

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 COUNTY OF SAN DIEGO, CENTRAL DIVISION  
3

4 LARRY GERACI, an individual, CASE NO:  
5 Plaintiff, 37-2017-00010073-  
vs. CU-BC-CTL

6  
DARRYL COTTON, an individual,  
7 and DOES 1 through 10,  
inclusive,  
8  
Defendants.

9 \_\_\_\_\_/

10  
11 AND RELATED CROSS-ACTIONS  
12 \_\_\_\_\_/

13  
14  
15  
16 VIDEOTAPED DEPOSITION OF ABHAY SCHWEITZER  
17 TAKEN AT LEMON GROVE, CALIFORNIA  
18 JANUARY 30, 2019  
19  
20  
21

22 REPORTED BY: JACQUELINE STEARMAN, CSR NO. 9373  
23  
24  
25

1 On Wednesday, January 30, 2019, commencing at the  
 2 hour of 10:07 a.m. at 7880 Broadway, in the City of Lemon  
 3 Grove, County of San Diego, State of California, before  
 4 me, Jacqueline Stearman, Certified Shorthand Reporter in  
 5 and for the State of California, personally appeared:

6  
 7 ABHAY SCHWEITZER,  
 8 called by the Defendant, who, being by me first sworn, was  
 9 thereupon examined as a witness in said cause.

10  
 11 A P P E A R A N C E S  
 12 FOR THE PLAINTIFF AND CROSS-DEFENDANT:

13 FERRIS & BRITTON  
 14 BY: SCOTT H. TOOTHACRE, ESQ.  
 15 501 WEST BROADWAY, SUITE 1450  
 16 SAN DIEGO, CALIFORNIA 92101  
 17 (619) 233-3131

18 FOR THE DEFENDANT AND CROSS-COMPLAINANT:

19 JACOB P. AUSTIN  
 20 ATTORNEY AT LAW  
 21 1455 FRAZEE ROAD, SUITE 500  
 22 SAN DIEGO, CALIFORNIA 92108  
 23 (619) 357-6850

24 FOR THE DEFENDANT AND CROSS-COMPLAINANT OF COUNSEL:

25 THE LAW OFFICES OF ANDREW FLORES  
 BY: ANDREW FLORES, ESQ.  
 7880 BROADWAY  
 LEMON GROVE, CALIFORNIA 91945  
 (619) 356-1556

THE VIDEOGRAPHER: JAVAN E. HEARD, CLVS

1 SAN DIEGO, CALIFORNIA; WEDNESDAY, JANUARY 30, 2019  
 2 10:07 A.M.  
 3 THE VIDEOGRAPHER: Good morning. Time on the record is  
 4 10:07 a.m. Today's date is January 30th, 2019.  
 5 My name is Javan Heard of Peterson Reporting Video and  
 6 Litigation Services. The court reporter today is Jack --  
 7 Jacqueline Stearman of Peterson Reporting located at  
 8 530 B Street, Suite 350, San Diego, California 92101  
 9 This begins the videotaped deposition of Abhay  
 10 Schweitzer testifying in the matter of Larry Geraci versus  
 11 Darryl Cotton held in the Superior Court of California,  
 12 County of San Diego Central Case No. 37-2017-000100173  
 13 taken at 7880 Broadway.  
 14 Counsel, please identify yourselves and state whom you  
 15 represent.  
 16 MR. TOOTHACRE: Scott Toothacre on behalf of  
 17 Plaintiffs.  
 18 MR. AUSTIN: Jacob Austin on behalf of Defendant  
 19 Cotton.  
 20 THE VIDEOGRAPHER: Thank you. The court reporter may  
 21 now swear in or affirm the deponent.  
 22 MR. TOOTHACRE: May we have the -- the other attorney  
 23 appear -- appearance on the record?  
 24 MR. FLORES: Yes. Andrew Flores, of counsel for  
 25 Mr. Austin.

1	I N D E X	
2	EXAMINATION	PAGE
3	BY MR. AUSTIN	4

7	INDEX OF EXHIBITS	
8	DEFENDANT'S	PAGE
9	Exhibit 1 String of various e-mails	17
10	Exhibit 2 San Diego form DS 190 dated October 31st, 2016	20
11	Exhibit 3 Ownership Disclosure Statement DS318	22
12	Exhibit 4 String of various e-mails	23
13	Exhibit 5 Screen shot of DSD website regarding 6220 application	31
14	Exhibit 6 String of various e-mails	37
15	Exhibit 7 Declaration	40
16		
17		
18		
19		
20	Witness Signature Page	63
21	Reporter Certificate Page	64
22		
23		
24		
25		

1 THE VIDEOGRAPHER: Sorry about that.  
 2 MR. TOOTHACRE: Thank you.  
 3 THE VIDEOGRAPHER: The court reporter may now swear in  
 4 the witness.  
 5  
 6 ABHAY SCHWEITZER,  
 7 having first been duly sworn, testified as follows:  
 8  
 9 MR. TOOTHACRE: Okay. Jacob, before we get started, I  
 10 was going to make an additional production of documents  
 11 that came in after the last production from  
 12 Mr. Schweitzer. It's Bates marked Techne 004933 through  
 13 004964.  
 14 I don't know if you want to question him on that  
 15 today, but I brought a copy for you, a copy for the  
 16 reporter, if you did want to mark one as an exhibit, and  
 17 of course a copy for myself. And I understand these were  
 18 documents that were submitted on the appeal of the CUP.  
 19 MR. AUSTIN: I might not ask questions on this right  
 20 away, but if you want to refer to it for any answers, we  
 21 can just go through it that way, and maybe I have  
 22 questions from there.  
 23 MR. TOOTHACRE: You can take a look at it on the break  
 24 and decide what you want to do with it, if anything.  
 25 MR. AUSTIN: Shall we get started?

1 MR. TOOTHACRE: Sure.  
2  
3 EXAMINATION  
4 BY MR. AUSTIN:  
5 Q. All right. My name is Jacob Austin. I'm  
6 representing Defendant and Cross-Complainant Darryl Cotton  
7 in this matter.  
8 Are you familiar with the case Larry Geraci versus  
9 Darryl Cotton?  
10 A. I'm familiar that there is a case.  
11 Q. And even though you're not a party to this case,  
12 I'm going to ask you some questions about some things you  
13 may be a witness to or have personal knowledge of and will  
14 be pertinent to the lawsuit. You understand that?  
15 A. I do.  
16 Q. Okay. Do you understand that you're under oath  
17 and that being under oath means you're sworn to tell the  
18 truth?  
19 A. I do.  
20 Q. You understand that your responses here have the  
21 same force as in a courtroom with a judge and jury?  
22 A. I do.  
23 Q. Have you ever had a deposition taken before?  
24 A. I have not.  
25 Q. Are you prepared to answer my questions today?

1 Q. Yes.  
2 A. It's quite cold in here. Can you turn the  
3 temperature up a little bit?  
4 Q. Yes, that can be done. What is your full name?  
5 A. Abhay Caran Schweitzer.  
6 Q. Have you ever used any other names or aliases?  
7 A. Yes, I have.  
8 MR. TOOTHACRE: Jacob, you might want to have him tell  
9 that for Jacqueline, that middle name.  
10 BY MR. AUSTIN:  
11 Q. Yes. Could you spell your middle name, please?  
12 A. C-a-r-a-n.  
13 MR. TOOTHACRE: Thank you.  
14 BY MR. AUSTIN:  
15 Q. Thank you. What other aliases have you used?  
16 A. Abhay Santos.  
17 Q. Is that it? Okay.  
18 A. That is it.  
19 Q. Okay. Thank you. Where do you work?  
20 A. I own a company.  
21 Q. And what is the name of that company?  
22 A. Ideal Environment, LLC dba Techne.  
23 Q. And how long have you owned this company?  
24 A. Approximately since 2010.  
25 Q. Do you have any professional licenses?

1 A. I believe I am.  
2 Q. There isn't anything that would prevent you from  
3 provide -- providing me your full attention, is there?  
4 A. Excuse me?  
5 Q. There's nothing -- all right. All right.  
6 There's nothing that would prevent you from giving me your  
7 full attention, correct?  
8 A. We're moving back to our house today after  
9 fumigation, so if there's no emergencies as a result of  
10 that --  
11 Q. Okay.  
12 A. -- I should be able to give you my full  
13 attention.  
14 Q. Excellent. You aren't taking any medications  
15 that would prevent you from answering any of my questions?  
16 A. I'm not.  
17 Q. You'll let me know if you don't understand any of  
18 my questions, correct?  
19 A. I will.  
20 Q. Perfect. If you need to take a break at any  
21 time, just let me know, and we can give you as much time  
22 as you need.  
23 A. Thank you.  
24 Q. All right. What is --  
25 A. Can I make a request?

1 A. I myself do not.  
2 Q. Does Techne operate under any professional  
3 licenses?  
4 A. It does not.  
5 Q. What does Techne do?  
6 A. Techne provides design services. We also do our  
7 own development projects.  
8 Q. How many CUP applications, or what -- or  
9 marijuana outlet, or what were previously known as MCCs,  
10 how many of those CUP applications have you worked with?  
11 A. Under Techne? I mean --  
12 MR. TOOTHACRE: Vague and ambiguous.  
13 BY MR. AUSTIN:  
14 Q. Has Techne processed any Conditional Use Permits  
15 for marijuana outlets?  
16 A. In which -- in which city?  
17 Q. In -- in San Diego County.  
18 A. In San Diego County proper?  
19 Q. Yes.  
20 A. San Diego County doesn't have a process for  
21 Condition Use applications for any cannabis.  
22 Q. Right. I was talking about within the County of  
23 San Diego. So within San Diego city or possibly Lemon  
24 Grove city, any of the neighboring cities that are within  
25 San Diego.

1 A. We have processed multiple applications within  
2 the cities and the County of San Diego.  
3 **Q. How many applications do you think Techne has**  
4 **worked on?**  
5 A. Which types of applications?  
6 **Q. For either what is now currently a marijuana**  
7 **outlet or what was formally an MMCC.**  
8 A. Within the same jurisdiction you just described?  
9 **Q. Within San Diego jurisdictions.**  
10 A. I don't have an exact number. I'd have to look  
11 at our records.  
12 **Q. An estimate is fair.**  
13 A. But I think it would be somewhere between 15 and  
14 20.  
15 **Q. 15 and 20? Of those applications, do you know**  
16 **how many have been approved?**  
17 MR. TOOTHACRE: Vague and ambiguous.  
18 THE WITNESS: Without me looking at my record, I  
19 couldn't give you a number on exactly how many have gone  
20 through the entire process, gotten to hearing and been  
21 approved.  
22 BY MR. AUSTIN:  
23 **Q. Okay. But Techne has had applications for CUPs**  
24 **for marijuana outlets that have made it through the**  
25 **hearing process and approval?**

1 MR. TOOTHACRE: Vague and ambiguous. You mean Gina  
2 Austin? Myself? Mike Weinstein?  
3 BY MR. AUSTIN:  
4 **Q. Yes. Have you -- have you ever met Michael**  
5 **Weinstein?**  
6 A. Yes, I have.  
7 **Q. And did you have any discussions outside the**  
8 **scope of your Declarations?**  
9 MR. TOOTHACRE: Objection. That's attorney-client  
10 privilege.  
11 MR. LOPEZ: Are you saying that Mr. Weinstein is  
12 his -- his attorney?  
13 MR. TOOTHACRE: We represent Mr. Schweitzer for  
14 purposes of this deposition, and things that he may have  
15 discussed with our other clients are also under joint  
16 privilege.  
17 THE WITNESS: Are you still waiting on me?  
18 BY MR. AUSTIN:  
19 **Q. No, no, no, no. I'm just modifying some**  
20 **questions.**  
21 **Have you ever posted any information about the lawsuit**  
22 **on any website, your company website or any other?**  
23 A. I don't recall ever posting anything related to  
24 this lawsuit anywhere.  
25 **Q. So you have not read anyone else's Affidavits or**

1 A. That's correct.  
2 **Q. Okay. Thank you. Have you spoken to anyone**  
3 **other than counsel that is present here for Mr. Geraci**  
4 **about this case?**  
5 A. Yes, I have.  
6 **Q. What specifically have you discussed about this**  
7 **case?**  
8 MR. TOOTHACRE: Vague and ambiguous.  
9 BY MR. AUSTIN:  
10 **Q. Who have you had discussions with regarding this**  
11 **case?**  
12 A. I informed my staff that I would be at the  
13 deposition today for a legal matter related to the project  
14 we worked on. I also informed my wife that I would be at  
15 the deposition today regarding a case related to a project  
16 I worked on.  
17 **Q. Have you reviewed any documents pertinent to the**  
18 **court case like anything that has been filed within the**  
19 **court?**  
20 A. I've reviewed my Declarations.  
21 **Q. So other than your Declarations, you haven't seen**  
22 **any other court documents related to the case?**  
23 A. I don't recall reviewing any other documents.  
24 **Q. Have you ever met with Mr. Geraci's counsel prior**  
25 **to meeting Mr. Toothacre this morning?**

1 **Declarations regarding this case?**  
2 A. I have read what I believe is the website that  
3 Mr. Darryl Cotton created and I've read the content that I  
4 believe it was him who published.  
5 **Q. On Mr. Cotton's website, does it appear that a**  
6 **significant amount of court documents are posted?**  
7 MR. TOOTHACRE: Vague.  
8 BY MR. AUSTIN:  
9 **Q. I know I've seen his website, and he basically**  
10 **posts every single thing that gets filed. Have you**  
11 **reviewed his website thoroughly?**  
12 A. I would not say thoroughly, no.  
13 **Q. But you've been on it a few times?**  
14 A. I've been on it maybe two or three times.  
15 **Q. Can you describe his website and the pages you**  
16 **looked the at?**  
17 A. Describe it visually?  
18 **Q. What you gathered from -- from looking at it.**  
19 **Like, what -- reading through it, is it just -- I don't**  
20 **know. How would you describe it? Are there multiple**  
21 **attachments, or is it just, like, one stream of**  
22 **never-ending information? How would you --**  
23 A. Are you referring to the portion of that  
24 website --  
25 **Q. Yes, related to the lawsuit.**

1 A. Understood. What I observed was text and  
2 there -- there was what appeared to be multiple  
3 attachments. Links to attachments. I should clarify.  
4 **Q. Okay. Links to attachments. And what was your**  
5 **purpose for going on that website?**  
6 A. The purpose was to double-check my Declarations  
7 against what was filed and also to get a better  
8 understanding of if there were any personal accusations  
9 against myself or my staff from Mr. Darryl Cotton.  
10 **Q. Are you familiar with attorney Gina Austin?**  
11 A. Yes, I am.  
12 **Q. How do you know Gina Austin?**  
13 A. Do you want to know how I met her?  
14 **Q. We can start there.**  
15 A. Okay. I met Gina Austin, I believe, in 2014.  
16 She was another consultant on a project which we were a  
17 consultant on.  
18 **Q. Was that a project related to an MMCC?**  
19 A. I believe it was.  
20 **Q. How many projects are you worked on with Gina**  
21 **Austin?**  
22 MR. TOOTHACRE: Vague as to time.  
23 BY MR. AUSTIN:  
24 **Q. Since 2014.**  
25 A. That's hard for me to estimate without looking at

1 BY MR. AUSTIN:  
2 **Q. So of -- of those projects, your -- you're not**  
3 **certain how many have been approved?**  
4 A. I'm not.  
5 **Q. Are -- how many of them are currently under**  
6 **review or being processed?**  
7 A. I'd have to look at my records to give you that.  
8 **Q. Did Gina Austin introduce you to Mr. Geraci for**  
9 **the 6176 Federal Boulevard property?**  
10 A. I don't believe so.  
11 **Q. Did Larry Geraci himself hire you for that**  
12 **project?**  
13 A. Our contract is with Rebecca Barry. We  
14 understand that she's an agent of Mr. Geraci.  
15 **Q. Okay. So you know Larry Geraci strictly through**  
16 **this application?**  
17 A. That's correct.  
18 **Q. Okay. How do you know Rebecca Barry. Or how --**  
19 **how were you introduced to Rebecca Barry?**  
20 A. I don't believe I was introduced with Rebecca  
21 Barry. I think I may have met her once at Mr. Geraci's  
22 business.  
23 **Q. Were you paid by Larry or Rebecca?**  
24 A. As individuals?  
25 **Q. Yes.**

1 my record. Multiple projects.  
2 **Q. So a significant amount. Would you say more than**  
3 **10?**  
4 A. I believe more than 10.  
5 **Q. Okay. And the majority of those projects, were**  
6 **they to seek approval for Condition Use Permits in**  
7 **marijuana outlets or MMCCs?**  
8 MR. TOOTHACRE: Vague as to "majority." You can just  
9 ask him how many were for MMCCs.  
10 BY MR. AUSTIN:  
11 **Q. Right. How many of the projects you worked on**  
12 **with Gina Austin would you say were for marijuana**  
13 **dispensaries outlets or MMCCs?**  
14 A. In San Diego or throughout the state?  
15 **Q. Throughout the state.**  
16 A. I would estimate somewhere between eight and  
17 maybe 15. But without looking at my record, I can't give  
18 you a certain number.  
19 **Q. Okay.**  
20 MR. TOOTHACRE: I'm going to caution you  
21 Mr. Schweitzer, he -- Mr. Austin's entitled to your best  
22 estimates, but he's -- nobody here wants you to guess. So  
23 if you have an estimate like you just gave, that's fine.  
24 But if it's a pure guess, don't go there, okay?  
25 THE WITNESS: Thank you.

