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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - CENTRAL DIVISION  
THE HONORABLE DAVID O. CARTER, U.S. DISTRICT JUDGE

JEFFREY POWERS, et al,

Plaintiffs,

Case No. LACV22-8357

vs.

DENIS RICHARD MCDONOUGH,

Defendants.

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REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS  
TRIAL DAY 7  
Wednesday, August 14, 2024  
8:00 a.m.  
LOS ANGELES, CALIFORNIA

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**WITNESS INDEX**

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<b>WITNESS:</b>	<b>Page</b>
<b>STEVEN EDWARD BRAVERMAN</b>	
Direct Examination by Mr. Rosenberg (Continued federal defendants' direct examination)	6
<b>GENNIFER GAE YOSHIMARU</b>	
Direct Examination by Mr. Rosenbaum (Plaintiff's direct examination)	97
Cross-Examination by Mr. Rosenberg	202
<b>STEVEN EDWARD BRAVERMAN (recalled)</b>	
Cross-Examination by Mr. Rosenbaum	216
Redirect Examination by Mr. Rosenberg	243
<b>MICHAEL SEEGER DENNIS</b>	
Direct Examination by Ms. Savage	248

	<b>EXHIBIT INDEX</b>	
	<b>* * *</b>	
	<b>EXHIBIT NO.</b>	<b>Page</b>
1		
2		
3	<b>1293</b>	<b>8</b>
4	<b>1322</b>	<b>12</b>
5	<b>81A</b>	<b>39</b>
6	<b>1313</b>	<b>44</b>
7	<b>1515</b>	<b>45</b>
8	<b>1316</b>	<b>46</b>
9	<b>1331</b>	<b>52</b>
10	<b>1330</b>	<b>55</b>
11	<b>203</b>	<b>56</b>
12	<b>1294 thru 1299</b>	<b>59</b>
13	<b>904</b>	<b>154</b>
14	<b>905</b>	<b>155</b>
15	<b>902</b>	<b>157</b>
16	<b>900</b>	<b>159</b>
17	<b>901</b>	<b>173</b>
18	<b>903</b>	<b>179</b>
19	<b>220</b>	<b>225</b>
20	<b>35A</b>	<b>252</b>
21	<b>223</b>	<b>259</b>
22	<b>222</b>	<b>292</b>
23		
24		
25		

1                   **LOS ANGELES, CALIFORNIA; WEDNESDAY, AUGUST 14, 2024**

2                                   **8:00 A.M.**

3                                   **--oOo--**

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5  
6                   THE COURT: Back on the record, all counsel are  
7 present, the parties are present, and Dr. Braverman is present.  
8 Good morning.

9                   THE WITNESS: Good morning.

10                  THE COURT: This would be a continued direct  
11 examination by the Government.

12                  MR. ROSENBERG: Once again, Brad Rosenberg from the  
13 Department of Justice on behalf of the United States.

14                                  DIRECT EXAMINATION (Continued)

15                                  (Federal defendants' direct examination)

16 BY MR. ROSENBERG:

17 Q        Good morning, Dr. Braverman, welcome to day three of your  
18 testimony.

19 A        Good morning.

20 Q        I would like to turn to the subject of -- sometimes we  
21 call them "leases" but I think the broader and better term is  
22 "land use agreements" on the West LA Campus with third parties.

23                  Are you familiar with the land use agreements that VA  
24 has with the Brentwood School, UCLA, SafetyPark, and Bridgeland  
25 Resources, also sometimes referred to as Breitburn?

1 A Yes.

2 Q How are you familiar with those agreements?

3 A Well, in my role previously, as the medical center direct  
4 for GLA, I had an opportunity to review the leases themselves,  
5 also having to approve responses to the Office of Inspector  
6 General for their reports when they called those leases -- or  
7 three of those land use agreements into question, the OIG  
8 report did not speak to UCLA's land use agreement. And then as  
9 previously identified the issue of revision or amendment to the  
10 UCLA lease agreement and then also viewing the Congressionally  
11 mandated reports associated with the land use agreements for  
12 the master plan.

13 Q I would like to start with one of those reports.

14 MR. ROSENBERG: And so, can we bring up the  
15 documents that has been identified as Exhibit 1293.

16 BY MR. ROSENBERG:

17 Q Dr. Braverman, I'd invite you to take just a moment to  
18 look through the document and ask you if you recognize it?

19 A Yes. I do.

20 Q Is this -- well, what is it?

21 A It's the Congressionally-mandated report for activities  
22 with the West Los Angeles Leasing Act of 2016, that was  
23 completed in September of 2023.

24 Q Is this one of the reports to which you just referred a  
25 few moments ago?

1 A Yes.

2 MR. ROSENBERG: I would like to move this into  
3 evidence.

4 THE COURT: Received.

5 (Exhibit 1293 received into evidence.)

6 BY MR. ROSENBERG:

7 Q Can you explain for the Court why VA prepares or prepared  
8 this document, and similar documents the VA provided to  
9 Congress in the past?

10 A Yes. They were requirements of the West LA Leasing Act in  
11 its various amendments.

12 Q And just generally speaking what is in the report?

13 A It basically identifies those land use agreements that we  
14 have and also the land use agreements that are -- or that have  
15 specific requirements to them in regards to revenue, and  
16 regards to in-kind contributions.

17 Q And these reports are provided to Congress annually?

18 A Yes.

19 Q I'd like to ask you to turn to page -- we're going to use  
20 the exhibit numbers that are in the lower right-hand corner of  
21 the document because sometimes they can differ from the  
22 pagination of the original document. Turn to page 1293-007.

23 And on that page, is a table in the lower right-hand  
24 corner, identified as Table 1.

25 Can you describe for the Court the information that is



1 contained in that table? Just generally speaking.

2 A So this table identifies what GLA has spent on lease  
3 revenue funds on -- for the total amount since we started  
4 spending money -- started spending the lease revenue funds and  
5 it totals almost \$8 million for activities that include  
6 accessibility improvements, things for the care, treatment and  
7 rehabilitation service primarily and which also involves  
8 utilities, guard stations, paving, those road improvements and  
9 other miscellaneous things that I mentioned yesterday.

10 Q I would like to ask you to turn the page to the next page,  
11 which is identified as page 1293-008.

12 And at the top of this page is another table identified  
13 as Table 2. And if you could just take a moment to look at  
14 that and provide a description for the Court of the information  
15 that is contained within that table.

16 A Yeah, so this is basically an accounting of the money that  
17 has come into the -- I guess for want of the better term the  
18 lease revenue fund, that includes revenue from leases, that  
19 includes money from a restitution fund that was put in place  
20 due to people who were convicted of fraudulent activities in  
21 the past. That was a total then of about 13 and a half million  
22 dollars of which we spent, as the previous chart showed, almost  
23 \$8 million leaving 5 and a half million dollars available as of  
24 the end of fiscal year '23.

25 Q And do you see under underneath that table there is a

1 series of bullet points that says "Discussion," and there  
2 should be a bullet point, if you see it referring to a lease  
3 between VA and Brentwood School.

4 Did I read that correctly?

5 A Yes. At the bottom of the page, I'm sorry. I was trying  
6 to find it, it flashed up on the screen.

7 Q There are a lot of bullets because, while I think the  
8 parties are focused on a discrete number of land use agreements  
9 there are actually quite a few land use agreements on the West  
10 LA Campus on which VA is required to report to Congress; is  
11 that right?

12 A Yes.

13 Q And there is also a bullet point for a lease between VA  
14 and Regents of UCLA?

15 A Yes.

16 Q And a lease between VA and SafetyPark Corporation?

17 A Correct.

18 Q And then I'll just note if you turn to the next page which  
19 is 1293-009, at the bottom there is a paragraph -- I will just  
20 summarize it, but I want to make sure you see it, it refers to  
21 revokable license to WG Holdings SPV, LLC which is a successor  
22 to Breitburn Operating LP, Maverick Natural Resources and a  
23 short description to that agreement?

24 A Yes, that's the last bullet on that page.

25 Q All right. You can put that aside for just a moment.

1 Now let's go back to the OIG reports for just a moment.

2 When you first became medical center director in 2019,  
3 the -- when did the first OIG report come out?

4 A 2018.

5 Q So it predates you as medical center director?

6 A Yes.

7 Q And you are nonetheless familiar, I think as you just  
8 testified, with that OIG report?

9 A Yes.

10 Q And that OIG report identified a number of land use  
11 agreements that the Inspector General determined were  
12 noncompliant with the Leasing Act?

13 A Yes.

14 Q Do you know approximately how many?

15 A It was around 20.

16 Q And around the -- either -- what happened to many of those  
17 noncompliant land use agreements that the Office of Inspector  
18 General identified?

19 A Some were canceled, some were allowed to expire. Excuse  
20 me, basically all of them were resolved with the exception of  
21 the ones that persisted into the 2021 OIG report, so the ones  
22 that we've already discussed yesterday, the lease with,  
23 Breitburn, the lease with Brentwood, the lease with SafetyPark  
24 those were the primaries. And then we had the two new leases  
25 associated with the air pure -- air quality assessments and

1 then the other one that was canceled before -- well, actually,  
2 the one that was canceled before the OIG report in 2021 was not  
3 present in the 2018 report.

4           There were also some easement issues that were fixed  
5 based on OIG's recommendations in 2018, but then they came back  
6 with other objections in 2021.

7 Q       All right. Let's turn to the Brentwood School lease for a  
8 moment.

9           MR. ROSENBERG: And I would like to -- let's bring  
10 up if you can, Exhibit Number 1322.

11           BY MR. ROSENBERG:

12 Q       Dr. Braverman, take just a moment to look at what has just  
13 been handed to you as Exhibit 1322.

14 A       I have it.

15 Q       Do you recognize this document?

16 A       Yes, it's the lease agreement with Brentwood.

17 Q       You are familiar with the document?

18 A       I am.

19           MR. ROSENBERG: I would like to move to admit this  
20 into evidence.

21           THE COURT: Received.

22           (Exhibit 1322 received into evidence.)

23 BY MR. ROSENBERG:

24 Q       I'm just curious, why did you -- why did VA not cancel the  
25 Brentwood lease if the Office of Inspector General identified

1 it as being noncompliant with the West LA Leasing Act?

2 A So there are a few reasons.

3 Number 1, the VA disagrees with some of the assertions  
4 and conclusions that were made by OIG, some that had to do with  
5 the -- in fact, it's in the OIG report that we had yesterday,  
6 where whether in-kind contributions were acceptable or not, the  
7 VA believes that they are acceptable as part of a lease.

8 Number 2, this lease was done as a ten-year lease with  
9 an option that is automatically renewable.

10 The VA --

11 THE COURT: Just a moment. All right. Let me  
12 repeat that back. That the in-kind contributions the OIG  
13 believed were not in compliance with the 2016 West LA lease?

14 THE WITNESS: No. There are other codes and laws  
15 that predated the West LA Leasing Act that said that in-kind  
16 contributions would not be appropriate for leases, but the West  
17 LA Leasing Act allows it. So the VA's position is that the  
18 West LA Leasing Act superseded those other codes and in-kind  
19 contributions are allowed.

20 THE COURT: Just one moment. Who eventually  
21 resolves that type of dispute?

22 THE WITNESS: Ultimately you may, Your Honor.

23 But I think this is -- so that part ends up being a  
24 perpetual disagreement.

25 THE COURT: But does it go -- when I have two

1 government agencies, so the OIG Office of Inspector General for  
2 our record and the VA, does that then go to the administration  
3 as a policy consideration or -- you don't have a Supreme Court  
4 for instance, I do, but.

5 THE WITNESS: So the way OIG reports work is that  
6 the OIG makes findings and recommendations, whether that is on  
7 the healthcare side or the administrative side.

8 THE COURT: Right.

9 THE WITNESS: The VA then responds with their  
10 concurrence or disagreement --

11 THE COURT: I think I understand the process.

12 THE WITNESS: Right, in an action plan.

13 THE COURT: What I'm asking do you eventually reach  
14 an impasse without another government entity able to intercede  
15 and therefore does it thus become an administration policy  
16 decision? In other words, over at the White House?

17 THE WITNESS: Yes. Or an agreement to disagreement,  
18 and the investigation gets closed depending upon the importance  
19 of the disagreement.

20 THE COURT: Let me make one more note, okay?

21 I interrupted you partway through the other  
22 answer, my apologies, counsel, please continue.

23 MR. ROSENBERG: Let me go a little bit out of order  
24 to see if we can help provide some clarity to the Court on this  
25 issue.

1                   So can we pull up -- and you may still have in  
2 front of you what has previously been entered as Exhibit  
3 Number 2, which is the OIG report from 2018, and I know you  
4 have an ever-growing stack of papers in front of you, so just  
5 take a moment to find that.

6                   THE WITNESS: I have it.

7 BY MR. ROSENBERG:

8 Q           And this has already been admitted into evidence, but I  
9 will ask you, are you familiar with this document?

10 A          Yes.

11 Q          So, can you turn to page 85 of the exhibit, again using  
12 the pagination of the exhibit number, and it should say  
13 Appendix E Management Comments at the top?

14 A          I don't think this goes that far.

15 Q          It should.

16                   THE COURT: I think I have the document.

17 BY MR. ROSENBERG:

18 Q          I believe the entire --

19 A          I have the -- oh, I have the '21, okay. Sorry.

20                   THE COURT: I may have the same thing. Are you  
21 referring to Exhibit 2?

22                   MR. ROSENBERG: Exhibit Number 2, Appendix E, on  
23 page 85 of the exhibit using the pagination of the exhibit  
24 number.

25                   THE COURT: Just a moment.

1 MR. ROSENBERG: My colleague has also put that up on  
2 the screen if it helps.

3 THE WITNESS: Yes, I have it. Yeah, I was looking  
4 at the '21 report. I have the '18 report now and more pages.

5 THE COURT: Crisis averted.

6 MR. ROSENBERG: Okay, great.

7 BY MR. ROSENBERG:

8 Q What's in front of you says Appendix E, Management  
9 Comments, maybe you can elaborate on what the management  
10 comments to an Office of Inspector General report are.

11 A So when the report is made by the OIG, then the receiving  
12 authority leadership has an opportunity to explain their points  
13 of view associated with the findings.

14 In some cases those are concurrence, and some cases they  
15 are in nonconcurrence, and then it goes on to identify where  
16 agreements and disagreements are, and then evidence associated  
17 with that.

18 Q And at least -- maybe the easiest way to do this is to  
19 correct me if I'm wrong, typically management will receive a  
20 near final draft of the IG report, have an opportunity to  
21 provide comments, and then that gets incorporated into the  
22 Office of Inspector General report. Is that the way it works  
23 at VA?

24 A Yes.

25 Q And if you look through the management comments, are there



1 any circumstances -- and I know you testified earlier, where  
2 leases were canceled or there are concurrences, do they appear  
3 in the management comments in this exhibit?

4 A So most of the comments where they are specific, have to  
5 do with the disagreements.

6 So for the bulk of the leases where VA concurred that  
7 they needed to be, you know, canceled or revised or allowed to  
8 expire, there wasn't a lot of detail in the management comments  
9 associated with those.

10 Q But typically you would need a great deal of detail if one  
11 is concurring with the recommendation --

12 A Right, exactly. Yeah, I thought I was answering your  
13 question.

14 Q Right. No, and I'm just looking, for example, on pages 99  
15 and 100, and these are issues that are not directly related to  
16 what is in this litigation, it appears there are in  
17 concurrences or partial concurrences there?

18 A Yes. So some of the findings in the 2018 report had to do  
19 with keeping records identifying what needed to be on public  
20 websites versus what could be internal and that sort of thing  
21 and the VA agreed and fixed those.

22 That was also in conjunction with the other VA agencies  
23 like OAM.

24 Q I'm going to ask you to turn to page 94 of the exhibit.

25 This is an unfortunate circumstance where whoever

1 prepared this document did not use Widow or Orphan Control  
2 because it says at the bottom "Brentwood School lease" and then  
3 immediately the substance begins on the next page, so I only  
4 wanted to highlight page 94 because that's the beginning of  
5 management comments regarding the Brentwood School lease.

6 But then I'll ask you to just look at pages 95 and 96,  
7 and the questions that I have are actually going to focus on  
8 page 96.

9 I'm going to direct your attention to the paragraph  
10 toward the top of page 96, I'm going to read it to you.

11 "As a practical consideration, VA notes that the finding  
12 that the Brentwood School lease is deficient because the  
13 principal purpose of the lease is to provide Brentwood School  
14 continued use of the athletic facilities, can be corrected only  
15 by discontinuing that lease. With respect to this lease" --

16 THE COURT: "Discontinue that use," did you say  
17 "that lease"?

18 MR. ROSENBERG: Oh, that use. Thank you, Your  
19 Honor.

20 BY MR. ROSENBERG:

21 Q "With respect to this lease, then: Recommendation one,  
22 take action to correct deficiencies noted in this report  
23 requires VA to terminate the lease and bar Brentwood School  
24 from using the facilities it has constructed on the campus.

25 Any action VA might take to comply with this

1 recommendation would likely trigger a litigative challenge that  
2 could indefinitely suspend both the lease termination and VA's  
3 authority to carry out EULs to house homeless veterans.

4 This outcome is patently unreasonable."

5 With Judge Carter's correction and my struggle over  
6 pronouncing one word, did I read that correctly?

7 A Yes.

8 Q Did this -- does this paragraph summarize at least some of  
9 VA management's concerns with the OIG's recommendation?

10 A Yes.

11 Q Can you elaborate on that, please?

12 A Well, there's a few other pieces that would go along with  
13 this, so not only would there be potentially litigation, there  
14 would also be costs to then take over the buildings and/or  
15 demolish the buildings that would be on that leased area.

16 Money that the VA doesn't have to, you know, operate and  
17 maintain those facilities and they would likely end up in  
18 disrepair the same way as some of the other nonmedical  
19 facilities on the campus have gone into disrepair over time.

20 So that's, you know, that's one piece.

21 And that gets to I think we spoke briefly about it  
22 yesterday, fiduciary responsibility to the healthcare system on  
23 spending its healthcare dollars on the needs of the veterans  
24 for healthcare versus maintenance of facilities it's not using  
25 on that leased property, so that was one piece as well.

1 I mean, from a management perspective that was a big  
2 challenge, but just straight up cancellation.

3 Q Can you think of -- or provide the Court with other  
4 examples where VA has struggled to assume responsibilities for  
5 land on the campus where a lease or an agreement has been  
6 canceled?

7 A Yes. One example might be the Japanese Gardens where  
8 there was a Shakespeare Theater associated with that and part  
9 of that was -- their contribution was keeping up that garden  
10 area, so upon cancellation of that lease --

11 THE COURT: I'm sorry, "they" being who?

12 THE WITNESS: The leaseholders of the Shakespeare  
13 Theater.

14 THE COURT: Not the Brentwood School?

15 THE WITNESS: No. No, sir. However, I will get to  
16 that, but now we rely on volunteers to come and help weed the  
17 garden and try to provide some maintenance, that's one of the  
18 in-kind contributions from the Brentwood School from their  
19 students.

20 So, but that's not in the same shape as it was and the  
21 ability to use. Employee and veterans activities there has  
22 been canceled as a result.

23 Some of that was accelerated by COVID as well when we  
24 weren't doing those kinds of group activities, to be fair.

25 BY MR. ROSENBERG:

1 Q But just to be clear though, when you say it's "not in the  
2 same shape," do you mean worse shape?

3 A Yes, it's worse shape than it was in before, it has not  
4 been maintained to the level it should be.

5 Q That's because an agreement with the organization that was  
6 putting on the plays was canceled and the organization was no  
7 longer providing the maintenance for the garden?

8 A Right. So that's an example, I don't think there was  
9 significant cost to the VA in canceling that agreement because  
10 there wasn't litigation, there wasn't, you know, money that we  
11 were necessarily receiving, it was in-kind contributions. But  
12 I think that on a larger scale, that would be a risk to the  
13 property that Brentwood leases.

14 Q So if the Japanese Garden is now in a worse state of  
15 repair due to the cancellation of that agreement, why did VA  
16 cancel that agreement?

17 A Well, because the agreement itself arguably didn't  
18 principally benefit veterans and the cost associated with that  
19 was not to the extent where it would, you know, financially  
20 hurt veterans from being able to get the care that they need.

21 But large sums of money that would have to be put  
22 into the care of the land that is leased by Brentwood or doing  
23 something with maintenance of those buildings, you know, all of  
24 that would be problematic in a much larger extent from a  
25 budgetary and employee resource.

1 A different example not related to --

2 Q If you don't mind, I have one more question about the  
3 Japanese Garden just to close the loop on that. Do you know  
4 whether the cancellation of that agreement was recommended by  
5 the Office of Inspector General?

6 A Yes.

7 Q And, well, yes --

8 A Yes, it was recommended by the Office of Inspector  
9 General.

10 Q Thank you.

11 A Yes, I know, and yes, it was. Sorry.

12 Q Okay.

13 A I understand how that was confusing.

14 Q You were about to provide another example?

15 A This isn't to the lease piece as much, but the costs that  
16 are involved. So we have -- we had a swimming pool in the  
17 Sepulveda Ambulatory Care Center that was used as a therapy  
18 pool, but it got to the point where the maintenance  
19 requirements of that pool and that building exceeded the  
20 usefulness of the pool as a therapy device, and we've had to  
21 close that pool.

22 So these are, you know, challenges and risk  
23 benefit assessments that go on every day at the healthcare  
24 system to be able to identify what may and may not be  
25 maintained based on resources and having to do that with the

1 Brentwood lease would add additional burden to that discussion.

2 Q Now, I don't want to presume what the Court may or may not  
3 do in this case and I don't want you to presume that either for  
4 these next couple of questions, but let me ask you this:

5 Does VA have the financial resources to maintain the  
6 facilities that the Brentwood School currently has on the West  
7 LA Campus?

8 THE COURT: That would be the swimming pool, tennis  
9 courts, a portion of the track.

10 MR. ROSENBERG: Yes, Your Honor, any or all of them.

11 THE COURT: Any and all baseball fields.

12 THE WITNESS: And when you say "VA" do you mean GLA  
13 or VA in general?

14 BY MR. ROSENBERG:

15 Q Just --

16 A So what I will say is that, you know, despite the large  
17 budget that GLA has, and I mentioned yesterday that was  
18 \$1.4 billion overall, inclusive of community care costs,  
19 inclusive of the -- what they call NRM, nonrecurring  
20 maintenance costs, GLA is expected to spend -- and I say  
21 "expected" because there's still a couple of months this year,  
22 about \$20 million to \$25 million on those nonrecurring  
23 maintenance costs, those would be things that have to do with  
24 facility infrastructure, maintenance, the buildings, the pipes,  
25 the flooding, the windows, that maintenance and upkeep. Ground

1 maintenance would be a little bit different.

2           Their overall budget is going to end the year after  
3 providing some surplus to GLA with about a -- you know, they  
4 did pretty well, so they ended up this year with spending all  
5 of their money with a 2 to \$5 million supplement, if you will,  
6 from the network.

7           The VISN, overall, needed a \$60 million supplement for  
8 its healthcare budget across all eight facilities, and the VA  
9 overall has already announced in the media that it is \$3  
10 billion short this year for mandatory funding and has made a  
11 request next year for an additional \$12 billion for the 2025  
12 budget because of anticipated shortages.

13           THE COURT: Yesterday you testified 407.25 -- strike  
14 that. I think we have an agreement, 407.25 billion, are there  
15 any supplements in for this year?

16           THE WITNESS: So for the \$407 billion, the operating  
17 budget out of that is 330 billion. Some of that difference has  
18 to do with escrow money and multi-year money that's left over.  
19 It's that \$3 billion for this year's budget that's being asked  
20 and then an additional 12 billion from the advance  
21 appropriation for next year that's being requested.

22           THE COURT: I'm joking with you, can you get them to  
23 shift a little bit more money to you? Just a joke, counsel.

24           THE WITNESS: That's okay and I can talk about that,  
25 too.



1 MR. ROSENBERG: And I think we're actually going to  
2 address that budgetary number a little bit later this morning  
3 because it's a little bit more complicated as I --

4 THE COURT: 407.

5 MR. ROSENBERG: Yeah.

6 THE WITNESS: But I put that into perspective just  
7 to say that all of our facilities are generally at -- spending  
8 at their allotted money or over their allotted money in order  
9 to meet the healthcare costs, and in the case of GLA the  
10 construction and other costs that have been, you know, allotted  
11 through a separate budget so this would be a hardship for the  
12 facility to pay significantly more money towards the  
13 maintenance of that area and those facilities. Especially if  
14 they are not using them.

15 Q Certainly it's not VA has budgeted for?

16 A No.

17 Q There is an alternative, I suppose. You could just  
18 bulldoze the Brentwood facilities. Has VA budgeted for that?

19 THE COURT: Well, the Brentwood recreational  
20 facilities.

21 MR. ROSENBERG: Yes.

22 THE COURT: Let's leave the school alone. Okay?

23 BY MR. ROSENBERG:

24 Q There may be enough litigation concerns just with the  
25 facilities on campus.

1 A The buildings on the -- I wouldn't anticipate that  
2 happening any time soon.

3 Q So there is no budget for removing it?

4 A No. And, actually, demolition is pretty costly as well.  
5 Surprisingly so. I don't have an estimate on what that would  
6 be, though.

7 Q Do you have a view on whether the Brentwood space would be  
8 good space for building housing? And Brentwood space, again, I  
9 mean the athletic facilities on the north end of the campus.

10 THE COURT: At least the 22 acres that are leased.

11 MR. ROSENBERG: Yes, Your Honor.

12 THE WITNESS: There is one area that is south of  
13 their main part of the campus facilities that they use that is  
14 a softball field. That area is actually one of the areas that  
15 we have targeted for the potential for temporary housing. Of  
16 course, that is, you know, adjacent to the Arroyo, but -- so  
17 that is just a current landfill issue, but I don't expect that  
18 to be for a very long period of time.

19 I would say that that would require the demolition of  
20 all of that -- all of those facilities that are there in order  
21 to put housing there.

22 The other consideration -- and I wouldn't say  
23 limitation -- is that that is on the other side of the Arroyo  
24 where their building space is. So that would, potentially,  
25 depending upon which part -- you would have to enter it from

1 another part of the campus, not the main part of the campus.  
2 That is not a deal breaker; that is just a consideration.

3 And part of the master plan in the future contemplates  
4 making some bridges and road connections to be able to get  
5 there.

6 Q Do you have an understanding of -- I think you referred to  
7 both financial and in-kind contributions that the Brentwood  
8 School makes pursuant to its lease? Do you recall that  
9 testimony?

10 A I recall the testimony.

11 Q Do you have an understanding of what those contributions  
12 are?

13 A Yes.

14 Q Can you describe them for the Court?

15 A Well, the financial contribution requirement is, I  
16 believe, \$850,000. I don't have that number right in front of  
17 me for lease.

18 And \$915,000 for in-kind contributions.

19 Q Let me pause you there because we may be able to help both  
20 you and the Court with that.

21 A Yeah. The Congressional report lists that out.

22 MR. ROSENBERG: Can we pull, please, the  
23 Congressional report, the tables that were in Exhibits 1293.  
24 And then, actually, we're going to turn to page -- let me find  
25 this. Let's start with 1293, page 16.

1           And just for the record, we're back to the Congressional  
2 report, the report the VA issued to Congress in September  
3 of 2023.

4           And on page 16 of that exhibit is a -- begins a summary  
5 of the Brentwood lease. And I'm going to ask you to look  
6 through pages 17, 18, 19, 20, and 21, and 22.

7           Just take a moment to look through those pages. And I  
8 will have just a couple questions for you about them.

9 Q       Are you done, Dr. Braverman?

10 BY MR. ROSENBERG:

11 A       Yes.

12 Q       So just at a high level, can you describe for the Court --  
13 well, let me start with this.

14           You said -- when I asked you about the contributions  
15 that the Brentwood School makes, you said the Congressional  
16 report lists them. Is this what you were thinking of?

17 A       Yes.

18 Q       Can you describe this for the Court, please.

19 A       Well, the -- Exhibit C identifies what is considered to be  
20 the rent requirements, the money that has been received from  
21 the rent payments, the requirements for the in-kind  
22 considerations, and then a list of those in-kind considerations  
23 that were received for this last fiscal year, FY '23, that was  
24 an estimated of \$2 million and then identified the specific  
25 metrics associated with, for example, number of meals, number

1 of veterans visited, the number of student service hours from  
2 volunteer work, tickets, scholarships, the meals that were  
3 donated associated with CTRS, and, you know, other kinds of  
4 events.

5 Q And just, again, generally speaking, regarding these  
6 contributions, does VA have the ability to provide these  
7 contributions that the Brentwood School is currently providing  
8 directly?

9 A In many cases, we would not have been able to do that  
10 ourselves based on the activities or the law or what have you.  
11 We spoke about the changes in interpretation of meals. So the  
12 meals no longer are required for CTRS in terms of a  
13 requirement. Previously, they were, that we couldn't do that.

14 But the rest of these things are things that we probably  
15 don't have available. We don't have the funds for a shuttle  
16 service, for example. That is allowed to shuttle people who  
17 are not eligible for beneficiary travel. But the Brentwood  
18 School can do that on the campus, which has been beneficial.

19 So there are things that were prohibited from doing but  
20 that Brentwood School is supplying versus things that are more  
21 discretionary in nature.

22 Q And if we were to look at the prior year's Congressional  
23 reports, do you anticipate that we would find a similar  
24 breakdown of the contributions that the Brentwood School makes?

25 A It would be similar, yes. Same topic areas. Maybe

1 different amounts.

2 Q Of course.

3 I'm going to -- in keeping with Mr. Rosenbaum's use of  
4 baseball analogies, I'm going to toss you a softball, just for  
5 the record.

6 At the time that the West Los Angeles Leasing Act became  
7 law, were the Brentwood facilities, athletic facilities on the  
8 22 acres at the north end of campus, already on the West LA  
9 Campus?

10 A Yes.

11 Q Did VA ever consider renegotiating the lease with the  
12 Brentwood School to try to get a better deal?

13 A Well, it was originally negotiated in 2016 as the  
14 legislation was being approved through the West LA Leasing Act.  
15 The original House bill portion of that included a -- in the  
16 committee report, a recommendation that Brentwood be included  
17 in the West LA Leasing Act to the same extent that UCLA was.

18 That wasn't in the final bill. But it was that the  
19 lease was built with the understanding that that was going to  
20 happen.

21 The OIG -- the West LA Leasing Act requires that the VA  
22 may not enter into new leases with agencies that are deemed to  
23 have inappropriate leases by the OIG or leases that are not in  
24 compliance. So that interpretation is that we at VA may not  
25 renegotiate such a lease that is out of compliance according to

1 OIG.

2 So, we can't renegotiate outside the terms of the  
3 existing lease, even if that renegotiation would make the  
4 overall lease more beneficial for veterans.

5 Q So VA is stuck?

6 A To some extent for that -- to make it better, yes.

7 Q Let me -- you are familiar with -- I know you are not a  
8 lawyer, but you are familiar with the Leasing Act.

9 So would it be helpful for the Court to step through or  
10 have the witness step through the basis for VA's opinion that  
11 it cannot renegotiate a lease that the Office of Inspector  
12 General has found to be noncompliant?

13 THE WITNESS: I think he's asking you, Judge.

14 THE COURT: I have given you full rein in the  
15 lawsuit. You can -- don't worry about the time. If you want  
16 to do that, that is fine.

17 BY MR. ROSENBERG:

18 Q Okay. Let's go ahead and do that.

19 THE COURT: While you are doing that, where would I  
20 find, from either party, this opinion that this lease cannot be  
21 renegotiated? Is that within the West LA Leasing Act, or is  
22 this an opinion by counsel that you are relying upon?

23 THE WITNESS: I think that's -- that's what, I  
24 think, Brad is going to run through.

25 MR. ROSENBERG: Yes. And this is -- yes. I'm going

1 to run through the statutory provisions.

2 BY MR. ROSENBERG:

3 Q So let's start with Exhibit Number 81, which is a copy of  
4 the West LA Leasing Act.

5 THE COURT: And this is the VA's opinion in contrast  
6 with the Office of Inspector General?

7 THE WITNESS: No. There is agreements in this part.

8 THE COURT: Thank you.

9 MR. ROSENBERG: This is going to be a three-step  
10 process, Your Honor. It's a little bit tricky.

11 BY MR. ROSENBERG:

12 Q Okay. So if we could turn to page 4 of Exhibit Number 81.  
13 And look at paragraph (h) (1).

14 Paragraph (h) says, Compliance with certain laws.

15 And paragraph (1) says, Laws relating to leases and land  
16 use.

17 And I'm not going to read that now, but I'm going to  
18 just take a moment to ask you to review that paragraph, and let  
19 me know if it is your understanding that that paragraph, at the  
20 time that the West Los Angeles Leasing Act was passed, governed  
21 VA's ability to negotiate land use agreements that were found  
22 to be noncompliant by the Office of Inspector General?

23 A Yes. That is the associated paragraph.

24 Q Okay. And I don't know if the Court wants to review that  
25 paragraph. We're going to come back to a modified version of



1 it in just a moment.

2 So if we could pull up -- and this is actually going to  
3 be a new demonstrative. But it's the Department of Veterans  
4 Affairs Expiring Authorities Act of 2018.

5 THE COURT: That would be Exhibit Number?

6 MR. ROSENBERG: 1622.

7 If we could pull that up to give a copy to the witness  
8 and to the Court.

9 BY MR. ROSENBERG:

10 Q All right. Can you turn, please, to the second to last  
11 page of this document, it says, Section 303, modification of  
12 compliance requirements for particular leases relating to the  
13 Department of Veterans Affairs West Los Angeles Campus.

14 THE COURT: What page, please?

15 THE WITNESS: It's the second to last page. It's  
16 the very bottom.

17 BY MR. ROSENBERG:

18 Q And this is short, so I am going to go ahead and read  
19 this. And if you let me know if I read it correctly.

20 Section 2(h)(1) of the West Los Angeles Leasing Act of  
21 2016, public law 114-226, is amended by striking, quote, any  
22 lease or land sharing agreement on the campus, unquote, and  
23 inserting, quote, any new lease or land sharing agreement at  
24 the campus that has not been compliant with such laws.

25 Did I read that correctly?

1 A Yes.

2 Q Okay. So now we get to Part 3. We're going to merge  
3 these two documents together. And I apologize. I did this  
4 this morning on paper in my hotel room, but I have, basically,  
5 a markup of the two statutes. And I might need some help with  
6 the Elmo.

7 THE COURT: Maybe we have to -- is there something  
8 we have to push?

9 There it is.

10 MR. ROSENBERG: Success. Sometimes it's the little  
11 things in life, Judge Carter.

12 BY MR. ROSENBERG:

13 Q All right. So this is -- I will just say, what I have  
14 done here is I have taken the West Los Angeles Leasing Act, and  
15 pursuant to the subsequent statute that we just read, I crossed  
16 out the language that's directed to be crossed out. And you  
17 can see the handwriting that identifies how that relevant  
18 statutory provision now reads.

19 And so let me read this to you, this highlighted  
20 section.

21 Section H, compliance with certain laws, subsection 1,  
22 laws relating to leases and land use. If the Inspector General  
23 of the Department of Veterans Affairs determines as part of an  
24 audit report or evaluation conducted by the Inspector General  
25 that the department is not in compliance with all federal laws

1 relating to leases and land use at the campus or that  
2 significant mismanagement has occurred with respect to the  
3 leases or land use at the campus, the Secretary may not enter  
4 into any new lease or land sharing agreement at the campus that  
5 is not in compliance with such law, comma, or renew any such  
6 lease or land sharing agreement that is not in compliance with  
7 such laws, comma, until the Secretary certifies to the  
8 Committee on Veterans' Affairs of the Senate and the House of  
9 Representatives, the Committees on Appropriations of the Senate  
10 and House of Representatives, and each member of the Senate and  
11 the House of Representatives who represents the area in which  
12 the campus is located that all recommendations included in the  
13 audit report or evaluation have been implemented.

14 Did what I just read to the Court reflect VA's  
15 understanding of the constraints that are placed upon it when  
16 seeking to renegotiate or renew the land use agreement --  
17 release, in the case of Brentwood -- that is not in compliance  
18 or that the Office of -- rather, that the Office of Inspector  
19 General has found not to be in compliance with the West Los  
20 Angeles Leasing Act?

21 A I would say, renegotiation is considered a new lease. I  
22 don't know that renewing would be if there is an option year.  
23 But renegotiating would be considered a new lease. And --  
24 although renewing is in here. But, like I said, I'm not -- I  
25 don't believe accepting an option year is the same as renewing.

1 But that is up for the lawyers to decide.

2 But that is the issue. And part of the catch-22 is that  
3 OIG will not review a draft lease to prospectively assess  
4 whether, in their view, it would be compliant.

5 And that's another piece that prevents us from moving  
6 forward with an alternative lease from, you know, our  
7 perspective.

8 THE COURT: Well, back to the same question I asked  
9 earlier. In this report by the OIG that states that this is  
10 a -- for want of a better word -- a misuse in this lease, you  
11 have no way of resolving that except through the  
12 administration? In other words, you have to go to the White  
13 House, basically?

14 THE WITNESS: And -- or ignore the OIG.

15 THE COURT: Or ignore the OIG.

16 THE WITNESS: Right. Which is basically what is  
17 happening now.

18 So -- but the -- or agreeing to disagree.

19 So the challenge is -- so OIG, NVA here are in agreement  
20 that this lease can't be renegotiated unless it's deemed to  
21 principally benefit veterans. And in their view, because they  
22 can't assess that prospectively, it has to be canceled.

23 And that's what is their view in the report, that it  
24 needed to be terminated. Now, they say it could be terminated  
25 or resolved, but they won't tell us how to resolve it. And

1 that is part of the challenge.

2 And I believe it could be improved, but --

3 THE COURT: So basically -- it basically comes down  
4 eventually, with this impasse, to administration policy  
5 decision, doesn't it? When all is said and done with this, you  
6 have no way of breaking this logjam except through the policy  
7 of whatever the administration sends down.

8 THE WITNESS: Right. Or a legal determination of  
9 whether it meets the intent of the law.

10 THE COURT: Counsel.

11 BY MR. ROSENBERG:

12 Q Well, let me ask just one more question, building on Judge  
13 Carter's question. And I pulled this off, but let me put it  
14 back on.

15 I mean, there is a reference to Congress in this  
16 paragraph. Could Congress fix this?

17 A Well, I think it would be -- the report requires us to  
18 tell Congress that we have implemented all of the  
19 recommendations. So Congress, I guess, could change the law  
20 and say that, you know, the Brentwood lease is -- you know,  
21 meets the intent of the West LA Leasing Act, like they did in  
22 including UCLA. So I guess there would be a way to do that.

23 I can't speak to Congress's appetite to make that  
24 change. But these Congressional reports -- we also,  
25 separately, have to report -- and this is a VA large report --

1 all OIG recommendations that aren't resolved within a year.  
2 And, obviously, these two reports are not resolved and have not  
3 been resolved for going on six years now. So, every year there  
4 is a report to Congress that says these two OIG reports have  
5 not yet been resolved.

6 THE COURT: So let me repeat that back. Congress  
7 has known about this for six years and hasn't resolved it?

8 THE WITNESS: Yes.

9 THE COURT: And the administration hasn't resolved  
10 it, either the past administration, Trump, or the Biden  
11 administration? Or, better yet, have you taken this --

12 THE WITNESS: No. I mean, that is correct.

13 THE COURT: Okay.

14 THE WITNESS: I was just doing the dates to see who  
15 was President at the time. Yes, sir.

16 BY MR. ROSENBERG:

17 Q I mean, one more, again, to follow up on Judge Carter's  
18 question though and just to explore this a little bit more.  
19 When we refer to the administration resolving it, I guess I'm a  
20 little bit unclear what that means because it seems like there  
21 is just an impasse. The Inspector General has a view; VA  
22 management has a different view.

23 A So I believe the issue at hand that makes maybe this  
24 different from being just an administrative issue is that it's  
25 an interpretation of law.

1           And so when it's interpretation of law, then the Courts  
2 and Congress are the ones who may engage versus just the  
3 administration.

4           So then it comes to just -- so by default, we're  
5 continuing on with the existing lease. So we're basically  
6 saying, OIG, we disagree. And the Secretary is aware that  
7 we're continuing with this lease. And he certifies in the  
8 report that we have not resolved the OIG annually.

9   Q       And one last question on the Brentwood School lease before  
10 we turn to the next one that I would like us to discuss.

11           Do you believe that the costs to VA of terminating the  
12 Brentwood School lease would be greater than the benefits that  
13 VA currently receives from that lease?

14   A       Yes.

15           MR. ROSENBERG: Judge Carter, I did mark up, as you  
16 saw -- I would suggest maybe that we just mark this as  
17 Exhibit 81A, because it is a modification of Exhibit 81.

18           THE COURT: Is that the markup you did this morning?

19           MR. ROSENBERG: That is the markup.

20           THE COURT: I will receive it into evidence. And  
21 don't worry about the notes. There's notes you've written.  
22 It's not prejudicial. Just give it to Karlen at your  
23 convenience. It's received.

24           (Exhibit 81A received into evidence.)

25   BY MR. ROSENBERG:

1 Q All right. Time to play ball.

2 Let's talk about UCLA. And let's turn back -- it should  
3 already be in front of you -- Exhibit Number 1293.

4 That is the 2023 Congressional report.

5 And I will ask you to turn, if you will, to page 21 --  
6 oh, sorry. 22 maybe. I might be looking -- no, it's 22.

7 THE COURT: 22, Counsel. I pulled a Braverman and  
8 was looking at the wrong year's exhibit. Okay.

9 THE WITNESS: I have it.

10 BY MR. ROSENBERG:

11 Q Okay. I will ask you to take a moment to look at  
12 pages 22, 23, 24, 25, 26, 27, and 28, just to familiarize  
13 yourself with that.

14 Okay. Does this section of the report generally address  
15 the lease that VA has with UCLA?

16 A Yes. To the same extent that it did with Brentwood.

17 Q It discusses the benefits that UCLA provides to veterans,  
18 at least from VA's perspective?

19 A Yes.

20 Q And we could find some of those benefits on, for example,  
21 pages -- on page 27?

22 A Yes.

23 Q I'd like to go back to yesterday's testimony. And we  
24 heard an audio recording regarding a modification to the UCLA  
25 lease. Do you recall that audio recording being played in



1 court?

2 A Yes.

3 Q Do you recall there --

4 THE COURT: I'd like you to play it one more time.  
5 I have heard it once.

6 MR. ROSENBERG: Okay.

7 THE COURT: I would like to hear it one more time.  
8 Could somebody do that for me.

9 MR. ROSENBERG: Plaintiffs.

10 (Audio played in open court.)

11 THE COURT: Is there a transcript that either party  
12 has prepared of that tape? Because I have heard it twice now,  
13 but -- would one of you do so --

14 MR. SILBERFELD: We will.

15 THE COURT: -- before the end of trial?

16 BY MR. ROSENBERG:

17 Q So, Dr. Braverman, yesterday you testified that it was a  
18 mistake to not be more transparent regarding the process that  
19 was used regarding the amendment to the lease?

20 A Yes.

21 Q I'd like to focus a little bit -- rather than focus on the  
22 process foul, I would like to focus on the substance of that  
23 conversation that we just heard.

24 And we don't have a transcript yet, but I wrote down a  
25 few words just now when the Court replayed the tape.

1 I heard the words -- and I might not get this exactly  
2 right, but I think it's pretty close -- "In exchange, we get  
3 overflow parking back, which is important to us for  
4 construction."

5 Do you have any idea what that means?

6 A Yes. To put some of this in context.

7 The lease -- the UCLA lease allows UCLA to essentially  
8 do whatever it wants within the leasehold.

9 So UCLA already had the authority to build a new  
10 infield. And they came to us in this COVID period where they  
11 indicated that they had donors that the field wasn't being used  
12 because of the cancellation of the baseball during the COVID  
13 season and that they would like to get started on building this  
14 infield that they already had the authority to do.

15 So, it was my decision, ultimately, to say okay. If  
16 they can do it anyway, let's see if we could get some benefit  
17 from that and get things that the VA would need and that could  
18 benefit veterans along the way as well.

19 To be honest, where my mistake was was not getting  
20 feedback from veterans on how we might do that better than what  
21 we did.

22 There were -- there was one big challenge that the  
23 current lease had for us at the time, and that was a  
24 requirement in the lease that required us to provide up to 500  
25 spaces of overflow parking every time there was an event at the

1 stadium.

2 And because of the beginning of the construction for,  
3 you know, the 205 and 208 EULs and then eventually 207, the  
4 construction of the Metro and other things that were going on,  
5 we were having a parking problem because parking lots were  
6 being closed, parking lots were being turned over for EULs in  
7 the future. And to be able to recapture those 500 spaces on  
8 the north part of the grounds was very important to us.

9 So I viewed this as an opportunity to remove that part  
10 of the lease in exchange for something that UCLA was already  
11 authorized to do.

12 The additional piece was to get the benefit of use of  
13 that infield, that Astroturf infield, for recreational  
14 activities associated with our rehabilitation programs and the  
15 nursing homes.

16 Q So let's go ahead and -- I think it would be helpful if we  
17 could actually look at the leases and what transpired through  
18 that negotiation process.

19 So I would like to show you what has been previously  
20 marked as Exhibit 1313.

21 A I don't have that one yet. I started looking for it.

22 MR. ROSENBERG: We're adding to your pile. I  
23 apologize.

24 BY MR. ROSENBERG:

25 Q Do you recognize this document?

1 A Yes. This is the original lease from 2016 with UCLA.

2 Q And are you familiar with it?

3 A Yes.

4 MR. ROSENBERG: Move to admit, Your Honor.

5 THE COURT: Received.

6 (Exhibit 1313 received into evidence.)

7 BY MR. ROSENBERG:

8 Q I'm going to ask you to return to page 10 of Exhibit 1313.  
9 And that is using the exhibit numbering. So it says 1313-10 in  
10 the lower right-hand corner.

11 Do you see the paragraph under Article 4? It's  
12 paragraph B. And it says, Lessee overflow parking. And I'm  
13 just going to read the first sentence or two of that.

14 Thank you for making that bigger.

15 Lessee overflow parking. In addition to lessee's right  
16 to use the property per the terms and conditions of this lease,  
17 lessee shall have the right to use, at no additional cost, up  
18 to 500 parking spaces on the balance of the WLA campus for  
19 overflow parking -- parenthetical, overflow parking, closed  
20 parenthetical -- during events held at the property for which  
21 the parking located on the property is insufficient.

22 Did I read that first sentence correctly?

23 A Yes.

24 Q And is that the provision of the lease that was presenting  
25 a challenge to VA?

1 A Yes.

2 Q Now, there are, as I'm aware, at least two subsequent --  
3 two amendments to that lease. There is one which, you know,  
4 maybe we can just admit for the record now. It's -- I'll just  
5 put it in front of you so we can get this admitted. It's  
6 Exhibit 1315.

7 Can we show that to the witness?

8 I'm just going to ask, do you recognize this amendment?  
9 This document?

10 A Yes.

11 Q Do you know what it is?

12 A Yes. It's an amendment to the lease with UCLA. That was  
13 from 2018. And it was, basically, making a drawing and  
14 identifying the boundaries of the lease.

15 MR. ROSENBERG: Move to admit.

16 THE COURT: Received.

17 (Exhibit 1515 received into evidence.)

18 BY MR. ROSENBERG:

19 Q That's not the amendment we have been discussing for the  
20 last couple of minutes, is it?

21 A Correct.

22 Q I would like to show you Exhibit 1316.

23 Do you recognize this document?

24 A Yes.

25 Q What is it?

1 A This is the second lease that we're describing that  
2 identified the improvement to the parking lot to make an  
3 infield lease. It identified where that was within their  
4 leasehold and then identifying the part of being able to use  
5 the infield for recreation activities from the VA staff and  
6 then the elimination of the overflow parking requirement.

7 MR. ROSENBERG: Move to admit.

8 THE COURT: Received.

9 (Exhibit 1316 received into evidence.)

10 MR. ROSENBERG: And just so that we're all focused  
11 on the same part of this amendment, can you turn to page 2 of  
12 that exhibit and it is Article 3.2.

13 BY MR. ROSENBERG:

14 Q I'll ask you to take a moment to look at that.

15 A Yes, it deletes that paragraph that you read in the prior  
16 lease -- original lease agreement.

17 Q I'm just going to read it for the record.

18 "Paragraph 3.2, Lessee Overflow Parking,  
19 Article 4.B of the lease is deleted in its entirety and there  
20 shall be no further VA requirement or obligation for lessee  
21 overflow parking."

22 I did read that correctly?

23 A Yes.

24 Q Did that provision -- did implementation of that provision  
25 solve the challenge you described earlier regarding UCLA's

1 right to access overflow parking on the campus?

2 A Yes.

3 Q Does VA have the ability to maintain UCLA's baseball  
4 stadium and practice field if a Court were to invalidate the  
5 lease?

6 A No.

7 Q Could VA simply knock down Jackie Robinson Stadium?

8 A Yeah, I think the discussion would be the same as I  
9 mentioned from Brentwood's facilities.

10 Q Are there any -- is it a historic structure?

11 A Yes, there's an additional --

12 (Reporter Clarification.)

13 BY MR. ROSENBERG:

14 Q Is it a historic structure?

15 A Yes, I believe that it would be classified as a historic  
16 structure that may prohibit the building -- or the destruction  
17 of the stadium, but I don't know that for a fact.

18 THE COURT: What is this?

19 THE WITNESS: I believe it was originally built  
20 around the 1920s as an American Legion Stadium and then --

21 THE COURT: The site?

22 THE WITNESS: The site itself. Sorry.

23 THE COURT: Sorry. The site that the main stadium  
24 sits on, was it a prior baseball field?

25 THE WITNESS: It was originally an American Legion

1 baseball field.

2 THE COURT: But that was torn down and new  
3 construction took place in the early two thousands?

4 THE WITNESS: I don't know the date, sir.

5 THE COURT: How was that a historical site? If you  
6 don't know, that's fine.

7 THE WITNESS: I don't. This might be wives' tale.

8 THE COURT: Thank you.

9 BY MR. ROSENBERG:

10 Q Would VA, regardless of any historical significance of the  
11 structure, have the financial ability -- or, rather, the budget  
12 to tear down Jackie Robinson Stadium?

13 A No. But we would have to have that historical question  
14 resolved before doing anything, anyway, and that's true for any  
15 of the changes that we make to buildings on our campus because  
16 overall the campus is designated as a historical site.

17 Q And tearing down a stadium on the campus, do you think  
18 that would be a significant alteration to the nature of the  
19 campus such that it would have to undergo at least a  
20 historical --

21 A I don't know that, but we would ask that question.

22 Q You would have to find out?

23 A Yes.

24 Q Let's talk about SafetyPark.

25 THE COURT: By the way, nobody is holding you to be



1 an expert in this area, but this is a thought process that is  
2 concerning you in making these decisions?

3 THE WITNESS: Yes.

4 THE COURT: Okay.

5 MR. ROSENBERG: I think we can go back to 1293,  
6 which is the Congressional report, and I would ask you to turn  
7 to page 28 and 29.

8 BY MR. ROSENBERG:

9 Q Do you recognize this section of the document that you  
10 have already seen?

11 A Yes.

12 Q And this is the section of the Congressional report  
13 regarding SafetyPark?

14 A Yes.

15 Q And, like the other sections of the report that you have  
16 been asked to review today, does it generally summarize the  
17 benefits that VA receives from SafetyPark?

18 A Yes.

19 Q Based on your review of this document, and any refresh  
20 that it might provide, what are those benefits?

21 A Well, the primary benefits, No. 1 is that it's an  
22 employment opportunity for veterans. It's a veteran-owned  
23 parking lot. It's run and employed or staffed by veterans.  
24 Veterans may park free in that area and, you know, they also  
25 have opportunity for customer service and other occupational

1 training associated with that.

2 And then gross revenue receipts minus operating  
3 expenses, in other words, the net, ends up coming to the VA  
4 each month as well.

5 Q How does VA use that money?

6 A That goes into the lease revenue fund for the expenses  
7 that we have identified earlier.

8 Q And just to -- I'm a very forgetful person, but what are  
9 those expenses again?

10 A Well, the bulk of those expenses thus far have been to  
11 support the CTRS program.

12 Q So SafetyPark -- the revenue that VA receives from  
13 SafetyPark helps to support CTRS?

14 A Yes.

15 Q Why wasn't this lease canceled?

16 A Because the VA disagreed that it wasn't for principally  
17 benefiting veterans.

18 THE COURT: They disagreed with the OIG?

19 THE WITNESS: With the OIG.

20 BY MR. ROSENBERG:

21 Q Do you know the term of this lease?

22 A I think this is renewed annually.

23 THE COURT: It's right there. Go back. It's there.

24 THE WITNESS: Yeah.

25 BY MR. ROSENBERG:

1 Q The VA could choose not to renew it then at the end of  
2 given year?

3 THE COURT: First of all for the year, it's nine  
4 one-year extensions, correct?

5 THE WITNESS: It's one year with nine extensions, so  
6 a total of ten years.

7 THE COURT: Right, ten years.

8 BY MR. ROSENBERG:

9 Q Does VA currently have any use -- any alternative use for  
10 the SafetyPark site?

11 A Not at this time.

12 Q Could VA have an alternative use for the SafetyPark site  
13 in the future?

14 A Yes.

15 Q What would that use be?

16 A Well, it's a parking lot, so it's an area that could be  
17 suitable for housing in the future if that was necessary.

18 Q And if VA made a determination that it's necessary, would  
19 your expectation be that the lease would not be renewed at that  
20 time?

21 A That would be an alternative for the VA to put in place.

22 Q Now, if VA were to not renew the lease at the next renewal  
23 opportunity, or if this Court were to invalidate that lease,  
24 would VA still receive the revenues that are paid by  
25 SafetyPark?

1 A No.

2 Q And just for completeness I would like to show you what  
3 has been marked as Exhibit 1331.

4 Do you recognize this document?

5 A Yes.

6 Q What is it?

7 A It's the lease agreement with SafetyPark.

8 MR. ROSENBERG: Move to admit.

9 THE COURT: Received.

10 (Exhibit 1331 received into evidence.)

11 MR. ROSENBERG: Your Honor, if I could take a  
12 one-minute break to confer with someone.

13 THE COURT: Sure.

14 MR. ROSENBERG: All right.

15 BY MR. ROSENBERG:

16 Q Let's turn back to -- it should be in front of you,  
17 Exhibit 2, that's the OIG report.

18 A Which one?

19 Q The 2018 report. And I'm going to ask you -- we're going  
20 to go to the management comments again, and I'm going to ask  
21 you to turn specifically to page 97 of Exhibit 2. And I'm  
22 going to ask you to review the two paragraphs on the bottom of  
23 that page, it says "Breitburn RL."

24 By the way, when we say "RL" do you know what  
25 that term means?

1 A Revocable license.

2 Q And I'm going to read the first paragraph and maybe the  
3 first couple of sentences of the second paragraph. And if you  
4 could let me know if I've read this correctly.

5 "The history behind the oil drilling activities  
6 on the campus is complex and the documentation permitting that  
7 activity equally so.

8 While the audit reports refers only to an RL between  
9 that allows Breitburn surface access to VA property, that RL is  
10 related to a slant drilling lease, Lease Number R-1956, between  
11 Breitburn and the Bureau of Land Management, which administers  
12 subsurface drilling rights on all federal lands.

13 VA is at a loss to understand whether or how it might  
14 cure this deficiency.

15 The underlying lessor, BLM, is not bound by either the  
16 DMP or the Act.

17 VA is not a party to the Breitburn BLM lease.

18 The Breitburn VA RL is necessary to prevent the United  
19 States from breaching the Breitburn BLM lease.

20 To effectively negotiate more veteran-centric  
21 consideration to support this RL, they would have to have the  
22 authority to terminate Breitburn's access to the campus if  
23 Breitburn refused to provide such consideration.

24 Because the RL is necessary to prevent the United States  
25 from breaching a legally binding contract to which VA is not a

1 party, then VA clearly lacks the authority to terminate  
2 Breitburn's access to the campus."

3 Did I accurately read those two paragraphs?

4 A Yes.

5 Q And I read the full sum of those two paragraphs, did I  
6 not?

7 A Yes.

8 Q Based on -- what is the challenge -- I mean, it is -- I  
9 agree that this is complex.

10 What is the challenge that VA faced regarding --  
11 I'm going to call it "the oil site"?

12 A So in lay terms, there's already an agreement between the  
13 BLM, the Bureau of Land Management, and Breitburn to drill  
14 below ground, but in order to do that they have to have access  
15 above ground and it's that above-ground access that the VA is  
16 providing through the revocable license.

17 And if we took the above-ground access away, they  
18 wouldn't be able to do the below-ground drilling, which is  
19 their agreement with the Government through the Bureau of Land  
20 Management Department of Interior.

21 So that's the issue that we really -- we can't -- based  
22 on the other parts of the West LA Leasing Act that says if they  
23 are considering this to be noncompliant, then we can't  
24 renegotiate unless we cancel and if we cancel, we violate the  
25 Government's ability to hold their other leases, then we were

1 kind of stuck in being able to do anything.

2 Q Would it be beneficial to VA if it had the ability to --  
3 well, let me actually stop there for a moment and show you a  
4 different exhibit.

5 I'm going to show you Exhibit 1330.

6 Actually, to be specific my colleague, Matthew Carney,  
7 will show you Exhibit 1330.

8 MR. ROSENBERG: Thank you very much, Matt, for your  
9 help here.

10 BY MR. ROSENBERG:

11 Q When you are done with reviewing that, let me know, I have  
12 another document I would like to show you.

13 A Okay.

14 Q Let me start with this, do you recognize this document?

15 A Yes.

16 Q What is it?

17 A It's the agreement with Breitburn and the Disabled  
18 American Veterans for the donation of the oil revenue, I guess  
19 for want of a better term, to DAV to provide transportation to  
20 veterans.

21 Q I'm going to show you one more document.

22 MR. ROSENBERG: Actually, first, I'd like to move to  
23 admit.

24 THE COURT: Received.

25 (Exhibit 1330 received into evidence.)

1 BY MR. ROSENBERG:

2 Q One more document identified as Exhibit 203.

3 A Thank you.

4 THE COURT: Thank you very much.

5 BY MR. ROSENBERG:

6 Q Do you recognize Exhibit 203?

7 A Yes.

8 Q What is it?

9 A It's an amendment for the extension of the land use  
10 agreement with Breitburn.

11 MR. ROSENBERG: Move to admit 203.

12 THE COURT: Received.

13 (Exhibit 203 received into evidence.)

14 BY MR. ROSENBERG:

15 Q So Exhibit 203, I realize you have two documents in front  
16 of you, Exhibit 203, is that the underlying currently  
17 applicable revocable license for Breitburn?

18 A Yes.

19 Q And what is Exhibit 1330? That was the first document my  
20 colleague, Mr. Carney, was able to hand to you just now, it  
21 says, "Donation agreement"?

22 A Yes. So that's the agreement that allows for the exchange  
23 of funds between Breitburn and the Disabled American Veterans,  
24 so that the Disabled American Veterans would use those monies  
25 for veteran transportation.



1 Q Does VA believe that that benefits veterans?

2 A Yes.

3 Q Can VA -- this agreement is one of the -- this revocable  
4 license, is this one of the agreements in which VA management  
5 and Office of Inspector General disagree?

6 A Yes.

7 Q So is VA constrained in its ability to renegotiate this  
8 revocable license?

9 A Yes.

10 Q If there were a -- let me ask this: If there were an  
11 ability for VA to obtain a greater contribution from -- I will  
12 call it "Breitburn/Bridgeland Industries," because there's  
13 complex ownership structure there, that would be to the benefit  
14 of veterans, would VA be interested in having a greater  
15 contribution?

16 A Of course.

17 Q And if there were an ability for VA to obtain some  
18 additional land and/or flexibility as -- you know, from  
19 Breitburn/Bridgeland Industry, would that also be beneficial to  
20 VA for veterans?

21 A If it was usable land.

22 Q In your view, based on your understanding of the  
23 constraints that VA faces, if there were a Court-ordered  
24 settlement regarding the issues surrounding  
25 Breitburn/Bridgeland Industries, would that be to the benefit

1 of VA and the veterans that it serves?

2 A Yes, I think that would be true of any of the agreements  
3 because where VA and OIG differ are typically on matters that  
4 are interpretations of law.

5 And if that is resolved in court with Court sanctions,  
6 you know, new agreement, then that would resolve those  
7 differences of opinion.

8 Q And in that regard would it be helpful for a Court finding  
9 that any modified agreements are consistent with the  
10 obligations of the West Los Angeles Leasing Act?

11 A Yes. Because that would, you know, essentially keep there  
12 from being a disagreement between OIG and VA as to whether it's  
13 in compliance with the West LA Leasing Act which is their  
14 requirement to assess -- or was their requirement to assess.  
15 There is not actually a requirement to continue to assess, just  
16 those two initial reports.

17 MR. ROSENBERG: Your Honor, I have one housekeeping  
18 matter, I think I'm just about done with my questions regarding  
19 land use agreements, but there are as we have alluded to a  
20 series of other Congressional reports that predate the report  
21 the witness has testified about.

22 I can have the witness identify them, but alternatively  
23 if plaintiffs are willing to stipulate, I would like to offer  
24 and move them into evidence.

25 THE COURT: Counsel is walking towards you to reach

1 an agreement.

2 MR. ROSENBAUM: We will stipulate, Your Honor.

3 THE COURT: Stipulate. So it saves a lot of time,  
4 thank you both.

5 MR. ROSENBERG: It will be Exhibits 1294.

6 THE COURT: 1294, just identify what that is.

7 MR. ROSENBERG: Sure, give me one second.

8 THE COURT: Just read the title.

9 MR. ROSENBERG: 1294 is the September 2022  
10 Congressional report.

11 THE COURT: Okay.

12 MR. ROSENBERG: 1295 is the 2021 Congressional  
13 report.

14 THE COURT: Okay.

15 MR. ROSENBERG: 1296 is the 2020 Congressional  
16 report.

17 1297 is the 2019 Congressional report.

18 1298 is the 2018 Congressional report. And I will note  
19 that that exhibit also includes some cover letters to  
20 individual representatives and I believe -- and senators.

21 And then 1297 -- sorry, 1299. Excuse me, 1299 is the  
22 2017 Congressional report also with accompanying cover letters.

23 THE COURT: Each of those are received, 1294, 1295,  
24 1296, 1297, 1298, 1299 by stipulation of counsel.

25 (Exhibits 1294-1299 received into evidence.)

1 MR. ROSENBERG: Just one more moment.

2 THE COURT: Why don't you check with your team and  
3 see if you have got everything.

4 MR. ROSENBERG: I have a little ways to go still,  
5 Your Honor, I think now would be a good time -- we have been  
6 going almost for two hours for maybe a 15-minute break.

7 THE COURT: 15 minutes.

8 MR. ROSENBERG: Start at ten. Thank you.

9 (Morning recess.)

10 THE COURT: We're back on the record. All counsel  
11 and the parties are present.

12 The record should reflect on numerous occasions the  
13 Court did not call upon Bridgeland. The assumption by all  
14 parties was you would speak up if you had cross-examination.

15 MR. GUADIANA: Yes.

16 THE COURT: But this time you have been mentioned  
17 specifically, if you have cross-examination, please.

18 MR. ROSENBERG: I still have a little bit to go.

19 THE COURT: But remind me to call you, counsel.

20 MR. ROSENBERG: Here we will be turning to the world  
21 of budgeting and finance.

22 BY MR. ROSENBERG:

23 Q Dr. Braverman, do you recall yesterday there was a  
24 discussion about VA's budget?

25 A Yes.

1 Q Do you recall that I -- that we entered into a stipulation  
2 for purposes of your testimony yesterday that based on  
3 information that plaintiffs' counsel shared with us VA had  
4 \$407 billion in budgetary resources for fiscal year 2024. Do  
5 you recall that?

6 A Yes.

7 Q Is there any significance to the term "budgetary  
8 resources"?

9 A Well, budgetary resources would include monies that aren't  
10 necessarily executable in the fiscal year, they may be money  
11 that is set aside for five-year future money, it may be money  
12 that actually is past year's monies that weren't spent yet but  
13 would be spent for new obligations that were discovered to have  
14 occurred in prior years, money that would be for future  
15 construction and construction that has already been obligated  
16 but not yet paid.

17 So, the overall operating budget for VA in terms of 2024  
18 fiscal year funds is approximately \$362 billion.

19 I say "approximately," because that also includes  
20 revenue that might come in from collection and insurance and  
21 other sort of things.

22 Q I ask that question for precision because I know there was  
23 some discussion back and forth about the number.

24 I don't think that much matters for your testimony  
25 yesterday because I think you would still say 362 billion is

1 still very large number; is that right?

2 A Yes. If I said 362, I apologize, it's 332.

3 Q You might have said 332, I might be the one who needs to  
4 offer an apology.

5 A 369 is the request for '25, so it's easy to get numbers  
6 mixed up at that large amount of money.

7 Q How do you know these numbers?

8 A In my role as the network director we review and make  
9 plans for, you know, the budgets, not just with our network,  
10 VISN 22, but also all of VHA and understanding how it fits into  
11 the VA budget.

12 Q All right. I would like to try to do this in as efficient  
13 a manner as possible. But I think it would be helpful to have  
14 an overview of VA's budgeting process.

15 So let me start here.

16 What was the number that you believe roughly VA fiscal  
17 year '24 budget is?

18 A \$332 billion or so.

19 Q And earlier, I forget the exact phrase you used, there are  
20 various different components within VA, there is -- and we're  
21 focusing on the Veterans Health Administration?

22 A Yes.

23 Q There is also the Veterans Benefit Administration and the  
24 National Cemetery Administration?

25 A Yes.

1 Q So focusing on the VHA budget, of the number that you just  
2 provided how much was budgeted for VHA healthcare, roughly?

