?
 24 A. Yes.
 25 Q. And in reviewing it, it states that

Page 43

1 the conversion rate for JUUL is 37 percent; is that
 2 accurate?
 3 A. Yeah.
 4 Q. And it states that the conversion
 5 rate for MarkTen is 22 percent; is that accurate?
 6 A. Yeah.
 7 Q. When you assessed MarkTen, did that
 8 include both the cigalike and the Elite pod products?
 9 A. Yes, that would have been inclusive
 10 of both.
 11 Q. Okay. Are you finished with your
 12 answer? I'm sorry, Mr. Crozier.
 13 A. Yes, that would have included both.
 14 Q. And did you have a view on which
 15 product was better at converting among the MarkTen
 16 products, cigalike versus the Elite pod product?
 17 A. Well, we didn't dive that deep into
 18 it.
 19 Q. Did you have a view from other
 20 sources?
 21 A. No. I think MarkTen Elite came on in
 22 March of 2018. So it was a relatively new product
 23 compared to MarkTen as a whole.
 24 Q. Now, did it surprise you that JUUL
 25 had a higher conversion rate?

Page 44

1 A. No. As I understood it, JUUL has
 2 5 percent nicotine and MarkTen was less of the amount
 3 of nicotine in it. So one thought there was that
 4 there was a higher nicotine satisfaction with JUUL as
 5 compared to MarkTen.
 6 Q. And what is the significance of
 7 nicotine satisfaction when it comes -- what -- strike
 8 that.
 9 What is the significance of nicotine
 10 satisfaction in regards to the issue of conversion?
 11 A. The vendors explained it to me, if a
 12 product has a higher nicotine satisfaction, that's
 13 essentially what a consumer is looking for that had
 14 been a smoker. So if you get the amount of nicotine
 15 to satiate what you're looking for, the product will
 16 be more effective in conversion.
 17 Q. And are you aware that JUUL had
 18 something called nicotine salts?
 19 A. Yes.
 20 Q. And what are the significance of
 21 nicotine salts in regard to the issue of nicotine
 22 satisfaction?
 23 A. As it was explained to me, nicotine
 24 salts facilitates absorption into the body.
 25 Q. And how did MarkTen Elite compare on

Page 45

1 the question of nicotine satisfaction?
 2 A. That, I don't know. I was told by
 3 the -- my rep -- my sales rep that MarkTen Elite did
 4 not use salt, and I believe the percentage of
 5 nicotine was lower, but I don't know the specifics on
 6 the -- as it compared to JUUL as a percent of
 7 nicotine.
 8 Q. In your experience, do e-vapor
 9 products that provide satisfaction levels more akin
 10 to cigarettes achieve more success in converting
 11 smokers?
 12 A. That's an inference you can draw from
 13 this study, that the JUUL with the higher nicotine
 14 content was more effective.
 15 Q. By the way, did you discuss the issue
 16 of nicotine satisfaction or nicotine salts with the
 17 FTC?
 18 A. I don't recall that I did. I don't
 19 remember, though.
 20 Q. One of the other things that struck
 21 me here is the total number of customers, [REDACTED]
 22 versus [REDACTED] under the MarkTen.
 23 Do you see that?
 24 A. Yes.
 25 Q. Was one of the reasons JUUL had more

Paul Crozier Confidential

01/19/2021

46 to 49

Page 46

1 customers, you believe, because it provided greater
 2 nicotine satisfaction?
 3 MR. LOVINGER: Object to form and
 4 foundation.
 5 A. Yeah. I would be speculating if --
 6 you know, to make that determination.
 7 MR. MOSES: Why don't we take a break
 8 here? We've been going for an hour and just take a
 9 10-minute break if that's all right.
 10 (A brief recess was taken.)
 11 BY MR. MOSES:
 12 Q. Thank you, Mr. Crozier.
 13 I want to turn to Paragraph 13 of
 14 your declaration, and it states: Within the vapor
 15 category, Sheetz only sells closed vaping systems
 16 which come prefilled with vaping liquids in tanks or
 17 pods. Prior to JUUL's entry, most closed systems
 18 were cigalikes which were modeled to look like
 19 cigarettes and were often not reusable. JUUL devices
 20 look more like USB thumb drives and are pod based,
 21 which means that consumers could easily replace an
 22 empty cartridge for their JUUL devices and enjoy a
 23 variety of different flavors. The vast majority of
 24 vapor sales at Sheetz are pod based including all
 25 JUUL sales; although Sheetz also sells some cigarette

Page 47

1 products.
 2 Do you see that?
 3 A. Yes.
 4 Q. Okay. And are pods still the vast
 5 majority of your sales since this --
 6 A. Yes.
 7 Q. -- you reviewed this declaration?
 8 A. Yes.
 9 Q. And why are pods the vast majority of
 10 your sales?
 11 A. I think a lot of it goes back to
 12 convenience and that's what most of the products are
 13 now currently offered by our vendors. So again, just
 14 ease of use. You just click on a pod into a battery
 15 as opposed to a cigalike where things are screwed on
 16 and off.
 17 And I mentioned earlier here, but
 18 cigalikes, some of them are not reusable, so there's
 19 not a great economy of scale there either for a
 20 single-use cigalike-type product.
 21 Q. And do you recall when the switch
 22 from category being more -- involving more cigalike
 23 products to the category involving more pod products
 24 occurred?
 25 A. I think, if I remember correctly,

Page 48

1 roughly 2017 is when the pod system or JUUL kind of
 2 took off with the fall of 2017.
 3 Q. Okay.
 4 A. And before that --
 5 Q. Let me show you --
 6 A. A lot of it was
 7 the cigalike-type product.
 8 Q. And what was -- was this a
 9 significant change in the market, in the category?
 10 A. Yes.
 11 MR. LOVINGER: Object to form.
 12 Q. And how -- why was the change
 13 significant?
 14 A. I don't remember the exact like mix
 15 of who like our sales were what, but JUUL went from
 16 being a small player to well over 50 percent of the
 17 category.
 18 Q. Okay. Let me show you a document
 19 we've premarked as DX-1127.
 20 (Exhibit DX-1127, Chart, was marked
 21 for Identification by the court reporter.)
 22 BY MR. MOSES:
 23 Q. And this is a chart -- these are two
 24 charts that I'll represent to you we had created
 25 based on data referenced in -- in the footnote at the

Page 49

1 bottom comparing in the first chart the
 2 performance -- the relative performance of sales of
 3 devices for pod-based products and cigalike products
 4 over time and -- and in the bottom for cartridges.
 5 And understanding that you didn't prepare this
 6 document, does this seem directionally correct to
 7 you?
 8 A. Yeah. Directionally, like you said,
 9 I didn't put these together, but directionally, this
 10 looks like what happened with the category.
 11 Q. Okay. And the -- and at this point,
 12 the category is overwhelmingly pods; is that correct?
 13 A. Yes.
 14 Q. Okay. And in looking at these
 15 charts, does it -- if we see that the division, as
 16 you said, appears to occur sometime in the fall of
 17 '17 and then accelerate throughout '18 into '19. Is
 18 that consistent with your recollection as well?
 19 A. Yes.
 20 Q. And in your experience, do
 21 cigalikes -- you already mentioned -- excuse me,
 22 strike that.
 23 You already mentioned about the kinds
 24 of consumers that might be interested in cigalikes.
 25 Do you view cigalikes to be a substitute for pods?

Paul Crozier Confidential

01/19/2021

50 to 53

| | |
|--|--|
| <p style="text-align: right;">Page 50</p> <p>1 MR. LOVINGER: Object to form.</p> <p>2 A. I'd be speculating on the use or</p> <p>3 behavior or preference of a consumer.</p> <p>4 MR. MOSES: Well, let me show you</p> <p>5 DX1128.</p> <p>6 (Exhibit DX1128, Email, March 2019,</p> <p>7 was marked for Identification by the court</p> <p>8 reporter.)</p> <p>9 BY MR. MOSES:</p> <p>10 Q. And this is an email in March 2019</p> <p>11 from Barbara Fowler to you: Hey, Paul, Sean had</p> <p>12 referred me to you with a question a customer had</p> <p>13 asked.</p> <p>14 A. Yeah.</p> <p>15 Q. And she is looking for a substitute</p> <p>16 for the MarkTen and you respond viewed zero is a very</p> <p>17 similar product. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Am I correct, sir, that Vuse Ciro is</p> <p>20 a cigalike product?</p> <p>21 A. Yes.</p> <p>22 Q. And why did you recommend a cigalike</p> <p>23 product as a substitute?</p> <p>24 A. Very similar, kind of how I had at</p> <p>25 the end of the sentence there was round and from what</p> | <p style="text-align: right;">Page 52</p> <p>1 percent or less of the market.</p> <p>2 Is that consistent with your</p> <p>3 recollection?</p> <p>4 A. Yes.</p> <p>5 Q. And is it consistent with your</p> <p>6 recollection that they were declining part of the</p> <p>7 category?</p> <p>8 A. Yes.</p> <p>9 Q. And currently, while you had some</p> <p>10 cigalike sales, are they small -- very small part of</p> <p>11 your overall sales in that category?</p> <p>12 A. Yeah.</p> <p>13 Q. Were cigalikes likely to be a</p> <p>14 competitive threat to JUUL if Altria had not closed</p> <p>15 Nu Mark?</p> <p>16 MR. SANTOS: Object to form.</p> <p>17 MR. LOVINGER: Object to form.</p> <p>18 A. I would be speculating on what the</p> <p>19 long-term would have been there.</p> <p>20 BY MR. MOSES:</p> <p>21 Q. Well, given that -- the decline in</p> <p>22 the market, do you believe that cigalikes posed a</p> <p>23 competitive threat to JUUL?</p> <p>24 MR. LOVINGER: Object to form.</p> <p>25 A. I'm sorry. Can you say that again?</p> |
| <p style="text-align: right;">Page 51</p> <p>1 the vendor Reynolds had showed me it was similar to</p> <p>2 nicotine in strength to a MarkTen product. So it</p> <p>3 kind of made sense, you know, to go in that</p> <p>4 direction.</p> <p>5 Also the price is very similar. I</p> <p>6 don't have that listed there, but the price was --</p> <p>7 for Ciro and MarkTen would have been very -- well,</p> <p>8 close, if you will.</p> <p>9 Q. Now, did you view pods and cigalikes</p> <p>10 as competitive with each other?</p> <p>11 A. I think the way I thought of it was</p> <p>12 cigalikes -- a lot of cigalike product users kind of</p> <p>13 moved into pod devices long-term, so I mean you could</p> <p>14 kind of see that in the chart before, but kind of it</p> <p>15 was more of a progression from cigalikes into pods.</p> <p>16 Q. Now, you mentioned the chart we</p> <p>17 looked at before and we, obviously, looked at an</p> <p>18 email concerning the discontinuation of MarkTen.</p> <p>19 Do you recall that in December 2018,</p> <p>20 MarkTen, Altria announced that they were</p> <p>21 discontinuing the MarkTen cigalike brands?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And at the time, if we put the</p> <p>24 chart back up -- you can go back to the chart,</p> <p>25 DX1127. The chart reflects that cigalikes were 20</p> | <p style="text-align: right;">Page 53</p> <p>1 Q. Given the significant decline in the</p> <p>2 cigalike -- cigalike category, do you believe that</p> <p>3 cigalikes were likely to be a competitive threat to</p> <p>4 JUUL if Altria had not closed Nu Mark?</p> <p>5 MR. LOVINGER: Objection.</p> <p>6 A. Yeah, that would be unlikely.</p> <p>7 BY MR. MOSES:</p> <p>8 Q. And but for the closure of the Nu</p> <p>9 Mark MarkTen cigalikes, do you think the trend of</p> <p>10 declining cigalike sales would have changed?</p> <p>11 MR. LOVINGER: Object to form;</p> <p>12 foundation.</p> <p>13 A. Yeah, I wouldn't be able to -- I'd be</p> <p>14 speculating again.</p> <p>15 BY MR. MOSES:</p> <p>16 Q. Well, I guess -- let me -- I throw a</p> <p>17 lot of objections. Let me just see if I can reframe</p> <p>18 the question.</p> <p>19 Do you think -- I think you agree</p> <p>20 that there was a trend in declining cigalike share of</p> <p>21 this category; isn't that correct?</p> <p>22 A. Yeah.</p> <p>23 Q. Do you think that trend would have</p> <p>24 changed had Altria not closed or removed its Nu Mark</p> <p>25 cigalike brands?</p> |

Page 54

1 MR. LOVINGER: Objection; foundation.
 2 A. Well, I'm looking at this chart, and
 3 it looks like, you know, the -- trying to remember
 4 back then, but it looks like it was pretty stable
 5 around [REDACTED] percent for a while there.
 6 So, again, I'd be guessing as to what
 7 would have happened had it stayed on the market. But
 8 it -- it didn't have that continued nosedive that you
 9 see right above December of 2017. It kind of levels
 10 out after that, so beyond a certain point there,
 11 there would be some guessing as to where the category
 12 would have went. I mean it could have stayed [REDACTED]
 13 percent long-term. No one knows, you know.
 14 Q. It didn't say [REDACTED] percent long-term
 15 did it?
 16 MR. LOVINGER: Object to form.
 17 A. Beyond that, no, but the product was
 18 also pulled from the market.
 19 BY MR. MOSES:
 20 Q. There were other competitors -- other
 21 manufacturers selling cigalike products?
 22 A. Yes.
 23 Q. Including the Vuse Ciro product you
 24 recommended to that customer?
 25 A. Yes.

Page 55

1 Q. And their market share continued to
 2 decline, those products?
 3 A. Yes, Vuse Ciro and Vuse Solo is
 4 another brand product extension.
 5 Q. Now, let's go on to Paragraph 14, you
 6 write: [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 Are the NJOY and Reynolds Vuse
 11 products you're referencing there pod products?
 12 MR. LOVINGER: Object to the form.
 13 A. NJOY, the majority of that is a pod
 14 product and Reynolds Vuse is -- the majority of that
 15 is their pod product Vuse Alto, but they do have
 16 pod-based products still, Ciro, Vibe and Solo.
 17 But, again, the majority of it's
 18 their pod products.
 19 Q. I believe you misspoke. I think you
 20 meant cigalike-based products, Ciro, Vibe and Solo;
 21 is that correct?
 22 A. Yes, thank you.
 23 Q. No worries and ITG's Blu, is that a
 24 pod product?
 25 A. There's pod product there and we have

Page 56

1 the disposable cigalike product, too, but it's a mix
 2 of both.
 3 Q. And is the majority of the sales
 4 there the pod products?
 5 A. That, I'm not sure. I'm not close to
 6 that data anymore. I can't say for certain.
 7 Q. And NJOY and the Vuse -- the NJOY pod
 8 product and the Vuse pod product, do they have
 9 nicotine salts?
 10 A. I believe NJOY has nicotine salts and
 11 Vuse Alto has nicotine salts is my understanding.
 12 Q. And the Vuse Alto product is a
 13 nicotine product as well?
 14 A. Yes.
 15 Q. Do you believe that that results in
 16 their providing greater nicotine satisfaction to
 17 their customers?
 18 A. That's what we've heard from the
 19 vendors about consumer research. So it's probably
 20 reasonable to make that assumption.
 21 Q. And you believe that's a factor in
 22 their success?
 23 A. Yeah.
 24 Q. Now, you go on to discuss this a
 25 little more in Paragraph 15. I believe that NJOY's

Page 57

1 growth in 2019 can be attributed to a few factors.
 2 First, for six months from May 1 to October 31, 2019,
 3 I assume; is that correct?
 4 A. Yes.
 5 Q. NJOY discounted its device from a
 6 regular retail price of about 24.99 to just 99 cents.
 7 Second, unlike JUUL NJOY continues to sell vapor pods
 8 in fruit flavors throughout 2019. NJOY pulled all
 9 its fruit flavors in 2020 pursuant to the FDA ban.
 10 Third, NJOY pods are priced significantly lower than
 11 JUUL's. It remains to be seen whether NJOY can
 12 sustain -- sustain its rate of growth in 2020 without
 13 its fruit flavors or the 99 cents promotion. So just
 14 going through that for a second. You talk about
 15 first cutting the price of the device.
 16 Do you see that?
 17 A. Yes.
 18 Q. Okay. And what do you understand to
 19 be the strategy in that regard?
 20 A. The thinking there was to get a
 21 device in a consumer's hand at a lower retail, just
 22 kind of like the razor razor blade model. So
 23 lowering the threshold risk of wasting money to the
 24 consumer so the risk of spending 25 bucks and it
 25 being a device I don't like is kind of taken away if

Page 58

1 it's only 99 cents.

2 Q. And is the idea to generate trial so

3 the consumer can see if they like the product?

4 A. Yes.

5 Q. And you talk about the sale of

6 cartridges as well. Do you see that?

7 A. Yes.

8 Q. Are -- what is the significance of

9 ongoing cartridge sales as a measure of a success of

10 a product?

11 A. Cartridge sales are important because

12 it shows there's through-put with the consumer. So

13 they buy the device and then keep coming back to, you

14 know, buy the pods together with the device, as

15 opposed to just buying the device once and whether it

16 came with pods or not, the pods show that the person

17 is still using the device.

18 Q. So would I agree that device sales

19 without looking at ongoing cartridge sales -- strike

20 that.

21 Can you look at device sales without

22 looking at ongoing cartridge sales to assess the

23 quality of the success of a product?

24 A. Well, you would want to look at both.

25 Q. Now, I'm going to ask you to look at

Page 59

1 another set of data we generated from -- another

2 chart we generated from the data you sent to us. And

3 this is Tabs 15 and 16 from our binder, but DX1135

4 and DX1136.

5 (Exhibit DD1135, Sheetz's Retail

6 Volume Shares By Brand Device, Sheetz's

7 Pod-Based Vaporizers June 2017 Through July

8 2020, was marked for Identification by the

9 court reporter.)

10 (Exhibit DX1136, Sheetz's Retail

11 Volume Shares By Brand Cartridge, Sheetz's

12 Pod-Based Vaporizers January 2017 to July

13 2020, was marked for Identification by the

14 court reporter.)

15 MR. MOSES: So we're going to load

16 both.

17 BY MR. MOSES:

18 Q. Okay. So why don't you take a moment

19 to look at those charts, Mr. Crozier. And the first,

20 DX1135 is entitled Sheetz's Retail Volume Shares By

21 Brand Device, Sheetz's Pod-Based Vaporizers June 2017

22 Through July 2020 and the second, DX1136 is entitled

23 Sheetz's Retail Volume Shares By Brand Cartridge,

24 Sheetz's Pod-Based Vaporizers January 2017 to July

25 2020 and, again, it's broken down by brand obviously.

Page 60

1 And, again, without knowing that you didn't create

2 these charts and I'm representing to you that we

3 created them based on the data that was in the

4 production with the sourcing at the bottom of the

5 charts, do these seem directionally accurate to you?

6 A. Directionally, yeah.

7 Q. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 A. [REDACTED]

11 Q. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 A. [REDACTED]

16 Q. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 A. [REDACTED]

20 Q. [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 61

1 A. [REDACTED]

2 Q. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 A. [REDACTED]

7 Q. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 A. [REDACTED]

12 Q. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Do you recall raising that issue in

18 your declaration?

19 MR. LOVINGER: Object to form.

20 BY MR. MOSES:

21 Q. And you can go back --

22 A. Yes.

23 Q. Okay. Thank you.

24 A. '15, yes.

25 Q. Yes, in '15, you said: It remains to

Page 62

1 be seen whether NJOY can sustain its rate of growth
 2 in 2020 without its fruit flavors or the 99 cent
 3 promotion.
 4 A. Yes.
 5 Q. Does this chart show that NJOY, at
 6 least it sustained its position in the market, even
 7 without those fruit flavors?
 8 MR. LOVINGER: Object to form.
 9 A. Yes, it appears to be stable from
 10 2000 -- or 2020 -- February 2020 beyond.
 11 Q. Okay. And is that consistent with
 12 your understanding that NJOY continues to be a
 13 significant player in the market?
 14 A. Yeah.
 15 Q. And given the absence of -- given the
 16 FDA flavor ban, can some of that be attributed to the
 17 fact that NJOY provides nicotine satisfaction?
 18 A. I would be speculating. I think it's
 19 probably more due to their price structure has helped
 20 them lower retail.
 21 Q. Okay. Do you think without nicotine
 22 satisfaction, they would have success?
 23 A. No.
 24 Q. Now, looking back in the chart, we
 25 see the introduction of MarkTen Elite in February of

Page 63

1 2018. Do you see that? I'm looking at but I didn't
 2 tell you DX1135 where it's more visible.
 3 Do you see in February of 2018, the
 4 introduction --
 5 A. Yes, I see it there.
 6 Q. And if we look at the cartridge
 7 chart, DX1136, my observation is that the MarkTen
 8 Elite cartridge sales did not have a similar uptick
 9 to the device sales of the devices.
 10 Do you agree with that?
 11 MR. LOVINGER: Object to form.
 12 A. Yeah, compared to the other graphic
 13 representation, that's a fair statement.
 14 BY MR. MOSES:
 15 Q. Okay. And is that consistent with
 16 your recollection?
 17 A. Yes.
 18 Q. And the devices -- we'll go over this
 19 in a little bit -- but the devices were on promotion
 20 throughout most of this period, for MarkTen Elite; is
 21 that correct?
 22 A. I don't recall the specific
 23 promotions, but, yeah, generally, they were on
 24 promotion. I think along with the cartridge pack,
 25 battery and the cartridge together.

Page 64

1 Q. [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 A. [REDACTED]
 6 [REDACTED]
 7 Q. [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 A. Yeah.
 19 Q. Now, let's go on to -- let's go on to
 20 Paragraph 16. It states there in contrast to
 21 judicial -- strike that.
 22 In contrast to traditional
 23 cigarettes, which have been declining for years,
 24 vapor sales at Sheetz decreased dramatically in 2017
 25 and 2018, spurred primarily by JUUL's rapid growth.

Page 65

1 In 2019, however, vapor sales at Sheetz grew at a
 2 significantly lower rate following JUUL's voluntary
 3 withdrawal of most of its flavors as well as press
 4 reports of vaping illnesses from open vape systems
 5 that impacted the whole vapor category.
 6 Did I read that correctly?
 7 A. Yeah.
 8 Q. And you mentioned flavors there. We
 9 were obviously discussing that as well in connection
 10 with NJOY. What are -- what are you referring to
 11 when you talk about flavors?
 12 A. Flavors beyond tobacco and menthol.
 13 Q. And what is the significance of them
 14 with regard to consumer appeal?
 15 A. Well, that's something, like any
 16 category, consumers look for different flavors and
 17 variety in products and then, excuse me, I think what
 18 is being referred to there is just the -- you know,
 19 those products coming off the market was going to
 20 have an impact.
 21 Q. Now, you noted that in the prior
 22 paragraph, that in February of 2020, the FDA
 23 instituted a flavor ban.
 24 Do you recall that?
 25 A. Yes.

Paul Crozier Confidential

01/19/2021

66 to 69

Page 66

1 Q. And are you aware that Altria
 2 discontinued most of its flavors in October of 2018?
 3 A. Yes.
 4 Q. Had Altria or Nu Mark remained in the
 5 market with its e-vapor products, would its lack of
 6 flavors hindered its ability to compete?
 7 MR. LOVINGER: Object to form.
 8 MR. SANTOS: Object to form;
 9 foundation.
 10 A. Yes, but to me, I would be
 11 speculating. It's a long time ago in just the mix of
 12 where things were at the time. I would be guessing.
 13 BY MR. MOSES:
 14 Q. Okay. All right. Well, you did say
 15 that the removal of flavors might have had an effect
 16 on NJOY's success --
 17 A. Right.
 18 Q. Would you have had the same question
 19 about whether the removal of flavors would have an
 20 effect on the Nu Mark product's success?
 21 A. Yeah, I think the difference is that
 22 NJOY -- if you think about that, it came later when
 23 it was kind of an FDA mandate, so the playing field
 24 was leveled, kind of when NJOY came out of the flavor
 25 business, so it was menthol and tobacco for

Page 67

1 everybody.
 2 So that's a little different than
 3 what kind of I think you said the MarkTen had been
 4 pulled in 2018, which I recall, but that is different
 5 if -- you know, because there were other people that
 6 had not pulled fruit flavors or flavors beyond
 7 tobacco and menthol.
 8 Q. Okay. But then do you agree that not
 9 having flavors during a time when others are using
 10 flavors would hinder your ability to compete?
 11 A. That's very likely, yes.
 12 Q. Let's go on to Paragraph 17, and you
 13 write: Shelf space for vapor products -- or it
 14 states here, excuse me: Shelf space for vapor
 15 products and other innovative tobacco products is
 16 kept separately from traditional cigarettes.
 17 And by the way, why is that?
 18 A. Just the -- we break up all the
 19 categories that way. So if cigars are kind of in
 20 their own section, then smokeless tobacco, Snuff, is
 21 in its own section. It just draws a clear
 22 delineation between product type form factor and it's
 23 easier for the person running the register to find
 24 the product for the consumer when they ask for it.
 25 Q. And does shelf space also help with

Page 68

1 product -- category management for you, having these
 2 delineated shelf space?
 3 A. Yes.
 4 Q. And does creating a separate category
 5 for innovative tobacco products also help distinguish
 6 the category overall?
 7 A. Yes.
 8 MR. LOVINGER: Object to form.
 9 BY MR. MOSES:
 10 Q. So I want to show you two -- we're
 11 going to get to what I have a feeling is a subject
 12 you actually really love, which is planograms, given
 13 your history. I want to show you two documents,
 14 DX1130 and DX1131.
 15 (Exhibit DX1130, Planogram, was
 16 marked for Identification by the court
 17 reporter.)
 18 (Exhibit DX1131, Planogram, was
 19 marked for Identification by the court
 20 reporter.)
 21 Q. Looking at DX-1130, this is a
 22 document which has -- oh, okay. Is it -- is this the
 23 current set or planogram that you use in JUUL -- in
 24 your Sheetz stores in this category?
 25 A. Yes, I think there may be some minor

Page 69

1 variation within the, you know, vendor space, but
 2 that's pretty close to accurate.
 3 Q. Okay. And if we could go to 1131,
 4 this is a -- based on your annotation to your
 5 declaration, we understand this to be the planogram
 6 when JUUL first came into the category set.
 7 Is that consistent with your
 8 recollection?
 9 A. Yeah.
 10 Q. Okay. And so here we have JUUL
 11 towards the bottom by contrast to the planogram we
 12 just looked at where JUUL was at the top; is that
 13 correct?
 14 A. Yes.
 15 Q. And if we look at -- if we mark
 16 DX1132.
 17 (Exhibit DX1132, Planogram in January
 18 2018, was marked for Identification by the
 19 court reporter.)
 20 MR. SOWLATI: Okay. It's loaded.
 21 MR. MOSES: Okay.
 22 BY MR. MOSES:
 23 Q. This is what we understand to be the
 24 planogram in January 2018, just before Elite was
 25 introduced into the market. Is that consistent with

Page 70

1 your recollection?

2 A. Yeah, that shows Elite in the

3 planogram. So yes, that would have been -- that

4 would have been March of 2018 in stores, I believe.

5 Q. Okay. And JUUL was at the very

6 bottom here?

7 A. Yeah.

8 Q. And so we looked at a planogram from

9 2015 where JUUL was near the bottom. We looked at a

10 planogram from January of 2018 where JUUL was at the

11 very bottom.

12 Why do you think JUUL was able to

13 have the success it had despite being at the bottom

14 of your set?

15 A. I think it just had a product quality

16 or resinated with consumers. And you see similar

17 things where sometimes, as a category, you put better

18 selling products on the bottom shelf because the

19 consumers will find the product or know that you have

20 it, if that makes sense.

21 Q. So is placement on the shelf alone a

22 guaranty of success -- a higher placement on the

23 shelf alone a guaranty of success?

24 A. No.

25 Q. Does product quality matter?

Page 71

1 A. Yes.

2 Q. Now, you mentioned how -- you

3 mentioned how there are -- one of the factors you

4 take into account in setting the planogram are

5 contracts with suppliers or manufacturers.

6 Do you recall giving that testimony?

7 A. Yes.

8 Q. And you signed such a contract with

9 Nu Mark or Altria or one of its service companies,

10 correct?

11 A. Yes.

12 Q. If you could go to DX-1134.

13 (Exhibit DD-1134, Agreement, was

14 marked for Identification by the court

15 reporter.)

16 Q. Is this an agreement that you signed

17 with Nu Mark LLC regarding shelf space in 2018?

18 A. Yes.

19 Q. And if you go to the second page of

20 Paragraph 4 and looking at 4B, it states: Retailer

21 may terminate this RUF in its entirety or with

22 respect to one or more stores.

23 Do you see that?

24 A. Yes.

25 Q. Am I correct in understanding that

Page 72

1 Sheetz had the right to voluntarily terminate its

2 participation in whole or in part with this shelf

3 space agreement?

4 A. Yes.

5 Q. Let's jump ahead to Paragraph 22

6 through 24.

7 And I just want to focus first on the

8 header of these paragraphs, Roman IV Altria's

9 discontinuation of MarkTen, an investment in JUUL.

10 Did the FTC write that header?

11 A. Yes.

12 Q. Am I correct, Mr. Crozier, have no

13 personal knowledge as to whether and to what extent

14 these two events -- the discontinuation of MarkTen

15 and Altria's investment in JUUL are linked; isn't

16 that correct?

17 MR. LOVINGER: Object to form.

18 A. I'm sorry. Can you restate it?

19 Q. Very badly-worded question.

20 Do you have any personal knowledge as

21 to whether and to what extent these two events

22 identified in the header the discontinuation of

23 MarkTen and the investment in JUUL are linked.

24 A. No personal knowledge, just lived

25 through both and in running the category.

Page 73

1 Q. Okay. Now, taking Paragraph 22

2 first, in 2018, before Altria's announced its

3 investment in JUUL, Altria had been aggressively

4 promoting Nu Mark products. Altria paid Sheetz [REDACTED]

5 [REDACTED] in 2018 for the right to the top three

6 shelves in Sheetz's vapor displays. When Sheetz

7 entered into the agreement with Altria in 2018, the

8 plan was to fill the top three shelves and Sheetz's

9 vapor fixtures exclusively with Altria's Nu Mark

10 products until Altria discontinued MarkTen December

11 2018 MarkTen occupied more shelves and was in a more

12 favorable display position than any other vaping

13 brand sold at Sheetz.

14 Do you see that?

15 A. Yes.

16 Q. Okay. And am I correct that you were

17 speaking here about all the Nu Mark products,

18 cigalike and pod together?

19 A. Yeah, and the top three shelves, that

20 would have been both, yes.

21 Q. Okay. And when you talk about

22 aggressively promoting Nu Mark products, you're

23 talking about all of the cigalike and pod products

24 together?

25 A. Correct.

Page 74

1 Q. And if, in fact, we go to
 2 Paragraph -- the annotation that you prepared, which
 3 for the record is DX-1129, and if you go to Paragraph
 4 22 in that annotation, do you see that underneath
 5 the -- underneath that, are you listing various kinds
 6 of -- what are you listing underneath Paragraph 22 in
 7 your annotation?
 8 A. [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] And
 23 then what I have on the promo calendar just shows
 24 promotional calendars by week. It's an Excel file.
 25 Q. And these promotions, to confirm,

Page 75

1 involve both the MarkTen product and the Elite
 2 product?
 3 A. Yeah.
 4 Q. And can you explain why despite that
 5 aggressive promotion of MarkTen products in 2018,
 6 those products were unable to make significant
 7 progress in taking share away from JUUL?
 8 MR. LOVINGER: Object to the form and
 9 foundation.
 10 A. Yeah, there would just -- it would
 11 be -- I would speculate a little bit but I mean it
 12 just did not resonate with consumers quite the same
 13 way or as they had hoped, if that makes sense. Both
 14 of those were pretty aggressive offers, but they
 15 didn't really generate a ton of through-put, but long
 16 term, again, be a little bit of speculation because
 17 it was less than a full year that product had on the
 18 market, kind of launched in March of 2018 and the
 19 decision to pull it was in the fall, late fall of the
 20 same year, which isn't a long runway of time.
 21 Q. Did you -- am I correct, Mr. Lovinger
 22 made a foundation objection. I am correct by the way
 23 that the MarkTen products did not make a significant
 24 dent in JUUL's share during 2018?
 25 MR. LOVINGER: Object to form.