1 A. I'm not sure what you mean by that.  
2 MR. TOOTHACRE: I'm going to object. It's vague and  
3 ambiguous.  
4 BY MR. AUSTIN:  
5 **Q. Okay. So here I have marked as Exhibit 4 an**  
6 **e-mail from you to Larry and --**  
7 MR. TOOTHACRE: Are you marking this as Exhibit 4 to  
8 the deposition?  
9 MR. LOPEZ: For identification.  
10 MR. TOOTHACRE: You gonna start with four?  
11 MR. AUSTIN: Yeah, I could -- I could switch the  
12 order, I guess. That would make sense make this one.  
13 MR. TOOTHACRE: Let's mark it as Exhibit 1.  
14 MR. AUSTIN: Yeah.  
15 (Defendant's Exhibit 1 was marked for identification)  
16 MR. TOOTHACRE: And can you identify it for the  
17 record, Jacob?  
18 BY MR. AUSTIN:  
19 **Q. Are -- are these e-mails between you and Larry**  
20 **Geraci?**  
21 A. They appear to be so.  
22 **Q. And --**  
23 MR. TOOTHACRE: Let me just -- for the record,  
24 Exhibit 1 appears to be e-mails between Larry Geraci and  
25 Abhay Schweitzer dated October 5th, 2016.

1 Mr. Schweitzer, have you ever seen that document  
2 before?

3  
4 THE WITNESS: It looks like an e-mail I sent --

5 MR. TOOTHACRE: Okay

6 THE WITNESS: -- to Larry.

7 MR. TOOTHACRE: Thank you.

8 BY MR. AUSTIN:

9 **Q. And in this e-mail, you discuss the services  
10 contract between and Mr. Geraci, correct?**

11 A. What I state here is that I'm pointing out some  
12 key points to that contract, but the contract itself is  
13 attached.

14 **Q. Right. And Mr. Geraci is asking that Miss  
15 Barry's name be on everything within these e-mails,  
16 correct, regarding the application?**

17 A. No, that's not my understanding.

18 **Q. What is your understanding of these e-mails?**

19 A. My understanding from this e-mail, or the series  
20 of e-mails, is that Mr. Geraci was asking that the  
21 agreement be resubmitted under the name of Rebecca Barry.

22 **Q. Okay. Thank you. At the time, did you know who  
23 Rebecca Barry was?**

24 A. Did I know her personally?

25 **Q. Or did you know who she was or what her capacity**

1 was?

2 MR. TOOTHACRE: Vague and ambiguous.

3 BY MR. AUSTIN:

4 **Q. Did you find it odd that Mr. Geraci was asking  
5 you to submit this project under someone else's name?**

6 A. I did not.

7 **Q. Is this a common practice within the -- within  
8 your field?**

9 MR. TOOTHACRE: Calls for speculation. No foundation.

10 BY MR. AUSTIN:

11 **Q. When you are applying for these applications, is  
12 it common in your experience for people to use agents to  
13 submit these applications under their own -- under  
14 different names?**

15 MR. TOOTHACRE: Same objection. Vague and ambiguous  
16 and assumes facts not in evidence.

17 BY MR. AUSTIN:

18 **Q. Did you ask Mr. Geraci why he wanted Miss Barry  
19 to be on the application and have everything under her  
20 name?**

21 MR. TOOTHACRE: Assumes facts.

22 MR. AUSTIN: Well, I asked if he --

23 MR. TOOTHACRE: I'm not arguing. He can answer.

24 THE WITNESS: I'd like to get clarity on what you're

25 asking. Are we still discussing this e-mail?

1 BY MR. AUSTIN:

2 **Q. Not strictly, but what I -- what I'm trying to  
3 ask is, did you ask Mr. Geraci why he wanted Barry to have  
4 everything under her name?**

5 MR. TOOTHACRE: Assumes facts and vague and ambiguous.

6 THE WITNESS: Your -- I can answer -- the question's  
7 quite broad. I can answer specifically. In this case, I  
8 did not find it odd at all, neither did I inquire about  
9 it.

10 BY MR. AUSTIN:

11 **Q. Okay.**

12 A. In the case of what's mentioned in this e-mail.

13 **Q. Right. And as far as the 6176 Federal Boulevard  
14 property in general, did you -- did you ask why Barry was  
15 to be described as the owner?**

16 MR. TOOTHACRE: Same objections.

17 THE WITNESS: It's not my understanding that Rebecca  
18 Barry was to be described as the owner of the property, if  
19 that's what you implied.

20 MR. AUSTIN: All right. I have another exhibit. So  
21 this will be exhibit --

22 MR. LOPEZ: Two.

23 MR. AUSTIN: So Exhibit 2, for the record, this is San  
24 Diego form DS 190 dated October 31st, 2016.

25 (Defendant's Exhibit 2 was marked for identification)

1 BY MR. AUSTIN:

2 **Q. Do you recognize this document?**

3 A. It looks familiar to me.

4 **Q. Are these standard forms within the application  
5 process?**

6 MR. TOOTHACRE: Vague and ambiguous. Calls for  
7 speculation.

8 MR. AUSTIN: Are --

9 MR. LOPEZ: All right.

10 (Counsel confer outside the hearing of the reporter.)

11 BY MR. AUSTIN:

12 **Q. Do you typically have these forms submitted  
13 within the application process?**

14 MR. TOOTHACRE: Vague and ambiguous.

15 BY MR. AUSTIN:

16 **Q. Are these mandatory forms for the application  
17 process?**

18 MR. TOOTHACRE: Vague and ambiguous.

19 THE WITNESS: I'm going to answer as best as I can.  
20 We are required to submit all of the forms that the City  
21 determines are required at the time of that approval.

22 BY MR. AUSTIN:

23 **Q. Do you believe that to be one of those forms?**

24 A. Yes, I do.

25 **Q. Okay. Do you see the name of the individual who**

1 **signed that document?**  
 2 A. I see a signature under "Business Owner Name"  
 3 indicated as Rebecca Barry.  
 4 **Q. Okay. Thank you.**  
 5 MR. AUSTIN: And marked as Exhibit 3 is an Ownership  
 6 Disclosure Statement DS318.  
 7 (Defendant's Exhibit 3 was marked for identification)  
 8 BY MR. AUSTIN:  
 9 **Q. Do you recognize any names on that document?**  
 10 A. I do.  
 11 **Q. Did you help prepare this document?**  
 12 A. I don't recall if myself personally prepared this  
 13 document. I believe this document was prepared by my  
 14 firm.  
 15 **Q. Would that be the same for Exhibit 2? Would the**  
 16 **firm have prepared that document?**  
 17 A. I don't recall.  
 18 **Q. Did Gina Austin help Techne in the preparation of**  
 19 **this application?**  
 20 MR. TOOTHACRE: Attorney-client work product. Don't  
 21 answer that. You're instructed not to answer.  
 22 BY MR. AUSTIN:  
 23 **Q. Did -- did -- did Miss Austin request that you --**  
 24 **let's see. Request that you forward copies of documents**  
 25 **before submitting them?**

Page 22

1 **the person completing the submission package? I am under**  
 2 **the impression it's getting submitted on Friday. I would**  
 3 **like to review all the documents prior to submittal. PDF**  
 4 **is fine."**  
 5 **This -- this is -- do you recall receiving that**  
 6 **e-mail?**  
 7 MR. TOOTHACRE: I'm going to object that there's no  
 8 foundation for this being from Gina Austin, and I'll just  
 9 leave it at that.  
 10 BY MR. AUSTIN:  
 11 **Q. Does -- does that e-mail -- do you recognize that**  
 12 **e-mail as one that you sent, or that you received? I'm**  
 13 **sorry, that -- do you recognize that e-mail as one that**  
 14 **you received or responded to?**  
 15 A. No.  
 16 **Q. You don't --**  
 17 A. I think that this is a reproduction. I don't  
 18 recall that e-mail in and of itself without looking at  
 19 this printed document.  
 20 **Q. Do you recall sending documents for Ms. Austin to**  
 21 **review?**  
 22 MR. TOOTHACRE: Vague and ambiguous.  
 23 BY MR. AUSTIN:  
 24 **Q. Mrs. Austin. In -- in regards to this project,**  
 25 **do you recall sending e-mails back and forth with Miss --**

Page 24

1 MR. TOOTHACRE: Same objection. You're instructed not  
 2 to answer.  
 3 MR. AUSTIN: Marked as Exhibit 4 is a chain of  
 4 e-mails from what appears to be -- is this the right one?  
 5 Okay.  
 6 THE WITNESS: May I have another water?  
 7 THE REPORTER: Sure.  
 8 THE WITNESS: Thank you.  
 9 MR. AUSTIN: So Exhibit 4, I have four pages of e-mail  
 10 chains starting from Rebecca Barry on October 31st, 2016,  
 11 ending with an e-mail from you on October 26, 2016. And  
 12 on the third page there is an e-mail from Gina Austin.  
 13 (Defendant's Exhibit 4 was marked for identification)  
 14 BY MR. AUSTIN:  
 15 **Q. Do you recognize these e-mails? Do you recognize**  
 16 **this document?**  
 17 A. They appear to be e-mails that I sent between  
 18 myself and Rebecca Barry and Gina Austin.  
 19 **Q. And Gina Austin was cc-ed on your e-mails with**  
 20 **Rebecca?**  
 21 A. Are you asking on all my e-mails?  
 22 **Q. In -- in this document, this exhibit.**  
 23 A. It appears so.  
 24 **Q. On the third page, October 27, 2016, at**  
 25 **11:29 a.m., Gina Austin writes, "Thanks, Abhay. Are you**

Page 23

1 **Mrs. Austin?**  
 2 MR. TOOTHACRE: Vague and ambiguous.  
 3 MR. LOPEZ: I think -- even though he objects, you  
 4 still have to answer the question.  
 5 THE WITNESS: I wasn't sure if you were going to  
 6 rephrase the question.  
 7 I do recall interacting with Miss Austin on this  
 8 particular project and I do believe through e-mail as  
 9 well, yes.  
 10 BY MR. AUSTIN:  
 11 **Q. And you did -- you did show her your submissions?**  
 12 **You did send her PDF -- PDF or other means of production**  
 13 **of what was being submitted?**  
 14 A. I don't recall that specifically.  
 15 MR. TOOTHACRE: Vague and ambiguous.  
 16 BY MR. AUSTIN:  
 17 **Q. Do you have any reason to believe that this**  
 18 **e-mail might not be authentic in that it might be a**  
 19 **reproduction?**  
 20 A. Are you asking me to speculate on it?  
 21 MR. TOOTHACRE: Calls for speculation.  
 22 BY MR. AUSTIN:  
 23 **Q. That's not the question. The question is, do you**  
 24 **have any reason to believe it's a reproduction?**  
 25 A. I don't myself, no.

Page 25

1 Q. Okay. Thank you. Do you know someone named  
2 Aaron Magagna?

3 A. I do.

4 MR. AUSTIN: And for the court reporter his last name  
5 is spelled M-a-g-a-g-n-a.

6 BY MR. AUSTIN:

7 Q. How do you know Aaron Magagna?

8 A. Aaron Magagna --

9 Q. Or Magagna.

10 A. -- was introduced to me through a friend in  
11 common.

12 Q. Who was that friend?

13 A. His name is Rakesh Goyal.

14 MR. TOOTHACRE: Can you spell that for the court  
15 reporter, please?

16 THE WITNESS: I believe the name is spelled

17 R-a-k-e-s-h, last name G-o-y-a-l.

18 MR. TOOTHACRE: Thank you.

19 BY MR. AUSTIN:

20 Q. Are you aware of Mr. Magagna's application that  
21 is competing with Mr. Cotton and Mr. Geraci's property?

22 MR. TOOTHACRE: Assumes facts not in evidence. Vague  
23 and ambiguous.

24 THE WITNESS: Are you waiting for me, or are you going  
25 to rephrase it?

1 person, but I don't recall what staff I took.

2 Q. Did you make a public comment personally at that  
3 hearing?

4 A. I did.

5 Q. And what was it that you said? I mean, what was  
6 the purpose of your comment?

7 A. I can -- I can explain to you a brief summary of  
8 what I spoke publicly in that, is that what you'd like to  
9 hear?

10 Q. Yes, a brief summary would be fine.

11 A. The document that Mr. Toothacre submitted is an  
12 in-depth analysis which we prepared which was the basis of  
13 what I spoke of that day.

14 I spoke in summary of that. And from my recollection,  
15 I also answered some of the questions that the planning  
16 commissioners had related to the information I had  
17 provided.

18 Q. Was -- was one of the objections related to 6220  
19 being located near a children's day care center?

20 A. I don't know what you mean by "one of the  
21 objections." It's not a term that we use in processing  
22 these projects.

23 MR. TOOTHACRE: Let me interpose a vague and ambiguous  
24 objection.

25 ///

1 BY MR. AUSTIN:

2 Q. Oh, no, I'm going to rephrase.

3 Are you aware of Mr. Magagna's CUP application that is  
4 pending on 6220 Federal Boulevard?

5 A. I'm aware that there's an application on that  
6 property that's been approved.

7 Q. Did you attend the public hearing on October 17,  
8 2018 -- I'm sorry.

9 Did you attend the public hearing on October 17th,  
10 2018 regarding the approval of the CUP on 6220 Federal  
11 Boulevard?

12 A. If what you're referring to is the Planning  
13 Commission Hearing --

14 Q. Yes.

15 A. -- and assuming that your date is correct, yes.

16 Q. Did you oppose the approval of that CUP on 6220?

17 A. Did I personally oppose or did my firm oppose?

18 MR. TOOTHACRE: Yeah, vague and ambiguous.

19 BY MR. AUSTIN:

20 Q. Did you personally make an opposition at that  
21 hearing?

22 A. My firm opposed that project. I was part of  
23 that.

24 Q. Okay. Who in your firm attended that hearing?

25 A. Certainly me. There may have been one more

1 BY MR. AUSTIN:

2 Q. Would the term -- would the correct terminology  
3 be an opposition or -- so when -- when someone at the  
4 public hearing has an issue, a reason why approval should  
5 not be granted, what -- what would you call that? What  
6 would the terminology be?

7 MR. TOOTHACRE: Vague and ambiguous.

8 BY MR. AUSTIN:

9 Q. If it's not an objection, what --

10 A. I'm happy to comment on what I spoke of and the  
11 document I prepared, but I'm not sure that I fully  
12 understand your question.

13 Q. Well, within this document, I haven't been able  
14 to fully review all of it, but isn't -- to your  
15 recollection, is there concern of there being a day care  
16 center that is too close to the 6220 property?

17 A. I don't know if a day care center was mentioned  
18 in that document. I know that it was brought up, I  
19 believe, by somebody else at the hearing.

20 Q. Yes, think that's what I was trying to ask  
21 earlier.

22 A. Okay.

23 Q. Did you ever investigate that issue to see if it  
24 was the case?

25 MR. TOOTHACRE: Vague and ambiguous.



1 BY MR. AUSTIN:  
2 **Q. After hearing about the day care center, did you**  
3 **want to check to see if that was the case, if it was**  
4 **within a designated area?**

5 A. Yes.

6 MR. TOOTHACRE: Same objection

7 THE WITNESS: I did want to do that.

8 BY MR. AUSTIN:

9 **Q. Yes. And did you do so?**

10 A. I did not do so personally.

11 **Q. Did someone in your firm? Did you have anyone**  
12 **look?**

13 A. Yes.

14 **Q. What was the outcome?**

15 A. From my recollection, we determined that that was  
16 not a qualifying sensitive use that needed any specified  
17 separation.

