

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AO]
) Docket No. 15-0071
)
Milk in California)
)
_____)

VOLUME XXXIX

TRANSCRIPT OF PROCEEDINGS

November 17, 2015

Myra A. Pish, CSR No. 11613

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BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AO]
) Docket No. 15-0071
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Milk in California)
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BEFORE U.S. ADMINISTRATIVE LAW JUDGE
JILL S. CLIFTON

Tuesday, November 17, 2015

9:00 a.m.

The Falls Event Center
4105 West Figarden Drive
Fresno, California 93722

TRANSCRIPT OF PROCEEDINGS

VOLUME XXXIX

Reported by:

Myra A. Pish CSR
Certificate No. 11613

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APPEARANCES:

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LAUREL MAY, Marketing Specialist
PAMELA ELLIOTT, Marketing Specialist
DANA COALE, Deputy Administrator

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Hanson Bridgett, San Francisco
BY: JOHN VLAHOS, ESQ.

DAIRY INSTITUTE OF CALIFORNIA: Davis Wright Tremaine
BY: CHIP ENGLISH, ESQ.
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HILMAR CHEESE: JAMES DeJONG

CALIFORNIA PRODUCER HANDLERS ASSOCIATION: Stoel Rives
BY: NICOLE HANCOCK, ESQ

SELECT MILK PRODUCERS: MILTNER LAW FIRM, INC.
BY: RYAN MILTNER, ESQ.

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24
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I N D E X - V O L U M E 39

WITNESSES IN CHRONOLOGICAL ORDER

DENNIS SCHAD:

CONTINUED DIRECT EXAMINATION BY MR. BESHORE	7870
VOIR DIRE EXAMINATION BY MR. ENGLISH	7878
CROSS-EXAMINATION BY MR. ENGLISH	7884
REDIRECT EXAMINATION BY MR. BESHORE	7916
RE CROSS-EXAMINATION BY MR. MILTNER	7920
RE CROSS-EXAMINATION BY MR. ENGLISH	7921
RE CROSS-EXAMINATION BY MR. HILL	7922

LON HATAMIYA:

DIRECT EXAMINATION BY MR. VLAHOS	7924
VOIR DIRE EXAMINATION BY MR. ENGLISH	7945
CROSS-EXAMINATION BY MR. ENGLISH	7948
REDIRECT EXAMINATION BY MR. VLAHOS	7953
RE CROSS-EXAMINATION BY MR. ENGLISH	7954

PETE GARBANI:

DIRECT EXAMINATION BY MR. BESHORE	7959
CROSS-EXAMINATION BY MR. ENGLISH	7985

DR. WILLIAM SCHIEK:

DIRECT EXAMINATION BY MR. ENGLISH	7992
CROSS-EXAMINATION BY MR. VLAHOS	8013
CROSS-EXAMINATION BY MR. BESHORE	8027
CROSS-EXAMINATION BY MS. HANCOCK	8029
CROSS-EXAMINATION BY MR. MILTNER	8035
CROSS-EXAMINATION BY MR. VLAHOS	8036

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3
4
5
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10
11
12
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24
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I N D E X - V O L U M E 39

INDEX OF EXHIBITS

NO.	DESCRIPTION	I.D.	EVD.
185	TESTIMONY OF DENNIS SCHAD SECOND STATEMENT		7883
186	EXHIBITS OF DENNIS SCHAD SECOND STATEMENT		7884
187	LAND O'LAKES, INC. LETTER SEPTEMBER 27, 2005	7889	7891
188	THE COMPARATIVE COST OF DOING BUSINESS IN CALIFORNIA BY LON HATAMIYA	7923	7947
189	TESTIMONY OF PETE GARBANI REBUTTAL	7958	7984
190	EXHIBITS OF PETE GARBANI REBUTTAL	7958	7985
191	QUOTA INPUT VALUES	7995	8011

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1 TUESDAY, NOVEMBER 17, 2015 - - MORNING SESSION

2 JUDGE CLIFTON: We're back on record on November 17, 2015.
3 It's a Tuesday. It's approximately 9:00 in the morning. We
4 are in Fresno, California. This is Day 39 of the milk hearing.

5 My name is Jill Clifton. I'm the United States
6 Administrative Law Judge who is assigned to take in the
7 evidence at this rule making hearing. I would like now to take
8 appearance of others who are participating, starting with other
9 USDA employees.

10 MR. HILL: Good morning, everyone. My name is Brian Hill
11 and I'm an Attorney with the Office of the General Counsel.

12 MS. BECKER: Good morning, Lauren Becker, I'm also an
13 Attorney with the Office of the General Counsel.

14 MR. FRANCIS: Good morning, William Francis, F-R-A-N-C-I-S,
15 Dairy Marketing Specialist USDA AMS Dairy Programs.

16 MS. MAY: Good morning, Laurel May, with USDA AMS Dairy
17 Program.

18 MS. ELLIOTT: Hello, my name is Pamela Elliott,
19 E-L-L-I-O-T-T, I am a Marketing Specialist with the USDA AMS
20 Dairy Program.

21 MR. CARMAN: Good morning, Clifford Carman, C-A-R-M-A-N,
22 Assistant to the Deputy Administrator, Dairy Programs.

23 MR. VIERRA: Good morning, Brad Vierra, V-I-E-R-R-A, on
24 duty with the Federal Milk Market out of Dallas, Texas.

25 MR. SCHAEFER: Henry Schaefer, H-E-N-R-Y, S-C-H-A-E-F-E-R,

1 Agricultural Economist for the Upper Midwest Milk Marketing
2 Order, Federal Order 30, on detail with AMS Dairy Programs.

3 MS. COALE: Good morning, Dana Coale, C-O-A-L-E, Deputy
4 Administrator with Dairy Programs, Agricultural Marketing
5 Service, U.S. Department of Agriculture.

6 MR. BESHORE: Good morning, Marvin Beshore, M-A-R-V-I-N,
7 B-E-S-H-O-R-E, Attorney for Proponents of Proposal Number 1,
8 California Dairies, Dairy Farmers of America, and Land O'Lakes.

9 MR. VLAHOS: Good morning, John Vlahos, J-O-H-N, V -- as in
10 Victor -- L-A-H-O-S with the law firm of Hanson, Bridgett,
11 H-A-N-S-O-N, B-R-I-D-G-E-T-T, San Francisco, appearing as
12 co-counsel for the same parties as Mr. Beshore.

13 MR. SCHAD: Good morning, Dennis Schad, S-C-H-A-D, I work
14 for Land O'Lakes.

15 MR. GARBANI: Good morning, Pete Garbani with
16 Land O'Lakes, that's spelled G-A-R-B-A-N-I.

17 MR. ENGLISH: Good morning, your Honor, my name is
18 Chip English, E-N-G-L-I-S-H, I'm an Attorney with the law firm
19 of Davis, Wright, Tremaine with my principal office in
20 Washington, D.C., I did check with them yesterday and as long
21 as I get back by the end of the year, I won't have lost my
22 office.

23 I am one of the Attorneys representing the Dairy
24 Institute of California, which is Proponents of
25 Proposal Number 2.

1 MS. VULIN: Good morning, Ashley Vulin, A-S-H-L-E-Y.
2 V -- as in Voldemort -- U-L-I-N, also an Attorney with Davis,
3 Wright, Tremaine, representing the Dairy Institute of
4 California.

5 DR. SCHIEK: Good morning, William Schiek, S-C-H-I-E-K,
6 Economist with the Dairy Institute of California.

7 MR. DeJONG: James DeJong, D-e, J-O-N-G, Dairy Policy
8 Economic Analyst for Hilmar Cheese, dairy farmer-owned
9 manufacturer of cheese, whey, and milk powder.

10 MS. HANCOCK: Nicole Hancock, I'm an Attorney with
11 Stoel Rives, I'm representing the California Producer Handlers
12 Association and Ponderosa Dairy.

13 MR. VANDENHEUVEL: Rob Vandenheuvel,
14 V-A-N-D-E-N-H-E-U-V-E-L, here with Milk Producers Council.

15 MS. HANCOCK: I forgot to mention that when I came back
16 from Boise this weekend, I brought some Idaho potatoes with me
17 because I couldn't bring any dairy products, but there's
18 actually no potato in the Idaho spud that is back there, so I
19 hope you all enjoy those.

20 JUDGE CLIFTON: Does anyone know if Ryan Miltner is still
21 in town? Good. All right. I miss my chicks when they are
22 missing, my little chicks. It is especially appropriate that I
23 use that word with Macho Ryan who rides a motorcycle and all
24 that -- captain America as we know him.

25 All right. Let's see. Let's start, we can do our full

1 preliminary matters first.

2 Mr. Beshore, is that right, we can?

3 MR. BESHORE: Yes, absolutely.

4 JUDGE CLIFTON: All right. Let's do all the announcements
5 and preliminary matters, beginning with those from the
6 employees from the United States Department of Agriculture.

7 MS. MAY: Good morning, Laurel May with USDA. Glad to see
8 all of you here today. As you know, everybody that would like
9 to is -- anybody that would like to is welcome to testify at
10 this hearing. To do so, just let one of us know that you would
11 like to and we'll get you into the line up. If you would like
12 to question any of the witnesses who are appearing here, you
13 may do so by approaching the podium and the Judge will
14 acknowledge you.

15 We are broadcasting via live audio feed, that's
16 accessible at www.ams.usda.gov/live.

17 The court reporter is recording and providing official
18 transcripts of the hearing which are available as soon as she
19 can get them to us on an ongoing basis, and those can be viewed
20 at the AMS dairy website. When you get into the spot, you can
21 choose between transcripts or records, there's links for each.
22 And as of yesterday, I haven't checked last night, but as of
23 yesterday I think we were up to Exhibit 74 was available on
24 that website.

25 We have refreshments in the back of the room that

1 everybody is welcome to enjoy.

2 As best as I can recall, Mr. Schad was on the stand
3 yesterday, and we ended in the middle of his testimony. And as
4 far as I know, that's where we're going to start again this
5 morning, but I will leave it to Mr. Beshore to give you more
6 details about that.

7 JUDGE CLIFTON: Who next has some preliminary matters and
8 announcements? Mr. Beshore.

9 MR. BESHORE: So in terms of schedule today and our last
10 day tomorrow, here's what it looks like: Dennis Schad will
11 complete his rebuttal testimony this morning; after him, we
12 have rebuttal testimony from Mr. Hatamiya; and after him, we
13 have rebuttal testimony from Mr. Garbani.

14 I fully expect all those can be accomplished today. We
15 do not have any other testimony today, but our testimony
16 tomorrow would be from Mr. Hollon and Dr. Erba, and those
17 statements will be brief, on the short side in both cases, and
18 hence my optimism.

19 JUDGE CLIFTON: Mr. English?

20 MR. ENGLISH: If -- this is Chip English -- if we have time
21 after the Cooperatives three witnesses are complete today, we
22 are ready to go forward with Dr. Schiek in response to the
23 questions you asked last week, your Honor. If somehow that
24 doesn't get done today, obviously we'll do it tomorrow. But if
25 Mr. Beshore is correct about where things are and we end up

1 with a gap in time, we are prepared to help fill it.

2 JUDGE CLIFTON: Very good. We do not yet know whether
3 we'll be finished tomorrow. We all would love that, but we
4 still need to determine whether we need to take additional
5 evidence, particularly about the value of exempt quota and
6 regular quota from anyone else after we hear from Dr. Schiek
7 particularly, so that remains to be seen. But I think everyone
8 whose been participating all throughout would be delighted if
9 we can bring this hearing to a close tomorrow.

10 That brings me to my preliminary issue, which is,
11 again, the transcript corrections and briefing schedule. I
12 thought some more about it and I want to throw something out
13 that I haven't yet said and see if it causes anyone heartburn.
14 That is, of course we expect initial briefs from the Proponent
15 briefs, of course. But I would like the understanding that
16 anyone may submit a reply brief, even if he hasn't submitted an
17 initial brief. There may be someone who just notices one flaw
18 and wants to address it. That would be great. We would love
19 to have the input of all thoughtful people who consider all the
20 briefs, and then perhaps would like to file a reply. So that's
21 a little different from normal procedure.

22 Normally, the replies are reserved to those who file
23 the initial brief. But in this case, I expect the initial
24 briefs, particularly from at least the Proponents of
25 Proposals 1 and 2 to be massive, and there would be no reason

1 to expect others to do that kind of work at the beginning. So
2 think about it. I'll ask for your responses to that later.

3 Mr. English?

4 MR. ENGLISH: Chip English. I don't necessarily disagree,
5 your Honor, but I guess I would say maybe a couple of caveats.
6 First, anybody who is a Proponent of a Proposal shouldn't be
7 able to wait for a reply. And second, I would like the caveat
8 to be that the reply is really a reply and not, you know,
9 somebody's first shot at something that prevents other people
10 who would otherwise reply. So I think that's -- with those two
11 caveats, I think, just my initial reaction I see nodding.

12 MR. BESHORE: I agree with both points.

13 JUDGE CLIFTON: Good.

14 MR. ENGLISH: With those caveats, I think we can probably
15 accept that.

16 JUDGE CLIFTON: All right. Excellent. I agree with both
17 of those as well.

18 The whole point of filing an initial brief is to expose
19 to everyone else your argument, your thinking, your reasoning,
20 your dependence on certain portions of the evidence, and that
21 gives others a chance to evaluate that. So I like very much
22 your caveats, Mr. English. All right.

23 So if, in fact, tomorrow does turn out to be our last
24 day, then tomorrow I must set the deadlines. So be thinking
25 about how many days after the last transcript and exhibit are

1 posted you would like to go forward with proposed corrections,
2 those would be just from the attorneys for Proposals 1 and 2,
3 and then another date thereafter for everyone else to comment
4 on proposed corrections.

5 Then a deadline for me. You need to give me also a
6 deadline by which I would rule. And what my ruling is called,
7 it is called the certification of the transcript, that's what
8 it's actually called, that's what its name is. But it also
9 specifies what exhibits were admitted and what exhibits were
10 rejected, so it's very brief. But it, then, is followed by
11 this opening round of briefs, and then the response or, I'm
12 going to call them reply, the reply briefs. Mr. Beshore?

13 MR. BESHORE: One other thought I had that kind of falls in
14 the same area here in terms of administrative wrap up, and that
15 relates to Requests for Official Notice or Administrative
16 Notice. Thinking about this, my thought, or request would be
17 that those requests for taking administrative notice be done
18 with the first brief. That would provide an opportunity, if
19 there's any objections to them, for those to be made, but it
20 would also, it would also mean that we don't have to be, dwell
21 upon that issue, you know, tomorrow or whenever before we
22 leave -- we leave here. And I think it's, that's something
23 that can be handled in written submissions. That's my thought
24 and suggestion.

25 JUDGE CLIFTON: Mr. English?

1 MR. ENGLISH: Chip English. You know, yesterday, your
2 Honor, you asked a question for the, for those who were not in
3 the room about how hard we're all working, and I want to
4 emphasize that notwithstanding the fact that we are Proponents
5 and Opponents of proposals are fighting as hard as they can for
6 their clients, I think almost every week, if not almost every
7 dairy, there have been discussions among counsel. And so
8 Mr. Beshore alerted me of this before we got on the record
9 today. I think that is really laudatory. I think it is not
10 something that happens in a trial-like setting very often. I
11 want to thank Mr. Beshore for that, I think he has done it as
12 well, I know Ms. Hancock has, so I want to say I had a chance
13 to think about it, and I agree with Mr. Beshore. Even though
14 we have created the list, but the fact of the matter is, as you
15 write the brief you are going to come forward and say, "You
16 know what? I wish I had taken official notice of that." And
17 so I think that it is highly appropriate to think in those
18 terms. So I just want to put that out and we can talk about it
19 some more later, but I agree.

20 JUDGE CLIFTON: What that reminds me of is the fact that we
21 already addressed this issue of a like issue earlier. And that
22 is, that I am not the trier-of-fact, so you don't need me to
23 say whether we will take official notice or not, because the
24 Agricultural Marketing Service can do that with the help of
25 Counsel. Just as it is they who will rule on Mr. English's

1 motion that an adverse inference be made or taken with regard
2 to evidence that was not presented. So this would be a perfect
3 way for the Request for Official Notice to be made. It can be
4 done thoughtfully as you prepare your briefs, it ensures the
5 accuracy of what's being requested.

6 I had said before that if you were asking for official
7 notice of something I wanted a copy of it in the record. So
8 we talked about the exceptions to that, there are many
9 exceptions. Exceptions such as USDA web sites and other
10 commonly relied upon official pronouncements. I would think
11 the California Department of Food and Agriculture website would
12 be another one where you wouldn't need to put into the record a
13 piece of paper that shows what was, where that website is found
14 or what was on it at a particular day. So you could also deal
15 with that issue in your briefs, and if you have a more obscure
16 document that you are asking official notice be taken of, you
17 can append it to your brief and then it will be, ultimately the
18 Secretary, but initially the team from Agricultural Marketing
19 Service of the USDA that determines whether to take official
20 notice or not. So I like it.

21 All right. Are there any other preliminary matters?
22 Ms. Hancock?

23 MS. HANCOCK: Nicole Hancock. I have talked to most of you
24 about this, but just to maybe get it and make sure everybody is
25 on the same page. The producer-handlers are planning to put on

1 a witness tomorrow that will deal or talk about exempt quota
2 evaluation. Some of it will be dependent on what we hear from
3 Dr. Schiek as whether it will determine whether or not we can
4 get it all on tomorrow, but our plan is we will be brief and
5 put it in the record tomorrow. And we have alerted the USDA
6 that hopefully this means there is no need for anybody to
7 reserve any dates in December, so I just want to make sure
8 everybody knew.

9 JUDGE CLIFTON: There's another issue. And that is that I
10 asked yesterday that AMS would make it clear how they also want
11 to be given copies of things like proposed corrections to the
12 transcript, briefs, and so on. And I would like to hear from
13 them at some point today, but I also overheard them discussing,
14 and I want to bring up an issue that I forgot to bring up
15 yesterday.

16 If you send regular mail to the Hearing Clerk's Office,
17 it is diverted for irradiation. This is left over from the
18 Anthrax problem that killed people. So they are still
19 protecting us from Anthrax. The problem with that is your
20 submission could be delayed by weeks. And when it arrives, it
21 has been antiqued, and it is brittle, and it makes my hands
22 itch, whatever it is they do with it. So please don't use
23 ordinary mail to submit a brief. It will miss deadline because
24 the deadline is not when you mailed it, it is when it arrives
25 and it is file stamped by the Hearing Clerk. So you do not

1 want to be late.

2 So one way you can prevent that, you can't, these
3 submissions you cannot either Fax or e-mail to the Hearing
4 Clerk, because they will be too large. They will just be, they
5 can't handle anything but very short submissions for the
6 official filing.

7 Now, a commercial delivery service such as Fed Ex, UPS,
8 or the like, can be used to solve this problem, but even there,
9 you know, do not wait until the last minute to send it or you
10 may miss the filing deadline.

11 I'm going to read into the record the address to which
12 documents should be sent to the Hearing Clerk, whether you
13 deliver them by hand or courier, or whether you Fed Ex or UPS
14 them, this is the place they go.

15 Hearing Clerk's Office, United States Department of
16 Agriculture, Stop 9203, South Building, Room 1031, 1400
17 Independence Avenue Southwest, Washington, D.C., 20250-9203.

18 If you want to telephone the Hearing Clerk's Office to
19 confirm receipt of your submission, the general phone number
20 for the Hearing Clerk is (202) 720-4443.

21 If you want to arrive at the South Building in
22 Washington, D.C., to hand deliver your documents and you need
23 to be escorted to the Hearing Clerk's Office in order to file
24 them, at the Security Guard station you call for the escort to
25 the Hearing Clerk's Office, (202) 720-4443.

1 The filing hours for the Hearing Clerk are essentially
2 9:00 a.m. to 4:30 p.m., the office is manned both before and
3 after that, but that's when they accept filings, 9:00 a.m. to
4 4:30 p.m.

5 All right. Who has anything else additional as a
6 preliminary matter? Ms. May?

7 MS. MAY: So in response to your request, we have an
8 address for delivery. We accept your briefs and comments in
9 electronic and hard copy form, if you, as long as the
10 electronic copies are no bigger than 20, as long as the --
11 sorry, electronic copies -- or electronic submissions can't be
12 larger than 20 megabytes, just because our system won't accept
13 that, so you might have to break into smaller chunks if you are
14 planning to send something bigger than that.

15 Anyway, you can send it to our AMS Dairy Comment
16 E-mail, and that is amsdairycomments@ams.usda.gov, or if you
17 want to use a courier service, as Judge Clifton suggested, to
18 ship in a hard copy, you can send it to: William Francis,
19 Director of the Order Formulation and Enforcement Division,
20 USDA, AMS Dairy Program, Stop 0231, Room 2969 South, 1400
21 Independence Avenue, Southwest, Washington, D.C., 20250-0231.
22 And Will's personal cell phone number is (202) --

23 JUDGE CLIFTON: This is actually not personal, this is just
24 his direct line.

25 MS. MAY: This is a number so if you need to get somebody

1 to come and escort you, (202) 720-6274.

2 JUDGE CLIFTON: If you don't mind, I would like you to say
3 all of that one more time.

4 MS. MAY: The whole address?

5 JUDGE CLIFTON: Yes.

6 MS. MAY: William Francis, Director, Order Formulation and
7 Enforcement Division, USDA, AMS Dairy Program, Stop 0231, Room
8 2969 South, 1400 Independence Avenue, Southwest, Washington,
9 D.C., 20250-0231. And the phone number is (202) 720-6274.

10 JUDGE CLIFTON: Now, Ms. May, the proposed transcript
11 corrections will all be posted on the same website where we
12 already have exhibits and transcripts?

13 MS. MAY: I believe so, yes.

14 JUDGE CLIFTON: All right. And briefs will also be posted
15 at that very same place?

16 MS. MAY: Yes.

17 JUDGE CLIFTON: Okay. Mr. English?

18 MS. MAY: Do those not also get posted at the regs.gov
19 website? I think we are supposed to upload those.

20 MR. FRANCIS: Yes, but there's a lag.

21 MS. MAY: True.

22 JUDGE CLIFTON: Mr. English?

23 MR. ENGLISH: Chip English. And this might have been sort
24 of understood, but I'm trying now, going back to the official
25 notice and briefing and the idea that someone could file a

1 reply brief without having filed an initial brief. And I would
2 note that if someone wishes to take official notice, I think
3 under the Rules of 900.8(c)(5) that anybody who wishes to take
4 official notice would need to do so in an original brief,
5 because the Rule requires that if a person shall be given
6 adequate notice after hearing or subsequent thereto, of matters
7 sotos, and shall be given adequate opportunity to find that
8 such facts are inaccurate or are erroneously noticed. And so
9 it does seem to me that a caveat would be that if you wish to
10 take official notice, it would have to be in an original brief.

11 JUDGE CLIFTON: Good. Thank you. I agree with that, so
12 does Mr. Beshore, he's nodding his head yes. That's excellent.
13 Thank you. All right. Mr. Vlahos?

14 MR. VLAHOS: John Vlahos. Your Honor, for some of us whose
15 writing skills are somewhat sloth-like, keeping up with the
16 various addresses was rather difficult. I wonder if they could
17 be posted or maybe even a handout tomorrow, so that we make
18 sure that we all have the right addresses and the right
19 numbers.

20 JUDGE CLIFTON: Yeah, of course, before you have to do
21 anything you will have a copy of the transcript that has this
22 in it, but we'll repeat it again tomorrow. So bring your notes
23 from today and you can fill in. I could also have Ms. May read
24 it one more time, would that help?

25 MR. VLAHOS: Tomorrow would be fine.

1 JUDGE CLIFTON: Business cards are helpful because that way
2 there's much less to write. You may still have something to
3 write. Thank you.

4 Are there any other announcements or preliminary
5 matters? There are none.

6 Mr. Schad, welcome back to the witness stand.
7 Mr. Schad, you remain sworn. Please, again, state and spell
8 your name.

9 MR. SCHAD: My name is Dennis Schad. D-E-N-N-I-S,
10 S-C-H-A-D.

11 JUDGE CLIFTON: Thank you. Mr. Beshore, you may proceed.

12 CONTINUED DIRECT EXAMINATION

13 BY MR. BESHORE:

14 Q. Yes. So, Mr. Schad, when we left off yesterday you had
15 completed the presentation of Roman Numeral VII of Exhibit 185,
16 your rebuttal testimony. And so now you may begin, and please
17 do, with Roman Numeral VIII on page 12.

18 A. VIII. Cooperative Response to Dairy Institute Proposal
19 Concerning Increased Shrinkage Allowance in 7(b) Plants

20 Dairy Institute provided four witnesses,
21 Mssrs. Herbein, Zolin, Meek, and Suever to testify in support
22 of a proposed change to Section 1051.43 to accommodate
23 purported excess shrinkage in Section 1051.7(b) plants.
24 Mr. Herbein provide a study of dairy plants represented as
25 federally pooled 7(b) plants and plants pooled on the

1 California Order. The witness testified --

2 JUDGE CLIFTON: Mr. Schad, what you said means exactly the
3 same as what's printed, but sometimes it's not good when you
4 skip words. So I just want to you slow down.

5 MR. SCHAD: Okay.

6 The witness testified --

7 BY MR. BESHORE:

8 Q. Go back and so we don't skip any words, and re-read the
9 sentence beginning with Mr. Herbein.

10 A. Mr. Herbein provided a study of dairy plants
11 represented as federally pooled 7(b) plants.

12 Q. Section 7(b)?

13 A. I'm sorry?

14 Q. You missed a word.

15 A. Federally pooled Section 7(b) plants and plants pooled
16 on the California State Order.

17 Q. Thank you.

18 A. The witness testified that the 19 plants manufactured
19 Extended Shelf Life (ESL) or aseptic milk products.

20 Mr. Herbein's cross-section study "Shrinkage,
21 Ultra-Pasteurized, and Aseptically Processed Milk at 7(b)
22 Distributing Plants," (Exhibit 84) included at least six
23 plants: Saputo (Frederick); Saputo Friendship; Murray;
24 Newington; White Bear Lake, and Frazier that are not pooled
25 distributing plants, and therefore, not subject to the

1 shrinkage provisions of Section 1000.43.

2 Dairy Institute witnesses also cited Table 18 of
3 Exhibit 9, Total 7(a) and 7(b) Plants with Excess Shrinkage,
4 All Orders - January 2009 - June 2015. While Dairy Institute
5 witnesses insisted during the hearing that California data was
6 needed for a California decision, no California plants were
7 included in the USDA study.

8 ESL products are valued-added products and should not
9 be granted excessive shrinkage consideration under the
10 California Order.

11 IX. Similarities Between California and Carolina Promulgations

12 In observing the 30-some days of this hearing, I am
13 struck with the similarities between this promulgation hearing
14 and the Carolina promulgation decision
15 (55 Fed. Reg. June 22, 1990, page 25601) in 1990. Like the
16 Proponents of Proposal 1, the dairy farmers in Carolina
17 testified that the Carolina Order should adopt the national
18 manufacturing price levels for Class II and III, at that time
19 the Basic Formula Price (BFP). While describing the
20 determination of the monthly BFP in detail (Ibid. at
21 Page 25641-3), the Secretary took official notice of Class II
22 Final Decision (1982 and 1989) to determine the new Class II
23 price.

24 Q. The new -- read that --

25 A. The new Order's Class II price.

1 Q. Thank you.

2 A. The new Order's Class II price (Ibid. Page 25641). The
3 Secretary also relied on previous Federal Order decisions to
4 determine the classification of milk based on its use
5 (Ibid. Page 25634). As noted in my previous testimony, the
6 Secretary rejected a proposal that would continue the Carolinas
7 State Order pricing of butterfat that conflicted with the
8 butterfat price in adjacent Federal Orders, citing previous
9 FMMO decisions (Ibid. Page 25643). The importance of aligning
10 the Class I differentials in the Carolina Order and existing
11 Orders was also noted (Ibid. at Page 25639-40). The Carolina
12 Order also provided for an other than uniform producer pricing
13 system through the approval of a base-excess plan in the new
14 Order (Ibid. at Page 25643).

15 JUDGE CLIFTON: Now, let me stop you. You read that as
16 "producer pricing system" is that the same as what is written
17 here "producer payment system"?

18 MR. SCHAD: I'll read it again.

19 The Carolina Order also provided for an other than
20 uniform producer payment system through the approval of the
21 base excess payment in the new Order (Ibid. at Page 25643).

22 JUDGE CLIFTON: Thank you. And while I have got you
23 interrupted, I would like to go to the, up many lines to the
24 fourth line of this section, Roman Numeral IX. The way you
25 read that line, you said that the California, excuse me, that

1 "the Carolina Order should adopt the national manufacturing
2 price levels for Class II and III". Would you like us to
3 insert "should" in the record copies?

4 MR. SCHAD: Yes.

5 MR. BESHORE: Yes

6 JUDGE CLIFTON: All right. We will do so. Thank you. You
7 may proceed.

8 MR. SCHAD: The Carolina promulgation decision also
9 addressed an issue that is, in my opinion, very germane to this
10 proceeding. A handler, Coburg Dairy, proposed a modification
11 to the provisions to the Carolina Order that charged a handler
12 the difference between the Class III and Class I price for a
13 non-fluid milk -- for a non-fluid milk product reconstituted
14 into a fluid milk product. The witness observed that it would
15 be likely that any reconstitution that would occur at the time
16 of the 1989 hearing, would be the result of a reverse osmosis
17 manufacturing process. The witness stated that such
18 concentrated milk product would be priced as Class II in most
19 Federal Orders, causing a pricing conflict.

20 The Secretary ruled:

21 The reconstitution charge adopted in the Carolina
22 Order is the same as the one applicable in most
23 other Federal Orders. Thus, if the reconstitution
24 charge were modified in the Carolina Order, there
25 would not be uniformity of classification of the

1 reconstituted milk product with the other Federal
2 Orders. It is concluded, therefore, that a
3 reconstitution charge at the difference between
4 the Class III and the Class I price shall apply
5 until such time that this issue can be reviewed on
6 a national basis.

7 And I will put the citation, which is not in the text,
8 it is (Ibid. 25637).

9 JUDGE CLIFTON: Let me repeat that back and if I have it
10 right, Ms. Elliott will show that on the record copy.
11 Ibid, 25637.

12 MR. SCHAD: That's correct.

13 JUDGE CLIFTON: All right. Good.

14 MR. SCHAD: Some of the issues raised by the Proponents of
15 Proposal 2, including: the appropriateness of combining both
16 block and barrel cheese prices in the DPRSR --

17 MR. BESHORE: Yeah, we have got that wrong.

18 MR. SCHAD: The NDPSR. Can we change that?

19 JUDGE CLIFTON: Are you sure?

20 MR. SCHAD: National Dairy Products and Sales Report, yes.

21 JUDGE CLIFTON: National Dairy, so it has to start with N,
22 that's the problem.

23 MR. BESHORE: Yes. NDPSR.

24 JUDGE CLIFTON: NDPSR. I think, Ms. Elliott, the easiest
25 way will just be to strike what's there and just write "NDPSR",

1 both on this line and the following line.

2 MR. BESHORE: Yes.

3 MS. ELLIOTT: Okay.

4 MR. SCHAD: I'll read the sentence again.

5 Some of the issues raised by the Proponents of Proposal
6 2, including: The appropriateness of combining both block and
7 barrel cheese prices in the NDPSR survey, regional pricing of
8 commodities included in the NDPSR, strike what's there and put
9 NDPSR.

10 The appropriateness of combining the manufacturing cost
11 of plants both within and beyond California's borders to
12 determine a product formula make allowances have been addressed
13 in previous Federal Order hearings, which is not to say the
14 Secretary could not notice those issues in a future hearing.
15 Others, such as increased shrinkage allowance in
16 Section 10.____.7(b) plants and a review of whey pricing have not
17 been addressed in the national hearing. It should be noted
18 that the Carolina Order was not suspended until a national
19 hearing to could be held to resolve the issue of price
20 conflict, nor should a California Order be so delayed.

21 MR. BESHORE: Okay. That completes your presentation of
22 your testimony in Exhibit 185. Do you have, I think we have
23 already referred to, and described the exhibits in 186. Do you
24 have anything to add at this time, Mr. Schad?

25 MR. SCHAD: No, I don't.

1 MR. BESHORE: Okay. Very good. Mr. Schad is available for
2 cross-examination. I would move the admission of 185 and 186.

3 JUDGE CLIFTON: All right. So let me clarify, on Page 14
4 of 185, are we to leave the section number on the fourth line
5 up, blank as it is?

6 MR. BESHORE: Yes.

7 MR. SCHAD: I was just leaving it open. It probably could
8 be referred to Section 1000.

9 JUDGE CLIFTON: It could be what, Section 1000 or something
10 else?

11 MR. SCHAD: Yes.

12 MR. BESHORE: Or 1051, I think the blank is intended to
13 refer to any Order relating to 7(b).

14 JUDGE CLIFTON: All right.

15 MR. SCHAD: And that was my intention.

16 JUDGE CLIFTON: All right. Good. And then there's one
17 word I think we need to strike to conform with the way you read
18 the sentence on the previous page. This is Page 13, the last
19 full sentence starts out, three lines up with, "the witness
20 observed" and on the next line after the word "occur" you read
21 it in such way that we would strike in "IN". So look at it,
22 Mr. Schad, and see if that's what you want us to do.

23 MR. SCHAD: And, yes, please.

24 MR. BESHORE: Yes.

25 JUDGE CLIFTON: So we'll strike "IN".

1 MR. BESHORE: Thank you, your Honor.

2 JUDGE CLIFTON: You're welcome. Does anyone wish to
3 question Mr. Schad before determining whether you object to the
4 admission into evidence of either Exhibit 185 or 186?
5 Mr. English?

6 VOIR DIRE EXAMINATION

7 BY MR. ENGLISH:

8 Q. Good morning. Chip English.

9 This is exclusively with respect to Exhibit 186. And
10 exclusively as to Cooperative Exhibit 12.H. there's no number
11 pages, but this is The Average Wholesale Delivered Price of 40
12 Pound Blocks of Cheddar Cheese in LTL Lots.

13 JUDGE CLIFTON: All right. Let us figure out how to find
14 it. Can you help us find it, Mr. English?

15 MR. ENGLISH: Well, it is the page before the four graphs
16 at the end, so it is the fifth to the last, I think it is four.
17 I counted wrong, sorry. Yeah, it is the fifth to the last
18 page, so it is the page before the four graphs with the blue
19 lines. It is two columns at test, Wisconsin and West Coast.

20 BY MR. ENGLISH:

21 Q. Good morning, Mr. Schad.

22 A. Good morning, Mr. English.

23 Q. So for this chart, this the Wisconsin column, that is
24 the column where the wholesale deliveries are made, correct?

25 A. Delivered.

1 Q. Delivered, correct? That's correct?

2 A. In both columns it's delivered.

3 Q. Yeah. So do you -- do you know from Dairy Market News
4 or from your chart, where the plant, the first plant that
5 produced the product is located?

6 A. No.

7 Q. Do you know where precisely in Wisconsin, the West
8 Coast the deliveries are made?

9 A. No.

10 Q. These are wholesale sales, correct?

11 A. Yes, as listed, yes. As noted.

12 Q. Okay. So they could be sales after we have heard the
13 word converters, correct, in this hearing?

14 A. No, I think they are -- I think Dairy Market News calls
15 cheese plants in order to get these numbers.

16 Q. Okay. You are not aware that according to Dairy Market
17 News that there could be as many, in fact, at least three title
18 changes before this data is put together?

19 A. I'm not aware of that.

20 Q. Do you know for a fact that the Dairy Market News is
21 looking at, I mean, the title is Average Wholesale Delivered
22 Price, it doesn't use the word "plant," do you know for a fact
23 that it's related to sales by plants?

24 A. That's my understanding that Dairy Market News calls
25 plants, survey plants.

1 Q. Do you know what the distance of delivery is, like
2 what's the longest distance for the Wisconsin column for the
3 delivery?

4 A. I do not know.

5 Q. Do you know the longest distance for the West Coast
6 column?

7 A. I do not know.

8 Q. Do you know the shortest distance for the Wisconsin
9 column?

10 A. I do not know.

11 Q. Do you know the shortest distance for the West Coast
12 column?

13 A. I do not know.

14 Q. Do you know the average distance, or I column?

15 A. No.

16 Q. Do you know the transportation cost?

17 A. No.

18 Q. Do you know what the minimum size load is to qualify?

19 A. Less than a carload. All that's listed in Dairy Market
20 News is less than a carload.

21 Q. Okay.

22 JUDGE CLIFTON: Less than a car, all right, which is a
23 truck?

24 MR. SCHAD: Yes.

25 MR. ENGLISH: Which is less than how much?

1 MR. SCHAD: 40,000 pounds, my understanding.

2 BY MR. ENGLISH:

3 Q. It's not your understanding that Dairy Market News uses
4 loads ranging from 1,000 to 5,000 pounds?

5 A. No.

6 Q. Did you compare these columns to what is reported to
7 NDPSR for a week?

8 A. No, I thought they were like comparisons, that's why I
9 included them.

10 Q. Well, you say they are like comparisons, but as we
11 discussed earlier in this proceeding, the NDPSR --

12 A. No, I'm sorry, I'm sorry, if I might interrupt you,
13 there were like comparisons, they were on the same page, Dairy
14 Market News West Coast and West Coast and Wisconsin. I was not
15 comparing them to NDPSR.

16 Q. And you agree they are different from NDPSR, which is
17 FOB plant or storage facility, correct?

18 A. Say that again?

19 Q. NDPSR is FOB the plant or a storage facility, correct?

20 A. I believe that's correct.

21 Q. Okay. Going back to an earlier question, do you -- do
22 you have any reason to believe that these would include only
23 first sales of product, as with the NDPSR?

24 A. Again, it's my understanding that Dairy Market News
25 surveys dairy plants.

1 Q. If these were second or even third sales, that would
2 include upcharges, correct? In interim transactions?

3 A. I don't know the answer to that question.

4 Q. So this is 40 pound blocks of cheddar. Do you know
5 what kind of 40 pound blocks of cheddar are included in either
6 column?

7 A. I would think that 40 pounds of cheddar in both columns
8 would be similar.

9 Q. Do you know whether the products could include products
10 that might be aged more than 30 days?

11 A. I would assume that the Dairy Market News is asking the
12 similar questions to West Coast plants as well as Wisconsin
13 plants.

14 Q. I understand. But do you have any knowledge comparing
15 to what is reported to NDPSR of whether it's the same kind of
16 category?

17 A. I did not compare this to NDPSR.

18 Q. Do you know what products are included in each column?

19 A. 40 pound blocks of cheddar, as noted.

20 Q. Could they be 40 pound blocks of cheddar that don't
21 meet the reportable standard for NDPSR?

22 A. I don't know the answer to that question.

23 Q. Are you aware of statements made that price quotes may
24 be as much as 30 or 50 cents higher than FOB prices?

25 A. No.

1 Q. That's all the questions I have, your Honor.

2 JUDGE CLIFTON: Are there any other questions for Mr. Schad
3 before you determine whether you object to the admission of
4 these exhibits? Are there any objections of the admission into
5 evidence of Exhibit 185? There are none. Exhibit 185 is
6 admitted into evidence.

7 (Thereafter, Exhibit 185, was
8 received into evidence.)

9 JUDGE CLIFTON: Are there any objections to the admission
10 into evidence of Exhibit 186? Mr. English?

11 MR. ENGLISH: Your Honor, I object to Exhibit 12.H in
12 Exhibit 186. The witness doesn't know the basis for many of
13 the numbers. He says it's relevant to compare Wisconsin and
14 West Coast, but he doesn't know where the plants could have
15 been located, so by definition, the plants showing up in the
16 Wisconsin column could include the cost of delivering from
17 plants in California. In fact, we have had testimony of sales
18 from California plants to converters in Wisconsin. And, you
19 know, at some point data becomes meaningless. And in this
20 particular instance the witness' number of answers of "I don't
21 know" just constitute a point where the numbers are meaningless
22 and I don't think they are relevant and I object.

23 JUDGE CLIFTON: Mr. Beshore?

24 MR. BESHORE: Well, we have heard a lot of
25 cross-examination. I don't think it has anything to do with

1 admissibility. These are Dairy Market News published price
2 information, which have just been assembled in 12.H. They are,
3 I'm looking at the Annual Publication, USDA AMS Dairy Market
4 Statistics 2014 Annual Summary, Page 42, and you know, 41, I
5 guess, 43, whatever, they are AMS numbers. They are AMS
6 published numbers. The details are described in the AMS Dairy
7 Market Statistics Publications, which is a compilation of the
8 Dairy Market News weekly publication. It is perfectly
9 admissible and argument can be made about the significance of
10 it.

11 JUDGE CLIFTON: I agree with Mr. Beshore. Evidence is not
12 necessarily true, evidence is not necessarily helpful.
13 Nevertheless, over objection, the entire Exhibit 186 is
14 admitted into evidence.

15 (Thereafter, Exhibit 186, was
16 received into evidence.)

17 JUDGE CLIFTON: Now, let us begin questions for Mr. Schad.
18 Who would like to start? Mr. English, thank you.

19 CROSS-EXAMINATION

20 BY MR. ENGLISH:

21 Q. Good morning, again, Mr. Schad.

22 A. Good morning, again, Mr. English.

23 Q. Are you familiar with the Texas Cooperative Extension
24 for Texas A and M University system?

25 A. No.

1 Q. So if they published a report that details how Dairy
2 Market News collects the data that is in 12.H, you have never
3 seen that?

4 A. No, I have never seen a Texas A and M publication.

5 Q. Okay. And if contrary to your statement it is stated
6 that Dairy Market News contacts cheese manufacturers and
7 wholesalers throughout the United States to create the LTL
8 report, would that change your statement about what kind of
9 sales are included?

10 A. When was this study dated?

11 Q. Looks like it's August of 2003.

12 A. 2003?

13 Q. Yes.

14 A. I would say that it would be true in 2003.

15 Q. Have you done anything to check with Dairy Market News
16 to see whether they have changed what they do to report that
17 data?

18 A. No.

19 Q. So let's turn first to Page 8 of your testimony. And
20 Exhibit 185, what I would call the first full paragraph of the
21 second paragraph on the page carry over, and you have the
22 sentence there, sir, "As California finds inappropriate for a
23 CSO Order to adopt make allowances directly from the CDFA
24 manufacturing survey, so should the California Federal FMMO."
25 Correct?

1 A. That's what I wrote.

2 Q. Yes.

3 A. That's the conclusion of the preceding.

4 Q. Isn't it a fact that the California Dairies as recently
5 as mid-2014, asked CDFA to use the most recent CDFA
6 manufacturing cost study and the actual results to set make
7 allowances in California?

8 A. Read that again.

9 JUDGE CLIFTON: Your voice dropped, please.

10 MR. SCHAD: The whole sentence, please, Chip.

11 MR. ENGLISH: I understand, I'm sorry, just a little
12 congested today.

13 BY MR. ENGLISH:

14 Q. Isn't it a fact that CDI, California Dairies, as
15 recently as mid-2014, asked CDFA to use the most recent CDFA
16 manufacturing cost study to set California's make allowances at
17 the actual rates of the manufacturing cost survey?

18 A. I'm not -- I'm not representing CDI. I wasn't at that
19 hearing. I can't -- I can't testify whether that's a fact or
20 not.

21 Q. Have you ever attended a CDFA hearing before?

22 A. Once.

23 Q. Which one?

24 A. Way back, just after Paul left.

25 Q. That would be Paul Christ?

1 A. That would be Paul Christ.

2 Q. You and I knew who we're talking about, correct?

3 A. Yes.

4 Q. All right. Now, you are saying USDA should not use the
5 CDFA study on Page 8, but when I look at your Exhibit 12.G in
6 Exhibit 186 --

7 A. 12.G.

8 Q. 12.G, so one page in front of the one we were just
9 looking at.

10 A. 12.G, yes.

11 Q. Okay. And so when I look at 12.G and I look under
12 cheese, and your own testimony yesterday was that USDA did use
13 the results of the manufacturing survey from 2006, correct?

14 A. My testimony in the previous paragraphs noted that CDFA
15 did not just list -- lift off a weighted average price and plug
16 it into the formulas. They may have sometimes, but they, my
17 testimony -- my testimony previous, quoted the CDFA people at
18 the 2000 hearing, said that they did not and that it was, it
19 was a point of policy.

20 Q. Okay.

21 A. I was just trying to make the point that CDFA does not
22 just take the weighted average and plug it in. They may, the
23 result may be the same, but they do things in between looking
24 at the weighted average number and determining what the product
25 price formula make allowance would be.

1 Q. Okay. Thank you. My question, sir, was that, in fact,
2 looking at Exhibit 12.G, didn't USDA in 2007 or 2008 take the
3 2006 data from the CDFA's study and plug it in?

4 A. I would think that they -- that they reported the same
5 number. My guess is that there was a policy decision to do
6 that, and it was not just a copy one number here, copy one
7 number there. That there was deliberations within the AMS
8 before. I'm not saying it can't ever be done, but I'm saying
9 that there's a process between the two.

10 Q. And I'm asking you, sir, when you say USDA shouldn't do
11 that, and you said I guess they did something, isn't it
12 nonetheless a fact that in the end, using Exhibit 12.G, that
13 that's exactly what USDA, the result was, to take the CDFA cost
14 number from 2006?

15 A. The result? The result, yes. But I was having problem
16 with the characterization of plug, of the word "plug".

17 Q. I apologize for the plug. Nonetheless, that's what
18 USDA did. For whatever reason, that's what they did, correct?

19 A. That's the result, yes, I agree.

20 Q. And that result is based on 2006 data, correct?

21 A. Yes, I believe that's it.

22 Q. So we at least have 2011 data. Why not use at least
23 2011 data, which is more up-to-date?

24 A. At a national hearing, USDA may want to do that.

25 Q. Doesn't Land O'Lakes believe that USDA should use the

1 most recent cost studies to set make allowances?

2 A. We put a -- we did not, we supported a proposal in the
3 last make allowance hearings to do that. Actually, we
4 supported two of them, one was a fuel adjuster as well as a
5 proposal to ask USDA to do manufacturing cost surveys that the
6 Department terminated those proposals.

7 Q. Okay. But you agree that was Land O'Lakes' position
8 then, correct?

9 A. Land O'Lakes supported that position, yes, those
10 proposals.

11 Q. Okay. And I have -- can I have a document marked?

12 JUDGE CLIFTON: I'm sorry, what did you just say?

13 MR. ENGLISH: I want a document marked.

14 JUDGE CLIFTON: You want a document marked. Yes. While
15 the document is being distributed, Ms. Elliott, I believe we
16 will be marking this as 187. Do you agree?

17 MS. ELLIOTT: That's correct.

18 JUDGE CLIFTON: Thank you this will be Exhibit 187.

19 (Thereafter, Exhibit 187, was
20 marked for identification.)

21 JUDGE CLIFTON: Please raise your hand if you still need a
22 copy. It appears the document has been distributed.
23 Mr. Schad, would you like a moment to review it?

24 MR. SCHAD: I think it would take quite a few moments,
25 given the number of pages, but maybe we can see where

1 Mr. English wants to go with this first.

2 JUDGE CLIFTON: All right.

3 MR. ENGLISH: Your Honor, what I have distributed as
4 Exhibit 187 is a combination of three documents. The first
5 document, front and back, on the first page is a letter
6 addressed to Dana Coale, Deputy Administrator of USDA AMS Dairy
7 programs, plural, September 27, 2005.

8 JUDGE CLIFTON: And you noted when she introduced herself
9 today she used the plural. I think that's pretty
10 authoritative.

11 MR. ENGLISH: Well, maybe if we get done tomorrow, we can
12 ask about the S, but -- anyway, the first two pages are a
13 letter written by Dennis Schad, Land O'Lakes Director of
14 Regulatory Affairs, to the Department, that is a request for
15 emergency hearing on Class III and IV make allowances. The
16 next part of the exhibit is testimony of Dennis Schad, dated
17 January 24th, 2006, twelve pages. And the last part is
18 testimony of Dennis Schad on behalf of Land O'Lakes,
19 February 26, 2007, which is a seven-page statement. And I'm
20 actually hoping to be relatively brief, your Honor.

21 MR. SCHAD: I'm sorry?

22 MR. ENGLISH: I was explaining to the Judge, but also to
23 you, Mr. Schad, I'm hoping to be relatively brief about this.

24 JUDGE CLIFTON: He talks very fast, doesn't he, Mr. Schad?

25 MR. SCHAD: He does. It must be Maine, it can't be

1 Virginia.

2 MR. ENGLISH: Or Germany.

3 BY MR. ENGLISH:

4 Q. Does this document look to be authentic, Mr. Schad?

5 Each one has your name on it. Do you recognize them?

6 A. That's my signature on the first one. On the other two
7 are transcripts, or well, one is.

8 Q. I think they are the actual exhibits, so it is not the
9 transcript so much as the prepared testimony.

10 A. Yes. And yes, I would -- I would certify them, I guess
11 as being mine.

12 Q. Okay. And these represented the official position at
13 the time, of Land O'Lakes with respect to, at least for that
14 proceeding which you thought USDA should do?

15 A. Yes.

16 Q. Okay. Actually, it's, your Honor, that's all I have.
17 I would like to move their admission.

18 JUDGE CLIFTON: All right. Does anyone wish to question
19 Mr. Schad before determining whether you object? No one. Is
20 there any objection to the admission into evidence of
21 Exhibit 187? There is none. Exhibit 187 is admitted into
22 evidence.

23 (Thereafter, Exhibit 187, was
24 received into evidence.)

25 BY MR. ENGLISH:

1 Q. So to the extent that, at least in that proceeding,
2 Land O'Lakes position was that make allowances should use the
3 most recent data available, I think, let me say first, has the
4 position changed overall?

5 A. I would say no.

6 Q. Okay. If -- so let me see then, if I can characterize
7 what I think you are saying, is that the overall policy hasn't
8 changed, but I understand your position to be the time to take
9 that out is not at this proceeding but would be at a future
10 national hearing; is that correct?

11 A. In all of these things were Exhibit 187 were relative
12 to a national hearing, yes.

13 Q. Okay. So let me turn to your discussion about Carolina
14 for a moment. First, what's the relative volumes of milk
15 produced in Carolina to California?

16 A. I would -- I don't know the answer, but I would
17 characterize it California is much bigger than the Carolinas.

18 Q. And --

19 A. Is that adequate?

20 Q. Yes.

21 A. Thank you.

22 Q. And relative to the decisions as recent as 1989, the
23 Carolina Order was adopted in 1990, correct?

24 A. As far -- yes. Yes.

25 Q. Relatively contemporaneous with any decisions coming

1 out in 1989, correct? To the extent USDA came out with a
2 pricing policy in 1989, the Carolina adoption in 1990 was
3 contemporaneous, almost contemporaneous with whatever USDA did
4 in 1989, correct?

5 A. Yeah, 1990 follows 1989.

6 Q. Okay. And what USDA did at that time was, for
7 manufacturing prices, adopt the national policy of the Basic
8 Formula Price, correct?

9 A. In the Carolina Order, yes.

10 Q. Okay.

11 A. That's --

12 Q. Now, while there was an adjuster in the Basic Formula
13 Price for product values, the Basic Formula Price was
14 nonetheless based upon a competitive price series, correct?

15 A. Yes.

16 Q. Okay. And looking at what was going on in the
17 Carolinas, vis-a-vie a Department decision to move forward
18 without staying for whatever reason for national hearing, both
19 North Carolina and South Carolina had, due to Federal and State
20 court decisions, lost the ability to price milk coming from
21 outside, and at least also as to one of them prices inside,
22 correct?

23 A. I don't understand your phrase national hearing within
24 that question.

25 Q. Well, okay. You testified that you found it relevant

1 that in the Carolina proceeding USDA did not decide to hold off
2 putting in the Carolina Order until it could have a national
3 hearing to adjust any prices, correct?

4 A. Well, I was -- I was opining --

5 Q. Yes.

6 A. -- on the -- on the fact that there was a -- there was
7 a question brought up by a handler at that hearing that brought
8 up a price conflict, and that the Secretary nevertheless
9 decided as he decided on that compensatory payment issue, and
10 said that this, this issue would be best brought -- if I
11 characterize this, as language, his real language is in my
12 testimony -- said that it would be best brought up in a
13 national hearing. That's -- that was my -- and I don't know
14 where you are going to with the --

15 Q. Well, where I'm going with that is, isn't it the case
16 that the record of the Carolina promulgation hearing
17 demonstrates, and is based upon the idea that both states of
18 North Carolina and South Carolina had, as a result of judicial
19 decisions, lost the ability to price significant volumes of
20 milk?

21 A. I'm not sure of the word significant, but, yes. I
22 mean, that question in itself, and with no relation to the
23 other point of the national hearing, I agree to that, yes.

24 Q. Well, that might have impacted the Secretary's decision
25 about whether or not to wait for a national hearing, right?

1 A. No, I think he was -- he was -- I say they are two
2 different issues. You are bringing up the interstate pricing
3 of milk in the Carolinas and the loss of ability of each of the
4 states to price interstate movements of milk, and the other
5 question about compensatory payments, I'm not sure I see the
6 language.

7 Q. Well, would it not maybe go to the urgency of the
8 Department needing to move in an area where there's literally
9 lost the ability to price milk?

10 A. I don't know the answer to that. I don't, didn't read
11 that in the decision.

12 Q. Would you also agree that the question of reconstituted
13 milk in the scheme of things was pretty small in the Carolina
14 Orders?

15 A. I don't know the answer to that question.

16 Q. Okay. You're aware that, in fact, USDA did have a
17 national hearing the same year that it issued the Carolina
18 decision in 1990, correct? So-called 43-day hearing?

19 A. Yeah, that was on Class I differentials.

20 Q. No, I'm talking about the 43-day hearing was much more
21 than the Class I differentials, wasn't it?

22 A. I wasn't involved in that one.

23 Q. Are you aware that one of the few changes made on a
24 national basis from that proceeding was to adopt a provision
25 for dealing with the reconstituted milk issues?

1 A. I did not know that.

2 Q. Okay. It happens to be in now famous Section 76,
3 Paragraph D. Do you know how many handlers have ever used
4 76(d) after it was adopted from the 1990 hearing?

5 A. No.

6 Q. Okay. If I told you zero, would you disagree?

7 A. I'd just like to know how you know that.

8 Q. Unfortunately, I can't be cross-examined. I think
9 actually there might have been a question earlier in the
10 proceeding from USDA. So let's go now to Pages 5 and 6 and
11 your discussion with the heading, the Limited Financial Effect
12 of Depooling in Federal Orders. So I'm going to confess some
13 confusion about this section. If there is a limited financial
14 effect of depooling in Federal Orders, why did the industry ask
15 USDA, and why did USDA go to seven or maybe as many nine
16 hearings after Federal Order Reform in multiple orders to put
17 in provisions regarding repooling restrictions in order to deal
18 with the fact that there was a lot of milk that was not being
19 pooled and effectively was depooled?

20 A. My study, my cost survey was in 2014 subsequent to
21 those -- those proceedings.

22 Q. But we have seen significant volumes, according to
23 USDA's reports, that are still not being pooled, correct?

24 A. There are volumes that are not being pooled.

25 Q. Eligible milk not pooled, correct?

1 A. That's correct.

2 Q. And we still seeing some fairly significant
3 fluctuations in milk supplies from month to month, which you
4 actually show in some of your exhibits, correct?

5 A. I'm not, probably -- probably have to be a bit more
6 detailed for me to answer.

7 Q. Well, you --

8 A. The numbers are what they are.

9 Q. Looking at Exhibit 186, and, for instance, in 12.D now,
10 D as in dog --

11 A. Federal Order 30?

12 Q. Federal Order 30.

13 A. Yes.

14 JUDGE CLIFTON: Give us a minute to find it.

15 MR. ENGLISH: I was, your Honor.

16 JUDGE CLIFTON: Thank you. You may proceed.

17 BY MR. ENGLISH:

18 Q. Just byway of example, from September to October 2014,
19 you see a fluctuation of a drop from a month with 30 days to a
20 month with 31 days of 658 million pounds, correct?

21 A. Yes.

22 Q. So if there's a limited financial effect of depooling,
23 people are still doing it, correct?

24 A. People are still -- people are still depooling. I'm
25 not sure -- I'm not sure what -- okay.

1 Q. Well --

2 A. People are still depooling. The handlers are still
3 depooling milk.

4 Q. I mean, there's a -- ultimately, you have got to do a
5 financial analysis, and you have got to do the reporting, and
6 you have got to figure out, especially in Order 30, how it
7 impacts your repooling in the future month, correct?

8 A. That's correct.

9 Q. So if there was a limited financial effect, and there's
10 costs of the business, of doing it, doesn't that mean that
11 somebody is determined that the financial benefit of doing it
12 must have been enough to take the action so not to pool the
13 eligible milk, correct?

14 A. And, yes. But the limited financial effect was to try
15 to take those Federal Orders, which produced a lot of cheese,
16 and to estimate what the financial impact was, divided by the
17 pounds. So it, that was the limited financial effect that I
18 was trying to get to in my testimony.

19 Q. Limited -- okay. So it's really the impact on an
20 annualized basis on the pool that you have calculated, correct?

21 A. On the four pools individually.

22 Q. For individual --

23 A. Individual and collectively, yes.

24 Q. And so -- so when you look at 12.D, what you have
25 calculated in the bottom line, which is the value of depooling

1 the total volume at 0.015 cents?

2 A. A cent and a half, yes.

3 Q. I'm sorry, so a cent and a half.

4 A. Yes.

5 Q. Thank you for the correction. So a cent and a half.

6 That, another way of putting that is, for the year of, for
7 2014, that was the annualized impact to the blend price for
8 Order 30, correct?

9 A. For depooling, depooling Class III milk.

10 Q. Yes. Correct?

11 A. Depooling Class III milk.

12 Q. But -- but, yes, you are agreeing that that's the
13 annualized, of the impact of not -- I'm trying to take what I
14 have heard from USDA as the way -- of milk eligibly pooled, not
15 pooled, one and a half cents was the -- was the impact of not
16 pooling Class III milk annually for 2014, correct?