Page 76

1 A. Mark -- MarkTen Elite, is that what
 2 you're asking?
 3 BY MR. MOSES:
 4 Q. Well, I'll ask generally about
 5 MarkTen. Isn't it true about MarkTen, is it true
 6 that MarkTen generally did not make a dent in JUUL's
 7 shares in 2018?
 8 A. Correct.
 9 Q. And isn't it true that Elite didn't
 10 make any dent in JUUL's share in 2018?
 11 MR. LOVINGER: Object to form.
 12 A. Correct.
 13 BY MR. MOSES:
 14 Q. Now, you mentioned the promotions for
 15 Elite which appear to have run from March 4, 2018 and
 16 that's when it was introduced at your stores; is that
 17 correct?
 18 A. Yes.
 19 Q. All the way through to September 30,
 20 2018. Do you see that?
 21 A. Yeah.
 22 Q. And did JUUL respond at all with new
 23 kinds of promotions of its own after Elite was
 24 introduced?
 25 A. No, I mean, they just ran their

Page 77

1 normal -- they would do -- their offer was generally
 2 \$20 off of a pod pack with the -- or battery and pod
 3 pack together. But I don't recall them doing things
 4 above and beyond to address that.
 5 Q. And am I correct that that promotion,
 6 that \$20 off promotion was something that they had
 7 done before Elite was even introduced?
 8 A. Yeah, that -- that was their standard
 9 offer. I think it was 20 bucks off the battery with
 10 pods and then 10 or 15 off if it was just the battery
 11 alone device.
 12 Q. Did JUUL seem particularly concerned
 13 with the Elite introduction?
 14 MR. LOVINGER: Object to form.
 15 A. I don't recall them being concerned
 16 in our discussions at the category level when we were
 17 planning out promotions.
 18 BY MR. MOSES:
 19 Q. Now, I note that the promotion for
 20 Elite ended on September 30, 2018 before restarting
 21 again in November -- the end of November as you said
 22 you believed to move through some inventory. But
 23 focusing on September 30, 2018, if you could go back
 24 to DX1135, which is the device chart, do you see on
 25 that chart how the volume -- how it represents that

Page 78

1 the volume dropped off significantly for Elite
 2 devices following September 30, 2018?
 3 A. Yeah.
 4 Q. Do you think that had to do with the
 5 ending of the promotion?
 6 MR. LOVINGER: Object to form.
 7 A. Yeah, I mean that's a reasonable
 8 assumption.
 9 BY MR. MOSES:
 10 Q. And why is it a reasonable
 11 assumption?
 12 A. Well, when the cost of a product goes
 13 back up or off -- a product comes off a heavy
 14 promotion like that, we generally see units
 15 decelerate.
 16 Q. This seems to decelerate almost to
 17 zero.
 18 Does that surprise you?
 19 A. I don't know if I would characterize
 20 it as surprised but it was a pretty big drop-off for
 21 sure, yes.
 22 Q. Now, Mr. Crozier, I'd like to turn
 23 focus to Paragraph 24. And you state from 2016 until
 24 JUUL took off in 2017, MarkTen had been the leading
 25 vapor brand sold at Sheetz stores. Is that a

Page 79

1 reference to the MarkTen cigalike products? I
 2 believe contributing factor included MarkTen's
 3 favorable shelf position, Altria's heavy promotional
 4 activity and the wide variety of flavors offered for
 5 sale at Sheetz.
 6 Those factors continued into 2017
 7 into 2018, correct?
 8 A. Yes, until the Altria pulled their
 9 flavored products, yes.
 10 Q. And so the full of those flavors had
 11 a competitive effect on Altria's products?
 12 A. I don't recall off the top of my head
 13 what the exact drop-off was, but again, compared to a
 14 brand like NJOY, it would have been a disadvantage
 15 not having the same flavor assortment.
 16 Q. And so if we go to the annotated
 17 version of this, if you look there, you point out --
 18 and this is again 1129, and I'm looking at Paragraph
 19 24, the annotations to it. [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 A. Yeah.
 24 Q. Okay. [REDACTED]
 25 [REDACTED]

Page 80

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 A. Yeah.
 5 Q. Okay. And GreenSmoke was what?
 6 A. That was a cigalike product that was
 7 part of Altria's portfolio.
 8 Q. And if you go down to the annotation
 9 under Paragraph 25, [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 A. Yeah.
 13 Q. Okay. So despite -- and in 2017,
 14 Altria was or Nu Mark was aggressively promoting its
 15 MarkTen products?
 16 A. Yeah.
 17 Q. And in 2018, was Altria or Nu Mark
 18 aggressively promoting its MarkTen products?
 19 A. Yes.
 20 Q. And you agree that despite that
 21 aggressive promotion, they lost significant share
 22 from JUUL and weren't able to recover it?
 23 MR. LOVINGER: Object to form.
 24 A. Yeah, they had lost share to JUUL
 25 over that period of time.

Page 81

1 BY MR. MOSES:
 2 Q. And they failed to recover it over
 3 that period of time; is that correct?
 4 A. Correct.
 5 Q. Do I think the losses would have been
 6 greater if there had been no aggressive promotion?
 7 Did you hear the question? I had a phone call that
 8 might have interrupted the --
 9 A. Yeah. Could you say it again? I'm
 10 sorry. I couldn't hear.
 11 Q. That's the problem with doing this in
 12 an office.
 13 Do you -- strike that. I'll strike
 14 the question.
 15 Do you recall what -- by the way, in
 16 October of 2018, do you recall the GreenSmoke share
 17 at that point?
 18 A. I don't recall what it was at that
 19 point.
 20 Q. Well, let's look at --
 21 MR. MOSES: Adam, which is the
 22 October 2018 doc DX?
 23 MR. SOWLATI: I believe that's
 24 DX1146.
 25 MR. MOSES: Okay. Let's just mark

Page 82

1 that for a second.
 2 (Exhibit DX-1146, Spreadsheet, was
 3 marked for Identification by the court
 4 reporter.)
 5 BY MR. MOSES:
 6 Q. So we're going to call that up and
 7 Mark DX-1146.
 8 And this is a spreadsheet that we
 9 printed for October 2018, performance in this
 10 category from the files you produced.
 11 Does this look familiar to you?
 12 A. Yeah.
 13 Q. Okay. And is this a regular report
 14 that was prepared to monitor the performance in this
 15 tobacco product category?
 16 A. Yeah.
 17 Q. Okay. If we go to the second page
 18 and we see the bottom right corner, e-cig share by
 19 state by revenue. And you see JUUL Labs is listed
 20 there [REDACTED] percent total?
 21 A. Yeah.
 22 Q. And that's consistent with the number
 23 you put in your annotation under Line 25?
 24 A. Yeah.
 25 Q. Okay. And MarkTen is [REDACTED] percent?

Page 83

1 A. Yeah.
 2 Q. And GreenSmoke is [REDACTED] percent?
 3 A. Correct.
 4 Q. And if you look at your annotation
 5 under Paragraph 24, MarkTen ended December 2017 with
 6 [REDACTED] percent and GreenSmoke at [REDACTED] percent, correct?
 7 A. That's under which one? Sorry.
 8 Q. Under Paragraph 24.
 9 A. Okay, yes.
 10 Q. So the Nu Mark products lost share
 11 during the year?
 12 A. Yeah.
 13 Q. And if we could put up the November
 14 chart --
 15 MR. MOSES: Adam, what is the --
 16 MR. LOVINGER: That is DX-1145.
 17 MR. MOSES: So we're going to put up
 18 DX1145.
 19 (Exhibit DX1145, Chart, was marked
 20 for Identification by the court reporter.)
 21 BY MR. MOSES:
 22 Q. Which is the version of this chart
 23 for November.
 24 A. Yes.
 25 Q. And so this is the summary by

Page 84

1 manufacturer, November 2018.
 2 And does this look familiar to you as
 3 well as a regular report prepared to monitor this
 4 category?
 5 A. Yeah.
 6 Q. Okay. And if we go to the next page,
 7 do you see that MarkTen has gone down further at this
 8 point, November 2018?
 9 A. Yeah, it looks like about [REDACTED]
 10 [REDACTED]
 11 MR. MOSES: Why don't we just take a
 12 quick break there, and I'll go over my notes and
 13 probably about in a position to finish up relatively
 14 quickly?
 15 (A discussion was held off the
 16 record.)
 17 (A brief recess was taken.)
 18 BY MR. MOSES:
 19 Q. So Mr. Crozier, I'm nearing the end
 20 here. I just want to go back to Paragraph 25
 21 quickly.
 22 You write: While the deep discounts
 23 help to sell MarkTen, it never took off the way JUUL
 24 did, JUUL was able to become the leading supplier of
 25 vapor products without offering such deep discounts

Page 85

1 because JUUL had a superior product that customers
 2 preferred over other vapor brands.
 3 What do you mean -- what did you mean
 4 when you said that "JUUL had a superior product"?
 5 A. I think what I was referencing there
 6 is just the look of the product. You know, it was in
 7 a USB-type format with like a mat finish. The
 8 eases -- just from the appearance, the packaging was
 9 clean too. Also the ease of use. Not having the
 10 click pod system was, you know, user friendly, you
 11 could charge on one end and then remove the
 12 cartridges in and out without having to screw them on
 13 and off. Those were form factors -- those form
 14 factors that really resonated, that had had a higher
 15 quality perspective there and drove a lot of that
 16 success.
 17 Q. And those form factors are found in
 18 pod products?
 19 A. Yes.
 20 MR. LOVINGER: Object to form.
 21 BY MR. MOSES:
 22 Q. Was its delivery of nicotine
 23 satisfaction also something that made it a superior
 24 product?
 25 A. Yes. I think that helped as well.

Paul Crozier Confidential

01/19/2021

86 to 89

Page 86

1 The percentage of nicotine was -- I think at the time

2 JUUL had the highest nicotine percentage.

3 Q. And you say at the time, since that

4 time, have other products come on the market with

5 similar nicotine satisfaction?

6 A. Yeah, I'm not sure if NJOY is a

7 slightly higher or not, but I think it's right in

8 line, maybe a little higher. I don't recall off the

9 top of my head, though, the exact percentage.

10 Q. And what about Vuse Alto?

11 A. I'm not sure about that one. I think

12 that's 4 percent and JUUL's 5, if I'm remembering

13 that correctly. I might be thinking of Blu, though,

14 but they're all in the same ballpark.

15 Q. And is that one of the factors there

16 being in the same ballpark a nicotine satisfaction

17 that makes them competitive with JUUL?

18 A. Yeah.

19 Q. Now, you write: Nevertheless -- or

20 it's written, nevertheless MarkTen remained the

21 second largest vapor brand behind JUUL at Sheetz

22 through 2018.

23 And we just reviewed the revenue

24 share numbers before the break.

25 Is the reference there to MarkTen all

Page 87

1 of the MarkTen products, cigalike and Elite?

2 A. Yeah.

3 Q. If the sentence were to read:

4 Nevertheless, Elite remained, could you have said

5 second largest vapor brand behind JUUL?

6 A. No.

7 Q. You know, if we could go to Paragraph

8 26 of your declaration, in late 2010, Altria

9 announced that it would discontinue MarkTen as of

10 December 19, 2018.

11 On December 20, 2018, Altria publicly

12 announced they want to make an investment in JUUL. I

13 was initially surprised. Altria would discontinue

14 MarkTen since Altria participates in every level of

15 the tobacco industry. And MarkTen had been fairly

16 successful at Sheetz, although it appears that

17 MarkTen was not as successful as other retailers.

18 The decision to discontinue MarkTen more sense when

19 Altria announced that it partnered with JUUL.

20 Did I read that correctly?

21 A. Yes.

22 Q. Now, when you say that "MarkTen had

23 been fairly successful at Sheetz," are you again

24 referring to the cigalike products?

25 MR. LOVINGER: Object to form.

Page 88

1 A. Yeah, I'm not sure if I meant only

2 cigalikes or both, but I mean I probably viewed Elite

3 as somewhat as a success in terms of thinking of them

4 together as one because the MarkTen Elite was an

5 exclusive launch for Sheetz, so there was -- there

6 was an element of that there, too, but I mean

7 generally, you know, I don't remember the exact

8 percentages, but the majority of MarkTen sales were

9 the cigalikes.

10 Q. And -- and as we reviewed the share

11 of MarkTen in 2018, after the introduction Elite

12 actually went down; is that correct?

13 A. Yes.

14 Q. So is it fair to say the success they

15 had has been largely prior to 2018?

16 MR. LOVINGER: Object to form.

17 A. Yes, right. I mean that's one way to

18 look at it.

19 BY MR. MOSES:

20 Q. Now, you say that you were initially

21 surprised that Altria would discontinue MarkTen.

22 Do you have any personal knowledge as

23 to any analysis that Altria or its affiliates

24 conducted and decided whether or not to discontinue

25 MarkTen?

Page 89

1 A. No.

2 Q. Do you have any knowledge as to

3 whether Nu Mark made or lost money?

4 A. No.

5 Q. Do you have any knowledge as to any

6 regulatory assessments they had as to the likelihood

7 of success and seeking and PMTA?

8 A. No.

9 Q. Do you have any knowledge as to their

10 assessment of the future prospects of the product in

11 a market that had become increasingly dominated by

12 pods?

13 A. No.

14 Q. Do you have any knowledge -- and you

15 write -- moving on, you say the decision to

16 discontinue MarkTen made more sense once Altria

17 announced their partnership with JUUL.

18 Do you have any knowledge as to the

19 negotiations between JUUL and Altria?

20 A. No.

21 MR. LOVINGER: Object to form.

22 BY MR. MOSES:

23 Q. Do you have any knowledge as to when

24 agreements were reached with JUUL for any investment

25 versus when decisions were made to discontinue any Nu

Page 90

1 Mark products?
 2 A. No.
 3 Q. Now, one thing I noted is your
 4 declaration jumps straight to December 20, 2018 and
 5 you state that Altria announced it would discontinue
 6 MarkTen as of December 19, 2018.
 7 By the way, were those the FTC's
 8 words?
 9 MR. LOVINGER: Object to the form.
 10 A. Those -- I think those are my words
 11 that they summed up in the declaration.
 12 BY MR. MOSES:
 13 Q. Do you recall that the announcement
 14 to discontinue MarkTen happened on December 7, 2018?
 15 A. I don't -- maybe I misremembered
 16 that, but I thought it was the 19th or I did at the
 17 time.
 18 Q. Okay. Do you -- in any event, in
 19 reading the declaration, I noted that you went
 20 straight to December 2018 but do you recall that in
 21 October 2018 Altria removed its pod products and
 22 flavors?
 23 A. I -- in October, I thought they had
 24 removed pod and flavor but we had had the MarkTen
 25 cigalikes, correct? We kept the MarkTen cigalikes,

Page 91

1 and then I think it was in December they got -- made
 2 the announcements that all MarkTen products would go
 3 away.
 4 Q. And it was the discontinuation of
 5 MarkTen cigalike in December that surprised you?
 6 MR. LOVINGER: Objection; form.
 7 A. Yeah, and that was because it was a
 8 complete -- the way I took that was they would no
 9 longer -- Altria would no longer be involved in the
 10 vapor category, which they're involved in every
 11 nicotine category.
 12 Q. And did you discuss the October
 13 withdrawal of pods or flavors with the FTC?
 14 A. I don't know that we got into that
 15 specifically. I don't remember that.
 16 Q. Do you recall that that surprised
 17 you?
 18 A. I don't think it surprised me. I
 19 think it was at the time I think Altria had been
 20 working on preventing youth access with the FDA, so I
 21 know they had taken a stance against some of the
 22 flavored products. So I think it was kind of in line
 23 with some of their view on the category.
 24 Q. And did the removal of Elite create a
 25 significant issue for you as a category manager of

Page 92

1 tobacco products when it happened in October 2018 in
 2 terms of your P&L?
 3 MR. LOVINGER: Object to the form.
 4 A. Well, we self-supply MarkTen Elite,
 5 so I think we had enough product that -- and of the
 6 other MarkTen to continue selling it for a while.
 7 So immediately, it was not like a
 8 major decline. And MarkTen Elite itself was not a
 9 major portion of MarkTen, and as you know, MarkTen
 10 was roughly █ percent of the category less at that
 11 point, so it would have been a pretty small impact to
 12 the category as a whole even if it had been sold
 13 immediately but we had some time to sell through the
 14 product. The frustrating part, I guess, was just
 15 managing the product coming in and out -- product
 16 returns and moving stuff around on the shelves.
 17 Q. Now, I want to turn to Paragraph 27
 18 and 28. See I promised we're almost done.
 19 In Paragraph 27, as part of Altria's
 20 partnership with JUUL, Altria announced that it
 21 entered into a service agreement with JUUL, and then
 22 you go on to describe some of that, and then in
 23 Paragraph 28, on January 30, 2020, however, Altria
 24 sent a letter to all of its retail partners that it
 25 terminated the services agreement with JUUL. As a

Page 93

1 result, Altria would no longer offer any new coupons
 2 for JUUL and it would no longer be allowed to occupy
 3 any part of the top three shelves, according to
 4 Altria starting April 1, 2020 the top three shelves
 5 can be used to display Altria's on! Nicotine Patches,
 6 Skoal Snus or Black & Mild Cigars.
 7 Do you see those two paragraphs?
 8 A. Yes.
 9 Q. Why is JUUL still at the top of the
 10 shelf in light of what you wrote on Paragraph 28?
 11 A. We renegotiated that space, so JUUL
 12 is at the top of the fixture because it's the number
 13 one product in the category for e-cigarettes.
 14 Q. And so you wanted to have -- is the
 15 fact that it was the number one category -- product
 16 in the category a reason you wanted it at the top?
 17 A. Yes.
 18 Q. By the way, do you view the market
 19 for shelf space as competitive?
 20 MR. LOVINGER: Object to form.
 21 A. What do you mean?
 22 BY MR. MOSES:
 23 Q. Well, are manufacturers still
 24 competing to get shelf space at your stores in the
 25 e-vapor category?

Paul Crozier Confidential

01/19/2021

94 to 97

Page 94

1 A. Yes, yes.

2 Q. And did the arrangements described in

3 Paragraph 27 regarding Altria's partnership with

4 JUUL, as you put it there, prevent the rise of NJOY?

5 MR. SANTOS: Object to form.

6 MR. LOVINGER: Object to form.

7 A. I'd be -- well, you're saying -- hang

8 on one second.

9 BY MR. MOSES:

10 Q. Let me rephrase the question. Let me

11 withdraw it. Given the objections, let me rephrase

12 the question.

13 Did NJOY's -- we reviewed NJOY's rise

14 previously in this deposition.

15 Did that occur while Altria was

16 engaged in what you call the partnership with JUUL in

17 Paragraph 27?

18 A. Yes.

19 Q. Can we go to Paragraphs 29 and 30,

20 and this is a section called Increased Tobacco

21 Regulations. The FDA and Congress recently passed a

22 number of new regulations that will affect the

23 tobacco industry and the retail sale of tobacco

24 products.

25 And you described some of them, and

Page 95

1 then you write in Paragraph 30: The FDA is also

2 requiring all vapor products on the market to submit

3 a PMTA by May of 2020. In order to continue

4 marketing their products to other consumers, Sheetz

5 will only sell vapor products from companies that

6 have committed to submit an PMTA application prior to

7 the FDA deadline.

8 Do you see that?

9 A. Yes.

10 Q. What is the significance of the FDA

11 regulations they describe in Paragraph 29 and 30 for

12 the category?

13 A. The significance of the minimum age

14 going from 18 to 21, that essentially moved three

15 years of consumers out of all nicotine categories and

16 then, in February of 2020, the ban on all flavored

17 products that were in pod systems was banned. That

18 was a big one, too.

19 I think, prior to that, safe to say

20 the majority of sales were in the flavors that were

21 not menthol and tobacco. So those were two big

22 things that hit, removing three years of consumers

23 and then also a significant assortment from the

24 category and then the last paragraph, PMTA from --

25 that was the premarket tobacco applications had to be

Page 96

1 filed. Significant costs there, so certain products

2 that did not have a PMTA path or an intention to be

3 taken down that path had to be sold through a return

4 to the vendor ahead of time.

5 It also meant anything -- like it

6 kind of limited what you could bring to market, new

7 products and innovation.

8 So that was another impact there of

9 PMTAs but in a broader sense.

10 Q. Okay. And you talked about Altria's

11 views on youth vaping a moment ago, and I'm not

12 looking to review that, but do you agree that the

13 makers of these -- is it Sheetz's point of view that

14 the tobacco products with which it partners need to

15 be very good at meeting these rules and achieving

16 high standards in doing so?

17 A. Yes.

18 Q. Okay. In your experience, did Altria

19 try to do so?

20 A. Yes.

21 Q. And would its assistance for JUUL in

22 helping it meet these rules be beneficial from your

23 point of view?

24 MR. LOVINGER: Object to form and

25 foundation.

Page 97

1 A. Yes.

2 BY MR. MOSES:

3 Q. Okay. Well, let me look at our last

4 exhibit, which is DX1143.

5 (Exhibit DX1143, SHEETZ5784 through

6 SHEETZ5785, was marked for Identification by

7 the court reporter.)

8 BY MR. MOSES:

9 Q. And this is Bates stamped SHEETZ5784

10 through 85.

11 Do you have it there, Mr. Crozier?

12 A. Not yet.

13 Q. It's not yet in the Box. But if you

14 don't mind, we'll look at it on the screen.

15 A. I see it.

16 Q. Okay. And do you recognize this as a

17 notice that JUUL sent its trade partners following

18 the investment by Altria in JUUL?

19 A. Yes.

20 Q. And if you look at the bottom of the

21 paragraph, the bottom of that first page, it says:

22 Altria will also partner with us on our efforts to

23 prevent youth from using any tobacco products and

24 we'll work with Altria to prevent youth usage through

25 our previously-announced initiatives, et cetera.

Paul Crozier Confidential

01/19/2021

98 to 101

Page 98

1 Do you see that?

2 A. Yes.

3 Q. Would you view that as a benefit for

4 JUUL's partnering with Altria in this category?

5 A. Yes.

6 Q. And you also write in Paragraph 30 --

7 MR. MOSES: You can take that down,

8 Adam.

9 Q. -- Sheetz will only sell vapor

10 products from companies that have committed to submit

11 a PMTA application prior to the FDA deadline.

12 Do you see that?

13 A. Yeah.

14 Q. Why will Sheetz only sell vapor

15 products from companies that have committed to submit

16 a PMTA application prior to the FDA deadline?

17 A. Because if a company didn't intend to

18 file a PMTA, we didn't want to be left holding a

19 bunch of product at the time when -- so it's just to

20 back it up. The product didn't go through the PMTA

21 process by the deadline, it had to be removed from

22 the market.

23 So you didn't want a bunch of product

24 like that in your store and have to return it;

25 especially from a smaller vendor that might not

Page 99

1 understand all the rules and regulations and then if

2 you had millions of dollars in product to return, you

3 theoretically could be left with a bunch of returns

4 to write off if the vendor was no longer solvent.

5 Q. You understand that the PMTA

6 application is also intended to assess products --

7 and whether the FDA views them as beneficial for the

8 public health?

9 A. Yeah.

10 Q. Does Sheetz have a view as to whether

11 it would be appropriate to sell products where

12 there's no intention to submit a PMTA because it

13 would be indicative that it might not be viewed as

14 having an ability to achieve FDA approval?

15 A. Yeah. I mean that's an important

16 part of it, too, to pass a company that -- I mean I

17 think that speaks more to people acting in good

18 faith, right? If a product was -- you know, if we

19 knew a product had no intention of going through

20 PMTA, we would not carry it, for obvious reasons,

21 right? Like the company wouldn't have been doing the

22 homework of PMTAs, hundreds of thousands of dollars

23 to put together and a bunch of research and speaks

24 to, you know, a company being organized and having

25 their -- the right regulatory frame of mind for these

Page 100

1 types of products.

2 Q. And if a product doesn't get a PMTA

3 approval, it cannot be sold after May of 2020 or

4 whatever the current deadline is, correct?

5 A. Yeah, they -- they had to have it

6 submitted by the deadline, but I -- to my knowledge,

7 the only product that still has received a PMTA

8 approval is iCoast, so I think as long as they're in

9 the works and the FDA is reviewing them, they are

10 still committed to be sold.

11 Q. Would you view Altria's -- do you

12 view Altria as having its act together -- I forget

13 how he put it -- in terms of these kinds of

14 regulatory issues?

15 A. Yes.

16 MR. LOVINGER: Object to form.

17 BY MR. MOSES:

18 Q. Would you view their assistance to

19 JLI in achieving PMTA approval as a positive for the

20 category?

21 A. Yes.

22 Q. Would Sheetz want to sell a product

23 that a company that concluded did not achieve PMTA

24 approval?

25 A. No.

Page 101

1 Q. Would you expect -- strike that.

2 Do you have any personal knowledge of

3 why Altria removed Elite?

4 A. No. Just the fact that I would

5 imagine it wasn't selling to their expectations.

6 Q. Do you have any personal knowledge of

7 why Altria removed the Apex pod product?

8 Have you ever heard of the Apex pod

9 product? Let me start there.

10 A. I heard about it --

11 Q. Strike that. Let me reask the

12 question.

13 Have you ever heard the Apex product?

14 A. Yes.

15 Q. Did you ever use it or sell it?

16 A. No.

17 Q. Do you have any personal knowledge of

18 why Altria removed Apex?

19 A. No.

20 Q. Do you have any personal knowledge of

21 why Altria removed flavors other than menthol or

22 mint?

23 A. As I understand it, they were trying

24 to get ahead of what they perceived to be a driver of

25 the youth problem and flavors was something they

Page 102

1 thought was impacting that.

2 Q. And the FDA eventually agreed with

3 that; isn't that correct?

4 A. Yes. The FDA had the products all

5 pulled in February of 2019.

6 Q. Do you have any personal knowledge of

7 why Altria shut down Nu Mark?

8 A. No.

9 MR. MOSES: Mr. Crozier, that's all I

10 have, thank you very much, subject to any follow-up

11 questions following Mr. Lovinger.

12 MR. SANTOS: Go off the record for a

13 minute.

14 THE REPORTER: Off the record at

15 11:51.

16 (A brief recess was taken.)

17 EXAMINATION BY MR. LOVINGER:

18 Q. Mr. Crozier, my name is Michael

19 Lovinger. I represent the Federal Trade Commission

20 in this matter. Nice to meet you virtually today.

21 Do you recall, in your -- in your

22 discussion with Mr. Moses -- let me actually share a

23 document with you.

24 Do you see a document marked DX1135

25 on your screen?

Page 103

1 A. Yes.

2 Q. Do you recall discussing this chart

3 that Mr. Moses created earlier today?

4 A. Yes.

5 Q. The chart in DX1135 purports to show

6 the share of pod-based vaporizers sold from Sheetz

7 from July 2017 to July 2020; is that correct?

8 A. Yes.

9 Q. Do you recall when MarkTen Elite was

10 first sold at Sheetz?

11 A. That would have been March of 2018.

12 Q. If you look at the chart that

13 Mr. Moses shared in DX1135, did Altria grow its share

14 of pod-based vaporizers at Sheetz starting in March

15 of 2018?

16 A. Yes.

17 Q. And if you look from February 2018

18 through September 2018, how did Altria's share of

19 pod-based vaporizers sold at Sheetz change?

20 A. It appears that -- looking at that

21 graph that it continued to grow through September.

22 Q. [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 A. Yeah.

Page 104

1 Q. And if you look at the share of JUUL

2 during the same time period, from February 2018

3 through September 2018, how did JUUL's share change

4 at Sheetz?

5 A. It looks like it dropped a little bit

6 and then came back after October --

7 September/October.

8 Q. During the period when MarkTen Elite

9 was sold at Sheetz, did JUUL and MarkTen Elite

10 account for substantially all of the pod-based

11 vaporizers sold at Sheetz?

12 A. I'm trying to think if we really had

13 any other -- I don't think Vuse Alto had been

14 launched yet. It looks like right after Elite came

15 out, so, yeah that was -- yeah, I think that was it.

16 We just had the Elite and JUUL for pod-based.

17 Q. Do you recall Mr. Moses asking you

18 about the cause of the steep drop-off and MarkTen

19 Elite device sales in the PX1135?

20 A. Yes.

21 Q. Thank you. When did Altria announce

22 that it would discontinue the sale of MarkTen Elite?

23 A. I believe that was the fall of 2018.

24 Q. Do you recall -- was it October 2018

25 or do you not recall right now?

Page 105

1 MR. MOSES: Objection to form.

2 A. I believe -- yeah, I believe -- I'm

3 not a hundred percent sure. It was between October

4 and November, I think, but I don't know the exact

5 date.

6 MR. MOSES: No worries. Let me --

7 let me share a document marked PX3118.

8 (Exhibit PX3118, Email, October 26,

9 2018, was marked for Identification by the

10 court reporter.)

11 MR. MOSES: Mike, is this a new

12 document? Sorry.

13 MR. LOVINGER: Yes, this is a new

14 document marked -- I'm sorry, marked 3118.

15 MR. MOSES: Michael, you're sharing

16 your screen, just FYI.

17 MR. LOVINGER: Yeah, I can't figure

18 out how to turn it off. Let me stop this here.

19 Let's go off the record for a second.

20 THE REPORTER: Off the record, 12:37.

21 (A discussion was held off the

22 record.)

23 BY MR. LOVINGER:

24 Q. Do you see a document marked PX3118

25 in the share drive and I'll also share the screen.

Paul Crozier Confidential

01/19/2021

106 to 109

Page 106

1 A. Yeah, I see that.

2 Q. Do you see the document marked 3118?

3 Great. It appears to be an email that you sent to

4 Douglas Mills, Joshua Campbell and Matthew Decker on

5 October 26, 2018 with a subject: For a decision to

6 continue sales select Nu Mark SKUs.

7 Do you see that?

8 A. Yes.

9 Q. And who are those individuals?

10 A. Doug and Josh are directors in

11 marketing and Matt Decker is a purchasing manager for

12 our wholesale side.

13 Q. It looks like you forwarded to him an

14 earlier email that you sent to Daniel Coffin.

15 Who is Daniel Coffin?

16 A. He's the vice president of marketing.

17 He is my supervisor.

18 Q. Got it. And in that email to DNA

19 could have been on October 25, 2018, you wrote,

20 quote: As discussed, there was a lot of news today

21 and back and forth regarding Altria's vape product.

22 The attached files and notes below cover Altria's

23 voluntary action/response to the FDA's September

24 comments on the proliferation of vapor sales in the

25 United States. This was a voluntary action taken by

Page 107

1 Altria to address the FDA's concerns cited in

2 September. This is not an FDA mandate to Altria.

3 Did I read that accurately?

4 A. Yes.

5 Q. And then you also wrote, quote: In

6 summary, one, MarkTen Elite pod-based product, Altria

7 will end production of all SKUs. However, Altria

8 will continue to accept orders from our DC and we can

9 continue to sell at retail until the impacted Nu Mark

10 SKUs are depleted.

11 Did I read that correctly?

12 A. Yes.

13 Q. Does this refresh your recollection

14 as to when Altria discontinued the sale of MarkTen

15 Elite?

16 A. Yes.

17 Q. And when was that?

18 A. October of 2018.

19 Q. Look at page 2 of PX3118. You

20 concluded your email to your boss, quote: I have not

21 heard of similar actions looking to be taken by other

22 manufacturers at this time.

23 Did I read that correctly?

24 A. Yes.

25 Q. And was that an accurate statement

Page 108

1 when you wrote it?

2 A. Yes.

3 Q. Do you recall any other e-cigarette

4 suppliers besides Altria that voluntarily

5 discontinued an entire product line pending FDA

6 approval?

7 MR. MOSES: Objection to form.

8 A. I don't recall, no.

9 BY MR. LOVINGER:

10 Q. The only time you recall a supplier

11 of e-cigarettes discontinuing an entire product line

12 that was still on the market pending FDA approval was

13 Altria's actions with MarkTen Elite in October of

14 2018?

15 MR. MOSES: Objection to form.

16 A. Yes. But I think -- I mean, an

17 entire product line, that was the only one I -- JUUL

18 had sold their mint and some of their flavors, but

19 not the entire product line.

20 BY MR. LOVINGER:

21 Q. Did certain manufacturers discontinue

22 flavors but not an entire product line like MarkTen

23 Elite?

24 MR. MOSES: Objection to form.

25 A. No, not that I recall, no.

Page 109

1 BY MR. LOVINGER:

2 Q. How long did Altria sell MarkTen

3 Elite in the United States?

4 A. We had it -- Sheetz had it from March

5 of 2018 till -- this communication shows October. We

6 filled it a little bit beyond that, because of our

7 self-supply nature because we had some product in

8 reserve, I guess you could -- lack of better words.

9 But if you looked at when they had it available, it

10 would have been March through October. I guess

11 that's about eight months.

12 Q. Are you surprised that Altria would

13 launch a product with MarkTen Elite and discontinue

14 it eight months later?

15 MR. MOSES: Objection; form.

16 A. I was a little surprised that it

17 hadn't even been on the market an entire year,

18 especially since we kind of had it as an exclusive

19 product launch in March but less than a year is a

20 pretty short time.

21 BY MR. MOSES:

22 Q. Do you recall any other examples of

23 e-cigarette suppliers discontinuing products in that

24 short of a time period?