18 **Q. Have you ever worked with a company called**  
19 **Pacific Custom Pools?**

20 A. I'm sorry.

21 **Q. Do you know if you've ever worked with a company**  
22 **called Pacific Custom Pools?**

23 A. That name doesn't sound familiar.

24 **Q. Do you know a Bruno Vasquez?**

25 A. The name doesn't sound familiar.

1 **Q. Did you ever have a chance to review the plans**  
2 **for the CUP at 6220?**

3 A. I did review plans that we obtained through the  
4 City of San Diego's report to the Planning Commission  
5 which I believe were the plans for that project for the  
6 Conditional Use Permit that they were applying for.

7 **Q. All right. Is your firm assisting Mr. Magagna in**  
8 **the processing of the CUP at 6220?**

9 A. No.

10 MR. AUSTIN: So what exhibit are we on?

11 MR. LOPEZ: What exhibit are we on, five?

12 THE REPORTER: Five.

13 MR. AUSTIN: So I would like to present Exhibit 5  
14 which is a screen shot of the DSD website with regards to  
15 the 6220 application. It's this one.

16 (Defendant's Exhibit 5 was marked for identification)

17 BY MR. AUSTIN:

18 **Q. So in this screen shot, it indicates that Techne**  
19 **is involved -- do you recognize this document?**

20 MR. TOOTHACRE: Objection. Assumes facts not in  
21 evidence. No foundation for this document. And I'm going  
22 to disagree with the representation of the way it's been  
23 characterized. But other than that, if you can answer the  
24 question.

25 THE WITNESS: Can you repeat the question?

1 BY MR. AUSTIN:

2 **Q. Are you familiar with -- let's see. You've just**  
3 **mentioned how you had reviewed documents through the DSD**  
4 **website.**

5 **Are you familiar this website and how they list**  
6 **people, firms and individuals related to various projects?**

7 MR. TOOTHACRE: Vague and ambiguous.

8 MR. AUSTIN: All right.

9 MR. TOOTHACRE: He can answer, if he understands.

10 THE WITNESS: I can give you my understanding of what  
11 this -- what appears to be generated from a particular  
12 section of the Development Services website and what its  
13 purpose is.

14 BY MR. AUSTIN:

15 **Q. Yeah, if you could do that.**

16 A. Would you like that?

17 **Q. Yeah, that would be perfect.**

18 A. DSD stands for Development Services Department,  
19 in this case San Diego. This particular portion of the  
20 website where you can search for an approval will give you  
21 some information about that project.

22 **Q. Yes. Okay. Within this portion of the website,**  
23 **do you see the section where it says "Customer**  
24 **Information"?**

25 A. Which page are you referring to of the exhibit?

1 It's not numbered, so it's hard for me to follow.

2 **Q. The first page.**

3 A. Is this the page?

4 **Q. Yes. Do you see the section where it says**  
5 **"Customer Information"?**

6 A. I do.

7 **Q. And do you recognize the name Carlos Gonzalez?**

8 A. I do.

9 **Q. He works with your Techne?**

10 A. He's an employee of my firm.

11 **Q. Yes. And, also, if you go down a few lines, do**  
12 **you see your name?**

13 A. I do.

14 **Q. And going back to Mr. Gonzalez, your employee --**  
15 **they're an employee of Techne. It says his role is an**  
16 **agent. Do you see that? Do you see that section?**

17 A. I do see it indicated that way.

18 **Q. So is Techne, in fact, an agent of Mr. Magagna's**  
19 **CUP application?**

20 A. Absolutely not.

21 MR. TOOTHACRE: Vague as to time. Misconstrues the  
22 document. That's -- that's fine. Go ahead. Go ahead and  
23 answer.

24 THE WITNESS: Absolutely not.

25 ///

1 BY MR. AUSTIN:  
2 **Q. Is there -- do you know of any reason why Techne**  
3 **would be listed as an agent?**  
4 MR. TOOTHACRE: Calls for speculation. If you do  
5 know, you can answer.  
6 THE WITNESS: I can speculate. Would you like me to?  
7 MR. TOOTHACRE: No, don't guess if you don't know the  
8 answer.  
9 THE WITNESS: I don't know.  
10 BY MR. AUSTIN:  
11 **Q. So you don't know why your name and one of your**  
12 **employee's name, names, is listed within the customer**  
13 **information?**  
14 A. I would speculate if I told you, and I'm not  
15 going to speculate. So the answer to that is no.  
16 **Q. So, to your knowledge, has Techne in any capacity**  
17 **aided Mr. Magagna in his application?**  
18 A. Absolutely not.  
19 **Q. Would it be adverse to Mr. Cotton and Mr.**  
20 **Geraci's application on 6176 if the -- if Mr. Magagna's**  
21 **CUP application went through?**  
22 MR. TOOTHACRE: Vague and ambiguous. He can answer.  
23 MR. AUSTIN: All right.  
24 THE WITNESS: The City of San Diego has a regulation  
25 through the Municipal Code that MOs, marijuana outlets,

1 MR. TOOTHACRE: And just for clarity, which project  
2 are you referring to?  
3 THE WITNESS: Mr. Geraci's application for a marijuana  
4 outlet on Federal Boulevard.  
5 MR. TOOTHACRE: Thank you.  
6 MR. AUSTIN: Okay. Thank you.  
7 BY MR. AUSTIN:  
8 **Q. Is -- is Mr. Dutta a partner of Geraci in this**  
9 **application?**  
10 MR. TOOTHACRE: Calls for speculation.  
11 THE WITNESS: Not that I'm aware of.  
12 BY MR. AUSTIN:  
13 **Q. Has Mr. Dutta assisted in the application process**  
14 **for Mr. Geraci?**  
15 MR. TOOTHACRE: Same objection.  
16 THE WITNESS: Not that I'm aware of.  
17 BY MR. AUSTIN:  
18 **Q. Has Mr. Dutta ever directed you to do anything on**  
19 **the application?**  
20 MR. TOOTHACRE: Vague and ambiguous.  
21 THE WITNESS: I don't recall him directing me to do  
22 anything on this application.  
23 BY MR. AUSTIN:  
24 **Q. To your knowledge, would Mr. Dutta have any**  
25 **authority in making any directions or decisions in the**

1 can't be within 1,000 feet, and they specify, all that's  
2 measured, of another approved marijuana outlet.  
3 Given that's my understanding that Mr. Magagna's  
4 project is approved and there is no more room for any more  
5 appeals, that would be detrimental to Mr. Geraci's  
6 project.  
7 BY MR. AUSTIN:  
8 **Q. So if Techne were assisting in both applications,**  
9 **that would seem like a conflict of interest?**  
10 MR. TOOTHACRE: Vague and ambiguous, but --  
11 THE WITNESS: That -- absolutely, I would agree with  
12 that.  
13 BY MR. AUSTIN:  
14 **Q. Okay. Thank you. Do you know Neil Dutta?**  
15 MR. TOOTHACRE: I'm sorry, the name one more time?  
16 MR. AUSTIN: Neil Dutta, last name, D-u-t-t-a.  
17 THE WITNESS: I do.  
18 BY MR. AUSTIN:  
19 **Q. And how do you know Mr. Dutta.**  
20 A. I know him through Mr. Geraci.  
21 **Q. Yes.**  
22 A. Let me rephrase that.  
23 I don't recall if it was Mr. Geraci or Mr. Jim Bartell  
24 who introduced me, but I do know Neil through this  
25 project.

1 **application process? I mean authority from Mr. Geraci.**  
2 MR. TOOTHACRE: Same objection. Also calls for a  
3 legal conclusion.  
4 THE WITNESS: It seems like you're asking me to  
5 speculate on that.  
6 BY MR. AUSTIN:  
7 **Q. All right. Well, were you ever given the**  
8 **impression that Mr. Dutta could be a decision-maker along**  
9 **with Mr. Geraci and Miss Barry?**  
10 MR. TOOTHACRE: Assumes facts not in evidence. Calls  
11 for a legal conclusion. Calls for speculation.  
12 THE WITNESS: Do you want me to answer that?  
13 MR. TOOTHACRE: You can, if you like. It's --  
14 THE WITNESS: I don't -- that's not the impression  
15 that I have.  
16 MR. AUSTIN: Okay. I'll direct your attention to  
17 what will now be labeled as Exhibit 6 which is an e-mail  
18 to Larry from Jim -- from you dated October 10, 2016 as  
19 well which is --  
20 MR. TOOTHACRE: Counsel -- do you have a copy,  
21 Counsel?  
22 MR. AUSTIN: Yes.  
23 MR. TOOTHACRE: Thanks.  
24 (Defendant's Exhibit 6 was marked for identification)  
25 ///

1 BY MR. AUSTIN:  
2 **Q. Here, I have an e-mail dated October 7, 2016. Do**  
3 **you remember this e-mail?**  
4 A. I don't remember by recollection this particular  
5 e-mail. I do remember discussing this issue.  
6 **Q. All right. All right. In this e-mail, you ask**  
7 **for Larry or Neil to make sure that access can be granted.**  
8 **So, basically, it looks as if you're treating Larry or**  
9 **Neil as if they have, you know, decision-making authority.**  
10 MR. TOOTHACRE: Assumes facts. No foundation. I  
11 object to the characterization as asked by counsel. Was  
12 that your intent in writing to Neil and Mr. Geraci or --  
13 THE WITNESS: No.  
14 MR. TOOTHACRE: What was your intent in writing that  
15 to both of them?  
16 THE WITNESS: I would have to speculate.  
17 MR. TOOTHACRE: Okay.  
18 THE WITNESS: My understanding is that Neil was not my  
19 client.  
20 MR. TOOTHACRE: Okay.  
21 BY MR. AUSTIN:  
22 **Q. If -- if that's the case, how did Neil get**  
23 **involved in any of the e-mails?**  
24 MR. TOOTHACRE: Calls for speculation. Vague and  
25 ambiguous.

1 MR. AUSTIN: Seven's dated March 23rd, 27 or --  
2 MR. TOOTHACRE: February 27 --  
3 MR. AUSTIN: I think it was executed February 27.  
4 MR. TOOTHACRE: Okay. That's what I have.  
5 (Defendant's Exhibit 7 was marked for identification)  
6 BY MR. AUSTIN:  
7 **Q. Do you recognize this document?**  
8 A. Let me read through it.  
9 **Q. Yes, of course.**  
10 MR. TOOTHACRE: Any document you're given, Mr.  
11 Schweitzer, take as much time as you want to review it.  
12 Nobody wants you to guess. We want you to be -- review it  
13 and be able to give full test -- your full testimony,  
14 accurate testimony, about it. So take your time. Don't  
15 feel rushed.  
16 THE WITNESS: Thank you.  
17 MR. LOPEZ: Just so everybody knows, I did turn off  
18 the air conditioning. So if anybody does get warm, it  
19 does kind of get hot because of the windows, so if it does  
20 get warm, let me know. I can turn it back on.  
21 MR. TOOTHACRE: Okay.  
22 THE WITNESS: I believe this is a true copy of it.  
23 BY MR. AUSTIN:  
24 **Q. May I direct your attention to the -- Page 5, the**  
25 **very last page? Is that your signature?**

1 BY MR. AUSTIN:  
2 **Q. This is an e-mail that you sent with both of**  
3 **their names, slash and/or.**  
4 A. I believe so.  
5 **Q. Is there a reason why that is? Do you recall why**  
6 **you would have phrased your e-mail that way?**  
7 A. From my recollection, it appears that Neil may  
8 have been in charge with facilitating access to the  
9 property.  
10 MR. AUSTIN: Okay. All right. I would like to ask you  
11 some questions about the -- some of the Declarations you  
12 have submitted in this case. Are we on seven?  
13 MR. TOOTHACRE: Seven.  
14 BY MR. AUSTIN:  
15 **Q. You've mentioned you've had occasion to review**  
16 **the Declarations that you have previously submitted,**  
17 **correct?**  
18 A. That's correct.  
19 **Q. All right. Are -- are these true and correct**  
20 **copies of the Declarations that you have submitted, you**  
21 **have signed? You have signed and have been submitted?**  
22 MR. LOPEZ: Let's -- let's take them one at a time.  
23 THE WITNESS: Yeah, please.  
24 MR. TOOTHACRE: So seven is -- what's the date on  
25 seven so we have the correct one?

1 A. It appears that that's my signature.  
2 **Q. Okay. Thank you. And on Page 3, if you go to**  
3 **Paragraph 11, Line 14, you mention there's only one major**  
4 **issue left. And is that in reference to approve -- a**  
5 **potential approval for a CUP application at that time?**  
6 A. I believe what I'm discussing here is the  
7 application getting to the stage where staff comments are  
8 cleared. And when I mentioned this one major issue to be  
9 resolved, it's regarding that phase of the application,  
10 not the approval of the application.  
11 **Q. Not the overall, just a phase. Okay. Had**  
12 **that -- has that issue been resolved?**  
13 A. Yes, it has.  
14 **Q. When was it resolved?**  
15 MR. TOOTHACRE: Vague and ambiguous. What issue are  
16 we talking about?  
17 MR. LOPEZ: I think it's the issue that's referenced  
18 in the --  
19 THE WITNESS: Are you asking me?  
20 MR. TOOTHACRE: What -- what is the issue?  
21 THE WITNESS: This is regarding the street dedication.  
22 MR. TOOTHACRE: Okay. Thank you.  
23 THE WITNESS: Can you repeat the question?  
24 BY MR. AUSTIN:  
25 **Q. So the street dedication issue has already been**

1 resolved.  
 2 Do you recall approximately when that issue was  
 3 resolved?  
 4 A. Approximately late last year.  
 5 Q. Late last year. Late 2018?  
 6 A. That's correct.  
 7 Q. Would you estimate it was in October? November?  
 8 December?  
 9 A. I'd have to look at my records to give you any  
 10 better time frame than I just gave you.  
 11 Q. Also, on Page 3, Paragraph 12, Lines 26 through  
 12 27 --  
 13 A. Yes.  
 14 Q. -- you mention that, "It is currently my best  
 15 estimate on the issue being cleared by April 16th, 2018."  
 16 MR. TOOTHACRE: Vague and ambiguous as to what the  
 17 issue is.  
 18 BY MR. AUSTIN:  
 19 Q. Is that the street dedication issue that -- that  
 20 is being referenced?  
 21 A. I believe so.  
 22 Q. So your -- you estimated it would be completed in  
 23 April, but it took until the end of the year; is that  
 24 correct?  
 25 A. What's the question?

1 BY MR. AUSTIN:  
 2 Q. Do you take that into account when you're making  
 3 your estimates, your time estimates, for various issues  
 4 being resolved?  
 5 A. Do I take into account the volatility of the  
 6 City's review process?  
 7 Q. Yes.  
 8 A. Yes.  
 9 Q. And you have -- you've already told us that  
 10 you've done a significant number of these applications, so  
 11 would you say that your time estimates are generally  
 12 pretty accurate?  
 13 MR. TOOTHACRE: Vague and ambiguous.  
 14 THE WITNESS: Can you be more specific?  
 15 BY MR. AUSTIN:  
 16 Q. When you make time estimates and timelines of  
 17 when you think various things will be approved or issues  
 18 being cleared, do you feel that your estimates are  
 19 generally accurate?  
 20 MR. TOOTHACRE: Same objection.  
 21 THE WITNESS: No, because it's an estimate. By  
 22 nature, it's not accurate.  
 23 BY MR. AUSTIN:  
 24 Q. But you do try to be as close and accurate as  
 25 possible within reason, correct?

1 Q. For the -- for that issue to be resolved, you had  
 2 estimated it would be completed in April, but -- but now  
 3 you say it didn't actually get completed until the end of  
 4 the year, correct?  
 5 A. By "completed," do you mean cleared at staff  
 6 level?  
 7 Q. Cleared at staff level.  
 8 A. That's correct.  
 9 Q. Do you know why it took a lot longer?  
 10 A. I don't know why. You'd have to ask City staff.  
 11 Q. Understand. Okay. Is that somewhat unusual for  
 12 the City of San Diego?  
 13 MR. TOOTHACRE: Calls for speculation.  
 14 THE WITNESS: Absolutely not.  
 15 BY MR. AUSTIN:  
 16 Q. In your experience, have you had delays like that  
 17 happen before?  
 18 MR. TOOTHACRE: Vague and ambiguous.  
 19 BY MR. AUSTIN:  
 20 Q. For issues being cleared sometimes taking  
 21 significantly longer than anticipated?  
 22 MR. TOOTHACRE: Same objection. You can answer.  
 23 THE WITNESS: We have frequently had unexpected delays  
 24 and timelines in the City of San Diego while processing  
 25 our projects. That is very common.

