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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
HONORABLE ANDREW J. GUILFORD, JUDGE PRESIDING
HSINGCHING HSU,)
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Plaintiff,)
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Vs.) No. SACV15-0865-AG
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PUMA BIOTECHNOLOGY, ET AL,)
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Defendants.)
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_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL, DAY 5
SANTA ANA, CALIFORNIA
WEDNESDAY, JANUARY 23, 2019

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INDEX

WITNESS:

PAGE:

<u>Alexander Younger, Plaintiffs' witness,</u> <u>previously sworn</u>	4
CROSS-EXAMINATION RESUMED	4
REDIRECT EXAMINATION	79
RECROSS-EXAMINATION	83
<u>Claire Sherman, Plaintiffs' witness, sworn</u>	88
DIRECT EXAMINATION	88
CROSS-EXAMINATION	128
REDIRECT EXAMINATION	165
<u>Brett Trueman, Plaintiffs' witness, sworn</u>	166
DIRECT EXAMINATION	167
CROSS-EXAMINATION	177
REDIRECT EXAMINATION	189

EXHIBITS:

Exhibit 12 received	7
Exhibit 34 received	47
Exhibit 992 received	66
Exhibit 552 received	99
Exhibit 1078 received	118
Exhibit 1079 received	120
Exhibit 1080 received	122
Exhibit 1081 received	124
Exhibit 209 received	127
Exhibit 127 received	144
Exhibit 289 received	149
Exhibit 905 received	152
Exhibit 991 received	187
Portions of videotape deposition of Eric Schmidt played.	192
The videotape deposition of Joshua Bleharski, played.	194
Exhibit 105 received	195
Exhibit 524 received	196
Exhibit 530 received	196
Exhibit 542 received	196

1 SANTA ANA, CALIFORNIA; WEDNESDAY, JANUARY 23, 2019; 9:03 A.M.

2 ---

3 THE CLERK: All rise.

4 (Open court - jury present)

5 THE COURT: Welcome back, everyone.

6 Mr. Clubok, please continue.

7 MR. CLUBOK: Thank you very much.

8 **Alexander Younger, Plaintiffs' witness, previously sworn**

9 **CROSS-EXAMINATION RESUMED**

10 BY MR. CLUBOK:

11 Q. Good morning, Mr. Younger.

12 A. Good morning.

13 Q. Mr. Younger, where we left off yesterday, we were
14 talking about how the practice is that an advisor like
15 Capital would purchase stock in a company like Puma on your
16 behalf and not tell you in advance, but then they would
17 notify you after, correct?

18 A. Well, that notification would come through the standard
19 recordkeeping, yes.

20 Q. The notification came through the standard
21 recordkeeping? What do you mean by that?

22 A. I think when we spoke yesterday, I referred to the
23 monthly accounting report, but also the fact that those
24 trades are placed through our custodian bank. So we see them
25 within that custody system.

1 Q. Okay. But in the case of Puma, Norfolk -- I'm sorry.
2 In the case of Puma, Capital actually specifically
3 highlighted that they had made the investments in Puma to
4 you; isn't that true?

5 A. In what sense? While they were making those investments
6 or post the event? It's not untypical in quarterly reporting
7 for them to highlight a number of new positions they will
8 have taken in that period. That's not untypical of any
9 investment manager.

10 Q. Yes. I understand. So let me try it again,
11 and maybe my question wasn't clear. Capital purchased Puma
12 stock for Norfolk without telling you in advance they were
13 going to do it, correct?

14 A. Correct.

15 Q. And after the fact, they notified you that they had made
16 these purchases, correct?

17 MR. FORGE: Your Honor, I'm just going to object as
18 vague as to time in terms of when after the fact.

19 THE COURT: Sustained.

20 Clarify that.

21 BY MR. CLUBOK:

22 Q. Well, when? How soon after Puma -- I'm sorry. How soon
23 after Capital made its initial investments on behalf of
24 Norfolk did Capital specifically highlight to you that they
25 had made those investments?

1 A. Are you classifying the standard accounting reporting in
2 your phrase specifically highlighting?

3 Q. No, sir. I'm not asking about the standard accounting,
4 which you did get anyway. I'm asking about Capital
5 specifically highlighting to Norfolk that it had invested in
6 Puma on behalf of Norfolk. How soon did that occur after the
7 first investments?

8 A. My expectation would be that given it was a new
9 position, there would be some narrative inclusion in the
10 first quarterly report following those trades.

11 Q. So the very first quarterly report following the first
12 trades in Puma stock, Capital would have specifically
13 highlighted those investments to you; is that correct?

14 A. That's my expectation, along with all --

15 Q. And was that --

16 A. Could I finish, sir?

17 Q. Of course.

18 A. -- along with all other new positions that they would
19 have initiated in that period.

20 Q. And it -- it's not just your expectation, but in fact
21 that's what actually happened in this case. That is, that
22 Capital specifically highlighted the investment in Puma stock
23 within the first quarter after the initial purchases; isn't
24 that true?

25 A. I recall that that quarterly report included Puma

1 Biotechnology amongst a number of other company names.

2 Q. So is that a yes?

3 A. Well, that's yes, to my recollection.

4 BY MR. CLUBOK:

5 Q. Why don't we turn your attention to Exhibit 12.

6 MR. CLUBOK: Exhibit 12, Your Honor, has no
7 objection to it. I'd like to offer it into admission.

8 THE COURT: Without objection Exhibit 12 is
9 admitted.

10 **(Exhibit 12 received)**

11 BY MR. CLUBOK:

12 Q. Exhibit 12 is the quarterly investment report for
13 Norfolk Pension Fund for the period ending December 31st,
14 2014; correct?

15 A. Yes, that's correct. It says it on the first page.

16 Q. And this would have been the very first quarterly report
17 by Capital Group to Norfolk about Norfolk's investments which
18 you received after the very first purchases in Puma stock,
19 correct?

20 A. Given an initial purchase date of October, which falls
21 in this quarter, that's correct.

22 Q. And, in fact, if we turn to page -- I believe it's
23 page 10 of the exhibit although it's numbered page 9 in the
24 slide deck. This is a page that's entitled Investing in
25 Healthcare Innovation. Do you see that?

1 A. I can, yes.

2 Q. And this was a page in which Capital is specifically
3 highlighting to Norfolk its approach to investing in
4 healthcare-related companies, correct?

5 A. That's correct.

6 Q. And specifically in biotechnology companies, correct?

7 A. It references biotechnology, yes.

8 Q. And Capital is explaining to Norfolk and highlighting
9 its approach, and it says in the first main paragraph: The
10 biopharmaceutical industry is in a golden age of innovation.

11 Do you see that?

12 A. Sorry. Yes.

13 Q. And two sentences later it says: As companies explore
14 revolutionary cures against cancer and other troubling
15 conditions, we are seeing investment opportunities in new
16 areas.

17 Do you see that?

18 A. I can read that, yes.

19 Q. So Capital is telling you they just bought Puma stock
20 and it's because they see this investment opportunity in a
21 company like Puma and these others identified here, correct?

22 MR. FORGE: Objection, Your Honor. Compound. And
23 the document speaks for itself.

24 MR. CLUBOK: May I slightly rephrase, Your Honor?

25 THE COURT: Yes, please. I think you should.

1 BY MR. CLUBOK:

2 Q. Was it your understanding from this that Capital was
3 communicating to you their approach to investing in
4 biopharmaceutical companies, including Puma?

5 A. This page lists their approach and a number of positions
6 they initiated in Agios, Puma, and Incyte.

7 Q. And they specifically on the right call out Puma and
8 have their own paragraph related to Puma, correct?

9 A. There are two bullet points relating to Puma, yes.

10 Q. Also on this page they have a list of all of the
11 positions, or they call it the holdings, as of December 31st,
12 2014, that they have purchased on behalf of Norfolk, correct?

13 A. Well, to clarify, these are holdings in the healthcare
14 area. They're not the total portfolio.

15 Q. Thank you for that clarification. This is just the
16 healthcare sector that Capital has invested on. Capital has
17 also invested on a number of other sectors, correct?

18 A. Yes, across all sectors globally. But, yes, that's
19 correct. This is healthcare specifically.

20 Q. So within the healthcare set of investments made by
21 Capital on behalf of Norfolk, Puma is listed as one of, looks
22 like, 12 or so other companies?

23 A. One of 12 or so, as you say, yes.

24 Q. And overall the holdings represent .5 percent?

25 A. I'd need to add that up, but if -- I'm happy to trust

1 your math, but, yeah.

2 Q. Sir, I'm actually just referring to what it says here.
3 It says Puma Biotechnology is .5 percent of the total
4 holdings. Do you see that?

5 A. Apologies. I thought you said total holdings of five
6 percent.

7 Q. I probably did. I said it incorrectly. I apologize.

8 A. So I'd say you're referring to Puma Bio being .5 percent
9 of the total portfolio that Capital are running on our
10 behalf?

11 Q. Right.

12 A. That's correct.

13 Q. Now, with respect to all of these other biotech,
14 biopharmaceutical companies --

15 A. I don't believe they're all biopharmaceutical companies.

16 Q. Fair enough. They're all within the healthcare
17 industry?

18 A. They are healthcare companies. It's a sector analysis.

19 Q. And some of them are biopharmaceutical companies just
20 like Puma?

21 A. Well, they'll all have unique characteristics. Some of
22 them will be biopharmaceutical companies. Some of them will
23 be larger pharma companies which have biopharma activities
24 within them.

25 Q. Right. But some of them like Puma were single-drug

1 biopharmaceutical companies, correct?

2 A. I don't know whether they were single-drug biopharma
3 companies.

4 Q. Okay. Now, you said that you have two law firms,
5 including this law firm that's here today, Robbins Geller,
6 and another law firm who are on retainer to continually
7 monitor your investments, correct?

8 A. They undertake the monitoring as I described. That's
9 correct.

10 Q. And I think you said on direct that they'll tell you if
11 there are lawsuits that relate to your holdings and if there
12 are settlements and that sort of thing, correct?

13 A. There's two functions. So one is have lawsuits or
14 settlements been reached, and are we claiming those moneys to
15 which we are due appropriately.

16 The second is the identification of where there may
17 have been various activities which might indicate that a
18 lawsuit is required for investors to seek remedy.

19 Q. And amongst those two law firms you have on retainer,
20 you would expect them to include this group of
21 healthcare-related companies amongst the ones they're
22 watching to see if there are lawsuit or settlements or
23 potential claims, correct?

24 A. They have full access to all of our records, so they
25 would be reviewing our entire portfolio across all sectors

1 and all of the managers that run those moneys.

2 Q. So surely you've been advised that every single one of
3 these companies on this list has been the subject of a
4 shareholder lawsuit; isn't that true?

5 A. So are you referring to being the subject of or being
6 advised that there is the potential for -- are you talking
7 about settlement?

8 Q. My question, sir, is every single one of these companies
9 on this list has been sued by shareholders. Were you aware
10 of that?

11 MR. FORGE: Your Honor, object to the phrasing of
12 the statement.

13 THE COURT: Overruled.

14 THE WITNESS: I'm not aware of the litigation
15 history of all of those companies.

16 BY MR. CLUBOK:

17 Q. Are you aware that many of these other companies were
18 also sued by Robbins Geller, the same firm that is
19 representing you here in this case?

20 MR. FORGE: Your Honor, I would object on 401 and
21 403 grounds.

22 THE COURT: Sustained.

23 BY MR. CLUBOK:

24 Q. Are you aware, sir, that in some cases the companies
25 were sued because their stock price was allegedly too low,

1 and in other cases they were sued because the stock price was
2 allegedly too high?

3 MR. FORGE: Objection. 401, 403, and 602.

4 THE COURT: Just a moment.

5 Sustained.

6 MR. CLUBOK: May I respond briefly, Your Honor?

7 THE COURT: Briefly.

8 MR. CLUBOK: The implication here was that they
9 have law firms monitoring, and only in the most special case
10 do they choose to participate. I want to examine what they
11 knew about the other lawsuits and whether it's true that
12 there is some special circumstance why they chose to
13 participate in this one versus the others.

14 THE COURT: Response?

15 MR. FORGE: What Mr. Clubok infers is really not
16 relevant, Your Honor. It's what the jury can infer. And
17 there was no questions about anything being special about
18 this lawsuit.

19 THE COURT: Okay. I'm reversing myself. The
20 objection is overruled.

21 MR. CLUBOK: Thank you, Your Honor.

22 THE COURT: Don't thank me. I'm just doing my job.

23 MR. CLUBOK: I appreciate it.

24 May I ask, Your Honor, if the court reporter could
25 read back the question?

1 THE COURT: She may.

2 (Record read)

3 THE WITNESS: As I stated, I'm not aware of the
4 litigation history of all those companies, so I'm not aware
5 of the details of those litigations.

6 BY MR. CLUBOK:

7 Q. With respect -- you see there's a company called
8 Receptos here?

9 A. I can see that's included on the list.

10 Q. And Receptos was mentioned in the context -- were you
11 here when Receptos was discussed in Mr. Auerbach's testimony?

12 A. The name came up. I can't remember the detail of that
13 testimony.

14 Q. Are you aware that Receptos itself has been sued both by
15 shareholders who claimed the share prices were too low and by
16 other shareholders who are claiming the shareholder price was
17 too high? Were you aware of that?

18 A. I think I would have to refer --

19 MR. FORGE: Your Honor, I'm going to raise a 401,
20 403, and 602 objection. The witness has already stated he
21 does not have personal knowledge of lawsuits involving these
22 other companies.

23 THE COURT: The question is, were you aware of
24 that? You may answer yes or no.

25 THE WITNESS: No.

1 BY MR. CLUBOK:

2 Q. And were you aware that it was the Robbins Geller firm
3 that has used, claiming that -- well, strike that. Are you
4 aware that Receptos makes a drug called Ozanimod, which is a
5 drug designed to address multiple sclerosis?

6 A. No, I'm not.

7 Q. And are you aware that there has been a claim that the
8 benefits of that drug were -- and I'm loosely saying it --
9 overstated, and thus the stock price associated with this
10 company was inflated? Are you aware about those claims?

11 A. From my previous answers, of course I'm not.

12 Q. Well, are you aware that Robbins Geller has pursued
13 those claims on behalf of their clients?

14 A. Robbins Geller is active behalf of a number of
15 shareholders in this area.

16 Q. Have you heard of a firm called Robbins Arroyo?

17 A. I'm not familiar with that firm, no.

18 Q. Are you aware that the Robbins in Robbins Geller is a
19 person named Darren Robbins, and the Robbins in Robbins
20 Arroyo is his brother named Brian Robbins? Are you aware of
21 that?

22 MR. FORGE: Your Honor, I'm going to object on 401
23 and 403 grounds. This is so far afield, I think it's
24 irrelevant.

25 MR. CLUBOK: I'll link it up if I may, Your Honor.

1 THE COURT: Overruled subject to strike if you
2 don't link it up sufficiently.

3 THE WITNESS: Apologies. So I'm able to answer?

4 MR. CLUBOK: Yes.

5 THE WITNESS: I'm not aware of the family
6 relationship of Robbins Geller partners.

7 BY MR. CLUBOK:

8 Q. Did you know that the Robbins Arroyo firm sued on behalf
9 of shareholders who claimed that Receptos was undervalued
10 when it was sold? Are you aware that that happened?

11 A. I'm not aware of the legal action involving Receptos.

12 Q. Well, you were an investor in Receptos. Did you monitor
13 a lawsuit that was filed by the brother of the lead partner
14 of the firm that's representing you in this case?

15 MR. FORGE: Again, Your Honor, I'm going to object
16 to this whole line of questioning under 401 and 403.

17 THE COURT: Are you wrapping it up?

18 MR. CLUBOK: I've got two more questions on this
19 and I'll be wrapped up.

20 THE COURT: Subject to a motion to strike, ask the
21 two following questions.

22 THE WITNESS: I think in terms of what our
23 monitoring means, so the initial monitoring is, is there a
24 case in which you wish to be involved, of which we accept the
25 -- we understand to be the presumption of the U.S. court that

1 the lead plaintiff status is best pursued by the investor
2 with the largest loss in that individual case. Generally,
3 and I know you have some issues on what is small or large,
4 but we are not an enormous fund.

5 So typically large losses occur by large investors
6 subject to specific circumstances. Our monitoring beyond
7 that is are we collecting funds that have fallen due when
8 decisions have been made and settlement has been reached.

9 And that is a multi-faceted approach because there
10 are a number of those settlements. We would simply be
11 reconciling between the report from the lawyers and the
12 report from the custodian.

13 BY MR. CLUBOK:

14 Q. And that's exactly what I'm getting to. You would
15 surely have been notified if the Robbins Arroyo firm had
16 settled on behalf of a class involving your investment in
17 Receptos, correct?

18 A. We would be notified if there was a claim to be filed.

19 Q. Right. And are you aware that in that case the
20 settlement was just for payment of lawyers' fees with no
21 money to the class in the case brought by Robbins Arroyo?

22 THE COURT: Hold on. Make the objection.

23 MR. FORGE: 401 and 403.

24 THE COURT: Sustained.

25 MR. FORGE: Your Honor --

1 THE COURT: Hold on. Hold on.

2 Do not consider the attorney's question.

3 Yes?

4 MR. FORGE: Your Honor, at this time that's the
5 second question of the two questions that Mr. Clubok said he
6 had that was going to somehow tie up this entire line of
7 questioning. I don't believe he has done that, and I would
8 move to strike all of the questions along these lines as
9 under 401 and 403.

10 THE COURT: I'm inclined to do it.

11 Response?

12 MR. CLUBOK: The response, Your Honor, is that this
13 witness was examined about the monitoring they do both in
14 terms of whether to bring lawsuits and about settlements that
15 they can make claims on. It was -- to the extent it was
16 intended to try to show that there is something special about
17 this case because they're here as opposed to the other cases,
18 that's the purpose I use it for.

19 THE COURT: Okay. If you're tying it together with
20 a question about how other cases settled, for heaven's sake,
21 we're not getting into that. We're not getting into, as I
22 think I've heard people in this case say, cases within cases,
23 why it might settle, based on a million different factors.

24 I'm going to strike this line of testimony and ask
25 you to move on. Move on.

1 MR. CLUBOK: Thank you, Your Honor.

2 BY MR. CLUBOK:

3 Q. It was the Robbins Geller firm that triggered your
4 interest in this lawsuit, correct?

5 A. Yes. The initial approach was from Robbins Geller.

6 Q. And you are not being asked to pay anything to pursue
7 this litigation in terms of costs or fees of this case; isn't
8 it true?

9 A. I believe it's standard practice that it's a contingent
10 fee basis with the firm.

11 Q. That's the standard practice in the U.S. but not in
12 England, right?

13 A. The legal framework for securities litigation in England
14 is completely different. I'm not -- I'm not a UK or a U.S.
15 attorney, so I suspect I'd be slipping into areas where my
16 understanding would be more limited for the benefit of the
17 Court.

18 Q. Do you know who is paying the fees and costs for this
19 litigation?

20 A. As I've just said, it's a contingent fee basis. So
21 should the litigation be successful, that's where the fees
22 are derived. Funding, which is what you may be arriving at,
23 is being provided by Robbins Geller.

24 Q. And how about all the costs of paying all those experts
25 who have testified and are going to continue to testify in

1 this case on behalf of you? Do you know who's paying those
2 costs?

3 A. I think that's the answer I've just given. The upfront
4 costs are being met by Robbins Geller.

5 Q. Now, sir, you are responsible for knowing at least in
6 layman's terms -- I realize you're not a lawyer -- but the
7 general gist of the allegations that you're coming here to
8 bring on behalf of the class, correct?

9 A. That's correct.

10 Q. And you were here -- you've been here through opening
11 statements and through the testimony of the witnesses up to
12 this point, correct?

13 A. For the majority. I think I did have to step out for
14 one of the sessions.

15 Q. Fair enough. But you understand that generally
16 speaking, the claims here are that during a teleconference on
17 July 22nd, 2014, Mr. Auerbach made what you claim to be or
18 what the plaintiffs in this case claim to be false
19 statements, correct?

20 MR. FORGE: Your Honor, I'm going to object under
21 401 and 403. It's not counsel's job to frame the case in the
22 form of a question.

23 THE COURT: Where are we going with this?

24 MR. CLUBOK: I'm just establishing what the general
25 allegations are. Let me make it -- let me rephrase and see

1 if I can get to it.

2 BY MR. CLUBOK:

3 Q. The basic gist of this case is that Mr. Auerbach said
4 something untrue on that call that relates generally to four
5 subject areas. These were the ones the Court read to the
6 jury, and that is specifically the disease-free survival
7 rates, the absolute disease-free survival rates, the rates of
8 grade-three or higher diarrhea, the Kaplan-Meier curves, and
9 the discontinuation rate in the ExteNET study due to adverse
10 events. Just generally speaking, those are the four --

11 A. Was that not five?

12 Q. Probably the way I asked it, it may have sounded like
13 five. Let me say it again.

14 MR. CLUBOK: And if I may, I'm just trying to
15 establish --

16 THE COURT: I don't know that we need this witness
17 telling us what this case is about. Get to the question that
18 makes that somehow relevant.

19 BY MR. CLUBOK:

20 Q. Well, the allegations are that there were false
21 statements made on July 22nd, and then the truth is
22 supposedly revealed to the market based on the publication of
23 the abstract on May 13th, 2015, and also based on a
24 presentation made at an ASCO conference on June 1st. That's
25 the general claim that you're pursuing on behalf of the

1 class, correct?

2 MR. FORGE: Your Honor, again --

3 THE COURT: You have not wrapped it up into
4 anything relevant. I don't want this man to describe the
5 case.

6 MR. CLUBOK: Your Honor, my intention --

7 THE COURT: You need a wrap-up question, and I
8 don't hear it. If you're just asking him to give his opinion
9 of what this case is about, this witness is not the right
10 person to ask.

11 MR. CLUBOK: It's about the timing of the purchase
12 of the stock.

13 THE COURT: Then ask the wrap-up question. You're
14 not asking that.

15 BY MR. CLUBOK:

16 Q. Sir, is it your claim that you are entitled to recover
17 for damages for stock that was purchased after the telephone
18 call but before the truth was allegedly revealed first on
19 that publication of the May abstract? Is that the gist of
20 your claim?

21 MR. FORGE: Your Honor, again --

22 THE COURT: Sustained.

23 MR. FORGE: Thank you.

24 BY MR. CLUBOK:

25 Q. Why don't we move on concretely, and maybe this will

1 show what we're trying to do here. If we could turn back to
2 Exhibit 14. This was the bank record that your lawyer asked
3 you about in the initial examination.

4 Do you remember this one?

5 A. That is correct, yes.

6 Q. And this is the one where you were testifying about when
7 you believed that Norfolk had initially purchased the stock
8 that is the subject of your million-dollar damages claim,
9 correct?

10 A. That's correct, yes.

11 Q. All right. So then we -- we also showed you another
12 document which we'll put up side by side, which was
13 Exhibit 18, which is transactions that we received evidence
14 of when we asked Capital to send it to us directly.

15 A. That's correct. That's a Capital document against an
16 HSBC custody record.

17 Q. So the first question is: Did you understand for
18 purposes of this litigation that you had an obligation to
19 provide all the records that Norfolk had about the dates of
20 the purchases of its stock?

21 A. I did. I'd also accept that there was some confusion in
22 my testimony yesterday. Given the break, I did take the
23 opportunity to discuss with the office the two records. The
24 issue that arose there is as of the first of December, we
25 transitioned to a new custodial provider. So HSBC is the

1 custodial provider. The previous custodian was the U.S. Bank
2 Northern Trust headquartered in Chicago that has a
3 significant London operation.

4 So you asked with reference to the first item on
5 that list, which I don't know if you can blow it up, the
6 3,300 shares. That's -- my speculation was incorrect, which
7 I apologize.

8 That was the transitioning in of those units, those
9 shares that were held but were traded in accordance with that
10 Capital block there. So they were purchased when the
11 custodian arrangement lay with Northern Trust.

12 Q. Understood. In the course of the litigation, did you
13 provide us with the records from Northern Trust that
14 reflected Norfolk's actual purchases?

15 A. I believe we provided the records that were requested,
16 and we've certainly taken good order of the retention
17 instructions we've received. So all of those records, both
18 physical and electronic, where they exist, are available.

19 Q. You understand -- you understood that what was requested
20 was a record from Norfolk's records of all of the purchases
21 in Puma during the class period? Did you understand that
22 that was a request made?

23 MR. FORGE: Objection, Your Honor. It's vague as
24 to time. As counsel knows, this class -- the Court certified
25 this class on December 8th.

1 THE COURT: Hold on. Let's -- let's stop. Vague
2 as to time. Sustained.

3 BY MR. CLUBOK:

4 Q. During the class period. I asked you at the
5 beginning --

6 THE COURT: Hold on. Just a moment.
7 Start another question fresh.

8 MR. CLUBOK: Sure.

9 BY MR. CLUBOK:

10 Q. I think we established at the very beginning that you
11 understand the class period in this case runs from July 22nd,
12 2014, through May 29th, 2015. I think you've already
13 testified to that, that that's your understanding of the
14 class period, correct?

15 A. Yes. If I've testified to that, yes.

16 Q. Okay. So when I say class period, that's what I mean.
17 Okay?

18 A. Uh-huh.

19 Q. You understand?

20 A. Yes.

21 Q. Okay. So did you understand that in the course of
22 discovery, you had an obligation on behalf of Norfolk to
23 produce the records that Norfolk had of its purchases of Puma
24 stock during that class period?

25 A. I believe --

1 MR. FORGE: Your Honor, I'm going to object. Vague
2 as to time. The reason is because the initial complaint
3 which was not filed by Norfolk alleged a different class
4 period. So I think what counsel is trying to set up here is
5 a gotcha.

6 The class period was not established by the Court
7 until December 8th, 2017, and that's when the class period
8 officially became July 22, 2014, through May 29, 2015.

9 THE COURT: Sustained.

10 BY MR. CLUBOK:

11 Q. Sir, did you -- did you --

12 MR. CLUBOK: Well, Your Honor, if I may, I think
13 long before --

14 THE COURT: Sustained. Ask another question.

15 BY MR. CLUBOK:

16 Q. Sir, did you understand that there was a proposed class
17 period even before the judge ruled on the dates of the class
18 period for which you had an obligation to produce records
19 showing Norfolk's purchases of Puma stock during the proposed
20 class period which was those dates, July 22nd, 2014, through
21 May 29th, 2015? Did you understand that obligation during
22 the course of discovery in this case?

23 A. I believe we provided records as requested, but I'm -- I
24 cannot recall, and forgive me, the specific narrative of
25 those requests.

1 Q. Okay. Why don't we try to make this even simpler. We
2 have prepared a demonstrative that's entitled demonstrative
3 number two. That is a document that we have compiled using
4 both the records that Norfolk provided and the records that
5 we obtained from Capital to try to identify all of the
6 purchases made by Norfolk of Puma stock during the actual
7 class period.

8 MR. CLUBOK: If I may put up demonstrative number
9 two, Your Honor?

10 THE COURT: Yes.

11 MR. CLUBOK: Thank you.

12 BY MR. CLUBOK:

13 Q. Demonstrative number two, which is on the large board --
14 and we also have a hard copy that we have marked as
15 demonstrative number two -- shows every single purchase by
16 Norfolk of Puma stock during the class period, correct?

17 A. That appears to be the case.

18 Q. And, in fact, the first purchase date is October 2nd,
19 2014, and the last purchase date according to this is
20 May 14th, 2015; correct?

21 A. They are the dates on the demonstrative.

22 Q. Okay. Now, and I -- sir, you have up on this screen
23 just in case you want to double-check all the records. You
24 have the binders. You take my word for it or you can take
25 time if you want that we've accurately reflected in

1 demonstrative two the combined purchases by Norfolk of Puma
2 stock.

3 A. The dates on the screen are blurred, but I will take
4 your word for it.

5 THE COURT: Let me ask, is there an 8 1/2 x 11
6 version of this?

7 MR. CLUBOK: There is, Your Honor. I believe it's
8 in your binder. And that's what we'll be marking as
9 demonstrative Exhibit 2.

10 THE COURT: I would prefer to mark it as an ongoing
11 exhibit.

12 MR. CLUBOK: That's fine. You'd like me to mark it
13 and hand it up to Your Honor as the official --

14 THE COURT: Wait. Which book is it in? Is it in
15 the 16 volumes or in this volume?

16 MR. CLUBOK: In the Younger specific volume, Your
17 Honor.

18 THE COURT: It's not in the 16 volumes?

19 MR. CLUBOK: No. It's a demonstrative, so it would
20 be a document that we just obviously didn't have ahead of
21 time, but it is tabbed.

22 THE COURT: Well, not obviously. All right. So I
23 have a demonstrative. It needs to have an exhibit number,
24 not a separate exhibit number for a demonstrative. What
25 exhibit number would you like to give to it?

1 MR. CLUBOK: Demonstrative Exhibit 2, Your Honor.

2 THE COURT: No, no, no.

3 MR. CLUBOK: DX-2?

4 THE COURT: No. Let me state it again. It needs
5 to be one of the regular running exhibits. What exhibit
6 number would you like to give to it?

7 MR. CLUBOK: Exhibit 1089, Your Honor.

8 THE COURT: Okay.

9 MR. CLUBOK: Thank you.

10 THE COURT: I do have a 1088. And you think -- you
11 know what? We're going to make this Exhibit 1100.

12 MR. CLUBOK: Thank you, Your Honor. I appreciate
13 it.

14 THE COURT: Exhibit 1100 is the demonstrative.
15 Okay?

16 MR. CLUBOK: Okay.

17 THE COURT: Proceed.

18 BY MR. CLUBOK:

19 Q. So you have Exhibit 1100, which is DX-2 or the second
20 demonstrative that the defendants have provided in this case.

21 What I'd like to do now is put up on the screen a
22 picture of the stock chart throughout the class period. What
23 we have on the screen here is a graph that shows the closing
24 stock price for every day during the class period from
25 July 22nd, 2014, through May 29th, 2015.

1 Do you see that?

2 A. Yes, I can.

3 Q. And what we've added to that stock chart -- and this is
4 why I want to just try to orient you about the timing of the
5 purchases --

6 MR. FORGE: Your Honor, just for the record, I
7 would just ask counsel to identify for the record what is
8 being shown to the jury and the witness. I don't have a
9 problem with it, just...

10 THE COURT: I believe that -- thank you for that,
11 counsel. I believe that is the third page of Exhibit 1100
12 bearing the mark DX-3. Am I correct on that?

13 MR. CLUBOK: This is a different demonstrative,
14 Your Honor. I apologize.

15 THE COURT: Do you know what DX-3 is?

16 MR. CLUBOK: DX-3 is -- yes, Your Honor. We're --
17 we are -- I was building the DX-3, and then I was going to
18 offer it into -- as an exhibit.

19 THE COURT: Look, I think the plaintiff is correct
20 in wanting this to be identified. How do you wish to
21 identify it so someone months from now might be able to know
22 what we're talking about?

23 MR. CLUBOK: Your Honor, it's going to become DX-3
24 and ideally Exhibit 1101.

25 THE COURT: How about the third page of

1 Exhibit 1100?

2 MR. CLUBOK: I can do it if you like, Your Honor,
3 but it's really --

4 THE COURT: Listen. I'm going to leave it at this.
5 Just make your record and do it as simple as possible. I
6 thought this was DX-3 in my book under tab -- I think it
7 would be better to call this page 3 of Exhibit 1100. If you
8 want to go a different route, I'll add all the other exhibits
9 and we'll do it that way.

10 MR. CLUBOK: I would appreciate it. It really is a
11 distinct exhibit from Exhibit 1100, which we had --

12 THE COURT: You need to give it an exhibit number
13 and we'll move forward.

14 MR. CLUBOK: Okay. We'll call it Exhibit 1101.

15 THE COURT: And what is it in the book in front of
16 me?

17 MR. CLUBOK: DX-3.

18 THE COURT: Okay. 1101 is DX-3. Okay. Go ahead.

19 MR. CLUBOK: Thank you, Your Honor.

20 BY MR. CLUBOK:

21 Q. So Exhibit 1101 shows both a stock chart with a closing
22 price of every day in the class period from July 22nd, 2014,
23 through May 29th, 2015. We've also added to that two
24 specific dates. One in a blue box that says July 22nd, 2014,
25 that was the date of the press release and the conference

1 call that we've been discussing in this case.

2 We've also added a blue box to identify the date
3 May 13th, 2015, which is the date that that abstract was
4 published in advance of the ASCO meeting.

5 MR. FORGE: Your Honor --

6 BY MR. CLUBOK:

7 Q. Is this all accurate?

8 MR. FORGE: Your Honor, just for the record, as the
9 Court can see, Exhibit 1101 has a line drawn down from -- I'm
10 just describing for the record -- drawn down from May 13th,
11 2015, to the point in the stock chart that corresponds to the
12 price to that date.

13 It does not, however, have a corresponding line
14 dropping all the way down from July 22nd, 2014, to the \$59
15 price on that date.

16 THE COURT: Is that an objection or an observation?

17 MR. FORGE: It's just noting it for the record,
18 Your Honor.

19 THE COURT: All right. Continue.

20 MR. CLUBOK: Okay. May I offer Exhibit 1101, Your
21 Honor, as described?

22 THE COURT: As -- to be admitted into evidence
23 rather than a demonstrative?

24 MR. CLUBOK: Actually I would offer it as an
25 exhibit into --

1 THE COURT: I don't know what you're saying, then,
2 when you say I offer. Just tell me what you want done.

3 MR. CLUBOK: I'd like to offer Exhibit 1101 as
4 reflective of the witness's testimony, into evidence.

5 THE COURT: Okay. So you're offering it as an
6 exhibit? Simple question.

7 MR. CLUBOK: Yeah.

8 THE COURT: Any objection?

9 MR. FORGE: Yes, Your Honor. It's hearsay and 602
10 as to this witness.

11 THE COURT: Foundation. Sustained.

12 MR. CLUBOK: Okay.

13 BY MR. CLUBOK:

14 Q. So we'll refer to 1101 simply as a demonstrative. Now,
15 sir, what we are going to do --

16 THE COURT: And by the way, that means -- a lot of
17 lawyer talk here. It means at this moment you don't get to
18 take that image on the screen with you into your
19 deliberations at the moment.

20 Okay. Go ahead.

21 MR. CLUBOK: Okay.

22 BY MR. CLUBOK:

23 Q. But you certainly are familiar with these two dates,
24 July 22nd, 2014, as being the date of the press release and
25 conference call, and then May 13th, 2015, being the date that

1 the ASCO abstract was published, correct?

2 A. I believe they are the dates, yes.

3 Q. Okay. Now we are going to create -- we're going to put
4 on another exhibit.

5 MR. CLUBOK: That's in your binder, Your Honor, as
6 DX-4. We will ask that that be identified for the record as
7 Exhibit 1102.

8 BY MR. CLUBOK:

9 Q. In Exhibit 1102 we're going to add, indicated by red
10 dots, the purchases of Puma stock onto the stock chart so
11 that we can show graphically the dates that Puma stock was
12 purchased by Norfolk during the class period. Okay?

13 A. Yeah.

14 Q. So what I'm going to do is simply ask Mr. Lara to add
15 onto the stock chart first a series of purchases, the first
16 few purchases that were made on October 2nd, October 3rd,
17 October 6th, October 7th, October 8th, and October 9th, six
18 days in October when Capital bought Puma stock on behalf of
19 Norfolk, correct?

20 A. I can see you've added those dots. Yes.

21 Q. And they're red dots that have been put on that
22 accurately reflect those dates?

23 A. I think the key there would make that quite difficult
24 for me just to give a comment on accuracy, but they look to
25 be approximately positioned.

1 Q. Okay. And then again in early and mid December 2014,
2 Capital bought more stock in Puma on behalf of Norfolk, and
3 those were the 3rd of December, and it was actually two
4 purchases on the 3rd; also the 4th of December, on my
5 birthday, when there were also two purchases; and the 11th of
6 December and the 12th of December. Do you see that?

7 A. I can see you've added those dots in the additional
8 period, yeah.

9 Q. And all of those purchases would have been made before
10 Capital issued its quarterly report to you to tell you about
11 the fact that Norfolk was now invested in Puma, correct?

12 A. Given that they are in advance of the quarter end, yes,
13 that would be correct.

14 Q. And then after that quarterly report, in January Capital
15 continued to buy more stock on behalf of Norfolk. And, in
16 fact, there were I believe seven days in early and
17 mid-January -- the 7th, the 8th, the 9th, the 12th, the 13th,
18 the 14th, and the 15th.

19 Again, those were all reflected on the big board
20 right next to you in case you want to check as I read them
21 out. And we've added red dots to show those purchases by
22 Norfolk of Puma stock in early to mid-January. Do you see
23 that?

24 A. Yep. I can see an additional group of red dots.

25 Q. Okay. Now, you were here during various testimony that

1 was given about a stock offering. And were you here and did
2 you generally understand that there was a stock offering done
3 by Puma sometime in 2015?

4 A. I understand that Puma did a stock offering to raise
5 additional capital.

6 Q. And the date of that offering I will tell you was
7 January 20th. Does that -- any reason to disagree with me
8 there?

9 A. Of course, I wouldn't disagree with you.

10 Q. Okay. So assuming that January 20th is the date of that
11 stock offering that was the subject of a fair amount of
12 testimony, is it fair to say that every one of the red dots,
13 every one of the purchases of Puma stock up on the screen so
14 far were all done before that secondary stock offering?
15 Correct? All the purchases, in other words, between --

16 A. I'm just --

17 Q. Sure.

18 A. So the final -- so the final purchase on there is
19 January 15th, which is in advance of the 20th.

20 Q. Yeah. So every single purchase except for those last
21 two -- and we'll get to those -- were by Puma -- I'm sorry.
22 Every single purchase of Puma stock by Norfolk prior to
23 May 14th was also prior to the stock offering, correct?

24 A. The purchases that Capital made were prior to the 20th
25 of January, if that's the date of the stock offering.

1 Q. You would agree that whatever was disclosed to the
2 public in connection with that January 20th stock offering
3 certainly couldn't have been relied upon in the purchases
4 that were made through January 15, 2015; isn't it true?

5 MR. FORGE: Objection, Your Honor. Number one, it
6 misstates the evidence. But more importantly, it's really
7 calling for expert testimony regarding what is reflected in
8 the stock -- what information is reflected in the stock price
9 at what time.

10 THE COURT: Sustained as phrased.

11 BY MR. CLUBOK:

12 Q. Is it true that every single purchase by Norfolk through
13 January 15th could not possibly have relied on what was
14 publicly disclosed in connection with the January 20, 2015,
15 stock offering?

16 MR. FORGE: Objection, Your Honor. Again, this is
17 improperly calling for expert testimony. As counsel knows,
18 the information that relates to the January 20th stock
19 offering dates back far before January 20th, 2015 and has an
20 impact on the price far before January 20th, 2015.

21 THE COURT: Sustained as phrased.

22 BY MR. CLUBOK:

23 Q. Have you looked at what was disclosed to the public --
24 strike that. You know in a stock offering, there are
25 disclosures made to the public in connection with the stock

1 offering? Are you aware of that?

2 A. Given our investment management arrangements, we don't
3 generally participate in -- this is as Norfolk -- in stock
4 offerings. That would be a choice that's made by managers.

5 So that I am -- so I'm not familiar with the
6 generalities of stock offering documentation, nor did I
7 specifically review the stock offering documentation that was
8 offered for this particular Puma offer.

9 Q. Norfolk did not participate in the stock offering on
10 January 20, 2015; correct?

11 A. To my knowledge, no.

12 Q. So is that a yes to my question? This is that double
13 negative problem, so let me just ask it again for the record.

14 It's true that to the best of your knowledge,
15 Norfolk did not participate in the stock offering that
16 occurred in January 2015, correct?

17 A. I mean, our trading record is behind me, which does not
18 indicate we participated in that stock offering.

19 Q. So is that a yes?

20 A. That would be a yes.

21 Q. And as far as you know, did anybody from Capital ever
22 say to you in words or substance that the decision to
23 purchase prior to -- the decision to purchase Puma stock
24 through January 14, 2015, had anything to do with what was
25 going to be publicly disclosed in connection with the

1 January 20th stock offering?

2 A. We had no discussions with Capital regarding that stock
3 offering.

4 Q. Let's turn then to May 13th, 2015. On May 13th, 2015,
5 we know that's the date that abstract, the ASCO abstract, is
6 released. That's a tongue twister. Is that correct?

7 A. Are you asking me a question? Yes.

8 Q. And Exhibit 503, which has already been admitted into
9 evidence, is the actual abstract that was released on that
10 day.

11 MR. CLUBOK: If we could put that up on the screen.

12 BY MR. CLUBOK:

13 Q. I take it at the time you didn't read this abstract back
14 then?

15 A. That wasn't part of my role. No.

16 Q. Okay. But you entrusted your investment managers like
17 Capital who were following a stock like this to have read
18 that, correct?

19 A. I don't know if Capital specifically read it. Capital
20 would be researching a range of companies taking information
21 from a number of sources. So I can't comment specifically on
22 whether they read that document.

23 Q. Well, let's turn -- I think before we previously
24 highlighted -- strike that.

25 Mr. Auerbach was asked about some aspects of this

1 document, and in particular there's a section called results.

2 MR. CLUBOK: If we could highlight that.

3 BY MR. CLUBOK:

4 Q. It talks about how -- there's a bold word in the
5 abstract called results with a colon, and then it continues
6 for a couple sentences that we can highlight on the screen.

7 MR. CLUBOK: If we could just highlight through
8 that paragraph.

9 BY MR. CLUBOK:

10 Q. You were here when you heard some testimony about the
11 reaction to these results by analysts and others?

12 MR. FORGE: Your Honor, I'm going to object under
13 403 timing ground and 602. This witness has already
14 testified he never reviewed this document and has no idea
15 whether Capital did. This is somewhat of a show here.

16 THE COURT: Overruled.

17 THE WITNESS: Sorry. Could the court reporter
18 repeat the question?

19 THE COURT: Yes, please. Thank you.

20 (Record read)

21 THE WITNESS: Yes, I believe that from part of the
22 testimony.

23 BY MR. CLUBOK:

24 Q. And below those results there's a chart, I guess, that
25 has rows beginning with IDFS and a column that begins with

1 efficacy end point.

2 MR. CLUBOK: I'm going to just ask if we could
3 expand that a little bit so it's easier to see.

4 BY MR. CLUBOK:

5 Q. You see there is the 93.9 percent and 91.6 percent
6 absolute disease-free survival rates that have been the
7 subject of some of the testimony in this case, correct?

8 A. I can see those two highlighted numbers.

9 Q. And that was published as part of this abstract,
10 correct?

11 MR. FORGE: Objection, Your Honor. 602. The
12 witness has already disclaimed any personal knowledge of this
13 abstract.

14 THE COURT: Overruled.

15 THE WITNESS: Well, it is published in the document
16 presented before us as the abstract.

17 BY MR. CLUBOK:

18 Q. Okay. And you're now aware that this was publicized at
19 the time, correct?

20 MR. FORGE: Objection, Your Honor. Again, the now
21 aware, it's still not personal knowledge.

22 THE COURT: Hold on. When you say now aware,
23 sustained.

24 MR. CLUBOK: Okay.
25

1 BY MR. CLUBOK:

2 Q. Sir, turning to another sentence in the abstract
3 publication. You can see that on the top of the second page,
4 it identifies the grade-three diarrhea rates. If we can
5 highlight that. It says diarrhea was the most common adverse
6 event, AE, for N patients with 40 percent G3. Do you see
7 that?

8 A. Yes. That's the highlighted statement.

9 Q. And that was included in this abstract that was
10 published on May 13th; is that correct?

11 MR. FORGE: Again, I would object on 602 grounds.

12 THE COURT: Aren't you really just using this
13 witness to make an argument that you're more than welcome to
14 make to the jury?

15 MR. CLUBOK: A, I'm testing whether he knew it at
16 the time, which I think we've gotten the answer to that. And
17 B, I'm also comparing this to what his investment advisors
18 are going to say about that and see if he knows that. I plan
19 to ask him those appropriate questions.

20 THE COURT: All right. Overruled.

21 Did you get an answer to the last question?

22 MR. CLUBOK: I don't believe so, Your Honor.

23 THE COURT: Would you like it reread?

24 MR. CLUBOK: Thank you, Your Honor.

25 (Record read)

1 THE WITNESS: Yes, I can see it in the abstract as
2 presented in evidence.

3 BY MR. CLUBOK:

4 Q. And then it goes on to --

5 THE COURT: Hold on just a moment.

6 Did you get that last answer? When she's reading,
7 just a slight pause before you give a quick answer is
8 helpful.

9 THE WITNESS: I'm sorry, Your Honor.

10 THE COURT: Go ahead.

11 BY MR. CLUBOK:

12 Q. And finally it goes on to say that the diarrhea,
13 although it was the most common adverse event, it was
14 manageable --

15 MR. CLUBOK: If we could highlight that: Diarrhea,
16 the most common AE, was manageable.

17 BY MR. CLUBOK:

18 Q. You see that was all part of the abstract, correct?

19 A. I'm just trying to identify it in the yellow
20 highlighting. Bear with me. Thank you. Yes, I can see in
21 the yellow highlighting at the bottom: Diarrhea, the most
22 common AE, was manageable.

23 Q. And are you aware that the fact that the diarrhea,
24 grade-three diarrhea rates could have been either 30 or
25 40 percent was not subject -- was not a factor into Capital's

1 decision to purchase Puma stock?

2 A. That is not a discussion we've had with Capital, so it
3 would have to come from them.

4 Q. You've never asked Capital point-blank directly whether
5 the fact of diarrhea rates being 30 or 40 percent was a
6 factor or affected in any way their decision to purchase Puma
7 stock? You've never asked that question to Capital?

8 A. We've not explored that with them, no.

9 Q. Well, are you aware of what Capital has said in this
10 litigation under oath on that subject?

11 A. Not off the top of my head, no.

12 Q. Okay. Well, I'm going to refer you to a transcript in
13 your binder that's called the Kopcho transcript.

14 MR. FORGE: Your Honor, I'm going to --

15 THE COURT: There's no pending question. He's
16 being referred. Let's wait until we see what the question
17 is.

18 BY MR. CLUBOK:

19 Q. I'm going to ask you to turn to page 202, lines 12 to --
20 I'm referring you to -- and by the way, this is the
21 transcript of Darcy Kopcho, right? I'm sorry. You know who
22 Darcy Kopcho is, correct?

23 A. Yes.

24 Q. She was one of the people at Capital at the time who was
25 helping advise or making decisions on behalf of Norfolk in

1 connection with the Puma investments, correct?

2 A. She was a portfolio manager at Capital who were our
3 investment manager at the time.

4 Q. Who specifically was involved in the decision to invest
5 in Puma, correct?

6 A. I believe that's the case.

7 Q. And were you -- you said that you didn't know off the
8 top of your head if Capital in the course of this litigation
9 had said anything on this subject. My question to you is,
10 sir, are you aware that under oath --

11 THE COURT: Just a moment.

12 MR. FORGE: Your Honor, I would object to the use
13 of the deposition in this manner. As counsel is well aware,
14 we --

15 THE COURT: Hold on. This isn't the way we use
16 depositions.

17 MR. CLUBOK: Okay.

18 BY MR. CLUBOK:

19 Q. Let me ask you this: Does reading this testimony on
20 page 202 --

21 A. Could I find it? Sorry. I wasn't aware of the piece of
22 testimony you were looking at. You're sort of away from the
23 microphone.

24 Q. I apologize. I'm sorry. My eyes are not great, so I
25 keep leaning forward. I'm going to try to position the

1 microphone better.

2 A. I'm on 202.

3 Q. Yes. And I think you had just said off the top of your
4 head, you didn't recall whether Capital had testified under
5 oath on the subject of whether the difference between 30 to
6 40 percent rates of grade-three diarrhea changed the decision
7 to buy Puma stock.

8 I'm wondering -- first question is: Does page 202,
9 the testimony there, do anything to refresh your recollection
10 as to whether you were aware of the position that Capital has
11 taken in this litigation?

12 A. I haven't previously read this testimony.

13 Q. Okay. And you've done nothing else to investigate with
14 Capital inside or outside of the litigation whether that had
15 any effect, the difference in rates of grade-three diarrhea
16 had any impact on their decision to purchase Puma stock on
17 Norfolk's behalf, correct?

18 A. Investigation has been undertaken by our attorneys.

19 Q. Right. Have you ever done that personally?

20 A. No, given that that work is being undertaken by our
21 attorneys.

22 Q. I'm going to ask you to look at Exhibit 34.

23 MR. CLUBOK: Your Honor, I believe this has not
24 been objected to, and I'm going to ask that it be offered
25 into evidence.

1 THE COURT: Without objection 34 is admitted.

2 **(Exhibit 34 received.)**

3 BY MR. CLUBOK:

4 Q. Exhibit 34 is a document that appears to be authored by
5 Skye Drynan, dated May 14, 2015. Do you see that?

6 A. I'm just looking. That appears to be the case.

7 Q. And the title of this article -- if we could blow that
8 up -- is the house is not, all caps, on fire. And then in
9 all caps, buy. Do you see that?

10 A. Yes, I can read that.

11 Q. And actually I should say for the record, it actually
12 says Puma, colon, the house is, all caps, not, on fire, dash,
13 dash, in all caps, buy. That's what the title of this report
14 is from May 14, 2015; correct?

15 A. That's the title of the report that was made during the
16 class period.

17 Q. And were you aware that at the time this was -- that
18 Skye Drynan had generated this report?

19 A. Was I aware at the time?

20 Q. Yes.

21 A. No, because this is an internal Capital document for the
22 consumption of Capital employees.

23 Q. Did Capital ever share this report to you after
24 May 14th?

25 A. No. Capital haven't shared this report, neither have

1 they shared reports on any other companies in their
2 portfolio.

3 Q. Okay. But Capital does from time to time discuss their
4 investment strategies with you and sends you quarterly
5 reports about them, correct?

6 A. Not from time to time. We receive a quarterly
7 investment report. We have regular update meetings and
8 reviews as well.

9 Q. Okay.

10 MR. CLUBOK: If we could turn back to Exhibit 1102
11 on the screen, please.

12 BY MR. CLUBOK:

13 Q. That's demonstrative Exhibit 4 in the book with all of
14 the purchases up until May 13th. This is I believe where we
15 left off with all the red dots that all ended previously in
16 January of 2015.

17 The abstract gets released on May 13th. Ms. Drynan
18 then issues this report. And then on May 14th, isn't it the
19 case that Norfolk buys additional stock in Puma?

20 A. Yeah, which has been kindly put on the demonstrative.
21 So, yeah.

22 Q. In fact, there were two purchases that day totaling --
23 on May 14th, the day after the ASCO abstract gets released,
24 there are two purchases of stock for a total of 2,200
25 additional shares in Puma on behalf of Norfolk, correct?

1 A. That's correct, but within the class period.

2 Q. Right. But it's after information is released on
3 May 13th which you're claiming exposed fraud in the company;
4 isn't that true?

5 A. That's true, but those purchases remain within the class
6 period.

7 Q. Right. You are seeking to recover -- along with all of
8 the other red dots, you're seeking to recover for the losses
9 that you may have suffered in the future or that you may
10 suffer -- strike that. I apologize. That was an inartful
11 question.

12 You're seeking to recover for losses associated
13 with the purchases of all of the red dots on Exhibit 1102,
14 including those purchases made on May 14th, 2015; correct?

15 A. We are seeking to recover the losses for the entirety of
16 the class period, which runs through and includes those
17 purchases made on May 14th.

18 Q. Now, after -- let's continue. This is the class period.
19 But after the class period, what happens next of relevance to
20 this case -- strike that.

21 The class period ends May 29, 2015; correct?

22 A. Correct.

23 Q. And then I assume it's the next -- well, on June 1st,
24 2015, there is a presentation at ASCO. Let's look at
25 Exhibit 176 which has already been admitted just to remind

1 you that this is the slide show that is presented on June 1st
2 at ASCO which you heard testimony about, correct?

3 A. I've seen the document and heard testimony on it, yes.

4 Q. And I take it at the time, you hadn't reviewed either
5 the presentation or any report of this presentation back in
6 2015, correct?

7 A. You're correct, but, no, we hadn't.

8 Q. And you just learned about this presentation after the
9 fact and after in fact this case was filed, right?

10 A. That's correct.

11 Q. But you would have expected Skye Drynan and others at
12 Capital to have been following what happened at ASCO given
13 all of the investments that they had made on your behalf;
14 isn't that true?

15 A. We would expect Capital to be taking information,
16 publicly available information, and incorporating it into
17 their investment decisions.

18 Q. And this would have been publicly available information,
19 this presentation at ASCO, correct?

20 A. I'm not able to comment on that. I'd be making an
21 assumption. I don't know the practice of publication at
22 ASCO.

23 MR. CLUBOK: Let's put up -- what we have on the
24 screen right now is the first page of Exhibit 176. Let's put
25 up the view that shows all 20 slides.

1 BY MR. CLUBOK:

2 Q. There's been testimony that these 20 slides where the
3 presentation was made by Dr. Arlene Chan at ASCO. You were
4 here for that, right?

5 A. I believe so, yes.

6 Q. Okay. And if we refer -- and my understanding -- strike
7 that.

8 Is it your understanding that the gist of your
9 claim includes the fact that there was some information
10 revealed on June 1st during this ASCO presentation that
11 exposed some fraudulent statement that had been made back on
12 that conference call? Is that your general position that
13 you're advancing in this case on behalf of the class?

14 MR. FORGE: Your Honor, I'm going to renew the
15 objection that the Court sustained regarding counsel's
16 attempts to summarize the claims and ask this witness to
17 characterize the gist of the claims.

18 MR. CLUBOK: Your Honor, under the PSLRA, it's
19 perfectly appropriate -- if I may respond.

20 THE COURT: Well, I wish you would -- I wish you
21 take the hints I keep giving you. Let me just reread the way
22 you phrased the question. (The Court reading) Yeah, I'm
23 going to sustain it the way you phrased it. But you can get
24 around this, counsel.

25

1 BY MR. CLUBOK:

2 Q. Let me try it this way. Do you know the gist of the
3 complaint that you're making with respect to what was
4 presented at ASCO on behalf of the class?

5 A. I am aware of the complaint. The use of the phrase
6 gist --

7 Q. I apologize.

8 A. Let's put it this way. I'm aware of the summary of the
9 complaint, would be my answer to that.

10 Q. I'm not asking you to be a lawyer here, but just based
11 on your understanding of what you're alleging in this case,
12 what generally speaking is the information that was disclosed
13 at ASCO that you say revealed some fraud?

14 MR. FORGE: Your Honor, I'm going to object on 401
15 and 403.

16 THE COURT: I don't know why you need to say based
17 on. Why don't you just ask him the question without
18 referring to the complaint?

19 MR. CLUBOK: Okay.

20 BY MR. CLUBOK:

21 Q. What, if any, information was released at ASCO that
22 exposed any kind of fraudulent statement back in that
23 conference call?

24 A. So my understanding is that the ASCO conference
25 highlighted the true disease-free survival rates and the four

1 other items that you previously referred to of the complaint.

2 Q. I'm sorry. The first one was the true disease-free
3 survival rates?

4 A. It referred to disease-free survival rates.

5 Q. Those were disclosed in the abstract that we just looked
6 at, correct?

7 A. Are you considering the presentation -- I mean, they all
8 relate to ASCO, would be my -- sorry. Are you -- what are
9 you asking me to correct, would be my question?

10 Q. Let me ask you this. Specifically with respect to the
11 June 1st presentation at ASCO, what if anything was disclosed
12 that revealed some sort of fraud?

13 MR. FORGE: Your Honor, I'm going to object on 401,
14 403, and 602 grounds. This witness has already disclaimed
15 knowledge of the details of the ASCO presentation. So it's
16 an attempted memory test, but it's not even a fair memory
17 test because this witness never was aware of the information.

18 THE COURT: Sustained.

19 MR. CLUBOK: Your Honor, I will not ask about
20 details, but am I allowed to ask him if he knows anything
21 about what --

22 THE COURT: Ask your question and see what happens.

23 MR. CLUBOK: Okay.

24 BY MR. CLUBOK:

25 Q. Sir, can you describe anything that you know about what

1 was allegedly presented on June 1st at ASCO that demonstrates
2 there was a fraud?

3 MR. FORGE: Your Honor, I'm just going to object as
4 vague. He's asking if you know anything that was allegedly
5 presented rather than what was presented. It's not clear
6 what he's asking.

7 MR. CLUBOK: May I rephrase?

8 THE COURT: Yes.

9 BY MR. CLUBOK:

10 Q. Was anything -- can you give -- strike that. Can you
11 describe in whatever detail you're capable of describing what
12 you think was said on June 1st at ASCO that demonstrates a
13 fraud had occurred?

14 MR. FORGE: Again, Your Honor, I'm going to object
15 on 602 grounds because this witness has already disclaimed
16 personal knowledge of what was said on June 1st at the ASCO
17 presentation.

18 THE COURT: Overruled.

19 THE WITNESS: I would be performing a memory test,
20 and I would not be making a distinction in my mind between
21 the two documents. My overall review of it is that the
22 information presented here was significantly different to the
23 information and impression given by the call in July the
24 previous year.

25

1 BY MR. CLUBOK:

2 Q. In what subject?

3 A. Well, on the effectiveness of neratinib.

4 Q. And you can't be any more specific than that, correct?

5 A. That level of detail would not be appropriate to my
6 professional knowledge of it.

7 Q. And when you said you can't make a distinction -- I
8 don't want to the put words in your mouth -- you qualified
9 your answer at first. And we could ask the court reporter to
10 read it back if that would help you. You said --

11 A. I'm aware of how I answered.

12 Q. Could you just explain what you mean when you say that
13 you can't make a distinction between the two?

14 A. Well, as a lay person without significant knowledge of
15 the practice and process at ASCO, my takeaway from sitting
16 here, which could be incorrect, would be that a synopsis of a
17 presentation should reflect that presentation.

18 So I'm viewing the abstract as a synopsis, if you
19 like, of what's thereafter going to be presented at the
20 conference.

21 Q. Is there anything that you're aware of that was
22 different on June 1st that demonstrated fraud?

23 MR. FORGE: Objection, Your Honor. Vague as to
24 different from what?

25 MR. CLUBOK: Different from the abstract that had

1 been published in advance of the ASCO conference.

2 MR. FORGE: I would make a 602 objection. The
3 witness has already repeatedly stated he's not familiar with
4 either document, and he doesn't distinguish between the two.

5 And at this point I would also make a 403
6 objection, Your Honor.

7 THE COURT: How much longer do you have with this
8 witness?

9 MR. CLUBOK: This is was it. Oh, I'm sorry. With
10 this witness, on this line of questioning? With this witness
11 I have approximately 25 minutes.

12 THE COURT: All right. The objection is sustained.

13 MR. CLUBOK: All right.

14 BY MR. CLUBOK:

15 Q. Let's look at --

16 MR. CLUBOK: Your Honor, I'm going to turn to what
17 has been included in your binder as DX-5 but which we will
18 ask to be marked as Exhibit 1103. And that is --

19 THE COURT: All right. My binder goes from DX-4 to
20 DX-6. That's what my binder does.

21 MR. FORGE: Just to help you out, Your Honor, I
22 think for some reason DX-5 is before DX-2. So the
23 demonstrative tabs actually begins with DX-5 and then drops
24 down to DX-2.