17 A. Yes.

18 Q. But an individual business wouldn't look at the
19 financial impact on the pool, they would look on the financial
20 impact for that business, correct?

21 A. Sure.

22 Q. Okay. So when you go back now to 12.C, which is
23 Order 124, you have calculated the impact on the pool of
24 eligible milk not pooled regarding Class III for 2014 as 23.7
25 cents, correct?

1 A. That's correct.

2 Q. Okay. Did you do the math to show what the impact was
3 for the businesses that did that for the months that they did
4 it?

5 A. I was not, I did not have the information to do that
6 impact.

7 Q. Well, but you would have the information at least as to
8 the businesses in aggregate who did it, correct?

9 A. I -- I think I'm trying, I think I tried to show that
10 in the column called extension.

11 Q. Okay. So in the column called extension, I mean, I'm
12 looking at the February, 25 cents; April, 40 cents;
13 September, very small volume of 42 cents; October volume \$1.10;
14 and November \$1.88. You didn't show us the average for those,
15 did you?

16 A. The average for those?

17 Q. Well, if you did, you have got a line of 877,368,992
18 which is the total pounds eligible milk not pooled, Class III,
19 correct? For 2014?

20 A. If you wanted to do that, the same kind of analysis, I
21 guess you would, there's enough information for you to do it
22 here. You could go and the estimated depooled with the actual
23 Class III, and make that division, but I was, I was looking, I
24 was trying to purport it different.

25 Q. Okay. I understand, you were reporting the impact on

1 the pool, and I'm just asking, you are reporting -- I'm sorry,
2 an overall Class III impact, correct?

3 A. Yes. Well, actually milk used to produce cheese.

4 Q. Okay. So I stand corrected. It's actually not, I get
5 that. I'll take that correction.

6 MR. BESHORE: There's a lot to correct.

7 MR. ENGLISH: Well, but --

8 JUDGE CLIFTON: Let me stop you there, Mr. English, I want
9 to hear from Mr. Beshore as to his concern, and then,
10 Mr. English, you may resume.

11 MR. BESHORE: My concern is there's been a lot of
12 misstatement and incorrect information in this recent
13 examination. The impacts, as Mr. Schad explicitly in detail
14 stated in his direct testimony, the impact is on the Class III
15 milk, not on the pool. It's on milk, it's a per hundredweight
16 calculation on total milk used to produce cheese, not on the
17 blend price or the pool.

18 MR. SCHAD: I'm -- go ahead, Chip.

19 MR. ENGLISH: I think I accept that correction, your Honor.
20 And you would, too, Mr. Schad.

21 MR. SCHAD: I'm sorry. I mischaracterized.

22 MR. ENGLISH: And I'm sorry, I wasn't intending to, so I
23 accept that -- that correction. So all my earlier statements
24 would be the Class III cheese and not the pool.

25 BY MR. ENGLISH:

1 Q. But my central point remains that it could be
2 participants who are not pooling all their milk who get a
3 benefit that is greater than that average on annual basis.
4 Correct?

5 A. I have no idea.

6 Q. Okay. And, in fact, when someone does it in an
7 individual month, they are picking up that value in the
8 individual month, correct?

9 A. Yes.

10 Q. Okay. So if in the columns for value of FMMO 124
11 depooling, where you have the estimated depool PPD and the
12 extension, and you have got the volume of 877,368,992 pounds,
13 and dollars of \$8,727,605, you agree it would be easy to do the
14 calculation for the number that's not there, which is the
15 middle column, which is the impact as price impact, correct?
16 Basically an average of 25 cents, the 40 cents, the 42 cents,
17 the \$1.10, \$1.88 at a weighted basis, right? You could do that
18 math, correct?

19 A. Your -- and what you would -- and what would be your
20 divisor?

21 Q. Well, I'm asking, couldn't you take a weighted average
22 of the 25 cents?

23 A. If that's the question can you take a weighted average?
24 Sure, sir, you can take a weighted average.

25 Q. And that would be a much bigger number. I mean, none

1 of those numbers are less than 25 cents, correct?

2 A. You would be taking a weighted average of a negative
3 PPD, I'm not sure what you would get with it, but --

4 Q. Well, I'm not sure what we're getting at 23.7. I'm
5 asking, isn't the impact for the individual businesses who make
6 the decision to depool something different from the limited
7 financial impact of depooling on Federal Orders?

8 A. I don't know. I was -- I was -- I was trying to
9 calculate or estimate what the value was, and I thought the
10 most relevant divisor would be on the estimated milk used to
11 produce cheese in that Order. So that's -- that's what I was
12 trying to calculate and show.

13 Q. Okay. If an individual business for an individual
14 month is looking for a marginal value, it may look at it
15 differently, correct?

16 A. It's -- yes. You can't say no to that question.

17 Q. Okay. So turning to Page 2 of your testimony. And in
18 a way you started to get there yesterday, but then you didn't
19 go all the way there. You -- under heading 1, you have pooling
20 Milk in FMMO 1. And at one point during additional examination
21 from Mr. Beshore, you acknowledged that, and I think I wrote it
22 down correctly, that for the Northeast Order, the PPD is rarely
23 negative, correct?

24 A. That's correct.

25 Q. Okay. In fact, is it the case that for the timeframe

1 from 2009 to the present, it's only been negative in the month
2 of October 2012?

3 A. I don't know that to be a fact, but I do know that it's
4 rarely a negative, you know, it depends on how you zone it out,
5 whether -- whether that's true. I guess you were using the
6 base zone.

7 Q. Are you using the base zone?

8 A. But it could have a different effect if you zone it
9 out.

10 Q. I understand. But nonetheless, if it's rarely a
11 negative PPD, it could be the fact that the PPD is not negative
12 as much if not more than the restrictions in that market for
13 repooling, correct?

14 A. Ask that question again, please.

15 Q. If we haven't had the experience that we have had in
16 other orders with multiple months of a negative PPD, we don't
17 really know, then, the reason why the milk doesn't get
18 depooled, do we?

19 A. That's correct.

20 Q. Thank you.

21 A. I --

22 JUDGE CLIFTON: Did you want to add to that, Mr. Schad?
23 You are welcome to.

24 MR. SCHAD: No, that's fine.

25 BY MR. ENGLISH:

1 Q. So turning now to Part 2 of your testimony, on Page 2,
2 carrying over to Page 3, this is Exhibit 185. And you're
3 discussing on Page 3, just above Part 3, the idea that prices
4 in New York and Pennsylvania are \$1.06 above Federal Order
5 minimums. Do you see that?

6 A. Yes. We're talking about my Exhibit 12.B, yes.

7 Q. Okay. So we're talking about 12.B, and in your
8 analysis of it in your testimony, correct?

9 A. Yes.

10 Q. Okay. Now, you don't mean to imply that those premiums
11 for January through March of 2013, that average the Northeast
12 to be \$1.06 are based solely on Class III, do you?

13 A. No.

14 Q. Okay.

15 A. They are above Federal Order minimums, yes.

16 Q. But the federal minimums include for the premiums on
17 Class I correct?

18 A. The \$1.06 would include all premiums.

19 Q. Which includes premiums on Class I, correct?

20 A. That's correct.

21 Q. And premiums on Class II, correct?

22 A. That would be correct. Well, in a way would USDA was
23 reporting premiums, the average premiums paid the producers,
24 just the distinction now you are talking about premiums in
25 another sense. Premiums paid by manufacturing plants and

1 Class I plants to handlers.

2 Q. By definition, in order to get to the producers,
3 somebody's got to be paying those dollars, correct?

4 A. I -- I could parse that, but generally speaking, that's
5 true.

6 Q. Okay. So I don't want to spend a lot of time on
7 Pennsylvania --

8 A. Neither do I.

9 Q. Nonetheless --

10 A. We do that much too often.

11 Q. I understand that. But nonetheless, for this record,
12 the Pennsylvania Marketing Board, for instance, maintains a
13 premium to be paid by handlers to producers or the
14 Cooperatives, based on milk produced, processed, and sold, in
15 Pennsylvania that is in Class I, correct?

16 A. Yes, the PMMB premiums is a mandated premium paid on
17 the milk produced, processed, and sold in, by Pennsylvania
18 handlers to Pennsylvania dairy farmers through their handlers.

19 Q. And that premium is presently how much?

20 A. Help me out here.

21 Q. \$1.85?

22 A. Good enough.

23 Q. Plus a fuel adjuster?

24 A. Plus a fuel adjuster.

25 Q. No, not anymore? That includes the fuel adjuster. I

1 haven't been there as much as Mr. Beshore and his client.

2 A. \$1.85 including the fuel adjuster, yes, that's correct.

3 Q. So you know, when you talk about the Northeast and its
4 competitive conditions, if there's premiums on Class III, that
5 could also represent the value of cheese sold in the Northeast,
6 correct?

7 A. It could represent a lot of things.

8 Q. Okay.

9 JUDGE CLIFTON: Mr. English, would you say again the name
10 of that Pennsylvania Board that gets the money?

11 MR. ENGLISH: Well, the Board doesn't get the money, they
12 would never -- so let's first give you the name, the
13 Pennsylvania Milk Marketing Board, otherwise known as the PMMB.
14 But to be clear, while that Board, by regulation or Order, sets
15 the level of that premium to be paid by Class I processors on
16 milk produced, processed, and sold in Pennsylvania, it does not
17 collect those dollars.

18 JUDGE CLIFTON: Ah, and do those dollars ultimately go to
19 the producers?

20 MR. ENGLISH: Handlers pay their suppliers based upon their
21 volumes, and then it can be divided up and blended and things
22 like that, so it gets a little more complicated than that, but
23 yes.

24 JUDGE CLIFTON: All right. And do you agree with
25 Mr. English's characterization, Mr. Schad?

1 MR. SCHAD: Yes.

2 JUDGE CLIFTON: Thank you.

3 BY MR. ENGLISH:

4 Q. Now, above that section you have referenced using a
5 measure, using the same measure as the Dairy Institute, but for
6 six states, Wisconsin, New York, Pennsylvania, Iowa, South
7 Dakota, and Minnesota, and you say that represents 51 percent
8 of the nation's cheese production.

9 A. I'm sorry, I think you are now --

10 Q. Very same page.

11 A. It's just, we're going to Exhibit 12.

12 Q. No, I'm on page 185. Exhibit 185, I am essentially on
13 Page 3. I know that it comes over to the exhibits a little
14 bit, but I'm on Page 3 of Exhibit 185.

15 A. And you are at the top of the page.

16 Q. And I'm now at the top of the very same page, where I
17 was discussing the premiums.

18 A. Yes.

19 JUDGE CLIFTON: All right. Stop interrupting each other,
20 thank you.

21 MR. ENGLISH: Thank you, your Honor.

22 BY MR. ENGLISH:

23 Q. And your statement is that yes, it does relate back to
24 the Exhibit 12.A, but I'm looking at the text, you state that
25 "those six states represent 51 percent of the nation's cheese

1 production." Is that correct?

2 A. That's correct. That's what I stated.

3 Q. Would you agree that 47 percent of the country's
4 American cheese production, if you drew a line from Montana
5 down to New Mexico and went west, would you agree that 47
6 percent of the American cheese production is from that line
7 West?

8 A. I don't know the answer to that question.

9 Q. Okay. You further state, and I admit at this second
10 I'm not going to find it, you do an analysis and conclude that
11 in essence, California as to cheddar cheese, is --

12 A. Yes.

13 Q. -- not on surplus state, but effectively a deficit
14 state, correct?

15 A. I believe that one could argue as one were.

16 Q. One might conclude that, but were you here for the day
17 that Dr. Stephenson testified?

18 A. No, I wasn't.

19 Q. Did you have occasion to look at his testimony at all?

20 A. I'm sure I skimmed it, but no, I didn't.

21 Q. All right. So have you -- okay. I'm trying to live up
22 to the agreement not to ask about the earlier study, so I'm
23 pausing for a second to think about how to ask this question.

24 JUDGE CLIFTON: Would this be a good time for our morning
25 break?

1 MR. ENGLISH: It is up to you, your Honor.

2 JUDGE CLIFTON: Let's do it. Please be back and ready to
3 go at 10:55. 10:55 we'll go back on record.

4 (Whereupon, a break was taken.)

5 JUDGE CLIFTON: We're back on record at 10:55. I'm pleased
6 to note the presence of Ryan Miltner, and he was listening in
7 after he completed his business call. All right.

8 Mr. English, you may proceed.

9 BY MR. ENGLISH:

10 Q. So, Mr. Schad, I'm still or, I'm not still, I'm back on
11 Page 3 --

12 A. 3.

13 Q. And looking at your discussion about Exhibit 12.B and
14 the ability in the Northeast to pay premiums. So if national
15 pricing of competitive prices, permits payment of premiums --
16 let me strike that.

17 Does national pricing, minimum regulated pricing, which
18 is the result of competitive prices, permit the payment of
19 premiums above minimum Class III?

20 A. I didn't -- you put in -- you talked about national
21 prices and competitive prices --

22 Q. I apologize.

23 JUDGE CLIFTON: Yeah, so when I asked you not to interrupt
24 each other, that's to both of you, you know. Even if he's got
25 a flawed question, let's let him finish it before you point out

1 that you cannot answer it because of the problem. All right.
2 Start again, Mr. English.

3 BY MR. ENGLISH:

4 Q. I'm going to try to change it, your Honor.

5 MR. HILL: Your Honor, quickly, I just want, for the
6 record, to let it show when he talks about 12.B, 12.C and 12.E,
7 he's actually talking about Exhibit 186, Table 12.C or
8 Exhibit 12.C within Exhibit 186, just for the record. So
9 people listening know it is actually Exhibit 186, not Exhibit
10 12.B on our list.

11 JUDGE CLIFTON: Yes, that's very helpful.

12 MR. ENGLISH: Thank you, Mr. Hill. I think we have all
13 sort of done that. We have multiple exhibit numbers within
14 exhibits. If we had gone back to Day 1 we might have used
15 attachments, but we didn't. So, we're not going back to Day 1.
16 All right.

17 BY MR. ENGLISH:

18 Q. All right. Let me see if I can ask the question a
19 different way. Cheese makers in the Northeast are able to buy
20 milk for cheese in the market where the minimum regulated price
21 allows for the competitive market to adjust prices upward,
22 correct?

23 A. There is testimony that cheese makers across the
24 country pay prices above federal minimums.

25 Q. And where that is happening, that's because the federal

1 minimum is a minimum and allows the market to operate above the
2 minimum, correct?

3 A. It could happen for a multitude of factors.

4 Q. But that is one of the reasons why it can happen?

5 A. That is one of the reasons it might happen.

6 Q. You have discussed in your statements, starting on
7 Page 3 over to Page 5, but in particular on 5, above Part 4
8 where you are discussing this idea of a Hilmar premium,
9 hypothetically of 25 cents.

10 A. I did --

11 Q. Okay.

12 A. I did not say Hilmar.

13 Q. I'm sorry.

14 A. It was a hypothetical cheese plant.

15 Q. I'm sorry. I'm sorry. I confused because I read
16 Hilmar's testimony, so I apologize that I connected that dot.
17 So it is a hypothetical premium of 25 cents, correct?

18 A. Yes. In a hypothetical example, yes.

19 Q. If the minimum price, the regulated minimum price,
20 rises by more than that 25 cents, it may very well be that that
21 premium disappears, correct?

22 A. I don't see the connection.

23 Q. If today in California there's a hypothetical premium
24 of 25 cents being paid on Class III milk, and the minimum
25 regulated price goes up by 50 cents, wouldn't you expect that

1 premium of 25 cents to disappear?

2 A. Not necessarily. That 25 cents could be tied to
3 services irrespective of the minimum price of milk.

4 Q. Okay. So if the 25 cents is connected to services
5 that's not connected to the minimum price for the milk, why
6 would a seller agree, in your hypothetical, to lower that price
7 in order to assist the buyer?

8 A. In my hypothetical, again, I'm pointing to Hilmar who
9 said that their under class price was \$2.27 was it, or \$2.24,
10 plus transportation. So if you, you are using the \$2.50
11 number, if you could sell your incremental milk at your plant
12 in California rather than transportation out-of-state, it
13 would -- it would work for both plants.

14 Q. But if the seller is collecting a service charge so it
15 is not the value of the milk, but it is a service charge, then
16 what incentive does it have to basically subsidize the service
17 charge?

18 A. Well, the seller is trying to make an economic decision
19 where it would cost more to move those incremental ten loads of
20 milk than it would be to forego the service charge, that would
21 be the -- that would be the rational the rationality of that
22 decision.

23 Q. You agree that if the minimum regulated price were to
24 increase, that the room above the minimum regulated price to
25 pay competitive premiums would likely be less?

1 A. Again, there -- there premiums are paid for a multiple,
2 a multiple number of things.

3 Q. Okay. Well, let me go, then, to your testimony about
4 sales below Federal Order minimum prices more specifically, and
5 looking at Page 4.

6 A. Page 4.

7 Q. On Exhibit 185?

8 A. I'm there.

9 JUDGE CLIFTON: Mr. Vierra, would you close the back door
10 for me? I'm getting noise. Thank you. Mr. English, you may
11 proceed.

12 MR. ENGLISH: Thank you, your Honor.

13 BY MR. ENGLISH:

14 Q. So this analysis that you discuss on the first full
15 paragraph, which is a paragraph after the carry over paragraph,
16 you asked your accounting department to report volumes of milk
17 sold at under class prices for all of 2014; is that correct?

18 A. That's correct.

19 Q. Okay. Did you break it down by month?

20 A. Did I break it down by month? I believe there was a
21 monthly break down, yes.

22 Q. Do you have that information for us?

23 A. I do not have it with me.

24 Q. Do you agree that annual aggregate data could mask what
25 might be going on in an individual month?

1 A. I agree that an average is an average, and we're
2 averaging twelve months.

3 Q. Wasn't 2014 a tale of two halves, the first half being
4 very different from the second half?

5 A. In which way do you mean that, Mr. English?

6 Q. I mean, the market conditions existing in the first six
7 months of 2014 were significantly different than the market
8 conditions in the second half of 2014?

9 A. I would agree with that characterization.

10 Q. And wouldn't it be more likely that you would have seen
11 distressed milk in the second half of 2014?

12 A. I believe that's true. That's also -- I believe that's
13 true.

14 Q. Okay. And you asked for 2014 data. And I assume this
15 was done as rebuttal, so by the time, when did you ask for this
16 data from your accounting department?

17 A. Oh, I don't know. Four weeks ago, three weeks ago.

18 Q. So by that time they would have had data through
19 September of 2015, correct?

20 A. Yes.

21 Q. Okay. But you didn't ask for the data for 2015?

22 A. That's correct.

23 Q. And hasn't there been a significant -- at least Dairy
24 Market News has reported instances of distressed sales in 2015?

25 A. I have heard that.

1 Q. Thank you. That's all I have.

2 JUDGE CLIFTON: Who next will question Mr. Schad? I'll
3 invite redirect and then I'll ask if the USDA employees have
4 questions.

5 REDIRECT EXAMINATION

6 BY MR. BESHORE:

7 Q. Marvin Beshore. Just a couple of questions, Mr. Schad.

8 First of all, a couple of questions on pricing in the
9 Northeast and marketing in the Northeast. With respect to the
10 PMMB premium which Mr. English called to your attention, with
11 which you are quite familiar, can you tell us what portion of
12 milk produced in Pennsylvania that premium applies to?

13 A. Yes, when you take -- when you take that subsection of
14 milk produced, processed, and sold as Class I in the State of
15 Pennsylvania and divide that by the volume of milk produced in
16 Pennsylvania, you come to a percentage of between 10 and 15
17 percent.

18 Q. So if we wanted to, you know, have some idea of what
19 impact it had on the, you know, on average premiums in
20 Pennsylvania, to say nothing of other -- in Pennsylvania,
21 forget about other areas in the Northeast, we could apply that
22 percentage to the premium that you have indicated was reported
23 by the Market Administrator, apply that percentage to the PMMB
24 premium, to see what it generates on a blended basis on
25 Pennsylvania farms?

1 A. Right. I guess you could take 15 percent of \$1.85 and
2 hold that and compare that to the \$1.06.

3 Q. And -- okay. Now, with respect to the PPD in the
4 Northeast. I think that on one of your, one of your tables on
5 the, comparing the -- one of your graphs, you showed, you
6 calculated and showed an average -- an average PPD in the
7 cheese producing areas in Order 1?

8 A. Yes, Exhibit 12.A of Exhibit 186.

9 Q. Thank you.

10 A. At the bottom of the line, as I spoke in my direct
11 testimony, what I tried to do was to estimate the average --
12 the average, the impact to the PPD at -- the average impact to
13 the PPD and the cheese making areas of those states.

14 Q. Okay. So in New York it was minus 75?

15 A. That's correct.

16 Q. Okay.

17 JUDGE CLIFTON: Just to be clear, that's 75 cents, correct?

18 MR. BESHORE: Correct. Per hundredweight.

19 MR. SCHAD: That's correct.

20 JUDGE CLIFTON: Thank you.

21 BY MR. BESHORE:

22 Q. Okay. So if you were looking at the Order 1 milk shed
23 and whether there were PPD-related incentives to depool, you
24 couldn't use the Boston announced price, you would have to
25 certainly reduce that by the minus 75 that you show on Exhibit

1 7.A for New York location?

2 A. Right. I believe I said that in cross-examination, and
3 that would be for cheese.

4 Q. Okay.

5 A. Cheese processors.

6 Q. Now, are there times in Order 1, where but for the
7 limitations of the dairy farmer for other market provisions,
8 there would be incentives to depool classes other than
9 Class III, such as Class II milk?

10 A. Yes.

11 Q. Okay. And even, I guess, potentially Class IV milk?

12 A. I have never seen it done, but it's possible.

13 Q. Okay. And is it your testimony that the -- that the
14 provisions of that Order, nevertheless, result in milk being
15 pooled generally all the time?

16 A. Definitely. Yes.

17 Q. Okay. Now, with respect to Exhibit D, E, and F -- C,
18 D -- 186, 12.C, D, and F, your calculations on the depooling,
19 value of depooling, I think we got this clear. I don't want
20 there to be any question. These are calculations with respect
21 to the average impact on milk used to produce cheese but pooled
22 and depooled in these Orders, correct?

23 A. That's correct.

24 Q. Okay. And the purpose for making these calculations in
25 this proceeding was to evaluate whether the mandatory pooling

1 under Proposal 1 would place California cheese makers at a
2 substantial disadvantage with Federal Order cheese makers,
3 correct?

4 A. That's correct.

5 Q. Who did not have -- who have the opportunity to elect
6 not to pool from time to time.

7 A. The outside California does, inside California does
8 not.

9 Q. Okay. And when you -- when you determine that in, for
10 instance, the number one cheese order in the Federal Order
11 system, Order 30, the average impact on cheese makers there,
12 the ability to depool is, or I shouldn't say cheese makers, I
13 should say the average impact on handlers pooling milk used to
14 produce cheese, is, what, a penny and a half per hundredweight?

15 A. That's correct.

16 Q. Okay. Now, in your opinion, when mandatory pooling in
17 California plays California cheese persons plants, handlers,
18 with milk used to produce cheese at a competitive disadvantage,
19 with those in Order 30?

20 A. No.

21 MR. ENGLISH: Objection.

22 JUDGE CLIFTON: Let me hear the objection, remember the
23 question if you can, Mr. Schad.

24 MR. ENGLISH: Is he asking the questions about the
25 aggregate or individual businesses? So my objection is, it's

1 not clear what he's asking about, and I think the answer is
2 different.

3 MR. BESHORE: The answer is addressed to the aggregate.

4 MR. SCHAD: And the answer is no, I do not believe that I
5 would put California at competitive disadvantage given the
6 example of the Exhibit 12.D, where it shows that the impact
7 cheese makers in Order 30 was one and a half cents across the
8 entire year.

9 BY MR. BESHORE:

10 Q. And with your calculations of a weighted average across
11 the multiple of Federal Orders, weighted average impact of
12 electing not to pool milk used to produce cheese, would the
13 answer be the same with respect to the system, broadly?

14 A. The answer is yes.

15 Q. Thank you, Mr. Schad. I have no further questions on
16 redirect, your Honor.

17 MR. MILTNER: Ryan Miltner, Counsel for Select Milk.

18 RE CROSS-EXAMINATION

19 BY MR. MILTNER:

20 Q. If you could look at Page 6 of your testimony.

21 A. Yes.

22 Q. And then turn to page, Exhibit 12.E of your exhibits.

23 A. Yes.

24 Q. Okay.

25 JUDGE CLIFTON: So just for the record, that's 12.E of

1 Exhibit 186.

2 MR. MILTNER: That's correct.

3 BY MR. MILTNER:

4 Q. And I think that there's a discrepancy between the
5 number in the third to last line of your testimony on Page 6,
6 and the calculated value of depooling on Exhibit 12.E.

7 A. Yes. I see it.

8 Q. And I have looked at the numbers and I think the number
9 on the exhibit is correct. Would you agree with that?

10 A. Yes. And I should change the testimony number to that
11 number, which is five and a half cents.

12 Q. Okay. So we'll strike \$0.045 and replace it with
13 \$0.055.

14 A. Please.

15 Q. Thank you. That's all I have.

16 JUDGE CLIFTON: Ms. Elliott, I know you just nodded yes,
17 but just to confirm, we're talking about the third line up from
18 the bottom of page 5, and we are striking the 45 and making it
19 55, correct?

20 MS. ELLIOTT: Yes.

21 JUDGE CLIFTON: Mr. English.

22 RE-CROSS-EXAMINATION

23 BY MR. ENGLISH:

24 Q. Chip English. A follow up to Mr. Beshore.

25 You discussed your aggregate and the -- you didn't

1 conclude the Southwest Order, right?

2 A. No, I did not.

3 Q. And the Southwest Order is another Order that does not
4 have any repooling restrictions, correct?

5 A. No, it did not.

6 Q. Okay. Thank you. That's all I have.

7 A. Thank you.

8 JUDGE CLIFTON: All right. Are there any other questions
9 before I ask for questions from USDA employees? None. Are
10 there questions from the USDA employees?

11 RE-CROSS-EXAMINATION

12 BY MR. HILL:

13 Q. Brian Hill. Just in a follow up to Mr. Miltner.

14 If you look at Page 6 of your testimony, which is
15 Exhibit 185, I just want to make sure that last sentence, that
16 correction does not change anything in your final calculation
17 of the weighted average impact, it is still 4.2 cents?

18 A. No, I did the weighted average from the same Excel
19 file.

20 Q. Okay.

21 A. So I trust it's the same numbers carried over. It was
22 a problem in transcription onto the written testimony.

23 Q. Thank you very much.

24 JUDGE CLIFTON: Are there any other questions for Mr. Schad
25 on this topic? Mr. Schad, do you expect to be recalled on

1 another topic?

2 MR. SCHAD: No, I do not.

3 JUDGE CLIFTON: Do you think you are through with your
4 testimony at this particular hearing?

5 MR. SCHAD: I believe so.

6 JUDGE CLIFTON: Last chance, does anyone have any questions
7 for Mr. Schad? Mr. Schad, I personally would like to thank you
8 for all of the hard work, particularly appreciate all of the
9 data analysis done by every witness here. It is very difficult
10 and very helpful. Thank you.

11 MR. SCHAD: You're welcome.

12 JUDGE CLIFTON: Mr. Beshore?

13 MR. BESHORE: Our next witness is Mr. Lon Hatamiya and he
14 will be presented by Mr. Vlahos.

15 MR. VLAHOS: Your Honor, the written prepared testimony of
16 Mr. Hatamiya is being distributed. I believe that would be
17 Exhibit 188. Am I correct on that?

18 JUDGE CLIFTON: You are correct. Ms. Elliott, we'll mark
19 this as Exhibit 188.

20 MS. ELLIOTT: That's correct.

21 (Thereafter, Exhibit 188, was
22 marked for identification.)

23 MR. VLAHOS: Your Honor, Mr. Hatamiya has been sworn.
24 Would you want to admonish him about his testimony?

25 JUDGE CLIFTON: It appears the document has been

1 distributed. Welcome, Mr. Hatamiya.

2 MR. HATAMIYA: Thank you very much.

3 JUDGE CLIFTON: You remain sworn. Will you please again
4 state and spell your name?

5 MR. HATAMIYA: Yes, it's Lon Hatamiya. First name is
6 L-O-N, my last name is H-A-T-A-M-I-Y-A.

7 JUDGE CLIFTON: Mr. Vlahos, you may proceed.

8 MR. VLAHOS: Thank you, your Honor.

9 DIRECT EXAMINATION

10 BY MR. VLAHOS:

11 Q. Mr. Hatamiya, good morning.

12 A. Good morning.

13 Q. Now, because the issue has come up in these
14 proceedings, have you been asked by the co-ops to do an
15 analysis on the matter of the cost of doing business in
16 California?

17 A. Yes, Mr. Vlahos, I have.

18 Q. And you have prepared testimony that has been
19 distributed on that subject; is that correct?

20 A. That is correct.

21 Q. Now, Mr. Hatamiya, your previous testimony have
22 indicated that you served as the Secretary of Technology, Trade
23 and Commerce for the State of California during the period, I
24 think, 1999 to 2003; is that correct?

25 A. That is also correct.

1 Q. And during your service as Secretary, did you have
2 occasion to have to deal with the issue of the cost of doing
3 business in California?

4 A. I had the regular occasion of dealing with the cost of
5 doing business in California, especially in light of the
6 competition across the country.

7 Q. Could you elaborate the kinds of things you had to do
8 in that connection?

9 A. Well, we were under constant attack in California for
10 being the costliest state to do business, and I always had to
11 point out that that was not the case. That we, not only became
12 the eighth largest economy for a reason, but there are many
13 competitive areas of the state that were very positive for
14 doing business from many different types of industries.

15 Q. And so you have sort of done an analysis of the same
16 subject for the purpose of this proceeding, correct?

17 A. I have. I have looked at many different types of
18 studies, the sources of data, and done my own analysis of the
19 validity of those studies.

20 Q. Okay. And now --

21 JUDGE CLIFTON: May I interrupt, the eighth largest economy
22 compared to what?

23 MR. HATAMIYA: Eighth largest economy in the world.

24 JUDGE CLIFTON: Thank you.

25 BY MR. VLAHOS:

1 Q. In fact, I think there's been previous testimony,
2 California would be ahead of countries like India and Russia?

3 A. Brazil, Italy, many of the large countries, that's
4 correct.

5 Q. Okay. You now can proceed with your written testimony.
6 I caution you when you read it, you do this well anyway, but
7 let's make sure you read it slowly and deliberately for the
8 benefit of the reporter and everybody here and everybody whose
9 listening online.

10 A. Absolutely. Thank you.

11 JUDGE CLIFTON: Mr. Hatamiya, I'm going to ask you to start
12 with cover page.

13 MR. HATAMIYA: Yes.

14 JUDGE CLIFTON: I would like you to read everything on it
15 before you turn the page.

16 MR. HATAMIYA: The cover page states, as is my testimony is
17 entitled, The Comparative Cost of Doing Business in California,
18 November 2015, Central Valley Communities are Competitive with
19 the Rest of the Nation, Prepared for California Dairies,
20 Incorporated, Dairy Farmers of America, Incorporated, and Land
21 O'Lakes, Incorporated, Lon Hatamiya, MBA, JD, President and
22 CEO, the Hatamiya Group.

23 Let me turn to the first page. Again, the title, The
24 Comparative Cost of Doing Business in California, Central
25 Valley Communities are Competitive with the Rest of the Nation.

1 My name is Lon Hatamiya. I'm the President and CEO of
2 The Hatamiya Group, an economic and strategic advisory
3 consulting firm located in Davis, California. I was retained
4 by California Dairies, Incorporated, Dairy Farmers of America,
5 Incorporated, and Land O'Lakes, Incorporated, ("Cooperatives")
6 to provide an independent and objective analysis of the cost of
7 doing business in California. I have been asked to respond to
8 the assertion that the current cost of doing business in
9 California, when combined with the creation of a Federal Milk
10 Marketing Order, will place California cheese makers at a
11 competitive disadvantage with the rest of the nation.

12 1. Introduction--Cost of Doing Business

13 Through my extensive professional experience and
14 expertise, I believe I bring a unique perspective to this
15 analysis. From 1993 to 1997, I served as Administrator of the
16 Agricultural Marketing Service of the United States Department
17 of Agriculture ("USDA") where I oversaw over 50 Federal
18 programs, including the Federal Milk Marketing Order ("FMMO")
19 system. I also served as Administrator of the Foreign
20 Agricultural Service at USDA from 1997 to 1999, and then
21 returned to my native California to serve as Secretary of the
22 Technology Trade and Commerce Agency from 1999 to 2003, where I
23 oversaw the promotion of statewide economic development, job
24 creation, and business retention.

25 Prior to my service at USDA, I practiced law and worked

1 with my three-generation family farm in Yuba and Butte
2 counties. Since 2003, I have been a consulting economist,
3 analyzing local, regional, state, national and international
4 economic impacts, trends, and economic development
5 opportunities on various industries including agriculture,
6 energy, high technology, real estate, retail, professional
7 sports, transportation, tourism, and higher education. I have
8 testified over a hundred times before the World Trade
9 Organization, the U.S. Congress, the California State
10 Legislature, and federal, state, and local courts, boards, and
11 commissions on a wide variety of relevant issues.

12 Throughout my career --

13 BY MR. VLAHOS:

14 Q. Excuse me, would you start that again? You left out a
15 word.

16 A. Throughout my professional career, I have acquired and
17 maintained an international, national, regional, as well as a
18 statewide and local perspective with regard to agriculture and
19 its pertinent economic impact upon all communities. For this
20 analysis, I have relied upon that combined experience, and most
21 specifically, on my ten-year as Secretary of technology, trade
22 and commerce, for California to determine the best measure of
23 the cost of doing business across the country.

24 There are various periodic surveys, reports, and
25 studies that have regularly monitored the cost of doing

1 business across the United States. Forbes, CNBC, and other
2 assorted economic development organizations provide some form
3 of comparative analysis of the cost of doing business from
4 state to state. However, there's a common thread among most of
5 these analyses -- they rely upon the primary data generated and
6 analyzed by Moody's Analytics in their biennial North American
7 Business Cost Review. And I have a Footnote 1, "North American
8 Business Cost Review," Moody's Analytics, May 2014, and updated
9 October 2014. Through its team of economists, Moody's
10 Analytics is a leading independent provider of data, analysis,
11 modeling, and forecasts on national and regional economies,
12 financial markets, and credit risk. The company offers unique
13 tools and best practices for measuring and managing risk
14 through expertise and experience in credit analysis, economic
15 research, and financial risk management. By providing leading
16 edge software, advisory services, and research, including the
17 proprietary analysis of Moody's Investors Service, Moody's
18 Analytics integrates and customizes its offerings to address
19 specific business challenges. For purposes of my analysis, I
20 rely upon Moody's Analytics trusted and objective North
21 American Business Cost Review.

22 Q. May I interrupt you there, Mr. Hatamiya? When you were
23 Secretary of Technology, Trade, and Commerce for California,
24 did you have occasion to actually use Moody's Analytics in
25 your, as part of your duties?

1 A. Yes, I did. And actually I used probably the
2 predecessor to Moody's Analytics, it was called Economics.Com,
3 which was acquired by Moody's, and they did economics
4 forecasting as well as business cost, the cost of doing
5 business review.

6 Q. And since the time you have been operating as an
7 economics consultant, have you had other occasions where other
8 projects also used Moody's Analytics?

9 A. Most absolutely. I utilized their resource again
10 because of the primary research that they do. Primarily, I
11 have used Moody's Analytics for their analysis of Central
12 Valley communities. They have done a great job of forecasting
13 where the economy is going in the various counties throughout
14 the Central Valley.

15 Q. Thank you. Now, would you proceed with your written
16 testimony?

17 A. Now, to Section 2. Cost of Doing Business is not
18 Uniform Statewide.

19 As a whole, there's no question that California
20 generally ranks among the states with the highest cost of doing
21 business. However, focusing on the statewide average is an
22 improper measure for the cost of doing business in California's
23 primary milk manufacturing regions. With respect to statewide
24 averages that have been incorrectly relied upon by others
25 testifying at this hearing, Table 1 highlights the various

1 rankings of some of the largest cheese manufacturing states
2 according to Moody's Analytics 2014 North American Business
3 Cost Review.

4 Let me turn to Table 1, entitled Cost of Doing Business
5 Index. And again, the Footnote 2. The footnote is again,
6 referenced, "North American Business Cost Review," Moody's
7 Analytics, May 2014, and updated October 2014, Page 8. And as
8 I note in this table, it ranks from California all the way down
9 through South Dakota, and index in ranking. The index, if I
10 could explain --

11 Q. Please do.

12 A. -- for this table, the national average is one hundred,
13 so you are above one hundred you are above the national
14 average. If you are below one hundred, you are below the
15 national average. The second column is the rank, and that's
16 among 50 states, with the highest cost at number 1, so if you
17 are ranked number 1 you are the highest cost state. So
18 California in this instance is the 7th highest ranked state and
19 South Dakota is the 49th ranked state.

20 Continuing with my testimony: The Moody's Analytics
21 Cost of Doing Business Index compares a state or metropolitan
22 area's average business cost with that of the United States.
23 For metro areas, the index comprises four components: (1) unit
24 labor cost; (2) energy cost; (3) state and local taxes; and (4)
25 office rent. Because of lack of office rent data at the state

1 level, only the first three categories are utilized to
2 calculate the cost of doing business index for states. And
3 this is what's related to you in table 1.

4 However, and more specifically, the cost of doing
5 business in California should not be considered in its entirety
6 as the state is made up of at least nine distinct economic
7 regions with differing labor, energy, state and local taxes,
8 and office rental costs, which collectively result in the 8th
9 largest economy in the world.

10 Q. Let me have you stop there just for one second,
11 Mr. Hatamiya. When you say that there are at least nine
12 distinct economic regions, where does that information come
13 from?

14 A. That comes from a number of, essentially that's from
15 the economic strategy panel that I used to share at the
16 statewide level, so it was a series of economists from around
17 the state that looked at the State of California to determine
18 that there were subregions within the state, there were
19 sub-economies. And in a minute, I'll turn to the next page and
20 you can see those noted.

21 Q. And I think I may have interrupted you before you read
22 the last sentence on Page 3.

23 A. Yes. The last sentence is, the most, the more
24 appropriate measure is to examine the available regional cost
25 of doing business within the state.

1 And as we turn to Page 4 you will see that the nine
2 different regions that I noted before.

3 Q. And that's on the map with colored sections of
4 California that's displayed on that page?

5 A. That is correct. And that comes from the Economic
6 Strategy Panel from California.

7 Q. Thank you.

8 A. For purposes of my analysis, I have focused upon the
9 San Joaquin Valley Region, which is noted in green here, or the
10 lighter green, in the California state map above, since most of
11 the largest cheese manufacturing plants are located within this
12 area. This region includes from north to south, the counties
13 of San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings,
14 Tulare, and Kern. The remainder of my testimony will be
15 focused upon this most relevant region of California.

16 III. Examination and Comparison of the Cost of Doing Business
17 Index of the San Joaquin Valley Metro Areas versus Other U.S.
18 Cheese Manufacturing Locales.

19 Moody's Analytics provide not only a state by state
20 comparison, but also provide a more specific comparative
21 U.S. Metropolitan Area Relative Business Cost.

22 Q. And there was a footnote there, Mr. Hatamiya, would you
23 mind reading the footnote?

24 A. Yes. This is Footnote 3, again in quotes, "North
25 American Business Cost Review," Moody's Analytics, May 2014,

1 and updated October 2014, Pages 9 through 16.

2 Turning to Page 5: For cheese plant manufacturing cost
3 comparisons, these U.S. Metropolitan Area Relative Business
4 Costs are the most relevant to be considered. The following
5 San Joaquin Valley metropolitan areas (highlighted in Table 2
6 in alphabetical order), which are also home to many of the
7 largest cheese manufacturing plants in California, provide more
8 reasonable and competitive costs for doing business.

9 Let me turn to Table 2 for just kind of a quick
10 explanation of what this is. Again, it's entitled the Cost of
11 Doing Business Index by San Joaquin Valley Metropolitan Areas,
12 and again, Footnoted 4, that comes from, "North American
13 Business Cost Review," Moody's Analytics, May 2014, and updated
14 October 2014, pages 15 and 16. As you note in Table 2, I have
15 the largest metropolitan areas in the San Joaquin Valley
16 counties that I just mentioned noted below, including
17 Bakersfield, Fresno, Hanford, Merced, Modesto, Stockton, and
18 Visalia.

19 And going through the each of those columns, the first,
20 the third column is a cost of doing business index. The index,
21 again, is related to one hundred which is the national average.
22 As you see all of those metropolitan areas fall below the
23 national average, all in the 90's and some even in the 80's.
24 And the rank is, again, ranking among 384 metropolitan areas
25 across the country, which I'll get you the explanation in a

1 minute.

2 The others are index and rankings of the other
3 subcomponents I mentioned, unit labor cost, energy cost, state
4 and local tax, and office rents. And those are just noted here
5 for the information purposes. We'll get to more of those
6 details in a moment.

7 Q. So your further testimony will explain each of those?

8 A. They will be most specific on each of those components.

9 Q. Thank you. Proceed with the text.

10 JUDGE CLIFTON: Now, excuse me, both of you, I know you are
11 both excited, slow down.

12 MR. VLAHOS: Thrilled.

13 JUDGE CLIFTON: Don't talk until the other has stopped, and
14 there's been a little silence, and then talk.

15 BY MR. VLAHOS:

16 Q. Will do. Pick up from where you left off,
17 Mr. Hatamiya.

18 A. I will. Thank you, Mr. Vlahos.

19 As the figures from Table 2 clearly indicate, the cost
20 of doing business in the San Joaquin Valley falls well below
21 the national average (Index=100), and well below the cost of
22 doing business index collectively of the State of California.

23 Most importantly, Moody's Analytics also provides U.S.
24 Metropolitan Area Relative Business Costs for 384 metropolitan
25 areas across the country. The availability of this data has

1 enabled me to develop the following Table 3, which compares
2 more specifically the cost of doing business for the top 25
3 manufacturing plant locations across the key cheese producing
4 states of California, Colorado, Idaho, Michigan, Minnesota,
5 New Mexico, New York, Oregon, Pennsylvania, South Dakota,
6 Texas, and, of course, Wisconsin. The Index is based upon the
7 National Average of 100, as I mentioned before, and the Rank is
8 based upon the relative position among the 384 metropolitan
9 areas measured. Again, number 1 being the highest cost, number
10 384 being the lowest cost.

11 Let me now turn to Page 6 in Table 3, and this is where
12 most of the information lies. Table 3 is entitled Cost of
13 Doing Business Index, and this is sub, again, footnoted number
14 5, coming from the same source, "North American Business Cost
15 Review," Moody's Analytics, May 2014, and updated October 2014,
16 pages 9 through 16.

17 And again, as I note here at the top, lowest to highest
18 with national average at 100 index. So I ranked these, again,
19 these are the communities and I did it by the index number, as
20 compared to the national average. So the lowest cost is the
21 first community, the highest cost would be the last in this
22 table. This is just on the cost of doing business Index. I
23 include the unit labor cost, energy cost, state and local tax,
24 office rent, but that's again, just for information purposes.
25 The ranking in this, though, is just for the cost, overall cost

1 of doing business.

2 Q. Mr. Hatamiya, if I interrupt again, could you explain
3 again, you have talked about it, but in a little more detail,
4 about how you picked the cities that are listed in the left
5 hand column of that table?

6 A. I did an analysis of the major cheese producing locales
7 across the country. Not only California, but as I mentioned,
8 in all the other cheese producing states. And I tried to find
9 the metropolitan areas that were the closest to many of those
10 cheese producing locales across the country for comparative
11 measure.

12 Q. So if I understand that correctly, you picked the
13 metropolitan area that was nearest to a major cheese
14 manufacturing facility; is that correct?

15 A. That's correct.

16 Q. And the cheese manufacturing facility was located, not
17 within the city, but actually in a more suburban or
18 agricultural area outside the city, would you expect the cost
19 there to be lower or higher than the city the metropolitan
20 area?

21 A. In most cases they are going to be lower in rural
22 areas. So these are just a good reflective point for
23 comparison. And so I think it gives you a good measure. If
24 you take a look at this, this table, let me turn to my text
25 because I think it will explain. We can turn to Page 7.

1 Once again, as the data from Table 3 indicates, the
2 Cost of Doing Business in San Joaquin Valley Metro Areas (as
3 noted in gold) those are the California communities, compare
4 favorably with other cheese producing metro areas across the
5 country. So the point I'm making here is that California
6 communities are competitive with almost any other cheese
7 producing area of the country.

8 Let me now move to Section 4.

9 IV. Further Examination and Comparison of the Specific
10 Components that Make up the Cost of Doing Business Index

11 A further examination and comparison of the specific
12 components of unit labor cost, state and local tax, and office
13 rent, reveal even more competitive positioning that San Joaquin
14 Valley metro areas. It is also clear that San Joaquin Valley
15 metro areas, and that's Footnote number 6, I'm sorry, that --
16 I'm -- I can't read myself, that's apostrophe. Overall cost --
17 let me start there again. It is also clear that San Joaquin
18 Valley Metro areas' overall Cost of Doing Business Indices
19 would be much lower if it were not for the high cost of energy
20 in these communities, which rank among the highest Energy Cost,
21 that's Footnote number 6, areas in Table 3. Let me read that
22 for you. Footnote, 6: Moody's Analytics calculates the Energy
23 Cost Index by comparing the average commercial and industrial
24 electricity costs, in cents per kilowatt-hour, with the
25 national average. The data comes from the Energy Information

1 Administration, a division of the Department of Energy. The
2 EIA reports commercial industrial prices of all major
3 independent publicly owned utilities, as well as cooperatives.
4 And it continues.

5 Nevertheless, according to the most recent California
6 Department of Food and Agriculture Dairy Manufacturing Cost
7 Exhibit for the period of January through December 2013, the
8 weighted average electricity cost in cheddar cheese
9 manufacturing makes up only 2.9 percent of the overall cost of
10 manufacturing cheese. And that's, again, Footnote number 7.
11 And that's, "Cheese Manufacturing Costs," California Department
12 of Food and Agriculture Dairy Manufacturing Cost Exhibit for
13 the period of January through December 2013, dated
14 November 12th, 2014.

15 Therefore, it seems clear that energy cost has a small
16 impact on the overall cost of doing business, at least in
17 cheese, California cheese manufacturing metro areas.

18 A much more significant component upon cheese
19 manufacturing costs is unit labor cost. Again, according to
20 CDFA's cheese manufacturing cost exhibit, processing labor
21 costs make up nearly 25.5 percent of overall manufacturing
22 costs -- that's Footnote number 8. "Cheese Manufacturing
23 Costs" California Department of Food and Agriculture Dairy
24 Manufacturing Cost Exhibit for the period of January through
25 December 2013, dated November 12, 2014.

1 The following Table 4, highlights the compelling cost
2 competitiveness of San Joaquin Valley metro areas. If we can
3 turn to Table 4, that's table entitled Unit Labor Costs, and
4 that's Footnoted 9. And that's a description of what those
5 unit labor costs and I'll read that to you now: Footnote
6 number 9: Moody's Analytics calculates unit labor cost total
7 by creating a weighted average of unit labor cost in each
8 three-digit NAICS industry. And I think that's North American,
9 and I can't remember the complete definition of NAICS, but it
10 is the measure that's used for all different types of
11 occupations in industries within the United States.

12 The weights are equal to the national share of
13 employment in each industry. This adjustment is necessary
14 since unit labor costs vary across industries as a result of
15 the occupational mix of the industry's employment and the
16 capital structure of its operations. However, such a
17 compositional bias can be avoided by using the national share
18 of employment for each industry to weight the unit labor cost
19 components. A state-specific component weight system is used
20 in lieu of a uniform fixed component weighting system. State
21 specific weights were generated by analyzing interindustry
22 capital flows via IMPLAN modeling software.

23 Let me return to Table 4, again, in the first column,
24 these are the top 10 cheese manufacturing U.S. Metro Areas with
25 the Lowest Labor Costs, and this references, again, back to my

1 Table 3. So I just took, if we can return to Table 3 for a
2 moment, I took a third column and ranked those, or put those in
3 order of their index.

4 Q. By the third column you mean the column that's headed
5 Energy Cost?

6 A. No, the third column highlighted Unit Labor Cost.

7 Q. Excuse me, I misspoke myself, unit labor cost?

8 A. That's correct. As I said, I was going to return to
9 that, and these are the separate compositions of those. And as
10 you can see here for purposes of simplicity, I ranked only the
11 ten cheese manufacturing U.S. metro areas with lowest unit
12 labor cost. Four of the top six are San Joaquin Valley metro
13 areas (as noted in gold) with Merced the lowest, followed by
14 Modesto in fourth, Fresno in fifth, and Bakersfield in sixth.
15 In short, the vast majority of cheese manufacturing, metro
16 areas and other states exceed these California areas in unit
17 labor costs.

18 I think this is an important note to make, that
19 California, in light of incorrect popular belief, is among the
20 lowest in unit labor cost of cheese manufacturing areas for the
21 country.

22 Q. You mean the San Joaquin Counties?

23 A. San Joaquin County communities that I have noted.
24 That's correct.

25 Now, if I can move on. Another important cost

1 component measured by Moody's Analytics is state and local tax.
2 The effective tax rate index is measured others as the total
3 state and local tax revenue as a percent of total personal
4 income in the area, indexed to the national effective tax rate.
5 This is a top down measure that uses government revenues to
6 represent the tax burden. This measure includes all taxes,
7 including personal, property, and corporate, less severance
8 taxes, corporate license taxes, education, hospital and inter-
9 governmental transfers. Business contributions to unemployment
10 and workers' compensation programs are also included, because
11 they represent cost for hired labor. However, only the
12 contributions from employers are included in calculating an
13 area's tax burden. And that's footnoted number 10, this again,
14 comes from "North American Business Cost Review," Moody's
15 Analytics, May 2014, and updated October 2014, page 4.

16 Turning to Page 9. Table 5 highlights the Top Ten
17 Cheese Manufacturing U.S. Metro Areas with the Lowest State and
18 Local Tax Index. Let me turn again to a Table 5, which is
19 entitled State and Local Tax. Footnoted 11, this again comes
20 from "The North American Business Cost Review," Moody's
21 Analytics, May 2014, and updated October 2014, Page 4.

22 Table 5 includes, as I just mentioned, the top ten
23 cheese manufacturing U.S. metro areas with the lowest state and
24 local taxes.

25 Once again, San Joaquin Valley metro areas are among

1 the lowest in state and local tax with six areas out of the top
2 ten (as noted in gold) for comparison purposes who is
3 impossible to determine the state and local tax component for
4 California cheese plants, since CDFA's cheese manufacturing
5 cost exhibit does not break it out for those expenditures.
6 Nonetheless, Table 5 illustrates the competitive position of
7 San Joaquin Valley metro areas and that state and local tax
8 burden are higher in most other cheese manufacturing metro
9 areas across the United States.

10 And again, you can see from here, out of the top ten,
11 six of those are in California San Joaquin Valley communities.

12 Lastly, I examined the office rent component of the
13 Cost of Doing Business Index. According to CDFA's cheese
14 manufacturing cost exhibit, office rent makes up nearly 6.3 of
15 overall manufacturing cost. The following Table 6 highlights
16 the compelling cost competitiveness of San Joaquin Valley metro
17 areas.

18 Again, turning to Table 6, office rent, Footnote 12:
19 Moody's Analytics Office Rent index compares the cost of
20 renting office space in a metropolitan area with the national
21 average. The Torto Wheaton office rent index from CBRE, which
22 is a large real estate, commercial real estate brokerage, forms
23 the basis of the office rent index. Further, the index
24 standardizes the rental measure to a 10,000 square foot
25 building of an average age and class for five years in an

1 average area of the market. Again, this standardization avoids
2 compositional bias caused by differing mixes of buildings and
3 terms of individual contracts in a given period.

4 Let me return again to Table 6, this is again, at the
5 Top Ten Manufacturing U.S. Metro Areas with the Lowest Office
6 Rent. Again, San Joaquin Valley metro areas among the lowest
7 in office rent, with three areas included within the top ten
8 (as noted in gold). Merced is far and away the lowest cost
9 metro area among all considered.

10 As you can see here, the index is 51, meaning that it
11 falls 49 points below the national average. As you can see,
12 the rank here is 354. 354 is the lowest, so there are only 30
13 communities, 384 being the total number in the universe, there
14 are only 30 metro areas across the country that are lower than
15 Merced.

16 Let me move to Section 5 in my conclusion.

17 The dairy industry is an important vital contributor to
18 the agricultural and overall economy of the great state of
19 California, and reflected in industry's overall productiveness.
20 As my analysis of the cost of doing business has shown, the
21 major cheese manufacturing metro areas located in California's
22 San Joaquin Valley, are among the most cost competitive as
23 compared to other metro areas across the country. Contrary to
24 incorrect popular belief, there are important regions within
25 California that remain among the lowest metro areas with regard

1 to unit labor cost, state and local tax, and office rent.
2 Moreover, the cost of doing business, when combined with a
3 creation of the Federal Milk Marketing Order, will not place
4 California cheese makers at a competitive disadvantage with the
5 rest of the nation.

6 And that concludes my testimony.

7 Q. And is there anything would you like to add other than
8 that, Mr. Hatamiya?

9 A. No, I believe that's conclusive of my analysis.

10 Q. Your Honor, I move for the admission of Exhibit 188.

11 JUDGE CLIFTON: Does anyone wish to question Mr. Hatamiya
12 before you determine whether you object? Mr. English?

13 VOIR DIRE EXAMINATION

14 BY MR. ENGLISH:

15 Q. Good morning, Mr. Hatamiya.

16 A. Good morning, Mr. English.

17 Q. I just have a couple of questions regarding the
18 footnotes. And so the North American Business Cost Review, is
19 that a subscription service of some kind?

20 A. Yes, it is.

21 Q. So that would explain why we have been unable to bring
22 it up on our computers while you have been testifying?

23 A. That's correct. If you would like to purchase it, you
24 can certainly bring it up.

25 Q. Well, your Honor, I'm not sure what to do with that.

1 We have these footnotes that are references, I mean, obviously,
2 we're not going to make an exhibit of it, but on the other
3 hand, it is the basis for a lot of the testimony. And I don't
4 know what to do with something where I can't go look at the
5 underlying material. So I am not sure, I'm not going to
6 object, I just want to note I think that creates a conundrum
7 for us and USDA.

8 JUDGE CLIFTON: Are there any other questions for
9 Mr. Hatamiya before you determine whether you object to the
10 admission into evidence of Exhibit 188?

11 Mr. Hatamiya, do you have with you any further data
12 that led to the composition of Exhibit 188 that might provide
13 even more information that Mr. English could look at?

14 MR. HATAMIYA: I do, I have a copy of that study.

15 JUDGE CLIFTON: Bless you. I think it would be useful to
16 have a break, where at least the attorneys for the proponents
17 can have a look at it. Let's see, Mr. Vlahos, when should we
18 time that break? It's 11:55.

19 MR. VLAHOS: Well, the direct examination of Mr. Hatamiya's
20 concluded, so this might be the appropriate time.

21 JUDGE CLIFTON: Why don't we. Do you think, let me ask
22 Mr. English, do you think if we took a 15-minute break now that
23 that might be adequate?

24 MR. ENGLISH: I don't want to belabor the point, your
25 Honor, I don't know obviously without seeing it, it's hard to

1 know without seeing it. On the other hand, I don't have a lot
2 of questions for this witness on cross, and I don't say it is a
3 problem, it is just that without knowing what it is, it is sort
4 of hard to know what my feelings are about it. And so I would
5 like to think a 15-minute break would be sufficient.

6 JUDGE CLIFTON: Let's try that. I think that's better than
7 keeping Mr. Hatamiya through a lunch hour.

8 MR. ENGLISH: And I agree. And I don't want -- I'm not
9 here to keep him unnecessarily, that's not the point.

10 MR. VLAHOS: That sounds like a very reasonable way to do
11 it, your Honor.

12 JUDGE CLIFTON: All right. Good. Let's take a 15-minute
13 break. Please be back and ready to go at 12:10. That gives
14 you 14. 12:10.

15 (Whereupon, a break was taken.)

16 JUDGE CLIFTON: We are back on record at 12:11. Let me ask
17 now if there's any objection to the admission into evidence of
18 Exhibit 188. There are none. Exhibit 188 is admitted into
19 evidence.

20 (Thereafter, Exhibit 188, was
21 received into evidence.)

22 MR. VLAHOS: Your Honor, I think when we stopped for the
23 break we had provided a copy of the North American Business
24 Cost Review so that Mr. English would have an opportunity to
25 see the data. However, I would like to call your attention to

1 the second to the last page of that document which contains a
2 rather extensive confidentiality warning that all information
3 contained is protected by copyright law, none of the
4 information may be copied or otherwise reproduced, re-packaged
5 and so forth. I won't read the whole thing, but for that
6 reason, although we have provided that for the purposes, or to
7 the people, Mr. English to see the source data, it cannot be
8 introduced as an exhibit in evidence. And I would ask that
9 after the, after the cross-examination is concluded and the
10 witness excused, that we return the copies back to
11 Mr. Hatamiya.

12 JUDGE CLIFTON: I don't think that's necessary. I -- who
13 knows, this may lead to a lot more subscriptions. I believe
14 everyone here will recognize that protection. Mr. English?

15 MR. ENGLISH: I'm not going to pretend to be an
16 intellectual property lawyer, I can barely pretend to be a milk
17 lawyer, but I think this will document will fair use, and I
18 think that this probably falls under that doctrine. We aren't
19 going to ask to make it an exhibit, I promise. We're not going
20 to do that.