3 A 161 or so billion dollars.

4 Q And just so that the Court has an understanding, what does  
5 that money go to?

6 A So, generally VHA money that is associated with the  
7 healthcare system comes in four appropriations, so four buckets  
8 of money, if you will.

9 One bucket is for medical services. Think of the  
10 clinical team in the hospitals, the pharmaceuticals, the  
11 medical supplies, those sort of things.

12 The second bucket is called medical support and  
13 compliance. We call it medical administrative money. That  
14 would be to fund the administrative kinds of services, the  
15 supply clerks and the schedulers and HR and those sort of  
16 things.

17 Then a third bucket is facilities. So that would be any  
18 monies associated with maintenance and upkeep of the  
19 facilities, the personnel associated with that, like the  
20 engineers and painters and plumbers and such. Or, you know, in  
21 some cases the yard or the housekeeping maintenance and the  
22 groundskeepers.

23 And then the fourth category is called medical community  
24 care, that's the money that's used to pay for the community  
25 care costs for the medical costs associated with veterans

1 getting their care in community hospitals versus in the direct  
2 care VA system.

3 So those are all kind of divided into those buckets.

4 Then there is some set-asides for nonrecurring  
5 maintenance, and that's what I explained before about the money  
6 that is used for construction, rehabilitation, maintenance,  
7 renovation, infrastructure repair of existing facilities and  
8 grounds. Think utilities, storage tanks, roof repairs, HVAC  
9 repairs, et cetera. And so those are the -- I would say those  
10 are the major categories within VHA.

11 Q What about -- whether VHA or not -- maybe can you explain  
12 this, what about capital construction, is there a budget for  
13 that?

14 A So capital construction is a separate account within VA.  
15 So the Office of Construction and Facilities Management is, you  
16 know, a separate office within the Office of Construction and  
17 Logistics, I have forgotten the OACL, the Office of Acquisition  
18 Construction and Logistics, that is a direct assistant  
19 secretary under the secretary.

20 So VA also has budgetary groups for the overall  
21 governance organizations that fall under VA that supersede  
22 those three administrations.

23 So capital construction falls into that. Office of  
24 Information Technology falls into something similar, but for  
25 capital construction the -- essentially the 2025 budget moving



1 forward was requested for \$2 billion worth of major  
2 construction and then another -- the VA is recommending VHA has  
3 \$2 billion for NRM.

4 THE COURT: What is that?

5 THE WITNESS: The nonrecurring maintenance, the NRM  
6 that I defined before.

7 THE COURT: Okay.

8 THE WITNESS: And then there is up to \$3 billion for  
9 other minor construction projects.

10 So --

11 BY MR. ROSENBERG:

12 Q Let me pause right there, just for clarity. Those  
13 numbers, are those VA-wide?

14 A Yes.

15 Q Across the entire country?

16 A Across the entire country.

17 So, currently, on the major side -- I will use that as  
18 an example first -- think of that as large replacement medical  
19 centers. And there are currently eight on the priority list.  
20 That means that -- and they range from 1 to \$3 billion each in  
21 cost.

22 So, that, essentially, means that no more than one or  
23 maybe squeezing in two is able to be executed in a given year.  
24 And of those eight, they are all in, you know disrepair. They  
25 were built 50 to 100 years ago. And, you know, just -- it

1 doesn't pay to continue to try to rehabilitate them.

2           So, this fiscal year '25, the VA Greater Los Angeles  
3 Healthcare System had its critical care tower and central  
4 utility processing center requested to Congress for funding at  
5 the tune of \$1.4 billion. And that utility processing center  
6 was essential in order to provide the utility infrastructure to  
7 support all of the growth of housing on the north part of the  
8 campus as well as this new critical care tower, which includes  
9 the replacement inpatient units, the replacement ORs, and the  
10 replacement emergency departments.

11           So, that means that other facilities, like Phoenix and  
12 San Antonio and St. Louis and Charleston aren't able to get  
13 funded in the next, probably, couple of years unless Congress  
14 was able to increase their authorization.

15           The other competing challenge there is that at the same  
16 time that VA has decided to only fund one of these medical  
17 centers -- and I think there is a smaller unit in Dallas that  
18 is also being included in the \$2 billion that I mentioned, the  
19 extra \$600 million -- is that -- and it's been news, you know,  
20 in -- across the country is that VA has asked for \$3 billion  
21 from Congress to fund this year due to overspending in the  
22 mandatory benefits through VBA and then for 2025 an increase in  
23 \$12 billion to cover an anticipated shortfall, in some ways due  
24 to the increased number of veterans we're taking care of  
25 through the PACT Act over the last two years.

1           So, a \$12 billion need for VHA already just for its  
2 medical care and an inability to use those construction monies  
3 that are budgeted for these other medical centers that are in  
4 need.

5       Q     Are there any other sources of funding for construction  
6 that you can think of?

7       A     For major construction, that is pretty much the only  
8 source.

9           Now, there are public/private ventures that happen  
10 occasionally. They require approval by the Secretary for those  
11 kinds of donations.

12           The other option that the PACT Act authorized is for VA  
13 to partner with its academic affiliates, those academic  
14 universities -- like in Los Angeles, in this case, UCLA or  
15 U.S.C. or others -- that those academic affiliates could build  
16 or lease out a facility for lease and use by the VA.

17           So the VA doesn't have to do the capital expenditure but  
18 would essentially lease those buildings. And there are places  
19 across the country where there are agreements to do that.

20           One such agreement is with Stanford for a research  
21 center.

22           So there are -- but those are pretty much the only  
23 options for large capital building, other than the EUL process  
24 that we have talked about before.

25       Q     Your testimony right now makes me thankful that I never

1 became an accountant.

2 Let me see if I can take a step back on this and see if  
3 we can come up with a couple of takeaways.

4 In an organization such as VA, does budgeting involve  
5 choices? Tradeoffs?

6 A Yes.

7 Q How so?

8 A Well, as we mentioned, for example, in this case, one of  
9 the things that happened this year, in 2024, as we were faced  
10 with a budget challenge, is that we had to restrict, you know,  
11 hiring of full-time employees.

12 And we had to -- the goal across the -- across all of  
13 VHA was to try to maintain as close to zero growth in general  
14 with the exception of some of the specific program-funded  
15 programs.

16 And I didn't really talk about specific programs versus  
17 general programs. Another restriction that Congress puts on us  
18 as to how we may spend budget.

19 So -- should I jump into that, since I brought it up,  
20 or --

21 Q Well, I would say if you think that it's relevant to the  
22 issue of whether VA could fund additional construction, setting  
23 aside the legal questions that the Court may ultimately  
24 resolve, there's a separate question of funding is what I want  
25 to focus on.

1 A Sure.

2 So, when -- one of the things -- we're constrained by  
3 the buckets of funding appropriations that I talked about.

4 So, we can't overspend and convert money from one bucket  
5 to another. And facilities bucket is the bucket that supports  
6 the supporting functions associated with construction.

7 Specific purpose funds relate to programs like the  
8 Homeless Program Office, the -- women's health, suicide  
9 prevention, et cetera. And those are fenced, if you will, for  
10 use.

11 The Homeless Program Office funds are the funds that we  
12 use to support those healthcare for Homeless Veterans Contracts  
13 that I mentioned yesterday, the medical care associated with  
14 homeless veterans, the HUD-VASH social workers, the outreach,  
15 all of the things that our homeless program does.

16 VHA has a \$3.2 billion budget for its homeless program.  
17 I think I mentioned yesterday that includes SSVF, the  
18 Supportive Services For Veterans Families, the Grant and Per  
19 Diem programs, and others things.

20 Q And this is nationwide, just to be clear?

21 A That is for nationwide.

22 For the care -- for the things that I mentioned, VISN 22  
23 has a \$205 million budget, of which GLA gets \$125 million of  
24 that 205.

25 THE COURT: You have a \$205 million budget?

1 THE WITNESS: For VISN 22 facilities.

2 THE COURT: I would call it the catchment.

3 THE WITNESS: The eight facilities in our region.

4 THE COURT: Yes. The VISN 22, once again, though,  
5 covers Arizona --

6 THE WITNESS: Arizona, New Mexico, and Southern  
7 California.

8 THE COURT: Southern California.

9 THE WITNESS: Yeah. That's the 205.

10 THE COURT: You have 205 million for homeless out of  
11 3.2 billion.

12 THE WITNESS: That's correct. The --

13 THE COURT: Hold on. What is the percentage  
14 nationwide of the homeless in Southern California -- strike  
15 that -- Southern California and Arizona versus the rest of the  
16 nation? Because we have heard anecdotal information. There is  
17 25 percent, 30 percent.

18 What is your best guesstimate? And I'm not holding you  
19 to it, just your best guesstimate.

20 THE WITNESS: No. I'm just kind of doing math in my  
21 head. I would say probably about 10 percent in those -- all of  
22 those areas. I think Keith might know that -- Keith Harris,  
23 Dr. Harris might know that number better. But --

24 THE COURT: Where are we getting these news  
25 releases -- you know, the public is consuming this information

1 about 25 percent or 30 percent or 33 percent of all of the  
2 homeless -- I'm just going to take homeless or house-less are  
3 in California, and a huge percentage in Southern California,  
4 and then I want to turn to veterans.

5 Am I running the same ratio of about, anecdotally,  
6 25 percent or 33 percent? That range of veterans?

7 And I will just take California, to make it easy,  
8 because that's -- the news lumps California. Am I running  
9 about that same percentage as the house-less population as it  
10 is to veterans?

11 THE WITNESS: It's probably consistent in terms of  
12 looking at the veterans versus everybody.

13 THE COURT: I'm just joking with you for a moment.

14 THE WITNESS: Sure.

15 THE COURT: I'm going to take the lowest figure of  
16 10 percent into 3.2 billion. How much is that? About 310,  
17 approximately?

18 THE WITNESS: I'm sorry?

19 THE COURT: I'm going to take 3.2 billion.

20 THE WITNESS: Yes.

21 THE COURT: I'm going to take the lowest figure you  
22 have given me, 10 percent.

23 THE WITNESS: Yes.

24 THE COURT: What is that? 310 million?

25 THE WITNESS: That would be about 310 million.

1 THE COURT: You get 205?

2 THE WITNESS: So I think --

3 THE COURT: Go over and see Dr. Harris here and get  
4 some more --

5 THE WITNESS: No, no.

6 THE COURT: Wait, wait, wait.

7 THE WITNESS: But I -- I didn't partition it well.

8 THE COURT: Hear me now. You've got all day. I  
9 will be here two days with you.

10 THE WITNESS: Sure.

11 THE COURT: Now I'm going to assume 30 percent.  
12 Better yet, 25 percent of 3.2 billion. And let's assume we  
13 have that amount of veterans.

14 THE WITNESS: Right. I understand.

15 THE COURT: You get my point.

16 THE WITNESS: Yes.

17 THE COURT: Have you been back there pitching and  
18 shoving and pushing to get more money out here? Whether it's  
19 your 10 percent figure -- because you are 100 million short.  
20 He's right over there, by the way. His name is Dr. Harris.

21 THE WITNESS: No. I understand.

22 So there is more to the story that might put this in  
23 perspective.

24 THE COURT: Tell me more to the story.

25 THE WITNESS: Okay. So the money that I'm referring



1 to is just the money that comes to the VISN and the facilities  
2 across the country for the things that I mentioned. It doesn't  
3 include what came off the top of that \$3.2 billion for SSVF for  
4 the Grant and Per Diem programs. And I will be honest that I  
5 don't know exactly how much of that comes to VA.

6 THE COURT: But that is nationwide.

7 THE WITNESS: Well, but that -- some of that is  
8 distributed to the -- Southern California, which doesn't  
9 include the 200,000 --

10 THE COURT: It's your agency. It's your state.

11 THE WITNESS: Sure.

12 THE COURT: You might be a -- you needed some more  
13 money.

14 Counsel, your question now.

15 THE WITNESS: Okay. And then -- there are 18 VISNs.  
16 Right.

17 BY MR. ROSENBERG:

18 Q How is the money that you just mentioned that is taken off  
19 the top distributed across different VISNs?

20 A Right. Well, that money goes to specific -- the money  
21 taken off the top goes to community programs. And I, honestly,  
22 don't know exactly how much of that goes into our region, but I  
23 can find that out.

24 But the remaining money is distributed to all 18 of the  
25 networks. VISN 22 gets \$205 million. VISN 21, which includes

1 Northern California, is approximately \$150 million. And none  
2 of the other networks across the country exceed \$90 million.

3 And so the point is, the money that is being distributed  
4 for these homeless programs, actually, in large part, is coming  
5 to our network in Southern California.

6 So GLA alone, with their \$125 million, is getting more  
7 money than every other network across the country for its  
8 homeless programming in terms of the care.

9 And we're spending all of the money that we receive.

10 So we will -- and VHA has been good about giving us the  
11 money that we need for those contracts, the costs associated  
12 with the HCHV, for CTRS, for example, and other programs.

13 (Reporter clarification.)

14 THE WITNESS: HCHV. It's an acronym I used for  
15 Healthcare for Homeless Veterans, the contract authority that  
16 we have for these programs that also includes the A Bridge Home  
17 tents for their emergency shelter.

18 So, we are getting good funding for those programs that  
19 we are able to execute. So I will stop there.

20 BY MR. ROSENBERG:

21 Q So if -- and I'm not a numbers person. I might have lost  
22 track of the exact numbers that were being used a few moments  
23 ago. But when you were asked to describe -- it was \$210  
24 million that goes to homeless programs and VISN 22?

25 A 205.

1 Q 205.

2 And the total budget was, I believe, 3.2 billion?

3 A Right.

4 Q But is it -- again, I'm trying to simplify a little bit.

5 Is there a denominator problem in that because money is  
6 taken off the top and distributed in the first instance across  
7 different programs or across the country? If one were to try  
8 to figure out the proper percentage, one would need to do that  
9 first and then figure out what the denominator is to figure out  
10 the percentage?

11 THE COURT: It's just a rough hypothetical. It's  
12 not going to turn on the case.

13 THE WITNESS: No, no.

14 THE COURT: In other words, Dr. Braverman, you are  
15 in there pushing for more money, right?

16 THE WITNESS: Yeah. Yes. And --

17 THE COURT: West of the Mississippi.

18 THE WITNESS: Yeah. And I would say about  
19 \$450 million is the amount of money that is being distributed  
20 to all of the VISNs as part of that homeless program. And so  
21 VISN 22 is getting --

22 THE COURT: In your region, VISN 22 that's the  
23 amount?

24 THE WITNESS: No, no. \$450 million out of that 3.2  
25 billion -- well, let me -- 4 to 350, six times -- no, I'm

1 sorry. So 500. About \$500 million is being distributed across  
2 the 18 VISNs out of the 3.2 billion.

3 THE COURT: Okay.

4 THE WITNESS: And I can get the exact number. We're  
5 getting 40 percent of that in VISN 22.

6 BY MR. ROSENBERG:

7 Q Let me pause there, because I feel like we're putting you  
8 into a little bit of an uncomfortable spot because you are  
9 doing something that I could never do which is to come up with  
10 these estimates off the top of your head.

11 So if it would be helpful for the Court and if  
12 you think you have access to these numbers, that could be  
13 something that we could -- could that be something we could  
14 provide? I mean so you're not testifying off the top of your  
15 head?

16 A It could, I didn't bring my computer today so it would  
17 have to be later, I would have to go home and send it to you.

18 Q Understood. We can sort that out potentially later if  
19 it's something that the Court thinks --

20 THE COURT: I don't think the case is going to turn  
21 on it.

22 MR. ROSENBERG: Then we have enough on our plate  
23 right now so we'll take a pass on that unless the Court tells  
24 us otherwise.

25 THE WITNESS: Yes.

1 BY MR. ROSENBERG:

2 Q Let me ask one more question in this area, because I want  
3 to bring it back to what's really relevant -- this is all  
4 relevant, but what is really directly relevant in this case.

5 Can you describe what money -- and you may have  
6 done this already, but since we're talking about budgets and  
7 finances, what money has been set aside to support the EUL  
8 program in the master plan?

9 A So, approximately \$325 million has been authorized through  
10 the PACT Act and kind of fenced off, if you will, for the West  
11 LA EUL support program.

12 Q And how is that money used generally?

13 A So that money provides for, you know, contracting for  
14 infrastructure, construction, parcel remediation, turnover,  
15 ecological and environmental mitigation, the ability to fix  
16 roads, other sorts of things, the things that would be in  
17 support -- it also includes the personnel requirements in order  
18 to make those planning activities and -- I guess that's  
19 probably a good list there.

20 Q Let me see if I can wrap it all up this way.

21 You testified earlier about how budgeting involves  
22 choices and allocations.

23 If VA had to come up with a substantial amount of money,  
24 let's use maybe a billion dollars to fund housing on the WLA  
25 campus, and recognizing that some portions of VA's budget are,

1 as you said, cordoned off in different ways, appropriated  
2 different ways, what would the impact on that be?

3 THE COURT: Over what time period, counsel? One  
4 year or multiple years?

5 BY MR. ROSENBERG:

6 Q Let's say \$200 million a year over five years.

7 A Yeah, so for the minor construction that I mentioned, I  
8 mean, there's \$3 billion available for these constructions and  
9 that would include nursing home replacements, clinic  
10 replacements, spinal cord injury unit replacements, and there  
11 is \$8 million of known requirements that have been put in to  
12 what is called the SCIP, and that's the System For Capital  
13 Improvement Program. So for each 1 to \$200,000 -- or hundred  
14 million dollars that would be taken out of that availability,  
15 that's one or two additional falling apart facilities that  
16 wouldn't be able to be replaced that takes care of thousands of  
17 veterans for healthcare.

18 If it was a billion dollars at once, that would  
19 essentially mean that a medical center replacement, like the  
20 critical care tower of GLA would not be able to be funded for  
21 that particular year because the money would have to go towards  
22 housing.

23 And the challenge is that, you know, a medical center is  
24 taking care of 90,000 veterans versus the housing that might  
25 take care of an additional thousand, just for the housing

1 portion.

2 So, that is something for consideration as well.

3 Q And, again, all of your testimony at least today on this  
4 concerns the financing issues. I know you testified yesterday  
5 about some of the legal authority issues, and I don't think we  
6 need to discuss that further today, but we're simply talking  
7 about money?

8 A Yes.

9 Q I'd like to turn to plaintiffs' proposals, and I recognize  
10 that plaintiffs' experts have not testified in this case yet  
11 and you may be coming back -- well, you are planning to come  
12 back and have made travel arrangements to come back for the  
13 last week of this trial after plaintiffs have testified so that  
14 you can review their testimony and provide any further opinions  
15 if relevant at that time.

16 But I think you mentioned yesterday that you reviewed  
17 the expert report that was submitted by Randy Johnson in this  
18 case?

19 A The declarations, yes.

20 Q Yes. And the expert reports submitted by Steve Soboroff?

21 A Yes.

22 Q So at least as it's contained in those expert reports you  
23 are familiar with their proposals?

24 A Yes.

25 Q What do you understand -- what do you understand their

1 proposal to be regarding temporary housing?

2 A To build up to 1,000 units of modular temporary housing.

3 Q And for permanent housing?

4 A An additional, you know, 1,280 or so to bring the total to  
5 4,000 -- between the thousand -- the extra 1,200 plus the 1,000  
6 plus 2,800 to get to 4,000 total.

7 Q 4,000 --

8 A I'm sorry, 1,800 to get to 4,000 total.

9 Q Maybe it's just a math question, and we talked a lot about  
10 numbers, maybe you're used to much bigger numbers than simple  
11 thousands, but there's 1,200 units currently -- roughly  
12 1,200 units currently is part of the master plan of 2022.

13 A Correct.

14 Q So 4,000 units total of permanent supportive housing is  
15 what is being proposed?

16 A That would be another 2,800.

17 Q Okay. Now you are not -- I don't think you would hold  
18 yourself out as a real estate development expert, would you?

19 A No.

20 Q But you do have a lot of experience running hospital  
21 complexes, don't you?

22 A Yes.

23 Q And you testified earlier that West Los Angeles campus, is  
24 an integrated medical center setting?

25 A Yes.



1 Q Plus development of housing, is it not?

2 A Yes.

3 Q And also the critical care tower and other medical  
4 services on that campus?

5 A Yes.

6 Q And you having had that experience as being medical center  
7 director understand -- well, let me ask this: Do you think  
8 that complex is unique in terms of how it needs to be  
9 developed?

10 A Well, it is, there's no other organization that has the  
11 master plan like West Los Angeles and GLA has.

12 There are other hospital systems that have one or two  
13 EUL buildings on it, but nothing that has a planned community,  
14 if you will.

15 Q And, I'm just curious, are you aware of any planned  
16 communities that integrate a complex hospital setting such as  
17 the West LA Campus does?

18 A Not in conjunction with those planned communities, no.

19 Q In your estimation, how many acre parcels would be  
20 required to build 1,000 temporary housing units roughly?

21 A Roughly about 24 if we look at the 50 to 60 per unit.

22 THE COURT: Now just one moment. "In your  
23 estimation how many eight-acre parcels would be required to  
24 build 1,000 temporary housing units." Is there a difference  
25 between parcels and acres?

1 MR. ROSENBERG: Yeah, I think he said acre, not  
2 eight-acre, a single acre.

3 THE COURT: Then let me write this down, eight acres  
4 might build 1,000 temporary --

5 THE WITNESS: He asked single-acre parcels, how many  
6 acres --

7 THE COURT: Hold on, I'm confused already, I'm going  
8 to understand this now, I'm sorry. Eight acres will build  
9 1,000 temporary interim units, yes or no? Just yes or no?

10 THE WITNESS: No.

11 THE COURT: Okay. Now why?

12 THE WITNESS: The question was how many acres. How  
13 many single-acre parcels, not eight-acre parcels. That's how I  
14 understood it.

15 MR. ROSENBERG: Yeah, I wasn't using the word eight.

16 THE COURT: Okay. Reword it then.

17 THE WITNESS: So that would be approximately 24,  
18 based on at least the original plan that we were putting  
19 together for 43-unit modular groupings if you will.

20 THE COURT: So 50 -- it was simply 50 to 60 -- I'm  
21 going to call it permanent -- sorry, temporary housing units  
22 per acre?

23 THE WITNESS: Yes. If you could get 50 per acre  
24 that would be 20 acres.

25 THE COURT: Now just a moment, and that gives us

1 1,000.

2 THE WITNESS: That gives us --

3 THE COURT: We should have some extra acreage just  
4 to develop, you know, some recreation or whatever?

5 All right. Now, what happens if it's double-storied,  
6 because most of your barracks out there are double-storied,  
7 that's 2,000.

8 THE WITNESS: It would be less of a land requirement  
9 if there were two stories of buildings.

10 THE COURT: That's very simple. Two times 1,000 is  
11 2,000 if I double story it, approximately, give or take.

12 THE WITNESS: That would be correct.

13 THE COURT: And let's throw in four or five more  
14 acres for recreation, so if we had 24 acres, hypothetically,  
15 single story temporary we'd have 1,000 units. If we  
16 double-storied those, which most of your barracks are, and I  
17 assume your new construction is also, we would have  
18 2,000 units, approximately.

19 THE WITNESS: If the plans allowed for that in  
20 contiguous location for all the building --

21 THE COURT: Lots of contingencies. Landfill that  
22 we've run into, a whole lot of problems.

23 THE WITNESS: Right.

24 THE COURT: But so when I'm thinking about this I'm  
25 thinking the same thing about permanent supportive housing, I

1 called it PSH, in other words, long-term supportive housing am  
2 I dealing with about 50 per acre, give or take, if it's single  
3 storied and 100 per acre if it's double-storied? With all  
4 sorts of problems involved, I understand that.

5 THE WITNESS: So I think the buildings that are  
6 being built are larger than an acre each and they typically  
7 have 50 to 70 units.

8 THE COURT: You tell me then so I have some  
9 guesstimate here, how much I can build out if it's single  
10 storied for temporary or doubled storied for temporary, or  
11 single storied for PSH or long-term supportive or  
12 double-storied. You are the expert, give me some idea about  
13 the acreage that I need.

14 THE WITNESS: Well, what we were describing was the  
15 model that we looked at which was 43 units of temporary housing  
16 would require one to one and a half acres.

17 So to build 1,000 of those would require 24 separate  
18 acre parcels. If there is an opportunity within that model to  
19 double stack, then we would either need half of that number of  
20 parcels or we could double the number of units.

21 THE COURT: And your present construction, or what  
22 I'm going to call your newer construction rather than the  
23 renovation, how many stories is that newer construction on the  
24 campus over by I'm going to call it MacArthur, but it's not,  
25 over in that area, are they two stories, three stories, how

1 tall are there?

2 THE WITNESS: They are two or three.

3 THE COURT: I'm sorry, two or three?

4 THE WITNESS: Generally two or three.

5 THE COURT: Okay. So if I went three stories then I  
6 increase whatever.

7 THE WITNESS: And I don't know whether the temporary  
8 structures can support that.

9 THE COURT: And I don't either. I'm just trying to  
10 get a guesstimate here. Thank you.

11 Counsel?

12 BY MR. ROSENBERG:

13 Q Often I've heard it referred as the campus having two  
14 different components, a South Campus and North Campus, and I  
15 see that there's a map, I believe -- correct me if I'm wrong,  
16 is that Exhibit 1069 in the lower right-hand corner?

17 A Yes.

18 THE COURT: Yes.

19 BY MR. ROSENBERG:

20 Q I have a halfway decent memory.

21 When I'm referring -- do you see Wilshire Boulevard? I  
22 think we all know this, do you see Wilshire Boulevard on the  
23 map?

24 A Yes.

25 Q So when I refer to the "South Campus" I'm going to be

1 referring to the area of south of Wilshire Boulevard.

2 What is that portion of the campus generally set aside  
3 for.

4 A Well, we would think of that as the healthcare portion of  
5 the campus.

6 Q Okay.

7 A The south part.

8 Q And in your role as former medical center director of --

9 (Reporter Clarification.)

10 BY MR. ROSENBERG:

11 Q In your role as medical center director is it appropriate  
12 to place temporary housing on the South Campus?

13 A The bigger challenge than appropriateness really comes to  
14 the space because of the ongoing and upcoming construction that  
15 is expected for that new critical care tower.

16 So when, Number 1, there is going to be a new parking  
17 garage for employees that will be in that kind of southwest  
18 quadrant of the campus. Much of the green space will be used  
19 for lay-down activities for the construction.

20 The part of the challenge with all of this is you can  
21 see there is construction ongoing for the Metro on the northern  
22 part of the southern part of the campus, so when building this  
23 new construction and the new central utility plant, then  
24 there's got to be space also for those construction activities  
25 to have their equipment and the supplies that are going to be

1 going into the building and everything else. Pretty much the  
2 south part of the campus is going to be, you know, just a big  
3 complex, be careful where you are going location during that  
4 time.

5 So then the very eastern southeastern part of that  
6 campus is also adjustment to 405, so that's not going to be the  
7 best location for people to be in temporary housing.

8 What our goal is and part of the master plan is to use  
9 the northern part of the campus for any of the housing options  
10 that we have in place.

11 THE COURT: Why isn't the area of the 405 conducive?

12 THE WITNESS: Oh, just the noise and being next to  
13 the highway and the fumes that sort of thing.

14 THE COURT: Okay.

15 THE WITNESS: That's also a utility lay-down  
16 location for where the utility plant is going to come into  
17 play.

18 THE COURT: Thank you.

19 BY MR. ROSENBERG:

20 Q You mentioned the North Campus, which is the area north of  
21 Wilshire Boulevard?

22 A Yes.

23 Q Are there appropriate places on the north campus to build  
24 temporary houses in your view?

25 A I think there are. There are places that we have reviewed

1 and done assessments on as to where options may be.

2           There is the Great Lawn that is just to the south of  
3 where the Care, Treatment and Rehabilitation Services are,  
4 CTRS.

5           There are areas, we mentioned Barrington Park that is  
6 across the street from that SafetyPark parking lot. That would  
7 be a good location.

8           There are -- if one were to stop using the golf course  
9 and close that up and convert the golf course to temporary  
10 housing, that would be an option there.

11           There is areas near the Veterans' Garden that could be  
12 conducive to space.

13           So there are a few areas on the north part of the campus  
14 that could work for temporary housing. We want to try to do  
15 that though, just as we have permanent housing buildings, to do  
16 it where it would tie in to any kind of transportation routes  
17 or ease of ability to get to the healthcare apparatus necessary  
18 for their care.

19 Q       So that raises actually an interesting point I hadn't  
20 thought of before, but when we refer to temporary housing, the  
21 temporary -- the term "temporary," does it modify the length of  
22 time that someone is living in that housing or does it modify  
23 the length of time that a building may be used?

24           In other words, you could construct -- one could  
25 construct a temporary housing building that will house people



1 for a short period of time, but that building might be on the  
2 campus for a long period of time, is that...

3 A I think there are two ways to think about that and both  
4 are true.

5 So one is you are making buildings for people to live in  
6 for up to two years, preferably a shorter period of time as  
7 they are transitioning into finding permanent housing, but they  
8 are being in this temporary location, having the ability to  
9 provide housing for families in that situation and so, yes,  
10 shorter period of time for people.

11 The nature of the buildings, if this is viewed as a  
12 temporary way to get people into housing on the campus during  
13 the duration of the buildup for permanent supportive housing,  
14 and this is an interim solution in part, then you wouldn't have  
15 to have buildings that would last for as long a period of time  
16 because they would arguably no longer be necessary after the  
17 permanent housing is in place.

18 I think one of the -- you know, one of the challenging  
19 issues is the notion that every unhoused veteran needs to be on  
20 the West LA Campus.

21 It's clear that there are some people who absolutely  
22 benefit from being in this housing and having immediate or  
23 close to immediate access to their healthcare needs.

24 But many others of our veterans find housing in the  
25 community, in project-based housing that is outside of West LA,

1 closer to where their families are, where their personal  
2 history is, and, you know, for -- the challenge with having  
3 everybody located in one area, especially if that housing  
4 happens faster than our ability to construct a town center and  
5 the community amenities that would be beneficial, puts people  
6 at safety risk.

7 And we have already seen with the opening of Buildings  
8 205, 208, and 207, since February and May of 2023, more than  
9 200 percent increase in crimes and security calls, not only in  
10 those building areas, but across the entire campus.

11 Some of those -- the bulk of those are properly  
12 disorderly conduct, some of those happen to do with drugs and  
13 alcohol, but that requires a better trained police force that  
14 can work with community policing versus the way in which most  
15 VA PDs are trained to do just responsive policing.

16 And right now, one of the also existing challenges is  
17 the recruitment of the police.

18 So, our vacancy rate for the requirements that we have  
19 on campus right now is 47 percent, so we have basically 80 to  
20 85 of the 140 people -- 140 police force that is necessary  
21 based on the current requirements.

22 That is only going to increase with more people living  
23 on campus.

24 So that's something that we have to address, but it is a  
25 concern associated with, you know, increasing number of

1 veterans on the campus who have serious mental illness and  
2 substance use disorders.

3 I'm not -- this is not to malign anybody, but I'm using  
4 some of this statistics that we have over the last few quarters  
5 coming from the police and the calls that they are having to  
6 make.

7 Q And that's because VA has a responsibility to ensure  
8 safety and security of residents that live on its campus,  
9 doesn't it?

10 A Yes.

11 Q How would the construction of up to 4,000 additional units  
12 of permanent supportive housing impact residents who are  
13 currently on the campus?

14 A Well, one of the problems that we're already seeing with  
15 the current level of construction are the closures of streets,  
16 the disruption of utilities because of contractors hitting the  
17 electrical wirings, the water pipes, those sort of things.

18 Last year we had 53 outage days, if you will, those are  
19 from I think 24 separate events. So those are, you know, the  
20 amount of days where we didn't have power, we didn't have  
21 water, that could be to some certain segment of the campus, in  
22 some cases it was the whole campus, to include water and  
23 electrical power that we shut off at the hospital.

24 So, those put health and safety at risk from the  
25 healthcare hospital setting, also of course it's a problem for

1 the veterans that are living in those residential facilities  
2 that don't have power or electric or water when those events  
3 occur.

4 And the more construction there will be, the more  
5 likelihood that will occur because we have some understanding  
6 of what is underground, but not a whole complete understanding  
7 of what's underground everywhere.

8 Q Would the construction of a substantial number of  
9 additional permanent supportive housing units beyond what is  
10 contemplated in the master plan have an impact on the  
11 supportive services that are provided in permanent supporting  
12 housing units and, if so, what would that impact be?

13 A Well, we would have to hire more people or contract for  
14 more services.

15 One of the items that came up yesterday or the day  
16 before for discussion was the idea of having, you know, more VA  
17 employees versus contract employees providing support.

18 We have historically been challenged to hire case  
19 managers and HUD-VASH employees. GLA has made a lot of  
20 progress to move from the 70 percent -- well, I guess a  
21 30 percent vacancy rate, 70 percent full rate up to its current  
22 mid-80s, that's with incentives and increasing the pay for  
23 social workers just to do HUD-VASH work versus inpatient social  
24 work, but I would be concerned if we couldn't rely on contract  
25 support. If we were unable to continue to hire more, you know,

1 HUD-VASH social workers under that specific purpose fund amount  
2 that we get from the Homeless Program Office.

3 I'm sure the Homeless Program Office and the VA would  
4 support the financial requirements to take care of those  
5 veterans. That's our duty to do that. And, frankly, we have  
6 to do that whether they are being cared for in our facility or  
7 cared for off of our facility, that is part of our healthcare  
8 requirement.

9 Q I know plaintiffs' experts have not testified yet in this  
10 case so you haven't had an opportunity to review the testimony  
11 that they will provide to the Court.

12 But as you understand it, are there any substantial  
13 flaws with plaintiffs' experts' plans?

14 A I think some of the assumptions that were potentially  
15 inappropriately made at the beginning of the master plan  
16 weren't addressed, at least in the declaration that I read, in  
17 regards to the environmental study requirements, the need to go  
18 through procurement and contracting because we have to -- you  
19 know, we would have to be the ones that would hire the builders  
20 and the contractors and that sort of thing.

21 So I didn't see a discussion of how the Federal rules  
22 associated with building were considered.

23 Then, I already mentioned the issues with what's  
24 underground and the impact to the overall campus based on the  
25 ongoing construction that is already there.

1 MR. ROSENBERG: Judge Carter, if I could just have a  
2 moment?

3 THE COURT: Counsel, check with your team and make  
4 sure. I might open also to either side if you have forgotten  
5 something, if it is important to you, I'll reopen.

6 MR. ROSENBERG: Sorry?

7 THE COURT: I'm wide open to reopening if there is  
8 something critical to either side that you want to bring out  
9 later.

10 How are you doing after two days, okay?

11 THE WITNESS: Yes. Thank you.

12 MR. ROSENBERG: Just to be clear, I think it's  
13 almost two full days, but this is his third day on the stand.

14 THE COURT: We're not done yet though.

15 MR. ROSENBERG: I don't have any further questions  
16 for Doctor --

17 THE COURT: Subject to recall though, he may be a  
18 rebuttal witness?

19 MR. ROSENBERG: Yes. Specifically, as the Court  
20 knows, we have identified him as a hybrid witness and he will  
21 be back in town for the last week of trial and he will be able  
22 to respond to plaintiffs' experts, as well -- at that time as  
23 well as any other questions that the Court may have as it has  
24 indicated it may have some questions.

25 THE COURT: I have asked a few but I want to hear

1 from Soboroff and Johnson, et cetera. There are just a few  
2 along the way.

3 By the way, let me apologize, that was a really rough  
4 hypothetical, I don't know if you can get more money or not if  
5 it's needed, but, you know, I just -- hold on, I'm doing some  
6 rough silly math so we will come back to that, the case won't  
7 turn on it.

8 THE WITNESS: I didn't do a good job of laying out  
9 the money that was available, so. 200 million out of 500.

10 MR. GUADIANA: We have no questions.

11 THE COURT: Counsel, this would be either redirect  
12 or recross, it would be recross by --

13 MR. SILBERFELD: Only because I'm closest to the  
14 microphone, Your Honor, what we would like to do with the  
15 Court's permission, and I think the Government is fine with  
16 this, is interrupt Dr. Braverman to take a nonparty witness  
17 who's been waiting several hours, that is the Brentwood  
18 representative.

19 THE COURT: Certainly.

20 MR. SILBERFELD: If we could do that and then return  
21 to Dr. Braverman.

22 THE COURT: Do you mind if we do that as a courtesy  
23 to the member of the public?

24 THE WITNESS: No problem.

25 THE COURT: That is very kind of you. If you step

1 down then, sir, we will bring you back in just a moment.

2 If you would like to call your next witness, please.

3 THE WITNESS: Do you want me to keep all of these  
4 papers here?

5 THE COURT: You know, they are going to hopefully  
6 clean that up because I think the next witness will have some  
7 documents that may not be necessary. So some of you folks just  
8 help clean up this.

9 Counsel, does he have to leave?

10 MR. SILBERFELD: He can stay.

11 THE COURT: Just out of an abundance of caution, why  
12 don't you leave the courtroom. That way we have it both sides.

13 Okay. Your next witness is?

14 MR. ROSENBAUM: Your Honor, the plaintiffs call  
15 Gennifer Yoshimaru.

16 THE COURTROOM DEPUTY: Do you solemnly swear that  
17 the testimony you are to about give in the cause now pending  
18 before this Court shall be the truth, the whole truth, and  
19 nothing but the truth, so help you God?

20 THE WITNESS: I do.

21 THE COURT: Would you come forward, please. If  
22 counsel could help the witness for just a moment.

23 We're going to navigate around you these charts.

24 THE WITNESS: I appreciate that.

25 THE COURT: And the entrance is closest to the wall.



1 You may be seated. Would you state your full name?

2 THE WITNESS: Gennifer Gae Yoshimaru.

3 THE COURT: And would you spell your last name?

4 THE WITNESS: Y-O-S-H-I-M-A-R-U.

5 GENNIFER GAE YOSHIMARU,

6 having been duly sworn

7 testified as follows:

8 THE COURT: This is direct examination by  
9 plaintiffs.

10 DIRECT EXAMINATION

11 (Plaintiffs' direction examination)

12 BY MR. ROSENBAUM:

13 Q Nice to see you again, Ms. Yoshimaru. How are you?

14 A Fine, thank you.

15 Q I think it might be beneficial if you spelled your first  
16 name for the record too?

17 A Sure. Gennifer, with a G, G-E-N-N-I-F-E-R.

18 Q Thank you, Ms. Yoshimaru. What is your relationship --  
19 what is your position with the Brentwood School?

20 A I'm assistant head of school.

21 Q And when did you actually start at Brentwood?

22 A July 1, 2011.

23 Q And how long have you had the position as assistant head?

24 A Since my initial employment. My title has dropped a  
25 modifier, but it has always been assistant head.

1 Q You have always had the same duties and responsibilities  
2 generally speaking; is that correct?

3 A When I began my employment, I did not have direct  
4 responsibilities with regard to our relationship with the VA.

5 Q Okay. Other than that, your responsibilities have  
6 remained the same?

7 A Yes.

8 Q Help me a little bit about the governing structure of the  
9 Brentwood School. Is there a board of directors?

10 A Yes, there is a board of trustees.

11 Q Board of trustees. Thank you. How many trustees are on  
12 this board?

13 A Approximately 25.

14 Q And you are aware that you were presented for purposes of  
15 this case as a 30(b)(6) witness to answer questions about the  
16 relationship of Brentwood School to the VA, and about the lease  
17 between the VA and Brentwood; is that right?

18 A Yes.

19 Q You understand what a 30(b)(6) witness is?

20 A I believe it is the person most knowledgeable.

21 Q Exactly right.

22 Are you a veteran?

23 A No, I'm not.

24 Q And you don't have any specific degrees with respect to  
25 working with individuals with disabilities; isn't that right?

1 A Correct.

2 Q Could you tell me -- tell the Court, please, what your  
3 salary is at Brentwood.

4 A The approximate \$280,000 a year.

5 Q And then, in addition to the \$280,000 a year, you also  
6 have a compensation package; isn't that right?

7 A Insurance, yes. And 403(b).

8 Q And that includes a credit towards healthcare?

9 A Insurance is a credit towards healthcare, yes.

10 Q And the 403(b) that's a credit towards retirement?

11 A Yes.

12 Q Let's explore a little bit some background regarding  
13 Brentwood School.

14 And until I say otherwise, or until you think it's  
15 appropriate, we're talking about the whole school, not just the  
16 complex close to the 22 acres. Okay?

17 A Okay.

18 Q So, Brentwood is a K through 12 school?

19 A Yes.

20 Q And it enrolls around 1100 students?

21 A Correct. A little more than that, yes.

22 Q Do you know how much more?

23 A I don't know the exact number for next year. It is  
24 between 1150 and 1200.

25 Q Thank you. And Brentwood, as part of being a K through 12

1 school, it has an elementary school for grades K through 5?

2 A Correct.

3 Q And do you know how many students the elementary school  
4 enrolls?

5 A 300.

6 Q And then it also has a middle school for grade 6 through  
7 8; is that right?

8 A Yes.

9 Q And do you know how many students that enrolls?

10 A Approximately 320.

11 Q Then it also has a high school; is that right?

12 A Correct.

13 Q And the high school enrolls approximately how many  
14 students?

15 A The balance of 620 from 1200.

16 THE COURT: I'm sorry, balance of 620 to 1200, so  
17 roughly give or take 600.

18 THE WITNESS: Yes, sir.

19 THE COURT: Okay.

20 BY MR. ROSENBAUM:

21 Q And that, again, that is for grades 9 through 12? Am I  
22 right?

23 A Yes.

24 Q And we're going to talk a little bit about the property  
25 location. It's the high school that -- where the 22 acres is

1 located. Do I have that right?

2 A It is called the east campus, on the east campus is both  
3 the middle school and the upper school, or the high school as  
4 you are referring to it.

5 Q Got it.

6 And the numbers you just provided to the Court regarding  
7 enrollment, you expect those numbers to remain relatively  
8 stable going into the future; is that right?

9 A That is correct.

10 Q Currently, Ms. Yoshimaru, the -- am I pronouncing your  
11 name right?

12 A It's close enough.

13 Q Well, I want to get it right.

14 A Yoshimaru.

15 Q Yoshimaru. Thank you.

16 The tuition for the elementary school for each student  
17 is approximately \$45,000?

18 A Yes, approximately.

19 Q Okay. Is it more or less? I want to get that right.

20 A I think it's a little less.

21 Q Okay. In the neighborhood of 45,000?

22 A Yes, sir.

23 Q A smidge less?

24 A Yes.

25 Q And for grades 6 through 12, the tuition for each student

1 is approximately \$50,300; is that right?

2 A It's a little bit more for next year.

3 Q Do you know how much more?

4 A I believe it's approximately 53,000.

5 Q Got it. And as a general rule, the tuition for all  
6 students increases on an annual basis; is that right?

7 A Correct.

8 Q And it increases in the range of 2 to 4 percent per year?

9 A Correct.

10 Q And in addition to tuition, there are other fees that  
11 students and -- or their families have to pay. Am I right?

12 A Not all students, yes, some.

13 Q I'm glad you said that.

14 So, first, there is the category of new student fees; is  
15 that correct?

16 A That is accurate.

17 Q New student fees, as the name suggests, are a one-time  
18 payment for each student as that student enrolls into the  
19 school; is that right?

20 A That's correct.

21 Q Regardless of what grade?

22 A That's correct.

23 Q And that is approximately \$2,250 per year?

24 A Approximately.

25 Q And then there is also what school calls --

1 A Excuse me. Sorry, sir. It's not per year. It's one  
2 time.

3 Q I'm sorry. Exactly right. My mistake. Sorry.

4 Then there is also a MacBook fee?

5 A For some grades.

6 Q Okay. And do you know for which grades?

7 A It's either upper school, or middle school and upper  
8 school. I'm not sure.

9 Q That is between \$1100 and \$1400 per year, per student?

10 A Not per year. And it's also optional. A student can  
11 choose to purchase their own MacBook rather than through the  
12 school.

13 Q Do you know what percent of the students purchase the  
14 MacBook through the school?

15 A No, I do not.

16 Q Okay. And then for students who require transportation,  
17 there is also a transportation fee; isn't that right?

18 A The transportation fee is for all students.  
19 Transportation itself -- so, for example, if a student takes  
20 the bus, it is free.

21 Q Got it. And that is a bus that is chartered by Brentwood;  
22 is that right?

23 A Yes.

24 Q And the transportation fee is around \$1,500?

25 A Yes.

1 Q Now, for students who are in particular grades where there  
2 are retreats -- let me come back a step?

3 For some grades, those grades have retreats; is that  
4 right?

5 A That's right.

6 Q What's a retreat?

7 A A trip away for class connection and bonding.

8 Q And then there would be an overnight fee attached to that;  
9 is that right?

10 A That's correct.

11 Q Do you know the number of students who -- for whom that  
12 fee applies?

13 A Approximately 400.

14 Q And the amount of the fee depends on the particular  
15 activity; is that right?

16 A That is correct.

17 Q Do you know if there is a range attached to that fee?

18 A I believe so.

19 Q Do you know what that range is?

20 A It could vary within a couple of hundred dollars depending  
21 on the duration of the retreat and the location.

22 Q Okay. Do you have any numbers attached to that?

23 A I don't.

24 Q Okay. Now, in addition to tuition and fees, Brentwood has  
25 an endowment?



1 A That is correct.

2 Q And the endowment is approximately \$30 million. Do I have  
3 that right?

4 A That is correct.

5 Q And then there is what Brentwood calls a useful practice  
6 of families making donations to the school; is that right? In  
7 addition to everything we have been talking about so far.

8 A Correct.

9 Q And approximately 75 percent of students at school, give  
10 or take, make those donations. Am I right?

11 A Correct.

12 Q And that's on an annual basis?

13 A Correct.

14 Q Then there is also an annual fundraising goal for  
15 Brentwood; isn't that right?

16 A Those two are the same.

17 Q Okay. And the annual fundraising goal is \$4.2 million?

18 A That is correct.

19 Q But for '24, '25, it's going to go up some, or is that the  
20 number for that year too?

21 A It's the same.

22 Q All right. Thank you. And you expect that goal to be  
23 met; is that right?

24 A Yes, I do.

25 Q Incidentally, gifts to the annual fund, they are tax

1 deductible; isn't that right?

2 A Correct.

3 Q And gifts to the endowment are tax deductible?

4 A Correct.

5 Q And then the school also has a line of credit that it has  
6 not drawn on, so far as you know, right?

7 A That's accurate.

8 Q Let's do a little history about Brentwood School.  
9 Brentwood School, as we know it, started around 1972?

10 A Correct.

11 Q And just -- we don't have to put on a map, but do you mind  
12 telling the Court, please, what are the locations of the  
13 elementary, and the middle, and the high school?

14 A In 1972, the school had just one campus. It is the campus  
15 currently located at 100 South Barrington Place. I say  
16 "currently" because in 1972 it was the same location, the  
17 street address was different, however. It was on Lasky Drive  
18 and the residential neighborhood.

19 It wasn't until 1990ish that what we call the west  
20 campus, which is the lower or elementary school, was purchased.  
21 And that is on Sunset and Saltair.

22 Q Got it. Thank you. And you mentioned this before, I  
23 apologize if I'm repeating, but the east campus, that is  
24 located at 100 South Barrington Place?

25 A That is accurate.

1 Q And, again, that houses grades 6 through 12?

2 A It does now, sir. It did not in 1972.

3 Q Thank you.

4 And again, the term -- if I use the term upper school,  
5 that relates to the high school.

6 A Yes. Grades 9 through 12.

7 Q And if I put together the land mass for the east campus  
8 and the west campus -- not including the 22 acres -- but the  
9 east campus and the west campus, that is 15 acres; is that  
10 right?

11 A Yes.

12 Q Which is seven acres less than the 22 acres that is land  
13 that was deeded in 1888?

14 A Correct.

15 Q And the 22 acres is where Brentwood has its athletic  
16 facilities?

17 A The 22 acres is where the veterans center for recreation  
18 education is located, yes. And those are athletic and  
19 recreational facilities.

20 Q And they are -- those 22 acres are adjacent to the school  
21 property that is the east campus?

22 A Yes, sir.

23 Q And there are -- those athletic facilities on the  
24 22 acres, they are used by high school students?

25 A Yes.

1 Q And occasionally by middle school students?

2 A Yes.

3 THE COURT: I missed this, I apologize. But you  
4 stated that the elementary student tuition was approximately  
5 \$45,000; grades 6 through 12 was \$53,000. I don't believe I  
6 ever heard the high school.

7 THE WITNESS: The high school is the same. It's 9  
8 through 12, so 6 through 12 is that number.

9 THE COURT: I missed that. I'm sorry. Thank you  
10 very much.

11 BY MR. ROSENBAUM:

12 Q You referenced this a moment ago. The founders of  
13 Brentwood School, as we know it today, purchased that property  
14 which had been formerly occupied by a school called the Urban  
15 Military Academy?

16 A That is correct, since 1929.

17 Q And that property did not include the 22-acre parcel that  
18 you and I just discussed; is that correct?

19 A That's correct.

20 Q The founders of Brentwood School made that purchase with  
21 the goal of setting up a private school?

22 A Correct. An independent school.

23 Q I'm sorry, what?

24 A An independent school.

25 Q Yes. Not part of the public -- Los Angeles public school

1 system?

2 A Correct.

3 Q Or any public school system?

4 A Correct.

5 Q And at that point, Brentwood School used the 22 acres that  
6 are used today for the athletic program; isn't that right?

7 A In 1972?

8 Q Around that period of time, yes.

9 A My understanding is that in 1972, those 22 acres were used  
10 primarily as landfill. It was a series of ravines and gullies,  
11 so it could not be used, primarily, for athletic facilities.

12 Having said that, it's also my understanding that the  
13 cross country team would run through the course of roads and  
14 gullies in that space.

15 Q The Brentwood cross country team?

16 A Yes, sir. With permission.

17 Q And the permission you just referenced, that was pursuant  
18 to an arrangement with the VA; isn't that right?

19 A Correct.

20 Q And in your 30(b)(6) capacity, you were not able to find  
21 any records that state that Brentwood paid any rent to the VA  
22 in 1972; isn't that true?

23 A That's correct.

24 Q The first time that you are aware that Brentwood paid any  
25 rent to the VA was in the 1990s; is that right?

1 A That is accurate.

2 Q And in -- the late 1990s?

3 A I believe so, yes.

4 Q And what was the rent that Brentwood paid in the late  
5 1990s?

6 A I believe it was approximately \$550,000 a year.

7 Q Okay. And are there specific records that reflect that?

8 A Yes.

9 Q Okay. And you are aware that the relationship with the VA  
10 was first informal, and then it became verbal, and then a  
11 revocable license, and then an ESA and sharing agreement. Is  
12 that the sequence?

13 A Correct.

14 Q And you have no knowledge of Brentwood ever being asked to  
15 pay any monies for the use of the land from 1972 through late  
16 1990s?

17 A Correct.

18 Q And you have never given any thought to whether Brentwood  
19 should retroactively pay for the use of those 22 acres during  
20 that period of time, have you?

21 A No, I have not.

22 Q Nor anybody at Brentwood?

23 A I don't know.

24 Q Okay. Now, at some point there was an enhanced sharing  
25 agreement with the VA; is that right?

1 A Yes.

2 Q And your assumption is that Brentwood had dealings at the  
3 time with a VA employee named Ralph Tillman?

4 THE COURT: Ralph who?

5 MR. ROSENBAUM: Tillman, T-I-L-L-M-A-N.

6 THE WITNESS: Yes. My understanding is he had a  
7 role in land use at the time.

8 BY MR. ROSENBAUM:

9 Q Land use for the VA?

10 A Yes.

11 Q And your understanding is that for Brentwood to invest  
12 approximately \$15 million to rehabilitate these 22 acres as to  
13 what is now the athletic complex, the school would pay some  
14 rent and the athletic facilities would be for the school use,  
15 and then available for use by veterans when it wasn't being  
16 used by the school. Wasn't that your understanding?

17 MR. ROSENBERG: Objection. Compound and confusing.

18 THE COURT: Just a moment. Do you understand the  
19 question?

20 Let's have him ask it again.

21 Counsel, if you would re-ask that. Sustained.

22 BY MR. ROSENBAUM:

23 Q Of course. Your understanding is that for investing  
24 approximately \$15 million to rehabilitate the 22 acres to  
25 develop what is now the athletic complex, the school would pay

1 some rent, and the athletic facilities would be used by the  
2 school. And when the school wasn't using the facilities, they  
3 would be available for veterans. Isn't that right?

4 A It's my understanding that the enhanced sharing agreement  
5 involved capital improvements that the school paid for and that  
6 the sharing agreement included access for both students and  
7 veterans.

8 Q But didn't you tell me in deposition that the use by the  
9 veterans would be when those property -- that property was not  
10 being used by students?

11 A During the -- enhanced sharing agreement terms?

12 Q Yes.

13 A I don't recall.

14 Q Okay. Could we get the deposition, page 57, line 5?

15 Let me ask this question: The facilities we're talking  
16 about, they were used by students during school years -- school  
17 student hours; is that right?

18 A I would imagine so, yes.

19 Q That's fine.

20 And that was the agreement from the late 1990s through  
21 2011?

22 A Correct.

23 Q And then what happened in 2011 was the *Valentini* case?

24 A Yes.

25 Q You are familiar with what the *Valentini* case was?



1 A Yes.

2 Q And in 2011 -- do you know who Judge Otero is?

3 A I know the name.

4 Q You know him as the judge who was the judge for the  
5 *Valentini* case?

6 A Yes, I do.

7 Q And in 2011, you are aware that Judge Otero of the Federal  
8 District Court here in Los Angeles held that the enhanced  
9 sharing agreement between the VA and Brentwood School was  
10 illegal under federal law?

11 A Yes.

12 Q And with respect to the rent that Brentwood paid up until  
13 this time, you don't know how the number for that rent was  
14 arrived at; isn't that correct?

15 A That is correct.

16 Q You don't know if there ever was, for example, an analysis  
17 of the value of that property for Brentwood School and that  
18 that played a factor in the rent. You don't know; isn't that  
19 right?

20 A What I do --

21 Q Let me ask you, please, to answer that, then you can go  
22 on.

23 You don't know that, right?

24 A I'm sorry. Would you repeat the question.

25 Q Sure. You don't know if there was ever an analysis of

1 what fair market rent would be during that period of time?

2 A I do not.

3 Q And you don't know if there ever was an analysis of what  
4 the replacement value property would be if it were monetized  
5 for that parcel of land?

6 A I do not. It was before my time.

7 Q In fact, you don't have any information at all as to where  
8 that number came from?

9 A I do know that the enhanced sharing agreement and the  
10 commitments made therein were subject to Congressional review  
11 and approval before the enhanced sharing agreement was  
12 executed.

13 Q Other than that, you don't have any idea where that number  
14 came from?

15 A Correct.

16 Q You don't know what documents, if any, were provided to  
17 Congress?

18 A No. It's before my time.

19 Q Okay. Let's review a little bit about the development of  
20 the athletic facilities on these 22 acres at this time.

21 On the 22 acres there was a regulation football field;  
22 isn't that right?

23 A Correct.

24 Q And a baseball field?

25 A Correct.

1 Q And a tennis court?

2 A Correct.

3 Q I'm sorry, strike that. Tennis courts.

4 A Correct.

5 Q Plural.

6 A Yes, sir.

7 Q Do you know how many?

8 A I think six.

9 Q And there was a pavilion?

10 A Correct.

11 Q And do you know what sports were played within the  
12 pavilion?

13 A There are basketball hoops, so basketball, volleyball, and  
14 fencing practices but not competitions.

15 Q And then there was also a back field?

16 A Yes.

17 Q Two words.

18 A Yes.

19 Q Do you know what that back field was used for?

20 A It has been used for softball and sometimes volleyball  
21 practice.

22 Q Okay. And then there was an aquatic complex?

23 A Later developed, yes.

24 Q Okay. And there was a trailer in that -- on that property  
25 that was used as a coaches' office?

1 A Correct.

2 Q And when the football field was developed and playable,  
3 that was between -- do you know what the period of time was  
4 that that happened?

5 A Sometime between 1999 and 2001.

6 Q Okay. And during that period of time Brentwood students  
7 used football field; isn't that right?

8 A Correct.

9 Q And during that period of time Brentwood had a football  
10 team?

11 A Yes.

12 Q And the Brentwood football team, it's a high school team,  
13 and in certain years depending on the demand, there is a senior  
14 varsity squad and then there is another varsity squad. Do I  
15 have that right?

16 A Almost. It's varsity and junior varsity.

17 Q Got it. Thank you.

18 And there were student athletes who played on both  
19 squads, but not all -- not all students played on both squads  
20 but some did.

21 A Some did play on both teams.

22 Q Okay. There were between 12 and 20 Brentwood student  
23 players on the senior varsity?

24 A On varsity.

25 Q Okay. And on the junior varsity, maybe around 12 student

1 athletes?

2 A Yes.

3 Q And the football team, in addition -- it had practices on  
4 that field?

5 A Yes.

6 Q Do you know how many days a week it had practices?

7 A Three or four.

8 Q And then it also played games on that field?

9 A Yes.

10 Q And when it played games on that field, teams from other  
11 schools would come and play; isn't that right?

12 A Yes.

13 Q And so if we put it together, the practices and the games  
14 could be five days a week during the season; isn't that right?

15 A Yes.

16 Q And that could take place anywhere from Monday through  
17 Saturday?

18 A Correct.

19 Q And when there was a game or a practice, veterans couldn't  
20 use that field; isn't that right?

21 A Yes.

22 Q During the games, in addition to the players, there would  
23 be coaches who would be present; isn't that right? Brentwood  
24 coaches.

25 A Yes.

1 Q Do you know how many?

2 A I would imagine two to four.

3 Q Okay. And when there were games, it's not uncommon for  
4 family members and friends and supporters to come to those  
5 games; isn't that right?

6 A Correct.

7 Q And they could stand around the field and on that property  
8 and watch the game?

9 A Yes.

10 Q And were there cheerleaders, Brentwood School cheerleaders  
11 that would go to those games?

12 A At a certain point in time, yes.

13 Q Okay. Do you know when that was?

14 A My understanding is cheerleading ebbed and flowed for a  
15 number of years. Sometimes no squad, sometimes a large squad.

16 Q Okay. And when there were games, everything you just told  
17 me with respect to Brentwood, was truly the teams that came.  
18 There were coaches there. There were family and friends and  
19 supporters there. There could be cheerleaders there as well.  
20 Isn't that correct?

21 A Yes.

22 Q Okay. And the school year, during this period of time,  
23 went from the end of August through the middle of June; isn't  
24 that right?

25 A Yes.

1 Q And besides using the field -- besides Brentwood students  
2 using the football field during the school year, they also used  
3 that field for summer practices; isn't that right?

4 A Yes.

5 Q And that would go from the middle of June to the end of  
6 June and in early August?

7 A Yes.

8 Q Now, in the early 2000s, Brentwood also built the pavilion  
9 that you were talking to me about?

10 A Correct.

11 Q Incidentally, the football field was also used for spring  
12 practices in addition to the other uses we talked about?

13 A I'm sorry, did you say "sprint" or "spring"?

14 Q Spring.

15 A Yes.

16 Q And the pavilion that I just mentioned, that was around  
17 the same time as the football field was built. Am I right?

18 A Correct.

19 Q And the pavilion was used by Brentwood students?

20 A Correct.

21 Q And I think you told me it could be used for volleyball,  
22 basketball, and fencing?

23 A Correct.

24 Q So, starting with volleyball. There was a Brentwood boys  
25 volleyball team and a Brentwood girls volleyball team; isn't

1 that right?

2 A Yes. When we -- I believe when we spoke about this in  
3 deposition, I clarified that the volleyball teams compete in  
4 the gymnasium, that is on school property and owned by the  
5 school.

6 There could be practices in the pavilion, and sometimes  
7 there could be middle school games in the pavilion.

8 Q Thank you for that. And both the boys teams and the girls  
9 teams, as you just told me, they had practices and they had  
10 games; isn't that right?

11 A Correct.

12 Q Your records didn't tell you or you didn't know how many  
13 days these teams had games and practices?

14 A Correct.

15 Q And you don't know if there was more than one team for  
16 each; isn't that right?

17 A That is right.

18 Q But you do know the boys and girls had different seasons?

19 A Yes.

20 Q And then, if there were games, those games -- students  
21 from other schools would come to Brentwood; isn't that right?

22 A Correct.

23 Q The Brentwood basketball team during this time would  
24 sometimes play their games in the pavilion?

25 A The basketball team, are you referring to the varsity or



1 junior varsity team?

2 Q Did any of the Brentwood basketball teams during this time  
3 period play games in the pavilion?

4 A I don't know. If so, it would have been middle school.

5 Q Okay. And in terms of the basketball court in the  
6 pavilion, we will get to photos soon but there was a full court  
7 and the court was divided so that there were six backboards and  
8 nets on each half of the court?

9 A Correct.

10 Q And boys and girls played?

11 A Correct.

12 Q Do you know the number of students that played over this  
13 period of time?

14 A I don't.

15 Q Okay. Or the number of hours that were spent by Brentwood  
16 students on the basketball courts?

17 A I don't know.

18 Q If I asked you the same questions about all of the other  
19 facilities we have talked about so far, the football, the  
20 volleyball in terms of the numbers of students who are -- or  
21 the number of hours that the students -- do you have that  
22 number?

23 A No, I do not.

24 Q Now, there was also -- just to complete the pavilion  
25 story, it was also used for fencing, right?

1 A For some practices, not for competitions.

2 Q Do you know the number of students over this period of  
3 time that were involved in fencing?

4 A I do not.

5 Q Okay. And there was also a regulation baseball field and  
6 tennis court, you told me, on the 22 acres?

7 A Correct.

8 Q And a softball field for girls that was a -- that is a  
9 subset of the baseball field?

10 A Correct.

11 Q And combining things here, there were practices and games  
12 for baseball and tennis during the school year; is that right?

13 A Correct.

14 Q And there were also games or matches where teams from  
15 other schools would come to the Brentwood facilities we have  
16 been talking about?

17 A Yes.

18 Q Again, you don't know the number of students or the number  
19 of student hours for this period of time?

20 A That's correct.

21 Q And then the facility we're talking about also has a track  
22 and field capacity; isn't that right?

23 A Correct.

24 Q And there were certain sports in particular that were  
25 played on that track and field; isn't that right?

1 A Correct.

2 Q Running?

3 A Yes.

4 Q High jump?

5 A Yes.

6 Q Triple jump?

7 A What is that?

8 Q That was a trick question.

9 Besides high jump and running, do you know other  
10 activities that were on the track and field?

11 A I think it's long jump where they jump in the sandpit.

12 Q Yes. Again, you don't know the number of students or  
13 student hours?

14 A No.

15 Q Now, all of the questions I have just asked you, if you  
16 want I will break them down, at no point that you're aware of  
17 did the VA ever ask you any of those specific questions that  
18 you're aware of?

19 A In the '90s?

20 Q Through 2011.

21 A Not that I'm aware of.

22 Q Okay. And the aquatic center on the 22 acres, that  
23 includes an Olympic-sized swimming pool?

24 A It's competition size. I don't know if that is the same  
25 as Olympic size.

1 Q What was the word you used?

2 A Competition size.

3 Q That came into existence between 2005 and 2006?

4 A Correct.

5 Q And the competition -- the reason you said competition is  
6 because there are meets there; isn't that right?

7 A Yes.

8 Q There are six lanes; isn't that correct?

9 A Yes.

10 Q And Brentwood had during that period of time and today  
11 both a boys team and a girls team?

12 A Correct.

13 Q And some years there were senior varsity and junior  
14 varsity teams?

15 A Correct.

16 Q And, again, with respect to swimming, you don't know the  
17 number of students or the number of student hours that actually  
18 were compiled during this time?

19 A That's correct.

20 Q So far as you know the VA has never made any inquiry for  
21 this time period?

22 A Correct.

23 Q And when there were games or when there were meets, same  
24 thing you told me about the other sports, teams from other  
25 schools would come, they would bring their players, bring their

1 coaches, they would bring family, friends, spectators as well;  
2 is that right?

3 A That's right.

4 Q Now, in addition to the 22 acres you just talked to me  
5 about their use by the Brentwood teams, the athletic facilities  
6 on this parcel of land could also be used for physical  
7 education classes; isn't that right?

8 A Correct.

9 Q And Brentwood has a physical education requirement for the  
10 high school?

11 A Correct.

12 Q And that requirement is state mandated; isn't that true?

13 A Correct.

14 Q Talking about the *Valentini* case, you told me that --  
15 well, you are aware that Judge Otero issued a decision that  
16 invalidated that ESA; isn't that right?

17 A Correct.

18 Q And that financial agreement that we -- that financial  
19 agreement, you don't know if in determining that amount of rent  
20 there was any attempt by either the VA or Brentwood to  
21 determine what the replacement value of those 22 acres were;  
22 isn't that right?

23 A Could you repeat the question.

24 Q Sure. The rent value during this period of time, am I not  
25 correct, Ms. Yoshimaru, that you don't know if in determining

1 that amount there was any attempt by the VA or by Brentwood to  
2 determine what the replacement value of those 22 acres were;  
3 isn't that right?

4 A Of the land itself?

5 Q Of the land and the facilities that were on that land.

6 If Brentwood says, "Look, we want a facility just like  
7 this facility."

8 THE COURT: On 22 acres of land.

9 BY MR. ROSENBAUM:

10 Q We'll start there. On 22 acres of land somewhere else, so  
11 far as you know, there was no analysis as to what that would  
12 cost?

13 MR. ROSENBERG: Objection, assumes facts not in  
14 evidence.

15 THE COURT: The 22 acres of land.

16 MR. ROSENBERG: I don't think there are 22 acres of  
17 land available in Los Angeles.

18 MR. ROSENBAUM: Precisely my point.

19 THE COURT: The point is you are going to get a  
20 valuation of the facilities and if one was even undertaken?

21 MR. ROSENBAUM: Exactly right.

22 THE COURT: Just re-ask the question. Re-ask the  
23 question.

24 BY MR. ROSENBAUM:

25 Q Was there any attempt to determine that value that you are

1 aware of?