25 THE COURT: Thank you for that, counsel.

1 MR. CLUBOK: Thank you.

2 THE COURT: If I'm not mistaken, DX-5 is 1101;
3 isn't it? No. I'm sorry. And DX-3 was 1101. DX-5 is 1100;
4 isn't it? We just need a clear record. I believe, is DX-5
5 what we have up there on the screen behind the witness?

6 MR. CLUBOK: I understand, Your Honor, and I
7 apologize for the confusion. This is a tabbing error that's
8 my fault. So let me just say 1100 was supposed to be a
9 one-page exhibit. I see in the binder it has two because of
10 a tabbing error.

11 So we have marked DX-2 as Exhibit 1100, which is
12 just the shares purchased during the class period.

13 THE COURT: Hold on right there. 1100 is DX-2? Is
14 that what you're saying?

15 MR. CLUBOK: Yes. I believe that's correct, Your
16 Honor.

17 THE COURT: Just a moment. Okay. So that's 1100.
18 I really do wish the parties had a better control on the
19 documents. All right. So DX-2 is 1100. 1101 is DX-3. 1102
20 is DX-4. Now where are we?

21 MR. CLUBOK: I appreciate your patience, Your
22 Honor. I'm sorry. Now we're on 1103 by my count, and that
23 is the other page that shows Norfolk's purchase of Puma stock
24 both before -- both during and after the class period.

25 THE COURT: And I believe that doesn't have a

1 specific number in my book. You see, think about how this
2 will be translated without getting into details in a file so
3 that someone at some other time can look at it. So you see,
4 at the end -- make your record, counsel. If it's confusing,
5 it's the fault of the parties.

6 MR. CLUBOK: Correct. I agree with that, and I
7 apologize.

8 THE COURT: We've got something called 1103, and it
9 bears no indication in the book. What's the title of 1103?

10 MR. CLUBOK: Your Honor, 1103 -- so 1100 was
11 Norfolk's purchases of Puma stock during the class period.
12 1101 is the stock chart that also identifies the date of the
13 conference call and press release and the ASCO abstract.

14 THE COURT: You know, you're now saying something
15 different than I said. I referred to the DX number. What
16 you're saying now, I need to go through and cross correlate
17 to my DX number. We just need a record.

18 MR. CLUBOK: I know, Your Honor, and I'm doing the
19 best I can to try to --

20 THE COURT: Okay. Well, why didn't you use the DX
21 number instead of the title? If you use the titles, I need
22 to go back and crosscheck against you. If that's what you
23 want to do, that's what we'll do.

24 MR. CLUBOK: I will do it the best way that's
25 useful to the Court. I'm trying to do it the best I can.

1 What we had originally included in your binder as DX-2 should
2 be a one-page document that shows Norfolk's purchases of Puma
3 stock during the class period. We have marked it for
4 identification purposes in this case as Exhibit 1100.

5 THE COURT: Okay. I must say, as I look at
6 Exhibit 1100, it doesn't say anything about class period.

7 MR. CLUBOK: I understand. That was the testimony
8 that was given during the case, and it certainly has the
9 dates. But --

10 THE COURT: All right. Next.

11 MR. CLUBOK: Exhibit -- the document that was in
12 your binder as DX-3 -- I'm sorry -- as DX-3 which shows the
13 stock chart during the class period and the two dates that we
14 discussed, July 22nd, 2014, the date of the press release and
15 conference call; and May 13th, 2015, the date of the ASCO
16 abstract, has been marked for identification purposes as
17 Exhibit 1101.

18 May I continue?

19 THE COURT: Sure.

20 MR. CLUBOK: And then what was marked in your book
21 as DX-3, which is entitled --

22 THE COURT: I think you just described DX-3 as
23 1101.

24 MR. CLUBOK: DX-4 in your book has been marked as
25 Exhibit 1102 for identification purposes. It is entitled

1 Norfolk's purchases of Puma stock during the class period,
2 and it shows the stock chart with the dates of the press
3 release, conference call, ASCO abstract, and red dots
4 indicating the dates of purchases of Puma stock by Norfolk.

5 Then, Your Honor, I've asked that a new exhibit
6 could be identified as Exhibit 1104. It was --

7 THE COURT: I'm sorry. What happened to 1103?

8 MR. CLUBOK: Apologies, Your Honor. If I may have
9 just a moment.

10 THE COURT: Sure.

11 (Brief pause in proceedings)

12 MR. CLUBOK: I think we've got it sorted out. I
13 apologize, Your Honor.

14 THE COURT: Okay. I think we stopped at 102 [sic],
15 which is DX-4.

16 MR. CLUBOK: 1102?

17 THE COURT: 1102, which is DX-4.

18 MR. CLUBOK: Yes. So, Your Honor, 1103, which was
19 supposed to DX-5 but was mistakenly the second page of a
20 different exhibit.

21 THE COURT: In my book DX-5 is a document entitled
22 Norfolk's purchase of Puma stock, and it begins with the
23 number in the lower right-hand corner of 14,200.

24 MR. CLUBOK: Yes. That's the right one, Your
25 Honor. Okay.

1 THE COURT: That will be 11 -- that will be DX-5,
2 1103.

3 MR. CLUBOK: Exactly. Thank you, Your Honor. I
4 appreciate your patience.

5 THE COURT: And it's similar, by the way, to DX-2
6 except it adds the 14,200.

7 MR. CLUBOK: That's exactly right.

8 THE COURT: Good.

9 MR. CLUBOK: Thank you, Your Honor.

10 THE COURT: Go ahead.

11 MR. CLUBOK: I appreciate it.

12 BY MR. CLUBOK:

13 Q. Exhibit 1103, which in the book is DX-5, is entitled
14 Norfolk's purchase of Puma stock, but it now shows both the
15 shares purchased during the class period which ended on
16 May 29, 2015, and additional shares purchased by Norfolk
17 after the class period. Do you see that?

18 A. Yes, I can see that.

19 Q. And you have here the first purchase. The very first
20 purchase after the class period by Norfolk of Puma stock is
21 June 1st, 2015, 1,100 shares, correct?

22 A. Capital purchased on our behalf on that date.

23 Q. On that very date of that ASCO presentation, Capital is
24 buying even more Puma stock, correct?

25 A. I can see that trade on that date, correct.

1 Q. And are you aware as to whether or not that trade was
2 made after the folks at Capital heard what was presented at
3 ASCO?

4 A. I do not know the specific timing of that trade.

5 Q. Well, you certainly know that the -- that this purchase
6 on July 6th, some weeks later, that was certainly made after
7 the ASCO presentation, after the ASCO abstract, and after all
8 that analyst coverage of those two that we've talked about in
9 this trial, correct?

10 A. I'm assuming that purchase would have been made after
11 that date but would have been at a stock price incorporating
12 that information once it was publicly available.

13 Q. Sure. Another 2,300 shares purchased on July 6, 2015;
14 correct?

15 A. That's the information on the chart.

16 MR. CLUBOK: We're going to add -- and I believe
17 this is mercifully the last demonstrative that I'm going to
18 ask the Court to allow me to present. And that is -- the
19 Court helped me get the numbers and I quickly lose it --
20 1104, Your Honor.

21 We would like to put on the screen Exhibit 1104,
22 which takes the stock chart and extends it through the date
23 that covers the period for all of Norfolk's purchases of Puma
24 stock.

25 THE COURT: Okay. I'm going to step in here and

1 say 1104 in my book -- are you going to add things to what's
2 on the board?

3 MR. CLUBOK: Yes, Your Honor.

4 THE COURT: So you add things, and then we'll
5 describe what we have.

6 MR. CLUBOK: What we're doing here is we take --
7 we're taking what previously had been 1102 that showed the
8 purchases through the class period, and we've now added a
9 blue box showing the date of the ASCO conference, which was
10 June 1st, 2015. We are putting a red dot on at the price at
11 which the stock was purchased on behalf of Norfolk on that
12 date.

13 BY MR. CLUBOK:

14 Q. Do you see that, sir?

15 A. I can see that dot, yes.

16 Q. And then we're going to continue to add with additional
17 red dots indications of additional purchases made by Norfolk
18 after the ASCO conference, which includes purchases on
19 July 6th, 2015; July 8th, 2015; July 9th, 2015; July 15th,
20 2015; July 16th, 2015; and August 14th, 2015.

21 Do you see that?

22 A. I can see that.

23 Q. And then -- sorry. And I jumped ahead to the August
24 date. We've also put up some additional dates onto this
25 exhibit which identify on June 3rd, 2015, that was the date

1 the initial lawsuit in this case was filed.

2 Are you aware of that?

3 A. I haven't got the dates committed to memory, but that
4 sounds right.

5 Q. Okay. And then on July 24, 2015, Norfolk actually
6 signed a sworn verification relating to the purchases that it
7 had made during the class period at that time, correct?

8 MR. FORGE: Your Honor, this is -- it goes back to
9 the same objection. It's vague as to class period. After
10 was a different alleged class period --

11 THE COURT: Objection, vague. Sustained.

12 BY MR. CLUBOK:

13 Q. Are you aware that on July 24th, 2015, there was a sworn
14 verification signed by individuals at Norfolk relating to
15 this case?

16 A. As I stated previously, I haven't committed those dates
17 to memory, but that sounds about right.

18 Q. In fact, let's -- why don't we just turn right then to
19 that document.

20 MR. CLUBOK: That has been identified in the binder
21 as Exhibit 992. Your Honor, I'd like to offer 992 into
22 evidence.

23 MR. FORGE: Your Honor, here's the issue with 992.
24 It's an earlier period of time than when the Court
25 established the class period, so this goes back to the gotcha

1 line of questioning. There's a different class period date
2 range for 992.

3 THE COURT: Response?

4 MR. CLUBOK: This is -- this is not about a gotcha.
5 This is showing what Norfolk was saying on the one hand about
6 this case and on the other hand continuing to purchase stock.
7 It puts into context the stock purchases that were made after
8 this.

9 THE COURT: You asked the witness to look at it.
10 Are you moving its admission?

11 MR. CLUBOK: I did ask to have its admission -- I
12 did ask for its admission. And I should say, Your Honor,
13 there's actually multiple purposes for this sworn
14 verification.

15 THE COURT: Okay. Let me stop by saying in exhibit
16 book 15, which says 980 through 1066, that exhibit doesn't
17 appear. How do I find that exhibit?

18 MR. CLUBOK: In the Younger binder that I with
19 great reluctance provided yesterday, it has Exhibit 992 in
20 the binder specifically for the witness, Mr. Younger. And we
21 provided a copy to counsel.

22 THE COURT: I'm wondering why it couldn't find its
23 way into the 15 other binders. Okay, 992. You move its
24 admission. And the plaintiff says?

25 MR. FORGE: Your Honor, I would object under 403

1 grounds because it's confusing and it gets into the
2 procedural history of the case, because as you can see,
3 there's a reference to the during the class period in
4 paragraph four here.

5 The class period as of August 3rd, 2015, was a
6 different date range than the class period the Court
7 eventually set in December of 2017.

8 THE COURT: I can think of a few avenues the
9 defense should be allowed to pursue on this. So the
10 objection is overruled based on what I just heard, and 992 is
11 admitted.

12 **(Exhibit 992 received.)**

13 MR. CLUBOK: If we could put 992 up on the screen,
14 please.

15 BY MR. CLUBOK:

16 Q. This is the second -- the first page of Exhibit 992 just
17 says Exhibit B, but the second page of Exhibit 992 which, if
18 we could blow up on the screen, it's entitled certification
19 of named plaintiff pursuant to federal securities laws. Do
20 you see that?

21 A. Yes, I do.

22 Q. And it says that Norfolk County Council as administering
23 authority of the Norfolk Pension Fund, plaintiff, declares --
24 and then it has a number of numbered paragraphs following.

25 Do you see that?

1 A. Yes, I can see that.

2 Q. The first one is that plaintiff has reviewed a complaint
3 and authorized its filing. Do you see that?

4 A. I can read that, yes.

5 MR. FORGE: Your Honor, I'm going to object under
6 602 grounds here, and 403. This witness is not the witness
7 who signed the verification, so it's not fair to present this
8 as if this witness knows to what complaint, whether it had
9 been filed at this time or was to be filed in the future.
10 This is not Mr. Younger's verification.

11 THE COURT: Overruled.

12 MR. CLUBOK: May I ask the question be repeated?

13 THE COURT: Yes, you may.

14 MR. CLUBOK: Thank you, Your Honor.

15 (Record read)

16 THE WITNESS: Yes.

17 BY MR. CLUBOK:

18 Q. Was that a true statement as far as you know?

19 MR. FORGE: Objection, Your Honor, under 602
20 grounds. Again, this is not Mr. Younger's --

21 THE COURT: Now it's foundation -- as far as you
22 know. The objection is sustained.

23 BY MR. CLUBOK:

24 Q. Do you know whether it's a true statement?

25 THE COURT: Yes or no?

1 THE WITNESS: Yes, to the best of my knowledge.

2 THE COURT: Ask him how he knows.

3 BY MR. CLUBOK:

4 Q. How do you know whether or not that's a true statement?

5 A. Because of the integrity of the system that would
6 require it to be signed off.

7 Q. Isn't it also the case that it was your job to do the
8 review of the complaints as part of your administration of
9 this litigation?

10 A. We have reviewed various versions of various documents.

11 Q. Okay. Now, on paragraph four it says that plaintiff has
12 made the following transactions during the class period in
13 the securities that are subject of this action. And then it
14 refers to a Schedule A. Do you see that?

15 A. The statement or the schedule?

16 Q. Do you see the statement?

17 A. Yes, I can see the statement.

18 Q. And then you see where it refers to Schedule A, correct?

19 A. I can see that. It's not highlighted, but I can see it.

20 Q. Do you see it now? It's highlighted.

21 A. I can see it now. It's been highlighted.

22 Q. If we could turn to Schedule A. Schedule A lists the
23 number of purchases by Norfolk of Puma stock, correct?

24 A. That's correct.

25 Q. If you turn back one page in the exhibit, you can see

1 that this was signed under penalty of perjury on July 24th,
2 2015, by two people whose signatures are difficult to
3 decipher, but I'm going to ask if you know who those
4 signatures -- if you recognize those signatures.

5 A. I think I've given previous testimony. So the chief
6 investment manager is Glenn Cossey, and the head of the
7 pension fund is Nicola Mark.

8 Q. And it says on this, according to this verification,
9 that -- and those are your boss and your boss's boss who
10 signed this under penalty of perjury on July 24th, 2015;
11 correct?

12 A. Yes. That is my direct line manager and indeed his
13 direct line manner. And, yes, I can read the statement under
14 which they signed that document.

15 Q. And as far as you know, at any time in this case has
16 anything related to this verification been updated, or has
17 additional information been provided to update this
18 verification at any time as far as you know?

19 MR. FORGE: Your Honor, I'm going to object under
20 401 and --

21 THE COURT: Sustained. Sustained.

22 BY MR. CLUBOK:

23 Q. Are you aware of any other verifications that have been
24 filed in connection with this case relating to Norfolk's
25 purchases of Puma stock?

1 A. I don't know.

2 MR. CLUBOK: Is this a good time for our break,
3 Your Honor?

4 THE COURT: Yes. How much longer with this
5 witness?

6 MR. CLUBOK: Less than 15 minutes.

7 THE COURT: Well, it keeps getting longer. And
8 I'll direct your attention to the original estimate made by
9 the defense for this witness. I'm trying to think what has
10 happened that made that estimate be now much longer. But
11 just be thinking about that.

12 We'll take our break now and we'll come back at ten
13 minutes to 11. Thank you.

14 THE CLERK: All rise.

15 (Open court - jury not present)

16 THE COURT: All right. See you in 15 minutes.

17 MR. CLUBOK: Thank you, Your Honor.

18 (Recess taken from 10:36 a.m. until 10:56 a.m.)

19 THE CLERK: All rise.

20 (Open court - jury present)

21 THE COURT: Mr. Clubok.

22 MR. CLUBOK: Thank you.

23 BY MR. CLUBOK:

24 Q. Welcome back, Mr. Younger.

25 I'm going to put back up Exhibit 1104. We had just

1 talked about the date of the signing of the verification
2 dated July 24th, 2015. By that point Norfolk was already
3 seeking to become the lead plaintiff in this case, correct?

4 A. July 24th, yes. That's correct.

5 Q. That's when -- Norfolk was accusing Puma of committing
6 securities fraud as of that date, correct?

7 MR. FORGE: Objection, Your Honor. The Court can
8 take judicial notice of the fact that Norfolk had not filed a
9 complaint as of that date, had not made any allegations as of
10 that date. Counsel is continuing to imply a different class
11 period and a different state of affairs than actually existed
12 as of July 2015.

13 MR. CLUBOK: Your Honor, I object to these lengthy
14 lawyer arguments.

15 THE COURT: No. I don't object to them. I think
16 there's some issues that need to be clarified.

17 MR. CLUBOK: My question was not in a filed
18 complaint context but in a -- let me withdraw and I'll ask it
19 again if I may, Your Honor.

20 THE COURT: Go ahead.

21 BY MR. CLUBOK:

22 Q. As of July 24th, Norfolk had committed to pursuing a
23 claim for fraud against Puma and in fact -- I'll stop right
24 there. Isn't that right?

25 A. Sorry. Could you just repeat the actual question?

1 Q. At least as of July 24th, 2015, Norfolk was seeking to
2 pursue a claim against Puma for securities fraud, correct?

3 A. That would be correct.

4 Q. And after that date, Norfolk then bought additional
5 shares of Puma stock in August of 2015; isn't that true?

6 A. Capital on our behalf purchased stock in Puma.

7 Q. On August 14th, 2015, some weeks after this verification
8 was signed, correct?

9 A. Based on the chart behind me, yes.

10 Q. And based on the records that we've provided you,
11 correct?

12 A. Indeed, yeah.

13 MR. CLUBOK: If we could put the red dot -- in
14 fact, the exhibit -- I believe with that, Your Honor,
15 Exhibit 1104 is complete on the screen, and we have marked it
16 as a demonstrative. All four of these exhibits, Your Honor,
17 we've properly labeled. If you'd like me to pass them up, I
18 can. And by that, I mean --

19 THE COURT: Just a moment. Just a moment.

20 All right. 1104 is an unmarked page in the exhibit
21 book I have received for the examination of Mr. Younger. It
22 actually is the last page in this exhibit book. It is
23 perhaps best identified by the fact that there is a yellow
24 shading in the lower right-hand side above the date
25 July 24th, 2015. So that will be 1104.

1 Go ahead.

2 MR. CLUBOK: Your Honor, for each of the exhibits
3 1100 through 1104, we have labels conforming to the Court's
4 marking system. I can bring them up now or later if you
5 prefer.

6 THE COURT: Okay. Good. Bring them up now. Thank
7 you. Oops, no one is here.

8 MR. CLUBOK: I apologize, Your Honor.

9 THE COURT: All right. There we go. Good. Thank
10 you. And you've marked these with exhibit tabs, so they
11 probably should be just given to Ms. Bredahl.

12 MR. CLUBOK: We will, Your Honor.

13 THE COURT: You know, you managed to staple the
14 exhibit tab on three different corners of different
15 documents, but that's okay.

16 Go ahead.

17 BY MR. CLUBOK:

18 Q. With respect to Exhibit 1104, as it was noted, there's a
19 shaded section that indicates all of the purchases of Puma
20 stock after the class period, the current class period in
21 this case, correct?

22 A. Yes. I can see the shaded section.

23 Q. All right. Now, I want to focus on the time period from
24 June 1st, 2015, when the ASCO conference occurred, through --
25 let's just start with through June 30th, through the end of

1 that month. Okay? That end of June was the end of a, if
2 I've done the math right, a quarter? That was the end of a
3 quarter for Norfolk?

4 A. Yeah. We work calendar quarters, so the 30th of June
5 would be a calendar quarter end.

6 Q. So June 30th would have been the end of the second
7 quarter of 2015, right?

8 A. That's correct.

9 Q. And you would expect Capital to give you a quarterly
10 report for the state of the investments it had made on
11 Norfolk's behalf through the end of June?

12 A. We would receive a quarterly report in format and figure
13 in that exhibit number that you see here.

14 Q. And when you received that quarterly report, did Norfolk
15 in any way in words or substance suggest -- sorry. When you
16 received that quarterly report, did Capital in any way in
17 words or substance suggest that they believed that fraud had
18 been revealed in either May or June relating to Puma?

19 MR. FORGE: Your Honor, objection. Vague as to
20 suggest and to whom.

21 THE COURT: Overruled.

22 THE WITNESS: I don't recall any discussions with
23 me personally.

24 BY MR. CLUBOK:

25 Q. Do you recall any indication at all from Capital to

1 Norfolk in the context of its second quarter report in which
2 Capital in any way suggested that they believed that a fraud
3 had occurred?

4 A. I don't.

5 Q. Now, after that, there's additional purchases of stock
6 as indicated by the red dots on Exhibit 1104, and they
7 continue through to August 14th, 2015; right?

8 A. Yes.

9 Q. And then there's another quarter that ends, the third
10 quarter ends in September, at the end of September 2015,
11 correct?

12 A. The third quarter ends the end of September. That's
13 correct.

14 Q. And you would have expected -- I assume Capital sent you
15 its quarterly report for the period that went through --

16 A. I'm not aware we've ever missed a quarterly report. So,
17 yes. That would be the case.

18 Q. And are you aware of Capital in the third quarter, when
19 it's reporting on the state of the investments it had made
20 for Norfolk, in any way indicating that it believed that
21 there had been some fraud exposed in May and June that
22 related to Puma?

23 A. I'm not aware of that.

24 Q. You still work with Capital today, correct?

25 A. Capital International are an investment manager for the

1 Norfolk Pension Fund today.

2 Q. Have they been disciplined in any way in connection with
3 their investment on your behalf in Puma stock?

4 A. I'm not sure why we would be disciplining an investment
5 manager if a fraud has occurred at a company. The suggestion
6 being that it was their fault fraud occurred?

7 Q. Could you please answer my question, sir. Is that a no
8 to my question?

9 A. I don't understand the context in which we would be
10 disciplining a third party for the actions of another party.
11 If the -- the answer to the question would be, no, we have
12 not disciplined Capital.

13 Q. Would you have expected Capital to follow all of the
14 public news relating to Puma before it made a decision to
15 purchase additional stock on your behalf?

16 A. We would be expecting Capital to be following publicly
17 available information.

18 Q. And would you be expecting Capital then to have followed
19 closely what happened on June 1st, 2015, at the ASCO
20 conference before it made additional purchases in Puma stock?

21 A. I'm certain they would have noticed a significant drop
22 in the stock price, and they may therefore have established
23 that the stock was now trading at fair value.

24 MR. CLUBOK: Could I ask that my question be
25 repeated back and ask that an answer to my question be given,

1 Your Honor?

2 THE COURT: Please repeat back the question.

3 (Record read)

4 THE WITNESS: I would expect them to follow that
5 information as it is available, and I would expect them to be
6 considering that in the context of the valuation the company
7 was then trading at.

8 BY MR. CLUBOK:

9 Q. And you would expect them to take into account more than
10 just the price of the stock but also things like what
11 occurred at ASCO; isn't that true?

12 A. I'm not sure I follow your line of questioning. I would
13 expect the price of the stock to reflect what had occurred at
14 ASCO, and I would expect Capital to be using that supporting
15 information in any investment decision.

16 Q. Would you have expected Capital to rely on more
17 information beyond just the price of the stock in making a
18 decision to continue buying Puma on behalf of Norfolk?

19 A. My assumption would be that Capital are taking wide
20 sources of information in evaluating any company in their
21 portfolio, including Puma.

22 Q. And you have not, though, specifically asked anyone at
23 Capital what they specifically relied upon when making these
24 decisions on your behalf for any of these purchases; isn't
25 that true?

1 A. Any during the entire time period including the class
2 period, or any in the period we've been discussing, the
3 shaded?

4 Q. Any purchase of -- let me ask it again, sir. With
5 respect to any purchase of Puma stock either before or after
6 the class period, it's true that you have not spoken directly
7 with anyone at Capital regarding what they relied upon when
8 they made those purchases on Norfolk's behalf, correct?

9 A. I have not. As I said, we've given the investigation to
10 our attorneys.

11 Q. And as far as you know, no one who works at Norfolk,
12 like you or your boss or your boss's boss, as far as you're
13 aware, none of those people have had those direct discussions
14 with Capital about what they relied upon when they decided to
15 invest in Puma stock either during or after the class period;
16 isn't that true?

17 A. We have not had those conversations beyond the direct
18 work of our attorneys.

19 Q. Is that a yes?

20 A. Yeah.

21 MR. CLUBOK: Thank you.

22 THE COURT: All right. Thank you.

23 Redirect?

24 I will note that at the end of yesterday I said how
25 much longer, and there was a thought we might get him out of

1 here by 5:00. But, gosh, we wouldn't have gotten him out of
2 here until 6:00 or 7:00.

3 MR. CLUBOK: Yes.

4 THE COURT: So it's good thing you stayed, sir.

5 THE WITNESS: Thank you.

6 MR. FORGE: I was at 90 seconds at the end of the
7 day yesterday, Your Honor. I will be a little bit longer
8 than that, but not too much more.

9 **REDIRECT EXAMINATION**

10 BY MR. FORGE:

11 Q. Mr. Younger, directing your attention back to
12 Exhibit 503.

13 MR. FORGE: Highlight the first sentence, please,
14 Larry. The first sentence. And the table also, please.

15 BY MR. FORGE:

16 Q. Mr. Younger, do you have any reason to believe that
17 Capital was aware of the internal e-mails at Puma showing
18 that Alan Auerbach was aware of the actual grade-three
19 diarrhea rate for neratinib back on July 22nd, 2014?

20 A. I have no reason to believe that.

21 Q. Do you have any reason to believe that Capital was aware
22 of the internal e-mail showing that Alan Auerbach was aware
23 of the actual absolute benefit from neratinib back on
24 July 22nd, 2014?

25 MR. CLUBOK: Objection, Your Honor. Foundation.

1 The way these questions are being asked, it's not whether or
2 not he's aware. It's suggesting, I believe, something that
3 he would lack foundation to respond to, or it would be
4 leading.

5 THE COURT: Just a moment.

6 I think he asked it correctly.

7 Overruled.

8 THE WITNESS: I have no reason to believe that.

9 BY MR. FORGE:

10 Q. Now, you mentioned a couple of times --

11 MR. FORGE: Your Honor, may I approach?

12 THE COURT: Yes, you may.

13 MR. FORGE: Your Honor, would it be okay if I stand
14 in the well for a moment?

15 THE COURT: Yes.

16 BY MR. FORGE:

17 Q. Mr. Younger, you mentioned a couple of times that you
18 would expect Puma's share price to reflect publicly available
19 information; is that right?

20 A. I would, yes.

21 Q. Okay. So even though it's a really big board and --

22 MR. CLUBOK: Objection, Your Honor. I move to
23 strike that. That was the subject of your ruling that said
24 it was expert testimony and leading. He only answered that
25 in response to a sustained objection.

1 MR. FORGE: Your Honor, I'm referring to
2 Mr. Younger's testimony this morning.

3 THE COURT: Hold on.

4 The objection is overruled.

5 BY MR. FORGE:

6 Q. Now, Mr. Younger, let's add some information that
7 defendants omitted from this demonstrative. If you could
8 please take a look at Exhibit 18 and tell me the share price,
9 the price per share that Puma paid in its first purchase, the
10 one closest to July 22nd. Can you tell me the share price it
11 paid?

12 A. This is Capital we're talking about?

13 MR. CLUBOK: Objection. Object to the
14 characterization we admitted anything from that exhibit.
15 He's just referring him to a different exhibit.

16 THE COURT: I didn't understand any such
17 characterization.

18 MR. CLUBOK: I heard an accusation that we omitted
19 information from an exhibit, which I take exception to.

20 THE COURT: All right. Just a moment.

21 You did say that. I'll strike that opening
22 sentence.

23 MR. FORGE: Okay.

24 BY MR. FORGE:

25 Q. Mr. Younger, does the defendant's demonstrative,

1 Exhibit 1103, does it reflect the share prices for any of the
2 purchases listed in this four-and-a-half-foot-tall board?

3 A. There's no share price information on that board.

4 Q. Okay. So let's fill those in for the jury, at least a
5 few of them. The first purchase, the one closest to
6 Mr. Auerbach's statement on July 22nd, 2014, what was the
7 share price of Puma then? And you can look at Exhibit 18 for
8 that.

9 A. This is the trade blotter?

10 Q. Correct.

11 A. The date, sorry, of what trade?

12 Q. October 2nd, 2014, the first purchase.

13 A. Apology. Yeah. So 200 shares, the price of which was
14 \$246.85.

15 Q. Okay. So let's put \$246 here by the first purchase.

16 Now, that ASCO presentation was -- I think you
17 heard the testimony. It was basically all day, all day with
18 sessions that evening, correct?

19 A. I believe so, yes.

20 Q. Okay. So let's ask about the price of Puma's stock that
21 Capital -- I'm sorry, that Norfolk paid after June 1st. What
22 was the first purchase after June 1st?

23 A. So this blotter runs to May 29th.

24 Q. You can look at Exhibit 14 for that.

25 A. Sorry. All right.

1 Q. You can actually look at this board also. First one is
2 July 6, 2015. So if you look at Exhibit 14, what does that
3 show for the share price as of July 6, 2015?

4 A. The disclosed unit price in that document is \$113.01.

5 Q. Okay. Then by the time of Capital's last purchase on
6 behalf of Norfolk, that August 14th, 2015, purchase date,
7 what was the price of Puma stock then?

8 A. \$88.56.

9 Q. I'll round that to \$89.

10 MR. FORGE: I'll hold the board so the jurors can
11 see it.

12 Your Honor, I would ask the Court to take judicial
13 notice of the fact that as of July 24th, 2015, the only
14 complaint that was on file in this matter was the complaint
15 at docket one which was filed by an individual other than
16 Norfolk, represented by a firm other than Robbins Geller.

17 THE COURT: I'm not going to be taking judicial
18 notice on the fly like that.

19 MR. FORGE: Okay. We can deal with it later.
20 Thank you, Your Honor.

21 Nothing further, Mr. Younger.

22 **RECROSS-EXAMINATION**

23 BY MR. CLUBOK:

24 Q. Mr. Younger, you were just asked a question, and I
25 apologize if I don't get it exactly right. If you need it

1 read back, we can ask that it be read back. I'll try to
2 capture the gist of it. Do you guys use that word, gist?

3 A. Yeah, but it's quite general.

4 Q. Okay. The essence of it is what I'm trying to capture.
5 You were asked if you had any reason to believe on -- that
6 whether or not -- strike that -- that you had any reason to
7 believe that when Capital purchased stock on Norfolk's behalf
8 on May 14th, that they knew about the information that had
9 been in Mr. Auerbach's private e-mails or something to that
10 effect? Do you remember that question?

11 A. I do recall that question, yeah.

12 Q. Okay. Fair to say you have no idea one way or the other
13 what information Capital had when they chose to make that
14 purchase on May 14th, correct?

15 A. Sorry. Well, I have no reason -- the answer to the
16 first question is I have no reason to believe that they had
17 the internal Puma e-mail access. But I also don't have full
18 access to the information that they did have in making that
19 decision.

20 Q. Okay. And you do know -- strike that.

21 You also don't know whether or not the information
22 that gets released on May 13th, that if it had been available
23 prior to that to Capital, whether it would have affected
24 their decision to purchase Puma stock; is that fair?

25 A. This is the abstract we're now discussing?

1 Q. Yes, sir.

2 A. No. I have no knowledge as to whether it would have
3 impacted either their decision or the market price had it
4 come out.

5 Q. But what you do know is that the next trading day after
6 the abstract is released, Ms. Drynan recommends buy, and in
7 fact Capital buys more stock on behalf of Norfolk. That's
8 what you do know, correct?

9 A. This is by reference to her notes, yeah.

10 MR. FORGE: Object as to the compound. The first
11 part of it the witness has disclaimed any knowledge of the
12 recommendation.

13 THE COURT: Rephrase.

14 BY MR. CLUBOK:

15 Q. Sir, you do know that on the first trading day after the
16 abstract was released, in fact Capital purchased more Puma
17 stock on behalf of Norfolk? That's something you do know,
18 correct?

19 A. I am aware that purchase was made on the 14th of May.

20 Q. And you also with respect to June 1st don't have --
21 don't know whether or not the information that was revealed
22 on June 1st would have had an impact on purchase decisions
23 made prior to June 1st; is that fair?

24 A. Information revealed on June 1st which wasn't known,
25 would that have had an impact on decisions made prior to that

1 date? I would assume the information that is not available
2 cannot by its nature impact on decisions prior to its
3 availability.

4 Q. And if the information that was revealed at the ASCO
5 conference on June 1st had been revealed earlier, you don't
6 know one way or the other whether it would have impacted
7 Capital's decision to purchase Puma stock, correct?

8 A. In them considering a number of factors, no, I don't
9 know how that factor would have influenced that decision.

10 Q. But you do know that on June 1st, Capital did buy more
11 stock following that ASCO presentation, correct?

12 MR. FORGE: Your Honor, I'm going to object as to
13 vague as to time -- June 1st. He says following the ASCO
14 presentation. That is not clear from the record.

15 THE COURT: Sustained.

16 BY MR. CLUBOK:

17 Q. Do you know whether or not the purchases made on
18 June 1st were before or after the ASCO presentation?

19 A. I do not know that.

20 Q. Okay. Do you know -- have you made any effort to
21 investigate that?

22 A. As I said, the investigation is being conducted by the
23 attorneys. I'm not aware of any evidence of the exact timing
24 of the trade.

25 Q. And you certainly know, though, that trades were made on

1 June 1st and continuing thereafter on behalf of Norfolk,
2 correct?

3 A. I know that trades were made outside of the class period
4 by Capital on behalf of Norfolk.

5 Q. After the ASCO presentation?

6 A. After the class period, which is book-ended by the ASCO
7 presentation, yeah.

8 MR. CLUBOK: Thank you.

9 THE COURT: Thank you.

10 Anything else?

11 MR. FORGE: No, Your Honor. Thank you.

12 THE COURT: All right.

13 MR. CLUBOK: Thank you, Mr. Younger.

14 THE COURT: Thank you. Cheerio.

15 The plaintiff will call its next witness.

16 MR. GRONBORG: Plaintiffs call Dr. Claire Sherman.

17 THE COURT: As Dr. Sherman comes forward, I have
18 reviewed jury instructions, and on the issue of damages,
19 causation, and reliance, I have reconstructed the
20 instructions based on suggestions from both sides, and I
21 would like to hand out this proposal.

22 Ms. Bredahl, I only have one copy, so I need you to
23 make multiple copies and hand it out to the parties to review
24 and comment upon further.

25 Would you please stand right there. Thank you.

Claire Sherman, Plaintiffs' witness, sworn

THE CLERK: If you will please state and spell your first and last name.

THE WITNESS: Claire Sherman, C-l-a-i-r-e, S-h-e-r-m-a-n.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. GRONBORG:

Q. Good morning, Dr. Sherman. We're about to hand out some binders. We'll bring one up for you as well as for the Court.

A. Thank you.

Q. If you don't mind, as that's happening, we can begin.

A. Okay.

Q. Dr. Sherman, were you Puma's director of biostatistics from January of 2013 to November of 2014?

A. Yes. That's correct.

Q. Were you based in Puma's San Francisco offices?

A. South San Francisco.

Q. South San Francisco. Thank you.

And as the director of biostatistics at Puma, were you involved in the ExteNET trial?

A. Yes, I was.

Q. What was your role in that trial?

A. I was the lead biostatistician for that trial.

1 Q. Can you tell us briefly what that means?

2 A. I was in charge of managing the analyses and the
3 programming for that trial.

4 Q. You've previously testified under oath about Puma and
5 the ExteNET trial; is that right?

6 A. Yes.

7 Q. Twice in this case and once in another matter; is that
8 correct?

9 A. That's correct.

10 Q. And were you represented by lawyers from
11 Latham & Watkins on each of those occasions?

12 A. Yes, I was.

13 Q. Did Puma pay for those attorneys to represent you?

14 A. As far as I know, yes.

15 Q. And you understood at the time that they were the same
16 lawyers that were defending Puma and Alan Auerbach in this
17 case; is that right?

18 A. Yes.

19 Q. Did they ever offer to get you your own independent
20 attorney?

21 A. No.

22 Q. Let's, if you don't mind, turn back to 2014 and the work
23 on the ExteNET trial. Were you involved in the topline
24 analysis of the efficacy and safety results?

25 A. I was.

1 Q. Can you briefly just tell us what your role was with
2 respect to those?

3 A. I did the programming and analyses for all of the
4 topline analyses for the ExteNET trial.

5 Q. And prior to the formal analysis of those topline
6 results, did the ExteNET trial data have to be cleaned?

7 A. Yes.

8 Q. And just very briefly, what does the process of cleaning
9 data mean?

10 A. The process of cleaning data, basically we go through
11 the data and the data management team looks for
12 inconsistencies. Those inconsistencies are then queried in
13 the electronic-captured database. Those are then addressed
14 by the staff at the investigational site.

15 They correct the inconsistencies. Or if those
16 inconsistencies exist in the electronic medical record, data
17 management notes that those inconsistencies are in the
18 electronic medical records and that they're irreconcilable.

19 Q. In early July 2014 was the ExteNET trial database
20 soft-locked?

21 A. Yes.

22 Q. And this cleaning process, was that done before the
23 soft-lock took place?

24 A. Yes, it was.

25 Q. How much time did you spend cleaning the data before it

1 was soft-locked?

2 A. A considerable amount of time.

3 Q. Approximately how many months did that go on?

4 A. I believe the last patient, last visit for the study
5 occurred sometime in October, maybe November, and then
6 through July.

7 Q. Is that October of 2013 to July of 2014?

8 A. Yes.

9 Q. And was it just you doing this work?

10 A. No. It was a team effort, clinical operations and
11 biometrics.

12 Q. And was the soft-lock of the data, in your opinion was
13 that an important step in the life of the trial?

14 A. Absolutely.

15 Q. Why is that?

16 A. That was going to be the essential readout for the
17 two-year data for potential licensing.

18 Q. Was that the first time that you were able to see which
19 patients were on neratinib and which were on a placebo?

20 A. Once the database was locked through our standard
21 operating procedure, we then provided our standard operating
22 procedure to the clinical research organization. They went
23 through their procedures for unblinding. At that point when
24 their procedures were completed, they sent us the
25 randomization schedule.

1 Q. How many people were involved at Puma in the cleaning of
2 this data?

3 A. Quite a few. So it involved clinical operations team,
4 data management, and clinical science, and people in stats.

5 Q. It was a big project; is that right?

6 A. Yes, it was.

7 Q. Originally the ExteNET trial database was supposed to be
8 soft-locked before July of 2014; isn't that right?

9 A. That is correct.

10 Q. Was the aim to get it soft-locked and unblinded in March
11 or April of 2014?

12 A. Yes, it was.

13 Q. The deadline slipped for that?

14 A. Yes, it did.

15 Q. And did you understand that Mr. Auerbach was upset, was
16 angry when those deadlines slipped?

17 A. Yes.

18 Q. Did he let you know that he was angry?

19 A. Yes, he did.

20 Q. How did he do that?

21 A. He wasn't shy about being upset and letting us know.

22 Q. Did he blame you?

23 A. Essentially the team which I was a part of.

24 Q. Did he question your competency?

25 A. I don't believe so.

1 Q. At the time did you want to make sure that the database
2 was clean before it was unlocked?

3 A. Absolutely, because you can't go back.

4 Q. What do you mean, you can't go back?

5 A. It's essentially frowned upon to lock a database and
6 then unlock it and relock it. So it's better to get your
7 ducks in a row and then lock it once and not have to return
8 to it.

9 Q. At some point did you understand that it was absolutely
10 critical to get that database locked -- excuse me,
11 soft-locked by the third quarter of the year?

12 A. I don't think there was any predetermined deadline. I
13 think it was just the question of why it was taking so long
14 to get that work done.

15 Q. Do you recall your testimony in the depositions in this
16 case?

17 A. I'm pretty sure I'm consistent on that.

18 Q. Okay. Do you recall testifying whether or not it was
19 absolutely critical to have the database soft-locked by the
20 third quarter of 2015?

21 A. Well, I know Alan wanted it done by then.

22 Q. What was your understanding of why it was critical and
23 needed to have the database soft-locked by that time?

24 A. My understanding was that there some impatience in how
25 long it took from last patient, last visit, the fall of the

1 previous year to essentially now the summer.

2 Q. Did you understand it had anything to do with funding
3 for Puma?

4 A. No.

5 Q. Well, if I can have you turn to -- there's a transcript.
6 If I can have you turn to page 134 of your deposition
7 transcript, starting at line 20.

8 MR. GRONBORG: If we can play the clip, 134, 20, to
9 135, 1.

10 (Portion of videotaped deposition played)

11 BY MR. GRONBORG:

12 Q. Do you believe that testimony was honest?

13 A. Yeah. You asked me if Alan had basically told me that.
14 So he hadn't --

15 Q. I wasn't going to ask you about what somebody told you.

16 MS. SMITH: Your Honor, can the witness finish her
17 answer?

18 THE COURT: Were you finished with your answer?

19 THE WITNESS: So Alan never told our team it had
20 directly to do with funding. Normally speaking, when you
21 have deliverables that become protracted and there's an
22 understanding that these deliverables should have been done,
23 then you have to explain to investors and whatnot what the
24 delays are.

25

1 BY MR. GRONBORG:

2 Q. But at the time it was your understanding that it needed
3 to be done in order to have funding for Puma; is that right?

4 A. In terms of how the industry works, yes.

5 Q. After the ExteNET trial database was soft-locked, was
6 access to the unblinded information strictly limited within
7 Puma.

8 A. Yes, it was. Essentially a closed system was devised
9 for the randomization schedule.

10 Q. And very briefly, what does that mean?

11 A. So the snapshot for the database was readily available
12 to the biometrics team. The only thing that was unavailable
13 was the randomization schedule which provided information
14 regarding which patients in the trial were either randomized
15 to the neratinib arm or the placebo arm.

16 Q. So without that randomization key, with just having the
17 snapshot, you wouldn't be able to know which patients had
18 been on the drug or which ones were on the placebo; is that
19 right?

20 A. Not with absolute certainty.

21 Q. Who within Puma had access to the randomization key?

22 A. Only me.

23 Q. And this was -- we're talking the period of July 2014.
24 Are you the only person who had access to the randomization
25 key?

1 A. Yes.

2 Q. Why is that?

3 A. I was the only statistician that was unblinded.

4 Q. So is it right that at Puma you were the only
5 statistician who had access to the full unblinded database?

6 A. Well, when you say unblinded database, people had access
7 to the data, but they didn't know the allocation of patients.
8 So people in the company would have the data snapshot, but
9 they wouldn't be able to analyze the data with certainty
10 knowing who was allocated to which treatment group.

11 Q. Was there a secure computer system that was used to
12 house the unblinded data?

13 A. Yes.

14 Q. And where was that secure computer system?

15 A. That was in the south San Francisco office in a locked
16 office.

17 Q. Who had access to that office in July of 2014?

18 A. Only I did.

19 Q. And in July of 2014 did you do your analyses of the data
20 from that locked office?

21 A. Yes.

22 Q. Did you do all of your analyses of the data on the
23 secure system?

24 A. That was the only way to do the analyses. The system
25 was set up so that the computer was networked to a singular

1 Ethernet cabling system that went to some service provider
2 where it was completely walled off from the other data for
3 Puma.

4 Q. Could you transfer analyses out from the secure system
5 to other people at Puma?

6 A. Through a process.

7 Q. What was that process?

8 A. So the system was set up where we used a secure sort of
9 mailing system called Excelion where Excelion would log in
10 everything that went into the secure system and everything
11 that went out.

12 Q. So this Excelion system, was that the only way that you
13 could get analyses from the secure computer in the locked
14 room in San Francisco to other people at Puma?

15 A. Yes.

16 Q. And did the Excelion track what materials you were
17 sending out from the secure system?

18 A. It would track the files that were sent in and out of
19 the system.

20 Q. If I could have you turn to Exhibit 552.

21 A. (Witness complies.)

22 Q. Have you seen this document before?

23 A. I have.

24 Q. And do you understand it's a document that was created
25 through the Excelion system?

1 A. Yes.

2 Q. And the comments on the far right side of the document,
3 are those comments that you made?

4 A. Yes, I did.

5 MR. GRONBORG: We would move to have Exhibit 552
6 admitted into evidence.

7 MS. SMITH: We object, Your Honor. Authenticity,
8 901.

9 THE COURT: Response on authenticity?

10 MR. GRONBORG: She's identified it and --

11 THE COURT: You mean authenticity? You mean
12 foundation?

13 MS. SMITH: Yes, Your Honor. Foundation and
14 authenticity.

15 THE COURT: Okay. Just a moment.

16 Sustained as developed so far.

17 BY MR. GRONBORG:

18 Q. You said you have seen this document before; is that
19 right?

20 A. Yes.

21 Q. You understand that this is a chart or a listing from
22 the Excelion system?

23 A. Yes.

24 Q. Do you have an understanding of how you generate a chart
25 like this?

1 A. I don't in the sense of I did not generate this listing.

2 THE COURT: Let me ask. I'd like to take a look at
3 the document. I have this rather thick binder. Oops, that's
4 the wrong binder. Wait a minute.

5 MR. GRONBORG: It would either be in the witness
6 binder or in one of the large binders as 552.

7 THE COURT: I have it in this binder. Let me just
8 look at it for a moment.

9 When you said the comments on the right-hand side
10 are comments she made, those are the small typewritten
11 comments on the far right-hand side?

12 MR. GRONBORG: Correct, Your Honor, the column
13 titled comments.

14 THE COURT: The objections are overruled as stated.
15 Next question.

16 MR. GRONBORG: We would move to have 552 admitted.

17 THE COURT: I think you did. I think there were
18 objections. I overruled them. 552 is admitted.

19 **(Exhibit 552 received)**

20 BY MR. GRONBORG:

21 Q. We're referring to this as the Excelion log. Is that
22 how you understand what it's called?

23 A. Yes.

24 Q. And again, the columns on the right-hand side, the
25 comments on the far right-hand side, those would be comments

1 that you would make?

2 A. Yes, they were.

3 Q. There's a sender column on the left side. That would
4 identify sent the e-mail. In this case it's all your e-mail
5 address; is that right?

6 A. Yes, they are.

7 Q. The date and time, you understand those would be the
8 date and time that you sent it to one of the recipients?

9 A. It's a little more complicated than that. There's a
10 couple things you have to look at. One of the things is the
11 column for the IP address.

12 So when the system was first instituted, I had to
13 get files into the system, meaning the programs that had been
14 written to do the analyses. So when you look at the IP
15 address, some of those were sent from my -- essentially my
16 work office computer into the system, and then, you know,
17 through e-mail.

18 I then saved them and put them on the system. In
19 some cases things were sent out of the system for, say, for
20 senior management to look at or for me to get and then
21 further disseminate to senior management, because the closed
22 system was primarily set up to do analyses and not
23 essentially for document preparation and things like that.

24 Q. Back to that comment column, though, those would be your
25 comments identifying what it was that was being sent out of

1 the system?

2 A. That's correct.

3 Q. If I can have you turn to Exhibit 123. It's already
4 been admitted.

5 A. (Witness complies.)

6 Q. Do you see it's a July 17th, 2014, e-mail from Alvin
7 Wong to you among others with an attachment titled the
8 topline efficacy analyses for the ExteNET trial?

9 Do you see that?

10 A. Yes, I do.

11 Q. Were you involved in preparing the attachment to that
12 e-mail?

13 A. Yes, I was.

14 Q. What was your involvement?

15 A. I essentially worked on all of the statistical analyses,
16 prepared tables and graphics, then put them in a document;
17 and then worked with Alvin Wong to create a report for senior
18 management.

19 Q. So at the time you were preparing it, did you understand
20 that this document was going to go to Mr. Auerbach and senior
21 management at Puma?

22 A. Absolutely.

23 Q. So you made every effort you could to ensure it didn't
24 have any errors in it?

25 A. That's right.

1 Q. And how did you decide which information to include in
2 this topline efficacy analysis?

3 A. All of the information that is included in the topline
4 analyses were prespecified in the statistical analysis plan.

5 Q. So this was supposed to include everything that was a
6 topline analysis?

7 A. The primary and the secondary efficacy end points. It
8 didn't include the exploratories.

9 Q. If you could turn to page 6 of the document. It's
10 actually labeled page 8 of 35. The slide is number 6.

11 A. Okay.

12 Q. Do you see it's titled summary of topline efficacy?

13 A. Uh-huh.

14 THE COURT: I'm sorry.

15 THE WITNESS: Yes.

16 THE COURT: Thank you. It's easier to record.

17 BY MR. GRONBORG:

18 Q. And the top line of the top chart, does that identify
19 the DFS rates for the primary end point to the ExteNET trial?

20 A. Yes, it does.

21 Q. That was 91.6 percent for the placebo; is that right?

22 A. That's correct.

23 Q. And 93.9 percent for neratinib; is that right?

24 A. That's right.

25 Q. And then below that there are a few results for

1 secondary end points, correct?

2 A. Correct.

3 Q. Do you see any results there where the placebo DFS rate
4 is 86 percent?

5 A. No.

6 Q. Do you see any results there where the neratinib DFS
7 rate is 90 percent or 91 percent?

8 A. No.

9 Q. If I could have you turn to page 10 of the chart. It's
10 page 12 of 35 of the exhibit.

11 A. (Witness complies.)

12 Q. Do you see -- are those the Kaplan-Meier curves for the
13 primary end point of the ExteNET trial?

14 A. Yes, that's correct.

15 Q. Who prepared this?

16 A. I did.

17 Q. You prepared those on the secure system?

18 A. Yes, I did.

19 Q. So those would have had to have been transferred out
20 from the secure system?

21 A. That's correct.

22 Q. Those Kaplan-Meier curves, did they go out beyond
23 two years, 28 days?

24 A. No. They're exactly at two years and 28 days.

25 Q. And are you aware of any Kaplan-Meier curves in

1 Exhibit 123, the topline efficacy analyses, that go out
2 beyond two years and 28 days?

3 A. No.

4 Q. Did you listen to Alan Auerbach's July 22nd, 2014,
5 public call with investors about the ExteNET trial?

6 A. No.

7 Q. Have you ever seen a transcript of that call?

8 A. Yes, I have.

9 Q. Did you tell Alan Auerbach that he should tell investors
10 that the placebo DFS rate was 86 percent?

11 A. No.

12 Q. Did you tell Alan Auerbach that he should tell investors
13 that the neratinib DFS rate was 90 to 91 percent?

14 A. No.

15 Q. Did you tell him that he should suggest to investors
16 that the absolute difference in the DFS rates for the primary
17 end point of the ExteNET trial was four to five percent?

18 MS. SMITH: Objection. Lacks foundation.

19 THE COURT: Wasn't the question, did he tell you?

20 MS. SMITH: Yes, Your Honor. Withdrawn.

21 THE COURT: Well, no. No.

22 MR. GRONBORG: I believe it was, did you tell him?

23 THE COURT: Yeah. The objection is overruled. I'm
24 sorry. It is -- just to be clear, the question is: Did you
25 tell him that he should suggest to investors that the

1 absolute difference in the DFS rate for the primary end point
2 of the ExteNET trial was four to five percent?

3 The objection is overruled. Go ahead.

4 THE WITNESS: No.

5 BY MR. GRONBORG:

6 Q. At any time before July 22nd, 2014, as the lead
7 biostatistician, did you ever tell Mr. Auerbach that the
8 absolute difference in the DFS rates for the primary end
9 point in the ExteNET trial was four to five percent?

10 A. No.

11 Q. At any time before July 22nd, 2014, did you ever tell
12 Mr. Auerbach that the placebo DFS rate for the primary end
13 point of the trial was 86 percent?

14 A. No.

15 Q. At any time before July 22nd, 2014, did you ever tell
16 Mr. Auerbach that the Kaplan-Meier curves were separating by
17 a full one percent a year?

18 A. No.

19 Q. At any time before July 22nd, 2014, did you ever tell
20 Mr. Auerbach that the Kaplan-Meier curves were going from six
21 percent to seven percent to eight percent absolute
22 difference?

23 A. No, but I didn't communicate with Alan anything except
24 what was in this report.

25 Q. Let's turn to Exhibit 124.

1 A. (Witness complies.)

2 Q. Have you seen Exhibit 124 before, the July 18th, 2014,
3 e-mail from Alvin Wong?

4 A. Yes.

5 Q. And you worked closely with -- it's Dr. Wong; is that
6 right?

7 A. Yes.

8 Q. You worked closely with Dr. Wong at this time?

9 A. Yes, I did.

10 Q. You guys were in the same office together?

11 A. We were next-door neighbors in the office.

12 Q. Did he have access to the secure room?

13 A. No, but he would come into that room if we needed to
14 discuss things regarding the ExteNET trial.

15 Q. Did he do his own analyses on that secure system?

16 A. No. I was the only person that had access to the system
17 and the data on the system.

18 Q. And the summary of the safety results that are attached
19 to this Exhibit 124, is that something that was transferred
20 from you on the secure system?

21 A. No, it wasn't.

22 Q. Okay. How about the tables that are also -- the tables
23 that are attached to Exhibit 124, are those tables that were
24 transferred through the Excelion system by you?

25 A. Right. So those tables were produced by the contract

1 research organization Rho, and any deliverables that Rho was
2 contracted to perform were sent to me because I was the
3 unblinded statistician.

4 Q. And the question was: Were those tables transferred by
5 you through the secure system?

6 A. Yes, they were.

7 Q. So they would appear on the Excelion log; is that right?

8 A. That's correct.

9 Q. And you transferred them to Dr. Wong?

10 A. And perhaps senior management.

11 Q. And were you aware that Dr. Wong was providing those
12 tables to senior management at Puma?

13 A. Yes.

14 Q. If you had thought that any of the topline safety
15 results were inaccurate, would you have let Dr. Wong send
16 them to Puma senior management?

17 A. Of course not.

18 Q. And as of July 2014, did you have any reason to believe
19 that any of the topline safety results were wrong?

20 A. We hadn't gone through full validation of the safety.
21 We had done some cursory checks, but that was -- that was it.

22 Q. The safety results have been validated by Rho; is that
23 right?

24 A. Rho does their own validation, and then we do an
25 independent validation in-house.

1 Q. Had the safety results been validated by Rho prior to
2 July 22nd, 2014?

3 A. Yes. They're all validated prior to Puma receiving
4 them.

5 Q. Did you have any reason to believe that any of the
6 topline safety results were inaccurate when you sent them to
7 Dr. Wong?

8 A. Sometimes there's misunderstandings with regard to the
9 statistical analysis plan and whatnot. So that's why we do a
10 check in-house.

11 Q. All the cleaning that you had done on the data before
12 July 2014, does that include the safety data?

13 A. Yes, it does.

14 Q. And prior to July 22nd, 2014, did you tell any Puma
15 executive that you thought that there were errors in the
16 safety tables?

17 A. It -- it's not an issue regarding the data. It's
18 regarding interpretation of the statistical analysis plan and
19 some of the instructions in that. So it's not --

20 Q. I appreciate that. Very specific question if you don't
21 mind. Did you tell any of the executives at Puma before
22 July 22nd, 2014, that you thought there were any errors with
23 any of the topline safety results?

24 A. No.

25 Q. And prior to July 22nd, 2014, did you tell any Puma

1 executive that you were not confident in the accuracy of the
2 safety results?

3 A. No.

4 Q. And you're one of the recipients of Dr. Wong's
5 July 18th, 2014, e-mail; is that right?

6 A. That's correct.

7 Q. And did you ever reply to all and say that there was
8 anything incorrect about Dr. Wong's e-mail?

9 A. No, I didn't.

10 Q. Prior to July 22nd, 2014, did you ever tell Alan
11 Auerbach that you expected the grade-three diarrhea rate in
12 the ExteNET trial to be 29 to 30 percent?

13 A. No.

14 Q. Are you aware of what the grade-three diarrhea rate in
15 the ExteNET trial is?

16 A. For which arm?

17 Q. The neratinib arm.

18 A. I believe it was around 39 percent.

19 Q. Does 39.9 percent sound right?

20 A. I don't -- I don't remember exactly.

21 Q. I think it's the sixth slide, page 9 of 272. You can
22 see it in front of you?

23 A. Right.

24 Q. 39.9 percent grade-three diarrhea. Does that sound
25 right?

1 A. It's there.

2 Q. At any point prior to July 22nd, 2014, did you ever tell
3 Mr. Auerbach that the grade-three diarrhea rate was anything
4 other than 39.9 percent?

5 A. No.

6 Q. At any point in time before you left the company, did
7 you ever tell Mr. Auerbach or anyone else that the
8 grade-three diarrhea rate was anything other than
9 39.9 percent?

10 A. Before I left the company, I had been working on the
11 validation of the safety tables, and it was determined that
12 there were errors. The errors were in some sense fairly
13 minor with regard to our definition for treatment emergent
14 adverse events. And then when that was sorted out, all of
15 the tables were reworked.

16 Q. And what was the grade-three diarrhea rate for the
17 neratinib arm?

18 A. It was roughly the same. It was similar.

19 Q. It was exactly the same, right?

20 A. I don't remember.

21 Q. Do you remember ever telling anyone at Puma that the
22 grade-three diarrhea rate was anything other than
23 39.9 percent?

24 A. No.

25 Q. I'd like to have you turn to the next page, also titled

1 diarrhea.

2 A. Okay.

3 Q. Does that accurately reflect that the treatment
4 discontinuation rate due to diarrhea was 16.8 percent for the
5 neratinib arm?

6 A. Those were the tables run by Rho. So, yes.

7 Q. Prior to July 22nd, 2014, do you recall telling
8 Mr. Auerbach that the discontinuation rate due to diarrhea
9 was anything other than 16.8 percent?

10 A. No.

11 Q. Did you tell Mr. Auerbach that the discontinuation rate
12 due to adverse events was only five to ten percent?

13 A. No.

14 Q. Yet at any time before you left Puma, did you ever tell
15 any Puma executive that the discontinuation rate due to
16 diarrhea was anything other than 16.8 percent?

17 A. I would've gone about to ensure that it was validated,
18 but I don't recall telling them anything different.

19 Q. Well, this number had been validated by Rho; isn't that
20 right?

21 A. Yes, it had.

22 Q. If I could ask you to turn to the last page of the
23 entire exhibit.

24 A. (Witness complies.)

25 Q. Clinical investigation of neratinib protocol. Brief

1 summary of adverse events. Do you see that?

2 A. Yes.

3 Q. And do I have it right that that identifies that the
4 rate of adverse events leading to discontinuation of
5 neratinib is 27.6 percent?

6 A. Yes. That's what it says.

7 Q. Did you ever tell Mr. Auerbach that the adverse events
8 leading to discontinuation was anything other than
9 27.6 percent?