21 JUDGE CLIFTON: Who would like to ask the first questions
22 of Mr. Hatamiya? Mr. English, thank you.

23 CROSS-EXAMINATION

24 BY MR. ENGLISH:

25 Q. Thank you, Mr. Hatamiya. So let me just start based

1 upon what we were just talking about. Look at Page 5?

2 A. Page 5 of my testimony?

3 Q. Of your testimony, I'm sorry, yes, thank you for that.
4 Page 5 of Exhibit 188. And you said, "The availability of this
5 data has enabled me," this data being the Moody's data,
6 correct?

7 A. That is correct.

8 Q. Has enabled you to develop Table 3. And you said,
9 "Which compares more specifically the cost of doing business
10 for top 25 manufacturing plant locations across the key cheese
11 producing states of California, Colorado, Idaho, Michigan,
12 Minnesota, New Mexico, New York, Oregon, Pennsylvania, South
13 Dakota, Texas, and of course, Wisconsin."

14 How did you determine what the top 25 manufacturing
15 plant locations were?

16 A. Well, it's essentially in conference with the dairy
17 Cooperative assistance telling me where a number of the cheese
18 plants are around the country. We tried to identify as many of
19 the largest manufacturing facilities as possible. I then tried
20 to correlate those as closely as possible to the closest
21 metropolitan areas that were measured. Not all were obviously
22 within metropolitan areas, there were a handful that were in
23 rural areas that were not even close to any of these metro
24 areas.

25 Q. So if they weren't close to a metro area, what did you

1 do then?

2 A. I -- I was just to going to refer to the statewide
3 average. For example, Idaho is an example, but I think Idaho
4 doesn't fall under Federal Order, so that's not as relevant.
5 New Mexico, New Mexico we could turn to the statewide average
6 because all of the metro areas of New Mexico that are measured
7 in this, are on the other side of the state from where the
8 cheese manufacturing plants located. So I didn't really have
9 any relevant metro area in New Mexico to compare.

10 Q. Yeah, we were having that problem, too. But, so, you
11 didn't, you say that since Idaho wasn't in a federal marketing
12 area, you excluded for that purpose?

13 A. No, not for that purpose, I excluded it for the first
14 purpose I mentioned, that it wasn't close to any of the metro
15 areas that were measured, the locations that were provided to
16 me in terms, I think Twin Cities was a location in Idaho, Twin
17 Falls, I'm sorry, Twin Falls. I was thinking of Minnesota,
18 sorry. Thank you. And it wasn't included among those.

19 Q. Okay. And I would agree, if when we looked at it, it
20 looked like it was within two hours or two hours and 30 minutes
21 of three locations. So nonetheless, it could be useful, you
22 know, to look at the Moody's document and at least recognize
23 that Idaho -- as I looked at it, you have Boise City at 78 as
24 the index, Idaho Falls at 75, Pocatello, P-O-C-A-T-E-L-L-O, at
25 73, all fairly low, which was what you would expect from Idaho,

1 correct?

2 A. That's correct.

3 Q. Okay.

4 A. So in answer to your question, was it purposeful? I
5 was just trying to find the closest, I got on Google Maps and
6 it literally determined how close these communities were to
7 plants.

8 Q. Well, nonetheless, if you look at Table 3, if you
9 looked at the statewide average for Idaho or the cities that
10 are within two hours or two hours and 30 minutes of large
11 cheese production, you would certainly be either lower than the
12 lowest or no lower than Amarillo, right?

13 A. That is correct. Just to answer that further, the
14 measure that I was looking at was within 50 miles,
15 approximately 50 miles of the metro area, so you are right.
16 But those were all within a hundred miles, so I excluded those.
17 Same holds true for New Mexico.

18 Q. So New Mexico, the state average is a little higher but
19 we certainly don't know as you said from the eastern side of
20 the state, but you might expect, as you said rural areas were
21 lower than the urban areas, correct?

22 A. Absolutely.

23 Q. Okay. When you looked at this analysis in Moody's,
24 does that include the cost of doing, does that cost of doing
25 business include the time and expense involved in permit

1 processes?

2 A. No. If it's part of the governmental licensing
3 process, which I talked about in state and local tax, it is
4 included there. Part of the issue I think you are raising is
5 the variable that's so different from metropolitan area to
6 metropolitan area. So I believe that Moody's, in terms of
7 comparing apples to apples, tries to take as many measures that
8 can be compared across all of these different 384 different
9 metro areas. So some of it may fall under that, but it is not
10 specific.

11 Q. Does it include government attempts or successes to
12 provide incentives for entities to build in a certain location?

13 A. I don't believe it does.

14 Q. Did you, in your lucky absence from this proceeding
15 over the last several weeks, hear the testimony of a cheese
16 manufacturer from southern part of California, that they had
17 been offered various incentives to move to some area located in
18 something close to the Upper Midwest?

19 A. I did not hear the testimony, but I did read it. I do
20 have a copy of it.

21 Q. Okay. When you talk about the cost, and you have
22 referenced CDFA's studies, correct?

23 A. That is correct.

24 Q. And you have no reason to believe the CDFA audited
25 studies are incorrect, correct?

1 A. That is also correct.

2 Q. Now, you have listed this for primary regions for
3 cheese production, but do you agree that there is cheese
4 production in the southern part of the state in Los Angeles and
5 San Bernardino?

6 A. That is also correct, yes. But in answer to that
7 question, I think there's a very small percentage of the
8 overall cheese production of the State of California. I don't
9 know what that number is off the top of my head, but I know it
10 is a much smaller number than is manufactured here in the
11 Valley.

12 Q. Well, it may be small over all, but it may be important
13 to those businesses, right?

14 A. Yes, that's correct.

15 Q. That's all I have. Thank you.

16 JUDGE CLIFTON: Who next has questions for Mr. Hatamiya?
17 Mr. Vlahos, I would invite redirect and then I would ask if
18 there are any USDA employees who have questions.

19 REDIRECT EXAMINATION

20 BY MR. VLAHOS:

21 Q. Just one small topic, your Honor, in redirect.

22 Mr. English has asked you questions concerning Idaho
23 and New Mexico. The comparisons that you show in cost of doing
24 business on Table 3 is based on cost in the metro area. And to
25 the extent that the plants that are listed on your Table 3 are

1 in a rural area outside, they'd actually be lower in the
2 San Joaquin Valley, correct, than is shown here?

3 A. That is correct.

4 Q. That's all I have, your Honor. Are there any
5 questions? Mr. English?

6 RE CROSS-EXAMINATION

7 BY MR. ENGLISH:

8 Q. And they would be lower in Wisconsin, correct?

9 A. That's also correct.

10 Q. And they would be lower in Michigan?

11 A. That is correct.

12 Q. Thank you.

13 A. That holds true for all rural areas of the country.

14 Q. Fine. Thank you.

15 JUDGE CLIFTON: Mr. Hatamiya, I presume that Moody's
16 doesn't publish costs of doing business in industrial plants
17 located away from cities of any type. Do you, are you aware of
18 any study like that?

19 MR. HATAMIYA: No, I'm not aware of any study like that.
20 And, your Honor, I have done a pretty extensive analysis of
21 what's available. Not only during my term as Secretary of
22 Commerce for California, but subsequently as an economic
23 development consultant, you know, I peruse most of these
24 studies. And I have found that Moody's provides the most
25 unbiased objective analysis for state, you know, for

1 nationally.

2 JUDGE CLIFTON: I would now invite questions from the USDA
3 employees. I see none.

4 Mr. Hatamiya, again, I'm so grateful that you took the
5 time to prepare this. I love not only the way you prepare your
6 exhibits, but the way you present them. I do remember we had a
7 problem before with the color. We wanted to make sure that
8 everyone could read the color, the information that had shading
9 and so forth. I specifically remember Mr. Miltner's objection
10 before, and we agreed we would get the document in a different
11 version so that it would be very legible if there were a black
12 and white version, for example. I don't know if we have that
13 similar issue here. And I don't know how we resolved it
14 before. There was something that just didn't, that we couldn't
15 see data somehow with the shading or the letters in white.

16 MR. ENGLISH: Your Honor, if I may, maybe you rise in
17 defense of Mr. Miltner and unfairly with respect to my
18 colleague Mr. Vetne, who is listening in in Maine, but I
19 believe that was Mr. Vetne, not Mr. Miltner. And I thought in
20 the end, once it is scanned, it actually scanned just fine. It
21 was just an early -- I actually thought it worked.

22 MR. BESHORE: It was resolved in some way. It related to
23 footnotes which had a particular font or color that was
24 difficult, but I think the PDF or the scan did work out
25 eventually. I don't remember exactly how that was solved, but

1 I think it was resolved.

2 MR. ENGLISH: I thought it was resolved.

3 JUDGE CLIFTON: All right. Very good. Gentlemen, thank
4 you. You know, the fact that you can remember back that far
5 delights me. Ms. Vulin?

6 MS. VULIN: Your Honor, I believe on the record we had
7 indicated that we would have Exhibits 54(a) and 55(a), which
8 were going to be black and white copies. And I just wanted to
9 make clear that either we would strike that all together or
10 note that they were never submitted, but I just want to make
11 sure we don't have any holes in our Exhibit list.

12 JUDGE CLIFTON: All right. Very fine. It turned out that
13 was unnecessary to your recollection, Ms. Vulin.

14 MS. VULIN: Yes, I just wanted to make sure since you had
15 noted, you had labeled them as Exhibit A versions, that we
16 wouldn't have missing holes in the list.

17 JUDGE CLIFTON: There won't be any.

18 MS. VULIN: Yes.

19 JUDGE CLIFTON: Good. Excellent. So she came armed with
20 her laptop, so it wasn't entirely from her memory, but
21 nonetheless, I thank you.

22 Mr. Hatamiya, is there anything else you would like to
23 add before you step down?

24 MR. HATAMIYA: No, I think I have included all of my
25 testimony today. Thank you very much.

1 JUDGE CLIFTON: Thank you. All right. You may step down.
2 And again, with our thanks. Mr. Beshore?

3 MR. BESHORE: Your Honor, I would propose that at this time
4 we take our launch break and Mr. Garbani will be prepared to
5 proceed immediately thereafter, and I think we're on schedule.

6 JUDGE CLIFTON: All right. It is nearly 12:30. Now, I
7 know we're in distant location from most of the places to eat,
8 and I hope not everybody in the room will go to the Mexican
9 restaurant that I plan to go to within walking distance. And
10 therefore, I'm afraid I must give you an hour and a half today
11 so that we don't have half of you waiting for the other half.
12 So please be back and ready to go at 2:00. 2:00.

13 (Whereupon, the lunch recess was taken.)

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1 TUESDAY, NOVEMBER 17, 2015 - - AFTERNOON SESSION
2 JUDGE CLIFTON: We're back on record at 2:02. Mr. Beshore.
3 MR. BESHORE: Thank you, your Honor. Marvin Beshore. For
4 our next witness, and last witness for us today, we call
5 Mr. Pete Garbani.
6 JUDGE CLIFTON: And you have distributed some documents,
7 Mr. Beshore, would you describe those for us?
8 MR. BESHORE: I have distributed two documents. First one,
9 identified as the Testimony of Pete Garbani, Rebuttal, in
10 Support of Proposal 1. It has ten pages, including the
11 numbered cover page. And the second document is entitled
12 Exhibits of Pete Garbani in Support of Proposal 1, has graphs,
13 13.A through 13.J. I should have noted that the testimony is
14 identified in the lower right of the cover page as
15 Cooperatives' Exhibit 13.
16 JUDGE CLIFTON: Thank you. We'll number these now. And I
17 believe that the Testimony of Pete Garbani will be Exhibit 189;
18 is that correct, Ms. Elliott?
19 MS. ELLIOTT: Yes.
20 (Thereafter, Exhibit 189, was
21 marked for identification.)
22 JUDGE CLIFTON: Exhibit 189. And then the exhibits that
23 support that testimony will be Exhibit 190. 190.
24 (Thereafter, Exhibit 190, was
25 marked for identification.)

1 MR. BESHORE: Thank you.

2 JUDGE CLIFTON: You're welcome. Please raise your hand if
3 you do not yet have a copy of Exhibit 189 and 190? Everyone
4 has one.

5 Mr. Garbani, have you testified before in this hearing?

6 MR. GARBANI: No, I have not.

7 JUDGE CLIFTON: I'll swear you in in a seated position, if
8 you will raise your right hand.

9 Do you solemnly swear or affirm under penalty of
10 perjury that the evidence you will present will be the truth?

11 MR. GARBANI: Yes.

12 JUDGE CLIFTON: Please state and spell your name.

13 MR. GARBANI: My name is Pete Garbani, spelled
14 G-A-R-B-A-N-I.

15 JUDGE CLIFTON: Thank you. Mr. Beshore, you may proceed.

16 DIRECT EXAMINATION

17 BY MR. BESHORE:

18 Q. Very well. Thank you, your Honor. Mr. Garbani, what
19 is your business address?

20 A. My business address is 400 South M Street, Tulare,
21 California.

22 Q. Thank you. Now, would you proceed to read your
23 testimony, Exhibit 189, the first full paragraph, and when you
24 have reached the end, I want to just ask you another question
25 or so at that point.

1 A. Sure.

2 Good afternoon. My name is Pete Garbani, Director
3 Member Relations for Land O'Lakes, Inc. I have worked for
4 Land O'Lakes in different capacities over the last 15 years. I
5 began my career with Land O'Lakes within their accounting
6 organization and have performed a variety of roles, including
7 strategy, milk sourcing and sales, ranch-to-plant
8 transportation, regulatory and government affairs within
9 California, and general advocacy for our dairymen
10 member-owners. I have served as a member of the California
11 Department of Food and Agriculture (CDFA) Dairy Advisory
12 Committee, Board Member and Chairman of the Milk Producer
13 Security Trust Fund, and a Board Member for the Dairy Council
14 of California. Prior to joining Land O'Lakes in 2000, I spent
15 nearly 11 years with the public accounting firm Deloitte &
16 Touche, LLP, during which I obtained by CPA license. I have a
17 Bachelor of Science degree with an emphasis in accounting from
18 California State University Fresno.

19 Q. Okay. Now, you have not testified before, Mr. Garbani,
20 and I want you to just tell us a little bit more about your
21 day-to-day activities and responsibilities presently with
22 Land O'Lakes. You touch on it a little bit below, but let's
23 just talk about that a little bit more now. Tell us a little
24 bit more about that now so we can get a feel for what your, you
25 know, what your current work experience is.

1 A. Sure. So currently I spend the majority of my time
2 interacting with producers from our California milk sheds, both
3 here and in Orland, California. We have a handful in Southern
4 California as well, I believe one of them was here yesterday,
5 Michael Oosten. In that, in those interactions, though, we
6 talk about their business conditions, the co-ops business
7 performance, issues like drought and FMMO in California. So I
8 interact with them quite frequently.

9 Q. Do you have certain interaction with your customers as
10 well?

11 A. My customers are more limited now in my day-to-day
12 activities than they were in the past.

13 Q. Okay. Very good. Thank you. And please proceed with
14 your testimony.

15 A. I have attended many of the Federal Milk Marketing
16 Order (FMMO) in California hearing sessions conducted this far
17 and have learned a great deal about FMMO's. This is my first
18 experience with an FMMO hearing, although I have participated
19 in CDFA milk hearings in the past.

20 I'm here to testify in support of Proposal 1 offered by
21 Land O'Lakes, Inc., Dairy Farmers of America, Inc., and
22 California Dairies, Inc. My work as a Director Member
23 Relations with Land O'Lakes, means that I am in daily contact
24 with dairy producers in California. To know and understand
25 their circumstances, is my job. With that background, I have

1 heard some testimony and seen several pieces of evidence
2 provided in this hearing in opposition to Proposal 1, which I
3 would like to discuss further from a producer's point of view.
4 I will discuss three topics: First, the relationship between
5 class prices and producer prices in California. Second, the
6 supply of milk in California and its expansion or contraction.
7 And third, cost of production and dairy farm numbers in
8 California.

9 Class Prices and Over Order Premiums

10 At the top of Page 8 of Exhibit 98, Mr. DeJong points
11 out that "...California's recent milk production slowdown is an
12 expected response given the global oversupply of milk powder
13 and lower California Class 4a price." Currently, lower
14 producer prices may have contributed to the most recent milk
15 production slowdown, however, during the time period
16 January 2008 through June 2015, California Class 4a minimum
17 prices have contributed more to the California blend price than
18 the California Class 4b price has, for the majority of the
19 months. I would like to -- I say, see Exhibit 13.A Class Price
20 and California Blend Price Comparison 2008 through 2015.

21 Q. And that's part of Exhibit 190, correct?

22 A. Correct.

23 Q. So would you -- could we turn to that exhibit and tell
24 us a little bit about it, and if you prepared it and where you
25 got the information.

1 A. Sure. So this graph shows, and I believe everybody has
2 color copies out there, three different distinct lines
3 comparing statewide Class 4a in the green line, statewide
4 Class 4b in the brown line, and the statewide blend in the gray
5 line. And for most of the periods presented here you can see
6 that the green line is closer to the blend, and in some cases
7 above the blend price, as it relates to the comparison of the
8 4b price.

9 Now, this information came from Exhibit 61, which was
10 offered by the CDFA earlier in the hearing record. And
11 specifically, the schedules that it was attained from was
12 CDFA-A and CDFA-C.

13 Q. Very good. So continue with the text of your testimony
14 then on Page 3 of Exhibit 189.

15 A. In essence, during the timeframe when the 4b discount
16 had its largest impact in California, the cheese processors
17 have drawn money from the California pool which has allowed
18 them to pay their producers the quota and overbase values. At
19 the same time, they have retained the profits from the 4b
20 discounted milk price to pay over order premiums to their
21 producers.

22 During the period of January 2008 through June of 2015,
23 I estimated Hilmar's draw from the California pool to be
24 \$244.3 million. See Exhibit 13.B Estimated Hilmar Pool Draw,
25 2008 through 2015.

1 Q. Let's turn to Exhibit 13.B then, of Exhibit 190. And
2 could you tell us how you prepared that exhibit and what it
3 depicts, please?

4 A. Sure. So this is an annual impact showing each of the
5 bars in graph, and it shows the amount of estimated pool draw
6 that Hilmar would have received, given some of the assumptions
7 that I have used. And fundamentally, what this is, is the
8 difference between the 4b price and the blend price.

9 Q. The 4b price being the price set by CDFA for milk used
10 to produce cheese at Hilmar and all other cheese makers in
11 California?

12 A. Correct. I would just add that these are announced
13 prices so they are at a standard 3.5 fat, 8.7 percent SNF,
14 solids not fat.

15 Q. Very good. And for 2015 that was estimated through
16 what period of time?

17 A. Through the end of June.

18 Q. Okay. Thank you. So go back to the text then, on
19 Page 3 of 189 and continue with your testimony.

20 A. Sure. The estimate was based on processing 12 million
21 pounds of milk per day, 353 days per year, multiplied by the
22 difference between the 4b price and the statewide blend, per
23 the CDFA data indicated in Exhibit 61. Again, the same
24 information that I spoke of earlier. While the cheese
25 manufacturers in California would like to take credit for

1 keeping the pay price to producers as high as possible, it is
2 actually the butter/powder manufacturers who have contributed
3 the bulk of the value that makes up the regulated price paid to
4 all California producers.

5 On Exhibit 98, Page 10, Mr. DeJong indicates Hilmar has
6 paid \$120 million in premiums over several years. Since he
7 chose not to quantify the time represented by several years, I
8 estimated the value that Hilmar has gained from the difference
9 between the California Class 4b and the FMMO Class III using 12
10 million pounds per day of milk processed over a 92-month period
11 from January 2008 to August 2015. See Exhibit 13.C Estimated
12 Annual Hilmar Benefit Based on California Class 4b vs.
13 FMMO III, 2008 through 2015.

14 Q. So walk us through Exhibit 13.C of 190, Exhibit 190,
15 Mr. Garbani, please.

16 A. So again, this is an annual bar graph that shows the
17 estimated benefit to Hilmar, comparing the Class 4b versus the
18 FMMO Class III price. Again, at a standard 3.5 percent fat and
19 8.7 percent SNF.

20 Q. So the bars represent annual dollars; is that correct?

21 A. Correct.

22 Q. And the scale on the left is in, it's in dollars and
23 millions of dollars.

24 A. Correct.

25 Q. Okay. So the, like, 2014, the highest bar represents

1 approximately what amount in that year?

2 A. I don't have the number in front of me, but roughly a
3 little in excess of a hundred million dollars.

4 Q. Okay. And we can -- we can compare the bars to the
5 scale and determine the approximate benefit each year, correct?

6 A. Correct.

7 Q. That's based on the Hilmar volumes that you have
8 indicated before?

9 A. Correct. Again, 12 million pounds a day, 353 days a
10 year.

11 Q. By the way, why did you use 353 days a year?

12 A. Well, typically there are down days in manufacturing
13 plants, and in my estimate here, I assume there would be one
14 down day per month in their manufacturing calendar.

15 Q. Okay. And 12 million pounds per day, what's the basis
16 for that figure?

17 A. So I actually heard in the testimony that it is closer
18 to 14 million more recently, which would suggest the number
19 would be larger. However, as I looked back over this time
20 period from 2008 to today, I had to go back into some old CDFA
21 testimony, and they were roughly around that 12 million
22 dollars, or excuse me, 12 million pounds per day processing
23 level in the earlier years. So I left it at the lowest volume
24 of 12 million.

25 Q. In other words, that's a number, a volume number that

1 Hilmar has itself put into the public record?

2 A. Correct.

3 Q. Okay. Okay. Do you have anything more about 13.C
4 before you go back to your testimony?

5 A. I think the next sentence in the testimony is what I
6 would like to point out.

7 Q. Very good.

8 A. Which is --

9 Q. Proceed.

10 A. This represents the discounted value that Hilmar was
11 able to pay for the milk versus the FMMO Class III price from
12 January 2008 through August 2015. The estimated value of the
13 4b discount is \$467.2 million, just under one half billion
14 dollars.

15 Assuming Hilmar paid 120 million in premiums to
16 suppliers/producers, that left \$347 million for Hilmar's return
17 on investment over the eight plus years presented. Hilmar's
18 ability to pay 120 million in premiums results directly from
19 the regulated 4b price being too low.

20 JUDGE CLIFTON: Would you read that again, Mr. Garbani,
21 being sure to express dollars wherever it is indicated in your
22 testimony?

23 MR. GARBANI: Sure. Hilmar's ability to pay \$120 million
24 in premiums results directly from the regulated 4b price being
25 too low. Continuing to give Hilmar Cheese Company and other

1 cheese processors the ability to retain this 4b discount, will
2 only lead to more rapid consolidation and reductions in the
3 supply of California milk.

4 California Milk Supply Growth and Contraction

5 During Mr. James DeJong's testimony on behalf of Hilmar
6 Cheese Company, he showed us the growth of Hilmar's gross
7 receipts. However, he didn't show us how much of the growth
8 came from their own contract producers and owners. As I
9 understand, Hilmar used to contract annually for milk from
10 cooperatives, but currently Hilmar purchases from cooperatives
11 only on a spot basis. In fact, the extra milk needed for the
12 soon-to-open powder milk plant is coming from internal growth
13 and producers they have garnered from the market which include
14 former members of Land O'Lakes, Dairy Farmers of America, and
15 California Dairies.

16 Dr. Bill Schiek provided a graph in Exhibit 80, Figure
17 3, Page 7, beginning in 1970 through 2014, depicting the growth
18 in California milk supply. Without more recent information
19 from Hilmar representatives during the FMMO hearing, I turn to
20 the following statement from David Ahlem, CEO, Hilmar Cheese,
21 at the CDFA hearing held June 15th, 2015, page 227:

22 "Hilmar Cheese -- our year over year milk supply
23 of milk has increased. We're not having trouble
24 sourcing milk or fulfilling commitments in the
25 current environment. We have maintained our

1 non-summer contract caps."

2 Mr. Ahlem went on to say:

3 "Hilmar Cheese Company shipped nearly 400 loads
4 out-of-state this spring because we were unable to
5 find available processing capacity and willing
6 buyers for milk in California."

7 During the questions from the CDFA Hearing Panel, when
8 asked about their new powder plant being built in Turlock,
9 California, Mr. Ahlem replied on Page 240 and 241:

10 "Well, it certainly creates capacity so we have a
11 growing supply. As we illustrated that our milk
12 supply is up and we have been trying to grow it in
13 preparation for this new asset coming on."

14 However, he went on to answer the following question on
15 Page 243:

16 "Mr. Shippelhouse: As you have started growing
17 your milk supply, has that contributed to the 400
18 loads that you mentioned that you had to ship out
19 of state to find a home?

20 Mr. Ahlem: Yes, I think this spring that did
21 contribute to that some."

22 Based on Mr. Ahlem's testimony, it appears that while
23 the Dairy Institute and its members would argue that any over
24 supply situation in California was due to the Cooperative (LOL,
25 DFA, and CDI) which stands for Land O'Lakes, Dairy Farmers of

1 America, and California Dairies, Inc. Members growing their --

2 JUDGE CLIFTON: California Dairy Institute?

3 MR. GARBANI: No.

4 JUDGE CLIFTON: California Dairies, Inc.?

5 MR. GARBANI: Yes.

6 BY MR. BESHORE:

7 Q. Why don't you start that sentence again.

8 A. Yeah, let me start that sentence over.

9 Based on Mr. Ahlem's testimony, it appears that while
10 the Dairy Institute and its members would argue that any over
11 supply situation California was due to the Cooperative (LOL,
12 DFA, and CDI) members growing their milk beyond processing
13 capacity leading to the sale of the distressed milk that finds
14 its way into other states to compete with California finished
15 goods, Hilmar, in fact, also contributed to the over supply of
16 milk in California and has shipped its excess milk to their
17 plant in Texas to convert lower price milk into cheese that
18 competes with California cheese.

19 Clearly the growth has been attributable to Hilmar as
20 well, based on the following testimony from Mr. John Jeter,
21 CEO, Hilmar Cheese during the 2007 CDFA hearing, Pages 219 and
22 220:

23 "You know, the old way we did it, as we grew and
24 we averaged almost 20 percent growth a year,
25 although it slowed down dramatically recently, you

1 know, we would let people ship what they wanted
2 because we had markets for that milk."

3 As a result of this production growth, Hilmar, by its
4 own admission, has instituted production limits with its milk
5 suppliers. Exhibits 13.D Letter from Hilmar Dated October 18,
6 2007 and 13.E Letter from Hilmar Dated August 21, 2009, are two
7 letters distributed by Hilmar to their producer suppliers.

8 Q. Do you want to just look at 13.D and 13.E, and before
9 you go back to your testimony, did you, are those letters that
10 were actually sent by Hilmar to its producers?

11 A. Yes.

12 Q. Okay. And you, obviously you didn't receive them, but
13 you obtained them from someone in the, you know, in your
14 contact?

15 A. Yes.

16 Q. Okay. Do you want to describe them in any way other
17 than what you have in the text?

18 A. I think in the text it will outline what the -- what
19 the essence is of each letter, so if you don't mind, I'll
20 continue that.

21 Q. Very good.

22 A. The letter dated October 18, 2007, outlines the
23 initiation of Hilmar's milk production limits to their
24 producers, including penalties. In the letter dated August 21,
25 2009, Hilmar described its need for additional milk above the

1 then-contracted volumes, as long as the production is received
2 prior to December 31, 2009. Hilmar then cautions its suppliers
3 against making any major growth changes on their dairies that
4 cannot be reversed in January of 2010. This type of whipsaw
5 growth opportunity has limited, if any, value to producers when
6 it takes nearly two years to raise a calf into milk production,
7 and certainly could contribute to an over supply situation and
8 to shipments of milk out-of-state.

9 I would like to expand a bit on California milk
10 production volumes using previously presented information in
11 the hearing. If the opponents of Proposal 1 --

12 Q. Start that sentence again, please.

13 A. Excuse me, the opponents, the proponents -- let's do it
14 one more time.

15 The opponents of Proposal 1 have indicated California
16 production growth has been significantly higher than other
17 states in the U.S., as depicted in Exhibit 80, Figure 4, page
18 9. In the attached graphs, I have used the same information
19 Dr. Schiek presented in Exhibit 80, Table 4, Page 10, and Table
20 8, Page 16, but have changed the index period to be 2008
21 instead of 1985 or 2003, respectively. I chose 2008 as an
22 index period, because 2008 is the year within Dr. Schiek's
23 Exhibit 80, Figure 1, Page 1, when the whey factor in the 4b
24 formula was fixed by the CDFA at 25 cents.

25 While Exhibit 13.F Milk Production Index Selected

1 States and U.S. 2008 through 2014, (2008 = 100%) has been
2 entered into the record earlier in the hearing testimony,
3 Exhibit 13.G Dairy Farm Numbers by State as a Percent of 2008
4 Levels, 2008 through 2014 is new.

5 Q. Do you want to describe those exhibits just briefly
6 before you go on to describe them in your testimony, please?

7 A. Sure. Fundamentally, if those of you that were here
8 recall, Mr. Schiek talked about how he indexed the information
9 in his, in his graphs. All I have done is changed the index
10 period so that 2008 is at a hundred percent, and then we
11 measure from that period forward.

12 In the first graph, 13.F, you can see that California
13 is actually the lowest in milk production growth out of the
14 state's that were listed previously in Mr. Schiek's testimony.
15 And if we flip the page to 13.G, again, the same information, a
16 different index period. California, when we look at farm
17 numbers declining by state, California is second to the lowest
18 as far as reductions in farm numbers, only above Wisconsin in
19 this comparison.

20 Q. Okay. So please return, then, to the text of your
21 testimony on Page 7 of Exhibit 189.

22 A. Sure. Both Exhibit 13.F and Exhibit 13.G show a bit
23 different picture of growth and dairy farm declines than
24 Dr. Schiek suggested during his testimony, Exhibit 79, Page 31,
25 and Mr. Greg Dryer of Saputo also suggested on Exhibit 91,

1 Page 14. In their testimony, Dr. Schiek and Mr. Dryer both
2 suggested that California growth has been larger than in all
3 other states in the U.S. and the decreases in dairy farm
4 numbers are not abnormal and are slowing -- and are a slower
5 decline than in Idaho or Wisconsin. Their conclusions depend
6 largely on the timeframe and the data, that the data
7 represents, and more importantly, on the base year chosen.
8 Using 2008 as the index for measurement of both growth and milk
9 volumes and declining dairy farm numbers, it is apparent,
10 1) that California is not the leader in growth, nor the state
11 losing the least amount of dairy farms, and 2) the market
12 signals from the 4b price paid to producers in California have
13 had an impact on both measurements.

14 In Exhibit 98, Page 8, towards the bottom of the page,
15 Mr. DeJong wrote, "In such instances, processing capacity can
16 be needlessly shutdown resulting in loss of investment, lost
17 jobs for plant workers, and lost avenues for dairymen to
18 orderly and economically market their milk." But from a
19 dairyman's perspective, if minimum milk prices are set too low,
20 dairy farmers will be needlessly shut down, (as we have heard
21 from Mr. Fluegel, Mr. Medeiros, Ms. Medeiros, Ms. Lopes, and
22 other producers) resulting in loss of investment by dairymen,
23 lost jobs for dairy and farm workers, and an opportunity for
24 processors to enhance their profits. The Dairy Institute and
25 its members suggest it is better to have lower minimum

1 mandatory prices than minimum mandatory prices that are set too
2 high. The assumption is that over order premiums will be
3 offered to producers from manufacturers to supplement the
4 minimum mandatory prices, and that producers will ultimately
5 receive a fair value for their milk. While the theory
6 indicates manufacturers will "do the right thing" and pay
7 additional premiums when warranted, there is no market
8 mechanism to ensure it will happen.

9 Cost of Production (COP) and Producer Margins

10 Dairy Institute witnesses have used ERS, which stands
11 for Economic Research Service, and CDFA cost of production data
12 to suggest farm net income is adequate, in spite of the
13 basically unanimous testimony of dairy farmers that things are
14 not doing well on the farm in California. The Dairy Institute
15 data should not overshadow the producers witnesses -- the
16 producer witnesses. First and foremost, use of ERS information
17 to depict the COP in California and other states is minimally
18 useful, whether trying to show total cost per hundredweight or
19 relativity across selected states as depicted in Dr. Schiek's
20 Exhibit 80, Figure 11, Page 24 and the graphs within Mr. Greg
21 Dryer's testimony, Exhibit 91, Pages 10 and 11. Exhibit 13.H
22 2014 Selected States Margin per CWT, acronym for hundredweight,
23 illustrates the following of relying on ERS COP information.
24 It shows 2014 margin per CWT using Federal Order mailbox prices
25 2014, from a website that I have included in the written

1 testimony:

2 www.fmma30.com/Homepage/FO30-MailboxPrices.html

3 Q. Can we include that as if read without Mr. Garbani
4 spelling out the URL, your Honor?

5 JUDGE CLIFTON: Yes, we can. However, I would like him to
6 indicate, just to give people some orientation, just the phrase
7 that comes immediately following the www.

8 MR. GARBANI: FMMA 30.

9 JUDGE CLIFTON: Thank you.

10 MR. GARBANI: So we have the reference to URL, plus
11 marketing cost, including a 50 cent per CWT estimate for
12 hauling, less ERS COP from another long URL:

13 [www.ers.usda.gov/datafiles/Milk_Cost_of_Production_Estimates/
14 Milk_CostofProduction_Estimates2010_Base/Annual/MilkState2010%
15 20base.xls](http://www.ers.usda.gov/datafiles/Milk_Cost_of_Production_Estimates/Milk_CostofProduction_Estimates2010_Base/Annual/MilkState2010%20base.xls)

16 MR. BESHORE: And I would like to handle that the same way,
17 if we could, your Honor.

18 JUDGE CLIFTON: Yes, I would like the court reporter to
19 type both these web sites just as if the witness had read them,
20 and you will find them on page 8 of Exhibit 189. And for now,
21 what I would like, Mr. Garbani, is if you will just read the
22 cite following www.

23 MR. GARBANI: ERS.

24 MR. BESHORE: Go ahead to the back slash.

25 MR. GARBANI: ers.usda.gov

1 JUDGE CLIFTON: Good. Thank you.

2 BY MR. BESHORE:

3 Q. Continue to the end of that with the next sentence and
4 then we'll look at the graphs.

5 A. Sure. As several witnesses have testified, 2014 was
6 one of the best years in recent history for dairy farm margins.
7 Since the graph included on Exhibit 13.H of my exhibit suggests
8 excessive negative margins that year, it underlies the fact
9 that ERS COP may not be a good source to use in assessing COP
10 or resulting in margins for procedures.

11 Q. So in that text that you have just read, in the
12 paragraphs, when you have said COP, that's an abbreviation that
13 you use for Cost of Production throughout, correct?

14 A. Yes, correct.

15 Q. And the first website, FMMA 30, can you just tell us
16 what that website is? Is that the Order 30 Federal Milk Market
17 Administrator website?

18 A. Yes.

19 Q. Okay. Now, let's go to Exhibit 13.H, which you have
20 just described. And just tell us where you got the information
21 and how you displayed it?

22 A. So within this Exhibit 13.H, you can see the
23 calculations across the top. And there are some information
24 there about where the pieces of data came from similar to the
25 testimony that we just talked about. Basically, we start with

1 their cost of production information, and similar to what has
2 been done in previous testimony, we add back things like
3 hauling and marketing to get to our revenue, our mailbox
4 revenue line.

5 Q. And would you, the 50 cent hauling number, was that
6 your estimate or -- why did you use 50 cents there?

7 A. It was based on an estimate of what I believe hauling
8 costs would be reasonable in different Orders in different
9 states.

10 Q. Very good. Continue.

11 A. So then it goes on to calculate a net income or a net
12 margin for each of the states, and as you can see by the
13 picture and the graph, almost all of these states have negative
14 margins during the year that was supposed to be extremely
15 beneficial for dairy farmers.

16 Q. That leads you to have some observations about the use
17 of those ERS numbers, I take it?

18 A. Correct.

19 Q. Okay.

20 A. And I think I just read some of those into testimony.

21 Q. Yes. So continue then with your testimony on Page 9 of
22 Exhibit 189.

23 A. Alternatively, review of the CDFA COP feedback forms
24 from Q4 2012 not adjusted for high components or organic
25 operations, is captured on Exhibit 13.I CDFA's COP Q4-2012 of

1 my testimony. The variance between high and low with COP is
2 almost \$30, from a high of \$45.24 per hundredweight to a low of
3 \$15.39 per hundredweight. Correspondingly, the difference
4 between the highest calculated margin of \$11.89 per
5 hundredweight, and lowest calculated margin of minus \$10.23
6 shown on Exhibit 13.J CDFA's Net Margin Q4-2012 is in excess of
7 \$22 per hundredweight.

8 Q. Okay. Would you stop there and let's look at, that's
9 Exhibits 13.I and 13.J, your graphs in Exhibit 190, and just
10 tell us about each of those.

11 A. Sure. So these are, it's basically a scattered graph
12 of all the data points that are included in a period of time
13 quarterly for the CDFA of all the feedback forms that are
14 included in their cost of production survey.

15 Q. And have you identified with numbers the high and the
16 low that were referred to in your testimony?

17 A. Yes. You can see the highest being \$45.24, the lowest
18 \$15.39.

19 Q. Okay. And the color of the dots represents the
20 location of the producer reporting this information or feed,
21 reporting this feedback; is that correct?

22 A. That is correct. They segment the state up into
23 different areas as is provided on the right hand margin of the
24 graph, North Valley, North Coast, Southern Cal, South Valley.

25 Q. Okay. And is Exhibit 13.J then, how does that differ

1 from -- well, first of all, Exhibit 13.I, those are full cost
2 of production numbers; is that correct?

3 A. Correct.

4 Q. Cost of production as figured by the CDFA formulas.

5 A. Correct.

6 Q. Okay. So what do we have on 13.J, then?

7 A. Well, 13.J is, again, a calculation of net margin for
8 those same operations, for the same time period of the fourth
9 quarter of 2012. Again, what the color of the dots
10 representing the segmentation, I guess, within the state in the
11 different areas. But again, using information, like cost of
12 production, adding back into it, or mailbox price, and adding
13 back into it the hauling cost and the marketing cost to arrive
14 at an income number, subtracting the cost of production to give
15 us these margins.

16 Q. Okay. And did you prepare these graphs from the CDFA
17 information?

18 A. Yes, I did.

19 Q. Thank you. Very good. Continue then with the text of
20 Exhibit 189, your testimony, where you left off. The last
21 paragraph before the subheading fair and equitable on Page 9.

22 A. The reason for utilizing a different period than
23 Dr. Schiek, and including all dairies in the CDFA COP data is
24 to underscore that indeed the COP and estimated margin in
25 California have a wide range, especially depending on the

1 period selected.

2 Fair and Equitable

3 The proponents of Proposal 1 are not trying to increase
4 the milk price in California to cover the wide range of COP in
5 the state. We are simply asking for prices available to other
6 producers in FMMO's in the nation. This is in stark contrast
7 to what the Dairy Institute supports in Proposal 2, which
8 provides for additional shrink for extended shelf life
9 products, a whey price that eases the burden within minimum
10 milk prices for smaller cheese plants, freight cost to
11 subsidize the spatial value of their finished goods, and
12 processor-favorable changes to make allowances. In other
13 words, the Cooperatives recognize an FMMO isn't expected to
14 cover all the costs relating to producing milk for all
15 California producers, as they may or may not be efficient or
16 may be covering their cost by marketing their milk in a manner
17 that compensates them for their milk characteristics
18 (components, organic, rBST free). At the same time, we do not
19 believe it is appropriate for processors in the contemplated
20 FMMO to deduct their inefficiencies, excess shrink, lack of
21 whey processing investment, or (contradicting current USDA
22 policy) spatial values for finished goods produced in
23 California, from producers' minimum milk prices. We would
24 point out that while producers' cost of production in margins
25 are available within the COP data on the CDFA website, we have

1 yet to see an income statement from any of the processors
2 within California who claim they can't afford an increase in
3 their milk cost that would result from an adopting Proposal 1.
4 Summary

5 In summary, I would like to recap a few previously
6 mentioned themes:

7 * Hilmar's milk is growing, and in the past has added
8 to the over supply situation in California, as well as
9 to sales of milk to out-of-state processors, including
10 themselves, creating a finished good product that
11 competes with market share with California products.

12 * Hilmar and other cheese processors have financially
13 benefitted from the California pool over the last
14 several years.

15 * Over order premiums can be paid by Hilmar due to the
16 4b discount.

17 * COP information available from ERS is misleading and
18 it is difficult to get an accurate actual COP and
19 margin value.

20 * As California producers have repeatedly testified,
21 they want to be part of the national milk marketplace
22 with a milk price based on national product values.

23 Thank you for the opportunity to provide this rebuttal
24 testimony.

25 Q. Thank you, Mr. Garbani. Do you have anything you would

1 like to add at this point?

2 A. No.

3 Q. Your Honor, I would move the admission of Exhibit 189
4 and 190, and Mr. Garbani will be available for
5 cross-examination questions.

6 JUDGE CLIFTON: I have one question first, Mr. Garbani.
7 Look at your last two exhibits, please, and tell me how you
8 determine where to put the green line. What is -- what does
9 that represent?

10 MR. GARBANI: I apologize, your Honor. I should have noted
11 this in the testimony. The green line is actually depicted, a
12 depiction of the average for that period on the cost of
13 production. So for 13.I, that line, and it is a little bit
14 off, just last-minute prep here, it is \$20.01 per hundredweight
15 is the value of that green line, the average value for that
16 cost of production.

17 MR. BESHORE: Say that number again.

18 MR. GARBANI: \$20.01.

19 MR. BESHORE: Thank you.

20 MR. GARBANI: And on the following page, 13.J, that green
21 line is supposed to represent \$1.26 per hundredweight.

22 MR. BESHORE: How did you reach the \$1.26?

23 MR. GARBANI: They are both simple averages.

24 MR. BESHORE: Thank you for the question, your Honor.

25 JUDGE CLIFTON: Someone would have asked it. Mr. Hill?

1 MR. HILL: Brian Hill. I just want to point out again,
2 when your Honor asked, for the record, when your Honor asked
3 for the last two exhibits, she meant the last two tables from
4 Exhibit 190, not 189, and not Exhibit 189 and Exhibit 190; is
5 that correct?

6 JUDGE CLIFTON: That's correct. Thank you, Mr. Hill.
7 Yeah. This has got to be very difficult for people listening
8 in on the audio feed. I would love -- this has been the best
9 hearing technologically, just excellent. If there would be any
10 miracle that we could have to make it even better, it would be
11 that somehow these exhibits could be visible to the people who
12 are listening to the audio feed. I know that's very difficult.
13 I know that USDA, for example, does not want to use technology
14 such as Skype and some other technologies that have hacking
15 vulnerabilities, so I don't know that it's possible. But that
16 would be my dream, that it would be just like it's been for the
17 last 39 days, but that the people on the audio feed could see
18 the exhibits.

19 All right. Let me ask first, does anyone wish to
20 question Mr. Garbani on either Exhibit 189 or Exhibit 190
21 before determining whether you have objections? No one. Is
22 there any objection to the admission into evidence of Exhibit
23 189? There is none. Exhibit 189 is admitted into evidence.

24 (Thereafter, Exhibit 189, was
25 received into evidence.)

1 JUDGE CLIFTON: Is there any objection to the admission
2 into evidence of Exhibit 190? There is none. Exhibit 190 is
3 admitted into evidence.

4 (Thereafter, Exhibit 190, was
5 received into evidence.)

6 JUDGE CLIFTON: Who will begin cross-examination of
7 Mr. Garbani? Thank you, Mr. English. Someone has to. I
8 always appreciate the person who will go first.

9 CROSS-EXAMINATION

10 BY MR. ENGLISH:

11 Q. Chip English. And I know this was a huge surprise that
12 I was going to go first.

13 And I don't have a lot, your Honor. So I just have
14 several areas to look at, Mr. Garbani. First of all, good
15 afternoon.

16 A. Good afternoon.

17 Q. I don't think you and I have had the pleasure, assuming
18 that would be the word either one of us would use, but --

19 A. Agreed.

20 Q. Looking first at Page 6, and your discussion just above
21 the last paragraph about the whipsaw growth opportunity. And
22 you point out that it takes dairy farmers nearly two years to
23 raise a calf. You would agree with me that dairy farmers have
24 other ways to adjust production as opposed to adding cows or
25 eliminating cows, correct?

1 A. I'm not sure I follow that question.

2 Q. All right. Well, your, built into that statement is, I
3 believe, the assumption that the way producers can grow milk
4 production is by adding calves, correct?

5 A. Correct.

6 Q. Okay. They could also alter the production by quantity
7 or quality of the feed.

8 A. Oh sure, yes.

9 Q. Okay. They could also alter production by using or
10 discontinuing the use of rBST?

11 A. Yes.

12 Q. Okay. So my question was, it's not just the adding a
13 calf or subtracting a calf that adjusts production for dairy
14 farmers, correct?

15 A. Correct.

16 Q. Okay. And it may seem a minor point, but I think it
17 doesn't probably for one segment of the Dairy Institute of
18 California. On the bottom of Page 3, you are talking about the
19 cheese manufacturers and you are talking about the
20 butter/powder manufacturers, but my friends from the Dairy
21 Industry of California who are the Class I processors may take
22 issue with who is paying money into the pool, correct?

23 A. Correct.

24 Q. So I want to turn now to Page 4 of your testimony,
25 which is Exhibit 189, and Exhibit 190, Exhibits 13.B and 13.C,

1 trying to keep Mr. Hill happy, and the record clear.

2 You don't know the prices that Hilmar receives when it
3 sells cheese, do you?

4 A. No.

5 Q. Okay. So when you say that the estimated value of the
6 4b discount is 467.2 million, you subtract 120 million paid to
7 the dairy farmers, and that leaves 347 million for Hilmar's
8 return on investment. You don't know that that really left 347
9 million for Hilmar's return on investment, do you?

10 A. Based on the data that I had available, that's --
11 that's what my calculations indicate.

12 Q. So your assumption there is that Hilmar can sell the
13 milk at or above Federal Milk Order Class III prices, the
14 prices that are assumed under the formula?

15 A. Could you repeat that question?

16 Q. Well, your assumption at deriving a \$347 million return
17 on investment, is based on the idea that Hilmar is getting a
18 price for the cheese they sell that allows that 347 million to
19 exist, correct?

20 A. That's true.

21 Q. But you don't know that because you don't know what
22 prices they are selling the product at, right?

23 A. That evidence hasn't been offered.

24 Q. Okay. Well, looking at Exhibit 190, 13.C, and the
25 numbers for 2008, 2009, and 2010, and your estimated annual

1 Hilmar benefit, that means that was the benefit Land O'Lakes
2 was getting at its Tulare plant that it closed on October 2010?

3 A. Yes, a portion of it.

4 Q. Okay. And nonetheless, Land O'Lakes decided to close
5 that plant, correct?

6 A. I think that's a matter of record in the testimony,
7 yes.

8 Q. Now, on 13.B -- how long have you been involved in
9 California dairy industry history?

10 A. 15 years'ish, yeah.

11 Q. Okay. So going back to 2000, right? At least?

12 A. Correct.

13 Q. So if you ran your Exhibit 13.B back in time to 2003,
14 wouldn't it be true that Hilmar and other Class 4b operations,
15 were making payments into the pool as opposed to receiving a
16 pool draw each of those years 2003, 2004, 2005, 2006, 2007?

17 A. I haven't looked at that information to make that
18 calculation.

19 Q. Does it sound right based upon your knowledge of the
20 industry going back to 2000?

21 A. I don't have that comparison between 4a and 4b and the
22 blend to make that determination in front of me.

23 Q. If the evidence in the record shows that that's what
24 was going on, and some of those numbers were at least as big as
25 the positive numbers in latter years, would that change your

1 testimony?

2 A. Say that again, please.

3 Q. If the record revealed that data is there to do those
4 calculations for payments into the pool that are equal to, or
5 greater than, these pool draws you see in your 13.B, would that
6 change the testimony you have provided?

7 A. It may likely. However, the reason why I have chosen
8 this period of time is because it is most relevant to proximity
9 of this hearing.

10 Q. Nonetheless, you talked about the premiums paid by
11 Hilmar. Those premiums were also paid prior to 2008, correct?

12 A. The truth of the matter is, when I looked at CDFA
13 testimony, that 120 million has been quoted on for at least ten
14 years, so I'm not sure when it started or how it moves.

15 Q. Well, but, that means, if it's been quoted for years,
16 they were paying that 120 million both when they were paying
17 into the pool and when they were collecting out of the pool,
18 correct?

19 A. While it maybe correct, they must have gotten a great
20 price for their cheese, if that's true.

21 Q. I have no further questions.

22 JUDGE CLIFTON: Who next has questions for Mr. Garbani? I
23 would invite redirect and then I'll ask if USDA has any
24 questions.

25 MR. BESHORE: I have no redirect.

1 JUDGE CLIFTON: Thank you, Mr. Beshore. He indicated he
2 has no redirect. Are there any questions from employees of
3 USDA? There are none. Mr. Garbani, is there anything else you
4 would like to add?

5 MR. GARBANI: No. Other than to thank you for the
6 opportunity to testify today.

7 JUDGE CLIFTON: Thank you for your studied focus here. I
8 find this helpful.

9 MR. BESHORE: Your Honor, Marvin Beshore. Your Honor, as
10 indicated this morning, that is our testimony for today in
11 rebuttal. We do have Mr. Hollon, trusting he arrives back in
12 Fresno tomorrow, and Dr. Erba to close out our case.

13 JUDGE CLIFTON: All right. And Dr. Erba is not ready to go
14 today; is that correct?

15 MR. BESHORE: That is correct.

16 JUDGE CLIFTON: All right. Then I would look forward to
17 Dr. Schiek and the testimony that I requested from him.

18 MR. BESHORE: Marvin Beshore. I don't want to belabor the
19 record, I would reiterate the objections we have made to this
20 testimony and I want to add one additional objection. And that
21 is that, as this, as your Honor has just indicated, as this
22 testimony has been requested by your Honor, the Rules of
23 Practice do not provide, within the scope of powers of the
24 Judge for these hearings, the ability to call witnesses. And I
25 would note that objection to the testimony.

1 JUDGE CLIFTON: Thank you. Your objection is noted. I
2 did, after I had heard Dr. Schiek's testimony surrounding
3 Exhibits 145 and 146, and after I had thought about it over
4 night, I realized I wanted to recall him to expand on the ideas
5 presented. I felt it was essential for that information to be
6 available for consideration. I did that on my own. I wasn't
7 prompted to do it by anyone. It was just my thought process in
8 evaluating what we were hearing, not only from Dr. Schiek, but
9 also about that time we had testimony from Mr. Gonsalves. We
10 had excellent cross-examination by Mr. Vlahos of the witnesses
11 on the Monday, Dr. Schiek, and whoever else testified that day.
12 And it all seemed to focus my attention on the fact that we
13 needed a little more information. So it's somewhat
14 controversial that I have asked for it, but I did.
15 Mr. English?

16 MR. ENGLISH: May I be heard, even though I -- I understand
17 we're going to go forward, but nonetheless I think for the
18 record I have two things.

19 Nothing in the Rules of Practice provides sort of this
20 order that we have informally adopted over the last few
21 proceedings, where after proponents go, that there's rebuttal.
22 Nothing prevents anybody from showing up tomorrow and offering
23 testimony for the first time. Nothing would prevent us from
24 asking Dr. Schiek to come back on our own. So I think that
25 that is a more than a technical point, I think it is a point

1 that is really irrelevant because I think we could call him on
2 our own.

3 I do want to go back briefly, I'm not going to repeat
4 the entire discussion that we had last week, but I do think
5 that it really is notable to look at the case of Alto Dairy,
6 which we did discuss, lo so many days ago, I think that first
7 Friday in September. And in the Alto Dairy case, the Court of
8 Appeals said the following, which I just think is absolutely
9 critical of this entire proceeding because we just cannot think
10 of ourselves as being constrained by a straitjacket.

11 "The purpose of a rule making proceeding is not merely
12 to vote up or down the specific proposals advanced before the
13 proceeding begins, but to refine, modify, and supplement the
14 proposals in light of the evidence and arguments presented in
15 the course of the proceeding. If every modification is to
16 require further hearing, at which that modification is set
17 forth in the notice, agencies will be loathe to modify those
18 proposals and the rule making process would be degraded."

19 We are merely trying to live up to that. I call, on
20 our own, Dr. Schiek to the stand.

21 JUDGE CLIFTON: Mr. English, you may proceed.

22 DIRECT EXAMINATION

23 BY MR. ENGLISH:

24 Q. Thank you. We do not have a statement to pass out. We
25 are, we have a few extra, but we literally are responding to

1 those questions and making an effort to do so as best we are
2 able.

3 Dr. Schiek, do you have a few preliminary comments?

4 A. Yes, I do. As soon as the microphone is in place.

5 JUDGE CLIFTON: Dr. Schiek, you remain sworn. Would you
6 again state and spell your name?

7 DR. SCHIEK: Yes, my name is William Schiek, S-C-H-I-E-K.

8 So just, first in response to Judge Clifton's
9 questions, I wanted to kind of reiterate just kind of what our
10 thinking, basic thinking is, and just a couple of points
11 that -- you know, we believe the core of Federal Milk Marketing
12 Orders is uniform prices paid to dairy farmers and uniform
13 prices paid by handlers, and also there should be no trade
14 barriers with regard to Order regulation.

15 We also believe that Proposals 1 and 3, as they are
16 currently constructed, are inconsistent with those principles.
17 So that, I wanted to say at the outset.

18 BY MR. ENGLISH:

19 Q. So in light of that, what do you do about Judge
20 Clifton's questions, that I will now ask you. As we wrote them
21 down, and if we misconstrued them, we apologize. We can fix
22 them, obviously, but -- and we have sort or shortened it a
23 little bit, not that your Honor didn't present them in a very
24 cogent way. But number 1, how can we work toward uniform
25 pricing?

1 A. Okay. So you know, given what I just said, I think if
2 you have a payment based on quota and non-quota price, you have
3 to conclude that that's inherently non-uniform. And so, just,
4 if you are going to work toward uniform pricing, you would
5 think that over time the quota program would have to go away in
6 order to achieve uniform pricing to producers. And so that
7 raises the issue of some sort of sunset of quota as an answer,
8 and maybe the only answer to that problem.

9 Q. Number 2. How does USDA deal with the fact that it has
10 no control over who owns quota and what California might do
11 going forward with quota program?

12 A. Yeah. And that's a difficult one. And I think, you
13 know, that might be another reason why a sunset would be
14 something to consider.

15 The other possibility, of course, would be that you
16 could have a, some sort of provision in the Order that would
17 cause the Order to suspend or terminate if USDA or if CDFA were
18 to change or increase the value of quota or do something that
19 that interfered with the way USDA wanted to handle the
20 situation. So I don't have good answers for that one, but
21 that's -- that's one thing that comes to mind.

22 Q. So I'm going to ask the third question, and then I
23 think I'll pause for a moment. The third question, as we
24 understood it was, how do you compensate quota holders for the
25 full value of their holding? And the pause is, have you caused

1 to be prepared a chart to look at as you discussed --

2 A. Yes.

3 Q. Have you caused a chart to be produced in order to
4 respond to this question?

5 A. I did.

6 Q. Okay. So your Honor, I would like to pass out a
7 document to be marked.

8 JUDGE CLIFTON: While the exhibit is being distributed, I'm
9 going to mark it, Ms. Elliott, as Exhibit 191. Do you agree?

10 MR. ELLIOTT: Yes.

11 (Thereafter, Exhibit 191, was
12 marked for identification.)

13 JUDGE CLIFTON: Please raise your hand if you still need a
14 copy of this document that I have marked as Exhibit 191. The
15 first words on it say Quota Input Values. All right. It
16 appears everyone has a copy. You may proceed.

17 BY MR. ENGLISH:

18 Q. So Exhibit 191 is a PDF of an Excel spreadsheet with
19 Columns A through L, and it runs from January 2017 as a
20 hypothetical, through February of 2028.

21 First, Dr. Schiek, near the top on the first page of
22 Exhibit 191 there's a total quota value. Do you see that?

23 A. Yes.

24 Q. What is that number and where does it come from?

25 A. Okay. That is the number that was prepared by

1 Mr. Hatamiya on his testimony which was Exhibit 64, and the
2 total quota value number actually comes from Page 14 of his
3 testimony. And so that is the asset value of quota as he
4 calculated it.

5 JUDGE CLIFTON: Is it 64 or 54?

6 DR. SCHIEK: I have got 54, did I say 64?

7 JUDGE CLIFTON: You did.

8 DR. SCHIEK: Oh, I meant to say 54, I'm sorry.

9 BY MR. ENGLISH:

10 Q. So before we actually look at the chart, let's go back
11 to the question now. How do you compensate quota holders for
12 the full value of their holding?

13 A. Okay. So the idea here is that you would pay quota
14 holders either out of the pool, we also thought about this as
15 potentially as some kind of a check off on all producers,
16 recognizing that there may not be mechanisms to do that, but we
17 are just thinking about different things. It could also be
18 paid out of the pool with a certain value coming out each month
19 and that's kind of what this analysis would show, how that was
20 put together. So the idea is to pay quota holders out, out of
21 what the current payment rate has been, plus interest, which we
22 calculated at the Moody's BAA Bond Index Rate, which is, for
23 recent day, it was 5.51 percent.

24 Q. Now, why did you use the Moody's BAA for this purpose?

25 A. Yeah, the BAA rate has been used by CDFA in calculating

1 return on investment both on producer assets, in calculating
2 producer cost of production and the return on investment
3 allowance. It's also been used in the manufacturing cost as a
4 return on investment calculation on the net book value of the
5 asset. So, you know it's a rate that CDFA has used and we
6 thought it would be appropriate to use in this calculation.

7 Q. How is that different from, and maybe more broadly, how
8 is this calculation different, but how is that interest rate
9 different from the calculation that you used in your testimony
10 from last Monday?