1 MR. TOOTHACRE: Same objection.  
 2 THE WITNESS: I use my best judgment.  
 3 BY MR. AUSTIN:  
 4 Q. Yes.  
 5 A. With the information I have available.  
 6 Q. Are you still working on the 6176 property?  
 7 MR. TOOTHACRE: Vague and ambiguous.  
 8 BY MR. AUSTIN:  
 9 Q. Are you still working on that CUP application?  
 10 A. Are you asking myself as an individual or my  
 11 firm?  
 12 Q. Or Techne.  
 13 A. What do you mean by "working on" it?  
 14 MR. TOOTHACRE: Vague and ambiguous.  
 15 BY MR. AUSTIN:  
 16 Q. Are you still seeking -- is Techne still seeking  
 17 approval of that CUP application?  
 18 THE WITNESS: Is that covered, or am I allowed to  
 19 comment on that?  
 20 MR. TOOTHACRE: Which -- which -- which application is  
 21 that?  
 22 THE WITNESS: Mr. Geraci's.  
 23 MR. TOOTHACRE: Let's go off the record. I want to  
 24 confer with my client.  
 25 THE VIDEOGRAPHER: Time off the record is 11:18 a.m.

1 (Recess taken)  
 2 THE VIDEOGRAPHER: Time back on the record is  
 3 11:29 a.m. Counsel, you may proceed.  
 4 MR. AUSTIN: All right. Thank you.  
 5 BY MR. AUSTIN:  
 6 **Q. To your knowledge, is the 6176 CUP application**  
 7 **still being processed for Federal Boulevard?**  
 8 A. What I can answer is that we are not seeking  
 9 approval of that project, but I don't know exactly what  
 10 you mean by is it still being processed.  
 11 **Q. Right. And why are you no longer seeking**  
 12 **approval?**  
 13 A. It's not possible to have it approved.  
 14 **Q. So is the 6220 project 100 percent approved and**  
 15 **complete?**  
 16 A. That's my understanding, that the Conditional Use  
 17 Permit is approved. I don't know what you mean by  
 18 "complete."  
 19 **Q. Okay. I was talking about the CUP. And I was --**  
 20 **I was given a document by Mr. Toothacre. It appears to be**  
 21 **an appeal of that approval. Is that -- is that what this**  
 22 **is?**  
 23 A. No, this is supplemental information that we  
 24 submitted in relation to an appeal.  
 25 **Q. Okay.**

1 A. Of that project.  
 2 **Q. Okay. So who is -- is Techne seeking the appeal?**  
 3 A. The process has run its course. The hearing  
 4 which you mentioned previously --  
 5 **Q. Uh-huh.**  
 6 **A -- was the hearing where the decision was made on**  
 7 **this appeal. So, unfortunately, there's nothing more to**  
 8 **do on this appeal.**  
 9 **Q. Okay. So this supplemental information, do**  
 10 **you -- do you think that could change the City's mind? Or**  
 11 **is that the goal of the supplemental information?**  
 12 A. Are you asking what is the goal of this document?  
 13 **Q. Yes, sir.**  
 14 A. We produced this document in order to give it, as  
 15 indicated here, to the planning commissioners, planning  
 16 commissioners being the decision-makers for the appeal of  
 17 the project in question.  
 18 **Q. Okay. Do you know the status of what the**  
 19 **planning commissioners are doing with that property?**  
 20 A. I don't believe the planning commissioners are  
 21 doing anything with that property.  
 22 **Q. As far as --**  
 23 MR. TOOTHACRE: Let's -- it's vague. Which property  
 24 are you talking about?  
 25 MR. AUSTIN: This is the 6220 property.

1 MR. TOOTHACRE: Okay.  
 2 MR. AUSTIN: Mr. Magagna's.  
 3 THE WITNESS: Are you asking me what the decision of  
 4 the Planning Commission was in relation to the appeal?  
 5 BY MR. AUSTIN:  
 6 **Q. Has -- has a final -- final decision been made?**  
 7 A. Yes.  
 8 **Q. Yes. So -- so Mr. Geraci's property is -- okay.**  
 9 **Well, if that's the case, then is the supplemental**  
 10 **information that was provided, is that -- is that futile?**  
 11 **Could --**  
 12 A. Yeah, I'm struggling to understand your  
 13 questioning.  
 14 MR. TOOTHACRE: Yeah, I think you're misunderstanding.  
 15 I believe this was submitted in connection with his  
 16 presentation at the commission.  
 17 THE WITNESS: That's correct.  
 18 BY MR. AUSTIN:  
 19 **Q. Well, I see that this is dated in December and**  
 20 **that hearing was in October. Is -- is that not correct?**  
 21 A. The hearing for the Planning Commission --  
 22 **Q. Oh, for the Planning Commission.**  
 23 A. -- in relation to the appeal of what the City of  
 24 San Diego identifies as Project 598124 I believe was on  
 25 December 5th or 6th of 2018.

1 **Q. And the result of that was approval by the**  
 2 **Planning Commission or that -- on that hearing?**  
 3 A. The Planning Commission denied the appeal.  
 4 **Q. They denied the appeal. Okay. So does that mean**  
 5 **the 6220 property is green-lighted to become a marijuana**  
 6 **outlet? Are there any more hurdles?**  
 7 MR. TOOTHACRE: Vague and ambiguous.  
 8 MR. AUSTIN: And compound. I'm sorry.  
 9 THE WITNESS: If you can be more clear, I'll try to  
 10 answer, but I'm not sure what you're asking.  
 11 BY MR. AUSTIN:  
 12 **Q. I'm just trying to ask if Mr. Magagna's marijuana**  
 13 **outlet is coming into fruition? Is -- is Mr. Magagna**  
 14 **going to own a marijuana outlet on that property?**  
 15 MR. TOOTHACRE: Same objection.  
 16 BY MR. AUSTIN:  
 17 **Q. Is -- is it -- okay. So the CUP is approved, you**  
 18 **say, right?**  
 19 A. That's my understanding.  
 20 **Q. Okay.**  
 21 A. The CUP for Mr. Magagna on the project that we  
 22 just discussed.  
 23 **Q. And the Planning Commission has denied the**  
 24 **appeal?**  
 25 A. That's correct.

1 **Q. Okay. What further hurdles are there for Mr.**  
2 **Magagna's marijuana outlet, are there any?**  
3 MR. TOOTHACRE: Calls for speculation.  
4 THE WITNESS: You have to ask him.  
5 BY MR. AUSTIN:  
6 **Q. Okay. All right. So if you're not 100 percent**  
7 **sure Mr. Magagna can have the marijuana outlet there, why**  
8 **is the 6176 property not being pursued any longer?**  
9 A. I think understand. I'm going to restate the  
10 question. Can you confirm that that's what you're asking?  
11 I think what you're trying to ask me is how do I know  
12 that his CUP was granted and what influence that has in us  
13 not pursuing the approval of Mr. Geraci's project. Is  
14 that correct?  
15 **Q. Yes, sir.**  
16 A. We know that the CUP was granted. Because that  
17 CUP is granted, we can no longer meet the requirements to  
18 have the CUP we're applying for to be granted. That's why  
19 we're no longer seeking approval.  
20 **Q. Okay. So all right. That makes sense. So are**  
21 **you familiar with Barbara Harris Permitting?**  
22 A. Yes.  
23 **Q. How are you familiar with -- with Barbara Harris**  
24 **Permitting?**  
25 A. Barbara Harris Permitting is a permit processing

1 **Q. So because of the approval of this competing CUP,**  
2 **you believe all work on Mr. Geraci's property has ceased?**  
3 A. That's not correct.  
4 **Q. Are -- is -- to your knowledge, is someone still**  
5 **hoping to open a marijuana outlet there if possible?**  
6 MR. TOOTHACRE: Calls for speculation.  
7 THE WITNESS: To my knowledge, no.  
8 BY MR. AUSTIN:  
9 **Q. To your knowledge. What work, to your knowledge,**  
10 **would be being done for 6176?**  
11 A. By who?  
12 **Q. Anyone.**  
13 A. I can't speculate to somebody else's work. If  
14 you can be more specific, I'll try to answer your  
15 questions as best as I can.  
16 MR. TOOTHACRE: Are you aware of anybody performing  
17 any work on behalf of that property currently?  
18 THE WITNESS: Yes.  
19 BY MR. AUSTIN:  
20 **Q. Can you describe that?**  
21 A. I believe that the City of San Diego is going  
22 through the process to close out that project, and myself  
23 and staff and my firm are providing them the information  
24 they need to do that.  
25 **Q. What does that entail?**

1 company who has done work for us and for our clients for a  
2 number of years  
3 MR. TOOTHACRE: Can you spell Barbara Harris for the  
4 court reporter, please?  
5 MR. AUSTIN: Yes.  
6 THE WITNESS: I can try.  
7 MR. AUSTIN: I -- I can do it.  
8 MR. TOOTHACRE: Sure.  
9 MR. AUSTIN: B-a-r-b-a-r-a, Harris, H-a-r-r-i-s  
10 Permitting.  
11 MR. TOOTHACRE: Thank you.  
12 BY MR. AUSTIN:  
13 **Q. To your knowledge, is Barbara Harris Permitting**  
14 **now listed as the agent for Mr. Geraci's 6176 process?**  
15 MR. TOOTHACRE: Calls for speculation  
16 THE WITNESS: You're asking me to speculate on how the  
17 City categorizes people.  
18 BY MR. AUSTIN:  
19 **Q. Oh.**  
20 A. And I can't do that.  
21 **Q. Understood. Do you know if Barbara Harris**  
22 **Permitting is still working on that application, or has**  
23 **all work ceased?**  
24 A. No to my knowledge. To my knowledge Barbara  
25 Harris Permitting is not working on that project.

1 A. Are you asking me to describe how the City closes  
2 out a project or the scope of our work in relation to  
3 that?  
4 **Q. The scope of your work in relation.**  
5 A. Mainly coordinating between the City and the  
6 applicant and the financially responsible party to pay any  
7 past due invoices and to formally request that the  
8 application be withdrawn.  
9 **Q. If it was discovered that Mr. Magagna's approval**  
10 **of his CUP was obtained through fraud, how would that**  
11 **affect the winding down process on Mr. Geraci's property?**  
12 MR. TOOTHACRE: Calls for speculation. Calls for a  
13 legal conclusion. Assumes facts not in evidence. Vague  
14 and ambiguous. If you understand the question, you can --  
15 THE WITNESS: I don't understand the question.  
16 BY MR. AUSTIN:  
17 **Q. All right. If -- if Mr. Magagna's CUP**  
18 **application is to ultimately -- or not -- not just the CUP**  
19 **application, but if his marijuana outlet project is**  
20 **ultimately a failure and if you had any reason to believe**  
21 **that it wouldn't go through, how would that affect the**  
22 **winding down process on Mr. Geraci's property?**  
23 MR. TOOTHACRE: Same objections.  
24 THE WITNESS: Do you want me to speculate?  
25 MR. TOOTHACRE: No.

1 MR. LOPEZ: To your knowledge.  
 2 BY MR. AUSTIN:  
 3 **Q. To your knowledge, in that -- in that scenario,**  
 4 **if Mr. Magagna's marijuana outlet could not go through --**  
 5 **it -- if -- how would you deal with that in relation to**  
 6 **Mr. Geraci's process if you -- if you didn't think you had**  
 7 **to finish the winding down process?**  
 8 MR. TOOTHACRE: Same objections. And additional,  
 9 incomplete hypothetical  
 10 THE WITNESS: I'm going to state as best as I can  
 11 understand question.  
 12 I think what you're asking is in the hypothetical  
 13 situation that somehow Mr. Magagna's CUP was revoked, if  
 14 and how that may affect the winding down process of  
 15 Mr. Geraci's CUP. Is that correct?  
 16 BY MR. AUSTIN:  
 17 **Q. Yes.**  
 18 A. I have no idea.  
 19 **Q. In this document that was provided by**  
 20 **Mr. Toothacre, the supplemental information for the appeal**  
 21 **on the approval of the 6220 property, are there any pieces**  
 22 **of information or arguments there as to why the -- that**  
 23 **approval should be denied that were not raised at the**  
 24 **October public hearings?**  
 25 A. Can you be more specific?

1 **Mr. Bartell?**  
 2 A. A number of projects.  
 3 **Q. Do you have a rough estimate?**  
 4 A. I don't. I would have to look at my records to  
 5 give that you.  
 6 **Q. Okay. Would you say it's more than 10? More**  
 7 **than --**  
 8 A. I'm not going to speculate.  
 9 **Q. So you're not sure if it was under 20, over 20?**  
 10 A. I'm not sure of the number of projects that I've  
 11 worked on with Mr. Bartell over the years.  
 12 **Q. Right. You are entitled to a good faith**  
 13 **estimate. I know we said, like, we don't want just a**  
 14 **random guess, but if you had just -- just a good faith**  
 15 **estimate, I think that would be --**  
 16 A. My good faith guess, without looking at my  
 17 records, would be over 20 projects.  
 18 **Q. But less than 30 perhaps?**  
 19 A. I can't speculate on that again.  
 20 MR. TOOTHACRE: Yeah.  
 21 THE WITNESS: I'm giving you the best answer that I  
 22 can and you keep asking. And unfortunately this is as  
 23 accurate I can be based on my recollection.  
 24 BY MR. AUSTIN:  
 25 **Q. I apologize for belaboring -- belaboring that**

1 **Q. Were -- were the issues raised in your**  
 2 **supplemental document -- were the issues raised in that**  
 3 **also raised at the public hearing? Are there --**  
 4 A. By "the public hearing," do you mean the hearing  
 5 officer hearing for Mr. Magagna's application?  
 6 **Q. Yes.**  
 7 A. I'll have to speak from memory and about what we  
 8 typically do. Is that what you want to hear?  
 9 **Q. Yes.**  
 10 A. Typically, we would not provide all of the  
 11 information, or, as is commonly said, show our cards at  
 12 the first opportunity we have to appeal a project. We  
 13 would wait until further down the line to produce a more  
 14 comprehensive argument, but we would set the foundation  
 15 for that argument at an early stage.  
 16 **Q. So this is the comprehensive document?**  
 17 A. I would categorize it as that, yes.  
 18 **Q. And that appeal is completely closed? There's --**  
 19 **there's no reopening that appeal, to your knowledge?**  
 20 A. That's a legal question. To my knowledge,  
 21 there's no more room to appeal that project.  
 22 **Q. Okay.**  
 23 A. In the Development Services Department.  
 24 **Q. Gotcha. Earlier we discussed Mr. Jim Bartell.**  
 25 **How many -- how many projects have you worked on with**

1 **point.**  
 2 **Would it be possible for you to provide a**  
 3 **comprehensive list in the future of the projects you**  
 4 **worked on with Mr. Bartell?**  
 5 MR. TOOTHACRE: Well, if a -- if a -- if you -- if you  
 6 issue a proper subpoena he would provide that information,  
 7 but he's not a party to this litigation, so --  
 8 MR. AUSTIN: I was just trying to find out if that  
 9 information exists.  
 10 THE WITNESS: Is the question, does the information  
 11 exist on which projects my firm has worked with Mr. Jim  
 12 Bartell's firm on?  
 13 BY MR. AUSTIN:  
 14 **Q. Yes, sir.**  
 15 A. That information does exist.  
 16 **Q. Okay. Thank you. And you say Mr. Bartell**  
 17 **introduced you to Mr. Magagna?**  
 18 A. That's not what I said.  
 19 **Q. Oh, that's not what you said? Because when I --**  
 20 **when I asked how you met Mr. Magagna, I thought you said**  
 21 **you were introduced by Mr. Bartell.**  
 22 A. That's incorrect.  
 23 MR. TOOTHACRE: Misstates testimony.  
 24 BY MR. AUSTIN:  
 25 **Q. I'm sorry. Who was it that introduced you to**

1 **Mr. Magagna?**  
2 A. Rakesh Goyal.  
3 **Q. Oh, Rakesh Goyal. I do apologize for that.**  
4 **Has Mr. Magagna tried to enlist your services or the**  
5 **services of Techne at any point?**  
6 A. Absolutely not.  
7 **Q. Do you have any ownership interest in**  
8 **Mr. Magagna's 6220 project?**  
9 A. Absolutely not.  
10 **Q. How long did you work on the project at 6176?**  
11 MR. TOOTHACRE: Vague and ambiguous.  
12 BY MR. AUSTIN:  
13 **Q. How long did Techne --**  
14 MR. TOOTHACRE: Vague and ambiguous as to -- are you  
15 asking how many months, how many hours he has in it? And  
16 if you can be more specific as to what you're asking.  
17 BY MR. AUSTIN:  
18 **Q. Yeah. Do you know when Techne began working on**  
19 **the 7176 project, roughly?**  
20 A. I believe in 2016.  
21 **Q. Yes. And when did Techne cease work for seeking**  
22 **approval on that project?**  
23 A. When did we cease work?  
24 MR. TOOTHACRE: I'm going to say vague and ambiguous.  
25 MR. AUSTIN: I'm sorry.