10 A. No.

11 Q. Did you ever tell him it was five to ten percent?

12 A. No.

13 Q. Now, the ExteNET database you were working on in July of
14 2014, did it have any results for people who had been on the
15 study for longer than two years and 28 days?

16 A. Yes, it had.

17 Q. Did that include some people who had had a disease
18 recurrence beyond two years and 28 days?

19 A. It had all of the information recorded through the
20 snapshot date.

21 Q. Do you recall how many people -- the database, how many
22 people in that database had a disease recurrence after two
23 years and 28 days?

24 A. Wow. No. I would have to have a pretty good memory for
25 that.

1 Q. Prior to July 22nd, 2014, who at Puma would have done
2 the programming necessary to try and derive Kaplan-Meier
3 curves that included events after two years and 28 days?

4 A. All that programming was done prior to the topline
5 readout, so there's no additional programming required for
6 that.

7 Q. When you say for that, you mean for every exploratory
8 group, there's no additional programming needed?

9 A. Well, no. There's some, but -- so for the topline, it
10 was only the part A analyses according to the statistical
11 analysis plan. So essentially all data after two years and
12 28 days was effectively expunged because it wasn't going to
13 be used in the analyses.

14 Q. So programming wouldn't have been done to include this
15 expunged data; is that right?

16 A. That's right.

17 Q. If somebody was going to do programming with this
18 expunged data in July of 2014, would it have been you?

19 A. Yes.

20 Q. Now, do you have any firsthand knowledge of any analysis
21 of the Kaplan-Meier curves being done for this expunged data?

22 A. Well, the data was always available. The question is if
23 somebody had made that request.

24 Q. My question is: Do you have any firsthand knowledge of
25 that being done before July 22nd, 2014?

1 A. I don't recall.

2 Q. If I could have you turn to your deposition, page 304,
3 line --

4 THE COURT: Before you do that, let me ask: How
5 much longer with this witness?

6 MR. GRONBORG: Less than ten minutes.

7 THE COURT: Will there be examination from the
8 defense?

9 MS. SMITH: Yes, Your Honor.

10 THE COURT: We'll take our break now and we'll see
11 you all at 1:30. Thank you.

12 THE CLERK: All rise.

13 (Recess taken from 11:59 a.m. until 1:30 p.m.)

14 THE CLERK: All rise.

15 (Open court - jury present)

16 THE COURT: Welcome back, folks.

17 You may continue the examination.

18 BY MR. GRONBORG:

19 Q. Dr. Sherman, I'd like to pick up with where we left off
20 right before lunch. The pending question was: Do you,
21 Puma's former lead biostatistician, have any firsthand
22 knowledge of any analysis being done prior to July 22nd,
23 2014, of Kaplan-Meier curves that went beyond two years and
24 28 days?

25 A. I don't remember.

1 Q. That's fine if you don't remember. My question is
2 whether you personally have any firsthand knowledge of that
3 being done.

4 A. I guess I don't really understand the question. In
5 terms of the analyses were done four and a half years ago,
6 and I haven't been employed with Puma for more than four
7 years.

8 So my recollection is that I don't -- I mean, if
9 you had asked me a week after I had done the analyses, I
10 could tell you with absolute certainty. But certainly not
11 today.

12 Q. Was your recollection better when you were deposed?

13 A. No -- I mean, what I had when I was deposed was e-mails,
14 in terms of e-mails that were sent back and forth between
15 senior management and the team. And there was nothing in
16 those e-mails with regard to doing analyses with those
17 three-year curves or with regard to the Excelion log, having
18 sent those things out.

19 Q. Let's look at your testimony. If you would turn to page
20 304 of your transcript, starting at line 23. If it's easier,
21 we can play it. It's 304, 23, through 305, 2.

22 (Portion of videotaped deposition played)

23 BY MR. GRONBORG:

24 Q. You believe that testimony was truthful?

25 A. Yes.

1 Q. Do you have any evidence to suggest that there were
2 Kaplan-Meier curves done using that expunged data prior to
3 July 22nd, 2014?

4 A. What I can say is that when we were putting together the
5 -- when we were trying to validate the computer code to make
6 sure that the analyses would be correct with Rho, we did not
7 expunge the data and ran the analyses out to the last
8 assessment that was done. But that was not based upon the
9 actual randomization key. It was based upon a fake
10 randomization key that we had made up.

11 Q. Okay. And we want to focus on the actual data. So once
12 you had unblinded it and had the actual randomization key, do
13 you have any evidence that analysis, part A, beyond two years
14 and 28 days was done prior to July 22nd, 2014?

15 A. No.

16 Q. If you could turn back to Exhibit 552. That's the
17 Excelion log. And those are your comments on the right-hand
18 side?

19 A. Uh-huh.

20 Q. Do you see any indication anywhere in those comments
21 that you sent from the secure system any Kaplan-Meier curves
22 that would have gone out beyond part A, beyond two years and
23 28 days?

24 A. No.

25 Q. And in terms of programming for the Kaplan-Meier curves,

1 is it right that you would've been the person who would've
2 been responsible for any of that programming?

3 A. Yes.

4 Q. And would you have done that programming in accordance
5 with Puma's statistical analysis plan?

6 A. That's correct.

7 Q. Including the censoring methodology that was in Puma's
8 statistical analysis plan?

9 A. I guess I don't understand the question. So the
10 sensitivity analyses were not part of topline. That was to
11 look at the robustness of the topline results.

12 Q. I appreciate that, but in terms of the programming for
13 the Kaplan-Meier curves, did you use the plan that was set
14 forth in the SAP, the statistical analysis plan?

15 A. Yes.

16 Q. You didn't alter that programming to the best of your
17 knowledge before July 22nd?

18 A. I did not. Nope.

19 Q. And do you see any record anywhere in any of the
20 materials you've seen that you would have altered the
21 programming for the Kaplan-Meier curves?

22 A. No.

23 Q. If I could have you turn to Exhibit 1078.

24 A. (Witness complies.)

25 Q. Exhibit 1078, is that an e-mail from you to Dr. Alvin

1 Wong on August 4th, 2014, as well as Judith Bebchuk?

2 A. Yes.

3 MR. GRONBORG: We move to have 1078 moved into
4 evidence.

5 MS. SMITH: No objection.

6 THE COURT: 1078 is admitted.

7 **(Exhibit 1078 received.)**

8 BY MR. GRONBORG:

9 Q. Does this reflect that as of August 4th, 2014, you were
10 working on the sensitivity analysis for two or more missed
11 visits?

12 A. Yes.

13 Q. Does that indicate that that analysis had not been
14 completed prior to August 4th, 2014?

15 A. That's correct.

16 Q. And do you know when you were able to complete that
17 analysis?

18 A. I'm not sure, but probably shortly thereafter when Judy
19 provided me with confirmation of those subjects that had two
20 or more prior visits. So the sensitivity analyses that were
21 conducted per the SAP were never executed by Rho. So any
22 analyses with regard to sensitivity would have been validated
23 in-house by the folks at Puma.

24 Q. And you would not have been able to do that analysis
25 until you had confirmation of the patients who had two or

1 more missed visits; is that right?

2 A. Well, what I wanted to make sure of, if somebody else
3 was doing the programming, that the number of subjects that
4 had two or more missed visits, that we matched on that. And
5 if, in fact, we did match on that, then the analyses would be
6 correct.

7 Q. And as of August 4th, 2014, you didn't know whether or
8 not there was a match on that; is that right?

9 A. That's right.

10 Q. And actually if you could turn to the Excelion log
11 again, Exhibit 552.

12 A. (Witness complies.)

13 Q. Do you see any indication in your comment there that you
14 had sent out of the secure system any sensitivity analysis
15 with respect to patients who had missed two or more visits?

16 A. No. As I had said earlier, this was strictly the
17 topline analysis results as per the SAP.

18 Q. And that wouldn't include the sensitivity analysis?

19 A. That's correct.

20 Q. Let me have you turn to Exhibit 1079.

21 A. (Witness complies.)

22 Q. This is another e-mail chain between yourself, Dr. Wong,
23 and Judith Bebchuk?

24 A. Uh-huh.

25 MR. GRONBORG: We move to have Exhibit 1079

1 admitted into evidence.

2 MS. SMITH: No objection.

3 THE COURT: 1079 is admitted.

4 **(Exhibit 1079 received.)**

5 BY MR. GRONBORG:

6 Q. Turn to page 5 of 27. Do you see there's an attachment
7 to the e-mail chain?

8 A. Okay.

9 Q. What is this document?

10 A. This was a document of the analysis put together per the
11 statistical analysis plan that was being shared with a
12 statistical consultant named Tom Fleming.

13 Q. And was this being prepared after July 22nd, 2014?

14 A. Well, the date says July 31st.

15 Q. If I can have you turn to page 24 of 27.

16 A. (Witness complies.)

17 Q. Do you see the title of it is sensitivity analyses?

18 A. Uh-huh.

19 Q. And it says table 7-1, DFS censoring subjects if event
20 was reported after two missed visits. Do you see that?

21 A. Yes.

22 Q. And it says insert table of results?

23 A. Uh-huh.

24 Q. Does that indicate to you that that table had not been
25 completed in time to put it in as of August 4th or 5th when

1 you were sending this around?

2 A. It may have been completed, but it might not have been
3 validated.

4 Q. Do you have any firsthand knowledge about whether or not
5 it had been completed by August 5th, 2014?

6 A. I don't think there's any way I would remember.

7 Q. Actually, before we go on, if you could just turn to the
8 last page of the exhibit. It's 8, comparison to other
9 trials. Do you see that?

10 A. Yes, I do.

11 Q. Is it your understanding that this is a comparison of
12 the results in the ExteNET trial with other trials involving
13 Herceptin?

14 A. Yes.

15 Q. Do you see the BETH trial anywhere on that chart?

16 A. Can you repeat that?

17 Q. Do you see the BETH, B-E-T-H, the BETH trial anywhere on
18 that chart?

19 A. No, I don't.

20 Q. Let me have you turn to Exhibit 1080. It's an
21 August 7th e-mail from you and to you.

22 MR. GRONBORG: We'd move to have Exhibit 1080
23 admitted into evidence.

24 THE COURT: Any objection?

25 MS. SMITH: No objection.

1 BY MR. GRONBORG:

2 Q. Is this an e-mail you're sending yourself?

3 A. Yes.

4 THE COURT: Let me ask a question. Do you have
5 more exhibits between 1079 and 1082?

6 MR. GRONBORG: This is 1080.

7 THE COURT: Do you have any other exhibits between
8 1079 and 1082?

9 MR. GRONBORG: One.

10 THE COURT: You see, it just -- you have no idea
11 how complicated it gets. Now I have to erase and redo
12 because this is not on the list originally given to me, which
13 is the list I use.

14 MR. GRONBORG: I understand it's on a supplement,
15 which is not convenient. I'm sorry about that.

16 THE COURT: It's not practical, and I wonder why
17 the books don't follow the original instructions the Court
18 gave.

19 All right. We're now at 1080. Without objection,
20 it's admitted.

21 **(Exhibit 1080 received.)**

22 BY MR. GRONBORG:

23 Q. Dr. Sherman, are these files that you are transferring
24 to yourself through the Excelion system?

25 A. Yes.

1 Q. Okay. And the very first file that you're transferring
2 on August 7, 2014, is that the sensitivity analysis for
3 people who had two or more missed visits?

4 A. It would appear so from the title.

5 Q. And are you aware of any evidence that show that you had
6 completed and transferred that analysis at any time prior to
7 August 7th, 2014?

8 A. If I was sending it from my office laptop into Excelion,
9 I likely did the programming based on a fake randomization
10 schedule to make sure that the programming was correct. And
11 once the programming was correct, that's when I put it into
12 the closed system to run on the randomization schedule, the
13 actual randomization schedule.

14 Q. This analysis would have been with the actual
15 randomization key in the real data, not the fake one, right?

16 A. But these are the programs that would result in the
17 analyses. The reality is I spent most of my working days in
18 the office working on the data because I had to be in that
19 office in order to do any of those analyses.

20 And then sort of to get a reprieve from the office,
21 I would do the programming at home on my regular laptop not
22 with the actual randomization schedule to do this other
23 programming work so I wasn't in the office for an ungodly
24 number of hours.

25 Q. Okay. And the programming would have to be done before

1 you could do the analysis, correct?

2 A. That's correct.

3 Q. If I could have you turn now to Exhibit 1081.

4 A. (Witness complies.)

5 THE COURT: Any objection to its admission?

6 MS. SMITH: No objection.

7 THE COURT: It's admitted.

8 **(Exhibit 1081 received.)**

9 BY MR. GRONBORG:

10 Q. Exhibit 1081, do you see it's an e-mail from you to
11 Alvin Wong?

12 A. Uh-huh.

13 THE COURT: You need a yes or no, please.

14 THE WITNESS: Yes. Sorry.

15 BY MR. GRONBORG:

16 Q. And does that reflect that on July 30th, 2014, you were
17 telling Mr. Wong: I can easily put together the additional
18 one for the centrally confirmed HER2 population as well as
19 any other subpopulations we would want to examine?

20 A. Yes.

21 Q. All right. And what was it you were putting together?

22 A. So we have the analyses of -- in this statistical
23 analysis plan of the primary and secondary end points. Then
24 we look at subsets.

25 So in this particular e-mail we have the ITT

1 population, which is everybody that was randomized; the
2 amended intent-to-treat population, which I believe was
3 randomized and treated, but don't hold me to that. I need to
4 look at the SAP.

5 Then also the subset of those subjects that had
6 labs centrally confirmed HER2 data. So those are subsets of
7 the intent-to-treat population. Then those were specified in
8 the statistical analysis plan as additional analyses that
9 would be done. Then we do ad hoc analyses on other
10 subpopulations that are not specified in the statistical
11 analysis plan that come up out of interest depending on the
12 results from these analyses.

13 Q. Okay. And were you communicating with Dr. Wong about
14 doing those analyses at the end of July 2014?

15 A. Yes.

16 Q. They hadn't been done as of July 30th, 2014; right?

17 A. Some of them may have been done. I just don't recall
18 which. The idea is they might have been done sort of
19 quickly. I might have communicated something to Alvin, but a
20 report hadn't been written.

21 Q. And if you go to Exhibit 552 again, the Excelion log, do
22 you see anything in that exhibit identifying that any
23 analysis of the centrally confirmed population was sent out
24 of the secure system between July 3rd, 2014, and July 24th,
25 2014?

1 A. No.

2 Q. And do you recall that there was actually a lot of
3 missing data with respect to that centrally confirmed
4 subgroup?

5 A. I don't remember the percentage of subjects that had
6 central confirmation.

7 Q. Were you involved at all in trying to collect the data
8 for that subgroup?

9 A. When you say collect, it's either in the database or
10 it's not. So, you know, what I have programming to pull
11 those subjects out, yes, when the analysis was done. But I
12 don't recall, given the amount of time that has passed, to
13 know off the top of my head what percentage of the ITT
14 population had central confirmation for HER2.

15 Q. And you don't know what data was available as of
16 July 2014 for that subgroup; is that right?

17 A. Back then I would have, but not today.

18 Q. Okay. You left Puma in November of 2014, correct?

19 A. That's correct.

20 Q. And when you left, did you exercise your stock options?

21 A. I did.

22 Q. And in addition to exercising your options, did you then
23 sell your stock?

24 A. Well, that is exercising your options; is it not?

25 Q. Well, do you understand that when you exercise your

1 options, you get the stock. Then you have the option of
2 whether or not you want to sell it.

3 A. That's right. I was vested for two years.

4 Q. Okay. If I could have you turn to Exhibit 209.

5 MR. GRONBORG: I don't believe there are any
6 objections. We would ask 209 be admitted.

7 MS. SMITH: No objection.

8 THE COURT: 209 is admitted.

9 **(Exhibit 209 received.)**

10 BY MR. GRONBORG:

11 Q. Do you see -- I believe it's 14 lines down --
12 December 1st, 2014?

13 A. Okay.

14 Q. Does that accurately reflect that you sold 18,333 shares
15 at \$218.62 a share?

16 A. Yes.

17 Q. And you -- do you recall what your exercise price was?

18 A. Meaning the price of the options when I started at the
19 company, at Puma?

20 Q. Correct.

21 A. Somewhere around mid 20s.

22 Q. Does \$25 a share sound right?

23 A. Was it exactly \$25? Somewhere around there.

24 Q. And now, were you just selling those shares because you
25 wanted to put Puma Biotechnology behind you?

1 A. Well, I have the -- the way the stock options work, you
2 have 90 days from the point at which you terminate your
3 employment with the company. So you have that period of time
4 to exercise your shares or they revert back to the company.

5 Q. And did you understand you didn't have to sell your
6 shares in those 90 days? You just had to exercise the
7 options?

8 A. I guess I don't understand. When you say exercise them,
9 that does mean selling them.

10 Q. Had someone told you that you had to sell the stock?

11 A. It was you had 90 days to do that, otherwise the
12 company -- basically the stock is returned to the company.

13 Q. And I take it you sold, then, all of the stock that you
14 could?

15 A. What I had within that period, yes.

16 MR. GRONBORG: Thank you.

17 MS. SMITH: Your Honor, may I approach with
18 binders?

19 THE COURT: Yes.

20 Ms. Bredahl, can you assist?

21 **CROSS-EXAMINATION**

22 BY MS. SMITH:

23 Q. Good afternoon, Dr. Sherman.

24 A. Good afternoon.

25 Q. You were asked a few questions about your background,

1 but I'd like to give you a chance to provide the jury with a
2 little bit more information about your professional
3 background.

4 So would you first give the jury a summary of your
5 educational experience?

6 A. I have a bachelor's degree in mathematics from the
7 Pennsylvania State University, a master's degree in
8 biostatistics from the University of California Berkeley, and
9 a doctorate in statistics and applied mathematics from the
10 University of Waterloo in Ontario, Canada.

11 Q. Would you generally describe your work experience before
12 you joined Puma Biotechnology.

13 A. In general I have experience as a statistician I guess
14 for more than 20 years before I joined Puma in the
15 pharmaceutical industry, starting on the east coast in sort
16 of big pharma.

17 And then when I moved to California for graduate
18 school, I worked at Genentech and smaller biotech at that
19 point. Then I also have experience teaching at universities
20 as well as working for the state and federal governments.

21 Q. And how many clinical trials have you been involved with
22 as a biostatistician?

23 A. A lot. Easily more than 75.

24 Q. And how many clinical trials have you worked on since
25 the ExteNET trial?

1 A. I would say at least 20.

2 Q. And what do you do now, Dr. Sherman?

3 A. I still do this work, but I work as a consultant and I
4 spend my time across academia industry and a little bit of
5 grant writing for research for the National Institutes of
6 Health.

7 Q. You were asked a few questions about your relationship
8 with Mr. Auerbach. Would you describe your professional
9 relationship with Mr. Auerbach in your own words.

10 A. Alan was demanding, and he was probably the most
11 hands-on chief executive officer I'd ever worked with. And
12 he was quite involved, and when he was unhappy, he wasn't shy
13 about his unhappiness with things and would sometimes get
14 angry.

15 Q. Did you frequently interact with Mr. Auerbach?

16 A. No. His anger unsettled me, so I generally worked with
17 Alvin Wong, and he was our sort of middle person. Alvin
18 would generally speak directly with Alan, and then Alvin
19 would text me, e-mail me. We would meet to go over the
20 things that, you know, Alan had wanted or senior management
21 had wanted.

22 Q. You mentioned that Mr. Auerbach had been displeased on
23 occasion. Is Mr. Auerbach the only boss that you've ever
24 worked with that has expressed displeasure with you?

25 A. No.

1 Q. Have you had any contact with Mr. Auerbach since you
2 left Puma?

3 A. I said good morning to him today. But other than that,
4 no.

5 Q. Do you have any reason to lie to support Mr. Auerbach in
6 this case?

7 A. No.

8 Q. All right. The plaintiffs' attorney asked you a few
9 questions about your stock sales, and I'd like to ask you a
10 bit more about those.

11 A. Uh-huh.

12 Q. All right. So when you worked at Puma, did you receive
13 stock options as part of your compensation?

14 A. Yes. I believe it -- there were so many shares that
15 vested over a three-year period where you had to be at the
16 company at least a year to become vested, and then I believe
17 vesting continued every month thereafter.

18 Q. In your experience in biotech companies, is it common
19 for employees to receive stock options as a component of
20 their compensation?

21 A. Yes.

22 Q. All right.

23 I believe you mentioned that you exercised your
24 stock options in December of 2014. Why did you do that?

25 A. Basically I had 90 days to exercise, otherwise they

1 reverted back to the company.

2 Q. At the time that you exercised your stock options, did
3 you do that because you thought the ExteNET trial data was
4 bad?

5 A. I know it wasn't, because the readout was in July.

6 Q. And at the time that you exercised your stock options,
7 did you do that because you thought that the Puma stock price
8 would go down when the ExteNET trial data was released?

9 MR. GRONBORG: Objection. Calls for speculation.

10 THE COURT: Rephrase.

11 BY MS. SMITH:

12 Q. When you exercised your stock options, did you
13 anticipate that Puma's stock price would go down in the
14 future when the ExteNET data was made public?

15 A. But it was made public in July.

16 Q. Let me ask it differently. At the time that you
17 exercised your stock options in December of 2014, when the
18 ExteNET -- did you anticipate that when the ExteNET trial
19 data was presented at ASCO, that Puma's stock price would
20 drop?

21 A. No.

22 Q. Does the money that you made from exercising your stock
23 options in Puma have any bearing on your testimony here
24 today?

25 A. No.

1 Q. All right. Let's talk a bit about your analysis of the
2 ExteNET topline results. There's been some talk in this case
3 about the database snapshot, and you spoke about it a little
4 bit here today. I'd like to ask you a few more questions
5 about what exactly that is. Could you explain to the jury
6 what a database snapshot is?

7 A. So data are collected during the course of the trial
8 that are available to the statistician, data managers, and
9 programmers at Puma. During that period of time, during the
10 course of the trial, we look at the data in terms of seeing
11 if it's consistent, making sure that the data is reflective
12 of what's happening during the trial.

13 And if there are inconsistencies or Alvin as the
14 medical monitor for the study believes there is something
15 amiss, questions are put into the database for the
16 investigational site personnel to look at and go back to
17 their electronic medical records to sort through those
18 inconsistencies.

19 So this happens during the entire course of the
20 trial. At that point, during various times during the trial,
21 we take essentially snapshots over time. What we call them
22 are data extracts. So we're constantly extracting the data
23 to clean it, make sure it's representative of what's truly
24 happening during the trial.

25 And then when we get to database lock, everything

1 gets cleaned, sorted, and then we're certain that it is truly
2 representative of what occurred during the trial.

3 Q. Once the database snapshot is locked, does that database
4 ever change?

5 A. No.

6 Q. And from your analysis of part A of the ExteNET trial,
7 did you always use one database snapshot?

8 A. We always used the -- so the snapshots are dated. So
9 for that particular date, if I went back to Puma and pulled
10 the data files for that folder for that date, it would be the
11 exact same data that I used when I was there almost five
12 years ago.

13 Q. And is that database snapshot dated July 7th, 2014?

14 A. Yes.

15 Q. You talked a little bit about a statistical analysis
16 plan. Just briefly could you explain to the jury exactly
17 what a statistical analysis plan is?

18 A. So the idea behind a statistical analysis plan is prior
19 to the company or the statistician knowing which subjects are
20 in which treatment arm, we write a plan as to how we're going
21 to analyze the data.

22 The reason why we do that is if you don't have a
23 plan, you can do all sorts of analyses and then decide to
24 choose which analyses support your claim. But if you
25 prespecified it and don't know the randomization schedule,

1 then you're saying without information about who is in what
2 treatment arm, I'm going to stick by these analyses. Then if
3 they demonstrate that they're significant, it's because they
4 truly are and that, you know, there's a true result there.

5 Whereas, if I did, say, a hundred analyses, I would
6 expect based upon the significance level that we chose for
7 this study five of them would be significant. And then I
8 could say, well, I'm going to only talk about those five and
9 aren't the results wonderful.

10 So here, I'm locked into a plan where if in fact it
11 demonstrates statistical significance, it had nothing to do
12 with me running through, you know, numerous analyses and only
13 picking off the ones that are shown to be significant. So it
14 keeps essentially the clinical trial honest.

15 Q. All right. Let's take a look at the statistical
16 analysis plan for the ExteNET trial here, Exhibit 129, which
17 is already in evidence. There should be a copy in your
18 binder.

19 If you would turn to page 22 of that document. I
20 believe it's Bates ending 610. On page 22 do you see table
21 9.1 or 9-1?

22 A. I do.

23 Q. Okay. What is this table?

24 A. So this table provides a summary of the analyses that
25 are going to be conducted for the ExteNET trial which is

1 broken up into three parts, part A, B, and C.

2 Q. And where is the primary or is the primary end point
3 described in this table?

4 A. It is. It's the very top portion of the table.

5 Q. Which portion?

6 A. The very top, the first row.

7 Q. And does this table also describe the analysis methods
8 for the primary end point of the study?

9 A. Yes, it does.

10 Q. And where are the analysis methods specified?

11 A. They're specified within the table. So you'll see time
12 to event methods, and it has three bullet points which
13 provides the Kaplan-Meier plot, which is a descriptive
14 analysis; the stratified logrank test which computes the
15 p-value for the analysis; and then the Cox
16 proportional-hazards model.

17 Q. Are the absolute differences in DFS rates specified as
18 one of the primary end point analysis methods here?

19 A. No.

20 Q. Why not?

21 A. The standard for time to event models is to look at the
22 estimate of the hazard ratio.

23 Q. Do the analysis methods of the primary end point
24 describe whether or not a clinical trial is a success?

25 A. Generally speaking, if the primary end point is

1 demonstrated to be statistically significant, the clinical
2 trial is deemed a success.

3 Q. Was the ExteNET trial a success from a statistical
4 perspective?

5 A. Yes.

6 MR. GRONBORG: Objection. Vague.

7 THE COURT: Overruled. Actually, just a moment. I
8 did not catch vagueness. Let me look again.

9 Yeah. Overruled. The answer yes will remain.

10 BY MS. SMITH:

11 Q. Dr. Sherman, if you look a little bit lower in the
12 document, this table also refers to secondary end points.
13 What are those?

14 A. Secondary end points in a study are similar to the
15 primary end point. So when you design a clinical trial, the
16 clinical trial is designed so that you have enough subjects
17 in the study to demonstrate statistical significance.

18 So it's -- in statistics speak, it's a properly
19 powered study. The secondary end points are not necessarily
20 powered, but they form a constellation to provide an overall
21 picture of clinical benefit.

22 So in general, it's expected that the secondary end
23 points may be statistically significant or demonstrate a
24 trend toward statistical significance. But because they're
25 not necessarily powered, the idea is they provide a broader

1 picture of clinical benefit.

2 Q. Earlier we had looked at Exhibit 123, which is your
3 topline efficacy analysis. Are these primary and secondary
4 end points the analyses that you included in your topline
5 efficacy report?

6 A. Yes.

7 Q. All right.

8 MS. SMITH: We can take that away.

9 BY MS. SMITH:

10 Q. All right. There's been some discussion in this case
11 about censoring. At a very high level would you explain to
12 the jury what censoring is.

13 A. So the perfect clinical trial has all subjects going to
14 all of the assessments that are described in the protocol.
15 So I believe in this protocol subjects every 12 weeks had
16 scans to see whether or not they had recurrent breast cancer.

17 In some cases subjects would not show up for some
18 of those visits. And in some cases some of the subjects
19 decided in the middle of the trial that showing up at the
20 investigational sites, doing scans, and being part of the
21 study was too onerous with regard to sort of what's happening
22 in their lives overall.

23 In those situations some of these patients decide
24 they don't want to take part in the study anymore or they're
25 not being compliant with the protocol. In those situations

1 where they miss, in the case of the assessments, we don't
2 have any data with regard to whether or not they have
3 recurrent breast cancer.

4 And if they miss so many visits and then all of a
5 sudden they return and have recurrent breast cancer, we're
6 not quite certain exactly when the recurrence occurred
7 because they might have missed multiple visits.

8 In the same point, if somebody withdraws from the
9 study or if somebody is lost to follow-up and just never
10 shows up again at the investigational site, those subjects
11 are in fact censored. We do not have information with regard
12 to them completing the study.

13 And then in the statistical analysis plan, we
14 outline for different circumstances how the analyses will be
15 used to look at the robustness of the primary analysis,
16 understanding that we do have issues related to missing data
17 and censoring.

18 Q. And did you say that the approaches to censoring would
19 be outlined in the statistical analysis plan?

20 A. Yes.

21 Q. Let's take a look at that quickly. That's Exhibit 129.
22 This has already been admitted. If you would look at page 29
23 of 55, section 9.3, analysis methods.

24 A. Okay.

25 Q. Is this where in the statistical analysis plan the

1 approaches to censoring would be outlined?

2 A. Yes. And actually it's on page 30.

3 Q. Okay. Here on page 30, there are three numerical bullet
4 points. Do you see those?

5 A. Yes.

6 Q. Okay. The first two of these refer to FDA guidance. Do
7 you see that?

8 A. Yes.

9 Q. Could you explain what these two bullet points are and
10 why they're referring to FDA guidance?

11 A. Because clinical trials are imperfect because humans are
12 involved, and they miss visits, they drop out and whatnot,
13 the idea is when you do your primary analysis, it's with the
14 idea that you have perfect data and that the protocol was
15 followed to the letter.

16 Because that doesn't happen, the Food and Drug
17 Administration asks, requests these sensitivity analyses.
18 The idea behind them is you do additional analyses to see if
19 in looking at the data, if there's missing data, you put in a
20 rule that's conservative.

21 So, for example, if somebody misses two or more
22 assessments for recurrent disease, so they don't show up at
23 week 36, they don't show up at week 48, but then at week 60
24 they have recurrent breast cancer. So you don't know from,
25 say, week -- the last scan they had was at week 24.

1 So for the primary analysis you say, okay, they had
2 recurrent disease at week 60. So that analysis is done. The
3 sensitivity analysis says, well, you have missing data. The
4 disease recurrence happened somewhere between week 24 and
5 week 60.

6 So what the analysis plan says to do is you're
7 going to push that person back to week 24. And that's, like,
8 the worst case scenario. It says we know it occurred
9 somewhere in that period that we don't know because we don't
10 have the information. So we're going to push them back to
11 the last time there was a scan and say they had an event.

12 So the idea is it makes the data in some sense --
13 it drives the data back to a point where they would've had
14 recurrent disease earlier rather than later. So in some
15 sense, it's a very conservative way of looking at the data
16 such that when you implement that particular rule, the idea
17 is, you know, if it's still significant, then your results
18 from the primary analysis are robust.

19 If it's nearly significant, that still tells you
20 there's a trend. The problem is if it's not at all
21 significant, then the impact of the missing data is
22 significant, and then there might be issues with regard to
23 how the FDA looks at that data.

24 Q. Did Puma run these sensitivity analyses that you've just
25 described?

1 A. Yes.

2 MR. GRONBORG: Objection. Vague as to time.

3 THE COURT: Sustained.

4 BY MS. SMITH:

5 Q. At some point in 2014 had Puma run the sensitivity
6 analyses that you've just described?

7 MR. GRONBORG: Still objection, vague as to time.
8 Lack of foundation.

9 THE COURT: Overruled.

10 THE WITNESS: Yes.

11 BY MS. SMITH:

12 Q. And what did they show?

13 A. They showed that statistical significance was
14 maintained.

15 Q. All right. So I want to direct your attention back to
16 these bullet points in the statistical analysis plan. Had
17 Puma contemplated using FDA guidance for censoring in these
18 sensitivity analyses in the statistical analysis plan?

19 MR. GRONBORG: Objection. Foundation.

20 THE COURT: Just a moment.

21 Yeah. I need some background. Sustained.

22 BY MS. SMITH:

23 Q. Dr. Sherman, did you write the statistical analysis
24 plan?

25 A. Yes, I did.

1 Q. As of July 3rd, 2014, had Puma contemplated applying the
2 FDA guidance referenced in the statistical analysis plan for
3 censoring to the ExteNET data?

4 A. Yes. It's in the plan, and then it would be executed.

5 Q. All right. You talked a little bit earlier about
6 database lock issues. Who at Puma made the decision to lock
7 the ExteNET data for purposes of the part A analysis?

8 A. So a standard operating procedure was put into place
9 where it goes through multiple channels in terms of ensuring
10 that all queries have been addressed, making sure the data is
11 as clean as possible.

12 The study team would communicate that with senior
13 management. Certain personnel in the study team would sign
14 off. And then I believe once senior management was notified
15 that the team felt that the data was clean to take the
16 snapshot, I believe senior management had 24 hours to sign
17 off.

18 And then once they signed off, those signature
19 pages were provided to Rho for them to go through their
20 procedures to provide the snapshot as well as the
21 randomization schedule.

22 Q. Okay. Could Mr. Auerbach have made the decision to lock
23 the database by himself?

24 A. No.

25 Q. You mentioned an operating procedure. Was there an

1 operating procedure in place at Puma with respect to database
2 locks?

3 A. Yes.

4 Q. Take a look at Exhibit 127 in your binder.

5 MR. GRONBORG: No objection.

6 THE COURT: Are you moving its admission?

7 MS. SMITH: Yes, Your Honor. I move the admission
8 of Exhibit 127.

9 THE COURT: Okay. 127 is admitted.

10 **(Exhibit 127 received)**

11 BY MS. SMITH:

12 Q. Would you describe what this is?

13 A. This is a form for -- essentially an attachment to a
14 standard operating procedure which goes to the process for
15 unblinding a clinical trial. This indicates the reason for
16 unblinding, who would be provided the unblinded information,
17 who would have access to the unblinded results, and then any
18 comments. In the comments it indicates when the target date
19 that was being proposed.

20 Q. If you look toward the bottom of this document, there's
21 a list of names here. Do you see that?

22 A. Yes.

23 Q. Are -- does this list of names reflect everyone at Puma
24 that would need to sign off before the ExteNET trial data
25 could be locked?

1 A. So the people that are listed here are the people that
2 would be reviewing the analysis results for the standard
3 operating procedure for actual lock. I believe it was my
4 signature, Alvin's signature, and senior management.

5 Q. And by senior management, who are you referring to?

6 A. Alan Auerbach, Richard Bryce, and Richard Phillips.

7 Q. So the only person on this list that wouldn't have
8 needed to sign off on the database lock would have been
9 Judith Bebachuk; is that right?

10 A. That's right.

11 Q. Now, you were asked some questions about whether or not
12 Mr. Auerbach wanted to lock the database to obtain funding.
13 Did Mr. Auerbach ever tell you that he wanted to lock the
14 ExteNET trial database to obtain funding for Puma?

15 A. No.

16 Q. Did anyone else at Puma tell you that the reason they
17 wanted to lock the ExteNET trial database was to obtain
18 funding for Puma?

19 A. No.

20 Q. All right. After you analyzed the topline results, did
21 you play a role in reviewing Puma's July 22nd, 2014, press
22 release?

23 A. Yes.

24 Q. What was --

25 MR. GRONBORG: Objection. Misstates the evidence.

1 Vague as to time.

2 THE COURT: What misstates the evidence?

3 MR. GRONBORG: In terms of completing the analysis
4 of the topline data.

5 THE COURT: But the witness said yes, so that
6 becomes the evidence.

7 MR. GRONBORG: Okay.

8 THE COURT: The objection is overruled. That
9 becomes part of the evidence.

10 I don't understand the objection, misstates the
11 evidence. The witness has the ability to agree or not agree.

12 Go ahead.

13 BY MS. SMITH:

14 Q. Dr. Sherman, did you play a -- what was the role that
15 you played in reviewing Puma's July 22nd, 2014, press
16 release?

17 A. I made sure that the statements were consistent with the
18 topline analyses.

19 Q. And how did you go about doing that?

20 A. I looked through the analyses that I had run in terms of
21 the report that was written and essentially made sure that it
22 matched anything that was reported in the press release.

23 Q. Did you have any input into what information was
24 included in that press release?

25 A. Yeah. So when that report was written, Alvin and I sat

1 together to figure out essentially what is it that senior
2 management and, you know, eventually the public would be
3 interested in knowing with regard to the topline results.

4 So we had figured we would take the package insert
5 for Herceptin, which is essentially -- which was the standard
6 of care and which would be reflective of the placebo arm of
7 the trial; so that when the results were reported, the idea
8 would be that people would automatically look at Herceptin as
9 the standard of care and make comparisons against that.

10 So much of this stuff -- much of the results that
11 were reported in the report that was provided to senior
12 management and the input with regard to the press release was
13 related to comparisons that would be made to Herceptin and
14 what was publicly available to make that comparison.

15 Q. And when you refer to the pieces of information to make
16 the comparison to Herceptin, what pieces of information are
17 you referring to?

18 A. That would be the hazard ratio and the p-values that
19 were reported.

20 Q. I'd like to pull up Exhibit 102, which is Puma's
21 July 22nd, 2014, press release.

22 Does the press release refer to the p-value and
23 hazard ratio that you just mentioned?

24 A. Yes.

25 MS. SMITH: Could we highlight those?

1 BY MS. SMITH:

2 Q. So is this the information that you were referencing as
3 the comparable information to the Herceptin package insert?

4 A. Yes.

5 Q. I'd like to talk a little bit about the safety results
6 now. Would you describe generally what your role was in
7 reviewing the safety results for the ExteNET trial.

8 A. I was responsible for validating the work that Rho had
9 done with regard to the tables that were provided to the
10 study team. So similar to the efficacy topline, I was
11 responsible for ensuring that the safety tables that were
12 provided by Rho, that when we programmed them, that they
13 matched.

14 MS. SMITH: Could we pull up Exhibit 124, please.

15 BY MS. SMITH:

16 Q. When you say safety tables provided by Rho, are these
17 the safety tables provided by Rho that you're referring to?

18 A. These are essentially the topline summary tables.
19 That's not a complete set.

20 Q. Were these the only safety tables that Puma had received
21 as of July 22nd, 2014?

22 A. I believe so.

23 Q. And did you complete validation of these tables by
24 July 22nd, 2014?

25 A. No, I did not.

1 Q. Had you planned to do that?

2 A. Yes, I did.

3 Q. Why had you planned to validate these tables?

4 A. I wanted to make sure that the materials that our
5 contract research organization had provided to us were
6 correct.

7 Q. And was there any way to know whether these tables were
8 in fact correct without conducting that validation process?

9 A. No.

10 Q. Let's take a look at Exhibit 289.

11 MS. SMITH: I believe there's no objection to this,
12 Your Honor, so I would move this into evidence.

13 MR. GRONBORG: No objection.

14 THE COURT: 289 is admitted.

15 **(Exhibit 289 received.)**

16 BY MS. SMITH:

17 Q. All right. This is an e-mail between you and Kevin
18 Clark dated July 17th, 2014. Who is Kevin Clark?

19 A. Kevin Clark was a statistical programmer at Rho who was
20 assigned to the ExteNET trial.

21 Q. If you look in about the middle of the page, there's an
22 e-mail from you to Kevin Clark dated July 16th. You wrote:
23 Hi, Kevin. I'm still working through safety in addition to
24 writing an efficacy report.

25 What did you mean what you said, I'm still working

1 through safety?

2 A. So I was still doing the programming that needed to get
3 done in order to validate the safety tables provided by Rho.

4 Q. And then towards the bottom of the page in that same
5 e-mail, you wrote: I will be in touch about the safety and
6 subject disposition table once I get out from under the
7 current barrage of activity.

8 What was the current barrage of activity that you
9 were referring to here?

10 A. There were a lot of ad hoc analyses that were being
11 done. So as topline was -- the topline work had been done.
12 I was putting together the efficacy report with Alvin. I
13 still had other programming to be done in terms of questions
14 that came up from the results that we were looking through.

15 And then, of course, once that efficacy report had
16 been provided to senior management, they were curious about
17 other things as well. So as you answer questions, there tend
18 to be more questions. And at the time I was the only person
19 doing the work, so more work was coming in as I was trying to
20 complete other work.

21 Q. You mentioned ad hoc analyses. What are those?

22 A. So those are analyses that are not prespecified in the
23 statistical analysis plan, but people get interested once
24 they see the data. They say, oh, well, let's look at a
25 subset of the data. What -- were there particular regions

1 where the results were more significant than others? Were
2 subjects that were hormone-receptor positive versus negative,
3 did they have a greater clinical benefit? Things like that.

4 Q. How many of these ad hoc analyses had you run in the
5 time period between July 7th, 2014, and July 22nd, 2014?

6 A. A lot. I don't have a number, but it was a lot.

7 Q. We'll come back to those in a minute. I want to finish
8 up with safety here.

9 Now, you mentioned validation of the safety tables.
10 Could you describe in a bit more detail what the validation
11 process entails for validating these safety tables?

12 A. So in terms of safety tables, look at events that occur
13 during the study. So you can imagine when you follow
14 subjects for two years, everything that happens to them
15 healthwise is recorded.

16 So if they have a fever, if they have diarrhea, if
17 they're not feeling well, all of that gets recorded in the
18 database, the start date and then essentially the ending date
19 for those events. The safety -- the adverse event database
20 gets to be quite large, tens of thousands of entries.

21 Then those have to essentially be sifted through to
22 find out which of those events are considered treatment
23 emergent adverse events, which are events that occur after
24 treatment has started or events that were present before
25 treatment was started. They had to worsen.

1 So there's a lot of programming that's involved to
2 find out when treatment started, what events occurred, what
3 events worsened. Then once you do all that, you have to look
4 at the severity of the events and things like that.

5 So it's not just a question of, you know, adding up
6 a few numbers and whatnot. It's going through, you know,
7 thousands and thousands and thousands of data points, getting
8 them organized, and then creating that table.

9 Q. As of July 22nd, 2014, had you informed Mr. Auerbach
10 that you had completed this process of validating the safety
11 tables?

12 A. No.

13 Q. Did you continue working on validating the safety tables
14 after July 22nd, 2014?

15 A. I did.

16 Q. All right. Let's take a look at Exhibit 905.

17 MS. SMITH: I would move this into evidence, Your
18 Honor. I believe this has no objection.

19 MR. GRONBORG: No objections.

20 THE COURT: Number again?

21 MS. SMITH: 905. This is an e-mail used --

22 THE COURT: Just a moment. 905 is admitted.

23 Go ahead.

24 MS. SMITH: Thank you.

25 **(Exhibit 905 received.)**

1 BY MS. SMITH:

2 Q. This is an e-mail you sent on August 13th, 2014, to
3 Mr. Alvin Wong. If you look at the top, the very top of the
4 e-mail, you wrote: Hi, Alvin. Aurie and I will be tackling
5 safety next week. AE, TEAE, and SAE tables will come first,
6 standard fare to see if they line up with Rho's tables.

7 Are these safety tables that you're referring to in
8 this e-mail the same topline safety tables that are reflected
9 in the Exhibit 124 document we just looked at?

10 A. That in addition to others.

11 Q. And during the validation of these topline safety
12 tables, did you discover any errors in those tables?

13 A. Yes.

14 Q. What errors did you discover?

15 A. There's a little bit of history with this. So neratinib
16 was originally, I guess, the discovery of Wyeth, which was
17 then transferred to Pfizer, which then became an asset for
18 Puma.

19 During all of those transition periods, Rho was the
20 contract research organization that was -- much of the
21 analyses were outsourced to this contract research
22 organization, Rho.

23 So if you go back to the statistical analysis plans
24 for Wyeth and Pfizer, they had slightly different definitions
25 for what constituted a treatment emergent adverse event which

1 didn't quite line up with the Puma definition for treatment
2 emergent adverse event, which, there were slight
3 discrepancies.

4 Q. Were those discrepancies later corrected?

5 A. Yes.

6 MS. SMITH: We can take that exhibit down.

7 BY MS. SMITH:

8 Q. There's also been some discussion in the case about
9 dropout rates and discontinuation rates. Could you explain
10 what dropout rates and discontinuation rates are in the
11 context of the ExteNET study?

12 A. So subjects can drop out of a study in a number of
13 different ways. One particular way is at some point during
14 the trial, they don't wish to continue, at which point the
15 subjects fill out forms which are called withdrawal consent
16 forms that they sign off indicating that not only do they not
17 want to participate in the trial, but no further data may be
18 collected on them.

19 In the case if a subject is lost to follow-up,
20 that's also a dropout, but it's handled a little bit
21 differently because that particular subject does not contact
22 the investigator at the site to say that they don't want to
23 participate any longer. They just don't show up.

24 And then the clinical operations group and the
25 investigational site work together to track down the subject.

1 They make three attempts to contact them. If after three
2 attempts they are unreachable, at that point they are
3 essentially discontinued from the study. So those would be
4 instances where we wouldn't have additional follow-up
5 information for them.

6 Q. And what are discontinuation rates as compared to
7 dropout rates?

8 A. So with regard to discontinuation rates, it depends.
9 When you talk about dropout, the idea is you have no further
10 information on those subjects at the point at which either
11 they couldn't be contacted or at the point at which they
12 withdrew consent.

13 With regard to discontinuations, a lot of times
14 there might be subjects that no longer want to be on
15 treatment. They might have adverse events that they believe
16 are due to the treatment that they're receiving. However,
17 they discontinue treatment but continue participating in the
18 trial and go through the assessments, but they're no longer
19 on steady treatment.

20 Q. Had the dropout rates in the ExteNET trial been
21 validated as of July 22nd, 2014?

22 A. No.

23 Q. Had the discontinuation rates for the ExteNET trial been
24 validated as of July 22nd, 2014?

25 A. No.

1 Q. All right. I want to come back to this issue of the
2 Kaplan-Meier curves. Let's start with the database snapshot.
3 I believe you said it was correct that there is data in the
4 database snapshot for patients extending beyond two years; is
5 that right?

6 A. Yes.

7 Q. What information was in the database snapshot extending
8 beyond two years?

9 A. The subjects that were essentially the first subjects
10 that were randomized into the study, they had the longest
11 amount of follow-up as long as they stayed in the clinical
12 trial.

13 So at some point, I guess it was Wyeth had modified
14 the study through a study protocol where they were no longer
15 interested in continuing with the clinical trial. At that
16 point they amended the study, and at that point they said
17 anybody that had more than two years of follow-up at the
18 point that the protocol amendment was adopted by the
19 investigational site, they would no longer be on the trial
20 with their next assessment visit.

21 Anybody that had less than two years of follow-up
22 would continue in the study through two years. So there were
23 some subjects that I believe had almost four years of data
24 for the ones that were randomized, you know, essentially in
25 the earliest parts of the study. So we would have, if they

1 remained on study, all their assessments that were captured.

2 Q. As of July 22nd, 2014, would it have been possible to
3 generate Kaplan-Meier curves that extended past two years --

4 MR. GRONBORG: Objection.

5 BY MS. SMITH:

6 Q. -- using the database snapshot?

7 MR. GRONBORG: Objection. Calls for speculation.

8 THE COURT: Overruled.

9 THE WITNESS: Yes, it's possible.

10 BY MS. SMITH:

11 Q. And if someone had that same database snapshot today,
12 would it be possible to generate Kaplan-Meier curves
13 extending beyond two years?

14 MR. GRONBORG: Objection. Foundation. Calls for
15 speculation.

16 THE COURT: Overruled.

17 THE WITNESS: Yes.

18 BY MS. SMITH:

19 Q. Dr. Sherman, I believe you testified that you did not
20 remember running Kaplan-Meier curves looking beyond two years
21 as of July 22nd, 2014; is that right?

22 A. That's right.

23 Q. All right. Let's talk about why that might be the case.
24 Were you performing many different analyses at the time of
25 the ExteNET trial data?

1 A. Yes.

2 Q. And were those the ad hoc analyses that we were talking
3 about a moment ago?

4 A. Yeah. So the primary -- sort of the first things that I
5 did were based upon the statistical analysis plan for topline
6 readout. Then that report was written. After that, that's
7 when we were doing all sorts of ad hoc and exploratory
8 analyses after that point.

9 Q. And why were you running those?

10 A. People were interested in looking at various things in
11 terms of, you know, curiosity.

12 Q. Who asked you to perform these ad hoc analyses?

13 MR. GRONBORG: Vague as to time.

14 THE COURT: Overruled.

15 THE WITNESS: I worked with Alvin, and he
16 communicated with senior management.

17 BY MS. SMITH:

18 Q. Were these requests made during the period between
19 July 7th, 2014, and July 22nd, 2014?

20 A. Yes.

21 Q. How did Alvin Wong -- sorry. I'm sorry. Again, who did
22 you say communicated those requests to you?

23 A. Alvin.

24 Q. Okay. And how did Mr. Wong communicate those requests
25 to you?

1 A. He would drop by my office, text me, e-mail, call.

2 Q. And what were the analyses that you ran, if you
3 remember?

4 MR. GRONBORG: Objection. Calls for speculation.
5 She was just establishing that the witness couldn't remember
6 because she was running so many analyses.

7 MS. SMITH: I'll withdraw --

8 THE COURT: Sustained.

9 MS. SMITH: -- yeah.

10 BY MS. SMITH:

11 Q. Do you have a recollection of any of the analyses that
12 you -- of the ad hoc analyses that you ran at the time?

13 A. I know for a fact that when I -- after I did topline,
14 generally you look at analyses where you look at the
15 stratification factors that were used when you put together
16 the randomization schedule. So that would be the next level
17 of analyses that you would do.

18 Then those would get communicated out, and then
19 there might be additional things that somebody might be
20 interested in looking at depending on the results of those
21 analyses.

22 Q. Do you recall running ad hoc analyses for the hormone
23 receptor subgroups as of that time?

24 A. I believe so.

25 Q. And is it also possible that you ran ad hoc analyses for

1 the centrally confirmed patient population?

2 MR. GRONBORG: Still vague as to what that time
3 means.

4 THE COURT: Overruled.

5 THE WITNESS: That one I'm not so clear on.

6 BY MS. SMITH:

7 Q. Is it possible that you ran it?

8 A. It is possible.

9 MR. GRONBORG: Objection. Calls for speculation.

10 BY MS. SMITH:

11 Q. Is it also possible that you ran --

12 THE COURT: Hold on. Hold on. There was an
13 objection. What are you doing with your question? You're
14 reasking? What are you doing?

15 MS. SMITH: I will wait for the Court's ruling on
16 the objection.

17 THE COURT: So we now have a question pending?

18 MS. SMITH: I believe so, Your Honor.

19 THE COURT: All right. Just a moment. You talked
20 over each other a bit.

21 And there was an answer. Okay. Is it possible
22 that you ran it? Answer: It is possible. Objection, calls
23 for speculation.

24 Overruled. So the answer remains. Ask your next
25 question. And let me ask you this: How much longer with

1 this witness?

2 MS. SMITH: Five to ten minutes, Your Honor.

3 THE COURT: Okay. I think now would be a good time
4 for us to take a break. We'll see you all back here at 3:00.

5 Thank you.

6 (Recess taken from 2:42 p.m. until 3:03 p.m.)

7 THE CLERK: All rise.

8 (Open court - jury present)

9 BY MS. SMITH:

10 Q. Welcome back, Dr. Sherman. We were talking about some
11 of the ad hoc analyses that you had been running in July of
12 2014. Did you find it unusual that Mr. Wong had asked you to
13 perform ad hoc analyses on the ExteNET trial data in July of
14 2014?

15 A. Not at all.

16 Q. Why not?

17 A. Generally when you do analyses, those analyses elicit
18 more questions, and then you do those analyses and then
19 there's even more questions. So it -- it's almost like an
20 infinite loop.

21 Q. Earlier today we looked at Exhibit 123, which is your
22 topline efficacy report. Feel free to turn to that. We can
23 put it up on the screen.

24 Does this topline efficacy report contain all of
25 the ad hoc analyses that you ran before July 22nd, 2014?

1 A. It doesn't contain any of them.

2 Q. Okay. I think you said when you ran all of the analyses
3 you conducted, it was on a closed system; is that correct?

4 A. Yes.

5 Q. Did you save all of the analyses that you ran on Puma's
6 closed system between July 7th, 2014, and July 22nd, 2014?

7 A. So the topline efficacy analyses were saved in a folder
8 specifically entitled something about topline efficacy. Then
9 I had another folder for ad hoc analyses.

10 And because of sort of the volume of work, I would
11 take the computer code for some of those analyses and amend
12 it, run the analysis for a particular subset, and then modify
13 the code again and then run it. So I would overwrite the
14 last changes that I made. So some of the computer code
15 wasn't saved, and some of the outputs were not saved either.

16 Q. Did you save all of the ad hoc analyses that you ran
17 again during this same time period, July 7th to July 22nd,
18 2014?

19 A. No.

20 MR. GRONBORG: Again, object. Speculation given
21 the counsel's established -- tried to establish previously
22 that the witness does not have a memory of this time period.

23 THE COURT: I'm not understanding the objection. I
24 think she's able to say -- she's able to testify whether she
25 saved all the ad hoc analyses.

1 The objection is overruled. The answer remains.

2 THE WITNESS: No.

3 BY MS. SMITH:

4 Q. All right. Let's take a look at Exhibit 552 in your
5 binder.

6 MS. SMITH: We can put that up on the screen as
7 well.

8 BY MS. SMITH:

9 Q. This is the Excelion log that you discussed a bit
10 earlier today. Did you create this document?

11 A. No, I did not.

12 Q. And did you personally confirm that the Excelion log is
13 accurate?

14 A. What I was asked to do essentially with this log is to
15 look at the file names, and then in the comment section I
16 described the contents of those file names. If I wanted to
17 ensure that the Excelion log was complete, I would have had
18 to have gone through the Outlook e-mail to make sure that
19 everything that was sent or received was on this log.

20 But I know I didn't do that because that's not what
21 was asked of me at the time that this was provided to me.

22 Q. So you did not -- is it correct that you did not
23 personally confirm that all of the Excelion -- that the
24 Excelion log reflects all transmissions to and from the
25 closed system from July 7th to July 22nd, 2014?

1 A. I didn't check that.

2 Q. All right. Let's take a look toward the bottom.

3 There's a program or there's an entry for July 17, 2014, at
4 2126. Do you see that?

5 A. Yes.

6 Q. And then there's -- under file name there's a file
7 called stat underscore KM plot nine dot SAS. Do you see
8 that?

9 A. Yes.

10 Q. What is that?

11 A. That is a SAS macro, so it's a subroutine written in the
12 SAS computer language that's used to provide enhanced
13 graphics for Kaplan-Meier curves.

14 Q. Is that a program that can be used to run a variety of
15 Kaplan-Meier curves?

16 A. Yes.

17 Q. Dr. Sherman, I believe you testified that you have
18 reviewed the transcript of the July 22nd analyst call; is
19 that correct?

20 A. Yes.

21 Q. Are you aware of any reason why Puma employees would be
22 careful not to release the full ExteNET trial data to the
23 public as of July 22nd, 2014?

24 A. Generally when you want to present at scientific
25 meetings, if you divulge everything, that jeopardizes your

1 chances of being able to do an oral presentation at the
2 leading scientific conferences. And that's a pretty big
3 deal.

4 Q. Now that you've reviewed the transcript of the
5 July 22nd, 2014, analyst call, what is your reaction to the
6 statements that Mr. Auerbach made on that call?

7 MR. GRONBORG: Object, Your Honor. Lack of
8 foundation. Calls for a jury question.

9 THE COURT: Just a moment. And vague.
10 Sustained for all those reasons. And maybe
11 irrelevant. I don't know whether her reaction is relevant.
12 Sustained.

13 MS. SMITH: One moment, Your Honor.

14 No further questions.

15 **REDIRECT EXAMINATION**

16 BY MR. GRONBORG:

17 Q. Dr. Sherman, did you have any role in any of the
18 statements that were made by -- in reviewing any of the
19 statements that were made by Alan Auerbach on July 22nd,
20 2014?

21 A. No.

22 Q. And personally do you believe it's appropriate to make
23 misstatements or lie about the results of a clinical trial
24 such that they can be presented at a conference later?

25 A. I guess I don't understand the question. Why would

1 somebody make misstatements if the data is going to be
2 presented at a later date?

3 Q. Did you have any role, though, in deciding what
4 information not to disclose during that conference call?

5 A. No.

6 Q. All right.

7 And last, with respect to the Excelion log that you
8 were referring to, are you aware of any better record than
9 that of what information was transferred out of the secure
10 system between July 3rd and July 24th?

11 A. No.

12 MR. GRONBORG: Thank you.

13 THE COURT: Any further questions?

14 MS. SMITH: No, Your Honor.

15 THE COURT: Thank you.

16 You may step down, Doctor.

17 The plaintiff will call its next witness.

18 MR. GRONBORG: Plaintiffs call Professor Brett
19 Trueman.

20 **Brett Trueman, Plaintiffs' witness, sworn**

21 THE CLERK: If you will please state and spell your
22 first and last name.

23 THE WITNESS: Brett, B-r-e-t-t. Trueman,
24 T-r-u-e-m-a-n.

25 THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. GRONBORG:

Q. Professor Trueman, will you just briefly tell us who you are.

A. I am a professor of accounting at UCLA's Anderson School of Management.

Q. And what were you retained to do in this matter?

A. I was asked to analyze the financial position of Puma during the 2014-2015 period. Also I was asked to calculate burn rates as well as to assess the implications of the offering that Puma made of shares of stock in early 2015.

Q. And let's discuss your qualifications briefly. Can you tell us, where did you go for your undergraduate degree?

A. Columbia University.

Q. And do you have any graduate degrees?

A. Yes. I have a master's in industrial engineering, an MBA, and a Ph.D. in finance.

Q. When did you get your Ph.D. in finance?

A. In 1981.

Q. And after graduating from Columbia in 1981, is it right that you started teaching at UCLA?

A. That's right.

Q. Was that in the graduate school of management?

A. That's right.

Q. Have you been at UCLA ever since 1981?

1 A. I was there until '88. Then I moved to UC Berkeley and
2 then came back to UCLA in 2003.

3 Q. In general the courses you teach, what do they involve?

4 A. Move of the courses I've been teaching in recent years
5 are core financial accounting and basically intermediate
6 financial accounting course, as well as Ph.D. courses now and
7 then.

8 Q. And do any of the courses involve the preparation of
9 financial statements?

10 A. Yes. Both of the core class, the introductory class and
11 the intermediate class, focus on the preparation and analysis
12 of financial statements.

13 Q. And do any of the courses involve forecasting cash flows
14 for companies?

15 A. What I do in some cases is I have students use the
16 financial statements to determine what future financial
17 statements would look like or future cash flows would be.

18 Q. And have you been an expert in a case like this before?

19 A. Not in a case like this. I've been an expert witness in
20 a few other cases.

21 Q. Approximately how many?

22 A. Two.

23 Q. And I take it you've been paid for your work in this
24 case; is that right?

25 A. Yes.

1 Q. Does about \$20,000 sound right?

2 A. So far, yes.

3 Q. And did you work with any other organizations to sort of
4 assist you?

5 A. Yeah. FTI Consulting.

6 Q. And were you told what opinion you had to reach?

7 A. No.

8 Q. Was any of your pay contingent on reaching any
9 particular opinion?

10 A. No.

11 Q. And the opinions that you're offering, are they your
12 own?

13 A. They certainly are.

14 Q. Let's turn to Puma's financial position. Maybe before
15 you start, you referenced burn rate. Can you just tell us
16 briefly what that term burn rate means?