11 A. Okay. So last Monday, the concept that we had in our
12 exhibit was the idea of creating an annuity type instrument
13 that would be tradable, and so there we were, we were looking
14 at using interest rate very close to zero because if you change
15 the interest rate that inherently changes the annuity starting
16 principle calculation to achieve the payback. So there we were
17 trying to kind of keep that interest rate low. But here you
18 are just talking about a straight payback that ought to have a
19 return on investment with it.

20 Q. The fourth question that I recall, or that we wrote
21 down from last Tuesday is, if quota were to be withdrawn or
22 drawn down on a percentage basis, what should that percentage
23 be?

24 A. Right. So I gave some thought to this, because in some
25 ways there's some advantages to looking at paying off quota or

1 sunsetting quota through a percentage of the pool. And that
2 advantage is that the pool value varies a lot depending on a
3 number of factors. Just looking at commodity prices, it varies
4 substantially from time to time depending on whether you are on
5 a year with low commodity prices or a year with high commodity
6 prices, like 2014 was. So the idea of percentage of the pool
7 would create some consistency in terms of the amount of,
8 relative to the size of the pool, the amount of dollars coming
9 off to pay quota. So from that standpoint, I think in terms of
10 the operation of the pool there's some appeal there.

11 The difficulty with that, though, then is that the
12 payback is variable, and it could take longer. If you are
13 looking at payback to asset value to quota holders, it could
14 take longer doing it as a percentage of the pool and it would
15 be difficult for quota holders, because they wouldn't, you
16 know, their income stream would be more variable and they
17 wouldn't know how much they are getting each and every month.
18 So there's trade offs there as far as I can see.

19 Q. Did you find a range?

20 A. Yeah, in looking at what quota, the quota value, and
21 I'm, I looked at some data that I had got from CDFA. Milk
22 Pooling Branch puts out something called an 1101 report, which
23 is kind of like their pool calculation, being very similar to
24 the uniform price type calculation, has a lot of information on
25 prices and values, and you know, utilization by class. And

1 they also include the quota pay out and the regional quota
2 adjuster values. So I took the regional quota adjuster value
3 and subtracted that essentially, from the quota pay out, and
4 kind of come up with a net quota pay out. And then looked at
5 that as a percentage of the total pool value.

6 And looking from 2009 to 2014, through 2014, we had a
7 range of, I think in March of 2014, the quota pay out, net
8 quota pay out, was 1.3 percent of the pool. And this is,
9 again, the CDFA calculated pool, so it's inherent in that as
10 CDFA pricing. And the maximum was in, I think July 2009, and
11 it was almost 4 percent of the pool in that particular month,
12 that was a low price period. So the average over that
13 five-year period was about two and a quarter percent of the
14 pool.

15 Q. So let's go back to Exhibit 191 and follow up with a
16 couple of other questions.

17 So for Exhibit 191 we have already said that the total
18 quota value, USDA may determine is a different number, correct?
19 And that's based upon --

20 A. Correct.

21 Q. -- but you are just using it without agreeing with it,
22 with Mr. Hatamiya's statement from Exhibit 54, correct?

23 A. Correct. This is out of his exhibit.

24 Q. And the interest rate of 5.51 percent, I think you told
25 us a moment ago, is the current BAA rate, correct?

1 A. Correct.

2 Q. Where does the --

3 JUDGE CLIFTON: Are you saying --

4 MR. ENGLISH: BAA, I mean, if it was AAA, you might say
5 Triple A rating.

6 JUDGE CLIFTON: So it is B, as in boy?

7 MR. ENGLISH: B, as in boy, AA.

8 JUDGE CLIFTON: Thank you.

9 MR. ENGLISH: -- regulated.

10 BY MR. ENGLISH:

11 Q. And you said that's correct, it is 5.51 percent,
12 correct?

13 A. That was for a recent day. I think it was a couple of
14 days ago that we looked at it. And you know, point out, that
15 would be a higher rate than a Triple A, which is a top rating
16 for a corporate bond, for example, and we would have a lower
17 interest rate, that BAA rating.

18 Q. And how did the annual quota cost then get calculated?

19 A. Okay. That came from Mr. Hatamiya's testimony, again,
20 Exhibit 54, and that one did come from Page 16, and it was at
21 the bottom of the table with lots of gold highlights. I think
22 he probably has the table, Table 5 of that testimony. Total
23 Quota Payments, per California County 2014, and that was the
24 sum of all the counties that he had there. So that was
25 \$139,329,759.23.

1 Q. So let's just run through a couple of lines and see if
2 we can understand what this chart does and shows. So why don't
3 you start with January 2017?

4 A. Okay. So the first four columns actually come from
5 CDFA statistical publications that, this used to be in what
6 they would publish as the Dairy Information Bulletin, now it is
7 available, this information is available on their website under
8 the data statistics section. And it gives the monthly pounds
9 of quota solids nonfat, non-quota solids nonfat, and total
10 solids nonfat. And there's also a solids nonfat test for
11 California for market milk, and it's also published in that, in
12 that statistics table.

13 Q. And this is historical data. And as heading indicates,
14 it is repeated with Leap Year adjustments, correct?

15 A. Correct. And it is from 2013, a slightly lower
16 production year than 2014, which was somewhat extraordinary
17 year for income. And so we thought that would be a better
18 basis for a simulation going forward.

19 Q. Okay. So that's Columns B, C, D and E. And then,
20 Column F is just a blank as a buffer, correct?

21 A. Correct.

22 Q. So what is Column G?

23 A. So Column G is a monthly calculation of what that
24 annual quota costs. I'm calling it a cost, but it is actually
25 a benefit to quota holders from the pool. And we, you will

1 note that the numbers do change by month. And essentially,
2 what we're looking at there is a number of days in the month
3 over 365, at least in the first year. It's adjusted for Leap
4 Year, so some years it is going to be over 366, but -- so it,
5 you know, for January it would be 31 because there's 31 days,
6 divided by 365, times that 139,329,759.

7 Q. Which is dollars?

8 A. Which is dollars. And so that gives you a monthly
9 quota cost. And this is, by the way, I should say, net of the
10 regional quota adjusters because of how Mr. Hatamiya calculated
11 it, so it already has the regional quota adjuster taken out of
12 it, so it actually is the value received for that year. And so
13 that comes to a monthly cost of \$11,833,486. And then the next
14 column --

15 Q. Column H?

16 A. Column H, takes that value and divides by the value in
17 Column B, which is the quota SNF pounds, so you come up with a
18 value per pound of quota SNF, and that is 17.73 cents for that
19 month. And, you know, the first thing that jumps out at you is
20 why isn't it 19 and a half cents? And this is because it is
21 net of all, it's sort of a statewide average net of all the
22 regional quota adjusters that are out there.

23 Q. So once you net the regional quota adjusters, the .195
24 actually becomes .1773, correct?

25 A. Correct.

1 Q. So then we have Column I, another buffer, what is
2 Column J?

3 A. So Column J is sort of a payoff schedule if you were
4 going to pay off quota over a period of time. It begins in
5 years zero, which would, I guess, be December 2016, with the
6 balance, the total quota value from the top of the table there,
7 that \$1,163,388,062 and subtracts from it the amount in
8 Column G, which is the monthly quota payout. And so that comes
9 off in the first month. And then in the second month we kind
10 of look at the prior month's balance of that quota value, and
11 we subtract the February quota payout, but we also add in the
12 interest at 5.51 percent on a monthly basis. So again,
13 translate it to the monthly basis, so it would be less than
14 5.51, it would be the 31 over 365 fraction of the annual
15 interest rate. And that gets added back in. So each month you
16 are taking out the quota pay out from the balance of the quota
17 value, and you are adding in the interest rate on the balance.

18 Q. So Column K is a buffer, and I now I want to talk about
19 what Column L is, and I want to take that back to some
20 questions. So what is Column L?

21 A. Okay. So Column L essentially represents the pooled
22 value on a hundredweight basis of quota. That is, if we look
23 at the quota value in Column G and divided it by the milk in
24 the pool, in terms of hundredweight of milk in the pool, and
25 here we have sort of approximated that by taking the total SNF

1 and dividing by the SNF test, the average SNF test to come up
2 with a pounds of milk calculation, and then of course, divide
3 by 100, it's on a hundredweight basis. And so you take the
4 monthly quota payout divided by that number, and that gets you
5 to this 36 cents a hundredweight, which is what you see in the
6 January of Column L.

7 Q. So that takes me back to last Monday, and Mr. Vlahos
8 asked you a question that wouldn't the proposal, well, wasn't
9 so much a proposal, but the testimony you were providing an
10 alternative way of looking at that last Monday, I believe he
11 asked you, wouldn't that mean the quota holders were paying
12 themselves off? And what is your response to that?

13 A. Well, everybody who participates in the pool pays for
14 quota, and that is the ongoing way the quota system works. It
15 is a reallocation of pool dollars from everybody in the pool to
16 quota holders at a particular rate. So this just works the way
17 quota has been working.

18 It is basically, I mean, one way to look at it is
19 everybody's price is in the pool, is in this case around 30,
20 varies from 33 to 37 cents, but is that much lower because of
21 the need to provide the funds and set them aside to pay the
22 quota premium.

23 Q. So let me break that down a little bit. First, you
24 recognize, you just said that it varies, and you say 33 to 37
25 cents. Why does it vary?

1 A. It varies because the monthly quota payout varies
2 simply because quota is calculated as pounds of SNF per day, so
3 it varies with the numbers of days with the month and seasonal
4 production factors.

5 Q. So when you look at Column L, how does that compare to
6 what effectively is happening today as to how the quota gets
7 paid out or determined?

8 A. So how I look at it is that, you know, the overbase
9 price essentially, is this much lower on the per hundredweight
10 basis compared to a Federal Order blend, and the quota premium
11 gets put on top of the overbase price. So, you know, we talk
12 about \$1.70 a hundredweight, but really it is \$1.70 minus the
13 amount by which everybody's price is reduced by this
14 reallocation of money over to quota.

15 Q. Now, since you have been on the stand, there was
16 testimony last week, and indeed there were questions asked I
17 believe there was somebody who was interested in this answer,
18 maybe, but Mr. DeGroot testified that exempt quota should be
19 converted to regular quota, if at all, they are not buying into
20 this, I'm not saying they are buying into it, but if that
21 happened, that exempt quota could, for instance, he wasn't
22 speaking for all the producers, but nonetheless he was saying
23 that it could conceivably be converted to regular quota at 1.82
24 rate. Do you remember hearing that?

25 A. I remember hearing that. I was not here, I was

1 driving.

2 Q. You were listening?

3 A. I was listening in, yeah.

4 Q. We can't escape, your Honor. So what response do you
5 have to that testimony?

6 A. Well, I certainly understand how he did the
7 calculation, and you know, in terms of an internal valuation,
8 in terms of what that value means to an exempt PD, I can see
9 why they calculate it that way.

10 Our view is that if you are thinking about policy going
11 forward, we think that exempt quota should be treated as
12 regular quota. And I think one of the reasons we feel that is
13 that first, exempt quota cannot be traded, so it doesn't
14 command a premium in any kind of marketplace because it was
15 allocated, and allocated initially, but then, of course, it was
16 purchased. And that brings me to the second point. You know,
17 the last purchases of exempt quota were in 1995. So, you know,
18 here we are 20 years later, and I think our view is that the
19 cost of that purchase has been recovered from the benefit that
20 they have derived from it. So our view would be that it should
21 be treated like, valued at regular quota. That's just how we
22 see it.

23 Q. Let me just go back to Exhibit 191 for a second, then I
24 have one series of questions to ask, to answer. Ultimately,
25 Exhibit 191 is a pay-off, correct? I mean, that demonstrates a

1 pay off?

2 A. Yes.

3 Q. Okay. And that takes how long?

4 A. With this interest rate, of course if you used a higher
5 interest rate, it would be a longer pay off. But I calculated
6 it as 11 years and 3 months.

7 Q. And if you used a lower interest rate?

8 A. It would be less. And if you paid it off with a
9 larger, you know, percentage of the pool or something like
10 that, that was a larger, resulted in a larger pay out than what
11 we have shown here, you can pay it off more quickly.

12 Q. So also since you testified in this issue sort of
13 continued to percolate at the hearing, did you hear statements
14 that the processors really don't have a --

15 A. Dog in the fight.

16 Q. -- a dog in the fight? That is exactly I was about to
17 use that, but I wasn't sure I could, a dog in the fight -- I
18 hope my dog's not in a fight -- because it is producer money?
19 Do you remember hearing that?

20 A. I remember hearing that.

21 Q. So why does the Dairy Institute of California care
22 about how quota is handled?

23 A. Yeah, I think we have -- we have been concerned that
24 when dealing with quota leads to other policies, historically,
25 you know, with CDFA we were concerned because there was an

1 attempt to increase Class I prices to fund the fixed
2 differential back in the mid, early '90's, mid-'90's. It is
3 more when accommodating quota begins to have spill-over effects
4 in terms of the operation of the Order. And I think here, our
5 concern is that, you know, as proposed by the co-ops, you know,
6 we have proposed this mandatory pooling idea, they have
7 proposed this mandatory pooling idea, which is, you know,
8 provision that is quite different from other Federal Orders, at
9 least that's how we see it. That there's no ability for
10 handlers or plants or handlers to operate nonpool plants.
11 There's no ability to operate as a nonpool plant in California
12 under that proposal. There's no ability for handlers to
13 depool, and you know, you could talk about the merits or not of
14 depooling, but it is -- it is something that is at least
15 available as an option in other Federal Orders. And we also
16 see, you know, accommodating quota the way it's been proposed
17 is inconsistent with Federal Order provisions with respect to
18 pooling standards. And I'm thinking specifically of the fact
19 that the mandatory pooling involves the no shipping
20 requirements for supply plants, diversion limits, no loss of
21 ability to pool your milk if you don't perform, and so that's,
22 that's a concern.

23 And, you know, the things that we have already talked
24 about with regard to non-uniform payment to producers. That's
25 more of a policy issue, but some of these other Order

1 operational issues I think are the things that we're concerned
2 about.

3 Q. And what about uniform payments by handlers?

4 A. Well, uniform payments by handlers with regard to
5 exempt quota is an issue, yes.

6 Q. Okay. Do you have anything more to add?

7 A. I don't think so.

8 Q. Given how this hearing has progressed and everything,
9 are you and I out on a limb in a little bit in that we haven't
10 exactly run this by the Board of the Dairy Institute of
11 California?

12 A. It's true, we haven't. We have had discussions with
13 Board members, but this is not a position that Dairy Institute
14 of California is necessarily advocating. In one of these, I
15 was just responding from my view of things and the view that
16 Dairy Institute has historically had in response to
17 Judge Clifton's questions.

18 Q. Your Honor, at this point, I move admission of
19 Exhibit 191.

20 JUDGE CLIFTON: Are there any questions of Dr. Schiek
21 before you determine whether you have objections? There are
22 none. Are there any objections to the admission into evidence
23 of Exhibit 191?

24 MR. BESHORE: Subject to our standing objection to this
25 subject --

1 JUDGE CLIFTON: Please come to the microphone, Mr. Beshore,
2 and start again.

3 MR. BESHORE: I would just like to let the record reflect
4 that this should be received subject to our, what I think I
5 lodged as a standing objection a couple of days ago to the
6 pursuit of this topic.

7 JUDGE CLIFTON: Are there any additional objections or
8 questions? Mr. Francis?

9 MR. FRANCIS: Will Francis, USDA. The top of your page is
10 listed as, the source is Exhibit 54, Page 16, and I believe
11 some of it comes from Page 14 and some of it comes from Page
12 16. So that the total quota value, that 1.163 billion is from
13 Page 14?

14 DR. SCHIEK: Correct.

15 MR. FRANCIS: Okay. And the annual quota cost, the
16 139 million, is from Page 16?

17 DR. SCHIEK: Correct.

18 MR. FRANCIS: Okay. Thank you.

19 JUDGE CLIFTON: You know, he said that in his testimony,
20 but let us mark the exhibit accordingly. I think this would be
21 good.

22 Ms. Elliott, with regard to the first number, the
23 \$1,000,000,000 number, Dr. Schiek, would it be appropriate for
24 us to put out to the side of that (P period 14)?

25 DR. SCHIEK: I think that would be appropriate, yes.

1 JUDGE CLIFTON: All right. And I think that would take
2 care of it. Do you agree, Dr. Schiek?

3 DR. SCHIEK: Yes, I believe so.

4 JUDGE CLIFTON: All right.

5 MR. ENGLISH: Does that work for you, Mr. Francis?

6 MR. FRANCIS: Yes, that's clear. Thank you. From
7 Exhibit 54. Yes.

8 JUDGE CLIFTON: All right. Very good. So are there any
9 other objections, other than that already voiced by Mr. Beshore
10 on more than one occasion? Any other objections to the
11 admission into evidence of Exhibit 119 -- excuse me, 191?
12 There are none. Exhibit 191 is admitted into evidence, over
13 objection.

14 (Thereafter, Exhibit 191, was
15 received into evidence.)

16 MR. ENGLISH: Your Honor, I'm going to make the witness
17 available for cross-examination, but I don't think -- it is now
18 3:35, and therefore, may be appropriate to take our afternoon
19 break. And that may or may not make cross-examination more
20 efficient.

21 JUDGE CLIFTON: I think that's a good plan. So let us come
22 back and ready to go at 3:50. That's 35:0.

23 (Whereupon, a break was taken.)

24 JUDGE CLIFTON: We're back on record at 3:52. Who has the
25 first cross-examination questions for Dr. Schiek? Mr. Vlahos?

1 MR. HILL: Your Honor?

2 JUDGE CLIFTON: Mr. Hill?

3 MR. HILL: Before we begin, we just want one thing. We
4 would like Mr. English to please repeat the questions that he
5 asked the witness of a different topic, so we can have it on
6 the record and USDA personnel will know.

7 JUDGE CLIFTON: Mr. English, are you able to do that?

8 MR. ENGLISH: I believe I can. Are we limiting this to the
9 four questions --

10 MR. HILL: That's correct.

11 MR. ENGLISH: -- as opposed to the additional sort of
12 around that issue?

13 MR. HILL: That is correct.

14 MR. ENGLISH: So as we understood it, question number one
15 was, how can we work toward uniform pricing?

16 MR. HILL: And is that uniform pricing for producers or
17 handlers?

18 MR. ENGLISH: I think in this instance we understood it as
19 producers, but frankly, it obviously works for both producers
20 and handlers. But I think in this instance, we were primarily
21 answering it as to producers.

22 MR. HILL: Okay.

23 MR. ENGLISH: Second question, how does USDA deal with the
24 fact that it has no control over who owns quota and what
25 California could do with quota?

1 MR. VLAHOS: Excuse me?

2 JUDGE CLIFTON: Mr. Vlahos, do you need to sit somewhere
3 where you can take notes on these?

4 MR. VLAHOS: No, I just didn't quite hear the end of that
5 question.

6 JUDGE CLIFTON: Would you say it again, Mr. English?

7 MR. ENGLISH: How does USDA deal with the fact that it has
8 no control over who owns quota or over what California does
9 with quota?

10 I think we're ready for question three. How do you
11 compensate quota holders for the full value of their holding?
12 How do you compensate quota holders for the full value of their
13 holding?

14 And the fourth question as we understood it was, if
15 quota were to be withdrawn or paid down on a percentage basis,
16 what should the percentage be?

17 MR. HILL: Thank you very much, Mr. English. I appreciate
18 it.

19 MR. ENGLISH: You're welcome. Of course.

20 MR. VLAHOS: John Vlahos, your Honor.

21 CROSS-EXAMINATION

22 BY MR. VLAHOS:

23 Q. Good afternoon, Dr. Schiek.

24 A. Good afternoon, Mr. Vlahos.

25 Q. Dr. Schiek, you know how important quota is to

1 California producers, correct?

2 A. Correct.

3 Q. And when did you first learn that California producers,
4 through their co-ops, were going to request a Federal Milk
5 Marketing Order that called for provisions that, in their view,
6 protected value of quota.

7 A. I think we have been hearing about the -- we had been
8 hearing about the petition that the Cooperatives were going to
9 file probably, you know, in concept, about a year before it was
10 filed. But until we actually saw it, we didn't know exactly
11 what provisions were in there. We assumed there would be some
12 provision on quota, but didn't know exactly what would be in
13 there.

14 Q. And when did you first see the petition and learn what
15 proposals were being made with respect to quota?

16 A. So that would have been the end of January, beginning
17 of February, I believe, when the petition was filed or shortly
18 thereafter.

19 Q. Now, in your testimony last Monday I think it was,
20 although time is escaping me, you referred to a group of, your
21 group and Dairy Institute, getting together to study, take
22 steps to find out what position to take; is that correct?

23 A. Correct.

24 Q. Okay. And when did that begin?

25 A. I want to say early 2014 it seems -- it seems to be the

1 right part. Maybe a little bit before that, maybe late 2013
2 when we -- we heard that it was the co-ops' intention to pursue
3 a Federal Order.

4 Q. So your group started working on some way to
5 accommodate quota with the possible adoption of a Federal Milk
6 Marketing Order, correct?

7 JUDGE CLIFTON: Let me here Mr. English's objection, if he
8 has one.

9 MR. ENGLISH: I don't know that there was any foundation
10 for that question based upon the price was different prior to
11 that, so I object.

12 MR. VLAHOS: I don't know what foundation was necessary. I
13 just want to find out when they started working on --

14 JUDGE CLIFTON: Yeah, but specify what you think their
15 group was working on. I'm not sure it was a proposal to
16 accommodate quota.

17 MR. VLAHOS: All right.

18 BY MR. VLAHOS:

19 Q. What was your group working on?

20 A. We were working on the proposal for a Federal Order.

21 Q. With respect to the quota portion of that, what were
22 you working on?

23 A. I think early on we were, as I said in earlier
24 testimony, we were looking at how quota would work within the
25 context of a Federal Order, and I think, as I said in my

1 testimony a week ago, you know, we ended up kind of mimicking
2 the Oregon plan as our, that's where we landed when we put our
3 proposal in.

4 Q. So from deliberations that began initially way back in
5 2014, and then again when the original petition by the co-ops
6 was filed in recently, January or early February, what you came
7 up with as the way to handle quota, and comport with what you
8 understood the Farm Bill required, was the proposal set forth
9 in Proposal Number 2; is that correct?

10 A. That was what we came up with when we filed the
11 proposal, yes.

12 Q. Okay. So, now, when did you come up with the proposal
13 in Exhibit 191?

14 A. So this was developed much more recently. As I said
15 when, again last week, when we got to the hearing when we saw
16 USDA's preliminary analysis and heard their analysis of our
17 original proposal and the, sort of way it would lead to quota's
18 demise after several decision steps, we felt like we needed to
19 talk about other alternatives as a way to recognize quota
20 value.

21 Q. Well, when did you start developing this proposal?
22 This, excuse me one second, was it after last Monday?

23 A. I think we began talking as a concept about it prior to
24 last Monday, along with the concept that we actually floated
25 last Monday.

1 Q. Okay. This proposal, by the way, is one that you have
2 already said, is not one that has yet been approved by Dairy
3 Institute, correct?

4 A. Correct. It's not a Dairy Institute position, hasn't
5 been approved by our Board.

6 Q. Okay. So right now it is your individual position?

7 A. Right now it is an idea and an example of another way
8 of recognizing quota value.

9 Q. Now, you started your testimony today by saying that
10 the principles you understood was that the Federal Milk
11 Marketing Order for California had to establish uniform prices
12 to be paid and no trade barriers, correct?

13 A. I -- yeah, I think I said the core, our view is that
14 the core Federal Milk Marketing Orders, so the Order program is
15 uniform prices to producers and handlers -- and handlers and no
16 trade barriers, yes.

17 Q. Thank you. And you indicated that based on that set of
18 principles, you felt that this called for a sunset of quota.

19 A. If -- yes. If you are going to hold that uniform
20 prices are key, then you would think that quota would be
21 incompatible with that.

22 Q. Isn't that based on your interpretation of the Farm
23 Bill, that the Farm Bill, despite the fact that it says that a
24 California Federal Milk Market Order has the right to reblend
25 and redistribute receipts in order to recognize the value of

1 quota, you don't believe that that allows there to be quota
2 paid, and then a payment of blend price; is that correct?

3 A. Could you just repeat that last part of your question?

4 Q. Is your principle that the sunset is called for based
5 really on your interpretation of the Farm Bill language?

6 A. It is probably our interpretation of the Farm Bill
7 language in concert with our belief that uniform prices are the
8 core of the Federal Order program.

9 Q. Okay. Now, let me start out with a few questions about
10 some of the details of this, which I don't understand. But
11 first you talk about, in Table G, there is a, for monthly cost
12 is \$11,833,486 cents?

13 JUDGE CLIFTON: No, I believe you start with 11 million.

14 MR. VLAHOS: Excuse me, I said that wrong, \$11,833,486,
15 sorry, Dr. Schiek.

16 DR. SCHIEK: Yes.

17 BY MR. VLAHOS:

18 Q. Okay. Am I correct that if you took the annual quota
19 payments, well, strike that. What are the annual quota
20 payments to producers under the current California program?

21 A. Well, this example uses the number calculated by
22 Mr. Hatamiya, which was the 139,329,759.

23 Q. So there's, divided by 12, which I did, you would come
24 up with monthly \$11,610,813, I know you can't do that in your
25 head but --

1 A. Well, yes, if you divide it by 12 you would get a
2 different number than what's here. So this calculation
3 basically divides that by 365, and then multiplies back by the
4 number of days in that month.

5 Q. So what happens in the first month if this sort of
6 program were adopted? What happens to payments? Who gets paid
7 are and from what?

8 A. Well, the quota holders get paid, and it would be, the
9 example here suggests that it be the same rate that they are
10 currently being paid at.

11 Q. Let me see if I understand this correctly, though. If
12 nothing was done, if the quota program stayed exactly as it is
13 now, a quota holder would get roughly, let's just use round
14 numbers, 11.6, 11.8, somewhere around that amount, they'd get
15 that amount under the current program, and they wouldn't lose
16 their quota, would they?

17 A. Under the current program?

18 Q. Right.

19 A. Yeah, there's no provision for sunseting under the
20 current program.

21 Q. And that would continue really until the California
22 legislature either changed Article 3, Chapter 3.5 of the Food
23 and Agricultural Code or the producers voted it out.

24 A. Yes. I believe action by the legislature would be
25 needed to -- well, the producers could vote out the -- as I

1 understand it, and you probably know this better than I do, so
2 I am running a risk here, but as I understand it, producers can
3 vote out the fixed differential of the \$1.70 and then we would
4 revert to how quota used to be calculated, which is by
5 allocating the higher uses to the quota holders, Class I,
6 Class II, Class III.

7 Q. That's a pretty good analysis, you get an A minus on
8 it.

9 A. Thank you. But to actually do something like sunset
10 quota under the current program, the California legislature
11 would have to act.

12 Q. What I'm driving at that, what I'm driving at is, if
13 nothing were done, if quota were not retired, and the quota
14 system stayed the same, they'd get that 11.6 million, 11.8
15 million, really until one of those events happened, producers
16 voting it out, legislature changing it.

17 A. Correct.

18 Q. Under your program, they get that amount, but they lose
19 some quota?

20 A. Under -- yeah. Under this example, the quota program
21 would go away over 11 years and 3 months.

22 Q. Okay. And that's not necessarily what would happen if
23 this program were not adopted, correct?

24 A. Correct.

25 Q. Okay. And we talked about who pays for this. Quota,

1 the value of quota solids nonfat, represents, doesn't it, about
2 24 percent of the total pool value of solids not fat?

3 A. Yeah. I don't know the number off the top of my head.
4 I -- the last time I looked at it, it was around 22 but --

5 Q. Somewhere in that area.

6 A. Somewhere in that area, you know, it changes depending
7 on how much milk is produced and how much milk is in the pool.

8 Q. So in essence, to the extent of 24, a 24 percent that
9 quota holders have for their quota, they are using their own
10 money to buy out their own asset?

11 A. I would say that all producers' money is going to buy
12 out the asset.

13 Q. That is, that is very true, but the people who hold the
14 asset are using their own money to buy out their own asset?

15 A. I think they are going to be receiving a payment that
16 eventually ends, that is, they will be receiving on the same
17 basis that they currently receive that flow of income.

18 Q. Well, they are receiving the same amount of dollars,
19 but on one hand, they are not losing part of the asset. Under
20 your proposal, they are receiving the same dollars, but losing
21 part of that asset.

22 A. The asset would go away over time, that's correct.

23 Q. Okay. Now, you used an interest rate of 5.5 percent as
24 representing a return on investment.

25 A. Correct.

1 Q. And you derived that from what? Could you repeat that,
2 please?

3 A. It's the Moody's BAA Corporate Bond Index.

4 Q. Have you calculated what the rate of return on quota
5 is, the actual rate of return a quota holder is getting on his
6 or her investment?

7 A. I have heard different numbers thrown around and they
8 are higher than this, but I have not calculated it.

9 Q. Have you heard numbers like 15 percent rate of return?

10 A. Yeah.

11 Q. So you are saying they should take a 5.5 rate of
12 percent rate of return and they are now getting 15 percent rate
13 of return?

14 A. You could do this calculation with different interest
15 rate. We chose this one because it was consistent with the
16 other return on investment rates that CDFA uses. Typically,
17 you would expect that quota holders would bid up the price of
18 their quota asset to the point where the rate of return would
19 be equal to sort of the next best alternative investment, so
20 I'm not quite sure why it is higher, but I'll take your word
21 for it that it is higher.

22 Q. Okay. So I'm correct in saying that the difference
23 between this proposal, that's it was set forth in Exhibit 191,
24 and what is the actual fact, is that it's probably three times
25 too, almost three times too low in the rate of return.

1 A. If your number is correct, yes.

2 Q. Suppose you used in your amortization here, 15 percent
3 as the rate of return. How many years do you think it would
4 take to retire quota?

5 A. A lot longer.

6 Q. Three times as long?

7 A. I wouldn't know. I mean, that sounds reasonable, but I
8 don't know the answer.

9 Q. Anyway, the truth is, a multiple of what you calculated
10 in Exhibit 191?

11 A. Correct.

12 Q. Do you think that this program could be instituted
13 without a change in California law by the California
14 legislature?

15 A. I wouldn't know the answer to that.

16 Q. Did you consider that as a possibility?

17 A. I did look at, there are some statutory provisions in
18 the, in California law that talk about suspension of certain
19 parts of the chapters, whether it be pooling or minimum
20 marketing stabilization, if the -- if the Federal Order that's
21 adopted is in conflict with parts of the chapter.

22 Q. You are --

23 A. That's the only thing I know. And what that means, I'm
24 not a lawyer.

25 Q. Right. And I'm not expecting you to remember it

1 exactly. In fact, I give you a B on that one. There are
2 some --

3 A. Thank you.

4 Q. You may be slipping. You're correct in saying that
5 there are certain provisions in both the Stabilization and
6 Marketing Act and the Gonsalves Milk Pooling Act for suspension
7 of certain provisions to get rid of quota. Do you think there
8 would be a need or a change in California legislation over and
9 beyond the current provisions of law for suspension of certain
10 things, in the event of the adoption of a Federal Milk
11 Marketing Order?

12 A. I don't know the answer, Mr. Vlahos.

13 Q. Under the proposal in Exhibit 191, who would actually
14 administer all of this?

15 A. Well, I think the assumption here would be that the
16 Market Administrator would administer it.

17 Q. It wouldn't be a California issue, it would be the
18 Market Administrator administrating? Excuse me, I misspoke.
19 It would be the Market Administrator administering it?

20 A. It would be the Market Administrator administering it.
21 That was my assumption. This, there probably is a way you
22 could structure, through some agreement with CDFA to do
23 something similar, but I don't know whether CDFA would have the
24 authority to do it.

25 Q. Do you think there would be a need for California

1 legislation to enable the CDFA to administrate it?

2 A. That's a possibility.

3 Q. I'm sort of interested also in what happens month by
4 month. Let's just take that first month. Quota holders are
5 paid out \$11.8 billion. Is there a reduction in their quota
6 then, at that point? Somehow the quota goes somewhere?
7 Disappears?

8 A. The way this is set up is a pay-off schedule. So I
9 guess it would be like having a loan and you have a balance.
10 And you make a payment on the loan, and an over time, that loan
11 balance diminishes, I mean, that's the concept. So -- so does
12 it go away? I think there's an accounting that's done, saying
13 okay, if it's, you know, under this example, how it's set up,
14 it's 11 year and 3 month payback, so there's the accounting to
15 see how much is remaining that needs to be paid back.

16 Q. Well, what I'm trying to find out is, when the payment
17 is made, does a quota holder have less quota for the next month
18 or no quota for the next month?

19 A. I think they would have the same quota holding the next
20 month.

21 Q. Well, then will they get paid the same amount, 19 and a
22 half cents per pound of solids not fat the next month on the
23 remaining balance of their quota?

24 A. The way this example is set up, yes. Subject to their
25 original quota adjuster, yes, they would be paid at the same

1 rate they have been being paid on a per month basis, until it
2 reaches the end point.

3 Q. I don't think we're on the same, quite the same page.

4 A. Okay.

5 Q. What I'm getting at is, under your proposal, is a
6 quota, if -- we'll talk about the totality of quota holders.
7 Are they going to get \$11.833, etcetera, million the first
8 month, and also the next month, get on what quota is left, 19
9 and a half cents per solids not fat pound, plus the payment for
10 their quota of the next month of \$10,688,310?

11 A. Mr. Vlahos, I -- maybe I am not understanding you. But
12 let me ask if I understand your question.

13 Q. Sure.

14 A. So you are asking, are they going to get the pay-off
15 amount and the payment, the monthly quota payment? And the
16 answer is no.

17 Q. Yes, that's what I was trying to -- I am sorry I didn't
18 ask it the right way I guess, but that's what I wanted to
19 establish.

20 A. It's because I'm sliding down on the grading scale, I'm
21 getting dumber as I go.

22 Q. Well, I may have gotten a C on the question, too. We
23 both kind of failed that one.

24 May I confer with our team here for a moment?

25 JUDGE CLIFTON: Certainly.

1 MR. VLAHOS: Your Honor, the person from California yields
2 to the gentleman from Pennsylvania.

3 CROSS-EXAMINATION

4 BY MR. BESHORE:

5 Q. Marvin Beshore. Just one question of one area,
6 Dr. Schiek. And that's uniformity. I want to explore your
7 understanding or concept of uniformity and -- price uniformity,
8 under the AMAA. Would you say, has your testimony been about
9 uniformity as an economic concept or a legal concept, or what,
10 how have you been speaking of price uniformity? And I'm
11 talking about the producer side, I'm not -- I don't have -- I'm
12 not getting into the exempt quota handler issue in any way.

13 A. So I am thinking in terms of uniform prices with the
14 exception of adjustments for location and those kinds of
15 things.

16 Q. Okay. So under Proposal 2, so you got two farms in
17 Bakersfield, let's say, Bakersfield area. One delivers to
18 Los Angeles a distributing plant, the other one delivers to a
19 distributing plant in Fresno. The plant delivering to
20 Los Angeles gets 20.50 a hundredweight, assuming the same
21 butterfat protein; the one delivering to Fresno gets \$20 per
22 hundredweight, correct?

23 A. Correct.

24 Q. Okay. Now, is that uniform?

25 A. Under my understanding, it's because of the different

1 location, the basis is still uniform basis.

2 Q. So they are not paid the same price?

3 A. Uh-huh.

4 Q. But in your application of uniformity, their prices are
5 uniform, correct?

6 A. Yes.

7 Q. And why are they uniform?

8 A. I guess because their adjustment is based on where they
9 ship their milk, the plant of first receipt.

10 Q. So why does that make any difference? Why does that
11 make it uniform? Why is that of no consequence for uniformity?

12 A. I suppose because it's authorized.

13 Q. It is authorized under the law?

14 A. Yeah.

15 Q. Okay. So keep the same two farms. Now, one of them
16 has 4.0 percent butterfat test, and we have got a 20 cent
17 butterfat differential. The other has a 3.5 test. So the one
18 with the 4 percent test gets paid a dollar more than the one
19 with the 3.5 butterfat test, correct? If it is a 20 cent
20 differential for each tenth of a cent, it would be a dollar
21 difference, I think. Correct?

22 A. Yes, I think you are right.

23 Q. Okay. Now, are those producers being paid uniform
24 prices, in your concept of uniformity?

25 A. Again, because the variation of components, yes.

1 Q. And why is that uniform?

2 A. Because those are authorized.

3 Q. By the Agricultural Marketing Agreement Act?

4 A. Correct.

5 Q. Okay. Now, assume there's a California Federal Order,
6 and the same, one farm is a hundred percent quota, same two
7 farms side by side. The other farm is zero percent quota. One
8 farm is getting paid \$1.70 more per hundredweight than the
9 other farm, correct?

10 A. Correct.

11 Q. Now, is that a uniformity problem to you?

12 A. I guess, Mr. Beshore, it really comes down to what
13 recognized quota means and the Act, what that language means.

14 Q. So it's a uniformity problem if the Act doesn't
15 authorize different payments on the basis of quota, correct?

16 A. Correct.

17 Q. And if the Act does authorize different payments in the
18 basis of quota, there's no uniformity problem, isn't that
19 correct?

20 A. The way you framed your question, yes, that's correct.

21 Q. Thank you.

22 JUDGE CLIFTON: Ms. Hancock? You may proceed.

23 CROSS-EXAMINATION

24 BY MS. HANCOCK:

25 Q. Thank you. Dr. Schiek, I would like to look at

1 Exhibit 191 for a moment. So the starting value that you used,
2 that you have used from Mr. -- is it Dr. or Mr. Hatamiya?
3 Mr. Hatamiya, was the \$1.2 billion number?

4 A. Correct, rounded, yes.

5 Q. And that's, you understand that that was calculated
6 based on the current value of what quota can be traded for
7 today at \$525 a pound?

8 A. Correct.

9 Q. And did you also understand from his testimony that in
10 addition to that trading value of \$525 a pound, that there was
11 an additional layer of value that quota holders receive just
12 from having the opportunity collect a premium payment?

13 A. I don't recall that in his testimony, but that's, he
14 may have said that.

15 Q. And if he said that, you would agree that your
16 valuation here would not have taken the additional premium
17 payment opportunities into account in setting the payment
18 value?

19 A. Right. My valuation is based on the asset value.

20 Q. And you, do you recall the testimony about that asset
21 value, that over the years that the amount that quota can be
22 sold for, has been sold for, has consistently gone up?

23 A. Well, it's gone up and down depending on the year.
24 There's actually a fair bit of variation in it from year to
25 year. It has trended upward, though.

1 Q. That's fair. Better way to say it. So if you look
2 over a ten-year period historically, the trend is upward.

3 A. That's probably right.

4 Q. And then, what you are calculating here, what you're
5 offering in Exhibit 191, is using the current day value for
6 quota as it's trading for today or as it could be sold for
7 today. And so essentially it would be, if this were adopted,
8 it would be asking all of the quota holders, or let me say that
9 differently, it wouldn't be asking them, it would be forcing
10 all the quota holders to sell their quota at today's value; is
11 that right?

12 A. Under this example, yes, that would be how it would
13 work.

14 Q. But it wouldn't be paying them all today, it would be
15 paying them out over 11 years?

16 A. Over 11 years at that interest rate, yes.

17 Q. At today's, at today's value of \$525 a pound?

18 A. Correct.

19 Q. Okay. And is the proposal here that this interest rate
20 would remain fixed at the 5.51 percent or is there some
21 variability built in there?

22 A. I think it could be set up either way, you could set it
23 up with a fixed rate or you could have it as a variable rate
24 just like a mortgage or something, you know, you could do it
25 either way.

1 Q. This example --

2 A. This example just has a fixed rate.

3 Q. Fixed at the 5.51 percent?

4 A. Correct.

5 Q. So just kind of logistically how it would work, if I'm
6 understanding it correctly, is that it would be, the quota
7 holders would be, as of January 2017, selling their quota at
8 the \$525 rate, and they would get the monthly payments that you
9 have listed in, or their pro rata share of the monthly payments
10 you have listed in Column G?

11 A. Correct.

12 Q. But they wouldn't receive their premium payments, this
13 would be the sum of the payments that they would receive for
14 the 11 years, 3 months?

15 A. I guess you could say it that way. I would say that
16 the premium payment is paying, paying back the value of the
17 quota. I mean, at the end of the day, any asset value when you
18 buy something like, let's think of a different financial asset,
19 buy a bond or a stock. I'm buying, if it is a dividend paying
20 stock, for example, I'm buying an income stream and the
21 purchase price reflects the fact that I'm buying that income
22 stream. So this is, I think, using that same concept, that the
23 value of the income stream is really encapsulated in the asset
24 value.

25 Q. Okay. And would you agree with me, though, that

1 present value of dollars, the present value, let's say in 11
2 years this quota was still going to be worth \$1.2 billion. The
3 present value of that money would be considerably less; is that
4 right? Or some amount less, maybe not considerably, but some
5 amount less than that?

6 A. The present value of \$1.6 billion or \$1.2 billion in
7 the future is less than \$1.2 billion today, if that's the
8 question you are asking.

9 Q. That's what I'm asking.

10 A. Yes, that's correct.

11 Q. And then the inverse of that is true as well, that
12 \$1.2 billion today would be worth something more in the future;
13 is that right?

14 A. Correct. And here we're using, you could think of the
15 5.51 percent as the, as the discount rate.

16 Q. And would -- is that what you would use to calculate a
17 discount rate for a present value?

18 A. Every -- I imagine every individual quota holder has
19 their own internal discount rate that they feel is appropriate.
20 Typically, when you look at a discount rate, you are looking at
21 alternative as sort of the next best alternative or the
22 opportunity cost investment. This rate has been used by CDFA
23 to do that, make that calculation for asset values in plants
24 and for a return on investment for producers on their assets as
25 well. So we're just, we're just using that rate. You may be

1 able to argue that there's a higher rate, someone could argue
2 maybe there's a lower rate that's appropriate. But for this
3 example, that's the rate we thought -- we chose.

4 Q. Okay. And if that rate was less than what the quota
5 holders had been receiving, as you and Mr. Vlahos talked about,
6 would you agree with me that that would be considered a
7 diminishment of the quota value?

8 A. I'm sure it would be viewed that way by producers who
9 hold it.

10 Q. But you, as an Economist, would you agree with me that
11 if the actual rate that they had been receiving was greater
12 than what you have proposed here, that it would be a
13 diminishment in the value of the quota?

14 A. You know, I don't know that I really know the answer to
15 that. Part of the rationale for the high rate of return for
16 quota is, at least it has been suggested, and academic study,
17 that it is the policy default risk. The fact that quota can be
18 ended by the legislature that leads to a higher rate of return,
19 and I don't know if that's the case or not, but you could also,
20 if you follow that line of argument, you could also argue that
21 if you had a specific idea of quota being protected for a
22 period of time, that would reduce uncertainty about policy
23 default. So it could be that the greater certainty argues for
24 a lower rate that you are trading off a lower rate of return
25 for greater certainty about how -- how long quota is going to

1 be there. So I think it really, the answer is, it depends. It
2 depends on how you view the probability of policy defaulting
3 and the quota changing. If you view that under the state
4 system it is going to continue in perpetuity, then your
5 argument is correct, it would be a diminishment. On the other
6 hand, if you view that with the rising number of people who
7 have little or no quota maybe wanting to change the system at
8 some point in the future maybe, you know, maybe it has some
9 risk associated with it.

10 Q. Thank you. That's all I have.

11 JUDGE CLIFTON: Mr. Vlahos? Mr. Vlahos, before you go, let
12 me hear from Mr. Miltner, and then I'll hear from you.

13 CROSS-EXAMINATION

14 BY MR. MILTNER:

15 Q. Ryan Miltner, Counsel for Select Milk.

16 Dr. Schiek, I have a question based on Ms. Hancock's
17 last few questions. The BAA rate, what is the default risk on
18 a BAA note?

19 A. The default risk I guess would be that the issuer would
20 default on the bond.

21 Q. Sure. But I mean in terms of when Moody's assigns that
22 risk rating to a bond, do you, have you done any looking, or do
23 you know what Moody's, how Moody's characterizes the risk of
24 default for bonds with that specific rating?

25 A. I do not.

1 Q. Okay. So do you know if the perceived risk of quota
2 not being paid has any correlation to a BAA rating?

3 A. I don't.

4 Q. Thank you.

5 JUDGE CLIFTON: Mr. Vlahos.

6 CROSS-EXAMINATION

7 BY MR. VLAHOS:

8 Q. This is John Vlahos.

9 Dr. Schiek, this is also in connection with
10 Ms. Hancock's questions. You indicated that perhaps using the
11 lower rate of return than the actual rate of return, that quota
12 holders are gaining on their quota takes away sort of the
13 uncertainty that quota might go away or be changed by the
14 legislature?

15 A. I think I would characterize my answer, and if I didn't
16 say it this way, is that a lower rate, if it implies less risk,
17 might be justified.

18 Q. When did the 19 and a half cents per pound solid nonfat
19 go into effect?

20 A. I believe 1994.

21 Q. That's 21 years ago?

22 A. Uh-huh.

23 Q. Has there been any change?

24 A. No.

25 Q. Has there been any suggestion of a change?

1 A. Any change that where, I think my testimony talked
2 about discussions, but beyond the discussion phase, no, it's
3 not gone beyond the discussion phase.

4 Q. Do you foresee any prospect in the near future or even
5 in the next ten years that the California legislature would
6 make any change?

7 A. I don't know. It would depend on the producer
8 community, I would guess, whether they want a change.

9 Q. Is it your belief that the producer community might
10 want to lower the amount?

11 A. Oh, lower the rate?

12 Q. Uh-huh?

13 A. No.

14 Q. No further questions.

15 JUDGE CLIFTON: Are there any other questions before I
16 invite questions from employees of the USDA? There are none.
17 Mr. Francis?

18 MR. FRANCIS: Will Francis, USDA. Just one quick question.
19 Have you had any discussions with CDFA about the concept that
20 you outlined in Exhibit 191?

21 DR. SCHIEK: No, we haven't.

22 MR. FRANCIS: Thank you.

23 JUDGE CLIFTON: Are there any other questions from anyone
24 for Dr. Schiek on this topic? Is there any redirect?

25 MR. ENGLISH: No, your Honor.

1 JUDGE CLIFTON: All right. Thank you. Dr. Schiek, thank
2 you very much. I know this was a difficult endeavor and I am
3 grateful to you for giving it a try. Thank you.

4 Is there any other evidence to be taken today?
5 Mr. Beshore, you have none, is that correct?

6 MR. BESHORE: That is correct.

7 JUDGE CLIFTON: And Mr. English, you have none; is that
8 correct?

9 MR. ENGLISH: That's correct.

10 JUDGE CLIFTON: And Ms. Hancock, you have none; is that
11 correct?

12 MS. HANCOCK: That's correct.

13 JUDGE CLIFTON: All right. Let's have a preview for
14 tomorrow.

15 MR. BESHORE: Marvin Beshore. Tomorrow we will have
16 testimony from Mr. Hollon and from Dr. Erba. And that will
17 conclude our case. The testimony in both cases, in both
18 instances would be anticipated to be relatively brief. My
19 prediction stands.

20 MS. HANCOCK: The producer-handlers will put on testimony
21 from one witness, Dennis Lund, that we anticipate will be very
22 brief. But other than that, that's it from us, the Producer
23 Handlers and Ponderosa.

24 JUDGE CLIFTON: And Dennis Lund is the accountant that's
25 already testified?

1 MS. HANCOCK: Yes. He's Director of Cost Accounting for
2 Foster Farms Dairy and Crystal Creamery, but he will be
3 testifying on behalf of the California Producer Handlers
4 Association, collectively.

5 JUDGE CLIFTON: Mr. English?

6 MR. ENGLISH: Chip English. I have had a brief confer with
7 Mr. Beshore on one issue before we turn to another one. I just
8 want to make sure that we're all on the same page. I know
9 we're all exhausted, and I do not propose, unless someone else
10 proposes, there is a provision in the Rules conceivably where
11 we could ask for the opportunity for closing argument.

12 JUDGE CLIFTON: Oh, no, no, no, no.

13 MR. ENGLISH: That's it, I'm going there, okay? I wanted
14 to make sure we were going to no or five minutes each. I
15 wanted to make sure before I take this evening off and not
16 write such a closing argument, that we all agree we're not
17 doing one.

18 MS. HANCOCK: You don't have yours done?

19 MR. ENGLISH: Very funny, I can do it tonight, I guarantee
20 it. But I want to make sure that your Honor wasn't
21 anticipating one, that no one else was going to do one, and I'm
22 content not to do one.

23 JUDGE CLIFTON: Excellent. The briefs will constitute your
24 closing. This is way too complicated to do it while we're
25 here. Very difficult. All these issues.

1 MR. ENGLISH: So I agree. So I don't know whether we use
2 any part of the next 18 and a half minutes to talk about briefs
3 or wait until tomorrow. But Mr. Beshore, you and I have had a
4 brief conversation about it, but I don't know whether you want
5 to go now or not.

6 MR. BESHORE: We can open it up. We were just confirming
7 outside the microphone that there's no surrebuttal from the
8 Dairy Institute people.

9 MR. ENGLISH: At the moment, subject to what happens
10 tomorrow, and I would be shocked if I changed my mind.
11 Shocked. I have no intention at this point, nor do I have any
12 volunteers to provide any surrebuttal tomorrow, or any other
13 day.

14 MR. BESHORE: So with respect to briefs and reply briefs, I
15 I don't have any fixed instilling proposals here. I expect, if
16 I understood our discussions earlier informally, we're talking
17 about setting a time from, for the principle, for the opening
18 briefs that would be anchored on the time in the record is
19 corrected.

20 JUDGE CLIFTON: Yes, from the date that I file my
21 certification of transcript is the title of the thing.

22 MR. BESHORE: Okay. And I would just expect to have 60
23 days, a minimum from that time period for the opening brief, 60
24 or 90, depending on how soon the transcripts were corrected.
25 And as far as the reply, you know, 45 perhaps, just throwing

1 those out as timeframes. Possible.

2 MR. ENGLISH: I was thinking you and I talked about 90 this
3 morning, but, okay. I guess part of that depends on what we're
4 going to do with the certification of the transcript. And
5 that, candidly, your Honor, depends not only when the
6 transcripts become available, but on my final return to D.C.
7 after three months and two weeks, and that's because I am not
8 going to return to D.C. until December 16th. So, obviously,
9 I'll just be helping with the transcript corrections, but I
10 will not be looking at any transcripts before December 17th. I
11 just don't have the ability.

12 In between I have some client meetings, I have the luck
13 of the draw of actually flying back to Fresno in between the
14 drive back to the East Coast for a board meeting for a client
15 on December 8th and 9th, and that's going to delay any return.
16 So I don't know what we're talking about with the certification
17 of the transcript. That obviously depends on all of this.

18 JUDGE CLIFTON: All right. Well, let me ask you this,
19 Mr. English. Let's just assume that by the time you get back
20 to the District mid-December, that all of the transcripts and
21 all of the exhibits are on the website. What is the soonest
22 that you could submit your proposed corrections to that entire
23 transcript?

24 MR. ENGLISH: Can we think about that overnight, your
25 Honor?

1 JUDGE CLIFTON: Yeah, you need to give me dates certain
2 tomorrow, because I want to schedule it with certainty. Now,
3 if you find that it's necessary to ask for extensions after
4 these timeframes are set with certainty, the Rule is you first
5 confer with one another, and you indicate whether your request
6 is opposed or whether there is acquiescence in your request.
7 And so for each of you, it would be among the other proponents
8 that you would be checking to see if you can submit it as an
9 agreed upon request, or as one to which there is no objection
10 or something of that nature.

11 It would then be the Agricultural Marketing Service
12 that would be ruling, unless what you are requesting is still
13 before me, if I have not yet certified the transcript.

14 MR. ENGLISH: Well, your Honor, in light of your -- which I
15 cannot see is unreasonable, but nevertheless your request which
16 may be mild, that Mr. Beshore, and I, or my team, take the lead
17 on that, that puts the burdens on Mr. Beshore and me, and
18 again, we can talk about that this evening, but I'm getting a
19 little bit of a signal here, I mean, end of December, some of
20 us will be the first time we have seen our families. I'm
21 looking at doing January 31st as a date that we would like to
22 talk about for getting that in, since we have to do the labor.
23 We can talk about that a little bit overnight, Mr. Beshore.

24 MR. BESHORE: March 31 for briefs.

25 JUDGE CLIFTON: You have to give me time to certify the

1 transcript. After I get, well -- two things. After the
2 English/Vulin team and the Beshore/Vlahos team go first, then
3 everybody else goes next, including the Hancock team, including
4 the AMS, and then I rule. And my ruling is the certification
5 of the transcript. And after that is your 60 or 90 days.

6 MR. BESHORE: I guess -- I guess my thought, I would -- I
7 would like to see the transcript, certification target date be
8 January 31, so that we can brief it by March 31, principle
9 briefs, that's my thought.

10 JUDGE CLIFTON: All right. If I'm going to finish my work
11 by January 31, you would have to have had all of the other
12 proposals come to me at least three weeks before that, which
13 gives you between January 1 and January 7 to do your work. Not
14 so good.

15 MR. BESHORE: I have time.

16 JUDGE CLIFTON: Let me hear from Dana Coale.

17 MS. COALE: Your Honor, if I can speak on behalf of AMS and
18 USDA here. First of all, I think it is imperative that we get
19 the transcript, and there are, we have an excellent court
20 reporter who is doing an outstanding job. However, she is a
21 one-person operation, and in conversations with her today, we
22 are not expecting to get the complete transcript, we'll
23 continue to post as -- as it comes available, and she is
24 dedicated, as soon as she is no longer spending all of her
25 waking hours with us, to transcribe. Worse case scenario, the

1 transcripts, complete transcripts will not be available until
2 January 1.

3 And I would offer that we don't prescribe to specific
4 dates, but we prescribe to specific time periods from the date
5 at which the transcript is made available. Because it may
6 fluctuate. And may come in a little bit earlier, it may come
7 in a little bit later. And we truly appreciate the work that
8 Myra has done, and we don't want to lose her before the
9 transcript is transcribed. So I don't want to create too much
10 pressure here.

11 JUDGE CLIFTON: She's amazingly durable, have you noticed?

12 MS. COALE: I have noticed that. Thank you.

13 JUDGE CLIFTON: Yes. And Mr. Beshore, I think when he was
14 speaking about a January 31 and a March 31, he knows that we're
15 going to set this in terms of timeframes, not dates certain.
16 But in our minds, we have to project about when that might be,
17 as well as be thinking about what's humanly possible.

18 MR. BESHORE: Right. I actually, I perhaps misunderstood,
19 your Honor. I thought you were looking for dates, dates
20 certain, but I understand timeframes is a better way, I mean,
21 as, I think a useful way to do it. I would -- the transcripts
22 are going to continue to be posted as on an incremental basis,
23 right? Well, that helps somewhat. I don't know, I don't want
24 to work through the holidays, other than anybody else, but we
25 do have -- we have some urgency in this matter from the dairy

1 farmers of California, as we have heard, and I believe that
2 make it incumbent upon -- I certainly feel the urgency from my
3 clients, and I think it is incumbent upon us to fashion a
4 schedule that is -- is as expeditious as possible. And we all
5 have, we all have personal considerations, of course. But we
6 have a larger constituency to address, I believe.

7 MR. ENGLISH: And your Honor, I think that it is good to
8 have this conversation, I don't think we're going to get to a
9 final result today, but I need to point out that I have other
10 clients, too; Mr. Beshore has other clients; Ms. Vulin works
11 for other partners in the law firm, Davis, Wright, Tremaine,
12 with them, and she's advising me that she is booked up, not
13 personal reasons, she's booked up for professional matters in
14 December. Lucky she didn't have a PACA trial this week. And
15 listen, I understand the desire to get this done, just as I
16 want to get the hearing done. I'm not looking to postpone
17 everything. But I think realistically January 20th may be the
18 earliest we can, for our part. It's a massive transcript, I'm
19 sure. I'm not sure how many pages we are up to yet. It is a
20 massive transcript. And again, what I am hearing is that the
21 laboring oar, just the laboring oar, basically the oars are
22 being placed in the hands of Mr. Beshore's team and my team.

23 And that, I can tell you that normally what I would do
24 is I would rely on others to do their own witnesses and things
25 like that. And, therefore, this creates sort of a greater

1 obligation on us than I normally have. And so it's an
2 extraordinary demand in the sense of the time commitment.
3 And I just don't think it's realistic to think we can get it
4 done much before the third week of January for our part.

5 I really appreciate Ms. Coale's input. I want to make
6 sure that if we're talking about, you know, a date after things
7 are available, we certainly need to have a way of getting that
8 information so we know by e-mail or whatever, and then I would
9 like to sort of say, all right, if we're assuming that the
10 transcript's available no later than January 1st, that we say
11 that's a certain number of days from there. If it is earlier,
12 at some point, let's say magically she gets it done by
13 December 10th, that doesn't make the deadline December 30th. I
14 just want to be --

15 JUDGE CLIFTON: I agree with you. We should say that there
16 should be some "no earlier than" language. I agree with you on
17 that.

18 MR. ENGLISH: And I think this is -- we're coming down to 5
19 'til -- I think there's enough food for thought for people to
20 think about over the evening. And if we want to talk tomorrow
21 morning when we're driving over here, Mr. Beshore, I'm greatly
22 enjoying the extra 30 minutes, I'll be happy to do that.

23 JUDGE CLIFTON: Good. Thank you. Yes, we'll address it
24 again in the morning. I'm glad you all are all thinking.
25 There are two reasons that I have tasked the proponents, the

1 lawyers for the proponents of Proposals 1 and 2 with transcript
2 corrections. Number one, they are the most familiar with the
3 evidence. Some of it's been developed for more than a year.
4 Number two, they are very well versed in California specifics
5 and in Federal Milk Marketing Order specifics, and it does not
6 serve me well when any team looks only at its own witnesses.
7 The corrections I care most about are when you look at the
8 other teams' witnesses. So I do want you to be responsible for
9 the entire transcript.