25 A. I do not.

Paul Crozier Confidential

01/19/2021

110 to 113

Page 110

1 Q. If you turn to page 4 of PX3118, it
 2 appears to be a letter from Altria to Scott Gottlieb,
 3 the FDA commissioner.
 4 Why did you include that attachment
 5 in your email, if you recall?
 6 A. I'm just reading it quick here a
 7 second. Thanks. This looks like a note from Altria
 8 to the commissioner of the FDA talking about why they
 9 were pulling MarkTen Elite and Apex pod systems and
 10 also that they were getting rid of the flavors of the
 11 MarkTen cigalike and GreenSmoke cigalike products
 12 with flavors beyond menthol and mint and tobacco.
 13 So I think I was just giving him
 14 background context into what Altria was thinking
 15 ahead of that discontinuation.
 16 Q. If you turn to page 9 of PX3118,
 17 there's another attachment. It appears to be a
 18 letter from Altria to retailers dated October 25,
 19 2018.
 20 Why did you include this attachment
 21 in your email to your boss?
 22 A. Just to provide further context. I
 23 think it kind of supported that letter to the -- or
 24 explanation of that letter to Commissioner Gottlieb
 25 in terms of why they chose to discontinue those

Page 111

1 products.
 2 Q. And there's a section -- a heading
 3 that says: Our actions, and Altria wrote, quote:
 4 Because we believe in the long-term promise of
 5 e-vapor products and harm reduction for adult
 6 smokers, we will take the following actions to
 7 address the complex situation.
 8 One, discontinuing the sale of Nu
 9 Mark's MarkTen Elite pod-based product until we
 10 receive a market order from the FDA -- sorry, from
 11 FDA or the youth issues otherwise addressed.
 12 Did Altria give you any other reasons
 13 for why it discontinued MarkTen Elite in October of
 14 2018?
 15 A. I don't recall any. I think like
 16 that says there was tied to pod-based systems.
 17 Q. So the only reason you're aware of
 18 why MarkTen Elite was discontinued was because of the
 19 youth issue; is that -- is that accurate?
 20 A. Yes.
 21 MR. MOSES: Objection to form.
 22 BY MR. LOVINGER:
 23 Q. And what does youth issue refer to?
 24 A. The -- I believe the FDA commissioner
 25 called it a vaping epidemic among youth, and so I

Page 112

1 think Altria -- the way it was explained to me -- was
 2 discontinuing the pod-based system helped address
 3 that.
 4 Q. Was there something specific about
 5 pod-based e-cigarettes that made them more likely to
 6 be used by youth?
 7 MR. MOSES: Objection to form.
 8 A. I'd be speculating, but a lot there,
 9 but I think most of it was ease of use, like the
 10 convenience that I mentioned earlier. You can just
 11 click a pod and the actual battery. It's easier to
 12 use.
 13 Q. In October of 2018, Altria continued
 14 its pod-based products purportedly for the youth
 15 issues; is that correct?
 16 MR. MOSES: Objection to form.
 17 A. Yeah.
 18 BY MR. LOVINGER:
 19 Q. Let me continue. Altria didn't
 20 discontinue any cigalike products in February of
 21 2018, only pod-based products?
 22 MR. MOSES: Objection to form;
 23 objection; misstates the document.
 24 A. The -- well, on No. 2, they did
 25 discontinue the other flavors of the cigalike

Page 113

1 products.
 2 Q. Let me rephrase the question.
 3 Did Altria discontinue any of its
 4 cigalike product lines or just -- just flavors?
 5 MR. MOSES: Objection to form.
 6 A. Just flavors.
 7 BY MR. LOVINGER:
 8 Q. Did you experience any issues at
 9 Sheetz with use -- youth use of MarkTen Elite?
 10 A. I do not recall any.
 11 Q. Were you aware of any reports of
 12 underage use of MarkTen Elite at other retailers?
 13 A. No, not to my knowledge.
 14 Q. Turning to JUUL for a moment. Were
 15 you aware of any reports of underage use of JUUL at
 16 other retailers?
 17 A. I'd not heard other specific
 18 instances -- well, I guess -- well, what do you mean
 19 "use"? Like underage sales of product?
 20 Q. There's a -- the quote, youth issue
 21 that Altria referenced --
 22 A. Yeah.
 23 Q. -- on DX3118. That's what I'm
 24 referring to.
 25 MR. MOSES: Objection to form.

Paul Crozier Confidential

01/19/2021

114 to 117

Page 114

1 A. Yeah, I'm trying to think of -- I'm
 2 not sure quite what the question is -- or you know
 3 what I mean or how to think of that.
 4 BY MR. LOVINGER:
 5 Q. Have you -- let me rephrase the
 6 question.
 7 Were you aware of any reports of
 8 youth's use of JUUL at the time when the DX3118 was
 9 drafted in October of 2018?
 10 MR. MOSES: Objection to form.
 11 MR. CALSYN: Objection to form.
 12 A. I had heard media reports about it,
 13 like in industry documents. But I had not -- if that
 14 makes sense, like in -- in trade magazines, those
 15 types of articles, yes.
 16 BY MR. LOVINGER:
 17 Q. Did you hear concerns from the FDA
 18 about underage use of e-cigarettes at the time?
 19 A. Yes. That was reported in the media
 20 news magazines.
 21 Q. Was there any particular products
 22 where -- where underage use of e-cigarettes was a
 23 particular issue in October of 2018?
 24 MR. MOSES: Objection to form.
 25 MR. CALSYN: Objection to form.

Page 115

1 A. JUUL seemed to be the focus at that
 2 time, as I recall.
 3 BY MR. MOSES:
 4 Q. After the reasons that Altria gave
 5 for discontinuing MarkTen Elite in October of 2018,
 6 were you surprised to hear that Altria was partnering
 7 with JUUL three months later?
 8 MR. MOSES: Objection to form.
 9 A. Yeah. It was a little striking. I
 10 guess the base compared to this statement here or the
 11 reasons given here.
 12 Q. Why was it striking?
 13 A. Just 'cuz they had talked about
 14 pod-based products and then MarkTen was the --
 15 MarkTen Elite was the pod-based product and so was
 16 JUUL.
 17 Q. You -- turn back to the document
 18 PX-1135.
 19 Do you see that on your screen,
 20 Mr. Crozier?
 21 A. Yes.
 22 Q. Is there any other explanation you
 23 have for why MarkTen Elite failed --
 24 THE REPORTER: Counsel, could you
 25 repeat the question? I couldn't hear you.

Page 116

1 BY MR. LOVINGER:
 2 Q. If you turn back to the document
 3 marked DX1135, do you recall a discussion about a
 4 significant drop in sales of MarkTen Elite pod-based
 5 vaporizers starting in October 2018?
 6 A. Yes.
 7 Q. And do you recall Mr. Moses asking
 8 you about the cause of that deep drop-off?
 9 A. Yes.
 10 Q. Do you have any understanding whether
 11 Altria's announcement that it would discontinue
 12 MarkTen Elite in October of 2018 played any role in
 13 that decline in sales of MarkTen Elite devices at
 14 Sheetz?
 15 MR. MOSES: Objection; objection to
 16 form.
 17 A. Yeah, I think at that time, if I
 18 remember correctly, they -- the promotion we had
 19 ended then and that makes sense, that it would drop
 20 when the promotion ended.
 21 BY MR. LOVINGER:
 22 Q. What about when Altria announced that
 23 it would discontinue the sale of MarkTen Elite? Did
 24 that have any effect on the sale of Elite vaporizer
 25 devices?

Page 117

1 MR. MOSES: Objection to form.
 2 A. I don't know that that got out in the
 3 public as much. You know what I mean? Like I'm not
 4 sure it was so much a public awareness of that versus
 5 the offer had ended. I would be guessing trying to
 6 differentiate the two. But they did end the heavy
 7 promotion, and I mean, if you think about it, it
 8 makes sense to not heavily promote something you're
 9 getting out of. But I'm not sure if it was consumer
 10 knowledge of that or just the deal ending that drove
 11 that decline.
 12 Q. Did JUUL end its promotions at the
 13 same time --
 14 MR. MOSES: Objection to form.
 15 Q. -- as MarkTen Elite ended its
 16 promotions?
 17 MR. MOSES: Object to form.
 18 Objection; foundation.
 19 A. I'm not sure what promotions we were
 20 running at that specific time but they did continue
 21 to run promotions after that.
 22 BY MR. LOVINGER:
 23 Q. You can set aside that document.
 24 Do you recall discussing your
 25 declaration with Mr. Moses earlier today?

Paul Crozier Confidential

01/19/2021

118 to 121

| | |
|---|---|
| <p style="text-align: right;">Page 118</p> <p>1 A. Yes.</p> <p>2 Q. I'm going to share a copy of your</p> <p>3 declaration. Give me one second.</p> <p>4 This document is marked DX8000 I'm</p> <p>5 sharing.</p> <p>6 (Exhibit DX8000, Declaration, was</p> <p>7 marked for Identification by the court</p> <p>8 reporter.)</p> <p>9 BY MR. MOSES:</p> <p>10 Q. I believe it was -- I forget what the</p> <p>11 Defendants marked it, but does this appear to be the</p> <p>12 declaration you signed in this matter?</p> <p>13 A. Yes.</p> <p>14 MR. MOSES: Just for the record, we</p> <p>15 marked it as DX1121.</p> <p>16 MR. LOVINGER: Thank you. Sorry.</p> <p>17 BY MR. LOVINGER:</p> <p>18 Q. And if you turn to the last page of</p> <p>19 DX8000, is that your signature?</p> <p>20 A. Yes.</p> <p>21 Q. Did you review your declaration</p> <p>22 carefully before signing it?</p> <p>23 A. Yes.</p> <p>24 Q. And when you signed your declaration,</p> <p>25 did you sign it under penalty of perjury?</p> | <p style="text-align: right;">Page 120</p> <p>1 reporter.)</p> <p>2 MR. MOSES: We marked this as 1129,</p> <p>3 PX1129.</p> <p>4 MR. LOVINGER: I believe the version</p> <p>5 that was marked as PX1129 did not have Bates numbers,</p> <p>6 but... sorry, this document is marked DX1129 did not</p> <p>7 have Bates numbers and PX3115 is Bates stamped marked</p> <p>8 SHEETZ00000024.</p> <p>9 MR. SANTOS: Is this document in Box?</p> <p>10 MR. LOVINGER: Yes, PX3115. And I'm</p> <p>11 sharing it on the screen.</p> <p>12 BY MR. LOVINGER:</p> <p>13 Q. Is this a document you discussed</p> <p>14 earlier, Mr. Crozier, where you added some -- I guess</p> <p>15 some citations and additional information to the --</p> <p>16 certain paragraphs of the declaration signed in this</p> <p>17 matter?</p> <p>18 A. Yes.</p> <p>19 Q. If you turn to Paragraph 8 of your</p> <p>20 declaration -- let me pull that up one second.</p> <p>21 Actually, turn to Paragraph 13 of your declaration.</p> <p>22 You wrote, quote: Within the vapor category, Sheetz</p> <p>23 only sells closed vaping systems which come</p> <p>24 pre-filled with vaping liquid in tanks or pods.</p> <p>25 Is that an accurate statement?</p> |
| <p style="text-align: right;">Page 119</p> <p>1 A. Yes.</p> <p>2 Q. When you reviewed and signed your</p> <p>3 declaration, was there anything at the time you found</p> <p>4 to be incorrect?</p> <p>5 A. No.</p> <p>6 Q. And if there was anything that you</p> <p>7 believed to be incorrect, you would not have signed</p> <p>8 it without correcting that statement?</p> <p>9 A. Correct.</p> <p>10 Q. Do you recall if you made any changes</p> <p>11 after reviewing the first draft of your declaration?</p> <p>12 A. I think I made some minor changes to</p> <p>13 maybe some sales percentage numbers, but I don't</p> <p>14 recall what they were currently.</p> <p>15 Q. And those changes were -- that you</p> <p>16 made were designed to make sure that everything in</p> <p>17 your declaration was accurate as possible?</p> <p>18 A. Yes.</p> <p>19 Q. Sitting here today, is there anything</p> <p>20 that you would change in your declaration?</p> <p>21 A. No.</p> <p>22 Q. I'm going to share another document</p> <p>23 with you. This one is marked PX3115.</p> <p>24 (Exhibit PX3115, SHEETZ00000024, was</p> <p>25 marked for Identification by the court</p> | <p style="text-align: right;">Page 121</p> <p>1 A. Yes.</p> <p>2 Q. That was accurate at the time you</p> <p>3 signed your declaration; is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. And it's accurate today as well?</p> <p>6 A. Yes.</p> <p>7 Q. Got it. How do you define the term</p> <p>8 "closed vaping system"?</p> <p>9 A. "Closed" meaning there is a pod that</p> <p>10 is filled by a manufacturer or a cartridge and that</p> <p>11 gets screwed or clicked into a battery. There's no</p> <p>12 open vessel or cartridge that you pour liquid from</p> <p>13 another container into it and then use it from there.</p> <p>14 Q. If if you turn to Paragraph 19 of</p> <p>15 your declaration, it says, quote: Sheetz does not</p> <p>16 sell open systems, which are devices that consumers</p> <p>17 refill with vaping liquids on their own. And so is</p> <p>18 that what you were just referring to when you</p> <p>19 referred to "open"?</p> <p>20 A. Yes.</p> <p>21 Q. Why doesn't Sheetz sell open tank</p> <p>22 cigarettes?</p> <p>23 A. They were not -- we had them a long</p> <p>24 time ago and they were not successful. And industry</p> <p>25 data shows that they have had a pretty steep decline</p> |

Paul Crozier Confidential

01/19/2021

122 to 125

Page 122

1 since the earlier days of the e-cigarette world.
 2 So just not a lot of demand in
 3 C-stores for that type of product.
 4 Q. You mentioned Sheetz tried it a long
 5 time ago. Has Sheetz tried to sell any open tank
 6 e-cigarettes since then?
 7 A. No.
 8 Q. Is Sheetz considering selling any
 9 open tank e-cigarettes today?
 10 A. No, we're not.
 11 Q. And what about in the future?
 12 MR. SANTOS: Objection to the form.
 13 A. Yeah, I would be speculating. I
 14 don't -- that could change over time.
 15 BY MR. LOVINGER:
 16 Q. If you turn to PX3115, which has your
 17 additional notes there are a couple sentences below
 18 Paragraph 19 of your declaration.
 19 What were those referring to?
 20 A. Those were the open systems we tried.
 21 One was Triple 3 and one was called NJOY and then the
 22 next line down, it says e-cig products 2/26/15, that
 23 would show a planogram where we had those two brands
 24 of open tank systems, and they were on the back wall
 25 of our store tobacco area, meaning kind of -- not in

Page 123

1 the most visible section with storage of cigarettes,
 2 cartons. So they had already kind of been relegated
 3 to a nonprominent position based on their sales being
 4 slow.
 5 Q. Okay. Thank you. Is that -- that
 6 NJOY the same as the NJOY that you discussed earlier
 7 with Mr. Moses?
 8 A. No.
 9 MR. MOSES: Objection to form.
 10 BY MR. LOVINGER:
 11 Q. Is it a -- is it a different company
 12 or a different product by NJOY company?
 13 MR. MOSES: Objection to form.
 14 A. It's a different type of product.
 15 The NJOY back then was a tank system and currently
 16 it's a pod system. I don't -- I think NJOY of that
 17 era had went bankrupt and been restructured, but I
 18 don't know all the details on that.
 19 BY MR. LOVINGER:
 20 Q. Got it. Thank you. If you turn back
 21 to PX8000, your declaration. In Paragraph 18, the
 22 last sentence, you wrote, quote: Prices at vape
 23 stores are not a factor that Sheetz considers when
 24 deciding on how to price vapor product.
 25 Did I read that correctly?

Page 124

1 A. Yes.
 2 Q. Can you help me understand why
 3 doesn't Sheetz consider prices at vape stores when
 4 deciding how to price vape products?
 5 A. A lot of the products sold at
 6 vapor -- vape shops are products we don't sell.
 7 Vapor -- a vape store has a lot more open tank
 8 systems with the various liquids, batteries, mod
 9 devices.
 10 So they have the room for it and the
 11 time to talk to people about it. They have less foot
 12 traffic per day than a typical C-store. So a C-store
 13 like ours that has people buying gas, cigarettes,
 14 food, snacks, drinks, beer, whatever, the cashier,
 15 person behind the counter doesn't have the time to
 16 talk about different types of liquids and batteries,
 17 coils, those types of things. So completely
 18 different type of customer segment there.
 19 Q. Does Sheetz consider prices of online
 20 vapor retailers when setting some prices?
 21 A. No, not -- I don't remember looking
 22 at -- when I had the category myself, it was more a
 23 brick-and-mortar comparison but C-store --
 24 Q. By "brick and mortar," you're
 25 referring to C-stores?

Page 125

1 A. Yeah, like similar to gas stations.
 2 MR. MOSES: Form.
 3 BY MR. LOVINGER:
 4 Q. Can you help me understand why you
 5 would look in other C-stores or gas stations when
 6 determining your prices rather than vape shops and
 7 online retailers?
 8 MR. MOSES: Objection to form.
 9 A. Similar type of customers. You know,
 10 a product offering beyond tobacco is the same. So
 11 it's bringing in the same type of consumer; similar
 12 product offerings to the products sold -- that Sheetz
 13 sells in their vapor sets is very similar to what
 14 other gas stations have or convenience stores.
 15 Q. If you turn to Paragraph 21 of your
 16 declaration, it says, quote: According to data from
 17 MSA, open systems have been in steep decline as
 18 consumer preferences have shifted to closed systems.
 19 Did I read that correctly?
 20 A. Yes.
 21 Q. And is that an accurate statement?
 22 A. Yes.
 23 Q. Has that decline in share of open
 24 systems that preferred -- that consumer preference
 25 shifted closed systems continued since you signed

Paul Crozier Confidential

01/19/2021

126 to 129

Page 126

1 your declarations in March of 2020?

2 A. To my knowledge, yeah, that's --

3 they're largely unchanged.

4 Q. You refer to data from MSA.

5 What is MSA?

6 A. MSA is a company that takes aggregate

7 shipping and transactional information. I don't

8 think it's only limited to tobacco, but they're, I

9 think, based out of Pittsburgh and they -- like I

10 say, they look at that type of shipment to retail and

11 then retail scan data as well in the category.

12 Q. Does MSA include data on closed

13 systems e-cigarettes?

14 A. Yes.

15 Q. Does MSA include data open tank

16 e-cigarettes?

17 A. Yes.

18 Q. Do you recall on any third-party data

19 sources related to e-cigarettes?

20 A. No, that's the main one we look at,

21 MSA.

22 Q. Can you turn to Paragraph 23 of your

23 declaration, DX8000, you wrote, before Altria's

24 investment in JUUL, Altria had been also heavily

25 discounting MarkTen at Sheetz. Altria offered

Page 127

1 discounts to consumers of up to 80% below retail

2 price on MarkTen devices, which made them much

3 cheaper than JUUL's devices.

4 Is that an accurate statement?

5 A. Yeah.

6 Q. Do you have any understanding why

7 Altria was discounting MarkTen so heavily at Sheetz?

8 MR. MOSES: Object to form.

9 A. They had described it to me and, you

10 know, our organization, it was to drive trial.

11 Q. Do you believe that Sheetz's

12 customers benefited from those discounts that Altria

13 provided on MarkTen?

14 MR. MOSES: Objection to form.

15 A. Yeah, I would imagine customers

16 benefited from a lower price which helped sell

17 some -- turn some units. I mean promotions in

18 general benefit customers in terms of saving money,

19 driving traffic and getting inventory turned.

20 Q. Those discounts that you referenced

21 of up to 80 percent below retail price on MarkTen

22 devices, were those for the cigalike devices or

23 the -- the pod-based vapors?

24 A. I think I was thinking mostly of the

25 cigalike product at that point; some of the heavy

Page 128

1 couponing they did on their devices and discounting.

2 Q. Did Altria do any discounting on its

3 Elite pod-based devices?

4 A. Yes, they had -- I forget the exact

5 offers but you could buy a battery and a pod for a

6 certain amount that was greatly reduced. I mean it

7 might have been in that 80 percent range, too. I

8 just don't remember the original retails compared to

9 the discounted off the top of my head but they were

10 pretty significant.

11 Q. If you turn to Paragraph 24 of your

12 declaration. It states, quote: From 2016 until JUUL

13 took off in 2017, MarkTen had been the leading vapor

14 brand sold at Sheetz stores.

15 Is that an accurate statement?

16 A. Yes.

17 MR. MOSES: Objection to form.

18 BY MR. LOVINGER:

19 Q. What factors do you believe enabled

20 Altria to be the leading supplier of cigarettes sold

21 at Sheetz from 2016 through part of 2017?

22 A. I think part of the -- what made it

23 work well with us is that we had a -- a partnership

24 agreement with them. They were on a top shelf. We

25 had exclusive flavors with them and then some -- I

Page 129

1 believe semi-exclusive or exclusive discounts, \$4 off

2 two pod packs was one that we offered that was pretty

3 significant and drew a lot of traction that helped

4 turn the units.

5 Q. Turn to PX3115, under declaration

6 line 25 is a reference to see e-cig report October

7 2018 dot.xlsx.

8 Do you see that?

9 A. Yes.

10 Q. Do you recall discussing this

11 document earlier today with Mr. Moses?

12 A. Yes.

13 Q. Let me pull it up again.

14 MR. MOSES: I think it's 1146,

15 Michael.

16 MR. LOVINGER: Thanks, I didn't have

17 it in front of me, so I just shared what I believed

18 to be the same document marked PX3119. It would be

19 the same one that was marked as PX1146 and it's a

20 table, chart, with the heading Summary By

21 Manufacturer October 2018.

22 BY MR. LOVINGER:

23 Q. What did you use this document for in

24 the ordinary course of business?

25 A. Mostly, we would look at -- if you go

Paul Crozier Confidential

01/19/2021

130 to 133

Page 130

1 to the next page, there was a good -- if you go up
 2 just a bit, it was e-cigarette share of revenue was a
 3 good way to track, you know, what brands or product
 4 lines were bringing in the most revenue and then the
 5 next down would be margins and then you could see how
 6 that broke out as a percentage and then e-cig's
 7 percent of category breakdown kind of shows what
 8 percent of OTP vapor was per the current year and
 9 prior year and then the change.
 10 Q. Got it. And did you prepare
 11 spreadsheets like this every month?
 12 A. I -- I did not prepare them. Our
 13 analytics team prepared these but they were prepared
 14 every month, yes.
 15 Q. Thank you. Did you share any of the
 16 data in -- those found in these spreadsheets with
 17 JUUL?
 18 A. Yes.
 19 Q. What was the purpose of sharing some
 20 of this data with JUUL?
 21 A. We shared this data with them to show
 22 them kind of what their sales were, and then when
 23 they would run promotions, they would be able to see
 24 like the -- the bump they got out of it. I'm trying
 25 to think of a promotion. It's \$20 off of a device

Page 131

1 kit that we talked about, so we would share this
 2 information with them and they could see how that
 3 promotion did.
 4 Q. Did you share any of the data in the
 5 monthly spreadsheets with Altria?
 6 A. Yes.
 7 Q. What was the purpose of sharing that
 8 data with Altria?
 9 A. Same thing, to see how promotions
 10 were making an impact on the category.
 11 Q. Did you share any of the data in the
 12 monthly spreadsheets with any other e-cigarette
 13 suppliers?
 14 A. Not regularly. I think it was mostly
 15 limited to the top one and two at that time. I -- I
 16 don't -- you know, some of the smaller players it
 17 didn't make a lot of sense because they weren't
 18 running promotions that had trackable type of
 19 through-put or things worth tracking.
 20 Q. And the first table in PX3119 says
 21 nicotine units. What does that refer to?
 22 A. That converts units sold within a
 23 brand into like a single nicotine unit, so you see
 24 down there, it says: Estimated carton equivalents,
 25 trying to equvalate a device or pod to actual an

Page 132

1 cigarette sold. So I believe the conversion our
 2 analyst used is like one single pod is roughly a pack
 3 of cigarettes. So ten packs sold would be like a
 4 carton of cigarettes.
 5 Q. In October of 2018, which supplier
 6 had the largest shares of nicotine units sold as
 7 Sheetz?
 8 A. JUUL.
 9 Q. Which supplier had the second large
 10 share of nicotine sold as Sheetz?
 11 MR. MOSES: Objection.
 12 A. MarkTen.
 13 Q. There's a table below, it says
 14 vaporizers/accessories.
 15 What are those?
 16 A. Those are the sales of the actual
 17 battery device associated with the e-cigarette brand
 18 or product.
 19 Q. In October of 2018 which supplier of
 20 e-cigarettes had the largest share of
 21 vaporizers/accessories sold at Sheetz --
 22 A. JUUL.
 23 Q. -- which supplier had the second
 24 largest share of vaporizer/accessory sold at Sheetz?
 25 A. MarkTen.

Page 133

1 Q. The third table in PX3119 says total
 2 units.
 3 What does that refer to?
 4 A. That combines the pod and battery
 5 sales together into just like a gross type unit.
 6 Q. And October of 2018, which supplier
 7 had the largest share of total e-cigarette units sold
 8 at Sheetz?
 9 A. JUUL.
 10 Q. And which e-cigarette supplier had
 11 the second largest share of total units sold at
 12 Sheetz?
 13 MR. MOSES: Objection to form.
 14 A. The MarkTen.
 15 BY MR. LOVINGER:
 16 Q. And for the table page 3119, it says
 17 total revenue. What does that refer to?
 18 A. Total dollar sales.
 19 Q. In October of 2018, which e-cigarette
 20 supplier had the largest share of total revenue at
 21 Sheetz?
 22 A. JUUL.
 23 Q. Which e-cigarette supplier had the
 24 second largest share of overall revenue at Sheetz?
 25 A. MarkTen.

Paul Crozier Confidential

01/19/2021

134 to 137

Page 134

1 Q. And the fifth table in PX3119, under
 2 Total Margin, what is that?
 3 A. That's the profitability for the
 4 category.
 5 Q. Do you happen to know I guess -- does
 6 it refer to gross margin or do you have any more
 7 detail to what margin that refers to?
 8 A. Yeah. I mean that's pretty much
 9 gross margin. It doesn't back out like labor and
 10 waste and variance like theft or whatever. So this
 11 is just cost minus retail essentially.
 12 MR. LOVINGER: Let's go off the
 13 record. I think now is a good time for a break.
 14 Let's take ten minutes and then resume at around
 15 1:40.
 16 (A brief recess was taken.)
 17 THE REPORTER: Back on, 1:42.
 18 BY MR. LOVINGER:
 19 Q. Go back to your declaration,
 20 Mr. Crozier. And if you look at Paragraph 126, it
 21 says: In late 2018, Altria announced that it would
 22 discontinue MarkTen as of December 19, 2018.
 23 Do you recall that discussion
 24 earlier -- discussing that paragraph, rather, with
 25 Mr. Moses?

Page 135

1 A. Yes.
 2 Q. And do you recall where you got that
 3 December 19, 2018 date from?
 4 MR. MOSES: Objection to form.
 5 A. I -- I think it was from trade
 6 announcements, if I recall correctly, but I think he
 7 mentioned it was December 7th, but I don't know. I
 8 don't remember off the top of my head which is
 9 accurate or how I came up with the 1924.
 10 BY MR. LOVINGER:
 11 Q. It's only fair. There are a lot of
 12 dates --
 13 A. Yeah.
 14 Q. -- involved here. And it wasn't
 15 your -- something that you or Sheetz did. But let
 16 me -- let me share a document marked PX9080 with you.
 17 (Exhibit PX9080, Press Release, was
 18 marked for Identification by the court
 19 reporter.)
 20 BY MR. LOVINGER:
 21 Q. PX9080 appears to be a press release
 22 from Altria dated December 7, 2018 about a heading:
 23 Altria Refocuses Innovative Product Efforts.
 24 Do you say that?
 25 A. Yes.

Page 136

1 Q. Does that refresh your recollection
 2 as to the date that Altria announced that it would
 3 discontinue MarkTen?
 4 A. Yeah, that makes sense.
 5 Q. If you turn back to PX8000, second
 6 sentence in Paragraph 26 says: On October 20 --
 7 sorry, let me read that over.
 8 The second sentence of Paragraph 26
 9 of your declaration says, quote: On December 20,
 10 2018, Altria publicly announced that it would make an
 11 investment in JUUL; is that accurate to the best of
 12 your understanding?
 13 A. Yes.
 14 Q. Okay. Turn to PX3115. That's the
 15 document that had your notes in the second paragraph,
 16 below Paragraph 26 at the top of page 7. There's a
 17 reference to -- from 12/20/18 and there's a link to
 18 something called Altria investment in JUUL
 19 announcement.
 20 Do you see that?
 21 A. Yes.
 22 Q. I'm sharing a document marked PX9081.
 23 Is this the document you were referring to in our
 24 discussion after Paragraph 26 of PX3115?
 25 A. That appears to be it, yes.

Page 137

1 (Exhibit PX9081, Press Release, was
 2 marked for Identification by the court
 3 reporter.)
 4 BY MR. LOVINGER:
 5 Q. PX9081 is another press release from
 6 Altria dated December 20, 2018 that is entitled,
 7 quote, Altria makes \$12.8 Billion Minority Investment
 8 in JUUL to Accelerate Harm Reduction and Drive
 9 Growth. Let me actually turn back to Paragraph 26 of
 10 your declaration, third sentence of that paragraph
 11 states, quote: I was initially surprised that Altria
 12 would discontinue MarkTen since Altria participate in
 13 every level of the tobacco industry and MarkTen had
 14 been fairly successful at Sheetz, although it appears
 15 that MarkTen was not as successful at other
 16 retailers.
 17 Thinking back to December 7 of 2018,
 18 were you surprised when you heard that Altria was
 19 discontinuing its e-cigarette business?
 20 A. Yeah, as I have noted there, I was
 21 initially surprised because they have kind of a
 22 leadership role in cigarettes and Snuff and in some
 23 ways, cigars, too, with John Middleton brand. So the
 24 fact that they would kind of exit the category
 25 surprised me a little bit.

Page 138

1 Q. Did Altria inform you prior to
 2 December 7, 2018 that it was planning to discontinue
 3 its e-cigarette business?
 4 MR. MOSES: Objection to form.
 5 A. I don't recall any discussions ahead
 6 of time like that.
 7 BY MR. LOVINGER:
 8 Q. Did Altria give you any indication
 9 prior to December 7, 2018 that it was dissatisfied
 10 with the performance of its e-cigarette business?
 11 A. I know they -- they knew it wasn't
 12 the leader in the category, but we -- you know, it
 13 wasn't like they were negative or down on it in my
 14 discussions with them. We did everything we could to
 15 promote the product, along the way with the different
 16 promotions we ran.
 17 Q. In your discussions with Altria and
 18 with respect to their e-cigarette business at Sheetz,
 19 were they ever pleased with the performance of their
 20 e-cigarette products at Sheetz?
 21 A. Yeah, I mean I got that impression
 22 based on some of those promotions. We did like the
 23 2 -- \$4 of two pod packs of the cigalike products and
 24 that was upwards of 80,000 a month and discounting
 25 which was pretty good for that product. I remember

Page 139

1 us being mutually satisfied with some of those, you
 2 know, promotions.
 3 Q. When Altria announced that it was
 4 distinct MarkTen and setting down Nu Mark on December
 5 7, 2018, did they ever give you any explanation for
 6 that decision?
 7 A. I don't recall a -- specifically a --
 8 I get the sense it was tied to the youth accessing,
 9 but I might be confusing that with the October pod
 10 and flavor removal, because I think at this point
 11 they only had tobacco and menthol left in our store
 12 and it was just the cigalike product.
 13 Q. Paragraph 27 of your declaration, you
 14 discuss that Altria entered into a services agreement
 15 with JUUL; is that correct?
 16 A. Yes.
 17 Q. What services did Altria agree to --
 18 or are you aware that Altria agreed to provide for
 19 JUUL as part of that services agreement?
 20 MR. MOSES: Objection to form.
 21 A. That MarkTen had had the top 3
 22 shelves of the fixture and in this agreement, JUUL
 23 went into that space and then looking at this
 24 document, coupons for JUUL were also placed on some
 25 Marlboro cigarettes.