17 A. So burn rate means the rate at which a company is using
18 up its cash in its operating activities.

19 Q. And in this case were you able to analyze Puma's
20 financial condition in the 2014 to 2015 time period?

21 A. Yes.

22 Q. All right. What did you do to do that?

23 A. I looked at the financial statements and financial
24 reports that they filed with the Securities and Exchange
25 Commission, the quarterly and annual reports during the

1 2014-2015 period.

2 I also looked at forecasts that Puma had made for
3 its cash outflows during the second and third -- excuse me,
4 third and fourth quarters of 2014, and first and second
5 quarters of 2015.

6 Q. And did you analyze Puma's -- what their expenses and
7 net losses were during that period?

8 A. Yes. They were on the -- during that period they were
9 on the financial statements that were filed with the SEC.

10 Q. And with respect to the company's burn rate, what did
11 you find?

12 A. I found that the projections during the period -- the
13 third quarter of 2014 through the second quarter of 2015,
14 that Puma was estimating a burn rate of approximately
15 \$10.2 million a month up to \$11.8 million a month outflow of
16 cash.

17 Q. Did you prepare a demonstrative?

18 A. Yes. I have that.

19 Q. And we'll refer to the set of demonstratives for
20 Professor Trueman as Exhibit 1110, which is in the binder.

21 MR. GRONBORG: If we could have demonstrative 1110,
22 page 1, pulled up.

23 For the record, Your Honor, you'll notice it also
24 has a PDEM17 stamp on it.

25 THE COURT: Give me the PDEM again.

1 MR. GRONBORG: PDEM17, lower right corner. We'll
2 refer to it as Exhibit 1110, page 1.

3 THE COURT: So you mean plaintiff demonstrative 17?

4 MR. GRONBORG: Correct.

5 THE COURT: All right. It's not in evidence yet.
6 Go ahead.

7 BY MR. GRONBORG:

8 Q. Can you tell us what this demonstrative shows?

9 A. What this shows is the minimum and maximum amount of
10 burn, that is, cash that's expected to be used up in
11 operations from the third quarter of 2014 through the fourth
12 quarter of 2015.

13 I have in one column, the minimum based on
14 documents provided by Puma. I have the minimum expected burn
15 rate as well as the maximum expected burn rate.

16 Q. What types of documents were you referring to that you
17 had from Puma?

18 A. They were budgets, forecasts that Puma had prepared and
19 that I received from FTI Consulting.

20 Q. And then did you do anything to check the assumptions
21 that you made based on those budgets?

22 A. Yes. So I looked at the actual burn rates that the
23 company incurred during the period of third quarter of 2014
24 through the second quarter of 2015, and they were within the
25 range that they had estimated.

1 Q. And then with respect to the last two quarters in 2015,
2 how did you estimate the burn rate for those?

3 A. So I was not given any documents that showed Puma's
4 estimate for burn rates in the third and fourth quarter of
5 2015, so I basically used an average from the third quarter
6 of 2014 through the second quarter of 2015. Then I just -- I
7 extrapolated two more quarters.

8 Q. And did you check those assumptions as well?

9 A. Yes. They were consistent with what the actual burn
10 rate was for Puma during those two quarters.

11 Q. And do you have a demonstrative that sort of illustrates
12 what this meant in terms of Puma's cash on hand?

13 A. That's correct. I have.

14 MR. GRONBORG: If we can pull up Exhibit 1110,
15 page 2, also referenced as plaintiffs' demonstrative 18.

16 BY MR. GRONBORG:

17 Q. Can you tell us, what are we looking at here?

18 A. Sure. We're looking at --

19 THE COURT: Hold on. Excuse me. All right, 1110,
20 page 2. I've got it. I heard it differently. I heard
21 11102.

22 MR. GRONBORG: Sorry. Exhibit 1110, page 2.

23 THE WITNESS: So what we're looking at is a graph
24 of the level of cash and cash equivalents. What I mean by
25 that are cash and short-term securities that can be easily

1 converted to cash. So looking at the balance from the end of
2 the second quarter 2014 through the end of 2015, under the
3 assumption that the burn rates were either at the minimum
4 amount projected by Puma or the maximum amount.

5 BY MR. GRONBORG:

6 Q. So without an infusion of capital by June of 2015, how
7 much cash would Puma have had?

8 A. So if we started out -- if the company started out at
9 the end of the second quarter 2014 with, as you see here,
10 \$178.4 million, and the amount -- given the amount that the
11 company was spending, the burn rate per quarter, that would
12 have brought us down by the end of the second quarter to
13 between \$37 million and \$55.8 million -- that is, by the end
14 of the second quarter of 2015.

15 Q. And without getting more cash, when would Puma -- when
16 was Puma expected to run out of money?

17 A. It would've run out of money by the end of
18 December 2015, which you can see by negative numbers at the
19 end of the fourth quarter 2015 of between \$5 million and
20 \$33 million.

21 Q. And did Puma actually run out of cash before the end of
22 2015?

23 A. No, they didn't.

24 Q. Why is that?

25 A. They had a stock offering which provided them with

1 around \$200 million of additional cash.

2 Q. And did you do any analysis of that stock offering?

3 A. Yes, I did.

4 Q. What did you do?

5 A. I assessed the timing of the stock offering. I looked
6 to see how much the company would have been able to raise
7 given the -- if it had done that offering at six months
8 earlier, so that would be right before the class period
9 start, and six months later, and also right after the class
10 period, two days after the class period ended.

11 So I looked to see how many -- how much money the
12 company could have raised at those time periods if they had
13 sold the same number of shares that they actually sold in
14 January of 2015. I also looked at how many shares they would
15 have had to sell to raise the same amount of money as they
16 did raise in January 2015.

17 Q. Did you prepare a demonstrative of that analysis?

18 A. Yes. I have that, too.

19 MR. GRONBORG: I believe that's page 3. So it
20 would be Exhibit 1110, page 3. Also referenced on the
21 document as plaintiffs' demonstrative 19.

22 BY MR. GRONBORG:

23 Q. Can you just tell us, what does this show us?

24 A. So the offering on January 21st, that was the company's
25 actual offering, it raised \$218.5 million. And they got that

1 money through the sale of 1.15 million shares at a stock
2 price of \$190 a share. I compared that to what they would've
3 gotten six months earlier, if they made the offering six
4 months earlier, and six months earlier is just before the
5 class period started. The price was a little less than \$59 a
6 share.

7 So if they wanted to sell the same number of
8 shares, 1.15 million, they would have raised \$67.8 million.
9 Or if they want to raise the same \$218.5 million that they
10 did raise in January of 2015, they would have had to sell 3.7
11 million shares, roughly three times the number of shares they
12 actually did issue.

13 Q. Go ahead.

14 A. On the other side, if they had issued -- if they had the
15 stock offering six months after they actually had it, so that
16 was July 21st of 2015, then with the price at \$99.72, they
17 would have been able to raise -- for the same number of
18 shares they actually did sell, 1.15 million, they would've
19 raised 114.7 million.

20 Or if they want to raise the same 218 and a half
21 million dollars they did actually raise in January 2015, they
22 would've had to sell 2.19 million shares, roughly twice as
23 many shares as they did sell.

24 Q. So you're not saying they couldn't have sold \$218
25 million worth of stock before July 22nd or after June 1st,

1 2015?

2 A. That's correct. I'm not saying that.

3 Q. And you've identified -- is it -- does this chart
4 identify, though, the number of shares that would have to be
5 sold in order to have raised that same amount of money either
6 before or after the class period?

7 A. Yes, it does.

8 Q. Now, are you saying that Puma couldn't have had a stock
9 offering after the June 1st, 2015, disclosure?

10 A. No, I'm not saying that.

11 Q. Okay. So what are -- what are you telling us about what
12 they could have done after June 1st, 2015?

13 A. What I am showing here is that the level of dilution of
14 the shares would have been significantly higher either at six
15 months before the actual offering or six months after the
16 actual offering.

17 Q. Thank you.

18 MS. COOK: Good afternoon, Your Honor. My name is
19 Jordan Cook. I'm here on behalf of Alan Auerbach and Puma
20 Biotechnology.

21 Good afternoon, Professor Trueman.

22 Your Honor, I've got some binders. May I approach
23 with a copy?

24 THE COURT: Yes, you may.

25 MS. COOK: Thank you.

CROSS-EXAMINATION

BY MS. COOK:

Q. Professor Trueman, I just want to ask you a few questions about the testimony that you just gave. You mentioned earlier that you are a professor in accounting?

A. Yes.

Q. But you have never worked with a company to determine whether to conduct a public offering; is that right?

A. That's correct.

Q. And you have never worked with a company in any respect in connection with a public offering of stock?

A. That's correct.

Q. And you never worked with a company to determine the appropriate timing to offer stock?

A. That's correct.

Q. And you've never been involved at all with a company while it conducted a stock offering?

A. That's correct.

Q. Professor Trueman, your hourly rate for this matter is \$800 per hour; is that correct?

A. That's correct.

Q. And you're paid for all of the time that you testify here; is that right?

A. Yes, it is.

Q. All of the time that you spent sitting in court as well?

1 A. Yes.

2 Q. And earlier you mentioned that you have a consulting
3 firm, FTI Consulting; is that correct?

4 A. No, I don't have that firm. That firm contacted me and
5 asked me if I would be willing to serve as an expert witness.

6 Q. Okay. And they provided research support in connection
7 with your opinions in this matter?

8 A. Yes, they did.

9 Q. And do you know how much they've been paid in connection
10 with your opinion?

11 A. No, I don't.

12 Q. Do you know how much they've billed in connection with
13 your opinion?

14 A. In connection with my opinion?

15 Q. In connection with helping with the research?

16 A. No, I don't.

17 Q. I'd like to talk briefly about your first opinion. To
18 start, as you sit here today, you have no opinion on why Puma
19 chose to conduct a stock offering in January 2015; is that
20 right?

21 A. I'm not giving any opinion on that. That's correct.

22 Q. And your opinion is limited to calculation of a burn
23 rate and an estimate of the month in which Puma would run out
24 of cash?

25 A. Those were the main things that I was testifying about,

1 yes.

2 Q. Okay. And you don't have an opinion on whether Puma was
3 motivated to make a misrepresentation to the market to
4 inflate its stock because of the burn rate?

5 A. No, I do not.

6 Q. And, Professor Trueman, you understand that in this
7 litigation plaintiff claims that Puma made misrepresentations
8 about the ExteNET data on a conference call on July 22nd,
9 2014?

10 A. Yes.

11 Q. But right now you do not have an opinion about whether
12 Puma would have been able to raise financing during the class
13 period if they had not made those representations which
14 plaintiff claims are misleading?

15 A. No, I'm not making an opinion on that.

16 Q. Okay. So I just want to talk about your burn rate
17 briefly. For this opinion you calculated Puma's burn rate,
18 and you concluded that Puma would run out of money by the end
19 of 2015?

20 A. That is correct.

21 Q. And Puma had internal projections that you relied on
22 with your report?

23 A. That's right.

24 Q. And you compared the burn rate that you calculated with
25 Puma's actual burn rate as disclosed in their 10-K and 10-Q

1 filings?

2 A. Yes.

3 Q. And you determined that Puma's internal forecasts were
4 either consistent or reasonably accurate relative to what it
5 actually disclosed?

6 A. Yes. That's right.

7 Q. So meaning what Puma projected internally matched what
8 it disclosed publicly?

9 A. It was consistent, yes.

10 Q. Thank you.

11 Professor Trueman, I'm going to turn to your second
12 opinion in connection with the offering. So during the
13 relevant time period, so 2014-2015, Puma was a development
14 stage biopharmaceutical company, right?

15 A. Correct.

16 Q. And at the time it had no commercial products?

17 A. That's right.

18 Q. And as of June 2014, Puma had not generated any revenue?

19 A. That's right. It may have had some interest on some
20 marketable securities. I don't recall.

21 Q. And so Puma's net cash in operating activities in 2015
22 was also negative as well?

23 A. Yes.

24 Q. So Puma didn't have any net cash coming into the company
25 anytime during 2014 or 2015?

1 A. You mean aside from the stock offering?

2 Q. Yes, outside of the stock offering.

3 A. That's correct.

4 Q. Thank you.

5 And so like any company that doesn't have revenue,
6 at some point Puma had to find some source of capital to
7 continue to operate; is that right?

8 A. Yes, it is.

9 Q. And as you discussed earlier, Puma did in fact raise
10 money through a secondary offering in January 2015; is that
11 right?

12 A. Yes.

13 Q. Okay. And, in fact, Puma conducted two stock offerings
14 prior to January 2015; is that correct?

15 A. Yes.

16 MS. COOK: Your Honor, I'd like to show a
17 demonstrative. It's at the end of your binder, and it's been
18 tagged Exhibit 1005, I believe. Sorry, 1105. It's just a
19 one-page document.

20 THE COURT: Proceed.

21 MS. COOK: Thank you.

22 Can we put that up on the screen, please?

23 BY MS. COOK:

24 Q. So, for example, Puma conducted an offering in October
25 of 2012; is that right?

1 A. Yes.

2 Q. And in that offering Puma sold a little over eight and a
3 half million shares and raised approximately \$138 million; is
4 that right?

5 A. I believe that's correct.

6 Q. And then they conducted another offering in February of
7 2014, and in that offering Puma sold roughly 1.25, a little
8 over, shares and raised again approximately \$138 million; is
9 that right?

10 A. I believe that's correct.

11 Q. And then after the class period, so after June 2015,
12 Puma raised money again; is that right?

13 A. Yes.

14 Q. And that was in October 2016?

15 A. I believe so.

16 Q. And there Puma sold 4.3 million shares and raised about
17 \$162 million?

18 A. I believe that's correct.

19 Q. Professor Trueman, did you calculate the dilution rate
20 to any shareholders as a result of any of these offerings?

21 A. Any of these four offerings, you mean?

22 Q. Yes.

23 A. I did look briefly -- after my deposition I did look
24 briefly at Alan Auerbach's dilution in the January 2015
25 offering.

1 Q. But you did not consider for any of the other three
2 offerings?

3 A. No, I did not.

4 Q. And that dilution rate was not part of your original
5 opinion as reflected in your report?

6 A. That's correct.

7 Q. And so you -- when formulating your original report, you
8 didn't take into consideration these three offerings?

9 A. These other three, no, I didn't.

10 Q. And you didn't consider them before your deposition,
11 correct?

12 A. That's right.

13 Q. Okay.

14 Now I'd just like to talk about the opinion -- the
15 three alternative dates that you spoke about earlier. So the
16 first date, July 21st, 2014, plaintiffs' counsel selected
17 that date for you?

18 A. Yes.

19 Q. Okay. And you don't know what Mr. Auerbach's actual
20 dilution would have been if the stock offering was conducted
21 on July 21st, 2014?

22 A. I believe I did an analysis after the deposition just
23 because the deposition raised that issue.

24 Q. But as part of your original report, you didn't offer
25 any opinion or calculation about what his actual dilution

1 was?

2 A. No.

3 Q. And those numbers were based on publicly available
4 information; is that right?

5 A. Which numbers?

6 Q. To calculate the actual dilution rate?

7 A. That's correct.

8 Q. And you also didn't take into account for those opinions
9 that you offered in your report and at your deposition that
10 Puma had just conducted a stock offering in February 2014,
11 which would have been five months before the hypothetical
12 offering date?

13 A. You mean I did not take into account that they had an
14 offering in preparing my report and opinions?

15 Q. Correct.

16 A. That's right.

17 Q. Okay. So let's look at the next date. I'm going to go
18 a little out of order. July 21st, 2015, did plaintiffs'
19 counsel also select this date for you?

20 A. Yes.

21 Q. For this one you also didn't calculate what the actual
22 dilution rate of Mr. Auerbach's stock ownership would have
23 been under that alternative scenario?

24 A. Not at the time I gave my deposition and filed the
25 report.

1 Q. Okay. So you don't have any idea -- well, sorry.
2 Strike that.

3 So even though this information was publicly
4 available, you didn't offer that calculation?

5 A. The information --

6 Q. -- needed to calculate Mr. Auerbach's dilution.

7 A. Well, what was publicly available was the stock price,
8 so I would have made my own calculation. It's not like there
9 was publicly available information that directly would have
10 led to a simple calculation of the dilution.

11 Q. Understood. But information such as the number of
12 shares outstanding of Puma, the number of shares offered,
13 Mr. Auerbach's stock ownership, is all publicly available
14 information?

15 A. That's correct.

16 Q. Then on the third date, June 2nd, 2015, that's the day
17 after the ASCO presentation. Plaintiffs' counsel also
18 selected that date for you?

19 A. Yes, they did.

20 Q. And again, you didn't calculate the actual dilution to
21 Mr. Auerbach's stock ownership at the time of submitting your
22 report?

23 A. That's correct.

24 Q. And you didn't consider any other dates, correct?

25 A. I looked at the 30 days before the July 21st, 2014, date

1 and 30 days before the July 21st, 2015, date. Took an
2 average stock price there. So I did an alternative
3 calculation for those two dates.

4 So instead of using the actual price on that date,
5 I used the average of the 30 days before.

6 Q. Okay. But those three dates -- July 21st, 2014;
7 June 2nd, 2015; and July 21st, 2015 -- are the only dates
8 that you used as a potential alternative offering date?

9 A. That's correct.

10 Q. And you didn't consider whether Puma could have
11 conducted an offering on a date when the stock price was
12 higher?

13 A. Those are the three -- I chose -- I used those three
14 dates. I didn't use any other date.

15 Q. But you would agree that if the offering had been done
16 at higher stock prices, the dilutive effect on an
17 individual's stock ownership would have been less?

18 A. Certainly if the price was lower, there would have been
19 more dilution. If the price was higher, there would have
20 been less dilution.

21 Q. And, Professor Trueman, I believe that you were here
22 yesterday when my colleague, Ms. Johnson, talked about
23 Exhibit 989.

24 MS. COOK: I would like to put that up on the
25 screen.

1 BY MR. COUGHLIN:

2 Q. So yesterday you may recall that we were looking at net
3 cash used in operating expenses?

4 A. In operating activities, you mean?

5 Q. Yes.

6 A. Yes.

7 Q. Pardon me. And also at Puma's research and development
8 expenses?

9 A. Yes.

10 Q. Okay. I'd like to walk a year ahead now to after ASCO.

11 MS. COOK: Your Honor, I'd move to admit
12 Exhibit 991 into evidence.

13 THE COURT: Okay. 991, it's not on the original
14 chart. Is there any objection to 991?

15 MR. GRONBORG: No objection, Your Honor.

16 THE COURT: 991 is admitted.

17 **(Exhibit 991 received.)**

18 MS. COOK: Thank you.

19 And can we put that up on the screen, and we're
20 going to go to page 61.

21 BY MS. COOK:

22 Q. Professor Trueman, if you look at the 2016 column, which
23 is the column on the far left, it says that Puma raised and
24 collected \$162.4 million; is that right?

25 A. Yes.

1 Q. So that's roughly the amount of the stock offering in
2 2016; is that correct?

3 A. Yes.

4 Q. And in that same 2016 column, it says that Puma spent
5 \$222.8 million on research and development. Do you see that?

6 A. Yes.

7 Q. And you have no reason to believe these numbers are
8 inaccurate?

9 A. No, I don't.

10 Q. So isn't it the case that after ASCO, Puma raised
11 \$162.4 million and spent \$222.8 million on clinical trials?

12 A. So I see from the offering information that you provide
13 that they raised \$172 million. The -- I don't -- I'd have to
14 look at the SEC filing to know why that's different from the
15 162.4.

16 In terms of the amount spent on clinical trials, I
17 just see that the R&D is 222.8. I can't say what that is
18 comprised of.

19 Q. Thank you, Professor Trueman.

20 MS. COOK: I don't have any further questions.

21 THE COURT: All right. Do we have any further
22 redirect?

23 MR. GRONBORG: Yes, just a couple minutes, Your
24 Honor.

25 THE COURT: All right.

REDIRECT EXAMINATION

BY MR. GRONBORG:

Q. Professor Trueman, if I could just direct you back. This was the demonstrative that was shown to you by defense counsel. I believe it was 1105. Certain of the information was missing from there, so I filled it in on my own.

Do you see the October 25th, 2016, offering that you were referred to? Do you recall that that was at \$40 a share?

A. I believe so, yes.

Q. Okay. Does it sound right to you that to raise the \$172 million, they had to sell 4.3 million shares?

A. Yes.

Q. Is that consistent with the analysis you did of what would've happened if Puma had had a stock offering before or after the class period?

A. Yes. I had stated that I had done an analysis of how many shares the company would've have to sell at the various offering dates. So at the July 21st, 2014, or July 21st, 2015, dates, how many shares they would've had to sell to raise the same amount of money that they actually did raise; or how much money they would've raised if they sold the same number of shares as they did in January 2015.

What this shows is consistent with what I had testified to. You see that the offering on October 25th,

1 2016, the price was \$40 a share. So they had to sell more
2 than three times as many shares as they sold in January 2015,
3 and they didn't even raise the same amount of money as they
4 raised in 2015.

5 And note this similar situation for 2012 and 2014
6 offerings. So if you compare the 2014 and 2012 offerings,
7 they raised about the same -- they raised the same amount of
8 money. But because the price was so much less in 2012, they
9 had to sell around eight times as many shares.

10 So there's significantly more dilution because the
11 price is lower. They had to sell a lot more shares to raise
12 the same amount of money.

13 Then if you compare the January 2015 offering with
14 the February 2014 offering, you will see that they sold about
15 the same number of shares. But because the price was higher
16 in January 2015, they were able to raise substantially more
17 money.

18 Q. Just to test your math briefly, if you add up the price
19 at which the three offerings that were done outside the class
20 period, so take each of those share prices, combined do they
21 add up to \$190 a share?

22 A. Do they add up to -- excuse me?

23 Q. What are the three prices -- if you just take the share
24 price for each of those three offerings, what do they add up
25 to?

1 A. 178.

2 Q. So less than 190 a share?

3 A. Yes.

4 MR. GRONBORG: No more questions.

5 THE COURT: Anything further?

6 Apparently so.

7 MS. COOK: I have one point of clarification.

8 Dr. Trueman, I apologize. Our demonstrative had
9 172 versus 162, so I just wanted to make the correction that
10 it should be 162. That's all.

11 Thank you.

12 THE COURT: All right. Anything else?

13 MR. GRONBORG: Nothing else.

14 THE COURT: You may step down, Doctor.

15 Plaintiff will call its next witness.

16 MR. FORGE: Your Honor, we have two deposition
17 videos to play for the jury. Both sides have resolved all
18 differences, and in total those videos add up to 44 minutes
19 for the two witnesses.

20 THE COURT: Let's get going.

21 MR. FORGE: Okay, Your Honor. Thank you.

22 At this time the plaintiffs would play the
23 deposition video of Mr. Eric Schmidt.

24 Again, Your Honor, just for the record, this
25 includes cuts from both sides. It's not just plaintiffs'

1 side.

2 THE COURT: All right. These are designations from
3 the defense as well?

4 MR. FORGE: Yes, sir.

5 THE COURT: Percentage coming from the defense?

6 MR. FORGE: I'm sorry, Your Honor?

7 THE COURT: Do you know what percentage comes from
8 the defense?

9 MR. FORGE: We'll get those time totals for you,
10 Your Honor, when they're both done. But, yes, we do. We
11 know. I just don't know off the top of my head. But there's
12 an agreement among the parties as to how it breaks down.

13 THE COURT: I don't know if I should keep my clock
14 running.

15 Keep going. We'll see what happens.

16 MR. CLUBOK: Your Honor, while he's teeing that up,
17 I'll just say we have agreed on the time, and we can provide
18 the breakdown for you.

19 THE COURT: I'm going to stop the clock, then, and
20 get the time at the conclusion.

21 Let's go.

22 **(Portions of videotape deposition of Eric Schmidt**
23 **played.)**

24 MR. FORGE: Your Honor, I apologize. In my haste
25 to get these videos to start, I forgot to alert the Court to

1 the idea that we had to pause this particular video for a
2 limiting instruction at this point, that the portion that
3 plays next, which for the record is at page 131, line 20, is
4 not being offered for the truth of the matter asserted but
5 rather for the speaker's state of mind.

6 THE COURT: All right.

7 Does the defense agree?

8 MR. GRONBORG: We absolutely agree, Your Honor.

9 THE COURT: Okay. And how long is this admonition
10 effective?

11 MR. FORGE: This is for the next 34 seconds, Your
12 Honor.

13 THE COURT: All right. So for the next 34 seconds,
14 the witness is going to say something. It doesn't matter
15 whether that's true, and it's not being offered to say it's
16 true. It's being offered to show what people thought was
17 true, their state of mind on the issue.

18 Is that sufficient?

19 MR. FORGE: Yes, Your Honor. Thank you.

20 THE COURT: 34 seconds. Go ahead.

21 (Playing of videotaped deposition resumed)

22 MR. FORGE: Your Honor, that concludes
23 Mr. Schmidt's testimony. We will lodge with the Court
24 jointly as Exhibit 1106 just for the record the specific
25 portions of the transcript that we played.

1 The breakdown in time for Mr. Schmidt's video
2 deposition was 15 minutes for the plaintiffs and seven
3 minutes for the defendant.

4 At this time we would play the video deposition of
5 Joshua Bleharski. The breakdown on this deposition is nine
6 and a half minutes for plaintiffs, 12 and a half minutes for
7 defendant.

8 So, Your Honor, that would take us a little bit
9 past, almost ten minutes past our 4:30 cutoff.

10 THE COURT: We better get started.

11 So it's a total of 24.5 minutes for the plaintiffs
12 and 19.5 minutes for the defense.

13 MR. FORGE: Yes, sir.

14 THE COURT: Okay. Proceed.

15 **(The videotape deposition of Joshua Bleharski,**
16 **played.)**

17 MR. FORGE: Your Honor, the final five minutes of
18 the times that I gave you earlier occurred on the second day,
19 and that's being played right now.

20 (Playing of videotaped deposition resumed)

21 MR. FORGE: Your Honor, that concludes both video
22 depositions. The parties will collectively submit
23 Exhibit 1107 to reflect what we played from Mr. Bleharski's
24 deposition. We will also be moving into evidence Exhibits
25 105, 524, 530 --

1 THE COURT: Hold on. Is there any objection?
2 We've got to write these down.

3 MR. FORGE: I'm sorry, Your Honor.

4 THE COURT: How many are you going to give?

5 MR. FORGE: There are four exhibit numbers. There
6 are no objections.

7 THE COURT: There are no objections; is that
8 correct?

9 MR. CLUBOK: That's correct, Your Honor, subject to
10 the limiting instruction. The numbered were blurred by, but
11 I think some of them were subject to a limiting instruction.

12 MR. FORGE: If they are, we can clarify that, but I
13 don't believe so. But if they are, that would be fine. If
14 the Court would like the numbers, they are 105 --

15 THE COURT: Just a moment. Okay.

16 **(Exhibit 105 received.)**

17 MR. FORGE: -- 524, 530 --

18 THE COURT: Hold on.

19 MR. FORGE: I'm sorry.

20 THE COURT: It seems you folks don't know the
21 process.

22 MR. FORGE: I'm sorry.

23 THE COURT: If you have a better process, let me
24 know. At the end, you're going to want to know what goes to
25 the jury.

1 MR. FORGE: Absolutely.

2 THE COURT: I don't know how you expect this to
3 happen. I really don't. 524, huh?

4 MR. FORGE: Yes, sir.

5 THE COURT: All right. That's in.

6 **(Exhibit 524 received.)**

7 MR. FORGE: The next one is 530.

8 THE COURT: 530 is in.

9 **(Exhibit 530 received.)**

10 MR. FORGE: And the fourth and final one is 542.

11 THE COURT: 542 is in.

12 **(Exhibit 542 received)**

13 THE COURT: All right. Anything else before we let
14 the jury go?

15 MR. FORGE: No, Your Honor. Thank you.

16 THE COURT: All right.

17 Thank you, ladies and gentlemen. We'll see you
18 tomorrow at 9:00. Thank you.

19 THE CLERK: All rise.

20 (Open court - jury not present)

21 THE COURT: All right. Be seated.

22 How many more witnesses does the plaintiff have?

23 MR. FORGE: Your Honor, we have two more witnesses,
24 one live, one video deposition.

25 THE COURT: And who are they?

1 MR. FORGE: Darcy Kopcho and Steven Feinstein, with
2 Ms. Kopcho, which is K-o-p-c-h-o, being by video deposition,
3 and Mr. Feinstein live.

4 THE COURT: All right. And I have 14 uncalled
5 witnesses for the defense. How many witnesses does the
6 defense have?

7 MR. CLUBOK: Your Honor, time permitting we intend
8 to call Paul Gompers.

9 THE COURT: Tell me how many.

10 MR. CLUBOK: Five live witnesses, Your Honor, and
11 -- sorry. I'm counting up. One second. Five live witnesses
12 and four depositions, I believe.

13 THE COURT: Okay. So you have nine more witnesses.
14 So total we have 11 more witnesses, folks. I suggest we
15 loosen our time schedule. The parties actually are pretty
16 close right now. I have the plaintiff at 14 hours and
17 25 minutes and the defendant at 13 hours and 40 minutes.

18 You're coming up on your respective cutoffs, and I
19 don't think there's any way we can get 11 witnesses in. And
20 I keep struggling in the back with the jury instructions.
21 For the record, I said I might charge it against time. I've
22 not charged any of that.

23 We've got to spend some good time on jury
24 instructions, and we've got nine witnesses. I would propose
25 we arrange to finish the witnesses on Friday but not do jury

1 instructions or closing argument.

2 MR. CLUBOK: We agree, Your Honor.

3 MR. FORGE: That's acceptable, Your Honor.

4 THE COURT: All right. Then how can I be fair
5 about time to make sure that happens? Let me say, I'm more
6 than aware that when I impose time and people stop witnesses
7 early, although I'm not sure that has happened because --
8 long witnesses. But when they stop witnesses early, I want
9 to be fair and not penalize for that.

10 All right. What do you think I should do? I mean,
11 I can sit down and do the math and figure out how much time
12 for everyone.

13 MR. COUGHLIN: Your Honor, I think if we got
14 together, we can talk about it tonight and let you know
15 tomorrow, now that we know what you're thinking.

16 THE COURT: Yeah. And I not hold this to you at
17 all, but how long do you think your closing and rebuttal will
18 be, plaintiff?

19 MR. COUGHLIN: I think hopefully close is less than
20 an hour, and rebuttal another 15, 20 minutes.

21 THE COURT: An hour and 15, whoo. That whoo is not
22 meaning it is too long. That means there's a lot of
23 territory to cover.

24 Defense?

25 MR. CLUBOK: I'm glad to hear that, because I was

1 going to say an hour and a half at least, if not two.

2 THE COURT: That's why I threw that in.

3 MR. CLUBOK: Thank you.

4 THE COURT: You know, I think -- you know, we told
5 them it would go until Friday. If we conclude witnesses on
6 Friday, then roll up our sleeves, work on jury instructions,
7 special verdict, come in fresh Tuesday, deliver the
8 instructions on Tuesday, hear the closing argument, that's
9 what we should do. Okay.

10 THE CLERK: That's fine. I have criminal matters I
11 have to move from Tuesday.

12 THE COURT: When?

13 (Court and clerk conferring)

14 THE COURT: Yes, you need to move that criminal
15 matter. Yes.

16 And I would like for us to see about further
17 discussion on jury instructions the early part of Friday
18 afternoon and/or Monday from 10 to 12.

19 MR. CLUBOK: We are available, Your Honor.

20 THE COURT: Okay. So that's what we'll do. Okay.

21 MR. CLUBOK: Great.

22 THE COURT: As you work time out, I do want to be
23 somewhat equal in time, and that might include the extra time
24 the defense needs for closing. You can consider that. It
25 would be my goal to be equal unless you're not liking that.

1 Didn't I get an odd motion I've never gotten before
2 from the defense for more time?

3 MR. CLUBOK: A motion, Your Honor, for more time?
4 Not from us.

5 THE COURT: Maybe it was the plaintiff for more
6 time. You don't remember that back in the history of this
7 case? Maybe I'm confusing it.

8 MR. FORGE: I think, Your Honor, it was a joint
9 request to have a timed trial.

10 THE COURT: No. Maybe it's a different case. It
11 was a request that one side -- might be the side with the
12 burden of proof, to have more time. Irrelevant. We're not
13 doing that now.

14 Okay. So I order the parties to assign appropriate
15 time so that this case will end by -- it's got to be 1:30 on
16 Friday because we're going to have them here 8:00 to 1:30.
17 So when -- the testimony has to end at 1:30.

18 Do what you need to do on that. Perhaps consider
19 if you want to bicker amongst yourselves about, well, you're
20 getting extra time for the closing or whatever. Again, I
21 have plaintiff at 14:25, defendant at 13:40. Okay. So work
22 all that out.

23 MR. COUGHLIN: Thank you, Your Honor.

24 THE COURT: We will conclude with testimony Friday
25 at 1:30. We then might spend a little time on jury

1 instructions, although the court reporter and others might
2 want to take a break. And as I mentioned before, we need to
3 be done at 3:00 on Friday.

4 Now, do you have a little time now to discuss jury
5 instructions, say, just 15 minutes to get a handle on what
6 we're doing here?

7 MR. CLUBOK: Of course, Your Honor.

8 THE COURT: Okay. So let me -- let's go back to
9 where we were, and I am going to give joint instruction
10 number one. I think both sides agreed.

11 Let me also say the format that these ultimately
12 need to be in. I do not want them referencing the subject
13 matter. We could go back and forth on that, but I don't want
14 them referencing the subject matter. And I want them all to
15 say Court Instruction No., period, blank. That gives you all
16 the possibility to shuffle and reorder as you think
17 appropriate.

18 So in the final form as presented to me, it needs
19 to say Court Instruction No. blank. I then actually mark the
20 instructions as I read them, and it's my way of knowing what
21 I actually read. It's the system.

22 That includes the preliminary instructions I give.
23 So I need a batch of preliminary instructions that say Court
24 Instruction No. blank. I will fill those in. Then I'll
25 begin with the next in order, which actually you've agreed

1 upon the opening instructions at the end of the case -- the
2 obvious ones, go deliberate, pick a foreperson, et cetera.

3 So you need to put those all in that form, which
4 should be easy. You should also put into that form the
5 disputed instructions which we are now going to be
6 considering again.

7 I have told you that I'm going to give Court
8 Instruction No. 1. Then we get to Instruction No. 2. That
9 gets to the dispute about omission. You know, I thought a
10 lot about that. The last time I heard that it wasn't in the
11 pleading. Then I heard it was in the pleading but specific
12 only as to one claim which got dismissed and not specific
13 enough concerning the other claims.

14 Boy, I've looked. In fact, plaintiffs' papers on
15 this just lays out a lot of allegations, and it's going to be
16 my ruling that they get to present an omission theory. So
17 that means I would be giving number -- plaintiffs' No. 2.

18 Does anyone wish to argue further on that? You
19 know, it's an interesting point. Gosh, can you lay in the
20 weed on your 12(b)(6) and then in the middle of the trial say
21 gotcha? Either there's a missing element in a claim or there
22 is an Iqbal/Twombly plausibility or specificity issue and
23 then not pursue it.

24 Go ahead. Yeah.

25 MR. CLUBOK: Two objections in addition to the ones

1 we made before. And if I'm repeating, I don't mean to.

2 THE COURT: No. Go ahead.

3 MR. CLUBOK: One is I do not believe as we sit here
4 this moment we know specifically what the nature or the
5 details of what was omitted. I don't believe we know exactly
6 what we're shooting at or defending against. That's number
7 one.

8 Number two, I would say that to the extent we have
9 heard some things about omissions, they are just the flip
10 side of a false statement. And many Courts have ruled you
11 could take every misstatement case and call it an omission
12 statement, because by its very nature you're saying you speak
13 falsely because you're omitting to tell the truth that makes
14 the false statement true.

15 So it's those two separate points I'd just like to
16 raise again.

17 THE COURT: Okay. On the issue of your not being
18 sure, I have some sympathy for that, but an early 12(b)(6)
19 motion -- I think it was page 20 or 25 of the joint
20 arguments -- gosh, the plaintiff laid out in their complaint
21 all the things and you could have filed a 12(b)(6) motion
22 saying this isn't specific enough. Tell me what you're
23 talking about. And you could have filed a discovery. You
24 could have filed an interrogatory that says: In paragraph 23
25 you say there was admission. Please describe it. I mean --

1 MR. CLUBOK: We did do those things, Your Honor.
2 We filed a motion that we prevailed upon ultimately on the
3 omissions that we thought we were facing.

4 THE COURT: You filed a motion for further
5 discovery?

6 MR. CLUBOK: No, no. Summary judgment.

7 THE COURT: No. I didn't say summary judgment. I
8 said -- you complain that you don't know what they are. You
9 know, there's something called discovery when you find out
10 what the issues are.

11 MR. CLUBOK: I understand. We did ask for those in
12 discovery. We were referred back to the complaint, which
13 made us believe they were confined to the corners of the
14 complaint. The omissions that were identified in the
15 complaint with specificity related to the press release.

16 So we did make those requests. We got our answer.
17 We had no reason to file a motion. We prevailed on that, and
18 now we're left not knowing what are the omissions from the
19 conference call that we are asked to defend against.

20 That's our position.

21 THE COURT: Okay. I'm not -- I understand the
22 argument. I'm not buying it. I'll give you another
23 argument. You were misled by that one statement in their
24 summary judgment.

25 MR. CLUBOK: There is estoppel to that and there is

1 judicial estoppel, and I believe we've argued that. I assume
2 you've already rejected it.

3 THE COURT: I get it. I'm going to make the
4 decision. They can argue omissions. But you made your
5 record. I get it.

6 So that gets us into elements of a 10(b)(5) claim.
7 I'm inclined to give the plaintiffs' Instruction No. 3. Do
8 you wish to address that further?

9 MS. JOHNSON: I do, Your Honor. We are generally
10 fine with that except for element number three. Plaintiff
11 deviated from the model instruction, and we would request
12 that the instruction the Court gives return to the model
13 instructions.

14 THE COURT: How does it deviate?

15 MS. JOHNSON: They wrote a new element three.

16 THE COURT: Response?

17 MR. GRONBORG: The response is element three goes
18 to reliance. So the model instruction has instruction for
19 individual reliance. That's they justifiably relied on a
20 statement. Within the notes, there's the commentary, and
21 later in the instructions, about what you say, what the
22 instruction is, if you have a case like this that is based on
23 the fraud on the market theory of reliance.

24 This is not an individual reliance case, so the
25 instruction there is not something we made up. It is the

1 fraud on the market instruction with respect to reliance.

2 THE COURT: Yes. I thought I had all my notes on
3 another piece of paper. I have my notes on the actual
4 instruction. I understand what you're saying, Ms. Johnson,
5 and I wish to say yes. We're now talking about number three,
6 correct?

7 MR. GRONBORG: Correct.

8 THE COURT: Okay. And I did want to at least get
9 to this today, and that goes to the word justifiable in
10 element three. I'm sorry. In -- I guess element three. I'm
11 looking specifically at document 687, which I think should be
12 the key document we work off of, page 14. The question is
13 whether justifiably goes before relied.

14 And what else?

15 MS. JOHNSON: Actually -- and I heard Your Honor
16 say that yesterday.

17 THE COURT: Yeah.

18 MS. JOHNSON: The model instruction says for
19 element three: Plaintiff justifiably relied on defendant's
20 untrue statement of a material fact in buying company
21 securities.

22 THE COURT: Okay. So we're -- go ahead.

23 MS. JOHNSON: And that's what, if we should return
24 to, there is a separate instruction for the fraud on the
25 market issue. So that's not a justification for departing

1 from the model instructions for number three.

2 THE COURT: Well, the fraud on the market theory
3 are at instructions number what? Do we know? They're kind
4 of deep into it.

5 MS. JOHNSON: Deep into it.

6 THE COURT: Okay.

7 MR. GRONBORG: Six, I believe, but let me just
8 confirm that.

9 MS. JOHNSON: Plaintiffs' 6, defendant's 12.

10 THE COURT: What do we do then about line 13 on
11 page 14?

12 Is it the plaintiffs' position that they have
13 sufficiently met the fourth factor for marketplace -- for
14 fraud on the market that we discussed in the summary
15 judgment? Do you understand the question? If you don't
16 understand the question, I'll back up and give you the
17 backup.

18 Do you believe you've established the fourth
19 element for fraud on the market that I had questions about in
20 the summary judgment?

21 MR. GRONBORG: Well, I believe we will. We decided
22 it was a jury determination about -- there are four parts to
23 fraud on the market.

24 THE COURT: So you're not going to let me make that
25 decision?

1 MR. GRONBORG: On materiality is the fourth part.
2 You decide -- my understanding of the ruling was on the three
3 of the four elements of the fraud on the market theory, those
4 have been decided. The fourth was whether or not the alleged
5 misstatements or omissions are material, and you had decided
6 that that was a -- the jury would decide that issue.

7 THE COURT: All right. Then do we not have to have
8 this Instruction No. 3 interact with the later instructions?

9 Let me just throw this out. At line 13 we say: If
10 you do not find a fraud on the market as defined in
11 instruction numbers later, plaintiffs must show justifiable
12 reliance. Don't those two have to interact? How are you
13 proposing that to happen? Yes?

14 MS. JOHNSON: I don't think they do because the
15 model instruction is written in a way where you can use both.
16 Fraud on the market says the presumption allows for a finding
17 of, you know, reliance if -- and then it gives those four
18 factors, three of which have already been decided.

19 And if plaintiff proves the fourth factor, then the
20 exceptions come into play. And if defendants establish their
21 burden on the exceptions, then the presumption goes away.

22 THE COURT: Where is that in the model instruction?
23 Are we looking at 18.2?

24 MS. JOHNSON: 18.7 is the one I'm talking about.

25 THE COURT: But I have in front of me 18.2,

1 plaintiffs' Instruction No. 3. So what does that say that
2 takes into account the elements described at 18.7?

3 MR. GRONBORG: Your Honor, I believe it's in the
4 notes, not in the instruction.

5 THE COURT: I'm looking at your number three.

6 MR. GRONBORG: You're looking at our number three.

7 THE COURT: I can't read number three unless you
8 establish fraud on the market.

9 MR. GRONBORG: Well, if I -- fraud on the market is
10 -- plaintiffs are not doing an either/or. I have seen the
11 length that you added in your proposed reliance about if
12 there's a rebuttal, plaintiffs must then prove. Plaintiffs
13 have not --

14 THE COURT: Wait. Where did that come from?

15 MR. GRONBORG: This is what you handed out this
16 morning.

17 THE COURT: Yes, to reliance.

18 MR. GRONBORG: To reliance.

19 THE COURT: Yes. Okay.

20 MR. GRONBORG: The very last sentence which I
21 believe you had added says: If defendants successfully rebut
22 the presumption of reliance by Norfolk, plaintiffs must then
23 prove that they justifiably relied directly on the alleged
24 misrepresentation or omission.

25 THE COURT: Are you saying that if the jury doesn't

1 find materiality on fraud on the market, you lose?

2 MR. GRONBORG: Yes.

3 THE COURT: Oh. Did you hear that?

4 MS. JOHNSON: Yes.

5 THE COURT: Okay. Well, then, I'd have to check
6 and see if the reliance instruction appropriately sets that
7 up. I'm now seeing your internal thought process. Okay.
8 I'm with you on that.

9 We'll come back and have to see it. We'll
10 certainly come back when we get to your reliance instruction.

11 Let me go on to something else just so you get some
12 preliminaries here. Number four, materiality and the
13 Omnicare issue. You know, I've since looked at Omnicare. I
14 get Omnicare. It is in the instructions to the model
15 instruction, but my tentative is to go against the defense
16 here, because Omnicare, it went on and on about opinion with
17 the speaker saying I believe, I believe. Opinion, opinion.

18 And the parties actually accepted that it was an
19 opinion case because that was stated over and over. And if
20 I'm recalling right, there was an SEC filing that
21 specifically said opinion.

22 So it was a huge issue in Omnicare. Tell me how
23 this comes anywhere close to that. Are you with me?

24 MS. JOHNSON: Yes, and I don't want to answer the
25 wrong question.

1 THE COURT: Yeah. Okay.

2 MS. JOHNSON: So I'll answer that first and then
3 talk about the instruction if I could. This case is down to
4 four statements. One of them is: I believe the curves
5 appear to be continuing to separate.

6 THE COURT: Okay. Do you agree that one of those
7 statements say I believe?

8 MR. GRONBORG: I -- that sounds like close to the
9 exact language, although if I could explain it, the issue
10 here, unlike Omnicare, is this case isn't pled that
11 Mr. Auerbach didn't have a belief. I mean, obviously this
12 case is pled all along as what he said was contradicted by
13 the fact that he knew at the time. Expect was the --

14 THE COURT: Your statement, Ms. Johnson, that it
15 specifically said I believe --

16 MS. JOHNSON: Yeah, I should look it up, too.

17 THE COURT: I'm actually looking at the special
18 verdict form, which is something else we need to talk about,
19 and the special verdict form filed by Latham & Watkins lists
20 the statements.

21 All right. So on that we're going to see whether
22 it says -- whether one of the sentences says, I believe. You
23 still might not be out of the woods, Ms. Johnson, because
24 Omnicare just goes on and on. It was an accepted notion of
25 belief.

1 MS. JOHNSON: And on that I would just note that
2 the model instruction has a number of bracketed paragraphs
3 for use if it applies to that particular case. The comments
4 explain those bracketed paragraphs 1, 2, 3, 4, 5, but the one
5 of those five that is explained in the notes but not provided
6 for in the instruction is opinion.

7 So respectfully, the instruction comment suggests
8 that if it is an opinion, there should be something in the
9 instruction that addresses it. The model just doesn't
10 provide what that bracketed language would be, and I think it
11 should have.

12 So if Your Honor finds that there is an opinion
13 statement, there should be an opinion instruction in number
14 four.

15 THE COURT: And I still say that -- we'd all agree
16 this isn't as strongly an opinion case as Omnicare, which
17 just was completely about opinion. If you say it says I
18 believe, that may get you out of the woods, but it may not.

19 So that's -- we've kind of identified that issue.
20 You may have other arguments. But it's 5:00. I wanted to
21 preview those general arguments. This will give you time to
22 look over the handouts I gave on reliance, causation, and
23 damages, kind of incorporating things from both of what you
24 have to say. And we will have a more extensive time to
25 review all of this.

1 So I'm going to let you go, but with one last
2 thing. Any general comments on the differences between the
3 special verdicts? I mean, I'm looking at it and I'm trying
4 to see where the fight is. Any general comments?

5 MR. GRONBORG: I'd like to think that they get
6 resolved. The jury instructions should resolve, at least
7 some of them.

8 MR. CLUBOK: Your Honor, we are -- we have been
9 meaning to reach out, and we agree with that. So we will
10 work with them tonight and try to reconcile that, consistent
11 with your rulings.

12 THE COURT: Well, it looks like we'll have a
13 sufficient time Friday afternoon and Monday morning to
14 resolve this. So Tuesday we'll have the big show. Okay?

15 MR. CLUBOK: Okay.

16 THE COURT: Thank you.

17 MS. JOHNSON: Thank you, Your Honor.

18 THE COURT: For the record, I didn't charge any of
19 that conversation, so we're still at 14:25 and 13:07. No, I
20 got that wrong -- 14 four, 25 minutes, and 13 seven,
21 40 minutes. Thank you.

22 (Proceedings adjourned at 5:03 p.m.)
23
24
25

CERTIFICATE

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
TRANSCRIPT OF THE STENOGRAPHICALLY RECORDED PROCEEDINGS IN
THE ABOVE MATTER.

FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE
REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

/s/ Miriam V. Baird

01/23/2019

MIRIAM V. BAIRD
OFFICIAL REPORTER

DATE

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,		2
'88 [1] - 168:1		2 [9] - 28:9, 29:1, 115:21, 172:15, 172:20, 172:22, 202:8, 202:17, 212:4 2,200 [1] - 48:24 2,300 [1] - 62:13 2.19 [1] - 175:22 20 [11] - 37:14, 38:10, 50:25, 51:2, 94:7, 94:8, 129:14, 130:1, 193:3, 198:20, 203:19 200 [1] - 82:13 2003 [1] - 168:2 2012 [4] - 181:25, 190:5, 190:6, 190:8 2013 [2] - 88:16, 91:7 2014 [121] - 7:14, 9:12, 20:17, 25:12, 26:8, 26:20, 27:19, 29:25, 31:22, 31:24, 32:14, 33:24, 35:1, 59:14, 79:19, 79:24, 82:6, 82:12, 88:16, 89:22, 90:19, 91:7, 92:8, 92:11, 95:23, 96:17, 96:19, 101:6, 104:4, 105:6, 105:11, 105:15, 105:19, 106:2, 107:18, 108:2, 108:12, 108:14, 108:22, 108:25, 109:5, 109:10, 110:2, 111:7, 112:14, 113:1, 113:18, 113:25, 114:23, 116:3, 116:14, 118:1, 118:9, 118:14, 119:7, 120:13, 121:5, 123:2, 123:7, 124:16, 125:14, 125:16, 125:24, 125:25, 126:16, 126:18, 127:12, 131:24, 132:17,
/		
/s [1] - 214:9		
0		
01/23/2019 [1] - 214:9		
1		
1 [5] - 94:9, 170:22, 171:2, 202:8, 212:4 1,100 [1] - 61:21 1-053 [1] - 1:23 1.15 [3] - 175:1, 175:8, 175:18 1.25 [1] - 182:7 1/2 [1] - 28:5 10 [3] - 7:23, 103:9, 199:18 10(b)(5) [1] - 205:6 10-K [1] - 179:25 10-Q [1] - 179:25 10.2 [1] - 170:15 1005 [1] - 181:18 102 [2] - 60:14, 147:20 105 [4] - 3:21, 194:25, 195:14, 195:16 1066 [1] - 65:16 1078 [6] - 3:15, 117:23, 117:25, 118:3, 118:6, 118:7 1079 [7] - 3:15, 119:20, 119:25, 120:3, 120:4,		

<p>134:13, 142:5, 143:1, 145:21, 146:15, 147:21, 148:21, 148:24, 149:18, 151:5, 152:9, 152:14, 153:2, 155:21, 155:24, 157:2, 157:21, 158:19, 161:12, 161:14, 161:25, 162:6, 162:18, 163:25, 164:3, 164:23, 165:5, 165:20, 169:20, 170:4, 170:13, 171:11, 171:23, 172:6, 173:2, 173:9, 179:9, 180:18, 180:25, 182:7, 183:16, 183:21, 184:10, 185:25, 186:6, 189:19, 190:5, 190:6, 190:14</p> <p>2014-2015 [3] - 167:9, 170:1, 180:13</p> <p>2015 [102] - 21:23, 25:12, 26:8, 26:21, 27:20, 29:25, 31:23, 32:3, 32:11, 33:25, 36:3, 37:4, 37:14, 37:19, 37:20, 38:10, 38:16, 38:24, 39:4, 47:5, 47:14, 48:16, 49:14, 49:21, 49:24, 50:6, 59:15, 61:16, 61:21, 62:13, 63:10, 63:19, 63:20, 63:25, 64:5, 64:13, 66:5, 69:2, 69:10, 71:2, 71:12, 72:1, 72:5, 72:7, 72:25, 73:24, 74:7, 75:7, 75:10, 76:19, 83:2, 83:3, 83:6, 83:13, 93:20, 167:11, 169:20, 170:5, 170:13, 171:12, 171:24, 172:1, 172:5, 172:6, 173:2, 173:6, 173:14, 173:18, 173:19, 173:22, 174:14, 174:16, 175:10, 175:16, 175:21, 176:1, 176:9, 176:12, 178:19, 179:19, 180:21, 180:25, 181:10, 181:14, 182:11, 182:24, 184:18, 185:16, 186:1, 186:7, 189:20, 189:23, 190:2, 190:4, 190:13, 190:16</p> <p>2016 [6] - 182:14, 187:22, 188:2, 188:4, 189:7, 190:1</p> <p>2017 [2] - 26:7, 66:7</p> <p>2019 [2] - 1:19, 4:1</p> <p>202 [4] - 44:19, 45:20, 46:2, 46:8</p> <p>209 [5] - 3:17, 127:4, 127:6, 127:8, 127:9</p> <p>20s [1] - 127:21</p> <p>20th [9] - 36:7, 36:10, 36:19, 36:24, 37:2, 37:18, 37:19, 37:20, 39:1</p> <p>2126 [1] - 164:4</p> <p>218 [1] - 175:20</p>	<p>218.5 [2] - 174:25, 175:9</p> <p>21st [11] - 174:24, 175:16, 183:16, 183:21, 184:18, 185:25, 186:1, 186:6, 186:7, 189:19</p> <p>22 [3] - 26:8, 135:19, 135:20</p> <p>222.8 [3] - 188:5, 188:11, 188:17</p> <p>22nd [56] - 20:17, 21:21, 25:11, 26:20, 29:25, 31:22, 31:24, 32:14, 33:24, 59:14, 79:19, 79:24, 81:10, 82:6, 104:4, 105:6, 105:11, 105:15, 105:19, 108:2, 108:14, 108:22, 108:25, 109:10, 110:2, 111:7, 113:1, 113:25, 114:22, 116:3, 116:14, 117:17, 120:13, 145:21, 146:15, 147:21, 148:21, 148:24, 151:5, 152:9, 152:14, 155:21, 155:24, 157:2, 157:21, 158:19, 161:25, 162:6, 162:17, 163:25, 164:18, 164:23, 165:5, 165:19, 175:25, 179:8</p> <p>23 [5] - 1:19, 4:1, 115:20, 115:21, 203:24</p> <p>24 [6] - 64:5, 120:15, 140:25, 141:4, 141:7, 143:16</p> <p>24.5 [1] - 194:11</p> <p>24th [11] - 64:13, 69:1, 69:10, 71:2, 71:4, 71:22, 72:1, 72:25, 83:13, 125:24, 166:10</p> <p>25 [4] - 56:11, 197:17, 203:19, 213:20</p> <p>25th [2] - 189:7, 189:25</p> <p>27 [2] - 120:6, 120:15</p> <p>27.6 [2] - 112:5, 112:9</p> <p>272 [1] - 109:21</p> <p>28 [11] - 103:23, 103:24, 104:2, 112:15, 112:18, 112:23, 113:3, 113:12, 114:24, 116:14, 116:23</p> <p>289 [4] - 3:18, 149:10, 149:14, 149:15</p> <p>29 [5] - 26:8, 49:21, 61:16, 109:12, 139:22</p> <p>29th [5] - 25:12, 26:21, 29:25, 31:23, 82:23</p> <p>2:42 [1] - 161:6</p> <p>2nd [5] - 27:18, 34:16, 82:12, 185:16, 186:7</p>	<p>3.7 [1] - 175:10</p> <p>30 [9] - 43:24, 44:5, 46:5, 109:12, 140:2, 140:3, 185:25, 186:1, 186:5</p> <p>304 [3] - 114:2, 115:20, 115:21</p> <p>305 [1] - 115:21</p> <p>30th [5] - 73:25, 74:4, 74:6, 124:16, 125:16</p> <p>31st [3] - 7:13, 9:11, 120:14</p> <p>34 [8] - 3:13, 46:22, 47:1, 47:2, 47:4, 193:11, 193:13, 193:20</p> <p>35 [2] - 102:10, 103:10</p> <p>36 [1] - 140:23</p> <p>39 [1] - 109:18</p> <p>39.9 [5] - 109:19, 109:24, 110:4, 110:9, 110:23</p> <p>3:00 [2] - 161:4, 201:3</p> <p>3:03 [1] - 161:6</p> <p>3rd [8] - 34:16, 35:3, 35:4, 63:25, 66:5, 125:24, 143:1, 166:10</p>	<p>99:6, 99:16, 99:18, 99:19, 116:16, 119:11, 125:21, 163:4</p> <p>5:00 [2] - 79:1, 212:20</p> <p>5:03 [1] - 213:22</p> <p>5th [2] - 120:25, 121:5</p>
			6
			<p>6 [6] - 62:13, 83:2, 83:3, 102:9, 102:10, 207:9</p> <p>60 [3] - 140:23, 141:2, 141:5</p> <p>602 [11] - 13:3, 14:20, 33:9, 40:13, 41:11, 42:11, 53:14, 54:15, 56:2, 67:6, 67:19</p> <p>61 [1] - 187:20</p> <p>610 [1] - 135:20</p> <p>655 [1] - 2:6</p> <p>66 [1] - 3:14</p> <p>67.8 [1] - 175:8</p> <p>687 [1] - 206:11</p> <p>6:00 [1] - 79:2</p> <p>6th [3] - 34:17, 62:6, 63:19</p>
			7
			<p>7 [2] - 3:13, 123:2</p> <p>7-1 [1] - 120:19</p> <p>75 [1] - 129:23</p> <p>79 [1] - 3:5</p> <p>7:00 [1] - 79:2</p> <p>7th [10] - 34:17, 35:17, 121:21, 123:7, 134:13, 151:5, 158:19, 162:6, 162:17, 163:25</p>
			8
			<p>8 [3] - 28:5, 102:10, 121:8</p> <p>83 [1] - 3:5</p> <p>86 [3] - 103:4, 104:10, 105:13</p> <p>88 [2] - 3:6, 3:6</p> <p>8:00 [1] - 200:16</p> <p>8th [5] - 24:25, 26:7, 34:17, 35:17, 63:19</p>
			9
			<p>9 [2] - 7:23, 109:21</p> <p>9-1 [1] - 135:21</p> <p>9.1 [1] - 135:21</p> <p>9.3 [1] - 139:23</p> <p>90 [7] - 79:6, 103:7, 104:13, 128:2, 128:6, 128:11, 131:25</p> <p>901 [1] - 98:8</p> <p>905 [5] - 3:18, 152:16, 152:21, 152:22, 152:25</p> <p>91 [2] - 103:7, 104:13</p> <p>91.6 [2] - 41:5, 102:21</p>