10 All right. So tomorrow I expect to be the last day of
11 this hearing. I expect to close the record tomorrow. I expect
12 that I will do it prior to 5:00. I think we'll finish before
13 5:00. For those reasons, tomorrow is casual Wednesday.

14 All right. We go off record at 4:56.

15 (Whereupon, the evening recess was taken.)

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COURT REPORTERS CERTIFICATE

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I, MYRA A. PISH, hereby certify:

I am a duly qualified Certified Shorthand Reporter, in the State of California, holder of Certificate Number CSR 11613, issued by the Court Reporters Board of California and which is in full force and effect.

I am not financially interested in this action and am not a relative or employee of any attorney of the parties, or of any of the parties.

I am the reporter that stenographically recorded the testimony in the foregoing proceeding and the foregoing transcript is a true record of the testimony given.

DATED: January 8, 2016
 FRESNO, CALIFORNIA



MYRA A. PISH, CSR
Certificate No. 11613

	\$2.50 (1) 7913:10	7870:22;8015:5, 16	24;8014:10; 8016:24;8020:9; 8024:13;8030:24; 8041:13;8044:18	7890:6;7916:23; 7927:15,19;7977:17; 8024:16,18,19,20
	\$20 (1) 8027:21	accommodating (2) 8008:3,16		admissibility (1) 7884:1
	\$20.01 (2) 7983:14,18	according (6) 7879:16;7896:22; 7931:2;7939:5,19; 7943:13	add (11) 7876:24;7904:22; 7945:7;7956:23; 7964:12;7978:2; 7983:1;7990:4,20; 8003:11;8009:6	admissible (1) 7884:9
	\$22 (1) 7979:7	accordingly (1) 8010:20		admission (17) 7877:2;7878:4; 7883:3,4,9;7891:17, 20;7945:10; 7946:10;7947:17; 7971:4;7983:3; 7984:22;7985:1; 8009:18,22;8011:11
\$	\$244.3 (1) 7963:24	account (1) 8030:17	added (2) 7982:7;8003:15	
\$0.045 (3) 7976:13,14; 7921:12	\$30 (1) 7979:2	accountant (1) 8038:24	adding (6) 7980:12,12; 7985:24;7986:4,12; 8003:17	
\$0.055 (1) 7921:13	\$347 (2) 7967:16;7987:16	accounting (8) 7914:16;7915:16; 7960:5,15,17; 8025:12,14;8039:1	addition (1) 8030:10	
\$1,000,000,000 (1) 8010:23	\$45.24 (2) 7979:2,17	accurate (1) 7982:18	additional (9) 7903:20;7971:25; 7975:7;7981:8; 7990:20;8010:7; 8012:11;8030:11,16	admit (1) 7909:9
\$1,163,388,062 (1) 8003:7	\$467.2 (1) 7967:13	achieve (2) 7994:6;7997:16		admitted (7) 7883:6;7884:14; 7891:21;7947:18; 7984:23;7985:3; 8011:12
\$1.06 (4) 7905:4,12,18; 7917:2	\$525 (4) 8030:7,10; 8031:17;8032:8	acknowledged (1) 7903:21	address (5) 7929:18;7959:19, 20;8045:6;8046:23	admonish (1) 7923:24
\$1.10 (2) 7900:13;7902:17	\$8,727,605 (1) 7902:13	acquiescence (1) 8042:6	addressed (5) 7874:9;7876:12, 17;7890:6;7920:3	adopt (5) 7872:17;7874:1; 7885:23;7893:7; 7895:24
\$1.2 (5) 8030:3;8033:2,6,7, 12	A	acquired (2) 7928:16;7930:3	adequate (3) 7892:19;7946:23; 7975:12	adopted (8) 7874:21;7892:23; 7896:4;7991:20; 8019:6;8020:23; 8023:21;8031:7
\$1.26 (2) 7983:21,22	AA (1) 8000:7	acronym (1) 7975:22	adjacent (1) 7873:8	adopting (1) 7982:3
\$1.6 (1) 8033:6	AAA (1) 8000:4	across (20) 7911:23;7920:7, 10;7925:6;7928:23; 7929:1;7934:25; 7935:25;7936:3; 7937:7,10;7938:4; 7940:14;7943:9; 7944:14,23;7949:10; 7952:8;7975:19; 7977:23	adjust (3) 7894:3;7911:21; 7985:24	adoption (3) 7893:2;8015:5; 8024:10
\$1.70 (4) 8005:12,12; 8020:3;8029:8	abbreviation (1) 7977:12	act (7) 8020:11;8024:6,6; 8029:3,13,14,17	adjusted (2) 7978:24;8002:3	advanced (1) 7992:12
\$1.85 (3) 7906:21;7907:2; 7917:1	ability (15) 7893:20;7894:19; 7895:3,9;7910:14; 7919:12;7967:18,23; 7968:1;7990:24; 8008:9,11,12,21; 8041:11	action (2) 7898:12;8019:24	adjuster (10) 7889:4;7893:12; 7906:23,24,25; 7907:2;7999:2,2; 8002:11;8025:25	advantage (1) 7998:2
\$1.88 (2) 7900:14;7902:17	able (5) 7911:19;7967:11; 7993:2;8012:7; 8034:1	activities (2) 7960:21;7961:12	adjusters (3) 8002:10,22,23	advantages (1) 7997:25
\$10,688,310 (1) 8026:10	abnormal (1) 7974:4	actual (9) 7886:6,17;7891:8; 7900:22;7982:18; 8022:5,24;8034:11; 8036:11	adjustment (2) 7940:13;8028:8	advising (1) 8045:12
\$10.23 (1) 7979:5	above (17) 7905:3,4,15; 7908:4;7910:19; 7911:24;7912:1,7; 7913:24;7931:13,13; 7933:10;7963:7; 7971:25;7973:18; 7985:20;7987:13	action (2) 7898:12;8019:24	adjustments (2) 8001:14;8027:14	advisory (3) 7927:2;7929:16; 7960:11
\$11,610,813 (1) 8018:24	absent (1) 7952:14	act (7) 8020:11;8024:6,6; 8029:3,13,14,17	adjusts (1) 7986:13	advocacy (1) 7960:9
\$11,833,486 (3) 8002:13;8018:12, 14	Absolutely (4) 7926:10;7930:9; 7951:22;7992:8	action (2) 7898:12;8019:24	administer (2) 8024:14,16	advocating (1) 8009:14
\$11.8 (1) 8025:5	academic (1) 8034:16	activities (2) 7960:21;7961:12	administering (2) 8024:19,20	Affairs (2) 7890:14;7960:8
\$11.833 (1) 8026:7	accept (2) 7901:19,23	actual (9) 7886:6,17;7891:8; 7900:22;7982:18; 8022:5,24;8034:11; 8036:11	administrate (1) 8025:1	affirm (1) 7959:9
\$11.89 (1) 7979:4	accommodate (3)	Actually (33) 7889:3;7890:20; 7891:16;7896:9; 7897:4;7901:3,4; 7911:7,9;7929:24; 7930:1;7937:17; 7954:1;7955:20,21; 7965:2;7966:17; 7971:10;7973:13; 7983:11;7996:2,10; 8001:4,24;8002:12,	administrating (1) 8024:18	afford (1) 7982:2
\$120 (2) 7965:6;7967:23		act (7) 8020:11;8024:6,6; 8029:3,13,14,17	Administration (1) 7939:1	afraid (1) 7957:10
\$139,329,759.23 (1) 8000:25		action (2) 7898:12;8019:24	Administrator (9)	AFTERNOON (7) 7958:1;7960:2;
\$15.39 (2) 7979:3,18		activities (2) 7960:21;7961:12		
\$2.24 (1) 7913:9		actual (9) 7886:6,17;7891:8; 7900:22;7982:18; 8022:5,24;8034:11; 8036:11		
\$2.27 (1) 7913:9		act (7) 8020:11;8024:6,6; 8029:3,13,14,17		

7985:15,16;8011:18; 8013:23,24 again (75) 7870:7;7873:18; 7876:4;7881:18,24; 7884:21,22;7886:8; 7904:14;7907:9; 7911:2;7913:8; 7914:1;7924:3; 7926:23;7928:14; 7930:9;7931:5,5; 7933:24;7934:10,12, 21,24;7936:9,13,17, 18,24;7937:2,3; 7938:1,17;7939:10, 19;7940:23,25; 7942:13,18,19,25; 7943:10,18;7944:1, 4,4,6;7955:4;7957:2; 7964:23;7965:16,18; 7966:9;7967:20; 7970:7;7972:12; 7973:15;7980:7,9, 11;7983:17;7984:1; 7989:2;7993:6; 7999:9;8000:19; 8003:12;8010:2; 8013:6;8016:5,15; 8028:25;8042:18; 8045:20;8046:24 against (1) 7972:3 age (1) 7943:25 aged (1) 7882:10 agencies (1) 7992:17 Agency (1) 7927:22 aggregate (5) 7900:8;7914:24; 7919:25;7920:3; 7921:25 ago (8) 7915:17,17; 7992:6;7999:25; 8000:14;8010:5; 8016:1;8036:21 agree (31) 7881:16;7884:11; 7888:19;7889:7,16; 7894:23;7895:12; 7902:13;7907:24; 7909:3,5;7913:6,23; 7914:24;7915:1,9; 7921:9;7947:8; 7950:19;7953:3; 7985:23;7995:9; 8011:2;8030:15; 8032:25;8034:6,10; 8039:16;8040:1; 8046:15,16 agreed (3) 7955:10;7985:19; 8042:9 agreeing (2) 7899:12;7999:21 agreement (3) 7909:22;8024:22; 8029:3 Agricultural (7) 7927:16,20; 7937:18;7944:18; 8019:23;8029:3; 8042:11 Agriculture (7) 7927:17;7928:5, 18;7939:6,12,23; 7960:11 Ah (1) 7907:18 ahead (3) 7901:18;7926:2; 7976:24 Ahlem (4) 7968:20;7969:2,9, 20 Ahlem's (2) 7969:22;7970:9 aligning (1) 7873:9 allocated (2) 8006:15,15 allocating (1) 8020:5 Allowance (5) 7870:19;7876:15; 7887:25;7889:3; 7997:3 allowances (8) 7876:12;7885:23; 7886:7,16;7889:1; 7890:15;7892:2; 7981:12 allowed (1) 7963:17 allows (4) 7911:21;7912:1; 7987:18;8018:1 almost (7) 7893:3;7938:6; 7970:24;7978:13; 7979:2;7999:11; 8022:25 along (1) 8016:24 alphabetical (1) 7934:6 alter (2) 7986:6,9 alternative (4) 8004:10;8022:19; 8033:21,21 Alternatively (1) 7978:23 alternatives (1) 8016:19 although (4) 7948:6;7961:18; 7970:25;8014:20 Alto (2) 7992:5,7 always (2) 7925:10;7985:8 AMAA (1) 8027:8 Amarillo (1) 7951:12 amazingly (1) 8044:11 America (5) 7926:20;7927:4; 7961:21;7968:14; 7970:1 American (15) 7909:4,6;7929:6,7, 21;7931:2,6; 7933:25;7934:12; 7936:14;7940:8; 7942:14,20;7945:18; 7947:23 among (14) 7929:4;7930:20; 7931:16;7934:24; 7936:8;7938:20; 7941:19;7942:25; 7944:6,9,22,25; 7950:18;8042:7 amortization (1) 8023:2 amount (17) 7964:5;7966:1; 7974:11;7998:7,8; 8003:7;8005:13; 8019:14,15;8020:18; 8021:18;8025:21; 8026:15;8030:21; 8033:4,5;8037:10 AMS (8) 7884:3,5,5,6; 7888:7;7890:6; 8043:4,17 analyses (1) 7929:5 analysis (29) 7898:5;7900:20; 7905:8;7909:10; 7914:14;7923:9; 7924:15;7925:15,18; 7927:6,15;7928:20; 7929:3,10,14,17,19; 7930:11;7933:8; 7937:6;7944:20; 7945:9;7951:23; 7954:20,25;7996:19; 8016:16,16;8020:7 Analytics (23) 7929:6,8,10,18,20, 24;7930:2,8,11; 7931:2,7,20; 7933:19,25;7934:13; 7935:23;7936:15; 7938:22;7940:6; 7942:1,15,21; 7943:19 analyzed (1) 7929:6 analyzing (2) 7928:3;7940:21 anchored (1) 8040:18 Angeles (3) 7953:4;8027:18, 20 announced (2) 7917:24;7964:12 announcements (1) 7870:4 Annual (15) 7884:3,4;7902:3; 7914:24;7964:4; 7965:12,16,20; 7987:25;8000:18; 8001:24;8003:14; 8010:15;8018:18,19 annualized (3) 7898:20;7899:7, 13 annually (2) 7899:16;7968:9 annuity (2) 7997:12,15 anticipate (1) 8038:21 anticipated (1) 8038:18 anticipating (1) 8039:21 anymore (1) 7906:25 apologize (5) 7888:17;7910:22; 7912:16;7983:10; 7993:21 apostrophe (1) 7938:16 apparent (1) 7974:9 appeal (1) 7998:10 Appeals (1) 7992:8 appears (5) 7889:22;7923:25; 7969:22;7970:9; 7995:16 apples (2) 7952:7,7 applicable (1) 7874:22 application (1) 8028:4 applies (1) 7916:12 apply (3) 7875:4;7916:21, 23 appreciate (5) 7923:8;7985:8; 8013:17;8044:7; 8046:5 appropriate (9) 7932:24;7946:20; 7981:19;7997:6; 8010:23,25;8011:18; 8033:19;8034:2 appropriateness (3) 7875:15;7876:6, 10 approval (2) 7873:13,20 approved (2) 8017:2,5 approximate (1) 7966:5 approximated (1) 8003:25 approximately (2) 7951:15;7966:1 April (1) 7900:12 area (26) 7895:8;7933:12, 21;7934:3;7935:24; 7937:13,18,20; 7938:7;7942:4; 7943:20;7944:1,9; 7949:25;7950:9,12; 7951:15;7952:5,6, 17;7953:24;7954:1; 8021:5,6;8027:5,17 areas (55) 7916:21;7917:7, 13;7925:13; 7931:23;7933:17; 7934:5,11,15,22,24; 7935:25;7936:9; 7937:9,22;7938:2,4, 14,15,21;7939:17; 7940:2,24;7941:11, 13,16,16,20; 7942:17,23,25; 7943:1,7,9,17; 7944:5,6,7,14,21,23, 25;7949:21,22,23, 24;7950:6,15; 7951:20,21;7952:9; 7954:13;7979:23; 7980:11;7985:14 areas' (1) 7938:18 area's (2) 7931:22;7942:13 argue (6)

7909:15;7969:23; 7970:10;8034:1,1,20 argues (1) 8034:23 argument (5) 7884:9;8034:20; 8035:5;8039:11,16 arguments (1) 7992:14 armed (1) 7956:19 around (8) 7932:16;7949:18; 7966:21;8004:19; 8012:12;8019:14; 8021:4;8022:7 arrive (1) 7980:13 arrives (1) 7990:11 Article (1) 8019:22 aseptic (1) 7871:19 Aseptically (1) 7871:21 aside (1) 8004:21 assembled (1) 7884:2 assertion (1) 7927:8 assessing (1) 7977:9 asset (18) 7969:13;7996:3; 7997:5;7998:13; 8021:10,12,14,14,19, 21,22;8022:18; 8030:19,20;8032:17, 18,23;8033:23 assets (2) 7997:1;8033:24 assigns (1) 8035:21 assist (1) 7913:7 assistance (1) 7949:17 associated (1) 8035:9 Association (1) 8039:4 assorted (1) 7929:2 assume (5) 7882:11;7915:14; 7966:13;8029:5; 8041:19 assumed (2) 7987:14;8014:11 Assuming (4) 7967:15;7985:17;	8027:20;8046:9 assumption (6) 7975:2;7986:3; 7987:12,16;8024:15, 21 assumptions (1) 7964:6 attached (1) 7972:18 attachments (1) 7911:15 attack (1) 7925:9 attained (1) 7963:11 attempt (1) 8008:1 attempts (1) 7952:11 attended (2) 7886:21;7961:15 attention (3) 7916:10;7947:25; 7991:12 attorneys (1) 7946:16 attributable (1) 7970:19 audio (3) 7984:8,12,17 audited (1) 7952:24 August (5) 7885:11;7965:11; 7967:12;7971:6,24 authentic (1) 7891:4 authoritative (1) 7890:10 authority (1) 8024:24 authorize (2) 8029:15,17 authorized (3) 8028:12,13; 8029:2 availability (2) 7935:25;7949:4 available (21) 7877:1;7892:3; 7932:24;7954:21; 7969:5;7981:5,25; 7982:17;7983:4; 7987:10;7991:6; 8001:7,7;8008:15; 8011:17;8041:6; 8043:23;8044:1,5; 8046:7,10 avenues (1) 7974:17 Average (59) 7878:11;7879:21; 7880:14;7887:15,22,	24;7900:14,16; 7902:3,16,21,23,24; 7903:2;7905:11,23; 7915:1,1;7916:19; 7917:6,6,11,12,12; 7918:21;7919:11,13; 7920:10,11;7922:17, 18;7930:21;7931:12, 14,15,22;7934:21, 23;7935:21;7936:7, 18,20;7938:23,25; 7939:8;7940:7; 7943:21,25;7944:1, 11;7950:3,5;7951:9, 18;7983:12,15; 7999:12;8002:21; 8004:1 averaged (1) 7970:24 averages (2) 7930:24;7983:23 averaging (1) 7915:2 avoided (1) 7940:17 avoids (1) 7944:1 aware (7) 7879:16,19; 7882:23;7895:16,23; 7954:17,19 away (8) 7944:8;7954:17; 7994:5;8020:21; 8021:22;8025:12; 8036:12,13	8003:15,19;8004:7; 8006:23;8008:2; 8011:22,24;8016:4; 8019:3;8025:15; 8032:16;8041:13,14, 19 background (1) 7961:25 Bakersfield (4) 7934:17;7941:14; 8027:17,17 balance (7) 8003:6,10,16,17; 8025:9,11,23 bar (2) 7965:16,25 barely (1) 7948:16 barrel (2) 7875:16;7876:7 barriers (3) 7993:14;8017:12, 16 bars (3) 7964:5;7965:20; 7966:4 base (4) 7873:21;7904:6,7; 7974:7 based (32) 7873:4;7888:20; 7893:14;7894:17; 7905:12;7906:14; 7907:20;7936:6,8; 7948:25;7953:24; 7964:20;7965:12; 7966:7;7969:22; 7970:9,20;7978:7; 7982:22;7987:10,17; 7988:19;7994:2; 7999:19;8015:10; 8017:17,22;8018:4; 8028:8;8030:6,19; 8035:16 base-excess (1) 7873:13 Basic (5) 7872:19;7893:7, 12,13;7993:10 Basically (8) 7902:16;7913:16; 7975:13;7977:25; 7979:11;8004:18; 8019:3;8045:21 basis (26) 7875:6;7883:12; 7895:24;7898:20; 7902:3,17;7916:24; 7943:23;7946:3; 7966:15;7968:11; 7997:22;8001:18; 8003:12,13,22; 8004:3;8005:10;	8013:15;8021:17; 8026:1;8028:1,1; 8029:15,18;8044:22 Bear (1) 7871:24 became (1) 7925:11 become (1) 8041:6 becomes (2) 7883:19;8002:24 began (3) 7960:5;8016:4,23 begin (5) 7870:16;7884:17; 7985:6;8012:3; 8014:24 beginning (3) 7871:9;7968:17; 8014:16 begins (3) 7992:13;8003:4; 8008:3 behalf (4) 7890:18;7968:5; 8039:3;8043:17 belabor (2) 7946:24;7990:18 belief (4) 7941:19;7944:24; 8018:7;8037:9 below (9) 7914:4;7931:14, 14;7934:16,22; 7935:20,21;7944:11; 7960:22 beneficial (1) 7978:15 benefit (10) 7898:11;7902:3; 7926:8;7965:12,17; 7966:5;7988:1,1; 8001:25;8006:19 benefitted (1) 7982:13 Bernardino (1) 7953:5 Beshore (82) 7870:11,13; 7871:7;7874:5; 7875:17,23;7876:2, 21;7877:1,6,12,24; 7878:1;7883:23,24; 7884:11;7901:6,9, 11;7903:21;7907:1; 7916:6,7;7917:18, 21;7920:3,9; 7921:24;7923:12,13; 7955:22;7957:2,3; 7958:2,3,3,7,8; 7959:1,15,17; 7970:6;7976:16,24; 7977:2;7983:17,19,
			B	
		BAA (10) 7996:22,24,25; 7999:25;8000:4,17; 8022:3;8035:17,18; 8036:2 Bachelor (1) 7960:17 back (53) 7870:6;7871:8; 7875:9;7881:21; 7886:24;7890:5; 7899:22;7908:23; 7910:2,3,5,10; 7911:14,15;7914:9; 7940:25;7947:13,16; 7948:10;7956:4; 7957:12;7958:2; 7964:18;7966:19,20; 7967:4;7971:9; 7976:24;7978:2; 7980:12,13;7988:11, 13,20;7990:11; 7991:24;7992:3; 7996:10;7999:15;		

<p>22,24;7989:25; 7990:1,9,9,15,18,18; 8009:24;8010:1,3; 8011:9;8027:4,5; 8029:12;8038:5,6, 15,15;8039:7; 8040:3,6,14,22; 8042:16,17,23,24; 8043:6,15;8044:13, 18;8045:10;8046:21</p> <p>Beshore/Vlahos (1) 8043:2</p> <p>Beshore's (1) 8045:22</p> <p>best (9) 7894:10,12; 7928:22;7929:13; 7977:6;7984:8; 7993:1;8022:19; 8033:21</p> <p>better (7) 7947:6;7974:25; 7984:10;8001:17; 8020:1;8031:1; 8044:20</p> <p>beyond (5) 7876:11;7970:12; 8024:9;8037:2,3</p> <p>BFP (2) 7872:19,20</p> <p>bias (2) 7940:17;7944:2</p> <p>bid (1) 8022:17</p> <p>biennial (1) 7929:6</p> <p>big (1) 7988:24</p> <p>bigger (2) 7892:17;7902:25</p> <p>Bill (6) 7968:16;8016:8; 8017:23,23;8018:5,6</p> <p>billion (9) 7967:13;8010:12; 8025:5;8030:3; 8033:2,6,6,7,12</p> <p>bit (19) 7897:5;7908:14; 7960:20,22,23,24; 7962:24;7972:9; 7973:22;7983:13; 7993:23;8004:23; 8009:9;8015:1; 8030:24;8042:19,23; 8044:6,7</p> <p>black (2) 7955:11;7956:8</p> <p>blank (3) 7877:5,12; 8001:20</p> <p>blend (12) 7899:7;7901:17;</p>	<p>7962:17,20;7963:4, 6,7;7964:8,22; 7988:22;8005:10; 8018:2</p> <p>blended (2) 7907:21;7916:24</p> <p>Bless (1) 7946:15</p> <p>block (2) 7875:16;7876:6</p> <p>Blocks (5) 7878:12;7882:4,5, 19,20</p> <p>blue (1) 7878:18</p> <p>Board (11) 7906:12;7907:10, 11,13,14;7960:12, 13;8009:10,13; 8017:5;8041:14</p> <p>boards (1) 7928:10</p> <p>Boise (1) 7950:23</p> <p>Bond (6) 7996:22;8000:16; 8022:3;8032:19; 8035:20,22</p> <p>bonds (1) 8035:24</p> <p>book (1) 7997:4</p> <p>booked (2) 8045:12,13</p> <p>borders (1) 7876:11</p> <p>Boston (1) 7917:24</p> <p>both (26) 7875:15;7876:1,6, 11;7879:2;7882:7; 7893:18;7894:17; 7910:24;7913:13; 7935:10,11;7961:2; 7973:22;7974:1,8, 13;7976:19; 7983:23;7989:16; 7997:1;8012:19; 8024:5;8026:23; 8038:17,17</p> <p>bottom (6) 7898:25;7917:10; 7921:18;7974:14; 7986:18;8000:21</p> <p>boy (2) 8000:6,7</p> <p>Branch (1) 7998:22</p> <p>Brazil (1) 7926:3</p> <p>break (17) 7909:25;7910:4; 7914:19,20,21;</p>	<p>7943:5;7946:16,18, 22;7947:5,13,15,23; 7957:4;8004:23; 8011:19,23</p> <p>Brian (2) 7922:13;7984:1</p> <p>brief (8) 7890:20,23; 8038:18,22;8039:6; 8040:4,23;8043:8</p> <p>briefly (2) 7973:5;7992:3</p> <p>briefs (7) 8039:23;8040:2, 14,14,18;8042:24; 8043:9</p> <p>bring (3) 7927:14;7945:21, 24</p> <p>bringing (1) 7895:2</p> <p>brings (1) 8006:16</p> <p>broadly (2) 7920:13;7997:7</p> <p>brokerage (1) 7943:22</p> <p>brought (4) 7894:7,7,10,12</p> <p>brown (1) 7963:4</p> <p>buffer (3) 8001:20;8003:1, 18</p> <p>build (1) 7952:12</p> <p>building (1) 7943:25</p> <p>buildings (1) 7944:2</p> <p>built (3) 7969:8;7986:2; 8031:21</p> <p>bulk (1) 7965:3</p> <p>Bulletin (1) 8001:6</p> <p>burden (4) 7942:6,13;7943:8; 7981:9</p> <p>burdens (1) 8042:17</p> <p>Business (73) 7870:1;7898:10; 7899:18,20;7903:13; 7910:7;7924:15; 7925:3,5,10,14; 7926:17,24;7927:7, 8,12,24;7928:23; 7929:1,3,7,8,19,21; 7930:4,5,17,21,22; 7931:2,4,6,21,22; 7932:2,5,25;</p>	<p>7933:16,21,25; 7934:3,8,11,13,20; 7935:20,22,24; 7936:2,13,14,22; 7937:1;7938:2,10, 18;7939:16;7942:9, 14,20;7943:13; 7944:20;7945:2,18; 7947:23;7949:9; 7951:25;7953:24; 7954:16;7959:19,20; 7961:6,6</p> <p>businesses (5) 7900:3,8;7903:5; 7919:25;7953:13</p> <p>Butte (1) 7928:1</p> <p>butter/powder (2) 7965:2;7986:20</p> <p>butterfat (6) 7873:7,8;8027:21; 8028:16,17,19</p> <p>buy (6) 7911:19;8021:10, 11,14;8032:18,19</p> <p>buyer (1) 7913:7</p> <p>buyers (1) 7969:6</p> <p>buying (5) 8005:19,20; 8032:19,20,21</p> <p>byway (1) 7897:18</p>	<p>8001:23;8004:2; 8006:7;8019:2; 8022:14;8033:23</p> <p>calculations (7) 7918:18,20,24; 7920:10;7977:23; 7987:11;7989:4</p> <p>calendar (1) 7966:14</p> <p>calf (4) 7972:6;7985:23; 7986:13,13</p> <p>California (167) 7871:1,16;7872:5, 6,6,10,11;7873:25; 7876:20;7883:17,18; 7885:22,24;7886:4, 7,14;7892:15,17; 7909:11;7912:23; 7913:12;7919:1,7,7, 17,17;7920:5; 7924:16,23;7925:3, 5,9;7926:2,17,19,24; 7927:3,4,7,9,10,21; 7928:9,22;7929:23; 7930:19;7931:8,18; 7932:5,17;7933:4,6, 10,15;7934:7; 7935:22;7936:4; 7937:7;7938:3,5; 7939:5,11,17,23; 7941:16,19;7943:4, 11;7944:19,25; 7945:4;7949:11; 7952:16;7953:8; 7954:22;7959:21; 7960:9,10,14,18; 7961:2,3,4,7,16,22, 24;7962:5,6,8,13,16, 17,18,20;7963:16, 17,23;7964:11,25; 7965:4,9,12;7968:3, 4,15,18;7969:6,9,24; 7970:1,2,4,11,14,16, 18;7972:9,15; 7973:12,16,17; 7974:2,10,12; 7975:14,17;7980:25; 7981:4,15,23; 7982:2,8,11,13,20; 7986:18,21;7988:9; 7994:10;8000:23; 8001:11;8007:21; 8008:11;8009:11,14; 8012:25;8013:8; 8014:1,3;8017:11, 24;8018:20; 8019:21;8020:10; 8023:13,13,18; 8024:8,17,25; 8027:1;8029:5; 8037:5;8039:3; 8045:1;8047:4</p>
C				
			<p>Cal (1) 7979:24</p> <p>calculate (6) 7903:9,12;7932:2; 7978:11;8006:9; 8033:16</p> <p>calculated (20) 7898:20,25; 7899:23;7917:6; 7921:6;7979:4,5; 7996:4,22;7999:9; 8000:18;8002:10; 8005:2;8007:5; 8018:21;8020:4; 8022:4,8;8023:9; 8030:5</p> <p>calculates (2) 7938:22;7940:6</p> <p>calculating (4) 7942:12;7996:25; 7997:1;8031:4</p> <p>calculation (18) 7901:16;7902:14; 7922:16;7980:7; 7988:18;7997:4,6,8, 9,16;7998:23,24;</p>	

<p>California's (5) 7876:11;7886:16; 7930:22;7944:21; 7962:11</p> <p>call (7) 7885:20;7910:7; 7947:25;7958:4; 7990:24;7992:1,19</p> <p>called (8) 7900:10,11; 7916:10;7930:2; 7998:22;8014:5; 8017:18;8018:4</p> <p>calling (1) 8001:24</p> <p>calls (2) 7879:14,24</p> <p>calves (1) 7986:4</p> <p>came (8) 7893:1;7956:19; 7963:9;7968:8; 7977:24;8000:19; 8016:6,10</p> <p>can (71) 7875:5,18; 7878:14;7884:9; 7889:11,25;7890:11; 7892:6;7902:23,24; 7907:21;7911:18; 7912:4;7916:11; 7919:23;7926:5; 7932:20;7937:25; 7940:2,17;7941:1, 10,25;7943:10; 7944:10,11;7945:24; 7946:17;7948:16; 7952:8;7956:4; 7960:24;7963:5; 7966:4,4;7973:12; 7974:15;7976:3,5; 7977:15,22;7978:12; 7979:17;7982:15; 7986:3;7987:12; 7993:21,24;7998:18; 8001:2;8006:8; 8007:11;8012:5,8, 15;8013:3;8020:2; 8030:6,21;8034:17; 8039:19;8040:6; 8041:24;8042:8,18, 23;8043:8,17; 8045:18,23;8046:3</p> <p>candidly (1) 8041:5</p> <p>capacities (1) 7960:4</p> <p>capacity (4) 7969:5,10; 7970:13;7974:15</p> <p>capital (2) 7940:16,22</p> <p>caps (1)</p>	<p>7969:1</p> <p>captured (1) 7978:25</p> <p>car (1) 7880:22</p> <p>cards (1) 7870:1</p> <p>care (3) 8007:21;8011:2; 8047:7</p> <p>career (3) 7928:12,16; 7960:5</p> <p>carload (2) 7880:19,20</p> <p>Carolina (27) 7872:11,14,16,17; 7873:10,11,19; 7874:1,8,11,21,24; 7876:18;7892:13,15, 23;7893:2,9,19,19; 7894:1,2,16,18,18; 7895:13,17</p> <p>Carolinas (4) 7873:6;7892:17; 7893:17;7895:3</p> <p>carried (1) 7922:21</p> <p>carry (2) 7885:21;7914:15</p> <p>carrying (1) 7905:2</p> <p>case (10) 7894:15;7903:25; 7925:11;7990:12; 7992:5,7;8004:19; 8034:19;8038:17; 8043:25</p> <p>cases (3) 7937:21;7963:6; 8038:17</p> <p>casual (1) 8047:13</p> <p>categories (1) 7932:1</p> <p>category (1) 7882:16</p> <p>cause (1) 7994:17</p> <p>caused (3) 7944:2;7994:25; 7995:3</p> <p>causing (1) 7874:19</p> <p>caution (1) 7926:6</p> <p>cautions (1) 7972:2</p> <p>CBRE (1) 7943:21</p> <p>CDFAs (44) 7885:23;7886:5,5, 15,15,21;7887:5,14,</p>	<p>17,21;7888:13; 7952:24;7960:11; 7961:19;7963:10; 7964:9,23;7966:20; 7968:21;7969:7; 7970:21;7972:24; 7975:11;7978:23; 7979:13;7980:4,16, 23;7981:25; 7989:12;7994:17; 7996:25;7997:5; 7998:21;7999:9,10; 8001:5;8007:25; 8022:16;8024:22,23; 8025:1;8033:22; 8037:19</p> <p>CDFAs-A (1) 7963:12</p> <p>CDFAs-C (1) 7963:12</p> <p>CDFAs (7) 7888:3;7939:20; 7943:4,13;7952:22; 7978:25;7979:6</p> <p>CDI (4) 7886:14,18; 7969:25;7970:12</p> <p>cent (8) 7899:2,3,5; 7976:11;7978:5; 8028:16,19,20</p> <p>central (5) 7902:1;7926:18, 24;7930:11,14</p> <p>cents (36) 7882:24;7899:1, 15,25;7900:12,12, 13;7902:16,16,16, 22;7903:1;7912:9, 17,20,24,25;7913:1, 2,4;7917:17;7920:7; 7921:11;7922:17; 7938:24;7972:24; 7978:6;8002:18,20; 8004:5,20,25; 8018:12;8025:22; 8026:9;8036:18</p> <p>CEO (4) 7926:22;7927:1; 7968:20;7970:21</p> <p>certain (11) 7952:12;7961:9; 7996:18;8023:18; 8024:5,7,9;8042:1; 8044:15,20;8046:11</p> <p>certainly (10) 7917:25;7945:24; 7951:11,19;7969:10; 7972:7;8006:6; 8026:25;8045:2; 8046:7</p> <p>certainty (4) 8034:23,25;</p>	<p>8042:2,4</p> <p>certification (5) 8040:21;8041:4, 16;8043:4,7</p> <p>certified (1) 8042:13</p> <p>certify (2) 7891:10;8042:25</p> <p>Chairman (1) 7960:12</p> <p>challenges (1) 7929:19</p> <p>chance (1) 7923:6</p> <p>change (19) 7870:22;7875:18; 7885:8;7911:4; 7921:10;7922:16; 7988:25;7989:6; 7994:18;7997:14; 8002:1;8023:13; 8024:8;8035:7; 8036:23,25;8037:1, 6,8</p> <p>changed (8) 7885:16;7892:4,8; 7972:20;7973:9; 8019:22;8036:13; 8040:10</p> <p>changes (6) 7879:18;7895:23; 7972:3;7981:12; 7997:15;8021:6</p> <p>changing (2) 8020:16;8035:3</p> <p>Chapter (2) 8019:22;8023:21</p> <p>chapters (1) 8023:19</p> <p>characteristics (1) 7981:17</p> <p>characterization (3) 7888:16;7907:25; 7915:9</p> <p>characterize (4) 7892:6,17; 7894:11;8036:15</p> <p>characterizes (1) 8035:23</p> <p>charge (7) 7874:21,24; 7875:3;7913:14,15, 17,20</p> <p>charged (1) 7874:11</p> <p>chart (6) 7878:23;7879:4; 7995:1,3;7996:10; 8001:2</p> <p>check (2) 7885:15;7996:15</p> <p>checking (1) 8042:8</p>	<p>Cheddar (8) 7878:12;7882:4,5, 7,19,20;7909:11; 7939:8</p> <p>cheese (97) 7875:16;7876:7; 7878:12;7879:15; 7885:6;7887:12; 7898:15;7901:3,16, 24;7903:11;7907:5; 7908:8,25;7909:4,6, 11;7911:19,20,23; 7912:14;7917:7,13; 7918:3,5,21;7919:1, 2,10,11,12,14,17,18; 7920:7,12;7927:10; 7931:1;7933:11,18; 7934:2,7;7936:3; 7937:6,8,10,13,16; 7938:4,6;7939:8,10, 11,17,17,18,20,22; 7940:24;7941:11,15, 20;7942:17,23; 7943:4,4,8,13; 7944:21;7945:4; 7949:10,17;7950:8; 7951:11;7952:15; 7953:3,3,8;7963:16; 7964:10,10,24; 7967:25;7968:1,6, 20,22;7969:3; 7970:17,18,21; 7981:10;7982:12; 7986:19;7987:3,18; 7989:20</p> <p>Chip (6) 7878:8;7886:10; 7901:18;7921:24; 7985:11;8039:6</p> <p>chose (4) 7965:7;7972:21; 8022:15;8034:3</p> <p>chosen (2) 7974:7;7989:7</p> <p>Christ (2) 7886:25;7887:1</p> <p>circumstances (1) 7961:25</p> <p>citation (1) 7875:7</p> <p>cite (1) 7976:22</p> <p>cited (1) 7872:2</p> <p>cities (4) 7937:4;7950:16; 7951:9;7954:17</p> <p>citing (1) 7873:8</p> <p>city (4) 7937:17,18,19; 7950:23</p> <p>claim (1)</p>
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<p>7982:2 clarify (1) 7877:3 Class (63) 7872:18,21,22,25; 7873:2,10;7874:2, 12,12,18;7875:4,4; 7890:15;7895:19,21; 7899:9,11,16,24; 7900:18,23;7901:2, 14,24;7905:12,17, 19,21;7906:1,15; 7907:4,15;7910:19; 7912:24;7913:9; 7914:17;7916:14; 7918:9,9,11; 7943:25;7962:5,9, 13,16,18,19;7963:3, 4;7965:9,9,12,17,18; 7967:11;7986:21; 7987:13;7988:14; 7998:25;8008:1; 8020:5,6,6 classes (1) 7918:8 classification (2) 7873:4;7874:25 clear (10) 7907:14;7917:17; 7918:19;7920:1; 7938:14,17;7939:15; 7956:9;7987:1; 8011:6 clearly (2) 7935:19;7970:19 client (3) 7907:1;8041:12, 14 clients (3) 8045:3,10,10 CLIFTON (163) 7870:1,11;7871:2; 7873:15,22;7874:6; 7875:9,13,19,21,24; 7877:3,9,14,16,25; 7878:2,13;7880:22; 7883:2,9,23; 7884:11,17;7886:9; 7889:12,14,18,21; 7890:2,8,24; 7891:18;7897:14,16; 7901:8;7904:22; 7907:9,18,24; 7908:2,19;7909:24; 7910:2,5,23; 7911:11;7914:9; 7916:2;7917:17,20; 7919:22;7920:25; 7921:16,21;7922:8, 24;7923:3,6,12,18, 25;7924:3,7; 7925:21,24;7926:11, 14;7935:10,13;</p>	<p>7945:11;7946:8,15, 21;7947:6,12,16; 7948:12,21;7953:16; 7954:15;7955:2; 7956:3,12,17,19; 7957:1,6;7958:2,6, 16,22;7959:2,7,12, 15;7967:20;7970:2, 4;7976:5,9,18; 7977:1;7983:6,25; 7984:6;7985:1,6; 7989:22;7990:1,7, 13,16;7991:1; 7992:21;7993:5; 7995:8,13;7996:5,7; 8000:3,6,8;8009:20; 8010:1,7,19;8011:1, 4,8,21,24;8012:2,7; 8013:2,6;8015:7,14; 8018:13;8026:25; 8029:22;8035:11; 8036:5;8037:15,23; 8038:1,7,10,13,24; 8039:5,12,23; 8040:20;8041:18; 8042:1,25;8043:10, 16;8044:11,13; 8046:15,23 Clifton's (3) 7993:8,20; 8009:17 close (10) 7914:9;7949:23, 25;7950:14;7951:6; 7952:18;7988:4; 7990:12;7997:14; 8047:11 closed (1) 7988:2 closely (1) 7949:20 closer (2) 7963:6;7966:17 closest (3) 7937:9;7949:20; 7951:5 closing (3) 8039:11,16,24 CNBC (1) 7929:1 Coale (4) 7890:6;8043:16, 17;8044:12 Coale's (1) 8046:5 Coast (10) 7878:19;7879:8; 7880:5,11;7881:14, 14;7882:12; 7883:14;7979:24; 8041:14 Coburg (1) 7874:10</p>	<p>Code (1) 8019:23 cogent (1) 7993:24 colleague (1) 7955:18 collect (2) 7907:17;8030:12 collecting (2) 7913:14;7989:17 collectively (4) 7898:23;7932:8; 7935:22;8039:4 collects (1) 7885:2 color (6) 7955:7,8,23; 7963:2;7979:19; 7980:9 Colorado (2) 7936:4;7949:11 colored (1) 7933:3 column (40) 7878:23,24; 7880:2,6,9,12,14; 7882:6,18;7883:16; 7900:10,11;7902:15; 7931:15;7934:20; 7937:5;7940:23; 7941:2,4,4,6; 8001:20,22,23; 8002:14,15,16,17; 8003:1,2,3,8,18,19, 20,21,23;8004:6; 8005:5;8032:10 columns (9) 7878:19;7879:2; 7881:6;7882:7; 7902:10;7934:19; 7995:19;8001:4,19 combination (1) 7890:4 combined (3) 7927:9;7928:20; 7945:2 combining (3) 7875:15;7876:6, 10 coming (8) 7892:25;7893:20; 7936:14;7968:12; 7969:13;7996:18; 7998:8;8046:18 command (1) 8006:14 comments (1) 7993:3 Commerce (5) 7924:23;7927:22; 7928:22;7929:23; 7954:22 commercial (3)</p>	<p>7938:23;7939:2; 7943:22 commissions (1) 7928:11 commitment (1) 8046:2 commitments (1) 7968:24 Committee (1) 7960:12 commodities (1) 7876:8 commodity (3) 7998:3,5,5 common (1) 7929:4 Communities (12) 7926:18,25; 7928:19;7930:12; 7936:19;7938:3,6, 20;7941:23; 7943:11;7944:13; 7951:6 community (3) 7936:21;8037:8,9 company (4) 7929:12;7967:25; 7968:6;7969:3 Comparative (5) 7926:17,24; 7929:3;7933:20; 7937:10 compare (8) 7881:6;7882:17; 7883:13;7917:2; 7938:3;7950:9; 7966:4;8005:5 compared (5) 7925:22;7936:20; 7944:23;7952:8; 8005:10 compares (4) 7931:21;7936:1; 7943:19;7949:9 comparing (7) 7881:15;7882:14; 7917:5;7938:23; 7952:7;7963:3; 7965:17 Comparison (10) 7933:16,20; 7937:23;7938:9,11; 7943:2;7962:20; 7963:7;7973:19; 7988:21 comparisons (5) 7881:8,10,13; 7934:3;7953:23 compelling (2) 7940:1;7943:16 compensate (4) 7994:24;7996:11; 8013:11,12</p>	<p>compensates (1) 7981:17 compensation (1) 7942:10 compensatory (2) 7894:9;7895:5 compete (1) 7970:14 competes (2) 7970:18;7982:11 competition (1) 7925:6 competitive (19) 7893:14;7907:4; 7910:15,18,21; 7911:21;7913:25; 7919:18;7920:5; 7925:13;7926:18,25; 7927:11;7934:8; 7938:6,13;7943:6; 7944:22;7945:4 competitiveness (2) 7940:2;7943:16 compilation (1) 7884:7 complete (3) 7940:9;8043:22; 8044:1 completed (2) 7870:15;7910:7 completes (1) 7876:21 complicated (2) 7907:22;8039:24 component (6) 7939:18;7940:19, 20;7942:1;7943:3,12 components (8) 7931:23;7935:8; 7938:10,12;7940:19; 7978:24;7981:18; 8028:25 comport (1) 8016:7 composition (1) 7946:12 compositional (2) 7940:17;7944:2 compositions (1) 7941:9 comprises (1) 7931:23 computers (1) 7945:22 conceivably (2) 8005:23;8039:10 concentrated (1) 7874:18 concept (11) 7997:11;8014:9; 8016:23,24;8025:11; 8027:7,9,9;8028:24; 8032:22;8037:19</p>
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<p>concern (4) 7901:9,11;8008:5, 22</p> <p>concerned (3) 8007:23,25; 8009:1</p> <p>Concerning (2) 7870:19;7953:22</p> <p>concert (1) 8018:7</p> <p>considered (5) 7909:10,16; 7922:1;7994:3; 8038:17</p> <p>concluded (3) 7875:2;7946:20; 7948:9</p> <p>concludes (1) 7945:6</p> <p>conclusion (2) 7886:3;7944:16</p> <p>conclusions (1) 7974:5</p> <p>conclusive (1) 7945:9</p> <p>conditions (4) 7907:4;7915:6,8; 7961:6</p> <p>conducted (1) 7961:16</p> <p>confer (3) 8026:24;8039:6; 8042:5</p> <p>conference (1) 7949:16</p> <p>confess (1) 7896:12</p> <p>confidentiality (1) 7948:2</p> <p>confirm (1) 7921:17</p> <p>confirming (1) 8040:6</p> <p>conflict (4) 7874:19;7876:20; 7894:8;8023:21</p> <p>conflicted (1) 7873:7</p> <p>conform (1) 7877:17</p> <p>confused (1) 7912:15</p> <p>confusion (1) 7896:13</p> <p>congested (1) 7886:12</p> <p>Congress (1) 7928:9</p> <p>connected (3) 7912:16;7913:4,5</p> <p>connection (3) 7912:22;7925:8; 8036:9</p>	<p>consequence (1) 8028:11</p> <p>consider (2) 7994:14;8023:16</p> <p>considerably (2) 8033:3,4</p> <p>consideration (2) 7872:9;7991:6</p> <p>considerations (1) 8045:5</p> <p>considered (4) 7932:5;7934:4; 7944:9;8034:6</p> <p>consistency (1) 7998:7</p> <p>consistent (1) 8022:15</p> <p>consistently (1) 8030:22</p> <p>consolidation (1) 7968:2</p> <p>constant (1) 7925:9</p> <p>constituency (1) 8045:6</p> <p>constitute (2) 7883:21;8039:23</p> <p>constrained (1) 7992:10</p> <p>constructed (1) 7993:16</p> <p>consultant (2) 7930:7;7954:23</p> <p>consulting (2) 7927:3;7928:2</p> <p>contact (2) 7961:23;7971:14</p> <p>contacts (1) 7885:6</p> <p>contained (1) 7948:3</p> <p>contains (1) 7948:1</p> <p>contemplated (1) 7981:19</p> <p>contemporaneous (3) 7892:25;7893:3,3</p> <p>content (1) 8039:22</p> <p>context (1) 8015:25</p> <p>continue (12) 7873:6;7963:13; 7964:19;7971:20; 7977:3;7978:10,21; 7980:19;8019:21; 8035:4;8043:23; 8044:22</p> <p>CONTINUED (2) 7870:12;8007:13</p> <p>continues (1) 7939:4</p> <p>Continuing (2)</p>	<p>7931:20;7967:25</p> <p>contract (3) 7968:8,9;7969:1</p> <p>contraction (2) 7962:6;7968:4</p> <p>contracts (1) 7944:3</p> <p>contradicting (1) 7981:21</p> <p>contrary (2) 7885:5;7944:23</p> <p>contrast (1) 7981:6</p> <p>contribute (2) 7969:21;7972:7</p> <p>contributed (5) 7962:14,17; 7965:2;7969:17; 7970:15</p> <p>contributions (2) 7942:9,12</p> <p>contributor (1) 7944:17</p> <p>control (3) 7994:10;8012:24; 8013:8</p> <p>controversial (1) 7991:14</p> <p>conundrum (1) 7946:6</p> <p>conversation (2) 8040:4;8045:8</p> <p>conversations (1) 8043:21</p> <p>convert (1) 7970:17</p> <p>converted (2) 8005:19,23</p> <p>converters (2) 7879:13;7883:18</p> <p>Cooperative (6) 7870:18;7878:10; 7884:23;7949:17; 7969:24;7970:11</p> <p>Cooperatives (7) 7906:14;7927:5; 7939:3;7968:10,10; 7981:13;8014:8</p> <p>Cooperatives' (1) 7958:15</p> <p>co-ops (5) 7924:14;7961:6; 8008:5;8014:4; 8016:5</p> <p>co-ops' (1) 8015:2</p> <p>COP (16) 7975:9,17,23; 7976:12;7977:9,9, 12;7978:23,25; 7979:1;7980:23,24; 7981:4,25;7982:17, 18</p>	<p>copied (1) 7948:4</p> <p>copies (4) 7874:3;7948:10; 7956:8;7963:2</p> <p>copy (10) 7875:10;7888:6,6; 7889:22;7946:14; 7947:23;7952:20; 7959:3;7995:14,16</p> <p>copyright (1) 7948:3</p> <p>core (4) 7993:11;8017:13, 14;8018:8</p> <p>corporate (4) 7942:7,8;8000:16; 8022:3</p> <p>corrected (3) 7901:4;8040:19, 24</p> <p>correction (5) 7899:5;7901:5,19, 23;7922:16</p> <p>corrections (4) 8041:9,22;8047:2, 7</p> <p>correctly (4) 7903:22;7937:12; 8019:11;8032:6</p> <p>correlate (1) 7949:20</p> <p>correlation (1) 8036:2</p> <p>Correspondingly (1) 7979:3</p> <p>cost (145) 7876:10;7880:16; 7883:16;7886:6,16, 17;7888:13;7889:1, 5;7896:20;7913:19; 7924:15;7925:2,4; 7926:17,24;7927:6, 8;7928:23,25; 7929:3,7,8,21; 7930:4,4,17,20,22; 7931:3,4,6,16,17,21, 22,24,24;7932:2,4, 24;7933:16,21,25; 7934:2,10,13,20; 7935:3,3,19,21; 7936:2,9,10,12,14, 20,21,22,23,23,25, 25;7937:18;7938:2, 10,12,16,18,19,20, 23;7939:6,8,9,12,15, 16,19,20,24;7940:1, 6,7,18;7941:5,6,7,12, 20,25;7942:11,14, 20;7943:5,13,14,15, 16,19;7944:8,20,22; 7945:1,2,18; 7947:24;7949:9;</p>	<p>7951:24,24;7952:21; 7953:23,24;7962:7; 7975:9,11,18; 7976:11;7977:13; 7978:1;7979:14; 7980:1,4,11,13,13, 14;7981:10,16,24; 7982:3;7983:12,16; 7997:2,3;8000:18; 8001:24;8002:9,13; 8006:19;8010:15; 8018:11;8033:22; 8039:1</p> <p>costliest (1) 7925:10</p> <p>costs (20) 7898:10;7932:8; 7934:4,8;7935:24; 7938:24;7939:11,19, 21,22,23;7940:3,5, 14,25;7941:17; 7954:16;7978:8; 7981:14;8001:24</p> <p>Council (1) 7960:13</p> <p>Counsel (2) 7920:17;8035:15</p> <p>counted (1) 7878:17</p> <p>counties (6) 7928:2;7930:13; 7933:12;7934:16; 7941:22;8000:24</p> <p>countries (2) 7926:2,3</p> <p>country (14) 7911:24;7925:6; 7928:23;7934:25; 7935:25;7937:7,10; 7938:5,7;7941:21; 7944:14,23;7949:18; 7954:13</p> <p>country's (1) 7909:3</p> <p>County (2) 7941:23;8000:23</p> <p>couple (8) 7916:7,8;7945:17; 7993:10;7999:16; 8000:13;8001:1; 8010:5</p> <p>course (9) 7936:6;7949:13; 7992:15;7994:15; 8004:2;8006:15; 8007:4;8013:19; 8045:5</p> <p>court (4) 7893:20;7976:18; 7992:7;8043:19</p> <p>courts (1) 7928:10</p> <p>cover (6)</p>
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7926:12,16; 7958:11,14;7981:4, 14 covering (1) 7981:16 cows (2) 7985:24,25 CPA (1) 7960:16 Creamery (1) 8039:2 create (3) 7885:7;7998:7; 8044:9 creates (3) 7946:6;7969:10; 8045:25 creating (3) 7940:7;7982:10; 7997:12 creation (3) 7927:9,24;7945:3 credit (3) 7929:12,14; 7964:25 critical (1) 7992:9 cross (1) 7947:2 cross-examination (18) 7877:2;7883:25; 7884:19;7918:2; 7948:9,23;7983:5; 7985:6,9;7991:10; 8011:17,19,25; 8013:21;8027:3; 8029:23;8035:13; 8036:6 cross-examined (1) 7896:8 cross-section (1) 7871:20 Crystal (1) 8039:2 CSO (1) 7885:23 current (14) 7927:8;7960:25; 7968:25;7981:21; 7996:21;7999:25; 8018:20;8019:15,17, 20;8020:10;8024:9; 8030:6;8031:5 currently (6) 7961:1;7962:13; 7968:10;7993:16; 8019:10;8021:17 customers (2) 7961:9,11 customizes (1) 7929:18 CWT (3) 7975:22,24;	7976:11 D daily (1) 7961:23 Dairies (10) 7886:4,14; 7926:19;7927:4; 7961:22;7968:15; 7970:1,4;7972:3; 7980:23 Dairy (85) 7870:18,20,24; 7871:10;7872:2,4, 16;7874:10;7875:20, 21;7879:3,14,16,20, 24;7880:19;7881:3, 13,24,25;7882:11; 7884:1,3,6,8;7885:1, 6,15;7890:6; 7906:18;7908:5; 7915:23;7918:7; 7926:20;7927:4; 7939:6,12,23; 7944:17;7949:16; 7960:11,13;7961:21, 24;7962:7;7968:14; 7969:23,25;7970:2, 10;7973:3,23; 7974:3,9,11,20,23, 24;7975:10,13,14; 7977:6;7978:15; 7981:7;7985:22,23; 7986:13,17,20; 7987:7;7988:9; 7992:5,7;7993:12; 8001:6;8007:21; 8009:10,13,16; 8014:21;8017:2,4; 8039:2;8040:8; 8044:25 dairyman's (1) 7974:19 dairymen (3) 7960:9;7974:17, 22 Dakota (5) 7908:7;7931:9,19; 7936:5;7949:13 Dana (2) 7890:6;8043:16 data (44) 7872:5;7879:18; 7883:19;7885:2,17; 7888:3,20,22,23; 7892:3;7914:24; 7915:14,16,18,21; 7923:9;7925:18; 7929:5,10;7931:25; 7935:25;7938:1,25; 7946:11;7947:25; 7948:7;7949:5,5,5;	7955:15;7964:23; 7974:6,6;7975:11, 15;7977:24; 7979:12;7980:23; 7981:25;7987:10; 7989:3;7998:21; 8001:8,13 date (5) 8040:20;8042:21; 8043:7;8044:4; 8046:6 dated (8) 7885:10;7890:16; 7939:13,25;7971:5, 6,22,24 dates (5) 8042:1;8044:4,15, 19,19 David (1) 7968:20 Davis (2) 7927:3;8045:11 day (17) 7909:16;7911:14, 15;7964:21; 7965:10;7966:9,14, 15,22;7991:11; 7996:23;8000:13; 8005:2;8031:5; 8032:17;8040:13; 8047:10 days (19) 7872:12;7882:10; 7897:19,20;7964:21; 7966:9,11,12; 7984:17;7992:6; 8000:14;8002:2,5; 8005:3;8010:5; 8019:4;8040:23; 8043:5;8046:11 day-to-day (2) 7960:21;7961:11 DC (2) 8041:6,8 deadline (1) 8046:13 deal (6) 7896:17;7925:2; 7961:17;7994:9; 8012:23;8013:7 dealing (3) 7895:25;7925:4; 8007:24 December (12) 7939:7,13,25; 7972:2;8003:5; 8041:8,10,15; 8042:19;8045:14; 8046:13,13 decide (1) 7894:1 decided (3) 7894:9,9;7988:4	decision (13) 7872:6,14,22; 7874:8;7888:5; 7893:17;7894:24; 7895:11,18;7903:6; 7913:18,22;8016:18 decisions (6) 7873:3,9;7892:22, 25;7893:20;7894:19 decline (1) 7974:5 declines (1) 7973:23 declining (2) 7973:17;7974:9 decreases (1) 7974:3 dedicated (1) 8043:24 deduct (1) 7981:20 default (6) 8034:17,23; 8035:17,19,20,24 defaulting (1) 8035:2 defense (1) 7955:17 deficit (1) 7909:13 Definitely (1) 7918:16 definition (3) 7883:15;7906:2; 7940:9 degraded (1) 7992:18 degree (1) 7960:17 DeGroot (1) 8005:18 DeJong (3) 7962:10;7965:5; 7974:15 DeJong's (1) 7968:5 delay (1) 8041:15 delayed (1) 7876:20 deliberately (1) 7926:7 deliberations (2) 7888:7;8016:4 delights (1) 7956:5 Delivered (5) 7878:11,25; 7879:1,2,21 deliveries (2) 7878:24;7879:8 delivering (3) 7883:16;8027:19,	21 delivers (2) 8027:17,18 delivery (2) 7880:1,3 Deloitte (1) 7960:15 demand (1) 8046:2 demise (1) 8016:18 demonstrates (2) 7894:17;8006:25 Dennis (6) 7870:9;7890:13, 16,18;8038:21,24 D-E-N-N-I-S (1) 7870:9 Department (12) 7889:6;7890:14; 7893:17;7895:8; 7914:16;7915:16; 7927:16;7939:1,6, 11,23;7960:11 depend (2) 7974:5;8037:7 depending (6) 7980:25;7998:2,4; 8021:6;8030:23; 8040:24 depends (6) 7904:4;8035:1,2; 8041:3,5,17 depict (1) 7975:17 depicted (3) 7972:17;7975:19; 7983:11 depicting (1) 7968:17 depiction (1) 7983:12 depicts (1) 7964:3 depool (6) 7902:11;7903:6; 7917:23;7918:8; 7919:12;8008:13 depoiled (4) 7896:19;7900:22; 7904:18;7918:22 Depooling (16) 7896:12,14; 7897:22,24;7898:2, 3,25;7899:9,9,11; 7902:11;7903:7; 7918:18,19;7921:6; 8008:14 Deputy (1) 7890:6 derived (2) 8006:20;8022:1 deriving (1)
--	---	---	---	--