2 A I don't know. I -- my understanding -- I don't know if  
3 this is what you are asking, my understanding is the enhanced  
4 sharing agreement itself had a clause that identified the  
5 \$16 million investment in improving the facility and obliged in  
6 some way repayment of that improvement cost should the property  
7 not be shared.

8 Q My question is a little bit different, but I very much  
9 appreciate that answer.

10 In terms of the 22-acre parcel -- well, let's even break  
11 it down.

12 Counsel has just said he didn't think there was any  
13 22-acre parcel of land in Los Angeles that was even available  
14 for that purpose. You agree with him, do you not?

15 A I honestly don't know.

16 Q But do you know if there was ever any attempt by Brentwood  
17 to see if there were 22 acres anywhere?

18 A I don't know.

19 Q Okay. And in terms of what it would cost to take the  
20 facilities that were on that land and put them somewhere else,  
21 isn't it true that so far as you know that in determining the  
22 amount of rent there was no attempt to figure out what that  
23 value would be?

24 MR. ROSENBERG: Same objection, still assumes facts  
25 not in evidence.

1 THE COURT: Overruled. You can answer the question.  
2 If you understand the question, and if not, we'll have him  
3 repeat it.

4 THE WITNESS: Can I ask a clarifying question?

5 THE COURT: Sure.

6 THE WITNESS: Are you still asking me about 1999 or  
7 are you asking me about after 2011.

8 BY MR. ROSENBAUM:

9 Q At the time that the rent was established between -- that  
10 work between 1999 -- or the 1990s and 2011, that's where my  
11 question is for this moment. You are not aware of that rent  
12 determination looking into the value as I have just described  
13 it; isn't that right?

14 A I do not know what the process of valuation was.

15 Q Okay. Now, so far as you know, the VA during this period  
16 of time never inquired as to how much it would cost to replace  
17 the 22 acres?

18 A I do not know.

19 Q And so far as you know the VA never inquired as to the  
20 financial value of those 22 acres to Brentwood School; isn't  
21 that true?

22 A I do not know.

23 Q Or the cost to replace those athletic facilities that were  
24 then currently on the land?

25 A As I said earlier, I believe it was articulated that it



1 was 15 to \$16 million.

2 Q Do you know how that number was arrived at?

3 A It's the number the school invested in the remediation of  
4 the landfill and the development of the complex.

5 Q And to your knowledge, was there any attempt to determine  
6 what the value of that land was in any year subsequent to when  
7 the first development took place?

8 A When you say any or subsequent are you including past 2011  
9 through today.

10 Q Let's -- we will break it down. So let's say up through  
11 2011.

12 A I do not know.

13 Q And at some point after Judge Otero's decision Brentwood  
14 did look at public options, did it not?

15 A Yes.

16 Q By "public options" we mean property on public land. Do  
17 you understand that to be the meaning of that phrase?

18 A Correct.

19 Q It concluded, did it not, that there was no one place that  
20 could accommodate all of the sports in the way that the  
21 22 acres did?

22 A Correct.

23 Q Now, you are familiar with the West LA VA Leasing Act of  
24 2016; isn't that right?

25 A Yes.

1 Q And you are aware that there was an attempt by Brentwood  
2 to have that law amended?

3 A Correct.

4 Q And you believe that the idea to have the land amended --  
5 to have the law amended came from the Brentwood Board of  
6 Trustees?

7 A Yes.

8 Q And a law firm, in fact, was hired to head up that effort?

9 A Yes.

10 Q That is the law firm Brownstein, Hyatt, H-Y-A-T-T, Barber,  
11 Schreck, S-C-H-R-E-C-K; is that right?

12 A Correct.

13 Q That's a DC-based firm?

14 A Yes.

15 Q And that hiring, that retaining of the Brownstein firm,  
16 that continues through today; isn't that right?

17 A Yes.

18 Q How much has the Brownstein firm been paid by Brentwood  
19 for its representation?

20 A My understanding is over a course of approximately ten  
21 years approximately -- a little bit less than a million  
22 dollars.

23 Q Okay. And that million dollars came from the Brentwood  
24 operating budget?

25 A Yes.

1 Q And the Brownstein firm to your knowledge lobbied Congress  
2 to have the West LA VA Leasing Act amended; isn't that right?

3 A To my knowledge the board determined that the school  
4 needed representation in DC such that lawmakers and elected  
5 officials could be educated by Brentwood School, its  
6 partnership with the VA, and its benefits to veterans and their  
7 families.

8 Q All to the end of getting the law amended?

9 A All to the end of having an ongoing partnership with the  
10 VA that benefits veterans and their families.

11 Q All to the end of getting that law amended; isn't that  
12 right?

13 MR. ROSENBERG: Objection, asked and answered and  
14 argumentative.

15 THE COURT: Overruled. You can answer the question.

16 THE WITNESS: Repeat the question, please.

17 BY MR. ROSENBAUM:

18 Q Wasn't the -- wasn't an objective of that effort -- wasn't  
19 an objective of that effort to have that law amended?

20 A Yes.

21 Q Okay. And there were meetings with Congressman Lieu, and  
22 Congressman Sherman, Congressman McCarthy, Sandra Feinstein,  
23 and Sandra Patino, or members of their staff; isn't that right?

24 A Yes.

25 Q There were meetings with members of the House Committee on

1 Veterans Affairs?

2 A Yes.

3 Q And with members of the Senate Committees on Veterans  
4 Affairs?

5 A Yes.

6 Q And there were at least two attorneys from the Brownstein  
7 firm who specially was in getting Congress to act in certain  
8 ways beneficial to their clients?

9 A I don't know that I could answer that.

10 Q The effort that we're talking about by this law firm, that  
11 occurred just two years after the law itself was enacted; isn't  
12 that right? That's where it began?

13 A Shortly thereafter, yes.

14 Q And the inspiration for that lobbying effort was a report  
15 by the Office of the Inspector General?

16 A Correct.

17 Q And that was in 2018?

18 A Correct.

19 Q And the inspiration was to have removed -- strike that.

20 Your understanding is that the principal objective of  
21 that effort was to seek to remove the provision in the Leasing  
22 Act that dealt with the consequences of a finding by the Office  
23 of Inspector General that a lease of the -- when a lease of the  
24 -- with the VA was out of compliance with the West LA VA  
25 Leasing Act of 2016. And if you tell me you didn't follow that

1 I believe you, so let me start over.

2 A Thank you.

3 Q Your understanding is that the principal objective of the  
4 effort was to seek to remove a particular provision in the  
5 Leasing Act; isn't that right?

6 A Correct.

7 Q And the provision of the Leasing Act was that provision  
8 that dealt with the consequences of a particular finding by the  
9 Office of Inspector General; isn't that correct?

10 A The objective was to bring the authority of the IG as it  
11 relates to West LA in line with what it is nationally.

12 Q All right. I understand that is the position that  
13 Brentwood and its attorneys took, but specifically speaking  
14 here, the objective was to remove the provision that dealt with  
15 the consequences of a finding by the Office of Inspector  
16 General that a particular lease was out of compliance with the  
17 law; isn't that right, ma'am?

18 A We may be saying the same thing in different ways.

19 I still say the objective was to create a legislative  
20 amendment that brought the authority of the IG in line with  
21 what it is nationally. The means of which, or the method, a  
22 vehicle of which, would be an amendment of the Leasing Act,  
23 yes.

24 Q To remove the provision that I was referencing?

25 A Yes.

1 Q You're saying "yes"?

2 A Yes.

3 Q And that effort spans from somewhere beginning in 2018 to  
4 today?

5 A Correct.

6 Q Incidentally, so far as you know, Brentwood students were  
7 never made aware of these efforts?

8 A Of the...

9 Q Attempt to get the law change.

10 A I don't know for sure.

11 Q And in the OIG report in 2018, that reported that the  
12 Brentwood lease with the VA was out of compliance with the West  
13 LA VA Leasing Act of 2016; isn't that right?

14 A That was the conclusion IG made in that report and VA  
15 filed an extensive rebuttal.

16 Q Now, in fact, VA administrators were informed about the  
17 effort to amend the statute; isn't that true?

18 A Yes.

19 Q And that included VA administrators involving  
20 representatives from the General Counsel's Office of the VA;  
21 isn't that right?

22 A I believe so. Yes.

23 Q And at the time the initial time the secretary of the VA  
24 was Secretary Wilkie, W-I-L-K-I-E; isn't that right?

25 A Yes.

1 Q And so far as you know Secretary Wilkie's office was  
2 informed about the efforts to amend this law; isn't that right?

3 A I believe so.

4 Q And you also believe that local VA administration was  
5 informed; isn't that right?

6 A I believe so, yes.

7 Q That would include Alan Trinh, T-R-I-N-H; isn't that  
8 right?

9 A Yes.

10 Q And Mr. McKittrick?

11 A McKendrick?

12 Q Yes.

13 A Yes.

14 Q And to date?

15 THE COURT: Just a minute, would you slow down just  
16 a little bit. Alan and spell the last name, please?

17 MR. ROSENBAUM: T-R-I-N-H.

18 THE COURT: The other person you mentioned was?

19 BY MR. ROSENBAUM:

20 Q Go ahead.

21 THE COURT: The full name, please.

22 BY MR. ROSENBAUM:

23 Q Do you know the full name?

24 A Yes. Robert McKendrick.

25 THE COURT: Thank you, I missed that.

1 BY MR. ROSENBAUM:

2 Q And to date, to the best of your knowledge there hasn't  
3 been any legislation proposed of the nature that Brentwood was  
4 seeking?

5 A To my knowledge, yes.

6 Q All right. Now let's start talking about after the 2016  
7 law took effect.

8 And unless I tell you otherwise, that's -- all my  
9 questions are going to be post the 2016 law, are you with me?

10 A Thank you, yes.

11 Q Each of the athletic facilities that we discussed, they  
12 continued to be utilized from Brentwood School students from  
13 2016 to today?

14 A Yes.

15 Q And what existed in 2011, that exists today with respect  
16 to the athletic facilities that are on those 22 acres; isn't  
17 that right?

18 A Yes.

19 Q And as for the track and field facilities you mentioned to  
20 Judge Carter, you would estimate that between 30 to 50 percent  
21 of the students on the campus use those track and field  
22 facilities?

23 A Yes.

24 Q And that is about 250-plus students; isn't that right?

25 A Yes.



1 Q Now, you recall several moments ago I mentioned the  
2 concept of student hours. But I will be real clear on my  
3 definition here.

4 I'm defining that to mean the number of hours each  
5 student used it. So the total student hours would be all of  
6 the students who used it and then for each one of those  
7 students the number of hours that the students used those  
8 facilities. Are you with me?

9 A I am with you, but math is not my thing.

10 THE COURT: I was just going to say, that's a higher  
11 math problem.

12 BY MR. ROSENBAUM:

13 Q Actually, it's an easy math problem because the school has  
14 never calculated those hours; isn't that right?

15 A That is correct.

16 Q And the VA has never requested that those hours be  
17 calculated in terms of use by Brentwood students; isn't that  
18 also true?

19 A Not in that way, correct.

20 Q So to your knowledge if we look from 2016 to today, that  
21 number has never been figured out by either Brentwood or  
22 requested by the VA; isn't that right?

23 A No. The number we calculated was available hours of use  
24 in any 24-hour period, and majority access of those hours being  
25 available to veterans rather than students.

1 Q Okay. Well, you can be assured I'll get to that.

2 Since 2016, Brentwood has had a track and field team  
3 with girls and boys; isn't that right?

4 A Yes.

5 Q And same thing we talked about earlier, there have been  
6 meets at Brentwood, track meets, track and field meets?

7 A Yes.

8 Q And each meet has an opponent?

9 A Yes.

10 Q Over the course after season, the number of those track  
11 meets, in addition to the practices, I'm not talking about the  
12 practices, the other uses there, but the number of meets would  
13 be around six; isn't that right?

14 A Correct.

15 Q Same thing we talked about before, there would be --  
16 students would come from other schools, coaches would come from  
17 other schools, spectators would come from other schools,  
18 cheerleaders would come from other schools; isn't that right?

19 A Yes.

20 Q And those meets would last a couple of hours; isn't that  
21 right?

22 A Correct.

23 Q And just focusing on nonveteran hours in terms of use of  
24 the track and field, Brentwood doesn't maintain information as  
25 to what that number of hours is; isn't that right?

1 A Relative to the formula you are asking me about, correct.

2 Meaning how many students, that numbers of hours times that

3 number of students, is that the question you are asking me?

4 Q That's the start of it. Those aren't kept; isn't that

5 right?

6 A Correct.

7 Q Nor for their coaches?

8 A Correct.

9 Q Nor for spectators?

10 A Correct.

11 Q Nor for cheerleaders?

12 A Correct.

13 Q Correct?

14 A Correct.

15 Q Nor for nonveterans generally?

16 A For? Excuse me?

17 Q Correct. If I asked you the same questions regarding the

18 other athletic facilities on the 22 acres, football, lacrosse,

19 soccer, cross-country, tennis, and fencing, same answers; am I

20 right?

21 A Yes.

22 THE COURT: Which is, for the record -- what is the

23 answer?

24 BY MR. ROSENBAUM:

25 Q Well, the question is does Brentwood keep at the student

1 hours nonveteran hours, the number of hours that students or  
2 nonveterans use any of the facilities I just mentioned. That's  
3 not maintained for any of the sports I just talked about?

4 A Correct.

5 Q And the VA has never requested such information so far as  
6 you know?

7 A Correct.

8 Q Now, in addition to the sports I just mentioned, the  
9 football team post-2011 continues to play its games on that  
10 field; isn't that right?

11 A Correct.

12 Q It plays about four to five games a year?

13 A Correct.

14 Q And there are boys and girls soccer teams?

15 A Yes.

16 Q And, again, just to shortcut it a little bit, the sort of  
17 calculations that Judge Carter and I just talked about that's  
18 not maintained by Brentwood, compiled by Brentwood for the  
19 football team or soccer teams I just discussed?

20 MR. ROSENBERG: Objection, this is really confusing.

21 THE COURT: Do you understand the question? Would  
22 you like him to repeat it?

23 THE WITNESS: No, I believe he's asking me the same  
24 question for every student and every sport and every season.

25 THE COURT: And so you understand it.

1 THE WITNESS: The answer would be the same.

2 THE COURT: Then go ahead and answer the question.

3 THE WITNESS: Correct.

4 BY MR. ROSENBAUM:

5 Q The VA, to your knowledge, has never requested such  
6 information?

7 A Correct.

8 Q That's the same also if I would talk about lacrosse on the  
9 lacrosse field or cross-country or baseball on the baseball  
10 fields or tennis on the tennis courts, all the same; isn't that  
11 right?

12 A Correct.

13 Q The school doesn't maintain data as to -- at that level or  
14 for that purpose; isn't that right?

15 A No. No, it doesn't not.

16 Q And the VA, to your knowledge, has never requested such  
17 information?

18 A Not of that kind.

19 Q Okay. Now the 22 acres, parts of those 22 acres, they  
20 continue to be used for physical education, some physical  
21 education courses, do they not?

22 A Some. Yes.

23 Q And the -- there's also an aquatic center that we  
24 mentioned; isn't that right?

25 A Correct.

1 Q And the aquatic center, again, same questions, if I'm  
2 confusing you, just tell me and I'll sort it out for you, but  
3 there are swimming teams that Brentwood has; isn't that right?

4 A Yes.

5 Q They have a boys team and a girls team?

6 A Yes.

7 Q More than one boys team, more than one girls team?

8 A I don't think so.

9 Q Okay. And that aquatic --

10 (Reporter Clarification.)

11 THE WITNESS: I said I don't think so.

12 BY MR. ROSENBAUM:

13 Q You know, it's not your fault, but if you move a little  
14 closer to the mic and speak up a little bit more I think it  
15 will help the reporter and all of us.

16 A Is that better?

17 Q Much better, thank you.

18 The aquatic center can also be used by faculty at  
19 Brentwood; isn't that right?

20 A During specific hours, yes.

21 Q Okay. And same questions, the sorts of data you and I  
22 have been talking about Brentwood doesn't keep data at that  
23 level, isn't that right, for the aquatic center?

24 A Brentwood keeps data of hours of access and numbers  
25 individuals use, but not the math you are asking me to provide.

1 Q Okay. You can keep saying that, I give you my word, I am  
2 going to get to that.

3 A Okay.

4 Q The aquatic center has a particular name; isn't that  
5 right?

6 A Yes, it does.

7 Q And in that aquatic center there is the swimming  
8 activities we've talked about and there is also water polo  
9 activities; isn't that right?

10 A Correct.

11 Q And the name of that aquatic center is Caruso Watt.

12 A Yes.

13 Q And Watt is W-A-T-T?

14 A Yes.

15 Q And Caruso is C-A-R-U-S-O?

16 A Yes.

17 Q And Caruso, is Rick Caruso?

18 A Yes.

19 Q And Watt is Scott Watt? S-C-O-T-T.

20 A Yes.

21 Q And Mr. Caruso and Mr. Watt made a donation to the school  
22 with respect to that naming; isn't that right?

23 A That's correct.

24 Q And that was around \$3 million?

25 A Approximately, yes.

1 Q And then Mr. Caruso then enlarged his donation to the  
2 school to around \$10 million; isn't that right?

3 A That was not relevant to anything related to the 22 acres.

4 Q Well, maybe so.

5 The hours of operation of the school, let's discuss  
6 that.

7 Brentwood School, its hours of operation during the  
8 school year are from 8:30 a.m. to 3:00 p.m. Monday, Tuesday,  
9 and Thursday; is that right?

10 A Correct.

11 Q And on Wednesday it's 9:30 to 3:00 p.m.?

12 A Yes.

13 Q And on Fridays it's 8:30 to 2:30 p.m.?

14 A Yes.

15 Q And, again, would you tell me please what the calendar is  
16 for this school year? From when to when is school in session?

17 A From the end of August until the middle of June.

18 Q Okay. And then --

19 THE COURT: Just one moment, we're going to be going  
20 out to the VA facility and also to a number of other locations,  
21 one of those is going to include your school. Has anybody  
22 informed you about this yet?

23 THE WITNESS: I think I have heard.

24 THE COURT: Heard kind of a rumor?

25 THE WITNESS: It may happen.



1 THE COURT: It will happen. And initially I was  
2 going to not tell counsel when, but then it occurred to me on  
3 Saturday morning when I was thinking about this how rude that  
4 was because here we are at -- is this a closed facility or do  
5 we need somebody to open up -- eventually I will get to UCLA  
6 baseball field, which you have nothing to do with. Are you a  
7 closed facility? Do we need somebody to open up to see these  
8 22 acres?

9 THE WITNESS: That would be best.

10 THE COURT: Hold on. Counsel, you're the requesting  
11 party, the Government is going to arrange for that this.

12 Thank you very much, great enthusiasm.

13 They will contact you and request this. It's going to  
14 be about 5:30 in the morning, and I didn't know when school was  
15 going to start, so hopefully if you have young people in campus  
16 we're in and out of there. Also, I didn't want a big crowd,  
17 quite frankly, or people coming up talking to us, and we need  
18 to get back into court by 8:30.

19 So if you can work with the government so you're not  
20 surprised and there's not some rumor, is next Thursday okay?

21 THE WITNESS: For sure?

22 THE COURT: For sure.

23 THE WITNESS: Got you.

24 THE COURT: You are instructed to work with her out  
25 of courtesy. If it's closed, get the gates open, et cetera,

1 and we will be at your gate about -- well, around 5:30, but we  
2 may be in different locations. They're arranging kind of a  
3 site tour for me, so I'm not sure of the schedule.

4 Can you do that for us?

5 THE WITNESS: Thursday is the 21st, correct?

6 THE COURT: Well, no, I'm not sure -- no, it's --

7 THE WITNESS: It's the 22nd.

8 THE COURT: The 22nd. There we go. It's Thursday,  
9 the 22nd. They are going to be very courteous.

10 THE WITNESS: Can I say one thing?

11 THE COURT: Sure.

12 THE WITNESS: This may not matter.

13 THE COURT: It does. But what did you want to say?

14 THE WITNESS: I would very much like to be there,  
15 and I am supposed to be at West Point for my son's ring  
16 ceremony.

17 THE COURT: First of all, you're going to be there.  
18 There is nothing magic about that date.

19 When are you coming back?

20 THE WITNESS: I am coming -- I leave on Thursday  
21 morning at 7:00 a.m., and I'm coming back on Monday night --  
22 Tuesday night.

23 THE COURT: We can make it just as easily Wednesday.

24 THE WITNESS: That would be lovely. I really  
25 appreciate that. I'm so sorry.

1 THE COURT: Counsel, is there any objection if we  
2 have this on Wednesday?

3 MR. ROSENBERG: No. But to be clear, we're talking  
4 about Wednesday, the 21st?

5 THE COURT: Wednesday, the 21st. Does that work for  
6 you folks?

7 MR. SILBERFELD: Yes, Your Honor.

8 MR. GUADIANA: Yes, Your Honor.

9 THE WITNESS: I appreciate that. Thank you.

10 THE COURT: We're not taking any testimony out  
11 there.

12 THE WITNESS: I understand.

13 THE COURT: You know, but if you feel more  
14 comfortable because it's your school, for goodness sakes, it's  
15 your school.

16 THE WITNESS: And I am the liaison between the  
17 school's relationship.

18 THE COURT: Perfect. Would that be okay with you,  
19 then, Wednesday, so you see your son graduate from West Point?

20 THE WITNESS: It's the beginning of the graduation  
21 ceremony.

22 THE COURT: Okay. It's done.

23 Counsel, I will change that. I will send out a minute  
24 order. But out of courtesy, if there's no objection, let's  
25 make that Wednesday.

1 MR. ROSENBERG: No objection.

2 BY MR. ROSENBAUM:

3 Q So, in addition to the hours that you have just talked to  
4 us about regarding when the school was in operation, Brentwood  
5 also has programs over the summer; isn't that right?

6 A Yes, sir.

7 Q And those hours for the summer programs are 8:30 to 10:30  
8 over what days?

9 A I'm sorry, repeat that.

10 Q That was a terrible question.

11 THE COURT: Just a moment. If you have summer  
12 programs, I don't want to have the children inconvenienced.  
13 What time do you need us out?

14 THE WITNESS: There are no more.

15 THE COURT: Counsel, thank you.

16 BY MR. ROSENBAUM:

17 Q What are the hours for the summer programs?

18 A The summer programs are from 8:30 until I believe  
19 approximately 1:00 p.m., and then there is a very small amount  
20 of what is called after care available that takes place on the  
21 footprint owned by the school.

22 Q And how long does that childcare last?

23 A Until 5:00 p.m.

24 Q Okay. And what are the dates for the summer programs?

25 A The summer program runs from the end of June through the

1 -- early August. So it could be -- depends on how the weeks  
2 fall -- as early as August 2nd but it could be the 5th  
3 depending on the year.

4 Q And the summer programs include summer camps; isn't that  
5 right?

6 A Correct.

7 Q Summer camps for students.

8 A Correct.

9 Q And those include tennis camps and aquatic camps; is that  
10 right?

11 A That is accurate.

12 THE COURT: Counsel, would it be okay if we took a  
13 break just for the court reporter. Would this be a good time?

14 MR. ROSENBAUM: Sure.

15 THE COURT: Could we convene that quarter after  
16 1:00, would that give you enough time for lunch? About an  
17 hour.

18 MR. ROSENBAUM: Sure.

19 THE COURT: I'm going to ask to you return at 1:15.  
20 Thank you very much. Counsel, we will be in recess for the  
21 hour for lunch.

22 (Lunch recess.)

23 THE COURT: Everybody ready?

24 Then if I could have the witness retake the stand,  
25 please.

1 Counsel, we're back on the record. All counsel and  
2 parties are present. The witness is present.

3 Continue direct examination.

4 MR. ROSENBAUM: Thank you, Your Honor.

5 BY MR. ROSENBAUM:

6 Q Are you okay?

7 A I was just trying to get closer to the mic this time.

8 Q All right. Did you have a good lunch?

9 A I did. Thank you.

10 Q Great. When we broke, Ms. Yoshimaru, we were talking  
11 about the summer program. So, you told us that there are  
12 tennis camps; is that right?

13 A Yes, sir.

14 Q Two of them? How many?

15 A Each camp is a one-week session.

16 Q Yes.

17 A I'm not sure how many. At least two, maybe three.

18 Q And then there are also aquatics camps?

19 A Yes.

20 Q And do you know how many of those there are?

21 A Same thing, two or three --

22 Q Okay. And -- I'm sorry.

23 A -- weeks. Each one is a week long.

24 Q And Brentwood charges money for enrollment in those camps?

25 A Except to children of veterans.

1 Q Okay. Can you tell us the number of nonveterans versus  
2 the number of veterans -- young people who go to those camps?

3 A In this last year, so the camps that just finished, there  
4 were 200 and approximately 20 weeks of summary camp awarded to  
5 children of veterans. Those weeks went to -- I think it was 75  
6 different children. I could check.

7 Q And how many children who were not veterans?

8 A In the same age bracket?

9 Q Yes.

10 A Yes. Approximately 200.

11 Q Do you know how much is charged for those camps?

12 A They are charged at a weekly basis. It is between \$400  
13 and I think \$550 a week.

14 Q Okay. All that money goes to Brentwood School?

15 A To operating the camps, yes. The camps actually barely  
16 break even.

17 Q Okay. Could we please put before the witness Exhibit 904.

18 Do you have what has been marked as Exhibit 904 in front  
19 of you?

20 A Yes, I do.

21 Q We talked about this during the deposition?

22 A Yes, we did.

23 Q This Exhibit 904 comes from the Brentwood School website?

24 A Yes, it does.

25 Q And on the first page of what has been marked as

1 Exhibit 904, it says, "At Brentwood School, our 21-acre  
2 athletic facilities are an extension of the classroom that  
3 offer personal growth, rooted in our core values."

4 Did I read that right?

5 A Yes.

6 Q Okay. And it mentions that there are over 100 coaches.  
7 Those are Brentwood coaches?

8 A They would be -- yes, Brentwood coaches. That does not  
9 mean they are full-time employees. It also does not mean they  
10 are upper school coaches.

11 Q Okay. I appreciate that. Let's just quickly go through  
12 the photographs.

13 On the next page, page 2 of what has been marked as  
14 Exhibit 904, there is a photograph of the Caruso Watt Aquatic  
15 Center that you talked to me about.

16 A Yes, sir.

17 Q That photograph accurately reflects -- depicts that  
18 center?

19 A Yes.

20 Q It's on the 22 acres?

21 A Yes.

22 Q Turning the page, please. On the next page of 904, there  
23 are photographs of the stadium field and pavilion. Do you see  
24 those?

25 A Yes.



1 Q Do those accurately reflect, depict facilities that are on  
2 the 22 acres?

3 A Yes. Those are the same photos we use in our veterans  
4 access brochure.

5 Q Then on the next page, there are photographs of the tennis  
6 courts and the back field?

7 A Yes.

8 Q And they are also on the 22 acres?

9 A Yes. And those are actually veterans in that back field  
10 picture.

11 Q Okay. And then the next photograph is the weight room and  
12 fitness center?

13 A Yes.

14 Q That's also on the 22 acres?

15 A Yes.

16 Q Okay. And could I now have Exhibit 9 --

17 MR. ROSENBAUM: I move that into evidence Your  
18 Honor.

19 THE COURT: Received.

20 (Exhibit 904 received into evidence.)

21 MR. ROSENBAUM: Thank you.

22 BY MR. ROSENBAUM:

23 Q Exhibit 905, please.

24 Do you have that, Exhibit 905, in front of you?

25 A Yes, I do.

1 Q And this also comes from the Brentwood School website?

2 A Yes. As we discussed in the deposition, this is marketing  
3 designed to attract students to the school.

4 Q And it says, "whether students come to Brentwood to try  
5 something new or with significant club team experience, they  
6 will find a place among Eagle Athletics."

7 Do you see that?

8 A I do.

9 Q Eagle athletics is Brentwood's school name of its teams?

10 A The Eagles are the teams. Eagle Athletics, I think in  
11 this context, is referring to the athletic department.

12 Q Okay. Then it says, "We offer over 35 teams across 17  
13 sports, and impressive facilities to accommodate them all."

14 New sentence, "Our all encompassing in-house resources  
15 support athletes in an inclusive way, offering not only  
16 coaching on the field or court, but also strength and  
17 conditioning, mental performance, athletic training, college  
18 recruiting, and top notch athletic apparel and equipment  
19 through our Nike sponsorship."

20 Do you see that?

21 A Yes, I do.

22 Q Did I read that accurately?

23 A Yes, you did.

24 Q We don't have to go through all of them, but after this  
25 first page of this exhibit, there are pictures of things that

1 are hanging in the school that memorialize successful years by  
2 different sports teams of Brentwood?

3 A Yes. And these hang in the gymnasium that I have  
4 described previously, that is on the school property. And  
5 similarly, in the deposition, I believe I mentioned this, not  
6 all of these matters or awards reflect athletics that take  
7 place on that 22 acres.

8 Q But many of them do; isn't that right?

9 A Yes, sir.

10 Q Okay.

11 MR. ROSENBAUM: Could I also please ask that  
12 Exhibit 902 be placed in front of the witness?

13 Your Honor, I'd move the prior exhibit into  
14 evidence.

15 THE COURT: 905 is received.

16 MR. ROSENBAUM: Thank you.

17 (Exhibit 905 received into evidence.)

18 BY MR. ROSENBAUM:

19 Q Do you have what has been marked as 902 in front of you?

20 A Yes, I do.

21 Q And that comes also from the Brentwood School website?

22 A Yes, it does.

23 Q And the title of this is Recruited Athletes?

24 A Yes.

25 Q And on the first page, it says, "Athletes from Brentwood

1 School are offered personalized support through the college  
2 athletics recruiting process."

3 And then in smaller print, it says, "We are  
4 dedicated to helping our student athletes reach their athletic  
5 goals while at Brentwood and beyond. Our college counseling  
6 athletics liaison meets regularly with student athletes and  
7 their parents to answer questions and walk them through the  
8 recruiting process. Our goal is to ensure our student athletes  
9 are doing everything possible to maximize their opportunities."

10 I read that correctly?

11 A Yes, you did.

12 Q And then on the next page, that is all from the website?

13 A Yes.

14 Q And it says, "Brentwood hosts many events that educate our  
15 families and expose our student athletes to college and  
16 university coaches. Every year we organize two college bound  
17 student athlete nights and California's only football  
18 recruiting fair which brings over 20 colleges to our campus  
19 from across the country. We also have college coaches that  
20 come to campus when they are in the area to talk to our teams,  
21 and we help our student athletes arrange unofficial and  
22 official visits with college coaches according to NCAA rules.  
23 Since our Athletics College Counseling program has been  
24 implemented, we have seen an average of 20 percent of our  
25 student athletes choose to play their sport at Division 1, 2,

1 and 3 levels."

2 Did I read that accurately?

3 A Yes. As I recall explaining in the deposition, the two  
4 college bound student athlete nights have now been moved to  
5 virtual. They are Zoom, they are not on campus. And the  
6 football recruiting fair referred to does not take place on any  
7 portion of the 22-acre leased property.

8 Q Okay.

9 MR. ROSENBAUM: Move that into evidence, Your Honor.

10 THE COURT: 902 is received.

11 (Exhibit 902 received into evidence.)

12 MR. ROSENBAUM: Thank you, Your Honor.

13 Could I now ask, please, for Exhibit 900 to be placed --

14 THE COURT: And 904 is received also.

15 MR. ROSENBAUM: Thank you so much. Exhibit 900 in  
16 front of the witness, please.

17 THE WITNESS: Judge Carter, I believe you have  
18 different information than I do.

19 THE COURT: I have got 900.

20 THE WITNESS: I only have this. I only have half of  
21 what you have.

22 THE COURT: You take my copy.

23 MR. ROSENBAUM: I'm sorry about that. And we'll --

24 THE COURT: She's got a full copy. I can see that.

25 THE WITNESS: You know, I just realized it's

1 projected on the screen here, sir. I can look at this, if you  
2 would -- okay.

3 BY MR. ROSENBAUM:

4 Q Okay. I apologize for not getting the complete copy the  
5 first go-round here. You now have Exhibit 900 in front of you?

6 A Yes, I do.

7 Q And that's also from the Brentwood website?

8 A Yes, it is. Excuse me. No, it is not.

9 Q That is a document --

10 A It is a PDF that exists on the website. It's also a paper  
11 brochure.

12 Q Perfect. You recognize it?

13 A Yes, I do.

14 Q Okay.

15 MR. ROSENBAUM: Move this into evidence, Your Honor.

16 THE COURT: And that would be --

17 MR. ROSENBAUM: 900.

18 THE COURT: -- 9-0-0.

19 MR. ROSENBAUM: Correct.

20 THE COURT: Received.

21 (Exhibit 900 received into evidence.)

22 BY MR. ROSENBAUM:

23 Q Let's look at the second page here.

24 All right. So in this page, it lists the hours at which  
25 certain of the facilities on the 22 acres will be available to

1 veterans; isn't that right?

2 A Yes.

3 Q All right. And, in fact, it says the 22 acres  
4 recreational facility known as VCRE, all caps, is available  
5 daily to registered veterans during specific hours?

6 A Correct.

7 Q So it's not available at any time a veteran wants to use  
8 the facility?

9 A Correct. The agreement that we made was exclusive veteran  
10 use.

11 Q Okay. Now, looking at some of these times -- first of  
12 all, there are two columns. One for the academic year, and one  
13 for the summer year. Do you see that?

14 A Yes.

15 Q Now, I noticed that it says Academic Year 2022, 2023, and  
16 Summer 2023. So far as you know, is it the same for Summer  
17 2024?

18 A Basically, yes.

19 Q Okay. Some starting, for example, with the pool. The  
20 pool is open during the five-day week -- Monday through  
21 Friday -- for three days, Monday, Wednesday, and Friday?

22 A Correct.

23 Q Not open Tuesday and Thursday?

24 A Correct.

25 Q And the hours for Monday, Wednesday, and Friday, for both

1 the academic year and the summer year, start at 5:30 in the  
2 morning?

3 A Correct.

4 Q Incidentally, Brentwood doesn't run a shuttle from the  
5 campus to its athletic facilities; isn't that right?

6 A We do run a shuttle.

7 Q Yes. But my question doesn't run a shuttle specifically  
8 for the athletic facilities; is that correct?

9 A Correct. The circulating shuttle has a stop at the  
10 athletic facilities.

11 Q Okay. It doesn't start at 5:30 in the morning, does it?

12 A No, it does not.

13 Q It doesn't start at 6:30 in the morning, does it?

14 A No, it does not.

15 Q It doesn't start at 7:30 in the morning, does it?

16 A No, it does not.

17 Q Okay. Now, the hours for the swimming pool -- and it  
18 doesn't -- there is also a stop for that shuttle -- a limit for  
19 that shuttle -- that's a poorly stated question. I apologize.

20 It doesn't run in the evening, does it?

21 A No.

22 Q Okay. The pool hours that we're just looking at, they are  
23 determined based on Brentwood's staffing of the lifeguard;  
24 isn't that right?

25 A Correct.



1 Q And Brentwood only staffs one lifeguard?

2 A Correct.

3 Q And you have no knowledge, do you, as to whether the  
4 lifeguard has any training in dealing with individuals with  
5 PTSD or schizophrenia or TBI; isn't that right?

6 A Correct.

7 Q And no one from the VA has ever inquired as to what  
8 conditions -- what the -- whether -- no one from the VA has  
9 ever inquired as to whether the lifeguard has any of the  
10 training that I just mentioned; isn't that right?

11 MR. ROSENBERG: Objection. Lack of foundation and  
12 assumes facts not in evidence to the extent that those  
13 conditions are relevant to lifeguard training.

14 THE COURT: Overruled. I assume it concerns  
15 traumatic brain injury, the TBI that you referred to, and PTSD,  
16 amongst others.

17 MR. ROSENBAUM: Exactly.

18 BY MR. ROSENBAUM:

19 Q Isn't that correct, ma'am?

20 A Would you please repeat the question.

21 Q Yes. No one from the VA, to your knowledge, has ever  
22 inquired as to whether or not the lifeguard has any training in  
23 dealing with individuals who have PTSD or traumatic brain  
24 injury or schizophrenia?

25 A Correct.

1 Q And no one from the VA, to your knowledge, has made any  
2 inquiry as to whether or not veterans with those conditions, in  
3 fact, use the pool; is that right?

4 A Wouldn't that be HIPAA protected information?

5 Q Well, you can answer the question, and if there is a legal  
6 problem, we can raise that.

7 No one from the VA has ever inquired, have they?

8 A Not that I know of.

9 Q Okay. How many veterans use the lacrosse field?

10 A The lacrosse field is the same as the football field.

11 Q How many veterans have -- do you -- does Brentwood know  
12 how many veterans play lacrosse on that lacrosse field?

13 A No. We monitor entry and exit, not which facilities they  
14 are using.

15 Q Okay. And nobody from the VA has ever asked "do veterans  
16 play lacrosse?" for example, have they?

17 A No.

18 Q Let's go to the tennis courts on Exhibit 900.

19 The tennis courts, veterans have access during the  
20 academic year, Monday through Thursday, for one hour in the  
21 evening; isn't that right?

22 A Correct.

23 Q Okay. And so far as you know, no one has ever talked  
24 about extending that beyond an hour?

25 A Correct.

1 Q Okay. Does -- and that shuttle that you mentioned, it  
2 doesn't run at 8 o'clock at night, does it?

3 A No.

4 Q Doesn't run at 7 o'clock at night?

5 A No.

6 Q Do you know what time it stops running?

7 A 3 o'clock in the afternoon.

8 Q Okay. During the academic year, on Monday through Friday,  
9 we just said that the starting time for veterans is -- well,  
10 for the tennis courts, it's 5:00 a.m.

11 Do you see that?

12 A Yes.

13 Q Brentwood doesn't keep track of the number of veterans who  
14 use of the tennis courts or the pavilion or the back field,  
15 say, between 5:00 or 6:00 in the morning?

16 A We monitor the total number of veterans who utilize the  
17 facilities during those times, but not by specific area.

18 Q Okay. Same thing for 6:00 to 7:00 in the morning?

19 A Correct.

20 Q Okay. If you lived on the VA grounds, do you know what  
21 time you would have to get up in the morning to get to the  
22 tennis courts at 5:00 a.m.?

23 A It would depend on where you live.

24 Q Okay.

25 A The early morning start times were actually put in place

1 so that there was access for veterans who desired to work --  
2 work out before or after work.

3 Q Okay. The VA has never inquired about transportation;  
4 isn't that right?

5 A I need a more specific --

6 Q Between the grounds and the Brentwood School, no one from  
7 the VA has ever specifically inquired about that subject?

8 A I'm really sorry, that is a very broad question.

9 Q Well --

10 THE COURT: Counsel, could I ask just one question.

11 MR. ROSENBAUM: Of course.

12 THE COURT: This is very brief.

13 There was a reference to a shuttle.

14 THE WITNESS: Yes.

15 THE COURT: I want to assume that I'm in Building  
16 208 or 209 or 205, and they are located -- would you be kind  
17 enough to just come up and point to where that is. And on this  
18 map, it doesn't really show the Brentwood grounds.

19 Counsel is going to point on an older map to you, and  
20 the Brentwood School is obviously on the upside of that map.

21 THE WITNESS: Uh-huh.

22 THE COURT: If I'm a veteran and if I'm  
23 ambulatory -- not an amputee -- and I can find my way, can I  
24 walk, unimpeded by a gate, guard, from -- and point to that  
25 complex -- can I walk to the tennis courts, or am I going to

1 get stopped by -- I haven't seen this portion of it. Am I  
2 going to get stopped by a fence, a barrier, or a gate?

3 THE WITNESS: What would happen would be you would  
4 walk, and there are, in fact, two gates. One is at the  
5 threshold of -- I guess -- there is an access road that is a  
6 bit of space between the threshold where they are building the  
7 construction and MacArthur field right now. And the -- does  
8 that sound --

9 THE COURT: Not yet. But next Wednesday, I will get  
10 it.

11 THE WITNESS: The other point that is entry point to  
12 the leased property, during veteran access hours, when they  
13 make that walk, there is a -- we have a space called the  
14 Veteran Center For Recreation and Education Welcome Center and  
15 there are staff stationed there to -- the pedestrian gate is  
16 open, so the answer is there is a gate that is opened.

17 THE COURT: Slow down. It's too fast for me. Say  
18 that again.

19 THE WITNESS: So during access hours, in this  
20 instance --

21 THE COURT: Just a moment.

22 THE WITNESS: We'll call it 5:00 a.m.

23 THE COURT: 5:00 a.m.

24 THE WITNESS: It's 5:00 a.m. and you want to get an  
25 early morning workout. You walk from -- you're a resident in

1 Building 208, you walk out of your residence, it's less than a  
2 ten-minute walk --

3 THE COURT: Okay.

4 THE WITNESS: -- around the Japanese garden, the  
5 pedestrian gate is open, there is somebody at the Welcome  
6 Center to greet you and sign you in. If you want to check out  
7 equipment because you want to shoot baskets instead of -- or  
8 hit tennis balls, you do that, and then you go and use  
9 whichever area of the facility you would like to use.

10 When you are done, you come out, you sign out, and you  
11 walk back.

12 THE COURT: What time should I leave so I'm not  
13 interfering with the -- you know, on the grounds at the same  
14 time that the school children are?

15 THE WITNESS: 11:30. The access hours for veterans  
16 are 5:00 a.m. to 11:30 a.m. every morning.

17 THE COURT: Okay. Thank you.

18 BY MR. ROSENBAUM:

19 Q Let's follow up on what the judge was saying.

20 There is this path between Brentwood and the VA grounds;  
21 isn't that right, there is a path?

22 A Yes.

23 Q And that entire path is not lighted; isn't that correct?

24 A Not on the VA property.

25 Q And the access road that you are talking about, what it

1 does is it curves around the Japanese garden; isn't that  
2 correct?

3 A Yes. It curves between the Japanese garden and the new  
4 housing construction on MacArthur field.

5 THE COURT: For both of you, I wish, in some ways,  
6 that we were arriving unannounced. And that was my original  
7 intent until I realized that it was somewhat rude to the school  
8 or UCLA's baseball park. It dawned on me Saturday morning,  
9 frankly, that that just wasn't really fair to arrive at the  
10 gate with a number of people, and say, hi, I'm a federal judge,  
11 can I come in?

12 But by the same token, I don't know what that looks like  
13 in November when it's dark or January versus the summertime  
14 when it's light. So, counsel, you are not ordered, but the  
15 Court will not be offended if you wear tennis shoes, Levi's --  
16 I don't even care if you come to Court that day in that  
17 condition for one day, okay -- and we're going to take a little  
18 walk that day. And so, I want you there about 5 o'clock, okay?  
19 Not 5:30.

20 Go ahead, counsel.

21 MR. ROSENBAUM: Thank you, Your Honor.

22 BY MR. ROSENBAUM:

23 Q The portion you just described, that curved portion, that  
24 portion isn't lighted; isn't that correct?

25 A Not to my knowledge.

1 Q And you know what the phrase "ADA compliant" means, don't  
2 you?

3 A Yes.

4 Q And, to your knowledge, no one has ever inquired as to  
5 whether that path is ADA compliant; isn't that right?

6 A Correct.

7 Q And nobody from the VA has ever inquired as to whether  
8 that path is ADA compliant?

9 A The path around the Japanese garden, correct.

10 THE COURT: I'm joking with you, I know this, but  
11 nobody is going to do any work on the path until I get there.  
12 Okay?

13 THE WITNESS: I promise.

14 THE COURT: Thank you very much.

15 THE WITNESS: If you believe I keep my promises.

16 MR. ROSENBERG: Objection. It's potentially  
17 misleading, maybe I don't know the geography well enough, but  
18 if it's the path around the Japanese garden, and that's on VA  
19 property and not the Brentwood leasehold, then it's misleading  
20 to the extent that VA would be inquiring as to Brentwood as to  
21 why VA's own path may not be potentially --

22 THE COURT: I don't care. I just want to walk it  
23 and see --

24 MR. ROSENBERG: But I think the question implied  
25 that VA or -- it didn't imply, it asked whether VA inquired of



1 Brentwood whether the path was ADA compliant, but the path is  
2 not on the Brentwood leasehold.

3 THE COURT: I'm confused. I don't remember the  
4 question. Just ask the question. It's too long ago.

5 I want to walk that path with all of you folks, see  
6 what it looks like at 5 o'clock in the morning or a little  
7 after, and try to gauge what that would look like January  
8 versus the summertime. And so, we will have a little walk.

9 Okay. So I want it open 5 o'clock.

10 Okay. Thank you.

11 BY MR. ROSENBAUM:

12 Q To your knowledge, no one from the VA has inquired as to  
13 whether the path from the VA to Brentwood is entirely ADA  
14 compliant; isn't that right?

15 MR. ROSENBERG: Same objection. Where in the path?  
16 Which is on VA property not the Brentwood lease property.

17 THE COURT: You can answer that question.  
18 Overruled.

19 You can answer.

20 THE WITNESS: No. Not to my knowledge.

21 BY MR. ROSENBAUM:

22 Q The curve path, which the Court will test out, that path,  
23 you're familiar with it, are you not?

24 A Yes, and that path is currently frequented by the  
25 construction vehicles building the new housing so it is not in

1 it's normal state.

2 Q Well, isn't it true that that path for some time has had  
3 wear and tear on it?

4 THE COURT: What you mean by "wear and tear?"

5 BY MR. ROSENBAUM:

6 Q For some time it hasn't been completely smooth; isn't that  
7 correct?

8 MR. ROSENBERG: Objection. Not only wear and tear  
9 but some time.

10 THE COURT: Sustained.

11 BY MR. ROSENBAUM:

12 Q Has that path always been smooth?

13 A I -- honestly, it's -- it's an access road. I don't quite  
14 know.

15 THE COURT: I will see it next Wednesday even in the  
16 construction phase we will see it.

17 MR. ROSENBAUM: May I add one question on this, Your  
18 Honor?

19 THE COURT: You can ask as many as you like.

20 BY MR. ROSENBAUM:

21 Q Isn't it true that the path is decomposed granite or  
22 compact dirt?

23 A Yes.

24 Q Let me --

25 THE COURT: Will it hold the wheelchair?

1 THE WITNESS: Yes. We actually have at least two  
2 active participants in our program who would ride and depart by  
3 wheelchair.

4 BY MR. ROSENBAUM:

5 Q Let's turn to Exhibit 901 please.

6 Do you have what has been marked as 901 before  
7 you?

8 A Yes, I do.

9 Q And you have seen this document before?

10 A Yes, I have.

11 Q Okay. This is the VA shuttled schedule operated by  
12 Brentwood School?

13 A This is not the current schedule.

14 Q I was going to ask you to -- it needs a slight correction,  
15 does it not?

16 A Yes, and I believe we forwarded the updated one. I'm  
17 happy to do so again.

18 Q Correction isn't with the times, it's with the buildings;  
19 is that right?

20 A Actually, there is a more recent correction because we  
21 have added a stop based on veteran requests at New Directions  
22 and A Bridge Home, and we have adjusted the times.

23 THE COURT: But the point is if I want to go up at  
24 5 o'clock or even 6 o'clock, according to this semi correct  
25 shuttle schedule, I can't catch that shuttle until 9 o'clock,

1 can I?

2 THE WITNESS: That's correct.

3 THE COURT: I have to walk or wheel?

4 THE WITNESS: Or take a vehicle. There are many who  
5 have cars.

6 BY MR. ROSENBAUM:

7 Q And just following up on Judge Carter's question, the last  
8 shuttle from Brentwood School's runs at 2:15 in the afternoon;  
9 is that correct?

10 A Yes.

11 Q This is only Monday through Friday?

12 A Correct.

13 Q There are no shuttles on Saturday or Sunday?

14 A Correct. As we discussed in the deposition, this shuttle  
15 was created at VA's request as a circulating shuttle to  
16 transport veterans mostly to appointments at the hospital and  
17 they don't tend to be appointment at hospital or therapeutic  
18 areas on the weekends.

19 Q Perfect. Now, the --

20 MR. ROSENBAUM: I move that into evidence Your  
21 Honor.

22 THE COURT: Received.

23 (Exhibit 901 received into evidence.)

24 BY MR. ROSENBAUM:

25 Q Do you know what an audit report is?

1 A Yes, sir.

2 Q And what is an audit report?

3 A It's a report that reviews the compliance or noncompliance  
4 of all of the commitments made within a specific obligation.

5 So in this instance it's the report that reviewed our  
6 fulfillment or not with the agreements we made within our  
7 lease.

8 Q And the way it works, help me here, the way it works is  
9 that Brentwood prepares it and then it goes to the VA for its  
10 approval?

11 A Brentwood submits its audit information to the third-party  
12 auditor, it does not go directly from VA to -- excuse me, from  
13 Brentwood School to VA.

14 Q Thank you. It goes to an independent auditor, then it  
15 goes to the VA; is that right?

16 A That is my understanding.

17 Q All right. And the last audit report that you are aware  
18 of that has been finalized was for the year 2018-2019?

19 THE COURT: Just a moment. A little slower, you  
20 said for the year 2018?

21 MR. ROSENBAUM: To 2019.

22 BY MR. ROSENBAUM:

23 Q Isn't that correct?

24 A Lease year three, correct.

25 Q So the one -- the audit report for the year 2019-2020 so

1 far as you know that is still in the hands of the VA; is that  
2 right?

3 A Yes. My understanding is there's a draft audit that, you  
4 know, that has been completed.

5 Q Okay. And you don't have any idea when that review is  
6 going to be complete by the VA; isn't that right?

7 A I don't know when the audit will be finalized.

8 Q There have not been audits prepared for any years  
9 subsequent to 2019-2020; isn't that right?

10 A Yes. COVID derailed everything and my understanding is  
11 the desire is to complete year four and then move forward.

12 Q Okay. But my question is, so far as you know for whatever  
13 set of reasons there haven't been any audits prepared for any  
14 years subsequent to the year 2019-2020?

15 A Correct.

16 Q All right. Now the lease rate that accompanies -- that is  
17 utilized for the Brentwood VA lease, that includes a certain  
18 amount of money to be paid on an annual basis?

19 A Correct.

20 Q And the lease rate is \$850,000 a year?

21 A It's more than that now. There was escalation built in  
22 every two years.

23 Q Okay. Do you know how much that escalation is?

24 A Effective November 1, which will be the next escalation  
25 point, it will be \$915,000.

1 Q Okay.

2 A Plus a little more.

3 Q That rate was negotiated between Brentwood and the VA?

4 A Yes.

5 Q And so far as you know there were no veterans who were  
6 involved in those negotiations?

7 A Not when I was present.

8 Q Do you know what that hypothetical condition is?

9 A Yes, I do.

10 Q What is your understanding?

11 A A hypothetical condition is a condition that is applied as  
12 if it were true, though it is not.

13 In this instance it would be with regard to real  
14 estate appraisal.

15 Q Okay. And, in fact, the real estate appraisals that were  
16 utilized for purposes of this lease, they all included a  
17 hypothetical condition; isn't that right?

18 A Yes. Some depending on the appraiser, there was some  
19 similarity and some difference.

20 Q But in general all appraisals talked about hypothetical  
21 conditions; isn't that right? Am I right?

22 A Yes.

23 Q And the hypothetical condition here was, in fact, the  
24 22 acres cannot be rented because it's federal land; isn't that  
25 right?

1 A My understanding was that the hypothetical condition was  
2 that while it cannot be sold because it is federal land, it was  
3 -- for purposes of analysis was going to be treated as if it  
4 could be.

5 Q Could be sold or rented?

6 A My understanding was sold and then from that appraisal --  
7 both appraisals and then the third appraisal came up with a  
8 ground lease value.

9 Q Okay. But in terms of the -- whether it could be sold,  
10 the reality is that's federal land and it can't be sold; isn't  
11 that right?

12 A That is right.

13 Q All right. And you are not aware of any consideration  
14 given in terms of fixing what this number is, the 850,000 to  
15 915,000, you're not aware of any consideration given to what  
16 the replacement value would be if Brentwood would have to  
17 replace its facilities; isn't that true?

18 A I'm not sure I understand.

19 Q Okay. I will try it again, then we can go to the  
20 deposition if you would like.

21 You're not aware in reaching that number, of any  
22 consideration given to what the actual replacement value would  
23 be if Brentwood would have to replace its athletic facilities;  
24 isn't that correct?

25 A Correct. The appraisal looks at what it would cost if one



1 were to purchase something similar.

2 Q Okay. And in terms of the replacement value to Brentwood,  
3 there was no attempt to monetize that so far as you know; isn't  
4 that right?

5 A No, the negotiation was based on the appraisal.

6 Q Right.

7 And the consideration in terms of the possible use of  
8 that land, no consideration was given to the possibility that  
9 some portion of that land could be used for permanent  
10 supportive housing; isn't that true?

11 A Are you asking me about the appraisals in roughly 2018?

12 Q We'll say 2018, sure.

13 A Correct.

14 Q And/or for temporary housing?

15 A Not to my recollection in 2018.

16 Q Okay. And to your knowledge, the VA has never said let's  
17 consider the extent to which this land could be used for  
18 permanent supportive housing; isn't that true?

19 A In the 2023 appraisal, my recollection is there's a  
20 condition for consideration of some kind of housing.

21 Q But not permanent supportive housing?

22 A I don't recall.

23 Q Okay. In 2023, in the appraisal in 2023 -- strike that.

24 You don't know whether or not there was consideration  
25 for the possible use of permanent supportive housing or

1 temporary supportive housing in any of the appraisals; isn't  
2 that right?

3 A It's -- I don't think that's a yes or no answer.

4 Q Well, do you know of any --

5 A The answer is yes, for all of the appraisals in 2018. The  
6 answer is I'm not sure for 2023 because I recall consideration  
7 after condition for some potential kind of housing.

8 Q Okay. And not for the other appraisals, just this one  
9 appraisal that you're thinking about; right?

10 A Done by Colliers for VA.

11 Q Incidentally, veterans to your knowledge were never  
12 surveyed as to whether they thought Brentwood should pay more  
13 cash or less in-kind in terms of the balance between cash and  
14 in-kind. To your knowledge, veterans were never asked that  
15 question; isn't that true?

16 A I don't know.

17 Q Okay.

18 MR. ROSENBAUM: Can we please put Exhibit 903 in  
19 front of the witness.

20 BY MR. ROSENBAUM:

21 Q Is that before you now?

22 A Yes, it is.

23 Q Thank you. And do you recognize this document?

24 A Yes, I do.

25 Q And this is the document about value of annual in-kind

1 consideration to be provided by Brentwood School to the VA?

2 A This is an exhibit addended to the larger lease that  
3 synopsisizes the categories or buckets that we delineated in the  
4 lease and offers an estimated value for each so that we have  
5 something to measure our progress by.

6 Q Thank you.

7 MR. ROSENBAUM: Move that into evidence Your Honor.

8 THE COURT: Received.

9 (Exhibit 903 received into evidence.)

10 BY MR. ROSENBAUM:

11 Q Looking to the first paragraph, the paragraph that is  
12 here, that tells us the story about the 918,000.

13 Isn't it true that what happened here was that the  
14 918,000 went up from 850,000 because the in-kind went down.  
15 Wasn't that the adjustment that was made?

16 A I'm sorry, I don't understand your question.

17 Q Sure. Let me read it to you: "The aggregate value of the  
18 in-kind contributions allocated in any one year will be  
19 approximately 918,000 and is based on the total appraised value  
20 of \$1.76 million less 850,000 to be paid in rent."

21 Do you see that?

22 A I do.

23 Q I have read that accurately, have I not?

24 A Yes, you did.

25 Q All right. Now, regarding the actual in-kind that

1 Brentwood is claiming here, that in-kind consideration, that  
2 includes the cost of maintenance of the athletic facilities  
3 that we have been talking about; isn't that right?

4 A Two of the buckets of the in-kind relate to maintenance  
5 and repair of the 22 acres, yes.

6 Q Got it. That includes the lacrosse field and the football  
7 field and the other facilities that we discussed; isn't that  
8 right?

9 A Yes.

10 Q All right. And the way the calculation is made is that  
11 51 percent of the total cost of that maintenance is taken,  
12 claimed by Brentwood as in-kind consideration. Do I have that  
13 right?

14 A It's a little more complicated than that.

15 Q Okay. Why don't you help us out here.

16 A For example, in Paragraph 3, when you look at Paragraph 3,  
17 and I believe there is an explanation of some kind of this as a  
18 footnote in the lease.

19 However, if you look at Paragraph 3, the way that  
20 particular number, \$170,586 was achieved, was actually by  
21 looking at the operating costs, energy costs, and all of their  
22 operating costs of the 30 acres. So 8 owned by Brentwood  
23 School, 22 -- and then because 22 acres is roughly 24 percent  
24 -- excuse me. 22 acres is roughly 76 percent and 8 acres is  
25 24 percent, but we understood and agreed that it costs much

1 more to maintain those 8 acres of classrooms and other  
2 buildings.

3 In negotiating this what we did was rather than taking  
4 the full cost and multiplying it by the 76 percent, and then  
5 taking 51 percent, which would have been the value if you were  
6 just looking at it proportionate by percentage of the 30 full  
7 acres, we flipped it and decide 24 percent of the whole, which  
8 is the lesser value, and then took 51 percent of that number.

9 And that's how we got to \$170,587.

10 If I didn't confuse you even more, then sometimes you  
11 have confused me.

12 Q No, I'm grateful for that actually.

13 The 51 percent, that does not reflect the actual use of  
14 the property, the athletic facilities by Brentwood students as  
15 opposed to veterans, would you agree with me on that?

16 A It reflects --

17 Q I'm happy to have you answer, if you could just answer  
18 that, then can you explain anyway you want.

19 A Okay. I don't understand your question, because one is --  
20 are you asking me if it reflects how many people use it versus  
21 how often they use it?

22 Q I'm asking you both. I'm asking you, does it reflect the  
23 actual use of Brentwood students, the number of students who  
24 use it and the length of time they actually use it versus the  
25 number of veterans who use it and the actual time the veterans

1 use it. That number doesn't reflect that ratio, does it?

2 A I don't think that is a yes or no answer.

3 Q Okay. Why don't you answer that as you'd like.

4 A If you were asking the question about does that number  
5 reflect how many students and how many veterans use it, the  
6 answer is no.

7 If your question is does that number reflect how much  
8 access, what percentage of availability there is, the answer is  
9 yes.

10 Q Okay. It not only does not reflect the number of students  
11 versus the number of veterans who use it, it also doesn't  
12 reflect the number of hours that students use it versus the  
13 number of hours that veterans use it; isn't that right?

14 A Again, I don't think that is a yes or no, but by your  
15 interpretation, by your definition, yes.

16 Q And the access -- that includes like 5 to 6:00 a.m.?

17 A The access includes 5 to 11:30, 6 to 9, 7 to 7 on Sundays.

18 Q Right, so the answer is "yes"?

19 MR. ROSENBERG: Objection, vague.

20 A I'm so sorry.

21 BY MR. ROSENBAUM:

22 Q You answered it fine. On the 22 acres.

23 THE COURT: I didn't get an answer.

24 BY MR. ROSENBAUM:

25 Q Let me repeat it, I apologize.

1                   That doesn't reflect what happens in terms of --  
2 strike that.

3                   That reflects -- that total cost includes 5 to 6:00 a.m.  
4 in the morning; isn't that right?

5 A           Correct. That cost includes -- that cost takes into  
6 consideration all of the available hours.

7 Q           Okay. On the 22 acres, am I not correct that there are no  
8 postings that say, "This land was deeded to veterans"; isn't  
9 that correct?

10 A           That explicit language is not there.

11 Q           Okay.

12                   MR. ROSENBAUM: I have no further questions, Your  
13 Honor. I move this into evidence also.

14                   THE COURT: Now, we have Bridgeland?

15                   MR. GUADIANA: No questions.

16                   THE COURT: Counsel on behalf of redirect?

17                   MR. ROSENBERG: Yes.

18 BY MR. ROSENBERG:

19 Q           Good afternoon, Ms. Yoshimaru. Thank you very much for  
20 being here today. This may not be from your perspective your  
21 favorite way to spend a Wednesday afternoon, but I know  
22 everyone in this courtroom appreciates it.

23                   Let's start where opposing counsel left off.

24                   And I believe he asked you a question and apologies for  
25 stepping away from my podium for just one moment, but he asked

1 you whether there were -- about the -- he asked you about a  
2 specific language for a sign, "No postings that say that this  
3 land was deeded to veterans; is that correct?" And you said,  
4 "That explicit language is not there."

5 A Correct.

6 Q I'm wondering what signage is there that relates to  
7 veterans on the 22 acres?

8 A It is on the threshold, the entrance, it says, "Veterans  
9 Center -- The Veterans Center For Recreation and Education at  
10 Brentwood School. On the welcome center there is signage of a  
11 similar nature, along the 22-acre pathway there are light pole  
12 banners of a similar nature identify being it as Veterans  
13 Center For Recreation and Education, or VCRE, which is the  
14 acronym.

15 Q And I know you just said what the acronym is for VCRE, but  
16 can you describe what that facility is?

17 A VCRE is the whole universe of services and support that we  
18 offer to veterans through our partnership with VA. So our  
19 lease is a lease of land on those 22 acres. The VCRE is what  
20 we have named those 22 acres, however, in the context of the  
21 lease we provide educational opportunities to both veterans and  
22 their children, services in the forms of basic needs, meals,  
23 shuttles, toiletries, clothing, on a regular basis,  
24 transportation on a daily basis, that is the looping shuttle,  
25 yes, in order to help transport veterans who live on campus to



1 different care units on campus.

2 Student service opportunities, infrastructure support  
3 for many different types of veteran outreach fares and  
4 services. So while VCRE is labeled as such on the 22-acre  
5 physical footprint, the commitment that we have made and the  
6 partnership that we offer touches across all different  
7 categories with regard to services, opportunities, and access.

8 Q Now, you mentioned the shuttle just now, and I know you  
9 answered some questions about the shuttle a few minutes ago.

10 Can you describe the route of the shuttle that Brentwood  
11 operates?

12 A Yes. As I shared a few minutes ago, we have recently  
13 added a stop that was at the request of VA, but it was through  
14 veteran input at listening sessions they've been doing, it's a  
15 stop at New Directions and A Bridge Home, so currently that is  
16 a first stop of the shuttle. It then circulates around campus,  
17 stops at New Directions and A Bridge Home, Building 402,  
18 Building 500, Building 257, which is the HUD-VASH intake,  
19 Building 402 is the welcome center often frequented in  
20 particular by unhoused veterans who are seeking immediate  
21 assistance.

22 By the way, we also deliver daily meals to that  
23 center and the HUD-VASH center so that veterans who are seeking  
24 services, but have not eaten, can do so.

25 And then we have stops at Building 207, 208 which serves

1 208, 205, 209, it's that quad area, Heroes Golf Verse and VCRE.

2 Q And you mentioned just now listening sessions, do you know  
3 approximately when those listening sessions were?

4 A The ones I'm referring to were relatively recent. That  
5 request was made of us at a quarterly -- we meet -- VA and  
6 Brentwood School meet on a quarterly basis to talk about the  
7 progress towards the commitments made in our lease and that  
8 request was made of us at a recent quarterly meeting and it had  
9 been a topic of feedback that had come up I'm assuming within  
10 let's call it number of weeks prior to that.

11 Q And I'm just curious, did you attend any of those  
12 listening sessions?

13 A Those I did not, but I have attended previous ones.

14 Q Do you -- how often do you attend listening sessions?

15 A They have different names. So, sometimes we as VCRE offer  
16 focus groups. In those instances we do that probably three  
17 times a year at the domiciliary, at Building 209, at New  
18 Directions, at CTRS and we do that not only to ask how we are  
19 doing but to get input from veterans about what they would like  
20 and need.

21 Additionally, VA offers a series of town halls in  
22 particular as it relates to master plan. I often attend those  
23 town halls either in person or virtually.

24 Q Can you provide some examples of feedback you have heard  
25 at listening sessions over the last year or two as it relates

1 to the services the Brentwood School provides?

2 A I have -- I have often heard that the services we provide  
3 make a tangible difference in the lives of veterans.

4 I personally have received feedback about how important  
5 we are in their ongoing, sort of, life journey. And an example  
6 would be, in fact, two of our part-time employees are veterans  
7 who were formerly housed and went through CTRS or domiciliary,  
8 depending on the person to whom -- about whom I'm speaking, are  
9 now housed and employed and, in part, our partnership with VA  
10 and the work that we do to support veterans, made a meaningful  
11 impact in that way.

12 You know, I also forgot to mention that Dr. Susie Lyons  
13 who does -- she's our director of veteran education, and  
14 teaches many of the courses we offer to veterans. She includes  
15 comment cards, survey cards after every course seeking feedback  
16 from veterans.

17 So -- and I'm happy to share that entire body of  
18 feedback, but the bottom line is it is clear that the human  
19 connection and the relationship and the support that the  
20 school, its students, and our work offers is of direct and  
21 tangible benefit.

22 Q It's one thing to listen, it's another thing to respond.

23 Can you provide an example of how Brentwood has, if it  
24 has, I don't know the answer to this, but if it has changed its  
25 services or modified its services in response to feedback that

1 it's received from listening sessions?

2 A Sure.

3 I can provide several.

4 Very early on, in fact, this would be before even the  
5 lease that we currently have was finalized and we were running  
6 a pilot program, I frequently received -- had conversations  
7 with and received feedback from vets advocacy and their  
8 representatives who, as settlement partners, cared deeply about  
9 the progress and what we were doing.