<p>92101 [1] - 2:7 92130 [1] - 2:15 92701 [1] - 1:23 93.9 [2] - 41:5, 102:23 980 [1] - 65:16 989 [1] - 186:23 99 [1] - 3:14 991 [6] - 3:19, 187:12, 187:13, 187:14, 187:16, 187:17 992 [12] - 3:14, 64:21, 64:23, 65:2, 65:19, 65:23, 66:10, 66:12, 66:13, 66:16, 66:17 9:00 [1] - 196:18 9:03 [1] - 4:1 9th [3] - 34:17, 35:17, 63:19</p>	<p>accuracy [2] - 34:24, 109:1 accurate [3] - 32:7, 163:13, 180:4 accurately [4] - 27:25, 34:22, 111:3, 127:14 accusation [1] - 81:18 accusing [1] - 71:5 action [2] - 16:11, 68:13 actions [1] - 76:10 active [1] - 15:14 activities [5] - 10:23, 11:17, 169:18, 180:21, 187:4 activity [2] - 150:7, 150:8 actual [26] - 24:14, 27:6, 39:9, 71:25, 79:18, 79:23, 116:9, 116:11, 116:12, 123:13, 123:14, 123:22, 145:3, 171:22, 172:9, 174:25, 176:15, 176:16, 179:25, 183:19, 183:25, 184:6, 184:21, 185:20, 186:4, 206:3 ad [16] - 125:9, 150:10, 150:21, 151:4, 158:2, 158:7, 158:12, 159:12, 159:22, 159:25, 161:11, 161:13, 161:25, 162:9, 162:16, 162:25 add [14] - 9:25, 31:8, 34:9, 34:14, 62:16, 63:1, 63:4, 63:16, 81:6, 190:18, 190:21, 190:22, 190:24, 191:18 added [9] - 30:3, 31:23, 32:2, 34:20, 35:7, 35:21, 63:8, 209:11, 209:21 adding [1] - 152:5 addition [4] - 126:22, 149:23, 153:10, 202:25 additional [22] - 35:7, 35:24, 36:5, 48:19, 48:25, 61:16, 63:16, 63:17, 63:24, 69:17, 72:4, 75:5, 76:15, 76:20, 113:5, 113:8, 124:17, 125:8, 140:18, 155:4, 159:19, 174:1 address [5] - 15:5, 100:5, 100:11, 100:15, 205:8 addressed [2] - 90:13, 143:10 addresses [1] - 212:9 adds [1] - 61:6 adjourned [1] - 213:22 administering [1] - 66:22 Administration [1] - 140:17 administration [1] - 68:8 admission [9] - 7:7, 65:10, 65:11, 65:12, 65:24, 124:5, 144:6, 144:7, 203:25 admit [1] - 187:11</p>	<p>admitted [24] - 7:9, 32:22, 39:8, 47:1, 49:25, 66:11, 81:14, 98:6, 99:16, 99:18, 101:4, 118:6, 120:1, 120:3, 121:23, 122:20, 124:7, 127:6, 127:8, 139:22, 144:9, 149:14, 152:22, 187:16 admonition [1] - 193:9 adopted [1] - 156:18 advance [6] - 4:16, 5:12, 32:4, 35:12, 36:19, 56:1 advancing [1] - 51:13 adverse [13] - 21:9, 42:5, 43:13, 110:14, 111:12, 112:1, 112:4, 112:7, 151:19, 151:23, 153:25, 154:2, 155:15 advise [1] - 44:25 advised [2] - 12:2, 12:6 advisor [1] - 4:14 advisors [1] - 42:17 AE [4] - 42:6, 43:16, 43:22, 153:5 affairs [1] - 71:11 affected [2] - 44:6, 84:23 afield [1] - 15:23 afternoon [6] - 128:23, 128:24, 176:18, 176:21, 199:18, 213:13 age [1] - 8:10 Agios [1] - 9:6 ago [3] - 115:5, 134:12, 158:3 agree [11] - 37:1, 58:6, 146:11, 186:15, 193:7, 193:8, 198:2, 211:6, 212:15, 213:9 agreed [3] - 192:17, 201:10, 201:25 agreement [1] - 192:12 ahead [19] - 28:20, 31:18, 33:20, 43:10, 61:10, 63:23, 71:20, 73:1, 73:16, 105:3, 146:12, 152:23, 171:6, 175:13, 187:10, 193:20, 202:24, 203:2, 206:22 aim [1] - 92:10 AL [2] - 1:10, 2:12 Alan [18] - 79:18, 79:22, 89:16, 93:21, 94:13, 94:19, 104:4, 104:9, 104:12, 105:23, 109:10, 130:10, 130:18, 130:20, 145:6, 165:19, 176:19, 182:24 alert [1] - 192:25 Alexander [2] - 3:3, 4:8 allegations [5] - 20:7, 20:25, 21:20, 71:9, 202:15 alleged [4] - 26:3, 64:10,</p>	<p>208:4, 209:23 allegedly [5] - 12:25, 13:2, 22:18, 54:1, 54:4 alleging [1] - 52:11 allocated [1] - 96:10 allocation [1] - 96:7 allow [1] - 62:18 allowed [2] - 53:20, 66:9 allows [1] - 208:16 almost [4] - 134:11, 156:23, 161:19, 194:9 alter [1] - 117:16 altered [1] - 117:20 alternative [4] - 183:15, 184:23, 186:2, 186:8 Alvin [17] - 101:6, 101:17, 106:3, 117:25, 124:11, 125:19, 130:17, 130:18, 133:13, 146:25, 150:12, 153:3, 153:4, 158:15, 158:21, 158:23 Alvin's [1] - 145:4 amend [1] - 162:11 amended [2] - 125:2, 156:16 amendment [1] - 156:18 amiss [1] - 133:15 amount [17] - 36:11, 91:2, 126:12, 156:11, 171:9, 173:4, 173:10, 174:15, 176:5, 188:1, 188:16, 189:21, 190:3, 190:7, 190:12 ANA [3] - 1:18, 1:23, 4:1 analyses [80] - 89:2, 90:3, 90:4, 96:19, 96:22, 96:24, 97:4, 97:13, 100:14, 100:22, 101:8, 101:15, 102:4, 104:1, 106:15, 113:10, 113:13, 115:5, 115:9, 115:16, 116:6, 116:7, 117:10, 118:20, 118:22, 119:5, 120:17, 123:17, 123:19, 124:22, 125:8, 125:9, 125:12, 125:14, 134:23, 134:24, 135:2, 135:5, 135:12, 135:24, 138:4, 139:14, 140:17, 140:18, 141:24, 142:6, 142:18, 146:18, 146:20, 150:10, 150:21, 150:22, 151:4, 153:21, 157:24, 158:2, 158:8, 158:12, 159:2, 159:6, 159:11, 159:12, 159:14, 159:17, 159:21, 159:22, 159:25, 161:11, 161:13, 161:17, 161:18, 161:25, 162:2, 162:5, 162:7, 162:9, 162:11, 162:16, 162:25 analysis [74] - 10:18, 89:24,</p>
---	---	--	---

90:5, 102:2, 102:4, 102:6, 108:9, 108:18, 113:11, 113:20, 114:22, 116:13, 117:5, 117:8, 117:14, 118:10, 118:13, 118:17, 118:24, 119:14, 119:17, 119:18, 120:10, 120:11, 123:2, 123:6, 123:14, 124:1, 124:23, 125:8, 125:11, 125:23, 126:11, 133:1, 134:6, 134:15, 134:17, 134:18, 135:16, 136:7, 136:10, 136:14, 136:15, 136:18, 136:23, 138:3, 139:13, 139:15, 139:19, 139:23, 139:25, 140:13, 141:1, 141:2, 141:3, 141:6, 141:18, 142:16, 142:18, 142:23, 143:2, 143:7, 145:2, 146:3, 150:23, 153:23, 158:5, 162:12, 168:11, 174:2, 174:17, 183:22, 189:14, 189:17

analyst [3] - 62:8, 164:18, 165:5

analysts [1] - 40:11

analyze [5] - 96:9, 134:21, 167:8, 169:19, 170:6

analyzed [1] - 145:20

AND [2] - 2:14, 214:2

AND/OR [1] - 214:6

Anderson [1] - 167:5

ANDREW [2] - 1:3, 2:12

anger [1] - 130:16

angry [3] - 92:16, 92:18, 130:14

annual [1] - 169:25

answer [24] - 14:24, 16:3, 20:3, 42:16, 42:21, 43:6, 43:7, 52:9, 55:9, 76:7, 76:11, 76:25, 84:15, 94:17, 94:18, 137:9, 150:17, 160:21, 160:22, 160:24, 163:1, 204:16, 210:24, 211:2

answered [2] - 55:11, 80:24

answers [1] - 15:11

anticipate [2] - 132:13, 132:18

ANY [1] - 214:5

anytime [1] - 180:25

anyway [1] - 6:4

apologies [3] - 10:5, 16:3, 60:8

apologize [13] - 10:7, 24:7, 30:14, 45:24, 49:10, 52:7, 57:7, 58:7, 60:13, 73:8, 83:25, 191:8, 192:24

apology [1] - 82:13

appear [4] - 65:17, 107:7, 123:4, 211:5

applied [1] - 129:9

applies [1] - 212:3

applying [1] - 143:1

appreciate [8] - 13:23, 29:12, 31:10, 57:21, 61:4, 61:11, 108:20, 117:12

approach [9] - 8:3, 8:9, 9:3, 9:5, 17:9, 19:5, 80:11, 128:17, 176:22

approaches [2] - 139:18, 140:1

appropriate [7] - 42:19, 51:19, 55:5, 165:22, 177:14, 200:14, 201:17

appropriately [2] - 11:15, 210:6

April [1] - 92:11

ARE [1] - 214:6

area [2] - 9:14, 15:15

areas [3] - 8:16, 19:15, 21:5

argue [2] - 202:18, 205:4

argued [1] - 205:1

argument [5] - 42:13, 198:1, 199:8, 204:22, 204:23

arguments [4] - 71:14, 203:20, 212:20, 212:21

Arlene [1] - 51:3

arm [9] - 95:15, 109:16, 109:17, 110:17, 111:5, 134:20, 135:2, 147:6

arose [1] - 23:24

arrange [1] - 197:25

arrangement [1] - 24:11

arrangements [1] - 38:2

arriving [1] - 19:22

Arroyo [5] - 15:16, 15:20, 16:8, 17:15, 17:21

article [1] - 47:7

ASCO [48] - 21:24, 32:4, 34:1, 39:5, 48:23, 49:24, 50:2, 50:12, 50:19, 50:22, 51:3, 51:10, 52:4, 52:13, 52:21, 52:24, 53:8, 53:11, 53:15, 54:1, 54:12, 54:16, 55:15, 56:1, 58:13, 59:15, 60:3, 61:23, 62:3, 62:7, 63:9, 63:18, 73:24, 76:19, 77:11, 77:14, 82:16, 86:4, 86:11, 86:13, 86:18, 87:5, 87:6, 132:19, 185:17, 187:10, 188:10

aside [1] - 181:1

aspects [1] - 39:25

asserted [1] - 193:4

assess [1] - 167:10

assessed [1] - 174:5

assessment [2] - 116:8, 156:20

assessments [5] - 138:14, 139:1, 140:22, 155:18, 157:1

asset [1] - 153:17

assign [1] - 200:14

assigned [1] - 149:20

assist [2] - 128:20, 169:4

associated [2] - 15:9, 49:12

assume [4] - 49:23, 75:14, 86:1, 205:1

assuming [2] - 36:10, 62:10

assumption [3] - 50:21, 77:19, 173:3

assumptions [2] - 171:20, 172:8

attached [2] - 106:18, 106:23

attachment [4] - 101:7, 101:11, 120:6, 144:13

attempted [1] - 53:16

attempts [3] - 51:16, 155:1, 155:2

attention [4] - 7:5, 70:8, 79:11, 142:15

attorney [3] - 19:15, 89:20, 131:8

attorney's [1] - 18:2

attorneys [6] - 46:18, 46:21, 78:10, 78:18, 86:23, 89:13

Auerbach [36] - 20:17, 21:3, 39:25, 79:18, 79:22, 89:16, 92:15, 101:20, 104:9, 104:12, 105:7, 105:12, 105:16, 105:20, 109:11, 110:3, 110:7, 111:8, 111:11, 112:7, 130:8, 130:9, 130:15, 130:22, 130:23, 131:1, 131:5, 143:22, 145:6, 145:12, 145:13, 152:9, 165:6, 165:19, 176:19, 211:11

Auerbach's [10] - 14:11, 82:6, 84:9, 104:4, 182:24, 183:19, 184:22, 185:6, 185:13, 185:21

August [17] - 63:20, 63:23, 66:5, 72:5, 72:7, 75:7, 83:6, 118:1, 118:9, 118:14, 119:7, 120:25, 121:5, 121:21, 123:2, 123:7, 153:2

Aurie [1] - 153:4

authenticity [4] - 98:7, 98:9, 98:11, 98:14

authored [1] - 47:4

authority [1] - 66:23

authorized [1] - 67:3

automatically [1] - 147:8

availability [1] - 86:3

available [20] - 24:18, 50:16, 50:18, 62:12, 76:17, 77:5,

80:18, 84:22, 86:1, 95:11, 113:22, 126:15, 133:8, 147:14, 184:3, 185:4, 185:7, 185:9, 185:13, 199:19

avenues [1] - 66:8

average [3] - 172:5, 186:2, 186:5

aware [59] - 12:9, 12:14, 12:17, 12:24, 14:3, 14:4, 14:14, 14:17, 14:23, 15:2, 15:4, 15:7, 15:10, 15:12, 15:18, 15:20, 16:5, 16:10, 16:11, 17:19, 38:1, 41:18, 41:21, 41:22, 43:23, 44:9, 45:10, 45:13, 45:21, 46:10, 47:17, 47:19, 52:5, 52:8, 53:17, 55:11, 55:21, 62:1, 64:2, 64:13, 69:23, 75:16, 75:18, 75:23, 78:13, 79:17, 79:18, 79:21, 79:22, 80:2, 85:19, 86:23, 103:25, 107:11, 109:14, 123:5, 164:21, 166:8, 198:6

B

B-r-e-t-t [1] - 166:23

bachelor's [1] - 129:6

background [3] - 128:25, 129:3, 142:21

backup [1] - 207:17

bad [1] - 132:4

BAIRD [2] - 1:22, 214:10

Baird [1] - 214:9

balance [1] - 173:1

Bank [1] - 24:1

bank [2] - 4:24, 23:2

barrage [2] - 150:7, 150:8

based [19] - 18:23, 21:22, 21:23, 52:10, 52:16, 66:10, 72:9, 72:10, 87:20, 88:18, 116:8, 116:9, 123:9, 135:6, 158:5, 171:13, 171:21, 184:3, 205:22

basic [1] - 21:3

basis [2] - 19:10, 19:20

batch [1] - 201:23

Bates [1] - 135:20

bear [1] - 43:20

bearing [2] - 30:12, 132:23

bears [1] - 58:9

Bebchuk [3] - 118:1, 119:23, 145:9

became [2] - 26:8, 153:17

become [4] - 30:23, 71:3, 94:21, 131:16

becomes [2] - 146:6, 146:9

begin [2] - 88:13, 201:25

beginning [3] - 25:5, 25:10,

<p>40:25</p> <p>begins [3] - 40:25, 56:23, 60:22</p> <p>behalf [39] - 4:16, 5:23, 6:6, 9:12, 9:21, 10:10, 15:13, 15:14, 16:8, 17:16, 20:1, 20:8, 21:25, 25:22, 34:18, 35:2, 35:15, 44:25, 46:17, 48:25, 50:13, 51:13, 52:4, 61:22, 63:11, 72:6, 74:11, 76:3, 76:15, 77:18, 77:24, 78:8, 83:6, 84:7, 85:7, 85:17, 87:1, 87:4, 176:19</p> <p>BEHALF [2] - 2:3, 2:11</p> <p>behind [6] - 38:17, 57:5, 72:9, 127:25, 134:18, 140:18</p> <p>belief [2] - 211:11, 211:25</p> <p>believes [1] - 133:14</p> <p>below [2] - 40:24, 102:25</p> <p>benefit [5] - 19:16, 79:23, 137:21, 138:1, 151:3</p> <p>benefits [1] - 15:8</p> <p>Berkeley [2] - 129:8, 168:1</p> <p>best [8] - 17:1, 38:14, 58:19, 58:24, 58:25, 68:1, 72:23, 117:16</p> <p>BETH [4] - 121:15, 121:17</p> <p>better [8] - 31:7, 46:1, 57:18, 93:6, 115:12, 166:8, 194:10, 195:23</p> <p>between [20] - 17:11, 36:15, 46:5, 54:20, 55:13, 56:4, 115:14, 119:22, 122:5, 122:7, 125:24, 141:4, 149:17, 151:5, 158:18, 162:6, 166:10, 173:13, 173:19, 213:2</p> <p>beyond [14] - 17:6, 77:17, 78:17, 103:22, 104:2, 112:18, 114:23, 116:13, 116:22, 156:4, 156:8, 157:13, 157:20</p> <p>bicker [1] - 200:19</p> <p>big [6] - 35:19, 80:21, 92:5, 129:16, 165:2, 213:14</p> <p>billed [1] - 178:12</p> <p>binder [21] - 28:8, 34:5, 44:13, 56:17, 56:19, 56:20, 57:9, 59:1, 59:12, 64:20, 65:18, 65:20, 99:3, 99:4, 99:6, 99:7, 135:18, 144:4, 163:5, 170:20, 181:17</p> <p>binders [6] - 27:24, 65:23, 88:10, 99:6, 128:18, 176:22</p> <p>Bio [1] - 10:8</p> <p>biometrics [2] - 91:11, 95:12</p> <p>biopharma [2] - 10:23, 11:2</p> <p>biopharmaceutical [8] -</p>	<p>8:10, 9:4, 10:14, 10:15, 10:19, 10:22, 11:1, 180:14</p> <p>biostatistician [4] - 88:25, 105:7, 114:21, 129:22</p> <p>biostatistics [3] - 88:15, 88:21, 129:8</p> <p>biotech [3] - 10:13, 129:18, 131:18</p> <p>Biotechnology [5] - 7:1, 10:3, 127:25, 129:12, 176:20</p> <p>BIOTECHNOLOGY [2] - 1:10, 2:12</p> <p>biotechnology [2] - 8:6, 8:7</p> <p>birthday [1] - 35:5</p> <p>bit [17] - 41:3, 79:7, 129:2, 130:4, 131:10, 133:1, 133:4, 134:15, 137:11, 143:5, 148:5, 151:10, 153:15, 154:20, 160:20, 163:9, 194:8</p> <p>blame [1] - 92:22</p> <p>blank [4] - 44:4, 201:15, 201:19, 201:24</p> <p>Bleharski [3] - 3:20, 194:5, 194:15</p> <p>Bleharski's [1] - 194:23</p> <p>block [1] - 24:10</p> <p>blotter [2] - 82:9, 82:23</p> <p>blow [3] - 24:5, 47:7, 66:18</p> <p>blue [3] - 31:24, 32:2, 63:9</p> <p>BLUFF [1] - 2:14</p> <p>blurred [2] - 28:3, 195:10</p> <p>board [8] - 27:13, 35:19, 63:2, 80:21, 82:2, 82:3, 83:1, 83:10</p> <p>bold [1] - 40:4</p> <p>book [15] - 28:14, 31:6, 31:15, 48:13, 58:1, 58:9, 59:20, 59:24, 60:21, 61:13, 63:1, 65:16, 72:21, 72:22, 87:6</p> <p>book-ended [1] - 87:6</p> <p>books [1] - 122:17</p> <p>boss [5] - 69:9, 78:12, 130:23</p> <p>boss's [2] - 69:9, 78:12</p> <p>bottom [4] - 43:21, 144:20, 150:4, 164:2</p> <p>bought [4] - 8:19, 34:18, 35:2, 72:4</p> <p>box [3] - 31:24, 32:2, 63:9</p> <p>boy [1] - 202:14</p> <p>bracketed [3] - 212:2, 212:4, 212:10</p> <p>break [6] - 23:22, 70:2, 70:12, 114:10, 161:4, 201:2</p> <p>breakdown [3] - 192:18, 194:1, 194:5</p>	<p>breaks [1] - 192:12</p> <p>breast [4] - 138:16, 139:3, 139:5, 140:24</p> <p>Bredahl [3] - 73:11, 87:22, 128:20</p> <p>Brett [4] - 3:8, 166:18, 166:20, 166:23</p> <p>Brian [1] - 15:20</p> <p>brief [2] - 60:11, 111:25</p> <p>briefly [15] - 13:6, 13:7, 89:1, 90:1, 90:8, 95:10, 134:16, 167:3, 167:12, 169:16, 178:17, 179:17, 182:23, 182:24, 190:18</p> <p>bring [5] - 18:14, 20:8, 73:4, 73:6, 88:10</p> <p>broader [1] - 137:25</p> <p>BROADWAY [1] - 2:6</p> <p>broken [1] - 136:1</p> <p>brother [2] - 15:20, 16:13</p> <p>brought [2] - 17:21, 173:12</p> <p>Bryce [1] - 145:6</p> <p>budgets [2] - 171:18, 171:21</p> <p>building [1] - 30:17</p> <p>bullet [5] - 9:9, 136:12, 140:3, 140:9, 142:16</p> <p>burden [2] - 200:12, 208:21</p> <p>burn [21] - 167:10, 169:15, 169:16, 169:17, 170:10, 170:14, 171:10, 171:14, 171:15, 171:22, 172:2, 172:4, 172:9, 173:3, 173:11, 178:22, 179:4, 179:16, 179:17, 179:24, 179:25</p> <p>buy [6] - 35:15, 46:7, 47:9, 47:13, 85:6, 86:10</p> <p>buying [4] - 61:24, 77:18, 204:22, 206:20</p> <p>buys [2] - 48:19, 85:7</p> <p>BY [123] - 4:10, 5:21, 7:4, 7:11, 9:1, 12:16, 12:23, 14:6, 15:1, 16:7, 17:13, 19:2, 21:2, 21:19, 22:15, 22:24, 25:3, 25:9, 26:10, 26:15, 27:12, 29:18, 31:20, 32:6, 33:13, 33:22, 34:8, 37:11, 37:22, 39:12, 40:3, 40:9, 40:23, 41:4, 41:17, 42:1, 43:3, 43:11, 43:17, 44:18, 45:18, 47:3, 48:12, 51:1, 52:1, 52:20, 53:24, 54:9, 55:1, 56:14, 61:12, 63:13, 64:12, 66:15, 67:17, 67:23, 68:3, 69:22, 70:23, 71:21, 73:17, 74:24, 77:8, 79:10, 79:15, 80:9, 80:16, 81:5, 81:24, 83:23, 85:14, 86:16, 88:8, 94:11, 95:1, 98:17, 99:20, 102:17,</p>	<p>105:5, 114:18, 115:23, 118:8, 120:5, 122:1, 122:22, 124:9, 124:15, 127:10, 128:22, 132:11, 137:10, 138:9, 142:4, 142:11, 142:22, 144:11, 146:13, 148:1, 148:15, 149:16, 153:1, 154:7, 157:5, 157:10, 157:18, 158:17, 159:10, 160:6, 160:10, 161:9, 163:3, 163:8, 165:16, 167:2, 171:7, 172:16, 173:5, 174:22, 177:2, 181:23, 187:1, 187:21, 189:2</p>
C			
<p>CA [2] - 2:7, 2:15</p> <p>cabling [1] - 97:1</p> <p>calculate [6] - 167:9, 182:19, 184:6, 184:21, 185:6, 185:20</p> <p>calculated [2] - 179:17, 179:24</p> <p>calculation [6] - 178:22, 183:25, 185:4, 185:8, 185:10, 186:3</p> <p>calendar [2] - 74:4, 74:5</p> <p>California [2] - 129:8, 129:17</p> <p>CALIFORNIA [4] - 1:2, 1:18, 1:23, 4:1</p> <p>Canada [1] - 129:10</p> <p>cancer [5] - 8:14, 138:16, 139:3, 139:5, 140:24</p> <p>cannot [2] - 26:24, 86:2</p> <p>capable [1] - 54:11</p> <p>Capital [82] - 4:15, 5:2, 5:11, 5:23, 5:24, 6:4, 6:12, 6:22, 7:17, 8:2, 8:8, 8:19, 9:2, 9:16, 9:21, 10:9, 23:14, 23:15, 24:10, 27:5, 34:18, 35:2, 35:10, 35:14, 36:24, 38:21, 39:2, 39:17, 39:19, 40:15, 44:2, 44:4, 44:7, 44:9, 44:24, 45:2, 45:8, 46:4, 46:10, 46:14, 47:21, 47:22, 47:23, 47:25, 48:3, 50:12, 50:15, 61:22, 61:23, 62:2, 72:6, 74:9, 74:16, 74:25, 75:2, 75:14, 75:18, 75:24, 75:25, 76:12, 76:13, 76:16, 76:18, 77:14, 77:16, 77:19, 77:23, 78:7, 78:14, 79:17, 79:21, 81:12, 82:21, 84:7, 84:13, 84:23, 85:7, 85:16, 86:10, 87:4</p> <p>capital [3] - 36:5, 173:6, 181:6</p> <p>Capital's [3] - 43:25, 83:5,</p>			

<p>86:7</p> <p>caps [4] - 47:8, 47:9, 47:12, 47:13</p> <p>capture [2] - 84:2, 84:4</p> <p>captured [2] - 90:13, 157:1</p> <p>care [2] - 147:6, 147:9</p> <p>careful [1] - 164:22</p> <p>case [77] - 5:1, 5:2, 6:21, 12:19, 13:9, 16:14, 16:24, 17:2, 17:19, 17:21, 18:17, 18:22, 19:7, 20:1, 20:18, 20:21, 21:3, 21:17, 22:5, 22:9, 25:11, 26:22, 27:17, 27:23, 29:20, 32:1, 35:20, 41:7, 45:6, 47:6, 48:19, 49:20, 50:9, 51:13, 52:11, 59:4, 59:8, 64:1, 64:15, 65:6, 66:2, 68:7, 69:15, 69:24, 71:3, 73:21, 75:17, 89:7, 89:17, 93:16, 100:4, 131:6, 133:2, 138:10, 139:1, 141:8, 154:8, 154:19, 157:23, 168:18, 168:19, 168:24, 169:19, 188:10, 200:7, 200:10, 200:15, 202:1, 203:11, 205:22, 205:24, 210:19, 211:3, 211:10, 211:12, 212:3, 212:16</p> <p>cases [11] - 12:24, 13:1, 18:17, 18:20, 18:22, 100:19, 138:17, 138:18, 168:15, 168:20</p> <p>cash [19] - 168:13, 168:17, 169:18, 170:3, 170:16, 171:10, 172:12, 172:24, 172:25, 173:1, 173:7, 173:15, 173:21, 174:1, 178:24, 180:21, 180:24, 187:3</p> <p>catch [1] - 137:8</p> <p>causation [2] - 87:19, 212:22</p> <p>CCRA [1] - 1:22</p> <p>censored [1] - 139:11</p> <p>censoring [9] - 117:7, 120:19, 138:11, 138:12, 139:17, 139:18, 140:1, 142:17, 143:3</p> <p>central [2] - 126:6, 126:14</p> <p>CENTRAL [1] - 1:2</p> <p>centrally [5] - 124:18, 125:6, 125:23, 126:3, 160:1</p> <p>certain [5] - 76:21, 134:1, 139:6, 143:13, 189:5</p> <p>certainly [11] - 24:16, 33:23, 37:3, 59:8, 62:5, 62:6, 86:25, 115:10, 169:13, 186:18, 210:10</p> <p>certainty [3] - 95:20, 96:9, 115:10</p>	<p>CERTIFICATE [1] - 214:1</p> <p>certification [1] - 66:18</p> <p>certified [1] - 24:24</p> <p>CERTIFY [1] - 214:2</p> <p>cetera [1] - 202:2</p> <p>chain [2] - 119:22, 120:7</p> <p>Chan [1] - 51:3</p> <p>chance [1] - 129:1</p> <p>chances [1] - 165:1</p> <p>change [1] - 134:4</p> <p>changed [1] - 46:6</p> <p>changes [1] - 162:14</p> <p>channels [1] - 143:9</p> <p>characteristics [1] - 10:21</p> <p>characterization [2] - 81:14, 81:17</p> <p>characterize [1] - 51:17</p> <p>charge [3] - 89:2, 197:21, 213:18</p> <p>CHARGED [1] - 214:5</p> <p>charged [1] - 197:22</p> <p>chart [21] - 29:22, 30:3, 31:21, 32:11, 34:10, 34:15, 40:24, 58:12, 59:13, 60:2, 62:15, 62:22, 72:9, 98:21, 98:24, 102:18, 103:9, 121:15, 121:18, 176:3, 187:14</p> <p>check [7] - 27:23, 35:20, 108:10, 164:1, 171:20, 172:8, 210:5</p> <p>checks [1] - 107:21</p> <p>cheerio [1] - 87:14</p> <p>Chicago [1] - 24:2</p> <p>chief [2] - 69:5, 130:11</p> <p>choice [1] - 38:4</p> <p>choose [2] - 13:10, 134:24</p> <p>chose [5] - 13:12, 84:13, 135:6, 178:19, 186:13</p> <p>CIRCUIT [1] - 214:5</p> <p>circumstance [1] - 13:12</p> <p>circumstances [2] - 17:6, 139:14</p> <p>claim [15] - 15:7, 17:18, 20:17, 20:18, 21:25, 22:16, 22:20, 23:8, 51:9, 71:23, 72:2, 134:24, 202:12, 202:21, 205:6</p> <p>claimed [2] - 14:15, 16:9</p> <p>claiming [4] - 11:14, 14:16, 15:3, 49:3</p> <p>claims [10] - 11:23, 15:10, 15:13, 18:15, 20:16, 51:16, 51:17, 179:7, 179:14, 202:13</p> <p>CLAIRE [1] - 88:4</p> <p>Claire [4] - 3:6, 87:16, 88:1, 88:4</p> <p>clarification [2] - 9:15, 191:7</p> <p>clarified [1] - 71:16</p>	<p>clarify [3] - 5:20, 9:13, 195:12</p> <p>Clark [4] - 149:18, 149:19, 149:22</p> <p>class [73] - 17:16, 17:21, 20:8, 22:1, 24:21, 24:24, 24:25, 25:4, 25:11, 25:14, 25:16, 25:24, 26:3, 26:6, 26:7, 26:16, 26:17, 26:20, 27:7, 27:16, 29:22, 29:24, 31:22, 34:12, 47:16, 49:1, 49:5, 49:16, 49:18, 49:19, 49:21, 51:13, 52:4, 57:12, 57:24, 58:11, 59:3, 59:6, 59:13, 60:1, 61:15, 61:17, 61:20, 63:8, 64:7, 64:9, 64:10, 64:25, 65:1, 66:3, 66:5, 66:6, 68:12, 71:10, 73:20, 78:1, 78:6, 78:15, 87:3, 87:6, 168:10, 168:11, 174:8, 174:9, 174:10, 175:5, 176:6, 179:12, 182:11, 189:16, 190:19</p> <p>classifying [1] - 6:1</p> <p>clean [4] - 93:2, 133:23, 143:11, 143:15</p> <p>cleaned [2] - 90:6, 134:1</p> <p>cleaning [6] - 90:8, 90:10, 90:22, 90:25, 92:1, 108:11</p> <p>clear [6] - 5:11, 54:5, 57:4, 86:14, 104:24, 160:5</p> <p>CLERK [12] - 4:3, 70:14, 70:19, 88:2, 88:6, 114:12, 114:14, 161:7, 166:21, 166:25, 196:19, 199:10</p> <p>clerk [1] - 199:13</p> <p>clients [1] - 15:13</p> <p>clinical [24] - 91:10, 91:22, 92:3, 92:4, 111:25, 129:21, 129:24, 135:14, 136:24, 137:1, 137:15, 137:16, 137:21, 138:1, 138:13, 140:11, 144:15, 151:3, 154:24, 156:11, 156:15, 165:23, 188:11, 188:16</p> <p>clip [1] - 94:8</p> <p>clock [2] - 192:13, 192:19</p> <p>close [4] - 197:16, 198:19, 210:23, 211:8</p> <p>closed [6] - 95:8, 100:21, 123:12, 162:3, 162:6, 163:25</p> <p>closely [3] - 76:19, 106:5, 106:8</p> <p>closest [2] - 81:10, 82:5</p> <p>closing [7] - 29:23, 31:21, 198:1, 198:17, 199:8, 199:24, 200:20</p> <p>CLUBOK [203] - 2:12, 4:7, 4:10, 5:21, 7:4, 7:6, 7:11,</p>	<p>8:24, 9:1, 12:16, 12:23, 13:6, 13:8, 13:21, 13:23, 14:6, 15:1, 15:25, 16:4, 16:7, 16:18, 17:13, 18:12, 19:1, 19:2, 20:24, 21:2, 21:14, 21:19, 22:6, 22:11, 22:15, 22:24, 25:3, 25:8, 25:9, 26:10, 26:12, 26:15, 27:8, 27:11, 27:12, 28:7, 28:12, 28:16, 28:19, 29:1, 29:3, 29:7, 29:9, 29:12, 29:16, 29:18, 30:13, 30:16, 30:23, 31:2, 31:10, 31:14, 31:17, 31:19, 31:20, 32:6, 32:20, 32:24, 33:3, 33:7, 33:12, 33:13, 33:21, 33:22, 34:5, 34:8, 37:11, 37:22, 39:11, 39:12, 40:2, 40:3, 40:7, 40:9, 40:23, 41:2, 41:4, 41:17, 41:24, 42:1, 42:15, 42:22, 42:24, 43:3, 43:11, 43:15, 43:17, 44:18, 45:17, 45:18, 46:23, 47:3, 48:10, 48:12, 50:23, 51:1, 51:18, 52:1, 52:19, 52:20, 53:19, 53:23, 53:24, 54:7, 54:9, 55:1, 55:25, 56:9, 56:13, 56:14, 56:16, 57:1, 57:6, 57:15, 57:21, 58:6, 58:10, 58:18, 58:24, 59:7, 59:11, 59:20, 59:24, 60:8, 60:12, 60:16, 60:18, 60:24, 61:3, 61:7, 61:9, 61:11, 61:12, 62:16, 63:3, 63:6, 63:13, 64:12, 64:20, 65:4, 65:11, 65:18, 66:13, 66:15, 67:12, 67:14, 67:17, 67:23, 68:3, 69:22, 70:2, 70:6, 70:17, 70:22, 70:23, 71:13, 71:17, 71:21, 72:13, 73:2, 73:8, 73:12, 73:17, 74:24, 76:24, 77:8, 78:21, 79:3, 79:25, 80:22, 81:13, 81:18, 83:23, 85:14, 86:16, 87:8, 87:13, 192:16, 195:9, 197:7, 197:10, 198:2, 198:25, 199:3, 199:19, 199:21, 200:3, 201:7, 202:25, 203:3, 204:1, 204:6, 204:11, 204:25, 213:8, 213:15</p> <p>Clubok [4] - 4:6, 13:15, 18:5, 70:21</p> <p>coast [1] - 129:15</p> <p>code [4] - 116:5, 162:11, 162:13, 162:14</p> <p>colleague [1] - 186:22</p> <p>collect [2] - 126:7, 126:9</p> <p>collected [3] - 133:7, 154:18, 187:24</p>
---	---	---	---

collecting [1] - 17:7
collectively [1] - 194:22
COLLEEN [1] - 2:11
colon [2] - 40:5, 47:12
Columbia [2] - 167:14, 167:20
column [9] - 40:25, 99:12, 100:3, 100:11, 100:24, 171:13, 187:22, 187:23, 188:4
columns [1] - 99:24
combined [2] - 28:1, 190:20
coming [5] - 20:7, 150:19, 180:24, 192:5, 197:18
comment [8] - 34:24, 39:21, 50:20, 87:24, 100:24, 119:13, 163:15, 212:7
commentary [1] - 205:20
comments [16] - 98:2, 98:3, 99:9, 99:10, 99:11, 99:13, 99:25, 100:25, 116:17, 116:20, 144:18, 212:3, 213:2, 213:4
commercial [1] - 180:16
Commission [1] - 169:25
committed [3] - 64:3, 64:16, 71:22
committing [1] - 71:5
common [5] - 42:5, 43:13, 43:16, 43:22, 131:18
communicate [3] - 105:23, 143:12, 158:24
communicated [4] - 125:19, 158:16, 158:22, 159:18
communicating [2] - 9:3, 125:13
companies [25] - 8:4, 8:6, 8:13, 9:4, 9:22, 10:14, 10:15, 10:18, 10:19, 10:22, 10:23, 11:1, 11:3, 11:21, 12:3, 12:8, 12:15, 12:17, 12:24, 14:4, 14:22, 39:20, 48:1, 131:18, 168:14
company [35] - 4:15, 7:1, 8:21, 14:7, 15:10, 49:3, 76:5, 77:6, 77:20, 96:8, 110:6, 110:10, 127:19, 128:3, 128:4, 128:12, 131:16, 132:1, 134:19, 169:17, 171:23, 173:8, 173:11, 174:6, 174:12, 177:7, 177:10, 177:13, 177:16, 180:14, 180:24, 181:5, 189:18, 206:20
company's [2] - 170:10, 174:24
comparable [1] - 148:3
compare [2] - 190:6, 190:13
compared [3] - 155:6, 175:2, 179:24

comparing [1] - 42:17
comparison [4] - 121:8, 121:11, 147:14, 147:16
comparisons [2] - 147:9, 147:13
compensation [2] - 131:13, 131:20
competency [1] - 92:24
compiled [1] - 27:3
complain [1] - 204:8
complaint [16] - 26:2, 52:3, 52:5, 52:9, 52:18, 53:1, 67:2, 67:8, 71:9, 71:18, 83:14, 203:20, 204:12, 204:14, 204:15
complaints [1] - 68:8
complete [6] - 72:15, 118:16, 148:19, 148:23, 150:20, 163:17
completed [7] - 91:24, 118:14, 120:25, 121:2, 121:5, 123:6, 152:10
completely [3] - 19:14, 97:2, 212:17
completing [2] - 139:12, 146:3
compliant [1] - 138:25
complicated [2] - 100:9, 122:11
complies [10] - 97:21, 101:5, 103:11, 106:1, 111:24, 117:24, 119:12, 119:21, 120:16, 124:4
component [1] - 131:19
compound [2] - 8:22, 85:10
comprised [1] - 188:18
computer [9] - 96:11, 96:14, 96:25, 97:13, 100:16, 116:5, 162:11, 162:14, 164:12
computes [1] - 136:14
concerning [1] - 202:13
conclude [2] - 199:5, 200:24
concluded [1] - 179:18
concludes [2] - 193:22, 194:21
conclusion [1] - 192:20
concretely [1] - 22:25
condition [1] - 169:20
conditions [1] - 8:15
conduct [2] - 177:8, 178:19
conducted [11] - 86:22, 118:21, 135:25, 162:3, 177:17, 181:13, 181:24, 182:6, 183:20, 184:10, 186:11
conducting [1] - 149:8
CONFERENCE [1] - 214:7
conference [20] - 21:24, 31:25, 33:25, 51:12, 52:23,

52:24, 55:20, 56:1, 58:13, 59:15, 60:3, 63:9, 63:18, 73:24, 76:20, 86:5, 165:24, 166:4, 179:8, 204:19
conferences [1] - 165:2
conferring [1] - 199:13
confident [1] - 109:1
confined [1] - 204:13
confirm [3] - 163:12, 163:23, 207:8
confirmation [4] - 118:19, 118:25, 126:6, 126:14
confirmed [5] - 124:18, 125:6, 125:23, 126:3, 160:1
CONFORMANCE [1] - 214:6
conforming [1] - 73:3
confusing [3] - 58:4, 66:1, 200:7
confusion [2] - 23:21, 57:7
CONN [1] - 2:4
connection [14] - 37:2, 37:14, 37:25, 38:25, 45:1, 69:24, 76:2, 177:11, 178:6, 178:9, 178:12, 178:14, 178:15, 180:12
consent [2] - 154:15, 155:12
conservative [2] - 140:20, 141:15
consider [7] - 18:2, 183:1, 183:10, 185:24, 186:10, 199:24, 200:18
considerable [1] - 91:2
consideration [1] - 183:8
considered [1] - 151:22
considering [4] - 53:7, 77:6, 86:8, 202:6
consistent [9] - 93:17, 133:11, 146:17, 172:9, 180:4, 180:9, 189:14, 189:24, 213:10
constantly [1] - 133:22
constellation [1] - 137:20
constituted [1] - 153:25
consultant [2] - 120:12, 130:3
consulting [1] - 178:2
Consulting [3] - 169:5, 171:19, 178:3
consumption [1] - 47:22
contact [3] - 131:1, 154:21, 155:1
contacted [2] - 155:11, 178:4
contain [2] - 161:24, 162:1
contemplated [2] - 142:17, 143:1
contents [1] - 163:16
context [7] - 14:10, 65:7, 71:18, 75:1, 76:9, 77:6, 154:11

contingent [3] - 19:9, 19:20, 169:8
continually [1] - 11:6
continue [14] - 4:6, 19:25, 32:19, 49:18, 59:18, 63:16, 75:7, 77:18, 114:17, 152:13, 154:14, 155:17, 156:22, 181:7
continued [2] - 35:15, 131:17
continues [1] - 40:5
continuing [5] - 65:6, 71:10, 87:1, 156:15, 211:5
contract [4] - 106:25, 149:5, 153:20, 153:21
contracted [1] - 107:2
contradicted [1] - 211:12
control [1] - 57:18
convenient [1] - 122:15
conversation [1] - 213:19
conversations [1] - 78:17
converted [1] - 173:1
COOK [13] - 2:13, 176:18, 176:25, 177:2, 181:16, 181:21, 181:23, 186:24, 187:11, 187:18, 187:21, 188:20, 191:7
Cook [1] - 176:19
copies [1] - 87:23
copy [5] - 27:14, 65:21, 87:22, 135:17, 176:23
core [2] - 168:5, 168:10
corner [2] - 60:23, 171:1
corners [2] - 73:14, 204:13
correct [169] - 4:17, 5:13, 5:14, 5:16, 6:13, 7:14, 7:15, 7:19, 7:21, 8:4, 8:5, 8:6, 8:21, 9:8, 9:12, 9:17, 9:19, 10:12, 11:1, 11:7, 11:9, 11:12, 11:23, 17:17, 19:4, 20:8, 20:9, 20:12, 20:19, 22:1, 23:5, 23:9, 23:10, 23:15, 25:14, 27:16, 27:20, 30:12, 30:19, 34:1, 34:19, 35:11, 35:13, 36:15, 36:23, 38:10, 38:16, 39:6, 39:18, 41:7, 41:10, 41:19, 42:10, 43:18, 44:22, 45:1, 45:5, 46:17, 47:14, 48:5, 48:25, 49:1, 49:14, 49:21, 49:22, 50:2, 50:6, 50:7, 50:10, 50:19, 53:6, 53:9, 55:4, 57:15, 58:6, 61:21, 61:24, 61:25, 62:9, 62:14, 64:7, 68:18, 68:23, 68:24, 69:11, 71:3, 71:4, 71:6, 72:2, 72:3, 72:8, 72:11, 73:21, 74:8, 75:11, 75:13, 75:24, 78:8, 82:10, 82:18, 84:14, 85:8, 85:18, 86:7,

86:11, 87:2, 88:17, 89:8,
89:9, 90:15, 92:9, 99:12,
101:2, 102:22, 103:1,
103:2, 103:14, 103:21,
107:8, 109:6, 116:6, 117:6,
118:15, 119:6, 119:19,
123:10, 123:11, 124:1,
124:2, 126:18, 126:19,
127:20, 149:6, 149:8,
156:3, 162:3, 163:22,
164:19, 171:4, 172:13,
176:2, 177:9, 177:12,
177:15, 177:18, 177:20,
177:21, 178:3, 178:21,
179:20, 180:15, 181:3,
181:14, 182:5, 182:10,
182:18, 183:6, 183:11,
184:7, 184:15, 185:15,
185:23, 185:24, 186:9,
188:2, 195:8, 195:9, 206:6,
206:7

CORRECT [1] - 214:2

corrected [1] - 154:4

correction [1] - 191:9

correctly [1] - 80:6

correlate [1] - 58:16

corresponding [1] - 32:13

corresponds [1] - 32:11

Cossey [1] - 69:6

costs [5] - 19:7, 19:18,
19:24, 20:2, 20:4

COUGHLIN [5] - 2:4, 187:1,
198:13, 198:19, 200:23

Council [1] - 66:22

counsel [15] - 24:24, 26:4,
30:7, 30:11, 37:17, 45:13,
51:24, 56:25, 58:4, 65:21,
71:10, 183:16, 184:19,
185:17, 189:5

counsel's [3] - 20:21, 51:15,
162:21

count [1] - 57:22

counting [1] - 197:11

County [1] - 66:22

couple [5] - 40:6, 80:10,
80:17, 100:10, 188:23

course [14] - 6:17, 15:11,
24:12, 25:21, 26:22, 36:9,
45:8, 107:17, 133:7,
133:10, 133:19, 150:15,
168:6, 201:7

courses [5] - 168:3, 168:4,
168:6, 168:8, 168:13

court [12] - 4:4, 13:24, 16:25,
40:17, 55:9, 70:15, 70:20,
114:15, 161:8, 177:25,
196:20, 201:1

COURT [293] - 1:1, 1:22, 4:5,
5:19, 7:8, 8:25, 12:13,
12:22, 13:4, 13:7, 13:14,

13:19, 13:22, 14:1, 14:23,
16:1, 16:17, 16:20, 17:22,
17:24, 18:1, 18:10, 18:19,
20:23, 21:16, 22:3, 22:7,
22:13, 22:22, 25:1, 25:6,
26:9, 26:14, 27:10, 28:5,
28:10, 28:14, 28:18, 28:22,
29:2, 29:4, 29:8, 29:10,
29:14, 29:17, 30:10, 30:15,
30:19, 30:25, 31:4, 31:12,
31:15, 31:18, 32:16, 32:19,
32:22, 33:1, 33:5, 33:8,
33:11, 33:16, 37:10, 37:21,
40:16, 40:19, 41:14, 41:22,
42:12, 42:20, 42:23, 43:5,
43:10, 44:15, 45:11, 45:15,
47:1, 51:20, 52:16, 53:18,
53:22, 54:8, 54:18, 56:7,
56:12, 56:19, 56:25, 57:2,
57:13, 57:17, 57:25, 58:8,
58:14, 58:20, 59:5, 59:10,
59:19, 59:22, 60:7, 60:10,
60:14, 60:17, 60:21, 61:1,
61:5, 61:8, 61:10, 62:25,
63:4, 64:11, 65:3, 65:9,
65:15, 65:22, 66:8, 67:11,
67:13, 67:21, 67:25, 68:2,
69:21, 70:4, 70:7, 70:16,
70:21, 71:15, 71:20, 72:19,
73:6, 73:9, 73:13, 74:21,
77:2, 78:22, 79:4, 80:5,
80:12, 80:15, 81:3, 81:16,
81:20, 83:17, 85:13, 86:15,
87:9, 87:12, 87:14, 87:17,
94:18, 98:9, 98:11, 98:15,
99:2, 99:7, 99:14, 99:17,
102:14, 102:16, 104:19,
104:21, 104:23, 114:4,
114:7, 114:10, 114:16,
118:6, 120:3, 121:24,
122:4, 122:7, 122:10,
122:16, 124:5, 124:7,
124:13, 127:8, 128:19,
132:10, 137:7, 142:3,
142:9, 142:20, 144:6,
144:9, 146:2, 146:5, 146:8,
149:14, 152:20, 152:22,
157:8, 157:16, 158:14,
159:8, 160:4, 160:12,
160:17, 160:19, 161:3,
162:23, 165:9, 166:13,
166:15, 170:25, 171:3,
171:5, 172:19, 176:24,
181:20, 187:13, 187:16,
188:21, 188:25, 191:5,
191:12, 191:14, 191:20,
192:2, 192:5, 192:7,
192:13, 192:19, 193:6,
193:9, 193:13, 193:20,
194:10, 194:14, 195:1,
195:4, 195:7, 195:15,

195:18, 195:20, 195:23,
196:2, 196:5, 196:8,
196:11, 196:13, 196:16,
196:21, 196:25, 197:4,
197:9, 197:13, 198:4,
198:16, 198:21, 199:2,
199:4, 199:12, 199:14,
199:20, 199:22, 200:5,
200:10, 200:24, 201:8,
203:2, 203:17, 204:4,
204:7, 204:21, 205:3,
205:14, 205:16, 206:2,
206:8, 206:17, 206:22,
207:2, 207:6, 207:10,
207:24, 208:7, 208:22,
208:25, 209:5, 209:7,
209:14, 209:17, 209:19,
209:25, 210:3, 210:5,
211:1, 211:6, 211:14,
211:17, 212:15, 213:12,
213:16, 213:18

Court [25] - 19:17, 21:5,

24:24, 26:6, 32:9, 51:15,

51:22, 58:25, 62:18, 62:19,

64:24, 66:6, 71:7, 83:12,

88:11, 122:17, 192:25,

193:23, 195:14, 199:13,

201:15, 201:19, 201:23,

202:7, 205:12

Court's [2] - 73:3, 160:15

Courts [1] - 203:10

cover [1] - 198:23

coverage [1] - 62:8

covers [1] - 62:23

Cox [1] - 136:15

create [3] - 34:3, 101:17,
163:10

created [1] - 97:24

creating [1] - 152:8

criminal [2] - 199:10, 199:14

critical [3] - 93:10, 93:19,
93:22

CROSS [6] - 3:4, 3:7, 3:9,
4:9, 128:21, 177:1

cross [1] - 58:16

CROSS-EXAMINATION [6] -
3:4, 3:7, 3:9, 4:9, 128:21,
177:1

crosscheck [1] - 58:22

CSR [1] - 1:22

cures [1] - 8:14

curiosity [1] - 158:11

curious [1] - 150:16

current [3] - 73:20, 150:7,
150:8

cursory [1] - 107:21

curves [22] - 21:8, 103:12,
103:22, 103:25, 105:16,
105:20, 113:3, 113:21,
114:23, 115:17, 116:2,

116:21, 116:25, 117:13,
117:21, 156:2, 157:3,
157:12, 157:20, 164:13,
164:15, 211:4

custodial [2] - 23:25, 24:1

custodian [4] - 4:24, 17:12,
24:1, 24:11

custody [2] - 4:25, 23:16

cutoff [1] - 194:9

cutoffs [1] - 197:18

cuts [1] - 191:25

D

damages [4] - 22:17, 23:8,
87:18, 212:23

Darcy [3] - 44:21, 44:22,
197:1

Darren [1] - 15:19

dash [2] - 47:12, 47:13

data [77] - 90:6, 90:9, 90:10,
90:11, 90:16, 90:25, 91:12,
91:17, 92:2, 92:4, 96:7,
96:8, 96:9, 96:12, 96:19,
96:22, 97:2, 106:17,
108:11, 108:12, 108:17,
113:11, 113:15, 113:18,
113:21, 113:22, 116:2,
116:7, 116:11, 123:15,
123:18, 125:6, 126:3,
126:7, 126:15, 132:3,
132:8, 132:14, 132:19,
133:7, 133:8, 133:10,
133:11, 133:22, 134:10,
134:11, 134:21, 139:2,
139:16, 140:14, 140:19,
141:3, 141:12, 141:13,
141:15, 141:21, 141:23,
143:3, 143:7, 143:10,
143:15, 144:24, 146:4,
150:24, 150:25, 152:7,
154:17, 156:3, 156:23,
157:25, 161:13, 164:22,
166:1, 179:8

database [39] - 90:13, 90:19,
91:20, 92:7, 93:1, 93:5,
93:10, 93:19, 93:23, 95:5,
95:11, 96:5, 96:6, 112:13,
112:21, 112:22, 126:9,
133:3, 133:6, 133:15,
133:25, 134:3, 134:7,
134:13, 143:6, 143:23,
144:1, 145:8, 145:12,
145:14, 145:17, 151:18,
151:19, 156:2, 156:4,
156:7, 157:6, 157:11

date [60] - 7:20, 27:18, 27:19,
31:25, 32:2, 32:3, 32:12,
32:15, 33:24, 33:25, 36:6,
36:10, 36:25, 39:5, 58:12,

59:14, 59:15, 61:22, 61:23, 61:25, 62:11, 62:22, 63:9, 63:12, 63:24, 63:25, 65:1, 66:6, 71:1, 71:6, 71:9, 71:10, 72:4, 72:24, 82:11, 83:6, 86:1, 100:7, 100:8, 112:20, 120:14, 134:9, 134:10, 144:18, 151:18, 166:2, 183:16, 183:17, 184:12, 184:17, 184:19, 185:16, 185:18, 185:25, 186:1, 186:4, 186:8, 186:11, 186:14

DATE [1] - 214:10

dated [6] - 47:5, 71:2, 134:8, 134:13, 149:18, 149:22
dates [26] - 23:19, 26:17, 26:20, 27:21, 28:3, 31:24, 33:23, 34:2, 34:11, 34:22, 37:19, 59:9, 59:13, 60:2, 60:4, 63:24, 64:3, 64:16, 183:15, 185:24, 186:3, 186:6, 186:7, 186:14, 189:19, 189:20

DAY [1] - 1:17

days [22] - 34:18, 35:16, 103:23, 103:24, 104:2, 112:15, 112:18, 112:23, 113:3, 113:12, 114:24, 116:14, 116:23, 123:17, 128:2, 128:6, 128:11, 131:25, 174:10, 185:25, 186:1, 186:5

deadline [2] - 92:13, 93:12

deadlines [1] - 92:16

deal [2] - 83:19, 165:3

December [15] - 7:13, 9:11, 23:24, 24:25, 26:7, 35:1, 35:3, 35:4, 35:6, 66:7, 127:12, 131:24, 132:17, 173:18

decide [5] - 102:1, 134:23, 138:23, 208:2, 208:6

decided [6] - 78:14, 138:19, 207:21, 208:4, 208:5, 208:18

deciding [1] - 166:3

decipher [1] - 69:3

decision [19] - 38:22, 38:23, 44:1, 44:6, 45:4, 46:6, 46:16, 76:14, 77:15, 77:18, 84:19, 84:24, 85:3, 86:7, 86:9, 143:6, 143:22, 205:4, 207:25

decisions [7] - 17:8, 44:25, 50:17, 77:24, 85:22, 85:25, 86:2

deck [1] - 7:24

declares [1] - 66:23

deemed [1] - 137:2

deep [2] - 207:4, 207:5

defend [1] - 204:19

DEFENDANT [1] - 2:11

defendant [4] - 194:3, 194:7, 197:17, 200:21

defendant's [3] - 81:25, 206:19, 207:9

defendants [5] - 1:12, 29:20, 81:7, 208:20, 209:21

defending [2] - 89:16, 203:6

defense [14] - 66:9, 70:9, 114:8, 189:4, 192:3, 192:5, 192:8, 193:7, 194:12, 197:5, 197:6, 199:24, 200:2, 210:15

Defense [1] - 198:24

defined [1] - 208:10

definition [2] - 110:13, 154:1

definitions [1] - 153:24

degree [3] - 129:6, 129:7, 167:13

degrees [1] - 167:15

delays [1] - 94:24

deliberate [1] - 202:2

deliberations [1] - 33:19

deliver [1] - 199:7

deliverables [3] - 94:21, 94:22, 107:1

demanding [1] - 130:10

demonstrate [3] - 135:3, 137:17, 137:23

demonstrated [2] - 55:22, 137:1

demonstrates [3] - 54:1, 54:12, 135:11

demonstrative [35] - 27:2, 27:8, 27:13, 27:15, 27:21, 28:1, 28:9, 28:19, 28:23, 28:24, 29:1, 29:14, 29:20, 30:13, 32:23, 33:14, 48:13, 48:20, 56:23, 62:17, 72:16, 81:7, 81:25, 170:17, 170:21, 171:3, 171:8, 172:11, 172:15, 174:17, 174:21, 181:17, 189:4, 191:8

demonstratives [1] - 170:19

departing [1] - 206:25

deposed [2] - 115:12, 115:13

DEPOSIT [1] - 214:6

deposition [25] - 3:19, 3:20, 45:13, 94:6, 94:10, 114:2, 115:22, 182:23, 183:10, 183:22, 183:23, 184:9, 184:24, 191:16, 191:23, 192:22, 193:21, 194:2, 194:4, 194:5, 194:15, 194:20, 194:24, 196:24, 197:2

depositions [4] - 45:16,

93:15, 194:22, 197:12

derive [1] - 113:2

derived [1] - 19:22

describe [12] - 22:4, 53:25, 54:11, 63:5, 129:11, 130:8, 136:7, 136:24, 144:12, 148:6, 151:10, 203:25

described [9] - 11:8, 32:21, 59:22, 136:3, 138:14, 141:25, 142:6, 163:16, 209:2

describing [2] - 32:10, 54:11

descriptive [1] - 136:13

design [1] - 137:15

designations [1] - 192:2

designed [2] - 15:5, 137:16

detail [4] - 14:12, 54:11, 55:5, 151:10

details [5] - 14:5, 53:15, 53:20, 58:2, 203:5

determination [1] - 207:22

determine [3] - 168:16, 177:7, 177:13

determined [2] - 110:11, 180:3

developed [1] - 98:16

development [3] - 180:13, 187:7, 188:5

deviate [1] - 205:14

deviated [1] - 205:11

devised [1] - 95:8

DFS [11] - 102:19, 103:3, 103:6, 104:10, 104:13, 104:16, 105:1, 105:8, 105:12, 120:19, 136:17

diarrhea [24] - 21:8, 42:4, 42:5, 43:12, 43:15, 43:21, 43:23, 43:24, 44:5, 46:6, 46:15, 79:19, 109:11, 109:14, 109:24, 110:3, 110:8, 110:16, 110:22, 111:1, 111:4, 111:8, 111:16, 151:16