Page 140

1 Q. I think the last sentence of
 2 Paragraph 27 of your declaration also references
 3 other merchandising services support on behalf of
 4 JUUL. What does that refer to?
 5 A. I think that was Altria's fields
 6 staff that help to put out signs for JUUL on the
 7 fixture, if I remember correctly, they might have
 8 replaced the header a couple of times or replaced the
 9 sign. Altria has reps in our stores monthly.
 10 Q. Turn to Paragraph 28 of your
 11 declaration, on January 30, 2020, however, Altria
 12 sent a letter to all of its retail partners
 13 announcing that it had terminated the services
 14 agreement with JUUL.
 15 As a result, Altria would no longer
 16 offer any new coupons for JUUL and Marlboro products
 17 and JUUL would no longer be allowed to occupy any
 18 part of the top three shelves in Sheetz's vapor
 19 displays.
 20 Firstly, did I read that correctly?
 21 A. Yes.
 22 Q. Was that an accurate statement when
 23 you drafted your declaration?
 24 A. Yes.
 25 Q. And as of today, are you aware of any

Page 141

1 services that Altria provides to JUUL?
 2 A. No.
 3 Q. Did Altria give you any explanation
 4 why it stopped providing the services that it had
 5 initially announced in 2018, as of that January 30,
 6 2020 letter that you referenced?
 7 A. No. They didn't really get into the
 8 details on that, and once this time period started,
 9 which is essentially just over a year ago, the -- one
 10 of the guys that worked for me runs the category and
 11 he dealt directly with the changeover, but I don't
 12 remember the specific details on why that was such a
 13 hard break between the two on that services
 14 agreement. I don't remember the particulars or if
 15 they even really gave them in much detail.
 16 Q. Let's turn back to Paragraph 22 of
 17 your declaration. This is on page 4 of PX8000. The
 18 first sentence says, quote: In 2018, before Altria
 19 announced its investment in JUUL, Altria had been
 20 aggressively promoting Nu Mark products, end quote.
 21 Is that an accurate statement?
 22 A. Yeah.
 23 Q. You continue in Paragraph 22 of your
 24 declaration, quote: Altria paid Sheetz ██████████
 25 in 2018 for the rights to the top three shelves in

Page 142

1 Sheetz's vapor displays, end quote.
 2 Is that an accurate statement?
 3 A. Yes.
 4 Q. Is it typical for e-cigarette
 5 suppliers to pay Sheetz that much for shelf space?
 6 MR. MOSES: Objection to form.
 7 A. Recently R.J. Reynolds had proposed a
 8 pretty large amount [REDACTED] It's not
 9 unheard of. I mean it's a significant amount of
 10 money, but it's not unheard of.
 11 BY MR. LOVINGER:
 12 Q. At the time that Altria offered --
 13 let me ask a different question: When did Altria
 14 offer to pay Sheetz the [REDACTED] for the rights
 15 to the top three shelves in the e-cigarette displays?
 16 MR. MOSES: Objection.
 17 A. I don't -- I don't remember the
 18 specific date. I think it -- I mean it was in 2018,
 19 but I'm not sure of the exact date in that year when
 20 I had signed that.
 21 BY MR. LOVINGER:
 22 Q. At the time that Altria offered to
 23 pay [REDACTED] for e-cigarette shelf space, was --
 24 was it typical to expect cigarette suppliers to pay
 25 that much for shelf space?

Page 143

1 MR. MOSES: Objection to form.
 2 MR. SANTOS: Objection to form.
 3 A. Yeah, I don't know if I'd call it
 4 "typical." That's a tough one to answer. I know
 5 other companies had proposed money, but I don't
 6 remember what the amounts were from either JUUL or
 7 Reynolds. I just don't recall what they were at that
 8 time, but they were significant as well, but...
 9 Q. Do you recall if Altria offered to
 10 pay Sheetz more than other e-cigarette suppliers for
 11 shelf space in 2018?
 12 A. Yes, that would be accurate.
 13 Q. Is that more than any other
 14 e-cigarette suppliers or more than just some
 15 e-cigarette suppliers?
 16 MR. MOSES: Objection to form.
 17 A. It would have been more than all the
 18 other competitors.
 19 BY MR. LOVINGER:
 20 Q. Continuing in Paragraph 22 of your
 21 declaration, you wrote: When Sheets entered into the
 22 agreement with Altria in 2018, the plan was to fill
 23 the top three shelves in Sheetz's vapor fixtures
 24 exclusively with Altria's Nu Mark products.
 25 Did I read that correctly?

Page 144

1 A. Yes.
 2 Q. Is that statement accurate?
 3 A. Yes.
 4 Q. Do you recall which Altria products
 5 were in the top three shelves of your vapor fixtures
 6 at the time of the agreement?
 7 A. Yeah, I think it was MarkTen
 8 products. I don't believe we had a lead at the time
 9 but it was the MarkTen cigalikes and I believe
 10 Greensmith was up there, if I'm not wrong, and in
 11 Virginia they had a product called Verve, which was
 12 like an oral nicotine product that was like a gum or
 13 rubbery lozenge, if you will. There are different
 14 form factors or what some people call modern oral
 15 nicotine was one of the first products and again that
 16 was called Verve but only in Virginia, we had that
 17 kind of built in in the fixtures there.
 18 Q. And then the last sentence in
 19 Paragraph 22 of your declaration says, quote, until
 20 Altria discontinued MarkTen in December 2018, MarkTen
 21 occupied more shelves and was in a more favorable
 22 display position than any other vaping brand sold at
 23 Sheetz.
 24 Did I read that correctly?
 25 A. Yes.

Page 145

1 Q. Is that an accurate statement?
 2 A. Yes.
 3 Q. Does the reference to MarkTen refer
 4 to just the cigalike product or also the Elite
 5 pod-based product?
 6 A. That would be inclusive of both sites
 7 for MarkTen.
 8 Q. If you turn to PX3115, after
 9 declaration line 22, there were a number of, I guess
 10 citations or references.
 11 Why did you include those notes --
 12 actually --
 13 A. The -- go ahead.
 14 Q. You can go ahead.
 15 A. In Paragraph 22, I cite the [REDACTED]
 16 [REDACTED] agreement which is the second line I believe
 17 that Sheetz signed 2018 Nu Mark IPP retail offer
 18 rough or retail understanding form. I think the line
 19 above that is the planogram, e-cigarette products
 20 9/12/18, that would show you what the fixture looked
 21 like at the time. And then I think the rest of these
 22 were just different promotions we were running at the
 23 time but kind of referenced those offers being ran on
 24 MarkTen.
 25 Q. The second document, the final Sheetz

Page 146

1 signed 2018 Nu Mark ITP retail offer RUF. Let me
 2 share that and you can --

3 MR. MOSES: Can we go off the record
 4 just for a second? I'm having a technical issue here
 5 which I think I've solved but if we could just go off
 6 the record to make sure I have.

7 (A discussion was held off the
 8 record.)

9 (A brief recess was taken.)

10 BY MR. LOVINGER:
 11 Q. Mr. Crozier, I'm going to share a
 12 document marked PX3116.

13 (Exhibit PX3116, Agreement, was
 14 marked for Identification by the court
 15 reporter.)

16 Q. Is this the second document that
 17 you're referring to, the notes below declaration line
 18 22, PX3115?

19 MR. MOSES: Objection to form.

20 A. Can you go to the second page? Yes,
 21 that looks like the same form.

22 Q. I think that Respondents used the
 23 same document earlier and again, I don't have the
 24 printouts in front of me so I don't recall the PX
 25 number, but --

Page 147

1 MR. MOSES: It was 1134 just for the
 2 record. Thank you.

3 MR. LOVINGER: Thank you. PX1134
 4 should be the same document as PX1136.

5 Q. If you look on page 1 of PX1136,
 6 there's a numbered paragraph. It starts in bold: Nu
 7 Mark ITP merchandising requirements and then there
 8 are five letters paragraphs below.

9 Do you recall what those five
 10 lettered paragraphs are referring to?

11 A. Yes. It looks like the first one
 12 is -- letter A says the header is for a Nu Mark
 13 product so that's the card above the fixture, the top
 14 three shelves and then there's like a placard holder
 15 for a header above that. That would be the first
 16 one. And then the next one was: Dedicate to
 17 merchandising a Nu Mark ITP amount in an amount of
 18 ITP merchandising fee equal to the lesser and then it
 19 has 50 percent of total space used for ITP or the
 20 following number of shelves for which we went with
 21 the standard or high-profile option, three shelves.
 22 And then C is: Accept merchandise all Nu Mark ITP
 23 offered and sold -- except to merchandise all Nu Mark
 24 ITP offered to the stores so that -- to my knowledge,
 25 they meant new items where they launched a new --

Page 148

1 purchased a new item off the market, that would be
 2 required to be sold if offered to us. And then B is
 3 that we did not merchandise cigarettes or smokeless
 4 tobacco products below the Nu Mark ITP merchandising
 5 space, which we had a dedicated fixture for that.
 6 That was mostly vapor products or some of it was the
 7 oral nicotine, the dry pouches that are not
 8 considered smokeless tobacco. And then the display
 9 only Nu Mark's signage in the space immediately above
 10 the fixture containing the Nu Mark space, which I
 11 think is similar to the header discussion earlier.

12 Q. Got it. Thank you. So I guess is
 13 this what Sheetz was agreeing to in exchange for the
 14 [REDACTED] that Altria agreed to pay Sheetz?

15 MR. MOSES: Objection to form.

16 A. Yeah. I mean that was part of the --
 17 part of the requirements were that funds -- I'm not
 18 sure if it was limited to just that but this was the
 19 main gist of it.

20 BY MR. LOVINGER:
 21 Q. With respect to 1D about
 22 nonmerchandising cigarettes and moist smokeless
 23 tobacco products below the Nu Mark ITP merchandising
 24 space, do you have any understanding why that
 25 provision was included in the agreement?

Page 149

1 A. I don't -- I don't remember -- like,
 2 we didn't really have that problem at Sheetz because
 3 we had a dedicated space. I'd be kind of guessing as
 4 to why they would have that in the language, but I
 5 think it was, you know, mostly to have the dedicated
 6 space from bottom to top to vapor. I believe I
 7 recall my rep saying that, you know, help us sell
 8 more vapor products than some of -- of some of the
 9 other people in the market just because we had carved
 10 out a space for it; a truly dedicated space.

11 Q. Just to make sure the record is
 12 clear, what does ITP refer to?

13 A. Innovative Tobacco Products.

14 Q. And is that -- what products were
 15 part of the -- what is referred to as innovative
 16 tobacco products?

17 A. At this time, I understood it to mean
 18 vapor products. And for them it was GreenSmoke and
 19 MarkTen and Verve, I guess, technically, their oral
 20 product that I mentioned they had in Virginia.

21 Q. If you turn to the second page of the
 22 ITP agreement, which is PX3116. Is that your
 23 signature at the bottom?

24 A. Yes.

25 Q. And did someone from Altria also sign

Page 150

1 the ITP agreement?
 2 A. Yes.
 3 Q. Who was that?
 4 A. Chris Martorella. He's our senior
 5 account manager.
 6 Q. Was he -- was he responsible for all
 7 of the products that Altria sold or just the
 8 e-cigarettes?
 9 A. All products from Altria.
 10 Q. I see -- or it appears that you and
 11 the representative from Altria's both signed the ITP
 12 agreement on December 21, '18; is that correct?
 13 A. That looks -- yep.
 14 Q. Do you recall why you had signed the
 15 ITP agreement with Altria on that date?
 16 A. I do not. I mean I'm sure a lot led
 17 up to it ahead of time but I don't know what led to
 18 that specific date.
 19 Q. Do you recall from our earlier
 20 discussion that Altria announced the investment in
 21 JUUL on December 20, 2018?
 22 A. Okay, yeah.
 23 Q. Let me -- I guess is that a yes? Do
 24 you recall that date or would you like -- or would
 25 you like me to refresh your recollection?

Page 151

1 A. Yeah. Can you show me that again?
 2 Q. I'm sharing a document marked
 3 PX9081 --
 4 (Exhibit PX9081, Press Release, was
 5 previously marked for Identification by the
 6 court reporter.)
 7 BY MR. MOSES:
 8 Q. -- the press release from Altria
 9 dated December 20, 2018.
 10 A. Okay.
 11 Q. Does that refresh your recollection?
 12 A. Yes. We had talked about that before
 13 that Nu Mark ITP space.
 14 Q. Was it a coincidence that you signed
 15 the ITP agreement with Nu Mark the day after Altria
 16 announced the acquisition or the investment in JUUL?
 17 MR. SANTOS: Objection to form.
 18 A. Yeah, I don't recall the specifics,
 19 but -- you know what I mean? But it wouldn't have
 20 been -- like the announcement for that was on the
 21 20th, the one you just showed. But I know we had
 22 talked about this agreement well ahead of my
 23 knowledge of that.
 24 Q. Do you recall when you started
 25 negotiating with Altria on that e-cigarette shelf

Page 152

1 space?
 2 A. I don't.
 3 Q. Do you recall our earlier discussion
 4 that Altria announced on December 7, 2018 that they
 5 would be shutting down Nu Mark and discontinuing all
 6 of its cigarette products?
 7 A. Yes.
 8 Q. Do you have any understanding why
 9 Altria agreed to pay Sheetz [REDACTED] for shelf
 10 space for Nu Mark e-cigarettes two weeks after Altria
 11 announces its continuation of Nu Mark and MarkTen?
 12 MR. MOSES: Objection to form.
 13 A. Yeah, I don't recall. I mean I -- I
 14 almost feel like we had a different form like this
 15 before that and maybe they had us resign it, but I'd
 16 have to go -- look in my files, but I don't -- I mean
 17 the way you're presenting it, I -- it does -- it
 18 doesn't make a ton of sense, off the top of my head,
 19 but I don't recall the particulars of that time.
 20 Q. I'm going to now share a new document
 21 marked PX3121.
 22 (Exhibit PX3121, Email, January 31,
 23 2018, was marked for Identification by the
 24 court reporter.)
 25 BY MR. LOVINGER:

Page 153

1 Q. It should be in Box and then also
 2 sharing the screen now. PX3121 appears to be an
 3 email from you to one others individual and three
 4 ccs, dated January 31, 2018.
 5 Do you see -- is that accurate?
 6 A. Yes.
 7 Q. Do you recognize the document marked
 8 3121 or do you need some time to review it?
 9 A. No, go ahead.
 10 Q. Do you recognize the document marked
 11 PX3121?
 12 A. Yes.
 13 Q. And it looks like you attached a
 14 one-page document to the email that starts on page 2
 15 of PX3121. What is this document that you attach?
 16 A. That would have been an email to our
 17 cigarette third-party cigarette and tobacco installer
 18 just going through and e-cigarette reset
 19 authorization talking about between the 5th and 24th
 20 that somebody from Preferred Choice would be going in
 21 that store to do a research and it looked like it was
 22 to accommodate the launch of MarkTen Elite. Yeah,
 23 and that was ahead of the March launch of MarkTen
 24 Elite.
 25 Q. Got it. Did you draft the email to

Paul Crozier Confidential

01/19/2021

154 to 157

Page 154

1 Preferred Choice on page PX3121?
 2 A. Yes.
 3 Q. You wrote, quote: Please see the
 4 following for reset detail, end quote, and then
 5 there's -- the first bullet in red says, quote, the
 6 purpose of this reset is to make room for Sheetz
 7 exclusive launch of MarkTen Elite. This is an
 8 exciting new product line from MarkTen, closed quote.
 9 Did you write that -- those sentences?
 10 A. Yes.
 11 Q. Why did you characterize MarkTen
 12 Elite as an exciting new product line from MarkTen?
 13 A. It was -- I think there was a lot of
 14 excitement around that one because it was an
 15 exclusive launch for us. We were the only C-store in
 16 our area, you know, where we operate that had the
 17 product.
 18 Q. Was there anything else?
 19 A. It looks like -- go ahead.
 20 Q. I didn't mean to interrupt --
 21 interrupt if you had -- if you weren't finished with
 22 your answer.
 23 A. No, just stuff like that, the
 24 differentiation in the market, that was the main
 25 thing that was exciting about -- you know, having

Page 155

1 something unique at the store to offer our consumers.
 2 Q. Was that exclusivity period limited
 3 in time or was Sheetz the exclusive retailer
 4 throughout the history of MarkTen Elite?
 5 MR. MOSES: Objection.
 6 A. I have --
 7 Q. Do you want me to rephrase?
 8 A. No, I'm good. I think we had an
 9 exclusive for three months.
 10 Q. And then after three months, other
 11 C-stores in your area would be able to sell MarkTen
 12 Elite?
 13 A. That was my understanding, yes.
 14 MR. LOVINGER: Let's go off the
 15 record.
 16 (A discussion was held off the
 17 record.)
 18 (A brief recess was taken.)
 19 THE REPORTER: 2:36 back on the
 20 record.
 21 BY MR. LOVINGER:
 22 Q. Mr. Crozier, I have one more document
 23 to share with you. It's marked PX3120.
 24 (Exhibit PX3120, E-mail, December 20,
 25 2018, was marked for Identification by the

Page 156

1 court reporter.)
 2 Q. It should be in Box and on your
 3 screen. Do you see it? Mr. Crozier, let me know
 4 when you have PX3120 in front of you.
 5 A. Oh, are you speaking? I can't hear
 6 you if you are.
 7 MR. MOSES: Sorry. I was still on
 8 mute. You think I'd be used to that by now.
 9 MR. LOVINGER: No worries at all.
 10 A. Yes, I see the document.
 11 BY MR. LOVINGER:
 12 Q. Great. So PX3120 appears to be a
 13 series of emails between you and someone referred to
 14 as Rich Email or Rich Email; is that correct?
 15 A. Yeah, Rich is -- he was my former
 16 boss at Sheetz. He is now retired. He was the
 17 director of new business development at Sheetz.
 18 Q. Got it. And it looks like your
 19 former boss -- I guess -- what's his full name?
 20 A. Rich Stechroth, S-t-e-c-k-r-o-t-h.
 21 Q. So it looks like Rich Stechroth
 22 emailed you an article on December 20, 2018 with a
 23 link to the Wall Street Journal article; is that
 24 correct?
 25 A. Yes.

Page 157

1 Q. Do you recall what article -- what
 2 that article was about?
 3 A. Yeah, it was about the Altria, you
 4 know, vesting in JUUL for 35 percent.
 5 Q. And the -- was the subject of the
 6 email that your boss sent you, was it and there go
 7 your sales?
 8 A. Yeah, that would -- that's -- I think
 9 what he was getting at when he said sales would be
 10 kind of referencing with Altria there, probably was
 11 envisioning, if I had to guess, and what I -- I'm
 12 almost certain he meant was like the deep discounting
 13 that might happen; you know, like discounting
 14 promotional dollars that would reduce the sales
 15 dollars of the products.
 16 So JUUL was like 15, 16 bucks. So I
 17 think what the thinking at that time was perhaps
 18 Altria would work to lower the costs, to lower the
 19 retail structure with promotional dollars or
 20 whatever, you know, and it would lower your sales
 21 dollars.
 22 And then I used some colorful
 23 language there to describe the situation at the time
 24 which was, you know, thinking of what the investment
 25 in -- by Altria in JUUL meant. But we were going to

Paul Crozier Confidential

01/19/2021

158 to 161

Page 158

1 probably have a planogram change and a fixture
 2 realignment and given the time of year it was, it's a
 3 mess, if you know what I mean; so late December.
 4 And then there's been a bunch of
 5 rapid changes with that fixture at that time. So, as
 6 you know, we talked about it before, we had done a
 7 reset for MarkTen Elite less than a year prior to
 8 this. So just a lot of changes to that fixture.
 9 Q. Got it. And just to make sure I got
 10 that -- I understood what you just said. You
 11 mentioned some steep discounting. Who -- was that
 12 from Altria?
 13 A. Well --
 14 MR. MOSES: Objection to form.
 15 A. -- the thinking was that, you know,
 16 Altria does promotional buy-downs on cigarettes.
 17 They did it on MarkTen Elite. So if you have two
 18 products that are \$20, \$10 each, buying two would be
 19 a \$20 sale. What they did with MarkTen was \$4 off
 20 when you buy two. So what was 20 bucks would become
 21 16. So things like that where you have heavy
 22 discounting lowers your sales dollars.
 23 Q. Did that come to fruition with JUUL
 24 after Altria reached that 35 percent stake in JUUL?
 25 A. No. I don't recall -- no, I mean

Page 159

1 JUUL pretty much -- their pod pack stayed at 15.99ish
 2 and then the discounting on the devices stayed around
 3 the \$20 mark. That's a little different now. I
 4 think they have some device deals under \$10, but I --
 5 I can't speak to it directly since I no longer manage
 6 it, but I mean that's a completely different
 7 structure now.
 8 MR. LOVINGER: Got it. I have no
 9 further questions at this time. If you -- do you
 10 have any -- I'll hand it off to Mr. Moses.
 11 EXAMINATION BY MR. MOSES:
 12 Q. I just have a few questions,
 13 Mr. Moses. You said it's a completely different
 14 structure now. What did you mean by that?
 15 A. Well, now you guys no longer have
 16 that servicing agreement of, you know, where you're
 17 going in the stores or working with them on the vapor
 18 category.
 19 Q. Okay. But is it also a different
 20 structure because of the presence of NJOY and Hughes
 21 in the market?
 22 A. I wasn't thinking that when I said
 23 that. I just meant, you know, the -- the discounting
 24 JUUL does is completely different than when I was
 25 managing it directly. I mean, it is more like what

Page 160

1 NJOY does with a very deep discount on the devices.
 2 Q. And that's -- do you understand that
 3 JUUL has been doing that in response to NJOY?
 4 MR. LOVINGER: Object to form.
 5 A. That -- I don't know if that is
 6 exactly why. I mean it's reasonable to assume that
 7 to stay competitive.
 8 BY MR. MOSES:
 9 Q. And after JUUL -- after JUUL's
 10 investment and this colorful email that Mr. Lovinger
 11 showed you, JUUL continued immediately after the
 12 investment its regular pattern of promotion on its
 13 devices?
 14 MR. LOVINGER: Object to form.
 15 A. Yeah. As I recall, there were
 16 significant changes in the discounting structure with
 17 JUUL.
 18 Q. Okay. But immediately after, did
 19 JUUL continue its regular discounting practices on
 20 its devices?
 21 A. To the best of my knowledge, yes.
 22 Q. Okay.
 23 A. Nothing changed there.
 24 Q. And then five months later, as we
 25 reviewed, NJOY started its 99 cent promotion,

Page 161

1 correct?
 2 A. Yes.
 3 Q. So I just want to go over a few quick
 4 things in your deposition. Hopefully, it won't take
 5 too long.
 6 Mr. Lovinger, at the beginning of his
 7 exam reviewed with you Slide DX1135, which is the --
 8 actually, before I get to that, Mr. Lovinger asked
 9 you about your declaration and the accuracy of that,
 10 and I certainly appreciated your answers but you also
 11 today in answering questions about that declaration
 12 and explaining comments in it have been giving
 13 truthful testimony; is that correct?
 14 A. Yes.
 15 Q. Okay. So let's look at DX1135 and
 16 maybe my colleague can put it on the screen and
 17 Mr. Lovinger showed that to you. We had also
 18 reviewed and pointed out the Elite device performance
 19 between March and October of 2018. We had also shown
 20 you DX1136, which is the -- the chart we created and
 21 if Mr. Sowlati can put that up about the cartridge
 22 sales and this shows -- this portrays that the
 23 cartridge sales for Elite did not have a significant
 24 uptake as Mr. Lovinger reviewed with you on the
 25 device slide.

Paul Crozier Confidential

01/19/2021

162 to 165

Page 162

1 Is that consistent with your
 2 recollection of the performance of the cartridges
 3 relative to the devices?
 4 A. Yes.
 5 Q. Okay. And by "comparison," for
 6 example, the NJOY devices did go up significantly at
 7 the same time that their devices went up
 8 significantly. Is that consistent with your
 9 recollection of the performance of the NJOY devices
 10 and cartridges starting in May in 2019?
 11 MR. LOVINGER: Object to form.
 12 A. Yes.
 13 BY MR. MOSES:
 14 Q. Okay. And is it -- we've talked a
 15 little bit about cartridges sales being evidence of
 16 follow-through by consumers. Would it be fair to
 17 conclude that in this eight-month period, there was
 18 not particularly significant follow-through by
 19 consumers who had bought the Elite devices on trial
 20 in terms of cartridges?
 21 MR. LOVINGER: Object to form.
 22 MR. SANTOS: Object to form.
 23 A. Yeah, I mean it -- it's hard to say
 24 how they were used, but -- I mean pod-to-device ratio
 25 but it's not at the same rate as some of those other

Page 163

1 ones, but the volume also was slightly different as
 2 well.
 3 Q. There was -- there was less
 4 follow-through -- the device-to-cartridge ratio was
 5 lower than one might have hoped for successful trial;
 6 isn't that correct?
 7 MR. SANTOS: Object to form.
 8 A. Yeah, do you mean -- I mean from a
 9 manufacturer's perspective, yeah, I -- and I don't
 10 know that we had specific goals tied to that. I mean
 11 it -- it wasn't the same as the other one.
 12 Q. And the other ones you're referring
 13 to are --
 14 A. Like in the NJOY like you had just
 15 shown. Sorry.
 16 Q. You can take that down. Actually,
 17 let's go back to 1135 for a second. And -- and you
 18 had an exchange with Mr. Lovinger about the drop-off
 19 in October that's reflected in this, and -- and there
 20 was some discussion about when the announcement
 21 occurred about the removal of the Elite product. And
 22 there was -- both of you were talking about October
 23 2018. But do you recall from looking at the document
 24 that Mr. Lovinger showed you that it was October 25,
 25 2018?

Page 164

1 A. Yeah.
 2 Q. Okay. So it was at the end of the
 3 month?
 4 A. Correct.
 5 Q. Okay. So knowing that, does that
 6 suggest to you that the likely primary factor for the
 7 drop-off was the end of the promotion?
 8 MR. LOVINGER: Object to form.
 9 A. I don't know what the dates were for
 10 the promotion. But like I had mentioned to him, my
 11 guess would be that it was -- the promotion would be
 12 the main thing that a customer would react to. I
 13 don't know how many of my customers -- our customers,
 14 Sheetz's customers are reading press releases like
 15 that. I mean that would take more time to get out, I
 16 would imagine, into, you know, consumer knowledge
 17 base.
 18 Q. And if it happened in October 25th,
 19 it therefore could have -- it could have not reached
 20 consumer knowledge base even till November, right?
 21 A. Yes, theoretically. That's a
 22 reasonable...
 23 Q. And if you look at Exhibit 1129,
 24 which was your annotation -- and if we go to the
 25 notes you had under Paragraph 22 -- I don't know if

Page 165

1 you have it there or Mr. Sowlati can put it on the
 2 screen.
 3 A. I have it.
 4 Q. Okay. You see the buy Elite battery
 5 and pod pack promotion ended on 9/30/18?
 6 A. Yes.
 7 Q. Okay. And does that refresh your
 8 recollection that the promotion ended in September?
 9 A. Yeah. It would have been effectively
 10 over on the 30th or ran through the 30th so the first
 11 would have been at the full price, so I'm not sure
 12 what the full retail would have been at that point,
 13 but that's an elite battery and a pod pack for 8.99,
 14 it would have been significantly higher starting the
 15 1st of October 2018.
 16 Q. And sales then dropped off, correct?
 17 A. Right.
 18 Q. Now, you -- we talked a little bit
 19 about the -- with Mr. Lovinger about the consumer
 20 benefit for promotions and you noted that getting
 21 things for less money is a benefit and that's
 22 certainly true. And you also note some benefits for
 23 Sheetz in terms of turnover.
 24 Do you recall that discussion?
 25 A. Yes.

Page 166

1 Q. When we were talking in the morning,
 2 you also mentioned that one of the purposes of
 3 promotions on devices is to get trials so the
 4 customer is not out too much money.
 5 Do you recall that testimony?
 6 A. Yes.
 7 Q. If the customer buys a device at a
 8 trial price and determines that he or she doesn't
 9 like the -- the product and the nicotine experience
 10 that goes with it, is there still a significant
 11 consumer benefit for that trial price?
 12 MR. LOVINGER: Object to form and
 13 foundation.
 14 A. Yeah, I mean I guess it would be up
 15 to the individual consumer, but, you know,
 16 theoretically less value would be perceived there.
 17 Q. Now, can we go back to -- I think it
 18 was -- at least on our exam it was DX1146. This is
 19 the -- one of your monthly reports.
 20 Do you recall reviewing that with
 21 both me and Mr. Lovinger?
 22 A. Yeah.
 23 Q. By the way, Mr. Lovinger asked you
 24 whether this data shared with JUUL or Altria
 25 respectively. Is the data shared with JUUL JUUL data

Page 167

1 and is the data shared with Altria Altria data or did
 2 they get the whole thing?
 3 A. We sent this as is to both -- both
 4 organizations.
 5 Q. Okay. Now, Mr. Lovinger went through
 6 this and he pointed out -- I'm just looking at the
 7 nicotine units table and MarkTen is at [REDACTED] percent
 8 and JUUL is at [REDACTED] percent. Is the reference to
 9 MarkTen there both the cigalike and pod products?
 10 A. Yeah.
 11 Q. And if we go down to the next page --
 12 and is that true, excuse me, in the other tables as
 13 well?
 14 A. Yes, if we sold MarkTen Elite and
 15 MarkTen cigalikes, it would be all under the MarkTen
 16 banner there.
 17 Q. Okay. And if you go to the
 18 next -- -- the next page, thank you. This shows
 19 the -- actually, the next page. I want to go to the
 20 margin. Sorry.
 21 Mr. Lovinger pointed out the margin
 22 but didn't ask you any questions about it. Looking
 23 at the bottom left column -- bottom left chart, what
 24 place is MarkTen in terms of margin?
 25 A. The table where there's [REDACTED] percent.

Page 168

1 Q. Yes, sir.
 2 A. [REDACTED]
 3 [REDACTED]
 4 Q. And I believe we had some discussion
 5 about this this morning, but is that consistent with
 6 your recollection that [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 A. [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 Q. [REDACTED]
 20 [REDACTED]
 21 A. [REDACTED]
 22 [REDACTED]
 23 Q. [REDACTED]
 24 [REDACTED]
 25 A. [REDACTED]

Page 169

1 Q. Okay.
 2 MR. LOVINGER: I think on the
 3 transcript, the question should say "from a margin
 4 percent perspective"; is that correct, Mr. Moses?
 5 MR. MOSES: Yes. Thank you, Michael.
 6 Q. Now, Mr. Lovinger asked you some
 7 questions about whether Altria ever said they were
 8 dissatisfied with the performance and you noted that
 9 they understood that they were not the leader and
 10 added: We did everything we could to promote the
 11 product.
 12 Do you remember that exchange?
 13 A. Yes.
 14 Q. And is it true that you, as one of
 15 their trade partners, did everything you could to
 16 promote their MarkTen products?
 17 A. Yeah, yes.
 18 Q. And it's also true, as you reviewed
 19 this morning, that despite doing everything we could
 20 to promote their MarkTen products, they continued to
 21 lose market share to JUUL?
 22 A. Yes.
 23 MR. LOVINGER: Object to form.
 24 BY MR. MOSES:
 25 Q. You did mention one thing that you

Page 170

1 recall, they asked you whether you were pleased and
 2 you mentioned a \$4 for two-pack promotion, do you
 3 recall that?
 4 A. Yes.
 5 Q. And that related to a cigalike
 6 product, did it not?
 7 A. Yeah.
 8 Q. And you were talking about the
 9 discontinuation or announcement of the
 10 discontinuation of Nu Mark on December 7th and you
 11 noted that at that point there were just cigalikes
 12 and there were no flavors other than menthol and
 13 mint.
 14 Do you recall that exchange?
 15 A. Yes.
 16 Q. Was that much of a business in the
 17 cigalike space at that time -- excuse me -- in the
 18 e-vapor space at that time?
 19 MR. LOVINGER: Object to form.
 20 A. I don't recall what it was overall as
 21 a percentage at that time in December --
 22 November/December of 2018. I don't recall.
 23 BY MR. MOSES:
 24 Q. I'm just asking -- the question I'm
 25 getting at is would a business that was just

Page 171

1 cigalikes and did not have flavors one that you
 2 viewed as a significant business as of that time,
 3 December 2018?
 4 MR. LOVINGER: Object to form.
 5 A. Yeah, but I would not have described
 6 that as significant; especially given the fact that
 7 MarkTen was [REDACTED] with Elite and then that was
 8 gone and the flavors were gone. So I would imagine
 9 it had gone under -- into the teens as a percentage
 10 of the space.
 11 Q. You described -- mark that for a
 12 second.
 13 You said you would not have described
 14 that as significant.
 15 Do you mean that a business that was
 16 limited to cigalikes and no flavors other than
 17 menthol and mint, is that a business you would not
 18 have described as significant during this time frame?
 19 MR. LOVINGER: Object to form.
 20 A. Yeah, I mean correct because they
 21 were -- there were the other segments or
 22 manufacturers still had those flavors; like Reynolds
 23 had their flavors like melon and nectar, you know
 24 what I mean. So they had cigalikes that still had
 25 the flavors and MarkTen had cigalikes but didn't have

Page 172

1 the flavors, so those would be very reasonable to say
 2 it was less significant or insignificant.
 3 Q. Now, you mentioned -- the
 4 conversation with shelf space, you mentioned how R.J.
 5 Reynolds has also offered to pay for shelf space from
 6 time to time. Do you recall that exchange?
 7 A. Yes.
 8 Q. And -- and does that continue to this
 9 day, that R.J. Reynolds is interested in acquiring
 10 shelf space?
 11 A. Yeah, in my update meetings with Brad
 12 Campbell who manages the category, they have made or
 13 expressed interest in getting the -- I believe the
 14 top of the fixture an additional space. I don't know
 15 the hard and fast amount they had thrown around, but
 16 it -- it was significant, similar type of ask or look
 17 to get the upper portion of the fixture and some
 18 additional space.
 19 Q. Similar to what Altria had offered?
 20 A. Right.
 21 Q. And when you described the products
 22 that were going to go on the top shelves, you talked
 23 about cigalike products, GreenSmoke, Verve, am I
 24 correct that this -- the category that Altria
 25 initially set up was for more than just e-vapor

Page 173

1 products?
 2 MR. LOVINGER: Object to form.
 3 A. Yeah, ITP, I think that encompassed
 4 more than just vapor or it did, right, because I
 5 mentioned the Verve product, which is an oral --
 6 Q. Uh-huh.
 7 A. -- nonvapor product, but it was an
 8 Altria product that was meant for that space under
 9 the heading of ITP.
 10 Q. And we talked about on! That would
 11 be another product that could go in that space?
 12 A. Yeah.
 13 MR. LOVINGER: Object to form.
 14 BY MR. MOSES:
 15 Q. And you said that you recalled the
 16 conversation with someone from Altria when the ITP
 17 shelf program began. And I think I heard you
 18 correctly saying something to the effect that this
 19 individual said something to the effect that it would
 20 help sell the category more generally.
 21 Do you recall that exchange?
 22 A. What's that? Having it on the top
 23 shelf?
 24 Q. No, having this separate fixture for
 25 ITP product.