1 right?  
2 THE WITNESS: Am I allowed to answer his questions?  
3 MR. TOOTHACRE: Not typically, but --  
4 MR. LOPEZ: It's a clarification.  
5 MR. TOOTHACRE: But go ahead and answer.  
6 THE WITNESS: Can you repeat your question?  
7 THE WITNESS: So there's a difference between seeking  
8 approval -- work that you did -- or Techne did at seeking  
9 approval of the CUP, and then there was work that was done  
10 in winding up the CUP, or -- or terminating that -- that  
11 project. Is that -- is that -- is that fair to say?  
12 THE WITNESS: I would think that's fair to say.  
13 MR. LOPEZ: Okay. So I think his question was, when  
14 did you -- when did you cease seeking approval of the  
15 project? Not when the work was done, but when the work  
16 for seeking approval.  
17 THE WITNESS: When we were instructed to do so.  
18 BY MR. AUSTIN:  
19 **Q. What was that date?**  
20 A. Approximately one to two weeks ago.  
21 **Q. January of this year?**  
22 A. Yes, January of this year.  
23 **Q. Do you know how long the CUP process took for**  
24 **6220 to be approved?**  
25 A. I don't.

1 MR. TOOTHACRE: And it misstates prior testimony.  
2 BY MR. AUSTIN:  
3 **Q. When would -- at what date -- no.**  
4 **To your knowledge, when did -- when is the last time**  
5 **Techne did any work on seeking approval of the 6176**  
6 **project?**  
7 A. During the hearing which this document was  
8 discussed at and which you mentioned earlier.  
9 **Q. So that was the final -- the final piece of work**  
10 **Techne did?**  
11 A. That's a different question.  
12 **Q. For -- for --**  
13 MR. TOOTHACRE: Misstates testimony.  
14 BY MR. AUSTIN:  
15 **Q. Okay. So roughly that's when Techne concluded**  
16 **pursuing the project at the submission -- or hearing the**  
17 **results of the appeal?**  
18 MR. TOOTHACRE: Vague and ambiguous.  
19 THE WITNESS: I'm really not sure what you're asking.  
20 I'm sorry.  
21 MR. AUSTIN: All right. We can skip that.  
22 MR. LOPEZ: So wait. Is there -- is there a  
23 difference between -- I think the determination you're  
24 making is work is still approval, right? So there's a  
25 difference between approval and working on the project,

1 MR. AUSTIN: All right. I think -- I think we're done  
2 here as far as my questions go. If Mr. Toothacre has  
3 anything?  
4 MR. TOOTHACRE: No, no follow-up.  
5 MR. AUSTIN: All right.  
6 MR. TOOTHACRE: Want to propose a stipulation?  
7 MR. AUSTIN: Yes.  
8 MR. LOPEZ: Did you lose it?  
9 MR. AUSTIN: Yeah.  
10 MR. TOOTHACRE: I propose we relieve the court  
11 reporter of her statutory duties under the code, that she  
12 prepare a transcript and that transcript shall be  
13 forwarded to me. I will give it to Mr. Schweitzer for his  
14 review and correction. How long do you need to make any  
15 corrections?  
16 THE WITNESS: 72 hours.  
17 MR. TOOTHACRE: Okay. Within a -- within a week. We  
18 will notify counsel of any corrections that Mr. Schweitzer  
19 has made. We will maintain the original.  
20 If it's lost or destroyed or not available for any  
21 reason, a substitute can be used in its place at trial, a  
22 certified copy. Anything else? So stipulated?  
23 MR. AUSTIN: So stipulated.  
24 MR. TOOTHACRE: Okay.  
25 THE VIDEOGRAPHER: This concludes the videotaped



1 deposition, media number one. We're going off the record.  
2 The time is 11:50 a.m.

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1 I, ABHAY SCHWEITZER, declare under penalty of  
2 perjury that the foregoing is my deposition under oath;  
3 that these are the questions asked of me and my answers  
4 thereto; that I have read my deposition and have made any  
5 necessary corrections, additions or changes that I deem  
6 necessary.

7 Dated this \_\_\_\_\_ day of \_\_\_\_\_  
8 2019.

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ABHAY SCHWEITZER

1 STATE OF CALIFORNIA)SS:  
2 COUNTY OF SAN DIEGO)

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I do hereby certify:

That the foregoing deposition was taken before me  
at the time and place therein set forth at which time the  
witness was put under oath by me;

That the testimony of the witness and all  
objections made at the time of the examination were  
recorded stenographically by me were thereafter  
transcribed under my direction and supervision and that  
the foregoing is a true record of the same.

I further certify that I am neither counsel for nor  
related to any party to said action, nor anywise  
interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name this  
28th day of February, 2019.

\_\_\_\_\_  
JACQUELINE STEARMAN, CSR NO. 9373

<u>WORD INDEX</u>				
< 0 >	3 3:10 22:5, 7 41:2 42:11	7880 2:2, 22 4:13	ago 60:20	49:10 52:14
004933 5:12	30 1:18 2:1 4:1 56:18	< 9 >	agree 35:11	56:21 60:2, 5
004964 5:13	30th 4:4	91945 2:22	agreement 18:21	answered 28:15
< 1 >	31 3:10	92101 2:14 4:8	ahead 33:22, 22 60:5	answering 7:15
1 1:7 3:9 17:13, 15, 24	31st 3:10 20:24 23:10	92108 2:18	aided 34:17	answers 5:20 63:3
1,000 35:1	350 4:8	9373 1:22 64:22	air 40:18	anticipated 43:21
10 1:7 15:3, 4 37:18 56:6	356-1556 2:23	< A >	aliases 8:6, 15	anybody 40:18 52:16
10:07 2:2 4:2, 4	357-6850 2:19	a.m 2:2 4:2, 4 23:25 45:25	All 6:5 7:5, 5, 24 20:8, 20 21:9, 20 23:21 24:3	anywise 64:14
100 46:14 50:6	37 3:15	46:3 62:2	29:14 31:7 32:8	apologize 56:25 58:3
11 41:3	37-2017-00010017 3 4:12	Aaron 26:2, 7, 8	34:23 35:1 37:7	appeal 5:18
11:18 45:25	37-2017-00010073 1:5	ABHAY 1:16	38:6, 6 39:10, 19	46:21, 24 47:2, 7, 8, 16 48:4, 23
11:29 23:25 46:3	< 4 >	2:7 4:9 5:6 8:5, 16 17:25 23:25	46:4 50:6, 20	49:3, 4, 24 54:20
11:50 62:2	4 3:3, 10 17:5, 7 23:3, 9, 13	63:1, 13	51:23 52:2	55:12, 18, 19, 21 59:17
12 42:11	40 3:16	able 7:12 29:13 40:13	53:17 55:10	59:17
14 41:3	< 5 >	about 5:1 6:12 9:22 11:4, 6	59:21 61:1, 5 64:8	appeals 35:5
1450 2:14	5 3:10 31:13, 16 40:24	12:21 20:8 30:2	64:8	appear 4:23 13:5 17:21 23:17
1455 2:18	500 2:18	32:21 39:11	allowed 45:18 60:2	appearance 4:23
15 10:13, 15 15:17	501 2:14	40:14 41:16	along 37:8	appeared 2:5 14:2
16th 42:15	530 4:8	46:19 47:24	already 41:25 44:9	appears 17:24 23:4, 23 32:11 39:7 41:1 46:20
17 3:9 27:7	598124 48:24	55:7	also 9:6 11:14 12:15 14:7	applicant 53:6
17th 27:9	5th 17:25 48:25	Absolutely 33:20, 24 34:18 35:11	28:15 33:11	application 3:14 16:16 18:16
190 3:10 20:24	< 6 >	43:14 58:6, 9	37:2 42:11 55:3	19:19 21:4, 13, 16 22:19 26:20
< 2 >	6 3:15 37:17, 24	access 38:7 39:8	ambiguous 9:12	27:3, 5 31:15
2 3:10 20:23, 25 22:15	6176 16:9 20:13 34:20 45:6 46:6	account 44:2, 5	10:17 11:8 12:1	33:19 34:17, 20, 21 36:3, 9, 13, 19, 22 37:1 41:5, 7, 9, 10 45:9, 17, 20
20 3:10 10:14, 15 56:9, 9, 17	50:8 51:14	accurate 40:14 44:12, 19, 22, 24	17:3 19:2, 15	46:6 51:22 53:8, 18, 19 55:5
2010 8:24	52:10 58:10	56:23	20:5 21:6, 14, 18	18, 19 55:5
2014 14:15, 24	59:5	accusations 14:8	24:22 25:2, 15	27:3, 5 31:15
2016 3:10 17:25 20:24 23:10, 11, 24 37:18 38:2 58:20	619 2:15, 19, 23	action 64:14	26:23 27:18	33:19 34:17, 20, 21 36:3, 9, 13, 19, 22 37:1 41:5, 7, 9, 10 45:9, 17, 20
2018 27:8, 10 42:5, 15 48:25	6220 3:14 27:4, 10, 16 28:18	actually 43:3	28:23 29:7, 25	46:6 51:22 53:8, 18, 19 55:5
2019 1:18 2:1 4:1, 4 63:8 64:17	29:16 31:2, 8, 15 46:14 47:25	additional 5:10 54:8	32:7 34:22	18, 19 55:5
22 3:10	49:5 54:21 58:8 60:24	adverse 34:19	35:10 36:20	18, 19 55:5
23 3:10	60:24	affect 53:11, 21 54:14	38:25 41:15	18, 19 55:5
233-3131 2:15	63 3:20	Affidavits 12:25	42:16 43:18	18, 19 55:5
23rd 40:1	64 3:21	affirm 4:21	44:13 45:7, 14	18, 19 55:5
26 23:11 42:11	6th 48:25	after 5:11 7:8 30:2	49:7 53:14	18, 19 55:5
27 23:24 40:1, 2, 3 42:12	< 7 >	again 56:19	58:11, 14, 24	18, 19 55:5
28th 64:17	7 3:16 38:2 40:5	against 14:7, 9	59:18	18, 19 55:5
< 3 >	7176 58:19	agent 16:14 33:16, 18 34:3 51:14	amount 13:6 15:2	18, 19 55:5
	72 61:16	agents 19:12	analysis 28:12	18, 19 55:5
			ANDREW 2:21, 21 4:24	18, 19 55:5
			answer 6:25 19:23 20:6, 7	18, 19 55:5
			21:19 22:21, 21	18, 19 55:5
			23:2 25:4 31:23	18, 19 55:5
			32:9 33:23 34:5, 8, 15, 22 37:12	18, 19 55:5
			43:22 46:8	18, 19 55:5

<p>59:5, 24, 25 60:8, 9, 14, 16  <b>approve</b> 41:4  <b>approved</b> 10:16, 21 16:3 27:6 35:2, 4 44:17 46:13, 14, 17 49:17 60:24  <b>Approximately</b> 8:24 42:2, 4 60:20  <b>April</b> 42:15, 23 43:2  <b>area</b> 30:4  <b>arguing</b> 19:23  <b>argument</b> 55:14, 15  <b>arguments</b> 54:22  <b>asked</b> 19:22 38:11 57:20 63:3  <b>asking</b> 18:14, 20 19:4, 25 23:21 25:20 37:4 41:19 45:10 47:12 48:3 49:10 50:10 51:16 53:1 54:12 56:22 58:15, 16 59:19  <b>assisted</b> 36:13  <b>assisting</b> 31:7 35:8  <b>assumes</b> 19:16, 21 20:5 26:22 31:20 37:10 38:10 53:13  <b>assuming</b> 27:15  <b>attached</b> 18:13  <b>attachments</b> 13:21 14:3, 3, 4  <b>attend</b> 27:7, 9  <b>attended</b> 27:24  <b>attention</b> 7:3, 7, 13 37:16 40:24  <b>ATTORNEY</b> 2:17 4:22 12:12 14:10  <b>attorney-client</b> 12:9 22:20  <b>AUSTIN</b> 2:17 3:3 4:18, 18, 25 5:19, 25 6:4, 5 8:10, 14 9:13 10:22 11:9 12:2,</p>	<p>3, 18 13:8 14:10, 12, 15, 21, 23 15:10, 12 16:1, 8 17:4, 11, 14, 18 18:8 19:3, 10, 17, 22 20:1, 10, 20, 23 21:1, 8, 11, 15, 22 22:5, 8, 18, 22, 23 23:3, 9, 12, 14, 18, 19, 25 24:8, 10, 20, 23, 24 25:1, 7, 10, 16, 22 26:4, 6, 19 27:1, 19 29:1, 8 30:1, 8 31:10, 13, 17 32:1, 8, 14 34:1, 10, 23 35:7, 13, 16, 18 36:6, 7, 12, 17, 23 37:6, 16, 22 38:1, 21 39:1, 10, 14 40:1, 3, 6, 23 41:24 42:18 43:15, 19 44:1, 15, 23 45:3, 8, 15 46:4, 5 47:25 48:2, 5, 18 49:8, 11, 16 50:5 51:5, 7, 9, 12, 18 52:8, 19 53:16 54:2, 16 56:24 57:8, 13, 24 58:12, 17, 25 59:2, 14, 21 60:18 61:1, 5, 7, 9, 23  <b>Austin's</b> 15:21  <b>authentic</b> 25:18  <b>authority</b> 36:25 37:1 38:9  <b>available</b> 45:5 61:20  <b>aware</b> 26:20 27:3, 5 36:11, 16 52:16    <b>&lt; B &gt;</b>  <b>back</b> 7:8 24:25 33:14 40:20 46:2  <b>Barbara</b> 50:21, 23, 25 51:3, 13, 21, 24  <b>B-a-r-b-a-r-a</b> 51:9  <b>Barry</b> 16:13, 18, 19, 21 18:21, 23</p>	<p>19:18 20:3, 14, 18 22:3 23:10, 18 37:9  <b>Barry's</b> 18:15  <b>Bartell</b> 35:23 55:24 56:1, 11 57:4, 16, 21  <b>Bartell's</b> 57:12  <b>based</b> 56:23  <b>basically</b> 13:9 38:8  <b>basis</b> 28:12  <b>Bates</b> 5:12  <b>began</b> 58:18  <b>begins</b> 4:9  <b>behalf</b> 4:16, 18 52:17  <b>belaboring</b> 56:25, 25  <b>believe</b> 7:1 13:2, 4 14:15, 19 15:4 16:10, 20 21:23 22:13 25:8, 17, 24 26:16 29:19 31:5 39:4 40:22 41:6 42:21 47:20 48:15, 24 52:2, 21 53:20 58:20  <b>best</b> 15:21 21:19 42:14 45:2 52:15 54:10 56:21  <b>better</b> 14:7 42:10  <b>bit</b> 8:3  <b>Boulevard</b> 16:9 20:13 27:4, 11 36:4 46:7  <b>break</b> 5:23 7:20  <b>brief</b> 28:7, 10  <b>BRITTON</b> 2:13  <b>broad</b> 20:7  <b>Broadway</b> 2:2, 14, 22 4:13  <b>brought</b> 5:15 29:18  <b>Bruno</b> 30:24  <b>business</b> 16:22 22:2    <b>&lt; C &gt;</b>  <b>CALIFORNIA</b> 1:1, 17 2:3, 5, 14,</p>	<p>18, 22 4:1, 8, 11 64:1  <b>call</b> 29:5  <b>called</b> 2:8 30:18, 22  <b>Calls</b> 19:9 21:6 25:21 34:4 36:10 37:2, 10, 11 38:24 43:13 50:3 51:15 52:6 53:12, 12  <b>cannabis</b> 9:21  <b>capacity</b> 18:25 34:16  <b>Caran</b> 8:5  <b>C-a-r-a-n</b> 8:12  <b>cards</b> 55:11  <b>care</b> 28:19 29:15, 17 30:2  <b>Carlos</b> 33:7  <b>CASE</b> 1:4 4:12 6:8, 10, 11 11:4, 7, 11, 15, 18, 22 13:1 20:7, 12 29:24 30:3 32:19 38:22 39:12 48:9  <b>categorize</b> 55:17  <b>categorizes</b> 51:17  <b>cause</b> 2:9  <b>caution</b> 15:20  <b>cc-ed</b> 23:19  <b>cease</b> 58:21, 23 60:14  <b>ceased</b> 51:23 52:2  <b>center</b> 28:19 29:16, 17 30:2  <b>CENTRAL</b> 1:2 4:12  <b>certain</b> 15:18 16:3  <b>Certainly</b> 27:25  <b>Certificate</b> 3:21  <b>Certified</b> 2:4 61:22  <b>certify</b> 64:4, 13  <b>chain</b> 23:3  <b>chains</b> 23:10  <b>chance</b> 31:1  <b>change</b> 47:10  <b>changes</b> 63:5  <b>characterization</b> 38:11</p>	<p><b>characterized</b> 31:23  <b>charge</b> 39:8  <b>check</b> 30:3  <b>children's</b> 28:19  <b>cities</b> 9:24 10:2  <b>City</b> 2:2 9:16, 23, 24 21:20 31:4 34:24 43:10, 12, 24 48:23 51:17 52:21 53:1, 5  <b>City's</b> 44:6 47:10  <b>clarification</b> 60:4  <b>clarify</b> 14:3  <b>clarity</b> 19:24 36:1  <b>clear</b> 49:9  <b>cleared</b> 41:8 42:15 43:5, 7, 20 44:18  <b>client</b> 38:19 45:24  <b>clients</b> 12:15 51:1  <b>close</b> 29:16 44:24 52:22  <b>closed</b> 55:18  <b>closes</b> 53:1  <b>CLVS</b> 2:24  <b>Code</b> 34:25 61:11  <b>cold</b> 8:2  <b>coming</b> 49:13  <b>commencing</b> 2:1  <b>comment</b> 28:2, 6 29:10 45:19  <b>comments</b> 41:7  <b>Commission</b> 27:13 31:4 48:4, 16, 21, 22 49:2, 3, 23  <b>commissioners</b> 28:16 47:15, 16, 19, 20  <b>common</b> 19:7, 12 26:11 43:25  <b>commonly</b> 55:11  <b>company</b> 8:20, 21, 23 12:22 30:18, 21 51:1  <b>competing</b> 26:21 52:1</p>
--	---	---	--	--