DIEGO [2] - 2:7, 2:15

difference [6] - 46:5, 46:15, 104:16, 105:1, 105:8, 105:22

differences [3] - 136:17, 191:18, 213:2

different [26] - 18:23, 19:14, 26:3, 30:13, 31:8, 54:22, 55:22, 55:24, 55:25, 58:15, 60:20, 64:10, 65:1, 66:6, 71:10, 71:11, 73:14, 81:15, 111:18, 139:14, 153:24, 154:13, 157:24, 188:14, 200:10

differently [3] - 132:16, 154:21, 172:20

difficult [2] - 34:23, 69:2

dilution [14] - 176:13, 182:19, 182:24, 183:4, 183:20, 183:25, 184:6, 184:22, 185:6, 185:10, 185:20, 186:19, 186:20, 190:10

dilutive [1] - 186:16

direct [8] - 11:10, 69:12, 69:13, 70:8, 78:13, 78:17, 142:15, 189:3

DIRECT [4] - 3:6, 3:8, 88:7, 167:1

directing [1] - 79:11

directly [7] - 23:14, 44:4, 78:6, 94:20, 130:18, 185:9, 209:23

director [2] - 88:15, 88:21

disagree [2] - 36:7, 36:9

disciplined [2] - 76:2, 76:12

disciplining [2] - 76:4, 76:10

disclaimed [4] - 41:12, 53:14, 54:15, 85:11

disclose [1] - 166:4

disclosed [11] - 37:1, 37:14, 37:23, 38:25, 52:12, 53:5, 53:11, 83:4, 179:25, 180:5, 180:8

disclosure [1] - 176:9

disclosures [1] - 37:25

discontinuation [12] - 21:9, 111:4, 111:8, 111:11, 111:15, 112:4, 112:8, 154:9, 154:10, 155:6, 155:8, 155:23

discontinuations [1] - 155:13

discontinue [1] - 155:17

discontinued [1] - 155:3

discover [2] - 153:12, 153:14

discovery [7] - 25:22, 26:22, 153:16, 203:23, 204:5, 204:9, 204:12

discrepancies [2] - 154:3, 154:4

discuss [5] - 23:23, 48:3,

106:14, 167:12, 201:4

discussed [5] - 14:11, 59:14, 163:9, 181:9, 207:14

discussing [3] - 32:1, 78:2, 84:25

discussion [4] - 44:2, 138:10, 154:8, 199:17
discussions [3] - 39:2, 74:22, 78:13

disease [12] - 21:6, 21:7, 41:6, 52:25, 53:2, 53:4, 112:17, 112:22, 140:22, 141:2, 141:4, 141:14

disease-free [6] - 21:6, 21:7, 41:6, 52:25, 53:2, 53:4

<p>dismissed ^[1] - 202:12</p> <p>displeased ^[1] - 130:22</p> <p>displeasure ^[1] - 130:24</p> <p>disposition ^[1] - 150:6</p> <p>dispute ^[1] - 202:9</p> <p>disputed ^[1] - 202:5</p> <p>disseminate ^[1] - 100:21</p> <p>distinct ^[1] - 31:11</p> <p>distinction ^[3] - 54:20, 55:7, 55:13</p> <p>distinguish ^[1] - 56:4</p> <p>DISTRICT ^[3] - 1:1, 1:2, 1:22</p> <p>divulge ^[1] - 164:25</p> <p>docket ^[1] - 83:15</p> <p>Doctor ^[2] - 166:16, 191:14</p> <p>doctorate ^[1] - 129:9</p> <p>document ^[39] - 8:23, 23:12, 23:15, 27:3, 28:20, 39:22, 40:1, 40:14, 41:15, 47:4, 47:21, 50:3, 56:4, 59:2, 59:11, 60:21, 64:19, 69:14, 83:4, 97:22, 97:24, 98:2, 98:18, 99:3, 100:23, 101:16, 101:20, 102:9, 120:9, 120:10, 135:19, 137:12, 144:20, 153:9, 163:10, 174:21, 181:19, 206:11, 206:12</p> <p>documentation ^[2] - 38:6, 38:7</p> <p>documents ^[7] - 54:21, 57:19, 68:10, 73:15, 171:14, 171:16, 172:3</p> <p>dollar ^[1] - 23:8</p> <p>dollars ^[1] - 175:21</p> <p>done ^[46] - 18:7, 33:2, 36:2, 36:14, 46:13, 46:19, 74:2, 90:22, 93:14, 93:21, 94:22, 95:3, 107:21, 108:11, 113:1, 113:4, 113:14, 113:21, 113:25, 114:22, 115:3, 115:5, 115:9, 116:2, 116:8, 116:14, 117:4, 123:25, 125:9, 125:16, 125:17, 125:18, 126:11, 141:2, 148:9, 150:3, 150:11, 150:13, 174:7, 176:12, 186:15, 189:17, 190:19, 192:10, 201:3</p> <p>door ^[1] - 106:11</p> <p>dot ^[4] - 63:10, 63:15, 72:13, 164:7</p> <p>dots ^[13] - 34:10, 34:20, 34:21, 35:7, 35:21, 35:24, 36:12, 48:15, 49:8, 49:13, 60:3, 63:17, 75:6</p> <p>double ^[2] - 27:23, 38:12</p> <p>double-check ^[1] - 27:23</p> <p>DOWD ^[1] - 2:5</p> <p>down ^[16] - 32:9, 32:10,</p>	<p>32:14, 56:24, 127:11, 132:8, 132:13, 154:6, 154:25, 166:16, 173:12, 191:14, 192:12, 195:2, 198:11, 211:3</p> <p>Dr ^[28] - 51:3, 87:16, 87:17, 88:9, 88:15, 106:5, 106:8, 107:9, 107:11, 107:15, 108:7, 109:4, 109:8, 114:19, 117:25, 119:22, 122:23, 125:13, 128:23, 130:2, 137:11, 142:23, 146:14, 157:19, 161:10, 164:17, 165:17, 191:8</p> <p>drawn ^[2] - 32:9, 32:10</p> <p>DRIVE ^[1] - 2:14</p> <p>drives ^[1] - 141:13</p> <p>drop ^[5] - 76:21, 132:20, 140:12, 154:12, 159:1</p> <p>dropout ^[6] - 154:9, 154:10, 154:20, 155:7, 155:9, 155:20</p> <p>dropping ^[1] - 32:14</p> <p>drops ^[1] - 56:23</p> <p>Drug ^[1] - 140:16</p> <p>drug ^[6] - 10:25, 11:2, 15:4, 15:5, 15:8, 95:18</p> <p>Drynan ^[5] - 47:5, 47:18, 48:17, 50:11, 85:6</p> <p>ducks ^[1] - 93:7</p> <p>due ^[8] - 11:15, 17:7, 21:9, 111:4, 111:8, 111:12, 111:15, 155:16</p> <p>during ^[53] - 20:16, 24:21, 25:4, 25:24, 26:19, 26:21, 27:6, 27:16, 29:24, 34:12, 35:25, 47:15, 51:10, 57:12, 57:24, 58:11, 59:3, 59:8, 59:13, 60:1, 61:15, 64:7, 66:3, 68:12, 78:1, 78:15, 133:7, 133:9, 133:12, 133:19, 133:20, 133:24, 134:2, 151:13, 153:11, 153:19, 154:13, 158:18, 162:17, 166:4, 167:9, 169:25, 170:3, 170:7, 170:8, 170:12, 171:23, 172:10, 179:12, 180:12, 180:25</p> <p>DX ^[3] - 58:15, 58:17, 58:20</p> <p>DX-2 ^[9] - 29:3, 29:19, 56:22, 56:24, 57:11, 57:13, 57:19, 59:1, 61:5</p> <p>DX-3 ^[14] - 30:12, 30:15, 30:16, 30:17, 30:23, 31:6, 31:17, 31:18, 57:3, 57:19, 59:12, 59:21, 59:22</p> <p>DX-4 ^[6] - 34:6, 56:19, 57:20, 59:24, 60:15, 60:17</p> <p>DX-5 ^[10] - 56:17, 56:22,</p>	<p>56:23, 57:2, 57:3, 57:4, 60:19, 60:21, 61:1, 61:13</p> <p>DX-6 ^[1] - 56:20</p> <p>E</p> <p>e-mail ^[27] - 79:22, 84:17, 100:4, 100:17, 101:6, 101:12, 106:3, 109:5, 109:8, 117:25, 119:22, 120:7, 121:21, 122:2, 124:10, 124:25, 130:19, 149:17, 149:22, 150:5, 152:21, 153:2, 153:4, 153:8, 159:1, 163:18</p> <p>e-mails ^[5] - 79:17, 84:9, 115:13, 115:14, 115:16</p> <p>earliest ^[1] - 156:25</p> <p>early ^[9] - 35:1, 35:16, 35:22, 90:19, 167:11, 198:7, 198:8, 199:17, 203:18</p> <p>easier ^[3] - 41:3, 102:16, 115:20</p> <p>easily ^[3] - 124:17, 129:23, 172:25</p> <p>east ^[1] - 129:15</p> <p>easy ^[1] - 202:4</p> <p>educational ^[1] - 129:5</p> <p>effect ^[3] - 46:15, 84:10, 186:16</p> <p>effective ^[1] - 193:10</p> <p>effectively ^[1] - 113:12</p> <p>effectiveness ^[1] - 55:3</p> <p>efficacy ^[17] - 41:1, 89:24, 101:8, 102:2, 102:7, 102:12, 104:1, 138:3, 138:5, 148:10, 149:24, 150:12, 150:15, 161:22, 161:24, 162:7, 162:8</p> <p>effort ^[3] - 86:20, 91:10, 101:23</p> <p>eight ^[3] - 105:21, 182:2, 190:9</p> <p>either ^[17] - 43:24, 50:4, 56:4, 74:18, 78:5, 78:15, 85:3, 95:14, 99:5, 126:9, 155:10, 162:15, 173:3, 176:5, 176:14, 180:4, 202:21</p> <p>either/or ^[1] - 209:10</p> <p>electronic ^[5] - 24:18, 90:13, 90:16, 90:18, 133:17</p> <p>electronic-captured ^[1] - 90:13</p> <p>element ^[8] - 202:21, 205:10, 205:15, 205:17, 206:10, 206:19, 207:19</p> <p>elements ^[3] - 205:6, 208:3, 209:2</p> <p>elicit ^[1] - 161:17</p>	<p>emergent ^[4] - 110:13, 151:23, 153:25, 154:2</p> <p>employed ^[1] - 115:6</p> <p>employees ^[3] - 47:22, 131:19, 164:21</p> <p>employment ^[1] - 128:3</p> <p>end ^[49] - 35:12, 41:1, 58:4, 73:25, 74:1, 74:2, 74:5, 74:6, 74:11, 75:10, 75:12, 78:24, 79:6, 102:7, 102:19, 103:1, 103:13, 104:17, 105:1, 105:8, 105:12, 124:23, 125:14, 136:2, 136:8, 136:18, 136:23, 136:25, 137:12, 137:14, 137:15, 137:19, 137:22, 138:4, 173:1, 173:2, 173:9, 173:12, 173:13, 173:17, 173:19, 173:21, 179:18, 181:17, 195:24, 200:15, 200:17, 202:1</p> <p>ended ^[4] - 48:15, 61:15, 87:6, 174:10</p> <p>ending ^[3] - 7:13, 135:20, 151:18</p> <p>ends ^[4] - 49:21, 75:9, 75:10, 75:12</p> <p>engineering ^[1] - 167:16</p> <p>England ^[2] - 19:12, 19:13</p> <p>enhanced ^[1] - 164:12</p> <p>enormous ^[1] - 17:4</p> <p>ensure ^[3] - 101:23, 111:17, 163:17</p> <p>ensuring ^[2] - 143:9, 148:11</p> <p>entails ^[1] - 151:11</p> <p>entire ^[5] - 11:25, 18:6, 78:1, 111:23, 133:19</p> <p>entirety ^[1] - 49:15</p> <p>entitled ^[9] - 7:24, 22:16, 27:2, 59:21, 59:25, 60:21, 61:13, 66:18, 162:8</p> <p>entries ^[1] - 151:20</p> <p>entrusted ^[1] - 39:16</p> <p>entry ^[1] - 164:3</p> <p>equal ^[2] - 199:23, 199:25</p> <p>equivalents ^[1] - 172:24</p> <p>erase ^[1] - 122:11</p> <p>Eric ^[3] - 3:19, 191:23, 192:22</p> <p>error ^[2] - 57:7, 57:10</p> <p>errors ^[7] - 101:24, 108:15, 108:22, 110:12, 153:12, 153:14</p> <p>essence ^[1] - 84:4</p> <p>essential ^[1] - 91:16</p> <p>essentially ^[21] - 92:23, 93:5, 94:1, 95:8, 100:15, 100:23, 101:15, 113:11, 133:21, 135:14, 144:13, 146:21, 147:1, 147:5, 148:18,</p>
--	---	--	---

<p>151:18, 151:21, 155:3, 156:9, 156:24, 163:14</p> <p>establish ^[4] - 21:15, 162:21, 208:20, 209:8</p> <p>established ^[6] - 25:10, 26:6, 64:25, 76:22, 162:21, 207:18</p> <p>establishing ^[2] - 20:24, 159:5</p> <p>estimate ^[6] - 70:8, 70:10, 136:22, 172:2, 172:4, 178:23</p> <p>estimated ^[1] - 171:25</p> <p>estimating ^[1] - 170:14</p> <p>estoppel ^[2] - 204:25, 205:1</p> <p>ET ^[2] - 1:10, 2:12</p> <p>et ^[1] - 202:2</p> <p>Ethernet ^[1] - 97:1</p> <p>evaluating ^[1] - 77:20</p> <p>evening ^[1] - 82:18</p> <p>event ^[10] - 5:6, 42:6, 43:13, 120:19, 136:12, 136:21, 141:11, 151:19, 153:25, 154:2</p> <p>events ^[17] - 21:10, 110:14, 111:12, 112:1, 112:4, 112:7, 113:3, 151:12, 151:19, 151:22, 151:23, 151:24, 152:2, 152:3, 152:4, 155:15</p> <p>eventually ^[2] - 66:7, 147:2</p> <p>evidence ^[27] - 23:13, 32:22, 33:4, 37:6, 39:9, 43:2, 46:25, 64:22, 86:23, 98:6, 116:1, 116:13, 118:4, 120:1, 121:23, 123:5, 135:17, 145:25, 146:2, 146:6, 146:9, 146:11, 149:12, 152:17, 171:5, 187:12, 194:24</p> <p>exact ^[3] - 86:23, 134:11, 211:9</p> <p>exactly ^[12] - 17:14, 61:3, 61:7, 83:25, 103:24, 109:20, 110:19, 127:23, 133:5, 134:16, 139:6, 203:5</p> <p>EXAMINATION ^[18] - 3:4, 3:5, 3:5, 3:6, 3:7, 3:7, 3:8, 3:9, 3:9, 4:9, 79:9, 83:22, 88:7, 128:21, 165:15, 167:1, 177:1, 189:1</p> <p>examination ^[4] - 23:3, 72:21, 114:7, 114:17</p> <p>examine ^[2] - 13:10, 124:19</p> <p>examined ^[1] - 18:13</p> <p>example ^[2] - 140:21, 181:24</p> <p>Excelion ^[21] - 97:9, 97:12, 97:16, 97:25, 98:22, 99:21, 106:24, 107:7, 115:17,</p>	<p>116:17, 119:10, 122:24, 123:8, 125:21, 163:9, 163:12, 163:17, 163:23, 163:24, 166:7</p> <p>except ^[4] - 36:20, 61:6, 105:23, 205:10</p> <p>exception ^[1] - 81:19</p> <p>exceptions ^[2] - 208:20, 208:21</p> <p>Exchange ^[1] - 169:24</p> <p>excuse ^[4] - 93:10, 170:3, 172:19, 190:22</p> <p>executed ^[2] - 118:21, 143:4</p> <p>executive ^[4] - 108:15, 109:1, 111:15, 130:11</p> <p>executives ^[1] - 108:21</p> <p>exercise ^[7] - 126:20, 126:25, 127:17, 128:4, 128:6, 128:8, 131:25</p> <p>exercised ^[5] - 131:23, 132:2, 132:6, 132:12, 132:17</p> <p>exercising ^[3] - 126:22, 126:24, 132:22</p> <p>exhibit ^[36] - 7:23, 28:11, 28:23, 28:24, 28:25, 29:5, 30:18, 31:11, 31:12, 32:25, 33:6, 34:4, 57:9, 59:11, 60:5, 60:20, 63:25, 65:15, 65:16, 65:17, 68:25, 72:14, 72:20, 72:22, 73:10, 73:14, 74:13, 81:14, 81:15, 81:19, 103:10, 111:23, 121:8, 125:22, 154:6, 195:5</p> <p>Exhibit ^[132] - 3:13, 3:13, 3:14, 3:14, 3:15, 3:15, 3:16, 3:16, 3:17, 3:17, 3:18, 3:18, 3:19, 3:21, 3:22, 3:22, 3:23, 7:5, 7:6, 7:8, 7:10, 7:12, 23:2, 23:13, 28:9, 29:1, 29:7, 29:11, 29:14, 29:19, 30:11, 30:24, 31:1, 31:7, 31:11, 31:14, 31:21, 32:9, 32:20, 33:3, 34:7, 34:9, 39:8, 46:22, 47:2, 47:4, 48:10, 48:13, 49:13, 49:25, 50:24, 56:18, 57:11, 59:4, 59:6, 59:17, 59:25, 60:6, 61:13, 62:21, 64:21, 65:19, 66:12, 66:16, 66:17, 70:25, 72:15, 73:18, 75:6, 79:12, 81:8, 82:1, 82:7, 82:24, 83:2, 97:20, 98:5, 99:19, 101:3, 104:1, 105:25, 106:2, 106:19, 106:23, 116:16, 117:23, 117:25, 118:7, 119:11, 119:20, 119:25, 120:4, 121:20, 121:22, 122:21, 124:3, 124:8,</p>	<p>124:10, 125:21, 127:4, 127:9, 135:16, 138:2, 139:21, 144:4, 144:8, 144:10, 147:20, 148:14, 149:10, 149:15, 152:16, 152:25, 153:9, 161:21, 163:4, 170:20, 171:2, 172:14, 172:22, 174:20, 181:18, 186:23, 187:12, 187:17, 193:24, 194:23, 195:16, 196:6, 196:9, 196:12</p> <p>Exhibits ^[1] - 194:24</p> <p>exhibits ^[7] - 3:12, 29:5, 31:8, 72:16, 73:2, 122:5, 122:7</p> <p>exist ^[2] - 24:18, 90:16</p> <p>existed ^[1] - 71:11</p> <p>expand ^[1] - 41:3</p> <p>expect ^[12] - 11:20, 50:15, 74:9, 77:4, 77:5, 77:9, 77:13, 77:14, 80:18, 135:6, 196:2, 211:13</p> <p>expectation ^[3] - 6:8, 6:14, 6:20</p> <p>expected ^[10] - 50:11, 75:14, 76:13, 77:16, 109:11, 137:22, 171:10, 171:14, 171:15, 173:16</p> <p>expecting ^[2] - 76:16, 76:18</p> <p>expenses ^[3] - 170:6, 187:3, 187:8</p> <p>experience ^[5] - 129:5, 129:11, 129:13, 129:19, 131:18</p> <p>expert ^[6] - 37:7, 37:17, 80:24, 168:18, 168:19, 178:5</p> <p>experts ^[1] - 19:24</p> <p>explain ^[9] - 55:12, 94:23, 133:5, 134:16, 138:11, 140:9, 154:9, 211:9, 212:4</p> <p>explained ^[1] - 212:5</p> <p>explaining ^[1] - 8:8</p> <p>exploratories ^[1] - 102:8</p> <p>exploratory ^[2] - 113:7, 158:7</p> <p>explore ^[1] - 8:13</p> <p>explored ^[1] - 44:8</p> <p>exposed ^[4] - 49:3, 51:11, 52:22, 75:21</p> <p>expressed ^[1] - 130:24</p> <p>expunge ^[1] - 116:7</p> <p>expunged ^[5] - 113:12, 113:15, 113:18, 113:21, 116:2</p> <p>extended ^[1] - 157:3</p> <p>extending ^[3] - 156:4, 156:7, 157:13</p> <p>extends ^[1] - 62:22</p>	<p>ExteNET ^[46] - 21:9, 88:22, 89:5, 89:23, 90:4, 90:6, 90:19, 92:7, 95:5, 101:8, 102:19, 103:13, 104:5, 104:17, 105:2, 105:9, 106:14, 109:12, 109:15, 112:13, 121:12, 129:25, 132:3, 132:8, 132:14, 132:18, 133:2, 134:6, 135:16, 135:25, 137:3, 143:3, 143:7, 144:24, 145:14, 145:17, 148:7, 149:20, 154:11, 155:20, 155:23, 157:25, 161:13, 164:22, 179:8</p> <p>extensive ^[1] - 212:24</p> <p>extent ^[2] - 18:15, 203:8</p> <p>extra ^[2] - 199:23, 200:20</p> <p>extracting ^[1] - 133:22</p> <p>extracts ^[1] - 133:22</p> <p>extrapolated ^[1] - 172:7</p> <p>eyes ^[1] - 45:24</p>
F			
<p>faceted ^[1] - 17:9</p> <p>facing ^[1] - 204:3</p> <p>fact ^[32] - 4:23, 5:15, 5:18, 6:20, 7:22, 27:18, 35:11, 35:16, 43:23, 44:5, 48:22, 50:9, 51:9, 64:18, 71:8, 71:23, 72:14, 72:23, 83:13, 85:7, 85:16, 119:5, 135:10, 139:11, 149:8, 159:13, 181:9, 181:13, 202:14, 206:20, 211:13</p> <p>factor ^[5] - 43:25, 44:6, 86:9, 207:13, 208:19</p> <p>factors ^[4] - 18:23, 86:8, 159:15, 208:18</p> <p>fair ^[12] - 10:16, 20:15, 36:11, 36:12, 53:16, 67:7, 76:23, 84:12, 84:24, 85:23, 198:4, 198:9</p> <p>fairly ^[1] - 110:12</p> <p>fake ^[3] - 116:9, 123:9, 123:15</p> <p>fall ^[1] - 93:25</p> <p>fallen ^[1] - 17:7</p> <p>falls ^[1] - 7:20</p> <p>false ^[4] - 20:18, 21:20, 203:10, 203:14</p> <p>falsely ^[1] - 203:13</p> <p>familiar ^[4] - 15:17, 33:23, 38:5, 56:3</p> <p>family ^[1] - 16:5</p> <p>far ^[18] - 15:23, 36:14, 37:19, 37:20, 38:21, 67:18, 67:21, 69:15, 69:18, 78:11, 78:12, 89:14, 98:2, 98:16, 99:11,</p>			

<p>99:25, 169:2, 187:23 fare [1] - 153:6 fault [3] - 57:8, 58:5, 76:6 FDA [5] - 140:6, 140:10, 141:23, 142:17, 143:2 February [3] - 182:6, 184:10, 190:14 federal [2] - 66:19, 129:20 fee [2] - 19:10, 19:20 FEE [1] - 214:5 fees [4] - 17:20, 19:7, 19:18, 19:21 FEES [1] - 214:5 Feinstein [2] - 197:1, 197:3 felt [1] - 143:15 fever [1] - 151:16 few [12] - 34:16, 66:8, 82:5, 92:3, 102:25, 128:25, 130:7, 131:8, 133:4, 152:6, 168:20, 177:3 fight [1] - 213:4 figure [3] - 74:12, 147:1, 198:11 figured [1] - 147:4 file [8] - 58:2, 83:14, 123:1, 163:15, 163:16, 164:6, 204:17 filed [20] - 16:13, 17:18, 26:3, 50:9, 64:1, 67:9, 69:24, 71:8, 71:17, 83:15, 169:24, 170:9, 184:24, 203:21, 203:23, 203:24, 204:2, 204:4, 211:19 files [4] - 97:18, 100:13, 122:23, 134:10 filig [3] - 67:3, 188:14, 210:20 filings [1] - 180:1 fill [3] - 82:4, 154:15, 201:24 filled [1] - 189:6 final [5] - 36:18, 194:17, 196:10, 201:18 finally [1] - 43:12 finance [2] - 167:17, 167:18 financial [12] - 167:8, 168:5, 168:6, 168:9, 168:12, 168:16, 169:14, 169:20, 169:23, 170:9 financing [1] - 179:12 fine [5] - 28:12, 115:1, 195:13, 199:10, 205:10 finish [4] - 6:16, 94:16, 151:7, 197:25 finished [1] - 94:18 fire [2] - 47:8, 47:12 firm [15] - 11:5, 11:6, 12:18, 15:2, 15:16, 15:17, 16:8, 16:14, 17:15, 19:3, 19:10, 83:16, 178:3, 178:4 firms [3] - 11:4, 11:19, 13:9</p>	<p>first [49] - 6:7, 6:10, 6:11, 6:23, 7:15, 7:16, 7:18, 8:9, 22:18, 23:17, 23:24, 24:4, 27:18, 34:15, 46:8, 50:24, 53:2, 55:9, 61:19, 66:16, 67:2, 79:13, 79:14, 81:9, 82:5, 82:12, 82:15, 82:22, 84:16, 85:10, 85:15, 88:3, 91:18, 100:12, 123:1, 129:4, 136:6, 140:6, 153:5, 156:9, 158:4, 166:22, 170:4, 178:17, 183:16, 211:2 First [1] - 83:1 firsthand [5] - 113:20, 113:24, 114:21, 115:2, 121:4 five [17] - 10:5, 21:11, 21:13, 104:17, 105:2, 105:9, 111:12, 112:11, 134:11, 135:7, 135:8, 161:2, 184:11, 194:17, 197:10, 197:11, 212:5 Fleming [1] - 120:12 flip [1] - 203:9 flows [2] - 168:13, 168:17 fly [1] - 83:18 focus [3] - 73:23, 116:11, 168:11 folder [3] - 134:10, 162:7, 162:9 folks [5] - 62:2, 114:16, 118:23, 195:20, 197:14 follow [11] - 76:13, 77:4, 77:12, 122:17, 139:9, 151:13, 154:19, 155:4, 156:11, 156:17, 156:21 follow-up [6] - 139:9, 154:19, 155:4, 156:11, 156:17, 156:21 followed [2] - 76:18, 140:15 following [10] - 6:10, 6:11, 16:21, 39:17, 50:12, 66:24, 68:12, 76:16, 86:11, 86:13 Food [1] - 140:16 foot [1] - 82:2 FOR [1] - 214:5 forecasting [1] - 168:13 forecasts [3] - 170:2, 171:18, 180:3 FOREGOING [1] - 214:2 foreperson [1] - 202:2 FORGE [92] - 2:3, 5:17, 8:22, 12:11, 12:20, 13:3, 13:15, 14:19, 15:22, 16:15, 17:23, 17:25, 18:4, 20:20, 22:2, 22:21, 22:23, 24:23, 26:1, 30:6, 32:5, 32:8, 32:17, 33:9, 37:5, 37:16, 40:12, 41:11, 41:20, 42:11, 44:14,</p>	<p>45:12, 51:14, 52:14, 53:13, 54:3, 54:14, 55:23, 56:2, 56:21, 64:8, 64:23, 65:25, 67:5, 67:19, 69:19, 71:7, 74:19, 79:6, 79:10, 79:13, 79:15, 80:9, 80:11, 80:13, 80:16, 81:1, 81:5, 81:23, 81:24, 83:10, 83:19, 85:10, 86:12, 87:11, 191:16, 191:21, 192:4, 192:6, 192:9, 192:24, 193:11, 193:19, 193:22, 194:13, 194:17, 194:21, 195:3, 195:5, 195:12, 195:17, 195:19, 195:22, 196:1, 196:4, 196:7, 196:10, 196:15, 196:23, 197:1, 198:3, 200:8 forgive [1] - 26:24 forgot [1] - 192:25 form [8] - 20:22, 137:20, 144:13, 201:18, 202:3, 202:4, 211:18, 211:19 format [1] - 90:5 format [2] - 74:12, 201:11 former [1] - 114:21 forms [2] - 154:15, 154:16 formulating [1] - 183:7 forth [3] - 115:14, 117:14, 201:13 forward [3] - 31:13, 45:25, 87:17 foundation [11] - 33:11, 67:21, 79:25, 80:3, 98:12, 98:13, 104:18, 142:8, 142:19, 157:14, 165:8 four [23] - 21:4, 21:10, 52:25, 66:4, 68:11, 72:16, 82:2, 104:17, 105:2, 105:9, 115:5, 115:6, 156:23, 182:21, 195:5, 197:12, 207:22, 208:3, 208:17, 210:12, 211:4, 212:14, 213:20 four-and-a-half-foot-tall [1] - 82:2 fourth [10] - 170:4, 171:11, 172:4, 173:19, 196:10, 207:13, 207:18, 208:1, 208:4, 208:19 FOURTH [1] - 1:23 frame [1] - 20:21 framework [1] - 19:13 Francisco [5] - 88:18, 88:19, 88:20, 96:15, 97:14 fraud [27] - 49:3, 52:13, 53:12, 54:2, 54:13, 55:22, 71:6, 71:23, 72:2, 74:17, 75:2, 75:21, 76:5, 76:6, 205:23, 206:1, 206:24,</p>	<p>207:2, 207:14, 207:19, 207:23, 208:3, 208:10, 208:16, 209:8, 209:9, 210:1 fraudulent [2] - 51:11, 52:22 free [7] - 21:6, 21:7, 41:6, 52:25, 53:2, 53:4, 161:22 frequently [1] - 130:15 fresh [2] - 25:7, 199:7 Friday [8] - 197:25, 199:5, 199:6, 199:17, 200:16, 200:24, 201:3, 213:13 front [3] - 31:15, 109:22, 208:25 frowned [1] - 93:5 FTI [3] - 169:5, 171:19, 178:3 full [6] - 11:24, 84:17, 96:5, 105:17, 107:20, 164:22 functions [1] - 11:13 fund [2] - 17:4, 69:7 Fund [3] - 7:13, 66:23, 76:1 funding [7] - 19:22, 94:2, 94:20, 95:3, 145:12, 145:14, 145:18 funds [1] - 17:7 future [5] - 49:9, 67:9, 132:14, 168:16, 168:17</p>
G			
<p>G3 [1] - 42:6 Geller [12] - 11:5, 12:18, 15:2, 15:12, 15:14, 15:18, 16:6, 19:3, 19:5, 19:23, 20:4, 83:16 GELLER [1] - 2:5 Genentech [1] - 129:18 general [11] - 20:7, 20:24, 21:25, 51:12, 84:3, 129:13, 137:22, 168:3, 212:21, 213:2, 213:4 generalities [1] - 38:6 generally [16] - 17:2, 20:15, 21:4, 21:10, 36:2, 38:3, 52:12, 129:11, 130:16, 130:18, 136:25, 148:6, 159:14, 161:17, 164:24, 205:9 generate [4] - 98:24, 99:1, 157:3, 157:12 generated [2] - 47:18, 180:18 gentlemen [1] - 196:17 gist [9] - 20:7, 21:3, 22:19, 51:8, 51:17, 52:2, 52:6, 84:2 given [21] - 6:8, 7:20, 20:3, 23:22, 35:12, 36:1, 38:2, 46:20, 50:12, 54:23, 59:8, 69:5, 73:11, 76:25, 78:9,</p>			

<p>122:12, 126:12, 162:20, 172:3, 173:10, 174:7</p> <p>glad ^[1] - 198:25</p> <p>Glenn ^[1] - 69:6</p> <p>globally ^[1] - 9:18</p> <p>goal ^[1] - 199:25</p> <p>golden ^[1] - 8:10</p> <p>Gompers ^[1] - 197:8</p> <p>gosh ^[3] - 79:1, 202:19, 203:20</p> <p>gotcha ^[4] - 26:5, 64:25, 65:4, 202:21</p> <p>governments ^[1] - 129:20</p> <p>grade ^[13] - 21:8, 42:4, 43:24, 46:6, 46:15, 79:18, 109:11, 109:14, 109:24, 110:3, 110:8, 110:16, 110:22</p> <p>grade-three ^[13] - 21:8, 42:4, 43:24, 46:6, 46:15, 79:18, 109:11, 109:14, 109:24, 110:3, 110:8, 110:16, 110:22</p> <p>graduate ^[3] - 129:17, 167:15, 167:23</p> <p>graduating ^[1] - 167:20</p> <p>grant ^[1] - 130:5</p> <p>graph ^[2] - 29:23, 172:23</p> <p>graphically ^[1] - 34:11</p> <p>graphics ^[2] - 101:16, 164:13</p> <p>great ^[3] - 45:24, 65:19, 199:21</p> <p>greater ^[1] - 151:3</p> <p>GRONBORG ^[88] - 2:3, 87:16, 88:8, 94:8, 94:11, 95:1, 98:5, 98:10, 98:17, 99:5, 99:12, 99:16, 99:20, 102:17, 104:22, 105:5, 114:6, 114:18, 115:23, 118:3, 118:8, 119:25, 120:5, 121:22, 122:1, 122:6, 122:9, 122:14, 122:22, 124:9, 124:15, 127:5, 127:10, 128:16, 132:9, 137:6, 142:2, 142:7, 142:19, 144:5, 145:25, 146:3, 146:7, 149:13, 152:19, 157:4, 157:7, 157:14, 158:13, 159:4, 160:2, 160:9, 162:20, 165:7, 165:16, 166:12, 166:18, 167:2, 170:21, 171:1, 171:4, 171:7, 172:14, 172:16, 172:22, 173:5, 174:19, 174:22, 187:15, 188:23, 189:2, 191:4, 191:13, 193:8, 205:17, 206:7, 207:7, 207:21, 208:1, 209:3, 209:6, 209:9, 209:15,</p>	<p>209:18, 209:20, 210:2, 211:8, 213:5</p> <p>ground ^[1] - 40:13</p> <p>grounds ^[8] - 12:21, 15:23, 42:11, 53:14, 54:15, 66:1, 67:6, 67:20</p> <p>Group ^[1] - 7:17</p> <p>group ^[5] - 11:20, 35:24, 96:10, 113:8, 154:24</p> <p>guess ^[9] - 40:24, 115:4, 117:9, 128:8, 129:13, 153:16, 156:13, 165:25, 206:10</p> <p>guidance ^[4] - 140:6, 140:10, 142:17, 143:2</p> <p>GUILFORD ^[1] - 1:3</p> <p>guys ^[2] - 84:2, 106:10</p>	<p>help ^[2] - 55:10, 56:21</p> <p>helped ^[1] - 62:19</p> <p>helpful ^[1] - 43:8</p> <p>helping ^[2] - 44:25, 178:15</p> <p>HER2 ^[3] - 124:18, 125:6, 126:14</p> <p>Herceptin ^[6] - 121:13, 147:5, 147:8, 147:13, 147:16, 148:3</p> <p>HEREBY ^[1] - 214:2</p> <p>hi ^[2] - 149:23, 153:4</p> <p>HIGH ^[1] - 2:14</p> <p>high ^[3] - 13:2, 14:17, 138:11</p> <p>higher ^[6] - 21:8, 176:14, 186:12, 186:16, 186:19, 190:15</p> <p>highlight ^[9] - 5:7, 5:24, 40:2, 40:6, 40:7, 42:5, 43:15, 79:13, 147:25</p> <p>highlighted ^[10] - 5:3, 6:13, 6:22, 39:24, 41:8, 42:8, 52:25, 68:19, 68:20, 68:21</p> <p>highlighting ^[6] - 6:2, 6:5, 8:3, 8:8, 43:20, 43:21</p> <p>himself ^[1] - 143:23</p> <p>hints ^[1] - 51:21</p> <p>history ^[5] - 12:15, 14:4, 66:2, 153:15, 200:6</p> <p>hoc ^[16] - 125:9, 150:10, 150:21, 151:4, 158:2, 158:7, 158:12, 159:12, 159:22, 159:25, 161:11, 161:13, 161:25, 162:9, 162:16, 162:25</p> <p>hold ^[18] - 17:22, 18:1, 25:1, 25:6, 41:22, 43:5, 45:15, 57:13, 81:3, 83:10, 125:3, 160:12, 172:19, 195:1, 195:18, 198:16</p> <p>holdings ^[6] - 9:11, 9:13, 9:24, 10:4, 10:5, 11:11</p> <p>home ^[1] - 123:21</p> <p>honest ^[2] - 94:12, 135:14</p> <p>Honor ^[168] - 5:17, 7:6, 8:22, 8:24, 12:11, 12:20, 13:6, 13:16, 13:21, 13:24, 14:19, 15:22, 15:25, 16:15, 17:25, 18:4, 18:12, 19:1, 20:20, 22:2, 22:6, 22:21, 24:23, 26:1, 26:12, 27:9, 28:7, 28:13, 28:17, 29:1, 29:7, 29:12, 30:6, 30:14, 30:16, 30:23, 31:2, 31:19, 32:5, 32:8, 32:18, 32:21, 33:9, 34:5, 37:5, 37:16, 40:12, 41:11, 41:20, 42:22, 42:24, 43:9, 44:14, 45:12, 46:23, 51:14, 51:18, 52:14, 53:13, 53:19, 54:3, 54:14, 55:23, 56:6, 56:16, 56:21, 57:6,</p>	<p>57:16, 57:22, 58:10, 58:18, 60:5, 60:8, 60:13, 60:18, 60:25, 61:3, 61:9, 62:20, 63:3, 64:8, 64:21, 64:23, 65:12, 65:25, 67:5, 67:14, 67:19, 69:19, 70:3, 70:17, 71:7, 71:13, 71:19, 72:14, 72:16, 73:2, 73:8, 73:12, 74:19, 77:1, 79:7, 79:25, 80:11, 80:13, 80:22, 81:1, 83:12, 83:20, 86:12, 87:11, 94:16, 98:7, 98:13, 99:12, 104:20, 114:9, 128:17, 144:7, 149:12, 152:18, 160:18, 161:2, 165:7, 165:13, 166:14, 170:23, 176:18, 176:22, 181:16, 187:11, 187:15, 188:24, 191:16, 191:21, 191:24, 192:6, 192:10, 192:16, 192:24, 193:8, 193:12, 193:19, 193:22, 194:8, 194:17, 194:21, 195:3, 195:9, 196:15, 196:23, 197:7, 197:10, 198:2, 198:3, 198:13, 199:19, 200:3, 200:8, 200:23, 201:7, 204:1, 205:9, 206:15, 209:3, 212:12, 213:8, 213:17</p> <p>HONORABLE ^[1] - 1:3</p> <p>hopefully ^[1] - 198:19</p> <p>hormone ^[2] - 151:2, 159:22</p> <p>hormone-receptor ^[1] - 151:2</p> <p>hour ^[4] - 177:20, 198:20, 198:21, 199:1</p> <p>hourly ^[1] - 177:19</p> <p>hours ^[4] - 123:24, 143:16, 197:16, 197:17</p> <p>house ^[6] - 47:8, 47:12, 96:12, 107:25, 108:10, 118:23</p> <p>HSBC ^[2] - 23:16, 23:25</p> <p>HSINGCHING ^[2] - 1:4, 2:3</p> <p>HSU ^[2] - 1:4, 2:3</p> <p>huge ^[1] - 210:22</p> <p>humans ^[1] - 140:11</p> <p>hundred ^[1] - 135:5</p> <p>hypothetical ^[1] - 184:11</p>
			I
			<p>idea ^[15] - 40:14, 84:12, 122:10, 125:18, 134:18, 137:25, 140:13, 140:14, 140:18, 141:12, 141:16, 147:7, 155:9, 185:1, 193:1</p> <p>ideally ^[1] - 30:24</p> <p>identification ^[4] - 11:16,</p>

<p>59:4, 59:16, 59:25</p> <p>identified ^[10] - 8:21, 30:20, 34:6, 60:6, 64:20, 72:23, 98:10, 176:3, 204:14, 212:19</p> <p>identifies ^[3] - 42:4, 58:12, 112:3</p> <p>identify ^[9] - 27:5, 30:7, 30:21, 32:2, 43:19, 63:25, 100:4, 102:18, 176:4</p> <p>identifying ^[2] - 100:25, 125:22</p> <p>IDFS ^[1] - 40:25</p> <p>illustrates ^[1] - 172:11</p> <p>image ^[1] - 33:18</p> <p>imagine ^[1] - 151:13</p> <p>impact ^[6] - 37:20, 46:16, 85:22, 85:25, 86:2, 141:21</p> <p>impacted ^[2] - 85:3, 86:6</p> <p>impatience ^[1] - 93:24</p> <p>imperfect ^[1] - 140:11</p> <p>implement ^[1] - 141:16</p> <p>implication ^[1] - 13:8</p> <p>implications ^[1] - 167:10</p> <p>imply ^[1] - 71:10</p> <p>important ^[1] - 91:13</p> <p>importantly ^[1] - 37:6</p> <p>impose ^[1] - 198:6</p> <p>impression ^[1] - 54:23</p> <p>improperly ^[1] - 37:17</p> <p>IN ^[4] - 2:3, 2:11, 214:3, 214:6</p> <p>in-house ^[3] - 107:25, 108:10, 118:23</p> <p>inaccurate ^[3] - 107:15, 108:6, 188:8</p> <p>inartful ^[1] - 49:10</p> <p>inclined ^[2] - 18:10, 205:7</p> <p>include ^[9] - 11:20, 102:1, 102:5, 102:8, 108:12, 112:17, 113:14, 119:18, 199:23</p> <p>included ^[9] - 6:25, 14:9, 42:9, 56:17, 59:1, 102:3, 113:3, 138:4, 146:24</p> <p>includes ^[5] - 49:16, 51:9, 63:18, 191:25, 201:22</p> <p>including ^[6] - 9:4, 11:5, 49:14, 77:21, 78:1, 117:7</p> <p>inclusion ^[1] - 6:9</p> <p>inconsistencies ^[7] - 90:12, 90:15, 90:16, 90:17, 133:13, 133:18</p> <p>incorporating ^[3] - 50:16, 62:11, 212:23</p> <p>incorrect ^[3] - 24:6, 55:16, 109:8</p> <p>incorrectly ^[1] - 10:7</p> <p>incurred ^[1] - 171:23</p> <p>Incye ^[1] - 9:6</p>	<p>indeed ^[2] - 69:12, 72:12</p> <p>independent ^[2] - 89:19, 107:25</p> <p>INDEX ^[1] - 3:1</p> <p>indicate ^[4] - 11:17, 38:18, 118:13, 120:24</p> <p>indicated ^[2] - 34:9, 75:6</p> <p>indicates ^[3] - 73:19, 144:15, 144:18</p> <p>indicating ^[3] - 60:4, 75:20, 154:16</p> <p>indication ^[4] - 58:9, 74:25, 116:20, 119:13</p> <p>indications ^[1] - 63:17</p> <p>individual ^[4] - 17:2, 83:15, 205:19, 205:24</p> <p>individual's ^[1] - 186:17</p> <p>individuals ^[1] - 64:14</p> <p>industrial ^[1] - 167:16</p> <p>industry ^[5] - 8:10, 10:17, 95:4, 129:15, 130:4</p> <p>infer ^[1] - 13:16</p> <p>infers ^[1] - 13:15</p> <p>infinite ^[1] - 161:20</p> <p>inflate ^[1] - 179:4</p> <p>inflated ^[1] - 15:10</p> <p>influenced ^[1] - 86:9</p> <p>information ^[6] - 37:8, 37:18, 39:20, 49:2, 50:15, 50:16, 50:18, 51:9, 52:12, 52:21, 53:17, 54:22, 54:23, 62:12, 62:15, 69:17, 76:17, 77:5, 77:15, 77:17, 77:20, 80:19, 81:6, 81:19, 82:3, 84:8, 84:13, 84:18, 84:21, 85:21, 85:24, 86:1, 86:4, 95:6, 95:13, 102:1, 102:3, 112:19, 129:2, 135:1, 139:11, 141:10, 144:16, 146:23, 147:15, 147:16, 148:2, 148:3, 155:5, 155:10, 156:7, 166:4, 166:9, 184:4, 185:3, 185:5, 185:9, 185:11, 185:14, 188:12, 189:5</p> <p>informed ^[1] - 152:9</p> <p>infusion ^[1] - 173:6</p> <p>initial ^[8] - 5:23, 6:23, 7:20, 16:23, 19:5, 23:3, 26:2, 64:1</p> <p>initiated ^[2] - 6:19, 9:6</p> <p>Innovation ^[1] - 7:25</p> <p>innovation ^[1] - 8:10</p> <p>input ^[2] - 146:23, 147:12</p> <p>insert ^[3] - 120:22, 147:4, 148:3</p> <p>inside ^[1] - 46:14</p> <p>instances ^[1] - 155:4</p> <p>instead ^[2] - 58:21, 186:4</p> <p>instituted ^[1] - 100:12</p>	<p>Institutes ^[1] - 130:5</p> <p>instruction ^[27] - 193:2, 195:10, 195:11, 201:9, 205:11, 205:12, 205:18, 205:22, 205:25, 206:1, 206:4, 206:18, 206:24, 208:11, 208:15, 208:22, 209:4, 210:6, 210:10, 210:15, 211:3, 212:2, 212:6, 212:7, 212:9, 212:13</p> <p>Instruction ^[8] - 201:15, 201:19, 201:24, 202:8, 205:7, 208:8, 209:1</p> <p>instructions ^[25] - 24:17, 87:18, 87:20, 108:19, 122:17, 197:20, 197:24, 198:1, 199:6, 199:8, 199:17, 201:1, 201:5, 201:20, 201:22, 201:23, 202:1, 202:5, 205:13, 205:21, 207:1, 207:3, 208:8, 210:14, 213:6</p> <p>integrity ^[1] - 68:5</p> <p>intend ^[1] - 197:7</p> <p>intended ^[1] - 18:16</p> <p>intent ^[2] - 125:2, 125:7</p> <p>intent-to-treat ^[2] - 125:2, 125:7</p> <p>intention ^[1] - 22:6</p> <p>interact ^[3] - 130:15, 208:8, 208:12</p> <p>interest ^[3] - 19:4, 125:11, 180:19</p> <p>interested ^[5] - 147:3, 150:23, 156:15, 158:10, 159:20</p> <p>interesting ^[1] - 202:19</p> <p>intermediate ^[2] - 168:5, 168:11</p> <p>internal ^[7] - 47:21, 79:17, 79:22, 84:17, 179:21, 180:3, 210:7</p> <p>internally ^[1] - 180:7</p> <p>International ^[1] - 75:25</p> <p>interpretation ^[1] - 108:18</p> <p>interrogatory ^[1] - 203:24</p> <p>introductory ^[1] - 168:10</p> <p>invest ^[2] - 45:4, 78:15</p> <p>invested ^[4] - 6:5, 9:16, 9:17, 35:11</p> <p>investigate ^[2] - 46:13, 86:21</p> <p>investigation ^[4] - 46:18, 78:9, 86:22, 111:25</p> <p>investigational ^[6] - 90:14, 133:16, 138:20, 139:10, 154:25, 156:19</p> <p>investigator ^[1] - 154:22</p> <p>Investing ^[1] - 7:24</p> <p>investing ^[2] - 8:3, 9:3</p>	<p>investment ^[18] - 5:9, 6:22, 7:12, 8:15, 8:20, 17:16, 38:2, 39:16, 42:17, 45:3, 48:4, 48:7, 50:17, 69:6, 75:25, 76:3, 76:4, 77:15</p> <p>investments ^[13] - 5:3, 5:5, 5:23, 5:25, 6:7, 6:13, 7:17, 9:20, 11:7, 45:1, 50:13, 74:10, 75:19</p> <p>investor ^[2] - 16:12, 17:1</p> <p>investors ^[8] - 11:18, 17:5, 94:23, 104:5, 104:9, 104:12, 104:15, 104:25</p> <p>involve ^[3] - 168:3, 168:8, 168:13</p> <p>involved ^[13] - 16:24, 45:4, 88:22, 89:23, 92:1, 92:3, 101:11, 126:7, 129:21, 130:12, 140:12, 152:1, 177:16</p> <p>involvement ^[1] - 101:14</p> <p>involving ^[4] - 14:21, 16:11, 17:16, 121:12</p> <p>IP ^[2] - 100:11, 100:14</p> <p>Iqbal/Twombly ^[1] - 202:22</p> <p>irreconcilable ^[1] - 90:18</p> <p>irrelevant ^[3] - 15:24, 165:11, 200:12</p> <p>IS ^[1] - 214:2</p> <p>issue ^[16] - 23:24, 64:23, 87:18, 108:17, 156:1, 175:12, 183:23, 193:17, 202:22, 203:17, 206:25, 208:6, 210:13, 210:22, 211:9, 212:19</p> <p>issued ^[2] - 35:10, 175:14</p> <p>issues ^[7] - 17:3, 48:18, 71:16, 139:16, 141:22, 143:6, 204:10</p> <p>item ^[1] - 24:4</p> <p>items ^[1] - 53:1</p> <p>itself ^[2] - 8:23, 14:14</p> <p>ITT ^[2] - 124:25, 126:13</p>
J			
<p>January ^[33] - 35:14, 35:17, 35:22, 36:7, 36:10, 36:19, 36:25, 37:2, 37:4, 37:13, 37:14, 37:18, 37:19, 37:20, 38:10, 38:16, 38:24, 39:1, 48:16, 88:16, 174:14, 174:16, 174:24, 175:10, 175:21, 178:19, 181:10, 181:14, 182:24, 189:23, 190:2, 190:13, 190:16</p> <p>JANUARY ^[2] - 1:19, 4:1</p> <p>JASON ^[1] - 2:3</p> <p>jeopardizes ^[1] - 164:25</p> <p>job ^[3] - 13:22, 20:21, 68:7</p>			

<p>Johnson ^[4] - 186:22, 206:4, 211:14, 211:23</p> <p>JOHNSON ^[16] - 2:12, 205:9, 205:15, 206:15, 206:18, 206:23, 207:5, 207:9, 208:14, 208:24, 210:4, 210:24, 211:2, 211:16, 212:1, 213:17</p> <p>joined ^[2] - 129:12, 129:14</p> <p>joint ^[3] - 200:8, 201:9, 203:19</p> <p>jointly ^[1] - 193:24</p> <p>Jordan ^[1] - 176:19</p> <p>JORDAN ^[1] - 2:13</p> <p>Joshua ^[3] - 3:20, 194:5, 194:15</p> <p>judge ^[1] - 26:17</p> <p>JUDGE ^[1] - 1:3</p> <p>judgment ^[5] - 204:6, 204:7, 204:24, 207:15, 207:20</p> <p>JUDICIAL ^[1] - 214:7</p> <p>judicial ^[4] - 71:8, 83:12, 83:17, 205:1</p> <p>Judith ^[3] - 118:1, 119:23, 145:9</p> <p>Judy ^[1] - 118:18</p> <p>July ^[125] - 20:17, 21:21, 25:11, 26:8, 26:20, 29:25, 31:22, 31:24, 32:14, 33:24, 54:23, 59:14, 62:6, 62:13, 63:19, 63:20, 64:5, 64:13, 69:1, 69:10, 71:2, 71:4, 71:12, 71:22, 72:1, 72:25, 79:19, 79:24, 81:10, 82:6, 83:2, 83:3, 83:13, 90:19, 91:6, 91:7, 92:8, 95:23, 96:17, 96:19, 101:6, 104:4, 105:6, 105:11, 105:15, 105:19, 106:2, 107:18, 108:2, 108:12, 108:14, 108:22, 108:25, 109:5, 109:10, 110:2, 111:7, 112:13, 113:1, 113:18, 113:25, 114:22, 116:3, 116:14, 117:17, 120:13, 120:14, 124:16, 125:14, 125:16, 125:24, 126:16, 132:5, 132:15, 134:13, 143:1, 145:21, 146:15, 147:21, 148:21, 148:24, 149:18, 149:22, 151:5, 152:9, 152:14, 155:21, 155:24, 157:2, 157:21, 158:19, 161:11, 161:13, 161:25, 162:6, 162:17, 163:25, 164:3, 164:18, 164:23, 165:5, 165:19, 166:10, 175:16, 175:25, 179:8, 183:16, 183:21, 184:18, 185:25, 186:1,</p>	<p>186:6, 186:7, 189:19</p> <p>jumped ^[1] - 63:23</p> <p>June ^[40] - 21:24, 49:23, 50:1, 51:10, 53:11, 54:1, 54:12, 54:16, 55:22, 61:21, 63:10, 63:25, 73:24, 73:25, 74:1, 74:4, 74:6, 74:11, 74:18, 75:21, 76:19, 82:21, 82:22, 85:20, 85:22, 85:23, 85:24, 86:5, 86:10, 86:13, 86:18, 87:1, 173:6, 175:25, 176:9, 176:12, 180:18, 182:11, 185:16, 186:7</p> <p>jurors ^[1] - 83:10</p> <p>JURY ^[1] - 1:17</p> <p>jury ^[32] - 4:4, 13:16, 21:6, 30:8, 42:14, 70:15, 70:20, 82:4, 87:18, 114:15, 129:1, 129:4, 133:5, 134:16, 138:12, 161:8, 165:8, 191:17, 195:25, 196:14, 196:20, 197:20, 197:23, 197:25, 199:6, 199:17, 200:25, 201:4, 207:22, 208:6, 209:25, 213:6</p> <p>just. ^[1] - 30:9</p> <p>justifiable ^[2] - 206:9, 208:11</p> <p>justifiably ^[4] - 205:19, 206:13, 206:19, 209:23</p> <p>justification ^[1] - 206:25</p>	<p>KM ^[1] - 164:7</p> <p>knowing ^[6] - 20:5, 96:10, 134:19, 147:3, 201:20, 204:18</p> <p>knowledge ^[18] - 14:21, 38:11, 38:14, 41:12, 41:21, 53:15, 54:16, 55:6, 55:14, 68:1, 85:2, 85:11, 113:20, 113:24, 114:22, 115:2, 117:17, 121:4</p> <p>known ^[1] - 85:24</p> <p>knows ^[6] - 24:24, 37:17, 42:18, 53:20, 67:8, 68:2</p> <p>KOPCHO ^[1] - 197:2</p> <p>Kopcho ^[5] - 44:13, 44:21, 44:22, 197:1, 197:2</p>	<p>lead ^[6] - 16:13, 17:1, 71:3, 88:25, 105:6, 114:21</p> <p>leading ^[5] - 80:4, 80:24, 112:4, 112:8, 165:2</p> <p>leaning ^[1] - 45:25</p> <p>learned ^[1] - 50:8</p> <p>least ^[8] - 20:5, 72:1, 82:4, 130:1, 131:16, 199:1, 206:8, 213:6</p> <p>leave ^[1] - 31:4</p> <p>led ^[1] - 185:10</p> <p>left ^[12] - 4:13, 48:15, 100:3, 110:6, 110:10, 111:14, 114:19, 126:18, 126:20, 131:2, 187:23, 204:18</p> <p>legal ^[2] - 16:11, 19:13</p> <p>length ^[1] - 209:11</p> <p>lengthy ^[1] - 71:13</p> <p>LESS ^[1] - 214:5</p> <p>less ^[9] - 70:6, 114:6, 156:21, 175:5, 186:17, 186:20, 190:8, 191:2, 198:19</p> <p>letter ^[1] - 140:15</p> <p>letting ^[1] - 92:21</p> <p>level ^[6] - 55:5, 135:6, 138:11, 159:16, 172:24, 176:13</p> <p>licensing ^[1] - 91:17</p> <p>lie ^[2] - 131:5, 165:23</p> <p>life ^[1] - 91:13</p> <p>likely ^[1] - 123:9</p> <p>limited ^[3] - 19:16, 95:6, 178:22</p> <p>limiting ^[3] - 193:2, 195:10, 195:11</p> <p>line ^[19] - 16:16, 18:6, 18:24, 32:9, 32:13, 56:10, 65:1, 69:12, 69:13, 77:12, 94:7, 102:18, 114:3, 115:20, 153:6, 154:1, 193:3, 207:10, 208:9</p> <p>lines ^[3] - 18:8, 44:19, 127:11</p> <p>link ^[2] - 15:25, 16:2</p> <p>list ^[10] - 9:10, 12:3, 12:9, 14:9, 24:5, 122:12, 122:13, 144:21, 144:23, 145:7</p> <p>listed ^[3] - 9:21, 82:2, 145:1</p> <p>listen ^[2] - 31:4, 104:4</p> <p>listing ^[2] - 98:21, 99:1</p> <p>lists ^[3] - 9:5, 68:22, 211:19</p> <p>litigation ^[14] - 12:14, 14:4, 19:7, 19:13, 19:19, 19:21, 23:18, 24:12, 44:10, 45:8, 46:11, 46:14, 68:9, 179:7</p> <p>litigations ^[1] - 14:5</p> <p>live ^[4] - 196:24, 197:3, 197:10, 197:11</p> <p>lives ^[1] - 138:22</p> <p>LLP ^[2] - 2:5, 2:14</p>
L			
<p>labeled ^[2] - 72:17, 102:10</p> <p>labels ^[1] - 73:3</p> <p>labs ^[1] - 125:6</p> <p>lack ^[3] - 80:3, 142:8, 165:7</p> <p>lacks ^[1] - 104:18</p> <p>ladies ^[1] - 196:17</p> <p>laid ^[1] - 203:20</p> <p>language ^[3] - 164:12, 211:9, 212:10</p> <p>laptop ^[2] - 123:8, 123:21</p> <p>Lara ^[1] - 34:14</p> <p>large ^[6] - 17:3, 17:5, 27:13, 99:6, 151:20</p> <p>larger ^[1] - 10:23</p> <p>largest ^[1] - 17:2</p> <p>Larry ^[1] - 79:14</p> <p>last ^[24] - 27:19, 36:20, 42:21, 43:6, 62:17, 72:22, 83:5, 88:3, 91:4, 93:25, 111:22, 116:7, 121:8, 140:25, 141:11, 162:14, 166:7, 166:22, 172:1, 202:10, 209:20, 213:1</p> <p>Latham ^[2] - 89:11, 211:19</p> <p>LATHAM ^[1] - 2:14</p> <p>law ^[5] - 11:4, 11:5, 11:6, 11:19, 13:9</p> <p>laws ^[1] - 66:19</p> <p>lawsuit ^[7] - 11:18, 11:22, 12:4, 13:18, 16:13, 19:4, 64:1</p> <p>lawsuits ^[5] - 11:11, 11:13, 13:11, 14:21, 18:14</p> <p>lawyer ^[5] - 20:6, 23:2, 33:17, 52:10, 71:14</p> <p>lawyers ^[3] - 17:11, 89:10, 89:16</p> <p>lawyers' ^[1] - 17:20</p> <p>lay ^[3] - 24:11, 55:14, 202:19</p> <p>layman's ^[1] - 20:6</p> <p>lays ^[1] - 202:15</p>			
K			
<p>Kaplan ^[21] - 21:8, 103:12, 103:22, 103:25, 105:16, 105:20, 113:2, 113:21, 114:23, 116:2, 116:21, 116:25, 117:13, 117:21, 136:13, 156:2, 157:3, 157:12, 157:20, 164:13, 164:15</p> <p>Kaplan-Meier ^[21] - 21:8, 103:12, 103:22, 103:25, 105:16, 105:20, 113:2, 113:21, 114:23, 116:2, 116:21, 116:25, 117:13, 117:21, 136:13, 156:2, 157:3, 157:12, 157:20, 164:13, 164:15</p> <p>keep ^[5] - 45:25, 51:21, 192:13, 192:15, 197:20</p> <p>keeps ^[2] - 70:7, 135:14</p> <p>Kevin ^[5] - 149:17, 149:18, 149:19, 149:22, 149:23</p> <p>key ^[9] - 34:23, 95:16, 95:21, 95:25, 116:9, 116:10, 116:12, 123:15, 206:12</p> <p>kind ^[4] - 52:22, 207:3, 212:19, 212:23</p> <p>kindly ^[1] - 48:20</p>			