10 And, in particular, our initial pilot program was  
11 available only to veterans residing on the VA campus and it was  
12 actually a feedback of veterans engaged with vets advocacy,  
13 that in particular access to these series should be a available  
14 to all veterans, and it was from that that these hours we have  
15 been speaking of came to be, so that there could be access in  
16 particular to athletic facilities, recreation, education,  
17 fitness early in the morning, midday, and late at night and on  
18 weekends to fit the entire range of schedules that might be in  
19 a veteran's life.

20 I can give you more examples, that was very longwinded.

21 Q No, but it was helpful, so thank you for that.

22 Maybe you can provide one more example.

23 A Uh-huh. We -- during the COVID pandemic, one of the  
24 things that VA requested of us was daily meal service. And it  
25 was something that we provided. We provided more than 250

1 meals a day on a daily basis.

2 A request that came pretty quickly was dietary sort of  
3 accommodations and we pivoted pretty immediately and went from  
4 a standard meal service to a meal service that included  
5 pork-free options, kosher options, vegan options, gluten-free  
6 options, and vegetarian options, and I would say we made that  
7 switch within less than 72 hours.

8 Q Earlier, you testified about how Brentwood monitors entry  
9 and exit of VCRE. In case you didn't have an opportunity to  
10 fully answer that question, how does that monitoring take  
11 place?

12 A As I explained, the entrance to the property has a  
13 structure known as the VCRE Welcome Center. During all VCRE,  
14 or veteran-access hours, that welcome center is staffed with  
15 personnel who greet the veteran. We swipe ID. Veterans sign  
16 in. We verify that they have signed up online to become a VCRE  
17 member.

18 If they have not, there is somebody there to help them  
19 do so. They wear a VCRE wristband while they are on property.  
20 What that does is allow a very visible, it's like, I'm a  
21 member, I belong here, leave me alone sort of a thing so that  
22 they are not asked by public safety who they are and what they  
23 are doing.

24 After they have used whichever aspects of the facility  
25 they would like to use, up to including the fitness tent that

1 has a staffed trainer on-site during all access hours to do  
2 individual workout sessions designed for any age, any ability,  
3 and any fitness level, they sign out when they are done, and  
4 they leave.

5 Q And you were asked many questions by counsel about what I  
6 will describe as hypothetical information that Brentwood does  
7 not track. Can you tell us what information Brentwood does  
8 track as to the services that it provides to veterans?

9 A Yes. Firstly, we track how many members there are,  
10 members to VCRE, veterans who have signed up online, who have  
11 registered online. You only do that one time. It is an  
12 agreement we have with VA so that we verify veteran status to  
13 make sure that when the property is being used during veteran  
14 access, they are, in fact, veterans using the facilities.

15 It also allows us to advertise opportunities, courses,  
16 classes, social opportunities. It gives us a nice, sort of,  
17 veteran community to stay in touch with.

18 So, with regard, specifically, to use of the facility,  
19 we know who comes, when they come, how long they are here. We  
20 just don't know which things within those 22 acres they have  
21 chosen to do on that day.

22 When it comes to educational offerings for adults, for  
23 veterans, we register or have sign ups in the courses. Dr.  
24 Lyons, or whoever the instructor is, takes role. At the end of  
25 every course, we have a veteran feedback session. So we have

1 very good documentation with regard to the range of educational  
2 opportunities.

3 As it relates to student scholarship, children and  
4 grandchildren of veterans, as I said, I can tell you everything  
5 about summer scholarship to Summer at Brentwood. They are one  
6 hundred percent free scholarships. And they are the only form  
7 of scholarship the school gives.

8 In addition, in our lease, we make a commitment to a  
9 certain amount of financial assistance for children of veterans  
10 enrolled in the regular Brentwood School. To date, there are  
11 five students enrolled who are children of veterans receiving  
12 financial assistance. That assistance totals in excess of  
13 \$400,000. Our commitment in our lease is \$100,000.

14 It's reflective of everything we do. Our goal is always  
15 to outperform the commitments we make. We don't ever want to  
16 do our bare minimum.

17 Q You referred to education. And that is an interesting  
18 point because education is in the title of VCRE.

19 Can you give some examples of the educational courses  
20 that Brentwood provides.

21 A Sure. Currently, we offer weekly yoga classes at the  
22 domiciliary and at the Oasis, which is the female veterans  
23 program out of New Directions that is in Building 257. We  
24 offer cooking classes in both the domiciliary and Building 209  
25 on a monthly basis. Screenwriting on a weekly basis. Creative

1 writing on a quarterly basis.

2 We have done one full guard card certification course  
3 that was quite popular. We have a second one coming in the  
4 fall. In addition to that, we have partnered with Peter  
5 Stigers in voc rehab for years doing an employment readiness  
6 seminar that is -- it's quite in depth.

7 We provide the veterans engaged in that seminar with  
8 suits. They have headshots. They learn how to use LinkedIn,  
9 how to optimize their resumes. We do mock interviews. We do  
10 everything we can to prepare them for entry into the job search  
11 force.

12 And, in fact, Susie -- Dr. Lyons has been willing to  
13 serve as a reference on occasion for many of these veterans.

14 We offer art classes in CTRS, New Directions, the  
15 domiciliary and one other program that I'm forgetting. Oh,  
16 Home for Heroes, CLC, the Community Living Center. We offer  
17 financial literacy courses. Those happen more on a monthly  
18 basis, but they are designed to do two different things. They  
19 are designed to meet veterans where they are. So for some  
20 veterans, honestly, it's understanding how to do online  
21 banking, you know, if you're an older vet.

22 So, you know, one of the things we pride ourselves on is  
23 being very adaptable and flexible. The veteran population is a  
24 broad population. It's everything from young kids, who very  
25 recently served, to even, you know, a few remaining World War



1 II veterans.

2 So, when we're talking about education in particular,  
3 it's important to understand, you know, who the student is and  
4 what those needs are. And that is one of those things that, in  
5 particular, as an independent school, we're good at is  
6 customizing, adapting to whatever the need is.

7 Q Let's talk about services a little bit more.

8 Are you familiar with the reports that the Department of  
9 Veterans Affairs provides to Congress on an annual basis?

10 A I am. I am preparing that data right now.

11 Q Okay. And can we pull up Exhibit Number 1293. And I  
12 believe it is probably in a stack of papers. I feel bad that  
13 Judge Carter is -- is it -- it's been moved into evidence.

14 THE COURT: She doesn't have it, Counsel.

15 THE WITNESS: Thank you, sir. But I have it on the  
16 screen. Is that adequate?

17 BY MR. ROSENBERG:

18 Q Let's take a moment. Do you recognize this document?

19 THE COURT: Do you have another copy of 1293 that  
20 she could have, by any chance?

21 THE WITNESS: Yes, I do.

22 BY MR. ROSENBERG:

23 Q Now, I will represent to you that most of this document  
24 does not involve the Brentwood School, but part of it does.

25 So if you could turn to page 16 of the exhibit number.

1 And if you look in the lower right-hand corner, you will see  
2 the number 1293-016.

3 A Page 16?

4 Q Let's start at page 16.

5 A Okay.

6 Q I will ask you if you want to just take a moment to look  
7 over the next several pages, which is the portion of this  
8 document as it relates to the Brentwood School.

9 A Yes.

10 Q And looking at, in particular, there are -- there is an  
11 Exhibit E-2 that begins on page 19, using the pagination of the  
12 exhibit in the lower right-hand corner. It goes to page 21.  
13 And those are -- take a look at that particular chart, and if  
14 you could tell me what that identifies, that would be great.

15 A I don't know that I'm looking at the right thing, but I'm  
16 looking at 19 on the document.

17 THE COURT: It gets confusing.

18 THE WITNESS: Thank you.

19 THE COURT: It's this one right here. Look down.

20 THE WITNESS: Down here to there. Okay. Thank you.

21 Got it. Thank you.

22 Okay. I'm sorry. What was your question again?

23 BY MR. ROSENBERG:

24 Q If you could just take a look at that chart. It's Exhibit  
25 E-2. And I realize we're on Exhibit 1219. It's an exhibit

1 within an exhibit.

2 A Yeah.

3 Q So it's not a meta exhibit.

4 A I see it.

5 Q It's whatever the opposite of that is.

6 Okay. Do you recognize the information contained in  
7 that chart?

8 A Yes, I do.

9 Q And does -- you have provided a couple of examples of some  
10 of the services, the in-kind services that the Brentwood School  
11 provides. Based on this chart, are there any other significant  
12 services that the Brentwood School provides that you believe  
13 are a significant benefit to veterans?

14 A Transportation. The -- what you see on this particular  
15 chart under the Exhibit E-2, you will see the accessibility  
16 ramp. We extended an accessibility ramp. I think I mentioned  
17 previously, we have at least two veterans who actively use the  
18 facility who come on their electric wheelchairs. So we  
19 improved that specifically for them.

20 The Japanese garden is something we have not spoken of.  
21 But preCOVID, the school had fully restored the garden. And  
22 then when COVID, it was closed and has fallen into disrepair.  
23 But we have continued to maintain the koi pond and to make sure  
24 that the restrooms -- that there is restroom access there.

25 You can see, there are numerous events that we support.

1 That is all part of the importance of social interaction and  
2 engagement.

3 I have mentioned meal service, but we also do food  
4 pantries. There are quarterly -- sometimes more frequent food  
5 pantries in which we distribute more than -- I would say,  
6 between 150 and 250 bags of supplies.

7 You can see, I think, when you look at this list -- I  
8 think I have already touched on the scholarships. I have not  
9 talked about the computer labs that we maintain, particularly  
10 in Building 257, and then the domiciliary that are exclusively  
11 for veteran use, but we do that as well.

12 Something we have done more recently is incorporating  
13 pet services into the range of ways in which we try to be of  
14 service to veterans. And that's because we have seen, as the  
15 campus grows and has more residents, there are more and more  
16 pets, yet very often, there aren't adequate resources for those  
17 pets. I think that is still an area of growth, though we are  
18 supporting an upcoming event on August 23rd with quite a lot of  
19 access to pet services.

20 Fundamentally, anything VA or the veterans who provide  
21 feedback and those who live on campus, anything they ask us to  
22 do, we find a way of supporting, if it's within our capacity.

23 Q Thank you. I don't have any further questions on that  
24 exhibit, so you could put that aside.

25 You were asked many questions about various fees that

1 the Brentwood School charges. Do you recall those?

2 A Yes.

3 Q And Brentwood School charges tuition as well, right?

4 A Yes.

5 Q I hate to ask it so bluntly, but does the Brentwood School  
6 also have expenses?

7 A Many. One of the things that I did not touch on in my  
8 previous commentary was the tuition. If we just talk about the  
9 tuition number and the number of students, that alone is not  
10 straight math because we, in fact, have our own robust  
11 financial support budget. So there is in excess of \$20 million  
12 annually that is not received in tuition revenue because it is  
13 awarded in financial support, before you even talk about  
14 operating expenses for salaries and classrooms and utilities  
15 and planned maintenance and all of the things that go into  
16 running a school.

17 Q You also discussed the hours that athletic facilities on  
18 the 22 acres are available to veterans?

19 And you would acknowledge that during the hours that the  
20 athletic facilities are not available to veterans, are they  
21 being used by Brentwood School students?

22 A The way that -- yes, they are. And there are also hours  
23 in which they are being used by nobody. Right?

24 Q Why -- I'm a little surprised, honestly, by that. So can  
25 you explain that?

1 A The school has a conditional use permit. The conditional  
2 use permit at the school caps school activities on weekdays and  
3 weekends at different times.

4 So, beyond a certain moment in time in the evening,  
5 there is no activity allowed.

6 Q And why would that be, if you know?

7 A It was part of the neighborhood requirement in the  
8 conditional use permit.

9 Q I got a little bit confused -- and it's probably me. But  
10 when there was a discussion of the 51 percent and the in-kind  
11 contribution, I just got lost.

12 Can you explain to me how that contribution works? And  
13 I believe you mentioned a footnote in the Brentwood School  
14 lease. Would seeing that footnote help in your explanation in  
15 any way?

16 A I can, or I can -- do you want me to use the board?

17 Q If it would be helpful, that would be fantastic.

18 A Is that helpful? Okay.

19 THE COURT: We just have to hear you, so we're going  
20 to give you a microphone. Okay?

21 THE WITNESS: Okay.

22 THE COURT: We have to hear you, so we're going to  
23 give you a microphone.

24 MR. ROSENBERG: It's like the Donahue show.

25 THE WITNESS: I just want to be clear. You are

1 asking me specifically just about that, the paragraph 3, right,  
2 in the valuation of the -- when I was explaining that  
3 formula -- when I was explaining that formula, I was referring  
4 to the valuation of the annual operation, maintenance, and  
5 upkeep.

6 BY MR. ROSENBERG:

7 Q Yes.

8 A So that's the same question you are asking me. Right?

9 Q I'm just trying to understand it.

10 A Gotcha. Okay. I just wanted to make sure.

11 MR. ROSENBERG: May I approach, Your Honor?

12 THE WITNESS: I'm not an artist.

13 So you have the 22 acres that are leased, and you have  
14 the 8 acres that are Brentwood School -- you should never give  
15 a teacher a lot of colors.

16 This is 30 acres, correct?

17 This is -- I'm, like, really rough now, okay? This is  
18 76 percent; this is 24 percent. Right?

19 THE COURT: Okay.

20 THE WITNESS: Okay. So when it came to that bucket  
21 for maintenance and upkeep, from a school accounting position,  
22 all of those costs, right, what it costs to maintain and upkeep  
23 these 30 acres are one number. They are one accounting -- or  
24 they were at the time when we determined the lease, they were  
25 one account being processed.

1           So -- and this is where the math is not going to be at  
2 all right.

3           What we realized was this is classroom space; it is  
4 buildings; it is bathrooms; it is electricity. This costs a  
5 lot more to maintain than this does, which is grass and open  
6 space.

7           So, it did not make sense to say that bucket number  
8 should be -- like, let's say this is \$10,000. And I'm still  
9 going to do the math wrong. But it didn't make sense to say,  
10 okay, 70 percent -- 76 percent of \$10,000 is -- \$760; is that  
11 right?

12           MR. ROSENBERG: Yes.

13           THE WITNESS: No, it's not.

14           MR. ROSENBERG: Is it?

15           THE WITNESS: No.

16           MR. ROSENBERG: I'm a lawyer. I have already said I  
17 should never have been an accountant.

18           THE WITNESS: It's \$7,600 -- seventy six, more or  
19 less. Whatever. I don't even know. You are going to go with  
20 me on this, right? You get what I'm saying? Okay.

21           This didn't seem fair, right? So, instead, what we  
22 said, was whatever the number is, we're going to take the  
23 smaller number, the 24 percent number. So instead of -- now  
24 it's really bad math. But instead of 7,600, we're going to say  
25 it's the 2,400. It's the smaller number, right?



1 MR. ROSENBERG: Uh-huh.

2 THE WITNESS: For the maintenance and operation  
3 budget. And then that's getting multiplied by 51 percent,  
4 because 51 percent was the very common conversation around the  
5 primary or the principal value, right, being on the VA side  
6 versus on the Brentwood School side.

7 So that number, that 170K that you see in Category 3 is  
8 51 percent of the smaller percentage of the total cost of  
9 annual maintenance and upkeep. Got it? Is that okay?

10 MR. ROSENBERG: I think I do.

11 THE WITNESS: Do you?

12 THE COURT: Well, you'll never know.

13 MR. ROSENBERG: We will find out at some point.

14 THE WITNESS: I swear, I know it's confusing but --

15 THE COURT: Very gracious of you. Eventually,  
16 Counsel, when you are both done, I think I have a question that  
17 I would like to ask, but not now.

18 MR. ROSENBERG: Okay. I have maybe just one or two  
19 questions.

20 THE COURT: However. And then -- by the way, this  
21 is cross-examination, for the record. I'm so used to you  
22 taking witnesses on direct that I said re- -- whatever.

23 MR. ROSENBERG: I wasn't sure myself, and so some of  
24 my questions might --

25 THE COURT: You didn't call her as your own witness.

1 MR. ROSENBERG: No.

2 THE COURT: She's not necessarily an adverse witness  
3 so --

4 MR. ROSENBERG: No.

5 CROSS-EXAMINATION

6 BY MR. ROSENBERG:

7 Q You know, just so that we have -- I don't know what we  
8 should mark that as, where we are in terms of numbering. And  
9 Mr. -- Matt, where are we?

10 So maybe just -- we will put up -- since you are already  
11 the artist/teacher and you are close, would you mind just  
12 putting the number 1623 in the lower right-hand corner of that?

13 And, in the meantime, there is -- actually, there are a  
14 couple more questions, but -- so that we can tie this point up.

15 I'm actually going to ask you to look at the lease,  
16 which we have conveniently already moved into evidence. That  
17 is Exhibit 1322.

18 I don't know if you have that handy. I hate to ask  
19 Judge Carter to assist you with that, but I'm sure he will.

20 Thank you very much.

21 A Thank you. I got it.

22 Q And Exhibit 1322 -- and, specifically, you referenced a  
23 footnote in the Brentwood lease. And I believe that footnote  
24 appears on page 7, using the pagination of the exhibit.

25 A Yes.

1 Q Okay. Why don't you take a moment to look at those  
2 footnotes. And then let me know when you are ready.

3 A So this footnote, the one on page 7, refers to  
4 paragraph 4, to the deferred maintenance bucket -- how we got  
5 to that calculation.

6 Q Well, this is proof that this is a learning experience for  
7 me.

8 THE COURT: It should come out to \$348,000.

9 THE WITNESS: Correct. That relates to paragraph 4,  
10 which was the deferred -- the repair and replacement costs,  
11 deferred maintenance.

12 THE COURT: This would be number 4 also in  
13 Exhibit 903.

14 BY MR. ROSENBERG:

15 Q Can you identify the -- was there a footnote that ties to  
16 that issue, I guess, is my question?

17 A The footnote that ties to 1623 that we just discussed is  
18 on page 6 of the lease. It's Footnote Number 1.

19 It says: In order to determine the in-kind costs  
20 associated with operating and maintaining the facilities for  
21 daily operations, Brentwood School totaled the landscaping  
22 costs --

23 (Reporter clarification.)

24 THE COURT: We can look at it.

25 THE WITNESS: Okay. Thank you.

1 MR. ROSENBERG: And I think, really, the only thing  
2 that I wanted to do -- and I think we had a miscommunication on  
3 the pagination. But if the Court wants at look back at what  
4 you drew out and attach it to a provision of the lease, it  
5 would be that Footnote 1?

6 THE WITNESS: Uh-huh.

7 I see. The problem is I was looking at the lease  
8 page number.

9 THE COURT: And they will tie that together in the  
10 final, so don't worry about it.

11 THE WITNESS: Okay.

12 MR. ROSENBERG: But our math won't been as good. I  
13 have one last question.

14 BY MR. ROSENBERG:

15 Q You referred, I think, to the partnership that the  
16 Brentwood School has with VA?

17 A Uh-huh.

18 Q And the partnership is important to the Brentwood School?

19 A Uh-huh.

20 Q I hate to ask this, but what would happen to that  
21 partnership if Brentwood School's lease was terminated or  
22 voided?

23 A I would think it would be damaged.

24 Q How?

25 A The history that precedes me is a very longstanding

1 history of partnership, collaboration, shared support of  
2 veterans, shared support of veterans on that West LA VA campus.

3 It was the lawsuit in 2011, followed by the set aside,  
4 followed by the new negotiation, in my opinion -- because I was  
5 part of that negotiation -- that, for the first time, fully  
6 formalized all of the ways in which public-private partnership  
7 can strengthen services and offerings for veterans in a way  
8 that is sustainable, that is productive, and that is  
9 guaranteed.

10 Absent a formal relationship, the partnership dissolves.

11 MR. ROSENBERG: Just one moment.

12 THE COURT: Could you find that page for me in this  
13 where it talks about 51 percent?

14 THE WITNESS: Yes, sir.

15 MR. ROSENBERG: Thank you very much for your time.  
16 I know that Judge Carter has some questions for you.

17 THE COURT: Did you check with your team?  
18 Satisfied?

19 MR. ROSENBERG: I think we're thankful.

20 THE COURT: Counsel, do you have cross?

21 MR. ROSENBAUM: No questions, Your Honor.

22 THE COURT: First of all, just a question for a  
23 moment. Counsel, you can put up either document, but I think I  
24 would prefer, if it's okay, to put up 903 for just a moment  
25 because it's easier to read.

1           And you can refer to either 1322, if you would like to,  
2 or 903. Okay? 903 is just easier to read. And there we have  
3 what I'm going to call paragraph 3 and paragraph 4, which will  
4 match up with 1322. I think it's page 6. Okay?

5           THE WITNESS: Okay.

6           THE COURT: And you are going to have eventually  
7 a -- and 1322, you will explain that math once again as  
8 51 percent.

9           Now, this is in-kind contribution, correct?

10          THE WITNESS: Uh-huh.

11          THE COURT: And you have got about 1 point -- turn  
12 the page. You have got about 1.1 million in in-kind  
13 contribution, give or take about \$890,000 in what I'm going to  
14 call cash.

15          THE WITNESS: Uh-huh.

16          THE COURT: Okay? Roughly?

17          THE WITNESS: Uh-huh.

18          THE COURT: Okay. If I took 170,000, 348,000, look  
19 over -- and if I was not asking you a question, I might be  
20 making a mistake. The annual costs for routine upkeep of the  
21 22-acre complex -- so I'm thinking right now, subject to your  
22 correction, that my cost in paragraph 3 is for all 22 acres  
23 where I refer to the \$170,537, correct?

24          THE WITNESS: It is for the 22 acres. It is not the  
25 full cost.

1 THE COURT: I'm going to get there. Bear with me.

2 THE WITNESS: Okay.

3 THE COURT: For 22 acres?

4 THE WITNESS: Yes.

5 THE COURT: Go down to paragraph 4, it says 348,000  
6 for repair and replacement. But then the bottom line, it says  
7 22 acres.

8 THE WITNESS: Yes.

9 THE COURT: Are there some other maintenance costs  
10 or landscaping, irrigation costs in the in-kind contribution  
11 list on 903?

12 If they are, I think they are pretty minimal. But take  
13 a look at it for just a moment. You can flip the page. I  
14 don't care about the \$6,000 amount or --

15 THE WITNESS: Okay.

16 THE COURT: I want you to -- don't forget about it,  
17 but I'm not really talking to you about the 8 acres that the  
18 physical school is located on. I'm just going to talk about  
19 the 22 acres.

20 THE WITNESS: Okay.

21 THE COURT: Are there other operational or  
22 maintenance costs above the 170,000 and the 348,000 for these  
23 22 acres? Or are these my maintenance costs, in paragraph 3  
24 and paragraph 4, a little over 500,000, about 50 percent, give  
25 or take, of my total in-kind costs?

1 THE WITNESS: I'm not sure if this is what you are  
2 referring to.

3 THE COURT: Let me -- sometimes it's not clear. So  
4 let me apologize.

5 Turn back to the first page.

6 THE WITNESS: Uh-huh.

7 THE COURT: Look over to the right-hand column.

8 THE WITNESS: Uh-huh.

9 THE COURT: And where you see paragraph 3, you will  
10 see 22 acres.

11 THE WITNESS: Correct.

12 THE COURT: And go down to paragraph 4.

13 THE WITNESS: Uh-huh.

14 THE COURT: Go down to the bottom line. You will  
15 see 22 acres.

16 THE WITNESS: Correct.

17 THE COURT: Are these your costs for all of the  
18 categories you see: Landscaping, maintenance, custodial,  
19 irrigation, utilities, for athletic fields, track, tennis  
20 courts, and repair/replacement costs for facility refurbishment  
21 and those structures? Are those costs for all of the 22 acres?

22 THE WITNESS: These are the costs --

23 THE COURT: Okay. Yes or no?

24 THE WITNESS: I don't know -- again, I don't know  
25 that it's yes or no because --



1 THE COURT: Just a moment. Show me other costs then  
2 attached to the 22 acres for these categories?

3 THE WITNESS: Okay. In paragraph 9.

4 THE COURT: Okay. How much?

5 THE WITNESS: Category D.

6 THE COURT: How much?

7 THE WITNESS: The number says 223,462.

8 THE COURT: Okay. Just a moment.

9 THE WITNESS: Okay.

10 THE COURT: Is that for all 22 acres?

11 THE WITNESS: Some of it is in that -- I just will  
12 show you. Security, right, is public safety, life guards, so  
13 yes, yes.

14 THE COURT: Okay.

15 THE WITNESS: Management, coordination,  
16 communication, promotion, that is a yes and.

17 THE COURT: I'm going to make this as simple as I  
18 can.

19 THE WITNESS: Making it harder than it needs to be?

20 THE COURT: Yeah.

21 THE WITNESS: Okay.

22 THE COURT: Did you have input concerning these  
23 in-kind costs -- are these prepared by you to give to the  
24 auditor?

25 THE WITNESS: What you see there is from -- is the

1 rubric from the lease that endeavored to demonstrate --

2 THE COURT: No. No. These amounts had to be put in  
3 by somebody, 170,000 --

4 THE WITNESS: Correct. Those amounts --

5 THE COURT: Who did that?

6 THE WITNESS: That was in -- that was the joint  
7 negotiation between Brentwood School and the VA.

8 THE COURT: Okay. I'm going to make this as simple  
9 as possible. It's my fault.

10 Are the costs, all of these categories, applicable to  
11 the 22 acres?

12 THE WITNESS: Some of them are applicable to more  
13 than the 22 acres.

14 THE COURT: That would be on the next page. In  
15 other words, where you have security, you are having security  
16 for the 8 acres where your school premises are and the  
17 22 acres, the whole facility.

18 THE WITNESS: No, I think I'm saying something yet  
19 again different. Can I explain what I'm saying?

20 THE COURT: No, I'm going to do this again.

21 I'm a veteran allegedly and I use the facility from  
22 5:00 a.m. to 7 o'clock, hypothetically. Or I use it from  
23 6 o'clock to 8 o'clock. Or I use it from 3 o'clock to  
24 8 o'clock. Whatever those restricted hours are.

25 Is Brentwood submitting in-kind contributions for

1 maintenance and operation costs for this 22 acres for the  
2 entire period of time and your operational costs and your  
3 maintenance costs in this document?

4 THE WITNESS: No. We're submitting what is in that  
5 document are costs related to 51 percent of the time which ties  
6 to the veteran access hours.

7 THE COURT: Here's what I'm worried about. Here's  
8 what I don't know what to write about yet.

9 If you are taking these operational costs and  
10 maintenance costs for 22 acres for 24 hours a day, but if  
11 veteran could only use it for 5 hours a day, then that has to  
12 be proportioned out in some way. Because what's really  
13 happening is not you, but the school, is taking their  
14 maintenance costs, their operation costs for this entire period  
15 of time, but the veteran is somewhat restricted, so this cost  
16 should be prorated in some way.

17 THE WITNESS: So what you have --

18 THE COURT: Is this prorated or not?

19 THE WITNESS: Yes, it is.

20 THE COURT: Then how much above these are my  
21 maintenance costs and operational costs? Are you double this?  
22 Are you triple there?

23 THE WITNESS: So that 170 is 51 percent of  
24 24 percent of the whole cost.

25 THE COURT: Okay. I think I understand.

1 THE WITNESS: Can I --

2 THE COURT: Those are my questions.

3 Counsel, any questions?

4 MR. ROSENBAUM: No, Your Honor.

5 MR. ROSENBERG: Nothing else from the Government  
6 Your Honor.

7 THE WITNESS: May I just make one clarifying --

8 THE COURT: No, no, that's okay, let them ask the  
9 question. Well, what's --

10 THE WITNESS: It's just something you said to me, I  
11 just want to clarify why I'm so iffy on this. Earlier, when I  
12 explained that VCRE transcends what takes place on the  
13 22 acres, that's why that question for me is difficult, because  
14 in the categories of this lease, much of what is categorized  
15 and the in-kind services that are claimed don't take place on  
16 the 22 acres, they are the other things we do.

17 THE COURT: I don't know what to do with you yet.  
18 I'm worried, I don't know yet, I've got to look back through  
19 the record, but I'm worried that -- not you, but the school is  
20 writing off a majority or a huge portion of the maintenance and  
21 operational costs but the veterans have restricted or less  
22 hours and therefore these costs are inflated. That is my  
23 concern. I will go back through the record.

24 The second thing is if we come out at 5 o'clock, you  
25 want to be there, is that going to inconvenience you, children

1 et cetera, or anything?

2 THE WITNESS: No.

3 THE COURT: We're not going to take testimony out  
4 there, so I'm not going to have a lot of people running up to  
5 us. They're going to set the stage and I'm not sure if we'll  
6 be five or whatever, but I'm just trying to get an idea. And I  
7 know it's not the same in January as it is and I know there's  
8 construction equipment, but I haven't seen that path. I don't  
9 know how far you have to walk, other than the map, so just  
10 humbly thank you for being so gracious.

11 THE WITNESS: I thank you for changing the date so I  
12 could be there.

13 THE COURT: Counsel, any other questions?

14 MR. ROSENBERG: Nothing for the Government, Your  
15 Honor.

16 THE COURT: Do you want her left on call?

17 MR. ROSENBAUM: No, Your Honor.

18 THE COURT: Oh, one more question, I'm sorry, I'm  
19 trying not to bring you back.

20 I may be presented if we get to the second stage  
21 called an injunctive stage, with two different views. One,  
22 espoused by a gentleman who testified earlier Mr. Kuhn, and he  
23 is a social director, and I had the impression that he has  
24 somewhat envisioned a residential soldiers' home of what I call  
25 less volatile veterans. He was concerned about safety, not

1 only the numbers, how quick they would be put into the  
2 facility, and I was getting the impression that if we really  
3 had the psychotic and the violent he didn't want to mix that  
4 with what I'm going I'm going to call a less volatile veteran.

5 But there may be another view, and that is that you  
6 don't want to leave the volatile veteran on the street, you  
7 know for society to deal with on a street corner, and that may  
8 be the very kind of veteran who the VA needs to treat on campus  
9 and either segregate out or do something with.

10 If that was the model and we didn't want to leave those  
11 volatile veterans who need treatment as much, or probably more,  
12 on the street, and this became the center with the expertise to  
13 help these folks, that would increase the volatility of the  
14 veteran you may be dealing with now if they are coming up to  
15 your facility especially with kids.

16 How would we sort that out if the mission statement of  
17 the VA was to help every veteran, and especially the most  
18 volatile so they weren't left on the street corner for citizens  
19 to contend with, how would the Court go about in the future  
20 modelling that in some way?

21 THE WITNESS: So, I would share that from my  
22 experience the --

23 THE COURT: From your facility standpoint, not mine,  
24 I will make that decision, but how would that affect your kids  
25 up there?

1 THE WITNESS: Well, from -- in my experience in the  
2 West LA Leasing Act, the primary population to be served is, in  
3 fact, the most vulnerable population of veterans. So when we  
4 entered into this partnership we understood that, we supported  
5 that, and we committed to doing whatever we could to serve that  
6 population.

7 THE COURT: I'm not sure if we get that, I'm not  
8 sure how that gets sorted out in the future if we do.

9 THE WITNESS: And when I shared earlier that early  
10 on those were the only veterans who were allowed to use the  
11 22 acres in our pilot and it was, in fact, the sort of  
12 advocates for the more general veteran population, who  
13 encouraged, requested, and really urged us to open access to  
14 the whole universe of veterans, so we're -- yeah.

15 THE COURT: I don't have anything further, thank you  
16 very much.

17 Counsel, do you have any further from the  
18 witness?

19 MR. ROSENBERG: Nothing from the Government, Your  
20 Honor.

21 THE COURT: Counsel?

22 MR. ROSENBAUM: No, Your Honor.

23 THE COURT: May we excuse her? We will see you  
24 Wednesday of next week.

25 Counsel, would you like to take a recess?

1 Call your next witness then.

2 MR. ROSENBAUM: If Your Honor is willing we can  
3 certainly call Dr. Braverman back.

4 THE COURT: Okay, Dr. Braverman.

5 Terri, are you okay? Would you like a break?

6 Counsel, we're going to take a break for Terri right  
7 now.

8 (Afternoon break.)

9 THE COURT: We're back on the record. All counsel  
10 are present, the parties are present, Dr. Braverman has  
11 returned to the witness stand.

12 Counsel, help me, because he was called on direct, et  
13 cetera. Where are we?

14 MR. ROSENBERG: I think this is probably now a cross  
15 by Mr. Rosenbaum.

16 THE COURT: Counsel.

17 CROSS-EXAMINATION

18 BY MR. ROSENBAUM:

19 Q How are you, Dr. Braverman?

20 A I'm doing well, how are you, Mr. Rosenbaum?

21 Q I'm okay. Thank you for your patience and for all you do.

22 MR. ROSENBAUM: Could I have placed before the  
23 witness what has been marked as Exhibit 220?

24 THE COURT: Exhibit 220.

25 MR. ROSENBAUM: Your Honor, just for context, as you



1 will recall yesterday we talked about this August 7 report from  
2 OIG about severe occupational staffing shortages.

3 We provided and I think that the Government may have  
4 independently obtained a copy of it, I'll ask Dr. Braverman in  
5 a moment, but we appreciate the time from last night because  
6 it's given everybody an opportunity to look this over.

7 MR. DU: And, Your Honor, for reference there's a  
8 copy for you on your ledge.

9 THE COURT: Oh, thank you. I'm sorry.

10 MR. ROSENBERG: One inquiry, is the Exhibit 220 is  
11 that the entirety of the report?

12 MR. ROSENBAUM: The report in its entirety, Your  
13 Honor, is over 250 pages. If Your Honor or the Government  
14 wants the full report submitted, of course we have no objection  
15 to that.

16 THE COURT: I'm going to leave that to you to  
17 establish a record. Right now, 220.

18 MY MR. ROSENBAUM:

19 Q Dr. Braverman, do you have what has been marked as 220 in  
20 front of you?

21 A Yes, I.

22 Q And do you recognize this as excerpts from the entire  
23 report by the Office of Inspector General?

24 A Yes.

25 Q Have you had an opportunity to review these excerpts prior

1 to right now?

2 A Yes.

3 Q Looking at the first page of excerpt 220 that makes clear  
4 that this report was prepared by the U.S. Department of  
5 Veterans Affairs, the Office of Inspector General?

6 A Yes.

7 Q It's dated August 7 of this year?

8 A Yes.

9 Q And its title is "Veterans Health Administration" and then  
10 it says, "OIG," all caps, "determination of Veterans Health  
11 Administration's severe occupational staffing shortages fiscal  
12 year 2024." Correct?

13 A Yes.

14 Q Okay. Thank you. And then turning to the third page of  
15 what has been marked as Exhibit 220, that is the executive  
16 summary for the entire report?

17 A Yes.

18 Q And looking at the first sentence of the executive  
19 summary, it states, "The Veterans Access, Choice and  
20 Accountability Act (VACAA) of 2014, and VA Choice and Quality  
21 Employment Act (VCQEA) of 2017 requires that the VA Office of  
22 Inspector General (OIG) to determine annually a minimum of five  
23 clinical and five nonclinical Veterans Health Administration  
24 (VHA) occupations with the largest staffing shortage within  
25 each VHA medical center (facility)."

1 Did I read that correctly?

2 A Yes.

3 Q Thank you. And the West LA VA Medical Center that is  
4 included within all of the VHA medical centers; is that right?

5 A Yes.

6 Q So each medical center needs to report those shortages,  
7 those staffing vacancies, that exist in five clinical and five  
8 nonclinical VHA occupations.

9 Do I have that right?

10 A Yeah, actually a minimum of.

11 Q Yeah, exactly. And the West LA VA did that; is that  
12 correct?

13 A Yes. It listed more than five for each.

14 Q And if there are five or more vacancies, the Veterans  
15 Administration characterizes that as a severe occupational  
16 staffing shortage; is that right?

17 A No. No. I'm not sure where the five or more vacancies is  
18 coming from.

19 Each of the facilities -- I mean that might be in here  
20 somewhere, but that is not my understanding because there could  
21 be 5 vacancies out of 1,000 and that wouldn't be a severe  
22 shortage.

23 We were -- the survey generally instructs the facilities  
24 to identify what they believe to be staffing shortages and have  
25 to identify at least the top five in each of the two

1 categories.

2 Q Okay.

3 A So it's not based on a defined minimum number of  
4 vacancies.

5 Q And looking at the first bullet point on the executive  
6 summary, that reflects that the VHA facilities nationwide  
7 reported a total of 2,959 severe occupational shortages,  
8 correct?

9 A Yes.

10 Q And noted that that was a 5 percent decrease from the  
11 prior year -- fiscal year, correct?

12 A Yes.

13 Q And then turning, please, to the next page of what has  
14 been marked Exhibit 220.

15 Do you have that in front of you?

16 A Yes.

17 Q And the first bullet point tells us that psychology was  
18 the most frequently reported severe clinical occupational  
19 staffing shortage and also the most frequently reported Hybrid  
20 Title 38 severe shortage occupation; is that right?

21 A Yes.

22 Q And do you know what a Hybrid Title 38 severe shortage  
23 occupation is?

24 A Yes.

25 Q You could please explain to the Court.

1 A Sure. So the personnel in the VA are basically divided  
2 into three categories based on the U.S. Code.

3 One starts with Title 38, those are doctors, nurses,  
4 podiatrists and I think optometrists, so clinicians that are  
5 high-level clinicians.

6 Title 5 is your administrative positions.

7 Then Hybrid Title 38 was a new category that takes  
8 people that aren't Title 38, but are clinical positions and  
9 they are called Hybrid Title 38. There are -- they still fall  
10 into the general schedule GS category for their grading, but  
11 they have other Title 38, like authorities for the way they may  
12 get hired and paid et cetera.

13 So Hybrid 38's essentially are nondoctor, RN, podiatry  
14 and optometry clinical providers.

15 Q All right. Thank you.

16 Returning to page 1 of what's been marked as  
17 Exhibit 220, could you get to that please? Actually, the page  
18 after the one that is on the screen. It says Introduction at  
19 the beginning.

20 You know what, the page 1 is on the pagination of the  
21 report itself.

22 There we go. Do you have that in front of you.

23 A Yes.

24 Q So directing your attention to now what is the pagination  
25 of the report page 1, where it says, Introduction, that tells

1 us how the VA regards the purpose of this review; is that  
2 right?

3 A Yes.

4 Q And it says, "The purpose of this review is for the VA  
5 Office of Inspector General (OIG) to report a minimum of five  
6 clinical and five nonclinical Veterans Health Administration  
7 (VHA) occupations that have the largest staffing shortage at  
8 each VHA medical center (facility)," as required by the  
9 statutes that we talked about earlier; is that right?

10 A Yes.

11 Q And this is in sync with the description you gave me a few  
12 moments ago in terms of how this is the determined?

13 A Yes.

14 Q And then asking you, please, to turn to the next page in  
15 the exhibit, which if you look at the bottom of that it's  
16 paginated in the report as page 223. Do you have that in front  
17 of you?

18 A Yes.

19 Q This is listed as "Table C-1.131. Facility specific  
20 severe occupational staffing shortages, VA Greater Los Angeles  
21 Healthcare System in California," and then in parenthesis,  
22 "VISN 22, Station 691." Do I have that right?

23 A Yes.

24 Q And the way this is set up is the order here is the order  
25 in terms of the most to the least vacancies of the categories

1 that are mentioned; is that right?

2 A I wouldn't necessarily say vacancies, I would say  
3 shortages.

4 Q And the first 15 listed on -- I'm going to refer to it as  
5 page 23 -- 223. Are we okay on that?

6 A Yes.

7 Q So the first 13 of the shortages, to use your phrase, are  
8 all clinical on page 223?

9 A So a correction to what we just said. So they bunched --  
10 so the order kind of most severe to less severe, if you will,  
11 are batched in the most severe to less severe clinical, and the  
12 most severe to less severe nonclinical.

13 So it wouldn't be correct to assume that these clinical  
14 positions are more severely shortaged than the nonclinical,  
15 they're just batched that way.

16 Q Thank you for that clarification.

17 This is for the Los Angeles Healthcare System, isn't  
18 that what you told me?

19 A Yes, this is their list. So this is based on what the GLA  
20 executive leadership team and HR team submits to -- this is  
21 what they submitted to OIG for this survey.

22 Q All right. Let's start with the clinical here.

23 The one that is at the top of this in terms of  
24 the most shortages, that's psychology; is that right?

25 A Yes.

1 Q And the second most is social work; is that right?

2 A Yes.

3 Q And then the third most is practical nurse; is that right?

4 A Yes.

5 Q And the sixth most is psychiatry; is that right?

6 A Yes.

7 Q And then looking at the nonclinical, the first is police;  
8 is that right?

9 A Yes.

10 Q And so that tells us that that is the most in terms of the  
11 shortages that were reported by the Greater Los Angeles  
12 Healthcare System for the VA; isn't that right?

13 A Yes, that's consistent with what I testified to earlier  
14 today.

15 Q Okay.

16 MR. ROSENBAUM: Move this into evidence Your Honor.

17 THE COURT: Received.

18 MR. ROSENBERG: We have one request on this, that  
19 the ultimate copy that the Court receives into evidence should  
20 be the entirety of the report.

21 THE COURT: Just introduce it and I'm going to  
22 receive it.

23 (Exhibit 220 received into evidence.)

24 BY MR. ROSENBAUM:

25 Q You talked to counsel for the Government about the



1 Brentwood lease. Do you remember that?

2 A Yes.

3 Q And you acknowledged, I take it, that the Brentwood lease  
4 was adjudged by the OIG twice now as not being in compliance  
5 with the West LA Leasing Act of 2016; is that right?

6 A Yes.

7 Q That's the job of the OIG to dig into facts that are  
8 reported or it otherwise investigates and determines  
9 compliance, that's statutory requirement, isn't it?

10 A It sounds about right. I don't know the exact wording.

11 Q And your understanding of the statute is that so long as a  
12 lease is out -- is found by the OIG to be out of compliance  
13 with the Leasing Act, then that lease cannot be renewed?

14 A Correct.

15 MR. ROSENBAUM: And the -- let me now ask to have  
16 placed in front of you -- is it Exhibit 81? The one that  
17 counsel interlineated.

18 BY MR. ROSENBAUM:

19 Q Do you have now what has been marked as Exhibit 81 in  
20 front of you?

21 A Yes.

22 Q And counsel talked to you about an amendment that changed  
23 some of the language in this statute; isn't that right?

24 A Yes.

25 Q As it previously existed?

1 A Yes.

2 Q There was no change, to your knowledge, that with respect  
3 to the OIG requirement that if OIG finds a lease to be  
4 incompatible, to be illegal under the law, that that lease  
5 cannot be renewed, nothing changed with respect to that; isn't  
6 this true?

7 A Yes.

8 Q And it's true also that with respect to the criteria that  
9 initially existed in the 2016 law, no amendment changed what  
10 that criteria is, what it was in 2016?

11 A As far as the criteria for review against the West LA  
12 Leasing Act?

13 Q That's part one.

14 A Yes.

15 Q So you agree with me that --

16 A That didn't change.

17 Q And in terms of what constitutes what would be in  
18 compliance with the 2016 law, that didn't change either,  
19 correct?

20 A Correct. The principal change was that it didn't encumber  
21 other leases or entering into new leases just because one lease  
22 was held to be out of compliance.

23 Q Okay.

24 Now, if you take a look at page 4 -- strike that.

25 Your understanding of what changes may have been made,

1 it didn't change whether or not the Brentwood lease was  
2 determined by the OIG to be illegal under the Leasing Act of  
3 2016; isn't that correct?

4 A I think the term that they used was not in compliance.

5 Q Yeah, that didn't change at all?

6 A No, the language in the two OIG reports are pretty much  
7 identical.

8 Q Yes, they are, thank you.

9 Or with respect to SafetyPark or Breitburn, that part --  
10 nothing --

11 A Those did not change.

12 Q Thank you.

13 Now, taking a look at what is -- one more predicate  
14 question here.

15 So in terms of what Congress wanted to have happen to  
16 those leases when the OIG found a lease to be not in  
17 compliance, nothing in the statute with respect to the  
18 amendments, nothing changed in terms of what Congress was  
19 getting at.

20 Do you agree with me on that?

21 A No.

22 Q No?

23 A No. I mean, Congress changed the law, so they had some,  
24 you know, concern about the way it was being interpreted and  
25 they wanted to adjust that.

1 Q But in terms of the core criteria you just told me that  
2 remained the same?

3 A The criteria for whether something was in compliance, yes.  
4 That did not change.

5 Q Okay. Now looking at page 4 of what has been marked as  
6 Exhibit 81, would you mind turning to that, please?

7 MR. ROSENBAUM: I would appreciate having the copy  
8 with Mr. Rosenberg's interlineation.

9 I believe the clerk has that.

10 I think that is 81A. So I made a mistake, and I'd like  
11 you to take a look please at 81A, that was my error.

12 THE COURT: And the Court didn't have a copy of  
13 this, this is one of the few exhibits that I think that the  
14 actual marking on it, I don't believe I had that presented to  
15 me. I saw it, it was up on the screen. I don't recall having  
16 a copy of this.

17 MR. ROSENBERG: It was.

18 THE COURT: This is the one you prepared with  
19 writing on the side, I received that.

20 MR. ROSENBERG: Yes.

21 THE COURT: But I worked off the screen. So, in  
22 other words, what I was working off of was 81, 1622, and then  
23 you used another document you prepared that morning, put it up  
24 on the screen.

25 MR. ROSENBERG: It appears that one of my colleagues

1 has made -- somehow made a copy, so can I provide that to you?

2 THE COURT: I appreciate that.

3 MR. ROSENBERG: With the understanding these are my  
4 scribbles from my hotel this morning.

5 THE COURT: I will rely on those probably as  
6 personal comment, but at least it's in evidence. If the two of  
7 you want a clean copy on that, that's fine.

8 MR. ROSENBAUM: And that's 81A, are we right here?

9 THE COURT: 81A is fine.

10 BY MR. ROSENBAUM:

11 Q Do you have what has now been marked as 81 in front of  
12 you? 81A.

13 A Yes.

14 MR. ROSENBAUM: Your Honor, do you have 81A also?

15 THE COURT: I do.

16 BY MR. ROSENBAUM:

17 Q All right. And do you see the handwriting on the side,  
18 Mr. Rosenberg -- that is Mr. Rosenberg's handwriting.

19 A Yes.

20 Q And that comported with your understanding of how the more  
21 recent amendment couples with the prior 2016 law; isn't that  
22 right?

23 A Yes.

24 Q All right. So if I read it together, what it says is --  
25 and I'm looking here at section H one -- I was looking for a

1 number before that. But H1, H is compliance with certain laws,  
2 right?

3 A Yes.

4 Q And then 1 is laws relating to leases and land use,  
5 correct?

6 A Yes.

7 Q And then it says, "If the Inspector General of the  
8 Department of Veterans Affairs determines, as part of an audit,  
9 report, or evaluation conducted by the Inspector General, that  
10 the department is not in compliance with all federal laws  
11 relating to leases and land use at the campus, or that  
12 significant mismanagement has occurred with respect to leases  
13 or land use at the campus.

14 The secretary may not enter into any new lease or land  
15 sharing agreement at the campus that is not in compliance with  
16 such law, or renew any such lease or land sharing agreement  
17 that is not in compliance with such laws until the secretary  
18 certifies to the committees on veteran affairs of the Senate  
19 and House of Representatives, the committees on appropriations  
20 of the Senate and House of Representatives, and each member of  
21 the Senate and the House of Representatives who represents the  
22 areas in which the campus is located that all recommendations  
23 included in the audit report or evaluation have been  
24 implemented."

25 Do you agree that's what that says now when we put it

1 together?

2 A Yes.

3 Q So, help me understand your understanding here.

4 Part 1 is that if a lease is determined by OIG to be out  
5 of compliance with the law, that lease itself cannot be  
6 renewed, correct?

7 A Yes.

8 Q Okay. And that means that if that is the occurrence, the  
9 lease is canceled; is that correct?

10 A No. No. It means that you can't --

11 Q It cannot be renewed?

12 A You can't make a new lease, but the existing terms of the  
13 lease may continue.

14 Q Okay. And then when it says "any new lease or land  
15 sharing agreement at the campus that is not compliance with  
16 such law," added to what was previously there, is it not your  
17 understanding that whereas the lease may not be renewed, a new  
18 lease could be made with the same entity so long as it is in  
19 compliance with the law. Isn't that correct?

20 Isn't that your understanding, sir?

21 A So, for that to happen, the interpretation that we have  
22 is, for that to happen, a lease has to be canceled before a new  
23 lease could come into play.

24 Q Yes. That's actually why I used the word "cancel."

25 A So -- right. So, that speaks to the renegotiation, if you

1 will, versus amendment or versus, you know, option years.

2 Those amendment option years are okay, but renegotiation is not  
3 okay.

4 Q Right. And focusing on what you just told me, a new lease  
5 can -- the old lease cannot be renewed, but you can -- the  
6 statute, with this amendment, says that you could have a new  
7 lease with the entity as -- so long as it is in compliance with  
8 the law. Isn't that the plain meaning of this?

9 A Yes.

10 Q And --

11 A That is one way to interpret it, yes.

12 Q And if that were not the case, then the defects in the  
13 lease, according to the statute, they could never be cured;  
14 isn't that right?

15 A They would have to be cured by canceling and building a  
16 new lease.

17 Q Exactly right.

18 A Yes. If -- you know, as the way to do that, under -- the  
19 challenge that we had when we had discussions with OIG, how to  
20 cure some of their recommended leases, is that they would not  
21 tell us what it would take from their perspective to be  
22 incompliant, therefore, we couldn't present a prospective new  
23 lease in advance of canceling a lease to know that it would be  
24 in compliance with the law. That was the kind of a catch-22.

25 Q The OIG report points out that the effects that OIG



1 discovered and determined to be out of compliance with the law;  
2 isn't that right?

3 A In some cases. There is the one about -- at least with  
4 in-kind contributions that we will disagree with, that's not  
5 going to be fixed -- then what it might take to make something,  
6 in OIG's perspective, tip over into principally benefiting  
7 veterans. That's where, you know, that piece comes into play  
8 where we would want to have an agreement on something like  
9 that.

10 Q Yeah. So, it might take some good lawyers.

11 Let me ask you if you would please turn to page 5 -- you  
12 know what? Strike that.

13 Could I ask you, please, with respect to Exhibit 1293,  
14 I'm going to be looking at page 008 of that.

15 So, could Exhibit 1293 please be put in front of  
16 Dr. Braverman.

17 A I have the paper.

18 Q All right. And let's go, please, to page 008.

19 MR. ROSENBAUM: Your Honor, is that in front of you?

20 THE WITNESS: It's not on -- now it's in the screen.

21 THE COURT: Just one moment.

22 THE WITNESS: It's the congressionally mandated  
23 report.

24 THE COURT: I have that. I have got it.

25 MR. ROSENBAUM: You got it, everybody? Do you have

1 it, Dr. Braverman?

2 THE WITNESS: Yes, I have.

3 BY MR. ROSENBAUM:

4 Q All right. Now, looking at Table 2, you see the entry  
5 "restitution funds"?

6 A Yes.

7 Q And you talked about that with Mr. Rosenberg -- the  
8 restitution, 4,483,000 and change, goes for the purpose of the  
9 restitution funds; is that right?

10 A Yes.

11 Q And do you know what "restitution funds" refers to?

12 A They refer to the payments that were required from a  
13 couple of people who were convicted of crimes associated with  
14 land use agreements at the West LA VA hospital.

15 Q Do you know if Ralph Tillman was one of the persons who  
16 was involved with that?

17 A Yes.

18 Q Okay. And they were -- Mr. Tillman was indicted and  
19 convicted; is that right?

20 A Yes.

21 Q All right. And am I not correct, sir, that what this is  
22 telling us, in conjunction with the information you just  
23 supplied us, is that something short of \$5 million from lease  
24 funds are being used as restitution funds for misappropriation  
25 by VA officials of lease funds?

1 A I'm not sure that I -- no, I don't think that I would make  
2 that assessment.

3 What I would say is -- I guess I'm not quite sure what  
4 you are asking. I'm sorry.

5 Q Who gets the restitution?

6 A So, originally, that money was given to treasury. And in  
7 the West LA Campus Improvement Act, that made a change, such  
8 that the restitution funds that treasury received would be able  
9 to be given back to the VA for use in its lease revenue  
10 account, for want of a better term.

11 Q All right. So in other words, money that the West LA VA  
12 gets from leases is being returned to the West LA -- West LA  
13 VA, correct?

14 A Yes. So this enabled all of these lease revenues to come  
15 to GLA for the purposes as outlined in that leasing act as it  
16 was amended by the Campus Improvement Act to be used to in  
17 those areas under the facility appropriation, if you will.

18 So whatever we could do within the facility  
19 appropriation, we can do with this fund account. It doesn't  
20 have a year limitation on it, and we can make decisions on how  
21 that money would be spent in accordance with the amended West  
22 LA Leasing Act.

23 Q Exactly.

24 You also spoke to Mr. Rosenberg about the UCLA lease.  
25 Do you remember that?

1 A Yes.

2 Q And am I correct, sir, that if there had never been a  
3 lease with UCLA in the first place, then all of the land,  
4 including the infield, that would have been VA land; isn't that  
5 right?

6 A Yes.

7 Q Okay. And UCLA overflow parking, that uses a parking lot  
8 that is under the control of the National Cemetery Association;  
9 isn't that right?

10 A Not any longer. There is no overflow parking for UCLA.

11 Q But the parking that had existed that was overflow, that  
12 was under the National Cemetery Association; isn't that right?

13 A There was a section that could be used, and then there  
14 were other requirements. But once -- so, that was part of the  
15 issue is once the NCA, the National Cemetery Administration  
16 took over, that land -- so the VA -- the GLA gave land to the  
17 National Cemetery Administration for the purposes of building a  
18 columbarium and for making, you know, and making available that  
19 -- so the parking lot there was part of the lease.

20 So, once the NCA took over that parking, then that  
21 parking lot was no longer VHA's as part of the lease. And then  
22 we had to use -- and that's where the overflow parking into  
23 other areas on the campus came into play.

24 Q Okay.

25 You are very proud to be part of a Housing First

1 network, Housing First program of the VA; isn't that right?

2 A Yeah. I'm proud of the work we are doing, yes.

3 Q Housing First by the VA, before -- strike that.

4 Before Housing First, there were, around the country,  
5 and there was evidence based data and studies that showed the  
6 importance of permanent supportive housing, correct?

7 A Yes.

8 Q But part of the genius of Housing First was that it was  
9 Housing First -- not second, not third, not down the road, not  
10 after other sort of requirements. Part of the genius of what  
11 the VA did here was they said Housing First; isn't that right?

12 A There are academics who would debate whether that is the  
13 right thing to do in many circumstances. I'm not going to  
14 quote an article on that. I think that is the VA's position,  
15 and that works when a particular veteran is, you know, has the  
16 skills and means to be able to succeed in housing.

17 That varies from veteran to veteran, and it's why some  
18 people do well in tenant based housing and other people do  
19 better when they are in a community based environment, like the  
20 project housing for veterans.

21 Q And my question is focusing on the fact that whatever some  
22 academics may think, there is no question, is there, that for  
23 the VA, Housing First has improved successful?

24 A I would say that that is true.

25 Q And there is no question, would you say, that Housing

1 First is part of the DNA of the West LA VA center that you were  
2 medical director of, correct? Director of that medical center.  
3 Am I correct, sir?

4 A So, the goal was to try to do that as often as possible  
5 wherever that best opportunity for housing would be, yes.

6 Q And one of the -- one of the things that you talked to  
7 Mr. Rosenberg about was because of the way this has been  
8 embraced by that center -- one of the phrases you used this  
9 morning was "this is a complex hospital setting." And am I  
10 understanding you correct to say, this is part of our DNA and  
11 we recognize that the Housing First model is part of what our  
12 hospital center is all about; is that right?

13 A Well, I think I want to separate the notion of housing  
14 first, and what -- maybe I'm inappropriately inferring that you  
15 are saying Housing First at West LA.

16 And I don't agree that that is a requirement for every  
17 homeless veteran that is in Los Angeles. I have said that  
18 before.

19 But it is a benefit to have that housing there on the  
20 campus for those veterans who need the proximity to get their  
21 care at West LA.

22 Q And that's what you meant, in part, also, when you  
23 referred to the center as an integrated medical center  
24 involving housing; isn't that right?

25 A Yes.

1 Q Okay. Now, when you talked to Mr. Rosenberg about  
2 finances, one of the other genius parts of Housing First is  
3 that it's cost effective; isn't that right?

4 MR. ROSENBERG: Objection. Vague.

5 THE WITNESS: Yeah, I don't know what that means.

6 BY MR. ROSENBAUM:

7 Q Have you heard the phrase "cost effective" before?

8 A I know what cost effective means, but I don't know what it  
9 means in connection with your question.

10 Q Okay. Tell me what your understanding is of the phrase  
11 "cost effective"?

12 A That the benefit that would be accrued by the action  
13 exceeds what the cost was to make it happen. Or that it was  
14 worth the cost, you know, to -- for the benefit that's accrued  
15 by the action. In other words, I am going to pay some money or  
16 use resources and that is going to accrue a benefit that is  
17 worth that money.

18 Q Or it could save resources that would have otherwise been  
19 spent?

20 A Yeah. There may be unspent resources that are part of the  
21 savings, there may be health benefits, there may be a variety  
22 of things. I understand that.

23 Q That's great. And it could also include the fact that the  
24 entity isn't going to spend money on something that it won't  
25 need to have to spend money on if it implements a particular

1 proposal like Housing First; isn't that right?

2 A Right. And there could be second order effects of any of  
3 those actions that cost more money or cause other harm along  
4 the way as well. All --

5 Q Now, are you aware, sir, of studies that talk about how  
6 using a Housing First model can save those communities money  
7 that, for example, might otherwise be spent on emergency  
8 services for unhoused individuals?

9 A I am not.

10 Q Are you aware -- so, maybe you just answered this, sir.  
11 So, when you were talking to Mr. Rosenberg -- well, let me just  
12 ask you one predicate question.

13 Specifically, sir, are you aware of a study by the  
14 National Alliance to End Homelessness that said that a Housing  
15 First model can save communities on the average of \$31,545 per  
16 person over two years on emergency services.

17 Are you aware of that study?

18 A I wouldn't be able to quote it, but I believe that there  
19 is a study that says that.

20 Q Okay.

21 A I trust you.

22 Q Okay. So that over -- if we're talking about 1,000  
23 persons, then you take that number and you multiply it by  
24 1,000; is that correct?

25 A I would have to look closely at their methodology, but



1 that, on the face, seems reasonable.

2 Q Okay. And are you aware that the study said that using  
3 the cost -- using the housing cost protocol, the Housing First  
4 model, that it can save communities up to \$23,000 as opposed to  
5 what it would otherwise spend on a shelter program?

6 A Yes. I'm not going to debate what is in the article.  
7 Again, without assessing the methodology, I can't tell if it  
8 speaks specifically to certain types of communities, urban  
9 versus rural, any of that stuff. But I understand that article  
10 purports that Housing First is cost effective.

11 MR. ROSENBERG: And just an objection just because  
12 the witness hasn't -- I don't believe he has read the article.  
13 It's being described to him, and he's being asked to testify  
14 about it, so there is lack of foundation. And potentially  
15 misleading.

16 THE COURT: It also asks questions, though, what I  
17 call the negative, and that is, if he's read it and, therefore,  
18 attack any expert in terms of what that expert hasn't read.  
19 But, frankly, counsel is trying to get that in front of the  
20 Court as a statement.

21 BY MR. ROSENBAUM:

22 Q When you talked to Mr. Rosenberg about the cost of  
23 addressing homelessness for unhoused veterans, am I correct,  
24 sir, that you did not put into your calculations whatever cost  
25 effective results would follow from the Housing First model?

1 Am I correct, those numbers were not part of your  
2 discussion with Mr. Rosenberg?

3 MR. ROSENBERG: Well, objection because there needs  
4 to be established what the cost model for VA is. It's  
5 misleading because the benefits that potentially might accrue,  
6 may not be benefits that would fall within VA's budgetary  
7 process.

8 THE COURT: Overruled. You can answer that.

9 THE WITNESS: So, I didn't take a \$20- or \$30,000  
10 per person cost savings to the emergency care into account when  
11 I was making my discussion points earlier.

12 MR. ROSENBAUM: Can I just check with my counsel --  
13 my colleagues, please. Can I just have a moment to check with  
14 them?

15 THE COURT: Absolutely.

16 MR. ROSENBAUM: Your Honor, I have no further  
17 questions.

18 THE COURT: Just a minute. Recross, I believe.

19 THE WITNESS: Redirect.

20 THE COURT: Thank you very much. It's redirect.

21 MR. ROSENBERG: I'm not sure what this is called at  
22 this point, but I will keep it short.

23 THE COURT: Let's just say both sides get two  
24 rounds.

25 MR. ROSENBERG: I think I just have two questions.

REDIRECT EXAMINATION

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BY MR. ROSENBERG:

Q Number one, going back to what VA understands it's authority to be regarding leases, in light of the West Los Angeles Leasing Act and the amendment thereto, as reflected by my poor handwriting -- and I have to compliment Mr. Rosenbaum for being able to read my handwriting.

You testified that it's VA's position that if the Office of Inspector General finds a lease to be noncompliant, that precludes VA from renewing that lease; is that correct?

A That's the language in the act, yes.

Q Right. And I just want to be clear, leases oftentimes -- the leases we have been discussing oftentimes have a renewal provision already, to use a legal term, baked into them, incorporated into them.

What is VA's position on those provisions that, you know, might have, for example, a lease for ten years with an option for a party to renew that lease.

A So, the option would be part of the lease. So, that's not renewing the lease in its existence and starting a new lease; that's a continuation of the existing lease.

Q All right. The only other question I had is, you were asked earlier -- you testified earlier about some budgetary issues, and I believe that you might have a slight clarification or additional information to provide, and I just

1 wanted to provide you with that opportunity so that we have the  
2 best information -- again, recognizing it's all verbal -- but  
3 the best information for the Court.

4 A Yes. Thank you, because I feel like I screwed up on that  
5 one.

6 So, when I was talking about the Homeless Program Office  
7 money, the Homeless Program Office is budgeted \$3.2 billion, I  
8 mentioned that. And then I jumped all the way down to what the  
9 VISN was getting. So, the \$3.2 billion is the -- billion  
10 dollars, excuse me -- is divided, essentially, into  
11 \$1.3 billion that goes specifically to the field based  
12 hospitals. That would be the VISNs and then the hospitals.

13 The other \$1.9 billion goes to other things to include  
14 personnel at -- you know, running the programs, to include  
15 money that goes to Grant and Per Diem programs, money that goes  
16 to Supportive Services For Veterans Families.

17 I don't have the information on the amounts of those  
18 grants that come to California or Southern California. I don't  
19 have that information. We can get it, but I don't have access  
20 to that at the moment.

21 Of the \$1.3 billion that goes to the 18 networks, it's  
22 that money, the \$205 million that comes to VISN 22, which is  
23 roughly 15 and a half, 16 percent, 15.6, you know, how you  
24 round it -- 16 percent of that budget goes to VISN 22.

25 125 million of that 1.3 comes to GLA itself, which is

1 9.6 -- nearly 10 percent of all of the money that is going out  
2 into the field comes just to GLA.

3 We looked up the most recent PIT count numbers, and  
4 10 percent of homeless veterans are in the Los Angeles  
5 catchment area for GLA. So, the money that is coming to GLA is  
6 consistent with the percentage of homeless veterans according  
7 to the PIT count.

8 So whether that is enough, what I will say is, as we ask  
9 for more because we have contract needs or we're able to hire  
10 more HUD-VASH social workers and such, then VA has been willing  
11 to alter that calculus a bit and give that to GLA as necessary.

12 But as we saw in the OIG report, you know, social work  
13 continues to be a challenge on the hiring front and is one of  
14 our occupational shortages.

15 Thanks for letting me clarify that.

16 MR. ROSENBERG: Of course. Thank you very much for  
17 your time, Mr. Braverman. And as we previously indicated, we  
18 reserve the right to call Dr. Braverman later in these  
19 proceedings at trial.

20 THE COURT: Any other questions just to be certain?  
21 I think we have --

22 MR. ROSENBAUM: No, Your Honor.

23 THE COURT: Counsel?

24 MR. ROSENBERG: No, Your Honor.

25 THE COURT: We will place you on call. I promise

1 you we won't get you back until after August 25th. I think you  
2 said you had obligations.

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay. That may be in rebut then. Thank  
5 you very much.

6 THE WITNESS: Thank you, Your Honor. It's been a  
7 pleasure.

8 THE COURT: Counsel, then. Your next witness,  
9 please.

10 MS. SAVAGE: Plaintiffs' call Michael Dennis, Your  
11 Honor.

12 THE COURT: Thank you. I know you wanted to try to  
13 complete one of the gentlemen who is from DC.

14 MS. PITZ: He might just need a moment to come down.

15 THE COURT: Why don't you take a break and give the  
16 court reporter a break, back in 10 or 15 minutes.

17 (Afternoon recess.)

18 THE COURT: On the record. All counsel here  
19 present, the parties are present and your next witness is?

20 MS. SAVAGE: Michael Dennis, Your Honor.

21 THE COURT: Thank you. If you'd step forward.

22 (Oath administered.)

23 THE WITNESS: I do.

24 THE COURT: Thank you, sir. If you would please be  
25 seated in the box.

1 MS. SAVAGE: For the court reporter, you have Amanda  
2 Mangaser Savage for plaintiffs.

3 THE COURT: Thank you, sir, you can be seated sir.

4 MICHAEL SEEGER DENNIS,

5 having been duly sworn,

6 testified as follows:

7 THE COURT: Would you state your full name.

8 THE WITNESS: Michael Seeger Dennis.

9 THE COURT: Will you spell your first name?

10 THE WITNESS: Michael Seeger Dennis.

11 (Reporter Clarification.)