<p><b>complete</b> 46:15, 18  <b>completed</b> 42:22 43:2, 3  <b>completed,</b> 43:5  <b>completely</b> 55:18  <b>completing</b> 24:1  <b>compound</b> 49:8  <b>comprehensive</b> 55:14, 16 57:3  <b>concern</b> 29:15  <b>concluded</b> 59:15  <b>concludes</b> 61:25  <b>conclusion</b> 37:3, 11 53:13  <b>Condition</b> 9:21 15:6  <b>Conditional</b> 9:14 31:6 46:16  <b>conditioning</b> 40:18  <b>confer</b> 21:10 45:24  <b>confirm</b> 50:10  <b>conflict</b> 35:9  <b>connection</b> 48:15  <b>consultant</b> 14:16, 17  <b>content</b> 13:3  <b>contract</b> 16:13 18:10, 12, 12  <b>coordinating</b> 53:5  <b>copies</b> 22:24 39:20  <b>copy</b> 5:15, 15, 17 37:20 40:22 61:22  <b>correct</b> 7:7, 18 11:1 16:17 18:10, 16 27:15 29:2 39:17, 18, 19, 25 42:6, 24 43:4, 8 44:25 48:17, 20 49:25 50:14 52:3 54:15  <b>correction</b> 61:14  <b>corrections</b> 61:15, 18 63:5  <b>COTTON</b> 1:5 4:11, 19 6:6, 9 13:3 14:9 26:21 34:19  <b>Cotton's</b> 13:5</p>	<p><b>COUNSEL</b> 2:20 4:14, 24 11:3, 24 21:10 37:20, 21 38:11 46:3 61:18 64:13  <b>COUNTY</b> 1:2 2:3 4:12 9:17, 18, 20, 22 10:2 64:2  <b>course</b> 5:17 40:9 47:3  <b>COURT</b> 1:1 4:6, 11, 20 5:3 11:18, 19, 22 13:6 26:4, 14 51:4 61:10  <b>courtroom</b> 6:21  <b>covered</b> 45:18  <b>created</b> 13:3  <b>CROSS-ACTION S</b> 1:11  <b>CROSS-COMPLAINT</b> 2:16, 20 6:6  <b>CROSS-DEFENDANT</b> 2:12  <b>CSR</b> 1:22 64:22  <b>CU-BC-CTL</b> 1:5  <b>CUP</b> 5:18 9:8, 10 27:3, 10, 16 31:2, 8 33:19 34:21 41:5 45:9, 17 46:6, 19 49:17, 21 50:12, 16, 17, 18 52:1 53:10, 17, 18 54:13, 15 60:9, 10, 23  <b>CUPs</b> 10:23  <b>currently</b> 10:6 16:5 42:14 52:17  <b>Custom</b> 30:19, 22  <b>Customer</b> 32:23 33:5 34:12  <b>&lt; D &gt;</b>  <b>DARRYL</b> 1:5 4:11 6:6, 9 13:3 14:9  <b>date</b> 4:4 27:15 39:24 59:3 60:19  <b>dated</b> 3:10 17:25 20:24</p>	<p>37:18 38:2 40:1 48:19 63:7  <b>day</b> 28:13, 19 29:15, 17 30:2 63:7 64:17  <b>dba</b> 8:22  <b>deal</b> 54:5  <b>December</b> 42:8 48:19, 25  <b>decide</b> 5:24  <b>decision</b> 47:6 48:3, 6  <b>decision-maker</b> 37:8  <b>decision-makers</b> 47:16  <b>decision-making</b> 38:9  <b>decisions</b> 36:25  <b>Declaration</b> 3:16  <b>Declarations</b> 11:20, 21 12:8 13:1 14:6 39:11, 16, 20  <b>declare</b> 63:1  <b>dedication</b> 41:21, 25 42:19  <b>deem</b> 63:5  <b>Defendant</b> 2:8, 16, 20 4:18 6:6  <b>Defendants</b> 1:7  <b>DEFENDANT'S</b> 3:8 17:15 20:25 22:7 23:13 31:16 37:24 40:5  <b>delays</b> 43:16, 23  <b>denied</b> 49:3, 4, 23 54:23  <b>Department</b> 32:18 55:23  <b>deponent</b> 4:21  <b>DEPOSITION</b> 1:16 4:9 6:23 11:13, 15 12:14 17:8 62:1 63:2, 4 64:5  <b>describe</b> 13:15, 17, 20 52:20 53:1  <b>described</b> 10:8 20:15, 18  <b>design</b> 9:6  <b>designated</b> 30:4  <b>destroyed</b> 61:20</p>	<p><b>determination</b> 59:23  <b>determined</b> 30:15  <b>determines</b> 21:21  <b>detrimental</b> 35:5  <b>development</b> 9:7 32:12, 18 55:23  <b>DIEGO</b> 1:2 2:3, 14, 18 3:10 4:1, 8, 12 9:17, 18, 20, 23, 23, 25 10:2, 9 15:14 20:24 32:19 34:24 43:12, 24 48:24 52:21 64:2  <b>Diego's</b> 31:4  <b>difference</b> 59:23, 25 60:7  <b>different</b> 19:14 59:11  <b>direct</b> 37:16 40:24  <b>directed</b> 36:18  <b>directing</b> 36:21  <b>direction</b> 64:11  <b>directions</b> 36:25  <b>disagree</b> 31:22  <b>Disclosure</b> 3:10 22:6  <b>discovered</b> 53:9  <b>discuss</b> 18:9  <b>discussed</b> 11:6 12:15 49:22 55:24 59:8  <b>discussing</b> 19:25 38:5 41:6  <b>discussions</b> 11:10 12:7  <b>dispensaries</b> 15:13  <b>DIVISION</b> 1:2  <b>document</b> 18:1 21:2 22:1, 9, 11, 13, 13, 16 23:16, 22 24:19 28:11 29:11, 13, 18 31:19, 21 33:22 40:7, 10 46:20 47:12, 14 54:19 55:2, 16 59:7  <b>documents</b> 5:10, 18 11:17, 22, 23 13:6 22:24 24:3, 20 32:3  <b>doing</b> 47:19, 21  <b>double-check</b> 14:6  <b>DS</b> 3:10 20:24  <b>DS318</b> 3:10 22:6  <b>DSD</b> 3:10 31:14 32:3, 18  <b>due</b> 53:7  <b>duly</b> 5:7  <b>duties</b> 61:11  <b>Dutta</b> 35:14, 16, 19 36:8, 13, 18, 24 37:8  <b>D-u-t-t-a</b> 35:16  <b>&lt; E &gt;</b>  <b>earlier</b> 29:21 55:24 59:8  <b>early</b> 55:15  <b>eight</b> 15:16  <b>either</b> 10:6  <b>else's</b> 12:25 19:5 52:13  <b>e-mail</b> 17:6 18:4, 9, 19 19:25 20:12 23:9, 11, 12 24:6, 11, 12, 13, 18 25:8, 18 37:17 38:2, 3, 5, 6 39:2, 6  <b>e-mails</b> 3:9, 10, 15 17:19, 24 18:15, 18, 20 23:4, 15, 17, 19, 21 24:25 38:23  <b>emergencies</b> 7:9  <b>employee</b> 33:10, 14, 15  <b>employee's</b> 34:12  <b>enlist</b> 58:4  <b>entail</b> 52:25  <b>entire</b> 10:20  <b>entitled</b> 15:21 56:12  <b>Environment</b> 8:22  <b>ESQ</b> 2:13, 21  <b>estimate</b> 10:12 14:25 15:16, 23 42:7, 15 44:21 56:3, 13, 15  <b>estimated</b> 42:22 43:2</p>
--	---	---	--

<p><b>estimates</b> 15:22 44:3, 3, 11, 16, 18 <b>everybody</b> 40:17 <b>evidence</b> 19:16 26:22 31:21 37:10 53:13 <b>exact</b> 10:10 <b>exactly</b> 10:19 46:9 <b>EXAMINATION</b> 3:2 6:3 64:9 <b>examined</b> 2:9 <b>Excellent</b> 7:14 <b>Excuse</b> 7:4 <b>executed</b> 40:3 <b>Exhibit</b> 3:9, 10, 10, 10, 10, 15, 16 5:16 17:5, 7, 13, 15, 24 20:20, 21, 23, 25 22:5, 7, 15 23:3, 9, 13, 22 31:10, 11, 13, 16 32:25 37:17, 24 40:5 <b>EXHIBITS</b> 3:7 <b>exist</b> 57:11, 15 <b>exists</b> 57:9 <b>experience</b> 19:12 43:16 <b>explain</b> 28:7</p> <p>&lt; F &gt; <b>facilitating</b> 39:8 <b>fact</b> 33:18 <b>facts</b> 19:16, 21 20:5 26:22 31:20 37:10 38:10 53:13 <b>failure</b> 53:20 <b>fair</b> 10:12 60:11, 12 <b>faith</b> 56:12, 14, 16 <b>familiar</b> 6:8, 10 14:10 21:3 30:23, 25 32:2, 5 50:21, 23 <b>far</b> 20:13 47:22 61:2 <b>February</b> 40:2, 3 64:17 <b>Federal</b> 16:9 20:13 27:4, 10 36:4 46:7</p>	<p><b>feel</b> 40:15 44:18 <b>feet</b> 35:1 <b>FERRIS</b> 2:13 <b>field</b> 19:8 <b>filed</b> 11:18 13:10 14:7 <b>final</b> 48:6, 6 59:9, 9 <b>financially</b> 53:6 <b>find</b> 19:4 20:8 57:8 <b>fine</b> 15:23 24:4 28:10 33:22 <b>finish</b> 54:7 <b>firm</b> 22:14, 16 27:17, 22, 24 30:11 31:7 33:10 45:11 52:23 57:11, 12 <b>firms</b> 32:6 <b>first</b> 2:8 5:7 33:2 55:12 <b>five</b> 31:11, 12 <b>FLORES</b> 2:21, 21 4:24, 24 <b>follow</b> 33:1 <b>follows</b> 5:7 <b>follow-up</b> 61:4 <b>force</b> 6:21 <b>foregoing</b> 63:2 64:5, 12 <b>form</b> 3:10 20:24 <b>formally</b> 10:7 53:7 <b>forms</b> 21:4, 12, 16, 20, 23 <b>forth</b> 24:25 64:6 <b>forward</b> 22:24 <b>forwarded</b> 61:13 <b>foundation</b> 19:9 24:8 31:21 38:10 55:14 <b>four</b> 17:10 23:9 <b>frame</b> 42:10 <b>fraud</b> 53:10 <b>FRAZEE</b> 2:18 <b>frequently</b> 43:23 <b>Friday</b> 24:2 <b>friend</b> 26:10, 12 <b>fruition</b> 49:13 <b>full</b> 7:3, 7, 12 8:4 40:13, 13 <b>fully</b> 29:11, 14 <b>fumigation</b> 7:9</p>	<p><b>further</b> 50:1 55:13 64:13 <b>futile</b> 48:10 <b>future</b> 57:3</p> <p>&lt; G &gt; <b>gathered</b> 13:18 <b>general</b> 20:14 <b>generally</b> 44:11, 19 <b>generated</b> 32:11 <b>Geraci</b> 4:10 6:8 11:3 16:8, 11, 14, 15 17:20, 24 18:10, 14, 20 19:4, 18 20:3 35:20, 23 36:8, 14 37:1, 9 38:12 <b>GERACLan</b> 1:4 <b>Geraci's</b> 11:24 16:21 26:21 34:20 35:5 36:3 45:22 48:8 50:13 51:14 52:2 53:11, 22 54:6, 15 <b>getting</b> 24:2 41:7 <b>Gina</b> 12:1 14:10, 12, 15, 20 15:12 16:8 22:18 23:12, 18, 19, 25 24:8 <b>give</b> 7:12, 21 10:19 15:17 16:7 32:10, 20 40:13 42:9 47:14 56:5 61:13 <b>Given</b> 35:3 37:7 40:10 46:20 <b>giving</b> 7:6 56:21 <b>go</b> 5:21 15:24 33:11, 22, 22 41:2 45:23 53:21 54:4 60:5 61:2 <b>goal</b> 47:11, 12 <b>going</b> 5:10 6:12 14:5 15:20 17:2 21:19 24:7 25:5 26:24 27:2 31:21 33:14 34:15 49:14 50:9 52:21</p>	<p>54:10 56:8 58:24 62:1 <b>gonna</b> 17:10 <b>Gonzalez</b> 33:7, 14 <b>Good</b> 4:3 56:12, 14, 16 <b>Gotcha</b> 55:24 <b>gotten</b> 10:20 <b>Goyal</b> 26:13 58:2, 3 <b>G-o-y-a-l</b> 26:17 <b>granted</b> 29:5 38:7 50:12, 16, 17, 18 <b>green-lighted</b> 49:5 <b>GROVE</b> 1:17 2:3, 22 9:24 <b>guess</b> 15:22, 24 17:12 34:7 40:12 56:14, 16</p> <p>&lt; H &gt; <b>happen</b> 43:17 <b>happy</b> 29:10 <b>hard</b> 14:25 33:1 41:7 <b>Harris</b> 50:21, 23, 25 51:3, 9, 13, 21, 25 <b>H-a-r-r-i-s</b> 51:9 <b>hear</b> 28:9 55:8 <b>HEARD</b> 2:24 4:5 <b>hearing</b> 10:20, 25 21:10 27:7, 9, 13, 21, 24 28:3 29:4, 19 30:2 47:3, 6 48:20, 21 49:2 55:3, 4, 5 59:7, 16 <b>hearing,</b> 55:4 <b>hearings</b> 54:24 <b>held</b> 4:11 <b>help</b> 22:11, 18 <b>hire</b> 16:11 <b>hoping</b> 52:5 <b>hot</b> 40:19 <b>hour</b> 2:2 <b>hours</b> 58:15 61:16 <b>house</b> 7:8 <b>hurdles</b> 49:6 50:1</p>	<p><b>hypothetical</b> 54:9, 12</p> <p>&lt; I &gt; <b>idea</b> 54:18 <b>Ideal</b> 8:22 <b>identification</b> 17:9, 15 20:25 22:7 23:13 31:16 37:24 40:5 <b>identifies</b> 48:24 <b>identify</b> 4:14 17:16 <b>implied</b> 20:19 <b>impression</b> 24:2 37:8, 14 <b>inclusive</b> 1:7 <b>incomplete</b> 54:9 <b>incorrect</b> 57:22 <b>in-depth</b> 28:12 <b>INDEX</b> 3:7 <b>indicated</b> 22:3 33:17 47:15 <b>indicates</b> 31:18 <b>individual</b> 1:4, 5 21:25 45:10 <b>individuals</b> 16:24 32:6 <b>influence</b> 50:12 <b>information</b> 12:21 13:22 28:16 32:21, 24 33:5 34:13 45:5 46:23 47:9, 11 48:10 52:23 54:20, 22 55:11 57:6, 9, 10, 15 <b>informed</b> 11:12, 14 <b>inquire</b> 20:8 <b>instructed</b> 22:21 23:1 60:17 <b>intent</b> 38:12, 14 <b>interacting</b> 25:7 <b>interest</b> 35:9 58:7 <b>interested</b> 64:15 <b>interpose</b> 28:23 <b>introduce</b> 16:8 <b>introduced</b> 16:19, 20 26:10 35:24 57:17, 21, 25</p>
---	--	---	--	--