<p>lock [13] - 90:23, 91:12, 93:5, 93:7, 133:25, 143:6, 143:22, 145:3, 145:8, 145:12, 145:13, 145:17</p> <p>locked [16] - 90:20, 91:1, 91:20, 92:8, 92:10, 93:10, 93:11, 93:19, 93:23, 95:5, 96:15, 96:20, 97:13, 134:3, 135:10, 144:25</p> <p>locks [1] - 144:2</p> <p>lodge [1] - 193:23</p> <p>log [14] - 97:9, 99:21, 107:7, 115:17, 116:17, 119:10, 125:21, 163:9, 163:12, 163:14, 163:17, 163:19, 163:24, 166:7</p> <p>logrank [1] - 136:14</p> <p>London [1] - 24:3</p> <p>longest [1] - 156:10</p> <p>look [54] - 30:19, 34:24, 46:22, 49:24, 56:15, 58:3, 59:5, 65:9, 81:8, 82:7, 82:24, 83:1, 83:2, 99:2, 99:8, 100:10, 100:14, 100:20, 115:19, 117:11, 124:24, 125:4, 133:10, 133:16, 135:15, 136:21, 137:8, 137:11, 139:15, 139:21, 139:22, 144:4, 144:20, 147:8, 149:10, 149:21, 150:24, 151:12, 152:3, 152:16, 153:3, 159:14, 163:4, 163:15, 164:2, 168:17, 182:23, 184:17, 187:22, 188:14, 211:16, 212:22</p> <p>looked [15] - 37:23, 53:5, 138:2, 146:20, 153:9, 161:21, 169:23, 170:2, 171:22, 174:5, 174:11, 174:14, 185:25, 202:14, 210:13</p> <p>looking [19] - 45:22, 47:6, 140:19, 141:15, 150:14, 157:20, 158:10, 159:20, 172:17, 172:18, 172:23, 173:1, 187:2, 206:11, 208:23, 209:5, 209:6, 211:17, 213:3</p> <p>looks [4] - 9:21, 90:11, 141:23, 213:12</p> <p>loop [1] - 161:20</p> <p>loosely [1] - 15:8</p> <p>loosen [1] - 197:15</p> <p>lose [2] - 62:19, 210:1</p> <p>loss [1] - 17:2</p> <p>losses [5] - 17:5, 49:8, 49:12, 49:15, 170:7</p> <p>lost [2] - 139:9, 154:19</p> <p>low [2] - 12:25, 14:15</p>	<p>lower [6] - 60:23, 72:24, 137:11, 171:1, 186:18, 190:11</p> <p>lunch [1] - 114:20</p>	<p>matched [4] - 119:4, 146:22, 148:13, 180:7</p> <p>material [2] - 206:20, 208:5</p> <p>materiality [3] - 208:1, 210:1, 210:12</p> <p>materials [3] - 97:16, 117:20, 149:4</p> <p>math [4] - 10:1, 74:2, 190:18, 198:11</p> <p>mathematics [2] - 129:6, 129:9</p> <p>matter [10] - 83:14, 89:7, 167:7, 177:19, 178:7, 193:4, 193:14, 199:15, 201:13, 201:14</p> <p>MATTER [1] - 214:4</p> <p>matters [1] - 199:10</p> <p>maximum [3] - 171:9, 171:15, 173:4</p> <p>MBA [1] - 167:17</p> <p>mean [27] - 4:21, 25:16, 38:17, 53:7, 55:12, 72:18, 90:9, 93:4, 95:10, 98:11, 113:7, 115:8, 115:13, 128:9, 149:25, 171:3, 172:24, 181:1, 182:21, 184:13, 187:4, 198:10, 203:1, 203:25, 211:11, 213:3</p> <p>meaning [5] - 100:13, 127:18, 180:7, 198:22, 213:9</p> <p>means [9] - 16:23, 33:16, 33:17, 89:1, 160:3, 169:16, 169:17, 198:22, 202:17</p> <p>meant [1] - 172:12</p> <p>medical [4] - 90:16, 90:18, 133:14, 133:17</p> <p>meet [1] - 130:19</p> <p>meeting [1] - 32:4</p> <p>meetings [2] - 48:7, 164:25</p> <p>Meier [21] - 21:8, 103:12, 103:22, 103:25, 105:16, 105:20, 113:2, 113:21, 114:23, 116:2, 116:21, 116:25, 117:13, 117:21, 136:13, 156:2, 157:3, 157:12, 157:20, 164:13, 164:15</p> <p>memory [7] - 53:16, 54:19, 64:3, 64:17, 112:24, 162:22</p> <p>mentioned [12] - 14:10, 80:10, 80:17, 130:22, 131:23, 143:25, 147:23, 150:21, 151:9, 177:5, 178:2, 201:2</p> <p>mercifully [1] - 62:17</p> <p>met [3] - 5:10, 20:4, 207:13</p> <p>methodology [1] - 117:7</p>	<p>methods [6] - 136:7, 136:10, 136:12, 136:18, 136:23, 139:23</p> <p>MICHELE [1] - 2:12</p> <p>microphone [2] - 45:23, 46:1</p> <p>mid [4] - 35:1, 35:17, 35:22, 127:21</p> <p>mid-January [2] - 35:17, 35:22</p> <p>middle [4] - 130:17, 138:19, 149:21, 202:20</p> <p>might [20] - 11:17, 18:23, 30:21, 78:25, 121:2, 125:18, 125:19, 139:7, 141:22, 155:14, 155:15, 157:23, 159:19, 197:21, 199:23, 200:11, 200:25, 201:1, 211:23</p> <p>million [33] - 18:23, 23:8, 170:15, 173:10, 173:13, 173:19, 173:20, 174:1, 174:25, 175:1, 175:8, 175:9, 175:11, 175:18, 175:19, 175:21, 175:22, 175:25, 182:3, 182:8, 182:16, 182:17, 187:24, 188:5, 188:11, 188:13, 189:12</p> <p>million-dollar [1] - 23:8</p> <p>mind [6] - 54:20, 88:13, 89:22, 108:21, 193:5, 193:17</p> <p>minimum [4] - 171:9, 171:13, 171:14, 173:3</p> <p>minor [1] - 110:13</p> <p>minute [2] - 99:4, 151:7</p> <p>minutes [22] - 56:11, 70:6, 70:13, 70:16, 114:6, 161:2, 188:23, 191:18, 194:2, 194:3, 194:6, 194:9, 194:11, 194:12, 194:17, 197:17, 198:20, 201:5, 213:20, 213:21</p> <p>Miriam [1] - 214:9</p> <p>MIRIAM [2] - 1:22, 214:10</p> <p>misleading [1] - 179:14</p> <p>misled [1] - 204:23</p> <p>misrepresentation [2] - 179:3, 209:24</p> <p>misrepresentations [1] - 179:7</p> <p>miss [3] - 139:1, 139:4, 140:12</p> <p>missed [8] - 75:16, 118:10, 119:1, 119:4, 119:15, 120:20, 123:3, 139:7</p> <p>misses [1] - 140:21</p> <p>missing [7] - 126:3, 139:16, 140:19, 141:3, 141:21, 189:6, 202:21</p>
M			
<p>macro [1] - 164:11</p> <p>mail [27] - 79:22, 84:17, 100:4, 100:17, 101:6, 101:12, 106:3, 109:5, 109:8, 117:25, 119:22, 120:7, 121:21, 122:2, 124:10, 124:25, 130:19, 149:17, 149:22, 150:5, 152:21, 153:2, 153:4, 153:8, 159:1, 163:18</p> <p>mailing [1] - 97:9</p> <p>mails [5] - 79:17, 84:9, 115:13, 115:14, 115:16</p> <p>main [2] - 8:9, 178:25</p> <p>maintained [1] - 142:14</p> <p>majority [1] - 20:13</p> <p>man [1] - 22:4</p> <p>manageable [3] - 43:14, 43:16, 43:22</p> <p>managed [1] - 73:13</p> <p>management [23] - 38:2, 90:11, 90:17, 92:4, 100:20, 100:21, 101:18, 101:21, 107:10, 107:12, 107:16, 115:15, 130:20, 143:13, 143:14, 143:16, 145:4, 145:5, 147:2, 147:12, 150:16, 158:16, 167:23</p> <p>Management [1] - 167:6</p> <p>manager [7] - 5:9, 45:2, 45:3, 69:6, 69:12, 75:25, 76:5</p> <p>managers [4] - 12:1, 38:4, 39:16, 133:8</p> <p>managing [1] - 89:2</p> <p>manner [2] - 45:13, 69:13</p> <p>March [1] - 92:10</p> <p>Mark [1] - 69:7</p> <p>mark [4] - 28:10, 28:12, 30:12, 201:19</p> <p>marked [9] - 27:14, 56:18, 57:11, 59:3, 59:16, 59:20, 59:24, 72:15, 73:10</p> <p>market [16] - 21:22, 85:3, 179:3, 205:23, 206:1, 206:25, 207:2, 207:14, 207:19, 207:23, 208:3, 208:10, 208:16, 209:8, 209:9, 210:1</p> <p>marketable [1] - 180:20</p> <p>marketplace [1] - 207:13</p> <p>marking [2] - 28:8, 73:4</p> <p>master's [2] - 129:7, 167:16</p> <p>match [2] - 119:5, 119:8</p>			

<p>misstatement^[1] - 203:11</p> <p>misstatements^[3] - 165:23, 166:1, 208:5</p> <p>misstates^[4] - 37:6, 145:25, 146:2, 146:10</p> <p>mistaken^[1] - 57:2</p> <p>mistakenly^[1] - 60:19</p> <p>misunderstandings^[1] - 108:8</p> <p>model^[11] - 136:16, 205:11, 205:12, 205:18, 206:18, 207:1, 208:15, 208:22, 210:14, 212:2, 212:9</p> <p>models^[1] - 136:21</p> <p>modified^[1] - 156:13</p> <p>modify^[1] - 162:12</p> <p>moment^[24] - 13:4, 25:6, 33:17, 33:19, 43:5, 45:11, 57:17, 60:9, 72:19, 80:5, 80:14, 81:20, 98:15, 99:8, 137:7, 142:20, 152:22, 158:3, 160:19, 165:9, 165:13, 195:15, 203:4</p> <p>Monday^[2] - 199:18, 213:13</p> <p>money^[17] - 17:21, 132:22, 173:16, 173:17, 174:11, 174:15, 175:1, 176:5, 179:18, 181:10, 182:12, 189:21, 189:22, 190:3, 190:8, 190:12, 190:17</p> <p>moneys^[2] - 11:14, 12:1</p> <p>monitor^[3] - 11:7, 16:12, 133:14</p> <p>monitoring^[6] - 11:8, 13:9, 16:23, 17:6, 18:13</p> <p>month^[5] - 74:1, 131:17, 170:15, 178:23</p> <p>monthly^[1] - 4:23</p> <p>months^[11] - 30:21, 91:3, 174:7, 174:9, 175:3, 175:4, 175:15, 176:15, 184:11</p> <p>morning^[7] - 4:11, 4:12, 81:2, 88:9, 131:3, 209:16, 213:13</p> <p>most^[7] - 13:9, 42:5, 43:13, 43:16, 43:21, 123:17, 130:10</p> <p>motion^[8] - 16:20, 200:1, 200:3, 203:19, 203:21, 204:2, 204:4, 204:17</p> <p>motivated^[1] - 179:3</p> <p>mouth^[1] - 55:8</p> <p>move^[19] - 18:8, 18:25, 22:25, 31:13, 65:23, 80:22, 98:5, 99:16, 118:3, 119:25, 121:22, 144:7, 149:12, 152:17, 168:4, 187:11, 199:11, 199:14</p> <p>moved^[3] - 118:3, 129:17, 168:1</p>	<p>moving^[3] - 65:10, 144:6, 194:24</p> <p>MR^[384] - 4:7, 4:10, 5:17, 5:21, 7:4, 7:6, 7:11, 8:22, 8:24, 9:1, 12:11, 12:16, 12:20, 12:23, 13:3, 13:6, 13:8, 13:15, 13:21, 13:23, 14:6, 14:19, 15:1, 15:22, 15:25, 16:4, 16:7, 16:15, 16:18, 17:13, 17:23, 17:25, 18:4, 18:12, 19:1, 19:2, 20:20, 20:24, 21:2, 21:14, 21:19, 22:2, 22:6, 22:11, 22:15, 22:21, 22:23, 22:24, 24:23, 25:3, 25:8, 25:9, 26:1, 26:10, 26:12, 26:15, 27:8, 27:11, 27:12, 28:7, 28:12, 28:16, 28:19, 29:1, 29:3, 29:7, 29:9, 29:12, 29:16, 29:18, 30:6, 30:13, 30:16, 30:23, 31:2, 31:10, 31:14, 31:17, 31:19, 31:20, 32:5, 32:6, 32:8, 32:17, 32:20, 32:24, 33:3, 33:7, 33:9, 33:12, 33:13, 33:21, 33:22, 34:5, 34:8, 37:5, 37:11, 37:16, 37:22, 39:11, 39:12, 40:2, 40:3, 40:7, 40:9, 40:12, 40:23, 41:2, 41:4, 41:11, 41:17, 41:20, 41:24, 42:1, 42:11, 42:15, 42:22, 42:24, 43:3, 43:11, 43:15, 43:17, 44:14, 44:18, 45:12, 45:17, 45:18, 46:23, 47:3, 48:10, 48:12, 50:23, 51:1, 51:14, 51:18, 52:1, 52:14, 52:19, 52:20, 53:13, 53:19, 53:23, 53:24, 54:3, 54:7, 54:9, 54:14, 55:1, 55:23, 55:25, 56:2, 56:9, 56:13, 56:14, 56:16, 56:21, 57:1, 57:6, 57:15, 57:21, 58:6, 58:10, 58:18, 58:24, 59:7, 59:11, 59:20, 59:24, 60:8, 60:12, 60:16, 60:18, 60:24, 61:3, 61:7, 61:9, 61:11, 61:12, 62:16, 63:3, 63:6, 63:13, 64:8, 64:12, 64:20, 64:23, 65:4, 65:11, 65:18, 65:25, 66:13, 66:15, 67:5, 67:12, 67:14, 67:17, 67:19, 67:23, 68:3, 69:19, 69:22, 70:2, 70:6, 70:17, 70:22, 70:23, 71:7, 71:13, 71:17, 71:21, 72:13, 73:2, 73:8, 73:12, 73:17, 74:19, 74:24, 76:24, 77:8, 78:21, 79:3, 79:6, 79:10, 79:13, 79:15, 79:25, 80:9, 80:11, 80:13, 80:16, 80:22, 81:1, 81:5, 81:13, 81:18, 81:23,</p>	<p>81:24, 83:10, 83:19, 83:23, 85:10, 85:14, 86:12, 86:16, 87:8, 87:11, 87:13, 87:16, 88:8, 94:8, 94:11, 95:1, 98:5, 98:10, 98:17, 99:5, 99:12, 99:16, 99:20, 102:17, 104:22, 105:5, 114:6, 114:18, 115:23, 118:3, 118:8, 119:25, 120:5, 121:22, 122:1, 122:6, 122:9, 122:14, 122:22, 124:9, 124:15, 127:5, 127:10, 128:16, 132:9, 137:6, 142:2, 142:7, 142:19, 144:5, 145:25, 146:3, 146:7, 149:13, 152:19, 157:4, 157:7, 157:14, 158:13, 159:4, 160:2, 160:9, 162:20, 165:7, 165:16, 166:12, 166:18, 167:2, 170:21, 171:1, 171:4, 171:7, 172:14, 172:16, 172:22, 173:5, 174:19, 174:22, 187:1, 187:15, 188:23, 189:2, 191:4, 191:13, 191:16, 191:21, 192:4, 192:6, 192:9, 192:16, 192:24, 193:8, 193:11, 193:19, 193:22, 194:13, 194:17, 194:21, 195:3, 195:5, 195:9, 195:12, 195:17, 195:19, 195:22, 196:1, 196:4, 196:7, 196:10, 196:15, 196:23, 197:1, 197:7, 197:10, 198:2, 198:3, 198:13, 198:19, 198:25, 199:3, 199:19, 199:21, 200:3, 200:8, 200:23, 201:7, 202:25, 203:3, 204:1, 204:6, 204:11, 204:25, 205:17, 206:7, 207:7, 207:21, 208:1, 209:3, 209:6, 209:9, 209:15, 209:18, 209:20, 210:2, 211:8, 213:5, 213:8, 213:15</p> <p>MS^[80] - 94:16, 98:7, 98:13, 104:18, 104:20, 114:9, 118:5, 120:2, 121:25, 124:6, 127:7, 128:17, 128:22, 132:11, 137:10, 138:8, 138:9, 142:4, 142:11, 142:22, 144:7, 144:11, 146:13, 147:25, 148:1, 148:14, 148:15, 149:11, 149:16, 152:17, 152:21, 152:24, 153:1, 154:6, 154:7, 157:5, 157:10, 157:18, 158:17,</p>	<p>159:7, 159:9, 159:10, 160:6, 160:10, 160:15, 160:18, 161:2, 161:9, 163:3, 163:6, 163:8, 165:13, 166:14, 176:18, 176:25, 177:2, 181:16, 181:21, 181:23, 186:24, 187:11, 187:18, 187:21, 188:20, 191:7, 205:9, 205:15, 206:15, 206:18, 206:23, 207:5, 207:9, 208:14, 208:24, 210:4, 210:24, 211:2, 211:16, 212:1, 213:17</p> <p>multi^[1] - 17:9</p> <p>multi-faceted^[1] - 17:9</p> <p>multiple^[5] - 15:5, 65:13, 87:23, 139:7, 143:9</p> <p>must^[4] - 59:5, 208:11, 209:12, 209:22</p> <p>MVB11893@aol.com^[1] - 1:24</p>
N			
<p>name^[5] - 14:12, 88:3, 164:6, 166:22, 176:18</p> <p>named^[4] - 15:19, 15:20, 66:19, 120:12</p> <p>names^[5] - 7:1, 144:21, 144:23, 163:15, 163:16</p> <p>narrative^[2] - 6:9, 26:24</p> <p>National^[1] - 130:5</p> <p>nature^[3] - 86:2, 203:4, 203:12</p> <p>nearly^[1] - 141:19</p> <p>necessarily^[2] - 137:19, 137:25</p> <p>necessary^[1] - 113:2</p> <p>need^[23] - 9:25, 21:16, 22:7, 31:12, 52:16, 57:4, 58:16, 58:17, 58:21, 71:16, 83:25, 87:22, 124:13, 125:3, 142:21, 144:24, 199:14, 200:18, 201:2, 201:12, 201:23, 202:3, 211:18</p> <p>needed^[7] - 93:23, 95:2, 106:13, 113:8, 145:8, 150:2, 185:6</p> <p>needs^[4] - 28:23, 29:4, 199:24, 201:18</p> <p>negative^[4] - 38:13, 151:2, 173:18, 180:22</p> <p>neighbors^[1] - 106:11</p> <p>neratinib^[14] - 55:3, 79:19, 79:23, 91:19, 95:15, 102:23, 103:6, 104:13, 109:17, 110:17, 111:5, 111:25, 112:5, 153:15</p> <p>net^[4] - 170:7, 180:21,</p>			

<p>180:24, 187:2</p> <p>networked [1] - 96:25</p> <p>never [12] - 40:14, 44:4, 44:7, 53:17, 94:19, 118:21, 139:9, 177:7, 177:10, 177:13, 177:16, 200:1</p> <p>new [7] - 5:7, 6:8, 6:18, 8:15, 23:25, 60:5, 205:15</p> <p>news [1] - 76:14</p> <p>next [21] - 35:20, 49:19, 49:23, 59:10, 85:5, 87:15, 99:15, 106:11, 110:25, 153:5, 156:20, 159:16, 160:24, 166:17, 184:17, 191:15, 193:3, 193:11, 193:13, 196:7, 201:25</p> <p>next-door [1] - 106:11</p> <p>Nicola [1] - 69:7</p> <p>nine [4] - 164:7, 194:5, 197:13, 197:24</p> <p>none [1] - 78:13</p> <p>Norfolk [66] - 5:1, 5:12, 5:24, 6:5, 6:6, 7:13, 7:17, 8:3, 8:8, 9:12, 9:21, 23:7, 23:19, 25:22, 25:23, 26:3, 27:4, 27:6, 27:16, 28:1, 34:12, 34:19, 35:2, 35:11, 35:15, 35:22, 36:22, 37:12, 38:3, 38:9, 38:15, 44:25, 48:19, 48:25, 60:4, 61:16, 61:20, 63:11, 63:17, 64:5, 64:14, 65:5, 66:22, 66:23, 68:23, 71:2, 71:5, 71:8, 71:22, 72:1, 72:4, 74:3, 74:14, 75:1, 75:20, 76:1, 77:18, 78:11, 82:21, 83:6, 83:16, 85:7, 85:17, 87:1, 87:4, 209:22</p> <p>Norfolk's [16] - 7:17, 24:14, 24:20, 26:19, 46:17, 57:23, 58:11, 59:2, 60:1, 60:22, 61:14, 62:23, 69:24, 74:11, 78:8, 84:7</p> <p>normally [1] - 94:20</p> <p>Northern [3] - 24:2, 24:11, 24:13</p> <p>note [3] - 78:24, 190:5, 212:1</p> <p>noted [1] - 73:18</p> <p>notes [7] - 85:9, 90:17, 205:20, 206:2, 206:3, 209:4, 212:5</p> <p>nothing [5] - 46:13, 83:21, 115:15, 135:11, 191:13</p> <p>notice [4] - 71:8, 83:13, 83:18, 170:23</p> <p>noticed [1] - 76:21</p> <p>notification [2] - 4:18, 4:20</p> <p>notified [4] - 5:15, 17:15, 17:18, 143:14</p> <p>notify [1] - 4:17</p>	<p>noting [1] - 32:17</p> <p>notion [1] - 211:24</p> <p>November [3] - 88:16, 91:5, 126:18</p> <p>number [54] - 5:7, 7:1, 9:5, 9:17, 15:14, 17:10, 27:3, 27:8, 27:13, 27:15, 28:23, 28:24, 28:25, 29:6, 31:12, 39:21, 58:1, 58:15, 58:17, 58:21, 60:23, 66:24, 68:23, 74:13, 86:8, 102:10, 111:19, 119:3, 123:24, 151:6, 152:20, 154:12, 174:13, 175:7, 175:11, 175:17, 176:4, 185:11, 185:12, 189:23, 190:15, 201:10, 202:17, 203:6, 205:10, 206:5, 207:1, 207:3, 209:5, 209:6, 209:7, 210:12, 212:2, 212:13</p> <p>Number [2] - 37:5, 203:8</p> <p>numbered [3] - 7:23, 66:24, 195:10</p> <p>numbers [10] - 41:8, 62:19, 152:6, 173:18, 184:3, 184:5, 188:7, 195:5, 195:14, 208:11</p> <p>numerical [1] - 140:3</p> <p>numerous [1] - 135:12</p>	<p>160:16, 160:22, 162:23, 163:1, 187:14, 187:15, 195:1</p> <p>objections [7] - 99:14, 99:18, 127:6, 152:19, 195:6, 195:7, 202:25</p> <p>obligation [4] - 23:18, 25:22, 26:18, 26:21</p> <p>observation [1] - 32:16</p> <p>obtain [3] - 145:12, 145:14, 145:17</p> <p>obtained [1] - 27:5</p> <p>obvious [1] - 202:2</p> <p>obviously [3] - 28:20, 28:22, 211:11</p> <p>occasion [1] - 130:23</p> <p>occasions [1] - 89:11</p> <p>occur [4] - 6:6, 17:5, 151:12, 151:23</p> <p>occurred [14] - 38:16, 54:13, 73:24, 75:3, 76:5, 76:6, 77:11, 77:13, 91:5, 134:2, 139:6, 141:8, 152:2, 194:18</p> <p>October [16] - 7:20, 27:18, 34:16, 34:17, 34:18, 82:12, 91:5, 91:7, 181:24, 182:14, 189:7, 189:25</p> <p>odd [1] - 200:1</p> <p>OF [7] - 1:2, 1:16, 2:3, 2:11, 214:3, 214:7</p> <p>offer [12] - 7:7, 30:18, 32:20, 32:24, 33:2, 33:3, 38:8, 64:21, 89:19, 177:14, 183:24, 185:4</p> <p>offered [7] - 38:8, 46:24, 184:9, 185:12, 193:4, 193:15, 193:16</p> <p>offering [62] - 33:5, 36:1, 36:2, 36:4, 36:6, 36:11, 36:14, 36:23, 36:25, 37:2, 37:15, 37:19, 37:24, 38:1, 38:6, 38:7, 38:9, 38:15, 38:18, 39:1, 39:3, 167:11, 169:11, 173:25, 174:2, 174:5, 174:7, 174:24, 174:25, 175:3, 175:15, 176:9, 176:15, 176:16, 177:8, 177:11, 177:17, 178:19, 180:12, 181:1, 181:2, 181:10, 181:24, 182:2, 182:6, 182:7, 182:25, 183:20, 184:10, 184:12, 184:14, 186:8, 186:11, 186:15, 188:1, 188:12, 189:7, 189:15, 189:19, 189:25, 190:13, 190:14</p> <p>offerings [10] - 38:4, 181:13, 182:20, 182:21, 183:2,</p>	<p>183:8, 190:6, 190:19, 190:24</p> <p>office [14] - 23:23, 96:15, 96:16, 96:17, 96:20, 100:16, 106:10, 106:11, 123:8, 123:18, 123:19, 123:20, 123:23, 159:1</p> <p>officer [1] - 130:11</p> <p>offices [1] - 88:18</p> <p>official [1] - 28:13</p> <p>OFFICIAL [2] - 1:22, 214:10</p> <p>officially [1] - 26:8</p> <p>omission [4] - 202:9, 202:16, 203:11, 209:24</p> <p>omissions [6] - 203:9, 204:3, 204:14, 204:18, 205:4, 208:5</p> <p>omitted [3] - 81:7, 81:18, 203:5</p> <p>omitting [1] - 203:13</p> <p>Omnicare [8] - 210:13, 210:14, 210:16, 210:22, 211:10, 211:24, 212:16</p> <p>once [13] - 62:12, 89:7, 91:20, 93:7, 116:11, 123:11, 134:3, 143:14, 143:18, 150:6, 150:15, 150:23, 152:3</p> <p>one [66] - 9:21, 9:23, 11:13, 12:2, 12:8, 13:13, 20:14, 23:4, 23:6, 29:5, 31:24, 36:12, 36:13, 37:5, 44:24, 53:2, 57:9, 59:2, 60:24, 65:5, 67:2, 68:25, 73:7, 78:11, 81:10, 82:5, 83:1, 83:15, 84:12, 86:6, 87:22, 88:10, 99:6, 100:8, 100:10, 105:17, 109:4, 122:9, 123:15, 124:18, 134:7, 136:18, 154:13, 160:5, 165:13, 171:13, 181:19, 184:21, 191:7, 196:7, 196:10, 196:24, 197:11, 200:11, 201:10, 202:12, 203:3, 203:7, 204:23, 208:24, 211:4, 211:6, 211:22, 212:4, 213:1</p> <p>one-page [3] - 57:9, 59:2, 181:19</p> <p>onerous [1] - 138:21</p> <p>ones [7] - 11:21, 21:5, 95:18, 135:13, 156:24, 202:2, 202:25</p> <p>ongoing [1] - 28:10</p> <p>Ontario [1] - 129:10</p> <p>oops [2] - 73:7, 99:3</p> <p>Open [6] - 4:4, 70:15, 70:20, 114:15, 161:8, 196:20</p> <p>opening [3] - 20:10, 81:21, 202:1</p>
---	---	--	---

<p>operate ^[1] - 181:7</p> <p>operating ^[11] - 91:21, 143:8, 143:25, 144:1, 144:14, 145:3, 169:18, 180:21, 187:3, 187:4</p> <p>operation ^[1] - 24:3</p> <p>operations ^[4] - 91:10, 92:3, 154:24, 171:11</p> <p>opinion ^[30] - 22:8, 91:12, 169:6, 169:9, 178:10, 178:13, 178:14, 178:17, 178:18, 178:21, 178:22, 179:2, 179:11, 179:15, 179:17, 180:12, 183:5, 183:14, 183:25, 210:16, 210:17, 210:19, 210:21, 212:6, 212:8, 212:12, 212:13, 212:16, 212:17</p> <p>opinions ^[4] - 169:11, 178:7, 184:8, 184:14</p> <p>opportunities ^[1] - 8:15</p> <p>opportunity ^[2] - 8:20, 23:23</p> <p>opposed ^[1] - 18:17</p> <p>option ^[1] - 127:1</p> <p>options ^[15] - 126:20, 126:22, 126:24, 127:1, 127:18, 128:1, 128:7, 131:13, 131:19, 131:24, 132:2, 132:6, 132:12, 132:17, 132:23</p> <p>oral ^[1] - 165:1</p> <p>order ^[8] - 24:16, 95:3, 123:19, 150:3, 176:5, 184:18, 200:14, 201:25</p> <p>organization ^[5] - 91:22, 107:1, 149:5, 153:20, 153:22</p> <p>organizations ^[1] - 169:3</p> <p>organized ^[1] - 152:8</p> <p>orient ^[1] - 30:4</p> <p>original ^[6] - 70:8, 122:17, 183:4, 183:7, 183:24, 187:13</p> <p>originally ^[4] - 59:1, 92:7, 122:12, 153:16</p> <p>otherwise ^[2] - 128:11, 131:25</p> <p>outflow ^[1] - 170:15</p> <p>outflows ^[1] - 170:3</p> <p>outline ^[1] - 139:14</p> <p>outlined ^[2] - 139:19, 140:1</p> <p>Outlook ^[1] - 163:18</p> <p>outputs ^[1] - 162:15</p> <p>outside ^[4] - 46:14, 87:3, 181:2, 190:19</p> <p>outsourced ^[1] - 153:21</p> <p>outstanding ^[1] - 185:12</p> <p>overall ^[4] - 9:24, 54:21, 137:20, 138:22</p> <p>overruled ^[26] - 12:13, 13:20,</p>	<p>16:1, 40:16, 41:14, 42:20, 54:18, 66:10, 67:11, 74:21, 80:7, 81:4, 99:14, 99:18, 104:23, 105:3, 137:7, 137:9, 142:9, 146:8, 157:8, 157:16, 158:14, 160:4, 160:24, 163:1</p> <p>overstated ^[1] - 15:9</p> <p>overwrite ^[1] - 162:13</p> <p>own ^[8] - 9:8, 89:19, 106:15, 107:24, 130:9, 169:12, 185:8, 189:6</p> <p>ownership ^[4] - 184:22, 185:13, 185:21, 186:17</p> <p>ozanimod ^[1] - 15:4</p>	<p>154:17, 154:23</p> <p>participated ^[1] - 38:18</p> <p>participating ^[1] - 155:17</p> <p>particular ^[12] - 38:8, 40:1, 124:25, 134:9, 141:16, 150:25, 154:13, 154:21, 162:12, 169:9, 193:1, 212:3</p> <p>parties ^[8] - 57:18, 58:5, 87:23, 192:12, 194:22, 197:15, 200:14, 210:18</p> <p>partner ^[1] - 16:13</p> <p>partners ^[1] - 16:6</p> <p>parts ^[3] - 136:1, 156:25, 207:22</p> <p>party ^[2] - 76:10</p> <p>pass ^[1] - 72:17</p> <p>passed ^[1] - 126:12</p> <p>past ^[3] - 157:3, 194:9</p> <p>patience ^[2] - 57:21, 61:4</p> <p>patient ^[3] - 91:4, 93:25, 160:1</p> <p>patients ^[9] - 42:6, 91:19, 95:14, 95:17, 96:7, 118:25, 119:15, 138:23, 156:4</p> <p>PATRICK ^[1] - 2:4</p> <p>Paul ^[1] - 197:8</p> <p>pause ^[3] - 43:7, 60:11, 193:1</p> <p>pay ^[3] - 19:6, 89:13, 169:8</p> <p>paying ^[3] - 19:18, 19:24, 20:1</p> <p>payment ^[1] - 17:20</p> <p>PDEM ^[1] - 170:25</p> <p>PDEM17 ^[2] - 170:24, 171:1</p> <p>penalize ^[1] - 198:9</p> <p>penalty ^[2] - 69:1, 69:10</p> <p>pending ^[3] - 44:15, 114:20, 160:17</p> <p>Pennsylvania ^[1] - 129:7</p> <p>pension ^[1] - 69:7</p> <p>Pension ^[3] - 7:13, 66:23, 76:1</p> <p>people ^[22] - 18:22, 44:24, 69:2, 78:13, 92:1, 92:4, 96:6, 96:8, 97:5, 97:14, 112:14, 112:17, 112:21, 112:22, 123:3, 145:1, 147:8, 150:23, 158:10, 193:16, 198:6</p> <p>per ^[6] - 81:9, 118:21, 119:17, 120:10, 173:11, 177:20</p> <p>percent ^[39] - 9:24, 10:3, 10:6, 10:8, 41:5, 42:6, 43:25, 44:5, 46:6, 102:21, 102:23, 103:4, 103:7, 104:10, 104:13, 104:17, 105:2, 105:9, 105:13, 105:17, 105:21, 109:12,</p>	<p>109:18, 109:19, 109:24, 110:4, 110:9, 110:23, 111:4, 111:9, 111:12, 111:16, 112:5, 112:9, 112:11</p> <p>percentage ^[4] - 126:5, 126:13, 192:5, 192:7</p> <p>perfect ^[2] - 138:13, 140:14</p> <p>perfectly ^[1] - 51:19</p> <p>perform ^[3] - 107:2, 158:12, 161:13</p> <p>performing ^[2] - 54:19, 157:24</p> <p>perhaps ^[3] - 72:23, 107:10, 200:18</p> <p>period ^[91] - 5:8, 6:19, 7:13, 24:21, 25:4, 25:11, 25:14, 25:16, 25:24, 26:4, 26:6, 26:7, 26:17, 26:18, 26:20, 27:7, 27:16, 29:22, 29:24, 31:22, 34:12, 35:8, 47:16, 49:1, 49:6, 49:16, 49:18, 49:19, 49:21, 57:12, 57:24, 58:11, 59:3, 59:6, 59:13, 60:1, 61:15, 61:17, 61:20, 62:23, 63:8, 64:7, 64:9, 64:10, 64:24, 64:25, 65:1, 66:3, 66:5, 66:6, 68:12, 71:11, 73:20, 73:23, 75:15, 78:1, 78:2, 78:6, 78:15, 87:3, 87:6, 95:23, 128:3, 128:15, 131:15, 133:9, 141:9, 151:5, 158:18, 162:17, 162:22, 167:9, 169:20, 170:1, 170:7, 170:8, 170:12, 171:23, 174:8, 174:10, 175:5, 176:6, 179:13, 180:13, 182:11, 189:16, 190:20, 201:15</p> <p>periods ^[2] - 153:19, 174:12</p> <p>perjury ^[2] - 69:1, 69:10</p> <p>permitting ^[1] - 197:7</p> <p>person ^[10] - 15:19, 22:10, 55:14, 95:24, 106:16, 117:1, 130:17, 141:7, 145:7, 150:18</p> <p>personal ^[4] - 14:21, 41:12, 41:21, 54:16</p> <p>personally ^[6] - 46:19, 74:23, 115:2, 163:12, 163:23, 165:22</p> <p>personnel ^[2] - 133:16, 143:13</p> <p>perspective ^[1] - 137:4</p> <p>Pfizer ^[2] - 153:17, 153:24</p> <p>Ph.D ^[3] - 167:17, 167:18, 168:6</p> <p>pharma ^[2] - 10:23, 129:16</p> <p>pharmaceutical ^[1] - 129:15</p>
--	---	--	--

<p>Phillips ^[1] - 145:6</p> <p>phrase ^[2] - 6:2, 52:5</p> <p>phrased ^[4] - 37:10, 37:21, 51:22, 51:23</p> <p>phrasing ^[1] - 12:11</p> <p>physical ^[1] - 24:18</p> <p>pick ^[2] - 114:19, 202:2</p> <p>picking ^[1] - 135:13</p> <p>picture ^[3] - 29:22, 137:21, 138:1</p> <p>piece ^[2] - 45:21, 206:3</p> <p>pieces ^[2] - 147:15, 147:16</p> <p>place ^[3] - 90:23, 143:8, 144:1</p> <p>placebo ^[8] - 91:19, 95:15, 95:18, 102:21, 103:3, 104:10, 105:12, 147:6</p> <p>placed ^[1] - 4:24</p> <p>Plaintiff ^[1] - 1:6</p> <p>plaintiff ^[23] - 17:1, 30:19, 65:24, 66:19, 66:23, 67:2, 68:11, 71:3, 87:15, 166:17, 171:3, 179:7, 179:14, 191:15, 196:22, 197:16, 198:18, 200:5, 200:21, 203:20, 205:10, 206:19, 208:19</p> <p>PLAINTIFF ^[1] - 2:3</p> <p>Plaintiffs ^[1] - 87:16</p> <p>plaintiffs ^[11] - 20:18, 166:18, 191:22, 194:2, 194:6, 194:11, 208:11, 209:10, 209:12, 209:22</p> <p>Plaintiffs' ^[6] - 3:3, 3:6, 3:8, 4:8, 88:1, 166:20</p> <p>plaintiffs' ^[13] - 131:8, 172:15, 174:21, 183:16, 184:18, 185:17, 191:25, 202:14, 202:17, 205:7, 207:9, 207:12, 209:1</p> <p>plan ^[31] - 42:18, 102:4, 108:9, 108:18, 113:11, 117:5, 117:8, 117:13, 117:14, 120:11, 124:23, 125:8, 125:11, 134:16, 134:17, 134:18, 134:20, 134:23, 135:10, 135:16, 139:13, 139:19, 139:25, 141:6, 142:16, 142:18, 142:24, 143:2, 143:4, 150:23, 158:5</p> <p>planned ^[2] - 149:1, 149:3</p> <p>plans ^[1] - 153:23</p> <p>plausibility ^[1] - 202:22</p> <p>play ^[8] - 94:8, 115:21, 145:21, 146:14, 191:17, 191:22, 194:4, 208:20</p> <p>played ^[10] - 3:20, 3:21, 94:10, 115:22, 146:15, 192:23, 193:25, 194:16,</p>	<p>194:19, 194:23</p> <p>Playing ^[2] - 193:21, 194:20</p> <p>plays ^[1] - 193:3</p> <p>pleading ^[2] - 202:11</p> <p>pled ^[2] - 211:10, 211:12</p> <p>plot ^[2] - 136:13, 164:7</p> <p>point ^[42] - 20:12, 32:11, 41:1, 44:4, 56:5, 71:2, 91:23, 93:9, 102:19, 103:13, 104:17, 105:1, 105:9, 105:13, 110:2, 110:6, 128:2, 129:19, 133:20, 136:2, 136:8, 136:18, 136:23, 136:25, 137:15, 139:8, 141:13, 142:5, 154:13, 154:14, 155:2, 155:10, 155:11, 156:13, 156:16, 156:18, 158:8, 181:6, 191:7, 193:2, 202:19</p> <p>point-blank ^[1] - 44:4</p> <p>points ^[15] - 9:9, 102:7, 103:1, 124:23, 136:12, 137:12, 137:14, 137:19, 137:23, 138:4, 140:4, 140:9, 142:16, 152:7, 203:15</p> <p>population ^[7] - 124:18, 125:1, 125:2, 125:7, 125:23, 126:14, 160:1</p> <p>portfolio ^[6] - 9:14, 10:9, 11:25, 45:2, 48:2, 77:21</p> <p>Portion ^[2] - 94:10, 115:22</p> <p>portion ^[3] - 136:4, 136:5, 193:2</p> <p>portions ^[2] - 192:22, 193:25</p> <p>Portions ^[1] - 3:19</p> <p>position ^[8] - 6:9, 45:25, 46:10, 51:12, 167:8, 169:14, 204:20, 207:12</p> <p>positioned ^[1] - 34:25</p> <p>positions ^[4] - 5:7, 6:18, 9:5, 9:11</p> <p>positive ^[1] - 151:2</p> <p>possibility ^[1] - 201:16</p> <p>possible ^[11] - 31:5, 143:11, 157:2, 157:9, 157:12, 159:25, 160:7, 160:8, 160:11, 160:21, 160:22</p> <p>possibly ^[1] - 37:13</p> <p>post ^[1] - 5:6</p> <p>potential ^[4] - 11:23, 12:6, 91:17, 186:8</p> <p>powered ^[3] - 137:19, 137:20, 137:25</p> <p>practical ^[1] - 122:16</p> <p>practice ^[5] - 4:14, 19:9, 19:11, 50:21, 55:15</p> <p>predetermined ^[1] - 93:12</p> <p>prefer ^[2] - 28:10, 73:5</p>	<p>preliminaries ^[1] - 210:12</p> <p>preliminary ^[2] - 201:22, 201:23</p> <p>preparation ^[3] - 100:23, 168:8, 168:11</p> <p>prepare ^[2] - 170:17, 174:17</p> <p>prepared ^[6] - 27:2, 101:16, 103:15, 103:17, 120:13, 171:18</p> <p>preparing ^[3] - 101:11, 101:19, 184:14</p> <p>present ^[11] - 4:4, 62:18, 67:7, 70:15, 70:20, 114:15, 151:24, 161:8, 164:24, 196:20, 202:16</p> <p>presentation ^[24] - 21:24, 49:24, 50:5, 50:8, 50:19, 51:3, 51:10, 53:7, 53:11, 53:15, 54:17, 55:17, 61:23, 62:7, 82:16, 86:11, 86:14, 86:18, 87:5, 87:7, 165:1, 185:17</p> <p>presented ^[14] - 41:16, 43:2, 50:1, 52:4, 54:1, 54:5, 54:22, 55:19, 62:2, 132:19, 165:24, 166:2, 201:18</p> <p>PRESIDING ^[1] - 1:3</p> <p>prespecified ^[3] - 102:4, 134:25, 150:22</p> <p>press ^[13] - 31:25, 33:24, 58:13, 59:14, 60:2, 145:21, 146:15, 146:22, 146:24, 147:12, 147:21, 147:22, 204:15</p> <p>presumption ^[4] - 16:25, 208:16, 208:21, 209:22</p> <p>pretty ^[4] - 93:17, 112:24, 165:2, 197:15</p> <p>prevailed ^[2] - 204:2, 204:17</p> <p>preview ^[1] - 212:21</p> <p>previous ^[5] - 15:11, 24:1, 54:24, 69:5, 94:1</p> <p>previously ^[10] - 3:4, 4:8, 39:23, 46:12, 48:15, 53:1, 63:7, 64:16, 89:4, 162:21</p> <p>price ^[48] - 12:25, 13:1, 14:16, 15:9, 29:24, 31:22, 32:12, 32:15, 37:8, 37:20, 62:11, 63:10, 76:22, 77:10, 77:13, 77:17, 80:18, 81:8, 81:9, 81:10, 82:3, 82:7, 82:13, 82:20, 83:3, 83:4, 83:7, 85:3, 127:17, 127:18, 132:7, 132:13, 132:19, 175:2, 175:5, 175:16, 185:7, 186:2, 186:4, 186:11, 186:18, 186:19, 190:1, 190:8, 190:11, 190:15, 190:18, 190:24</p> <p>prices ^[5] - 14:15, 82:1,</p>	<p>186:16, 190:20, 190:23</p> <p>primarily ^[1] - 100:22</p> <p>primary ^[21] - 102:7, 102:19, 103:13, 104:16, 105:1, 105:8, 105:12, 124:23, 136:2, 136:8, 136:18, 136:23, 136:25, 137:15, 138:3, 139:15, 140:13, 141:1, 141:18, 158:4</p> <p>private ^[1] - 84:9</p> <p>problem ^[3] - 30:9, 38:13, 141:20</p> <p>procedural ^[1] - 66:2</p> <p>procedure ^[7] - 91:21, 91:22, 143:8, 143:25, 144:1, 144:14, 145:3</p> <p>procedures ^[3] - 91:23, 91:24, 143:20</p> <p>proceed ^[3] - 29:17, 181:20, 194:14</p> <p>Proceedings ^[1] - 213:22</p> <p>PROCEEDINGS ^[2] - 1:16, 214:3</p> <p>proceedings ^[1] - 60:11</p> <p>process ^[13] - 55:15, 90:8, 90:10, 90:22, 97:6, 97:7, 144:14, 149:8, 151:11, 152:10, 195:21, 195:23, 210:7</p> <p>produce ^[2] - 25:23, 26:18</p> <p>produced ^[1] - 106:25</p> <p>products ^[1] - 180:16</p> <p>professional ^[3] - 55:6, 129:2, 130:8</p> <p>Professor ^[13] - 166:18, 167:3, 170:20, 176:21, 177:3, 177:19, 179:6, 180:11, 182:19, 186:21, 187:22, 188:19, 189:3</p> <p>professor ^[2] - 167:5, 177:5</p> <p>program ^[2] - 164:3, 164:14</p> <p>programmed ^[1] - 148:12</p> <p>programmer ^[1] - 149:19</p> <p>programmers ^[1] - 133:9</p> <p>programming ^[25] - 89:3, 90:3, 113:2, 113:4, 113:5, 113:8, 113:14, 113:17, 116:25, 117:2, 117:4, 117:12, 117:16, 117:21, 119:3, 123:9, 123:10, 123:11, 123:21, 123:23, 123:25, 126:10, 150:2, 150:13, 152:1</p> <p>programs ^[2] - 100:13, 123:16</p> <p>project ^[1] - 92:5</p> <p>projected ^[2] - 173:4, 180:7</p> <p>projections ^[2] - 170:12, 179:21</p> <p>proof ^[1] - 200:12</p>
--	--	---	---

<p>properly [2] - 72:17, 137:18</p> <p>proportional [1] - 136:16</p> <p>proportional-hazards [1] - 136:16</p> <p>proposal [1] - 87:21</p> <p>propose [1] - 197:24</p> <p>proposed [4] - 26:16, 26:19, 144:19, 209:11</p> <p>proposing [1] - 208:13</p> <p>protocol [7] - 111:25, 138:14, 138:15, 138:25, 140:14, 156:14, 156:18</p> <p>protracted [1] - 94:21</p> <p>prove [2] - 209:12, 209:23</p> <p>proves [1] - 208:19</p> <p>provide [10] - 23:19, 24:13, 129:1, 137:20, 137:25, 143:20, 164:12, 188:12, 192:17, 212:10</p> <p>provided [27] - 19:23, 24:15, 26:23, 27:4, 29:20, 65:19, 65:21, 69:17, 72:10, 91:21, 95:13, 118:19, 143:19, 144:16, 147:11, 148:9, 148:12, 148:16, 148:17, 149:5, 150:3, 150:16, 163:21, 171:14, 173:25, 178:6, 212:5</p> <p>provider [3] - 23:25, 24:1, 97:1</p> <p>provides [2] - 135:24, 136:13</p> <p>providing [1] - 107:11</p> <p>PSLRA [1] - 51:18</p> <p>public [11] - 37:2, 37:23, 37:25, 76:14, 104:5, 132:14, 132:15, 147:2, 164:23, 177:8, 177:11</p> <p>publication [4] - 21:22, 22:19, 42:3, 50:21</p> <p>publicized [1] - 41:18</p> <p>publicly [14] - 37:14, 38:25, 50:16, 50:18, 62:12, 76:16, 80:18, 147:14, 180:8, 184:3, 185:3, 185:7, 185:9, 185:13</p> <p>published [6] - 32:4, 34:1, 41:9, 41:15, 42:10, 56:1</p> <p>pull [4] - 126:10, 147:20, 148:14, 172:14</p> <p>pulled [2] - 134:9, 170:22</p> <p>Puma [178] - 4:15, 5:1, 5:2, 5:3, 5:11, 5:22, 6:6, 6:12, 6:22, 6:25, 7:18, 8:19, 8:21, 9:4, 9:6, 9:7, 9:8, 9:9, 9:21, 10:3, 10:8, 10:20, 10:25, 24:21, 25:23, 26:19, 27:6, 27:16, 28:1, 34:10, 34:11, 34:18, 35:2, 35:11, 35:22, 36:3, 36:4, 36:13, 36:21, 36:22, 38:8, 38:23,</p>	<p>44:1, 44:6, 45:1, 45:5, 46:7, 46:16, 47:12, 48:19, 48:25, 57:23, 58:11, 59:2, 60:1, 60:4, 60:22, 61:14, 61:20, 61:24, 62:23, 68:23, 69:25, 71:5, 71:23, 72:2, 72:5, 72:6, 73:19, 74:18, 75:22, 76:3, 76:14, 76:20, 77:18, 77:21, 78:5, 78:15, 79:17, 81:9, 82:7, 83:7, 84:17, 84:24, 85:16, 86:7, 88:21, 89:4, 89:13, 89:16, 92:1, 94:3, 95:3, 95:7, 95:21, 96:4, 97:3, 97:5, 97:14, 101:21, 107:12, 107:16, 108:3, 108:14, 108:21, 108:25, 110:21, 111:14, 111:15, 113:1, 115:6, 118:23, 126:18, 127:19, 127:25, 129:12, 129:14, 131:2, 131:12, 132:7, 132:23, 133:9, 134:9, 141:24, 142:5, 142:17, 143:1, 143:6, 144:1, 144:23, 145:14, 145:16, 145:18, 148:20, 153:18, 154:1, 164:21, 167:8, 167:11, 170:2, 170:14, 171:14, 171:17, 171:18, 172:10, 173:4, 173:7, 173:15, 173:16, 173:21, 176:8, 176:19, 178:18, 178:23, 179:2, 179:7, 179:12, 179:18, 179:21, 180:7, 180:13, 180:18, 180:24, 181:6, 181:9, 181:13, 181:24, 182:2, 182:7, 182:12, 182:16, 184:10, 185:12, 186:10, 187:23, 188:4, 188:10, 189:15</p> <p>PUMA [2] - 1:10, 2:12</p> <p>Puma's [23] - 80:18, 82:20, 88:15, 88:18, 114:21, 117:5, 117:7, 132:13, 132:19, 145:21, 146:15, 147:20, 162:5, 169:14, 169:19, 170:6, 172:3, 172:12, 179:17, 179:25, 180:3, 180:21, 187:7</p> <p>purchase [38] - 4:15, 7:20, 22:11, 27:15, 27:18, 27:19, 36:18, 36:20, 36:22, 37:12, 38:23, 44:1, 44:6, 46:16, 57:23, 60:22, 61:14, 61:19, 61:20, 62:5, 62:10, 65:6, 76:15, 78:4, 78:5, 81:9, 82:5, 82:12, 82:15, 82:22, 83:5, 83:6, 84:14, 84:24, 85:19, 85:22, 86:7</p> <p>purchased [15] - 5:11, 9:12,</p>	<p>22:17, 23:7, 24:10, 34:12, 57:12, 61:15, 61:16, 61:22, 62:13, 63:11, 72:6, 84:7, 85:16</p> <p>purchases [48] - 5:16, 6:23, 7:18, 23:20, 24:14, 24:20, 25:23, 26:19, 27:6, 28:1, 30:5, 34:10, 34:15, 34:16, 35:4, 35:5, 35:9, 35:21, 36:13, 36:15, 36:24, 37:3, 48:14, 48:22, 48:24, 49:5, 49:13, 49:14, 49:17, 58:11, 59:2, 60:1, 60:4, 62:23, 63:8, 63:17, 63:18, 64:6, 65:7, 68:23, 69:25, 73:19, 75:5, 76:20, 77:24, 78:8, 82:2, 86:17</p> <p>purpose [1] - 18:18</p> <p>purposes [6] - 23:18, 59:4, 59:16, 59:25, 65:13, 143:7</p> <p>pursuant [1] - 66:19</p> <p>pursue [4] - 19:6, 66:9, 72:2, 202:23</p> <p>pursued [2] - 15:12, 17:1</p> <p>pursuing [2] - 21:25, 71:22</p> <p>push [2] - 141:7, 141:10</p> <p>put [35] - 23:12, 27:8, 29:21, 34:3, 34:21, 39:11, 48:20, 50:23, 50:24, 52:8, 55:8, 62:21, 63:24, 66:13, 70:25, 72:13, 82:15, 100:18, 101:16, 120:10, 120:25, 123:11, 124:17, 127:25, 133:15, 140:19, 143:8, 159:15, 161:23, 163:6, 181:22, 186:24, 187:19, 202:3, 202:4</p> <p>puts [1] - 65:7</p> <p>putting [4] - 63:10, 116:4, 124:21, 150:12</p>	<p>170:5, 172:1, 172:7, 172:10</p> <p>queried [1] - 90:12</p> <p>queries [1] - 143:10</p> <p>questioning [5] - 16:16, 18:7, 56:10, 65:1, 77:12</p> <p>questions [24] - 13:17, 16:18, 16:21, 18:5, 18:8, 42:19, 80:1, 128:25, 130:7, 131:9, 133:4, 133:15, 145:11, 150:13, 150:17, 150:18, 161:18, 161:19, 165:14, 166:13, 177:4, 188:20, 191:4, 207:19</p> <p>quick [1] - 43:7</p> <p>quickly [3] - 62:19, 125:19, 139:21</p> <p>quite [7] - 34:23, 84:3, 92:3, 130:12, 139:6, 151:20, 154:1</p>
R			
<p>R&D [1] - 188:17</p> <p>raise [19] - 14:19, 36:4, 174:6, 174:15, 174:16, 175:9, 175:10, 175:17, 175:20, 175:21, 179:12, 181:9, 189:11, 189:21, 190:3, 190:11, 190:16, 203:16</p> <p>raised [17] - 174:12, 174:25, 175:8, 175:19, 176:5, 182:3, 182:8, 182:12, 182:16, 183:23, 187:23, 188:10, 188:13, 189:22, 190:4, 190:7</p> <p>ran [11] - 116:7, 159:2, 159:12, 159:25, 160:7, 160:11, 160:22, 161:25, 162:2, 162:5, 162:16</p> <p>randomization [17] - 91:25, 95:9, 95:13, 95:16, 95:21, 95:24, 116:9, 116:10, 116:12, 123:9, 123:12, 123:13, 123:15, 123:22, 134:25, 143:21, 159:16</p> <p>randomized [5] - 95:14, 125:1, 125:3, 156:10, 156:24</p> <p>range [4] - 39:20, 65:2, 66:6, 171:25</p> <p>rate [41] - 21:9, 79:19, 103:3, 103:7, 104:10, 104:13, 105:1, 105:12, 109:11, 109:14, 110:3, 110:8, 110:16, 110:22, 111:4, 111:8, 111:11, 111:15, 112:4, 169:15, 169:16, 169:17, 170:10, 170:14,</p>			
Q			
<p>qualifications [1] - 167:12</p> <p>qualified [1] - 55:8</p> <p>quarter [29] - 6:23, 7:21, 35:12, 74:2, 74:3, 74:5, 74:7, 75:1, 75:9, 75:10, 75:12, 75:18, 93:11, 93:20, 170:13, 171:11, 171:12, 171:23, 171:24, 172:4, 172:5, 172:6, 173:2, 173:9, 173:11, 173:12, 173:14, 173:19</p> <p>quarterly [17] - 5:6, 6:10, 6:11, 6:25, 7:12, 7:16, 35:10, 35:14, 48:4, 48:6, 74:9, 74:12, 74:14, 74:16, 75:15, 75:16, 169:25</p> <p>quarters [6] - 74:4, 170:4,</p>			

171:15, 172:2, 172:10,
173:11, 177:19, 178:23,
179:4, 179:16, 179:17,
179:24, 179:25, 182:19,
183:4, 184:6, 184:22
rates [29] - 21:7, 41:6, 42:4,
43:24, 44:5, 46:6, 46:15,
52:25, 53:3, 53:4, 102:19,
104:16, 105:8, 136:17,
154:9, 154:10, 155:6,
155:7, 155:8, 155:20,
155:23, 167:10, 171:22,
172:4, 173:3
rather [5] - 32:23, 54:5, 99:3,
141:14, 193:5
ratio [3] - 136:22, 147:18,
147:23
reach [2] - 169:6, 213:9
reached [2] - 11:14, 17:8
reaching [1] - 169:8
reaction [3] - 40:11, 165:5,
165:11
read [23] - 8:18, 13:25, 14:2,
21:5, 35:20, 39:13, 39:17,
39:19, 39:22, 40:20, 42:25,
46:12, 47:10, 55:10, 67:4,
67:15, 69:13, 77:3, 84:1,
201:20, 201:21, 209:7
readily [1] - 95:11
reading [3] - 43:6, 45:19,
51:22
readout [4] - 91:16, 113:5,
132:5, 158:6
real [1] - 123:15
reality [1] - 123:17
realize [1] - 20:6
really [9] - 13:15, 31:3,
31:10, 37:6, 42:12, 57:18,
80:21, 115:4, 196:3
reasking [1] - 160:14
reason [20] - 26:2, 36:7,
56:22, 79:16, 79:20, 79:21,
80:8, 84:5, 84:6, 84:15,
84:16, 107:18, 108:5,
131:5, 134:22, 144:15,
145:16, 164:21, 188:7,
204:17
reasonably [1] - 180:4
reasons [1] - 165:10
rebut [1] - 209:21
rebuttal [3] - 198:17, 198:20,
209:12
recalling [1] - 210:20
receive [4] - 48:6, 74:12,
131:12, 131:19
received [43] - 3:13, 3:13,
3:14, 3:14, 3:15, 3:15,
3:16, 3:16, 3:17, 3:17,
3:18, 3:18, 3:19, 3:21,
3:22, 3:22, 3:23, 7:10,

7:18, 23:13, 24:17, 47:2,
66:12, 72:21, 74:14, 74:16,
99:19, 118:7, 120:4,
122:21, 124:8, 127:9,
144:10, 148:20, 149:15,
152:25, 163:19, 171:19,
187:17, 195:16, 196:6,
196:9, 196:12
receiving [2] - 108:3, 155:16
recent [1] - 168:4
receptor [2] - 151:2, 159:23
Receptos [9] - 14:8, 14:10,
14:11, 14:14, 15:4, 16:9,
16:11, 16:12, 17:17
Recess [3] - 70:18, 114:13,
161:6
recipients [2] - 100:8, 109:4
recognize [1] - 69:4
recollection [5] - 7:3, 46:9,
115:8, 115:12, 159:11
recommendation [1] - 85:12
recommends [1] - 85:6
reconcile [1] - 213:10
reconciling [1] - 17:11
reconstructed [1] - 87:19
record [33] - 14:2, 23:2,
23:16, 24:20, 30:6, 30:7,
31:5, 32:8, 32:10, 32:17,
34:6, 38:13, 38:17, 40:20,
42:25, 47:11, 57:4, 58:4,
58:17, 67:15, 77:3, 86:14,
90:16, 102:16, 117:19,
166:8, 170:23, 191:24,
193:3, 193:24, 197:21,
205:5, 213:18
RECORDED [1] - 214:3
recorded [3] - 112:19,
151:15, 151:17
recordkeeping [2] - 4:19,
4:21
records [16] - 11:24, 23:19,
23:23, 24:13, 24:15, 24:17,
24:20, 25:23, 26:18, 26:23,
27:4, 27:23, 72:10, 90:18,
133:17
recover [5] - 22:16, 49:7,
49:8, 49:12, 49:15
RECROSS [2] - 3:5, 83:22
RECROSS-EXAMINATION
[2] - 3:5, 83:22
recurrence [4] - 112:18,
112:22, 139:6, 141:4
recurrent [7] - 138:16, 139:3,
139:5, 140:22, 140:24,
141:2, 141:14
red [13] - 34:9, 34:21, 35:21,
35:24, 36:12, 48:15, 49:8,
49:13, 60:3, 63:10, 63:17,
72:13, 75:6
redirect [2] - 78:23, 188:22