Paul Crozier Confidential

01/19/2021

174 to 177

Page 174

1 A. Oh, yes.

2 Q. Can you elaborate on that a little?

3 What did you understand that point to mean?

4 A. So having -- we have a dedicated 2 or

5 3 foot section for vapor or did at this time where it

6 was vapor from top to bottom. I think what I was

7 referring to in that context was retailers who would

8 set aside a couple shelves here in the store and then

9 a couple of shelves over here and it's a disjointed

10 approach to the category, so having it all together

11 in like one major segment or section like the other

12 categories like Snuff or cigar was more effective in

13 terms of sales or resonating with consumers, you

14 know, across the counter.

15 Q. Okay. And was it more effective for

16 all products in that category, not just Altria

17 products to have that altogether?

18 A. Correct.

19 MR. MOSES: I have nothing further.

20 Thank you.

21 MR. LOVINGER: I have nothing further

22 either report.

23 MR. MOSES: Mr. Crozier, thank you

24 very much. I guess I should ask Mr. Santos, are we

25 done?

Page 175

1 MR. SANTOS: We're done.

2 MR. MOSES: Thank you very much and I

3 appreciate your time and I didn't ask you the

4 traditional question whether you've done this before

5 and if you haven't, then now you know.

6 THE DEPONENT: No, this is the first.

7 MR. SANTOS: We'd like to read his

8 deposition.

9 THE REPORTER: Okay. Thank you.

10 MR. CALSYN: I'd like to order a

11 transcript.

12 MR. SANTOS: I'd like to designate it

13 confidential.

14 (The deposition was concluded at 3:06

15 p.m.)

16

17

18

19

20

21

22

23

24

25

Page 176

A C K N O W L E D G M E N T

1

2

3 STATE OF)

4 :SS

5 COUNTY OF)

6

7 I, PAUL CROZIER, hereby certify

8 that I have read the transcript of my testimony

9 taken under oath in my deposition of January 19,

10 2021; that the transcript is a true, complete and

11 correct record of my testimony, and that the

12 answers on the record as given by me are true

13 and correct.

14

15 _____

16

17 PAUL CROZIER

18

19 Signed and subscribed to before me,

20 this ____ day of _____, ____.

21

22

23 _____

24 Notary Public, State of _____

25

Page 177

C E R T I F I C A T E

1

2 I, JENNIFER WIELAGE, a Notary

3 Public and Certified Shorthand Reporter, do

4 hereby state that prior to the commencement

5 of the examination

6 PAUL CROZIER

7 was duly sworn by me to testify

8 to the truth, the whole truth and nothing

9 but the truth.

10 I do further state that the

11 foregoing is a true and accurate transcript

12 of the testimony as taken stenographically

13 by and before me at the time, place and on

14 the date hereinbefore set forth.

15 I do further state that I am

16 neither a relative nor employee nor attorney


17 nor counsel of any of the parties to this

18 action, and that I am neither a relative nor

19 employee of such attorney or counsel and

20 that I am not financially interested in this

21 action.

22 

23 JENNIFER WIELAGE

24 License No. 30X100191600

25 1/20/21

Paul Crozier Confidential
01/19/2021

178 to 179

| | |
|--|--|
| <p style="text-align: right;">Page 178</p> <p>1 Errata Sheet</p> <p>2</p> <p>3 NAME OF CASE: ALTRIA GROUP -and- JUUL LABS</p> <p>4 DATE OF DEPOSITION: 01/19/2021</p> <p>5 NAME OF WITNESS: Paul Crozier</p> <p>6 Reason Codes:</p> <p>7 1. To clarify the record.</p> <p>8 2. To conform to the facts.</p> <p>9 3. To correct transcription errors.</p> <p>10 Page ____ Line ____ Reason ____</p> <p>11 From _____ to _____</p> <p>12 Page ____ Line ____ Reason ____</p> <p>13 From _____ to _____</p> <p>14 Page ____ Line ____ Reason ____</p> <p>15 From _____ to _____</p> <p>16 Page ____ Line ____ Reason ____</p> <p>17 From _____ to _____</p> <p>18 Page ____ Line ____ Reason ____</p> <p>19 From _____ to _____</p> <p>20 Page ____ Line ____ Reason ____</p> <p>21 From _____ to _____</p> <p>22 Page ____ Line ____ Reason ____</p> <p>23 From _____ to _____</p> <p>24</p> <p>25 _____</p> | |
| <p style="text-align: right;">Page 179</p> <p>1 Errata Sheet</p> <p>2</p> <p>3 NAME OF CASE: ALTRIA GROUP -and- JUUL LABS</p> <p>4 DATE OF DEPOSITION: 01/19/2021</p> <p>5 NAME OF WITNESS: Paul Crozier</p> <p>6 Reason Codes:</p> <p>7 1. To clarify the record.</p> <p>8 2. To conform to the facts.</p> <p>9 3. To correct transcription errors.</p> <p>10 Page ____ Line ____ Reason ____</p> <p>11 From _____ to _____</p> <p>12 Page ____ Line ____ Reason ____</p> <p>13 From _____ to _____</p> <p>14 Page ____ Line ____ Reason ____</p> <p>15 From _____ to _____</p> <p>16 Page ____ Line ____ Reason ____</p> <p>17 From _____ to _____</p> <p>18 Page ____ Line ____ Reason ____</p> <p>19 From _____ to _____</p> <p>20 Page ____ Line ____ Reason ____</p> <p>21 From _____ to _____</p> <p>22 Page ____ Line ____ Reason ____</p> <p>23 From _____ to _____</p> <p>24</p> <p>25 _____</p> | |

Paul Crozier Confidential
01/19/2021

| Exhibits | | |
|---|--|---|
| EX DX1121 Paul Crozier 011 | EX PX3121 Paul Crozier 011 | 15.99ish 159:1 |
| 921 4:15 11:7 | 921 5:19 152:21,22 153:2,11,15 154:1 | 16 30:13 59:3 64:20 157:16 158:21 |
| EX DX1122 Paul Crozier 011 | EX PX9080 Paul Crozier 011 | 16625 7:19 |
| 921 4:16 16:16,24 17:3 | 921 5:14 135:16,17,21 | 17 30:22 31:13 32:10 49:17 67:12 |
| EX DX1126 Paul Crozier 011 | EX PX9081 Paul Crozier 011 | 17th 11:19 |
| 921 4:18 42:13,14 | 921 5:15,18 136:22 137:1,5 151:3,4 | 18 30:22 49:17 95:14 123:21 150:12 |
| EX DX1127 Paul Crozier 011 | \$ | 184,000 168:18 |
| 921 4:19 48:19,20 | | 19 49:17 87:10 90:6 121:14 122:18 134:22 135:3 |
| EX DX1128 Paul Crozier 011 | \$1.20 32:4 | 1924 135:9 |
| 921 4:20 50:5,6 | \$10 27:9 158:18 159:4 | 19th 90:16 |
| EX DX1129 Paul Crozier 011 | \$12.8 137:7 | 1:40 134:15 |
| 921 4:17 18:17,19,24 120:6 | \$2 27:8,11 | 1:42 134:17 |
| EX DX1130 Paul Crozier 011 | \$20 77:2,6 130:25 158:18,19 159:3 | 1D 148:21 |
| 921 5:4 68:14,15 | \$3.6 73:4 142:14,23 145:15 148:14 152:9 | 1st 165:15 |
| EX DX1131 Paul Crozier 011 | \$4 74:12,15 129:1 138:23 158:19 170:2 | 2 |
| 921 5:5 68:14,18 | \$8 27:10 | |
| EX DX1132 Paul Crozier 011 | 1 | 2 16:15 55:7 80:1 107:19 112:24 138:23 153:14 168:18 174:4 |
| 921 5:6 69:16,17 | | 2.2 83:6 |
| EX DX1134 Paul Crozier 011 | 1 19:23 20:1,14 22:22 23:10 57:2 93:4 147:5 | 2/26/15 122:22 |
| 921 5:7 71:12 147:1 | 10 36:19 38:13 77:10 | 20 16:4 21:18 41:9 51:25 54:5,12,14 77:9 87:11 90:4 92:10 103:23 136:6,9 137:6 150:21 151:9 155:24 156:22 158:20 171:7 |
| EX DX1135 Paul Crozier 011 | 10-minute 46:9 | 2000 62:10 |
| 921 4:21 59:3,20 60:11 63:2 77:24 102:24 103:5,13 116:3 161:7,15 | 10.1 167:7 | 2003 22:14 |
| EX DX1136 Paul Crozier 011 | 10.9 80:1 83:6 | 2004 20:11 22:9 |
| 921 5:1 59:4,10,22 61:2 63:7 161:20 | 11 22:8 | 2005 22:6 |
| EX DX1143 Paul Crozier 011 | 11/25/18 74:20 | 2006 22:6 |
| 921 5:10 97:4,5 | 1129 30:12 79:18 120:2 164:23 | 2007 21:18 22:10 |
| EX DX1145 Paul Crozier 011 | 1131 69:3 | 2010 87:8 |
| 921 5:9 83:18,19 | 1134 147:1 | 2011 21:14,18 |
| EX DX1146 Paul Crozier 011 | 1135 163:17 | 2015 70:9 |
| 921 | 1146 129:14 | 2016 20:4 21:4,7,15 38:23 78:23 128:12,21 |
| EX DX8000 Paul Crozier 011 | 11:51 102:15 | 2017 30:22,23 36:19 48:1,2 54:9 59:7,12,21,24 64:24 78:24 79:6,20,25 80:13 83:5 103:7 128:13,21 |
| 921 5:12 118:4,6,19 126:23 | 12/20/18 136:17 | 2018 30:8,22 33:15 36:20 43:22 51:19 63:1,3 64:2,3,6, 25 66:2 67:4 69:18,24 70:4, 10 71:17 73:2,5,7,11 75:5, |
| EX PX3115 Paul Crozier 011 | 126 134:20 | |
| 921 5:13 119:23,24 120:7,10 122:16 129:5 136:14,24 145:8 146:18 | 12:37 105:20 | |
| EX PX3116 Paul Crozier 011 | 13 46:13 120:21 | |
| 921 5:16 146:12,13 149:22 | 14 17:4 55:5 | |
| EX PX3118 Paul Crozier 011 | 14,409 45:21 | |
| 921 5:11 105:7,8,24 107:19 110:1,16 | 14.8 79:21 | |
| EX PX3120 Paul Crozier 011 | 15 32:10 56:25 59:3 61:24, 25 77:10 157:16 | |
| 921 5:20 155:23,24 156:4,12 | | |

Paul Crozier Confidential
01/19/2021

| | | |
|---|---|--|
| <p>18,24 76:7,10,15,20 77:20, 23 78:2 79:7 80:10,17 81:16,22 82:9 84:1,8 86:22 87:10,11 88:11,15 90:4,6, 14,20,21 92:1 103:11,15,17, 18,23,24 104:2,3,23,24 105:9 106:5,19 107:18 108:14 109:5 110:19 111:14 112:13,21 114:9,23 115:5 116:5,12 129:7,21 132:5,19 133:6,19 134:21,22 135:3, 22 136:10 137:6,17 138:2,9 139:5 141:5,18,25 142:18 143:11,22 144:20 145:17 146:1 150:21 151:9 152:4, 23 153:4 155:25 156:22 161:19 163:23,25 165:15 170:22 171:3 2019 36:22 50:6,10 55:8 57:1,2,8 60:12 61:3 65:1 74:20 102:5 162:10 2020 17:5 57:9,12 59:8,13, 22,25 61:15 62:2,10 65:22 92:23 93:4 95:3,16 100:3 103:7 126:1 140:11 141:6 20th 151:21 21 95:14 125:15 150:12 22 43:5 72:5 73:1 74:4,6 141:16,23 143:20 144:19 145:9,15 146:18 164:25 23 126:22 24 72:6 78:23 79:19 83:5,8 128:11 24.99 57:6 242 7:19 24th 153:19 25 57:24 80:9 82:23 84:20 106:19 110:18 129:6 163:24 25.8 79:22 25th 164:18 26 87:8 105:8 106:5 136:6,8, 16,24 137:9 26.8 167:25 27 92:17,19 94:3,17 139:13 140:2 28 92:18,23 93:10 140:10 29 7:8 94:19 95:11 29.8 79:20 293 31:1 2:36 155:19</p> | <p style="text-align: center;">3</p> <hr/> <p>3 28:23,25 29:1 36:17,23 55:9 83:2 122:21 139:21 174:5 3.6 141:24 3/4 74:17 30 30:11 32:7,20 39:19 40:22 41:10 76:19 77:20,23 78:2 92:23 94:19 95:1,11 98:6 140:11 141:5 30th 165:10 31 57:2 152:22 153:4 3118 105:14 106:2 3119 133:16 3121 153:8 32 30:6 35 157:4 158:24 36 31:12 37 43:1 3:06 175:14</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 28:25 31:6 55:9 71:20 76:15 86:12 110:1 141:17 4B 71:20</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 11:16 36:4,17 44:2 86:12 5,895 45:22 5/19 74:17 5/20 74:18 50 48:16 147:19 5th 153:19</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 36:5,9 37:3 60 32:7,9 6th 168:2</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7 36:14,19 38:12,14 90:14 135:22 136:16 137:17 138:2,9 139:5 152:4</p> | <p>7.10 32:4 72.7 80:2 7th 135:7 170:10</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 39:17 120:19 8.30 32:3,14 8.8 79:21 8.99 74:19 165:13 80 127:21 128:7 80% 127:1 80,000 138:24 80.4 167:8 82.2 80:10 82:20 85 97:10</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 110:16 9.5 80:11 82:25 9.9 80:2 9/12/18 74:9 145:20 9/30/18 165:5 99 24:21 25:20 32:6 57:6,13 58:1 61:9 62:2 160:25 9:13 16:23</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>ability 10:12 38:4,18 66:6 67:10 99:14 absence 62:15 absorption 44:24 accelerate 49:17 137:8 accept 107:8 147:22 access 91:20 accessible 19:21 accessing 139:8 accommodate 153:22 account 25:10 71:4 104:10 150:5 accounting 27:12 31:12 accrue 27:12 accuracy 161:9 accurate 20:14 29:4 43:2,5 60:5 69:2 107:25 111:19 119:17 120:25 121:2,5 125:21 127:4 128:15 135:9</p> |
|---|---|--|

Paul Crozier Confidential
01/19/2021

| | | |
|--|---|--|
| <p>136:11 140:22 141:21 142:2 143:12 144:2 145:1 153:5 accurately 107:3 Ace 61:4,8 achieve 45:10 99:14 100:23 achieving 96:15 100:19 acknowledge 7:5,9 acquiring 172:9 acquisition 151:16 act 100:12 acting 99:17 action 106:25 action/response 106:23 actions 107:21 108:13 111:3,6 activity 79:4 actual 32:11 112:11 131:25 132:16 Adam 16:22 17:7 81:21 83:15 98:8 added 19:8 120:14 169:10 additional 120:15 122:17 172:14,18 address 77:4 107:1 111:7 112:2 addressed 111:11 administered 7:10 administrative 21:19 22:5 admitted 18:6 adult 37:12 111:5 affect 10:12 94:22 affiliates 88:23 age 95:13 aggregate 126:6 aggressive 36:24 75:5,14 80:21 81:6 aggressively 73:3,22 80:14, 18 141:20 agree 40:2 53:19 58:18 63:10 64:14 67:8 80:20 96:12 139:17 agreed 102:2 139:18 148:14 152:9 agreeing 148:13 agreement 71:13,16 72:3 73:7 74:11 92:21,25 128:24 139:14,19,22 140:14 141:14 143:22 144:6 145:16 146:13 148:25 149:22 150:1,12,15 151:15,22 159:16</p> | <p>agreements 20:7 89:24 ahead 10:1 72:5 96:4 101:24 110:15 138:5 145:13,14 150:17 151:22 153:9,23 154:19 akin 45:9 allowed 93:2 140:17 Alto 55:15 56:11,12 60:23 86:10 104:13 altogether 41:22 42:2 174:17 Altria 8:1 36:8 51:20 52:14 53:4,24 66:1,4 71:9 73:3,4, 7,10 79:8 80:14,17 87:8,11, 13,14,19 88:21,23 89:16,19 90:5,21 91:9,19 92:20,23 93:1,4 94:15 96:18 97:18, 22,24 98:4 100:12 101:3,7, 18,21 102:7 103:13 104:21 107:1,2,6,7,14 108:4 109:2, 12 110:2,7,14,18 111:3,12 112:1,13,19 113:3,21 115:4, 6 116:22 126:24,25 127:7, 12 128:2,20,43 131:5,8 134:21 135:22,23 136:2,10,18 137:6,7,11,12,18 138:1,8,17 139:3,14,17,18 140:9,11,15 141:1,3,18,19,24 142:12,13, 22 143:9,22 144:4,20 148:14 149:25 150:7,9,15, 20 151:8,15,25 152:4,9,10 157:3,10,18,25 158:12,16, 24 166:24 167:1 169:7 172:19,24 173:8,16 174:16 Altria's 72:8,15 73:2,9 79:3, 11 80:7 92:19 93:5 94:3 96:10 100:11 103:18 106:21,22 108:13 116:11 126:23 140:5 143:24 150:11 amount 26:24 28:19 44:2,14 128:6 142:8,9 147:17 172:15 amounts 143:6 analysis 88:23 analyst 21:17 28:6 42:21 132:2 analytics 130:13 annotated 79:16 annotation 30:13 69:4 74:2, 4,7 80:8 82:23 83:4 164:24 annotations 18:20 19:1 79:19</p> | <p>announce 104:21 announced 51:20 73:2 87:9, 12,19 89:17 90:5 92:20 116:22 134:21 136:2,10 139:3 141:5,19 150:20 151:16 152:4 announcement 90:13 116:11 136:19 151:20 163:20 170:9 announcements 91:2 135:6 announces 152:11 announcing 140:13 answering 15:2 161:11 answers 8:12 161:10 anymore 56:6 Apex 101:7,8,13,18 110:9 appeal 37:20 65:14 appealed 34:8 appealing 42:10 appearance 85:8 appears 18:25 49:16 62:9 87:16 103:20 106:3 110:2, 17 135:21 136:25 137:14 150:10 153:2 156:12 application 95:6 98:11,16 99:6 applications 95:25 appreciated 161:10 approach 174:10 approval 99:14 100:3,8,19, 24 108:6,12 approximately 31:12 36:17, 19,23 April 93:4 area 32:12,17 122:25 154:16 155:11 arrangement 7:13 arrangements 94:2 article 156:22,23 157:1,2 articles 114:15 ascertain 40:18 assess 58:22 99:6 assessed 43:7 assessment 89:10 assessments 89:6 assistance 96:21 100:18 assistant 22:5 associate 22:8 Association 20:9</p> |
|--|---|--|

Paul Crozier Confidential
01/19/2021

| | | |
|--|--|--|
| <p>assortment 23:24 79:15 95:23 assume 57:3 160:6 assumption 56:20 78:8,11 attach 153:15 attached 17:5 106:22 153:13 attachment 110:4,17,20 attorney 7:25 attorneys 7:4 attractive 25:4 32:24,25 33:10,21 34:1 35:8,17 42:6 attributed 57:1 62:16 authorization 153:19 aware 44:17 66:1 111:17 113:11,15 114:7 139:18 140:25 awareness 117:4</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back 11:3 19:25 21:21 28:3 30:10,23 31:6 40:18,25 41:14 47:11 51:24 54:4 58:13 61:21 62:24 77:23 78:13 84:20 98:20 104:6 106:21 115:17 116:2 122:24 123:15,20 134:9,17,19 136:5 137:9,17 141:16 155:19 163:17 166:17 background 110:14 badly-worded 72:19 balloon 30:25 ballpark 32:2,20 86:14,16 ban 57:9 61:14 62:16 65:23 95:16 bankrupt 123:17 banned 95:17 banner 167:16 Barbara 50:11 base 115:10 164:17,20 baseball 29:14 based 10:20 46:20,24 48:25 60:3 69:4 123:3 126:9 138:22 Bates 97:9 120:5,7 batteries 124:8,16 battery 26:22 35:3,4,6 47:14 63:25 74:19 77:2,9,10 112:11 121:11 128:5 132:17 133:4 165:4,13</p> | <p>beer 124:14 began 173:17 beginning 161:6 behalf 140:3 behavior 50:3 believed 77:22 119:7 129:17 beneficial 96:22 99:7 benefit 98:3 127:18 165:20, 21 166:11 benefited 127:12,16 benefits 165:22 big 13:1 78:20 95:18,21 Billion 137:7 binder 59:3 bit 14:5 24:8,19 26:18 36:9 63:19 75:11,16 104:5 109:6 130:2 137:25 162:15 165:18 Black 93:6 blade 57:22 Blu 55:9,23 86:13 board 20:8 body 44:24 bold 147:6 boss 107:20 110:21 156:16, 19 157:6 bottom 49:1,4 60:4 69:11 70:6,9,11,13,18 82:18 97:20,21 149:6,23 167:23 174:6 bought 162:19 Box 11:1 16:17 18:18 97:13 120:9 153:1 156:2 boxes 74:14 Brad 172:11 brand 55:4 59:6,11,21,23,25 73:13 78:25 79:14 86:21 87:5 128:14 131:23 132:17 137:23 144:22 brands 41:7,11 51:21 53:25 85:2 122:23 130:3 break 9:24 10:2 46:7,9 67:18 84:12 86:24 134:13 141:13 breakdown 130:7 breaks 9:23 brick 124:24 brick-and-mortar 124:23 briefly 21:5 bring 96:6 bringing 125:11 130:4</p> | <p>brings 31:15 broader 96:9 broke 130:6 broken 59:25 brought 64:6 bucks 57:24 77:9 157:16 158:20 budget 23:2 built 144:17 bullet 154:5 bump 130:24 bunch 21:25 98:19,23 99:3, 23 158:4 business 21:10 31:5 66:25 129:24 137:19 138:3,10,18 156:17 170:16,25 171:2,15, 17 buy 26:23 58:13,14 74:16,18 128:5 158:20 165:4 buy-downs 158:16 buying 40:15,25 58:15 124:13 158:18 buys 166:7</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C-R-O-Z-I-E-R 8:7 C-STORE 124:12,23 154:15 C-STORES 122:3 124:25 125:5 155:11 calendar 74:23 calendars 74:24 call 12:16,21 81:7 82:6 94:16 143:3 144:14 called 28:11 40:12 44:18 94:20 111:25 122:21 136:18 144:11,16 calls 12:10,11,13 CALSYN 114:11,25 175:10 Campbell 106:4 172:12 card 40:12,13,14 41:1 74:15 147:13 cards 41:4 career 22:18 carefully 118:22 carry 23:13,16,22 24:1,4,10 99:20 carton 131:24 132:4 cartons 123:2</p> |
|--|--|--|

Paul Crozier Confidential
01/19/2021

| | | |
|--|---|--|
| <p>cartridge 35:22 36:2 46:22 58:9,11,19,22 59:11,23 63:6,8,24,25 64:7,16 74:13 121:10,12 161:21,23</p> <p>cartridges 49:4 58:6 61:3,9 64:11,13 74:14 85:12 162:2, 10,15,20</p> <p>carved 149:9</p> <p>case 30:7 31:23</p> <p>cashier 124:14</p> <p>categories 24:17 67:19 95:15 174:12</p> <p>category 13:3,9,12 14:3,4, 10 15:12,18 16:3,5 20:2,4 21:20 23:9,13 24:10 25:5 28:7 29:17 30:4,22 31:3,10, 14 32:22 33:6,7,12,23 34:7 37:13 41:12,23 42:1,2,10 46:15 47:22,23 48:9,17 49:10,12 52:7,11 53:2,21 54:11 65:5,16 68:1,4,6,24 69:6 70:17 72:25 77:16 82:10,15 84:4 91:10,11,23, 25 92:10,12 93:13,15,16,25 95:12,24 98:4 100:20 120:22 124:22 126:11 130:7 131:10 134:4 137:24 138:12 141:10 159:18 172:12,24 173:20 174:10,16</p> <p>caused 39:23 40:3</p> <p>caveat 40:24</p> <p>CBT 20:5</p> <p>ccs 153:4</p> <p>cent 24:21 62:2 160:25</p> <p>center 22:3</p> <p>cents 25:20 32:7,8 57:6,13 58:1 61:9</p> <p>cetera 97:25</p> <p>chance 11:10 17:8</p> <p>change 9:12 27:14 48:9,12 103:19 104:3 119:20 122:14 130:9 158:1</p> <p>changed 14:5 16:2,5 53:10, 24 74:18 160:23</p> <p>changeover 141:11</p> <p>characterize 78:19 154:11</p> <p>charge 35:5,24 36:1 85:11</p> <p>chart 48:20,23 49:1 51:14, 16,24,25 54:2 59:2 62:5,24 63:7 77:24,25 83:14,19,22 103:2,5,12 129:20 161:20</p> | <p>167:23</p> <p>charts 48:24 49:15 59:19 60:2,5,9</p> <p>cheaper 127:3</p> <p>check 17:9</p> <p>chewing 29:15</p> <p>Choice 153:20 154:1</p> <p>chose 17:19 110:25</p> <p>Chris 150:4</p> <p>cigalike 14:21,23 15:5,8 34:8,14,18,24 35:3,8,21 43:8,16 47:15,22 49:3 50:20,22 51:12,21 52:10 53:2,10,20,25 54:21 56:1 73:18,23 74:12 79:1 80:6 87:1,24 91:5 110:11 112:20, 25 113:4 127:22,25 138:23 139:12 145:4 167:9 170:5, 17 172:23</p> <p>cigalike-based 55:20</p> <p>cigalike-type 47:20 48:7</p> <p>cigalikes 46:18 47:18 49:21, 24,25 51:9,12,15,25 52:13, 22 53:3,9 74:14 88:2,9 90:25 144:9 167:15 170:11 171:1,16,24,25</p> <p>cigar 174:12</p> <p>cigarette 31:24 36:6,10,24 37:4,10,12,25 38:18,25 39:23 40:15 41:20,21 46:25 132:1 142:24 152:6 153:17</p> <p>cigarettes 20:2 21:1 30:6 31:8 32:15,20 34:9 35:9 36:16 37:8,17 38:13 39:5,21 40:19,24,25 41:17,25 45:10 46:19 64:23 67:16 121:22 123:1 124:13 128:20 132:3, 4 137:22 139:25 148:3,22 158:16</p> <p>cigars 20:22 24:17 29:12 67:19 93:6 137:23</p> <p>Ciro 50:19 51:7 54:23 55:3, 16,20</p> <p>citations 120:15 145:10</p> <p>cite 145:15</p> <p>cited 107:1</p> <p>Civil 7:8</p> <p>clarify 15:2</p> <p>Claysburg 7:19</p> <p>clean 85:9</p> | <p>clear 67:21 149:12</p> <p>click 47:14 85:10 112:11</p> <p>clicked 121:11</p> <p>clicks 35:2</p> <p>close 51:8 56:5 69:2</p> <p>closed 46:15,17 52:14 53:4, 24 120:23 121:8,9 125:18, 25 126:12 154:8</p> <p>closure 53:8</p> <p>Coffin 106:14,15</p> <p>coils 124:17</p> <p>coincidence 151:14</p> <p>colleague 10:25 16:16 161:16</p> <p>colorful 157:22 160:10</p> <p>column 167:23</p> <p>combines 133:4</p> <p>comments 106:24 161:12</p> <p>Commission 12:4 102:19</p> <p>commissioner 110:3,8,24 111:24</p> <p>committed 95:6 98:10,15 100:10</p> <p>common 24:18</p> <p>communication 109:5</p> <p>companies 71:9 95:5 98:10, 15 143:5</p> <p>company 23:18 98:17 99:16, 21,24 100:23 123:11,12 126:6</p> <p>compare 33:3,14 44:25</p> <p>compared 32:6 34:11 43:23 44:5 45:6 60:22 63:12 79:13 115:10 128:8</p> <p>comparing 49:1</p> <p>comparison 124:23 162:5</p> <p>compete 66:6 67:10</p> <p>competing 25:12 93:24</p> <p>competition 24:23</p> <p>competitive 13:17 14:12 15:12,18 51:10 52:14,23 53:3 79:11 86:17 93:19 160:7</p> <p>competitors 24:13 54:20 143:18</p> <p>complete 8:12 10:7,12 91:8</p> <p>completely 124:17 159:6,13, 24</p> <p>complex 111:7</p> |
|--|---|--|

Paul Crozier Confidential
01/19/2021

| | | |
|--|---|---|
| <p>components 29:16 comprise 31:10 comprised 36:7 concern 35:15 concerned 41:19 77:12,15 concerns 107:1 114:17 conclude 162:17 concluded 100:23 107:20 175:14 conduct 41:5 conducted 39:19 88:24 confidential 175:13 confirm 74:25 confusing 139:9 Congratulations 22:19 Congress 94:21 conjunction 28:7 connection 10:17 65:9 consent 7:13 consideration 25:14 considerations 28:15 considered 29:25 148:8 considers 123:23 consistent 17:11 49:18 52:2,5 60:16,24 61:7 62:11 63:15 64:14 69:7,25 82:22 162:1,8 168:5 construct 23:3 consumer 20:25 23:17,18 24:3 25:13 34:2,4 41:22,25 44:13 50:3 56:19 57:24 58:3,12 65:14 67:24 117:9 125:11,18,24 164:16,20 165:19 166:11,15 consumer's 57:21 consumers 31:15 35:18 37:19 38:2 39:15 46:21 49:24 65:16 70:16,19 75:12 95:4,15,22 121:16 127:1 155:1 162:16,19 174:13 container 121:13 content 45:14 context 110:14,22 174:7 continuation 152:11 continue 36:15 92:6 95:3 106:6 107:8,9 112:19 117:20 141:23 160:19 172:8 continued 54:8 55:1 79:6 103:21 112:13 125:25 160:11 169:20</p> | <p>continues 57:7 62:12 Continuing 143:20 contract 28:14 71:8 contracts 28:17 71:5 contrast 64:20,22 69:11 contributing 79:2 convenience 25:12 31:9 47:12 112:10 125:14 convenient 36:3 conversation 172:4 173:16 conversion 41:7,13 42:19 43:1,4,25 44:10,16 132:1 convert 38:5,18 converted 37:9 converting 35:9 37:12 39:3, 9 42:5 43:15 45:10 converts 131:22 cooler 27:19 copy 118:2 corner 82:18 correct 10:17 19:15 21:2 33:2 49:6,12 50:19 53:21 55:21 57:3 63:21 69:13 71:10,25 72:12,16 73:16,25 75:21,22 76:8,12,17 77:5 79:7 81:3,4 83:3,6 88:12 90:25 100:4 102:3 103:7,24 112:15 119:9 121:3 139:15 150:12 156:14,24 161:1,13 163:6 164:4 165:16 168:24 169:4 171:20 172:24 174:18 correcting 119:8 correctly 12:15 13:7,24 19:3 31:18 47:25 65:6 86:13 87:20 107:11,23 116:18 123:25 125:19 135:6 140:7, 20 143:25 144:24 173:18 cost 27:2 31:25 32:4,7 33:17 34:6 39:5 78:12 134:11 168:14 costs 96:1 157:18 counsel 7:13 8:3 9:9,10,15, 18 11:24 17:17 115:24 counter 124:15 174:14 couple 122:17 140:8 174:8,9 couponing 128:1 coupons 93:1 139:24 140:16 court 7:4 8:4 11:8 16:25 18:21 42:15 48:21 50:7 59:9,14 68:16,19 69:19</p> | <p>71:14 82:3 83:20 97:7 105:10 118:7 119:25 135:18 137:2 146:14 151:6 152:24 156:1 courtroom 8:17 cover 27:2 106:22 create 60:1 91:24 created 48:24 60:3 103:3 161:20 creating 68:4 Croz 42:18 Crozier 7:18,24 8:7,8 10:15 17:2,8 26:13 43:12 46:12 59:19 72:12 78:22 84:19 97:11 102:9,18 115:20 120:14 134:20 146:11 155:22 156:3 174:23 curious 41:6 current 12:25 13:6,16 20:12, 15 23:24 60:25 68:23 100:4 130:8 customer 22:4 50:12 54:24 74:13 124:18 164:12 166:4, 7 customers 40:16 45:21 46:1 56:17 85:1 125:9 127:12,15, 18 164:13,14 cutting 57:15 cuz 115:13</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>Daniel 106:14,15 data 48:25 56:6 59:1,2 60:3 121:25 125:16 126:4,11,12, 15,18 130:16,20,21 131:4,8, 11 166:24,25 167:1 date 12:21 105:5 135:3 136:2 142:18,19 150:15,18, 24 dated 17:4 110:18 135:22 137:6 151:9 153:4 dates 135:12 164:9 day 124:12 151:15 172:9 days 122:1 DC 107:8 DD-1134 71:13 DD1135 59:5 deadline 95:7 98:11,16,21 100:4,6</p> |
|--|---|---|