<p><b>investigate</b> 29:23  <b>invoices</b> 53:7  <b>involved</b> 31:19            38:23  <b>issue</b> 29:4, 23            38:5 41:4, 8, 12,            15, 17, 20, 25            42:2, 15, 17, 19            43:1 57:6  <b>issues</b> 43:20            44:3, 17 55:1, 2  <b>its</b> 32:12 47:3            61:21</p> <p>&lt; J &gt;  <b>Jack</b> 4:6  <b>JACOB</b> 2:17            4:18 5:9 6:5            8:8 17:17  <b>JACQUELINE</b>            1:22 2:4 4:7            8:9 64:22  <b>JANUARY</b> 1:18            2:1 4:1, 4 60:21,            22  <b>JAVAN</b> 2:24            4:5  <b>Jim</b> 35:23            37:18 55:24            57:11  <b>joint</b> 12:15  <b>judge</b> 6:21  <b>judgment</b> 45:2  <b>jurisdiction</b> 10:8  <b>jurisdictions</b> 10:9  <b>jury</b> 6:21</p> <p>&lt; K &gt;  <b>keep</b> 56:22  <b>key</b> 18:12  <b>kind</b> 40:19  <b>know</b> 5:14 7:17,            21 10:15 13:9,            20 14:12, 13            16:15, 18 18:22,            24, 25 26:1, 7            28:20 29:17, 18            30:21, 24 34:2, 5,            7, 9, 11 35:14, 19,            20, 24 38:9            40:20 43:9, 10            46:9, 17 47:18            50:11, 16 51:21            56:13 58:18            60:23</p>	<p><b>knowledge</b> 6:13            34:16 36:24            46:6 51:13, 24,            24 52:4, 7, 9, 9            54:1, 3 55:19, 20            59:4  <b>known</b> 9:9  <b>knows</b> 40:17</p> <p>&lt; L &gt;  <b>labeled</b> 37:17  <b>LARRY</b> 1:4            4:10 6:8 16:11,            15, 23 17:6, 19,            24 18:6 37:18            38:7, 8  <b>late</b> 42:4, 5, 5  <b>LAW</b> 2:17, 21  <b>lawsuit</b> 6:14            12:21, 24 13:25  <b>leave</b> 24:9  <b>left</b> 41:4  <b>legal</b> 11:13 37:3,            11 53:13 55:20  <b>LEMON</b> 1:17            2:2, 22 9:23  <b>level</b> 43:6, 7  <b>licenses</b> 8:25 9:3  <b>Line</b> 41:3 55:13  <b>lines</b> 33:11            42:11  <b>Links</b> 14:3, 4  <b>list</b> 32:5 57:3  <b>listed</b> 34:3, 12            51:14  <b>Litigation</b> 4:6            57:7  <b>little</b> 8:3  <b>LLC</b> 8:22  <b>located</b> 4:7            28:19  <b>long</b> 8:23 58:10,            13 60:23 61:14  <b>longer</b> 43:9, 21            46:11 50:8, 17,            19  <b>look</b> 5:23 10:10            16:7 30:12 42:9            56:4  <b>looked</b> 13:16  <b>looking</b> 10:18            13:18 14:25            15:17 24:18            56:16</p>	<p><b>looks</b> 18:4 21:3            38:8  <b>LOPE</b> 60:13  <b>LOPEZ</b> 12:11            17:9 20:22 21:9            25:3 31:11            39:22 40:17            41:17 54:1            59:22 60:4 61:8  <b>lose</b> 61:8  <b>lost</b> 61:20  <b>lot</b> 43:9</p> <p>&lt; M &gt;  <b>Magagna</b> 26:2, 7,            8, 9 31:7 34:17            49:13, 21 50:7            57:17, 20 58:1, 4  <b>M-a-g-a-g-n-a</b>            26:5  <b>Magagna's</b>            26:20 27:3            33:18 34:20            35:3 48:2 49:12            50:2 53:9, 17            54:4, 13 55:5            58:8  <b>maintain</b> 61:19  <b>major</b> 41:3, 8  <b>majority</b> 15:5, 8  <b>making</b> 36:25            44:2 59:24  <b>mandatory</b> 21:16  <b>March</b> 40:1  <b>marijuana</b> 9:9,            15 10:6, 24 15:7,            12 34:25 35:2            36:3 49:5, 12, 14            50:2, 7 52:5            53:19 54:4  <b>mark</b> 5:16 17:13  <b>marked</b> 5:12            17:5, 15 20:25            22:5, 7 23:3, 13            31:16 37:24            40:5  <b>marking</b> 17:7  <b>matter</b> 4:10 6:7            11:13  <b>MCCs</b> 9:9  <b>mean</b> 9:11 12:1            17:1 28:5, 20            37:1 43:5 45:13            46:10, 17 49:4            55:4</p>	<p><b>means</b> 6:17            25:12  <b>measured</b> 35:2  <b>media</b> 62:1  <b>medications</b> 7:14  <b>meet</b> 50:17  <b>meeting</b> 11:25  <b>memory</b> 55:7  <b>mention</b> 41:3            42:14  <b>mentioned</b> 20:12            29:17 32:3            39:15 41:8 47:4            59:8  <b>met</b> 11:24 12:4            14:13, 15 16:21            57:20  <b>Michael</b> 12:4  <b>middle</b> 8:9, 11  <b>Mike</b> 12:2  <b>mind</b> 47:10  <b>Misconstrues</b>            33:21  <b>Misstates</b> 57:23            59:1, 13</p> <p><b>misunderstanding</b>            48:14  <b>MMCC</b> 10:7            14:18  <b>MMCCs</b> 15:7, 9,            13  <b>modifying</b> 12:19  <b>months</b> 58:15  <b>morning</b> 4:3            11:25  <b>MOs</b> 34:25  <b>moving</b> 7:8  <b>multiple</b> 10:1            13:20 14:2 15:1  <b>Municipal</b> 34:25</p> <p>&lt; N &gt;  <b>name</b> 4:5 6:5            8:4, 9, 11, 21            18:15, 21 19:5,            20 20:4 21:25            22:2 26:4, 13, 16,            17 30:23, 25            33:7, 12 34:11,            12 35:15, 16            64:16  <b>named</b> 26:1</p>	<p><b>names</b> 8:6            19:14 22:9            34:12 39:3  <b>nature</b> 44:22  <b>near</b> 28:19  <b>necessary</b> 63:5, 6  <b>need</b> 7:20, 22            52:24 61:14  <b>needed</b> 30:16  <b>neighboring</b> 9:24  <b>Neil</b> 35:14, 16,            24 38:7, 9, 12, 18,            22 39:7  <b>neither</b> 20:8            64:13  <b>never-ending</b>            13:22  <b>notify</b> 61:18  <b>November</b> 42:7  <b>number</b> 10:10,            19 15:18 44:10            51:2 56:2, 10            62:1  <b>numbered</b> 33:1</p> <p>&lt; O &gt;  <b>oath</b> 6:16, 17            63:2 64:7  <b>object</b> 17:2            24:7 38:11  <b>Objection</b> 12:9            19:15 23:1            28:24 29:9 30:6            31:20 36:15            37:2 43:22            44:20 45:1            49:15  <b>objections</b> 20:16            28:18, 21 53:23            54:8 64:9  <b>objects</b> 25:3  <b>observed</b> 14:1  <b>obtained</b> 31:3            53:10  <b>occasion</b> 39:15  <b>October</b> 3:10            17:25 20:24            23:10, 11, 24            27:7, 9 37:18            38:2 42:7 48:20            54:24  <b>odd</b> 19:4 20:8  <b>officer</b> 55:5  <b>OFFICES</b> 2:21</p>
--	--	--	--	--

<p><b>Oh</b> 27:2 48:22 51:19 57:19 58:3 <b>Okay</b> 5:9 6:16 7:11 8:17, 19 10:23 11:2 14:4, 15 15:5, 19, 24 16:15, 18 17:5 18:5, 22 20:11 21:25 22:4 23:5 26:1 27:24 29:22 32:22 35:14 36:6 37:16 38:17, 20 39:10 40:4, 21 41:2, 11, 22 43:11 46:19, 25 47:2, 9, 18 48:1, 8 49:4, 17, 20 50:1, 6, 20 55:22 56:6 57:16 59:15 60:13 61:17, 24 <b>once</b> 16:21 <b>open</b> 52:5 <b>operate</b> 9:2 <b>opportunity</b> 55:12 <b>oppose</b> 27:16, 17, 17 <b>opposed</b> 27:22 <b>opposition</b> 27:20 29:3 <b>order</b> 17:12 47:14 <b>original</b> 61:19 <b>outcome</b> 30:14 64:15 <b>outlet</b> 9:9 10:7 35:2 36:4 49:6, 13, 14 50:2, 7 52:5 53:19 54:4 <b>outlets</b> 9:15 10:24 15:7, 13 34:25 <b>outside</b> 12:7 21:10 <b>overall</b> 41:11 <b>owned</b> 8:23 <b>owner</b> 20:15, 18 22:2 <b>Ownership</b> 3:10 22:5 58:7</p>	<p>&lt;P&gt; <b>Pacific</b> 30:19, 22 <b>package</b> 24:1 <b>PAGE</b> 3:2, 8, 20, 21 23:12, 24 32:25 33:2, 3 40:24, 25 41:2 42:11 <b>pages</b> 13:15 23:9 <b>paid</b> 16:23 <b>Paragraph</b> 41:3 42:11 <b>part</b> 27:22 <b>particular</b> 25:8 32:11, 19 38:4 <b>partner</b> 36:8 <b>party</b> 6:11 53:6 57:7 64:14 <b>pay</b> 53:6 <b>PDF</b> 24:3 25:12, 12 <b>penalty</b> 63:1 <b>pending</b> 27:4 <b>people</b> 19:12 32:6 51:17 <b>percent</b> 46:14 50:6 <b>Perfect</b> 7:20 32:17 <b>performing</b> 52:16 <b>perjury</b> 63:2 <b>Permit</b> 31:6 46:17 50:25 <b>Permits</b> 9:14 15:6 <b>Permitting</b> 50:21, 24, 25 51:10, 13, 22, 25 <b>person</b> 24:1 28:1 <b>personal</b> 6:13 14:8 <b>personally</b> 2:5 18:24 22:12 27:17, 20 28:2 30:10 <b>pertinent</b> 6:14 11:17 <b>Peterson</b> 4:5, 7 <b>phase</b> 41:9, 11 <b>phrased</b> 39:6 <b>piece</b> 59:9</p>	<p><b>pieces</b> 54:21 <b>place</b> 61:21 64:6 <b>Plaintiff</b> 1:5 2:12 <b>Plaintiffs</b> 4:17 <b>Planning</b> 27:12 28:15 31:4 47:15, 15, 19, 20 48:4, 21, 22 49:2, 3, 23 <b>plans</b> 31:1, 3, 5 <b>please</b> 4:14 8:11 26:15 39:23 51:4 <b>point</b> 57:1 58:5 <b>pointing</b> 18:11 <b>points</b> 18:12 <b>Pools</b> 30:19, 22 <b>portion</b> 13:23 32:19, 22 <b>possible</b> 44:25 46:13 52:5 57:2 <b>possibly</b> 9:23 <b>posted</b> 12:21 13:6 <b>posting</b> 12:23 <b>posts</b> 13:10 <b>potential</b> 41:5 <b>practice</b> 19:7 <b>preparation</b> 22:18 <b>prepare</b> 22:11 61:12 <b>prepared</b> 6:25 22:12, 13, 16 28:12 29:11 <b>present</b> 11:3 31:13 <b>presentation</b> 48:16 <b>pretty</b> 44:12 <b>prevent</b> 7:2, 6, 15 <b>previously</b> 9:9 39:16 47:4 <b>printed</b> 24:19 <b>prior</b> 11:24 24:3 59:1 <b>privilege</b> 12:10, 16 <b>proceed</b> 46:3 <b>process</b> 9:20 10:20, 25 21:5, 13, 17 36:13 37:1 44:6 47:3 51:14 52:22</p>	<p>53:11, 22 54:6, 7, 14 60:23 <b>processed</b> 9:14 10:1 16:6 46:7, 10 <b>processing</b> 28:21 31:8 43:24 50:25 <b>produce</b> 55:13 <b>produced</b> 47:14 <b>product</b> 22:20 <b>production</b> 5:10, 11 25:12 <b>professional</b> 8:25 9:2 <b>project</b> 11:13, 15 14:16, 18 16:12 19:5 24:24 25:8 27:22 31:5 32:21 35:4, 6, 25 36:1 46:9, 14 47:1, 17 48:24 49:21 50:13 51:25 52:22 53:2, 19 55:12, 21 58:8, 10, 19, 22 59:6, 16, 25 60:11, 15 <b>projects</b> 9:7 14:20 15:1, 5, 11 16:2 28:22 32:6 43:25 55:25 56:2, 10, 17 57:3, 11 <b>proper</b> 9:18 57:6 <b>property</b> 16:9 20:14, 18 26:21 27:6 29:16 39:9 45:6 47:19, 21, 23, 25 48:8 49:5, 14 50:8 52:2, 17 53:11, 22 54:21 <b>propose</b> 61:6, 10 <b>provide</b> 7:3 55:10 57:2, 6 <b>provided</b> 28:17 48:10 54:19 <b>provides</b> 9:6 <b>providing</b> 7:3 52:23 <b>public</b> 27:7, 9 28:2 29:4 54:24 55:3, 4</p>	<p><b>publicly</b> 28:8 <b>published</b> 13:4 <b>pure</b> 15:24 <b>purpose</b> 14:5, 6 28:6 32:13 <b>purposes</b> 12:14 <b>pursued</b> 50:8 <b>pursuing</b> 50:13 59:16 <b>put</b> 64:7</p> <p>&lt; Q &gt; <b>qualifying</b> 30:16 <b>question</b> 5:14 25:4, 6, 23, 23 29:12 31:24, 25 41:23 42:25 47:17 50:10 53:14, 15 54:11 55:20 57:10 59:11 60:6, 13 <b>questioning</b> 48:13 <b>questions</b> 5:19, 22 6:12, 25 7:15, 18 12:20 28:15 39:11 52:15 60:2 61:2 63:3 <b>question's</b> 20:6 <b>quite</b> 8:2 20:7</p> <p>&lt; R &gt; <b>raised</b> 54:23 55:1, 2, 3 <b>Rakesh</b> 26:13 58:2, 3 <b>R-a-k-e-s-h</b> 26:17 <b>random</b> 56:14 <b>read</b> 12:25 13:2, 3 40:8 63:4 <b>reading</b> 13:19 <b>really</b> 59:19 <b>reason</b> 25:17, 24 29:4 34:2 39:5 44:25 53:20 61:21 <b>Rebecca</b> 16:13, 18, 19, 20, 23 18:21, 23 20:17 22:3 23:10, 18, 20 <b>recall</b> 11:23 12:23 22:12, 17 24:5, 18, 20, 25 25:7, 14 28:1</p>
---	--	---	--	---