7987:16 describe (4) 7958:7;7971:16; 7973:5,6 described (4) 7876:23;7884:6; 7971:25;7977:20 describing (1) 7872:19 description (1) 7940:4 desire (1) 8045:15 despite (1) 8017:23 detail (3) 7872:20;7901:13; 7937:3 detailed (1) 7897:6 details (4) 7884:6;7885:1; 7935:6;8018:10 determination (2) 7872:20;7988:22 determine (15) 7872:22;7873:4; 7876:12;7883:3; 7919:9;7928:22; 7932:17;7943:3; 7945:12;7946:9; 7949:14;7966:5; 7983:8;7999:18; 8009:21 determined (3) 7898:11;7951:6; 8005:7 determining (4) 7878:3;7887:24; 7891:19;7984:21 develop (2) 7936:1;7949:8 developed (2) 8016:14;8047:3 developing (1) 8016:21 development (4) 7927:23;7928:4; 7929:2;7954:23 DFA (2) 7969:25;7970:12 differ (1) 7979:25 difference (9) 7874:12;7875:3; 7964:8,22;7965:8; 7979:3;8022:22; 8028:10,21 different (41) 7881:16;7895:2; 7900:24;7903:6; 7904:8;7911:19; 7915:4,7;7920:2;	7925:14,17;7933:2; 7940:10;7952:5,8,8; 7955:10;7960:4; 7963:2;7973:16,23; 7978:8,8;7979:23; 7980:11,22;7996:17; 7997:7,8,9;7999:18; 8008:8;8012:5; 8015:10;8019:2; 8022:7,14;8027:25; 8029:15,17;8032:18 differential (4) 8008:2;8020:3; 8028:17,20 differentials (3) 7873:10;7895:19, 21 differently (2) 7903:15;8031:9 differing (2) 7932:7;7944:2 difficult (9) 7923:9;7955:24; 7982:18;7984:7,12; 7994:12;7998:15; 8038:2;8039:25 difficulty (1) 7998:11 diminishes (1) 8025:11 diminishment (3) 8034:7,13;8035:5 DIRE (2) 7878:6;7945:13 DIRECT (7) 7870:12;7901:14; 7917:10;7924:9; 7946:19;7959:16; 7992:22 directly (3) 7885:23;7967:18, 24 Director (4) 7890:13;7960:2; 7961:22;8039:1 disadvantage (5) 7919:2,18;7920:5; 7927:11;7945:4 disagree (1) 7896:6 disappear (1) 7913:1 disappears (2) 7912:21;8025:7 discontinuing (1) 7986:10 discount (9) 7963:15;7967:13; 7968:1;7982:16; 7987:6;8033:15,17, 19,20 discounted (2) 7963:20;7967:10	discrepancy (1) 7921:4 discuss (4) 7914:14;7962:3,4; 7992:6 discussed (4) 7881:11;7912:6; 7921:25;7995:1 discussing (3) 7905:3;7908:17; 7912:8 discussion (7) 7892:13;7896:11; 7910:13;7985:20; 7992:4;8037:2,3 discussions (4) 8009:12;8037:2, 19;8040:16 displayed (2) 7933:4;7977:21 distance (7) 7880:1,2,5,8,11, 14;7957:9 distant (1) 7957:7 distinct (3) 7932:6,12;7963:2 distinction (1) 7905:24 distressed (3) 7915:11,24; 7970:13 distributed (10) 7889:15,22; 7890:3;7923:16; 7924:1,19;7958:6,8; 7971:7;7995:8 Distributing (4) 7871:22,25; 8027:18,19 District (1) 8041:20 diversion (1) 8008:20 divide (3) 7916:15;8004:2; 8019:1 divided (6) 7898:16;7907:21; 8002:6;8003:23; 8004:4;8018:23 dividend (1) 8032:19 divides (2) 8002:16;8019:3 dividing (1) 8004:1 division (2) 7900:23;7939:1 divisor (2) 7902:20;7903:10 doctrine (1) 7948:18	document (15) 7889:11,13,14,15, 22;7890:5;7891:4; 7923:25;7948:1,17; 7950:22;7955:10; 7958:11;7995:7,14 documents (3) 7890:4;7958:6,8 dog (4) 7897:10;8007:15, 16,17 dog's (1) 8007:18 dollar (2) 8028:18,20 dollars (18) 7902:13;7906:3; 7907:17,18;7965:20, 22,23;7966:3,22; 7967:14,21;7998:8; 8002:7,8;8004:15; 8021:18,20;8033:1 done (23) 7885:15;7888:8; 7890:11;7911:13; 7915:15;7918:12; 7923:9;7925:15,18; 7930:12;7954:20; 7973:9;7978:2; 8019:12;8020:13; 8025:12;8035:22; 8039:18;8044:8; 8045:15,16;8046:4, 12 door (1) 7914:9 dot (1) 7912:16 dots (2) 7979:19;7980:9 down (25) 7871:4;7903:22; 7909:5;7914:19,20, 21;7931:8;7935:11; 7942:5;7956:23; 7957:1;7966:12,14; 7970:25;7974:20; 7992:12;7993:21; 7997:21,22;8004:23; 8013:15;8026:20; 8029:12;8030:23; 8046:18 DPRSR (1) 7875:16 Dr (43) 7909:17;7968:16; 7972:19,22;7973:24; 7974:1;7975:19; 7980:23;7990:12,13, 17;7991:2,8,11,24; 7992:20;7993:3,5,7; 7995:21;7996:6,8; 8009:20;8010:14,17,	23,25;8011:2,3,25; 8013:23,25;8018:15, 16;8027:6;8029:25; 8030:2;8035:16; 8036:9;8037:21,24; 8038:1,16 dramatically (1) 7970:25 draw (5) 7963:23,24; 7964:5;7988:16; 8041:13 drawn (2) 7963:17;7997:22 draws (1) 7989:5 dream (1) 7984:16 drew (1) 7909:4 drive (1) 8041:14 driving (4) 8006:1;8020:12, 12;8046:21 drop (1) 7897:19 dropped (1) 7886:9 drought (1) 7961:7 Dryer (2) 7973:25;7974:1 Dryer's (1) 7975:21 due (4) 7893:19;7969:24; 7970:11;7982:15 dumber (1) 8026:21 durable (1) 8044:11 during (15) 7872:5;7903:20; 7924:23;7925:1; 7954:21;7960:16; 7962:15;7963:15,22; 7968:5,19;7969:7; 7970:21;7973:24; 7978:14 duties (1) 7929:25
				E
				earlier (14) 7881:11,21; 7896:9;7901:23; 7909:22;7963:10; 7964:24;7966:23; 7973:2;8015:23; 8040:16;8044:6; 8046:11,16

earliest (1) 8045:18	7967:17	8038:2	7884:13;7920:8; 7992:4,9;8041:22; 8047:9	11,17;7967:12; 7980:24;7987:5,25
early (5) 7955:21;8008:2; 8014:25;8015:23; 8016:6	eighth (3) 7925:12,21,23	ended (2) 8016:1;8034:18	entirely (1) 7956:20	etcetera (1) 8026:7
eases (1) 7981:9	either (10) 7878:4;7882:5; 7951:11;7956:9; 7984:20;7985:18; 7996:14;8019:22; 8031:22,25	ends (1) 8021:16	entirety (1) 7932:5	evaluate (1) 7918:25
easiest (1) 7875:24	elaborate (1) 7925:7	energy (12) 7928:6;7931:24; 7932:7;7935:3; 7936:23;7938:19,20, 22,25;7939:1,15; 7941:5	entities (1) 7952:12	evaluating (1) 7991:8
East (1) 8041:14	elect (1) 7919:5	English (118) 7878:5,7,8,14,15, 20,22;7880:25; 7881:2;7883:10,11; 7884:18,20,22; 7886:11,13;7889:13; 7890:1,3,11,22; 7891:2,3,25; 7897:15,17;7901:7, 8,10,19,22,25; 7904,25;7907:9,11, 20;7908:3,21,22; 7910:1,8,9;7911:2,3, 12,17;7914:10,12, 13;7915:5;7916:10; 7919:21,24;7921:21, 23,24;7945:12,14, 16;7946:13,22,24; 7947:8,24;7948:7, 14,15,22,24; 7953:22;7954:5,7; 7955:16;7956:2; 7985:7,10,11; 7991:15,16;7992:21, 23;7993:18; 7995:17;7996:9; 8000:4,7,9,10; 8011:5,16;8012:4,7, 8,11,14,18,23; 8013:6,7,17,19; 8015:9;8037:25; 8038:7,9;8039:5,6,6, 13,19;8040:1,9; 8041:2,19,24; 8042:14;8045:7; 8046:18	entitled (7) 7926:17;7931:4; 7934:10;7936:12; 7940:3;7942:19; 7958:11	even (10) 7882:1;7910:24; 7918:11;7934:23; 7938:13;7946:13; 7949:23;7984:10; 7991:16;8037:4
eastern (1) 7951:19	electing (1) 7920:12	English/Vulin (1) 8043:2	environment (1) 7968:25	evening (4) 8039:15;8042:18; 8046:20;8047:15
easy (1) 7902:13	electricity (2) 7938:24;7939:8	English's (2) 7907:25;8015:7	equal (3) 7940:12;7989:4; 8022:19	event (1) 8024:10
eat (1) 7957:7	Eligible (4) 7896:25;7898:13; 7899:24;7900:18	entered (1) 7973:2	equitable (2) 7980:21;7981:2	event (1) 8024:10
economic (15) 7913:18;7927:2, 23;7928:4,4,19; 7929:2,14;7932:6, 12,15;7933:5; 7954:22;7975:11; 8027:9	eligibly (1) 7899:14	entire (6)	Erba (3) 7990:12,13; 8038:16	events (1) 8020:15
economically (1) 7974:18	eliminating (1) 7985:25		ERS (8) 7975:10,16,23; 7976:12,23;7977:9; 7978:17;7982:17	eventually (2) 7955:25;8021:16
economics (2) 7930:3,7	Elliott (14) 7875:10,24; 7876:3;7889:15,17; 7921:16,20;7923:18, 20;7958:18,19; 7995:9,10;8010:22		ersusdagov (1) 7976:25	everybody (7) 7926:8,8;7957:8; 7963:1;8004:13,15; 8043:3
EconomicsCom (1) 7930:2	else (8) 7877:10;7956:22; 7990:3;7991:11; 8039:9,21;8043:3; 8044:24		escape (1) 8006:4	everybody's (2) 8004:19;8005:13
economics (1) 7929:11	e-mail (1) 8046:8		escaping (1) 8014:20	everyone (4) 7948:14;7955:8; 7959:3;7995:16
economist (2) 7928:2;8034:10	emergency (1) 7890:15		ESL (2) 7871:19;7872:8	evidence (34) 7878:4;7883:5,6,8, 10;7884:11,12,14, 16;7891:20,22,24; 7946:10;7947:17,19, 21;7948:8;7959:10; 7962:1;7984:22,23, 25;7985:2,3,5; 7987:23;7988:23; 7992:14;8009:22; 8011:11,12,15; 8038:4;8047:3
economists (2) 7929:9;7932:16	emphasis (1) 7960:17		especially (3) 7898:6;7925:5; 7980:25	exactly (9) 7871:2;7888:13; 7955:25;8007:16; 8009:10;8014:10,12; 8019:12;8024:1
economy (6) 7925:12,21,23; 7930:13;7932:9; 7944:18	employees (7) 7916:3;7922:9,10; 7953:18;7955:3; 7990:2;8037:16		essence (4) 7909:11;7963:15; 7971:19;8021:8	EXAMINATION (14) 7870:12;7878:6; 7901:13;7903:20; 7916:5;7924:9; 7933:16;7938:9,11; 7945:13;7946:19; 7953:19;7959:16; 7992:22
edge (1) 7929:16	employers (1) 7942:12		essential (1) 7991:5	examine (1) 7932:24
education (2) 7928:7;7942:8	employment (3) 7940:13,15,18		essentially (8) 7908:12;7932:14; 7949:16;7999:3; 8002:1;8003:21; 8005:9;8031:7	examined (1) 7943:12
Effect (8) 7896:11,14; 7897:22;7898:9,14, 17;7904:8;8036:19	enable (1) 8025:1		establish (2) 8017:11;8026:19	example (19) 7897:18;7912:18;
effective (2) 7942:2,4	enabled (3) 7936:1;7949:5,8		estate (3) 7928:6;7943:22, 22	
effectively (3) 7896:19;7909:13; 8005:6	encapsulated (1) 8032:23		estimate (8) 7898:16;7903:9; 7917:11;7964:20; 7966:13;7976:11; 7978:6,7	
effects (1) 8008:3	end (11) 7878:16;7888:12; 7955:20;7959:24; 7964:17;7977:3; 8013:4;8014:16; 8026:2;8032:17; 8042:19		estimated (14) 7900:22;7902:11; 7903:10;7963:23,24; 7964:5,15;7965:8,	
efficient (2) 7981:15;8011:20	endeavor (1)			
effort (1) 7993:1				
EIA (1) 7939:2				
eight (1)				

7920:6;7950:3,3; 7955:12;7984:13; 8000:16;8017:7; 8018:21;8019:9; 8020:20;8025:13,24; 8031:12;8032:1,2, 20;8034:3 exceed (1) 7941:16 Excel (2) 7922:18;7995:18 Excellent (5) 7956:19;7984:9; 7991:10;8039:23; 8043:19 exception (1) 8027:14 excess (7) 7870:23;7872:3; 7873:21;7966:3; 7970:16;7979:6; 7981:20 excessive (2) 7872:9;7977:8 excited (1) 7935:11 excluded (3) 7950:12,13; 7951:16 exclusively (2) 7878:9,10 excuse (11) 7873:25;7928:14; 7935:10;7941:7; 7966:22;7972:13; 8011:11;8013:1; 8016:22;8018:14; 8024:18 excused (1) 7948:10 exempt (8) 8005:18,21; 8006:8,11,13,17; 8009:5;8027:12 exhausted (1) 8039:9 Exhibit (170) 7870:15;7871:22; 7872:3;7876:22; 7878:4,9,10;7883:5, 5,7,10,11,12; 7884:13,15;7885:20; 7887:5,6;7888:2,12; 7889:18,19;7890:4, 16;7891:21,21,23; 7892:11;7897:9; 7905:2,6;7908:11, 12,14,24;7910:13; 7911:7,8,8,9,9,13; 7914:7;7917:8,8,25; 7918:17;7920:6,22; 7921:1,6,9;7922:15; 7923:17,19,21;	7939:7,12,20,24; 7943:5,14;7945:10; 7946:2,10,12; 7947:18,18,20; 7948:8,19;7949:4; 7956:11,15;7958:15, 17,20,22,23,24; 7959:3,23;7962:10, 19,21,23;7963:9,14, 24;7964:1,1,2,23; 7965:5,11,14,14; 7968:16;7972:17,19, 23,25;7973:3,21,22, 22,24,25;7974:14; 7975:20,21,21; 7976:20;7977:7,7, 19,22;7978:22,25; 7979:6,9,25;7980:1, 20;7983:3;7984:4,4, 4,20,20,22,23,24; 7985:2,2,4;7986:25, 25;7987:24; 7988:13;7995:8,9, 11,14,18,22;7996:1; 7997:12;7999:15,17, 22,23;8000:20; 8006:23,25;8009:19, 23;8010:10,20; 8011:7,11,12,14; 8016:13;8022:23; 8023:10;8024:13; 8030:1;8031:5; 8037:20 exhibits (21) 7876:23;7883:4; 7891:8;7897:4; 7908:13;7911:14; 7920:22;7955:6; 7956:7;7958:12,22; 7971:5;7973:5; 7979:9;7983:7; 7984:3,11,18; 7986:25;7991:3; 8041:21 exist (1) 7987:19 existing (2) 7873:10;7915:6 expand (2) 7972:9;7991:4 expansion (1) 7962:6 expect (11) 7912:25;7922:25; 7937:18;7950:25; 7951:20;8022:17; 8040:15,22;8047:10, 11,11 expected (2) 7962:12;7981:13 expecting (2) 8023:25;8043:22 expeditious (1)	8045:4 expenditures (1) 7943:5 expense (1) 7951:25 experience (6) 7904:15;7927:13; 7928:20;7929:14; 7960:25;7961:18 expertise (2) 7927:14;7929:14 explain (5) 7931:10;7935:7; 7937:2,25;7945:21 explaining (1) 7890:22 explanation (2) 7934:10,25 explicitly (1) 7901:13 explore (1) 8027:6 express (1) 7967:21 Extended (2) 7871:19;7981:8 Extension (4) 7884:23;7900:10, 11;7902:12 extensions (1) 8042:3 extensive (3) 7927:13;7948:2; 7954:20 extent (4) 7892:1;7893:1; 7953:25;8021:8 extra (3) 7968:11;7992:25; 8046:22 extraordinary (2) 8001:16;8046:2 extremely (1) 7978:14	8012:24;8013:7; 8017:23;8022:24; 8024:1;8032:21; 8034:17 factor (1) 7972:23 factors (3) 7912:3;7998:3; 8005:4 failed (1) 8026:23 fair (6) 7948:17;7975:5; 7980:21;7981:2; 8030:24;8031:1 fairly (2) 7897:2;7950:25 fall (3) 7934:22;7950:4; 7952:9 falls (6) 7935:20;7944:11; 7948:18;7950:17,17, 24 familiar (3) 7884:23;7916:11; 8047:2 families (1) 8042:20 family (1) 7928:1 famous (1) 7896:2 far (7) 7892:24;7944:8; 7956:4;7961:16; 7973:18;7998:18; 8040:25 farm (21) 7928:1;7962:7; 7973:3,16,18,23; 7974:3,9,23; 7975:12,14;7977:6; 8016:8;8017:22,23; 8018:5,6;8029:6,7,8, 9 farmer (1) 7918:7 farmers (16) 7872:16;7906:18; 7926:20;7927:4; 7961:21;7968:14; 7969:25;7974:20; 7975:13;7978:15; 7985:22,23;7986:14; 7987:7;7993:12; 8045:1 farms (6) 7916:25;7974:11; 8027:16;8028:15; 8029:7;8039:2 fashion (1) 8045:3	fast (1) 7890:24 fat (6) 7964:13,14; 7965:18;8021:2; 8025:22;8026:9 favorably (1) 7938:4 February (6) 7890:19;7900:12; 7995:20;8003:11; 8014:17;8016:6 Fed (1) 7872:15 Federal (53) 7873:3,8;7874:19, 23;7875:1;7876:13; 7885:24;7893:19; 7896:12,14,16; 7897:11,12;7898:15; 7903:7;7905:4,15, 16;7911:24,25; 7914:4;7919:2,10; 7920:11;7927:9,17, 18;7928:10;7945:3; 7950:4,11;7961:15; 7975:24;7977:16; 7987:13;7993:11; 8005:10;8008:8,15, 17;8014:4;8015:3,5, 20,25;8017:10,14, 24;8018:8;8023:20; 8024:10;8029:5; 8047:5 federally (3) 7870:25;7871:11, 15 feed (5) 7979:20;7984:8, 12,17;7986:7 feedback (3) 7978:23;7979:13, 21 feel (4) 7960:24;8006:12; 8033:19;8045:2 feelings (1) 7947:4 felt (3) 7991:5;8016:18; 8017:18 few (8) 7889:24;7895:23; 7982:5;7991:20; 7992:25;7993:3; 8018:9;8035:17 fifth (3) 7878:16,17; 7941:14 fight (4) 8007:15,16,17,18 figure (7) 7878:13;7898:6;
			F	
		facilities (1) 7949:19 facility (4) 7881:17,19; 7937:14,16 fact (31) 7879:17,20,22; 7883:17;7886:4,14, 19;7888:1,12; 7894:6;7895:16; 7896:18;7902:6; 7903:25;7904:3,11; 7926:1;7956:4; 7968:11;7970:15; 7977:8;7991:12; 7994:9;8008:18;		

7966:16;7968:16; 7972:17,23;7975:20 figured (1) 7980:4 figures (1) 7935:19 file (3) 7922:19;8014:9; 8040:20 filed (4) 8014:10,17; 8016:6,10 Final (4) 7872:22;7922:16; 8041:6;8045:9 Financial (15) 7896:11,13; 7897:22;7898:5,9, 11,14,16,17; 7899:19,19;7903:7; 7929:12,15;8032:18 financially (1) 7982:12 find (15) 7878:13,14; 7897:14;7909:10; 7937:8;7951:5; 7969:5,19;7976:20; 7990:8;7998:19; 8014:22;8015:13; 8025:16;8042:3 finds (2) 7885:22;7970:13 fine (4) 7904:24;7954:14; 7955:20;7956:12 finish (3) 7910:25;8043:10; 8047:12 finished (4) 7970:14;7981:11, 22;7982:10 firm (3) 7927:3;7960:15; 8045:11 first (63) 7879:4;7881:23; 7885:19,20;7890:1, 4,5,12;7891:6; 7892:3,14;7907:12; 7914:14;7915:3,6; 7916:8;7924:5; 7926:23;7932:1; 7934:19;7936:21; 7940:23;7948:21; 7950:13;7958:8; 7959:23;7961:17; 7962:4;7973:12; 7975:16;7977:15; 7980:1;7983:6; 7984:19;7985:8,12, 14,20;7991:23; 7992:6;7993:8;	7995:15,21,21; 8001:4;8002:3,19; 8003:9;8004:23; 8006:13;8010:22; 8011:25;8014:3,14; 8018:11;8019:5; 8025:4;8026:7; 8028:9;8042:4,20; 8043:2,18 five (3) 7921:11;7943:25; 8039:14 five-year (1) 7999:13 fix (1) 7993:21 fixed (9) 7940:20;7972:24; 8008:1;8020:3; 8031:20,23;8032:2, 3;8040:15 flawed (1) 7910:25 flip (1) 7973:15 floated (1) 8016:24 flow (1) 8021:17 flows (1) 7940:22 fluctuate (1) 8044:6 fluctuation (1) 7897:19 fluctuations (1) 7897:3 Fluegel (1) 7974:21 fluid (1) 7874:14 flying (1) 8041:13 FMMA (2) 7976:8;7977:15 FMMO (15) 7873:9;7885:24; 7902:10;7903:20; 7927:18;7961:7,16, 18;7965:9,13,18; 7967:11;7968:19; 7981:13,20 FMMO's (2) 7961:17;7981:6 FOB (3) 7881:17,19; 7882:24 focus (2) 7990:7;7991:12 focused (2) 7933:8,15 focusing (1) 7930:21	follow (5) 7921:24;7922:13; 7986:1;7999:15; 8034:20 followed (1) 7941:13 following (13) 7876:1;7934:4; 7936:1;7940:1; 7943:15;7968:20; 7969:14;7970:20; 7975:23;7976:7,22; 7983:20;7992:8 follows (1) 7893:5 font (1) 7955:23 Food (6) 7939:6,12,23; 7960:11;8019:22; 8046:19 foot (1) 7943:24 Footnote (13) 7929:7;7931:5,5; 7933:22,23,24; 7938:15,21,22; 7939:10,22;7940:5; 7943:18 Footnoted (5) 7934:12;7936:13; 7940:4;7942:13,19 footnotes (3) 7945:18;7946:1; 7955:23 Forbes (1) 7929:1 forcing (1) 8031:9 forecasting (2) 7930:4,12 forecasts (1) 7929:11 forego (1) 7913:20 Foreign (1) 7927:19 foremost (1) 7975:16 foresee (1) 8037:4 forget (1) 7916:21 form (1) 7929:2 former (1) 7968:14 forms (3) 7943:22;7978:23; 7979:13 Formula (8) 7872:19;7876:12; 7887:25;7893:8,12,	13;7972:24;7987:14 formulas (2) 7887:16;7980:4 forth (5) 7948:5;7955:9; 7992:17;8016:8; 8022:23 forward (7) 7893:17;7973:11; 7990:16;7991:17; 7994:11;8001:18; 8006:11 Foster (1) 8039:2 found (2) 7893:25;7954:24 foundation (2) 8015:9,12 four (10) 7870:20;7878:15, 16,18;7898:21; 7915:17;7931:23; 7941:12;8001:4; 8012:9 fourth (6) 7873:24;7877:4; 7941:14;7980:8; 7997:20;8013:14 fraction (1) 8003:14 framed (1) 8029:20 Francis (11) 8010:8,9,9,15,18; 8011:5,6;8037:17, 18,18,22 frankly (1) 8012:19 Frazier (1) 7871:24 Frederick (1) 7871:23 free (1) 7981:18 freight (1) 7981:10 frequently (1) 7961:8 Fresno (8) 7933:13;7934:17; 7941:14;7960:18; 7990:12;8027:19,21; 8041:13 Friday (1) 7992:7 friends (1) 7986:20 Friendship (1) 7871:23 front (4) 7887:8;7890:5; 7966:2;7988:22 fuel (5)	7889:4;7906:23, 24,25;7907:2 fulfilling (1) 7968:24 full (9) 7877:19;7885:20; 7914:14;7959:23; 7980:1;7994:25; 7996:12;8013:11,12 Fund (2) 7960:13;8008:1 fundamentally (2) 7964:7;7973:7 funds (1) 8004:21 funny (1) 8039:19 further (12) 7909:9;7920:15; 7935:7;7938:9,11; 7943:23;7946:11; 7951:13;7962:3; 7989:21;7992:16; 8037:14 future (7) 7876:14;7892:9; 7898:7;8033:7,12; 8035:8;8037:4
G				
gained (1) 7965:8				
gaining (1) 8036:12				
Garbani (37) 7957:4;7958:5,9, 12,17;7959:5,6,11, 13,13,18;7960:2,19; 7965:15;7967:20,23; 7970:3,5;7976:3,8, 10,21,23,25; 7982:25;7983:4,6, 10,18,20,23; 7984:20;7985:7,14; 7989:22;7990:3,5				
G-A-R-B-A-N-I (1) 7959:14				
garnered (1) 7968:13				
gave (1) 7997:24				
general (1) 7960:9				
generally (3) 7906:4;7918:15; 7930:20				
generated (2) 7929:5;7940:21				
generates (1) 7916:24				
gentleman (1) 8027:2				

Gentlemen (1) 7956:3	7942:9;7952:2	8026:18;8028:8;	8025:3;8040:9	7984:9;7989:9;
germane (1) 7874:9	grading (1) 8026:20	8029:12;8032:15;	happy (2) 7987:1;8046:22	7991:8;7992:16;
Germany (1) 7891:2	granted (1) 7872:9	8035:19;8037:8;	hard (3) 7923:8;7946:25;	8005:24,25;8007:13,
gets (11) 7907:10,22;	graph (9) 7963:1;7964:5;	8041:3;8043:6,6	7947:4	19,20;8009:8;
8003:15;8004:4;	7965:16;7968:16;	H	Hatamiya (43) 7923:13,16,23;	8014:7,8;8016:15;
8005:6,11;8019:6;	7973:12;7977:7;	hacking (1) 7984:14	7924:1,2,5,5,11,21;	8045:16,20;8047:11
8027:20,21;8028:18;	7978:13;7979:11,24	half (20) 7899:2,3,5,15;	7925:23;7926:11,13,	hearings (5) 7876:13;7889:3;
8046:12	graphs (10) 7878:15,18;	7915:3,4,8,11;	16,21,22;7927:1,2;	7896:16;7961:19;
given (7) 7889:25;7920:5;	7917:5;7958:12;	7919:14;7920:7;	7929:22;7932:11;	7990:24
7944:3;7962:12;	7972:18;7973:9;	7921:11;7957:10,11,	7933:22;7935:17;	held (2) 7876:19;7968:21
7964:6;7994:1;	7975:20;7977:4;	11;7967:13;	7937:2;7945:8,11,	help (2) 7878:14;7906:20
8009:8	7979:9;7980:16	8002:20;8025:22;	15;7946:9,11,14;	helpful (5) 7870:1;7884:12;
gives (5) 7937:23;7947:13;	grateful (2) 7955:4;8038:3	8026:9;8036:18;	7947:7;7948:11,22,	7911:11;7923:10;
8001:8;8002:8;	gray (1) 7963:4	8040:2	25;7953:16;7954:15,	7990:8
8043:13	great (3) 7930:12;7944:18;	halves (1) 7915:3	19;7955:4;7956:22,	helping (1) 8041:9
giving (1) 8038:3	7961:17	Hancock (8) 8029:22,24;	24;7996:1;8002:10;	helps (1) 8044:23
glad (1) 8046:24	greater (6) 7902:3;7989:5;	8038:10,12,20;	8018:22;8030:2,3	Herbein (4) 7870:21,24;
global (1) 7962:12	8034:11,23,25;	8039:1,18;8043:3	H-A-T-A-M-I-Y-A (1) 7924:6	7871:9,10
goes (4) 7912:25;7978:11;	8045:25	Hancock's (2) 8035:16;8036:10	Hatamiya's (3) 7946:19;7999:22;	Herbein's (1) 7871:20
8025:6;8043:3	greatly (1) 8046:21	hand (10) 7889:21;7937:5;	8000:19	herself (1) 7890:8
gold (5) 7938:3;7941:13;	green (8) 7933:9,10;7963:3,	7946:3;7947:1;	hauling (5) 7976:12;7978:3,5,	high (10) 7928:6;7938:19;
7943:2;7944:8;	6;7983:8,11,15,20	7959:2,8;7979:23;	7;7980:13	7965:1;7975:2;
8000:21	greet (1) 7989:19	7995:13;8021:19;	head (3) 7953:9;8018:25;	7978:24;7979:1,2,
Gonsalves (2) 7991:9;8024:6	Greg (2) 7973:25;7975:20	8035:6	8021:3	15;7998:5;8034:15
good (43) 7871:3;7875:13;	grew (1) 7970:23	handful (2) 7949:22;7961:3	headed (1) 7941:4	higher (14) 7882:24;7928:7;
7877:1,16;7878:8,	gross (1) 7968:6	handle (3) 7976:16;7994:19;	heading (3) 7896:11;7903:19;	7937:19;7943:8;
21,22;7884:21,22;	Group (7) 7926:22;7927:2;	8016:7	8001:13	7951:18;7972:16;
7906:22;7909:24;	8014:20,21;8015:4,	handled (1) 8007:22	hear (9) 7901:9;7919:22;	8000:15;8007:4;
7924:11,12;7937:22,	15,19	handler (4) 7874:10,11;	7952:15,19;8007:13;	8020:5;8022:8,20,
23;7945:15,16;	grow (2) 7969:12;7986:3	7894:7;8027:12	8043:16	21;8034:1,18
7947:12;7956:3,19;	growing (5) 7969:11,16;	handlers (21) 7896:3;7898:2;	heard (14) 7879:12;7883:24;	highest (11) 7930:20;7931:16,
7960:2;7961:13;	7970:1,12;7982:7	7906:1,13,18,18;	7899:14;7915:25;	17,18;7936:9,17,21;
7963:13;7964:15;	Growth (17) 7968:4,6,7,12,17;	7907:20;7919:13,17;	7962:1;7966:17;	7938:20;7965:25;
7967:7;7971:21;	7970:19,24;7971:3;	7993:13;8008:10,10,	7974:20;7991:2,16;	7979:4,17
7977:1,9;7978:10;	7972:3,5,16;	12;8009:3,4;	8015:2;8016:16;	highlighted (2) 7934:5;7941:6
7980:19;7982:10;	7973:13,23;7974:2,	8012:17,20;8017:15,	8022:7,9;8045:1	highlights (5) 7930:25;7940:1;
7985:14,16;7994:20;	8,10;7985:21	15;8038:23;8039:3	hearing (56) 7872:5,12,13;	7942:16;7943:15;
8010:21;8011:8,21;	guarantee (1) 8039:19	hands (1) 8045:22	7874:16;7876:14,17,	8000:21
8013:23,24;8020:7;	guess (20) 7884:5;7888:5,11;	Hanford (1) 7934:17	19;7879:13;7886:19,	HILL (17) 7911:5,12;
8043:14;8045:7;	7891:10;7900:21;	7912:3,4,5;	21;7887:18;	7922:12,13;7983:25;
8046:23	7904:5;7917:1;	7975:8;8020:22	7888:24;7890:15;	7984:1,1,6;7987:1;
goods (3) 7970:15;7981:11,	7918:11;7980:10;	happen (5) 7912:3,4,5;	7892:10,12;7893:18,	8012:1,2,3,10,13,16,
22	8003:5;8025:9;	7975:8;8020:22	23;7894:3,7,13,16,	22;8013:17
Google (1) 7951:5		happened (2) 8005:21;8020:15	20;7895:17,18,	Hilmar (40) 7912:8,12;7913:8;
government (3) 7942:5;7952:11;		happening (2) 7911:25;8005:6	20;7896:4;7923:4;	7963:24;7964:6,10;
7960:8		happens (5) 7896:2;8019:5,6;	7930:25;7959:5;	7965:5,8,12,17;
governmental (2)			7961:16,18;7962:2;	7966:7;7967:1,10,
			7963:10;7968:19,21;	
			7969:7;7970:21;	
			7972:11;7973:2;	

<p>15,25;7968:5,9,10, 19,20,22;7969:3; 7970:15,19,21; 7971:3,5,6,7,10,25; 7972:2;7982:12,15; 7987:2,12,17; 7988:1,14;7989:11</p> <p>Hilmar's (10) 7912:16;7963:23; 7967:16,17,23; 7968:6;7971:23; 7982:7;7987:7,9</p> <p>hired (1) 7942:11</p> <p>historical (1) 8001:13</p> <p>historically (3) 8007:24;8009:16; 8031:2</p> <p>history (2) 7977:6;7988:9</p> <p>hold (5) 7894:1;7917:2; 8017:19;8021:13; 8034:9</p> <p>holder (4) 8019:13;8022:5; 8025:17;8033:18</p> <p>holders (23) 7994:24;7996:11, 14,20;7998:13,15; 8001:25;8004:11,16; 8013:11,12;8019:8; 8020:5;8021:9; 8022:17;8025:4; 8026:6;8030:11; 8031:8,10;8032:7; 8034:5;8036:12</p> <p>holding (5) 7994:25;7996:12; 8013:11,13;8025:19</p> <p>holds (2) 7951:17;7954:13</p> <p>holes (2) 7956:11,16</p> <p>holidays (1) 8044:24</p> <p>Hollon (2) 7990:11;8038:16</p> <p>home (2) 7934:6;7969:19</p> <p>Honor (58) 7878:1;7883:1,11; 7890:3,20;7891:16; 7897:15;7901:19; 7908:21;7910:1; 7911:4,5;7914:12; 7920:16;7923:15,23; 7924:8;7945:10,25; 7946:25;7947:11,22; 7953:21;7954:4,20; 7955:16;7956:6; 7957:3;7958:3;</p>	<p>7959:18;7976:4,17; 7983:3,10,24; 7984:2,2;7985:13; 7990:9,9,21,22; 7993:23;7995:6; 8006:4;8009:18; 8011:16;8012:1; 8013:20;8027:1; 8037:25;8039:20; 8041:5,25;8042:14; 8043:17;8044:19; 8045:7</p> <p>hope (2) 7957:8;8007:18</p> <p>hoping (2) 7890:20,23</p> <p>hospital (1) 7942:8</p> <p>hour (2) 7947:7;7957:10</p> <p>hours (5) 7950:20,20; 7951:10,10;8043:25</p> <p>huge (1) 7985:11</p> <p>humanly (1) 8044:17</p> <p>hundred (9) 7928:8;7931:12, 13,14;7934:21; 7951:16;7966:3; 7973:10;8029:6</p> <p>hundredweight (20) 7901:15;7917:18; 7919:14;7975:18,22; 7979:2,3,5,7; 7983:14,21;8003:22, 24;8004:3,5;8005:9, 12;8027:20,22; 8029:8</p> <p>hypothetical (7) 7912:14,17,18,23; 7913:6,8;7995:20</p> <p>hypothetically (1) 7912:9</p>	<p>8017:7;8034:21</p> <p>ideas (1) 7991:4</p> <p>identification (5) 7889:20;7923:22; 7958:21,25;7995:12</p> <p>identified (3) 7958:9,14; 7979:15</p> <p>identify (1) 7949:18</p> <p>II (10) 7872:18,21,22,25; 7873:2;7874:2,18; 7905:21;7918:9; 8020:6</p> <p>III (26) 7872:18;7874:2, 12;7875:4;7890:15; 7899:9,11,16,24; 7900:18,23;7901:2, 14,24;7905:12; 7907:4;7910:19; 7912:24;7918:9; 7933:16;7965:9,13, 18;7967:11; 7987:13;8020:6</p> <p>illustrated (1) 7969:11</p> <p>illustrates (2) 7943:6;7975:23</p> <p>imagine (1) 8033:18</p> <p>immediately (2) 7957:5;7976:7</p> <p>impact (31) 7898:16,19; 7899:7,13,15,19,20, 23;7900:2,6,25; 7901:2,14;7902:15, 15;7903:5,7; 7916:19;7917:12,12; 7918:21;7919:11,13; 7920:6,11;7922:17; 7928:19;7939:16; 7963:16;7964:4; 7974:13</p> <p>impacted (1) 7894:24</p> <p>impacts (3) 7898:7;7901:13; 7928:4</p> <p>imperative (1) 8043:18</p> <p>IMPLAN (1) 7940:22</p> <p>implies (1) 8036:16</p> <p>imply (1) 7905:10</p> <p>importance (1) 7873:9</p> <p>important (6)</p>	<p>7941:18,25; 7944:17,24;7953:12; 8013:25</p> <p>importantly (2) 7935:23;7974:7</p> <p>impossible (1) 7943:3</p> <p>improper (1) 7930:22</p> <p>inappropriate (1) 7885:22</p> <p>Inc (6) 7960:3;7961:21, 21,22;7970:1,4</p> <p>incentive (1) 7913:16</p> <p>incentives (4) 7917:23;7918:8; 7952:12,17</p> <p>include (13) 7881:22;7882:2,9; 7883:16;7905:16,18; 7936:23;7951:24,25; 7952:11;7968:13; 7976:3;7999:1</p> <p>included (17) 7871:22;7872:7; 7876:8;7881:9; 7882:5,18;7885:9; 7942:10,12;7944:7; 7950:18;7952:4; 7956:24;7975:25; 7977:7;7979:12,14</p> <p>includes (5) 7905:19;7906:25; 7933:12;7942:6,22</p> <p>including (16) 7875:15;7876:6; 7907:2;7927:18; 7928:5;7929:16; 7934:16;7942:7; 7958:10;7960:6; 7971:24;7976:11; 7980:23;7982:9; 8043:3,3</p> <p>income (11) 7942:4;7975:12; 7978:11;7980:14; 7982:1;7998:16; 8001:17;8021:17; 8032:20,21,23</p> <p>incompatible (1) 8017:21</p> <p>inconsistent (2) 7993:16;8008:17</p> <p>Incorporated (6) 7926:20,20,21; 7927:4,5,5</p> <p>incorrect (4) 7901:12;7941:19; 7944:24;7952:25</p> <p>incorrectly (1) 7930:24</p>	<p>increase (5) 7913:24;7981:3; 7982:2;7994:18; 8008:1</p> <p>Increased (3) 7870:19;7876:15; 7968:23</p> <p>incremental (3) 7913:11,19; 8044:22</p> <p>incumbent (2) 8045:2,3</p> <p>indeed (2) 7980:24;8005:16</p> <p>independent (3) 7927:6;7929:10; 7939:3</p> <p>Index (37) 7931:5,9,9,21,23; 7932:2;7933:17; 7934:11,20,20; 7935:2,22;7936:6, 13,18,19,22; 7938:10,23;7941:3; 7942:2,18;7943:13, 19,21,23,23; 7944:10;7950:24; 7972:20,22,25; 7973:9,16;7974:8; 7996:22;8022:3</p> <p>Index=100 (1) 7935:21</p> <p>indexed (2) 7942:4;7973:8</p> <p>India (1) 7926:2</p> <p>indicate (4) 7935:19;7976:6; 7987:11;8042:5</p> <p>indicated (12) 7916:22;7924:22; 7956:7;7964:23; 7966:8;7967:21; 7972:15;7990:1,10, 21;8017:17;8036:10</p> <p>indicates (4) 7938:1;7965:5; 7975:6;8001:13</p> <p>Indices (1) 7938:18</p> <p>individual (13) 7898:22,23; 7899:18;7902:7,8; 7903:5,13,13; 7914:25;7919:25; 7944:3;8017:6; 8033:18</p> <p>individually (1) 7898:21</p> <p>industrial (3) 7938:23;7939:2; 7954:16</p> <p>industries (4)</p>
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7925:14;7928:5; 7940:11,14 industry (8) 7896:14;7940:8, 13,18;7944:17; 7986:21;7988:9,20 industry's (2) 7940:15;7944:19 inefficiencies (1) 7981:20 informally (2) 7991:20;8040:16 information (39) 7884:2;7900:5,7, 21;7901:12; 7914:22;7932:12; 7935:5;7936:12,24; 7938:25;7946:13; 7948:2,4;7955:8; 7962:25;7963:9; 7964:24;7968:18; 7972:10,18;7973:8, 15;7975:16,23; 7977:20,23;7978:1; 7979:20;7980:11,17; 7982:17;7988:17; 7991:5,13;7998:24; 8001:6,7;8046:8 inherent (1) 7999:9 inherently (2) 7994:3;7997:15 initially (2) 8006:15;8016:4 initiation (1) 7971:23 Input (2) 7995:15;8046:5 insert (1) 7874:3 inside (2) 7893:21;7919:7 insisted (1) 7872:5 instance (8) 7883:20;7897:9; 7906:12;7919:10; 7931:18;8005:21; 8012:18,20 instances (3) 7915:24;7974:15; 8038:18 instead (1) 7972:21 instilling (1) 8040:15 Institute (21) 7870:18,20; 7872:2,4;7908:5; 7969:23;7970:2,10; 7974:24;7975:10,14; 7981:7;7986:17; 8007:21;8009:10,13, 16;8014:21;8017:3, 4;8040:8 instituted (2) 7971:4;8023:12 instrument (1) 7997:12 integrates (1) 7929:18 intellectual (1) 7948:16 intended (1) 7877:12 intending (1) 7901:22 intention (3) 7877:15;8015:2; 8040:11 inter- (1) 7942:8 interact (1) 7961:8 interacting (1) 7961:2 interaction (1) 7961:9 interactions (1) 7961:5 interest (17) 7996:21;7997:8, 14,15,17;7999:24; 8000:17;8003:12,15, 17;8007:4,5,7; 8021:23;8022:14; 8031:16,19 interested (2) 8005:17;8025:3 interfered (1) 7994:19 interim (1) 7882:2 interindustry (1) 7940:21 internal (3) 7968:12;8006:7; 8033:19 international (2) 7928:3,17 interpretation (3) 8017:22;8018:5,6 interrupt (5) 7881:12;7910:23; 7925:21;7929:22; 7937:2 interrupted (2) 7873:23;7932:21 interrupting (1) 7908:19 interstate (2) 7895:2,4 into (46) 7874:14;7878:4; 7883:4,6,8,10; 7884:14,16;7887:16; 7891:20,21,24; 7946:10;7947:17,18, 21;7966:20;7967:1; 7970:14,17;7972:6; 7973:2;7978:20; 7979:22;7980:12,13; 7984:22,23,25; 7985:2,3,5;7986:2, 22;7988:15;7989:4, 17;8005:19,20; 8009:22;8011:11,12, 15;8027:12; 8030:17;8036:19 introduced (2) 7890:8;7948:8 Introduction-Cost (1) 7927:12 inverse (1) 8033:11 investment (17) 7967:17;7974:16, 22;7981:21;7987:8, 9,17;7997:1,2,4,19; 8021:24;8022:6,16, 19;8033:22,24 Investors (1) 7929:17 invite (5) 7916:3;7953:17; 7955:2;7989:23; 8037:16 involved (3) 7895:22;7951:25; 7988:8 involves (1) 8008:19 Iowa (1) 7908:6 irrelevant (1) 7992:1 irrespective (1) 7913:3 issue (18) 7874:9;7875:5; 7876:19;7894:9,10; 7924:13;7925:2; 7952:4;7955:13; 7986:22;7994:7; 8007:12;8008:25; 8009:5;8012:12; 8024:17;8027:12; 8039:7 issued (1) 7895:17 issuer (1) 8035:19 issues (9) 7875:14;7876:5, 14;7895:2,25; 7928:11;7961:7; 8009:1;8039:25 Italy (1) 7926:3 IV (3) 7890:15;7918:11; 7938:9 IX (2) 7872:11;7873:24 J James (1) 7968:5 January (28) 7872:4;7890:17; 7905:11;7939:7,13, 24;7962:16; 7963:22;7965:11; 7967:12;7972:4; 7995:19;8001:3; 8002:5;8004:6; 8014:16;8016:6; 8032:7;8042:21; 8043:8,11,13,13; 8044:2,14;8045:17; 8046:4,10 JD (1) 7926:21 Jeter (1) 7970:20 Joaquin (22) 7933:9,13,17; 7934:5,11,15; 7935:20;7938:2,13, 14,17;7940:2; 7941:12,22,23; 7942:25;7943:7,11, 16;7944:6,22;7954:2 job (4) 7927:23;7930:12; 7961:25;8043:20 jobs (2) 7974:17,23 John (3) 7970:20;8013:20; 8036:8 joining (1) 7960:14 JUDGE (168) 7870:1,11;7871:2; 7873:15,22;7874:6; 7875:9,13,19,21,24; 7877:3,9,14,16,25; 7878:2,13;7880:22; 7883:2,9,23; 7884:11,17;7886:9; 7889:12,14,18,21; 7890:2,8,22,24; 7891:18;7897:14,16; 7901:8;7904:22; 7907:9,18,24; 7908:2,19;7909:24; 7910:2,5,23; 7911:11;7914:9; 7916:2;7917:17,20; 7919:22;7920:25; 7921:16,21;7922:8, 24;7923:3,6,12,18, 25;7924:3,7; 7925:21,24;7926:11, 14;7935:10,13; 7945:11;7946:8,15, 21;7947:6,12,16; 7948:12,21;7953:16; 7954:15;7955:2; 7956:3,12,17,19; 7957:1,6;7958:2,6, 16,22;7959:2,7,12, 15;7967:20;7970:2, 4;7976:5,9,18; 7977:1;7983:6,25; 7984:6;7985:1,6; 7989:22;7990:1,7, 13,16,24;7991:1; 7992:21;7993:5,8, 19;7995:8,13; 7996:5,7;8000:3,6,8; 8009:17,20;8010:1, 7,19;8011:1,4,8,21, 24;8012:2,7;8013:2, 6;8015:7,14; 8018:13;8026:25; 8029:22;8035:11; 8036:5;8037:15,23; 8038:1,7,10,13,24; 8039:5,12,23; 8040:20;8041:18; 8042:1,25;8043:10, 16;8044:11,13; 8046:15,23 judicial (1) 7894:18 July (1) 7999:10 jumps (1) 8002:19 June (6) 7872:4,15; 7962:16;7963:22; 7964:17;7968:21 justified (1) 8036:17 K keep (4) 7947:9;7987:1; 7997:17;8028:15 keeping (2) 7947:7;7965:1 Kern (1) 7933:14 key (3) 7936:3;7949:10; 8017:20 kilowatt-hour (1) 7938:24 kind (18) 7882:5,15;7885:8;
--

7900:20;7934:9; 7945:19;7993:9,9; 7996:15,19;7997:17; 7998:23;7999:4; 8003:9;8006:14; 8016:1;8026:23; 8032:5 kinds (2) 7925:7;8027:14 Kings (1) 7933:13 knew (1) 7887:2 knowing (1) 7947:3 knowledge (2) 7882:14;7988:19 known (1) 7907:13 knows (2) 7948:13;8044:14	8007:9,10,10;8045:6 largest (10) 7925:12,21,23; 7931:1;7932:9; 7933:11;7934:7,15; 7949:19;7963:16 last (41) 7877:18;7878:16, 17;7889:3;7890:17; 7921:5;7922:15; 7923:6;7924:6; 7932:22,23;7936:21; 7948:1;7952:15; 7958:4;7960:4; 7980:20;7982:13; 7983:7;7984:3,3,17; 7985:21;7991:20; 7992:4;7997:10,11, 21;8004:7,10; 8005:16;8006:17; 8014:19;8016:15,22, 24,25;8018:3; 8021:4;8035:17; 8047:10 Lastly (1) 7943:12 last-minute (1) 7983:14 late (1) 8015:1 later (3) 8006:18;8044:7; 8046:10 latter (1) 7988:25 launch (1) 7957:4 law (7) 7927:25;7948:3; 8023:13,18;8024:9; 8028:13;8045:11 lawyer (3) 7948:16,17; 8023:24 lawyers (1) 8047:1 layer (1) 8030:11 lead (4) 7948:13;7968:2; 8016:17;8042:16 leader (1) 7974:10 leading (3) 7929:10,15; 7970:13 leads (3) 7978:16;8007:24; 8034:18 Leap (2) 8001:14;8002:3 learn (2) 8014:3,14	learned (1) 7961:17 least (23) 7871:22;7879:17; 7888:22,22;7891:13; 7892:1;7893:21; 7900:7;7915:23; 7932:6,11;7939:16; 7946:16;7950:22; 7974:11;7988:11,24; 7989:13;8002:3; 8008:9,14;8034:16; 8043:12 leave (1) 7877:4 leaves (1) 7987:7 leaving (1) 7877:7 led (1) 7946:12 left (11) 7870:14;7886:24; 7928:14;7935:16; 7937:4;7965:22; 7966:23;7967:16; 7980:20;7987:8; 8026:8 legal (1) 8027:9 legible (1) 7955:11 legislation (2) 8024:8;8025:1 Legislature (9) 7928:10;8019:22, 24;8020:10,16; 8023:14;8034:18; 8036:14;8037:5 less (18) 7870:2;7880:19, 20,22,25;7903:1; 7913:25;7942:7; 7976:12;8003:13; 8007:8;8025:17; 8033:3,4,5,7;8034:4; 8036:16 letter (7) 7890:5,13;7971:5, 6,19,22,24 letters (3) 7955:15;7971:7,9 level (4) 7907:15;7932:1, 16;7966:23 levels (3) 7872:18;7874:2; 7973:4 license (2) 7942:8;7960:16 licensing (1) 7952:2 lies (1)	7936:12 lieu (1) 7940:20 Life (2) 7871:19;7981:8 lift (1) 7887:15 light (5) 7925:5;7941:19; 7992:14;7993:19; 8042:14 lighter (1) 7933:10 likely (4) 7874:15;7913:25; 7915:10;7989:7 limb (1) 8009:9 limitations (1) 7918:7 Limited (10) 7896:11,13; 7897:22;7898:9,14, 17,19;7903:6; 7961:11;7972:5 limiting (1) 8012:8 limits (3) 7971:4,23; 8008:20 line (24) 7873:24,25; 7876:1,1;7877:4,20; 7898:25;7900:17; 7909:4,6;7917:10; 7921:5,17;7963:3,4, 5,6;7978:4;7983:8, 11,13,15,21;8034:20 lines (5) 7873:23;7877:19; 7878:19;7963:2; 8001:1 list (4) 7887:15;7911:10; 7956:11,16 listed (9) 7879:11;7880:19; 7937:4;7953:2,25; 7973:14;8010:10; 8032:9,10 listen (1) 8045:15 listening (8) 7910:6;7911:9; 7926:9;7955:18; 7984:7,12;8006:2,3 literally (3) 7895:8;7951:6; 7992:25 little (23) 7886:11;7907:22; 7908:13;7935:14; 7937:3;7951:18;	7960:20,22,23,23; 7962:24;7966:3; 7983:13;7991:13; 7993:23;8004:23; 8009:9;8015:1; 8035:7;8042:19,23; 8044:6,7 live (2) 7909:21;7992:19 LLP (1) 7960:16 lo (1) 7992:6 load (1) 7880:18 loads (4) 7881:4;7913:19; 7969:3,18 loan (3) 8025:9,10,10 loathe (1) 7992:17 local (18) 7928:3,10,18; 7931:24;7932:7; 7935:4;7936:23; 7938:12;7942:1,3, 18,19,24;7943:1,3,7; 7945:1;7952:3 Locales (3) 7933:18;7937:6, 10 located (9) 7879:5;7883:15; 7927:3;7933:11; 7937:16;7944:21; 7950:8;7952:17; 7954:17 location (7) 7918:1;7950:16; 7952:12;7957:7; 7979:20;8027:14; 8028:1 locations (5) 7936:3;7949:10, 15;7950:15,21 lodged (1) 8010:5 logistically (1) 8032:5 LOL (2) 7969:24;7970:11 Lon (4) 7923:13;7924:5; 7926:21;7927:1 L-O-N (1) 7924:6 long (6) 7972:1;7976:12; 7988:8;8007:3; 8023:6;8034:25 longer (5) 7998:12,14;
L				
labeled (1) 7956:15 labor (22) 7931:24;7932:7; 7935:3;7936:23; 7938:12;7939:19,20; 7940:3,5,6,7,14,18, 25;7941:6,7,12,17, 20;7942:11;7945:1; 8042:22 laboring (2) 8045:21,21 lack (2) 7931:25;7981:20 Lake (1) 7871:24 Land (20) 7888:25;7889:7,9; 7890:13,18;7891:13; 7892:2;7926:20; 7927:5;7960:3,4,5, 14,22;7961:21,23; 7968:14;7969:25; 7988:1,4 landed (1) 8016:2 language (7) 7894:11,11; 7895:6;8018:5,7; 8029:13;8046:16 laptop (1) 7956:20 large (3) 7926:3;7943:22; 7951:10 largely (1) 7974:6 larger (6) 7966:19;7974:2;				