REDIRECT [6] - 3:5, 3:7, 3:9,
79:9, 165:15, 189:1
redo [1] - 122:11
REDUCTION [1] - 214:6
refer [9] - 14:18, 33:14,
44:12, 51:6, 140:6, 147:15,
147:22, 170:19, 171:2
reference [3] - 24:4, 66:3,
85:9
referenced [4] - 143:2,
169:15, 172:15, 174:20
references [1] - 8:7
referencing [3] - 148:2,
201:12, 201:14
referred [7] - 4:22, 44:16,
53:1, 53:4, 58:15, 189:8,
204:12
referring [16] - 10:2, 10:8,
12:5, 44:20, 52:18, 81:1,
81:15, 99:21, 140:10,
145:5, 147:17, 148:17,
150:9, 153:7, 166:8,
171:16
refers [3] - 68:14, 68:18,
137:12
reflect [11] - 34:22, 55:17,
77:13, 80:18, 82:1, 111:3,
118:9, 124:16, 127:14,
144:23, 194:23
reflected [7] - 24:14, 27:25,
35:19, 37:7, 37:8, 153:8,
183:5
reflective [3] - 33:4, 133:11,
147:6
reflects [1] - 163:24
refresh [1] - 46:9
regard [14] - 108:8, 110:13,
115:16, 115:17, 118:22,
138:21, 139:2, 139:11,
141:22, 147:3, 147:12,
148:9, 155:8, 155:13
regarding [8] - 37:7, 39:2,
51:15, 78:7, 95:14, 106:14,
108:17, 108:18
regions [1] - 150:25
regular [3] - 29:5, 48:7,
123:21
REGULATIONS [1] - 214:7
rejected [1] - 205:2
relate [2] - 11:11, 53:8
related [8] - 8:4, 9:8, 11:21,
69:16, 75:22, 139:16,
147:13, 204:15
relates [2] - 21:4, 37:18
relating [6] - 9:9, 64:6, 64:14,
69:24, 74:18, 76:14
relationship [3] - 16:6,
130:7, 130:9
relative [1] - 180:4
release [14] - 31:25, 33:24,

58:13, 59:14, 60:3, 145:22,
146:16, 146:22, 146:24,
147:12, 147:21, 147:22,
164:22, 204:15
released [10] - 39:6, 39:9,
48:17, 48:23, 49:2, 52:21,
84:22, 85:6, 85:16, 132:8
relevance [1] - 49:19
relevant [5] - 13:16, 21:18,
22:4, 165:11, 180:13
reliance [15] - 87:19, 205:18,
205:19, 205:23, 205:24,
206:1, 208:12, 208:17,
209:11, 209:17, 209:18,
209:22, 210:6, 210:10,
212:22
relied [10] - 37:3, 37:13,
77:23, 78:7, 78:14, 179:21,
205:19, 206:13, 206:19,
209:23
relock [1] - 93:6
reluctance [1] - 65:19
rely [1] - 77:16
remain [2] - 49:5, 137:9
remained [1] - 157:1
remains [2] - 160:24, 163:1
remedy [1] - 11:18
remember [14] - 14:12, 23:4,
84:10, 109:20, 110:20,
110:21, 114:25, 115:1,
121:6, 126:5, 157:20,
159:3, 159:5, 200:6
remind [1] - 49:25
renew [1] - 51:14
reorder [1] - 201:16
repeat [4] - 40:18, 71:25,
77:2, 121:16
repeated [2] - 67:12, 76:25
repeatedly [1] - 56:3
repeating [1] - 203:1
rephrase [5] - 8:24, 20:25,
54:7, 85:13, 132:10
reply [1] - 109:7
report [46] - 4:23, 6:10, 6:11,
6:25, 7:12, 7:16, 17:11,
17:12, 35:10, 35:14, 47:13,
47:15, 47:18, 47:23, 47:25,
48:7, 48:18, 50:5, 74:10,
74:12, 74:14, 74:16, 75:1,
75:15, 75:16, 101:17,
105:24, 125:20, 138:5,
146:21, 146:25, 147:11,
149:24, 150:12, 150:15,
158:6, 161:22, 161:24,
179:22, 183:5, 183:7,
183:24, 184:9, 184:14,
184:25, 185:22
reported [5] - 120:20,
146:22, 147:7, 147:11,
147:19

<p>REPORTER [2] - 1:22, 214:10</p> <p>reporter [4] - 13:24, 40:17, 55:9, 201:1</p> <p>REPORTER'S [1] - 1:16</p> <p>reporting [3] - 5:6, 6:1, 75:19</p> <p>reports [4] - 48:1, 48:5, 169:24, 169:25</p> <p>represent [2] - 9:24, 89:13</p> <p>representations [1] - 179:13</p> <p>representative [2] - 133:23, 134:2</p> <p>represented [2] - 83:16, 89:10</p> <p>representing [2] - 12:19, 16:14</p> <p>reprieve [1] - 123:20</p> <p>request [5] - 24:22, 113:23, 200:9, 200:11, 205:11</p> <p>requested [3] - 24:15, 24:19, 26:23</p> <p>requests [6] - 26:25, 140:17, 158:18, 158:22, 158:24, 204:16</p> <p>require [1] - 68:6</p> <p>required [2] - 11:18, 113:5</p> <p>reread [2] - 42:23, 51:21</p> <p>research [10] - 91:22, 107:1, 130:5, 149:5, 153:20, 153:21, 178:6, 178:15, 187:7, 188:5</p> <p>researching [1] - 39:20</p> <p>resolve [2] - 213:6, 213:14</p> <p>resolved [2] - 191:17, 213:6</p> <p>respect [16] - 10:13, 14:7, 52:3, 53:10, 73:18, 78:5, 85:20, 90:2, 119:15, 126:3, 144:1, 166:7, 170:10, 172:1, 177:10, 206:1</p> <p>respectfully [1] - 212:7</p> <p>respective [1] - 197:18</p> <p>respond [3] - 13:6, 51:19, 80:3</p> <p>response [8] - 13:14, 18:11, 18:12, 65:3, 80:25, 98:9, 205:16, 205:17</p> <p>responsible [4] - 20:5, 117:2, 148:8, 148:11</p> <p>result [3] - 123:16, 135:4, 182:20</p> <p>results [38] - 40:1, 40:5, 40:11, 40:24, 89:24, 90:6, 102:25, 103:3, 103:6, 106:18, 107:15, 107:19, 107:22, 108:1, 108:6, 108:23, 109:2, 112:14, 117:11, 119:17, 120:22, 121:12, 125:12, 133:2, 135:9, 141:17, 144:17, 145:2, 145:20, 147:3,</p>	<p>147:7, 147:10, 148:5, 148:7, 150:14, 151:1, 159:20, 165:23</p> <p>resumed [2] - 193:21, 194:20</p> <p>RESUMED [2] - 3:4, 4:9</p> <p>retained [1] - 167:7</p> <p>retainer [2] - 11:6, 11:19</p> <p>retention [1] - 24:16</p> <p>return [4] - 93:7, 139:5, 205:12, 206:23</p> <p>returned [1] - 128:12</p> <p>revealed [10] - 21:22, 22:18, 51:10, 52:13, 53:12, 74:18, 85:21, 85:24, 86:4, 86:5</p> <p>revenue [2] - 180:18, 181:5</p> <p>reversing [1] - 13:19</p> <p>revert [1] - 128:4</p> <p>reverted [1] - 132:1</p> <p>review [5] - 38:7, 54:21, 68:8, 87:23, 212:25</p> <p>reviewed [7] - 40:14, 50:4, 67:2, 68:10, 87:18, 164:18, 165:4</p> <p>reviewing [6] - 11:25, 145:2, 145:21, 146:15, 148:7, 165:18</p> <p>reviews [1] - 48:8</p> <p>revolutionary [1] - 8:14</p> <p>reworked [1] - 110:15</p> <p>Rho [18] - 107:1, 107:22, 107:24, 108:1, 111:6, 111:19, 116:6, 118:21, 143:19, 148:8, 148:12, 148:16, 148:17, 149:19, 150:3, 153:19, 153:22</p> <p>Rho's [1] - 153:6</p> <p>Richard [2] - 145:6</p> <p>right-hand [7] - 60:23, 72:24, 99:9, 99:11, 99:24, 99:25, 116:17</p> <p>rise [7] - 4:3, 70:14, 70:19, 114:12, 114:14, 161:7, 196:19</p> <p>robbins [1] - 15:14</p> <p>Robbins [20] - 11:5, 12:18, 15:2, 15:12, 15:16, 15:18, 15:19, 15:20, 16:6, 16:8, 17:15, 17:21, 19:3, 19:5, 19:23, 20:4, 83:16</p> <p>ROBBINS [1] - 2:5</p> <p>robust [1] - 141:18</p> <p>robustness [2] - 117:11, 139:15</p> <p>role [8] - 39:15, 88:24, 90:1, 145:21, 146:14, 148:6, 165:17, 166:3</p> <p>roll [1] - 199:6</p> <p>room [3] - 97:14, 106:12, 106:13</p> <p>roughly [5] - 110:18, 175:11,</p>	<p>175:22, 182:7, 188:1</p> <p>round [1] - 83:9</p> <p>route [1] - 31:8</p> <p>row [2] - 93:7, 136:6</p> <p>rows [1] - 40:25</p> <p>RUDMAN [1] - 2:5</p> <p>rule [2] - 140:20, 141:16</p> <p>ruled [2] - 26:17, 203:10</p> <p>ruling [4] - 80:23, 160:15, 202:16, 208:2</p> <p>rulings [1] - 213:11</p> <p>run [15] - 12:1, 111:6, 123:12, 141:24, 142:5, 146:20, 151:4, 162:12, 162:13, 164:14, 173:16, 173:17, 173:21, 178:23, 179:18</p> <p>running [9] - 10:9, 29:5, 135:12, 157:20, 158:9, 159:6, 159:22, 161:11, 192:14</p> <p>runs [3] - 25:11, 49:16, 82:23</p>	<p>68:22</p> <p>schedule [13] - 68:15, 68:22, 91:25, 95:9, 95:13, 123:10, 123:12, 123:13, 123:22, 134:25, 143:21, 159:16, 197:15</p> <p>Schmidt [3] - 3:20, 191:23, 192:22</p> <p>Schmidt's [2] - 193:23, 194:1</p> <p>School [1] - 167:5</p> <p>school [2] - 129:18, 167:23</p> <p>science [1] - 92:4</p> <p>scientific [2] - 164:24, 165:2</p> <p>sclerosis [1] - 15:5</p> <p>screen [20] - 27:22, 28:3, 29:21, 29:23, 33:18, 36:13, 39:11, 40:6, 48:11, 50:24, 57:5, 62:21, 66:13, 66:18, 72:15, 161:23, 163:6, 181:22, 186:25, 187:19</p> <p>seated [1] - 196:21</p> <p>SEC [3] - 170:9, 188:14, 210:20</p> <p>second [21] - 11:16, 18:5, 29:19, 42:3, 60:19, 66:16, 66:17, 74:6, 75:1, 170:3, 170:4, 170:13, 171:24, 172:6, 173:2, 173:9, 173:12, 173:14, 180:11, 194:18, 197:11</p> <p>secondary [10] - 36:14, 102:7, 103:1, 124:23, 137:12, 137:14, 137:19, 137:22, 138:3, 181:10</p> <p>seconds [4] - 79:6, 193:11, 193:13, 193:20</p> <p>section [5] - 40:1, 73:19, 73:22, 139:23, 163:15</p> <p>sector [2] - 9:16, 10:18</p> <p>sectors [3] - 9:17, 9:18, 11:25</p> <p>secure [18] - 96:11, 96:14, 96:23, 97:4, 97:8, 97:10, 97:13, 97:17, 103:17, 103:20, 106:12, 106:15, 106:20, 107:5, 116:21, 119:14, 125:24, 166:9</p> <p>securities [8] - 19:13, 66:19, 68:13, 71:6, 72:2, 172:25, 180:20, 206:21</p> <p>Securities [1] - 169:24</p> <p>see [110] - 4:24, 7:25, 8:11, 8:17, 8:20, 10:4, 11:22, 14:7, 14:9, 20:25, 30:1, 32:9, 34:20, 35:6, 35:7, 35:22, 35:24, 41:3, 41:5, 41:8, 42:3, 42:6, 42:18, 43:1, 43:18, 43:20, 44:16, 47:5, 47:9, 53:22, 57:9, 58:1, 58:3, 61:17, 61:18,</p>
S			
<p>S-h-e-r-m-a-n [1] - 88:5</p> <p>SACV15-0865-AG [1] - 1:8</p> <p>SAE [1] - 153:5</p> <p>safety [34] - 89:24, 106:18, 107:14, 107:19, 107:20, 107:22, 108:1, 108:6, 108:12, 108:16, 108:23, 109:2, 110:11, 148:5, 148:7, 148:11, 148:16, 148:17, 148:20, 149:23, 150:1, 150:3, 150:5, 151:8, 151:9, 151:11, 151:12, 151:19, 152:10, 152:13, 153:5, 153:7, 153:8, 153:11</p> <p>sake [1] - 18:20</p> <p>sale [1] - 175:1</p> <p>sales [1] - 131:9</p> <p>SAN [2] - 2:7, 2:15</p> <p>San [5] - 88:18, 88:19, 88:20, 96:15, 97:14</p> <p>SANTA [3] - 1:18, 1:23, 4:1</p> <p>SAP [4] - 117:14, 118:21, 119:17, 125:4</p> <p>SARAH [1] - 2:13</p> <p>SAS [3] - 164:7, 164:11, 164:12</p> <p>sat [1] - 146:25</p> <p>save [2] - 162:5, 162:16</p> <p>saved [5] - 100:18, 162:7, 162:15, 162:25</p> <p>scan [2] - 140:25, 141:11</p> <p>scans [2] - 138:16, 138:20</p> <p>scenario [2] - 141:8, 184:23</p> <p>Schedule [3] - 68:14, 68:18,</p>			

61:25, 63:14, 63:15, 63:21, 63:22, 66:2, 66:20, 66:25, 67:1, 67:3, 68:14, 68:16, 68:17, 68:18, 68:19, 68:20, 68:21, 68:25, 70:16, 73:22, 74:13, 83:11, 91:18, 101:6, 101:9, 102:12, 103:3, 103:6, 103:12, 109:22, 112:1, 114:10, 116:20, 117:19, 119:13, 120:6, 120:17, 120:20, 121:9, 121:15, 121:17, 122:10, 124:10, 125:22, 127:11, 135:20, 136:11, 138:16, 140:4, 140:7, 140:18, 144:21, 150:24, 153:6, 161:4, 164:4, 164:7, 173:9, 173:18, 174:6, 174:11, 188:5, 188:12, 188:17, 189:7, 189:25, 190:14, 192:15, 196:17, 199:16, 210:6, 210:9, 211:21, 213:4
seeing [3] - 8:15, 133:10, 210:7
seek [1] - 11:18
seeking [6] - 49:7, 49:8, 49:12, 49:15, 71:3, 72:1
select [1] - 184:19
selected [2] - 183:16, 185:18
sell [16] - 126:23, 127:2, 128:5, 128:10, 174:15, 175:7, 175:10, 175:18, 175:22, 175:23, 189:12, 189:18, 189:20, 190:1, 190:9, 190:11
selling [2] - 127:24, 128:9
send [2] - 23:14, 107:15
sender [1] - 100:3
sending [4] - 97:17, 121:1, 122:2, 123:8
sends [1] - 48:4
senior [18] - 100:20, 100:21, 101:17, 101:20, 107:10, 107:12, 107:16, 115:15, 130:20, 143:12, 143:14, 143:16, 145:4, 145:5, 147:1, 147:11, 150:16, 158:16
sense [5] - 5:5, 99:1, 110:12, 141:12, 141:15
sensitivity [13] - 117:10, 118:10, 118:20, 118:22, 119:14, 119:18, 120:17, 123:2, 140:17, 141:3, 141:24, 142:5, 142:18
sent [17] - 75:14, 91:24, 97:18, 100:4, 100:8, 100:15, 100:19, 100:25, 107:2, 108:6, 115:14,

115:18, 116:21, 119:14, 125:23, 153:2, 163:19
sentence [5] - 42:2, 79:13, 79:14, 81:22, 209:20
sentences [3] - 8:13, 40:6, 211:22
separate [4] - 28:24, 203:15, 206:24, 211:5
separating [1] - 105:16
September [3] - 75:10, 75:12
series [1] - 34:15
serve [1] - 178:5
service [1] - 97:1
sessions [2] - 20:14, 82:18
set [9] - 9:20, 26:4, 66:7, 96:25, 97:8, 100:22, 117:13, 148:19, 170:19
sets [1] - 210:6
settle [1] - 18:23
settled [2] - 17:16, 18:20
settlement [3] - 12:7, 17:8, 17:20
settlements [5] - 11:12, 11:14, 11:22, 17:10, 18:14
seven [4] - 35:16, 105:21, 194:2, 213:20
severity [1] - 152:4
shaded [3] - 73:19, 73:22, 78:3
shading [1] - 72:24
share [20] - 14:15, 47:23, 80:18, 81:8, 81:9, 81:10, 82:1, 82:3, 82:7, 83:3, 127:15, 127:22, 175:2, 175:6, 189:9, 190:1, 190:20, 190:21, 190:23, 191:2
shared [3] - 47:25, 48:1, 120:11
shareholder [2] - 12:4, 14:16
shareholders [6] - 12:9, 14:15, 14:16, 15:15, 16:9, 182:20
shares [40] - 24:6, 24:9, 48:25, 57:12, 61:15, 61:16, 61:21, 62:13, 72:5, 82:13, 127:14, 127:24, 128:4, 128:6, 131:14, 167:11, 174:13, 174:14, 175:1, 175:8, 175:11, 175:18, 175:22, 175:23, 176:4, 176:14, 182:3, 182:8, 182:16, 185:12, 189:12, 189:18, 189:20, 189:23, 190:2, 190:9, 190:11, 190:15
Sherman [18] - 3:6, 87:16, 87:17, 88:1, 88:4, 88:9, 88:15, 114:19, 122:23, 128:23, 130:2, 137:11,

142:23, 146:14, 157:19, 161:10, 164:17, 165:17
shooting [1] - 203:6
short [1] - 172:25
short-term [1] - 172:25
shortly [1] - 118:18
show [18] - 18:16, 23:1, 34:11, 35:21, 40:15, 50:1, 83:3, 123:5, 138:17, 140:22, 140:23, 142:12, 154:23, 174:23, 181:16, 193:16, 208:11, 213:14
showed [4] - 23:11, 63:7, 142:13, 172:3
showing [7] - 26:19, 63:9, 65:5, 79:17, 79:22, 138:19, 176:13
shown [3] - 30:8, 135:13, 189:4
shows [13] - 27:15, 29:23, 31:21, 50:25, 57:23, 59:2, 59:12, 60:2, 61:14, 139:10, 171:8, 171:9, 189:24
shuffle [1] - 201:16
shy [2] - 92:21, 130:12
sic [1] - 60:14
side [15] - 23:12, 72:24, 98:2, 99:9, 99:11, 99:24, 99:25, 100:3, 116:18, 175:14, 192:1, 200:11, 203:10
sides [4] - 87:20, 191:17, 191:25, 201:10
sifted [1] - 151:21
sign [5] - 143:13, 143:16, 144:24, 145:8, 154:16
signature [3] - 143:18, 145:4
signatures [3] - 69:2, 69:4
signed [9] - 64:6, 64:14, 67:7, 68:6, 69:1, 69:10, 69:14, 72:8, 143:18
significance [5] - 135:6, 135:11, 137:17, 137:24, 142:13
significant [13] - 24:3, 55:14, 76:21, 135:3, 135:7, 135:13, 137:1, 137:23, 141:17, 141:19, 141:21, 141:22, 151:1
significantly [3] - 54:22, 176:14, 190:10
signing [1] - 71:1
similar [5] - 61:5, 110:18, 137:14, 148:10, 190:5
simple [3] - 31:5, 33:6, 185:10
simpler [1] - 27:1
simply [3] - 17:10, 33:14, 34:14
single [8] - 10:25, 11:2, 12:2, 12:8, 27:15, 36:20, 36:22,

37:12
single-drug [2] - 10:25, 11:2
singular [1] - 96:25
sit [3] - 178:18, 198:11, 203:3
site [6] - 90:14, 133:16, 139:10, 154:22, 154:25, 156:19
sites [1] - 138:20
sitting [2] - 55:15, 177:25
situation [1] - 190:5
situations [2] - 138:23, 138:25
six [11] - 34:17, 105:20, 174:7, 174:9, 175:3, 175:4, 175:15, 176:14, 176:15, 207:7
sixth [1] - 109:21
Skye [3] - 47:5, 47:18, 50:11
sleeves [1] - 199:6
slide [4] - 7:24, 50:1, 102:10, 109:21
slides [2] - 50:25, 51:2
slight [2] - 43:7, 154:2
slightly [2] - 8:24, 153:24
slipped [2] - 92:13, 92:16
slipping [1] - 19:15
small [2] - 17:3, 99:10
smaller [1] - 129:18
SMITH [54] - 2:11, 94:16, 98:7, 98:13, 104:18, 104:20, 114:9, 118:5, 120:2, 121:25, 124:6, 127:7, 128:17, 128:22, 132:11, 137:10, 138:8, 138:9, 142:4, 142:11, 142:22, 144:7, 144:11, 146:13, 147:25, 148:1, 148:14, 148:15, 149:11, 149:16, 152:17, 152:21, 152:24, 153:1, 154:6, 154:7, 157:5, 157:10, 157:18, 158:17, 159:7, 159:9, 159:10, 160:6, 160:10, 160:15, 160:18, 161:2, 161:9, 163:3, 163:6, 163:8, 165:13, 166:14
snapshot [16] - 95:11, 95:17, 96:8, 112:20, 133:3, 133:6, 134:3, 134:7, 134:13, 143:16, 143:20, 156:2, 156:4, 156:7, 157:6, 157:11
snapshots [2] - 133:21, 134:8
soft [10] - 90:20, 90:23, 91:1, 91:12, 92:8, 92:10, 93:11, 93:19, 93:23, 95:5
soft-lock [2] - 90:23, 91:12
soft-locked [8] - 90:20, 91:1,

92:8, 92:10, 93:11, 93:19, 93:23, 95:5
sold [13] - 16:10, 127:14, 128:13, 174:13, 175:24, 176:5, 182:2, 182:7, 182:16, 189:22, 190:2, 190:14
someone [4] - 30:21, 58:3, 128:10, 157:11
sometime [2] - 36:3, 91:5
sometimes [2] - 108:8, 130:13
somewhat [2] - 40:15, 199:23
somewhere [4] - 127:21, 127:23, 141:4, 141:9
soon [3] - 5:22, 6:6
sorry [38] - 5:1, 5:22, 8:12, 36:21, 40:17, 43:9, 44:21, 45:21, 45:24, 53:2, 53:8, 56:9, 57:3, 57:22, 59:12, 60:7, 63:23, 71:25, 74:15, 82:11, 82:21, 82:25, 84:15, 102:14, 104:24, 122:15, 124:14, 158:21, 172:22, 181:18, 185:1, 192:6, 195:3, 195:19, 195:22, 197:11, 206:10
sort [14] - 11:12, 45:22, 53:12, 97:8, 123:20, 125:18, 129:15, 130:17, 133:17, 138:21, 158:4, 162:10, 169:3, 172:11
sorted [3] - 60:12, 110:14, 134:1
sorts [2] - 134:23, 158:7
sound [5] - 109:19, 109:24, 127:22, 169:1, 189:11
sounded [1] - 21:12
sounds [3] - 64:4, 64:17, 211:8
source [1] - 181:6
sources [2] - 39:21, 77:20
south [3] - 88:19, 88:20, 96:15
speaker [1] - 210:17
speaker's [1] - 193:5
speaking [5] - 20:16, 21:10, 52:12, 94:20, 136:25
speaks [1] - 8:23
special [8] - 13:9, 13:12, 13:17, 18:16, 199:7, 211:17, 211:19, 213:3
specific [12] - 17:6, 26:24, 28:16, 31:24, 55:4, 58:1, 62:4, 108:20, 193:24, 202:11, 202:12, 203:22
specifically [24] - 5:2, 5:24, 6:2, 6:5, 6:12, 6:22, 8:2, 8:6, 9:7, 9:19, 21:6, 38:7,

39:19, 39:21, 45:4, 53:10, 65:20, 77:22, 77:23, 162:8, 203:4, 206:11, 210:21, 211:15
specificity [2] - 202:22, 204:15
specified [5] - 125:7, 125:10, 136:10, 136:11, 136:17
speculation [8] - 24:6, 132:9, 157:7, 157:15, 159:4, 160:9, 160:23, 162:20
spell [2] - 88:2, 166:21
spend [4] - 90:25, 130:4, 197:23, 200:25
spending [1] - 173:11
spent [5] - 123:17, 177:25, 188:4, 188:11, 188:16
spoken [1] - 78:6
staff [1] - 90:14
stage [1] - 180:14
stamp [1] - 170:24
stand [2] - 80:13, 87:25
standard [15] - 4:18, 4:20, 6:1, 6:3, 19:9, 19:11, 91:20, 91:21, 136:21, 143:8, 144:14, 145:2, 147:5, 147:9, 153:6
staple [1] - 73:13
start [8] - 25:7, 73:25, 151:18, 156:2, 169:15, 174:9, 178:18, 192:25
started [9] - 127:18, 151:24, 151:25, 152:2, 167:21, 173:8, 175:5, 194:10
starting [3] - 94:7, 115:20, 129:15
stat [1] - 164:7
State [1] - 129:7
state [9] - 29:4, 71:11, 74:10, 75:19, 88:2, 129:20, 166:21, 193:5, 193:17
statement [20] - 12:12, 42:8, 51:11, 52:22, 67:18, 67:24, 68:4, 68:15, 68:16, 68:17, 69:13, 82:6, 203:10, 203:12, 203:14, 204:23, 205:20, 206:20, 211:14, 212:13
statements [16] - 20:11, 20:19, 21:21, 146:17, 165:6, 165:18, 165:19, 168:9, 168:12, 168:16, 168:17, 169:23, 170:9, 211:4, 211:7, 211:20
STATES [2] - 1:1, 214:7
statistical [33] - 101:15, 102:4, 108:9, 108:18, 113:10, 117:5, 117:8, 117:14, 120:11, 120:12, 124:22, 125:8, 125:10,

134:15, 134:17, 134:18, 135:11, 135:15, 137:3, 137:17, 137:24, 139:13, 139:19, 139:25, 142:13, 142:16, 142:18, 142:23, 143:2, 149:19, 150:23, 153:23, 158:5
statistically [2] - 137:1, 137:23
statistician [6] - 96:3, 96:5, 107:3, 129:13, 133:8, 134:19
statistics [2] - 129:9, 137:18
stats [1] - 92:4
status [1] - 17:1
stayed [2] - 79:4, 156:11
steady [1] - 155:19
STENOGRAPHICALLY [1] - 214:3
step [5] - 20:13, 62:25, 91:13, 166:16, 191:14
Steven [1] - 197:1
stick [1] - 135:2
still [14] - 41:21, 75:24, 130:3, 141:17, 141:19, 142:7, 149:23, 149:25, 150:2, 150:13, 160:2, 211:23, 212:15, 213:19
stock [152] - 4:15, 5:12, 6:12, 6:22, 7:18, 8:19, 12:25, 13:1, 15:9, 22:12, 22:17, 23:7, 23:20, 25:24, 26:19, 27:6, 27:16, 28:2, 29:22, 29:24, 30:3, 31:21, 32:11, 34:10, 34:11, 34:15, 34:18, 35:2, 35:15, 35:22, 36:1, 36:2, 36:4, 36:11, 36:13, 36:14, 36:22, 36:23, 36:25, 37:2, 37:8, 37:15, 37:18, 37:24, 37:25, 38:3, 38:6, 38:7, 38:9, 38:15, 38:18, 38:23, 39:1, 39:2, 39:17, 44:1, 44:7, 46:7, 46:16, 48:19, 48:24, 57:23, 58:11, 58:12, 59:3, 59:13, 60:1, 60:2, 60:4, 60:22, 61:14, 61:20, 61:24, 62:11, 62:22, 62:24, 63:11, 65:6, 65:7, 68:23, 69:25, 72:5, 72:6, 73:20, 75:5, 76:3, 76:15, 76:20, 76:22, 76:23, 77:10, 77:13, 77:17, 78:5, 78:15, 82:20, 83:7, 84:7, 84:24, 85:7, 85:17, 86:7, 86:11, 126:20, 126:23, 127:1, 128:1, 128:10, 128:12, 128:13, 131:9, 131:13, 131:19, 131:24, 132:2, 132:6, 132:7, 132:12, 132:13, 132:17, 132:19,

132:22, 167:11, 173:25, 174:2, 174:5, 175:1, 175:15, 175:25, 176:8, 177:11, 177:14, 177:17, 178:19, 179:4, 181:1, 181:2, 181:13, 183:20, 184:10, 184:22, 185:7, 185:13, 185:21, 186:2, 186:11, 186:16, 186:17, 188:1, 189:15
stop [6] - 25:1, 65:15, 71:23, 192:19, 198:6, 198:8
stopped [1] - 60:14
strategies [1] - 48:4
stratification [1] - 159:15
stratified [1] - 136:14
STREET [1] - 1:23
strictly [2] - 95:6, 119:16
strike [16] - 15:3, 16:1, 16:20, 18:8, 18:24, 37:24, 39:24, 49:10, 49:20, 51:6, 54:10, 80:23, 81:21, 84:6, 84:20, 185:2
strongly [1] - 212:16
struggling [1] - 197:20
students [1] - 168:15
study [27] - 21:9, 91:4, 112:15, 133:14, 135:7, 136:8, 137:14, 137:17, 137:19, 138:21, 138:24, 139:9, 139:12, 143:12, 143:13, 148:10, 151:13, 154:11, 154:12, 155:3, 156:10, 156:14, 156:16, 156:22, 156:25, 157:1
stuff [1] - 147:10
subgroup [3] - 126:4, 126:8, 126:16
subgroups [1] - 159:23
subject [24] - 12:3, 12:5, 16:1, 16:20, 17:6, 21:5, 23:8, 36:11, 41:7, 43:25, 44:10, 45:9, 46:5, 55:2, 68:13, 80:23, 150:6, 154:19, 154:21, 154:25, 195:9, 195:11, 201:12, 201:14
subjects [22] - 118:19, 119:3, 120:19, 125:5, 126:5, 126:11, 134:19, 137:16, 138:13, 138:15, 138:17, 138:18, 139:10, 151:2, 151:14, 154:12, 154:15, 155:10, 155:14, 156:9, 156:23
submit [1] - 194:22
submitting [1] - 185:21
subpopulations [2] - 124:19, 125:10
subroutine [1] - 164:11

<p>subset [3] - 125:5, 150:25, 162:12</p> <p>subsets [2] - 124:24, 125:6</p> <p>substance [3] - 38:22, 74:15, 74:17</p> <p>substantially [1] - 190:16</p> <p>success [3] - 136:24, 137:2, 137:3</p> <p>successful [1] - 19:21</p> <p>successfully [1] - 209:21</p> <p>sudden [1] - 139:5</p> <p>sued [6] - 12:9, 12:18, 12:25, 13:1, 14:14, 16:8</p> <p>suffer [1] - 49:10</p> <p>suffered [1] - 49:9</p> <p>sufficient [2] - 193:18, 213:13</p> <p>sufficiently [2] - 16:2, 207:13</p> <p>suggest [7] - 74:15, 74:17, 74:20, 104:15, 104:25, 116:1, 197:14</p> <p>suggested [1] - 75:2</p> <p>suggesting [1] - 80:2</p> <p>suggestion [1] - 76:5</p> <p>suggestions [1] - 87:20</p> <p>suggests [1] - 212:7</p> <p>SUITE [2] - 1:23, 2:6</p> <p>summarize [1] - 51:16</p> <p>summary [12] - 52:8, 102:12, 106:18, 112:1, 129:4, 135:24, 148:18, 204:6, 204:7, 204:24, 207:14, 207:20</p> <p>summer [1] - 94:1</p> <p>supplement [1] - 122:14</p> <p>support [3] - 131:5, 134:24, 178:6</p> <p>supporting [1] - 77:14</p> <p>supposed [4] - 57:8, 60:19, 92:7, 102:5</p> <p>supposedly [1] - 21:22</p> <p>surely [2] - 12:2, 17:15</p> <p>survival [6] - 21:6, 21:7, 41:6, 52:25, 53:3, 53:4</p> <p>SUSANNAH [1] - 2:4</p> <p>suspect [1] - 19:15</p> <p>sustain [1] - 51:23</p> <p>sustained [27] - 5:19, 12:22, 13:5, 17:24, 22:22, 25:2, 26:9, 26:14, 33:11, 37:10, 37:21, 41:23, 51:15, 53:18, 56:12, 64:11, 67:22, 69:21, 80:25, 86:15, 98:16, 142:3, 142:21, 159:8, 165:10, 165:12</p> <p>sworn [9] - 3:4, 3:6, 3:8, 4:8, 64:6, 64:13, 65:13, 88:1, 166:20</p> <p>sympathy [1] - 203:18</p> <p>synopsis [2] - 55:16, 55:18</p>	<p>system [43] - 4:25, 68:5, 73:4, 95:8, 96:11, 96:14, 96:23, 96:24, 97:1, 97:4, 97:8, 97:9, 97:10, 97:12, 97:17, 97:19, 97:25, 98:22, 100:12, 100:13, 100:16, 100:18, 100:19, 100:22, 101:1, 103:17, 103:20, 106:15, 106:16, 106:17, 106:20, 106:24, 107:5, 116:21, 119:14, 122:24, 123:12, 125:24, 162:3, 162:6, 163:25, 166:10, 201:21</p>	<p>T</p> <p>T-r-u-e-m-a-n [1] - 166:24</p> <p>tab [2] - 31:6, 73:14</p> <p>tabbed [1] - 28:21</p> <p>tabbing [2] - 57:7, 57:10</p> <p>table [14] - 79:14, 120:19, 120:22, 120:24, 135:20, 135:23, 135:24, 136:3, 136:4, 136:7, 136:11, 137:12, 150:6, 152:8</p> <p>tables [32] - 101:16, 106:22, 106:23, 106:25, 107:4, 107:12, 108:16, 110:11, 110:15, 111:6, 148:9, 148:11, 148:16, 148:17, 148:18, 148:20, 148:23, 149:3, 149:7, 150:3, 151:9, 151:11, 151:12, 152:11, 152:13, 153:5, 153:6, 153:7, 153:8, 153:12</p> <p>tabs [2] - 56:23, 73:10</p> <p>tackling [1] - 153:4</p> <p>tagged [1] - 181:18</p> <p>takeaway [1] - 55:15</p> <p>talks [1] - 40:4</p> <p>tall [1] - 82:2</p> <p>target [1] - 144:18</p> <p>teach [1] - 168:3</p> <p>teaching [3] - 129:19, 167:21, 168:4</p> <p>TEAE [1] - 153:5</p> <p>team [11] - 90:11, 91:10, 92:3, 92:23, 94:19, 95:12, 115:15, 143:12, 143:13, 143:15, 148:10</p> <p>teeing [1] - 192:16</p> <p>teleconference [1] - 20:16</p> <p>telephone [1] - 22:17</p> <p>ten [6] - 70:12, 111:12, 112:11, 114:6, 161:2, 194:9</p> <p>tend [1] - 150:17</p> <p>tens [1] - 151:20</p> <p>tentative [1] - 210:15</p>	<p>term [2] - 169:16, 172:25</p> <p>terminate [1] - 128:2</p> <p>terms [19] - 5:18, 16:22, 18:14, 19:7, 20:6, 95:4, 115:5, 115:14, 116:25, 117:12, 133:10, 143:9, 146:3, 146:20, 150:13, 151:12, 158:11, 172:12, 188:16</p> <p>territory [1] - 198:23</p> <p>test [5] - 53:16, 53:17, 54:19, 136:14, 190:18</p> <p>testified [9] - 19:25, 25:13, 25:15, 40:14, 46:4, 89:4, 157:19, 164:17, 189:25</p> <p>testify [3] - 19:25, 162:24, 177:22</p> <p>testifying [3] - 23:6, 93:18, 178:25</p> <p>testimony [34] - 14:11, 14:13, 18:24, 20:11, 23:22, 33:4, 35:25, 36:12, 37:7, 37:17, 40:10, 40:22, 41:7, 45:19, 45:22, 46:9, 46:12, 50:2, 50:3, 51:2, 59:7, 69:5, 80:24, 81:2, 82:17, 93:15, 94:12, 115:19, 115:24, 132:23, 177:4, 193:23, 200:17, 200:24</p> <p>testing [1] - 42:15</p> <p>text [2] - 130:19, 159:1</p> <p>THAT [1] - 214:2</p> <p>THE [342] - 2:3, 2:11, 4:3, 4:5, 5:19, 7:8, 8:25, 12:13, 12:14, 12:22, 13:4, 13:7, 13:14, 13:19, 13:22, 14:1, 14:3, 14:23, 14:25, 16:1, 16:3, 16:5, 16:17, 16:20, 16:22, 17:22, 17:24, 18:1, 18:10, 18:19, 20:23, 21:16, 22:3, 22:7, 22:13, 22:22, 25:1, 25:6, 26:9, 26:14, 27:10, 28:5, 28:10, 28:14, 28:18, 28:22, 29:2, 29:4, 29:8, 29:10, 29:14, 29:17, 30:10, 30:15, 30:19, 30:25, 31:4, 31:12, 31:15, 31:18, 32:16, 32:19, 32:22, 33:1, 33:5, 33:8, 33:11, 33:16, 37:10, 37:21, 40:16, 40:17, 40:19, 40:21, 41:14, 41:15, 41:22, 42:12, 42:20, 42:23, 43:1, 43:5, 43:9, 43:10, 44:15, 45:11, 45:15, 47:1, 51:20, 52:16, 53:18, 53:22, 54:8, 54:18, 54:19, 56:7, 56:12, 56:19, 56:25, 57:2, 57:13, 57:17, 57:25, 58:8, 58:14, 58:20, 59:5, 59:10, 59:19, 59:22, 60:7, 60:10, 60:14, 60:17, 60:21, 61:1, 61:5, 61:8, 61:10, 62:25, 63:4, 64:11, 65:3, 65:9, 65:15, 65:22, 66:8, 67:11, 67:13, 67:16, 67:21, 67:25, 68:1, 68:2, 69:21, 70:4, 70:7, 70:14, 70:16, 70:19, 70:21, 71:15, 71:20, 72:19, 73:6, 73:9, 73:13, 74:21, 74:22, 77:2, 77:4, 78:22, 79:4, 79:5, 80:5, 80:8, 80:12, 80:15, 81:3, 81:16, 81:20, 83:17, 85:13, 86:15, 87:9, 87:12, 87:14, 87:17, 88:2, 88:4, 88:6, 94:18, 94:19, 98:9, 98:11, 98:15, 99:2, 99:7, 99:14, 99:17, 102:14, 102:15, 102:16, 104:19, 104:21, 104:23, 105:4, 114:4, 114:7, 114:10, 114:12, 114:14, 114:16, 118:6, 120:3, 121:24, 122:4, 122:7, 122:10, 122:16, 124:5, 124:7, 124:13, 124:14, 127:8, 128:19, 132:10, 137:7, 142:3, 142:9, 142:10, 142:20, 144:6, 144:9, 146:2, 146:5, 146:8, 149:14, 152:20, 152:22, 157:8, 157:9, 157:16, 157:17, 158:14, 158:15, 159:8, 160:4, 160:5, 160:12, 160:17, 160:19, 161:3, 161:7, 162:23, 163:2, 165:9, 166:13, 166:15, 166:21, 166:23, 166:25, 170:25, 171:3, 171:5, 172:19, 172:23, 176:24, 181:20, 187:13, 187:16, 188:21, 188:25, 191:5, 191:12, 191:14, 191:20, 192:2, 192:5, 192:7, 192:13, 192:19, 193:6, 193:9, 193:13, 193:20, 194:10, 194:14, 195:1, 195:4, 195:7, 195:15, 195:18, 195:20, 195:23, 196:2, 196:5, 196:8, 196:11, 196:13, 196:16, 196:19, 196:21, 196:25, 197:4, 197:9, 197:13, 198:4, 198:16, 198:21, 199:2, 199:4, 199:10, 199:12, 199:14, 199:20, 199:22, 200:5, 200:10, 200:24, 201:8, 203:2, 203:17, 204:4, 204:7, 204:21, 205:3, 205:14, 205:16, 206:2, 206:8, 206:17, 206:22,</p>
---	--	---	---

<p>207:2, 207:6, 207:10, 207:24, 208:7, 208:22, 208:25, 209:5, 209:7, 209:14, 209:17, 209:19, 209:25, 210:3, 210:5, 211:1, 211:6, 211:14, 211:17, 212:15, 213:12, 213:16, 213:18, 214:2, 214:3, 214:4, 214:6, 214:7</p> <p>theory [4] - 202:16, 205:23, 207:2, 208:3</p> <p>thereafter [4] - 55:19, 87:1, 118:18, 131:17</p> <p>therefore [1] - 76:22</p> <p>they've [2] - 178:9, 178:12</p> <p>thick [1] - 99:3</p> <p>thinking [2] - 70:11, 198:15</p> <p>third [16] - 30:11, 30:25, 75:9, 75:12, 75:18, 76:10, 93:11, 93:20, 170:3, 170:4, 170:13, 171:11, 171:23, 172:4, 172:5, 185:16</p> <p>THIS [1] - 214:5</p> <p>thousands [4] - 151:20, 152:7</p> <p>three [46] - 21:8, 42:4, 43:24, 46:6, 46:15, 73:14, 79:18, 109:11, 109:14, 109:24, 110:3, 110:8, 110:16, 110:22, 115:17, 131:15, 136:1, 136:12, 140:3, 155:1, 175:11, 183:1, 183:8, 183:9, 183:15, 186:6, 186:13, 190:2, 190:19, 190:23, 190:24, 205:10, 205:15, 205:17, 206:5, 206:10, 206:19, 207:1, 208:2, 208:18, 209:5, 209:6, 209:7</p> <p>three-year [2] - 115:17, 131:15</p> <p>threw [1] - 199:2</p> <p>throughout [1] - 29:22</p> <p>throw [1] - 208:9</p> <p>tie [1] - 18:6</p> <p>timed [1] - 200:9</p> <p>timing [7] - 22:11, 30:4, 40:13, 62:4, 86:23, 174:5, 177:14</p> <p>title [7] - 47:7, 47:13, 47:15, 58:9, 58:21, 120:17, 123:4</p> <p>titled [4] - 99:13, 101:7, 102:12, 110:25</p> <p>titles [1] - 58:21</p> <p>today [13] - 11:5, 75:24, 76:1, 115:11, 126:17, 131:3, 132:24, 133:4, 157:11, 161:21, 163:10, 178:18, 206:9</p> <p>together [11] - 18:19, 106:10,</p>	<p>116:4, 120:10, 124:17, 124:21, 147:1, 150:12, 154:25, 159:15, 198:14</p> <p>Tom [1] - 120:12</p> <p>TOMKOWIAK [1] - 2:13</p> <p>tomorrow [2] - 196:18, 198:15</p> <p>tongue [1] - 39:6</p> <p>tonight [2] - 198:14, 213:10</p> <p>took [3] - 90:23, 93:25, 186:1</p> <p>top [12] - 42:3, 44:11, 45:8, 46:3, 102:18, 126:13, 136:4, 136:6, 153:3, 192:11</p> <p>topline [37] - 89:23, 90:4, 90:5, 101:8, 102:2, 102:3, 102:6, 102:12, 104:1, 107:14, 107:19, 108:6, 108:23, 113:4, 113:9, 117:10, 117:11, 119:17, 133:2, 138:3, 138:4, 145:20, 146:4, 146:18, 147:3, 148:10, 148:18, 150:11, 153:8, 153:11, 158:5, 159:13, 161:22, 161:24, 162:7, 162:8</p> <p>TOR [1] - 2:3</p> <p>total [8] - 9:14, 10:3, 10:5, 10:9, 48:24, 191:18, 194:11, 197:14</p> <p>totaling [1] - 48:22</p> <p>totals [1] - 192:9</p> <p>touch [1] - 150:5</p> <p>toward [3] - 137:24, 144:20, 164:2</p> <p>towards [1] - 150:4</p> <p>track [3] - 97:16, 97:18, 154:25</p> <p>trade [6] - 61:25, 62:1, 62:4, 82:9, 82:11, 86:24</p> <p>traded [1] - 24:9</p> <p>trades [5] - 4:24, 6:10, 6:12, 86:25, 87:3</p> <p>trading [5] - 38:17, 76:23, 77:7, 85:5, 85:15</p> <p>transactions [2] - 23:13, 68:12</p> <p>TRANSCRIPT [3] - 1:16, 214:3, 214:5</p> <p>transcript [10] - 44:12, 44:13, 44:21, 94:5, 94:7, 104:7, 115:20, 164:18, 165:4, 193:25</p> <p>transfer [1] - 97:4</p> <p>transferred [8] - 103:19, 106:19, 106:24, 107:4, 107:9, 123:6, 153:17, 166:9</p> <p>transferring [2] - 122:23, 123:1</p>	<p>transition [1] - 153:19</p> <p>transitioned [1] - 23:25</p> <p>transitioning [1] - 24:8</p> <p>translated [1] - 58:2</p> <p>transmissions [1] - 163:24</p> <p>treat [2] - 125:2, 125:7</p> <p>treated [1] - 125:3</p> <p>treatment [15] - 96:10, 110:13, 111:3, 134:20, 135:2, 151:22, 151:24, 151:25, 152:2, 153:25, 154:1, 155:15, 155:16, 155:17, 155:19</p> <p>trend [2] - 137:24, 141:20</p> <p>TRIAL [1] - 1:17</p> <p>trial [71] - 62:9, 88:22, 88:24, 88:25, 89:3, 89:5, 89:23, 90:4, 90:6, 90:19, 91:13, 92:7, 95:5, 95:14, 101:8, 102:19, 103:13, 104:5, 104:17, 105:2, 105:9, 105:13, 106:14, 109:12, 109:15, 121:12, 121:15, 121:17, 129:25, 132:3, 132:8, 132:18, 133:7, 133:10, 133:12, 133:20, 133:24, 134:2, 134:6, 135:14, 135:16, 135:25, 136:24, 137:2, 137:3, 137:15, 137:16, 138:13, 138:19, 144:15, 144:24, 145:14, 145:17, 147:7, 148:7, 149:20, 154:14, 154:17, 155:18, 155:20, 155:23, 156:12, 156:15, 156:19, 157:25, 161:13, 164:22, 165:23, 200:9, 202:20</p> <p>trials [7] - 121:9, 121:12, 129:21, 129:24, 140:11, 188:11, 188:16</p> <p>tried [1] - 162:21</p> <p>triggered [1] - 19:3</p> <p>troubling [1] - 8:14</p> <p>true [26] - 5:4, 6:24, 12:4, 13:11, 19:8, 37:4, 37:12, 38:14, 49:4, 49:5, 50:14, 52:25, 53:2, 67:18, 67:24, 68:4, 72:5, 77:11, 77:25, 78:6, 78:16, 135:4, 193:15, 193:16, 193:17, 203:14</p> <p>TRUE [1] - 214:2</p> <p>Trueman [17] - 3:8, 166:19, 166:20, 166:23, 167:3, 170:20, 176:21, 177:3, 177:19, 179:6, 180:11, 182:19, 186:21, 187:22, 188:19, 189:3, 191:8</p> <p>truly [3] - 133:23, 134:1, 135:4</p>	<p>trust [1] - 9:25</p> <p>Trust [3] - 24:2, 24:11, 24:13</p> <p>truth [4] - 21:21, 22:18, 193:4, 203:13</p> <p>truthful [1] - 115:24</p> <p>try [11] - 5:10, 18:16, 27:1, 27:5, 30:4, 45:25, 52:2, 58:19, 84:1, 113:2, 213:10</p> <p>trying [11] - 21:14, 23:1, 26:4, 43:19, 58:25, 70:9, 84:4, 116:5, 126:7, 150:19, 213:3</p> <p>Tuesday [4] - 199:7, 199:8, 199:11, 213:14</p> <p>turn [37] - 7:5, 7:22, 23:1, 39:4, 39:23, 44:19, 48:10, 56:16, 64:18, 68:22, 68:25, 89:22, 94:5, 94:6, 97:20, 101:3, 102:9, 103:9, 105:25, 110:25, 111:22, 114:2, 115:19, 116:16, 117:23, 119:10, 119:20, 120:6, 120:15, 121:7, 121:20, 124:3, 127:4, 135:19, 161:22, 169:14, 180:11</p> <p>turning [1] - 42:2</p> <p>twice [2] - 89:7, 175:22</p> <p>twister [1] - 39:6</p> <p>two [76] - 8:13, 9:9, 11:4, 11:13, 11:19, 16:18, 16:21, 18:5, 23:23, 27:3, 27:9, 27:13, 27:15, 28:1, 31:23, 33:23, 35:3, 35:5, 36:21, 41:8, 48:22, 48:24, 54:21, 55:13, 56:4, 57:9, 59:13, 62:8, 69:2, 91:17, 103:23, 103:24, 104:2, 112:15, 112:18, 112:22, 113:3, 113:11, 114:23, 116:13, 116:22, 118:10, 118:19, 118:25, 119:4, 119:15, 120:20, 123:3, 127:3, 140:6, 140:9, 140:21, 151:14, 156:4, 156:8, 156:17, 156:21, 156:22, 157:3, 157:13, 157:20, 168:22, 172:1, 172:7, 172:10, 174:10, 181:13, 186:3, 191:16, 191:19, 196:23, 199:1, 202:25, 203:8, 203:15, 208:12</p> <p>two-year [1] - 91:17</p> <p>tying [1] - 18:19</p> <p>types [1] - 171:16</p> <p>typewritten [1] - 99:10</p> <p>typically [1] - 17:5</p>
---	--	--	--

U			
U.S. [5] - 1:22, 16:25, 19:11, 19:14, 24:1 UC [1] - 168:1 UCLA [3] - 167:21, 167:25, 168:2 UCLA's [1] - 167:5 UK [1] - 19:14 ultimately [2] - 201:11, 204:2 unavailable [1] - 95:12 unblinded [10] - 92:10, 95:6, 96:3, 96:5, 96:6, 96:12, 107:3, 116:12, 144:16, 144:17 unblinding [3] - 91:23, 144:15, 144:16 uncalled [1] - 197:4 under [21] - 16:16, 18:9, 20:20, 31:6, 40:12, 44:10, 45:10, 46:4, 51:18, 65:25, 67:5, 67:19, 69:1, 69:10, 69:13, 69:19, 89:4, 150:6, 164:6, 173:2, 184:23 undergraduate [1] - 167:13 underscore [1] - 164:7 understood [4] - 24:12, 24:19, 89:15, 185:11 undertake [1] - 11:8 undertaken [2] - 46:18, 46:20 undervalued [1] - 16:9 ungodly [1] - 123:23 unhappiness [1] - 130:13 unhappy [1] - 130:12 unique [1] - 10:21 unit [1] - 83:4 UNITED [2] - 1:1, 214:7 units [1] - 24:8 universities [1] - 129:19 University [4] - 129:7, 129:8, 129:10, 167:14 unless [2] - 199:25, 209:7 unlike [1] - 211:10 unlock [1] - 93:6 unlocked [1] - 93:2 unmarked [1] - 72:20 unreachable [1] - 155:2 unsettled [1] - 130:16 untrue [2] - 21:4, 206:20 untypical [2] - 5:6, 5:8 unusual [1] - 161:12 up [82] - 9:25, 14:12, 15:25, 16:2, 16:17, 16:19, 18:6, 20:11, 22:3, 22:7, 22:13, 23:12, 24:5, 26:4, 27:8, 27:22, 28:13, 29:21, 36:13, 39:11, 47:8, 48:14, 50:23, 50:25, 57:5, 63:24, 66:13, 66:18, 70:25, 72:17, 73:4,		73:6, 88:10, 96:25, 97:8, 100:22, 114:19, 116:10, 125:11, 136:1, 138:17, 138:19, 139:9, 139:10, 140:22, 140:23, 147:20, 148:14, 150:14, 151:8, 152:5, 153:6, 154:1, 154:19, 154:23, 155:4, 156:11, 156:17, 156:21, 161:23, 163:6, 169:18, 170:15, 170:22, 171:10, 172:14, 181:22, 186:24, 187:19, 190:18, 190:21, 190:22, 190:24, 191:18, 192:16, 197:11, 197:18, 199:6, 205:25, 207:16, 210:7, 211:16 update [2] - 48:7, 69:17 updated [1] - 69:16 upfront [1] - 20:3 upset [2] - 92:15, 92:21 useful [1] - 58:25	
V			
vague [17] - 5:18, 24:23, 25:1, 26:1, 54:4, 55:23, 64:9, 64:11, 74:19, 86:13, 137:6, 142:2, 142:7, 146:1, 158:13, 160:2, 165:9 vagueness [1] - 137:8 validate [3] - 116:5, 149:3, 150:3 validated [9] - 107:22, 108:1, 108:3, 111:17, 111:19, 118:22, 121:3, 155:21, 155:24 validating [4] - 148:8, 151:11, 152:10, 152:13 validation [9] - 107:20, 107:24, 107:25, 110:11, 148:23, 149:8, 151:9, 151:10, 153:11 valuation [1] - 77:6 value [3] - 76:23, 136:15, 147:22 values [1] - 147:18 variety [1] - 164:14 various [7] - 11:17, 35:25, 68:10, 133:20, 158:10, 189:18 verdict [3] - 199:7, 211:18, 211:19 verdicts [1] - 213:3 verification [10] - 64:6, 64:14, 65:14, 67:7, 67:10, 69:8, 69:16, 69:18, 71:1, 72:7 verifications [1] - 69:23 version [1] - 28:6		versions [1] - 68:10 versus [3] - 13:13, 151:2, 191:9 vested [3] - 127:3, 131:15, 131:16 vesting [1] - 131:17 video [7] - 191:23, 193:1, 194:1, 194:4, 194:21, 196:24, 197:2 videos [3] - 191:17, 191:18, 192:25 videotape [4] - 3:19, 3:20, 192:22, 194:15 videotaped [4] - 94:10, 115:22, 193:21, 194:20 view [1] - 50:25 viewing [1] - 55:18 visit [3] - 91:4, 93:25, 156:20 visits [11] - 118:11, 118:20, 119:1, 119:4, 119:15, 120:20, 123:3, 138:18, 139:4, 139:7, 140:12 volume [3] - 28:15, 28:16, 162:10 volumes [2] - 28:15, 28:18 Vs [1] - 1:8	
W			
		wait [5] - 28:14, 44:16, 99:4, 160:15, 209:14 walk [1] - 187:10 walled [1] - 97:2 watching [1] - 11:22 Waterloo [1] - 129:10 WATKINS [1] - 2:14 Watkins [2] - 89:11, 211:19 ways [1] - 154:13 WEDNESDAY [2] - 1:19, 4:1 weed [1] - 202:20 week [11] - 115:9, 140:23, 140:25, 141:2, 141:4, 141:5, 141:7, 153:5 weeks [3] - 62:6, 72:7, 138:15 welcome [5] - 4:5, 42:13, 70:24, 114:16, 161:10 WEST [2] - 1:23, 2:6 whatnot [4] - 94:23, 108:9, 140:12, 152:6 whereas [1] - 135:5 whole [1] - 16:16 whoo [2] - 198:21 wide [1] - 77:19 willing [1] - 178:5 wish [9] - 16:24, 30:20, 51:20, 57:18, 154:14, 202:18, 205:8, 206:5 WITH [1] - 214:6 withdraw [2] - 71:18, 159:7	
		withdrawal [1] - 154:15 withdrawn [1] - 104:20 withdraws [1] - 139:8 withdrew [1] - 155:12 WITNESS [32] - 3:2, 12:14, 14:3, 14:25, 16:3, 16:5, 16:22, 40:17, 40:21, 41:15, 43:1, 43:9, 54:19, 67:16, 68:1, 74:22, 77:4, 79:5, 80:8, 88:4, 94:19, 102:15, 105:4, 124:14, 142:10, 157:9, 157:17, 158:15, 160:5, 163:2, 166:23, 172:23 Witness [10] - 97:21, 101:5, 103:11, 106:1, 111:24, 117:24, 119:12, 119:21, 120:16, 124:4 witness [46] - 3:3, 3:6, 3:8, 4:8, 14:20, 18:13, 21:16, 22:9, 30:8, 33:10, 40:13, 41:12, 42:13, 51:16, 53:14, 53:17, 54:15, 56:3, 56:8, 56:10, 57:5, 65:9, 65:20, 67:6, 67:8, 70:5, 70:9, 85:11, 87:15, 88:1, 94:16, 99:5, 114:5, 146:5, 146:11, 159:5, 161:1, 162:22, 166:17, 166:20, 168:19, 178:5, 191:15, 193:14 witness's [1] - 33:4 witnesses [17] - 20:11, 191:19, 196:22, 196:23, 197:5, 197:10, 197:11, 197:13, 197:14, 197:19, 197:24, 197:25, 198:6, 198:8, 199:5 wonder [1] - 122:16 wonderful [1] - 135:9 wondering [2] - 46:8, 65:22 Wong [19] - 101:7, 101:17, 106:3, 106:5, 106:8, 107:9, 107:11, 107:15, 108:7, 118:1, 119:22, 124:11, 124:17, 125:13, 130:17, 153:3, 158:21, 158:24, 161:12 Wong's [2] - 109:4, 109:8 woods [2] - 211:23, 212:18 word [5] - 27:24, 28:4, 40:4, 84:2, 206:9 words [6] - 36:15, 38:22, 55:8, 74:15, 74:17, 130:9 works [2] - 78:11, 95:4 worsen [1] - 151:25 worsened [1] - 152:3 worst [1] - 141:8 worth [1] - 175:25 would've [12] - 111:17, 117:1, 141:13, 173:17,	

175:2, 175:18, 175:22,
189:15, 189:18, 189:20,
189:22
wow ^[1] - 112:24
wrap ^[2] - 22:7, 22:13
wrap-up ^[2] - 22:7, 22:13
wrapped ^[2] - 16:19, 22:3
wrapping ^[1] - 16:17
write ^[3] - 134:20, 142:23,
195:2
writing ^[2] - 130:5, 149:24
written ^[7] - 100:14, 125:20,
146:21, 146:25, 158:6,
164:11, 208:15
wrote ^[4] - 149:22, 150:5,
153:4, 205:15
Wyeth ^[3] - 153:16, 153:24,
156:13

Y

year ^[9] - 54:24, 91:17,
93:11, 94:1, 105:17,
115:17, 131:15, 131:16,
187:10
years ^[27] - 103:23, 103:24,
104:2, 112:15, 112:18,
112:23, 113:3, 113:11,
114:23, 115:5, 115:7,
116:13, 116:22, 127:3,
129:14, 134:12, 151:14,
156:4, 156:8, 156:17,
156:21, 156:22, 156:23,
157:3, 157:13, 157:20,
168:4
yellow ^[3] - 43:19, 43:21,
72:23
yesterday ^[9] - 4:13, 4:22,
23:22, 65:19, 78:24, 79:7,
186:22, 187:2, 206:16
Younger ^[17] - 3:3, 4:8, 4:11,
4:13, 28:16, 65:18, 65:20,
70:24, 72:21, 79:11, 79:16,
80:17, 81:6, 81:25, 83:21,
83:24, 87:13
Younger's ^[3] - 67:10, 67:20,
81:2
yourself ^[3] - 119:22, 122:2,
122:24
yourselves ^[1] - 200:19