12 THE WITNESS: Yes, S-E-E-G-E-R.

13 THE COURT: Your first name is spelled

14 M-I-C-H-A-E-L.

15 THE WITNESS: A-E-L.

16 THE COURT: Your middle name is Dennis?

17 THE WITNESS: Last name is Dennis.

18 THE COURT: Oh, Seeger is that your middle.

19 THE WITNESS: Middle name is Seeger, S-E-E-G-E-R.

20 THE COURT: And your last name is D-E-N-N-I-S?

21 THE WITNESS: That's correct.

22 THE COURT: Thank you. Direct examination.

23 DIRECT EXAMINATION

24 BY MS. SAVAGE:

25 Q Mr. Dennis, you are a senior program adviser at HUD?

1 THE COURT: First of all, would you state your name  
2 for the record.

3 MS. SAVAGE: Yes, Your Honor, Amanda Mangaser Savage  
4 for the plaintiffs.

5 A Yes, I am.

6 BY MS. SAVAGE:

7 Q And your responsibility, in that role, is to advise HUD's  
8 Deputy Assistant Secretary For Public Housing and Voucher  
9 Programs on those programs?

10 A That is correct.

11 Q Including any issues with those programs' operations?

12 A Yes.

13 Q HUD identified you as its Rule 30(b)(6) witness for a  
14 number of topics in this litigation, right?

15 A That is correct.

16 Q And most of those topics involve HUD-VASH?

17 A That is correct.

18 Q Now, in the HUD-VASH partnership HUD takes no  
19 responsibility for providing supportive services to unhoused  
20 veterans; is that right?

21 A That is correct, that is VA's role.

22 Q Or insuring that those services are adequate?

23 A That is correct. Yes.

24 Q And HUD takes no responsibility in that partnership for  
25 referring eligible veterans to public housing agencies?



1 A That is correct. HUD is not involved in referral of  
2 veterans to the HUD-VASH program.

3 (Reporter Clarification.)

4 THE WITNESS: HUD does not have a role in referring  
5 homeless veterans to the HUD-VASH program.

6 BY MS. SAVAGE:

7 Q Or ensuring that the number of referrals is sufficient  
8 given a community's needs?

9 A Yes.

10 Q In Los Angeles or elsewhere?

11 A That is correct.

12 Q So let's talk about the operation that of HUD-VASH in Los  
13 Angeles.

14 HUD has never audited or otherwise evaluated the  
15 services provided by VA to homeless veterans in Los Angeles?

16 A That is correct.

17 Q And you have never visited any tenant-based housing sites  
18 in Los Angeles, have you?

19 A I have not, no.

20 Q And you don't know where they are?

21 A I do not personally know where they are, no.

22 Q Or any project-base sites in Los Angeles?

23 A I personally do not know, no.

24 Q Other than on the West LA Campus, I assume you know that  
25 they're --

1 THE COURT: I'm sorry, counsel, would you restate  
2 that a little slower?

3 MS. SAVAGE: Yes.

4 BY MS. SAVAGE:

5 Q Other than on West LA Campus, I assume that you know that  
6 there are project-based sites on that campus?

7 A Yes, I'm aware of that.

8 Q Okay. Has HUD ever inquired as to the number of HUD-VASH  
9 vouchers that have been utilized successfully by veterans on  
10 the West LA Campus?

11 A Not specifically on the West LA Campus, to the best of my  
12 knowledge, no.

13 Q Near the West LA Campus?

14 A To the best of my knowledge, no.

15 Q Now there are nine public housing agencies that service  
16 the Los Angeles metropolitan area; is that right?

17 A I believe so.

18 Q You have never spoken to anyone from those agencies, have  
19 you?

20 A Over the course of my career I probably have, but not  
21 related to HUD-VASH.

22 Q So, nobody at --

23 (Reporter Clarification.)

24 THE WITNESS: But not related to HUD-VASH.

25 BY MS. SAVAGE:

1 Q So the Housing Authority of the City of Los Angeles, we  
2 call that HACLA, you have never spoken with HACLA about  
3 HUD-VASH?

4 A Not recently. It's possible over the course of my career  
5 I have, but not recently, no.

6 Q Okay. LACDA, which is the Los Angeles County Development  
7 Authority, not recently, you haven't spoken with them about  
8 HUD-VASH; is that right?

9 A That's correct.

10 Q Have you ever been to the West LA Campus?

11 A No, I have not.

12 MS. SAVAGE: Tommy, can we please bring up  
13 Exhibit 35A. We will put that in front of you as well.

14 BY MS. SAVAGE:

15 Q So, Mr. Dennis, do you have Exhibit 35A in front of you?

16 A Yes, I do.

17 Q Have you seen this document before?

18 A Yes, I have.

19 Q What is it?

20 A This is a letter that HUD wrote, a written response, to  
21 the Veteran Affairs Committee staff related to a number of  
22 questions they had asked HUD regarding the HUD-VASH program.

23 Q And when was this sent?

24 A March 1st, 2024.

25 MS. SAVAGE: Your Honor, move Exhibit 35 into

1 evidence.

2 THE COURT: Received.

3 (Exhibit 35A received into evidence.)

4 BY MS. SAVAGE:

5 Q So directing your attention, Mr. Dennis, to page 2, do you  
6 see the paragraph beginning, "We recognize"?

7 A Yes.

8 Q Do you see the statement that, "HUD does not have the  
9 legal authority to exclude VA service-connected disability  
10 payments from annual income"?

11 A Yes, I see it.

12 Q Okay. So now let's direct your attention to the bottom of  
13 page 1 and then tell me -- well do bottom of page 1 start of  
14 page 2.

15 So at the bottom of page 1 the letter states that  
16 it "is intended to answer questions including whether HUD has  
17 the authority to, quote, establish different income definitions  
18 for different purposes, such as for the purposes of  
19 determining" --

20 THE COURT: Just a moment counsel, I'm sorry.

21 Whoever -- I'm going to need that paragraph picked out for just  
22 a moment. So we're going to slow you down because I'm looking  
23 at one page and then flipping too quickly to the next.

24 MS. SAVAGE: Okay, sure.

25 THE COURT: So I'm having trouble locating that. So

1 slower, and we are going to put up that paragraph you are  
2 reading from.

3 MS. SAVAGE: Okay, so the one I was reading. Okay.

4 THE COURT: Blow up that paragraph that we're  
5 referring to.

6 MS. SAVAGE: The one that begins "Does HUD have the  
7 legal" -- well, actually, sorry. Let me make sure. Was it the  
8 one -- I'm not sure what question I was on. Was it where I was  
9 saying --

10 THE COURT: I'm on page 1. You're going to help me  
11 now, we're going to go down to which paragraph, the overview?  
12 The purpose of this document? The analysis?

13 MS. SAVAGE: I'm looking at the bottom of page 1  
14 going to page 2. So I'm sorry for any confusion.

15 THE COURT: Bottom of page 1 is the heading Analysis  
16 of HUD's Legal Authority. Are you reading from page 1?

17 MS. SAVAGE: I'm reading from page 2.

18 THE COURT: Now I'm going to turn the page to page  
19 2. That's where you were reading from before; is that correct?

20 MS. SAVAGE: That's correct.

21 THE COURT: Not page 1, okay.

22 MS. SAVAGE: No. It's because it goes from page 1  
23 to page 2.

24 THE COURT: I'm going to have you slow down now.

25 MS. SAVAGE: Okay.

1 THE COURT: We're reading from page 2.

2 MS. SAVAGE: Yes.

3 THE COURT: Put up on page 2 what you are reading  
4 from.

5 MS. SAVAGE: Okay. So at the top of page 2, the  
6 letter states that it is intended to answer questions about  
7 whether HUD has the authority to, quote, and then this is from  
8 the top of page 2, establish different income definitions for  
9 different purposes such as for the purposes of determining  
10 annual income eligibility and household rent contributions.

11 THE COURT: Thank you.

12 BY MS. SAVAGE:

13 Q Do you see that?

14 A Yes, I do.

15 Q So let's move to the top of page 3.

16 So under the heading, "Does HUD have the legal authority  
17 to establish income definitions for different purposes, such as  
18 for the purposes of determining annual income eligibility and  
19 rent contributions?"

20 Mr. Dennis, can you please read the first sentence  
21 under that heading.

22 A "HUD has determined that it does not have the legal  
23 authority to amend its regulations to establish different  
24 income definitions for different purposes."

25 Q Okay. Thank you.

1 MS. SAVAGE: Tommy, if you could put up Exhibit 213  
2 -- or Exhibit 218, excuse me.

3 THE COURT: I have got a copy of that back in the  
4 back also. I appreciate that. Thank you.

5 BY MS. SAVAGE:

6 Q Do you have Exhibit 218 in front of you, Mr. Dennis?

7 A I do.

8 Q Have you seen this document before?

9 A Yes, I have.

10 Q Okay. What is it?

11 A It's a HUD news release -- press release regarding the  
12 recently published HUD-VASH Revised Operating Requirements.

13 Q And when was this press release issued?

14 A August 8th, 2024.

15 Q And it's tricky because 218 is not paginated very clearly  
16 for me.

17 Okay. On page 2 of 218, do you see where it says, "HUD  
18 is expanding access to HUD-VASH for veterans by" and then we  
19 have the second bullet, "adopting an alternative definition of  
20 annual income for applicants and participants of the HUD-VASH  
21 program that excludes veterans service-connected disability  
22 benefits when determining eligibility."

23 A Yes, I do.

24 Q Okay. So HUD's new policy then establishes different  
25 income definitions for different purposes, excluding

1 service-connected disability payments from the calculation of  
2 income for the purpose of eligibility, but not for the purpose  
3 of household and rent contributions; is that right?

4 A That is correct.

5 Q Okay. So, let's return again to Exhibit 35A, which is the  
6 letter detailing HUD's interpretation of its authority.

7 All right. So in that letter, I'm looking now at the  
8 top of page 2 this is referring to another question that HUD is  
9 answering.

10 Okay. Do you see that HUD is addressing whether it has  
11 the authority to, quote, establish different income definitions  
12 for different programs, such as a separate income definition  
13 used only for HUD-VASH. Do you see that?

14 A I do.

15 Q Okay. So directing your attention now to the middle of  
16 page 3, there is a heading there that says, "Does HUD have the  
17 legal authority to establish different income definitions for  
18 different programs, such as a modified income definition to be  
19 used only for the HUD-VASH program." Do you see where that  
20 heading is?

21 A Yes I do.

22 Q Can you please read the first sentence under that heading?

23 A Excuse me, "HUD has determined that, in general it does  
24 not have the legal authority to establish different income  
25 definitions for different programs, for the same reasons it



1 does not have authority to establish different income  
2 definitions for different purposes, namely that consistent use  
3 of defined term is required in the statute."

4 Q But HUD's new policy establishes an alternative income  
5 definition applicable only to the HUD-VASH program; isn't that  
6 right?

7 A That's correct.

8 Q Okay. So looking at the following paragraphs on page 3,  
9 and I'm looking at the paragraph beginning "However, an  
10 additional factor," so if you want to take a moment just to  
11 look at that.

12 This paragraph and the paragraphs that follow, and take  
13 as much time you need, this describe HUD's authority to waive  
14 statutory or regulatory requirements in the HUD-VASH program,  
15 right?

16 A That is correct.

17 Q Okay. So let's move to the last paragraph on page 3.

18 Can you please read the first sentence of that  
19 paragraph.

20 A "To date, HUD has not been persuaded that this waiver  
21 authority is sufficient to enable it to modify the annual  
22 income definition for HUD-VASH."

23 Q Thank you. So let's move now to page 4.

24 Here I'm looking at the third paragraph, can you please  
25 read the first sentence of that paragraph. It begins with, "In

1 sum."

2 A "In sum, the current HUD-VASH income definition does not  
3 appear to be a significant barrier to veterans' use of  
4 vouchers, at least one that is significant enough to justify  
5 using its statutory waiver authority to modify the program's  
6 most fundamental eligibility rules."

7 Q Okay. Thank you.

8 MS. SAVAGE: Let's bring up Exhibit 223, please.

9 BY MS. SAVAGE:

10 Q Mr. Dennis, do you have 223 in front of you?

11 A I do.

12 Q Have you seen this document before?

13 A Yes, I have.

14 Q And what is it?

15 A This is the Revised Operating Requirements for the  
16 HUD-VASH program.

17 Q And when was this published?

18 A This was published initially on HUD's website as a preview  
19 on I believe August 8th and then in the Federal Register as of  
20 August 13th.

21 Q Okay.

22 MS. SAVAGE: Your Honor, move Exhibit 223 in  
23 evidence.

24 THE COURT: Received.

25 (Exhibit 223 received into evidence.)

1 BY MS. SAVAGE:

2 Q Now, Mr. Dennis, directing your attention to page 14, the  
3 last paragraph.

4 Do you see -- and this is the middle of the paragraph so  
5 take the time you need to find it. Do you see where it says,  
6 quote, HUD is exercising its waiver authority --

7 THE COURT: Just a moment.

8 MS. SAVAGE: I'm looking at middle of this paragraph  
9 here.

10 THE COURT: Just a minute. So you are starting to  
11 read halfway through a sentence; is that correct?

12 MS. SAVAGE: Halfway through the sentence, although  
13 I'm happy to read the whole sentence.

14 THE COURT: That's fine.

15 BY MS. SAVAGE:

16 Q Do you see the portion that says, "HUD is exercising its  
17 waiver authority and establishing alternative requirements for  
18 purposes of determining income eligibility for HUD-VASH"?

19 A Yes, I do.

20 Q Okay. So this is the same waiver authority that we  
21 discussed previously?

22 A Yes. This is the HUD-VASH waiver authority.

23 Q Okay. So who drafted the letter that we were talking  
24 about on March 1st? The March 1st letter, Exhibit 35A?

25 A I assume it was a combination of drafters from HUD's

1 Office of General Legal Counsel.

2 Q Okay. And who at HUD would have approved that letter  
3 laying out HUD's position on its authority?

4 A My assumption would have been, you know, probably the  
5 general counsel.

6 Q Okay. So turning to the policy change that we went over  
7 and that HUD just made, was HUD aware of this Court's summary  
8 judgment determination issued July 14th, that it was facially  
9 discriminatory for VA to lease land to third-party developers  
10 who, one, imposed restrictive income limitations and, two,  
11 include disability benefits as income in determining housing  
12 eligibility?

13 A I'm sorry, could you repeat the first part of the  
14 question.

15 Q Sure. It might be easier if I brake it up into two  
16 pieces.

17 This Court issued a summary judgment  
18 determination on July 14th, finding it was facially  
19 discriminatory for VA to lease land to third-party developers  
20 who, one, impose restrictive income limitations and, two,  
21 include disability benefits --

22 (Reporter Clarification.)

23 MS. SAVAGE: Okay, sorry. Where do you want me to  
24 start from.

25 THE COURT: The very beginning. We want to you slow

1 down just a little bit.

2 MS. SAVAGE: Let me try again.

3 BY MS. SAVAGE:

4 Q Are you aware that on July 14th, this Court issued a  
5 summary judgment determination that it was facially  
6 discriminatory for VA to lease land to third-party developers  
7 who, one, impose restrictive income limitations and, two,  
8 include disability benefits as income in determining  
9 eligibility for housing?

10 A Yes, HUD was aware of that.

11 Q Okay. So HUD made the policy change that we have been  
12 discussing, the August policy change, pursuant to the statutory  
13 waiver authority it has with respect to HUD-VASH, correct?

14 A Yes.

15 THE COURT: Just one moment, counsel.

16 (Pause in proceedings.)

17 THE COURT: Please continue, thank you.

18 BY MS. SAVAGE:

19 Q And HUD's current secretary, or a different secretary of  
20 HUD under a different administration, presumably could change  
21 HUD's position as to the need for HUD to use its statutory  
22 waiver authority?

23 A You mean withdraw the waiver requirement?

24 Q Not withdraw the waiver requirement, let me say it like  
25 this. I understand that HUD has decided to use its statutory

1 waiver authority to enact the policy changes that we have just  
2 discussed.

3 A Correct. Yes.

4 Q And my question is could the current HUD secretary or a  
5 subsequent HUD secretary under another administration determine  
6 that the waiver authority did not justify the changes made?

7 A The -- a future HUD secretary could certainly change the  
8 operating requirements of the HUD-VASH program, yes.

9 Q Okay. Could, for example, go back to HUD's position of  
10 March 1st, that the waiver authority wasn't significant -- or  
11 rather the problem wasn't significant enough to exercise HUD's  
12 waiver authority?

13 A I guess to the extent that they determined HUD had erred  
14 and made a legal mistake, yes.

15 Q So nothing prevents HUD from retracting this policy change  
16 tomorrow, does it?

17 A No.

18 Q Okay. So let's return to Exhibit 35A, which is the March  
19 letter from HUB to the House Veterans Affairs Committee.

20 I would like to direct your attention to the  
21 second paragraph on page 4.

22 THE COURT: Just one moment. Thank you.

23 BY MS. SAVAGE:

24 Q Do you see where it says, "In cases where homeless  
25 veterans have been denied access to permanent supportive

1 housing units with project-based HUD-VASH vouchers, the cause  
2 of the denials has primarily been the more restrictive income  
3 limits imposed by LIHTC or other programs that also subsidize  
4 the housing"?

5 THE COURT: Before you finish, answer that, let me  
6 find this. You're on page 4; is that correct?

7 MS. SAVAGE: That's correct. It's been highlighted  
8 on the screen.

9 THE COURT: Thank you.

10 Do you recall the question? I'm sorry for the  
11 interruption.

12 THE WITNESS: I believe you asked me if I saw this?

13 BY MS. SAVAGE:

14 Q Yes, just if you've read the sentence?

15 A Yes, I have.

16 Q So the Revised Operating Requirements that we have been  
17 talking about, the policy change that just happened this  
18 August, that doesn't redress the income restrictions imposed by  
19 LIHTC or the Low-Income Housing Tax Credit program, doesn't it?

20 A No, it does not.

21 Q Or say income restrictions imposed by state and local tax  
22 credit programs?

23 A No, it does not.

24 Q That would require action by treasury for LIHTC, correct?

25 A That is correct.

1 Q And the treasury department has yet to act?

2 A The treasury department has not issued any regulatory  
3 guidance or subregulatory guidance on this issue since the time  
4 that HUD published the revised HUD operating requirements. No.

5 Q Thank you. So, similarly, redressing the income  
6 restrictions that are imposed by state and local tax credit  
7 programs, that would require action by state and local policy  
8 makers, wouldn't it?

9 A That is correct. Yes.

10 Q Okay. And developers have an incentive to apply income  
11 restrictions to more units in a given project in order to  
12 obtain more tax credits, don't they?

13 A That is correct, yes.

14 THE COURT: Just a moment, counsel.

15 (Pause in proceedings.)

16 THE COURT: Thank you counsel.

17 MS. SAVAGE: Thank you.

18 BY MS. SAVAGE:

19 Q So directing your attention in Exhibit 35A to the second  
20 paragraph of page 4.

21 I think that we've actually just done this. Sorry, I  
22 think I'm repeating this.

23 So you see the sentence beginning "In cases"?

24 A Yes, I do.

25 Q Okay. What this sentence is doing, it's identifying the



1 fact that the actual or fundamental reason for the exclusion of  
2 veterans from housing has been income limits imposed by LIHTC  
3 or other subsidy programs?

4 A That's correct. Yes.

5 Q Okay. Let's move to Exhibit 35A again, so same exhibit,  
6 page 5. The sentence that begins with, "In sum."

7 Okay. Can you please read the sentence. It's pulled up  
8 in front of you.

9 A "In sum, if Section 3 of the United States Housing Act  
10 were amended to exclude VA service-connected disability  
11 benefits from annual income only for some programs or purposes,  
12 such as only for the purpose of determining initial eligibility  
13 for veterans participating in the HUD-VASH program, then the  
14 change would likely have no impact on eligibility under the  
15 LIHTC or state or local subsidy programs."

16 Q Thank you. So by themselves HUD's new operating  
17 requirements may not changed disabled veterans' eligibility for  
18 any permanent supportive housing on or around the West LA  
19 Campus?

20 A Again, I don't know the specifics of those developments,  
21 but what the HUD-VASH operating requirement change does it  
22 impacts the eligibility for the project-based voucher  
23 requirements and the project-based voucher requirements only.

24 Q So to put that differently, it doesn't impact veterans who  
25 are excluded on the basis of the low income tax credit or state

1 or local subsidy restrictions?

2 A That is correct, yes.

3 THE COURT: Just one moment, please.

4 (Pause in proceedings.)

5 THE COURT: Thank you counsel.

6 MS. SAVAGE: Thank you.

7 BY MS. SAVAGE:

8 Q So let's turn back to HUD's press release, Exhibit 218.

9 Okay. I'm looking at page 2, in the paragraph beginning  
10 "HUD has been working" and I'm looking at the third sentence of  
11 that paragraph, the last sentence.

12 Do you see where it says, "HUD will also encourage state  
13 and local governments to make corresponding changes in their  
14 subsidy programs to ensure that all veterans experiencing  
15 homelessness have access to supportive housing"?

16 A I do, yes.

17 Q And so just to clarify, this says encourage, not require.

18 A Yes. HUD can't require the state or local governments to  
19 change the state and local government programs.

20 Q Okay. So, sitting here today, can you say with  
21 100 percent certainty that, as a result of HUD's new operating  
22 requirements, no disabled veteran will be excluded from  
23 project-based permanent supportive housing on or around the  
24 West LA Campus because their service-connected benefits place  
25 them over a state, local, or LIHTC imposed AMI limit?

1 A I'm sorry, I missed the beginning part of your answer.  
2 But the answer is, no, I cannot say that the disability  
3 benefits issue where families or applicants have incomes above  
4 the income eligibility requirements of LIHTC or the state or  
5 local programs would still not have a barrier to getting into  
6 those projects.

7 Q Okay. On or around the West LA Campus?

8 A Correct, yes.

9 Q Okay. Thank you. So let's turn now to the mechanics of  
10 the HUD-VASH program, particularly as it operates in LA.

11 You are aware that in March VA announced that it would  
12 allow public housing agencies to act in the place of VA with  
13 respect to intake, referral, and case management for the  
14 HUD-VASH program, right?

15 A Yes, I am.

16 Q Okay. And participation by public housing agencies in  
17 this program is voluntary, right?

18 A In the HUD-VASH program, yes.

19 Q None in the HUD-VASH -- in -- to be clear, in the program  
20 where they step into the shoes of VA for intake, referral, and  
21 case management, that participation is voluntary?

22 A It is not required, and they have to apply and be approved  
23 by the VA to do so, yes.

24 Q Okay. So earlier this week when asked whether this  
25 program was rolled out by VA, the deputy director of the West

1 LA VA medical center testified that the program is something  
2 that HUD has made available to the local public housing  
3 authorities to support additional services to expedite voucher  
4 utilization.

5 Is that your understanding of how this program works?

6 A No, it is not.

7 Q Okay. What is your understanding?

8 A My understanding is under the HUD-VASH program, the  
9 supportive services and the case management, the initial intake  
10 responsibilities are the VA. So, to the extent that the VA is  
11 designating entities to be eligible as designated service  
12 providers, that is a VA function, that is not a HUD function.

13 So, again, a public housing agency that is applying to  
14 be a VSP, applies to the VA, not to HUD, in order to assume  
15 that role.

16 Q Okay. So, it's VA outsourcing its, essentially, intake,  
17 referral, and case management services to public housing  
18 agencies?

19 A That is correct. Yes.

20 Q And VA isn't providing funding to those agencies, to your  
21 knowledge?

22 A That is correct.

23 Q Okay. And also, to your knowledge, this program isn't yet  
24 operational in Los Angeles?

25 A To the best of my knowledge, no.

1 Q Okay. Let's turn now to voucher utilization.

2 If a public housing agency is using less than 70 percent  
3 of their HUD allocated vouchers, they are not eligible for new  
4 allocations; isn't that right?

5 THE COURT: You dropped your voice. Would you  
6 repeat that again, please.

7 MS. SAVAGE: Sure.

8 BY MS. SAVAGE:

9 Q If a public housing agency is using less than 70 percent  
10 of their HUD allocated vouchers, they are not eligible for new  
11 allocations; is that right?

12 A That is correct. There is an exception with regards to,  
13 if they are project-based, which in some cases, they will be  
14 eligible even though they're below 70 percent.

15 But typically, the answer is, no, the threshold is 70  
16 percent utilization of HUD-VASH vouchers.

17 Q Okay. Thank you for that clarification.

18 Now, to the best of the knowledge, HACLA's present  
19 utilization rate is below 70 percent, right?

20 A Yes.

21 Q And LACDA's?

22 A Is also below 70 percent, yes.

23 Q Okay. And this would be in contrast to the national  
24 utilization average which is 73 percent?

25 A 75 percent.

1 Q 75 percent, thank you. Okay.

2 So, the low utilization rate of HUD-VASH vouchers in Los  
3 Angeles is concerning to HUD, isn't it?

4 A Yes, it is.

5 Q Okay. And one of the causes for low utilization in Los  
6 Angeles is the lack of timely referrals from the VA for  
7 eligible families; isn't that right?

8 A That is my understanding, yes.

9 Q Okay. Do you know how many HUD-VASH vouchers are being  
10 utilized within a five-mile radius of the West LA Campus?

11 A I do not.

12 Q Okay. Have you ever discussed with VA the utilization of  
13 HUD-VASH vouchers within a five-mile radius of the campus?

14 A I have not.

15 Q Okay. So, the government has mentioned a couple of new  
16 HUD initiatives intended to address homelessness in Los  
17 Angeles. So I would like to now talk through those with you.

18 In 2023, HUD designated the Los Angeles metropolitan  
19 area as a Small Area Fair Market rent, or SAFMR, mandatory  
20 area; isn't that right?

21 A Yes, it is.

22 Q So, what does that mean?

23 A That basically means, and bear with me for just a second  
24 here, in the housing choice voucher program, the public housing  
25 agency establishes what are known as payment standards.

1 Payment standard establishes the maximum subsidy that can be  
2 paid on behalf of an individual family. And those payment  
3 standards are benchmarked to what we call fair market rents.

4 Historically and typically, HUD publishes fair market  
5 rents on the basis of metropolitan areas. What small area FMRs  
6 do is say we are going to publish individual fair market rents  
7 based on ZIP code areas with the understanding that this more  
8 granular sort of approach to establishing FMRs will give  
9 families more buying power in more expensive neighborhoods.

10 Q Thank you for that comprehensive explanation.

11 But in LA, public housing agencies aren't required to a  
12 adjust their payments standards until January 2025; isn't that  
13 right?

14 A That's correct. Yes.

15 Q Okay. Do you know if any of the nine public housing  
16 agencies in the LA metropolitan area have already adjusted  
17 their standards?

18 A I'm not -- entirely possible, I think at least one may  
19 have.

20 Q Okay. Do you know which one?

21 A I don't know off the top of my head, no.

22 Q Okay. So, transitioning to Small Area Fair Market rents,  
23 that may increase per unit costs for public housing agencies;  
24 isn't that right?

25 A Potentially, yes.

1 Q Okay. Los Angeles has an extremely tight rental market,  
2 doesn't it?

3 A Yes, it does.

4 Q Okay. And the small area FMR designation doesn't redress  
5 the issue of housing scarcity near the West Los Angeles campus,  
6 does it?

7 A It addresses the affordability of housing close to the  
8 West LA Campus.

9 Q But not the overall supply.

10 A It doesn't increase supply of housing, no.

11 Q Okay.

12 A Physical supply.

13 Q Uh-huh. And it also doesn't solve the problem of  
14 landlords being unwilling to rent to veterans who are  
15 previously unhoused?

16 A No. It just expands the pool of veterans -- I'm sorry, of  
17 owners that potentially could have units which veterans could  
18 afford to rent.

19 Q Okay. And so it also doesn't directly redress the problem  
20 of landlords being unwilling to rent to voucher holders more  
21 generally because of the inspection process that that requires?

22 A No. The small area FMR does not address the inspection  
23 requirements in the housing choice voucher program.

24 (Reporter clarification.)

25 Could you repeat the question. I lost my train of



1 thought.

2 Q Sure. The small area FMR designation doesn't redress the  
3 problem of landlords being unwilling to rent to voucher holders  
4 because of the inspection process that the vouchers require?

5 A That is correct, yes.

6 Q Okay. It also doesn't redress the problem of inadequate  
7 referrals from VA?

8 A That is correct.

9 Q Okay. And has HUD projected the impact of this Small Area  
10 Fair Market rent designation with respect to HUD-VASH voucher  
11 utilization in the LA area?

12 A Not specifically, no.

13 Q Okay. And has HUD projected the impact of this Small Area  
14 Fair Market rent designation with respect to redressing veteran  
15 homelessness in the Los Angeles area?

16 A Not specifically, no.

17 Q Okay. So using Small Area Fair Market represents doesn't  
18 guarantee that HUD-VASH eligible veterans will be able to  
19 secure housing near the West LA Campus, does it?

20 A Not by itself. It improves the odds and the opportunities  
21 for families to find housing in those areas.

22 Q Okay. But as of today, HUD has no evidence that the use  
23 of Small Area Fair Market rents in LA will, in fact, impact the  
24 number of unhoused veterans able to access housing near the  
25 West LA Campus?

1 A To the best of my knowledge, we don't have evidence of  
2 that at this time. No.

3 Q Okay. So, let's move now to the second program referenced  
4 by the government. This is the HUD-VASH exception payment  
5 standards.

6 So in 2020, HUD established HUD-VASH exception payment  
7 standards between 111 and 160 percent of metropolitan fair  
8 market rent; is that right?

9 A That's correct, yes.

10 Q Okay. And I think I just said this, but to clarify, those  
11 payment standards are calculated --

12 THE COURT: I'm sorry, between 111 and 160?

13 MS. SAVAGE: That's right.

14 THE COURT: Just one moment, please. Thank you.

15 And your question was, "I think I just said, but to  
16 clarify, those payments standard are calculated --"

17 MS. SAVAGE: Yes. I will finish the question.

18 BY MS. SAVAGE:

19 Q I think I just said this, but to clarify, those payment  
20 standards are calculated as a percentage of metropolitan fair  
21 market rent, not Small Area Fair Market rent; is that right?

22 A That is correct.

23 Q Okay. So let's pull up, and please tell me, Exhibit 221.

24 MS. SAVAGE: Sorry. I think it may be -- Tommy, I  
25 think we may have them backwards. Can you pull up Exhibit 222,

1 then?

2 Okay. Great.

3 BY MS. SAVAGE:

4 Q Are you familiar with this document?

5 A Yes, I am.

6 Q Okay. And what is it?

7 A It is the -- I believe it's from the HUD web posting of  
8 fair market rents for --

9 THE COURT: Counsel, I'm sorry, I'm -- there we go.

10 Please continue.

11 THE WITNESS: It's the small area FMRs for fiscal  
12 year 2024 for the Los Angeles, Long Beach, Glendale metro area.

13 BY MS. SAVAGE:

14 Q Okay. And this is not paginated, so I apologize, if we  
15 can go to ZIP code 90049. That is Brentwood's ZIP code.

16 And do you see there that it says "one bedroom, \$3010"?

17 A Yes, I do.

18 Q Okay. And so what is the meaning of this?

19 A That would be the small area FMR for ZIP code 90049. So  
20 the public housing agencies would be basing their payment  
21 standard, if they were using small area FMRs, on \$3,010 in  
22 terms of establishing a payment standard. So anywhere between  
23 90 and 110 percent in the program. That H program up to 120  
24 percent for the HUD-VASH --

25 THE COURT: I'm going to have you repeat the answer.

1 That would be a small area FPR for ZIP code 90049, so the  
2 public housing agencies would be basing their payment standard  
3 if they were using small FRR 3,010 in terms of a establishing  
4 payment standards so anywhere between 90 and 110 10 percent in  
5 the program that --

6 (The record was read by the Judge.)

7 THE WITNESS: So let me go back just a second.

8 So in the HUD-VASH program, one of the HUD-VASH  
9 alternate requirements is that they can establish payments  
10 standards up to 120 percent of FMR.

11 So for the HUD-VASH program --

12 THE COURT: Slower.

13 THE WITNESS: For the HUD-VASH program, a public  
14 housing agency could establish a payment standard for HUD-VASH  
15 families up to 120 percent of \$3,010, which is the FMR.

16 BY MS. SAVAGE:

17 Q Okay.

18 THE COURT: Which would be how much? Calculate that  
19 for me.

20 THE WITNESS: Off the top of my head? Oh boy.

21 THE COURT: What is 120 percent of \$3,000? Make it  
22 simple.

23 THE WITNESS: Of \$3,000 we'd be at \$3,600.

24 THE COURT: I'm sorry.

25 THE WITNESS: \$3,600, without the \$10, right, which

1 would give us another --

2 THE COURT: There is about --

3 THE WITNESS: About \$3,600.

4 BY MS. SAVAGE:

5 Q Okay. And just to clarify for my own understanding, you  
6 are saying it's up to 120 percent of the Small Area Fair Market  
7 rent?

8 A For the HUD-VASH program, the payment standard the PHA can  
9 set is up to 120 percent of the applicable FMR. So if they are  
10 using small area FMRs, it would be 110 percent of the small  
11 area FMR. If they are not, it would be 120 percent of the  
12 metro FMR.

13 Q Okay.

14 A For Los Angeles, we gave them a special --

15 THE COURT: First of all, on the record for my court  
16 reporter, you are living in heaven, thank you very much. Thank  
17 you for transcribing, so this record is clear how much all of  
18 us appreciate you.

19 You need to slow down, so start again.

20 THE WITNESS: Okay. So, in the HUD-VASH program,  
21 the operation requirements for HUD-VASH provide that the PHA  
22 can establish a payment standard up to 120 percent of the  
23 applicable FMR.

24 So if the PHA in question is using small area FMRs, it  
25 would be 120 percent of the small area FMR.

1 THE COURT: But you get to 160 percent?

2 THE WITNESS: For Los Angeles, yes.

3 THE COURT: And how do you do that?

4 THE WITNESS: We gave them a waiver, an exception  
5 payment standard.

6 So HUD can gave exception payment standards. And for  
7 Los Angeles --

8 THE COURT: Now compute 160 percent for a one  
9 bedroom in ZIP code 90049.

10 MS. SAVAGE: But --

11 THE COURT: No. Thank you very much.

12 Help me. How much?

13 THE WITNESS: Well, to clarify, the exception  
14 payment standard of 160 percent applies to the Metro FMR, not  
15 the small area FMR.

16 THE COURT: You just lost me.

17 THE WITNESS: Okay. So let me go back.

18 Prior to -- currently, Los Angeles is not a small area  
19 FMR area.

20 Okay. So when HUD gave them the exception payment  
21 standard of 160 percent, it was based on the metropolitan FMR,  
22 the metropolitan wide FMR.

23 THE COURT: Now, what's the -- metropolitan being  
24 defined as what? Downtown Los Angeles?

25 THE WITNESS: The entire County of Los Angeles, so

1 Glendale, Long Beach.

2 THE COURT: The entire county.

3 THE WITNESS: Yes, sir.

4 THE COURT: And therefore you have the discretion  
5 because you could exercise this exception to move from  
6 120 percent to 160 percent?

7 THE WITNESS: Correct.

8 THE COURT: All I care is about is that you  
9 calculate what that is for a one bedroom, which should be  
10 \$3,010.

11 THE WITNESS: Well, again, the \$3,010 is the small  
12 area FMR, right, which hasn't got into effect yet for Los  
13 Angeles. Okay. So that is coming.

14 So right now, in terms of what is the payment standard  
15 that PHAs are approved for in Los Angeles County for HUD-VASH,  
16 is 160 percent of the metropolitan FMR, which is not \$3,000.

17 THE COURT: Calculate that for me.

18 THE WITNESS: I would need to look at the --

19 MS. SAVAGE: That is my next exhibit, Your Honor.

20 THE COURT: Thank you.

21 MS. SAVAGE: Okay.

22 THE WITNESS: So, we're at roughly \$2,006 is the  
23 FMR. So 160 percent of that would be -- let's see, I'm not a  
24 math person.

25 THE COURT: Don't worry.

1 THE WITNESS: I have got to borrow a pencil.

2 THE COURT: Thank you.

3 THE WITNESS: Thank you. If my math is right, I  
4 think 2,800. Does anyone have a calculator?

5 Brad, you got a calculator?

6 THE COURT: They will help you. They can get their  
7 calculator.

8 THE WITNESS: Yeah, I need someone with a  
9 calculator.

10 THE COURT: So, If I -- 90049, one bedroom -- in  
11 other words, I'm having trouble keeping what is in effect and  
12 what's not effect, the metropolitan versus the percentages.  
13 And you are going to give me real dollars.

14 THE WITNESS: Yes, sir.

15 THE COURT: Eventually, when we're done with this  
16 magical formula.

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. Real dollars, what do I get  
19 in 90049?

20 THE WITNESS: Currently, at 120, you get \$3,600.

21 THE COURT: Currently at 120, I get \$3,600.

22 THE WITNESS: Yes, sir.

23 THE COURT: And this goes into effect at 160  
24 percent, what do I get?

25 THE WITNESS: Well, again, the 160 percent goes away



1 at the end of 2024.

2 THE COURT: Okay.

3 THE WITNESS: Okay. So there won't be 160 percent  
4 anymore.

5 THE COURT: I want something right now. What do I  
6 get?

7 THE WITNESS: Right now at -- in this ZIP code, you  
8 would get -- the maximum you would get would be 160 percent of  
9 2000 which is, I think, 20.

10 Do we have answer.

11 MS. PETTY: Permission to pass the witness a  
12 calculator.

13 THE COURT: Or you could just tell him.

14 MR. ROSENBERG: Just so the record is clear, what's  
15 the number and then what is the multiplier?

16 THE WITNESS: We were rounding, so we were using  
17 2000, right, and we're multiplying that by 160 percent. So.

18 MR. ROSENBERG: So, 2000 times 1.6 is 3200.

19 THE WITNESS: 3200.

20 THE COURT: Okay. 3200.

21 Now, when this goes away, what do I get?

22 THE WITNESS: 3600.

23 THE COURT: So I go from 120 percent at 3010, 3600,  
24 now I'm at 3200 today. But when this goes away I'm at 3600?

25 THE WITNESS: Correct.

1 THE COURT: How does my veteran understand this?

2 THE WITNESS: The housing agency just needs to  
3 explain to him what the payment standard is. This is your  
4 buying power, essentially, and not try to befuddle people with  
5 all of these complications.

6 THE COURT: Yeah. Hopefully they are just going to  
7 give the vets the dollar and cents.

8 THE WITNESS: In this ZIP code, \$3,600 is your  
9 payment standard.

10 THE COURT: So right now, I might be incentivized  
11 not to get housing until 2025.

12 THE WITNESS: You will have more buying power in  
13 January 2025.

14 THE COURT: I would be nuts to take a \$400 decrease.  
15 I think I will just hang out in the streets.

16 THE WITNESS: Well, if you are searching and the  
17 payment standard changes, it would go up. So we would  
18 certainly encourage people not to do that.

19 THE COURT: And who again explains this to the  
20 veteran and helps them? HACLA?

21 THE WITNESS: The public housing agency briefs the  
22 family on how the program works. So they would explain the  
23 numbers that the families are working with in terms of what the  
24 payment standard is and what that means for units that are  
25 eligible for them to rent.

1 THE COURT: Okay. Counsel.

2 BY MS. SAVAGE:

3 Q Counsel, does HUD review from public housing agencies the  
4 material that they give to, say, homeless veterans to notify  
5 them of these policies changes?

6 A No, we do not.

7 Q Okay. So the exception payment standard we are talking  
8 about, you are saying those sunset in 2024?

9 A The 160 percent runs through the end of 2024. Yes.

10 THE COURT: And is this enough, just in your opinion  
11 as an expert, for the Southern California area in our rental  
12 market for a veteran?

13 THE WITNESS: I'm not from Los Angeles. I mean --  
14 so it's hard for me to say.

15 THE COURT: You don't know the rental market.

16 THE WITNESS: I don't know the -- I'm not --

17 THE COURT: That's not a fair question on my part.  
18 Thank you. I will withdraw that.

19 BY MS. SAVAGE:

20 Q Okay. So the exception payment standards that we're  
21 talking about right now -- not the Small Area Fair Market  
22 rents, but the previous exception payment standards, they don't  
23 solve the problem, again, of landlords being unwilling to rent  
24 to veterans who have previously been unhoused?

25 A They don't solve -- again, it depends on the reason the

1 landlord is not willing to rent to the family. If it had to be  
2 "I want this much rent and you can't afford it because the  
3 payment standard is too low," that is one issue, right? If  
4 it's "I just don't want to rent to a veteran who is  
5 experiencing homelessness," this in itself wouldn't solve that  
6 problem.

7 THE COURT: Is there a difference in these rates  
8 between what I'm going to call a HUD voucher --

9 THE WITNESS: Yes, sir.

10 THE COURT: -- versus the HUD-VASH, or are we under  
11 the same computation?

12 THE WITNESS: We provide, for the HUD-VASH program,  
13 up to 120 percent automatically. Under the regular HCV  
14 program, it's 110 percent.

15 THE COURT: So veterans get a little bit of a  
16 10 percent kick.

17 THE WITNESS: Correct. Automatically. Now, again,  
18 housing agencies can ask for additional exception payment  
19 standards above and beyond 120 percent, but that's something  
20 they have to come to HUD for. They can't do it on their own.

21 THE COURT: Explain to me the -- just a moment --  
22 developer incentive to apply more restrictions -- or I'm sorry,  
23 to in apply income restriction to more units in a given project  
24 to obtain more tax credits.

25 That was the statement. Now I want to have you help me

1 fully understand that incentive.

2 THE WITNESS: Okay. So, again, I don't work for the  
3 treasury department.

4 THE COURT: That's okay. You said it.

5 THE WITNESS: Yes, sir.

6 So the way tax credits work, basically, is the amount of  
7 tax credit you get is based on, essentially, a percentage of  
8 what's called the qualified basis. And the qualified basis is  
9 a percentage of -- I believe it's the project's expenses that  
10 are tied -- that are tied to or related to the units that are  
11 receiving the Low-Income Housing Tax Credit requirements,  
12 right, so that meet those standards.

13 So, there is an incentive. If you are trying to  
14 generate larger amount of tax credits to have those tax credit  
15 units apply to more of your units in the development, right?  
16 Because you maximize how much tax credits you get, which then  
17 helps you -- if you are selling them, right -- generally, the  
18 capital you need to make the improvements or the rehab or  
19 construct the property.

20 THE COURT: Thank you very much.

21 BY MS. SAVAGE:

22 Q Okay. And I guess just to follow up on that, so what that  
23 means, in practice, is that developers will often go beyond,  
24 for example, the LIHTC limitations in terms of applying it to a  
25 greater percentage of the units in a given development; is that

1 right?

2 A Many LIHTC properties go beyond the minimum requirements  
3 by the LIHTC program to qualify for tax credits, yes.

4 Q Okay. So going back to what we were speaking about  
5 before, the exception payment standards that are sunseting in  
6 2024. These payment standards also didn't redress the problem  
7 of landlords being unwilling to rent to voucher holders more  
8 generally because of the inspection process that that requires?

9 A Right. If the owner doesn't want to participate because  
10 he doesn't want his units subject to an inspection, then the  
11 payment standard doesn't change that, right?

12 We would hope that, to the extent that he possibly can  
13 qualify for a higher rent, that he might be more willing, for  
14 instance, to put up with the inspection.

15 But in and of itself, right, if my main reason for not  
16 participating in the program is, I don't want my unit  
17 inspected, this would not provide any redress for that.

18 Q Or if your main reason for not participating in the  
19 program is I want to turn my unit around quickly, and  
20 inspections take time, right?

21 A Right.

22 Q Okay. And in a tight housing market like LA, it's not  
23 uncommon for a landlords to want to quickly turn around their  
24 units; is that right?

25 A That is correct. Yes.

1 Q Okay. It also -- and when I say "it," I'm talking about  
2 the exception payment standards, again, that sunset in 2024.  
3 They also don't redress the problem of inadequate referrals  
4 from VA, again, right?

5 A That is correct.

6 Q Okay. And so has HUD studied whether the exception  
7 payment standards that have been adopted for LA, were adopted  
8 for LA in 2020, have had any impact on HUD-VASH voucher  
9 utilization?

10 A We certainly have looked at HUD-VASH utilization, but  
11 whether or not -- I don't -- we have not had a specific study  
12 to say, you know, what is the impact of this exception payment  
13 standard on what is happening with HUD-VASH utilization.

14 Q Okay. So using exception payment standards like the one  
15 we're talking about, that doesn't guarantee that HUD-VASH  
16 eligible veterans will be able to secure housing near the West  
17 LA Campus, does it?

18 A No. We would need a combination of various strategies to  
19 address the issues you're talking about, right, which are  
20 beyond just affordability.

21 Q Right. And as of today, HUD has no evidence that the use  
22 of exception payment standards has, in fact, impacted the  
23 number of unhoused veterans able to access housing near the  
24 West LA Campus; isn't that right?

25 A To the best of my knowledge, no, I have not seen such a

1 study.

2 Q Okay. I just want to return -- counsel has reminded me of  
3 a couple of additional questions.

4 Is it true that new or additional vouchers issue from  
5 HUD every year?

6 A I'm sorry, could you repeat the question?

7 Q Uh-huh. So, you know, vouchers that are allocated to  
8 public housing agencies, every year there are vouchers  
9 available so long as the public housing agency is at an  
10 acceptable utilization rate; is that right?

11 A For the HUD-VASH program?

12 Q Yes.

13 A Yes. We have had new vouchers each year for the HUD-VASH  
14 program.

15 THE COURT: Which, once again, is 70 percent; is  
16 that correct?

17 THE WITNESS: That is the threshold, sir, yes.

18 BY MS. SAVAGE:

19 Q So just to clarify, for every year that a public housing  
20 agency has a utilization rate below 70 percent, they will miss  
21 out on further vouchers from HUD for that year?

22 A Unless they apply and receive vouchers through the  
23 exception, right, we talked about the exceptions where PHAs  
24 below 70 can still qualify based on their plans to  
25 project-based vouchers.



1 THE COURT: So let me transparently state to all of  
2 you folks what I'm absorbing a partial of this.

3 With the 70 percent utilization rate, if a particular  
4 area falls below that, HUD would look at that and say: Why are  
5 we putting these vouchers -- hypothetically -- out in this area  
6 and getting this return?

7 And Cincinnati, for instance, might be doing a better  
8 job or Tampa, Florida, and therefore, nationwide HUD might look  
9 at that and say, we're getting these voucher returns, that's  
10 silly, we've had them hanging out there, they could be used in  
11 Chicago or another place. And, therefore, that national  
12 standard of 70 percent, what is that based on.

13 THE WITNESS: That is based on right now our current  
14 average is 75 percent.

15 THE COURT: Nationwide?

16 THE WITNESS: Nationwide.

17 THE COURT: I thought it was 73, but 75 percent.

18 THE WITNESS: It's 75 now. It's going up.

19 So just to clarify, too, again, the other reason is  
20 rather than providing additional vouchers, we want the agencies  
21 to concentrate on leasing the vouchers that they have, right,  
22 giving them additional vouchers on top of the vouchers they're  
23 already trying to lease just adds to the burden, doesn't  
24 necessarily increase the ability of them to utilize the  
25 vouchers they already have.

1 THE COURT: What are we attributing to Los Angeles,  
2 because everybody here who reads the papers knows that Mayor  
3 Bass was very concerned on the Section 8, let's call them, and  
4 return in that area, I think it was due in October.

5 So now kind of this human cry, hey folks on my staff,  
6 and county, what are you doing, we're going to have to give  
7 these back.

8 I'm not going to go over to that side, I'm going to come  
9 over to the VA side. What is causing this? Is it lack of  
10 staff? Is it incompetency? What is causing this lower return  
11 consistently in Los Angeles?

12 THE WITNESS: So, you know, again, speak from HUD's  
13 perspective. The biggest challenge in Los Angeles is lack of  
14 affordable housing, it's extremely, extremely tight rental  
15 market. You know, the slow referrals from the VA, which we're  
16 trying to address with our VA partners. And then, again, you  
17 know, as counsel mentioned, you know, willingness of landlords  
18 to participate in the program.

19 THE COURT: What does that last mean, "willingness  
20 to participate" by an individual?

21 THE WITNESS: So even if you have affordable units,  
22 right, you need to find landlords who are willing to take the  
23 voucher.

24 THE COURT: Landlord willingness. Lack of nimbyism  
25 then. Well, not nimbyism, but a reluctance to take our

1 Section 8 folks or VASH.

2 Okay, Counsel, I'm sorry, you can continue on  
3 with whenever you were, I apologize for that.

4 MS. SAVAGE: That is perfectly fine, Your Honor.

5 BY MS. SAVAGE:

6 Q I just have one question. So if an agency doesn't fully  
7 -- a public housing agency doesn't fully utilize the vouchers  
8 it has been allocated by HUD those vouchers just sit on the  
9 shelf, don't they?

10 A That is correct, yes.

11 Q That's federal money that could be used to house, for  
12 example, a homeless veteran that is just sitting on the shelf  
13 because, for example, there are not enough referrals from VA?

14 A That is correct. Or for other reasons, right? We don't  
15 like to see vouchers just sitting on the shelf obviously if we  
16 have people who need them.

17 THE COURT: Okay.

18 MS. SAVAGE: I have no further questions.

19 THE COURT: Check with your team over here for a  
20 moment.

21 MS. SAVAGE: Let me check with them, thank you. I  
22 appreciate the reminder.

23 I have been reminded that I did not move to admit  
24 Exhibit 222.

25 THE COURT: 222 is received.

1 (Exhibit 222 received into evidence.)

2 THE COURT: And later on, on each side, just come up  
3 and check with Karlen. We're not trying to keep evidence out,  
4 we're trying to bring evidence in.

5 I know you would like to start tonight, I want to make  
6 sure I'm absorbing, you've come too far, I've got to understand  
7 this, okay, except some of the equations I'm struggling with  
8 still.

9 THE WITNESS: We all do, it's complicated.

10 THE COURT: Counsel, we're going to resume tomorrow  
11 at 8 o'clock when I'm fresh. I just want to hear cross, I want  
12 you folks to get some rest. I want to look at my notes  
13 tonight.

14 So it's only 5:30, I apologize, but you go home and we  
15 will see you tomorrow at 8 o'clock. Thank you for returning,  
16 sir, I'm sorry we didn't finish you today. See you tomorrow.

17 (Pause in proceedings.)

18 THE COURT: Let's go on the record. Counsel for  
19 Bridgeland, all right?

20 MR. GUADIANA: So, Your Honor, I would like to  
21 notify the Court of a settlement between Bridgeland, the  
22 federal defendants and the plaintiffs. We would like to show  
23 this to you, we plan on filing a -- plaintiffs' plan on filing  
24 a motion for a fair hearing next week.

25 We would request that if Your Honor is able to review

1 this now and provide us with any thoughts that Bridgeland be  
2 relieved from attending the remaining portion of the trial.

3 THE COURT: Help me. Judge Birotte said that there  
4 were settlement discussions with you in subsequent  
5 conversations, I didn't completely wall myself off, but I  
6 walled myself off well enough to know that if this wasn't far  
7 enough along, I didn't want to know the particulars of it.

8 I'd really like to make certain that I continue to focus  
9 on the witnesses here, so some of the folks in DC get back to  
10 DC in a timely fashion.

11 And I would like you to lay out tomorrow the parameters  
12 of this on the record in some summary form.

13 Then I'd like to take it home over the recess and look  
14 at it and we will schedule a fair hearing sometime next week.

15 If I have some concerns, I would like to be courteous  
16 and call those to your attention beforehand, because I have to  
17 determine if it's fair and reasonable, okay?

18 MR. GUADIANA: That works, Your Honor.

19 THE COURT: Fair enough. That way it will give me  
20 three or four days to look at it and we can keep the trial  
21 going and not inconvenience the witnesses here.

22 Would that be acceptable?

23 MR. GUADIANA: Yes, Your Honor.

24 THE COURT: That means though your full  
25 participation, I may approve it, I may not.

1 MR. GUADIANA: I understand.

2 THE COURT: So let me have some time with it, but I  
3 told Judge Birotte whatever that was to keep the discussions  
4 going, if there was any possibility of something going on the  
5 table. But I'm not representing -- I said to him, I couldn't  
6 represent whether I was accepting, not accepting, and certain  
7 parts I think became -- as you progressed along I think I'm  
8 aware of a little bit, but I hesitate about where you are.

9 Now has that been docketed?

10 MR. GUADIANA: Not yet, Your Honor.

11 THE COURT: I need that docketed. It goes on the  
12 docket like any other document.

13 Then why don't you just leave a copy with me, not  
14 tonight. Not tonight. Tomorrow.

15 As soon as I see it on the docket, I will have access to  
16 it, okay?

17 We will see you tomorrow. I don't want to take any more  
18 of your time, sir, we will see you tomorrow at 8 o'clock.

19 And, counsel, if it's docketed I will probably start  
20 looking at it at 2 a.m. No kidding.

21 (The proceedings concluded at 5:27 p.m.)

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**CERTIFICATE OF OFFICIAL REPORTER**

COUNTY OF LOS ANGELES )  
 )  
STATE OF CALIFORNIA )

I, TERRI A. HOURIGAN, Federal Official Realtime Court Reporter, in and for the United States District Court for the Central District of California, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the judicial conference of the United States.

Date: 15th day of August, 2024.

/s/ TERRI A. HOURIGAN

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TERRI A. HOURIGAN, CSR NO. 3838, RPR, CRR  
Federal Court Reporter

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	<b>'</b>			
	<p><b>'18</b> [1] - 16:4  <b>'21</b> [2] - 15:19, 16:4  <b>'23</b> [2] - 9:24, 28:23  <b>'24</b> [2] - 62:17, 105:19  <b>'25</b> [3] - 62:5, 66:2, 105:19  <b>'90s</b> [1] - 123:19</p>			
	<b>/</b>			
	<p><b>/s</b> [1] - 295:19</p>			
	<b>0</b>			
	<p><b>008</b> [2] - 233:14, 233:18</p>			
	<b>1</b>			
	<p><b>1</b> [28] - 8:24, 13:3, 32:15, 34:21, 49:21, 65:20, 78:13, 86:16, 97:22, 156:25, 174:24, 203:18, 204:5, 206:11, 221:16, 221:20, 221:25, 230:4, 231:4, 252:13, 252:15, 253:10, 253:13, 253:15, 253:16, 253:21, 253:22  <b>1,000</b> [13] - 80:2, 80:5, 81:20, 81:24, 82:4, 82:9, 83:1, 83:10, 83:15, 84:17, 219:21, 240:22, 240:24  <b>1,200</b> [3] - 80:5, 80:11, 80:12  <b>1,280</b> [1] - 80:4  <b>1,800</b> [1] - 80:8</p>			
				<b>2</b>
				<p><b>2</b> [31] - 9:13, 13:8, 15:3, 15:21, 15:22, 24:5, 28:24, 46:11, 52:17, 52:21, 65:1, 65:3, 66:18, 102:8, 152:13, 156:25, 234:4, 252:5, 252:14, 253:14, 253:17, 253:19, 253:23, 254:1, 254:3, 254:5, 254:8, 255:17, 256:8, 266:9, 294:20  <b>2(h)(1)</b> [1] - 33:20  <b>2,000</b> [3] - 83:7, 83:11, 83:18  <b>2,400</b> [1] - 200:25  <b>2,800</b> [3] - 80:6, 80:16, 280:4  <b>2,959</b> [1] - 220:7  <b>20</b> [8] - 11:15, 28:6, 82:24, 116:22, 151:4, 156:18, 156:24, 281:9  <b>200</b> [4] - 90:9, 95:9, 151:4, 151:10  <b>200,000</b> [1] - 73:9  <b>2000</b> [3] - 281:9, 281:17, 281:18  <b>20005</b> [1] - 2:23  <b>2000s</b> [1] - 119:8  <b>2001</b> [1] - 116:5  <b>2005</b> [1] - 124:3  <b>2006</b> [1] - 124:3  <b>2011</b> [12] - 97:22, 112:21, 112:23, 113:2, 113:7, 123:20,</p>



<p>128:7, 128:10, 129:8, 129:11, 136:15, 205:3  <b>2014</b> [1] - 218:20  <b>2016</b> [19] - 7:22, 13:13, 30:13, 33:21, 44:1, 129:24, 132:25, 134:13, 136:6, 136:9, 136:13, 137:20, 138:2, 225:5, 226:9, 226:10, 226:18, 227:3, 229:21  <b>2017</b> [2] - 59:22, 218:21  <b>2018</b> [17] - 11:4, 12:3, 12:5, 15:3, 17:18, 33:4, 45:13, 52:19, 59:18, 132:17, 134:3, 134:11, 173:20, 177:11, 177:12, 177:15, 178:5  <b>2018-2019</b> [1] - 173:18  <b>2019</b> [3] - 11:2, 59:17, 173:21  <b>2019-2020</b> [3] - 173:25, 174:9, 174:14  <b>202</b> [1] - 4:9  <b>2020</b> [3] - 59:15, 274:6, 287:8  <b>2021</b> [4] - 11:21, 12:2, 12:6, 59:12  <b>2022</b> [3] - 59:9, 80:12, 159:15  <b>2023</b> [11] - 7:23, 28:3, 40:4, 90:8, 159:15, 159:16, 177:19, 177:23, 178:6, 270:18  <b>2024</b> [16] - 1:14, 6:1, 61:4, 61:17, 68:9, 159:17, 218:12, 251:24, 255:14, 275:12, 281:1, 283:8, 283:9, 286:6, 287:2, 295:16  <b>2025</b> [6] - 24:11, 64:25, 66:22, 271:12, 282:11, 282:13  <b>203</b> [7] - 5:11, 56:2, 56:6, 56:11, 56:13, 56:15, 56:16  <b>205</b> [10] - 43:3, 69:24, 70:9, 70:10, 72:1, 74:25, 75:1, 90:8, 164:16, 186:1  <b>207</b> [3] - 43:3, 90:8, 185:25  <b>208</b> [6] - 43:3, 90:8, 164:16, 166:1, 185:25, 186:1</p>	<p><b>209</b> [4] - 164:16, 186:1, 186:17, 191:24  <b>21</b> [4] - 28:6, 40:5, 73:25, 194:12  <b>21-acre</b> [1] - 152:1  <b>21202</b> [1] - 2:13  <b>2121</b> [1] - 2:6  <b>213</b> [2] - 1:23, 255:1  <b>216</b> [1] - 4:12  <b>218</b> [5] - 255:2, 255:6, 255:15, 255:17, 266:8  <b>21st</b> [3] - 146:5, 147:4, 147:5  <b>22</b> [92] - 26:10, 28:6, 30:8, 40:6, 40:7, 40:12, 62:10, 69:22, 70:1, 70:4, 73:25, 74:24, 75:21, 75:22, 76:5, 99:16, 100:25, 107:8, 107:12, 107:15, 107:17, 107:20, 107:24, 109:5, 109:9, 110:19, 111:12, 111:24, 114:20, 114:21, 122:6, 123:22, 125:4, 125:21, 126:2, 126:8, 126:10, 126:15, 126:16, 127:17, 128:17, 128:20, 129:21, 136:16, 139:18, 141:19, 144:3, 145:8, 152:20, 153:2, 153:8, 153:14, 155:7, 158:25, 159:3, 175:24, 180:5, 180:23, 180:24, 182:22, 183:7, 184:7, 184:19, 184:20, 190:20, 197:18, 199:13, 206:22, 206:24, 207:3, 207:7, 207:19, 207:23, 208:10, 208:15, 208:21, 209:2, 209:10, 210:11, 210:13, 210:17, 211:1, 211:10, 212:13, 212:16, 215:11, 222:22, 244:22, 244:24  <b>22-acre</b> [7] - 108:17, 127:10, 127:13, 157:7, 184:11, 185:4, 206:21  <b>220</b> [11] - 5:19, 216:23, 216:24, 217:10, 217:17, 217:19, 218:3,</p>	<p>218:15, 220:14, 221:17, 224:23  <b>221</b> [1] - 274:23  <b>222</b> [5] - 5:22, 274:25, 291:24, 291:25, 292:1  <b>223</b> [8] - 5:21, 222:16, 223:5, 223:8, 258:8, 258:10, 258:22, 258:25  <b>223,462</b> [1] - 209:7  <b>225</b> [1] - 5:19  <b>22nd</b> [3] - 146:7, 146:8, 146:9  <b>23</b> [2] - 40:12, 223:5  <b>23rd</b> [1] - 196:18  <b>24</b> [13] - 40:12, 81:21, 82:17, 83:14, 84:17, 91:19, 180:23, 180:25, 181:7, 199:18, 200:23, 211:10, 211:24  <b>24-hour</b> [1] - 137:24  <b>243</b> [1] - 4:13  <b>248</b> [1] - 4:15  <b>25</b> [6] - 40:12, 70:17, 71:1, 71:6, 72:12, 98:13  <b>250</b> [3] - 188:25, 196:6, 217:13  <b>250-plus</b> [1] - 136:24  <b>2500</b> [1] - 2:13  <b>252</b> [1] - 5:20  <b>257</b> [3] - 185:18, 191:23, 196:10  <b>259</b> [1] - 5:21  <b>25th</b> [1] - 246:1  <b>26</b> [1] - 40:12  <b>27</b> [2] - 40:12, 40:21  <b>28</b> [3] - 40:12, 49:7, 295:9  <b>2800</b> [1] - 2:6  <b>29</b> [1] - 49:7  <b>292</b> [1] - 5:22  <b>2:15</b> [1] - 172:8  <b>2:30</b> [1] - 144:13  <b>2nd</b> [1] - 149:2</p>	<p><b>3,010</b> [1] - 276:3  <b>3.2</b> [13] - 46:12, 46:18, 69:16, 70:11, 71:16, 71:19, 72:12, 73:3, 75:2, 75:24, 76:2, 244:7, 244:9  <b>30</b> [9] - 70:17, 71:1, 72:11, 92:21, 136:20, 180:22, 181:6, 199:16, 199:23  <b>30(b)(6)</b> [4] - 98:15, 98:19, 109:20, 248:13  <b>300</b> [1] - 100:5  <b>3010</b> [1] - 281:23  <b>303</b> [1] - 33:11  <b>310</b> [3] - 71:16, 71:24, 71:25  <b>320</b> [1] - 100:10  <b>3200</b> [4] - 281:18, 281:19, 281:20, 281:24  <b>33</b> [2] - 71:1, 71:6  <b>330</b> [1] - 24:17  <b>332</b> [2] - 62:2, 62:3  <b>348,000</b> [3] - 206:18, 207:5, 207:22  <b>35</b> [2] - 154:12, 251:25  <b>350</b> [2] - 1:22, 75:25  <b>35A</b> [9] - 5:20, 251:13, 251:15, 252:3, 256:5, 259:24, 262:18, 264:19, 265:5  <b>3600</b> [3] - 281:22, 281:23, 281:24  <b>362</b> [2] - 61:25, 62:2  <b>369</b> [1] - 62:5  <b>38</b> [7] - 220:20, 220:22, 221:3, 221:7, 221:8, 221:9, 221:11  <b>38's</b> [1] - 221:13  <b>3838</b> [2] - 1:21, 295:20  <b>39</b> [1] - 5:5  <b>3:00</b> [2] - 144:8, 144:11</p>	<p><b>4.2</b> [1] - 105:17  <b>4.B</b> [1] - 46:19  <b>40</b> [1] - 76:5  <b>400</b> [1] - 104:13  <b>402</b> [2] - 185:17, 185:19  <b>403(b)</b> [1] - 99:10  <b>403(b)</b> [1] - 99:7  <b>405</b> [2] - 87:6, 87:11  <b>407</b> [1] - 25:4  <b>407.25</b> [2] - 24:13, 24:14  <b>43</b> [1] - 84:15  <b>43-unit</b> [1] - 82:19  <b>4311</b> [1] - 1:22  <b>44</b> [1] - 5:6  <b>45</b> [1] - 5:7  <b>45,000</b> [1] - 101:21  <b>46</b> [1] - 5:8  <b>47</b> [1] - 90:19</p>
		<b>3</b>	<b>4</b>	<b>5</b>
		<p><b>3</b> [25] - 24:9, 24:19, 34:2, 65:8, 65:20, 66:20, 78:8, 143:24, 157:1, 163:7, 180:16, 180:19, 199:1, 201:7, 206:3, 206:22, 207:23, 208:9, 210:23, 254:15, 256:16, 257:8, 257:17, 265:9</p>	<p><b>4</b> [17] - 32:12, 44:11, 75:25, 102:8, 203:4, 203:9, 203:12, 206:3, 207:5, 207:24, 208:12, 226:24, 228:5, 257:23, 262:21, 263:6, 264:20  <b>4,000</b> [6] - 80:5, 80:6, 80:7, 80:8, 80:14, 91:11  <b>4,483,000</b> [1] - 234:8</p>	<p><b>5</b> [19] - 9:23, 24:5, 100:1, 112:14, 167:18, 169:6, 169:9, 171:24, 182:16, 182:17, 183:3, 211:11, 212:24, 219:21, 220:10, 221:6, 233:11, 234:23, 265:6  <b>50</b> [9] - 65:25, 81:21, 82:20, 82:23, 84:2, 84:7, 136:20, 207:24  <b>500</b> [6] - 42:24, 43:7, 44:18, 76:1, 95:9, 185:18  <b>500,000</b> [1] - 207:24  <b>51</b> [12] - 180:11, 181:5, 181:8, 181:13, 198:10, 201:3, 201:4, 201:8, 205:13, 206:8, 211:5, 211:23  <b>52</b> [1] - 5:9  <b>53</b> [1] - 91:18  <b>53,000</b> [1] - 102:4  <b>55</b> [1] - 5:10  <b>56</b> [1] - 5:11  <b>57</b> [1] - 112:14  <b>59</b> [1] - 5:12  <b>5:00</b> [9] - 148:23, 163:10, 163:15, 163:22, 165:22, 165:23, 165:24, 166:16, 210:22  <b>5:27</b> [1] - 294:21  <b>5:30</b> [6] - 145:14, 146:1, 160:1, 160:11, 167:19, 292:14</p>