Paul Crozier Confidential
01/19/2021

| | | |
|---|---|---|
| <p>deal 74:12 117:10 deals 159:4 dealt 141:11 decelerate 78:15,16 December 51:19 54:9 73:10 79:25 83:5 87:10,11 90:4,6, 14,20 91:1,5 134:22 135:3, 7,22 136:9 137:6,17 138:2,9 139:4 144:20 150:12,21 151:9 152:4 155:24 156:22 158:3 170:10,21 171:3 decide 23:12,16 decided 88:24 deciding 123:24 124:4 decision 75:19 87:18 89:15 106:5 139:6 decisions 89:25 Decker 106:4,11 declaration 10:16,23 11:7, 13,22 12:6 16:12 17:6,12,19 18:4,9,20 19:1,7,24 28:24 31:7 36:5 39:18 46:14 47:7 61:14,18 69:5 87:8 90:4,11, 19 117:25 118:3,6,12,21,24 119:3,11,17,20 120:16,20, 21 121:3,15 122:18 123:21 125:16 126:23 128:12 129:5 134:19 136:9 137:10 139:13 140:2,11,23 141:17,24 143:21 144:19 145:9 146:17 161:9,11 declarations 126:1 declare 7:11 decline 36:10,16,18,22 38:13 39:6,22 41:20 52:21 53:1 55:2 92:8 116:13 117:11 121:25 125:17,23 declining 52:6 53:10,20 64:23 decreased 64:24 decreasing 37:4 Dedicate 147:16 dedicated 148:5 149:3,5,10 174:4 deep 43:17 84:22,25 116:8 157:12 160:1 Defendants 118:11 define 121:7 delineated 68:2 delineation 67:22</p> | <p>delivery 85:22 demand 122:2 dent 75:24 76:6,10 department 22:1 depleted 107:10 DEPONENT 175:6 deposition 7:5,6,7 10:5 94:14 161:4 175:8,14 depositions 8:19 describe 29:1 92:22 95:11 157:23 description 29:5 designate 175:12 designed 119:16 detail 134:7 141:15 154:4 details 123:18 141:8,12 determination 46:6 determine 28:16 determines 166:8 determining 125:6 developed 28:5 development 156:17 device 26:21 34:10 35:21 37:16 57:5,15,21,25 58:13, 14,15,17,18,21 59:6,21 63:9 74:17 77:11,24 104:19 130:25 131:25 132:17 159:4 161:18,25 166:7 device-to-cartridge 163:4 devices 31:8 46:19,22 49:3 51:13 60:12,18,21 61:9,10 63:9,18,19 64:11,13,15,17 78:2 116:13,25 121:16 124:9 127:2,3,22 128:1,3 159:2 160:1,13,20 162:3,6, 7,9,19 166:3 difference 66:21 differences 33:19 34:23 differentiate 117:6 differentiation 154:24 dig 24:8 direction 9:18 51:4 directional 23:21 directionally 49:6,8,9 60:5,6 directly 33:7 141:11 159:5, 25 director 156:17 directors 106:10 disadvantage 79:14</p> | <p>discontinuation 51:18 72:9, 14,22 74:22 91:4 110:15 170:9,10 discontinue 87:9,13,18 88:21,24 89:16,25 90:5,14 104:22 108:21 109:13 110:25 112:20,25 113:3 116:11,23 134:22 136:3 137:12 138:2 discontinued 66:2 73:10 107:14 108:5 111:13,18 144:20 discontinuing 51:21 108:11 109:23 111:8 112:2 115:5 137:19 152:5 discount 26:7,20 160:1 discounted 57:5 128:9 discounting 126:25 127:7 128:1,2 138:24 157:12,13 158:11,22 159:2,23 160:16, 19 discounts 84:22,25 127:1, 12,20 129:1 discuss 13:17 28:8 40:5 45:15 56:24 91:12 139:14 discussed 18:3 106:20 120:13 123:6 discussing 65:9 103:2 117:24 129:10 134:24 discussion 26:10 41:15 42:1 84:15 102:22 105:21 116:3 134:23 136:24 146:7 148:11 150:20 152:3 155:16 163:20 165:24 168:4 discussions 12:3 18:7 77:16 138:5,14,17 disjointed 174:9 display 73:12 93:5 144:22 148:8 displays 73:6 140:19 142:1, 15 disposable 56:1 dissatisfied 138:9 169:8 distinct 139:4 distinguish 68:5 distribution 22:1,3 dive 43:17 diversion 36:12 37:4 division 49:15 DNA 106:18</p> |
|---|---|---|

Paul Crozier Confidential
01/19/2021

| | | |
|--|--|---|
| <p>doc 81:22 document 11:5,11 17:2,23 18:17 19:2,5,6,14 42:11 48:18 49:6 68:22 102:23,24 105:7,12,14,24 106:2 112:23 115:17 116:2 117:23 118:4 119:22 120:6,9,13 129:11,18,23 135:16 136:15,22,23 139:24 145:25 146:12,16,23 147:4 151:2 152:20 153:7,10,14,15 155:22 156:10 163:23 documents 68:13 114:13 dollar 32:11 133:18 168:17, 19 dollars 26:21 27:4,7,8,9,10 28:22 31:13 99:2,22 157:14, 15,19,21 158:22 168:11 dominated 89:11 doors 27:20 dot 129:7 Doug 106:10 Douglas 106:4 download 11:1 draft 16:11 17:5 119:11 153:25 drafted 17:12 114:9 140:23 dramatically 64:24 draw 45:12 draws 67:21 drew 129:3 drinks 31:17 124:14 drive 105:25 127:10 137:8 driver 31:11 101:24 drives 46:20 driving 127:19 drop 116:4,19 drop-off 78:20 79:13 104:18 116:8 163:18 164:7 dropped 78:1 104:5 165:16 drove 85:15 117:10 dry 148:7 due 36:11,23 38:17 62:19 duly 7:20 DX 81:22 DX-1121 11:7 DX-1122 16:16,24 17:3 DX-1127 48:19,20 DX-1129 74:3</p> | <p>DX-1130 68:21 DX-1134 71:12 DX-1145 83:16 DX-1146 82:2,7 DX11 10:23 DX1121 10:24 11:11 19:25 118:15 DX1126 42:13,14 DX1127 51:25 DX1128 50:5,6 DX1129 18:17,19,24 120:6 DX1130 68:14,15 DX1131 68:14,18 DX1132 69:16,17 DX1135 59:3,20 60:11 63:2 77:24 102:24 103:5,13 116:3 161:7,15 DX1136 59:4,10,22 61:2 63:7 161:20 DX1143 97:4,5 DX1145 83:18,19 DX1146 81:24 166:18 DX3118 113:23 114:8 DX8000 118:4,6,19 126:23 dynamics 16:5</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e-cig 42:18 82:18 122:22 129:6 e-cig's 130:6 e-cigarette 108:3 109:23 122:1 130:2 131:12 132:17 133:7,10,19,23 137:19 138:3,10,18,20 142:4,15,23 143:10,14,15 145:19 151:25 153:18 e-cigarettes 20:22 24:20 29:12 93:13 108:11 112:5 114:18,22 122:6,9 126:13, 16,19 132:20 150:8 152:10 168:8 E-MAIL 155:24 e-vapor 24:25 25:14 26:2,15 30:4,22 31:2 37:8 38:6 39:10 45:8 66:5 93:25 111:5 170:18 172:25 earlier 47:17 103:3 106:14 112:10 117:25 120:14 122:1 123:6 129:11 134:24 146:23</p> | <p>148:11 150:19 152:3 ease 47:14 85:9 112:9 eases 85:8 easier 67:23 112:11 easily 46:21 economy 47:19 effect 66:15,20 79:11 116:24 173:18,19 effective 44:16 45:14 174:12,15 effectively 22:15 165:9 efforts 97:22 135:23 eight-month 162:17 elaborate 26:17 30:21 174:2 element 88:6 elite 14:20,23 15:2 43:8,16, 21 44:25 45:3 62:25 63:8,20 64:6,8,12,16 69:24 70:2 74:16,19 75:1 76:1,9,15,23 77:7,13,20 78:1 87:1,4 88:2, 4,11 91:24 92:4,8 101:3 103:9 104:8,9,14,16,19,22 107:6,15 108:13,23 109:3, 13 110:9 111:9,13,18 113:9, 12 115:5,15,23 116:4,12,13, 23,24 117:15 128:3 145:4 153:22,24 154:7,12 155:4, 12 158:7,17 161:18,23 162:19 163:21 165:4,13 167:14 171:7 email 16:24 17:3,11 18:10 42:14,17 50:6,10 51:18 105:8 106:3,14,18 107:20 110:5,21 152:22 153:3,14, 16,25 156:14 157:6 160:10 emailed 156:22 emails 156:13 employer 22:16 empty 46:22 enabled 128:19 encompassed 173:3 end 24:16 36:1 50:25 77:21 84:19 85:11 107:7 117:6,12 141:20 142:1 154:4 164:2,7 ended 18:3 77:20 83:5 116:19,20 117:5,15 165:5,8 ending 78:5 117:10 engaged 94:16 enjoy 46:22 entered 73:7 92:21 139:14 143:21</p> |
|--|--|---|

Paul Crozier Confidential
01/19/2021

| | | |
|--|---|--|
| <p>entire 108:5,11,17,19,22 109:17 entirety 71:21 entitled 59:20,22 137:6 entrant 19:10 entrants 14:4 entry 46:17 envisioning 157:11 epidemic 111:25 equal 33:20 42:4 147:18 equivalate 131:25 equivalents 131:24 era 123:17 essentially 19:6,8 22:9 23:6 24:21 44:13 95:14 134:11 141:9 Estimated 131:24 event 90:18 events 72:14,21 eventually 34:18 102:2 evidence 162:15 exact 12:21 48:14 79:13 86:9 88:7 105:4 128:4 142:19 exam 161:7 166:18 EXAMINATION 7:22 102:17 159:11 examples 109:22 Excel 74:24 exchange 148:13 163:18 169:12 170:14 172:6 173:21 excise 36:21 38:22,24 excitement 154:14 exciting 154:8,12,25 excluding 30:6 exclusive 88:5 109:18 128:25 129:1 154:7,15 155:3,9 exclusively 73:9 143:24 exclusivity 155:2 excuse 31:11 49:21 65:17 67:14 167:12 170:17 exhibit 11:7 16:24 18:19 42:14 48:20 50:6 59:5,10 68:15,18 69:17 71:13 82:2 83:19 97:4,5 105:8 118:6 119:24 135:17 137:1 146:13 151:4 152:22 155:24 164:23 exit 137:24</p> | <p>expect 101:1 142:24 expectations 101:5 experience 45:8 49:20 96:18 113:8 166:9 experiencing 55:8 explain 75:4 explained 44:11,23 112:1 explaining 26:16 161:12 explanation 110:24 115:22 139:5 141:3 expressed 172:13 extension 55:4 extent 72:13,21</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>facilitates 44:24 facings 28:16 fact 27:12 62:17 74:1 93:15 101:4 137:24 171:6 factor 24:15 56:21 67:22 79:2 123:23 164:6 factors 25:9,11,13 57:1 71:3 79:6 85:13,14,17 86:15 128:19 144:14 failed 81:2 115:23 fair 17:18 21:1 24:24 25:3 63:13 88:14 135:11 162:16 fairly 87:15,23 137:14 faith 99:18 fall 48:2 49:16 75:19 104:23 familiar 82:11 84:2 fast 172:15 favorable 73:12 79:3 144:21 FDA 57:9 62:16 65:22 66:23 91:20 94:21 95:1,7,10 98:11,16 99:7,14 100:9 102:2,4 107:2 108:5,12 110:3,8 111:10,11,24 114:17 FDA's 106:23 107:1 February 17:4 61:15 62:10, 25 63:3 64:2 65:22 95:16 102:5 103:17,23 104:2 112:20 Federal 7:8 12:4 102:19 fee 147:18 feel 152:14 feeling 68:11</p> | <p>fewer 36:12 field 66:23 fields 140:5 figure 41:24 105:17 file 74:24 98:18 filed 96:1 files 82:10 106:22 152:16 fill 73:8 143:22 filled 109:6 121:10 final 145:25 finance 22:1 find 40:21 67:23 70:19 finish 8:22 84:13 85:7 finished 43:11 154:21 firm 8:1 Firstly 140:20 fits 27:20 fixture 28:17,18,19 93:12 139:22 140:7 145:20 147:13 148:5,10 158:1,5,8 172:14, 17 173:24 fixtures 73:9 143:23 144:5, 17 flat 31:3 flavor 35:4 61:14 62:16 65:23 66:24 79:15 90:24 139:10 flavored 79:9 91:22 95:16 flavors 46:23 57:8,9,13 62:2, 7 65:3,8,11,12,16 66:2,6,15, 19 67:6,9,10 79:4,10 90:22 91:13 95:20 101:21,25 108:18,22 110:10,12 112:25 113:4,6 128:25 170:12 171:1,8,16,22,23,25 172:1 flip 17:8 focus 72:7 78:23 115:1 focusing 60:7 77:23 folks 35:7,11 follow 9:18 follow-on 64:16 follow-through 162:16,18 163:4 follow-up 102:10 food 31:16 124:14 foot 31:11 124:11 174:5 footnote 19:8 48:25 forget 100:12 118:10 128:4 form 13:19 15:13,19 17:14, 20 25:7,16 33:24 34:21</p> |
|--|---|--|

Paul Crozier Confidential
01/19/2021

| | | |
|--|--|--|
| <p>35:12 37:21 38:7,20 39:12, 13 42:7 46:3 48:11 50:1 52:16,17,24 53:11 54:16 55:12 61:19 62:8 63:11 66:7,8 67:22 68:8 72:17 74:11 75:8,25 76:11 77:14 78:6 80:23 85:13,17,20 87:25 88:16 89:21 90:9 91:6 92:3 93:20 94:5,6 96:24 100:16 105:1 108:7,15,24 109:15 111:21 112:7,16,22 113:5,25 114:10,11,24,25 115:8 116:16 117:1,14,17 122:12 123:9,13 125:2,8 127:8,14 128:17 133:13 135:4 138:4 139:20 142:6 143:1,2,16 144:14 145:18 146:19,21 148:15 151:17 152:12,14 158:14 160:4,14 162:11,21,22 163:7 164:8 166:12 168:9,22 169:23 170:19 171:4,19 173:2,13 format 85:7 formulate 9:8 forward 40:20 64:2 forwarded 106:13 found 85:17 119:3 130:16 foundation 46:4 53:12 54:1 66:9 75:9,22 96:25 117:18 166:13 Fowler 50:11 frame 99:25 171:18 framed 9:11 frankly 42:3 free 74:17 friendly 85:10 front 28:2 129:17 146:24 156:4 fruit 57:8,9,13 62:2,7 67:6 fruition 158:23 frustrating 92:14 FTC 8:10 9:10 11:23 12:8,22 15:16 16:13 17:11,18 19:7 40:6 45:17 72:10 91:13 FTC's 90:7 full 8:6 75:17 79:10 156:19 165:11,12 funds 27:2 148:17 funny 168:14 future 89:10 122:11</p> | <p>FYI 105:16</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gained 39:11 gaining 36:20 Gary 11:24 17:4 gas 124:13 125:1,5,14 gave 115:4 141:15 general 127:18 generally 26:4 30:17 32:18 35:3 37:24 63:23 76:4,6 77:1 78:14 88:7 173:20 generate 58:2 75:15 generated 59:1,2 60:17 168:6 gist 148:19 give 8:11 10:12 17:8 20:10 27:1 32:5 111:12 118:3 138:8 139:5 141:3 giving 71:6 110:13 161:12 goals 23:4,9 24:7,14,15,22 163:10 good 7:23 9:1 10:22 40:21 61:16 96:15 99:17 130:1,3 134:13 138:25 155:8 Gottlieb 110:2,24 graduate 22:12 graduated 20:13 graph 103:21 graphic 63:12 great 10:4,11,15,19 11:21 19:18 38:4 47:19 106:3 156:12 greater 42:5 46:1 56:16 64:12,16 81:6 greatly 128:6 Greensmith 144:10 Greensmoke 79:21 80:1,5 81:16 83:2,6 110:11 149:18 172:23 grew 65:1 103:22 gross 133:5 134:6,9 168:13 group 37:18 40:16,23 grow 103:13,21 growing 14:6 grown 14:9 16:4 growth 30:16,17,24 39:22, 24 40:3 55:8 57:1,12 62:1 64:25 137:9</p> | <p>guaranty 70:22,23 guess 28:9 29:15 37:7 53:16 92:14 109:8,10 113:18 115:10 120:14 134:5 145:9 148:12 149:19 150:23 156:19 157:11 164:11 166:14 174:24 guessing 54:6,11 66:12 117:5 149:3 gum 144:12 guys 141:10 159:15</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hand 57:21 159:10 handy 11:2 19:20,24 hang 94:7 happen 12:17 134:5 157:13 happened 12:1 49:10 54:7 90:14 92:1 164:18 hard 141:13 162:23 172:15 hardcopy 11:2 19:21 harm 111:5 137:8 head 12:19 33:18 79:12 86:9 128:9 135:8 152:18 header 72:8,10,22 140:8 147:12,15 148:11 heading 111:2 129:20 135:22 173:9 heads 9:2 health 99:8 hear 81:7,10 114:17 115:6, 25 156:5 heard 29:18 35:7,11 56:18 101:8,10,13 107:21 113:17 114:12 137:18 173:17 heavily 117:8 126:24 127:7 heavy 78:13 79:3 117:6 127:25 158:21 held 20:3,11 26:10 84:15 105:21 146:7 155:16 helped 62:19 85:25 112:2 127:16 129:3 helping 96:22 hey 42:18 50:11 high 41:20 96:16 high-profile 147:21 higher 25:4 30:10,24 31:16, 25 32:1,11,19 33:1 36:11 42:8 43:25 44:4,12 45:13</p> |
|--|--|--|

Paul Crozier Confidential
01/19/2021

| | | |
|---|---|---|
| <p>70:22 85:14 86:7,8 165:14 highest 33:7 86:2 hinder 67:10 hindered 66:6 history 40:15 68:13 155:4 hit 95:22 hitting 23:7 24:6 holder 147:14 holding 98:18 homework 99:22 hoped 75:13 163:5 hotdog 32:6 hour 46:8 Hughes 159:20 hundred 40:19 105:3 hundreds 99:22</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>icoast 100:8 idea 58:2 Identification 11:8 16:25 18:21 42:15 48:21 50:7 59:8,13 68:16,19 69:18 71:14 82:3 83:20 97:6 105:9 118:7 119:25 135:18 137:2 146:14 151:5 152:23 155:25 identified 8:4 72:22 illnesses 65:4 imagine 101:5 127:15 164:16 171:8 immediately 92:7,13 148:9 160:11,18 impact 65:20 92:11 96:8 131:10 impacted 65:5 107:9 impacting 102:1 important 8:19,20,25 31:11 41:13 58:11 99:15 impression 138:21 include 43:8 110:4,20 126:12,15 145:11 included 43:13 79:2 148:25 including 46:24 54:23 inclusive 43:9 145:6 incorrect 119:4,7 increase 38:17 64:12 increased 36:13,19 38:13 94:20</p> | <p>increases 38:24 increasingly 14:12 89:11 index 32:21 indicating 11:17 indication 138:8 indicative 99:13 individual 153:3 166:15 173:19 individuals 106:9 industry 12:25 13:6,16,18 23:20 36:6,10 87:15 94:23 114:13 121:24 137:13 inference 45:12 inform 138:1 information 19:8,12,13 120:15 126:7 131:2 infused 29:24 inhaled 38:9 initially 87:13 88:20 137:11, 21 141:5 172:25 initiatives 97:25 innovation 96:7 innovative 29:19 67:15 68:5 135:23 149:13,15 inserted 19:13 insight 23:22 insights 23:17,18 insignificant 172:2 installer 153:17 instances 113:18 instituted 65:23 intend 98:17 intended 37:19,23 99:6 intention 96:2 99:12,19 interaction 18:13 interactions 18:13 interest 24:3 25:13 60:18 172:13 interested 20:25 35:9 49:24 172:9 interesting 21:24 interrupt 154:20,21 interrupted 81:8 interruption 26:14 interviewed 17:22 introduced 69:25 76:16,24 77:7 introduction 38:14 62:25 63:4 77:13 88:11</p> | <p>inventory 77:22 127:19 investment 11:25 72:9,15, 23 73:3 87:12 89:24 97:18 126:24 136:11,18 137:7 141:19 150:20 151:16 157:24 160:10,12 involve 75:1 involved 91:9,10 135:14 involving 47:22,23 IPP 145:17 issue 44:10,21 45:15 61:17 91:25 111:19,23 113:20 114:23 146:4 issues 100:14 111:11 112:15 113:8 item 26:20 27:9,10 74:8 148:1 items 18:5 26:7 147:25 ITG 36:8 55:9 ITG's 55:23 ITP 29:25 146:1 147:7,17,18, 19,22,24 148:4,23 149:12, 22 150:1,11,15 151:13,15 173:3,9,16,25 IV 72:8</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>January 59:12,24 69:17,24 70:10 79:20 92:23 140:11 141:5 152:22 153:4 JDA 28:11 JLI 100:19 job 9:1 jobs 21:25 John 137:23 joining 7:24 Jonathan 7:25 Josh 106:10 Joshua 106:4 Journal 156:23 judicial 64:21 July 20:3 21:4,7 59:7,12,22, 24 103:7 jump 72:5 jumps 90:4 June 59:7,21 JUUL 14:2,15 16:6 30:16,24 33:3,5,6 34:12 35:25 36:20 37:16 39:4,8,15,20 40:3,23</p> |
|---|---|---|

Paul Crozier Confidential
01/19/2021

| | | |
|---|---|---|
| <p>41:8,10 43:1,24 44:1,4,17 45:6,13,25 46:19,22,25 48:1,15 52:14,23 53:4 55:6 57:7 60:23 68:23 69:6,10,12 70:5,9,10,12 72:9,15,23 73:3 75:7 76:22 77:12 78:24 79:21 80:2,9,22,24 82:19 84:23,24 85:1,4 86:2,17,21 87:5,12,19 89:17,19,24 92:20,21,25 93:2,9,11 94:4, 16 96:21 97:17,18 104:1,9, 16 108:17 113:14,15 114:8 115:1,7,16 117:12 126:24 128:12 130:17,20 132:8,22 133:9,22 136:11,18 137:8 139:15,19,22,24 140:4,6,14, 16,17 141:1,19 143:6 150:21 151:16 157:4,16,25 158:23,24 159:1,24 160:3,9, 11,17,19 166:24,25 167:8 168:7,13 169:21 JUUL's 33:14 38:14,18 46:17 57:11 64:25 65:2 75:24 76:6,10 86:12 98:4 104:3 127:3 160:9 JUUL/ALTRIA 11:25</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>kind 13:1,8,10,25 22:10 23:9 30:25 32:2 34:5 39:14 40:11,16 48:1 50:24 51:3, 12,14 54:9 57:22,25 66:23, 24 67:3,19 75:18 91:22 96:6 109:18 110:23 122:25 123:2 130:7,22 137:21,24 144:17 145:23 149:3 157:10 kinds 49:23 74:5 76:23 100:13 kit 131:1 knew 99:19 138:11 knowing 60:1 164:5 knowledge 18:10 72:13,20, 24 88:22 89:2,5,9,14,18,23 100:6 101:2,6,17,20 102:6 113:13 117:10 126:2 147:24 151:23 160:21 164:16,20</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>labor 134:9</p> | <p>Labs 82:19 lack 66:5 109:8 laid 21:11 landscape 14:5 language 149:4 157:23 large 132:9 142:8 largely 88:15 126:3 largest 86:21 87:5 132:6,20, 24 133:7,11,20,24 late 75:19 87:8 134:21 158:3 launch 88:5 109:13,19 153:22,23 154:7,15 launched 75:18 104:14 147:25 law 7:20 lay 27:17 28:8 laying 27:22 lead 13:8 144:8 leader 14:2,3 138:12 169:9 leadership 137:22 leading 41:11 55:6 78:24 84:24 128:13,20 leaving 41:17,22 42:2 led 150:16,17 left 16:6 27:20 98:18 99:3 139:11 167:23 legal 17:17 lesser 147:18 letter 92:24 110:2,18,23,24 140:12 141:6 147:12 lettered 147:10 letters 147:8 level 77:16 87:14 137:13 leveled 66:24 levels 45:9 54:9 lieu 7:10 light 93:10 lighter 60:8 likelihood 89:6 limited 96:6 126:8 131:15 148:18 155:2 171:16 lines 113:4 130:4 link 136:17 156:23 linked 72:15,23 liquid 120:24 121:12 liquids 46:16 121:17 124:8, 16 listed 23:10 51:6 82:19</p> | <p>listing 74:5,6 lived 72:24 LLC 71:17 load 59:15 loaded 16:19,21 42:16 69:20 loading 11:6 locations 20:8 29:2,6 long 9:24 66:11 75:15,20 100:8 109:2 121:23 122:4 161:5 long-term 51:13 52:19 54:13,14 111:4 longer 33:5 91:9 93:1,2 99:4 140:15,17 159:5,15 looked 40:16 41:8,10 51:17 69:12 70:8,9 109:9 145:20 153:21 loose 29:14 lose 169:21 loss 20:4,18 losses 81:5 lost 80:21,24 83:10 89:3 lot 12:24 14:3 24:18 30:23 35:19 47:11 48:6 51:12 53:17 85:15 106:20 112:8 122:2 124:5,7 129:3 131:17 135:11 150:16 154:13 158:8 lottery 20:5 21:13 love 68:12 Lovinger 12:10 15:19 17:4, 14,20 25:7,16 33:24 34:21 35:12 37:21 38:7,20 39:13 40:6 42:7 46:3 48:11 50:1 52:17,24 53:5,11 54:1,16 55:12 61:19 62:8 63:11 66:7 68:8 72:17 75:8,21,25 76:11 77:14 78:6 80:23 83:16 85:20 87:25 88:16 89:21 90:9 91:6 92:3 93:20 94:6 96:24 100:16 102:11,17,19 105:13,17,23 108:9,20 109:1 111:22 112:18 113:7 114:4,16 116:1,21 117:22 118:16,17 120:4,10,12 122:15 123:10,19 125:3 128:18 129:16,22 133:15 134:12,18 135:10,20 137:4 138:7 142:11,21 143:19 146:10 147:3 148:20 152:25 155:14,21 156:9,11 159:8 160:4,10,14 161:6,8,17,24 162:11,21 163:18,24 164:8</p> |
|---|---|---|

Paul Crozier Confidential
01/19/2021

| | | |
|--|---|---|
| <p>165:19 166:12,21,23 167:5, 21 168:9,22 169:2,6,23 170:19 171:4,19 173:2,13 174:21 lower 31:15,21 32:5,18 33:16,17 34:6 45:5 57:10,21 62:20 65:2 127:16 157:18, 20 163:5 168:16 lowering 57:23 lowers 158:22 lowest 168:16 loyalty 40:12 lozenge 144:13</p> | <p>mandate 66:23 107:2 manner 7:14 manufacturer 25:19 37:23 84:1 121:10 129:21 manufacturer's 25:1 163:9 manufacturers 27:1 36:25 54:21 71:5 93:23 107:22 108:21 171:22 March 11:19 12:19 43:22 50:6,10 64:5,6 70:4 74:20 75:18 76:15 103:11,14 109:4,10,19 126:1 153:23 161:19 margin 23:5,8 24:14,15,22 25:4 27:5,10 28:22 31:13, 15,16,22 32:4,5,8,9,11,18, 21,22 33:1,7,17,19 37:15 41:14 42:8 134:2,6,7,9 167:20,21,24 168:3,7,10,11, 13,15,17,19,21,23 169:3 margins 25:13 32:19 33:4, 14 130:5 mark 10:22 52:15 53:4,9,24 66:4,20 69:15 71:9,17 73:4, 9,17,22 76:1 80:14,17 81:25 82:7 83:10 89:3 90:1 102:7 106:6 107:9 139:4 141:20 143:24 145:17 146:1 147:7, 12,17,22,23 148:4,10,23 151:13,15 152:5,10,11 159:3 170:10 171:11 Mark's 111:9 148:9 marked 11:8 16:24 18:20 24:21 42:14 48:20 50:7 59:8,13 68:16,19 69:18 71:14 74:11 82:3 83:19 97:6 102:24 105:7,9,14,24 106:2 116:3 118:4,7,11,15 119:23, 25 120:2,5,6,7 129:18,19 135:16,18 136:22 137:2 146:12,14 151:2,5 152:21, 23 153:7,10 155:23,25 market 14:12 16:2,7 23:18 24:14 30:21 39:10 48:9 52:1,22 54:7,18 55:1 60:25 61:16 62:6,13 65:19 66:5 69:25 75:18 86:4 89:11 93:18 95:2 96:6 98:22 108:12 109:17 111:10 148:1 149:9 154:24 159:21 169:21 marketing 22:11 95:4 106:11,16</p> | <p>Markten 13:2 14:15,16,18, 19,20 15:4,7,11,17 16:7 33:15,16,19,21 34:5,14 41:8 43:5,7,15,21,23 44:2,5,25 45:3,22 50:16 51:2,7,18,20, 21 53:9 62:25 63:7,20 64:6 67:3 72:9,14,23 73:10,11 74:12 75:1,5,23 76:1,5,6 78:24 79:1,20,25 80:11,15, 18 82:25 83:5 84:7,23 86:20,25 87:1,9,14,15,17, 18,22 88:4,8,11,21,25 89:16 90:6,14,24,25 91:2,5 92:4,6, 8,9 103:9 104:8,9,18,22 107:6,14 108:13,22 109:2, 13 110:9,11 111:9,13,18 113:9,12 115:5,14,15,23 116:4,12,13,23 117:15 126:25 127:2,7,13,21 128:13 132:12,25 133:14,25 134:22 136:3 137:12,13,15 139:4,21 144:7,9,20 145:3, 7,24 149:19 152:11 153:22, 23 154:7,8,11,12 155:4,11 158:7,17,19 167:7,9,14,15, 24 168:6,12 169:16,20 171:7,25 Markten's 79:2 Markten/juul-type 13:3 Marlboro 139:25 140:16 Martorella 150:4 mat 85:7 Matt 106:11 matter 7:11 10:17 11:14 24:1,4 70:25 102:20 118:12 120:17 Matthew 106:4 meaning 26:21 121:9 122:25 means 20:22 46:21 meant 55:20 88:1 96:5 147:25 157:12,25 159:23 173:8 measure 58:9 media 114:12,19 meet 96:22 102:20 meeting 96:15 meetings 172:11 melon 171:23 membership 20:9 menthol 65:12 66:25 67:7 95:21 101:21 110:12 139:11 170:12 171:17</p> |
| <p>M</p> | | |
| <p>made 15:12,18 25:22 30:25 32:7 37:15 39:6 51:3 75:22 85:23 89:3,16,25 91:1 112:5 119:10,12,16 127:2 128:22 172:12 magazines 23:20 114:14,20 main 22:16 29:16 36:7 126:20 148:19 154:24 164:12 maintain 61:15 maintained 35:10 60:21 major 92:8,9 174:11 majority 46:23 47:5,9 55:13, 14,17 56:3 88:8 95:20 make 25:11 27:9 32:9,10,23 33:9,21 38:5,6 40:19 46:6 56:20 75:6,23 76:6,10 87:12 119:16 131:17 136:10 146:6 149:11 152:18 154:6 158:9 makers 96:13 makes 13:10 16:7 35:14 41:20 70:20 75:13 86:17 114:14 116:19 117:8 136:4 137:7 making 21:19 32:3 131:10 manage 20:6 33:6 61:15 159:5 managed 33:7 management 68:1 manager 20:2,4 21:8,17 28:7 33:22 42:10 91:25 106:11 150:5 manages 21:9 172:12 managing 92:15 159:25</p> | | |