8007:5;8023:5; 8043:24 longest (2) 7880:2,5 look (39) 7877:21;7887:5, 11,11;7891:4; 7898:24;7899:18,19; 7903:14;7909:19; 7920:20;7922:14; 7937:24;7946:4,13, 17;7949:1;7950:22; 7951:8;7971:8; 7973:16;7977:4; 7979:8;7983:7; 7985:14;7990:16; 7992:5;7995:1; 7996:10;8003:10,22; 8004:18;8005:5,8; 8023:17;8029:25; 8031:1;8033:20; 8047:7 looked (15) 7921:8;7925:17; 7932:17;7950:19,20, 23;7951:9,23; 7966:19;7988:17; 7989:12;7998:21; 7999:4;8000:14; 8021:4 looking (32) 7879:21;7884:3; 7887:9,23;7888:2; 7893:16;7897:9; 7900:12,23;7903:14; 7908:24;7910:13; 7914:5;7917:22; 7951:14;7985:20; 7987:24;7997:13,25; 7998:3,13,20; 7999:6;8002:2; 8004:10;8015:24; 8033:20;8035:22; 8041:10;8042:21; 8044:19;8045:16 Looks (2) 7885:11;8047:6 Lopes (1) 7974:21 Los (3) 7953:4;8027:18, 20 lose (3) 8019:15;8020:18; 8044:8 losing (3) 7974:11;8021:19, 20 loss (4) 7895:3;7974:16, 22;8008:20 lost (6) 7893:20;7894:19;	7895:9;7974:16,17, 23 lot (14) 7883:24;7896:18; 7898:15;7901:6,11; 7906:6;7907:7; 7946:3;7947:1; 7948:13;7985:13; 7998:2,24;8023:5 Lots (2) 7878:12;8000:21 love (2) 7955:5;7984:8 low (11) 7950:25;7967:19, 25;7974:19;7979:1, 2,16;7997:17; 7998:5;7999:12; 8022:25 lower (28) 7913:6;7937:19, 21;7938:19; 7944:14;7951:11,12, 21;7954:1,8,10; 7958:14;7962:13,13; 7970:17;7974:25; 8000:16;8001:15; 8004:20;8005:9; 8007:7;8034:2,24, 24;8036:11,16; 8037:10,11 lowest (21) 7936:10,17,20; 7940:25;7941:11,13, 20;7942:17,23; 7943:1;7944:5,6,8, 12,25;7951:12; 7966:23;7973:13,17; 7979:5,17 LTL (2) 7878:12;7885:7 luck (1) 8041:12 lucky (2) 7952:14;8045:14 lunch (2) 7947:7;7957:13 Lund (2) 8038:21,24	M Madera (1) 7933:13 magically (1) 8046:12 mailbox (3) 7975:24;7978:3; 7980:12 Maine (2) 7890:25;7955:18 maintained (2) 7928:17;7968:25	maintains (1) 7906:12 major (5) 7937:6,13;7939:2; 7944:21;7972:3 majority (3) 7941:15;7961:1; 7962:18 makers (10) 7911:19,23; 7919:1,2,11,12; 7920:7;7927:10; 7945:4;7964:10 makes (3) 7939:9;7943:14; 7965:3 making (9) 7917:13;7918:24; 7921:18;7938:5; 7972:3;7988:15; 7992:11,18;7993:1 management (1) 7929:15 managing (1) 7929:13 mandated (1) 7906:16 mandatory (8) 7918:25;7919:16; 7975:1,1,4;8008:6,7, 19 manner (1) 7981:16 manufactured (2) 7871:18;7953:10 manufacturer (1) 7952:16 manufacturers (7) 7885:6;7964:25; 7965:2;7975:3,6; 7986:19,20 manufacturing (51) 7872:18;7874:1, 17;7876:10; 7885:24;7886:6,16, 17;7887:13;7889:5; 7893:7;7905:25; 7930:23;7931:1; 7933:11,18;7934:2, 7;7936:3;7937:14, 16;7939:6,9,10,11, 12,17,19,20,21,22, 24;7940:24;7941:11, 15,20;7942:17,23; 7943:4,8,14,15; 7944:5,21;7949:10, 14,19;7950:8; 7966:12,14;7997:3 many (17) 7873:23;7879:17; 7883:12;7896:3,15; 7925:12,14,17; 7926:3;7934:6;	7937:9;7949:18; 7952:7;7961:15; 7992:6;8023:3; 8045:19 map (2) 7933:3,10 Maps (1) 7951:5 March (5) 7905:11;7999:7; 8042:24;8043:8; 8044:14 Margin (10) 7975:22,24; 7978:12;7979:4,5,6, 23;7980:7,24; 7982:19 marginal (1) 7903:14 Margins (7) 7975:9;7977:6,8, 10;7978:14; 7980:15;7981:24 mark (3) 7923:18;7995:9; 8010:20 marked (10) 7889:11,13,14,20; 7923:22;7958:21,25; 7995:7,12,14 Market (39) 7879:3,14,16,20, 24;7880:19;7881:3, 14,24;7882:11; 7884:1,3,7,8;7885:2, 6,15;7904:12; 7911:20,21;7912:1; 7915:6,7,24; 7916:23;7918:7; 7944:1;7968:13; 7974:11,18;7975:7; 7977:16;7982:11; 8001:11;8017:24; 8024:16,18,19,20 Marketing (24) 7906:12;7907:13; 7916:9;7927:10,16, 18;7945:3;7950:11; 7961:15;7976:11; 7978:3;7980:13; 7981:16;7993:11; 8014:5;8015:6; 8017:11,14;8023:20; 8024:6,11;8029:3; 8042:11;8047:5 marketplace (2) 7982:21;8006:14 markets (2) 7929:12;7971:2 marking (1) 7889:16 Marvin (6) 7916:7;7958:3;	7990:9,18;8027:5; 8038:15 mask (1) 7914:24 massive (2) 8045:18,20 material (1) 7946:5 math (2) 7900:2;7902:18 matter (4) 7924:15;7988:6; 7989:12;8044:25 matters (2) 7870:5;8045:13 maximum (1) 7999:10 may (61) 7870:2,11,16; 7874:7;7882:23; 7887:16,22,23; 7888:24;7897:16; 7901:10;7903:14; 7910:8;7912:20; 7914:10;7924:7; 7925:21;7929:8,22; 7931:7;7932:21; 7933:25;7934:13; 7936:15;7942:15,21; 7948:4,13;7952:9; 7953:12,12;7955:16; 7957:1;7959:15; 7962:14;7977:9; 7981:15,15,16; 7986:16,21;7989:7; 7991:16;7992:21; 7995:16;7996:16; 7999:18;8011:18,19, 19;8024:4;8026:22, 24;8029:22; 8030:14;8033:25; 8042:16;8044:5,6,6; 8045:17 maybe (17) 7889:25;7890:11; 7895:7;7896:15; 7955:16;7989:19; 7994:8;7997:7; 8005:18;8015:1,1, 8026:11;8033:4; 8034:2;8035:7,8,8 MBA (1) 7926:21 mean (22) 7879:21;7894:22; 7898:4,10;7900:11; 7902:25;7905:10; 7915:5,6;7941:4,22; 7946:1;8000:4; 8004:11,18;8006:25; 8023:7;8025:11; 8032:17;8035:21; 8042:19;8044:20
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<p>meaning (1) 7944:10</p> <p>meaningless (2) 7883:19,21</p> <p>means (8) 7871:2;7961:23; 7988:1;7989:15; 8006:8;8023:23; 8029:13,13</p> <p>meant (2) 7984:3;7996:8</p> <p>measure (13) 7908:5,5;7928:22; 7930:22;7932:24; 7937:11,23;7940:10; 7942:5,6;7943:24; 7951:14;7973:11</p> <p>measured (6) 7936:9;7942:1,2; 7949:21;7950:6,15</p> <p>measurement (1) 7974:8</p> <p>measurements (1) 7974:13</p> <p>measures (1) 7952:7</p> <p>measuring (1) 7929:13</p> <p>mechanism (1) 7975:8</p> <p>mechanisms (1) 7996:16</p> <p>Medeiros (2) 7974:21,21</p> <p>Meek (1) 7870:21</p> <p>meet (1) 7882:21</p> <p>meeting (1) 8041:14</p> <p>meetings (1) 8041:12</p> <p>Member (5) 7960:3,10,12,13; 7961:22</p> <p>member-owners (1) 7960:10</p> <p>members (7) 7968:14;7969:23; 7970:1,10,12; 7974:25;8009:13</p> <p>memory (1) 7956:20</p> <p>mentioned (8) 7934:16;7935:3; 7936:7;7937:7; 7942:22;7950:14; 7969:18;7982:6</p> <p>Merced (5) 7933:13;7934:17; 7941:13;7944:8,15</p> <p>merely (2) 7992:11,19</p>	<p>merits (1) 8008:13</p> <p>metro (34) 7931:23;7933:17; 7938:2,4,14,15,18; 7939:17;7940:2,24; 7941:11,12,15; 7942:17,23,25; 7943:7,8,16;7944:5, 6,9,14,21,23,25; 7949:23,25;7950:6, 9,14;7951:15; 7952:9;7953:24</p> <p>metropolitan (19) 7931:21;7933:21; 7934:3,5,11,15,22, 24;7935:24,24; 7936:8;7937:9,13, 19;7943:20;7949:21, 22;7952:5,6</p> <p>Mexican (1) 7957:8</p> <p>Mexico (10) 7909:5;7936:5; 7949:12;7950:5,5,6, 9;7951:17,18; 7953:23</p> <p>Michael (1) 7961:5</p> <p>Michigan (3) 7936:4;7949:11; 7954:10</p> <p>microphone (3) 7993:4;8010:1; 8040:7</p> <p>mid (1) 8008:2</p> <p>mid-2014 (2) 7886:5,15</p> <p>mid-'90's (1) 8008:2</p> <p>mid-December (1) 8041:20</p> <p>middle (1) 7902:15</p> <p>Midwest (1) 7952:18</p> <p>might (19) 7881:12;7882:10; 7894:24;7896:9; 7909:16;7911:14; 7912:5;7914:25; 7946:12,20,23; 7951:20;7994:10,13; 8000:4;8036:13,17; 8037:9;8044:16</p> <p>mild (1) 8042:16</p> <p>miles (3) 7951:14,15,16</p> <p>milk (143) 7871:19,21; 7873:4;7874:13,13,</p>	<p>14,18;7875:1; 7892:14;7893:20; 7894:20;7895:3,4,9, 13,25;7896:18,25; 7897:3;7898:3,13; 7899:9,11,14,16,24; 7900:18;7901:3,15, 15,16;7902:2; 7903:10,20;7904:17; 7906:14,17;7907:13, 16;7911:20; 7912:24;7913:3,5, 11,15,20;7914:16; 7915:11;7916:12,14, 15;7917:22;7918:9, 11,14,21;7919:13, 18;7920:12,17; 7927:9,18;7930:23; 7945:3;7948:16; 7960:7,12;7961:2, 15,19;7962:6,11,12, 14;7963:20;7964:9, 21;7965:10; 7967:11;7968:3,4,9, 11,12,18,22,23,24; 7969:6,11,17; 7970:12,13,16,16, 17;7971:2,4,23,25; 7972:6,8,9,25; 7973:13;7974:8,18, 19;7975:5;7977:16; 7981:4,10,14,16,17, 23;7982:3,7,9,21,22; 7986:3;7987:13,13; 7993:11;7998:21; 8001:11;8003:23,24; 8004:2;8008:21; 8014:4;8015:5; 8017:10,14,24; 8021:7,7;8024:6,10; 8028:9;8035:15; 8047:5</p> <p>million (30) 7897:20;7963:24; 7964:20;7965:6,10; 7966:3,9,15,18,21, 22,24;7967:13,15, 16,18,23;7987:6,6,7, 9,16,18;7989:13,16; 8010:16;8018:13; 8020:14,15;8026:7</p> <p>millions (1) 7965:23</p> <p>Miltner (12) 7910:6;7920:17, 17,19;7921:2,3; 7922:13;7955:17,19; 8035:12,14,15</p> <p>Miltner's (1) 7955:9</p> <p>mimicking (1) 8016:1</p> <p>mind (4) 7933:23;7971:19; 7994:21;8040:10</p> <p>minds (1) 8044:16</p> <p>mine (1) 7891:11</p> <p>minimally (1) 7975:17</p> <p>minimum (24) 7880:18;7910:17, 19;7911:20;7912:1, 1,2,19,19,24;7913:3, 5,23,24;7914:4; 7962:16;7974:19,25; 7975:1,4;7981:9,23; 8023:19;8040:23</p> <p>minimums (4) 7905:5,15,16; 7911:24</p> <p>Minnesota (4) 7908:7;7936:4; 7949:12;7950:17</p> <p>minor (1) 7986:16</p> <p>minus (5) 7917:14,25; 7979:5;8005:12; 8020:7</p> <p>minute (3) 7897:14;7932:19; 7935:1</p> <p>minutes (5) 7950:20;7951:10; 8039:14;8040:2; 8046:22</p> <p>miracle (1) 7984:10</p> <p>mischaracterized (1) 7901:21</p> <p>misconstrued (1) 7993:21</p> <p>misleading (1) 7982:17</p> <p>missed (1) 7871:14</p> <p>missing (1) 7956:16</p> <p>misspoke (2) 7941:7;8024:18</p> <p>misstatement (1) 7901:12</p> <p>misunderstood (1) 8044:18</p> <p>mix (1) 7940:15</p> <p>mixes (1) 7944:2</p> <p>modeling (2) 7929:11;7940:22</p> <p>Modesto (2) 7934:17;7941:14</p> <p>modification (3) 7874:10;7992:15,</p>	<p>16</p> <p>modified (1) 7874:24</p> <p>modify (2) 7992:13,17</p> <p>moment (9) 7889:23;7892:14; 7935:6;7941:2; 7994:23;7999:25; 8026:24;8030:1; 8040:9</p> <p>moments (1) 7889:24</p> <p>Monday (9) 7991:11;7997:10, 11;8004:7,10; 8014:19;8016:22,24, 25</p> <p>money (10) 7907:10,11; 7963:17;7986:22; 8005:14;8007:18; 8021:10,11,14; 8033:3</p> <p>monitored (1) 7928:25</p> <p>Montana (1) 7909:4</p> <p>month (37) 7897:3,3,19,20; 7898:7;7902:7,8; 7903:14;7904:1; 7914:19,20,25; 7966:14;7996:18; 7998:17;7999:11; 8002:1,2,19;8003:9, 9,15;8005:3;8019:4, 5;8025:3,4,4,14,17, 18,20,22;8026:1,8,8, 10</p> <p>monthly (16) 7872:20;7914:21; 8001:8,23;8002:8, 13;8003:8,12,13; 8004:4;8005:1; 8018:11,24;8026:15; 8032:8,9</p> <p>months (9) 7900:3;7904:16; 7915:2,7;7962:19; 8007:6;8020:21; 8032:14;8041:7</p> <p>month's (1) 8003:10</p> <p>Moody's (37) 7929:6,8,9,17,17, 20,24;7930:2,3,8,11; 7931:2,6,20; 7933:19,25;7934:13; 7935:23;7936:15; 7938:22;7940:6; 7942:1,14,20; 7943:19;7949:5;</p>
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7950:22;7951:23; 7952:6;7954:15,24; 7996:22,24;8022:3; 8035:21,23,23 more (49) 7882:10;7888:23; 7895:20;7897:5; 7904:12;7907:22; 7912:20;7913:19; 7914:4;7915:10; 7932:4,23;7933:20; 7934:7;7935:5; 7936:2;7937:3,17; 7938:13;7939:18; 7946:13;7948:13; 7949:9;7960:20,23, 24;7961:11; 7962:17;7966:18; 7967:3;7968:2,18; 7972:14;7974:7; 7991:13,25;7997:7; 7998:16;8007:11; 8008:3,25;8009:6; 8011:10,19;8016:14; 8028:18;8029:8; 8033:12;8047:3 Moreover (1) 7945:2 morning (14) 7878:8,21,22; 7884:21,22;7909:24; 7924:11,12;7945:15, 16;7990:10;8041:3; 8046:21,24 mortgage (1) 8031:24 most (29) 7874:18,22; 7886:5,15;7889:1; 7892:3;7903:10; 7928:20;7929:4; 7930:9;7932:23; 7933:10,15;7934:4; 7935:8,23;7936:12; 7937:21;7939:5; 7943:8;7944:22; 7954:23,24;7957:7; 7962:14;7963:5; 7989:8;8047:2,7 move (12) 7877:2;7891:17; 7893:17;7895:8; 7913:19;7938:8; 7941:25;7944:16; 7945:10;7952:17; 7983:3;8009:18 movements (1) 7895:4 moves (1) 7989:14 Mssrs (1) 7870:21 much (30)	7870:2;7880:25; 7882:24;7891:9; 7892:17;7895:20; 7902:25;7904:12; 7906:10,19;7907:1; 7922:23;7924:2; 7938:19;7939:18; 7953:10;7956:25; 7968:7;7998:17; 8004:9,20;8005:9; 8013:17;8016:14; 8021:7,7;8025:15; 8038:2;8044:9; 8046:4 multiple (7) 7896:16;7904:16; 7911:13;7914:1,2; 7920:11;8023:9 multiplied (1) 7964:21 multiplies (1) 8019:3 multitude (1) 7912:3 Murray (1) 7871:23 must (4) 7890:25;7898:12; 7957:10;7989:19 Myra (1) 8044:8 myself (2) 7938:16;7941:7 N NAICS (2) 7940:8,9 name (14) 7870:8,9;7891:5; 7907:9,12;7924:4,5, 6;7927:1;7959:12, 13;7960:2;7993:6,7 Nation (5) 7926:19,25; 7927:11;7945:5; 7981:6 national (42) 7872:17;7874:1; 7875:6,20,21; 7876:17,18;7888:24; 7892:10,12;7893:7, 18,23;7894:2,13,23, 25;7895:17,24; 7910:14,17,20; 7928:3,17;7929:11; 7931:12,13,15; 7934:21,23;7935:21; 7936:7,18,20; 7938:25;7940:12,17; 7942:4;7943:20; 7944:11;7982:21,22 nationally (1)	7955:1 nation's (2) 7908:8,25 native (1) 7927:21 nature (1) 8042:10 NDPSR (16) 7875:18,23,24,25; 7876:7,8,9;7881:7, 11,15,16,19,23; 7882:15,17,21 near (2) 7995:21;8037:4 nearest (1) 7937:13 nearly (7) 7939:21;7943:14; 7957:6;7960:15; 7969:3;7972:6; 7985:22 necessarily (5) 7884:12,12; 7913:2;8009:14; 8020:22 necessary (4) 7940:13;7948:12; 8015:12;8042:3 need (11) 7877:17;7889:21; 7971:25;7995:13; 8004:21;8013:2; 8024:8,25;8042:1; 8045:9;8046:7 needed (5) 7872:6;7968:11; 7991:13;8016:18; 8019:25 needing (1) 7895:8 needlessly (2) 7974:16,20 needs (1) 8025:15 negative (9) 7903:2,23;7904:1, 4,11,11,16;7977:8; 7978:13 Neither (1) 7906:8 net (12) 7975:12;7978:11, 11;7979:6;7980:7; 7997:4;7999:4,7; 8002:9,21,21,23 Nevertheless (5) 7884:13;7894:8; 7918:14;7939:5; 8042:15 new (25) 7872:22,24,25; 7873:2,13,21; 7905:4;7908:6;	7909:5;7917:14; 7918:1;7936:5,5; 7949:12,12;7950:5, 5,6,9;7951:17,18; 7953:23;7969:8,13; 7973:4 Newington (1) 7871:24 News (16) 7879:3,14,17,20, 24;7880:20;7881:3, 14,24;7882:11; 7884:1,8;7885:2,6, 15;7915:24 next (22) 7877:20;7890:16; 7916:2;7923:13; 7932:19;7953:16; 7958:4;7967:5; 7977:3;7989:22; 8002:13;8022:19; 8025:17,18,19,22; 8026:8,10;8033:21; 8037:5;8040:2; 8043:3 night (1) 7991:4 nine (4) 7896:15;7932:6, 11;7933:1 nodded (1) 7921:16 noise (1) 7914:10 none (17) 7870:5;7883:5; 7891:21;7902:25; 7922:9;7947:18; 7948:3;7955:3; 7984:23;7985:2; 7990:3;8009:22; 8011:12;8037:16; 8038:5,7,10 nonetheless (14) 7888:12,17; 7893:14;7904:10; 7906:9,11;7943:6; 7950:21;7951:8; 7956:21;7988:4; 7989:10;7991:17; 8005:22 nonfat (6) 8001:9,9,10,10; 8021:1;8036:18 non-fluid (2) 7874:13,13 nonpool (2) 8008:10,11 non-quota (2) 7994:2;8001:9 non-summer (1) 7969:1 non-uniform (2)	7994:3;8008:24 nor (3) 7876:20;7974:10; 8040:11 normally (2) 8045:23;8046:1 North (18) 7893:19;7894:18; 7929:6,7,20;7931:2, 6;7933:12,24; 7934:12;7936:14; 7940:8;7942:14,20; 7945:18;7947:23; 7979:24,24 Northeast (10) 7903:22;7905:11; 7907:3,5;7910:14; 7911:19;7916:9,9, 21;7917:4 notable (1) 7992:5 note (10) 7910:6;7931:8; 7934:14;7936:17; 7941:18;7946:6; 7956:10;7990:25; 8002:1;8035:18 noted (21) 7873:5,11; 7876:17;7879:11; 7882:19;7887:14; 7890:8;7932:20; 7933:2,9;7934:16; 7935:4;7938:3; 7941:13,23;7943:2; 7944:8;7956:15; 7958:13;7983:10; 7991:1 notes (1) 8013:3 notice (3) 7872:21;7876:14; 7992:17 noticed (2) 8044:11,12 November (5) 7900:14;7926:18; 7939:14,25;7958:1 number (66) 7877:4;7878:10; 7883:20;7887:24; 7888:5,6,7,14; 7889:25;7902:14,25; 7913:11;7914:2; 7919:10;7921:5,8, 10,11;7931:16,17; 7932:14;7936:9,9, 13,19;7938:15,21; 7939:10,22;7940:6; 7942:13;7944:13; 7949:17;7953:9,10; 7958:16;7966:2,18, 25,25;7978:5;
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7980:14;7983:17; 7993:24;7994:9; 7995:24,25;7996:2; 7998:3;7999:18; 8002:2;8004:4; 8010:22,23;8012:14; 8016:9;8018:21; 8019:2,4;8021:3; 8023:1;8030:3; 8035:6;8046:11; 8047:2,4 numbered (1) 7958:11 numbers (27) 7879:15;7883:13, 21;7884:5,6;7897:8; 7903:1;7911:13; 7921:8;7922:21; 7962:7;7973:3,17, 18;7974:4,9; 7978:17;7979:15; 7980:2;7987:25; 7988:24,25;8002:1; 8005:3;8019:14; 8022:7,9 Numeral (3) 7870:15,17; 7873:24	7874:14;7877:20 observing (1) 7872:12 obtained (2) 7960:16;7971:13 obviously (8) 7946:1,25; 7949:21;7971:12; 7993:22;8012:19; 8041:8,17 occasion (5) 7909:19;7925:2,4; 7929:24;8011:10 occasions (1) 7930:7 occupational (1) 7940:15 occupations (1) 7940:11 occur (2) 7874:15;7877:20 October (13) 7897:18;7900:13; 7904:2;7929:9; 7931:7;7934:1,14; 7936:15;7942:15,21; 7971:5,22;7988:2 off (21) 7870:14;7887:15; 7894:1;7935:16; 7953:9;7980:20; 7983:14;7996:15; 7997:25;7998:9; 8003:4,9;8004:12; 8007:1,5,8,11; 8021:3;8034:24; 8039:15;8047:14 offer (1) 8044:3 offered (5) 7952:17;7961:20; 7963:10;7975:3; 7987:23 offering (2) 7991:22;8031:5 offerings (1) 7929:18 offers (1) 7929:12 office (16) 7931:25,25; 7932:8;7935:4; 7936:24;7938:12; 7943:12,14,18,19,20, 21,23;7944:5,7; 7945:1 official (2) 7872:21;7891:12 offs (1) 7998:18 often (1) 7906:10 O'Lakes (19)	7888:25;7889:9; 7890:13,18;7891:13; 7892:2;7926:21; 7927:5;7960:3,4,5, 14,22;7961:21,23; 7968:14;7969:25; 7988:1,4 O'Lakes' (1) 7889:7 old (2) 7966:20;7970:23 Once (5) 7886:22;7938:1; 7942:25;7955:20; 8002:23 one (87) 7874:22;7877:16; 7886:23;7887:8,8; 7888:6,6;7889:4; 7891:5,6,7,19; 7893:21;7895:22,23; 7899:15;7903:20; 7909:15,15,16; 7912:4,5;7917:4,4,5; 7919:10;7920:7; 7931:12,13,14; 7932:10;7934:21; 7953:21;7958:8; 7959:4;7961:4; 7966:13;7967:13; 7972:14;7977:6; 7983:6;7984:21; 7985:18;7986:17; 7990:20;7994:12,20, 21;8000:20; 8004:18;8006:12,24; 8009:14;8011:10; 8012:3,14;8015:8; 8016:22;8017:1,2; 8020:15;8021:19; 8022:15;8024:1; 8026:23;8027:5,5, 17,18,21;8028:15, 17,18;8029:6,7; 8037:18;8038:21; 8039:7,7,17,21,21, 21,22;8042:5,9; 8047:2 one-person (1) 8043:21 ongoing (1) 8004:14 online (1) 7926:9 only (21) 7881:22;7904:1; 7925:11;7932:1; 7933:19;7937:7; 7939:9;7941:10; 7942:11;7944:12,14; 7954:21;7955:5; 7968:2,11;7973:18; 7991:8;7994:8;	8023:23;8041:5; 8047:6 onto (1) 7922:22 Oosten (1) 7961:5 open (2) 7877:7;8040:6 opening (2) 8040:17,23 operate (3) 7912:1;8008:10, 11 operating (1) 7930:6 operation (3) 7998:10;8008:4; 8043:21 operational (1) 8009:1 operations (4) 7940:16;7978:25; 7980:8;7988:14 opining (1) 7894:4 opinion (2) 7874:9;7919:16 opponents (3) 7972:11,13,15 opportunities (2) 7928:5;8030:17 opportunity (10) 7919:5;7947:24; 7972:5;7974:23; 7982:23;7985:21; 7990:6;8030:12; 8033:22;8039:11 opposed (4) 7985:24;7988:15; 8012:11;8042:6 opposition (1) 7962:2 option (1) 8008:15 Order (90) 7871:1,16; 7872:10,17;7873:3, 7,10,12,14,19,21; 7874:1,11,22,24; 7876:13,18,20; 7877:13;7879:15; 7885:23;7892:23; 7893:9;7894:2; 7896:16,17;7897:11, 12;7898:6;7899:8, 23;7903:11,22; 7905:4,15;7906:2; 7907:14;7913:7; 7914:4;7917:7,22; 7918:6,14;7919:2, 10,10,11,19;7920:7; 7922:1,3,3;7927:10, 18;7934:6;7941:3;	7945:3;7950:4; 7961:16;7962:9; 7963:20;7975:2,24; 7977:16;7982:15; 7987:13;7991:20; 7993:14;7994:6,16, 17;7995:3;8005:10; 8008:4,17,25; 8014:5;8015:3,6,20, 25;8017:11,14,24, 25;8018:8;8023:20; 8024:11;8029:5; 8047:5 orderly (1) 7974:18 Orders (20) 7872:4;7873:8,11; 7874:19,23;7875:2; 7895:14;7896:12,14, 16;7898:15;7903:7; 7904:16;7918:22; 7920:11;7978:8; 7993:12;8008:8,15; 8017:14 Order's (2) 7872:25;7873:2 Oregon (3) 7936:5;7949:12; 8016:2 organic (2) 7978:24;7981:18 Organization (2) 7928:9;7960:6 organizations (1) 7929:2 orientation (1) 7976:6 original (3) 8016:5,17; 8025:25 Orland (1) 7961:3 osmosis (1) 7874:16 Others (5) 7876:15;7930:24; 7935:2;7942:2; 8045:24 otherwise (2) 7907:13;7948:4 ought (1) 7997:18 ourselves (1) 7992:10 out (67) 7877:19;7878:13; 7892:9;7893:1,1; 7898:6;7904:4,9; 7906:20;7910:25; 7925:11;7928:14; 7943:1,5,10; 7955:24;7956:12; 7962:11;7963:2;
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O

7967:6;7969:18; 7973:13;7976:4; 7981:24;7984:1; 7985:22;7989:17; 7990:12;7992:24; 7995:6;7996:14,18, 18,20,20;7998:22; 7999:1,3,4,7,8,23; 8000:14;8002:11,19, 22;8003:16,16; 8005:7;8007:10; 8009:9;8010:24; 8014:22;8015:13; 8018:9;8019:23,25; 8020:3,16;8021:10, 12,14;8025:5,16; 8031:15;8041:1; 8045:9 outline (1) 7971:18 outlined (1) 8037:20 outlines (1) 7971:22 out-of-state (4) 7913:12;7969:4; 7972:8;7982:9 outset (1) 7993:17 outside (5) 7893:21;7919:7; 7937:18;7954:1; 8040:7 outstanding (1) 8043:20 over (52) 7884:13;7885:21; 7905:2;7908:13; 7912:7;7914:15; 7922:21;7927:17; 7928:8;7952:15; 7953:12;7960:4; 7962:9;7963:20; 7965:6,10;7966:19; 7967:17;7968:22; 7969:23;7970:8,10, 15;7972:7;7975:2; 7982:8,13,15; 7991:3,20;7994:5, 10;7999:12;8002:3, 4;8003:4,14; 8005:14;8011:12; 8012:24;8013:8,8; 8020:21;8021:22; 8024:8;8025:10; 8030:21;8031:2,15, 16;8046:20,21 overall (13) 7892:4,7;7901:2; 7936:25;7938:16,18; 7939:9,16,21; 7943:15;7944:18,19; 7953:8	overbase (3) 7963:18;8005:8, 11 overnight (2) 8041:24;8042:23 oversaw (2) 7927:17,23 overshadow (1) 7975:15 oversupply (1) 7962:12 own (15) 7887:12;7925:18; 7968:8;7971:4; 7991:6,24;7992:2, 20;8021:9,10,14,14; 8033:19;8045:24; 8047:6 owned (1) 7939:3 owners (1) 7968:8 owns (3) 7994:10;8012:24; 8013:8	pages (12) 7878:11;7889:25; 7890:12,17;7896:10; 7934:1,14;7936:16; 7958:10;7970:21; 7975:21;8045:19 paid (36) 7905:23,25; 7906:13,16;7907:15; 7912:24;7914:1; 7965:3,6;7967:15; 7974:12;7982:15; 7987:6;7989:10,11; 7993:12,13;7996:18; 8005:7;8007:8; 8013:15;8017:12; 8018:2;8019:6,8,10; 8025:5,15,21,25; 8026:1;8028:2,18, 23;8029:8;8036:2 panel (3) 7932:15;7933:6; 7969:7 paragraph (9) 7885:20,21; 7896:3;7914:15,15, 15;7959:23; 7980:21;7985:21 paragraphs (2) 7887:14;7977:12 parse (1) 7906:4 part (21) 7890:16,17; 7905:1,3;7912:7; 7929:25;7952:2,4, 16;7953:4;7962:21; 7982:21;8015:1; 8018:3;8021:19,21; 8034:15;8040:2; 8041:3;8045:18; 8046:4 participants (1) 7902:2 participated (1) 7961:18 participates (1) 8004:13 particular (6) 7883:20;7912:7; 7923:4;7955:23; 7999:11;8004:16 particularly (1) 7923:8 partners (1) 8045:11 parts (2) 8023:19,21 pass (2) 7992:24;7995:6 past (3) 7961:12,19; 7982:7	Paul (3) 7886:24,25; 7887:1 pause (2) 7994:23,25 pausing (1) 7909:23 pay (26) 7907:20;7910:14; 7911:24;7913:25; 7963:18,20;7965:1; 7967:11,18,23; 7975:6;7996:13,20; 7998:9;7999:1,3,4,7, 8;8003:4,16; 8004:21;8007:1,5, 10,11 payback (5) 7997:16,18; 7998:12,13;8025:14 paying (11) 7906:3;7986:22; 7989:16,16;7997:25; 8004:11;8031:14,15; 8032:16,16,19 payment (20) 7873:17,20,21; 7894:9;7910:15,18; 7994:2;7996:21; 8008:24;8018:2; 8021:15;8025:10,16; 8026:9,15,15; 8030:12,17,17; 8032:16 payments (15) 7895:5;7988:15; 7989:4;8000:23; 8009:3,4;8018:19, 20;8019:6;8029:15, 17;8032:8,9,12,13 payoff (1) 8003:3 pay-off (3) 8006:25;8025:8; 8026:14 payout (4) 8003:8,11;8004:4; 8005:1 pays (2) 8004:13;8020:25 PD (1) 8006:8 PDF (2) 7955:24;7995:18 penalties (1) 7971:24 penalty (1) 7959:9 Pennsylvania (19) 7905:4;7906:7,12, 15,17,18;7907:10, 13,16;7908:6; 7916:12,15,16,20,20,	25;7936:5;7949:12; 8027:2 penny (1) 7919:14 people (16) 7887:17;7897:23, 24,24;7898:2; 7911:9;7948:7; 7971:1;7976:6; 7984:7,11,17; 8021:13;8035:6; 8040:8;8046:19 per (31) 7901:15;7917:18; 7919:14;7938:24; 7964:21,21,22; 7965:10;7966:14,15, 22;7975:18,22,24; 7976:11;7979:2,3,4, 7;7983:14,21; 8000:23;8002:18; 8005:2,9;8025:22; 8026:1,9;8027:21; 8029:8;8036:18 perceived (1) 8036:1 percent (36) 7908:7,25;7909:3, 6;7916:17;7917:1; 7939:9,21;7942:3; 7964:13;7965:18,19; 7970:24;7973:3,10; 7996:23;7999:8,11, 13,24;8000:11; 8003:12;8021:2,8, 23;8022:9,12,12; 8023:2;8028:16,18; 8029:6,7;8031:20; 8032:3;8033:15 percentage (13) 7916:16,22,23; 7953:7;7997:22,22; 7998:1,6,14;7999:5; 8007:9;8013:15,16 percolate (1) 8007:13 perfectly (1) 7884:8 perform (1) 8008:21 performance (1) 7961:7 performed (1) 7960:6 perhaps (3) 8036:10;8040:25; 8044:18 period (28) 7924:23;7939:7, 13,24;7944:3; 7962:15;7963:22; 7964:16;7965:10; 7966:20;7972:20,22;
	P			

7973:10,11,16; 7979:12;7980:8,22; 7981:1;7983:12; 7989:8;7999:12,13; 8003:4;8010:24; 8031:2;8034:22; 8040:23 periodic (1) 7928:24 periods (2) 7963:5;8044:4 perjury (1) 7959:10 permit (2) 7910:18;7951:25 permits (1) 7910:15 perpetuity (1) 8035:4 person (2) 7985:8;8027:1 personal (4) 7942:3,7;8045:5, 13 personally (1) 7923:7 personnel (1) 8012:6 persons (1) 7919:17 perspective (3) 7927:14;7928:18; 7974:19 pertinent (1) 7928:19 peruse (1) 7954:23 Pete (6) 7958:5,9,12,17; 7959:13;7960:2 petition (4) 8014:8,14,17; 8016:5 phase (2) 8037:2,3 phrase (2) 7893:23;7976:6 Pick (1) 7935:16 picked (2) 7937:4,12 picking (1) 7902:7 picture (2) 7973:23;7978:13 pieces (2) 7962:1;7977:24 place (4) 7919:1;7927:10; 7945:3;7993:4 placed (1) 8045:22 places (1)	7957:7 plan (4) 7873:13;7957:9; 8011:21;8016:2 plant (22) 7879:4,4,22; 7881:17,19;7912:14; 7913:11;7934:2; 7936:3;7949:10,15; 7968:12;7969:8; 7970:17;7974:17; 7988:2,5;8008:11; 8027:18,19,19; 8028:9 Plants (46) 7870:19,23,24,25, 25;7871:10,11,15, 15,18,22,23,25; 7872:3,6;7876:11, 16;7879:15,23,25, 25;7881:25;7882:12, 13;7883:14,15,17, 18;7905:25;7906:1; 7913:13;7919:17; 7933:11;7934:7; 7943:4;7949:18; 7950:8;7951:7; 7953:25;7954:16; 7966:13;7981:10; 8008:10,10,20; 8033:23 plays (1) 7919:17 Please (27) 7870:7,16; 7877:23;7886:9,10; 7889:21;7904:14; 7910:2;7921:14; 7924:3;7931:11; 7947:13;7957:12; 7959:2,12;7961:13; 7964:3;7965:15; 7972:12;7973:6,20; 7983:7;7989:2; 7995:13;8010:1; 8012:4;8022:2 pleased (1) 7910:5 pleasure (1) 7985:17 plug (6) 7887:15,22; 7888:3,16,16,17 plural (2) 7890:7,9 Plus (7) 7906:23,24; 7913:10;7967:17; 7976:10;7996:21; 8026:9 PMMB (4) 7906:16;7907:13; 7916:10,23	Pocatello (1) 7950:24 P-O-C-A-T-E-L-L-O (1) 7950:24 point (33) 7883:19,21; 7887:19,21;7894:23; 7902:1;7903:20; 7910:25;7925:11; 7937:22;7938:5; 7946:24;7947:9; 7959:25;7962:3; 7967:6;7981:24; 7983:1;7984:1; 7985:22;7986:16; 7991:25,25;8000:14; 8006:16;8009:18; 8022:18;8025:6; 8026:2;8035:8; 8040:11;8045:9; 8046:12 pointing (1) 7913:8 points (4) 7944:11;7962:10; 7979:12;7993:10 policies (1) 8007:24 policy (11) 7887:19;7888:5; 7892:7;7893:2,7; 7981:22;8006:10; 8008:25;8034:17,22; 8035:2 Ponderosa (1) 8038:23 pool (47) 7898:12,20; 7899:19,23;7901:1, 15,17,24;7919:6; 7920:12;7963:17,23, 24;7964:5;7982:13; 7986:22;7988:15,16; 7989:4,5,17,17; 7996:14,18;7998:1, 2,6,8,10,14,23; 7999:5,8,9,11,14; 8001:25;8003:24,24; 8004:13,15,15,19; 8007:9;8008:21; 8021:2,7 pooled (17) 7870:25,25; 7871:11,15,15,24; 7896:19,23,24,25; 7899:14,15,24; 7900:18;7918:15,21; 8003:21 pooling (13) 7899:16;7902:2; 7903:19;7918:25; 7919:13,16;7998:22; 8008:6,7,18,19;	8023:19;8024:6 pools (1) 7898:21 popular (2) 7941:19;7944:24 portion (3) 7916:11;7988:3; 8015:21 position (13) 7889:7,9;7891:12; 7892:2,4,8;7936:8; 7943:6;7959:7; 8009:13;8014:22; 8017:4,6 positioning (1) 7938:13 positive (2) 7925:13;7988:25 possibility (3) 7994:15;8023:16; 8025:2 possible (9) 7918:12;7949:19, 20;7965:1;7984:15; 8015:5;8041:1; 8044:17;8045:4 post (1) 8043:23 posted (1) 8044:22 postpone (1) 8045:16 potentially (2) 7918:11;7996:15 Pound (12) 7878:12;7882:4,5, 19,20;8002:18; 8025:22;8026:9; 8030:7,10;8031:17; 8036:18 pounds (16) 7881:1,4;7882:7; 7897:20;7898:17; 7900:18;7902:12; 7964:21;7965:10; 7966:9,15,22; 8001:8;8002:17; 8004:2;8005:2 powder (3) 7962:12;7968:12; 7969:8 powers (1) 7990:23 PPD (10) 7902:11;7903:3, 22;7904:11,11,16; 7917:3,6,12,13 PPD-related (1) 7917:23 Practice (2) 7990:23;7991:19 practiced (1) 7927:25	practices (1) 7929:13 preceding (1) 7886:3 precisely (1) 7879:7 predecessor (1) 7930:2 prediction (1) 8038:19 preliminary (3) 7870:4;7993:3; 8016:16 premium (20) 7906:13,16,19; 7907:15;7912:8,17, 21,23;7913:1; 7916:10,12,22,24; 8004:22;8005:10; 8006:14;8030:12,16; 8032:12,16 premiums (29) 7905:10,16,18,19, 21,23,23,24,25; 7906:16;7907:4; 7908:17;7910:14,15, 19;7913:25;7914:1; 7916:19;7962:9; 7963:20;7965:6; 7967:15,18,24; 7975:2,7;7982:15; 7989:10,11 prep (1) 7983:14 preparation (1) 7969:13 prepare (3) 7955:5,5;7980:16 prepared (9) 7891:9;7923:15; 7924:18;7926:19; 7957:4;7962:24; 7964:2;7995:1,25 prescribe (2) 8044:3,4 presence (1) 7910:6 present (9) 7904:1;7955:6; 7959:10;7993:23; 8033:1,1,3,6,17 presentation (2) 7870:15;7876:21 presented (7) 7923:14;7963:5; 7967:17;7972:10,19; 7991:5;7992:14 presently (2) 7906:19;7960:21 President (2) 7926:21;7927:1 pressure (1) 8044:10
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<p>presume (1) 7954:15</p> <p>pretend (2) 7948:15,16</p> <p>pretty (4) 7890:9;7895:13; 7954:20;8020:7</p> <p>prevent (1) 7991:23</p> <p>prevents (1) 7991:22</p> <p>preview (1) 8038:13</p> <p>previous (10) 7873:3,5,8; 7876:13;7877:18; 7887:14,17;7924:21; 7926:1;7978:2</p> <p>previously (3) 7972:10;7973:14; 7982:5</p> <p>price (80) 7872:18,19,23,25; 7873:2,8;7874:2,12; 7875:4;7876:19; 7878:11;7879:22; 7882:23;7884:1; 7887:15,25;7893:8, 13,13,14,20;7894:8, 19;7895:4,9;7899:7; 7901:17;7902:15; 7911:20;7912:19,19, 25;7913:3,5,6,9,23, 24;7917:24;7962:13, 17,18,19,20;7963:7, 8,20;7964:8,8,9,9, 22;7965:1,3,18; 7967:11,19,24; 7970:17;7974:12; 7980:12;7981:4,9; 7982:22;7987:18; 7989:20;7994:2; 7998:24;7999:12; 8004:19;8005:9,11, 13;8015:10;8018:2; 8022:17;8027:7,10; 8028:2;8032:21</p> <p>priced (1) 7874:18</p> <p>prices (48) 7875:16;7876:7; 7882:24;7893:7,21; 7894:3;7905:3; 7910:15,18,21,21; 7911:21,24;7914:4, 17;7939:2;7962:5,5, 9,14,17;7964:13; 7974:19;7975:1,1,4, 24;7981:5,10,23; 7987:2,13,14,22; 7993:12,13;7998:3, 5,6,25;8008:1; 8017:11,15,20;</p>	<p>8018:7;8027:13; 8028:4,24</p> <p>pricing (18) 7873:7,12,16; 7874:19;7876:7,16; 7893:2;7895:2; 7910:15,17,17; 7916:8;7993:25; 7994:4,6;7999:10; 8012:15,16</p> <p>Primarily (2) 7930:10;8012:20</p> <p>primary (4) 7929:5;7930:10, 23;7953:2</p> <p>principle (4) 7997:16;8018:4; 8040:17;8043:8</p> <p>principles (3) 7993:16;8017:10, 18</p> <p>printed (1) 7871:3</p> <p>Prior (8) 7927:25;7960:14; 7972:2;7989:11; 8003:10;8015:10; 8016:23;8047:12</p> <p>pro (1) 8032:9</p> <p>probability (1) 8035:2</p> <p>probably (13) 7877:7;7897:5,5; 7930:1;7948:18; 7986:17;8000:22; 8014:9;8018:6; 8020:1;8022:24; 8024:21;8031:3</p> <p>problem (11) 7875:22;7888:15; 7911:1;7922:22; 7947:3;7950:10; 7955:7;7994:8; 8029:11,14,18</p> <p>procedures (1) 7977:10</p> <p>proceed (17) 7870:11;7874:7; 7897:16;7910:8; 7914:11;7924:7; 7926:5;7930:15; 7935:9;7957:5; 7959:15,22;7961:13; 7967:9;7992:21; 7995:16;8029:22</p> <p>proceeding (15) 7874:10;7881:11; 7891:14;7892:1,9; 7894:1;7895:24; 7896:10;7918:25; 7925:16;7952:14; 7992:9,11,13,15</p>	<p>proceedings (3) 7896:21;7924:14; 7991:21</p> <p>process (5) 7874:17;7888:9; 7952:3;7991:7; 7992:18</p> <p>Processed (6) 7871:21;7906:14, 17;7907:16; 7916:14;7965:10</p> <p>processes (1) 7952:1</p> <p>processing (7) 7939:20;7964:20; 7966:22;7969:5; 7970:12;7974:15; 7981:21</p> <p>processor-favorable (1) 7981:12</p> <p>processors (11) 7907:15;7918:5; 7963:16;7968:1; 7974:24;7981:19; 7982:1,9,12; 7986:21;8007:14</p> <p>produce (8) 7901:3,16; 7903:11;7918:21; 7919:14,18;7920:12; 7964:10</p> <p>produced (12) 7879:5;7892:15; 7898:15;7906:14,17; 7907:16;7916:12,14, 15;7981:22;7995:3; 8021:7</p> <p>producer (19) 7873:12,16,17,20; 7960:12;7962:5,14; 7971:7;7975:9,16; 7979:20;7997:1,2; 8007:18;8027:11; 8037:7,9;8038:22; 8039:3</p> <p>producer-handlers (1) 8038:20</p> <p>producers (43) 7905:23;7906:2, 13;7907:19;7961:2, 24;7963:18,21; 7965:1,4;7968:8,13; 7971:10,24;7972:5; 7974:12,22;7975:3, 4,15;7981:6,15; 7982:20;7986:3; 7994:6;7996:15; 8005:22;8008:24; 8012:16,19,19,21; 8014:1,3;8017:15; 8018:20;8019:23,25; 8020:2,15;8028:23; 8033:24;8034:8</p>	<p>producers' (3) 7981:23,24; 8021:11</p> <p>producer's (1) 7962:3</p> <p>producing (9) 7917:7;7936:3; 7937:6,8,10;7938:4, 7;7949:11;7981:14</p> <p>product (12) 7874:13,14,18; 7875:1;7876:12; 7879:5;7881:23; 7887:24;7893:13; 7982:10,22;7987:22</p> <p>production (40) 7908:8;7909:1,4, 6;7951:11;7953:3,4, 8;7962:7,11,15; 7971:3,4,23;7972:1, 6,10,16,25;7973:13; 7975:9,11;7977:13; 7978:1;7979:14; 7980:2,4,12,14; 7981:24;7983:13,16; 7985:24;7986:4,6,9, 13;7997:2;8001:16; 8005:4</p> <p>productiveness (1) 7944:19</p> <p>products (9) 7871:19;7872:8,8; 7875:20;7882:9,9, 18;7981:9;7982:11</p> <p>professional (4) 7927:13;7928:6, 16;8045:13</p> <p>profits (2) 7963:19;7974:24</p> <p>program (15) 7994:5,11; 8017:14;8018:8,20; 8019:6,12,15,17,20; 8020:10,18,20,23; 8023:12</p> <p>programs (3) 7890:7;7927:18; 7942:10</p> <p>progressed (1) 8009:8</p> <p>project (1) 8044:16</p> <p>projects (1) 7930:8</p> <p>promise (1) 7948:19</p> <p>promotion (1) 7927:23</p> <p>prompted (1) 7991:7</p> <p>promulgation (4) 7872:13,14; 7874:8;7894:16</p>	<p>Promulgations (1) 7872:11</p> <p>property (2) 7942:7;7948:16</p> <p>Proponents (10) 7872:16;7875:14; 7876:5;7946:16; 7972:13;7981:3; 7991:21;8042:7; 8046:25;8047:1</p> <p>Proposal (36) 7870:18;7872:16; 7873:6;7875:15; 7876:5;7889:2,5; 7919:1;7958:10,12; 7961:20;7962:2; 7972:11,15;7981:3, 7;7982:3;8004:8,9; 8008:12;8015:15,20; 8016:3,8,9,11,12,17, 21;8017:1;8021:20; 8022:23;8024:13; 8026:5;8027:16; 8031:19</p> <p>proposals (10) 7889:6,10; 7992:12,14,18; 7993:15;8014:15; 8040:15;8043:12; 8047:1</p> <p>propose (2) 7957:3;8039:9</p> <p>proposed (8) 7870:22;7874:10; 8008:5,6,7,16; 8034:12;8041:22</p> <p>proposes (1) 8039:10</p> <p>proprietary (1) 7929:17</p> <p>prospect (1) 8037:4</p> <p>protected (3) 7948:3;8014:6; 8034:21</p> <p>protection (1) 7948:14</p> <p>protein (1) 8027:21</p> <p>provide (12) 7870:24;7927:6; 7929:2;7933:19,20; 7934:7;7946:12; 7952:12;7982:23; 7990:23;8004:21; 8040:12</p> <p>provided (11) 7870:20;7871:10; 7873:12,19;7947:23; 7948:6;7950:15; 7962:2;7968:16; 7979:23;7989:6</p> <p>provider (1)</p>
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<p>7929:10 provides (4) 7935:23;7954:24; 7981:8;7991:19 providing (2) 7929:15;8004:9 provision (6) 7895:24;7994:16; 8008:8;8014:12; 8019:19;8039:10 provisions (12) 7872:1;7874:11; 7896:17;7918:7,14; 8008:17;8014:5,11; 8023:17;8024:5,7,9 proximity (1) 7989:8 public (2) 7960:15;7967:1 Publication (3) 7884:3,8;7885:4 Publications (2) 7884:7;8001:5 publicly (1) 7939:3 publish (2) 7954:16;8001:6 published (4) 7884:1,6;7885:1; 8001:11 purchase (3) 7945:23;8006:19; 8032:21 purchased (1) 8006:16 purchases (2) 7968:10;8006:17 purport (1) 7900:24 purported (1) 7870:23 purpose (7) 7918:24;7925:16; 7950:12,13,14; 7992:11;7996:24 purposeful (1) 7951:4 purposes (7) 7929:19;7933:8; 7935:5;7936:24; 7941:10;7943:2; 7948:6 pursue (1) 8015:2 pursuit (1) 8010:6 put (15) 7875:7;7876:8; 7879:18;7889:2; 7896:16;7910:20; 7920:5;7941:2; 7967:1;7983:8; 7996:20;8005:11;</p>	<p>8010:24;8016:2; 8038:20 puts (2) 7998:22;8042:17 putting (2) 7894:2;7899:6</p> <p style="text-align: center;">Q</p> <p>Q4 (1) 7978:24 Q4-2012 (2) 7978:25;7979:6 qualify (1) 7880:18 quality (1) 7986:7 quantify (1) 7965:7 quantity (1) 7986:6 quarter (2) 7980:9;7999:13 quarterly (1) 7979:13 quick (2) 7934:9;8037:18 quickly (2) 7911:5;8007:11 quite (7) 7889:24;7916:11; 7961:8;8008:8; 8013:4;8022:20; 8026:3 quota (170) 7963:18;7994:2,5, 7,10,11,18,24; 7995:15,22;7996:2, 3,11,13,20;7997:21, 25;7998:1,9,13,15, 20,20;7999:1,1,2,3,4, 7,8,18;8000:18,23; 8001:9,24,25; 8002:9,10,11,17,18, 22,23;8003:4,6,8,10, 11,16,16,22,23; 8004:4,11,14,14,16, 17,22;8005:1,2,6,10, 14,18,19,21,23; 8006:11,12,13,17, 21;8007:22,24; 8008:3,16;8009:5; 8010:12,15;8012:24, 25;8013:8,9,11,12, 15,25;8014:6,12,15; 8015:5,16,21,24; 8016:7,19;8017:8, 18,20;8018:1,1,18, 19;8019:8,12,13,16; 8020:4,5,10,13,13, 19,20,25;8021:1,9,9; 8022:4,5,17,18; 8023:4;8024:7;</p>	<p>8025:4,5,6,17,17,18, 19,23,25;8026:6,6,8, 10,15;8027:12; 8029:6,7,13,15,18; 8030:6,11,21; 8031:6,8,10,10; 8032:6,7,17;8033:2, 18;8034:4,7,13,16, 17,21,25;8035:3,7; 8036:1,11,12,13 quota's (1) 8016:17 quoted (3) 7887:17;7989:13, 15 quotes (2) 7882:23;7933:24</p> <p style="text-align: center;">R</p> <p>raise (6) 7889:21;7959:2,8; 7972:6;7985:23; 7995:13 raised (2) 7875:14;7876:5 raises (1) 7994:7 raising (1) 7952:4 ran (1) 7988:13 ranch-to-plant (1) 7960:7 range (4) 7980:25;7981:4; 7998:19;7999:7 ranging (1) 7881:4 rank (6) 7931:15;7934:24; 7936:7;7938:20; 7943:12;7944:12 ranked (6) 7931:17,18,19; 7936:18;7941:2,10 ranking (3) 7931:9;7934:24; 7936:25 rankings (2) 7931:1;7935:2 ranks (2) 7930:20;7931:8 rapid (1) 7968:2 rarely (3) 7903:22;7904:4, 10 rata (1) 8032:9 rate (60) 7942:2,4;7996:21, 22,25;7997:5,8,14,</p>	<p>15,17;7999:24,25; 8000:15,17;8003:15, 17;8004:16; 8005:24;8007:4,5,7; 8019:9;8021:23; 8022:4,5,9,11,12,12, 15,18,25;8023:3; 8026:1;8031:16,19, 23,23;8032:2,8; 8033:15,17,19,20,22, 25;8034:1,2,3,4,11, 15,18,24,24; 8035:17;8036:11,11, 16;8037:11 rates (2) 7886:17;8022:16 rather (2) 7913:12;7948:2 rating (6) 8000:5,15,17; 8035:22,24;8036:2 rational (1) 7913:21 rationale (1) 8034:15 rationality (1) 7913:21 rBST (2) 7981:18;7986:10 reach (1) 7983:22 reached (1) 7959:24 reaches (1) 8026:2 read (27) 7872:24;7873:15, 18,25;7876:4; 7877:17,20;7886:8; 7895:10;7912:15; 7926:6,7,14; 7932:21;7938:16,21; 7940:5;7948:5; 7952:19;7955:8; 7959:22;7967:20; 7976:3,19,21; 7977:11;7978:20 reading (1) 7933:23 ready (6) 7910:2;7947:13; 7957:12;7990:13; 8011:22;8013:10 real (4) 7894:11;7928:6; 7943:22,22 realistic (1) 8046:3 realistically (1) 8045:17 realized (1) 7991:4 reallocation (2)</p>	<p>8004:15;8005:14 really (16) 7898:19;7904:17; 7950:8;7987:8; 7992:1,5;8005:12; 8007:14;8018:5; 8019:21;8020:15; 8029:12;8032:23; 8034:14;8035:1; 8046:5 reason (10) 7881:22;7888:18; 7893:18;7904:17; 7925:12;7948:6; 7952:24;7980:22; 7989:7;7994:13 reasonable (4) 7934:8;7947:10; 7978:8;8023:7 reasons (6) 7912:4,5;8006:12; 8045:13;8046:25; 8047:13 reblend (1) 8017:24 rebuttal (6) 7870:16;7915:15; 7958:9;7982:23; 7990:11;7991:21 recall (5) 7973:8;7991:4; 7997:20;8030:13,20 recalled (1) 7922:25 recap (1) 7982:5 receipt (1) 8028:9 receipts (2) 7968:7;8017:25 receive (6) 7971:12;7975:5; 8021:17;8030:11; 8032:12,13 received (11) 7883:8;7884:16; 7891:24;7947:21; 7964:6;7972:1; 7984:25;7985:5; 8002:12;8010:4; 8011:15 receives (1) 7987:2 receiving (7) 7988:15;8021:15, 16,18,20;8034:5,11 recent (13) 7886:5,15;7889:1; 7892:3,22;7901:12; 7939:5;7962:11,14; 7968:18;7977:6; 7996:23;8000:13 recently (6)</p>
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7886:4,15; 7966:18;7970:25; 8016:6,14 recess (2) 7957:13;8047:15 recognize (7) 7891:5;7948:14; 7950:22;7981:13; 8004:24;8016:19; 8017:25 recognized (1) 8029:13 recognizing (2) 7996:16;8017:8 recollection (1) 7956:13 reconstituted (4) 7874:13;7875:1; 7895:12,25 reconstitution (4) 7874:15,21,23; 7875:3 record (28) 7874:3;7875:10; 7894:16;7906:11; 7910:3,5;7911:6,8; 7920:25;7947:16; 7956:6;7958:2; 7963:10;7967:1; 7973:2;7984:2; 7987:1;7988:6,23; 7989:3;7990:19; 7991:18;8010:3; 8011:24;8012:6; 8040:18;8047:11,14 recovered (1) 8006:19 RE-CROSS-EXAMINATION (4) 7920:18;7921:22; 7922:11;7954:6 redirect (10) 7916:3,5;7920:16; 7953:17,19,21; 7989:23,25;7990:2; 8037:24 redistribute (1) 8017:25 reduce (2) 7917:25;8034:22 reduced (1) 8005:13 reduction (1) 8025:5 reductions (2) 7968:2;7973:18 refer (2) 7877:13;7950:2 reference (1) 7976:10 referenced (3) 7908:4;7931:6; 7952:22 references (2)	7940:25;7946:1 referred (4) 7876:23;7877:8; 7979:16;8014:20 refine (1) 7992:13 reflect (1) 8010:3 reflected (1) 7944:19 reflective (1) 7937:22 reflects (1) 8032:21 Reform (1) 7896:16 Reg (1) 7872:15 regard (6) 7928:18;7944:25; 7993:14;8008:24; 8009:4;8010:22 regarding (3) 7896:17;7899:24; 7945:17 Region (3) 7933:9,12,15 regional (11) 7876:7;7928:3,17; 7929:11;7932:24; 7999:1,2;8002:10, 11,22,23 regions (6) 7930:23;7932:7, 12;7933:2;7944:24; 7953:2 regular (5) 7925:4;8005:19, 23;8006:12,21 regularly (1) 7928:25 regulated (10) 7910:17;7911:20; 7912:19,25;7913:23, 24;7965:3;7967:19, 24;8000:9 regulation (2) 7907:14;7993:14 Regulatory (2) 7890:14;7960:8 reiterate (2) 7990:19;7993:9 rejected (1) 7873:6 relate (1) 7908:23 related (4) 7879:23;7932:3; 7934:21;7955:22 relates (1) 7963:7 relating (2) 7877:13;7981:14	relation (1) 7894:22 Relations (2) 7960:3;7961:23 relationship (1) 7962:4 relative (8) 7892:11,14,22; 7933:21;7934:3; 7935:24;7936:8; 7998:8 relatively (4) 7890:20,23; 7892:25;8038:18 relativity (1) 7975:19 relevant (10) 7883:13,22; 7893:25;7903:10; 7928:11;7933:15; 7934:4;7950:4,9; 7989:8 relied (3) 7873:3;7928:20; 7930:24 rely (3) 7929:5,20; 8045:24 relying (1) 7975:23 remain (5) 7870:7;7924:3; 7944:25;7993:5; 8031:20 remainder (1) 7933:14 remaining (2) 8025:15,23 remains (1) 7902:1 remember (11) 7919:22;7940:9; 7955:6,9,25;7956:4; 8005:24,25;8007:19, 20;8023:25 rent (12) 7931:25,25; 7936:24;7938:13; 7943:14,18,19,21, 23;7944:6,7;7945:1 rental (2) 7932:8;7943:24 renting (1) 7943:20 rents (1) 7935:4 re-packaged (1) 7948:4 repeat (6) 7875:9;7987:15; 7992:3;8012:4; 8018:3;8022:1 repeated (1)	8001:14 repeatedly (1) 7982:20 replace (1) 7921:12 replied (1) 7969:9 reply (2) 8040:14,25 repooling (4) 7896:17;7898:7; 7904:13;7922:4 Report (6) 7875:20;7885:1,8, 16;7914:16;7998:22 reportable (1) 7882:21 reported (5) 7881:6;7882:15; 7888:4;7915:24; 7916:22 reporter (3) 7926:8;7976:18; 8043:20 reporting (6) 7898:5;7900:25; 7901:1;7905:23; 7979:20,21 reports (3) 7896:23;7928:24; 7939:2 represent (8) 7907:5,7;7908:25; 7942:6,11;7965:20; 7983:9,21 representatives (1) 7968:19 represented (4) 7870:24;7871:11; 7891:12;7965:7 representing (3) 7886:18;7980:10; 8021:24 represents (7) 7908:7;7965:25; 7967:10;7974:7; 7979:19;8003:21; 8021:1 reproduced (1) 7948:4 request (6) 7890:14;8014:4; 8042:5,6,9,15 requested (2) 7990:17,22 requesting (1) 8042:12 require (1) 7992:16 required (1) 8016:8 requirements (1) 8008:20	re-read (1) 7871:8 research (4) 7929:15,16; 7930:10;7975:11 resolve (1) 7876:19 resolved (4) 7955:13,22; 7956:1,2 resource (1) 7930:9 respect (13) 7878:9;7891:13; 7916:9;7917:3; 7918:17,20;7920:13; 7930:23;7955:17; 8008:17;8014:15; 8015:21;8040:14 respectively (1) 7972:21 respond (2) 7927:7;7995:4 responding (2) 7992:25;8009:15 Response (6) 7870:18;7962:12; 7993:8;8004:12; 8006:4;8009:16 responsibilities (1) 7960:21 responsible (1) 8047:8 Rest (4) 7926:19,25; 7927:11;7945:5 restaurant (1) 7957:9 restrictions (3) 7896:17;7904:12; 7922:4 result (15) 7874:16;7887:23; 7888:13,15,15,19, 20;7894:18; 7910:18;7918:14; 7932:8;7940:14; 7971:3;7982:3; 8045:9 resulted (1) 8007:10 resulting (3) 7974:16,22; 7977:10 results (4) 7886:6;7887:13; 7967:18,24 resume (1) 7901:10 retail (1) 7928:6 retain (1) 7968:1
--	---	---	---	--