<p><b>5th</b> [1] - 149:2</p>	<p>225:19, 228:6, 228:22, 229:11</p>	<p><b>95</b> [1] - 18:6</p>	<p>293:22</p>	<p>197:19</p>
<p><b>6</b></p>	<p><b>81A</b> [9] - 5:5, 39:17, 39:24, 228:10, 228:11, 229:8, 229:9, 229:12, 229:14</p>	<p><b>96</b> [3] - 18:6, 18:8, 18:10</p>	<p><b>accepting</b> [3] - 35:25, 294:6</p>	<p><b>acknowledged</b> [1] - 225:3</p>
<p><b>6</b> [11] - 4:5, 100:6, 101:25, 107:1, 108:5, 108:8, 171:24, 182:17, 203:18, 206:4, 210:23</p> <p><b>60</b> [2] - 81:21, 82:20</p> <p><b>600</b> [1] - 100:17</p> <p><b>610</b> [2] - 2:10, 2:16</p> <p><b>620</b> [2] - 100:15, 100:16</p> <p><b>691</b> [1] - 222:22</p> <p><b>6:00</b> [4] - 163:15, 163:18, 182:16, 183:3</p> <p><b>6:30</b> [1] - 160:13</p>	<p><b>85</b> [3] - 15:11, 15:23, 90:20</p> <p><b>850,000</b> [3] - 176:14, 179:14, 179:20</p> <p><b>894-2849</b> [1] - 1:23</p> <p><b>8:00</b> [2] - 1:15, 6:2</p> <p><b>8:30</b> [5] - 144:8, 144:13, 145:18, 148:7, 148:18</p> <p><b>8th</b> [2] - 255:14, 258:19</p>	<p><b>97</b> [2] - 4:8, 52:21</p> <p><b>99</b> [1] - 17:14</p> <p><b>9:30</b> [1] - 144:11</p>	<p><b>access</b> [41] - 47:1, 53:9, 53:22, 54:2, 54:14, 54:15, 54:17, 76:12, 89:23, 112:6, 137:24, 142:24, 153:4, 162:19, 164:1, 165:5, 165:12, 165:19, 166:15, 166:25, 170:13, 182:8, 182:16, 182:17, 185:7, 188:13, 188:15, 189:14, 190:1, 190:14, 195:24, 196:19, 211:6, 215:13, 244:19, 255:18, 262:25, 266:15, 273:24, 287:23, 294:15</p>	<p><b>Acquisition</b> [1] - 64:17</p>
<p><b>7</b></p>	<p><b>9</b></p>	<p><b>A</b></p>	<p><b>Access</b> [1] - 218:19</p>	<p><b>acquire</b> [14] - 81:19, 81:23, 82:1, 82:2, 82:5, 82:13, 82:22, 82:23, 84:2, 84:3, 84:6, 84:18</p>
<p><b>7</b> [9] - 1:14, 163:4, 182:17, 202:24, 203:3, 210:22, 217:1, 218:7</p> <p><b>7,600</b> [1] - 200:24</p> <p><b>70</b> [15] - 84:7, 92:20, 92:21, 200:10, 269:2, 269:9, 269:14, 269:15, 269:19, 269:22, 288:15, 288:20, 288:24, 289:3, 289:12</p> <p><b>72</b> [1] - 189:7</p> <p><b>73</b> [2] - 269:24, 289:17</p> <p><b>75</b> [7] - 105:9, 151:5, 269:25, 270:1, 289:14, 289:17, 289:18</p> <p><b>753</b> [1] - 295:9</p> <p><b>76</b> [4] - 180:24, 181:4, 199:18, 200:10</p> <p><b>7:00</b> [2] - 146:21, 163:18</p> <p><b>7:30</b> [1] - 160:15</p>	<p><b>9</b> [7] - 100:21, 107:6, 108:7, 153:16, 171:25, 182:17, 209:3</p> <p><b>9-0-0</b> [1] - 158:18</p> <p><b>9.6</b> [1] - 245:1</p> <p><b>90</b> [2] - 275:23, 276:4</p> <p><b>90,000</b> [1] - 78:24</p> <p><b>900</b> [8] - 5:16, 157:13, 157:15, 157:19, 158:5, 158:17, 158:21, 162:18</p> <p><b>90005</b> [2] - 2:10, 2:16</p> <p><b>90012</b> [1] - 1:23</p> <p><b>90049</b> [6] - 275:15, 275:19, 276:1, 278:9, 280:10, 280:19</p> <p><b>90064</b> [1] - 3:5</p> <p><b>90067</b> [1] - 2:6</p> <p><b>901</b> [4] - 5:17, 171:5, 171:6, 172:23</p> <p><b>902</b> [5] - 5:15, 155:12, 155:19, 157:10, 157:11</p> <p><b>903</b> [8] - 5:18, 178:18, 179:9, 203:13, 205:24, 206:2, 207:11</p> <p><b>904</b> [9] - 5:13, 151:17, 151:18, 151:23, 152:1, 152:14, 152:22, 153:20, 157:14</p> <p><b>905</b> [5] - 5:14, 153:23, 153:24, 155:15, 155:17</p> <p><b>915,000</b> [1] - 176:15</p> <p><b>918,000</b> [3] - 179:12, 179:14, 179:19</p> <p><b>94</b> [2] - 17:24, 18:4</p>	<p><b>A-E-L</b> [1] - 247:15</p> <p><b>a.m</b> [14] - 1:15, 144:8, 146:21, 163:10, 163:22, 165:22, 165:23, 165:24, 166:16, 182:16, 183:3, 210:22, 294:20</p> <p><b>A.M</b> [1] - 6:2</p> <p><b>ability</b> [16] - 20:21, 29:6, 32:21, 47:3, 48:11, 54:25, 55:2, 57:7, 57:11, 57:17, 77:15, 88:17, 89:8, 90:4, 190:2, 289:24</p> <p><b>able</b> [29] - 14:14, 21:20, 22:24, 27:4, 27:19, 29:9, 43:7, 46:4, 54:18, 55:1, 56:20, 65:23, 66:12, 66:14, 74:19, 78:16, 78:20, 94:21, 109:20, 235:8, 237:16, 240:18, 243:7, 245:9, 273:18, 273:24, 287:16, 287:23, 292:25</p> <p><b>above-entitled</b> [1] - 295:12</p> <p><b>above-ground</b> [2] - 54:15, 54:17</p> <p><b>absent</b> [1] - 205:10</p> <p><b>absolutely</b> [2] - 89:21, 242:15</p> <p><b>absorbing</b> [2] - 289:2, 292:6</p> <p><b>abundance</b> [1] - 96:11</p> <p><b>academic</b> [7] - 67:13, 67:15, 159:12, 160:1, 162:20, 163:8</p> <p><b>Academic</b> [1] - 159:15</p> <p><b>academics</b> [2] - 237:12, 237:22</p> <p><b>Academy</b> [1] - 108:15</p> <p><b>accelerated</b> [1] - 20:23</p> <p><b>acceptable</b> [4] - 13:6, 13:7, 288:10,</p>	<p><b>165:5, 165:12, 165:19, 166:15, 166:25, 170:13, 182:8, 182:16, 182:17, 185:7, 188:13, 188:15, 189:14, 190:1, 190:14, 195:24, 196:19, 211:6, 215:13, 244:19, 255:18, 262:25, 266:15, 273:24, 287:23, 294:15</b></p> <p><b>Access</b> [1] - 218:19</p> <p><b>accessibility</b> [3] - 9:6, 195:15, 195:16</p> <p><b>accommodate</b> [2] - 129:20, 154:13</p> <p><b>accommodations</b> [1] - 189:3</p> <p><b>accompanies</b> [1] - 174:16</p> <p><b>accompanying</b> [1] - 59:22</p> <p><b>accordance</b> [1] - 235:21</p> <p><b>according</b> [5] - 30:25, 156:22, 171:24, 232:13, 245:6</p> <p><b>account</b> [5] - 64:14, 199:25, 235:10, 235:19, 242:10</p> <p><b>Accountability</b> [1] - 218:20</p> <p><b>accountant</b> [2] - 68:1, 200:17</p> <p><b>accounting</b> [3] - 9:16, 199:21, 199:23</p> <p><b>accrue</b> [2] - 239:16, 242:5</p> <p><b>accrued</b> [2] - 239:12, 239:14</p> <p><b>accurate</b> [5] - 102:16, 106:7, 106:25, 110:1, 149:11</p> <p><b>accurately</b> [6] - 54:3, 152:17, 153:1, 154:22, 157:2, 179:23</p> <p><b>achieved</b> [1] - 180:20</p> <p><b>acknowledge</b> [1] -</p>	<p><b>acreage</b> [2] - 83:3, 84:13</p> <p><b>acres</b> [94] - 26:10, 30:8, 81:25, 82:3, 82:6, 82:8, 82:12, 82:24, 83:14, 84:16, 99:16, 100:25, 107:8, 107:9, 107:12, 107:15, 107:17, 107:20, 107:24, 109:5, 109:9, 110:19, 111:12, 111:24, 114:20, 114:21, 122:6, 123:22, 125:4, 125:21, 126:2, 126:8, 126:10, 126:15, 126:16, 127:17, 128:17, 128:20, 129:21, 136:16, 139:18, 141:19, 144:3, 145:8, 152:20, 153:2, 153:8, 153:14, 155:7, 158:25, 159:3, 175:24, 180:5, 180:22, 180:23, 180:24, 181:1, 181:7, 182:22, 183:7, 184:7, 184:19, 184:20, 190:20, 197:18, 199:13, 199:14, 199:16, 199:23, 206:22, 206:24, 207:3, 207:7, 207:17, 207:19, 207:23, 208:10, 208:15, 208:21, 209:2, 209:10, 210:11, 210:13, 210:16, 210:17, 211:1, 211:10, 212:13, 212:16, 215:11</p> <p><b>acronym</b> [3] - 74:14, 184:14, 184:15</p> <p><b>Act</b> [47] - 7:22, 8:10, 11:12, 13:1, 13:15, 13:17, 13:18, 30:6, 30:14, 30:17, 30:21, 31:8, 31:21, 32:4, 32:20, 33:4, 33:20, 34:14, 35:20, 37:21,</p>
<p><b>8</b></p>	<p><b>8</b> [19] - 5:3, 9:5, 9:23, 78:11, 100:7, 163:2, 180:22, 180:24, 181:1, 199:14, 207:17, 210:16, 210:23, 210:24, 290:3, 291:1, 292:11, 292:15, 294:18</p> <p><b>80</b> [1] - 90:19</p> <p><b>81</b> [8] - 32:3, 32:12, 39:17, 225:16,</p>	<p><b>13:6, 13:7, 288:10,</b></p>	<p><b>180:20</b></p>	<p><b>212:16, 215:11</b></p>

<p>53:16, 54:22, 58:10, 58:13, 66:25, 67:12, 77:10, 129:23, 131:2, 132:22, 132:25, 133:5, 133:7, 133:22, 134:13, 215:2, 218:20, 218:21, 225:5, 225:13, 226:12, 227:2, 235:7, 235:16, 235:22, 243:5, 265:9</p> <p><b>act</b> [5] - 132:7, 235:15, 243:11, 264:1, 267:12</p> <p><b>action</b> [7] - 14:12, 18:22, 18:25, 239:12, 239:15, 263:24, 264:7</p> <p><b>actions</b> [1] - 240:3</p> <p><b>active</b> [1] - 171:2</p> <p><b>actively</b> [1] - 195:17</p> <p><b>activities</b> [16] - 7:21, 9:5, 9:20, 20:21, 20:24, 29:10, 43:14, 46:5, 53:5, 77:18, 86:19, 86:24, 123:10, 143:8, 143:9, 198:2</p> <p><b>activity</b> [3] - 53:7, 104:15, 198:5</p> <p><b>actual</b> [7] - 176:22, 179:25, 181:13, 181:23, 181:25, 228:14, 265:1</p> <p><b>ADA</b> [5] - 168:1, 168:5, 168:8, 169:1, 169:13</p> <p><b>adaptable</b> [1] - 192:23</p> <p><b>adapting</b> [1] - 193:6</p> <p><b>add</b> [2] - 23:1, 170:17</p> <p><b>added</b> [3] - 171:21, 185:13, 231:16</p> <p><b>addended</b> [1] - 179:2</p> <p><b>adding</b> [1] - 43:22</p> <p><b>addition</b> [14] - 44:15, 99:5, 102:10, 104:24, 105:7, 117:3, 117:22, 119:12, 125:4, 138:11, 140:8, 148:3, 191:8, 192:4</p> <p><b>additional</b> [21] - 23:1, 24:11, 24:20, 43:12, 44:17, 47:11, 57:18, 68:22, 78:15, 78:25, 80:4, 91:11, 92:9, 243:25, 257:10, 268:3, 284:18, 288:3, 288:4, 289:20, 289:22</p> <p><b>additionally</b> [1] - 186:21</p>	<p><b>address</b> [8] - 25:2, 40:14, 90:24, 106:17, 270:16, 272:22, 287:19, 290:16</p> <p><b>addressed</b> [1] - 93:16</p> <p><b>addresses</b> [1] - 272:7</p> <p><b>addressing</b> [2] - 241:23, 256:10</p> <p><b>adds</b> [1] - 289:23</p> <p><b>adequate</b> [3] - 193:16, 196:16, 248:22</p> <p><b>adjacent</b> [2] - 26:16, 107:20</p> <p><b>adjudged</b> [1] - 225:4</p> <p><b>adjust</b> [2] - 227:25, 271:12</p> <p><b>adjusted</b> [2] - 171:22, 271:16</p> <p><b>adjustment</b> [2] - 87:6, 179:15</p> <p><b>administered</b> [1] - 246:22</p> <p><b>administers</b> [1] - 53:11</p> <p><b>administration</b> [13] - 14:2, 14:15, 36:12, 37:4, 37:7, 38:9, 38:10, 38:11, 38:19, 39:3, 135:4, 261:20, 262:5</p> <p><b>Administration</b> [11] - 3:7, 3:7, 62:21, 62:23, 62:24, 218:9, 218:23, 219:15, 222:6, 236:15, 236:17</p> <p><b>Administration's</b> [1] - 218:11</p> <p><b>administrations</b> [1] - 64:22</p> <p><b>administrative</b> [5] - 14:7, 38:24, 63:13, 63:14, 221:6</p> <p><b>administrators</b> [2] - 134:16, 134:19</p> <p><b>admit</b> [9] - 12:19, 44:4, 45:4, 45:15, 46:7, 52:8, 55:23, 56:11, 291:23</p> <p><b>admitted</b> [2] - 15:8, 45:5</p> <p><b>adopted</b> [2] - 287:7</p> <p><b>adopting</b> [1] - 255:19</p> <p><b>adults</b> [1] - 190:22</p> <p><b>advance</b> [2] - 24:20, 232:23</p> <p><b>adverse</b> [1] - 202:2</p> <p><b>advertise</b> [1] -</p>	<p>190:15</p> <p><b>advise</b> [1] - 248:7</p> <p><b>adviser</b> [1] - 247:25</p> <p><b>advocacy</b> [2] - 188:7, 188:12</p> <p><b>advocates</b> [1] - 215:12</p> <p><b>affairs</b> [1] - 230:18</p> <p><b>Affairs</b> [11] - 33:4, 33:13, 34:23, 35:8, 132:1, 132:4, 193:9, 218:5, 230:8, 251:21, 262:19</p> <p><b>affect</b> [1] - 214:24</p> <p><b>affiliates</b> [2] - 67:13, 67:15</p> <p><b>afford</b> [2] - 272:18, 284:2</p> <p><b>affordability</b> [2] - 272:7, 287:20</p> <p><b>affordable</b> [2] - 290:14, 290:21</p> <p><b>afternoon</b> [4] - 163:7, 172:8, 183:19, 183:21</p> <p><b>Afternoon</b> [2] - 216:8, 246:17</p> <p><b>AGBEKO</b> [1] - 2:21</p> <p><b>age</b> [2] - 151:8, 190:2</p> <p><b>agencies</b> [19] - 14:1, 17:22, 30:22, 248:25, 250:15, 250:18, 267:12, 267:16, 268:18, 268:20, 271:11, 271:16, 271:23, 275:20, 276:2, 283:3, 284:18, 288:8, 289:20</p> <p><b>agency</b> [12] - 73:10, 268:13, 269:2, 269:9, 270:25, 276:14, 282:2, 282:21, 288:9, 288:20, 291:6, 291:7</p> <p><b>aggregate</b> [1] - 179:17</p> <p><b>ago</b> [9] - 7:25, 65:25, 74:23, 108:12, 137:1, 169:4, 185:9, 185:12, 222:12</p> <p><b>agree</b> [7] - 54:9, 127:14, 181:15, 226:15, 227:20, 230:25, 238:16</p> <p><b>agreed</b> [2] - 17:21, 180:25</p> <p><b>agreeing</b> [1] - 36:18</p> <p><b>agreement</b> [49] - 7:8, 7:10, 10:23, 12:16, 14:17, 20:5, 21:5, 21:9, 21:15, 21:16,</p>	<p>21:17, 22:4, 24:14, 33:22, 33:23, 35:4, 35:6, 35:16, 36:19, 46:16, 52:7, 54:12, 54:19, 55:17, 56:10, 56:21, 56:22, 57:3, 58:6, 59:1, 67:20, 110:11, 110:25, 112:4, 112:6, 112:11, 112:20, 113:9, 114:9, 114:11, 125:18, 125:19, 127:4, 159:9, 190:12, 230:15, 230:16, 231:15, 233:8</p> <p><b>agreements</b> [21] - 6:22, 6:23, 7:2, 7:7, 7:11, 8:13, 8:14, 10:8, 10:9, 11:11, 11:17, 16:16, 32:7, 32:21, 57:4, 58:2, 58:9, 58:19, 67:19, 173:6, 234:14</p> <p><b>ahead</b> [6] - 31:18, 33:18, 43:16, 135:20, 141:2, 167:20</p> <p><b>air</b> [2] - 11:25</p> <p><b>al</b> [1] - 1:6</p> <p><b>Alan</b> [2] - 135:7, 135:16</p> <p><b>alcohol</b> [1] - 90:13</p> <p><b>allegedly</b> [1] - 210:21</p> <p><b>Alliance</b> [1] - 240:14</p> <p><b>allocated</b> [5] - 179:18, 269:3, 269:10, 288:7, 291:8</p> <p><b>allocations</b> [3] - 77:22, 269:4, 269:11</p> <p><b>allotted</b> [3] - 25:8, 25:10</p> <p><b>allow</b> [2] - 189:20, 267:12</p> <p><b>allowed</b> [7] - 11:19, 13:19, 17:7, 29:16, 83:19, 198:5, 215:10</p> <p><b>allows</b> [5] - 13:17, 42:7, 53:9, 56:22, 190:15</p> <p><b>alluded</b> [1] - 58:19</p> <p><b>almost</b> [5] - 9:5, 9:22, 60:6, 94:13, 116:16</p> <p><b>alone</b> [4] - 25:22, 74:6, 189:21, 197:9</p> <p><b>ALSO</b> [1] - 3:6</p> <p><b>alter</b> [1] - 245:11</p> <p><b>alteration</b> [1] - 48:18</p> <p><b>alternate</b> [1] - 276:9</p> <p><b>alternative</b> [8] - 25:17, 36:6, 51:9,</p>	<p>51:12, 51:21, 255:19, 257:4, 259:17</p> <p><b>alternatively</b> [1] - 58:22</p> <p><b>AMANDA</b> [2] - 2:9, 2:15</p> <p><b>Amanda</b> [2] - 247:1, 248:3</p> <p><b>Ambulatory</b> [1] - 22:17</p> <p><b>ambulatory</b> [1] - 164:23</p> <p><b>AMELIA</b> [1] - 2:8</p> <p><b>amend</b> [3] - 134:17, 135:2, 254:23</p> <p><b>amended</b> [11] - 33:21, 130:2, 130:4, 130:5, 131:2, 131:8, 131:11, 131:19, 235:16, 235:21, 265:10</p> <p><b>amendment</b> [16] - 7:9, 41:19, 45:8, 45:12, 45:19, 46:11, 56:9, 133:20, 133:22, 225:22, 226:9, 229:21, 232:1, 232:2, 232:6, 243:5</p> <p><b>amendments</b> [3] - 8:11, 45:3, 227:18</p> <p><b>amenities</b> [1] - 90:5</p> <p><b>American</b> [5] - 47:20, 47:25, 55:18, 56:23, 56:24</p> <p><b>AMI</b> [1] - 266:25</p> <p><b>amount</b> [18] - 9:3, 62:6, 72:13, 75:19, 75:23, 77:23, 91:20, 93:1, 104:14, 125:19, 126:1, 127:22, 148:19, 174:18, 191:9, 207:14, 285:6, 285:14</p> <p><b>amounts</b> [4] - 30:1, 210:2, 210:4, 244:17</p> <p><b>amputee</b> [1] - 164:23</p> <p><b>analogies</b> [1] - 30:4</p> <p><b>Analysis</b> [1] - 253:15</p> <p><b>analysis</b> [6] - 113:16, 113:25, 114:3, 126:11, 176:3, 253:12</p> <p><b>anecdotal</b> [1] - 70:16</p> <p><b>anecdotally</b> [1] - 71:5</p> <p><b>ANGELES</b> [4] - 1:15, 1:23, 6:1, 295:3</p> <p><b>Angeles</b> [55] - 2:6, 2:10, 2:16, 3:5, 7:22, 30:6, 32:20, 33:13, 33:20, 34:14, 35:20,</p>
---	---	---	--	---

<p>58:10, 66:2, 67:14, 80:23, 81:11, 108:25, 113:8, 126:17, 127:13, 222:20, 223:17, 224:11, 238:17, 243:5, 245:4, 249:10, 249:13, 249:15, 249:18, 249:22, 250:16, 251:1, 251:6, 268:24, 270:3, 270:6, 270:17, 270:18, 272:1, 272:5, 273:15, 275:12, 277:14, 278:2, 278:7, 278:18, 278:24, 278:25, 279:13, 279:15, 283:13, 290:1, 290:11, 290:13</p> <p><b>announced</b> [2] - 24:9, 267:11</p> <p><b>annual</b> [17] - 102:6, 105:12, 105:14, 105:17, 105:25, 174:18, 178:25, 193:9, 199:4, 201:9, 206:20, 252:10, 254:10, 254:18, 255:20, 257:21, 265:11</p> <p><b>annually</b> [5] - 8:17, 39:8, 50:22, 197:12, 218:22</p> <p><b>answer</b> [37] - 14:22, 98:15, 113:21, 127:9, 128:1, 131:15, 132:9, 139:23, 141:1, 141:2, 156:7, 162:5, 165:16, 169:17, 169:19, 178:3, 178:5, 178:6, 181:17, 182:2, 182:3, 182:6, 182:8, 182:18, 182:23, 187:24, 189:10, 242:8, 252:16, 254:6, 263:5, 267:1, 267:2, 269:15, 275:25, 281:10</p> <p><b>answered</b> [4] - 131:13, 182:22, 185:9, 240:10</p> <p><b>answering</b> [2] - 17:12, 256:9</p> <p><b>answers</b> [1] - 139:19</p> <p><b>anticipate</b> [2] - 26:1, 29:23</p> <p><b>anticipated</b> [2] - 24:12, 66:23</p> <p><b>Antonio</b> [1] - 66:12</p> <p><b>anyway</b> [3] - 42:16, 48:14, 181:18</p> <p><b>apart</b> [1] - 78:15</p>	<p><b>apologies</b> [2] - 14:22, 183:24</p> <p><b>apologize</b> [13] - 34:3, 43:23, 62:2, 95:3, 106:23, 108:3, 158:4, 160:19, 182:25, 208:4, 275:14, 291:3, 292:14</p> <p><b>apology</b> [1] - 62:4</p> <p><b>apparatus</b> [1] - 88:17</p> <p><b>apparel</b> [1] - 154:18</p> <p><b>appear</b> [2] - 17:2, 258:3</p> <p><b>APPEARANCES</b> [2] - 2:1, 3:1</p> <p><b>Appendix</b> [3] - 15:13, 15:22, 16:8</p> <p><b>appetite</b> [1] - 37:23</p> <p><b>applicable</b> [6] - 56:17, 210:10, 210:12, 257:5, 277:9, 277:23</p> <p><b>applicants</b> [2] - 255:20, 267:3</p> <p><b>applied</b> [1] - 175:11</p> <p><b>applies</b> [3] - 104:12, 268:14, 278:14</p> <p><b>apply</b> [6] - 264:10, 267:22, 284:22, 284:23, 285:15, 288:22</p> <p><b>applying</b> [2] - 268:13, 285:24</p> <p><b>appointment</b> [1] - 172:17</p> <p><b>appointments</b> [1] - 172:16</p> <p><b>appraisal</b> [8] - 175:14, 176:6, 176:7, 176:25, 177:5, 177:19, 177:23, 178:9</p> <p><b>appraisals</b> [7] - 175:15, 175:20, 176:7, 177:11, 178:1, 178:5, 178:8</p> <p><b>appraised</b> [1] - 179:19</p> <p><b>appraiser</b> [1] - 175:18</p> <p><b>appreciate</b> [11] - 96:24, 127:9, 146:25, 147:9, 152:11, 217:5, 228:7, 229:2, 255:4, 277:18, 291:22</p> <p><b>appreciates</b> [1] - 183:22</p> <p><b>approach</b> [2] - 199:11, 271:8</p> <p><b>appropriate</b> [4] - 13:16, 86:11, 87:23,</p>	<p>99:15</p> <p><b>appropriated</b> [1] - 78:1</p> <p><b>appropriateness</b> [1] - 86:13</p> <p><b>appropriation</b> [3] - 24:21, 235:17, 235:19</p> <p><b>Appropriations</b> [1] - 35:9</p> <p><b>appropriations</b> [3] - 63:7, 69:3, 230:19</p> <p><b>approval</b> [3] - 67:10, 114:11, 173:10</p> <p><b>approve</b> [2] - 7:5, 293:25</p> <p><b>approved</b> [4] - 30:14, 260:2, 267:22, 279:15</p> <p><b>approximate</b> [1] - 99:4</p> <p><b>aquatic</b> [11] - 115:22, 123:22, 141:23, 142:1, 142:9, 142:18, 142:23, 143:4, 143:7, 143:11, 149:9</p> <p><b>Aquatic</b> [1] - 152:14</p> <p><b>aquatics</b> [1] - 150:18</p> <p><b>Ardmore</b> [2] - 2:10, 2:16</p> <p><b>area</b> [48] - 19:15, 20:10, 25:13, 26:12, 26:14, 35:11, 49:1, 49:24, 51:16, 77:2, 84:25, 86:1, 87:11, 87:20, 90:3, 156:20, 163:17, 166:9, 186:1, 196:17, 245:5, 250:16, 270:19, 270:20, 271:5, 271:16, 272:4, 272:22, 273:2, 273:11, 273:15, 275:11, 275:12, 275:19, 275:21, 276:1, 277:10, 277:11, 277:24, 277:25, 278:15, 278:18, 278:19, 279:12, 283:11, 289:4, 289:5, 290:4</p> <p><b>Area</b> [9] - 270:19, 271:22, 273:9, 273:13, 273:17, 273:23, 274:21, 277:6, 283:21</p> <p><b>areas</b> [14] - 26:14, 29:25, 70:22, 88:5, 88:11, 88:13, 90:10, 172:18, 230:22, 235:17, 236:23, 271:5, 271:7, 273:21</p>	<p><b>arguably</b> [2] - 21:17, 89:16</p> <p><b>argumentative</b> [1] - 131:14</p> <p><b>Arizona</b> [3] - 70:5, 70:6, 70:15</p> <p><b>arrange</b> [2] - 145:11, 156:21</p> <p><b>arrangement</b> [1] - 109:18</p> <p><b>arrangements</b> [1] - 79:12</p> <p><b>arranging</b> [1] - 146:2</p> <p><b>arrive</b> [1] - 167:9</p> <p><b>arrived</b> [2] - 113:14, 129:2</p> <p><b>arriving</b> [1] - 167:6</p> <p><b>Arroyo</b> [2] - 26:16, 26:23</p> <p><b>art</b> [1] - 192:14</p> <p><b>Article</b> [3] - 44:11, 46:12, 46:19</p> <p><b>article</b> [4] - 237:14, 241:6, 241:9, 241:12</p> <p><b>articulated</b> [1] - 128:25</p> <p><b>artist</b> [1] - 199:12</p> <p><b>artist/teacher</b> [1] - 202:11</p> <p><b>aside</b> [7] - 10:25, 61:11, 68:23, 77:7, 86:2, 196:24, 205:3</p> <p><b>asides</b> [1] - 64:4</p> <p><b>aspects</b> [1] - 189:24</p> <p><b>assertions</b> [1] - 13:3</p> <p><b>assess</b> [5] - 36:3, 36:22, 58:14, 58:15</p> <p><b>assessing</b> [1] - 241:7</p> <p><b>assessment</b> [1] - 235:2</p> <p><b>assessments</b> [3] - 11:25, 22:23, 88:1</p> <p><b>assist</b> [1] - 202:19</p> <p><b>assistance</b> [4] - 185:21, 191:9, 191:12</p> <p><b>assistant</b> [4] - 64:18, 97:20, 97:23, 97:25</p> <p><b>Assistant</b> [1] - 248:8</p> <p><b>associated</b> [23] - 7:11, 11:25, 16:13, 16:16, 17:9, 20:8, 21:18, 28:25, 29:3, 32:23, 43:14, 50:1, 63:6, 63:18, 63:19, 63:25, 69:6, 69:13, 74:11, 90:25, 93:22, 203:20, 234:13</p> <p><b>Association</b> [2] - 236:8, 236:12</p>	<p><b>assume</b> [11] - 20:4, 72:11, 72:12, 83:17, 161:14, 164:15, 223:13, 249:24, 250:5, 259:25, 268:14</p> <p><b>assumes</b> [3] - 126:13, 127:24, 161:12</p> <p><b>assuming</b> [1] - 186:9</p> <p><b>assumption</b> [3] - 60:13, 111:2, 260:4</p> <p><b>assumptions</b> [1] - 93:14</p> <p><b>assured</b> [1] - 138:1</p> <p><b>Astroturf</b> [1] - 43:13</p> <p><b>athlete</b> [2] - 156:17, 157:4</p> <p><b>athletes</b> [9] - 116:18, 117:1, 154:15, 156:4, 156:6, 156:8, 156:15, 156:21, 156:25</p> <p><b>Athletes</b> [2] - 155:23, 155:25</p> <p><b>athletic</b> [33] - 18:14, 26:9, 30:7, 107:15, 107:18, 107:23, 109:6, 109:11, 111:13, 111:14, 111:25, 112:1, 114:20, 125:5, 128:23, 136:11, 136:16, 139:18, 152:2, 154:11, 154:17, 154:18, 156:4, 160:5, 160:8, 160:10, 176:23, 180:2, 181:14, 188:16, 197:17, 197:20, 208:19</p> <p><b>Athletics</b> [3] - 154:6, 154:10, 156:23</p> <p><b>athletics</b> [4] - 154:9, 155:6, 156:2, 156:6</p> <p><b>attach</b> [1] - 204:4</p> <p><b>attached</b> [4] - 104:8, 104:17, 104:22, 209:2</p> <p><b>attack</b> [1] - 241:18</p> <p><b>attempt</b> [9] - 125:20, 126:1, 126:25, 127:16, 127:22, 129:5, 130:1, 134:9, 177:3</p> <p><b>attend</b> [3] - 186:11, 186:14, 186:22</p> <p><b>attended</b> [1] - 186:13</p> <p><b>attending</b> [1] - 293:2</p> <p><b>attention</b> [9] - 18:9, 221:24, 252:5, 252:12, 256:15, 259:2, 262:20,</p>
---	---	---	--	---

<p>264:19, 293:16  <b>Attorney</b> [3] - 2:12, 2:15, 3:4  <b>attorneys</b> [2] - 132:6, 133:13  <b>Attorneys</b> [3] - 2:5, 2:9, 2:22  <b>attract</b> [1] - 154:3  <b>attributing</b> [1] - 290:1  <b>audio</b> [3] - 40:24, 40:25, 41:10  <b>audit</b> [12] - 34:24, 35:13, 53:8, 172:25, 173:2, 173:11, 173:17, 173:25, 174:3, 174:7, 230:8, 230:23  <b>audited</b> [1] - 249:14  <b>auditor</b> [3] - 173:12, 173:14, 209:24  <b>audits</b> [2] - 174:8, 174:13  <b>August</b> [16] - 1:14, 118:23, 119:6, 144:17, 149:1, 149:2, 196:18, 217:1, 218:7, 246:1, 255:14, 258:19, 258:20, 261:12, 263:18, 295:16  <b>AUGUST</b> [1] - 6:1  <b>authorities</b> [2] - 221:11, 268:3  <b>Authorities</b> [1] - 33:4  <b>authority</b> [35] - 16:12, 19:3, 42:9, 42:14, 53:22, 54:1, 74:15, 79:5, 133:10, 133:20, 243:4, 252:9, 252:17, 254:7, 254:16, 254:23, 256:6, 256:11, 256:17, 256:24, 257:1, 257:13, 257:21, 258:5, 259:6, 259:17, 259:20, 259:22, 260:3, 261:13, 261:22, 262:1, 262:6, 262:10, 262:12  <b>Authority</b> [3] - 251:1, 251:7, 253:16  <b>authorization</b> [1] - 66:14  <b>authorized</b> [3] - 43:11, 67:12, 77:9  <b>automatically</b> [3] - 13:9, 284:13, 284:17  <b>availability</b> [2] -</p>	<p>78:14, 182:8  <b>available</b> [22] - 9:23, 29:15, 78:8, 95:9, 111:15, 112:3, 126:17, 127:13, 137:23, 137:25, 148:20, 158:25, 159:4, 159:7, 183:6, 188:11, 188:13, 197:18, 197:20, 236:18, 268:2, 288:9  <b>Avenue</b> [3] - 2:6, 2:10, 2:16  <b>average</b> [4] - 156:24, 240:15, 269:24, 289:14  <b>averted</b> [1] - 16:5  <b>awarded</b> [2] - 151:4, 197:13  <b>awards</b> [1] - 155:6  <b>aware</b> [30] - 39:6, 45:2, 81:15, 98:14, 109:24, 110:9, 113:7, 123:16, 123:18, 123:21, 125:15, 127:1, 128:11, 130:1, 134:7, 173:17, 176:13, 176:15, 176:21, 240:5, 240:10, 240:13, 240:17, 241:2, 250:7, 260:7, 261:4, 261:10, 267:11, 294:8</p>	<p>83:16  <b>barrier</b> [3] - 165:2, 258:3, 267:5  <b>Barrington</b> [3] - 88:5, 106:15, 106:24  <b>base</b> [1] - 249:22  <b>baseball</b> [14] - 23:11, 30:4, 42:12, 47:3, 47:24, 48:1, 114:24, 122:5, 122:9, 122:12, 141:9, 145:6, 167:8  <b>based</b> [39] - 12:5, 22:25, 29:10, 49:19, 54:8, 54:21, 57:22, 61:2, 82:18, 89:25, 90:21, 93:24, 130:13, 160:23, 171:21, 177:5, 179:19, 195:11, 220:3, 221:2, 223:19, 237:5, 237:18, 237:19, 244:11, 249:17, 250:6, 263:1, 265:22, 265:23, 266:23, 269:13, 271:7, 278:21, 285:7, 288:24, 288:25, 289:12, 289:13  <b>basic</b> [1] - 184:22  <b>basing</b> [2] - 275:20, 276:2  <b>basis</b> [18] - 31:10, 102:6, 105:12, 151:12, 174:18, 184:23, 184:24, 186:6, 189:1, 191:25, 192:1, 192:18, 193:9, 265:25, 271:5, 285:8  <b>basketball</b> [8] - 115:13, 119:22, 120:23, 120:25, 121:2, 121:5, 121:16  <b>baskets</b> [1] - 166:7  <b>Bass</b> [1] - 290:3  <b>batched</b> [2] - 223:11, 223:15  <b>bathrooms</b> [1] - 200:4  <b>Batina</b> [1] - 3:6  <b>Beach</b> [2] - 275:12, 279:1  <b>bear</b> [2] - 207:1, 270:23  <b>became</b> [6] - 11:2, 30:6, 68:1, 110:10, 214:12, 294:7  <b>become</b> [2] - 14:15, 189:16  <b>bedroom</b> [4] - 275:16, 278:9, 279:9,</p>	<p>280:10  <b>beforehand</b> [1] - 293:16  <b>befuddle</b> [1] - 282:4  <b>began</b> [2] - 98:3, 132:12  <b>beginning</b> [12] - 18:4, 43:2, 93:15, 134:3, 147:20, 221:19, 252:6, 257:9, 260:25, 264:23, 266:9, 267:1  <b>begins</b> [6] - 18:3, 28:4, 194:11, 253:6, 257:25, 265:6  <b>behalf</b> [3] - 6:13, 183:16, 271:2  <b>behind</b> [1] - 53:5  <b>believes</b> [1] - 13:7  <b>belong</b> [1] - 189:21  <b>below</b> [8] - 54:14, 54:18, 269:14, 269:19, 269:22, 288:20, 288:24, 289:4  <b>below-ground</b> [1] - 54:18  <b>benchmarked</b> [1] - 271:3  <b>beneficial</b> [7] - 29:18, 31:4, 55:2, 57:19, 90:5, 97:15, 132:8  <b>beneficiary</b> [1] - 29:17  <b>benefit</b> [15] - 21:18, 22:23, 36:21, 42:16, 42:18, 43:12, 57:13, 57:25, 89:22, 187:21, 195:13, 238:19, 239:12, 239:14, 239:16  <b>Benefit</b> [1] - 62:23  <b>benefiting</b> [2] - 50:17, 233:6  <b>benefits</b> [20] - 39:12, 40:17, 40:20, 49:17, 49:20, 49:21, 57:1, 66:22, 131:6, 131:10, 239:21, 242:5, 242:6, 255:22, 260:11, 260:21, 261:8, 265:11, 266:24, 267:3  <b>best</b> [14] - 70:18, 70:19, 87:7, 136:2, 145:9, 238:5, 244:2, 244:3, 250:11, 250:14, 268:25, 269:18, 274:1, 287:25  <b>better</b> [16] - 6:21, 9:17, 30:12, 31:6,</p>	<p>36:10, 38:11, 42:20, 55:19, 70:23, 72:12, 90:13, 142:16, 142:17, 235:10, 237:19, 289:7  <b>between</b> [38] - 10:3, 10:13, 10:16, 53:8, 53:10, 54:12, 56:23, 58:12, 80:5, 81:25, 98:17, 99:24, 103:9, 113:9, 116:3, 116:5, 116:22, 124:3, 128:9, 128:10, 136:20, 147:16, 151:12, 163:15, 164:6, 165:6, 166:20, 167:3, 175:3, 178:13, 196:6, 210:7, 274:7, 274:12, 275:22, 276:4, 284:8, 292:21  <b>beyond</b> [8] - 92:9, 156:5, 162:24, 198:4, 284:19, 285:23, 286:2, 287:20  <b>Biden</b> [1] - 38:10  <b>big</b> [4] - 20:1, 42:22, 87:2, 145:16  <b>bigger</b> [3] - 44:14, 80:10, 86:13  <b>biggest</b> [1] - 290:13  <b>bill</b> [2] - 30:15, 30:18  <b>billion</b> [39] - 23:18, 24:10, 24:11, 24:14, 24:16, 24:17, 24:19, 24:20, 61:4, 61:18, 61:25, 62:18, 63:3, 65:1, 65:3, 65:8, 65:20, 66:5, 66:18, 66:20, 66:23, 67:1, 69:16, 70:11, 71:16, 71:19, 72:12, 73:3, 75:2, 75:25, 76:2, 77:24, 78:8, 78:18, 244:7, 244:9, 244:11, 244:13, 244:21  <b>binding</b> [1] - 53:25  <b>Birotte</b> [2] - 293:3, 294:3  <b>bit</b> [29] - 14:23, 24:1, 24:23, 25:2, 25:3, 32:10, 38:18, 38:20, 41:21, 60:18, 75:4, 76:8, 98:8, 99:12, 100:24, 102:2, 114:19, 127:8, 130:21, 135:16, 140:16, 142:14, 165:6, 193:7, 198:9, 245:11, 261:1, 284:15, 294:8</p>
<p><b>B</b></p>				
<p><b>backboards</b> [1] - 121:7  <b>background</b> [1] - 99:12  <b>backwards</b> [1] - 274:25  <b>bad</b> [2] - 193:12, 200:24  <b>bags</b> [1] - 196:6  <b>baked</b> [1] - 243:14  <b>balance</b> [4] - 44:18, 100:15, 100:16, 178:13  <b>ball</b> [1] - 40:1  <b>balls</b> [1] - 166:8  <b>Baltimore</b> [2] - 2:13, 2:13  <b>banking</b> [1] - 192:21  <b>banners</b> [1] - 184:12  <b>bar</b> [1] - 18:23  <b>Barber</b> [1] - 130:10  <b>bare</b> [1] - 191:16  <b>barely</b> [1] - 151:15  <b>barracks</b> [2] - 83:6,</p>				

<p><b>BLM</b> [4] - 53:15, 53:17, 53:19, 54:13  <b>blow</b> [1] - 253:4  <b>bluntly</b> [1] - 197:5  <b>Board</b> [1] - 130:5  <b>board</b> [6] - 98:9, 98:10, 98:11, 98:12, 131:3, 198:16  <b>body</b> [1] - 187:17  <b>bonding</b> [1] - 104:7  <b>borrow</b> [1] - 280:1  <b>bottom</b> [14] - 10:5, 10:19, 18:2, 33:16, 52:22, 187:18, 207:6, 208:14, 222:15, 252:12, 252:13, 252:15, 253:13, 253:15  <b>Boulevard</b> [5] - 3:4, 85:21, 85:22, 86:1, 87:21  <b>bound</b> [3] - 53:15, 156:16, 157:4  <b>boundaries</b> [1] - 45:14  <b>box</b> [1] - 246:25  <b>boy</b> [1] - 276:20  <b>boys</b> [9] - 119:24, 120:8, 120:18, 121:10, 124:11, 138:3, 140:14, 142:5, 142:7  <b>bracket</b> [1] - 151:8  <b>BRAD</b> [1] - 2:20  <b>Brad</b> [3] - 6:12, 31:24, 280:5  <b>brain</b> [2] - 161:15, 161:23  <b>brake</b> [1] - 260:15  <b>BRANCH</b> [1] - 2:20  <b>Braverman</b> [21] - 6:7, 6:17, 7:17, 12:12, 28:9, 40:7, 41:17, 60:23, 75:14, 95:16, 95:21, 216:3, 216:4, 216:10, 216:19, 217:4, 217:19, 233:16, 234:1, 245:17, 245:18  <b>BRAVERMAN</b> [2] - 4:3, 4:11  <b>breaching</b> [2] - 53:19, 53:25  <b>break</b> [12] - 52:12, 60:6, 123:16, 127:10, 129:10, 149:13, 151:16, 216:5, 216:6, 216:8, 246:15, 246:16  <b>breakdown</b> [1] - 29:24</p>	<p><b>breaker</b> [1] - 27:2  <b>breaking</b> [1] - 37:6  <b>Breitburn</b> [16] - 6:25, 10:22, 11:23, 52:23, 53:9, 53:11, 53:17, 53:18, 53:19, 53:23, 54:13, 55:17, 56:10, 56:17, 56:23, 227:9  <b>Breitburn's</b> [2] - 53:22, 54:2  <b>Breitburn/ Bridgeland</b> [3] - 57:12, 57:19, 57:25  <b>Brentwood</b> [195] - 6:24, 10:3, 11:23, 12:7, 12:16, 12:25, 18:2, 18:5, 18:12, 18:13, 18:23, 20:14, 20:18, 21:13, 21:22, 23:1, 23:6, 25:18, 25:19, 26:7, 26:8, 27:7, 28:5, 28:15, 29:7, 29:17, 29:20, 29:24, 30:7, 30:12, 30:16, 35:17, 37:20, 39:9, 39:12, 40:16, 95:17, 97:19, 97:21, 98:9, 98:16, 98:17, 99:3, 99:13, 99:18, 99:25, 103:21, 104:24, 105:5, 105:15, 106:8, 106:9, 107:15, 108:13, 108:20, 109:5, 109:15, 109:21, 109:24, 110:4, 110:14, 110:18, 110:22, 111:2, 111:11, 113:9, 113:12, 113:17, 116:6, 116:9, 116:12, 116:22, 117:23, 118:10, 118:17, 119:1, 119:8, 119:19, 119:24, 119:25, 120:21, 120:23, 121:2, 121:15, 122:15, 124:10, 125:5, 125:9, 125:20, 126:1, 126:6, 127:16, 128:20, 129:13, 130:1, 130:5, 130:18, 130:23, 131:5, 133:13, 134:6, 134:12, 136:3, 136:12, 137:17, 137:21, 138:2, 138:6, 138:24, 139:25, 140:18, 142:3, 142:19, 142:22,</p>	<p>142:24, 144:7, 148:4, 150:24, 151:14, 151:23, 152:1, 152:7, 152:8, 154:1, 154:4, 155:2, 155:21, 155:25, 156:5, 156:14, 158:7, 160:4, 161:1, 162:11, 163:13, 164:6, 164:18, 164:20, 166:20, 168:19, 168:20, 169:1, 169:2, 169:13, 169:16, 171:12, 172:8, 173:9, 173:11, 173:13, 174:17, 175:3, 176:16, 176:23, 177:2, 178:12, 179:1, 180:1, 180:12, 180:22, 181:14, 181:23, 184:10, 185:10, 186:6, 187:1, 187:23, 189:8, 190:6, 190:7, 191:5, 191:10, 191:20, 193:24, 194:8, 195:10, 195:12, 197:1, 197:3, 197:5, 197:21, 198:13, 199:14, 201:6, 202:23, 203:21, 204:16, 204:18, 204:21, 210:7, 210:25, 225:1, 225:3, 227:1  <b>Brentwood's</b> [4] - 47:9, 154:9, 160:23, 275:15  <b>Bridge</b> [4] - 74:16, 171:22, 185:15, 185:17  <b>Bridgeland</b> [6] - 6:24, 60:13, 183:14, 292:19, 292:21, 293:1  <b>bridges</b> [1] - 27:4  <b>brief</b> [1] - 164:12  <b>briefly</b> [1] - 19:21  <b>briefs</b> [1] - 282:21  <b>bring</b> [15] - 7:14, 12:9, 76:16, 77:3, 80:4, 94:8, 96:1, 124:25, 125:1, 133:10, 213:19, 251:12, 258:8, 292:4  <b>brings</b> [1] - 156:18  <b>broad</b> [2] - 164:8, 192:24  <b>broader</b> [1] - 6:21  <b>brochure</b> [2] - 153:4, 158:11  <b>broke</b> [1] - 150:10</p>	<p><b>brought</b> [2] - 68:19, 133:20  <b>BROWN</b> [1] - 2:11  <b>Brownstein</b> [5] - 130:10, 130:15, 130:18, 131:1, 132:6  <b>bucket</b> [9] - 63:9, 63:12, 63:17, 69:4, 69:5, 199:20, 200:7, 203:4  <b>buckets</b> [5] - 63:7, 64:3, 69:3, 179:3, 180:4  <b>budget</b> [27] - 23:17, 24:2, 24:8, 24:12, 24:17, 24:19, 25:11, 26:3, 48:11, 60:24, 61:17, 62:11, 62:17, 63:1, 64:12, 64:25, 68:10, 68:18, 69:16, 69:23, 69:25, 75:2, 77:25, 130:24, 197:11, 201:3, 244:24  <b>budgetary</b> [8] - 21:25, 25:2, 61:4, 61:7, 61:9, 64:20, 242:6, 243:23  <b>budgeted</b> [5] - 25:15, 25:18, 63:2, 67:3, 244:7  <b>budgeting</b> [4] - 60:21, 62:14, 68:4, 77:21  <b>budgets</b> [2] - 62:9, 77:6  <b>build</b> [10] - 42:9, 67:15, 80:2, 81:20, 81:24, 82:4, 82:8, 84:9, 84:17, 87:23  <b>builders</b> [1] - 93:19  <b>Building</b> [11] - 164:15, 166:1, 185:17, 185:18, 185:19, 185:25, 186:17, 191:23, 191:24, 196:10  <b>building</b> [19] - 22:19, 26:8, 26:24, 37:12, 42:13, 47:16, 67:23, 83:20, 86:22, 87:1, 88:23, 88:25, 89:1, 90:10, 93:22, 165:6, 169:25, 232:15, 236:17  <b>buildings</b> [17] - 19:14, 19:15, 21:23, 23:24, 26:1, 48:15, 67:18, 81:13, 83:9, 84:5, 88:15, 89:5, 89:11, 89:15, 171:18,</p>	<p>181:2, 200:4  <b>Buildings</b> [1] - 90:7  <b>buildup</b> [1] - 89:13  <b>built</b> [7] - 30:19, 47:19, 65:25, 84:6, 119:8, 119:17, 174:21  <b>bulk</b> [3] - 17:6, 50:10, 90:11  <b>bulldoze</b> [1] - 25:18  <b>bullet</b> [7] - 10:1, 10:2, 10:13, 10:24, 220:5, 220:17, 255:19  <b>bullets</b> [1] - 10:7  <b>bunched</b> [1] - 223:9  <b>burden</b> [2] - 23:1, 289:23  <b>Bureau</b> [3] - 53:11, 54:13, 54:19  <b>bus</b> [2] - 103:20, 103:21  <b>buying</b> [3] - 271:9, 282:4, 282:12  <b>BY</b> [141] - 2:4, 2:8, 2:12, 2:15, 2:20, 3:3, 6:16, 7:16, 8:6, 12:11, 12:23, 15:7, 15:17, 16:7, 18:20, 20:25, 23:14, 25:23, 28:10, 31:17, 32:2, 32:11, 33:9, 33:17, 34:12, 37:11, 38:16, 39:25, 40:10, 41:16, 43:24, 44:7, 45:18, 46:13, 47:13, 48:9, 49:8, 50:20, 50:25, 51:8, 52:15, 55:10, 56:1, 56:5, 56:14, 60:22, 65:11, 73:17, 74:20, 76:6, 77:1, 78:5, 85:12, 85:19, 86:10, 87:19, 97:12, 100:20, 108:11, 111:8, 111:22, 126:9, 126:24, 128:8, 131:17, 135:19, 135:22, 136:1, 137:12, 139:24, 141:4, 142:12, 148:2, 148:16, 150:5, 153:22, 155:18, 158:3, 158:22, 161:18, 166:18, 167:22, 169:11, 169:21, 170:5, 170:11, 170:20, 171:4, 172:6, 172:24, 173:22, 178:20, 179:10, 182:21, 182:24, 183:18, 193:17, 193:22,</p>
---	--	---	--	---

<p>194:23, 199:6, 202:6, 203:14, 204:14, 216:18, 224:24, 225:18, 229:10, 229:16, 234:3, 239:6, 241:21, 243:2, 247:24, 248:6, 249:6, 250:4, 250:25, 251:14, 252:4, 254:12, 255:5, 258:9, 259:1, 259:15, 261:3, 261:18, 262:23, 263:13, 264:18, 266:7, 269:8, 274:18, 275:3, 275:13, 276:16, 277:4, 283:2, 283:19, 285:21, 288:18, 291:5</p>	<p>249:24, 250:5, 250:10, 250:11, 250:13, 251:10, 265:19, 266:24, 267:7, 270:10, 272:8, 273:19, 273:25, 287:17, 287:24</p> <p><b>campus</b> [86] - 18:24, 19:19, 20:5, 25:25, 26:9, 26:13, 27:1, 29:18, 30:8, 33:22, 33:24, 35:1, 35:3, 35:4, 35:12, 44:18, 47:1, 48:15, 48:16, 48:17, 48:19, 53:6, 53:22, 54:2, 66:8, 77:25, 80:23, 81:4, 84:24, 85:13, 86:2, 86:5, 86:18, 86:22, 87:2, 87:6, 87:9, 87:23, 88:13, 89:2, 89:12, 90:10, 90:19, 90:23, 91:1, 91:8, 91:13, 91:21, 91:22, 93:24, 101:2, 106:14, 106:20, 106:23, 107:7, 107:8, 107:9, 107:21, 136:21, 145:15, 156:18, 156:20, 157:5, 160:5, 184:25, 185:1, 185:16, 188:11, 196:15, 196:21, 205:2, 214:8, 230:11, 230:13, 230:15, 230:22, 231:15, 236:23, 238:20, 250:6, 270:13, 272:5</p> <p><b>cancel</b> [5] - 12:24, 21:16, 54:24, 231:24</p> <p><b>cancelled</b> [12] - 11:19, 12:1, 12:2, 17:2, 17:7, 20:6, 20:22, 21:6, 36:22, 50:15, 231:9, 231:22</p> <p><b>canceled</b> [3] - 21:9, 232:15, 232:23</p> <p><b>cancellation</b> [5] - 20:2, 20:10, 21:15, 22:4, 42:12</p> <p><b>cannot</b> [10] - 31:11, 31:20, 175:24, 176:2, 225:13, 226:5, 231:5, 231:11, 232:5, 267:2</p> <p><b>capacity</b> [3] - 109:20, 122:22, 196:22</p> <p><b>Capital</b> [1] - 78:12</p> <p><b>capital</b> [8] - 64:12, 64:14, 64:23, 64:25, 67:17, 67:23, 112:5,</p>	<p>285:18</p> <p><b>caps</b> [3] - 159:4, 198:2, 218:10</p> <p><b>card</b> [1] - 192:2</p> <p><b>cards</b> [2] - 187:15</p> <p><b>Care</b> [2] - 22:17, 88:3</p> <p><b>care</b> [31] - 9:6, 21:20, 21:22, 23:18, 63:24, 63:25, 64:1, 64:2, 66:3, 66:8, 66:24, 67:2, 69:13, 69:22, 74:8, 78:16, 78:20, 78:24, 78:25, 81:3, 86:15, 88:18, 93:4, 148:20, 167:16, 168:22, 185:1, 207:14, 238:21, 242:10, 279:8</p> <p><b>cared</b> [3] - 93:6, 93:7, 188:8</p> <p><b>career</b> [2] - 250:20, 251:4</p> <p><b>careful</b> [1] - 87:3</p> <p><b>Carney</b> [1] - 55:6</p> <p><b>carney</b> [1] - 56:20</p> <p><b>carry</b> [1] - 19:3</p> <p><b>cars</b> [1] - 172:5</p> <p><b>Carter</b> [9] - 34:11, 39:15, 94:1, 136:20, 140:17, 157:17, 193:13, 202:19, 205:16</p> <p><b>CARTER</b> [1] - 1:3</p> <p><b>Carter's</b> [4] - 19:5, 37:13, 38:17, 172:7</p> <p><b>Caruso</b> [7] - 143:11, 143:15, 143:17, 143:21, 144:1, 152:14</p> <p><b>CARUSO</b> [1] - 143:15</p> <p><b>case</b> [24] - 23:3, 25:9, 35:17, 67:14, 68:8, 75:12, 76:20, 77:4, 79:10, 79:18, 92:18, 93:10, 95:6, 98:15, 112:23, 112:25, 113:5, 125:14, 189:9, 232:12, 267:13, 267:21, 268:9, 268:17</p> <p><b>Case</b> [1] - 1:8</p> <p><b>cases</b> [9] - 16:14, 29:9, 63:21, 91:22, 233:3, 262:24, 264:23, 269:13</p> <p><b>cash</b> [3] - 178:13, 206:14</p> <p><b>catch</b> [1] - 171:25</p> <p><b>catch-22</b> [2] - 36:2, 232:24</p>	<p><b>catchment</b> [2] - 70:2, 245:5</p> <p><b>categories</b> [10] - 64:10, 179:3, 185:7, 208:18, 209:2, 210:10, 212:14, 220:1, 221:2, 222:25</p> <p><b>categorized</b> [1] - 212:14</p> <p><b>category</b> [5] - 63:23, 102:14, 209:5, 221:7, 221:10</p> <p><b>Category</b> [1] - 201:7</p> <p><b>causes</b> [1] - 270:5</p> <p><b>causing</b> [2] - 290:9, 290:10</p> <p><b>caution</b> [1] - 96:11</p> <p><b>CCRR</b> [1] - 1:21</p> <p><b>Cemetery</b> [5] - 62:24, 236:8, 236:12, 236:15, 236:17</p> <p><b>center</b> [40] - 7:3, 11:2, 11:5, 66:4, 66:5, 67:21, 78:19, 78:23, 80:24, 81:6, 86:8, 86:11, 90:4, 107:17, 123:22, 141:23, 142:1, 142:18, 142:23, 143:4, 143:7, 143:11, 152:18, 153:12, 184:10, 185:19, 185:23, 189:14, 214:12, 218:25, 219:6, 222:8, 238:1, 238:2, 238:8, 238:12, 238:23, 268:1</p> <p><b>Center</b> [11] - 22:17, 152:15, 165:14, 166:6, 184:9, 184:13, 189:13, 192:16, 219:3</p> <p><b>centers</b> [4] - 65:19, 66:17, 67:3, 219:4</p> <p><b>Central</b> [1] - 295:8</p> <p><b>central</b> [3] - 1:2, 66:3, 86:23</p> <p><b>CENTRAL</b> [1] - 1:2</p> <p><b>centric</b> [1] - 53:20</p> <p><b>cents</b> [1] - 282:7</p> <p><b>ceremony</b> [2] - 146:16, 147:21</p> <p><b>certain</b> [16] - 32:14, 34:21, 91:21, 116:13, 118:12, 122:24, 132:7, 158:25, 174:17, 191:9, 198:4, 230:1, 241:8, 245:20, 293:8, 294:6</p> <p><b>certainly</b> [6] - 25:15, 95:19, 216:3, 262:7, 282:18, 287:10</p>	<p><b>certainty</b> [1] - 266:21</p> <p><b>CERTIFICATE</b> [1] - 295:1</p> <p><b>certification</b> [1] - 192:2</p> <p><b>certifies</b> [3] - 35:7, 39:7, 230:18</p> <p><b>certify</b> [1] - 295:8</p> <p><b>cetera</b> [7] - 64:9, 69:9, 95:1, 145:25, 213:1, 216:13, 221:12</p> <p><b>challenge</b> [18] - 19:1, 20:2, 36:19, 37:1, 42:22, 44:25, 46:25, 54:8, 54:10, 66:15, 68:10, 78:23, 86:13, 86:20, 90:2, 232:19, 245:13, 290:13</p> <p><b>challenged</b> [1] - 92:18</p> <p><b>challenges</b> [2] - 22:22, 90:16</p> <p><b>challenging</b> [1] - 89:18</p> <p><b>chance</b> [1] - 193:20</p> <p><b>change</b> [25] - 37:19, 37:24, 134:9, 147:23, 226:2, 226:16, 226:18, 226:20, 227:1, 227:5, 227:11, 228:4, 234:8, 235:7, 260:6, 261:11, 261:12, 261:20, 262:7, 262:15, 263:17, 265:14, 265:21, 266:19, 286:11</p> <p><b>changed</b> [7] - 187:24, 225:22, 226:5, 226:9, 227:18, 227:23, 265:17</p> <p><b>changes</b> [8] - 29:11, 48:15, 226:25, 262:1, 262:6, 266:13, 282:17, 283:5</p> <p><b>changing</b> [1] - 213:11</p> <p><b>characterizes</b> [1] - 219:15</p> <p><b>charged</b> [2] - 151:11, 151:12</p> <p><b>charges</b> [3] - 150:24, 197:1, 197:3</p> <p><b>Charleston</b> [1] - 66:12</p> <p><b>chart</b> [6] - 9:22, 194:13, 194:24, 195:7, 195:11, 195:15</p> <p><b>chartered</b> [1] - 103:21</p>
<b>C</b>				
<p><b>C-1.131</b> [1] - 222:19</p> <p><b>calculate</b> [3] - 276:18, 279:9, 279:17</p> <p><b>calculated</b> [6] - 137:14, 137:17, 137:23, 274:11, 274:16, 274:20</p> <p><b>calculation</b> [3] - 180:10, 203:5, 256:1</p> <p><b>calculations</b> [2] - 140:17, 241:24</p> <p><b>calculator</b> [5] - 280:4, 280:5, 280:7, 280:9, 281:12</p> <p><b>calculus</b> [1] - 245:11</p> <p><b>calendar</b> [1] - 144:15</p> <p><b>California</b> [20] - 2:6, 2:10, 2:16, 3:5, 70:7, 70:8, 70:14, 70:15, 71:3, 71:7, 71:8, 73:8, 74:1, 74:5, 222:21, 244:18, 283:11, 295:8</p> <p><b>CALIFORNIA</b> [5] - 1:2, 1:15, 1:23, 6:1, 295:4</p> <p><b>California's</b> [1] - 156:17</p> <p><b>camp</b> [2] - 150:15, 151:4</p> <p><b>camps</b> [12] - 149:4, 149:7, 149:9, 150:12, 150:18, 150:24, 151:2, 151:3, 151:11, 151:15</p> <p><b>Campus</b> [29] - 6:22, 10:10, 23:7, 30:9, 33:13, 81:17, 85:14, 85:25, 86:12, 87:20, 89:20, 235:7, 235:16,</p>				

<p><b>charts</b> [1] - 96:23  <b>check</b> [10] - 60:2, 94:3, 151:6, 166:6, 205:17, 242:12, 242:13, 291:19, 291:21, 292:3  <b>cheerleaders</b> [5] - 118:10, 118:19, 138:18, 139:11  <b>cheerleading</b> [1] - 118:14  <b>Chicago</b> [1] - 289:11  <b>childcare</b> [1] - 148:22  <b>children</b> [11] - 148:12, 150:25, 151:5, 151:6, 151:7, 166:14, 184:22, 191:3, 191:9, 191:11, 212:25  <b>Choice</b> [2] - 218:19, 218:20  <b>choice</b> [2] - 270:24, 272:23  <b>choices</b> [2] - 68:5, 77:22  <b>choose</b> [3] - 51:1, 103:11, 156:25  <b>chosen</b> [1] - 190:21  <b>Cincinnati</b> [1] - 289:7  <b>circulates</b> [1] - 185:16  <b>circulating</b> [2] - 160:9, 172:15  <b>circumstance</b> [1] - 17:25  <b>circumstances</b> [2] - 17:1, 237:13  <b>citizens</b> [1] - 214:18  <b>City</b> [1] - 251:1  <b>CIVIL</b> [1] - 2:19  <b>claimed</b> [2] - 180:12, 212:15  <b>claiming</b> [1] - 180:1  <b>clarification</b> [6] - 74:13, 203:23, 223:16, 243:25, 269:17, 272:24  <b>Clarification</b> [7] - 47:12, 86:9, 142:10, 247:11, 249:3, 250:23, 260:22  <b>clarified</b> [1] - 120:3  <b>clarify</b> [10] - 212:11, 245:15, 266:17, 274:10, 274:16, 274:19, 277:5, 278:13, 288:19, 289:19</p>	<p><b>clarifying</b> [2] - 128:4, 212:7  <b>clarity</b> [2] - 14:24, 65:12  <b>class</b> [1] - 104:7  <b>classes</b> [5] - 125:7, 190:16, 191:21, 191:24, 192:14  <b>classified</b> [1] - 47:15  <b>classroom</b> [2] - 152:2, 200:3  <b>classrooms</b> [2] - 181:1, 197:14  <b>clause</b> [1] - 127:4  <b>CLC</b> [1] - 192:16  <b>clean</b> [3] - 96:6, 96:8, 229:7  <b>clear</b> [14] - 21:1, 69:20, 89:21, 94:12, 137:2, 147:3, 187:18, 198:25, 208:3, 218:3, 243:12, 267:19, 277:17, 281:14  <b>clearly</b> [2] - 54:1, 255:15  <b>clerk</b> [1] - 228:9  <b>clerks</b> [1] - 63:15  <b>clients</b> [1] - 132:8  <b>clinic</b> [1] - 78:9  <b>clinical</b> [11] - 63:10, 218:23, 219:7, 220:18, 221:8, 221:14, 222:6, 223:8, 223:11, 223:13, 223:22  <b>clinicians</b> [2] - 221:4, 221:5  <b>close</b> [10] - 22:3, 22:21, 42:2, 68:13, 88:9, 89:23, 99:16, 101:12, 202:11, 272:7  <b>closed</b> [7] - 14:18, 43:6, 44:19, 145:4, 145:7, 145:25, 195:22  <b>closely</b> [1] - 240:25  <b>closer</b> [3] - 90:1, 142:14, 150:7  <b>closest</b> [2] - 95:13, 96:25  <b>closures</b> [1] - 91:15  <b>clothing</b> [1] - 184:23  <b>club</b> [1] - 154:5  <b>coaches</b> [13] - 117:23, 117:24, 118:18, 125:1, 138:16, 139:7, 152:6, 152:7, 152:8, 152:10, 156:16, 156:19, 156:22  <b>coaches'</b> [1] - 115:25</p>	<p><b>coaching</b> [1] - 154:16  <b>code</b> [8] - 271:7, 275:15, 275:19, 276:1, 278:9, 281:7, 282:8  <b>Code</b> [2] - 221:2, 295:9  <b>codes</b> [2] - 13:14, 13:18  <b>collaboration</b> [1] - 205:1  <b>colleague</b> [3] - 16:1, 55:6, 56:20  <b>colleagues</b> [2] - 228:25, 242:13  <b>collection</b> [1] - 61:20  <b>college</b> [8] - 154:17, 156:1, 156:5, 156:15, 156:16, 156:19, 156:22, 157:4  <b>College</b> [1] - 156:23  <b>colleges</b> [1] - 156:18  <b>Colliers</b> [1] - 178:10  <b>colors</b> [1] - 199:15  <b>columbarium</b> [1] - 236:18  <b>column</b> [1] - 208:7  <b>columns</b> [1] - 159:12  <b>combination</b> [2] - 259:25, 287:18  <b>combining</b> [1] - 122:11  <b>comfortable</b> [1] - 147:14  <b>coming</b> [13] - 50:3, 74:4, 79:11, 91:5, 145:17, 146:19, 146:20, 146:21, 192:3, 214:14, 219:18, 245:5, 279:13  <b>comma</b> [2] - 35:5, 35:7  <b>comment</b> [2] - 187:15, 229:6  <b>commentary</b> [1] - 197:8  <b>Comments</b> [2] - 15:13, 16:9  <b>comments</b> [8] - 16:10, 16:21, 16:25, 17:3, 17:4, 17:8, 18:5, 52:20  <b>commitment</b> [3] - 185:5, 191:8, 191:13  <b>commitments</b> [4] - 114:10, 173:4, 186:7, 191:15  <b>committed</b> [1] - 215:5</p>	<p><b>committee</b> [1] - 30:16  <b>Committee</b> [4] - 35:8, 131:25, 251:21, 262:19  <b>committees</b> [2] - 230:18, 230:19  <b>Committees</b> [2] - 35:9, 132:3  <b>common</b> [1] - 201:4  <b>communication</b> [1] - 209:16  <b>communities</b> [6] - 81:16, 81:18, 240:6, 240:15, 241:4, 241:8  <b>Community</b> [1] - 192:16  <b>community</b> [11] - 23:18, 63:23, 63:24, 64:1, 73:21, 81:13, 89:25, 90:5, 90:14, 190:17, 237:19  <b>community's</b> [1] - 249:8  <b>compact</b> [1] - 170:22  <b>compensation</b> [1] - 99:6  <b>compete</b> [1] - 120:3  <b>competing</b> [1] - 66:15  <b>competition</b> [4] - 123:24, 124:2, 124:5  <b>competitions</b> [2] - 115:14, 122:1  <b>compiled</b> [2] - 124:18, 140:18  <b>complete</b> [6] - 92:6, 121:24, 158:4, 174:6, 174:11, 246:13  <b>completed</b> [2] - 7:23, 174:4  <b>completely</b> [2] - 170:6, 293:5  <b>completeness</b> [1] - 52:2  <b>complex</b> [14] - 53:6, 54:9, 57:13, 81:8, 81:16, 87:3, 99:16, 111:13, 111:25, 115:22, 129:4, 164:25, 206:21, 238:9  <b>complexes</b> [1] - 80:21  <b>Compliance</b> [1] - 32:14  <b>compliance</b> [34] - 13:13, 30:24, 30:25, 33:12, 34:21, 34:25, 35:5, 35:6, 35:17, 35:19, 58:13, 63:13,</p>	<p>132:24, 133:16, 134:12, 173:3, 225:4, 225:9, 225:12, 226:18, 226:22, 227:4, 227:17, 228:3, 230:1, 230:10, 230:15, 230:17, 231:5, 231:15, 231:19, 232:7, 232:24, 233:1  <b>compliant</b> [7] - 33:24, 36:4, 168:1, 168:5, 168:8, 169:1, 169:14  <b>complicated</b> [3] - 25:3, 180:14, 292:9  <b>complications</b> [1] - 282:5  <b>compliment</b> [1] - 243:6  <b>comply</b> [1] - 18:25  <b>components</b> [2] - 62:20, 85:14  <b>ported</b> [1] - 229:20  <b>compound</b> [1] - 111:17  <b>comprehensive</b> [1] - 271:10  <b>computation</b> [1] - 284:11  <b>compute</b> [1] - 278:8  <b>computer</b> [2] - 76:16, 196:9  <b>concentrate</b> [1] - 289:21  <b>concept</b> [1] - 137:2  <b>concern</b> [3] - 90:25, 212:23, 227:24  <b>concerned</b> [3] - 92:24, 213:25, 290:3  <b>concerning</b> [3] - 49:2, 209:22, 270:3  <b>concerns</b> [5] - 19:9, 25:24, 79:4, 161:14, 293:15  <b>concluded</b> [2] - 129:19, 294:21  <b>conclusion</b> [1] - 134:14  <b>conclusions</b> [1] - 13:4  <b>concluded</b> [1] - 17:6  <b>concurrence</b> [2] - 14:10, 16:14  <b>concurrences</b> [3] - 17:2, 17:17  <b>concurring</b> [1] - 17:11  <b>condition</b> [9] -</p>
--	---	---	--	--