Paul Crozier Confidential
01/19/2021

| | | |
|---|---|--|
| <p>mention 169:25 mentioned 20:17 25:18 27:13,24 29:8 47:17 49:21, 23 51:16 65:8 71:2,3 76:14 112:10 122:4 135:7 149:20 158:11 164:10 166:2 170:2 172:3,4 173:5 merchandise 147:22,23 148:3 merchandising 28:9,12 140:3 147:7,17,18 148:4,23 mess 158:3 Michael 12:10 102:18 105:15 129:15 169:5 Middleton 137:23 Mike 105:11 Mild 93:6 million 73:5 141:24 142:14, 23 145:16 148:14 152:9 millions 99:2 142:8 Mills 106:4 mind 10:6 97:14 99:25 minimum 95:13 minor 68:25 119:12 Minority 137:7 mint 101:22 108:18 110:12 170:13 171:17 minus 134:11 minute 102:13 minutes 134:14 misremembered 90:15 misspoke 55:19 misstates 112:23 mix 48:14 56:1 66:11 mod 124:8 model 57:22 modeled 46:18 modern 144:14 moist 24:12 25:10 148:22 moment 18:24 42:23 59:18 96:11 113:14 money 57:23 89:3 127:18 142:10 143:5 165:21 166:4 monitor 82:14 84:3 month 130:11,14 138:24 164:3 monthly 26:5,16 131:5,12 140:9 166:19 months 12:15,20 22:2,4,8 57:2 109:11,14 115:7 155:9,</p> | <p>10 160:24 morning 7:23 8:2,9 9:22 12:12 166:1 168:5 169:19 mortar 124:24 Moses 7:22,25 11:9 13:21 15:15,21 16:20 17:1,7,15 18:1,23 25:8,17 26:12 34:22 38:3,11 42:16 46:7,11 48:22 50:4,9 52:20 53:7,15 54:19 59:15,17 61:20 63:14 66:13 68:9 69:21,22 76:3,13 77:18 78:9 81:1,21,25 82:5 83:15, 17,21 84:11,18 85:21 88:19 89:22 90:12 93:22 94:9 97:2,8 98:7 100:17 102:9,22 103:3,13 104:17 105:1,6,11, 15 108:7,15,24 109:15,21 111:21 112:7,16,22 113:5, 25 114:10,24 115:3,8 116:7, 15 117:1,14,17,25 118:9,14 120:2 123:7,9,13 125:2,8 127:8,14 128:17 129:11,14 132:11 133:13 134:25 135:4 138:4 139:20 142:6,16 143:1,16 146:3,19 147:1 148:15 151:7 152:12 155:5 156:7 158:14 159:10,11,13 160:8 162:13 169:4,5,24 170:23 173:14 174:19,23 175:2 move 28:23-77:22 moved 51:13 80:2 95:14 movement 28:16 moving 41:23,25 89:15 92:16 MSA 125:17 126:4,5,6,12, 15,21 mute 156:8 mutually 139:1</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>National 20:9 nature 109:7 nearing 84:19 nectar 171:23 negative 138:13 negotiating 151:25 negotiations 89:19 news 106:20 114:20</p> | <p>nice 22:18 102:20 nicotine 20:25 29:23,24 38:9 44:2,3,4,7,9,12,14,18,21,23 45:1,5,7,13,16 46:2 51:2 56:9,10,11,13,16 62:17,21 85:22 86:1,2,5,16 91:11 93:5 95:15 131:21,23 132:6, 10 144:12,15 148:7 166:9 167:7 NJOY 14:5,6,9 16:3 25:22 55:7,10,13 56:7,10 57:5,7,8, 10,11 60:8 61:4,8,15 62:1,5, 12,17 64:11,15 65:10 66:22, 24 79:14 86:6 94:4 122:21 123:6,12,15,16 159:20 160:1,3,25 162:6,9 163:14 NJOY's 56:25 66:16 94:13 nods 9:2 nonemail 18:13 nonmerchandising 148:22 nonprominent 123:3 nonvapor 173:7 normal 77:1 nosedive 54:8 note 20:8 77:19 79:19 110:7 165:22 noted 65:21 74:16 90:3,19 137:20 165:20 169:8 170:11 notes 84:12 106:22 122:17 136:15 145:11 146:17 164:25 notice 97:17 November 77:21 83:13,23 84:1,8 105:4 164:20 November/december 170:22 Nu 52:15 53:4,8,24 66:4,20 71:9,17 73:4,9,17,22 80:14, 17 83:10 89:3,25 102:7 106:6 107:9 111:8 139:4 141:20 143:24 145:17 146:1 147:6,12,17,22,23 148:4,9, 10,23 151:13,15 152:5,10, 11 170:10 number 20:12 28:16 29:2,5 36:11 45:21 82:22 93:12,15 94:22 145:9 146:25 147:20 numbered 147:6 numbers 32:2 86:24 119:13 120:5,7 numerous 22:10</p> |
|---|---|--|

Paul Crozier Confidential
01/19/2021

| | | |
|---|--|--|
| <p style="text-align: center;">O</p> <hr/> <p>oath 7:10 8:16</p> <p>Object 13:19 15:13,19 17:14,20 25:7 34:21 35:12 37:21 38:7,20 39:12,13 42:7 46:3 48:11 50:1 52:16,17,24 53:11 54:16 55:12 61:19 62:8 63:11 66:7,8 68:8 72:17 75:8,25 76:11 77:14 78:6 80:23 85:20 87:25 88:16 89:21 90:9 92:3 93:20 94:5,6 96:24 100:16 117:17 127:8 160:4,14 162:11,21, 22 163:7 164:8 166:12 168:9,22 169:23 170:19 171:4,19 173:2,13</p> <p>objection 9:11 25:16 33:24 53:5 54:1 75:22 91:6 105:1 108:7,15,24 109:15 111:21 112:7,16,22,23 113:5,25 114:10,11,24,25 115:8 116:15 117:1,14,18 122:12 123:9,13 125:8 127:14 128:17 132:11 133:13 135:4 138:4 139:20 142:6,16 143:1,2,16 146:19 148:15 151:17 152:12 155:5 158:14</p> <p>objections 7:14,16 53:17 94:11</p> <p>observation 63:7</p> <p>obvious 99:20</p> <p>occupied 73:11 144:21</p> <p>occupy 93:2 140:17</p> <p>occur 49:16 94:15</p> <p>occurred 47:24 163:21</p> <p>October 57:2 66:2 80:10 81:16,22 82:9 90:21,23 91:12 92:1 104:6,24 105:3,8 106:5,19 107:18 108:13 109:5,10 110:18 111:13 112:13 114:9,23 115:5 116:5,12 129:6,21 132:5,19 133:6,19 136:6 139:9 161:19 163:19,22,24 164:18 165:15</p> <p>offer 25:21 26:22,23 77:1,9 93:1 117:5 140:16 142:14 145:17 146:1 155:1</p> <p>offered 47:13 79:4 126:25 129:2 142:12,22 143:9</p> | <p>147:23,24 148:2 172:5,19</p> <p>offering 84:25 125:10</p> <p>offerings 125:12</p> <p>offers 25:19 26:7 75:14 128:5 145:23</p> <p>office 22:8 81:12</p> <p>one-page 153:14</p> <p>ongoing 58:9,19,22</p> <p>online 124:19 125:7</p> <p>open 11:12 65:4 121:12,16, 19,21 122:5,9,20,24 124:7 125:17,23 126:15</p> <p>operate 21:14 154:16</p> <p>opposed 47:15 58:15</p> <p>opposite 36:1</p> <p>option 147:21</p> <p>oral 144:12,14 148:7 149:19 173:5</p> <p>order 10:22 95:3 111:10 175:10</p> <p>orders 107:8</p> <p>ordinary 129:24</p> <p>organization 28:20 127:10</p> <p>organizations 167:4</p> <p>organized 99:24</p> <p>original 128:8</p> <p>OTP 130:8</p> <p>Outlets 20:10</p> <p>overwhelmingly 49:12</p> <p>owner 25:5</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>P&I 22:20,25 23:4,6 24:7 25:5 27:5 33:10,11,22 92:2</p> <p>P-A-U-L 8:7</p> <p>p.m. 175:15</p> <p>PA 7:19</p> <p>pack 32:14 37:15,16 63:24 74:13,17,19 77:2,3 132:2 159:1 165:5,13</p> <p>packages 74:14</p> <p>packaging 85:8</p> <p>packs 129:2 132:3 138:23</p> <p>paid 73:4 141:24</p> <p>paragraph 19:23 20:1,14 22:22 23:10 28:23 29:1 30:13,15,16 31:6 36:9,14 37:3 38:12 39:17 46:13 55:5 56:25 64:20 65:22 67:12</p> | <p>71:20 72:5 73:1 74:2,3,6 78:23 79:18 80:9 83:5,8 84:20 87:7 92:17,19,23 93:10 94:3,17 95:1,11,24 97:21 98:6 120:19,21 121:14 122:18 123:21 125:15 126:22 128:11 134:20,24 136:6,8,15,16,24 137:9,10 139:13 140:2,10 141:16,23 143:20 144:19 145:15 147:6 164:25</p> <p>paragraphs 18:19,25 19:13 28:24 36:4 37:1 72:8 93:7 94:19 120:16 147:8,10</p> <p>part 23:11 27:4 28:22 31:4 38:17,21 39:23 40:3 41:16 52:6,10 72:2 80:7 92:14,19 93:3 99:16 128:21,22 139:19 140:18 148:16,17 149:15</p> <p>partially 36:23</p> <p>participate 137:12</p> <p>participates 87:14</p> <p>participating 7:5</p> <p>participation 72:2</p> <p>particulars 141:14 152:19</p> <p>parties 7:12</p> <p>partner 97:22</p> <p>partnered 87:19</p> <p>partnering 98:4 115:6</p> <p>partners 92:24 96:14 97:17 140:12 169:15</p> <p>partnership 89:17 92:20 94:3,16 128:23</p> <p>pass 99:16</p> <p>passed 94:21</p> <p>Patches 93:5</p> <p>path 96:2,3</p> <p>pattern 40:11 160:12</p> <p>Paul 7:18 8:7 50:11</p> <p>pay 27:11 142:5,14,23,24 143:10 148:14 152:9 172:5</p> <p>penalty 7:12 118:25</p> <p>pending 9:25 10:1 108:5,12</p> <p>Penn 20:13 22:12</p> <p>Pennsylvania 38:23</p> <p>penny 41:18 42:9</p> <p>people 11:1 27:17 37:7 39:3 40:11,13,22 41:17,21 67:5 99:17 124:11,13 144:14 149:9</p> |
|---|--|--|

Paul Crozier Confidential
01/19/2021

| | | |
|---|---|--|
| <p>perceived 101:24 166:16 percent 16:4 23:8 24:15,22 30:3,6,11 31:1,12,13 32:6,9,10,21,22 36:17,19,20,23 38:13,14 39:20 40:19,22 41:9,10 42:9 43:1,5 44:2 45:6 48:16 52:1 54:5,13,14 79:20,21,22 80:1,2,3,10,11 82:20,25 83:2,6 86:12 92:10 103:23 105:3 127:21 128:7 130:7,8 147:19 157:4 158:24 167:7,8,25 168:3,10,15,21,23 169:4 171:7 percentage 13:9 14:1,9 45:4 84:10 86:1,2,9 119:13 130:6 170:21 171:9 percentages 88:8 percents 168:14 performance 49:2 60:7 64:10 82:9,14 138:10,19 161:18 162:2,9 169:8 period 63:20 64:1 80:25 81:3 104:2,8 109:24 141:8 155:2 162:17 perjury 7:12 118:25 person 7:10 33:10 58:16 67:23 124:15 personal 72:13,20,24 88:22 101:2,6,17,20 102:6 perspective 85:15 163:9 168:17,19,23 169:4 phone 81:7 phrase 29:19 physically 7:6 pick 16:6 picture 28:1 pictures 28:2 Pittsburgh 126:9 placard 147:14 place 167:24 168:2 placement 70:21,22 plan 10:19 73:8 143:22 planning 20:7 28:11 77:17 138:2 planogram 21:9,16,20 27:25 28:1,6,10 68:15,18,23 69:5,11,17,24 70:3,8,10 71:4 74:9 122:23 145:19 158:1 planograms 28:5 68:12 played 116:12</p> | <p>player 16:3 48:16 62:13 players 14:8 29:14 36:7 131:16 playing 66:23 pleased 138:19 170:1 PMTA 89:7 95:3,6,24 96:2 98:11,16,18,20 99:5,12,20 100:2,7,19,23 PMTAS 96:9 99:22 pod 14:23 15:2 34:24 35:4,17 36:1 43:8,16 46:20,24 47:14,23 48:1 51:13 55:11,13,15,18,24,25 56:4,7,8 73:18,23 74:17,19 77:2 85:10,18 90:21,24 95:17 101:7,8 110:9 112:11 121:9 123:16 128:5 129:2 131:25 132:2 133:4 138:23 139:9 159:1 165:5,13 167:9 pod-based 49:3 55:16 59:7,12,21,24 103:6,14,19 104:10,16 107:6 111:9,16 112:2,5,14,21 115:14,15 116:4 127:23-128:3 145:5 pod-to-device 162:24 pod-type 34:17 35:2 pods 37:16 46:17 47:4,9 49:12,25 51:9,15 57:7,10 58:14,16 77:10 89:12 91:13 120:24 point 18:11 49:11 54:10 60:20 79:17 81:17,19 84:8 92:11 96:13,23 127:25 139:10 165:12 170:11 174:3 pointed 161:18 167:6,21 poly 36:13 popularity 36:21 39:11 portfolio 80:7 portion 35:4 92:9 172:17 portrays 161:22 posed 52:22 position 21:8,12,14 28:18 62:6 73:12 79:3 84:13 123:3 144:22 168:13 positions 20:12 22:10 positive 100:19 pouch 29:24 pouches 29:23 148:7 pour 121:12 powder 29:24</p> | <p>practices 160:19 pre-filled 120:24 pre-priced 24:19 pre-pricing 24:19 precise 17:19 preference 50:3 125:24 preferences 125:18 preferred 39:15 85:2 125:24 153:20 154:1 prefilled 46:16 premarked 10:23 17:3 18:17 48:19 premarket 95:25 prepare 11:22 16:11 49:5 130:10,12 prepared 10:15 74:2 82:14 84:3 130:13 presence 159:20 present 7:6 presenting 152:17 president 106:16 press 65:3 135:17,21 137:1,5 151:4,8 164:14 pretty 16:3 54:4 69:2 75:14 78:20 92:11 109:20 121:25 128:10 129:2 134:8 138:25 142:8 159:1 prevent 94:4 97:23,24 preventing 91:20 previously 94:14 151:5 previously-announced 97:25 price 25:1 51:5,6 57:6,15 62:19 123:24 124:4 127:2,16,21 165:11 166:8,11 priced 57:10 prices 24:9,25 25:14 31:24 123:22 124:3,19,20 125:6 pricing 24:16 primarily 64:25 primary 37:18 164:6 principles 28:9,13 printed 82:9 printouts 146:24 prior 20:12 21:4,7,16,23,25 22:2,5,7 31:2 46:17 65:21 88:15 95:6,19 98:11,16 130:9 138:1,9 158:7 privileged 9:17</p> |
|---|---|--|

Paul Crozier Confidential
01/19/2021

| | | |
|--|---|--|
| <p>pro 28:19 problem 26:9 81:11 101:25 149:2 Procedure 7:8 process 98:21 produced 82:10 product 14:18,21,23,24 15:2 23:25 24:4,21 25:4 27:20 28:8 30:24 31:25 32:1,13, 24,25 33:8,9 34:6,8,14 35:2, 3,8,15,25 36:1 38:6,10 42:4, 8 43:15,16,22 44:12,15 47:20 48:7 50:17,20,23 51:2,12 54:17,23 55:4,14, 15,24,25 56:1,8,12,13 58:3, 10,23 64:8 67:22,24 68:1 70:15,19,25 74:19,22 75:1, 2,17 78:12,13 80:6 82:15 85:1,4,6,24 89:10 92:5,14, 15 93:13,15 98:19,20,23 99:2,18,19 100:2,7,22 101:7,9,13 106:21 107:6 108:5,11,17,19,22 109:7,13, 19 111:9 113:4,19 115:15 122:3 123:12,14,24 125:10, 12 127:25 130:3 132:18 135:23 138:15,25 139:12 144:11,12 145:4,5 147:13 149:20 154:8,12,17 163:21 166:9 169:11 170:6 173:5,7, 8,11,25 product's 66:20 production 60:4 107:7 products 15:4,5,7,8,11,17 16:2 20:6,20,23 21:10 22:22 23:13,23 24:9,10,11,18,25 26:3,15 27:17,22 28:2 29:9, 10,19,23 30:4 31:9,10,15, 16,20,21,22 32:21 33:15,16, 21 34:17,18,24 35:17 36:12 37:4,8,10,13,19 38:2,5 39:4, 10,16,24 40:13,15,17 41:4 43:8,16 45:9 47:1,12,23 49:3 54:21 55:2,7,11,16,18, 20 56:4 65:17,19 66:5 67:13,15 68:5 70:18 73:4, 10,17,22,23 75:5,6,23 79:1, 9,11 80:15,18 83:10 84:25 85:18 86:4 87:1,24 90:1,21 91:2,22 92:1 94:24 95:2,4,5, 17 96:1,7,14 97:23 98:10,15 99:6,11 100:1 102:4 109:23 110:11 111:1,5 112:14,20,</p> | <p>21 113:1 114:21 115:14 122:22 124:4,5,6 125:12 138:20,23 140:16 141:20 143:24 144:4,8,15 145:19 148:4,6,23 149:8,13,14,16, 18 150:7,9 152:6 157:15 158:18 167:9 168:6 169:16, 20 172:21,23 173:1 174:16, 17 profit 20:4,18 23:5 41:18 42:9 profitability 37:14 134:3 profitable 168:20,24 program 40:12,13 173:17 progress 75:7 progression 51:15 proliferation 106:24 promise 111:4 promised 92:18 promo 74:23 promote 117:8 138:15 169:10,16,20 promoting 73:4,22 80:14,18 141:20 promotion 26:6 27:4,6 28:22 57:13 60:17 62:3 63:19,24 75:5 77:5,6,19 78:5,14 80:21 81:6 116:18,20 117:7 130:25 131:3 160:12,25 164:7,10,11 165:5,8 170:2 promotional 74:24 79:3 157:14,19 158:16 promotions 25:25 26:2,15 27:1,2 36:24 63:23 74:25 76:14,23 77:17 117:12,16, 19,21 127:17 130:23 131:9, 18 138:16,22 139:2 145:22 165:20 166:3 proposed 142:7 143:5 prospects 89:10 provide 23:19,21 45:9 110:22 139:18 provided 46:1 127:13 providing 56:16 141:4 provision 148:25 public 99:8 117:3,4 publications 23:21 publicly 87:11 136:10 pull 27:7 75:19 120:20 129:13</p> | <p>pulled 54:18 57:8 67:4,6 79:8 102:5 pulling 110:9 purchase 26:8 31:16 40:10, 13 purchased 74:13 148:1 purchases 41:19 purchasing 22:11 106:11 purportedly 112:14 purports 103:5 purpose 130:19 131:7 154:6 purposes 16:16 166:2 pursuant 7:8 57:9 put 8:3 11:1 16:17 18:18 49:9 51:23 70:17 82:23 83:13,17 94:4 99:23 100:13 140:6 161:16,21 165:1 PX 146:24 PX-1135 115:18 PX1129 120:3,5 PX1134 147:3 PX1135 104:19 PX1136 147:4,5 PX1146 129:19 PX3115 119:23,24 120:7,10 122:16 129:5 136:14,24 145:8 146:18 PX3116 146:12,13 149:22 PX3118 105:7,8,24 107:19 110:1,16 PX3119 129:18 131:20 133:1 134:1 PX3120 155:23,24 156:4,12 PX3121 152:21,22 153:2,11, 15 154:1 PX8000 123:21 136:5 141:17 PX9080 135:16,17,21 PX9081 136:22 137:1,5 151:3,4</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quality 23:25 58:23 70:15,25 85:15 quarterly 26:5,17 question 8:22 9:5,11,12,16, 25 10:6 45:1 50:12 53:18 61:13 66:18 72:19 81:7,14 94:10,12 101:12 113:2 114:2,6 115:25 142:13</p> |
|--|---|--|

Paul Crozier Confidential
01/19/2021

| | | |
|---|--|---|
| <p>169:3 170:24 175:4 questions 8:9,10,12 9:9 10:20 12:5 13:2,3,4 102:11 159:9,12 161:11 167:22 169:7 quick 84:12 110:6 161:3 quickly 9:22 84:14,21 quote 106:20 107:5,20 111:3 113:20 120:22 121:15 123:22 125:16 128:12 136:9 137:7,11 141:18,20,24 142:1 144:19 154:3,4,5,8</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R.J. 142:7 172:4,9 raise 61:13 raised 12:23 18:2 36:21 38:22 39:5 raising 16:9 61:17 ran 74:16,20 76:25 138:16 145:23 165:10 range 30:11 128:7 rapid 64:25 158:5 rate 36:15,18,22 38:13 39:22 43:1,5,25 57:12 62:1 65:2 162:25 rates 41:7 ratio 162:24 163:4 razor 57:22 reach 26:4,16,19 reached 11:23 89:24 158:24 164:19 react 164:12 read 23:20 31:18 65:6 87:3, 20 107:3,11,23 123:25 125:19 136:7 140:20 143:25 144:24 175:7 readily 19:21 reading 90:19 110:6 164:14 realignment 158:2 reask 101:11 reason 41:10 93:16 111:17 reasonable 56:20 78:7,10 160:6 164:22 172:1 reasons 45:25 99:20 111:12 115:4,11 recall 12:18,22 16:9 18:5 30:9 34:17 35:14 45:18 47:21 51:19 61:17 63:22</p> | <p>65:24 67:4 71:6 77:3,15 79:12 81:15,16,18 86:8 90:13,20 91:16 102:21 103:2,9 104:17,24,25 108:3, 8,10,25 109:22 110:5 111:15 113:10 115:2 116:3, 7 117:24 119:10,14 126:18 129:10 134:23 135:2,6 138:5 139:7 143:7,9 144:4 146:24 147:9 149:7 150:14, 19,24 151:18,24 152:3,13, 19 157:1 158:25 160:15 163:23 165:24 166:5,20 170:1,3,14,20,22 172:6 173:21 recalled 173:15 receive 111:10 received 100:7 recent 36:15 recently 94:21 142:7 recess 46:10 84:17 102:16 134:16 146:9 155:18 recognize 97:16 153:7,10 recollection 17:11 49:18 52:3,6 60:17,25 61:8 63:16 64:15 69:8 70:1 107:13 136:1 150:25 151:11 162:2, 9 165:8 168:6 recommend 50:22 recommended 54:24 record 8:6 16:23 26:11 74:3 84:16 102:12,14 105:19,20, 22 118:14 134:13 146:3,6,8 147:2 149:11 155:15,17,20 recover 80:22 81:2 red 60:8 154:5 reduce 157:14 reduced 128:6 reduction 111:5 137:8 refer 34:16 111:23 126:4 131:21 133:3,17 134:6 140:4 145:3 149:12 reference 25:21 28:1 32:14 79:1 86:25 129:6 136:17 145:3 167:8 referenced 48:25 113:21 127:20 141:6 145:23 references 140:2 145:10 referencing 28:13 32:13 42:23 55:11 85:5 157:10</p> | <p>referred 25:20 29:13 50:12 65:18 121:19 149:15 156:13 referring 19:18 64:1 65:10 87:24 113:24 121:18 122:19 124:25 136:23 146:17 147:10 163:12 174:7 refers 134:7 refill 121:17 reflected 18:4 163:19 reflects 51:25 Refocuses 135:23 refrain 94:10,11 reframe 53:17 refresh 107:13 136:1 150:25 151:11 165:7 regard 13:23 44:21 57:19 65:14 register 67:23 regular 57:6 82:13 84:3 160:12,19 regularly 131:14 regulations 94:21,22 95:11 99:1 regulatory 89:6 99:25 100:14 related 13:2 42:12 126:19 170:5 relative 49:2 162:3 release 135:17,21 137:1,5 151:4,8 releases 164:14 relegated 123:2 remain 29:4 remained 66:4 86:20 87:4 remains 57:11 61:25 remember 10:5 12:9,15,21, 25 13:7,24 14:8 15:25 18:10,12 33:18 45:19 47:25 48:14 54:3 88:7 91:15 116:18 124:21 128:8 135:8 138:25 140:7 141:12,14 142:17 143:6 149:1 169:12 remembering 86:12 remotely 7:7 removal 15:11,17 66:15,19 91:24 139:10 163:21 remove 85:11 removed 53:24 90:21,24 98:21 101:3,7,18,21 removing 95:22</p> |
|---|--|---|

Paul Crozier Confidential
01/19/2021

| | | |
|--|---|---|
| <p>renegotiated 93:11 rep 22:4 45:3 149:7 repeat 115:25 rephrase 9:6 113:2 114:5 155:7 replace 46:21 replaced 140:8 report 80:9 82:13 84:3 129:6 174:22 reported 114:19 reporter 7:4 8:5 11:8 16:23, 25 18:21 42:15 48:21 50:8 59:9,14 68:17,20 69:19 71:15 82:4 83:20 97:7 102:14 105:10,20 115:24 118:8 120:1 134:17 135:19 137:3 146:15 151:6 152:24 155:19 156:1 175:9 reporting 7:7,14 reports 21:9,17 65:4 113:11, 15 114:7,12 166:19 represent 8:1 48:24 102:19 representation 63:13 representative 150:11 representing 60:2 represents 77:25 reps 140:9 required 148:2 requirements 147:7 148:17 requiring 95:2 research 56:19 99:23 153:21 reserve 109:8 reset 153:18 154:4,6 158:7 resets 21:20 resign 152:15 resinate 75:12 resinated 70:16 resinating 174:13 resonated 85:14 respect 71:22 138:18 148:21 respond 50:16 76:22 Respondents 146:22 response 160:3 responsibilities 20:15 responsibility 20:5,19 21:13 22:21 23:1,7,10,12 27:21 responsible 20:7,18 33:11, 22 150:6</p> | <p>rest 145:21 restarting 77:20 restate 72:18 restructured 123:17 result 93:1 140:15 results 56:15 resume 134:14 retail 21:8,17 24:13 25:1 27:15,16 30:25 31:25 32:3,5 39:5 57:6,21 59:5,10,20,23 62:20 92:24 94:23 107:9 126:10,11 127:1,21 134:11 140:12 145:17,18 146:1 157:19 165:12 168:14 retailer 71:20 74:10 155:3 retailers 87:17 110:18 113:12,16 124:20 125:7 137:16 174:7 retails 128:8 retired 156:16 return 39:20 40:23 96:3 98:24 99:2 returns 92:16 99:3 reusable 46:19 47:18 revenue 30:25 79:20 80:1 82:19 86:23 130:2,4 133:17, 20,24 review 11:10 23:23 96:12 118:21 153:8 reviewed 17:23 47:7 86:23 88:10 94:13 119:2 160:25 161:7,18,24 169:18 reviewing 42:25 100:9 119:11 166:20 Reynolds 14:7 36:8 51:1 55:8,10,14 142:7 143:7 171:22 172:5,9 Rich 156:14,15,20,21 rid 110:10 rights 141:25 142:14 rise 94:4,13 risk 57:23,24 RJ 36:8 role 20:3,12 21:19 116:12 137:22 roles 21:4 Roman 72:8 room 7:6 124:10 154:6 rough 145:18</p> | <p>roughly 32:1,4,20 48:1 92:10 132:2 round 34:8 50:25 round-type 34:10 rubbery 144:13 RUF 71:21 146:1 Rule 7:8 rules 28:9 96:15,22 99:1 run 26:6 27:1 76:15 117:21 130:23 running 67:23 72:25 117:20 131:18 145:22 runs 141:10 runway 75:20</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S-T-E-C-K-R-O-T-H 156:20 safe 95:19 sake 10:22 sale 58:5 60:21 61:3,10 79:5 94:23 104:22 107:14 111:8 116:23,24 158:19 sales 13:9 14:2,6 21:13 23:4,7 27:7,9 28:15 30:3,6, 17 31:13 36:17,18 39:23 45:3 46:24,25 47:5,10 48:15 49:2 52:10,11 53:10 56:3 58:9,11,18,19,21,22 60:12 63:8,9 64:8,16,24 65:1 80:10 88:8 95:20 104:19 106:6,24 113:19 116:4,13 119:13 123:3 130:22 132:16 133:5,18 157:7,9,14,20 158:22 161:22,23 162:15 165:16 174:13 salt 45:4 salts 44:18,21,24 45:16 56:9,10,11 Santos 13:19 15:13 39:12 52:16 66:8 94:5 102:12 120:9 122:12 143:2 151:17 162:22 163:7 174:24 175:1, 7,12 satiate 44:15 satisfaction 44:4,7,10,12,22 45:1,9,16 46:2 56:16 62:17, 22 85:23 86:5,16 satisfied 139:1 save 26:24</p> |
|--|---|---|

Paul Crozier Confidential
01/19/2021

| | | |
|---|---|--|
| <p>saved 74:15 saving 127:18 scale 47:19 scan 41:3 126:11 schematic 28:3 scientific-type 41:2 Scott 110:2 scrap 29:13 screen 16:22 97:14 102:25 105:16,25 115:19 120:11 153:2 156:3 161:16 165:2 screw 35:22 85:12 screwed 47:15 121:11 screws 35:4 Sean 50:11 section 67:20,21 94:20 111:2 123:1 174:5,11 seeking 89:7 segment 34:11 124:18 174:11 segments 171:21 select 106:6 self-supply 92:4 109:7 sell 29:9,10,18 30:1 57:7 74:21 84:23 92:13 95:5 98:9,14 99:11 100:22 101:15 107:9 109:2 121:16, 21 122:5 124:6 127:16 149:7 155:11 173:20 selling 23:23 25:13 27:8 32:6 37:15,16 54:21 61:8 70:18 92:6 101:5 122:8 sells 31:7 32:13 46:15,25 120:23 125:13 semi-exclusive 129:1 senior 150:4 sense 13:11 16:8 35:14 41:20 51:3 70:20 75:13 87:18 89:16 96:9 114:14 116:19 117:8 131:17 136:4 139:8 152:18 sentence 50:25 87:3 123:22 136:6,8 137:10 140:1 141:18 144:18 sentences 122:17 154:9 separate 68:4 173:24 separately 67:16 September 64:2 74:18 76:19 77:20,23 78:2 103:18,21,24 104:3 106:23 107:2 165:8</p> | <p>September/october 104:7 series 12:3 156:13 service 22:4 71:9 92:21 services 92:25 139:14,17,19 140:3,13 141:1,4,13 servicing 159:16 set 26:2,14 27:19 59:1 68:23 69:6 70:14 117:23 172:25 174:8 sets 125:13 setting 8:20 24:9,16,24 25:14 71:4 124:20 139:4 shakes 9:2 share 13:12 16:6,22 24:14 53:20 55:1 60:22 61:16 75:7,24 76:10 80:21,24 81:16 82:18 83:10 86:24 88:10 102:22 103:6,13,18, 22 104:1,3 105:7,25 118:2 119:22 125:23 130:2,15 131:1,4,11 132:10,20,24 133:7,11,20,24 135:16 146:2,11 152:20 155:23 169:21 shared 103:13 129:17 130:21 166:24,25 167:1 shares 59:6,11,20,23 76:7 132:6 sharing 105:15 118:5 120:11 130:19 131:7 136:22 151:2 153:2 Sheets 143:21 Sheetz 7:19 17:17 20:3,6,7, 11,15,21 22:9,15 25:5 27:1, 15 29:1,5,10 31:7,12 36:18, 22 39:18 40:12 42:21 46:15, 24,25 55:7 64:24 65:1 68:24 72:1 73:4,6,13 74:15 78:25 79:5 86:21 87:16,23 88:5 95:4 98:9,14 99:10 100:22 103:6,10,14,19 104:4,9,11 109:4 113:9 116:14 120:22 121:15,21 122:4,5,8 123:23 124:3,19 125:12 126:25 127:7 128:14,21 132:7,10, 21,24 133:8,12,21,24 135:15 137:14 138:18,20 141:24 142:5,14 143:10 144:23 145:17,25 148:13,14 149:2 152:9 154:6 155:3 156:16,17 165:23</p> | <p>Sheetz's 30:3 31:14,21 59:5, 6,10,11,20,21,23,24 73:6,8 96:13 127:11 140:18 142:1 143:23 164:14 SHEETZ00000024 119:24 120:8 SHEETZ5784 97:5,9 SHEETZ5785 97:6 shelf 27:20,23 28:4 67:13, 14,25 68:2 70:18,21,23 71:17 72:2 79:3 93:10,19,24 128:24 142:5,23,25 143:11 151:25 152:9 172:4,5,10 173:17,23 shelves 21:11 73:6,8,11,19 92:16 93:3,4 139:22 140:18 141:25 142:15 143:23 144:5,21 147:14,20,21 172:22 174:8,9 shifted 125:18,25 shipment 126:10 shipping 126:7 shops 124:6 125:6 short 109:20,24 show 18:17 48:5,18 50:4 58:16 62:5 68:10,13 103:5 122:23 130:21 145:20 151:1 showed 39:19 51:1 74:10 151:21 160:11 161:17 163:24 shown 161:19 163:15 shows 23:5 28:2,3 58:12 70:2 74:23 109:5 121:25 130:7 161:22 167:18 shut 102:7 shutting 152:5 side 21:9 106:12 sign 11:22 118:25 140:9 149:25 signage 148:9 signature 11:17 118:19 149:23 signed 10:16 11:14,17 12:19 18:9 71:8,16 118:12,24 119:2,7 120:16 121:3 125:25 142:20 145:17 146:1 150:11,14 151:14 significance 37:11 44:6,9,20 58:8 65:13 95:10,13 significant 38:24 48:9,13 53:1 62:13 75:6,23 80:21</p> |
|---|---|--|