<p>retained (2) 7927:3;7963:19</p> <p>retention (1) 7927:24</p> <p>retire (1) 8023:4</p> <p>retired (1) 8020:13</p> <p>return (33) 7940:23;7941:1,8; 7944:4;7948:10; 7967:16;7973:20; 7987:8,9,16;7997:1, 2,4,19;8021:24; 8022:4,5,9,12,13,16, 18,25;8023:3; 8033:24;8034:15,18, 24;8036:11,11; 8041:6,8,15</p> <p>returned (1) 7927:21</p> <p>reveal (1) 7938:13</p> <p>revealed (1) 7989:3</p> <p>revenue (3) 7942:3;7978:3,4</p> <p>revenues (1) 7942:5</p> <p>reverse (1) 7874:16</p> <p>reversed (1) 7972:4</p> <p>revert (1) 8020:4</p> <p>review (16) 7876:16;7889:23; 7929:7,8,21;7930:5; 7931:3,6;7933:25; 7934:13;7936:15; 7942:14,20;7945:18; 7947:24;7978:23</p> <p>reviewed (1) 7875:5</p> <p>rid (1) 8024:7</p> <p>right (71) 7874:6;7875:10, 13;7877:3,14,16; 7878:13;7880:22; 7887:4;7890:2; 7891:18;7894:25; 7902:17;7907:24; 7908:19;7909:21; 7910:7;7911:1,16, 18;7917:1;7918:2; 7922:1,8;7947:12; 7951:12,15;7953:13; 7956:3,12;7957:1,6; 7958:14;7959:8; 7975:6;7979:23; 7984:19;7986:2; 7987:22;7988:11,19;</p>	<p>7990:13,16;7995:15; 7997:24;8011:1,4,8; 8015:1,17;8017:6,7, 24;8019:18; 8023:25;8026:18; 8028:22;8030:19; 8031:3,11;8033:4, 13;8038:1,13; 8041:18;8043:10; 8044:18,23;8046:9; 8047:10,14</p> <p>rise (1) 7955:16</p> <p>rises (1) 7912:20</p> <p>rising (1) 8035:6</p> <p>risk (12) 7929:12,13,15; 8020:2;8034:17; 8035:9,17,19,22,23; 8036:1,16</p> <p>roles (1) 7960:6</p> <p>Roman (3) 7870:15,17; 7873:24</p> <p>room (2) 7913:24;7957:8</p> <p>roughly (3) 7966:2,21; 8019:13</p> <p>round (1) 8019:13</p> <p>rounded (1) 8030:4</p> <p>rule (4) 7992:11,18; 8042:4;8043:4</p> <p>ruled (1) 7874:20</p> <p>Rules (3) 7990:22;7991:19; 8039:10</p> <p>ruling (2) 8042:12;8043:4</p> <p>run (2) 8001:1;8009:10</p> <p>running (1) 8020:2</p> <p>runs (1) 7995:19</p> <p>rural (5) 7937:21;7949:23; 7951:20;7954:1,13</p> <p>Russia (1) 7926:2</p> <p>Ryan (3) 7910:6;7920:17; 8035:15</p>	<p>sale (1) 7970:13</p> <p>Sales (12) 7875:20;7879:10, 12,23;7881:23; 7882:1;7883:17; 7885:9;7914:4; 7915:24;7960:7; 7982:9</p> <p>same (43) 7871:3;7873:16; 7874:22;7881:13; 7882:15;7887:23; 7888:4;7895:17; 7900:20;7908:5,10, 16;7920:13;7922:18, 21;7925:15; 7936:14;7951:17; 7963:19;7964:23; 7972:18;7973:15; 7976:16;7980:8,8; 7981:18;8019:9; 8020:14;8021:16,18, 20;8025:19,21,25; 8026:3,3;8027:20; 8028:2,15;8029:6,6; 8032:22;8039:8</p> <p>San (23) 7933:9,13,17; 7934:5,11,15; 7935:20;7938:2,13, 14,17;7940:2; 7941:12,22,23; 7942:25;7943:7,11, 16;7944:6,22; 7953:5;7954:2</p> <p>Saputo (3) 7871:23,23; 7973:25</p> <p>saw (2) 8014:10;8016:15</p> <p>saying (12) 7887:4;7888:8,8; 7892:7;8000:3; 8005:20,22;8017:9; 8022:11,22;8024:4; 8025:12</p> <p>scale (3) 7965:22;7966:5; 8026:20</p> <p>scan (1) 7955:24</p> <p>scanned (2) 7955:20,20</p> <p>scattered (1) 7979:11</p> <p>scenario (1) 8043:25</p> <p>Schad (64) 7870:6,7,9,9,14; 7871:2,5;7873:18; 7874:4,8;7875:12, 14,18,20;7876:4,24,</p>	<p>25;7877:1,7,11,15, 22,23;7878:3,21; 7880:24;7881:1; 7883:2;7884:17,21; 7886:10;7889:23,24; 7890:13,16,18,21,23, 24,25;7891:4,19; 7901:13,18,20,21; 7904:22,24;7907:25; 7908:1;7910:10; 7916:2,7;7917:19; 7919:23;7920:4,15; 7922:24,25;7923:2, 5,7,7,11</p> <p>S-C-H-A-D (1) 7870:10</p> <p>schedule (5) 7957:5;8003:3; 8025:8;8042:2; 8045:4</p> <p>schedules (1) 7963:11</p> <p>scheme (1) 7895:13</p> <p>Schiek (37) 7968:16;7972:19; 7973:8,24;7974:1; 7980:23;7990:17; 7991:8,11,24; 7992:20;7993:3,5,7, 7;7995:21;7996:6,8; 8009:20;8010:14,17, 23,25;8011:2,3,25; 8013:23,25;8018:15, 16;8027:6;8029:25; 8035:16;8036:9; 8037:21,24;8038:1</p> <p>S-C-H-I-E-K (1) 7993:7</p> <p>Schiek's (4) 7972:22;7973:14; 7975:19;7991:2</p> <p>Science (1) 7960:17</p> <p>scope (1) 7990:23</p> <p>seasonal (1) 8005:3</p> <p>seated (1) 7959:7</p> <p>second (18) 7882:1;7885:21; 7909:9,23;7915:4,8, 11;7931:15; 7932:10;7948:1; 7958:11;7962:5; 7973:17;8003:9; 8006:16,23;8012:23; 8016:22</p> <p>Secretary (12) 7872:21;7873:3,6; 7874:20;7876:14; 7894:8;7924:22;</p>	<p>7925:1;7927:21; 7928:21;7929:23; 7954:21</p> <p>Secretary's (1) 7894:24</p> <p>Section (17) 7870:22,23; 7871:12,15;7872:1; 7873:24;7876:16; 7877:4,8,9;7896:2, 13;7908:4;7930:17; 7938:8;7944:16; 8001:8</p> <p>sections (1) 7933:3</p> <p>Security (1) 7960:13</p> <p>seeing (3) 7897:2;7946:25; 7947:1</p> <p>seem (1) 7986:16</p> <p>seemed (1) 7991:12</p> <p>seems (3) 7939:15;8014:25, 25</p> <p>segment (2) 7979:22;7986:17</p> <p>segmentation (1) 7980:10</p> <p>Select (2) 7920:17;8035:15</p> <p>Selected (4) 7972:25;7975:19, 22;7981:1</p> <p>sell (4) 7913:11;7987:12, 18;8031:10</p> <p>seller (3) 7913:6,14,18</p> <p>selling (2) 7987:22;8032:7</p> <p>sells (1) 7987:3</p> <p>sense (2) 7905:25;8046:2</p> <p>sent (1) 7971:10</p> <p>sentence (14) 7871:9;7876:4; 7877:18,19;7885:22; 7886:10;7922:15; 7932:22,23;7967:5; 7970:7,8;7972:12; 7977:3</p> <p>separate (1) 7941:9</p> <p>September (5) 7890:7;7897:18; 7900:13;7915:19; 7992:7</p> <p>series (3)</p>
	S			

7893:14;7932:16; 8006:24 serve (2) 7927:21;8047:6 served (4) 7924:22;7927:15, 19;7960:10 service (12) 7913:14,15,16,20; 7925:1;7927:16,20, 25;7929:17; 7945:19;7975:11; 8042:11 services (3) 7913:3,4;7929:16 SESSION (1) 7958:1 sessions (1) 7961:16 set (18) 7886:6,16;7889:1; 7964:9;7974:19; 7975:1;7992:16; 8004:21;8016:8; 8017:17;8022:23; 8025:8,13,24; 8031:22,22;8042:4; 8044:15 sets (1) 7907:14 setting (2) 8030:17;8040:17 seven (1) 7896:15 seven-page (1) 7890:19 several (8) 7952:15;7962:1; 7965:6,7;7977:5; 7982:14;7985:14; 8016:18 severance (1) 7942:7 shading (2) 7955:8,15 shall (1) 7875:4 share (5) 7932:15;7940:12, 17;7982:11;8032:9 shed (1) 7917:22 sheds (1) 7961:2 Shelf (2) 7871:19;7981:8 ship (3) 7969:18;7971:1; 8028:9 shipments (1) 7972:8 shipped (2) 7969:3;7970:16	Shippelhouse (1) 7969:16 shipping (1) 8008:19 shocked (2) 8040:10,11 short (1) 7941:15 shortened (1) 7993:22 shortest (2) 7880:8,11 shortly (1) 8014:17 show (13) 7875:10;7897:4; 7900:2,9,14; 7903:12;7911:6; 7917:25;7953:23; 7968:7;7973:22; 7975:18;7996:19 showed (3) 7917:5,6;7968:6 showing (3) 7883:15;7964:4; 7991:22 shown (4) 7944:20;7954:2; 7979:6;8007:11 shows (7) 7920:6;7963:1; 7964:5;7965:16; 7975:24;7988:23; 8001:2 shrink (2) 7981:8,20 Shrinkage (7) 7870:19,23; 7871:20;7872:1,3,9; 7876:15 shut (1) 7974:20 shutdown (1) 7974:16 side (6) 7950:7;7951:19; 8010:24;8027:11; 8029:7,7 signal (1) 8042:19 signals (1) 7974:12 signature (1) 7891:6 significance (1) 7884:9 significant (6) 7894:19,21; 7896:22;7897:2; 7915:23;7939:18 significantly (2) 7915:7;7972:16 silence (1)	7935:14 similar (7) 7882:8,12; 7955:13;7977:24; 7978:1;7998:23; 8024:23 Similarities (2) 7872:11,13 simple (1) 7983:23 simplicity (1) 7941:10 simply (2) 7981:5;8005:2 simulation (1) 8001:18 sit (1) 8013:2 sites (1) 7976:19 situation (5) 7969:24;7970:11; 7972:7;7982:8; 7994:20 six (7) 7871:22;7908:6, 25;7915:6;7941:12; 7943:1,11 sixth (1) 7941:14 size (2) 7880:18;7998:8 skimmed (1) 7909:20 skip (2) 7871:4,8 Skype (1) 7984:14 slash (1) 7976:24 sliding (1) 8026:20 slightly (1) 8001:15 slipping (1) 8024:4 slow (2) 7871:4;7935:11 slowdown (2) 7962:11,15 slowed (1) 7970:25 slower (1) 7974:4 slowing (1) 7974:4 slowly (1) 7926:7 small (6) 7895:13;7900:13; 7939:15;7953:7,12, 21 smaller (2)	7953:10;7981:10 SNF (8) 7964:13;7965:19; 8002:17,18;8003:25; 8004:1,1;8005:2 So-called (1) 7895:18 software (2) 7929:16;7940:22 sold (9) 7906:14,17; 7907:5,16;7914:17; 7916:14;8030:22,22; 8031:6 solely (1) 7905:12 solemnly (1) 7959:9 solid (1) 8036:18 solids (9) 7964:14;8001:9,9, 10,10;8021:1,2; 8025:22;8026:9 solved (1) 7955:25 somebody (2) 7898:11;8005:17 somebody's (1) 7906:3 somehow (3) 7955:15;7984:11; 8025:6 someone (6) 7902:6;7971:13; 7983:25;7985:7; 8034:1;8039:9 sometimes (2) 7871:3;7887:16 somewhat (3) 7991:13;8001:16; 8044:23 somewhere (5) 8013:2;8019:14; 8021:5,6;8025:6 soon (3) 7993:4;8040:24; 8043:24 soonest (1) 8041:21 soon-to-open (1) 7968:12 sorry (22) 7871:13;7878:17; 7881:12,12;7886:11; 7889:12;7890:21; 7899:3;7901:1,21, 22;7908:9;7912:13, 15,15;7938:15; 7949:3;7950:17,18; 7996:8;8018:15; 8026:17 sort (20)	7911:13;7925:15; 7947:3;7991:19; 7993:22;7994:7,16; 8002:21;8003:3,25; 8007:12;8012:11; 8016:17;8019:5; 8022:19;8025:3; 8033:21;8036:12; 8045:25;8046:9 sound (1) 7988:19 sounds (2) 7947:10;8023:7 source (4) 7936:14;7948:7; 7977:9;8010:10 sources (1) 7925:18 sourcing (2) 7960:7;7968:24 South (10) 7893:19;7894:18; 7908:6;7931:9,19; 7933:12;7936:5; 7949:12;7959:20; 7979:24 southern (4) 7952:16;7953:4; 7961:3;7979:24 Southwest (2) 7922:1,3 space (1) 7943:20 spatial (2) 7981:11,22 speak (1) 8043:17 speaking (4) 7906:4;8005:22; 8027:10;8044:14 specific (12) 7929:19;7933:20; 7935:8;7938:9,11; 7940:21;7952:10; 7992:12;8034:21; 8035:24;8044:3,4 specifically (8) 7914:4;7928:21; 7932:4;7936:2; 7949:9;7955:9; 7963:11;8008:18 specifics (2) 8047:4,5 specify (1) 8015:14 spell (4) 7870:7;7924:4; 7959:12;7993:6 spelled (1) 7959:13 spelling (1) 7976:4 spend (2)
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7906:6;7961:1 spending (1) 8043:24 spent (1) 7960:14 spill-over (1) 8008:3 spite (1) 7975:12 spoke (2) 7917:10;7964:24 sports (1) 7928:7 spot (1) 7968:11 spreadsheet (1) 7995:18 spring (2) 7969:4,20 square (1) 7943:24 stabilization (2) 8023:20;8024:5 stand (4) 7870:6;7901:4; 7992:20;8005:15 standard (3) 7882:21;7964:13; 7965:18 standardization (1) 7944:1 standardizes (1) 7943:24 standards (1) 8008:18 standing (2) 8009:24;8010:5 standpoint (1) 7998:9 stands (3) 7969:25;7975:10; 8038:19 Stanislaus (1) 7933:13 stark (1) 7981:6 start (16) 7875:21;7884:18; 7911:2;7926:11; 7928:14;7938:17; 7948:25;7970:7,8; 7972:12;7977:25; 8001:3;8010:2; 8016:21;8018:9,13 started (6) 7903:18;7969:16; 7989:14;8015:4,13; 8017:9 starting (3) 7912:6;7997:15; 8030:1 starts (1) 7877:19	state (66) 7870:7;7871:16; 7873:7;7893:19; 7908:24;7909:9,13, 14;7916:14;7924:4, 23;7925:10,13; 7928:3,9,10;7929:4, 4;7931:17,18,19,21, 24,25;7932:6,7,17, 17,18,25;7933:10, 19,19;7935:3,22; 7936:23;7938:12; 7940:20;7942:1,3, 17,19,23;7943:1,3,7; 7944:18;7945:1; 7950:7;7951:18,20; 7952:3;7953:4,8; 7954:25;7959:12; 7960:18;7969:19; 7973:3,17;7974:10; 7979:22;7980:10; 7981:5;7993:6; 8035:3 stated (4) 7874:17;7885:5; 7901:14;7909:2 statement (9) 7885:5,8;7890:19; 7908:23;7968:20; 7982:1;7986:2; 7992:24;7999:22 statements (4) 7882:23;7901:23; 7912:6;8007:13 States (30) 7885:7;7894:17; 7895:4;7908:6,25; 7917:13;7926:16; 7927:16;7929:1; 7930:20;7931:1,16, 22;7932:2;7936:4; 7937:8;7940:11; 7941:16;7943:9; 7949:11;7970:14; 7972:17;7973:1; 7974:3;7975:17,19, 22;7978:9,12,13 state's (1) 7973:14 state-specific (1) 7940:19 statewide (14) 7927:23;7928:18; 7930:18,21,23; 7932:16;7950:2,5; 7951:9;7963:3,3,4; 7964:22;8002:21 statistical (1) 8001:5 Statistics (4) 7884:4,7;8001:8, 12 statutory (1)	8023:17 stayed (2) 8019:12;8020:14 staying (1) 7893:18 step (2) 7956:23;7957:1 Stephenson (1) 7909:17 steps (2) 8014:22;8016:18 still (16) 7870:2;7889:21; 7896:23;7897:2,23, 24,24;7898:2,2; 7910:10,10;7922:17; 7995:13;8028:1; 8033:2;8042:12 stock (2) 8032:19,20 Stockton (1) 7934:17 stop (5) 7873:15;7901:8; 7908:19;7932:10; 7979:8 stopped (2) 7935:13;7947:22 storage (2) 7881:17,19 straight (1) 7997:18 straitjacket (1) 7992:10 strategic (1) 7927:2 strategy (3) 7932:15;7933:6; 7960:7 stream (4) 7998:16;8032:20, 22,23 Street (1) 7959:20 strike (9) 7875:25;7876:8; 7877:17,21,25; 7910:16;7921:12; 7956:9;8018:19 striking (1) 7921:18 struck (1) 7872:13 structure (2) 7940:16;8024:22 studied (1) 7990:7 studies (7) 7889:1;7925:18, 19;7928:25;7952:22, 25;7954:24 study (16) 7870:24;7871:10,	20;7872:7;7885:10; 7886:6,16;7887:5; 7888:3;7896:20; 7909:22;7946:14; 7954:18,19;8014:21; 8034:16 sub (1) 7936:13 subcomponents (1) 7935:3 sub-economies (1) 7932:19 subheading (1) 7980:21 subject (8) 7871:25;7924:19; 7925:16;8009:24,25; 8010:4;8025:24; 8040:9 submit (2) 8041:22;8042:8 submitted (1) 7956:10 subregions (1) 7932:18 subscription (1) 7945:19 subscriptions (1) 7948:13 subsection (1) 7916:13 subsequent (1) 7896:20 subsequently (1) 7954:22 subsidize (2) 7913:16;7981:11 substantial (1) 7919:2 substantially (1) 7998:4 subtract (2) 7987:6;8003:11 subtracted (1) 7999:3 subtracting (2) 7980:14;7986:13 subtracts (1) 8003:7 suburban (1) 7937:17 successes (1) 7952:11 Suever (1) 7870:21 sufficient (1) 7947:5 suggest (3) 7966:18;7974:25; 7975:12 suggested (4) 7973:24,25; 7974:2;8034:16	suggestion (1) 8036:25 suggests (2) 7977:7;8019:9 sum (2) 8000:24;8032:13 Summary (3) 7884:4;7982:4,5 sunset (5) 7994:7,13; 8017:18;8018:4; 8020:9 sunsetting (2) 7998:1;8019:19 supplement (2) 7975:3;7992:13 suppliers (4) 7907:20;7971:5,7; 7972:2 suppliers/producers (1) 7967:16 supplies (1) 7897:3 supply (14) 7962:6;7968:3,4, 18,22;7969:11,12, 17,24;7970:11,15; 7972:7;7982:8; 8008:20 support (5) 7870:21;7958:10, 12,23;7961:20 supported (3) 7889:2,4,9 supports (1) 7981:7 Suppose (2) 8023:2;8028:12 supposed (2) 7978:14;7983:21 sure (44) 7875:19;7894:21; 7895:5;7897:25,25; 7899:21;7902:24; 7903:3,4;7909:20; 7922:15;7926:7; 7945:25;7946:5; 7955:7;7956:11,14; 7960:1;7961:1; 7963:1;7964:4,20; 7967:21,23;7973:7, 22;7977:5;7979:11; 7986:1,8;7989:14; 8007:17;8015:15; 8022:20;8026:13; 8034:8;8035:21; 8039:8,14,15,20; 8045:19,19;8046:6 surplus (1) 7909:13 surprise (1) 7985:11 surrebuttal (2)
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8040:7,12 surrounding (1) 7991:2 survey (7) 7876:7;7879:25; 7885:24;7886:17; 7887:13;7896:20; 7979:14 surveys (3) 7881:25;7889:5; 7928:24 suspend (1) 7994:17 suspended (1) 7876:18 suspension (3) 8023:18;8024:6,9 swear (2) 7959:7,9 sworn (4) 7870:7;7923:23; 7924:3;7993:5 system (14) 7873:13,16,17,20; 7884:24;7919:11; 7920:13;7927:19; 7940:19,20;8004:14; 8020:14;8035:4,7	7977:25;7989:10; 8008:23;8020:25; 8034:5;8037:1; 8041:2 talking (16) 7887:2;7895:20; 7905:6,7,24;7911:7; 7921:17;7949:1; 7986:18,19;7997:18; 8016:23;8027:11; 8040:16;8041:16; 8046:6 talks (2) 7890:24;7911:6 target (1) 8043:7 tasked (1) 8046:25 tax (16) 7935:4;7936:23; 7938:12;7942:1,2,3, 4,6,13,18,19;7943:1, 3,7;7945:1;7952:3 taxes (6) 7931:24;7932:7; 7942:6,8,8,24 team (9) 7929:9;8026:24; 8042:16;8043:2,2,3; 8045:22,22;8047:6 teams' (1) 8047:8 technical (1) 7991:25 technologically (1) 7984:9 technologies (1) 7984:14 Technology (6) 7924:22;7927:22; 7928:6,21;7929:23; 7984:13 telling (1) 7949:17 ten (11) 7913:19;7941:11; 7942:16,22;7943:2, 10;7944:5,7; 7958:10;7989:13; 8037:5 tenth (1) 8028:20 ten-year (2) 7928:21;8031:2 term (1) 7954:21 terminate (1) 7994:17 terminated (1) 7889:6 terms (12) 7944:3;7950:16; 7952:6;7998:7,9;	8003:24;8006:7,8; 8008:4;8027:13; 8035:21;8044:15 test (8) 7878:19;8001:10; 8004:1,1;8028:16, 17,18,19 testified (15) 7871:1,6,18; 7872:17;7893:25; 7909:17;7928:8; 7959:5;7960:19; 7977:5;7982:20; 7991:11;8005:18; 8007:12;8038:25 testify (4) 7870:21;7886:19; 7961:20;7990:6 testifying (3) 7930:25;7945:22; 8039:3 testimony (119) 7870:16;7873:5; 7876:22;7883:17; 7885:19;7887:12,14, 17,17;7890:16,18; 7891:9;7894:12; 7898:18;7901:14; 7903:17;7905:1,8; 7909:19;7911:23; 7912:16;7914:3; 7917:11;7918:13; 7920:20;7921:5,10; 7922:14,22;7923:4, 15,24;7924:18,21; 7926:1,5,16; 7930:16;7931:20; 7933:14;7935:7; 7945:6;7946:3; 7949:2,3;7952:15, 19;7956:25;7958:9, 13,17,23;7959:23; 7961:14;7962:1; 7963:13;7964:19; 7966:17,21;7967:4, 5,22;7968:5; 7969:22;7970:9,20; 7971:9;7973:2,6,14, 21,24;7974:1; 7975:13,21;7976:1; 7977:25;7978:2,20, 21;7979:1,16; 7980:20;7982:24; 7983:11;7986:24; 7988:6;7989:1,6,13; 7990:10,17,20,22, 25;7991:2,9,23; 7996:1,3;7997:9; 8000:19,22;8004:9; 8005:16;8006:5; 8010:19;8014:19; 8015:24;8016:1; 8017:9;8027:8;	8030:9,13,20; 8037:1;8038:16,17, 20 Texas (6) 7884:23,24; 7885:4;7936:6; 7949:13;7970:17 thanks (1) 7957:2 themes (1) 7982:6 then-contracted (1) 7972:1 theory (1) 7975:5 Thereafter (14) 7883:7;7884:15; 7889:19;7891:23; 7923:21;7947:20; 7957:5;7958:20,24; 7984:24;7985:4; 7995:11;8011:14; 8014:18 therefore (6) 7871:25;7875:2; 7939:15;7957:10; 8011:18;8045:25 thinking (10) 7950:17;7993:10, 10;7996:17; 8006:10;8008:18; 8027:13;8041:2; 8044:17;8046:24 third (11) 7882:1;7921:5,17; 7934:20;7941:2,4,6; 7962:7;7994:22,23; 8046:4 though (7) 7936:25;7961:5; 7991:16;7998:11; 8019:11;8030:25; 8032:25 thought (17) 7881:8;7891:14; 7903:9;7955:19,21; 7956:2;7991:3,7; 7996:14;7997:6,24; 8001:17;8034:3; 8043:6,9;8044:19; 8046:19 thread (1) 7929:4 three (15) 7877:19;7879:17; 7890:4;7915:17; 7932:1;7944:7; 7950:21;7962:4; 7963:2;8013:10; 8022:24,25;8023:6; 8041:7;8043:12 three-digit (1) 7940:8	three-generation (1) 7928:1 Thrilled (1) 7935:12 throughout (5) 7885:7;7928:12, 16;7930:13;7977:13 throwing (1) 8040:25 thrown (1) 8022:7 Thus (1) 7874:23 tied (1) 7913:2 til (1) 8046:19 timeframe (3) 7903:25;7963:15; 7974:6 timeframes (4) 8041:1;8042:4; 8044:15,20 times (6) 7918:6;7928:8; 8002:6;8022:24,25; 8023:6 title (4) 7879:17,21; 7926:23;8040:21 today (21) 7886:12;7890:9; 7912:23;7956:25; 7957:10;7958:4; 7966:20;7990:6,10, 14;8005:6;8017:9; 8030:7;8031:6,7,14; 8033:7,12;8038:4; 8043:21;8045:9 today's (3) 8031:10,17,17 together (4) 7879:18;7956:9; 7996:20;8014:21 told (2) 7896:6;7999:24 tomorrow (13) 7890:11;7990:12; 7991:22;8038:14,15; 8040:3,10,12; 8042:2;8046:20; 8047:10,11,13 tonight (1) 8039:19 took (7) 7872:21;7941:1,2; 7946:22;7955:4; 7999:2;8018:18 tools (1) 7929:13 top (24) 7908:15,16; 7936:2,17;7940:24;
T				
Table (44) 7872:2;7911:7; 7930:25;7931:4,8, 12;7932:3;7934:5,9, 14;7935:19;7936:1, 11,12,22;7937:5,24; 7938:1,21;7940:1,3, 3,23;7941:1,1; 7942:16,18,22; 7943:6,15,18; 7944:4;7949:8; 7951:8;7953:24,25; 7972:19,19;8000:21, 22,22;8001:12; 8003:6;8018:11 tables (2) 7917:4;7984:3 tale (1) 7915:3 talk (18) 7907:3;7935:13, 14;7952:21; 7960:23;7961:6; 8003:18;8005:11; 8008:13;8016:19; 8018:11;8023:18; 8026:6;8040:2; 8042:18,22,23; 8046:20 talked (11) 7910:20;7937:3; 7952:3;7973:8;				

7941:12;7942:5,16, 22;7943:1,10; 7944:5,7;7949:10, 14;7953:9;7962:10; 7977:23;7995:21; 8000:15;8003:6; 8005:11;8010:9; 8021:3 topic (6) 7922:25;7923:1; 7953:21;8010:6; 8012:5;8037:24 topics (1) 7962:4 Torto (1) 7943:21 Total (19) 7872:3;7899:1; 7900:18;7901:16; 7940:6;7942:2,3; 7944:13;7975:18; 7995:22;7996:2; 7999:5,17;8000:22; 8001:9;8003:6,25; 8010:12;8021:2 totality (1) 8026:6 touch (1) 7960:22 Touche (1) 7960:16 tourism (1) 7928:7 toward (3) 7993:24;7994:4; 8012:15 towards (1) 7974:14 tradable (1) 7997:13 Trade (9) 7924:22;7927:22; 7928:8,21;7929:23; 7993:13;7998:18; 8017:12,16 traded (2) 8006:13;8030:6 trading (3) 8030:10;8031:6; 8034:24 transactions (1) 7882:2 transcribe (1) 8043:25 transcribed (1) 8044:9 transcript (18) 7891:9;8040:21; 8041:4,9,17,23; 8042:13;8043:1,5,7, 19,22;8044:5,9; 8045:18,20;8047:1,9 transcription (1)	7922:22 transcripts (8) 7891:7;8040:24; 8041:6,10,20; 8044:1,1,21 transcript's (1) 8046:10 transfers (1) 7942:9 translate (1) 8003:13 transportation (5) 7880:16;7913:10, 12;7928:7;7960:8 treated (2) 8006:11,21 Tremaine (1) 8045:11 trend (1) 8031:2 trended (1) 8030:25 trends (1) 7928:4 trial (1) 8045:14 tried (5) 7900:9;7917:11; 7937:8;7949:18,19 tries (1) 7952:7 Triple (2) 8000:5,15 trouble (1) 7968:23 truck (1) 7880:23 true (14) 7884:12;7885:14; 7904:5;7906:5; 7915:12,13;7951:17; 7954:13;7987:20; 7988:14;7989:20; 8009:12;8021:13; 8033:11 truly (1) 8044:7 trust (2) 7922:21;7960:13 trusted (1) 7929:20 trusting (1) 7990:11 truth (3) 7959:10;7989:12; 8023:9 try (4) 7898:14;7911:4; 7947:6;8038:3 trying (18) 7887:21;7898:18; 7899:13;7900:9,24; 7903:8,12;7909:21;	7913:18;7951:5; 7969:12;7975:18; 7981:3;7987:1; 7992:19;7997:17; 8025:16;8026:17 TUESDAY (2) 7958:1;7997:21 Tulare (3) 7933:14;7959:20; 7988:2 Turlock (1) 7969:8 turn (20) 7885:19;7892:13; 7920:22;7926:15,23; 7931:4;7932:19; 7933:1;7934:9; 7936:11;7937:24,25; 7940:3;7942:18; 7950:5;7962:23; 7964:1;7968:19; 7986:24;8039:7 turned (1) 7956:12 turning (5) 7903:17;7905:1; 7934:2;7942:16; 7943:18 twelve (2) 7890:17;7915:2 Twin (3) 7950:16,16,17 two (27) 7878:19;7888:9; 7889:4;7890:12; 7891:6;7895:1; 7915:3;7950:20,20; 7951:10,10;7958:8; 7971:6;7972:6; 7983:7;7984:3,3; 7985:22;7991:18; 7999:13;8027:16; 8028:15;8029:6; 8041:7;8043:1; 8046:25;8047:4 type (5) 7954:17;7972:4; 7976:19;7997:12; 7998:24 types (3) 7925:14,17; 7940:10 typically (3) 7966:12;8022:16; 8033:20	unable (2) 7945:21;7969:4 unanimous (1) 7975:13 unbiased (1) 7954:25 uncertainty (2) 8034:22;8036:13 under (33) 7872:9;7887:11; 7903:19;7913:9; 7914:17;7919:1; 7925:9;7948:18; 7950:4;7952:9; 7959:9;7967:13; 7987:14;8001:7; 8008:12;8018:20; 8019:15,17,19; 8020:10,18,20,20; 8021:19;8024:13; 8025:13;8026:5; 8027:8,16,25; 8028:13;8031:12; 8035:3 underlies (1) 7977:8 underlying (1) 7946:5 underscore (1) 7980:24 understood (7) 7994:24;8012:14, 18;8013:14;8016:8; 8017:10;8040:16 unemployment (1) 7942:9 unfairly (1) 7955:17 Unfortunately (1) 7896:8 uniform (26) 7873:12,20; 7930:18;7940:20; 7993:12,12,24; 7994:4,6;7998:24; 8009:3,4;8012:15, 16;8017:11,15,19; 8018:7;8027:13,24; 8028:1,5,7,11,23; 8029:1 uniformity (12) 7874:25;8027:6,7, 7,9,10;8028:4,11,24; 8029:11,14,18 unique (2) 7927:14;7929:12 unit (17) 7931:23;7935:3; 7936:23;7938:12; 7939:19;7940:3,5,6, 7,14,18;7941:6,7,11, 16,20;7945:1 United (6)	7885:7;7927:16; 7929:1;7931:22; 7940:11;7943:9 universe (1) 7944:13 University (2) 7884:24;7960:18 unless (2) 8039:9;8042:12 unnecessarily (1) 7947:9 unnecessary (1) 7956:13 unreasonable (1) 8042:15 up (52) 7873:23;7877:5, 19;7883:15;7894:7, 8,12;7895:2;7902:7; 7907:21;7909:21; 7910:1;7912:25; 7921:17,24;7922:13; 7924:13;7932:6; 7935:16;7938:10; 7939:9,21;7943:14; 7945:22,24;7965:3; 7969:12;7979:22; 7991:22;7992:12,19; 7999:4,15;8002:17; 8004:1;8016:1,7,10, 12;8018:24; 8022:17;8025:8,13, 24;8030:22,23; 8031:22,23;8040:6; 8045:12,13,19 upcharges (1) 7882:2 updated (7) 7929:8;7931:7; 7934:1,13;7936:15; 7942:15,21 upon (20) 7893:14;7894:17; 7907:20;7928:19,20; 7929:5,20;7930:24; 7933:8,15;7936:6,8; 7939:18;7949:1; 7988:19;7999:19; 8015:10;8042:9; 8045:2,3 Upper (1) 7952:18 up-to-date (1) 7888:23 upward (3) 7911:21;8030:25; 8031:2 urban (1) 7951:21 urgency (3) 7895:7;8044:25; 8045:2 URL (3)
			U	
			ultimately (4) 7898:4;7907:18; 7975:4;8006:24 Ultra-Pasteurized (1) 7871:21	

<p>7976:4,10,12 USDA (47) 7872:7;7884:3; 7887:4,12;7888:2, 10,13,18,24,25; 7889:5;7890:6; 7891:14;7893:1,3,6; 7894:1;7895:16; 7896:10,15,15; 7899:14;7905:22; 7916:3;7922:9,10; 7927:17,20,25; 7946:7;7953:18; 7955:2;7981:21; 7984:13;7989:23; 7990:3;7994:9,17, 19;7999:18;8010:9; 8012:6,23;8013:7; 8037:16,18;8043:18 USDA's (2) 7896:23;8016:16 use (27) 7873:4;7879:22; 7886:5,15;7887:4, 12;7888:22,25; 7892:2;7917:24; 7929:24;7948:17; 7966:11;7975:16; 7977:9,13;7978:6, 16;7984:13; 7985:18;7986:10; 7996:24;7997:6; 8007:17;8019:13; 8033:16;8040:1 used (34) 7890:9;7896:3; 7901:3,16;7903:10; 7911:14;7918:21; 7919:13,18;7920:12; 7930:1,8,11; 7932:15;7940:10,19; 7964:7,9;7968:9; 7972:18;7975:10; 7996:25;7997:3,5,9; 8001:5;8007:4,7; 8020:4;8021:23; 8023:2;8030:1,2; 8033:22 useful (4) 7946:15;7950:21; 7975:18;8044:21 uses (5) 7881:3;7942:5; 8018:21;8020:5; 8022:16 using (22) 7888:12;7904:5,7; 7908:4,5;7913:10; 7940:17;7965:9; 7972:10;7974:8; 7975:24;7980:11; 7986:9;7997:14; 7999:21;8021:9,14;</p>	<p>8031:5;8032:22; 8033:14,25;8036:10 utilities (1) 7939:3 utilization (1) 7998:25 utilized (2) 7930:9;7932:1 utilizing (1) 7980:22 V validity (1) 7925:19 Valley (26) 7926:18,25; 7930:12,14;7933:9, 17;7934:5,11,15; 7935:20;7938:2,14, 14,18;7940:2; 7941:12;7942:25; 7943:7,11,16; 7944:6,22;7953:11; 7954:2;7979:24,24 valuation (3) 8006:7;8030:16, 19 value (74) 7898:25;7902:7, 10;7903:9,14; 7907:5;7913:15; 7918:19;7921:6; 7965:3,8;7967:10, 12;7972:5;7975:5; 7981:11;7982:19; 7983:15,15;7987:5; 7994:18,25;7995:22; 7996:2,3,12,18; 7997:4;7998:2,13, 20;7999:2,5,18; 8002:12,16,16,18; 8003:6,10,17,22,23; 8006:8;8010:12; 8013:11,12;8014:6; 8016:20;8017:8,25; 8021:1,2;8030:1,6, 10,11,18,19,21; 8031:5,10,17; 8032:16,17,23,24; 8033:1,1,3,6,17; 8034:7,13 valued (1) 8006:21 valued-added (1) 7872:8 values (8) 7893:13;7963:18; 7981:22;7982:22; 7995:15;7998:25; 7999:2;8033:23 variability (1) 8031:21</p>	<p>variable (4) 7952:5;7998:12, 16;8031:23 variance (1) 7979:1 variation (2) 8028:25;8030:24 varies (7) 7998:2,3;8004:20, 24;8005:1,1,3 variety (2) 7928:11;7960:6 various (5) 7928:5,24; 7930:13,25;7952:17 vary (2) 7940:14;8004:25 vast (1) 7941:15 versed (1) 8047:4 version (2) 7955:11,12 versions (1) 7956:15 versus (3) 7933:17;7965:17; 7967:11 Vetne (2) 7955:18,19 via (1) 7940:22 Vierra (1) 7914:9 view (11) 7962:3;8006:10, 18,20;8009:15,15; 8014:5;8017:13; 8035:2,3,6 viewed (1) 8034:8 VII (1) 7870:15 VIII (2) 7870:17,18 Virginia (1) 7891:1 Visalia (1) 7934:18 vis-a-vie (1) 7893:17 visible (1) 7984:11 vital (1) 7944:17 Vlahos (42) 7923:14,15,23; 7924:7,8,10,17; 7925:25;7928:13; 7935:12,15,18; 7946:17,19;7947:10, 22;7953:17,20; 7991:10;8004:7;</p>	<p>8011:25;8013:1,2,4, 20,20,22,24; 8015:12,17,18; 8018:14,17;8024:12; 8026:11;8027:1; 8034:5;8035:11,11; 8036:5,7,8 voice (1) 7886:9 voiced (1) 8011:9 VOIR (2) 7878:6;7945:13 volume (7) 7899:1;7900:13, 13;7902:12; 7916:15;7966:23,25 volumes (10) 7892:14;7894:19; 7896:22,24;7907:21; 7914:16;7966:7; 7972:1,10;7974:9 volunteers (1) 8040:12 vote (3) 7992:12;8019:25; 8020:3 voted (1) 8019:23 voting (1) 8020:16 vs (1) 7965:12 Vulin (6) 7956:5,6,13,14,18; 8045:10 vulnerabilities (1) 7984:15 W wait (2) 7894:25;8040:3 waiting (1) 7957:11 waking (1) 8043:25 walk (1) 7965:14 walking (1) 7957:9 wants (1) 7890:1 warning (1) 7948:2 warranted (1) 7975:7 way (56) 7870:1;7873:24; 7875:25;7877:17,21; 7886:24;7899:6,14; 7903:18,19;7905:22; 7911:19;7915:5;</p>	<p>7931:8;7947:10; 7955:5,6,22; 7966:11;7970:14,23; 7971:16;7976:16; 7986:3;7993:24; 7994:19;8002:9; 8004:10,14,16,18; 8006:9;8008:16; 8015:4;8016:4,7,17, 19;8017:1,7; 8024:21;8025:8,24; 8026:18;8027:12; 8029:20;8031:1,22, 25;8032:15;8034:8; 8036:16;8039:24; 8044:20,21;8046:7 ways (2) 7985:24;7997:25 web (1) 7976:19 website (7) 7975:25;7977:15, 16,17;7981:25; 8001:7;8041:21 Wednesday (1) 8047:13 week (7) 7881:7;7992:4; 8005:16;8016:1,15; 8045:14;8046:4 weekly (1) 7884:8 weeks (5) 7915:17,17; 7952:15;8041:7; 8043:12 weight (2) 7940:18,19 weighted (14) 7887:15,22,24; 7902:17,21,23,24; 7903:2;7920:10,11; 7922:17,18;7939:8; 7940:7 weighting (1) 7940:20 weights (2) 7940:12,21 welcome (7) 7870:6;7878:2; 7904:23;7923:11; 7924:1;7959:2; 8013:19 weren't (1) 7949:25 West (10) 7878:19;7879:7; 7880:5,11;7881:14, 14;7882:12; 7883:14;7909:5,7 what's (10) 7871:3;7875:25; 7876:8;7880:2;</p>
---	--	---	---	--

7892:14;7932:3; 7954:21;7966:15; 8019:2;8044:17 Wheaton (1) 7943:21 Whereupon (5) 7910:4;7947:15; 7957:13;8011:23; 8047:15 wherever (1) 7967:21 why (4) 7876:16;7972:23; 7981:9,21 whipsaw (2) 7972:4;7985:21 White (4) 7871:24;7955:12, 15;7956:8 whole (3) 7886:10;7930:19; 7948:5 Wholesale (4) 7878:11,24; 7879:10,21 wholesalers (1) 7885:7 whose (1) 7926:8 wide (3) 7928:11;7980:25; 7981:4 William (1) 7993:7 willing (1) 7969:5 Wisconsin (16) 7878:19,23; 7879:7;7880:2,8; 7881:14;7882:12; 7883:13,16,18; 7908:6;7936:6; 7949:13;7954:8; 7973:18;7974:5 wish (4) 7878:2;7891:18; 7945:11;7984:19 withdrawn (2) 7997:21;8013:15 within (29) 7876:11;7888:7; 7893:23;7911:8,13; 7932:18,25;7933:11; 7937:17;7940:11; 7944:7,24;7949:22; 7950:20;7951:10,14, 16;7957:9;7960:5,8; 7972:22;7975:20; 7977:22;7980:10; 7981:9,25;7982:2; 7990:23;8015:24 without (8) 7893:18;7946:25;	7947:1,3;7968:18; 7976:3;7999:21; 8023:13 witness (18) 7870:6;7871:1,6, 18;7874:14,17; 7877:19;7883:12; 7923:9,13;7947:2; 7948:10;7958:4,4; 7976:19;8011:16; 8012:5;8038:21 witness' (1) 7883:20 witnesses (12) 7870:20;7872:2,5; 7975:10,15,16; 7977:5;7990:24; 7991:10;8045:24; 8047:6,8 word (10) 7871:14;7877:17, 20;7879:13,22; 7888:16;7894:21; 7928:15;7985:18; 8022:20 words (5) 7871:4,8;7966:25; 7981:13;7995:15 work (16) 7913:13;7923:8; 7955:24;7960:25; 7961:22;7993:24; 7994:4;8011:5; 8012:15;8015:24; 8031:13;8032:5; 8043:10,13;8044:7, 24 worked (3) 7927:25;7955:21; 7960:3 workers (2) 7974:17,23 workers' (1) 7942:10 working (7) 8004:17;8015:4, 13,15,19,20,22 works (4) 8004:14,16; 8012:19;8045:10 world (3) 7925:23;7928:8; 7932:9 Worse (1) 8043:25 worth (2) 8033:2,12 Wright (1) 8045:11 write (4) 7870:2,3;7875:25; 8039:16 written (7)	7873:16;7890:13; 7922:22;7923:15; 7926:5;7930:15; 7975:25 wrong (3) 7875:17;7878:17; 8018:14 wrote (5) 7886:1;7903:21; 7974:15;7993:20; 7997:20 www (2) 7976:7,22 <small>www.finnu30.com/Homepage/FO30-MailboxPrices.html (1)</small> 7976:2 Y year (29) 7895:17;7899:6; 7920:8;7964:21; 7966:1,5,10,11; 7968:22,22;7970:24; 7972:22;7974:7; 7977:8;7978:14; 7998:5,5;8001:14, 16,17;8002:3,4,12; 8014:9;8025:14; 8030:23,24,25; 8047:3 years (28) 7943:25;7960:4, 15;7965:6,7; 7966:23;7967:17; 7972:6;7977:6; 7982:14;7985:22; 7988:16,25;7989:14, 15;8002:4;8003:5; 8006:18;8007:6; 8020:21;8023:3; 8030:21;8031:15,16; 8032:14;8033:2; 8036:21;8037:5 years'ish (1) 7988:10 yesterday (4) 7870:14;7887:12; 7903:18;7961:4 yields (1) 8027:1 York (6) 7905:4;7908:6; 7917:14;7918:1; 7936:5;7949:12 Yuba (1) 7928:1 Z zero (4) 7896:6;7997:14; 8003:5;8029:7 Zolin (1)	7870:21 zone (4) 7904:4,6,7,8 0 0.015 (1) 7899:1 1 1 (34) 7872:16;7903:19, 20;7911:14,15; 7917:7,22;7918:6; 7919:1;7927:12; 7929:7;7930:25; 7931:4,16,17,23; 7932:3;7936:9; 7958:10,12;7961:20; 7962:2;7972:11,15, 23,23;7974:10; 7981:3;7982:3; 7993:15,24;8043:13; 8044:2;8047:1 1,000 (1) 7881:4 1.163 (1) 8010:12 1.3 (1) 7999:8 1.82 (1) 8005:23 10 (6) 7916:16;7940:24; 7942:13;7965:5; 7972:19;7975:21 10,000 (1) 7943:24 10:55 (3) 7910:3,3,5 10_7b (1) 7876:16 100 (3) 7936:7,18;8004:3 100% (1) 7973:1 1000 (2) 7877:8,9 1000.43 (1) 7872:1 1051 (1) 7877:12 1051.43 (1) 7870:22 1051.7b (1) 7870:23 10th (1) 8046:13 11 (12) 7942:19;7960:15; 7975:20,21;8007:6; 8018:13;8020:21;	8025:14;8031:15,16; 8032:14;8033:1 11.6 (2) 8019:14;8020:14 11.8 (2) 8019:14;8020:14 11:55 (1) 7946:18 1101 (1) 7998:22 119 (1) 8011:11 12 (13) 7870:17;7908:11; 7939:25;7943:18; 7964:20;7965:9; 7966:9,15,21,22,24; 8018:23;8019:1 12:10 (2) 7947:13,14 12:11 (1) 7947:16 12:30 (1) 7957:6 120 (5) 7967:15,18; 7987:6;7989:13,16 124 (2) 7899:23;7902:10 12A (2) 7908:24;7917:8 12B (5) 7905:6,7;7910:13; 7911:6,10 12C (5) 7899:22;7911:6,7, 8;7918:18 12D (3) 7897:9;7898:24; 7920:6 12E (4) 7911:6;7920:22, 25;7921:6 12G (7) 7887:5,7,8,10,11; 7888:2,12 12H (4) 7878:10;7883:11; 7884:2;7885:2 12th (1) 7939:14 13 (2) 7877:18;7958:15 139 (1) 8010:16 139,329,759 (2) 8002:6;8018:22 13A (2) 7958:13;7962:19 13B (6) 7963:24;7964:1; 7986:25;7988:8,13; 7989:5
---	---	---	--	--

<p>13C (5) 7965:11,14; 7967:3;7986:25; 7987:24 13D (2) 7971:5,8 13E (2) 7971:6,8 13F (3) 7972:25;7973:12, 22 13G (3) 7973:3,15,22 13H (4) 7975:21;7977:7, 19,22 13I (4) 7978:25;7979:9; 7980:1;7983:13 13J (7) 7958:13;7979:6,9, 25;7980:6,7;7983:20 14 (8) 7877:3;7947:14; 7966:18;7974:1; 7996:2;8010:11,13, 24 145 (1) 7991:3 146 (1) 7991:3 15 (8) 7916:16;7917:1; 7934:14;7960:4; 7988:10;8022:9,12; 8023:2 15-minute (3) 7946:22;7947:5, 12 15th (1) 7968:21 16 (8) 7934:1,14; 7936:16;7972:20; 8000:20;8010:10,12, 16 16th (1) 8041:8 17 (1) 7958:1 17.73 (1) 8002:18 1773 (1) 8002:24 17th (1) 8041:10 18 (4) 7872:2;7971:5,22; 8040:2 185 (15) 7870:15;7876:22; 7877:2,4;7878:4; 7883:5,5,7;7885:20;</p>	<p>7905:2;7908:12,12, 14;7914:7;7922:15 186 (16) 7876:23;7877:2; 7878:4,9;7883:10, 12;7884:13,15; 7887:6;7897:9; 7911:7,8,9;7917:8; 7918:18;7921:1 187 (8) 7889:16,18,19; 7890:4;7891:21,21, 23;7892:11 188 (10) 7923:17,19,21; 7945:10;7946:10,12; 7947:18,18,20; 7949:4 189 (19) 7958:17,20,22; 7959:3,23;7963:14; 7964:19;7973:21; 7976:20;7978:22; 7980:20;7983:3; 7984:4,4,20,23,23, 24;7986:25 19 (5) 7871:18;8002:20; 8025:21;8026:8; 8036:18 190 (18) 7958:23,23,24; 7959:3;7962:21; 7964:1;7965:14,14; 7979:9;7983:4; 7984:4,4,20;7985:2, 2,4;7986:25;7987:24 191 (21) 7995:9,11,14,18, 22;7999:15,17; 8006:23,25;8009:19, 23;8011:11,12,14; 8016:13;8022:23; 8023:10;8024:13; 8030:1;8031:5; 8037:20 195 (1) 8002:23 1970 (1) 7968:17 1982 (1) 7872:22 1985 (1) 7972:21 1989 (7) 7872:22;7874:16; 7892:22;7893:1,2,4, 5 1990 (7) 7872:15,15; 7892:23;7893:2,5; 7895:18;7896:4 1993 (1)</p>	<p>7927:15 1994 (1) 8036:20 1995 (1) 8006:17 1997 (2) 7927:15,20 1999 (3) 7924:24;7927:20, 22 1st (1) 8046:10 2 2 (18) 7875:15;7876:6; 7903:17;7905:1,1; 7930:17;7931:5,24; 7934:5,9,14; 7935:19;7974:11; 7981:7;7994:9; 8016:9;8027:16; 8047:1 2.9 (1) 7939:9 2:00 (2) 7957:12,12 2:02 (1) 7958:2 20 (4) 7970:24;8006:18; 8028:16,19 20.50 (1) 8027:20 2000 (4) 7887:18;7960:14; 7988:11,20 2003 (9) 7885:11,12,14; 7924:24;7927:22; 7928:2;7972:21; 7988:13,16 2004 (1) 7988:16 2005 (2) 7890:7;7988:16 2006 (6) 7887:13;7888:3, 14,20;7890:17; 7988:16 2007 (6) 7888:2;7890:19; 7970:21;7971:6,22; 7988:16 2008 (20) 7888:2;7962:16, 20;7963:22,25; 7965:11,13;7966:20; 7967:12;7972:20,21, 22;7973:1,1,3,4,10; 7974:8;7987:25; 7989:11</p>	<p>2009 (8) 7872:4;7904:1; 7971:6,25;7972:2; 7987:25;7999:6,10 2010 (3) 7972:4;7987:25; 7988:2 2011 (2) 7888:22,23 2012 (3) 7904:2;7978:24; 7980:9 2013 (6) 7905:11;7939:7, 13,25;8001:15; 8015:1 2014 (46) 7884:4;7896:20; 7897:18;7899:7,16, 24;7900:19; 7914:17;7915:3,7,8, 11,14;7929:8,9; 7931:2,7,7;7933:25; 7934:1,13,14; 7936:15,15;7939:14, 25;7942:15,15,21, 21;7965:25; 7968:17;7973:1,4; 7975:22,24,25; 7977:5;7998:6; 7999:6,6,7;8000:23; 8001:16;8014:25; 8016:5 2015 (15) 7872:4;7915:19, 21,24;7926:18; 7958:1;7962:16,20; 7963:22,25;7964:15; 7965:11,13;7967:12; 7968:21 2016 (1) 8003:5 2017 (3) 7995:19;8001:3; 8032:7 2028 (1) 7995:20 20basexls (1) 7976:15 20th (1) 8045:17 21 (3) 7971:6,24; 8036:21 219 (1) 7970:21 22 (2) 7872:15;8021:4 220 (1) 7970:22 227 (1) 7968:21 23.7 (2)</p>	<p>7899:24;7903:4 24 (4) 7975:20;8021:2,8, 8 240 (1) 7969:9 241 (1) 7969:9 243 (1) 7969:15 24th (1) 7890:17 25 (15) 7900:12;7902:16, 22;7903:1;7912:9, 17,20,24;7913:1,2,4; 7936:2;7949:10,14; 7972:24 25.5 (1) 7939:21 25601 (1) 7872:15 25634 (1) 7873:5 25637 (2) 7875:8,11 25639-40 (1) 7873:11 25641 (1) 7873:2 25641-3 (1) 7872:21 25643 (3) 7873:9,14,21 26 (1) 7890:19 27 (1) 7890:7 3 3 (32) 7905:2,3,3; 7908:13,14;7910:11, 12;7912:7;7931:24; 7932:22;7933:24; 7936:1,11,12; 7938:1,21;7941:1,1; 7949:8;7951:8; 7953:24,25;7963:14; 7964:19;7968:17; 7986:18;7993:15; 8007:6;8019:22; 8020:21;8025:14; 8032:14 3.5 (5) 7964:13;7965:18; 8019:22;8028:17,19 3:35 (1) 8011:18 3:50 (1) 8011:22 3:52 (1)</p>
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8011:24 30 (19) 7882:10,24; 7897:11,12,19; 7898:6;7899:8; 7919:11,19;7920:7; 7944:12,14;7950:20; 7951:10;7976:8; 7977:15,16;8004:19; 8046:22 30-some (1) 7872:12 30th (1) 8046:13 31 (12) 7897:20;7972:2; 7973:24;8002:5,5; 8003:14;8042:24; 8043:8,8,11; 8044:14,14 31st (1) 8042:21 33 (2) 8004:20,24 347 (3) 7987:7,8,18 35:0 (1) 8011:22 353 (3) 7964:21;7966:9, 11 354 (2) 7944:12,12 36 (1) 8004:5 365 (4) 8002:3,6;8003:14; 8019:3 366 (1) 8002:4 37 (2) 8004:20,24 384 (6) 7934:24;7935:24; 7936:8,10;7944:13; 7952:8 39 (1) 7984:17 4 4 (17) 7912:7;7914:5,6; 7931:24;7933:1; 7934:12;7938:8; 7940:1,3,23; 7942:15,21;7972:17, 19;7986:24; 7999:11;8028:18 4.0 (1) 8028:16 4.2 (1) 7922:17	4:56 (1) 8047:14 40 (8) 7878:11;7882:4,5, 7,19,20;7900:12; 7902:16 40,000 (1) 7881:1 400 (3) 7959:20;7969:3, 17 41 (1) 7884:4 42 (3) 7884:4;7900:13; 7902:16 43 (1) 7884:5 43-day (2) 7895:18,20 45 (2) 7921:18;8040:25 467.2 (1) 7987:6 47 (2) 7909:3,5 49 (1) 7944:11 49th (1) 7931:19 4a (4) 7962:13,16; 7963:3;7988:21 4b (21) 7962:18;7963:4,8, 15,19;7964:8,9,22; 7965:9,12,17; 7967:13,19,24; 7968:1;7972:23; 7974:12;7982:16; 7987:6;7988:14,21 5 5 (16) 7896:10;7912:7,7; 7921:18;7934:2; 7936:14;7942:16,18, 22;7943:6;7944:16; 7949:1,2,4;8000:22; 8046:18 5,000 (1) 7881:4 5.5 (2) 8021:23;8022:11 5.51 (8) 7996:23;7999:24; 8000:11;8003:12,14; 8031:20;8032:3; 8033:15 5:00 (2) 8047:12,13 50 (9)	7882:24;7912:25; 7927:17;7931:16; 7951:14,15;7976:11; 7978:5,6 51 (3) 7908:7,25; 7944:10 54 (7) 7996:5,6,8; 7999:22;8000:20; 8010:10;8011:7 54a (1) 7956:7 55 (2) 7872:15;7921:19 55a (1) 7956:7 6 6 (12) 7896:10;7920:20; 7921:5;7922:14; 7936:11;7938:15,21, 22;7943:15,18; 7944:4;7985:20 6.3 (1) 7943:14 60 (3) 8040:22,23; 8043:5 61 (2) 7963:9;7964:23 64 (3) 7996:1,5,6 658 (1) 7897:20 7 7 (5) 7937:25;7939:10; 7968:17;7973:21; 8043:13 73 (1) 7950:25 75 (4) 7917:14,17,25; 7950:24 76 (1) 7896:2 76d (1) 7896:4 78 (1) 7950:23 79 (1) 7973:24 7a (2) 7872:3;7918:1 7b (8) 7870:19,25; 7871:11,12,15,21; 7872:3;7877:13	7th (1) 7931:18 8 8 (8) 7885:19;7887:5; 7931:7;7939:22; 7962:10;7972:20; 7974:14;7976:20 8.7 (2) 7964:13;7965:19 80 (5) 7968:16;7972:17, 19,23;7975:20 80's (1) 7934:23 84 (1) 7871:22 877,368,992 (2) 7900:17;7902:12 8th (2) 7932:8;8041:15 9 9 (9) 7872:3;7934:1; 7936:16;7940:4,6; 7942:16;7972:18; 7978:21;7980:21 90 (3) 8040:24;8041:2; 8043:5 90's (2) 7934:23;8008:2 91 (2) 7973:25;7975:21 92-month (1) 7965:10 98 (3) 7962:10;7965:5; 7974:14 9th (1) 8041:15
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