<p>167:17, 175:8, 175:11, 175:17, 175:23, 176:1, 177:20, 178:7  <b>conditional</b> [3] - 198:1, 198:8  <b>conditioning</b> [1] - 154:17  <b>conditions</b> [5] - 44:16, 161:8, 161:13, 162:2, 175:21  <b>conductive</b> [2] - 87:11, 88:12  <b>conduct</b> [1] - 90:12  <b>conducted</b> [2] - 34:24, 230:9  <b>confer</b> [1] - 52:12  <b>conference</b> [1] - 295:13  <b>conformance</b> [1] - 295:13  <b>confuse</b> [1] - 181:10  <b>confused</b> [4] - 82:7, 169:3, 181:11, 198:9  <b>confusing</b> [6] - 22:13, 111:17, 140:20, 142:2, 194:17, 201:14  <b>confusion</b> [1] - 253:14  <b>Congress</b> [22] - 8:9, 8:17, 10:10, 28:2, 37:15, 37:16, 37:18, 37:19, 38:4, 38:6, 39:2, 66:4, 66:13, 66:21, 68:17, 114:17, 131:1, 132:7, 193:9, 227:15, 227:18, 227:23  <b>Congress's</b> [1] - 37:23  <b>Congressional</b> [17] - 27:21, 27:23, 28:1, 28:15, 29:22, 37:24, 40:4, 49:6, 49:12, 58:20, 59:10, 59:12, 59:15, 59:17, 59:18, 59:22, 114:10  <b>congressionally</b> [1] - 233:22  <b>Congressionally</b> [2] - 7:10, 7:21  <b>Congressionally-mandated</b> [1] - 7:21  <b>Congressman</b> [3] - 131:21, 131:22  <b>conjunction</b> [3] - 17:22, 81:18, 234:22  <b>connected</b> [5] - 252:9, 255:21, 256:1,</p>	<p>265:10, 266:24  <b>connection</b> [3] - 104:7, 187:19, 239:9  <b>connections</b> [1] - 27:4  <b>consequences</b> [3] - 132:22, 133:8, 133:15  <b>consider</b> [2] - 30:11, 177:17  <b>consideration</b> [19] - 14:3, 18:11, 26:22, 27:2, 53:21, 53:23, 79:2, 176:13, 176:15, 176:22, 177:7, 177:8, 177:20, 177:24, 178:6, 179:1, 180:1, 180:12, 183:6  <b>considerations</b> [2] - 28:22  <b>considered</b> [4] - 28:19, 35:21, 35:23, 93:22  <b>considering</b> [1] - 54:23  <b>consistent</b> [5] - 58:9, 71:11, 224:13, 245:6, 257:2  <b>consistently</b> [1] - 290:11  <b>constitutes</b> [1] - 226:17  <b>constrained</b> [2] - 57:7, 69:2  <b>constraints</b> [2] - 35:15, 57:23  <b>construct</b> [4] - 88:24, 88:25, 90:4, 285:19  <b>constructed</b> [1] - 18:24  <b>construction</b> [40] - 25:10, 42:4, 43:2, 43:4, 48:3, 61:15, 64:6, 64:12, 64:14, 64:23, 64:25, 65:2, 65:9, 67:2, 67:5, 67:7, 68:22, 69:6, 77:14, 78:7, 83:17, 84:21, 84:22, 84:23, 86:14, 86:19, 86:21, 86:23, 86:24, 91:11, 91:15, 92:4, 92:8, 93:25, 165:7, 167:4, 169:25, 170:16, 213:8  <b>Construction</b> [3] - 64:15, 64:16, 64:18  <b>constructions</b> [1] - 78:8  <b>consuming</b> [1] - 70:25</p>	<p><b>cONT</b> [1] - 3:1  <b>contact</b> [1] - 145:13  <b>contained</b> [4] - 9:1, 9:15, 79:22, 195:6  <b>contemplated</b> [1] - 92:10  <b>contemplates</b> [1] - 27:3  <b>contend</b> [1] - 214:19  <b>context</b> [4] - 42:6, 154:11, 184:20, 216:25  <b>contiguous</b> [1] - 83:20  <b>contingencies</b> [1] - 83:21  <b>continuation</b> [1] - 243:21  <b>continue</b> [11] - 14:22, 58:15, 66:1, 92:25, 141:20, 150:3, 231:13, 261:17, 275:10, 291:2, 293:8  <b>continued</b> [4] - 6:10, 18:14, 136:12, 195:23  <b>Continued</b> [2] - 4:5, 6:14  <b>continues</b> [3] - 130:16, 140:9, 245:13  <b>continuing</b> [2] - 39:5, 39:7  <b>contract</b> [6] - 53:25, 74:15, 92:13, 92:17, 92:24, 245:9  <b>contracting</b> [2] - 77:13, 93:18  <b>contractors</b> [2] - 91:16, 93:20  <b>contracts</b> [1] - 74:11  <b>Contracts</b> [1] - 69:12  <b>contrast</b> [2] - 32:5, 269:23  <b>contribution</b> [9] - 20:9, 27:15, 57:11, 57:15, 198:11, 198:12, 206:9, 206:13, 207:10  <b>contributions</b> [20] - 8:16, 13:6, 13:12, 13:16, 13:19, 20:18, 21:11, 27:7, 27:11, 27:18, 28:14, 29:6, 29:7, 29:24, 179:18, 210:25, 233:4, 254:10, 254:19, 256:3  <b>control</b> [1] - 236:8  <b>Control</b> [1] - 18:1  <b>convene</b> [1] - 149:15  <b>convenience</b> [1] - 39:23</p>	<p><b>conveniently</b> [1] - 202:16  <b>conversation</b> [2] - 41:23, 201:4  <b>conversations</b> [2] - 188:6, 293:5  <b>convert</b> [2] - 69:4, 88:9  <b>convicted</b> [3] - 9:20, 234:13, 234:19  <b>cooking</b> [1] - 191:24  <b>coordination</b> [1] - 209:15  <b>copy</b> [16] - 32:3, 33:7, 157:22, 157:24, 158:4, 193:19, 217:4, 217:8, 224:19, 228:7, 228:12, 228:16, 229:1, 229:7, 255:3, 294:13  <b>cord</b> [1] - 78:10  <b>cordoned</b> [1] - 78:1  <b>core</b> [2] - 152:3, 228:1  <b>corner</b> [9] - 8:20, 8:24, 44:10, 85:16, 194:1, 194:12, 202:12, 214:7, 214:18  <b>Corporation</b> [1] - 10:16  <b>correct</b> [232] - 10:17, 16:19, 18:22, 38:12, 45:21, 51:4, 70:12, 80:13, 83:12, 85:15, 98:2, 99:1, 99:21, 100:2, 100:12, 101:9, 102:7, 102:9, 102:15, 102:20, 102:22, 104:10, 104:16, 105:1, 105:4, 105:8, 105:11, 105:13, 105:18, 106:2, 106:4, 106:10, 107:14, 108:16, 108:18, 108:19, 108:22, 109:2, 109:4, 109:19, 109:23, 110:13, 110:17, 112:22, 113:14, 113:15, 114:15, 114:23, 114:25, 115:2, 115:4, 115:10, 116:1, 116:8, 117:18, 118:6, 118:20, 119:10, 119:18, 119:20, 119:23, 120:11, 120:14, 120:22, 121:9, 121:11, 122:7, 122:10, 122:13, 122:20, 122:23,</p>	<p>123:1, 124:4, 124:8, 124:12, 124:15, 124:19, 124:22, 125:8, 125:11, 125:13, 125:17, 125:25, 129:18, 129:22, 130:3, 130:12, 132:16, 132:18, 133:6, 133:9, 134:5, 137:15, 137:19, 138:14, 138:22, 139:1, 139:6, 139:8, 139:10, 139:12, 139:13, 139:14, 139:17, 140:4, 140:7, 140:11, 140:13, 141:3, 141:7, 141:12, 141:25, 143:10, 143:23, 144:10, 146:5, 149:6, 149:8, 158:19, 159:6, 159:9, 159:22, 159:24, 160:3, 160:8, 160:9, 160:25, 161:2, 161:6, 161:19, 161:25, 162:22, 162:25, 163:19, 166:23, 167:2, 167:24, 168:6, 168:9, 170:7, 171:24, 172:2, 172:9, 172:12, 172:14, 173:23, 173:24, 174:15, 174:19, 176:24, 176:25, 177:13, 183:5, 183:7, 183:9, 184:3, 184:5, 199:16, 203:9, 206:9, 206:23, 208:11, 208:16, 210:4, 218:12, 219:12, 220:8, 220:11, 223:13, 225:14, 226:19, 226:20, 227:3, 230:5, 231:6, 231:9, 231:19, 234:21, 235:13, 236:2, 237:6, 238:2, 238:3, 238:10, 240:24, 241:23, 242:1, 243:10, 247:21, 248:10, 248:15, 248:17, 248:21, 248:23, 249:1, 249:11, 249:16, 251:9, 253:19, 253:20, 256:4, 257:7, 257:16, 259:11, 261:13, 262:3, 263:6, 263:7, 263:24, 263:25, 264:9, 264:13, 265:4,</p>
---	--	---	--	--

<p>266:2, 267:8, 268:19, 268:22, 269:12, 271:14, 273:5, 273:8, 274:9, 274:22, 279:7, 281:25, 284:17, 286:25, 287:5, 288:16, 291:10, 291:14, 295:10</p> <p><b>corrected</b> [1] - 18:14</p> <p><b>correction</b> [6] - 19:5, 171:14, 171:18, 171:20, 206:22, 223:9</p> <p><b>correctly</b> [9] - 10:4, 19:6, 33:19, 33:25, 44:22, 46:22, 53:4, 156:10, 219:1</p> <p><b>corresponding</b> [1] - 266:13</p> <p><b>cost</b> [35] - 21:9, 21:18, 44:17, 65:21, 126:12, 127:6, 127:19, 128:16, 128:23, 176:25, 180:2, 180:11, 181:4, 183:3, 183:5, 201:8, 206:22, 206:25, 211:15, 211:24, 239:3, 239:7, 239:8, 239:11, 239:13, 239:14, 240:3, 241:3, 241:10, 241:22, 241:24, 242:4, 242:10</p> <p><b>costly</b> [1] - 26:4</p> <p><b>costs</b> [47] - 19:14, 22:15, 23:18, 23:20, 23:23, 25:9, 25:10, 39:11, 63:25, 74:11, 180:21, 180:22, 180:25, 199:22, 200:4, 203:10, 203:19, 203:22, 206:20, 207:9, 207:10, 207:22, 207:23, 207:25, 208:17, 208:20, 208:21, 208:22, 209:1, 209:23, 210:10, 211:1, 211:2, 211:3, 211:5, 211:9, 211:10, 211:14, 211:21, 212:21, 212:22, 271:23</p> <p><b>Counsel</b> [8] - 3:8, 40:7, 193:14, 201:16, 212:3, 260:1, 291:2, 292:18</p> <p><b>counsel</b> [67] - 6:6, 14:22, 24:23, 31:22, 37:10, 58:25, 59:24, 60:10, 60:19, 61:3,</p>	<p>73:14, 78:3, 85:11, 94:3, 95:11, 96:9, 96:22, 111:21, 127:12, 145:2, 145:10, 147:1, 147:23, 148:15, 149:12, 149:20, 150:1, 164:10, 164:19, 167:14, 167:20, 183:16, 183:23, 190:5, 205:20, 205:23, 213:13, 215:17, 215:21, 215:25, 216:6, 216:9, 216:12, 216:16, 224:25, 225:17, 225:22, 241:19, 242:12, 245:23, 246:8, 246:18, 250:1, 252:20, 260:5, 261:15, 264:14, 264:16, 266:5, 275:9, 283:1, 283:3, 288:2, 290:17, 292:10, 294:19</p> <p><b>COUNSEL</b> [3] - 2:1, 2:7, 2:14</p> <p><b>Counsel's</b> [1] - 134:20</p> <p><b>counseling</b> [1] - 156:5</p> <p><b>Counseling</b> [1] - 156:23</p> <p><b>count</b> [2] - 245:3, 245:7</p> <p><b>country</b> [14] - 65:15, 65:16, 66:20, 67:19, 73:2, 74:2, 74:7, 75:7, 109:13, 109:15, 139:19, 141:9, 156:19, 237:4</p> <p><b>county</b> [2] - 279:2, 290:6</p> <p><b>COUNTY</b> [1] - 295:3</p> <p><b>County</b> [3] - 251:6, 278:25, 279:15</p> <p><b>couple</b> [14] - 23:4, 23:21, 28:8, 45:20, 53:3, 66:13, 68:3, 104:20, 138:20, 195:9, 202:14, 234:13, 270:15, 288:3</p> <p><b>couples</b> [1] - 229:21</p> <p><b>course</b> [18] - 26:16, 30:2, 57:16, 88:8, 88:9, 91:25, 109:13, 111:23, 130:20, 138:10, 164:11, 187:15, 190:25,</p>	<p>192:2, 217:14, 245:16, 250:20, 251:4</p> <p><b>courses</b> [6] - 141:21, 187:14, 190:15, 190:23, 191:19, 192:17</p> <p><b>court</b> [15] - 41:1, 41:10, 58:5, 115:1, 121:5, 121:6, 121:7, 121:8, 122:6, 145:18, 149:13, 154:16, 246:16, 247:1, 277:15</p> <p><b>Court</b> [51] - 8:7, 8:25, 9:14, 14:3, 14:24, 20:3, 23:2, 27:14, 27:20, 28:12, 28:18, 31:9, 32:24, 33:8, 35:14, 41:25, 47:4, 51:23, 57:23, 58:5, 58:8, 60:13, 63:4, 68:23, 76:11, 76:19, 76:23, 93:11, 94:19, 94:23, 96:18, 99:2, 101:6, 106:12, 113:8, 167:15, 167:16, 169:22, 204:3, 214:19, 220:25, 224:19, 228:12, 241:20, 244:3, 260:17, 261:4, 292:21, 295:7, 295:20</p> <p><b>COURT</b> [441] - 1:1, 1:22, 6:6, 6:10, 8:4, 12:21, 13:11, 13:20, 13:25, 14:8, 14:11, 14:13, 14:20, 15:16, 15:20, 15:25, 16:5, 18:16, 20:11, 20:14, 23:8, 23:11, 24:13, 24:22, 25:4, 25:19, 25:22, 26:10, 31:14, 31:19, 32:5, 32:8, 33:5, 33:14, 34:7, 36:8, 36:15, 37:3, 37:10, 38:6, 38:9, 38:13, 39:18, 39:20, 40:7, 41:4, 41:7, 41:11, 41:15, 44:5, 45:16, 46:8, 47:18, 47:21, 47:23, 48:2, 48:5, 48:8, 48:25, 49:4, 50:18, 50:23, 51:3, 51:7, 52:9, 52:13, 55:24, 56:4, 56:12, 58:25, 59:3, 59:6, 59:8, 59:11, 59:14, 59:23, 60:2, 60:7, 60:10, 60:16, 60:19, 65:4, 65:7, 69:25, 70:2, 70:4, 70:8, 70:10, 70:13,</p>	<p>70:24, 71:13, 71:15, 71:19, 71:21, 71:24, 72:1, 72:3, 72:6, 72:8, 72:11, 72:15, 72:17, 72:24, 73:6, 73:10, 73:12, 75:11, 75:14, 75:17, 75:22, 76:3, 76:20, 78:3, 81:22, 82:3, 82:7, 82:11, 82:16, 82:20, 82:25, 83:3, 83:10, 83:13, 83:21, 83:24, 84:8, 84:21, 85:3, 85:5, 85:9, 85:18, 87:11, 87:14, 87:18, 94:3, 94:7, 94:14, 94:17, 94:25, 95:11, 95:19, 95:22, 95:25, 96:5, 96:11, 96:21, 96:25, 97:3, 97:8, 100:16, 100:19, 108:3, 108:9, 111:4, 111:18, 126:8, 126:15, 126:19, 126:22, 128:1, 128:5, 131:15, 135:15, 135:18, 135:21, 135:25, 137:10, 139:22, 140:21, 140:25, 141:2, 144:19, 144:24, 145:1, 145:10, 145:22, 145:24, 146:6, 146:8, 146:11, 146:13, 146:17, 146:23, 147:1, 147:5, 147:10, 147:13, 147:18, 147:22, 148:11, 148:15, 149:12, 149:15, 149:19, 149:23, 153:19, 155:15, 157:10, 157:14, 157:19, 157:22, 157:24, 158:16, 158:18, 158:20, 161:14, 164:10, 164:12, 164:15, 164:22, 165:9, 165:17, 165:21, 165:23, 166:3, 166:12, 166:17, 167:5, 168:10, 168:14, 168:22, 169:3, 169:17, 170:4, 170:10, 170:15, 170:19, 170:25, 171:23, 172:3, 172:22, 173:19, 179:8, 182:23, 183:14, 183:16, 193:14, 193:19,</p>	<p>194:17, 194:19, 198:19, 198:22, 199:19, 201:12, 201:15, 201:20, 201:25, 202:2, 203:8, 203:12, 203:24, 204:9, 205:12, 205:17, 205:20, 205:22, 206:6, 206:11, 206:16, 206:18, 207:1, 207:3, 207:5, 207:9, 207:16, 207:21, 208:3, 208:7, 208:9, 208:12, 208:14, 208:17, 208:23, 209:1, 209:4, 209:6, 209:8, 209:10, 209:14, 209:17, 209:20, 209:22, 210:2, 210:5, 210:8, 210:14, 210:20, 211:7, 211:18, 211:20, 211:25, 212:2, 212:8, 212:17, 213:3, 213:13, 213:16, 213:18, 214:23, 215:7, 215:15, 215:21, 215:23, 216:4, 216:9, 217:9, 217:16, 224:17, 224:21, 228:12, 228:18, 228:21, 229:2, 229:5, 229:9, 229:15, 233:21, 233:24, 241:16, 242:8, 242:15, 242:18, 242:20, 242:23, 245:20, 245:23, 245:25, 246:4, 246:8, 246:12, 246:15, 246:18, 246:21, 246:24, 247:3, 247:7, 247:9, 247:13, 247:16, 247:18, 247:20, 247:22, 248:1, 250:1, 252:2, 252:20, 252:25, 253:4, 253:10, 253:15, 253:18, 253:21, 253:24, 254:1, 254:3, 254:11, 255:3, 258:24, 259:7, 259:10, 259:14, 260:25, 261:15, 261:17, 262:22, 263:5, 263:9, 264:14, 264:16, 266:3, 266:5, 269:5, 274:12, 274:14, 275:9,</p>
--	---	--	--	---

<p>275:25, 276:12, 276:18, 276:21, 276:24, 277:2, 277:15, 278:1, 278:3, 278:8, 278:11, 278:16, 278:23, 279:2, 279:4, 279:8, 279:17, 279:20, 279:25, 280:2, 280:6, 280:10, 280:15, 280:18, 280:21, 280:23, 281:2, 281:5, 281:13, 281:20, 281:23, 282:1, 282:6, 282:10, 282:14, 282:19, 283:1, 283:10, 283:15, 283:17, 284:7, 284:10, 284:15, 284:21, 285:4, 285:20, 288:15, 289:1, 289:15, 289:17, 290:1, 290:19, 290:24, 291:17, 291:19, 291:25, 292:2, 292:10, 292:18, 293:3, 293:19, 293:24, 294:2, 294:11  <b>Court's</b> [2] - 95:15, 260:7  <b>Court-ordered</b> [1] - 57:23  <b>courteous</b> [2] - 146:9, 293:15  <b>courtesy</b> [3] - 95:22, 145:25, 147:24  <b>courtroom</b> [2] - 96:12, 183:22  <b>COURTROOM</b> [1] - 96:16  <b>Courts</b> [1] - 39:1  <b>courts</b> [12] - 23:9, 115:3, 121:16, 141:10, 153:6, 162:18, 162:19, 163:10, 163:14, 163:22, 164:25, 208:20  <b>cover</b> [3] - 59:19, 59:22, 66:23  <b>covers</b> [1] - 70:5  <b>COVID</b> [6] - 20:23, 42:10, 42:12, 174:10, 188:23, 195:22  <b>create</b> [1] - 133:19  <b>created</b> [1] - 172:15  <b>creative</b> [1] - 191:25  <b>credit</b> [9] - 99:8, 99:9, 99:10, 106:5,</p>	<p>263:22, 264:6, 265:25, 285:7, 285:14  <b>Credit</b> [2] - 263:19, 285:11  <b>credits</b> [6] - 264:12, 284:24, 285:6, 285:14, 285:16, 286:3  <b>crimes</b> [2] - 90:9, 234:13  <b>crisis</b> [1] - 16:5  <b>criteria</b> [5] - 226:8, 226:10, 226:11, 228:1, 228:3  <b>critical</b> [6] - 66:3, 66:8, 78:20, 81:3, 86:15, 94:8  <b>CROSS</b> [2] - 202:5, 216:17  <b>cross</b> [10] - 60:14, 60:17, 109:13, 109:15, 139:19, 141:9, 201:21, 205:20, 216:14, 292:11  <b>Cross</b> [2] - 4:9, 4:12  <b>cross-country</b> [2] - 139:19, 141:9  <b>Cross-Examination</b> [2] - 4:9, 4:12  <b>CROSS-EXAMINATION</b> [2] - 202:5, 216:17  <b>cross-examination</b> [3] - 60:14, 60:17, 201:21  <b>crossed</b> [2] - 34:15, 34:16  <b>crowd</b> [1] - 145:16  <b>CRR</b> [1] - 295:20  <b>cry</b> [1] - 290:5  <b>CSR</b> [2] - 1:21, 295:20  <b>CTRS</b> [9] - 29:3, 29:12, 50:11, 50:13, 74:12, 88:4, 186:18, 187:7, 192:14  <b>cure</b> [2] - 53:14, 232:20  <b>cured</b> [2] - 232:13, 232:15  <b>curious</b> [3] - 12:24, 81:15, 186:11  <b>current</b> [10] - 26:17, 42:23, 90:21, 91:15, 92:21, 171:13, 258:2, 261:19, 262:4, 289:13  <b>curve</b> [1] - 169:22  <b>curved</b> [1] - 167:23  <b>curves</b> [2] - 167:1, 167:3</p>	<p><b>custodial</b> [1] - 208:18  <b>customer</b> [1] - 49:25  <b>customizing</b> [1] - 193:6</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>D.C</b> [1] - 2:23  <b>daily</b> [6] - 159:5, 184:24, 185:22, 188:24, 189:1, 203:21  <b>Dale</b> [1] - 3:7  <b>Dallas</b> [1] - 66:17  <b>damaged</b> [1] - 204:23  <b>dark</b> [1] - 167:13  <b>data</b> [6] - 141:13, 142:21, 142:22, 142:24, 193:10, 237:5  <b>date</b> [7] - 48:4, 135:14, 136:2, 146:18, 191:10, 213:11, 257:20  <b>Date</b> [1] - 295:16  <b>dated</b> [1] - 218:7  <b>dates</b> [2] - 38:14, 148:24  <b>DAV</b> [1] - 55:19  <b>Davenport</b> [1] - 3:8  <b>DAVID</b> [1] - 1:3  <b>dawned</b> [1] - 167:8  <b>DAY</b> [1] - 1:14  <b>days</b> [11] - 72:9, 91:18, 91:20, 94:10, 94:13, 117:6, 117:14, 120:13, 148:8, 159:21, 293:20  <b>DC</b> [5] - 130:13, 131:4, 246:13, 293:9, 293:10  <b>DC-based</b> [1] - 130:13  <b>deal</b> [4] - 17:10, 27:2, 30:12, 214:7  <b>dealing</b> [4] - 84:2, 161:4, 161:23, 214:14  <b>dealings</b> [1] - 111:2  <b>dealt</b> [3] - 132:22, 133:8, 133:14  <b>debate</b> [2] - 237:12, 241:6  <b>decent</b> [1] - 85:20  <b>decide</b> [2] - 36:1, 181:7  <b>decided</b> [2] - 66:16, 261:25  <b>decision</b> [6] - 14:16, 37:5, 42:15, 125:15, 129:13, 214:24</p>	<p><b>decisions</b> [2] - 49:2, 235:20  <b>declaration</b> [1] - 93:16  <b>declarations</b> [1] - 79:19  <b>decomposed</b> [1] - 170:21  <b>decrease</b> [2] - 220:10, 282:14  <b>dedicated</b> [1] - 156:4  <b>deductible</b> [2] - 106:1, 106:3  <b>deeded</b> [3] - 107:13, 183:8, 184:3  <b>deemed</b> [2] - 30:22, 36:20  <b>deeply</b> [1] - 188:8  <b>default</b> [1] - 39:4  <b>defects</b> [1] - 232:12  <b>DEFENDANT</b> [1] - 2:18  <b>Defendants</b> [1] - 1:10  <b>defendants</b> [1] - 292:22  <b>defendants'</b> [2] - 4:5, 6:15  <b>deferred</b> [3] - 203:4, 203:10, 203:11  <b>deficiencies</b> [1] - 18:22  <b>deficiency</b> [1] - 53:14  <b>deficient</b> [1] - 18:12  <b>defined</b> [4] - 65:6, 220:3, 257:3, 278:24  <b>defining</b> [1] - 137:4  <b>definition</b> [8] - 137:3, 182:15, 255:19, 256:12, 256:18, 257:5, 257:22, 258:2  <b>definitions</b> [9] - 252:17, 254:8, 254:17, 254:24, 255:25, 256:11, 256:17, 256:25, 257:2  <b>degrees</b> [1] - 98:24  <b>deleted</b> [1] - 46:19  <b>deletes</b> [1] - 46:15  <b>delineated</b> [1] - 179:3  <b>deliver</b> [1] - 185:22  <b>demand</b> [1] - 116:13  <b>demolish</b> [1] - 19:15  <b>demolition</b> [2] - 26:4, 26:19  <b>demonstrate</b> [1] - 210:1  <b>demonstrative</b> [1] -</p>	<p>33:3  <b>denials</b> [1] - 263:2  <b>denied</b> [1] - 262:25  <b>DENIS</b> [2] - 1:9, 2:18  <b>DENNIS</b> [3] - 4:14, 247:4, 247:20  <b>Dennis</b> [13] - 246:10, 246:20, 247:8, 247:10, 247:16, 247:17, 247:25, 251:15, 252:5, 254:20, 255:6, 258:10, 259:2  <b>denominator</b> [2] - 75:5, 75:9  <b>depart</b> [1] - 171:2  <b>department</b> [6] - 34:25, 154:11, 230:10, 264:1, 264:2, 285:3  <b>DEPARTMENT</b> [1] - 2:19  <b>Department</b> [8] - 6:13, 33:3, 33:13, 34:23, 54:20, 193:8, 218:4, 230:8  <b>departments</b> [1] - 66:10  <b>depict</b> [1] - 153:1  <b>depicts</b> [1] - 152:17  <b>deposition</b> [9] - 112:8, 112:14, 120:3, 151:21, 154:2, 155:5, 157:3, 172:14, 176:20  <b>depth</b> [1] - 192:6  <b>deputy</b> [1] - 267:25  <b>Deputy</b> [1] - 248:8  <b>DEPUTY</b> [1] - 96:16  <b>derailed</b> [1] - 174:10  <b>describe</b> [10] - 8:25, 27:14, 28:12, 28:18, 74:23, 77:5, 184:16, 185:10, 190:6, 257:13  <b>described</b> [5] - 46:25, 128:12, 155:4, 167:23, 241:13  <b>describing</b> [2] - 46:1, 84:14  <b>description</b> [3] - 9:14, 10:23, 222:11  <b>designated</b> [3] - 48:16, 268:11, 270:18  <b>designating</b> [1] - 268:11  <b>designation</b> [4] - 272:4, 273:2, 273:10, 273:14  <b>designed</b> [4] - 154:3, 190:2, 192:18, 192:19  <b>desire</b> [1] - 174:11</p>
---	---	--	--	---

<p><b>desired</b> [1] - 164:1  <b>despite</b> [1] - 23:16  <b>destruction</b> [1] - 47:16  <b>detail</b> [2] - 17:8, 17:10  <b>detailing</b> [1] - 256:6  <b>determination</b> [7] - 37:8, 51:18, 128:12, 218:10, 260:8, 260:18, 261:5  <b>determine</b> [8] - 125:21, 126:2, 126:25, 129:5, 203:19, 218:22, 262:5, 293:17  <b>determined</b> [11] - 11:11, 131:3, 160:23, 199:24, 222:12, 227:2, 231:4, 233:1, 254:22, 256:23, 262:13  <b>determines</b> [3] - 34:23, 225:8, 230:8  <b>determining</b> [11] - 125:19, 125:25, 127:21, 252:19, 254:9, 254:18, 255:22, 259:18, 260:11, 261:8, 265:12  <b>develop</b> [2] - 83:4, 111:25  <b>developed</b> [3] - 81:9, 115:23, 116:2  <b>developer</b> [1] - 284:22  <b>developers</b> [5] - 260:9, 260:19, 261:6, 264:10, 285:23  <b>development</b> [7] - 80:18, 81:1, 114:19, 129:4, 129:7, 285:15, 285:25  <b>Development</b> [1] - 251:6  <b>developments</b> [1] - 265:20  <b>device</b> [1] - 22:20  <b>Diem</b> [3] - 69:19, 73:4, 244:15  <b>dietary</b> [1] - 189:2  <b>differ</b> [2] - 8:21, 58:3  <b>difference</b> [5] - 24:17, 81:24, 175:19, 187:3, 284:7  <b>differences</b> [1] - 58:7  <b>different</b> [47] - 22:1, 24:1, 30:1, 38:22, 38:24, 55:4, 62:20, 73:19, 75:7, 78:1,</p>	<p>78:2, 85:14, 106:17, 120:18, 127:8, 133:18, 146:2, 151:6, 155:2, 157:18, 185:1, 185:3, 185:6, 186:15, 192:18, 198:3, 210:19, 213:21, 252:17, 252:18, 254:8, 254:9, 254:17, 254:23, 254:24, 255:24, 255:25, 256:11, 256:12, 256:17, 256:18, 256:24, 256:25, 257:1, 257:2, 261:19, 261:20  <b>differently</b> [1] - 265:24  <b>difficult</b> [1] - 212:13  <b>dig</b> [1] - 225:7  <b>DIRECT</b> [3] - 6:14, 97:10, 247:23  <b>Direct</b> [3] - 4:4, 4:8, 4:15  <b>direct</b> [17] - 4:5, 4:8, 6:10, 6:15, 7:3, 18:9, 64:1, 64:18, 97:8, 98:3, 150:3, 187:20, 201:22, 216:12, 247:22, 252:12, 262:20  <b>directed</b> [1] - 34:16  <b>directing</b> [5] - 221:24, 252:5, 256:15, 259:2, 264:19  <b>direction</b> [1] - 97:11  <b>Directions</b> [6] - 171:21, 185:15, 185:17, 186:18, 191:23, 192:14  <b>directly</b> [5] - 17:15, 29:8, 77:4, 173:12, 272:19  <b>director</b> [11] - 11:2, 11:5, 62:8, 81:7, 86:8, 86:11, 187:13, 213:23, 238:2, 267:25  <b>directors</b> [1] - 98:9  <b>dirt</b> [1] - 170:22  <b>disabilities</b> [1] - 98:25  <b>disability</b> [8] - 252:9, 255:21, 256:1, 260:11, 260:21, 261:8, 265:10, 267:2  <b>Disabled</b> [3] - 55:17, 56:23, 56:24  <b>disabled</b> [2] - 265:17, 266:22  <b>disagree</b> [4] - 36:18,</p>	<p>39:6, 57:5, 233:4  <b>disagreed</b> [2] - 50:16, 50:18  <b>disagreement</b> [5] - 13:24, 14:10, 14:17, 14:19, 58:12  <b>disagreements</b> [2] - 16:16, 17:5  <b>disagrees</b> [1] - 13:3  <b>discontinue</b> [1] - 18:16  <b>discontinuing</b> [1] - 18:15  <b>discovered</b> [2] - 61:13, 233:1  <b>discrete</b> [1] - 10:8  <b>discretion</b> [1] - 279:4  <b>discretionary</b> [1] - 29:21  <b>discriminatory</b> [3] - 260:9, 260:19, 261:6  <b>discuss</b> [3] - 39:10, 79:6, 144:5  <b>discussed</b> [12] - 11:22, 108:18, 136:11, 140:19, 154:2, 172:14, 180:7, 197:17, 203:17, 259:21, 262:2, 270:12  <b>discusses</b> [1] - 40:17  <b>discussing</b> [3] - 45:19, 243:13, 261:12  <b>discussion</b> [9] - 23:1, 47:8, 60:24, 61:23, 92:16, 93:21, 198:10, 242:2, 242:11  <b>Discussion</b> [1] - 10:1  <b>discussions</b> [3] - 232:19, 293:4, 294:3  <b>disorderly</b> [1] - 90:12  <b>disorders</b> [1] - 91:2  <b>dispute</b> [1] - 13:21  <b>disrepair</b> [4] - 19:18, 19:19, 65:24, 195:22  <b>disruption</b> [1] - 91:16  <b>dissolves</b> [1] - 205:10  <b>distribute</b> [1] - 196:5  <b>distributed</b> [7] - 73:8, 73:19, 73:24, 74:3, 75:6, 75:19, 76:1  <b>DISTRICT</b> [3] - 1:1, 1:2, 1:3  <b>District</b> [3] - 113:8, 295:7, 295:8  <b>divided</b> [4] - 64:3,</p>	<p>121:7, 221:1, 244:10  <b>Division</b> [1] - 156:25  <b>DIVISION</b> [2] - 1:2, 2:19  <b>DMP</b> [1] - 53:16  <b>DNA</b> [2] - 238:1, 238:10  <b>docket</b> [2] - 294:12, 294:15  <b>docketed</b> [3] - 294:9, 294:11, 294:19  <b>Doctor</b> [1] - 94:16  <b>doctors</b> [1] - 221:3  <b>document</b> [39] - 7:18, 8:8, 8:21, 8:22, 12:15, 12:17, 15:9, 15:16, 18:1, 33:11, 43:25, 45:9, 45:23, 49:9, 49:19, 52:4, 55:12, 55:14, 55:21, 56:2, 56:19, 158:9, 171:9, 178:23, 178:25, 193:18, 193:23, 194:8, 194:16, 205:23, 211:3, 211:5, 228:23, 251:17, 253:12, 255:8, 258:12, 275:4, 294:12  <b>documentation</b> [2] - 53:6, 191:1  <b>documents</b> [6] - 7:15, 8:8, 34:3, 56:15, 96:7, 114:16  <b>dollar</b> [1] - 282:7  <b>dollars</b> [13] - 9:22, 9:23, 19:23, 63:3, 77:24, 78:14, 78:18, 104:20, 130:22, 130:23, 244:10, 280:13, 280:18  <b>domiciliary</b> [6] - 186:17, 187:7, 191:22, 191:24, 192:15, 196:10  <b>Donahue</b> [1] - 198:24  <b>donated</b> [1] - 29:3  <b>donation</b> [3] - 55:18, 143:21, 144:1  <b>Donation</b> [1] - 56:21  <b>donations</b> [3] - 67:11, 105:6, 105:10  <b>done</b> [18] - 13:8, 28:9, 34:14, 37:5, 55:11, 58:18, 77:6, 88:1, 94:14, 147:22, 166:10, 178:10, 190:3, 192:2, 196:12, 201:16, 264:21,</p>	<p>280:15  <b>donors</b> [1] - 42:11  <b>double</b> [9] - 83:5, 83:6, 83:11, 83:16, 84:3, 84:12, 84:19, 84:20, 211:21  <b>double-storied</b> [5] - 83:5, 83:6, 83:16, 84:3, 84:12  <b>doubled</b> [1] - 84:10  <b>down</b> [30] - 37:3, 37:7, 41:24, 47:7, 48:2, 48:12, 48:17, 82:3, 86:19, 87:15, 96:1, 123:16, 127:11, 129:10, 135:15, 165:17, 179:14, 194:19, 194:20, 207:5, 208:12, 208:14, 237:9, 244:8, 246:14, 252:22, 253:11, 253:24, 261:1, 277:19  <b>downtown</b> [1] - 278:24  <b>Dr</b> [25] - 6:7, 6:17, 7:17, 12:12, 28:9, 41:17, 60:23, 70:23, 72:3, 72:20, 75:14, 95:16, 95:21, 187:12, 190:23, 192:12, 216:3, 216:4, 216:10, 216:19, 217:4, 217:19, 233:16, 234:1, 245:18  <b>draft</b> [3] - 16:20, 36:3, 174:3  <b>drafted</b> [1] - 259:23  <b>drafters</b> [1] - 259:25  <b>drawing</b> [1] - 45:13  <b>drawn</b> [1] - 106:6  <b>drew</b> [1] - 204:4  <b>drill</b> [1] - 54:13  <b>drilling</b> [4] - 53:5, 53:10, 53:12, 54:18  <b>Drive</b> [1] - 106:17  <b>dropped</b> [2] - 97:24, 269:5  <b>drugs</b> [1] - 90:12  <b>DU</b> [2] - 2:5, 217:7  <b>due</b> [5] - 9:20, 21:15, 66:21, 66:23, 290:4  <b>duly</b> [2] - 97:6, 247:5  <b>duration</b> [2] - 89:13, 104:21  <b>during</b> [36] - 42:12, 44:20, 87:3, 89:12, 110:19, 112:11, 112:16, 114:1, 116:6, 116:9, 117:14,</p>
---	--	---	--	--

<p>117:22, 118:22, 119:2, 120:23, 121:2, 122:12, 124:10, 124:18, 125:24, 128:15, 142:20, 144:7, 151:21, 159:5, 159:20, 162:19, 163:8, 163:17, 165:12, 165:19, 188:23, 189:13, 190:1, 190:13, 197:19 <b>duties</b> [1] - 98:1 <b>duty</b> [1] - 93:5</p>	<p>280:12, 280:23 <b>effective</b> [7] - 174:24, 239:3, 239:7, 239:8, 239:11, 241:10, 241:25 <b>effectively</b> [1] - 53:20 <b>effects</b> [2] - 232:25, 240:2 <b>efficient</b> [1] - 62:12 <b>effort</b> [9] - 130:8, 131:18, 131:19, 132:10, 132:14, 132:21, 133:4, 134:3, 134:17 <b>efforts</b> [2] - 134:7, 135:2 <b>eight</b> [10] - 24:8, 65:19, 65:24, 70:3, 81:23, 82:2, 82:3, 82:8, 82:13, 82:15 <b>eight-acre</b> [3] - 81:23, 82:2, 82:13 <b>either</b> [19] - 11:16, 23:3, 31:20, 38:10, 41:11, 53:15, 84:19, 85:9, 94:4, 94:8, 95:11, 103:7, 125:20, 137:21, 186:23, 205:23, 206:1, 214:9, 226:18 <b>elaborate</b> [2] - 16:9, 19:11 <b>elected</b> [1] - 131:4 <b>electric</b> [2] - 92:2, 195:18 <b>electrical</b> [2] - 91:17, 91:23 <b>electricity</b> [1] - 200:4 <b>elementary</b> [6] - 100:1, 100:3, 101:16, 106:13, 106:20, 108:4 <b>eligibility</b> [13] - 254:10, 254:18, 255:22, 256:2, 258:6, 259:18, 260:12, 261:9, 265:12, 265:14, 265:17, 265:22, 267:4 <b>eligible</b> [10] - 29:17, 248:25, 268:11, 269:3, 269:10, 269:14, 270:7, 273:18, 282:25, 287:16 <b>elimination</b> [1] - 46:6 <b>ELKINS</b> [1] - 3:3 <b>Elmo</b> [1] - 34:6 <b>elsewhere</b> [1] - 249:10</p>	<p><b>embraced</b> [1] - 238:8 <b>emergency</b> [5] - 66:10, 74:17, 240:7, 240:16, 242:10 <b>employed</b> [2] - 49:23, 187:9 <b>employee</b> [3] - 20:21, 21:25, 111:3 <b>employees</b> [7] - 68:11, 86:17, 92:17, 92:19, 152:9, 187:6 <b>Employment</b> [1] - 218:21 <b>employment</b> [4] - 49:22, 97:24, 98:3, 192:5 <b>enable</b> [1] - 257:21 <b>enabled</b> [1] - 235:14 <b>enact</b> [1] - 262:1 <b>enacted</b> [1] - 132:11 <b>encompassing</b> [1] - 154:14 <b>encourage</b> [3] - 266:12, 266:17, 282:18 <b>encouraged</b> [1] - 215:13 <b>encumber</b> [1] - 226:20 <b>end</b> [17] - 9:24, 19:17, 24:2, 26:9, 30:8, 41:15, 51:1, 118:23, 119:5, 131:8, 131:9, 131:11, 144:17, 148:25, 190:24, 281:1, 283:9 <b>End</b> [1] - 240:14 <b>endeavored</b> [1] - 210:1 <b>ended</b> [1] - 24:4 <b>endowment</b> [3] - 104:25, 105:2, 106:3 <b>ends</b> [2] - 13:23, 50:3 <b>energy</b> [1] - 180:21 <b>engage</b> [1] - 39:2 <b>engaged</b> [2] - 188:12, 192:7 <b>engagement</b> [1] - 196:2 <b>engineers</b> [1] - 63:20 <b>enhanced</b> [7] - 110:24, 112:4, 112:11, 113:8, 114:9, 114:11, 127:3 <b>enlarged</b> [1] - 144:1 <b>enrolled</b> [2] - 191:10, 191:11 <b>enrollment</b> [2] - 101:7, 150:24</p>	<p><b>enrolls</b> [5] - 99:20, 100:4, 100:9, 100:13, 102:18 <b>ensure</b> [3] - 91:7, 156:8, 266:14 <b>ensuring</b> [1] - 249:7 <b>enter</b> [4] - 26:25, 30:22, 35:3, 230:14 <b>entered</b> [3] - 15:2, 61:1, 215:4 <b>entering</b> [1] - 226:21 <b>enthusiasm</b> [1] - 145:12 <b>entire</b> [13] - 15:18, 65:15, 65:16, 90:10, 166:23, 187:17, 188:18, 211:2, 211:14, 217:22, 218:16, 278:25, 279:2 <b>entirely</b> [2] - 169:13, 271:18 <b>entirety</b> [4] - 46:19, 217:11, 217:12, 224:20 <b>entities</b> [1] - 268:11 <b>entitled</b> [1] - 295:12 <b>entity</b> [4] - 14:14, 231:18, 232:7, 239:24 <b>entrance</b> [3] - 96:25, 184:8, 189:12 <b>entry</b> [5] - 162:13, 165:11, 189:8, 192:10, 234:4 <b>environment</b> [1] - 237:19 <b>environmental</b> [2] - 77:15, 93:17 <b>envisioned</b> [1] - 213:24 <b>equally</b> [1] - 53:7 <b>equations</b> [1] - 292:7 <b>equipment</b> [4] - 86:25, 154:18, 166:7, 213:8 <b>erred</b> [1] - 262:13 <b>error</b> [1] - 228:11 <b>ESA</b> [2] - 110:11, 125:16 <b>escalation</b> [3] - 174:21, 174:23, 174:24 <b>escrow</b> [1] - 24:18 <b>especially</b> [4] - 25:13, 90:3, 214:15, 214:17 <b>espoused</b> [1] - 213:22 <b>essential</b> [1] - 66:6 <b>essentially</b> [11] - 42:7, 58:11, 64:25,</p>	<p>65:22, 67:18, 78:19, 221:13, 244:10, 268:16, 282:4, 285:7 <b>establish</b> [12] - 217:17, 252:17, 254:8, 254:17, 254:23, 256:11, 256:17, 256:24, 257:1, 276:9, 276:14, 277:22 <b>established</b> [3] - 128:9, 242:4, 274:6 <b>establishes</b> [4] - 255:24, 257:4, 270:25, 271:1 <b>establishing</b> [4] - 259:17, 271:8, 275:22, 276:3 <b>estate</b> [3] - 80:18, 175:14, 175:15 <b>estimate</b> [2] - 26:5, 136:20 <b>estimated</b> [2] - 28:24, 179:4 <b>estimates</b> [1] - 76:10 <b>estimation</b> [2] - 81:19, 81:23 <b>et</b> [8] - 1:6, 64:9, 69:9, 95:1, 145:25, 213:1, 216:12, 221:12 <b>EUL</b> [4] - 67:23, 77:7, 77:11, 81:13 <b>EULs</b> [3] - 19:3, 43:3, 43:6 <b>evaluated</b> [1] - 249:14 <b>evaluation</b> [4] - 34:24, 35:13, 230:9, 230:23 <b>EVE</b> [1] - 2:12 <b>evening</b> [3] - 160:20, 162:21, 198:4 <b>event</b> [2] - 42:25, 196:18 <b>events</b> [6] - 29:4, 44:20, 91:19, 92:2, 156:14, 195:25 <b>eventually</b> [8] - 13:20, 14:13, 37:4, 43:3, 145:5, 201:15, 206:6, 280:15 <b>ever-growing</b> [1] - 15:4 <b>everywhere</b> [1] - 92:7 <b>evidence</b> [49] - 8:3, 8:5, 12:20, 12:22, 15:8, 16:16, 39:20, 39:24, 44:6, 45:17, 46:9, 52:10, 55:25,</p>
<b>E</b>				
<p><b>E-2</b> [3] - 194:11, 194:25, 195:15 <b>Eagle</b> [2] - 154:6, 154:10 <b>eagle</b> [1] - 154:9 <b>Eagles</b> [1] - 154:10 <b>early</b> [10] - 48:3, 119:6, 119:8, 149:1, 149:2, 163:25, 165:25, 188:4, 188:17, 215:9 <b>ease</b> [1] - 88:17 <b>easement</b> [1] - 12:4 <b>easier</b> [3] - 205:25, 206:2, 260:15 <b>easiest</b> [1] - 16:18 <b>easily</b> [1] - 146:23 <b>east</b> [6] - 101:2, 106:23, 107:7, 107:9, 107:21 <b>East</b> [1] - 2:13 <b>eastern</b> [1] - 87:5 <b>easy</b> [3] - 62:5, 71:7, 137:13 <b>eaten</b> [1] - 185:24 <b>ebbed</b> [1] - 118:14 <b>ecological</b> [1] - 77:15 <b>educate</b> [1] - 156:14 <b>educated</b> [1] - 131:5 <b>education</b> [10] - 107:18, 125:7, 125:9, 141:20, 141:21, 187:13, 188:16, 191:17, 191:18, 193:2 <b>Education</b> [3] - 165:14, 184:9, 184:13 <b>educational</b> [4] - 184:21, 190:22, 191:1, 191:19 <b>EDWARD</b> [2] - 4:3, 4:11 <b>effect</b> [5] - 136:7, 279:12, 280:11,</p>				

<p>56:13, 58:24, 59:25, 126:14, 127:25, 153:17, 153:20, 155:14, 155:17, 157:9, 157:11, 158:15, 158:21, 161:12, 172:20, 172:23, 179:7, 179:9, 183:13, 193:13, 202:16, 224:16, 224:19, 224:23, 229:6, 237:5, 252:1, 252:3, 258:23, 258:25, 273:22, 274:1, 287:21, 292:1, 292:3, 292:4</p> <p><b>exact</b> [5] - 62:19, 74:22, 76:4, 99:23, 225:10</p> <p><b>exactly</b> [11] - 17:12, 42:1, 73:5, 73:22, 98:21, 103:3, 126:21, 161:17, 219:11, 232:17, 235:23</p> <p><b>Examination</b> [6] - 4:4, 4:8, 4:9, 4:12, 4:13, 4:15</p> <p><b>EXAMINATION</b> [6] - 6:14, 97:10, 202:5, 216:17, 243:1, 247:23</p> <p><b>examination</b> [11] - 4:5, 4:8, 6:11, 6:15, 60:14, 60:17, 97:8, 97:11, 150:3, 201:21, 247:22</p> <p><b>example</b> [25] - 17:14, 20:7, 21:8, 22:1, 22:14, 28:25, 29:16, 40:20, 65:18, 68:8, 74:12, 103:19, 113:16, 159:19, 162:16, 180:16, 187:5, 187:23, 188:22, 240:7, 243:17, 262:9, 285:24, 291:12, 291:13</p> <p><b>examples</b> [5] - 20:4, 186:24, 188:20, 191:19, 195:9</p> <p><b>exceed</b> [1] - 74:2</p> <p><b>exceeded</b> [1] - 22:19</p> <p><b>exceeds</b> [1] - 239:13</p> <p><b>except</b> [4] - 36:11, 37:6, 150:25, 292:7</p> <p><b>exception</b> [21] - 11:20, 68:14, 269:12, 274:4, 274:6, 278:4, 278:6, 278:13, 278:20, 279:5, 283:7,</p>	<p>283:20, 283:22, 284:18, 286:5, 287:2, 287:6, 287:12, 287:14, 287:22, 288:23</p> <p><b>exceptions</b> [1] - 288:23</p> <p><b>excerpt</b> [1] - 218:3</p> <p><b>excerpts</b> [2] - 217:22, 217:25</p> <p><b>excess</b> [2] - 191:12, 197:11</p> <p><b>exchange</b> [3] - 42:2, 43:10, 56:22</p> <p><b>exclude</b> [2] - 252:9, 265:10</p> <p><b>excluded</b> [2] - 265:25, 266:22</p> <p><b>excludes</b> [1] - 255:21</p> <p><b>excluding</b> [1] - 255:25</p> <p><b>exclusion</b> [1] - 265:1</p> <p><b>exclusive</b> [1] - 159:9</p> <p><b>exclusively</b> [1] - 196:10</p> <p><b>excuse</b> [11] - 11:19, 59:21, 103:1, 139:16, 158:8, 173:12, 180:24, 215:23, 244:10, 255:2, 256:23</p> <p><b>executable</b> [1] - 61:10</p> <p><b>execute</b> [1] - 74:19</p> <p><b>executed</b> [2] - 65:23, 114:12</p> <p><b>executive</b> [4] - 218:15, 218:18, 220:5, 223:20</p> <p><b>exercise</b> [2] - 262:11, 279:5</p> <p><b>exercising</b> [2] - 259:6, 259:16</p> <p><b>Exhibit</b> [98] - 7:15, 8:5, 12:10, 12:13, 12:22, 15:2, 15:21, 15:22, 28:19, 32:3, 32:12, 33:5, 39:17, 39:24, 40:3, 43:20, 44:6, 44:8, 45:6, 45:17, 45:22, 46:9, 52:3, 52:10, 52:17, 52:21, 55:5, 55:7, 55:25, 56:2, 56:6, 56:13, 56:15, 56:16, 56:19, 85:16, 151:17, 151:18, 151:23, 152:1, 152:14, 153:16, 153:20, 153:23, 153:24,</p>	<p>155:12, 155:17, 157:11, 157:13, 157:15, 158:5, 158:21, 162:18, 171:5, 172:23, 178:18, 179:9, 193:11, 194:11, 194:24, 194:25, 195:15, 202:17, 202:22, 203:13, 216:23, 216:24, 217:10, 218:15, 220:14, 221:17, 224:23, 225:16, 225:19, 228:6, 233:13, 233:15, 251:13, 251:15, 251:25, 252:3, 255:1, 255:2, 255:6, 256:5, 258:8, 258:22, 258:25, 259:24, 262:18, 264:19, 265:5, 266:8, 274:23, 274:25, 291:24, 292:1</p> <p><b>exhibit</b> [26] - 8:20, 15:11, 15:12, 15:23, 17:3, 17:24, 28:4, 40:8, 44:9, 46:12, 55:4, 59:19, 154:25, 155:13, 179:2, 193:25, 194:12, 194:25, 195:1, 195:3, 196:24, 202:24, 222:15, 265:5, 279:19</p> <p><b>EXHIBIT</b> [2] - 5:1, 5:2</p> <p><b>exhibits</b> [1] - 228:13</p> <p><b>Exhibits</b> [3] - 27:23, 59:5, 59:25</p> <p><b>exist</b> [1] - 219:7</p> <p><b>existed</b> [4] - 136:15, 225:25, 226:9, 236:11</p> <p><b>existence</b> [2] - 124:3, 243:20</p> <p><b>existing</b> [6] - 31:3, 39:5, 64:7, 90:16, 231:12, 243:21</p> <p><b>exists</b> [2] - 136:15, 158:10</p> <p><b>exit</b> [2] - 162:13, 189:9</p> <p><b>expanding</b> [1] - 255:18</p> <p><b>expands</b> [1] - 272:16</p> <p><b>expect</b> [3] - 26:17, 101:7, 105:22</p> <p><b>expectation</b> [1] - 51:19</p> <p><b>expected</b> [3] - 23:20, 23:21, 86:15</p> <p><b>expedite</b> [1] - 268:3</p>	<p><b>expenditure</b> [1] - 67:17</p> <p><b>expenses</b> [7] - 50:3, 50:6, 50:9, 50:10, 197:6, 197:14, 285:9</p> <p><b>expensive</b> [1] - 271:9</p> <p><b>experience</b> [6] - 80:20, 81:6, 154:5, 203:6, 214:22, 215:1</p> <p><b>experiencing</b> [2] - 266:14, 284:5</p> <p><b>expert</b> [9] - 49:1, 79:17, 79:20, 79:22, 80:18, 84:12, 241:18, 283:11</p> <p><b>expertise</b> [1] - 214:12</p> <p><b>experts</b> [3] - 79:10, 93:9, 94:22</p> <p><b>experts'</b> [1] - 93:13</p> <p><b>expire</b> [2] - 11:19, 17:8</p> <p><b>Expiring</b> [1] - 33:4</p> <p><b>explain</b> [12] - 8:7, 16:12, 64:11, 181:18, 197:25, 198:12, 206:7, 210:19, 220:25, 282:3, 282:22, 284:21</p> <p><b>explained</b> [3] - 64:5, 189:12, 212:12</p> <p><b>explaining</b> [3] - 157:3, 199:2, 199:3</p> <p><b>explains</b> [1] - 282:19</p> <p><b>explanation</b> [3] - 180:17, 198:14, 271:10</p> <p><b>explicit</b> [2] - 183:10, 184:4</p> <p><b>explore</b> [2] - 38:18, 99:12</p> <p><b>expose</b> [1] - 156:15</p> <p><b>extended</b> [1] - 195:16</p> <p><b>extending</b> [1] - 162:24</p> <p><b>extension</b> [2] - 56:9, 152:2</p> <p><b>extensions</b> [2] - 51:4, 51:5</p> <p><b>extensive</b> [1] - 134:15</p> <p><b>extent</b> [11] - 21:19, 21:24, 30:17, 31:6, 40:16, 161:12, 168:20, 177:17, 262:13, 268:10, 286:12</p> <p><b>extra</b> [3] - 66:19,</p>	<p>80:5, 83:3</p> <p><b>extremely</b> [3] - 272:1, 290:14</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>face</b> [1] - 241:1</p> <p><b>faced</b> [2] - 54:10, 68:9</p> <p><b>faces</b> [1] - 57:23</p> <p><b>facially</b> [3] - 260:8, 260:18, 261:5</p> <p><b>facilities</b> [73] - 18:14, 18:24, 19:17, 19:19, 19:24, 23:6, 24:8, 25:7, 25:13, 25:18, 25:20, 25:25, 26:9, 26:13, 26:20, 30:7, 47:9, 63:17, 63:19, 64:7, 66:11, 69:5, 70:1, 70:3, 73:1, 78:15, 92:1, 107:16, 107:19, 107:23, 109:11, 111:14, 112:1, 112:2, 112:15, 114:20, 121:19, 122:15, 125:5, 126:5, 126:20, 127:20, 128:23, 136:11, 136:16, 136:19, 136:22, 137:8, 139:18, 140:2, 152:2, 153:1, 154:13, 158:25, 160:5, 160:8, 160:10, 162:13, 163:17, 176:17, 176:23, 180:2, 180:7, 181:14, 188:16, 190:14, 197:17, 197:20, 203:20, 219:19, 219:23, 220:6</p> <p><b>Facilities</b> [1] - 64:15</p> <p><b>facility</b> [29] - 23:24, 25:12, 67:16, 93:6, 93:7, 122:21, 126:6, 126:7, 127:5, 144:20, 145:4, 145:7, 159:4, 159:8, 166:9, 184:16, 189:24, 190:18, 195:18, 208:20, 210:17, 210:21, 214:2, 214:15, 214:23, 222:8, 222:19, 235:17, 235:18</p> <p><b>facility</b> [1] - 218:25</p> <p><b>fact</b> [22] - 13:5, 47:17, 114:7, 130:8, 134:16, 159:3, 162:3, 165:4, 175:15,</p>
---	--	---	--	--