Paul Crozier Confidential
01/19/2021

| | | |
|--|--|---|
| <p>91:25 95:23 96:1 116:4 128:10 129:3 142:9 143:8 160:16 161:23 162:18 166:10 171:2,6,14,18 172:2, 16 significantly 57:10 60:13 61:4 64:9 65:2 78:1 162:6,8 165:14 signing 12:6 118:22 signs 140:6 similar 24:17 38:9 50:17,24 51:1,5 63:8 70:16 86:5 107:21 125:1,9,11,13 148:11 172:16,19 similarly 30:7 single 26:8,20 131:23 132:2 single-use 47:20 sir 50:19 168:1 sites 145:6 Sitting 119:19 situation 111:7 157:23 Skool 93:6 SKUS 106:6 107:7,10 slide 161:7,25 slightly 86:7 163:1 slow 123:4 small 16:3 48:16 52:10 92:11 smaller 31:4 98:25 131:16 smokeless 24:12 29:11 38:1 67:20 148:3,8,22 smoker 40:22 44:14 smokers 36:12 37:25 38:5, 18,19 39:9,20 40:11,14 41:7 45:11 111:6 smoking 35:10 37:7 39:21 40:18,23 snacks 124:14 Snuff 20:22 24:11 25:10 29:11 67:20 137:22 174:12 Snus 93:6 software 28:10 sold 29:25 55:7 64:11,13 73:13 78:25 92:12 96:3 100:3,10 103:6,10,19 104:9, 11 108:18 124:5 125:12 128:14,20 131:22 132:1,3,6, 10,21,24 133:7,11 144:22 147:23 148:2 150:7 167:14 Solo 55:3,16,20</p> | <p>solved 146:5 solvent 99:4 sort 29:8,10 60:8 sourced 19:9 sources 43:20 126:19 sourcing 60:4 Sowlati 10:25 11:5 16:18 18:22 69:20 81:23 161:21 165:1 space 21:8,17 27:15,16 28:11 67:13,14,25 68:2 69:1 71:17 72:3 93:11,19,24 139:23 142:5,23,25 143:11 147:19 148:5,9,10,24 149:3, 6,10 151:13 152:1,10 170:17,18 171:10 172:4,5, 10,14,18 173:8,11 span 12:15 speak 12:7 159:5 speaking 37:24 73:17 156:5 speaks 99:17,23 specific 33:18 63:22 112:4 113:17 117:20 141:12 142:18 150:18 163:10 specifically 14:1,9 15:25 27:22 91:15 139:7 specifics 45:5 151:18 speculate 75:11 speculating 37:22 39:14 46:5 50:2 52:18 53:14 62:18 66:11 112:8 122:13 speculation 75:16 spell 8:5 spending 57:24 spreadsheet 82:2,8 spreadsheets 130:11,16 131:5,12 spurred 64:25 stabilized 36:22 stable 54:4 62:9 staff 140:6 stagnant 31:3 stake 158:24 stamped 97:9 120:7 stance 91:21 standard 77:8 147:21 standards 96:16 standpoint 168:16 start 101:9</p> | <p>started 141:8 151:24 160:25 starting 93:4 103:14 116:5 162:10 165:14 starts 147:6 153:14 state 8:5 12:25 13:6,16 20:13 22:13 38:22 60:25 78:23 82:19 90:5 statement 19:7 63:13 107:25 115:10 119:8 120:25 125:21 127:4 128:15 140:22 141:21 142:2 144:2 145:1 statements 10:21 states 21:13 36:7,21 42:25 43:4 46:14 64:20 67:14 71:20 106:25 109:3 128:12 137:11 stations 125:1,5,14 statistical 42:21 stay 27:10 36:2 160:7 stayed 54:7,12 159:1,2 steady 36:10 Stechroth 156:20,21 steep 104:18 121:25 125:17 158:11 step 12:5 Stephen 42:17 stigma 35:10 stop 105:18 stopped 141:4 storage 123:1 store 21:11 27:18 41:22 42:2 98:24 122:25 124:7 139:11 153:21 155:1 174:8 store's 31:13 stores 25:12 29:2,3,5 31:9, 12 34:19 68:24 70:4 71:22 76:16 78:25 93:24 123:23 124:3 125:14 128:14 140:9 147:24 159:17 straight 90:4,20 strategy 57:19 Street 156:23 strength 51:2 strike 13:14 15:1 16:1,10 19:11 28:22 44:7 49:22 58:19 64:9,21 81:13 101:1, 11 striking 115:9,12 stronger 55:8 struck 45:20</p> |
|--|--|---|

Paul Crozier Confidential
01/19/2021

| | | |
|---|---|--|
| <p>structure 33:17 39:6 62:19 157:19 159:7,14,20 160:16 168:15</p> <p>study 39:19 40:5 41:5,9 42:12,22 45:13</p> <p>stuff 92:16 154:23</p> <p>subject 68:11 102:10 106:5 157:5</p> <p>submit 95:2,6 98:10,15 99:12</p> <p>submitted 100:6</p> <p>subsequent 38:25</p> <p>substantially 104:10</p> <p>substitute 49:25 50:15,23</p> <p>success 37:13 39:9 42:5 45:10 56:22 58:9,23 62:22 66:16,20 70:13,22,23 85:16 88:3,14 89:7</p> <p>successful 38:6 87:16,17,23 121:24 137:14,15 163:5</p> <p>suggest 13:15 164:6</p> <p>suggested 25:1</p> <p>suggests 39:21</p> <p>sum 22:11</p> <p>summary 83:25 107:6 129:20</p> <p>summed 90:11</p> <p>superior 85:1,4,23</p> <p>supervisor 106:17</p> <p>supplanted 34:18</p> <p>supplier 55:6 84:24 108:10 128:20 132:5,9,19,23 133:6, 10,20,23</p> <p>suppliers 71:5 108:4 109:23 131:13 142:5,24 143:10,14, 15</p> <p>support 140:3</p> <p>supported 110:23</p> <p>surprise 43:24 78:18</p> <p>surprised 78:20 87:13 88:21 91:5,16,18 109:12,16 115:6 137:11,18,21,25</p> <p>survey 41:2</p> <p>sustain 57:12 62:1</p> <p>sustained 62:6</p> <p>swear 7:17</p> <p>swipe 40:14</p> <p>swiped 74:15</p> <p>swipes 41:3</p> | <p>swiping 41:1</p> <p>switch 34:9 40:19 47:21</p> <p>sworn 7:20</p> <p>system 48:1 85:10 112:2 121:8 123:15,16</p> <p>systems 46:15,17 65:4 95:17 110:9 111:16 120:23 121:16 122:20,24 124:8 125:17,18,24,25 126:13</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>tab 16:15</p> <p>table 129:20 131:20 132:13 133:1,16 134:1 167:7,25 168:12</p> <p>tables 167:12</p> <p>Tabs 59:3</p> <p>takes 126:6</p> <p>taking 73:1 75:7</p> <p>talk 8:21 14:16,22 37:3 57:14 58:5 65:11 73:21 124:11,16</p> <p>talked 13:8,24 14:1,7,14 24:6 30:16 96:10 115:13 131:1 151:12,22 158:6 162:14 165:18 172:22 173:10</p> <p>talking 14:8 34:13 35:20 73:23 110:8 153:19 163:22 166:1 170:8</p> <p>tank 121:21 122:5,9,24 123:15 124:7 126:15</p> <p>tanks 46:16 120:24</p> <p>target 25:12 37:23</p> <p>targets 23:7,8</p> <p>tax 38:24</p> <p>taxes 36:12,21 38:22 39:5</p> <p>team 20:6 27:15,16,22 130:13</p> <p>technical 26:9,14 146:4</p> <p>technically 149:19</p> <p>teens 171:9</p> <p>temporary 22:7 26:6</p> <p>ten 132:3 134:14</p> <p>term 27:24 75:16 121:7</p> <p>terminate 71:21 72:1</p> <p>terminated 92:25 140:13</p> <p>terms 14:6 17:22 20:14 24:1, 4,13 25:10 27:12 28:18 33:3</p> | <p>35:20 36:17 37:13,14 88:3 92:2 100:13 110:25 127:18 162:20 165:23 167:24 168:2 174:13</p> <p>testifies 7:20</p> <p>testifying 8:16</p> <p>testimony 7:11 10:8,13 71:6 161:13 166:5</p> <p>theft 134:10</p> <p>theoretically 99:3 164:21 166:16</p> <p>thing 90:3 131:9 154:25 164:12 167:2 169:25</p> <p>things 20:19 22:21 23:21 29:9 33:20 34:11 39:2 42:4 45:20 47:15 66:12 70:17 77:3 95:22 124:17 131:19 158:21 161:4 165:21 168:14</p> <p>thinking 57:20 86:13 88:3 110:14 127:24 137:17 157:17,24 158:15 159:22</p> <p>third-party 126:18 153:17</p> <p>thought 44:3 51:11 90:16,23 102:1</p> <p>thoughts 11:24</p> <p>thousands 99:22</p> <p>threading 35:5</p> <p>threat 52:14,23 53:3</p> <p>threshold 57:23</p> <p>threw 37:9 38:24</p> <p>through-put 58:12 75:15 131:19</p> <p>throw 53:16</p> <p>thrown 172:15</p> <p>thumb 46:20</p> <p>tied 111:16 139:8 163:10</p> <p>till 109:5 164:20</p> <p>time 8:2 9:15,16,23 11:3,4 13:9 19:19 25:18,19 33:6, 11,15 36:20 41:24 49:4 51:23 66:11,12 67:9 75:20 80:25 81:3 86:1,3,4 90:17 91:19 92:13 96:4 98:19 104:2 107:22 108:10 109:20,24 114:8,18 115:2 116:17 117:13,20 119:3 121:2,24 122:5,14 124:11, 15 131:15 134:13 138:6 141:8 142:12,22 143:8 144:6,8 145:21,23 149:17 150:17 152:19 153:8 155:3</p> |
|---|---|--|

Paul Crozier Confidential
01/19/2021

| | | |
|---|---|--|
| <p>157:17,23 158:2,5 159:9 162:7 164:15 170:17,18,21 171:2,18 172:6 174:5 175:3 times 140:8 tobacco 20:3,5,9,19,20,21 22:21 24:10,11,12 29:9,10, 11,13,15,16,19 30:4,6 31:9, 10,14,21 32:22 33:11,22 37:12 38:1 65:12 66:25 67:7,15,20 68:5 82:15 87:15 92:1 94:20,23 95:21,25 96:14 97:23 110:12 122:25 125:10 126:8 137:13 139:11 148:4,8,23 149:13,16 153:17 today 10:13,19 55:7 102:20 103:3 106:20 117:25 119:19 121:5 122:9 129:11 140:25 161:11 told 45:2 ton 75:15 152:18 Toomey 42:18,20 top 12:18 28:18 33:18 69:12 73:5,8,19 79:12 86:9 93:3,4, 9,12,16 128:9,24 131:15 135:8 136:16 139:21 140:18 141:25 142:15 143:23 144:5 147:13 149:6 152:18 172:14,22 173:22 174:6 topic 27:14 topics 12:22 13:1 16:9 18:2 total 32:22 45:21 82:20 133:1,7,11,17,18,20 134:2 147:19 168:13,17 tough 143:4 track 41:21 130:3 trackable 131:18 tracking 131:19 traction 129:3 trade 12:4 23:20 97:17 102:19 114:14 135:5 169:15 traditional 36:16 39:21,22 40:24 64:22 67:16 175:4 traffic 31:11 124:12 127:19 transactional 126:7 transcript 169:3 175:11 trend 53:9,20,23 trends 23:19 30:21 trial 8:17 58:2 127:10 162:19 163:5 166:8,11</p> | <p>trials 166:3 Triple 122:21 true 32:12,17 76:5,9 165:22 167:12 169:14,18 truthful 10:8,12 161:13 turn 46:13 78:22 92:17 105:18 110:1,16 115:17 116:2 118:18 120:19,21 121:14 122:16 123:20 125:15 126:22 127:17 128:11 129:4,5 136:5,14 137:9 140:10 141:16 145:8 149:21 turned 127:19 Turning 113:14 turnover 165:23 two-pack 26:23 170:2 type 26:5,22 34:1,4,11 67:22 122:3 123:14 124:18 125:9, 11 126:10 131:18 133:5 172:16 typed 17:22 types 100:1 114:15 124:16, 17 typical 124:12 142:4,24 143:4</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>UBS 46:20 Uh-huh 173:6 unable 75:6 unchanged 126:3 unclear 9:5 underage 113:12,15,19 114:18,22 underneath 74:4,5,6 understand 8:15 57:18 69:5, 23 99:1,5 101:23 124:2 125:4 160:2 174:3 understanding 19:2 49:5 56:11 62:12 71:25 74:11 116:10 127:6 136:12 145:18 148:24 152:8 155:13 understood 44:1 149:17 158:10 169:9 unheard 142:9,10 unique 155:1 unit 23:7 28:16 36:11,17,18, 22 131:23 133:5</p> | <p>United 36:7 106:25 109:3 units 13:10 39:6 78:14 127:17 129:4 131:21,22 132:6 133:2,7,11 167:7 unlike 57:7 update 172:11 upper 172:17 uptake 161:24 uptick 63:8 upwards 138:24 usage 97:24 USB-TYPE 85:7 user 85:10 users 37:12 51:12</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vape 32:12,17 65:4 106:21 123:22 124:3,4,6,7 125:6 vaping 31:8 46:15,16 65:4 73:12 96:11 111:25 120:23, 24 121:8,17 144:22 vapor 12:25 13:6 15:12,17 20:22 29:22 30:5,17 32:19, 21,23 36:12 37:4,12,16 38:2,5 39:4,24 40:17 41:17 46:14,24 55:6 57:7 64:24 65:1,5 67:13,14 73:6,9 78:25 84:25 85:2 86:21 87:5 91:10 95:2,5 98:9,14 106:24 120:22 123:24 124:6,7,20 125:13 128:13 130:8 140:18 142:1 143:23 144:5 148:6 149:6,8,18 159:17 173:4 174:5,6 vaporizer 116:24 vaporizer/accessory 132:24 vaporizers 59:7,12,21,24 103:6,14,19 104:11 116:5 vaporizers/accessories 132:14,21 vapors 127:23 variance 134:10 variation 69:1 variety 31:8 46:23 65:17 79:4 vast 46:23 47:4,9 vendor 26:19 27:11 51:1 69:1 96:4 98:25 99:4 vendors 13:11 23:19 24:20 26:4,16 44:11 47:13 56:19</p> |
|---|---|--|

Paul Crozier Confidential
01/19/2021

| | | |
|---|---|--|
| <p>verbally 7:11 9:2 version 79:17 83:22 120:4 versus 43:16 45:22 89:25 117:4 Verve 144:11,16 149:19 172:23 173:5 vessel 121:12 vesting 157:4 Vibe 55:16,20 vice 106:16 view 13:17 14:11 35:16 43:14,19 49:25 51:9 91:23 93:18 96:13,23 98:3 99:10 100:11,12,18 viewed 34:5 50:16 88:2 99:13 171:2 views 96:11 99:7 Virginia 38:23 144:11,16 149:20 virtual 8:20 virtually 102:20 visible 63:2 123:1 volume 37:9 38:25 41:20 59:6,11,20,23 60:22 77:25 78:1 163:1 volumes 36:11 37:5 voluntarily 72:1 108:4 voluntary 65:2 106:23,25 Vuse 50:19 54:23 55:3,8,10, 14,15 56:7,8,11,12 60:22 79:22 80:2 86:10 104:13</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>Wachtell 8:1 waive 7:13 wall 122:24 156:23 wanted 93:14,16 wanting 34:10 waste 134:10 wasting 57:23 ways 14:3 137:23 week 74:24 weekly 23:5 weeks 152:10 West 38:23 wholesale 106:12 wide 31:8 79:4 withdraw 94:11</p> | <p>withdrawal 65:3 91:13 wording 17:19 words 19:10,16 90:8,10 109:8 work 27:7 97:24 128:23 157:18 worked 18:22 22:1,3 141:10 working 91:20 159:17 works 28:6 100:9 world 122:1 worries 55:23 105:6 156:9 worth 131:19 write 31:20 36:6,14 55:6 67:13 72:10 84:22 86:19 89:15 95:1 98:6 99:4 154:9 written 86:20 wrong 144:10 wrote 93:10 106:19 107:5 108:1 111:3 120:22 123:22 126:23 143:21 154:3</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p>xlsx 129:7</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year 22:12 23:3,4 38:25 75:17,20 79:24 83:11 109:17,19 130:8,9 141:9 142:19 158:2,7 years 36:11,15 39:7 64:23 95:15,22 York 8:1 youth 91:20 96:11 97:23,24 101:25 111:11,19,23,25 112:6,14 113:9,20 139:8 youth's 114:8</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>Zimmerman 11:24 17:4,16</p> | |
|---|---|--|

Paul Crozier Confidential
01/19/2021

176

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A C K N O W L E D G M E N T

STATE OF Pennsylvania

:SS

COUNTY OF BLAIR

I, PAUL CROZIER, hereby certify
that I have read the transcript of my testimony
taken under oath in my deposition of January 19,
2021; that the transcript is a true, complete and
correct record of my testimony, and that the
answers on the record as given by me are true
and correct.



PAUL CROZIER

Signed and subscribed to before me,
this 4 day of February, 2021.



Notary Public, State of PA

Commonwealth of Pennsylvania - Notary Seal
Bonnie L. Diehl, Notary Public
Blair County
My commission expires April 3, 2022
Commission number 1188432
Member, Pennsylvania Association of Notaries

Paul Crozier Confidential
01/19/2021

178

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Errata Sheet

NAME OF CASE: ALTRIA GROUP -and- JUUL LABS

DATE OF DEPOSITION: 01/19/2021

NAME OF WITNESS: Paul Crozier

Reason Codes:

- 1. To clarify the record.
- 2. To conform to the facts.
- 3. To correct transcription errors.

Page 18 Line 6 Reason 3
From admitted to omitted

Page 20 Line 5 Reason 3
From cbt to cbd

Page 20 Line 7 Reason 3
From agreements to arrangements

Page 33 Line 5 Reason 3
From no longer manage to no longer directly manage

Page 37 Line 9 Reason 3
From threw to drew

Page 38 Line 24 Reason 3
From th rew to drew

Page 50 Line 16 Reason 3
From zero to Ciro



U.S. LEGAL SUPPORT
(877) 479-2484

Paul Crozier Confidential
01/19/2021

179

1 Errata Sheet

2

3 NAME OF CASE: ALTRIA GROUP -and- JUUL LABS

4 DATE OF DEPOSITION: 01/19/2021

5 NAME OF WITNESS: Paul Crozier

6 Reason Codes:

7 1. To clarify the record.

8 2. To conform to the facts.

9 3. To correct transcription errors.

10 Page 54 Line 14 Reason 3

11 From say to stay

12 Page 85 Line 9 Reason 1

13 From Not having the to Having the

14 Page 99 Line 16 Reason 1

15 From pass a compnay to to pass on a company

16 Page 100 Line 8 Reason 3

17 From iCoast to IQOs

18 Page 102 Line 5 Reason 1

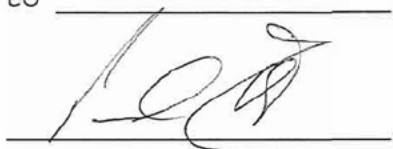
19 From February of 2019 to February of 2020

20 Page 106 Line 18 Reason 3

21 From dna to Dan

22 Page 112 Line 13 Reason 3

23 From Altria continued to Altria discontinued

24 

25

U.S. LEGAL SUPPORT
(877) 479-2484

Bonus Errata Sheet

NAME OF CASE: ALTRIA GROUP –and- JUUL LABS

DATE OF DEPOSITION: 01/19/2021

NAME OF WITNESS: Paul Crozier

Page 128 Line 20 Reason 3

From - supplier of cigarettes

To – supplier of e-cigarettes

Page 132 Line 3 Reason 1

From - So ten packs sold

To – So ten pods sold

Page 135 Line 9 Reason 3

From how I came up with the 1924

To – how I came up with the 19th

Page 139 Line 4 Reason 3

From distinct MarkTen

To – discontinuing

Page 142 Line 24 Reason 3

From – was it typical to expect cigarette

To was it typical to expect e-cigarette

Page 143 Line 21 Reason 3

From – When Sheets entered into

To - When Sheetz entered into



Bonus Errata Sheet

NAME OF CASE: ALTRIA GROUP –and- JUUL LABS

DATE OF DEPOSITION: 01/19/2021

NAME OF WITNESS: Paul Crozier

Page 144 Line 10 Reason 3

From – Greensmith was up

To – Greensmoke was up

Page 158 Line 3 Reason 1

From – so late December

To – so late in December

Page 159 Line 20 Reason 3

From – NJOY and Hughes

To – NJOY and Vuse

Page 160 Line 15 Reason 1

From – As I recall, there were

To – As I recall, there weren't

A handwritten signature in black ink, appearing to be "P. Crozier", written over a horizontal line.

Exhibit B-2

Confidential – Partially Redacted

DECLARATION OF PAUL CROZIER
CATEGORY MANAGER – CIGARETTES & TOBACCO
SHEETZ, INC.

I. BACKGROUND

1. I am the Category Manager for Cigarettes and Tobacco at Sheetz, a role that I have held since July 2016. As Category Manager, I have profit & loss responsibility for Sheetz's cigarettes, tobacco, lottery, and CBD products. I also manage the Retail Space Team at Sheetz, which is responsible for preparing planograms for all of Sheetz's locations. In addition to my role at Sheetz, I serve as a Board Member and Officer of the National Association of Tobacco Outlets, a trade association organized to enhance the common business interests of all tobacco retailers.
2. I have been at Sheetz since 2004 and have held a number of positions in marketing and sales prior to my current role as Category Manager for Cigarettes and Tobacco. I graduated from Penn State University with a BS in Management and Marketing.
3. Sheetz is a privately owned chain of convenience stores that are known for their award-winning made-to-order foods, quality gasoline, and selection of cigarettes and tobacco products. At the end of 2019, Sheetz owned and operated approximately 600 stores located in Pennsylvania, Maryland, Virginia, West Virginia, Ohio, and North Carolina.
4. Sheetz sells a wide variety of cigarettes, vaping devices, and other tobacco products at its convenience stores. These products, which comprise our tobacco category, are an important driver of foot traffic at Sheetz stores, accounting for approximately █% of store sales and █% of margin dollars. Although the tobacco category is one of Sheetz's lower margin products, it brings in consumers who often purchase higher margin products like food and drinks.

II. TRADITIONAL CIGARETTES

5. The cigarette industry in the United States is comprised of three main players – Altria, RJ Reynolds, and ITG. Altria is the leader with approximately █% share of cigarette sales at Sheetz. RJ Reynolds is the next largest supplier of cigarettes, followed by ITG. Liggett Vector is our smallest cigarette supplier.
6. The cigarette industry has seen a steady decline in unit volumes over a number of years due to higher taxes, fewer smokers, diversion to vapor products, and increased polyuse (i.e., customers who use other tobacco products like vaping devices and dry nicotine pouches in addition to cigarettes).

7. In recent years, the rate of decline for traditional cigarettes had been approximately 3-5% in terms of unit sales. However, the rate of decline in unit sales at Sheetz increased to approximately █% in 2017 and █% in 2018 during the time when JUUL began gaining popularity and when some states raised excise taxes. The unit rate of decline at Sheetz stabilized in 2019 to approximately █%, at least partially due to more aggressive promotions by cigarette manufacturers through customer loyalty programs and multi-pack offers.
8. Sheetz conducted a study that showed that at least 30% of smokers who tried JUUL did not return to smoking traditional cigarettes. This suggests that the growth in the rate of decline of traditional cigarette sales was caused at least in part by the growth in vapor products.
9. Most Sheetz stores display cigarettes in a shelf that is 6 feet wide with 9 rows of shelves. Due to contractual obligations imposed by the cigarette manufacturers, Sheetz must allocate shelf space proportional to the cigarette companies' market shares. This means that Altria occupies the top half of the cigarette display at all Sheetz stores. RJ Reynolds gets the 2nd position with approximately █% of the space, ITG gets the 3rd position with approximately █% of the space, and the remaining space at the bottom of the display is filled by Liggett Vector. Vapor products cannot be displayed in the cigarette display case, so they are displayed in a separate fixture.
10. For most states, Sheetz sets cigarette prices at the required state minimum. Since Virginia and North Carolina do not have mandatory minimum prices on cigarettes, Sheetz sets prices in those states at a level that will be competitive with other convenience stores located in our regions.
11. In recent years, cigarette manufacturers have typically increased prices twice each year. In 2019, however, the cigarette manufacturers announced three price increases – in February, June, and October. Altria was the first to announce a price increase in each instance, and RJ Reynolds and ITG followed within a few days.
12. When cigarette companies implement price increases, Sheetz will typically pass the higher costs on to end customers with a goal of preserving Sheetz's existing margins. During the last price increase that was imposed by the cigarette manufacturers, Sheetz was able to pass through the full price increases █, which had the effect of growing Sheetz's net profits on cigarettes by about █.

III. VAPOR PRODUCTS

13. Within the vapor category, Sheetz only sells closed vaping systems, which come pre-filled with vaping liquid in tanks or pods. Prior to JUUL's entry, most closed systems were cigalikes, which were modeled to look like cigarettes and were often not reusable. JUUL devices look more like USB thumb drives and are pod-based, which means that consumers could easily replace an empty cartridge for their JUUL devices and enjoy a variety of different flavors. The vast majority of vapor sales at Sheetz are pod-based, including all JUUL sales, although Sheetz also sells some cigalike products.
14. [REDACTED]
15. I believe that NJOY's growth in 2019 can be attributed to a few factors. First, for 6 months from May 1 to October 31, NJOY discounted its device from a regular retail price of about \$24.99 to just 99¢. This device promotion has now ended. Second, unlike JUUL, NJOY continued to sell vapor pods in fruit flavors throughout 2019. NJOY pulled all of its fruit flavors in February 2020 pursuant to the FDA ban. Third, NJOY's pod refills are priced significantly lower than JUUL's. It remains to be seen whether NJOY can sustain its rate of growth in 2020 without its fruit flavors or the 99¢ device promotion.
16. In contrast to traditional cigarettes, which have been declining for years, vapor sales at Sheetz grew dramatically in 2017 and 2018, spurred primarily by JUUL's rapid growth. In 2019, however, vapor sales at Sheetz grew at a significantly slower rate following JUUL's voluntary withdrawal of most of its flavors, as well as press reports of vaping illnesses from open vape systems that impacted the whole vapor category.
17. Shelf space for vapor products and other innovative tobacco products is kept separately from traditional cigarettes. Most Sheetz stores have 3 feet of shelf space allocated for vapor products and dry nicotine pouches. Through an agreement with Altria, JUUL currently occupies the top three shelves in Sheetz's vapor displays, although Altria recently announced that it will no longer allow JUUL to be placed in the top three shelves starting on April 1, 2020. Currently, RJ Reynolds gets the next two shelves for its Vuse products. NJOY, Blu, Logic, Leap, and dry nicotine pouches are all located below Vuse.
18. When determining retail prices for vapor products, Sheetz takes into account the manufacturer's suggested retail prices, Sheetz's target margins, and prices at competing convenience stores. Prices at vape stores are not a factor that Sheetz considers when deciding on how to price vapor products.
19. Sheetz does not sell open systems, which are devices that consumers refill with vaping liquids on their own. Sheetz trialed an open system about 5 years ago, but the trial was not successful and the supplier has since gone out of business.

20. Sheetz does not have the staff or the time to educate consumers on the use of open systems. I believe that other convenience stores share the same limitations, which is why I have not observed other convenience stores selling open vape systems. My understanding is that open vape systems are now sold almost exclusively at dedicated vape shops and online.
21. According to data from MSA, open systems have been in steep decline as consumer preferences have shifted to closed systems. Open systems have also been associated with illnesses due to consumer misuse or poor quality control, as reported in the press, which is a liability that Sheetz would prefer to avoid.

IV. ALTRIA'S DISCONTINUATION OF MARKTEN AND INVESTMENT IN JUUL

22. In 2018, before Altria announced its investment in JUUL, Altria had been aggressively promoting NuMark products. Altria paid Sheetz ██████████ in 2018 for the rights to the top three shelves in Sheetz's vapor displays. When Sheetz entered into the agreement with Altria in 2018, the plan was to fill the top three shelves in Sheetz's vapor fixtures exclusively with Altria's NuMark products. Until Altria discontinued MarkTen in December 2018, MarkTen occupied more shelves and was in a more favorable display position than any other vaping brand sold at Sheetz.
23. Before Altria's investment in JUUL, Altria had also been heavily discounting MarkTen at Sheetz. Altria offered discounts to consumers of up to 80% below retail price on MarkTen devices, which made them much cheaper than JUUL's devices. Altria also tested new and semi-exclusive flavors for MarkTen at Sheetz stores before they were more widely available at other retailers.
24. From 2016 until JUUL took off in 2017, MarkTen had been the leading vapor brand sold at Sheetz stores. I believe contributing factors include MarkTen's favorable shelf position, Altria's heavy promotional activity, and the wide variety of flavors offered for sale at Sheetz.
25. While the deep discounts helped to sell MarkTen, it never took off the way JUUL did. JUUL was able to become the leading supplier of vapor products without offering such deep discounts because JUUL had a superior product that customers preferred over other vapor brands. Nevertheless, MarkTen remained the second largest vapor brand behind JUUL at Sheetz through 2018.
26. In late 2018, Altria announced that it would discontinue MarkTen as of December 19, 2018. On December 20, 2018, Altria publicly announced that it would make an investment in JUUL. I was initially surprised that Altria would discontinue MarkTen since Altria participates in every level of the tobacco industry and MarkTen had been fairly successful at Sheetz, although it appears that MarkTen was not as successful at other retailers. The decision to discontinue MarkTen made more sense once Altria announced that it had partnered with JUUL.

27. As part of Altria’s partnership with JUUL, Altria announced that it entered into a services agreement with JUUL. Pursuant to the services agreement, Altria allowed JUUL to occupy the display space that Altria had previously paid Sheetz to reserve for NuMark products. Altria also included coupons for JUUL products in some Marlboro cigarettes, and provided other merchandising service and support on behalf of JUUL.
28. On January 30, 2020, however, Altria sent a letter to all of its retail partners announcing that it had terminated the services agreement with JUUL. As a result, Altria would no longer offer any new coupons for JUUL in Marlboro products, and JUUL would no longer be allowed to occupy any part of the top three shelves in Sheetz’s vapor displays. According to Altria, starting on April 1, 2020, the top three shelves can only be used to display Altria’s on! nicotine pouches, Skoal snus, or Black & Mild cigars.

V. INCREASED TOBACCO REGULATIONS

29. The FDA and Congress recently passed a number of new regulations that will affect the tobacco industry and the retail sale of tobacco products. In December 2019, Congress raised the minimum age to purchase cigarettes, vapor products, and other tobacco products from 18 to 21. In February 2020, the FDA issued a ban on all pod-based flavored vape products, with the exception of tobacco and menthol.
30. The FDA is also requiring all vapor products remaining on the market to submit a premarket tobacco product application (“PMTA”) by May 2020 in order to continue marketing their products to adult consumers. Sheetz will only sell vapor products from companies that have committed to submit a PMTA application prior to the FDA deadline.

* * *

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

Executed this 17 day of MARCH, 2020:



Paul Crozier
Category Manager – Cigarettes & Tobacco
Sheetz, Inc.