<p>35:23 36:21 39:5 42:2 <b>received</b> 24:12, 14 <b>receiving</b> 24:5 <b>Recess</b> 46:1 <b>recognize</b> 21:2 22:9 23:15, 15 24:11, 13 31:19 33:7 40:7 <b>recollection</b> 28:14 29:15 30:15 38:4 39:7 56:23 <b>record</b> 4:3, 23 10:18 15:1, 17 17:17, 23 20:23 45:23, 25 46:2 62:1 64:12 <b>recorded</b> 64:10 <b>records</b> 10:11 16:7 42:9 56:4, 17 <b>refer</b> 5:20 <b>reference</b> 41:4 <b>referenced</b> 41:17 42:20 <b>referring</b> 13:23 27:12 32:25 36:2 <b>regarding</b> 3:10 11:10, 15 13:1 18:16 27:10 41:9, 21 <b>regards</b> 24:24 31:14 <b>regulation</b> 34:24 <b>RELATED</b> 1:11 11:13, 15, 22 12:23 13:25 14:18 28:16, 18 32:6 64:14 <b>relation</b> 46:24 48:4, 23 53:2, 4 54:5 <b>relieve</b> 61:10 <b>remember</b> 38:3, 4, 5 <b>reopening</b> 55:19 <b>repeat</b> 31:25 41:23 60:6 <b>rephrase</b> 25:6 26:25 27:2 35:22 <b>report</b> 31:4</p>	<p><b>REPORTED</b> 1:22 <b>Reporter</b> 2:4 3:21 4:6, 20 5:3, 16 21:10 23:7 26:4, 15 31:12 51:4 61:11 <b>Reporting</b> 4:5, 7 <b>represent</b> 4:15 12:13 <b>representation</b> 31:22 <b>representing</b> 6:6 <b>reproduction</b> 24:17 25:19, 24 <b>request</b> 7:25 22:23, 24 53:7 <b>required</b> 21:20, 21 <b>requirements</b> 50:17 <b>resolved</b> 41:9, 12, 14 42:1, 3 43:1 44:4 <b>responded</b> 24:14 <b>responses</b> 6:20 <b>responsible</b> 53:6 <b>restate</b> 50:9 <b>resubmitted</b> 18:21 <b>result</b> 7:9 49:1 <b>results</b> 59:17 <b>review</b> 16:6 24:3, 21 29:14 31:1, 3 39:15 40:11, 12 44:6 61:14 <b>reviewed</b> 11:17, 20 13:11 32:3 <b>reviewing</b> 11:23 <b>revoked</b> 54:13 <b>right</b> 5:19 6:5 7:5, 5, 24 9:22 15:11 18:14 20:13, 20 21:9 23:4 31:7 32:8 34:23 37:7 38:6, 6 39:10, 19 46:4, 11 49:18 50:6, 20 53:17 56:12 59:21, 24 60:1 61:1, 5 <b>ROAD</b> 2:18 <b>role</b> 33:15</p>	<p><b>room</b> 35:4 55:21 <b>rough</b> 56:3 <b>roughly</b> 58:19 59:15 <b>run</b> 47:3 <b>rushed</b> 40:15  &lt; S &gt; <b>SAN</b> 1:2 2:3, 14, 18 3:10 4:1, 8, 12 9:17, 18, 20, 23, 23, 25 10:2, 9 15:14 20:23 31:4 32:19 34:24 43:12, 24 48:24 52:21 64:2 <b>Santos</b> 8:16 <b>saying</b> 12:11 <b>says</b> 32:23 33:4, 15 <b>scenario</b> 54:3 <b>SCHWEITZER</b> 1:16 2:7 4:10 5:6, 12 8:5 12:13 15:21 17:25 18:1 40:11 61:13, 18 63:1, 13 <b>scope</b> 12:8 53:2, 4 <b>SCOTT</b> 2:13 4:16 <b>Screen</b> 3:10 31:14, 18 <b>search</b> 32:20 <b>section</b> 32:12, 23 33:4, 16 <b>see</b> 21:25 22:2, 24 29:23 30:3 32:2, 23 33:4, 12, 16, 16, 17 48:19 <b>seek</b> 15:6 <b>seeking</b> 45:16, 16 46:8, 11 47:2 50:19 58:21 59:5 60:7, 8, 14, 16 <b>seen</b> 11:21 13:9 18:1 <b>send</b> 25:12 <b>sending</b> 24:20, 25 <b>sense</b> 17:12 50:20 <b>sensitive</b> 30:16</p>	<p><b>sent</b> 18:4 23:17 24:12 39:2 <b>separation</b> 30:17 <b>series</b> 18:19 <b>Services</b> 4:6 9:6 18:9 32:12, 18 55:23 58:4, 5 <b>set</b> 55:14 64:6 <b>seven</b> 39:12, 13, 24, 25 <b>Seven's</b> 40:1 <b>Shorthand</b> 2:4 <b>shot</b> 3:10 31:14, 18 <b>show</b> 25:11 55:11 <b>Signature</b> 3:20 22:2 40:25 41:1 <b>signed</b> 22:1 39:21, 21 <b>significant</b> 13:6 15:2 44:10 <b>significantly</b> 43:21 <b>single</b> 13:10 <b>sir</b> 47:13 50:15 57:14 <b>situation</b> 54:13 <b>skip</b> 59:21 <b>slash</b> 39:3 <b>somebody</b> 29:19 52:13 <b>somewhat</b> 43:11 <b>Sorry</b> 5:1 24:13 27:8 30:20 35:15 49:8 57:25 58:25 59:20 <b>sound</b> 30:23, 25 <b>speak</b> 55:7 <b>specific</b> 44:14 52:14 54:25 58:16 <b>specifically</b> 11:6 20:7 25:14 <b>specified</b> 30:16 <b>specify</b> 35:1 <b>speculate</b> 25:20 34:6, 14, 15 37:5 38:16 51:16 52:13 53:24 56:8, 19 <b>speculation</b> 19:9 21:7 25:21 34:4 36:10 37:11</p>	<p>38:24 43:13 50:3 51:15 52:6 53:12 <b>spell</b> 8:11 26:14 51:3 <b>spelled</b> 26:5, 16 <b>spoke</b> 28:8, 13, 14 29:10 <b>spoken</b> 11:2 <b>SS</b> 64:1 <b>staff</b> 11:12 14:9 28:1 41:7 43:5, 7, 10 52:23 <b>stage</b> 41:7 55:15 <b>standard</b> 21:4 <b>stands</b> 32:18 <b>start</b> 14:14 17:10 <b>started</b> 5:9, 25 <b>starting</b> 23:10 <b>STATE</b> 1:1 2:3, 5 4:14 15:14, 15 18:11 54:10 64:1 <b>Statement</b> 3:10 22:6 <b>status</b> 47:18 <b>statutory</b> 61:11 <b>STEARMAN</b> 1:22 2:4 4:7 64:22 <b>stenographically</b> 64:10 <b>stipulated</b> 61:22, 23 <b>stipulation</b> 61:6 <b>stream</b> 13:21 <b>Street</b> 4:8 41:21, 25 42:19 <b>strictly</b> 16:15 20:2 <b>String</b> 3:9, 10, 15 <b>struggling</b> 48:12 <b>submission</b> 24:1 59:16 <b>submissions</b> 25:11 <b>submit</b> 19:5, 13 21:20 <b>submittal</b> 24:3 <b>submitted</b> 5:18 21:12 24:2 25:13 28:11 39:12, 16, 20, 21</p>
--	--	---	--	--



<p>46:24 48:15  <b>submitting</b> 22:25  <b>subpoena</b> 57:6  <b>subscribed</b> 64:16  <b>substitute</b> 61:21  <b>SUITE</b> 2:14, 18  4:8  <b>summary</b> 28:7,  10, 14  <b>SUPERIOR</b> 1:1  4:11  <b>supervision</b>  64:11  <b>supplemental</b>  46:23 47:9, 11  48:9 54:20 55:2  <b>Sure</b> 6:1 17:1  23:7 25:5 29:11  38:7 49:10 50:7  51:8 56:9, 10  59:19  <b>swear</b> 4:21 5:3  <b>switch</b> 17:11  <b>sworn</b> 2:8 5:7  6:17</p> <p>&lt; T &gt;  <b>take</b> 5:23 7:20  39:22 40:11, 14  44:2, 5  <b>TAKEN</b> 1:17  4:13 6:23 46:1  64:5  <b>talking</b> 9:22  41:16 46:19  47:24  <b>Techne</b> 5:12  8:22 9:2, 5, 6, 11,  14 10:3, 23  22:18 31:18  33:9, 15, 18 34:2,  16 35:8 45:12,  16 47:2 58:5, 13,  18, 21 59:5, 10,  15 60:8  <b>tell</b> 6:17 8:8  <b>temperature</b> 8:3  <b>term</b> 28:21 29:2  <b>terminating</b>  60:10  <b>terminology</b>  29:2, 6  <b>test</b> 40:13  <b>testified</b> 5:7  <b>testifying</b> 4:10</p>	<p><b>testimony</b> 40:13,  14 57:23 59:1,  13 64:8  <b>text</b> 14:1  <b>Thank</b> 4:20 5:2  7:23 8:13, 15, 19  11:2 15:25 18:7,  22 22:4 23:8  26:1, 18 35:14  36:5, 6 40:16  41:2, 22 46:4  51:11 57:16  <b>Thanks</b> 23:25  37:23  <b>thereof</b> 64:15  <b>thereto</b> 63:4  <b>thing</b> 13:10  <b>things</b> 6:12  12:14 44:17  <b>think</b> 10:3, 13  16:21 24:17  25:3 29:20 40:3  41:17 44:17  47:10 48:14  50:9, 11 54:6, 12  56:15 59:23  60:12, 13 61:1, 1  <b>third</b> 23:12, 24  <b>thoroughly</b>  13:11, 12  <b>thought</b> 57:20  <b>three</b> 13:14  <b>Time</b> 4:3 7:21,  21 14:22 18:22  21:21 33:21  35:15 39:22  40:11, 14 41:5  42:10 44:3, 11,  16 45:25 46:2  59:4 62:2 64:6,  6, 9  <b>timelines</b> 43:24  44:16  <b>times</b> 13:13, 14  <b>today</b> 4:6 5:15  6:25 7:8 11:13,  15  <b>Today's</b> 4:4  <b>told</b> 34:14 44:9  <b>TOOTHACRE</b>  2:13 4:16, 16, 22  5:2, 9, 23 6:1  8:8, 13 9:12  10:17 11:8, 25  12:1, 9, 13 13:7</p>	<p>14:22 15:8, 20  17:2, 7, 10, 13, 16,  23 18:5, 7 19:2,  9, 15, 21, 23 20:5,  16 21:6, 14, 18  22:20 23:1 24:7,  22 25:2, 15, 21  26:14, 18, 22  27:18 28:11, 23  29:7, 25 30:6  31:20 32:7, 9  33:21 34:4, 7, 22  35:10, 15 36:1, 5,  10, 15, 20 37:2,  10, 13, 20, 23  38:10, 14, 17, 20,  24 39:13, 24  40:2, 4, 10, 21  41:15, 20, 22  42:16 43:13, 18,  22 44:13, 20  45:1, 7, 14, 20, 23  46:20 47:23  48:1, 14 49:7, 15  50:3 51:3, 8, 11,  15 52:6, 16  53:12, 23, 25  54:8, 20 56:20  57:5, 23 58:11,  14, 24 59:1, 13,  18 60:3, 5 61:2,  4, 6, 10, 17, 24  <b>transcribed</b>  64:11  <b>transcript</b> 61:12,  12  <b>treating</b> 38:8  <b>trial</b> 61:21  <b>tried</b> 58:4  <b>true</b> 39:19  40:22 64:12  <b>truth</b> 6:18  <b>try</b> 44:24 49:9  51:6 52:14  <b>trying</b> 20:2  29:20 49:12  50:11 57:8  <b>turn</b> 8:2 40:17,  20  <b>two</b> 13:14 20:22  60:20  <b>types</b> 10:5  <b>typically</b> 21:12  55:8, 10 60:3</p>	<p>&lt; U &gt;  <b>Uh-huh</b> 47:5  <b>ultimately</b> 53:18,  20  <b>understand</b> 5:17  6:14, 16, 20 7:17  16:14 29:12  43:11 48:12  50:9 53:14, 15  54:11  <b>understanding</b>  14:8 18:17, 18,  19 20:17 32:10  35:3 38:18  46:16 49:19  <b>understands</b> 32:9  <b>Understood</b> 14:1  51:21  <b>unexpected</b> 43:23  <b>unfortunately</b>  47:7 56:22  <b>unusual</b> 43:11  <b>Use</b> 9:14, 21  15:6 19:12  28:21 30:16  31:6 45:2 46:16</p> <p>&lt; V &gt;  <b>Vague</b> 9:12  10:17 11:8 12:1  13:7 14:22 15:8  17:2 19:2, 15  20:5 21:6, 14, 18  24:22 25:2, 15  26:22 27:18  28:23 29:7, 25  32:7 33:21  34:22 35:10  36:20 38:24  41:15 42:16  43:18 44:13  45:7, 14 47:23  49:7 53:13  58:11, 14, 24  59:18  <b>various</b> 3:9, 10,  15 32:6 44:3, 17  <b>Vasquez</b> 30:24  <b>versus</b> 4:10 6:8  <b>Video</b> 4:5  <b>VIDEOGRAPHE</b>  <b>R</b> 2:24 4:3, 20  5:1, 3 45:25  46:2 61:25</p>	<p><b>VIDEOTAPED</b>  1:16 4:9 61:25  <b>visually</b> 13:17  <b>volatility</b> 44:5  <b>vs</b> 1:5</p> <p>&lt; W &gt;  <b>wait</b> 55:13 59:22  <b>waiting</b> 12:17  26:24  <b>want</b> 5:14, 16, 20,  24 8:8 14:13  30:3, 7 37:12  40:11, 12 45:23  53:24 55:8  56:13 61:6  <b>wanted</b> 19:18  20:3  <b>wants</b> 15:22  40:12  <b>warm</b> 40:18, 20  <b>water</b> 23:6  <b>way</b> 5:21 31:22  33:17 39:6  <b>website</b> 3:10  12:22, 22 13:2, 5,  9, 11, 15, 24 14:5  31:14 32:4, 5, 12,  20, 22  <b>Wednesday</b> 2:1  4:1  <b>week</b> 61:17  <b>weeks</b> 60:20  <b>Weinstein</b> 12:2,  5, 11  <b>Well</b> 19:22 25:9  29:13 37:7, 19  48:9, 19 57:5  <b>went</b> 34:21  <b>We're</b> 7:8  50:18, 19 61:1  62:1  <b>WEST</b> 2:14  <b>WHEREOF</b>  64:16  <b>wife</b> 11:14  <b>winding</b> 53:11,  22 54:7, 14  60:10  <b>windows</b> 40:19  <b>withdrawn</b> 53:8  <b>witness</b> 2:9  3:20 5:4 6:13  10:18 12:17  15:25 18:4, 6</p>
---	--	--	---	--

19:24 20:6, 17  
21:19 23:6, 8  
25:5 26:16, 24  
30:7 31:25  
32:10 33:24  
34:6, 9, 24 35:11,  
17 36:3, 11, 16,  
21 37:4, 12, 14  
38:13, 16, 18  
39:23 40:16, 22  
41:19, 21, 23  
43:14, 23 44:14,  
21 45:2, 18, 22  
48:3, 17 49:9  
50:4 51:6, 16  
52:7, 18 53:15,  
24 54:10 56:21  
57:10 59:19  
60:2, 6, 7, 12, 17  
61:16 64:7, 8, 16  
**work** 8:19  
22:20 51:1, 23  
52:2, 9, 13, 17  
53:2, 4 58:10, 21,  
23 59:5, 9, 24  
60:8, 9, 15, 15  
**worked** 9:10  
10:4 11:14, 16  
14:20 15:11  
30:18, 21 55:25  
56:11 57:4, 11  
**working** 45:6, 9,  
13 51:22, 25  
58:18 59:25  
**works** 33:9  
**writes** 23:25  
**writing** 38:12, 14

< Y >  
**Yeah** 17:11, 14  
27:18 32:15, 17  
39:23 48:12, 14  
56:20 58:18  
61:9  
**year** 42:4, 5, 23  
43:4 60:21, 22  
**years** 51:2 56:11