<p>175:23, 187:6, 188:4, 190:14, 192:12, 197:10, 215:3, 215:11, 237:21, 239:23, 265:1, 273:23, 287:22</p> <p><b>factor</b> [2] - 113:18, 257:10</p> <p><b>facts</b> [4] - 126:13, 127:24, 161:12, 225:7</p> <p><b>faculty</b> [1] - 142:18</p> <p><b>Fair</b> [9] - 270:19, 271:22, 273:10, 273:14, 273:17, 273:23, 274:21, 277:6, 283:21</p> <p><b>fair</b> [17] - 20:24, 114:1, 156:18, 157:6, 167:9, 200:21, 271:3, 271:4, 271:6, 274:7, 274:20, 275:8, 283:17, 292:24, 293:14, 293:17, 293:19</p> <p><b>fall</b> [5] - 64:21, 149:2, 192:4, 221:9, 242:6</p> <p><b>fallen</b> [1] - 195:22</p> <p><b>falling</b> [1] - 78:15</p> <p><b>falls</b> [3] - 64:23, 64:24, 289:4</p> <p><b>familiar</b> [14] - 6:23, 7:2, 11:7, 12:17, 15:9, 31:7, 31:8, 44:2, 79:23, 112:25, 129:23, 169:23, 193:8, 275:4</p> <p><b>familiarize</b> [1] - 40:12</p> <p><b>families</b> [13] - 89:9, 90:1, 102:11, 105:6, 131:7, 131:10, 156:15, 267:3, 270:7, 271:9, 273:21, 276:15, 282:23</p> <p><b>Families</b> [2] - 69:18, 244:16</p> <p><b>family</b> [6] - 118:4, 118:18, 125:1, 271:2, 282:22, 284:1</p> <p><b>fantastic</b> [1] - 198:17</p> <p><b>far</b> [23] - 15:14, 50:10, 105:7, 106:6, 121:19, 124:20, 126:11, 127:21, 128:15, 128:19, 134:6, 135:1, 140:5, 159:16, 162:23, 174:1, 174:12, 175:5, 177:3, 213:9, 226:11, 292:6, 293:6</p>	<p><b>fares</b> [1] - 185:3</p> <p><b>fashion</b> [1] - 293:10</p> <p><b>fast</b> [1] - 165:17</p> <p><b>faster</b> [1] - 90:4</p> <p><b>fault</b> [2] - 142:13, 210:9</p> <p><b>favorite</b> [1] - 183:21</p> <p><b>February</b> [1] - 90:8</p> <p><b>federal</b> [11] - 4:5, 34:25, 53:12, 113:10, 167:10, 175:24, 176:2, 176:10, 230:10, 291:11, 292:22</p> <p><b>FEDERAL</b> [2] - 1:22, 2:19</p> <p><b>Federal</b> [6] - 6:15, 93:21, 113:7, 258:19, 295:6, 295:20</p> <p><b>fee</b> [8] - 103:4, 103:17, 103:18, 103:24, 104:8, 104:12, 104:14, 104:17</p> <p><b>feedback</b> [11] - 42:20, 186:9, 186:24, 187:4, 187:15, 187:18, 187:25, 188:7, 188:12, 190:25, 196:21</p> <p><b>fees</b> [5] - 102:10, 102:14, 102:17, 104:24, 196:25</p> <p><b>Feinstein</b> [1] - 131:22</p> <p><b>female</b> [1] - 191:22</p> <p><b>fence</b> [1] - 165:2</p> <p><b>fenced</b> [2] - 69:9, 77:10</p> <p><b>fencing</b> [5] - 115:14, 119:22, 121:25, 122:3, 139:19</p> <p><b>few</b> [15] - 7:25, 10:9, 13:2, 19:12, 41:25, 74:22, 88:13, 91:4, 94:25, 95:1, 185:9, 185:12, 192:25, 222:11, 228:13</p> <p><b>fiduciary</b> [1] - 19:22</p> <p><b>field</b> [50] - 26:14, 42:11, 47:4, 47:24, 48:1, 114:21, 114:24, 115:15, 115:19, 116:2, 116:7, 117:4, 117:8, 117:10, 117:20, 118:7, 119:1, 119:2, 119:3, 119:11, 119:17, 122:5, 122:8, 122:9, 122:22, 122:25, 123:10,</p>	<p>136:19, 136:21, 138:2, 138:6, 138:24, 140:10, 141:9, 145:6, 152:23, 153:6, 153:9, 154:16, 162:9, 162:10, 162:12, 163:14, 165:7, 167:4, 180:6, 180:7, 244:11, 245:2</p> <p><b>fields</b> [3] - 23:11, 141:10, 208:19</p> <p><b>figure</b> [7] - 71:15, 71:21, 72:19, 75:8, 75:9, 127:22</p> <p><b>figured</b> [1] - 137:21</p> <p><b>filed</b> [1] - 134:15</p> <p><b>filing</b> [2] - 292:23</p> <p><b>final</b> [3] - 16:20, 30:18, 204:10</p> <p><b>finalized</b> [3] - 173:18, 174:7, 188:5</p> <p><b>finance</b> [1] - 60:21</p> <p><b>finances</b> [2] - 77:7, 239:2</p> <p><b>financial</b> [13] - 23:5, 27:7, 27:15, 48:11, 93:4, 125:18, 128:20, 191:9, 191:12, 192:17, 197:11, 197:13</p> <p><b>financially</b> [1] - 21:19</p> <p><b>financing</b> [1] - 79:4</p> <p><b>findings</b> [3] - 14:6, 16:13, 17:18</p> <p><b>fine</b> [10] - 31:16, 48:6, 95:15, 97:14, 112:19, 182:22, 229:7, 229:9, 259:14, 291:4</p> <p><b>finish</b> [3] - 263:5, 274:17, 292:16</p> <p><b>finished</b> [1] - 151:3</p> <p><b>firm</b> [8] - 130:8, 130:10, 130:13, 130:15, 130:18, 131:1, 132:7, 132:10</p> <p><b>first</b> [46] - 11:2, 11:3, 44:13, 44:22, 51:3, 53:2, 53:3, 55:22, 56:19, 65:18, 75:6, 75:9, 97:15, 102:14, 109:24, 110:10, 129:7, 146:17, 151:25, 154:25, 155:25, 158:5, 159:11, 179:11, 185:16, 205:5, 205:22, 208:5, 218:3, 218:18, 220:5,</p>	<p>220:17, 223:4, 223:7, 224:7, 236:3, 238:14, 247:9, 247:13, 248:1, 254:20, 256:22, 257:18, 257:25, 260:13, 277:15</p> <p><b>FIRST</b> [1] - 1:22</p> <p><b>First</b> [18] - 236:25, 237:1, 237:3, 237:4, 237:8, 237:9, 237:11, 237:23, 238:1, 238:11, 238:15, 239:2, 240:1, 240:6, 240:15, 241:3, 241:10, 241:25</p> <p><b>firstly</b> [1] - 190:9</p> <p><b>fiscal</b> [10] - 9:24, 28:23, 61:4, 61:10, 61:18, 62:16, 66:2, 218:11, 220:11, 275:11</p> <p><b>fit</b> [1] - 188:18</p> <p><b>fitness</b> [4] - 153:12, 188:17, 189:25, 190:3</p> <p><b>fits</b> [1] - 62:10</p> <p><b>five</b> [20] - 61:11, 78:6, 83:13, 117:14, 140:12, 159:20, 191:11, 213:6, 218:22, 218:23, 219:7, 219:13, 219:14, 219:17, 219:25, 222:5, 222:6, 270:10, 270:13</p> <p><b>five-day</b> [1] - 159:20</p> <p><b>five-mile</b> [2] - 270:10, 270:13</p> <p><b>five-year</b> [1] - 61:11</p> <p><b>fix</b> [2] - 37:16, 77:15</p> <p><b>fixed</b> [3] - 12:4, 17:21, 233:5</p> <p><b>fixing</b> [1] - 176:14</p> <p><b>flashed</b> [1] - 10:6</p> <p><b>flaws</b> [1] - 93:13</p> <p><b>flexibility</b> [1] - 57:18</p> <p><b>flexible</b> [1] - 192:23</p> <p><b>flip</b> [1] - 207:13</p> <p><b>flipped</b> [1] - 181:7</p> <p><b>flipping</b> [1] - 252:23</p> <p><b>flooding</b> [1] - 23:25</p> <p><b>Florida</b> [1] - 289:8</p> <p><b>flowed</b> [1] - 118:14</p> <p><b>FMR</b> [19] - 272:4, 272:22, 273:2, 275:19, 276:10, 276:15, 277:9, 277:11, 277:12, 277:23, 277:25, 278:14, 278:15, 278:19, 278:21,</p>	<p>278:22, 279:12, 279:16, 279:23</p> <p><b>FMRs</b> [6] - 271:5, 271:8, 275:11, 275:21, 277:10, 277:24</p> <p><b>focus</b> [7] - 18:7, 41:21, 41:22, 68:25, 186:16, 293:8</p> <p><b>focused</b> [2] - 10:8, 46:10</p> <p><b>focusing</b> [5] - 62:21, 63:1, 138:23, 232:4, 237:21</p> <p><b>folks</b> [9] - 96:7, 147:6, 169:5, 214:13, 289:2, 290:5, 291:1, 292:12, 293:9</p> <p><b>follow</b> [6] - 38:17, 132:25, 166:19, 241:25, 257:12, 285:22</p> <p><b>followed</b> [2] - 205:3, 205:4</p> <p><b>following</b> [2] - 172:7, 257:8</p> <p><b>follows</b> [2] - 97:7, 247:6</p> <p><b>food</b> [2] - 196:3, 196:4</p> <p><b>football</b> [17] - 114:21, 116:2, 116:7, 116:9, 116:12, 117:3, 119:2, 119:11, 119:17, 121:19, 139:18, 140:9, 140:19, 156:17, 157:6, 162:10, 180:6</p> <p><b>footnote</b> [8] - 180:18, 198:13, 198:14, 202:23, 203:3, 203:15, 203:17</p> <p><b>Footnote</b> [2] - 203:18, 204:5</p> <p><b>footnotes</b> [1] - 203:2</p> <p><b>footprint</b> [2] - 148:21, 185:5</p> <p><b>FOR</b> [3] - 2:3, 2:18, 3:2</p> <p><b>force</b> [3] - 90:13, 90:20, 192:11</p> <p><b>foregoing</b> [1] - 295:10</p> <p><b>forget</b> [2] - 62:19, 207:16</p> <p><b>forgetful</b> [1] - 50:8</p> <p><b>forgetting</b> [1] - 192:15</p> <p><b>forgot</b> [1] - 187:12</p> <p><b>forgotten</b> [2] - 64:17,</p>
---	--	---	---	--

<p>94:4  <b>form</b> [2] - 191:6,                  293:12  <b>formal</b> [1] - 205:10  <b>formalized</b> [1] -                  205:6  <b>format</b> [1] - 295:12  <b>former</b> [1] - 86:8  <b>formerly</b> [2] - 108:14,                  187:7  <b>forms</b> [1] - 184:22  <b>formula</b> [4] - 139:1,                  199:3, 280:16  <b>forth</b> [1] - 61:23  <b>forward</b> [5] - 36:6,                  65:1, 96:21, 174:11,                  246:21  <b>forwarded</b> [1] -                  171:16  <b>foul</b> [1] - 41:22  <b>foundation</b> [2] -                  161:11, 241:14  <b>founders</b> [2] -                  108:12, 108:20  <b>four</b> [8] - 63:7, 83:13,                  117:7, 118:2, 140:12,                  174:11, 293:20  <b>fourth</b> [1] - 63:23  <b>FPR</b> [1] - 276:1  <b>frankly</b> [4] - 93:5,                  145:17, 167:9, 241:19  <b>fraudulent</b> [1] - 9:20  <b>free</b> [5] - 49:24,                  103:20, 189:5, 191:6  <b>frequent</b> [1] - 196:4  <b>frequented</b> [2] -                  169:24, 185:19  <b>frequently</b> [3] -                  188:6, 220:18, 220:19  <b>fresh</b> [1] - 292:11  <b>Friday</b> [5] - 159:21,                  159:25, 163:8, 172:11  <b>Fridays</b> [1] - 144:13  <b>friends</b> [3] - 118:4,                  118:18, 125:1  <b>front</b> [31] - 15:2,                  15:4, 16:8, 27:16,                  40:3, 45:5, 52:16,                  56:15, 151:18,                  153:24, 155:12,                  155:19, 157:16,                  158:5, 178:19,                  217:20, 220:15,                  221:22, 222:16,                  225:16, 225:20,                  229:11, 233:15,                  233:19, 241:19,                  245:13, 251:13,                  251:15, 255:6,                  258:10, 265:8</p>	<p><b>FRR</b> [1] - 276:3  <b>fulfillment</b> [1] - 173:6  <b>full</b> [18] - 31:14, 54:5,                  68:11, 92:21, 94:13,                  97:1, 121:6, 135:21,                  135:23, 152:9,                  157:24, 181:4, 181:6,                  192:2, 206:25,                  217:14, 247:7, 293:24  <b>full-time</b> [2] - 68:11,                  152:9  <b>fully</b> [6] - 189:10,                  195:21, 205:5, 285:1,                  291:6, 291:7  <b>fumes</b> [1] - 87:13  <b>function</b> [2] - 268:12  <b>functions</b> [1] - 69:6  <b>fund</b> [11] - 9:18,                  9:19, 50:6, 63:14,                  66:16, 66:21, 68:22,                  77:24, 93:1, 105:25,                  235:19  <b>fundamental</b> [2] -                  258:6, 265:1  <b>fundamentally</b> [1] -                  196:20  <b>funded</b> [3] - 66:13,                  68:14, 78:20  <b>funding</b> [7] - 24:10,                  66:4, 67:5, 68:24,                  69:3, 74:18, 268:20  <b>fundraising</b> [2] -                  105:14, 105:17  <b>funds</b> [15] - 9:3, 9:4,                  29:15, 56:23, 61:18,                  69:7, 69:11, 234:5,                  234:9, 234:11,                  234:24, 234:25, 235:8  <b>future</b> [10] - 27:3,                  43:7, 51:13, 51:17,                  61:11, 61:14, 101:8,                  214:19, 215:8, 262:7  <b>FY</b> [1] - 28:23</p>	<p>124:23, 140:9, 140:12  <b>garage</b> [1] - 86:17  <b>Garden</b> [3] - 21:14,                  22:3, 88:11  <b>garden</b> [10] - 20:9,                  20:17, 21:7, 166:4,                  167:1, 167:3, 168:9,                  168:18, 195:20,                  195:21  <b>Gardens</b> [1] - 20:7  <b>GARTSIDE</b> [1] - 3:3  <b>gate</b> [7] - 146:1,                  164:24, 165:2,                  165:15, 165:16,                  166:5, 167:10  <b>gates</b> [2] - 145:25,                  165:4  <b>gauge</b> [1] - 169:7  <b>General</b> [30] - 7:6,                  11:11, 11:18, 12:25,                  14:1, 16:10, 16:22,                  22:5, 22:9, 31:12,                  32:6, 32:22, 34:22,                  34:24, 35:19, 38:21,                  57:5, 132:15, 132:23,                  133:9, 133:16,                  134:20, 217:23,                  218:5, 218:22, 222:5,                  230:7, 230:9, 243:9,                  260:1  <b>general</b> [9] - 23:13,                  68:13, 68:17, 102:5,                  175:20, 215:12,                  221:10, 256:23, 260:5  <b>generally</b> [16] - 8:12,                  9:1, 25:7, 29:5, 40:14,                  49:16, 63:6, 77:12,                  85:4, 86:2, 98:2,                  139:15, 219:23,                  272:21, 285:17, 286:8  <b>generate</b> [1] - 285:14  <b>genius</b> [3] - 237:8,                  237:10, 239:2  <b>GENNIFER</b> [2] - 4:7,                  97:5  <b>Gennifer</b> [3] - 96:15,                  97:2, 97:17  <b>gentleman</b> [1] -                  213:22  <b>gentlemen</b> [1] -                  246:13  <b>geography</b> [1] -                  168:17  <b>gifts</b> [2] - 105:25,                  106:3  <b>girls</b> [10] - 119:25,                  120:8, 120:18,                  121:10, 122:8,                  124:11, 138:3,                  140:14, 142:5, 142:7</p>	<p><b>given</b> [16] - 31:14,                  51:2, 65:23, 71:22,                  110:18, 176:14,                  176:15, 176:22,                  177:8, 217:6, 235:6,                  235:9, 249:8, 264:11,                  284:23, 285:25  <b>GLA</b> [20] - 7:4, 9:2,                  23:12, 23:17, 23:20,                  24:3, 25:9, 69:23,                  74:6, 78:20, 81:11,                  92:19, 223:19,                  235:15, 236:16,                  244:25, 245:2, 245:5,                  245:11  <b>glad</b> [1] - 102:13  <b>Glendale</b> [2] -                  275:12, 279:1  <b>gluten</b> [1] - 189:5  <b>gluten-free</b> [1] -                  189:5  <b>go-round</b> [1] - 158:5  <b>goal</b> [9] - 68:12,                  87:8, 105:14, 105:17,                  105:22, 108:21,                  156:8, 191:14, 238:4  <b>goals</b> [1] - 156:5  <b>God</b> [1] - 96:19  <b>GOLDSTEIN</b> [1] -                  2:11  <b>golf</b> [2] - 88:8, 88:9  <b>Golf</b> [1] - 186:1  <b>goodness</b> [1] -                  147:14  <b>gotcha</b> [1] - 199:10  <b>governance</b> [1] -                  64:21  <b>governed</b> [1] - 32:20  <b>governing</b> [1] - 98:8  <b>Government</b> [10] -                  6:11, 54:19, 95:15,                  145:11, 212:5,                  213:14, 215:19,                  217:3, 217:13, 224:25  <b>government</b> [6] -                  14:1, 14:14, 145:19,                  266:19, 270:15, 274:4  <b>Government's</b> [1] -                  54:25  <b>governments</b> [2] -                  266:13, 266:18  <b>gracious</b> [2] -                  201:15, 213:10  <b>grade</b> [2] - 100:6,                  102:21  <b>grades</b> [11] - 100:1,                  100:21, 101:25,                  103:5, 103:6, 104:1,                  104:3, 107:1, 107:6,                  108:5</p>	<p><b>grading</b> [1] - 221:10  <b>graduate</b> [1] - 147:19  <b>graduation</b> [1] -                  147:20  <b>grandchildren</b> [1] -                  191:4  <b>granite</b> [1] - 170:21  <b>Grant</b> [3] - 69:18,                  73:4, 244:15  <b>grants</b> [1] - 244:18  <b>granular</b> [1] - 271:8  <b>grass</b> [1] - 200:5  <b>grateful</b> [1] - 181:12  <b>Great</b> [1] - 88:2  <b>great</b> [7] - 16:6,                  17:10, 145:12,                  150:10, 194:14,                  239:23, 275:2  <b>Greater</b> [3] - 66:2,                  222:20, 224:11  <b>greater</b> [4] - 39:12,                  57:11, 57:14, 285:25  <b>green</b> [1] - 86:18  <b>greet</b> [2] - 166:6,                  189:15  <b>gross</b> [1] - 50:2  <b>Grotecloss</b> [1] - 3:7  <b>ground</b> [7] - 23:25,                  54:14, 54:15, 54:17,                  54:18, 176:8  <b>grounds</b> [7] - 43:8,                  64:8, 163:20, 164:6,                  164:18, 166:13,                  166:20  <b>groundskeepers</b> [1]                  - 63:22  <b>group</b> [1] - 20:24  <b>groupings</b> [1] -                  82:19  <b>groups</b> [2] - 64:20,                  186:16  <b>growing</b> [1] - 15:4  <b>grows</b> [1] - 196:15  <b>growth</b> [4] - 66:7,                  68:13, 152:3, 196:17  <b>GS</b> [1] - 221:10  <b>GUADIANA</b> [9] -                  60:15, 95:10, 147:8,                  183:15, 292:20,                  293:18, 293:23,                  294:1, 294:10  <b>guarantee</b> [2] -                  273:18, 287:15  <b>guaranteed</b> [1] -                  205:9  <b>guard</b> [3] - 9:8,                  164:24, 192:2  <b>guards</b> [1] - 209:12  <b>guess</b> [12] - 9:17,                  37:19, 37:22, 38:19,</p>
<p><b>G</b></p>				
<p><b>G-E-N-N-I-F-E-R</b> [1] -                  97:17  <b>Gae</b> [1] - 97:2  <b>GAE</b> [2] - 4:7, 97:5  <b>game</b> [2] - 117:19,                  118:8  <b>games</b> [20] - 117:8,                  117:10, 117:13,                  117:22, 118:3, 118:5,                  118:11, 118:16,                  120:7, 120:10,                  120:13, 120:20,                  120:24, 121:3,                  122:11, 122:14,</p>				





<p>250:15, 260:11, 261:9, 263:1, 263:4, 265:2, 265:18, 266:15, 266:23, 267:12, 267:16, 268:2, 268:13, 268:17, 269:2, 269:9, 270:24, 271:11, 271:15, 271:23, 272:5, 272:7, 272:10, 272:23, 273:19, 273:21, 273:24, 275:20, 276:2, 276:14, 282:2, 282:11, 282:21, 283:3, 284:18, 286:22, 287:16, 287:23, 288:8, 288:9, 288:19, 290:14, 291:7</p> <p><b>Housing</b> [23] - 236:25, 237:1, 237:3, 237:4, 237:8, 237:9, 237:11, 237:23, 237:25, 238:11, 238:15, 239:2, 240:1, 240:6, 240:14, 241:3, 241:10, 241:25, 248:8, 251:1, 263:19, 265:9, 285:11</p> <p><b>HR</b> [2] - 63:15, 223:20</p> <p><b>HUB</b> [1] - 262:19</p> <p><b>HUD</b> [136] - 3:6, 69:14, 92:19, 92:23, 93:1, 185:18, 185:23, 245:10, 247:25, 248:13, 248:16, 248:18, 248:24, 249:1, 249:2, 249:4, 249:5, 249:12, 249:14, 250:8, 250:21, 250:24, 251:3, 251:8, 251:20, 251:22, 252:8, 252:16, 253:6, 254:7, 254:16, 254:22, 255:11, 255:12, 255:17, 255:18, 255:20, 256:8, 256:10, 256:13, 256:16, 256:19, 256:23, 257:5, 257:14, 257:20, 257:22, 258:2, 258:16, 259:6, 259:16, 259:18, 259:22, 260:7, 261:10, 261:11, 261:13, 261:20, 261:21, 261:25, 262:4, 262:5, 262:7,</p>	<p>262:8, 262:13, 262:15, 263:1, 264:4, 265:13, 265:21, 266:10, 266:12, 266:18, 267:10, 267:14, 267:18, 267:19, 268:2, 268:8, 268:12, 268:14, 269:3, 269:10, 269:16, 270:2, 270:3, 270:9, 270:13, 270:16, 270:18, 271:4, 273:9, 273:10, 273:13, 273:18, 273:22, 274:4, 274:6, 275:7, 275:24, 276:8, 276:11, 276:13, 276:14, 277:8, 277:20, 277:21, 278:6, 278:20, 279:15, 283:3, 284:8, 284:10, 284:12, 284:20, 287:6, 287:8, 287:10, 287:13, 287:15, 287:21, 288:5, 288:11, 288:13, 288:21, 289:4, 289:8, 291:8</p> <p><b>HUD's</b> [17] - 248:7, 253:16, 255:24, 256:6, 257:4, 257:13, 258:18, 259:25, 260:3, 261:19, 261:21, 262:9, 262:11, 265:16, 266:8, 266:21, 290:12</p> <p><b>HUD-VASH</b> [66] - 69:14, 92:19, 92:23, 93:1, 185:18, 185:23, 245:10, 248:16, 248:18, 249:2, 249:5, 249:12, 250:8, 250:21, 250:24, 251:3, 251:8, 251:22, 255:12, 255:18, 255:20, 256:13, 256:19, 257:5, 257:14, 257:22, 258:2, 258:16, 259:18, 259:22, 261:13, 262:8, 263:1, 265:13, 265:21, 267:10, 267:14, 267:18, 267:19, 268:8, 269:16, 270:2, 270:9, 270:13, 273:10, 273:18, 274:4, 274:6, 275:24, 276:8, 276:11, 276:13, 276:14, 277:8, 277:20,</p>	<p>277:21, 279:15, 284:10, 284:12, 287:8, 287:10, 287:13, 287:15, 288:11, 288:13</p> <p><b>huge</b> [2] - 71:3, 212:20</p> <p><b>human</b> [2] - 187:18, 290:5</p> <p><b>humbly</b> [1] - 213:10</p> <p><b>hundred</b> [3] - 78:13, 104:20, 191:6</p> <p><b>hurt</b> [1] - 21:20</p> <p><b>HVAC</b> [1] - 64:8</p> <p><b>Hyatt</b> [1] - 130:10</p> <p><b>Hybrid</b> [5] - 220:19, 220:22, 221:7, 221:9, 221:13</p> <p><b>hybrid</b> [1] - 94:20</p> <p><b>hypothetical</b> [9] - 75:11, 95:4, 175:8, 175:11, 175:17, 175:20, 175:23, 176:1, 190:6</p> <p><b>hypothetically</b> [3] - 83:14, 210:22, 289:5</p> <p style="text-align: center;"><b>I</b></p> <p><b>ID</b> [1] - 189:15</p> <p><b>idea</b> [7] - 42:5, 84:12, 92:16, 114:13, 130:4, 174:5, 213:6</p> <p><b>identical</b> [1] - 227:7</p> <p><b>identified</b> [16] - 7:9, 7:15, 8:24, 9:11, 9:12, 11:10, 11:18, 12:25, 28:24, 46:2, 46:3, 50:7, 56:2, 94:20, 127:4, 248:13</p> <p><b>identities</b> [5] - 8:13, 9:2, 28:19, 34:17, 194:14</p> <p><b>identify</b> [8] - 16:15, 22:24, 58:22, 59:6, 184:12, 203:15, 219:24, 219:25</p> <p><b>identifying</b> [4] - 17:19, 45:14, 46:4, 264:25</p> <p><b>iffy</b> [1] - 212:11</p> <p><b>IG</b> [4] - 16:20, 133:10, 133:20, 134:14</p> <p><b>ignore</b> [2] - 36:14, 36:15</p> <p><b>II</b> [1] - 193:1</p> <p><b>illegal</b> [3] - 113:10, 226:4, 227:2</p>	<p><b>illness</b> [1] - 91:1</p> <p><b>imagine</b> [2] - 112:18, 118:2</p> <p><b>immediate</b> [3] - 89:22, 89:23, 185:20</p> <p><b>immediately</b> [2] - 18:3, 189:3</p> <p><b>impact</b> [13] - 78:2, 91:12, 92:10, 92:12, 93:24, 187:11, 265:14, 265:24, 273:9, 273:13, 273:23, 287:8, 287:12</p> <p><b>impacted</b> [1] - 287:22</p> <p><b>impacts</b> [1] - 265:22</p> <p><b>impasse</b> [3] - 14:14, 37:4, 38:21</p> <p><b>implementation</b> [1] - 46:24</p> <p><b>implemented</b> [4] - 35:13, 37:18, 156:24, 230:24</p> <p><b>implements</b> [1] - 239:25</p> <p><b>implied</b> [1] - 168:24</p> <p><b>imply</b> [1] - 168:25</p> <p><b>importance</b> [3] - 14:18, 196:1, 237:6</p> <p><b>important</b> [6] - 42:3, 43:8, 94:5, 187:4, 193:3, 204:18</p> <p><b>impose</b> [2] - 260:20, 261:7</p> <p><b>imposed</b> [7] - 260:10, 263:3, 263:18, 263:21, 264:6, 265:2, 266:25</p> <p><b>impression</b> [2] - 213:23, 214:2</p> <p><b>impressive</b> [1] - 154:13</p> <p><b>improved</b> [3] - 37:2, 195:19, 237:23</p> <p><b>improvement</b> [2] - 46:2, 127:6</p> <p><b>Improvement</b> [3] - 78:13, 235:7, 235:16</p> <p><b>improvements</b> [4] - 9:6, 9:8, 112:5, 285:18</p> <p><b>improves</b> [1] - 273:20</p> <p><b>improving</b> [1] - 127:5</p> <p><b>in-house</b> [1] - 154:14</p> <p><b>in-kind</b> [31] - 8:16, 13:6, 13:12, 13:15, 13:18, 20:18, 21:11, 27:7, 27:18, 28:21,</p>	<p>28:22, 178:13, 178:14, 178:25, 179:14, 179:18, 179:25, 180:1, 180:4, 180:12, 195:10, 198:10, 203:19, 206:9, 206:12, 207:10, 207:25, 209:23, 210:25, 212:15, 233:4</p> <p><b>inability</b> [1] - 67:2</p> <p><b>inadequate</b> [2] - 273:6, 287:3</p> <p><b>inappropriate</b> [1] - 30:23</p> <p><b>inappropriately</b> [2] - 93:15, 238:14</p> <p><b>incentive</b> [4] - 264:10, 284:22, 285:1, 285:13</p> <p><b>incentives</b> [1] - 92:22</p> <p><b>incertified</b> [1] - 282:10</p> <p><b>incidentally</b> [5] - 105:25, 119:11, 134:6, 160:4, 178:11</p> <p><b>include</b> [17] - 9:5, 61:9, 73:3, 73:9, 78:9, 91:22, 108:17, 135:7, 144:21, 149:4, 149:9, 239:23, 244:13, 244:14, 260:11, 260:21, 261:8</p> <p><b>included</b> [10] - 30:15, 30:16, 35:12, 66:18, 112:6, 134:19, 175:16, 189:4, 219:4, 230:23</p> <p><b>includes</b> [19] - 9:18, 9:19, 59:19, 61:19, 66:8, 69:17, 73:25, 74:16, 77:17, 99:8, 123:23, 174:17, 180:2, 180:6, 182:16, 182:17, 183:3, 183:5, 187:14</p> <p><b>including</b> [7] - 37:22, 107:8, 129:8, 189:25, 236:4, 248:11, 252:16</p> <p><b>inclusive</b> [3] - 23:18, 23:19, 154:15</p> <p><b>Income</b> [2] - 263:19, 285:11</p> <p><b>income</b> [35] - 252:10, 252:17, 254:8, 254:10, 254:17, 254:18, 254:24, 255:20, 255:25, 256:2, 256:11,</p>
--	---	---	--	--

<p>256:12, 256:17, 256:18, 256:24, 257:1, 257:4, 257:22, 258:2, 259:18, 260:10, 260:11, 260:20, 261:7, 261:8, 263:2, 263:18, 263:21, 264:5, 264:10, 265:2, 265:11, 265:25, 267:4, 284:23</p> <p><b>incomes</b> [1] - 267:3</p> <p><b>incompatible</b> [1] - 226:4</p> <p><b>incompetency</b> [1] - 290:10</p> <p><b>incompliant</b> [1] - 232:22</p> <p><b>inconvenience</b> [2] - 212:25, 293:21</p> <p><b>inconvenienced</b> [1] - 148:12</p> <p><b>incorporated</b> [2] - 16:21, 243:15</p> <p><b>incorporating</b> [1] - 196:12</p> <p><b>increase</b> [9] - 66:14, 66:22, 85:6, 90:9, 90:22, 214:13, 271:23, 272:10, 289:24</p> <p><b>increased</b> [1] - 66:24</p> <p><b>increases</b> [2] - 102:6, 102:8</p> <p><b>increasing</b> [2] - 90:25, 92:22</p> <p><b>indefinitely</b> [1] - 19:2</p> <p><b>independent</b> [4] - 108:22, 108:24, 173:14, 193:5</p> <p><b>independently</b> [1] - 217:4</p> <p><b>INDEX</b> [2] - 4:1, 5:1</p> <p><b>indicated</b> [3] - 42:11, 94:24, 245:17</p> <p><b>indicted</b> [1] - 234:18</p> <p><b>individual</b> [5] - 59:20, 190:2, 271:2, 271:6, 290:20</p> <p><b>individuals</b> [5] - 98:25, 142:25, 161:4, 161:23, 240:8</p> <p><b>Industries</b> [2] - 57:12, 57:25</p> <p><b>Industry</b> [1] - 57:19</p> <p><b>inferring</b> [1] - 238:14</p> <p><b>infield</b> [7] - 42:10, 42:14, 43:13, 46:3, 46:5, 236:4</p> <p><b>inflated</b> [1] - 212:22</p>	<p><b>informal</b> [1] - 110:10</p> <p><b>Information</b> [1] - 64:24</p> <p><b>information</b> [22] - 8:25, 9:14, 61:3, 70:16, 70:25, 114:7, 138:24, 140:5, 141:6, 141:17, 157:18, 162:4, 173:11, 190:6, 190:7, 195:6, 234:22, 243:25, 244:2, 244:3, 244:17, 244:19</p> <p><b>informed</b> [4] - 134:16, 135:2, 135:5, 144:22</p> <p><b>infrastructure</b> [5] - 23:24, 64:7, 66:6, 77:14, 185:2</p> <p><b>initial</b> [6] - 58:16, 97:24, 134:23, 188:10, 265:12, 268:9</p> <p><b>initiatives</b> [1] - 270:16</p> <p><b>injunctive</b> [1] - 213:21</p> <p><b>injury</b> [3] - 78:10, 161:15, 161:24</p> <p><b>inpatient</b> [2] - 66:9, 92:23</p> <p><b>input</b> [3] - 185:14, 186:19, 209:22</p> <p><b>inquired</b> [13] - 128:16, 128:19, 161:7, 161:9, 161:22, 162:7, 164:3, 164:7, 168:4, 168:7, 168:25, 169:12, 250:8</p> <p><b>inquiring</b> [1] - 168:20</p> <p><b>inquiry</b> [3] - 124:20, 162:2, 217:10</p> <p><b>inserting</b> [1] - 33:23</p> <p><b>inspected</b> [1] - 286:17</p> <p><b>inspection</b> [6] - 272:21, 272:22, 273:4, 286:8, 286:10, 286:14</p> <p><b>inspections</b> [1] - 286:20</p> <p><b>Inspector</b> [28] - 7:5, 11:11, 11:17, 12:25, 14:1, 16:10, 16:22, 22:5, 22:8, 31:11, 32:6, 32:22, 34:22, 34:24, 35:18, 38:21, 57:5, 132:15, 132:23, 133:9, 133:15, 217:23, 218:5, 218:22, 222:5, 230:7,</p>	<p>230:9, 243:9</p> <p><b>inspiration</b> [2] - 132:14, 132:19</p> <p><b>instance</b> [7] - 14:4, 75:6, 165:20, 173:5, 175:13, 286:14, 289:7</p> <p><b>instances</b> [1] - 186:16</p> <p><b>instead</b> [4] - 166:7, 200:21, 200:23, 200:24</p> <p><b>instructed</b> [1] - 145:24</p> <p><b>instructor</b> [1] - 190:24</p> <p><b>instructs</b> [1] - 219:23</p> <p><b>insufficient</b> [1] - 44:21</p> <p><b>insurance</b> [3] - 61:20, 99:7, 99:9</p> <p><b>insuring</b> [1] - 248:22</p> <p><b>intake</b> [5] - 185:18, 267:13, 267:20, 268:9, 268:16</p> <p><b>integrate</b> [1] - 81:16</p> <p><b>integrated</b> [2] - 80:24, 238:23</p> <p><b>intended</b> [3] - 252:16, 254:6, 270:16</p> <p><b>intent</b> [3] - 37:9, 37:21, 167:7</p> <p><b>interaction</b> [1] - 196:1</p> <p><b>intercede</b> [1] - 14:14</p> <p><b>interested</b> [1] - 57:14</p> <p><b>interesting</b> [2] - 88:19, 191:17</p> <p><b>interfering</b> [1] - 166:13</p> <p><b>interim</b> [2] - 82:9, 89:14</p> <p><b>Interior</b> [1] - 54:20</p> <p><b>interlineated</b> [1] - 225:17</p> <p><b>interlineation</b> [1] - 228:8</p> <p><b>internal</b> [1] - 17:20</p> <p><b>interpret</b> [1] - 232:11</p> <p><b>interpretation</b> [7] - 29:11, 30:24, 38:25, 39:1, 182:15, 231:21, 256:6</p> <p><b>interpretations</b> [1] - 58:4</p> <p><b>interpreted</b> [1] - 227:24</p> <p><b>interrupt</b> [1] - 95:16</p> <p><b>interrupted</b> [1] - 14:21</p> <p><b>interruption</b> [1] -</p>	<p>263:11</p> <p><b>INTERVENOR</b> [1] - 3:2</p> <p><b>interviews</b> [1] - 192:9</p> <p><b>introduce</b> [1] - 224:21</p> <p><b>Introduction</b> [2] - 221:18, 221:25</p> <p><b>invalidate</b> [2] - 47:4, 51:23</p> <p><b>invalidated</b> [1] - 125:16</p> <p><b>invest</b> [1] - 111:11</p> <p><b>invested</b> [1] - 129:3</p> <p><b>investigates</b> [1] - 225:8</p> <p><b>investigation</b> [1] - 14:18</p> <p><b>investing</b> [1] - 111:23</p> <p><b>investment</b> [1] - 127:5</p> <p><b>invite</b> [1] - 7:17</p> <p><b>involve</b> [3] - 68:4, 193:24, 248:16</p> <p><b>involved</b> [7] - 22:16, 84:4, 112:5, 122:3, 175:6, 234:16, 249:1</p> <p><b>involves</b> [2] - 9:7, 77:21</p> <p><b>involving</b> [2] - 134:19, 238:24</p> <p><b>irrigation</b> [2] - 207:10, 208:19</p> <p><b>issue</b> [15] - 7:9, 14:25, 26:17, 36:2, 38:23, 38:24, 54:21, 68:22, 203:16, 236:15, 264:3, 267:3, 272:5, 284:3, 288:4</p> <p><b>issued</b> [7] - 28:2, 125:15, 255:13, 260:8, 260:17, 261:4, 264:2</p> <p><b>issues</b> [10] - 12:4, 17:15, 57:24, 79:4, 79:5, 89:19, 93:23, 243:24, 248:11, 287:19</p> <p><b>items</b> [1] - 92:15</p> <p><b>itself</b> [12] - 21:17, 47:22, 103:19, 126:4, 127:4, 132:11, 221:21, 231:5, 244:25, 273:20, 284:5, 286:15</p>	<p style="text-align: center;"><b>J</b></p> <p><b>Jackie</b> [2] - 47:7, 48:12</p> <p><b>January</b> [5] - 167:13, 169:7, 213:7, 271:12, 282:13</p> <p><b>Japanese</b> [9] - 20:7, 21:14, 22:3, 166:4, 167:1, 167:3, 168:9, 168:18, 195:20</p> <p><b>JEFFREY</b> [1] - 1:6</p> <p><b>job</b> [4] - 95:8, 192:10, 225:7, 289:8</p> <p><b>JODY</b> [1] - 2:21</p> <p><b>Johnson</b> [2] - 79:17, 95:1</p> <p><b>joint</b> [1] - 210:6</p> <p><b>joke</b> [1] - 24:23</p> <p><b>joking</b> [3] - 24:22, 71:13, 168:10</p> <p><b>journey</b> [1] - 187:5</p> <p><b>Judge</b> [20] - 19:5, 31:13, 34:11, 37:12, 38:17, 39:15, 113:2, 113:7, 125:15, 129:13, 136:20, 140:17, 157:17, 172:7, 193:13, 202:19, 205:16, 276:6, 293:3, 294:3</p> <p><b>JUDGE</b> [1] - 1:3</p> <p><b>judge</b> [5] - 94:1, 113:4, 166:19, 167:10</p> <p><b>judgment</b> [3] - 260:8, 260:17, 261:5</p> <p><b>judicial</b> [1] - 295:13</p> <p><b>July</b> [4] - 97:22, 260:8, 260:18, 261:4</p> <p><b>jump</b> [6] - 68:19, 123:4, 123:6, 123:9, 123:11</p> <p><b>jumped</b> [1] - 244:8</p> <p><b>June</b> [5] - 118:23, 119:5, 119:6, 144:17, 148:25</p> <p><b>junior</b> [4] - 116:16, 116:25, 121:1, 124:13</p> <p><b>Justice</b> [1] - 6:13</p> <p><b>JUSTICE</b> [1] - 2:19</p> <p><b>justify</b> [2] - 258:4, 262:6</p> <p><b>JUSTIN</b> [1] - 3:3</p> <p style="text-align: center;"><b>K</b></p> <p><b>KALT</b> [1] - 3:3</p> <p><b>KAPLAN</b> [1] - 2:4</p> <p><b>Karlen</b> [2] - 39:22, 292:3</p>
--	---	--	--	--

<p><b>keep</b> [11] - 58:11, 96:3, 139:25, 142:22, 143:1, 163:13, 168:15, 242:22, 292:3, 293:20, 294:3</p> <p><b>keeping</b> [4] - 17:19, 20:9, 30:3, 280:11</p> <p><b>keeps</b> [1] - 142:24</p> <p><b>Keith</b> [3] - 3:8, 70:22</p> <p><b>kept</b> [1] - 139:4</p> <p><b>kick</b> [1] - 284:16</p> <p><b>kidding</b> [1] - 294:20</p> <p><b>kids</b> [3] - 192:24, 214:15, 214:24</p> <p><b>kind</b> [49] - 8:16, 13:6, 13:12, 13:15, 13:18, 20:18, 21:11, 27:7, 27:18, 28:21, 28:22, 55:1, 64:3, 70:20, 77:10, 86:17, 88:16, 95:25, 141:18, 144:24, 146:2, 164:16, 177:20, 178:7, 178:13, 178:14, 178:25, 179:14, 179:18, 179:25, 180:1, 180:4, 180:12, 180:17, 195:10, 198:10, 203:19, 206:9, 206:12, 207:10, 207:25, 209:23, 210:25, 212:15, 214:8, 223:10, 232:24, 233:4, 290:5</p> <p><b>kinds</b> [4] - 20:24, 29:3, 63:14, 67:11</p> <p><b>knock</b> [1] - 47:7</p> <p><b>knowledge</b> [28] - 110:14, 129:5, 131:1, 131:3, 136:2, 136:5, 137:20, 141:5, 141:16, 161:3, 161:21, 162:1, 167:25, 168:4, 169:12, 169:20, 177:16, 178:11, 178:14, 226:2, 250:12, 250:14, 268:21, 268:23, 268:25, 269:18, 274:1, 287:25</p> <p><b>knowledgeable</b> [1] - 98:20</p> <p><b>known</b> [5] - 38:7, 78:11, 159:4, 189:13, 270:25</p> <p><b>knows</b> [2] - 94:20, 290:2</p> <p><b>koi</b> [1] - 195:23</p>	<p><b>kosher</b> [1] - 189:5</p> <p><b>Kristin</b> [1] - 3:7</p> <p><b>Kuhn</b> [1] - 213:22</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>LA</b> [66] - 6:22, 8:10, 10:10, 13:1, 13:13, 13:15, 13:17, 13:18, 23:7, 30:8, 30:14, 30:17, 30:21, 31:21, 32:4, 37:21, 54:22, 58:13, 77:11, 81:17, 89:20, 89:25, 129:23, 131:2, 132:24, 133:11, 134:13, 205:2, 215:2, 219:3, 219:11, 225:5, 226:11, 234:14, 235:7, 235:11, 235:12, 235:22, 238:1, 238:15, 238:21, 249:24, 250:5, 250:10, 250:11, 250:13, 251:10, 265:18, 266:24, 267:7, 267:10, 268:1, 270:10, 271:11, 271:16, 272:8, 273:11, 273:19, 273:23, 273:25, 286:22, 287:7, 287:8, 287:17, 287:24</p> <p><b>labeled</b> [1] - 185:4</p> <p><b>labs</b> [1] - 196:9</p> <p><b>LACDA</b> [1] - 251:6</p> <p><b>LACDA's</b> [1] - 269:21</p> <p><b>lack</b> [6] - 161:11, 241:14, 270:6, 290:9, 290:13, 290:24</p> <p><b>lacks</b> [1] - 54:1</p> <p><b>lacrosse</b> [9] - 139:18, 141:8, 141:9, 162:9, 162:10, 162:12, 162:16, 180:6</p> <p><b>IACV22-8357</b> [1] - 1:8</p> <p><b>land</b> [71] - 6:22, 6:23, 7:7, 7:8, 7:11, 8:13, 8:14, 10:8, 10:9, 11:10, 11:17, 20:5, 21:22, 32:15, 32:21, 33:22, 33:23, 34:22, 35:1, 35:3, 35:4, 35:6, 35:16, 56:9, 57:18, 57:21, 58:19, 83:8, 107:7, 107:12, 110:15, 111:7, 111:9, 114:5, 125:6, 126:4,</p>	<p>126:5, 126:8, 126:10, 126:15, 126:17, 127:13, 127:20, 128:24, 129:6, 129:16, 130:4, 175:24, 176:2, 176:10, 177:8, 177:9, 177:17, 183:8, 184:3, 184:19, 230:4, 230:11, 230:13, 230:14, 230:16, 231:14, 234:14, 236:3, 236:4, 236:16, 260:9, 260:19, 261:6</p> <p><b>Land</b> [3] - 53:11, 54:13, 54:19</p> <p><b>landfill</b> [4] - 26:17, 83:21, 109:10, 129:4</p> <p><b>landlord</b> [2] - 284:1, 290:24</p> <p><b>landlords</b> [8] - 272:14, 272:20, 273:3, 283:23, 286:7, 286:23, 290:17, 290:22</p> <p><b>lands</b> [1] - 53:12</p> <p><b>landscaping</b> [3] - 203:21, 207:10, 208:18</p> <p><b>lanes</b> [1] - 124:8</p> <p><b>language</b> [7] - 34:16, 183:10, 184:2, 184:4, 225:23, 227:6, 243:11</p> <p><b>large</b> [9] - 21:21, 23:16, 37:25, 62:1, 62:6, 65:18, 67:23, 74:4, 118:15</p> <p><b>larger</b> [5] - 21:12, 21:24, 84:6, 179:2, 285:14</p> <p><b>largest</b> [2] - 218:24, 222:7</p> <p><b>Lasky</b> [1] - 106:17</p> <p><b>last</b> [28] - 10:24, 28:23, 33:10, 33:15, 39:9, 45:20, 66:25, 79:13, 89:15, 91:4, 91:18, 94:21, 97:3, 135:16, 138:20, 148:22, 151:3, 172:7, 173:17, 186:25, 204:13, 217:5, 247:17, 247:20, 257:17, 259:3, 266:11, 290:19</p> <p><b>late</b> [5] - 110:2, 110:4, 110:15, 112:20, 188:17</p> <p><b>Law</b> [6] - 2:5, 2:9, 2:12, 2:15, 2:22, 3:4</p>	<p><b>law</b> [36] - 29:10, 30:7, 33:21, 35:5, 37:9, 37:19, 38:25, 39:1, 58:4, 113:10, 130:2, 130:5, 130:8, 130:10, 131:8, 131:11, 131:19, 132:10, 132:11, 133:17, 134:9, 135:2, 136:7, 136:9, 226:4, 226:9, 226:18, 227:23, 229:21, 230:16, 231:5, 231:16, 231:19, 232:8, 232:24, 233:1</p> <p><b>lawmakers</b> [1] - 131:4</p> <p><b>Lawn</b> [1] - 88:2</p> <p><b>laws</b> [11] - 13:14, 32:14, 33:24, 34:21, 34:22, 34:25, 35:7, 230:1, 230:4, 230:10, 230:17</p> <p><b>Laws</b> [1] - 32:15</p> <p><b>lawsuit</b> [2] - 31:15, 205:3</p> <p><b>lawyer</b> [2] - 31:8, 200:16</p> <p><b>lawyers</b> [2] - 36:1, 233:10</p> <p><b>lay</b> [4] - 54:12, 86:19, 87:15, 293:11</p> <p><b>lay-down</b> [2] - 86:19, 87:15</p> <p><b>laying</b> [2] - 95:8, 260:3</p> <p><b>leadership</b> [2] - 16:12, 223:20</p> <p><b>learn</b> [1] - 192:8</p> <p><b>learning</b> [1] - 203:6</p> <p><b>lease</b> [171] - 7:10, 9:2, 9:4, 9:18, 10:2, 10:13, 10:16, 11:22, 11:23, 12:7, 12:16, 12:25, 13:7, 13:8, 13:13, 18:2, 18:5, 18:12, 18:13, 18:15, 18:17, 18:21, 18:23, 19:2, 20:5, 20:10, 22:15, 23:1, 27:8, 27:17, 28:5, 30:11, 30:19, 30:25, 31:3, 31:4, 31:11, 31:20, 33:22, 33:23, 35:4, 35:6, 35:21, 35:23, 36:3, 36:6, 36:10, 36:20, 37:20, 39:5, 39:7, 39:9, 39:12, 39:13, 40:15, 40:25, 41:19, 42:7, 42:23,</p>	<p>42:24, 43:10, 44:1, 44:16, 44:24, 45:3, 45:12, 45:14, 46:1, 46:3, 46:16, 46:19, 47:5, 50:6, 50:15, 50:21, 51:19, 51:22, 51:23, 52:7, 53:10, 53:17, 53:19, 67:16, 67:18, 98:16, 132:23, 133:16, 134:12, 169:16, 173:7, 173:24, 174:16, 174:17, 174:20, 175:16, 176:8, 179:2, 179:4, 180:18, 184:19, 184:21, 186:7, 188:5, 191:8, 191:13, 198:14, 199:24, 202:15, 202:23, 203:18, 204:4, 204:7, 204:21, 210:1, 212:14, 225:1, 225:3, 225:12, 225:13, 226:3, 226:4, 226:21, 227:1, 227:16, 230:14, 230:16, 231:4, 231:5, 231:9, 231:12, 231:13, 231:14, 231:17, 231:18, 231:22, 231:23, 232:4, 232:5, 232:7, 232:13, 232:16, 232:23, 234:23, 234:25, 235:9, 235:14, 235:24, 236:3, 236:19, 236:21, 243:9, 243:10, 243:17, 243:18, 243:19, 243:20, 243:21, 260:9, 260:19, 261:6, 289:23</p> <p><b>Lease</b> [1] - 53:10</p> <p><b>leased</b> [7] - 19:15, 19:25, 21:22, 26:10, 157:7, 165:12, 199:13</p> <p><b>leasehold</b> [4] - 42:8, 46:4, 168:19, 169:2</p> <p><b>leaseholders</b> [1] - 20:12</p> <p><b>leases</b> [30] - 6:21, 7:4, 7:6, 9:18, 11:24, 13:16, 17:2, 17:6, 21:13, 30:22, 30:23, 32:15, 33:12, 34:22, 35:1, 35:3, 43:17, 54:25, 226:21, 227:16, 230:4, 230:11, 230:12,</p>
---	---	---	---	---

<p>232:20, 235:12, 243:4, 243:12, 243:13  <b>leasing</b> [2] - 235:15, 289:21  <b>Leasing</b> [37] - 7:22, 8:10, 11:12, 13:1, 13:15, 13:17, 13:18, 30:6, 30:14, 30:17, 30:21, 31:8, 31:21, 32:4, 32:20, 33:20, 34:14, 35:20, 37:21, 54:22, 58:10, 58:13, 129:23, 131:2, 132:21, 132:25, 133:5, 133:7, 133:22, 134:13, 215:2, 225:5, 225:13, 226:12, 227:2, 235:22, 243:5  <b>least</b> [20] - 16:18, 19:8, 26:10, 40:18, 45:2, 48:19, 79:3, 79:22, 82:18, 93:16, 132:6, 150:17, 171:1, 195:17, 219:25, 222:25, 229:6, 233:3, 258:4, 271:18  <b>leave</b> [11] - 25:22, 96:9, 96:12, 146:20, 166:12, 189:21, 190:4, 214:6, 214:10, 217:16, 294:13  <b>leaving</b> [1] - 9:23  <b>ledge</b> [1] - 217:8  <b>left</b> [4] - 24:18, 183:23, 213:16, 214:18  <b>Legal</b> [2] - 253:16, 260:1  <b>legal</b> [12] - 37:8, 68:23, 79:5, 162:5, 243:14, 252:9, 253:7, 254:16, 254:22, 256:17, 256:24, 262:14  <b>legally</b> [1] - 53:25  <b>Legion</b> [2] - 47:20, 47:25  <b>legislation</b> [2] - 30:14, 136:3  <b>legislative</b> [1] - 133:19  <b>length</b> [3] - 88:21, 88:23, 181:24  <b>less</b> [21] - 71:2, 71:9, 83:8, 101:19, 101:20, 101:23, 107:12, 130:21, 166:1, 178:13, 179:20, 189:7, 200:19, 212:21, 213:25,</p>	<p>214:4, 223:10, 223:11, 223:12, 269:2, 269:9  <b>Lessee</b> [2] - 44:12, 46:18  <b>lessee</b> [3] - 44:15, 44:17, 46:20  <b>lessee's</b> [1] - 44:15  <b>lesser</b> [1] - 181:8  <b>lessor</b> [1] - 53:15  <b>letter</b> [9] - 251:20, 252:15, 254:6, 256:6, 256:7, 259:23, 259:24, 260:2, 262:19  <b>letters</b> [2] - 59:19, 59:22  <b>letting</b> [1] - 245:15  <b>level</b> [7] - 21:4, 28:12, 91:15, 141:13, 142:23, 190:3, 221:5  <b>levels</b> [1] - 157:1  <b>Levi's</b> [1] - 167:15  <b>LEVY</b> [1] - 2:11  <b>liaison</b> [2] - 147:16, 156:6  <b>license</b> [7] - 10:21, 53:1, 54:16, 56:17, 57:4, 57:8, 110:11  <b>Lieu</b> [1] - 131:21  <b>life</b> [4] - 34:11, 187:5, 188:19, 209:12  <b>lifeguard</b> [6] - 160:23, 161:1, 161:4, 161:9, 161:13, 161:22  <b>light</b> [3] - 167:14, 184:11, 243:4  <b>lighted</b> [2] - 166:23, 167:24  <b>LIHTC</b> [10] - 263:3, 263:19, 263:24, 265:2, 265:15, 266:25, 267:4, 285:24, 286:2, 286:3  <b>likelihood</b> [1] - 92:5  <b>likely</b> [3] - 19:1, 19:17, 265:14  <b>limit</b> [2] - 160:18, 266:25  <b>limitation</b> [2] - 26:23, 235:20  <b>limitations</b> [4] - 260:10, 260:20, 261:7, 285:24  <b>limits</b> [2] - 263:3, 265:2  <b>line</b> [7] - 106:5, 112:14, 133:11, 133:20, 187:18, 207:6, 208:14  <b>LinkedIn</b> [1] - 192:8</p>	<p><b>list</b> [6] - 28:22, 65:19, 77:19, 196:7, 207:11, 223:19  <b>listed</b> [3] - 219:13, 222:19, 223:4  <b>listen</b> [1] - 187:22  <b>listening</b> [7] - 185:14, 186:2, 186:3, 186:12, 186:14, 186:25, 188:1  <b>lists</b> [3] - 27:21, 28:16, 158:24  <b>literacy</b> [1] - 192:17  <b>litigation</b> [5] - 17:16, 19:13, 21:10, 25:24, 248:14  <b>litigative</b> [1] - 19:1  <b>live</b> [5] - 89:5, 91:8, 163:23, 184:25, 196:21  <b>lived</b> [1] - 163:20  <b>lives</b> [1] - 187:3  <b>Living</b> [1] - 192:16  <b>living</b> [4] - 88:22, 90:22, 92:1, 277:16  <b>LLC</b> [1] - 10:21  <b>LLP</b> [3] - 2:4, 2:11, 3:3  <b>lobbied</b> [1] - 131:1  <b>lobbying</b> [1] - 132:14  <b>local</b> [12] - 135:4, 263:21, 264:6, 264:7, 265:15, 266:1, 266:13, 266:18, 266:19, 266:25, 267:5, 268:2  <b>located</b> [10] - 35:12, 44:21, 90:3, 101:1, 106:15, 106:24, 107:18, 164:16, 207:18, 230:22  <b>locating</b> [1] - 252:25  <b>location</b> [9] - 83:20, 87:3, 87:7, 87:16, 88:7, 89:8, 100:25, 104:21, 106:16  <b>locations</b> [3] - 106:12, 144:20, 146:2  <b>Logistics</b> [2] - 64:17, 64:18  <b>logjam</b> [1] - 37:6  <b>long-term</b> [2] - 84:1, 84:11  <b>longstanding</b> [1] - 204:25  <b>longwinded</b> [1] - 188:20  <b>Look</b> [1] - 126:6  <b>look</b> [47] - 7:18, 9:13, 12:12, 16:25, 18:6,</p>	<p>28:5, 28:7, 29:22, 32:13, 40:11, 43:17, 46:14, 81:21, 129:14, 137:20, 158:1, 158:23, 169:7, 180:16, 180:19, 194:1, 194:6, 194:13, 194:19, 194:24, 196:7, 202:15, 203:1, 203:24, 204:3, 206:18, 207:13, 208:7, 212:18, 217:6, 222:15, 226:24, 227:13, 228:11, 240:25, 257:11, 279:18, 289:4, 289:8, 292:12, 293:13, 293:20  <b>looked</b> [3] - 84:15, 245:3, 287:10  <b>looking</b> [35] - 16:3, 17:14, 40:6, 40:8, 43:21, 71:12, 128:12, 159:11, 160:22, 179:11, 180:21, 181:6, 194:10, 194:15, 194:16, 204:7, 218:3, 218:18, 220:5, 224:7, 228:5, 229:25, 233:14, 234:4, 252:22, 253:13, 256:7, 257:8, 257:9, 257:24, 259:8, 266:9, 266:10, 294:20  <b>looks</b> [3] - 167:12, 169:6, 176:25  <b>loop</b> [1] - 22:3  <b>looping</b> [1] - 184:24  <b>LOS</b> [4] - 1:15, 1:23, 6:1, 295:3  <b>Los</b> [55] - 2:6, 2:10, 2:16, 3:5, 7:22, 30:6, 32:20, 33:13, 33:20, 34:14, 35:19, 58:10, 66:2, 67:14, 80:23, 81:11, 108:25, 113:8, 126:17, 127:13, 222:20, 223:17, 224:11, 238:17, 243:4, 245:4, 249:10, 249:12, 249:15, 249:18, 249:22, 250:16, 251:1, 251:6, 268:24, 270:2, 270:5, 270:16, 270:18, 272:1, 272:5, 273:15, 275:12, 277:14, 278:2, 278:7, 278:18, 278:24, 278:25, 279:12, 279:15,</p>	<p>283:13, 290:1, 290:11, 290:13  <b>loss</b> [1] - 53:13  <b>lost</b> [4] - 74:21, 198:11, 272:25, 278:16  <b>Louis</b> [1] - 66:12  <b>lovely</b> [1] - 146:24  <b>Low</b> [2] - 263:19, 285:11  <b>low</b> [4] - 265:25, 270:2, 270:5, 284:3  <b>Low-Income</b> [2] - 263:19, 285:11  <b>LOWENSTEIN</b> [1] - 2:21  <b>lower</b> [9] - 8:20, 8:23, 44:10, 85:16, 106:20, 194:1, 194:12, 202:12, 290:10  <b>lowest</b> [2] - 71:15, 71:21  <b>LP</b> [1] - 10:22  <b>lumps</b> [1] - 71:8  <b>lunch</b> [3] - 149:16, 149:21, 150:8  <b>Lunch</b> [1] - 149:22  <b>Lyons</b> [3] - 187:12, 190:24, 192:12</p> <p style="text-align: center;"><b>M</b></p> <p><b>M-I-C-H-A-E-L</b> [1] - 247:14  <b>ma'am</b> [2] - 133:17, 161:19  <b>MacArthur</b> [3] - 84:24, 165:7, 167:4  <b>MacBook</b> [3] - 103:4, 103:11, 103:14  <b>magic</b> [1] - 146:18  <b>magical</b> [1] - 280:16  <b>main</b> [5] - 26:13, 27:1, 47:23, 286:15, 286:18  <b>maintain</b> [11] - 19:17, 23:5, 47:3, 68:13, 138:24, 141:13, 181:1, 195:23, 196:9, 199:22, 200:5  <b>maintained</b> [4] - 21:4, 22:25, 140:3, 140:18  <b>maintaining</b> [1] - 203:20  <b>maintenance</b> [36] - 19:24, 20:17, 21:7, 21:23, 22:18, 23:20,</p>
--	--	--	--	--

<p>23:23, 23:24, 23:25, 24:1, 25:13, 63:18, 63:21, 64:5, 64:6, 65:5, 180:2, 180:4, 180:11, 197:15, 199:4, 199:21, 201:2, 201:9, 203:4, 203:11, 207:9, 207:22, 207:23, 208:18, 211:1, 211:3, 211:10, 211:14, 211:21, 212:20</p> <p><b>major</b> [4] - 64:10, 65:1, 65:17, 67:7</p> <p><b>majority</b> [2] - 137:24, 212:20</p> <p><b>makers</b> [1] - 264:8</p> <p><b>malign</b> [1] - 91:3</p> <p><b>Management</b> [6] - 15:13, 16:8, 53:11, 54:13, 54:20, 64:15</p> <p><b>management</b> [15] - 16:9, 16:19, 16:25, 17:3, 17:8, 18:5, 20:1, 38:22, 52:20, 57:4, 209:15, 267:13, 267:21, 268:9, 268:17</p> <p><b>management's</b> [1] - 19:9</p> <p><b>managers</b> [1] - 92:19</p> <p><b>mandated</b> [4] - 7:11, 7:21, 125:12, 233:22</p> <p><b>mandatory</b> [3] - 24:10, 66:22, 270:19</p> <p><b>Mangaser</b> [2] - 247:2, 248:3</p> <p><b>MANGASER</b> [2] - 2:9, 2:15</p> <p><b>manner</b> [1] - 62:13</p> <p><b>map</b> [7] - 85:15, 85:23, 106:11, 164:18, 164:19, 164:20, 213:9</p> <p><b>March</b> [6] - 251:24, 259:24, 262:10, 262:18, 267:11</p> <p><b>Marcie</b> [1] - 3:9</p> <p><b>mark</b> [3] - 39:15, 39:16, 202:8</p> <p><b>MARK</b> [1] - 2:8</p> <p><b>marked</b> [15] - 43:20, 52:3, 151:18, 151:25, 152:13, 155:19, 171:6, 216:23, 217:19, 218:15, 220:14, 221:16, 225:19, 228:5, 229:11</p> <p><b>market</b> [12] - 114:1, 271:3, 271:4, 271:6, 272:1, 274:8, 274:21,</p>	<p>275:8, 283:12, 283:15, 286:22, 290:15</p> <p><b>Market</b> [9] - 270:19, 271:22, 273:10, 273:14, 273:17, 273:23, 274:21, 277:6, 283:21</p> <p><b>marketing</b> [1] - 154:2</p> <p><b>marking</b> [1] - 228:14</p> <p><b>markup</b> [3] - 34:5, 39:18, 39:19</p> <p><b>Maryland</b> [1] - 2:13</p> <p><b>mass</b> [1] - 107:7</p> <p><b>master</b> [9] - 7:12, 27:3, 77:8, 80:12, 81:11, 87:8, 92:10, 93:15, 186:22</p> <p><b>match</b> [1] - 206:4</p> <p><b>matches</b> [1] - 122:14</p> <p><b>material</b> [1] - 283:4</p> <p><b>math</b> [15] - 70:20, 80:9, 95:6, 137:9, 137:11, 137:13, 142:25, 197:10, 200:1, 200:9, 200:24, 204:12, 206:7, 279:24, 280:3</p> <p><b>Matt</b> [2] - 55:8, 202:9</p> <p><b>matter</b> [3] - 58:18, 146:12, 295:12</p> <p><b>matters</b> [3] - 58:3, 61:24, 155:6</p> <p><b>Matthew</b> [1] - 55:6</p> <p><b>Maverick</b> [1] - 10:22</p> <p><b>maximize</b> [2] - 156:9, 285:16</p> <p><b>maximum</b> [2] - 271:1, 281:8</p> <p><b>Mayor</b> [1] - 290:2</p> <p><b>McCarthy</b> [1] - 131:22</p> <p><b>MCDONOUGH</b> [2] - 1:9, 2:18</p> <p><b>McKendrick</b> [2] - 135:11, 135:24</p> <p><b>McKittrick</b> [1] - 135:10</p> <p><b>meal</b> [4] - 188:24, 189:4, 196:3</p> <p><b>meals</b> [7] - 28:25, 29:2, 29:11, 29:12, 184:22, 185:22, 189:1</p> <p><b>mean</b> [22] - 20:1, 21:2, 23:12, 26:9, 37:15, 38:12, 38:17, 54:8, 76:14, 78:8, 78:19, 129:16, 137:4, 152:9, 170:4, 219:19, 227:23, 261:23,</p>	<p>270:22, 283:13, 290:19</p> <p><b>meaning</b> [4] - 129:17, 139:2, 232:8, 275:18</p> <p><b>meaningful</b> [1] - 187:10</p> <p><b>means</b> [18] - 38:20, 42:5, 52:25, 65:20, 65:22, 66:11, 133:21, 168:1, 231:8, 231:10, 237:16, 239:5, 239:8, 239:9, 270:23, 282:24, 285:23, 293:24</p> <p><b>meant</b> [1] - 238:22</p> <p><b>meantime</b> [1] - 202:13</p> <p><b>measure</b> [1] - 179:5</p> <p><b>mechanics</b> [1] - 267:9</p> <p><b>media</b> [1] - 24:9</p> <p><b>medical</b> [29] - 7:3, 11:2, 11:5, 63:9, 63:11, 63:12, 63:13, 63:23, 63:25, 65:18, 66:16, 67:2, 67:3, 69:13, 78:19, 78:23, 80:24, 81:3, 81:6, 86:8, 86:11, 218:25, 219:4, 219:6, 222:8, 238:2, 238:23, 268:1</p> <p><b>Medical</b> [1] - 219:3</p> <p><b>meet</b> [6] - 25:9, 138:8, 186:5, 186:6, 192:19, 285:12</p> <p><b>meeting</b> [1] - 186:8</p> <p><b>meetings</b> [2] - 131:21, 131:25</p> <p><b>meets</b> [11] - 37:9, 37:21, 124:6, 124:23, 138:6, 138:11, 138:12, 138:20, 156:6</p> <p><b>member</b> [5] - 35:10, 95:23, 189:17, 189:21, 230:20</p> <p><b>members</b> [6] - 118:4, 131:23, 131:25, 132:3, 190:9, 190:10</p> <p><b>memorialize</b> [1] - 155:1</p> <p><b>memory</b> [1] - 85:20</p> <p><b>mental</b> [2] - 91:1, 154:17</p> <p><b>mention</b> [1] - 187:12</p> <p><b>mentioned</b> [36] - 9:9, 23:17, 47:9, 60:16, 66:18, 68:8, 69:13, 69:17, 69:22, 73:2, 73:18, 78:7, 79:16,</p>	<p>87:20, 88:5, 93:23, 106:22, 119:16, 135:18, 136:19, 137:1, 140:2, 140:8, 141:24, 155:5, 161:10, 163:1, 185:8, 186:2, 195:16, 196:3, 198:13, 223:1, 244:8, 270:15, 290:17</p> <p><b>mentions</b> [1] - 152:6</p> <p><b>merge</b> [1] - 34:2</p> <p><b>met</b> [1] - 105:23</p> <p><b>meta</b> [1] - 195:3</p> <p><b>method</b> [1] - 133:21</p> <p><b>methodology</b> [2] - 240:25, 241:7</p> <p><b>metrics</b> [1] - 28:25</p> <p><b>metro</b> [2] - 275:12, 277:12</p> <p><b>Metro</b> [3] - 43:4, 86:21, 278:14</p> <p><b>metropolitan</b> [11] - 250:16, 270:18, 271:5, 271:16, 274:7, 274:20, 278:21, 278:22, 278:23, 279:16, 280:12</p> <p><b>Mexico</b> [1] - 70:6</p> <p><b>mic</b> [2] - 142:14, 150:7</p> <p><b>Michael</b> [4] - 246:10, 246:20, 247:8, 247:10</p> <p><b>MICHAEL</b> [2] - 4:14, 247:4</p> <p><b>microphone</b> [3] - 95:14, 198:20, 198:23</p> <p><b>mid-80s</b> [1] - 92:22</p> <p><b>midday</b> [1] - 188:17</p> <p><b>middle</b> [16] - 100:6, 101:3, 103:7, 106:13, 108:1, 118:23, 119:5, 120:7, 121:4, 144:17, 247:16, 247:18, 247:19, 256:15, 259:4, 259:8</p> <p><b>might</b> [38] - 18:25, 20:7, 34:5, 40:6, 42:1, 42:20, 48:7, 49:20, 53:13, 61:20, 62:3, 70:22, 70:23, 72:22, 73:12, 74:21, 78:24, 82:4, 89:1, 94:4, 97:15, 188:18, 201:24, 206:19, 219:19, 233:5, 233:10, 240:7, 242:5, 243:17, 243:24, 246:14, 260:15, 282:10, 286:13, 289:7, 289:8</p>	<p><b>mile</b> [2] - 270:10, 270:13</p> <p><b>Military</b> [1] - 108:15</p> <p><b>million</b> [47] - 9:5, 9:21, 9:23, 23:22, 24:5, 24:7, 28:24, 66:19, 69:23, 69:25, 70:10, 71:24, 71:25, 72:19, 73:25, 74:1, 74:2, 74:6, 74:24, 75:19, 75:24, 76:1, 77:9, 78:6, 78:11, 78:14, 95:9, 105:2, 105:17, 111:12, 111:24, 127:5, 129:1, 130:21, 130:23, 143:24, 144:2, 179:20, 197:11, 206:12, 234:23, 244:9, 244:22, 244:25</p> <p><b>mind</b> [5] - 22:2, 95:22, 106:11, 202:11, 228:6</p> <p><b>mine</b> [1] - 214:23</p> <p><b>minimal</b> [1] - 207:12</p> <p><b>minimum</b> [6] - 191:16, 218:22, 219:10, 220:3, 222:5, 286:2</p> <p><b>minor</b> [2] - 65:9, 78:7</p> <p><b>minus</b> [1] - 50:2</p> <p><b>minute</b> [6] - 52:12, 135:15, 147:23, 166:2, 242:18, 259:10</p> <p><b>minutes</b> [5] - 45:20, 60:7, 185:9, 185:12, 246:16</p> <p><b>misappropriation</b> [1] - 234:24</p> <p><b>miscellaneous</b> [1] - 9:9</p> <p><b>miscommunication</b> [1] - 204:2</p> <p><b>misleading</b> [4] - 168:17, 168:19, 241:15, 242:5</p> <p><b>mismanagement</b> [2] - 35:2, 230:12</p> <p><b>miss</b> [1] - 288:20</p> <p><b>missed</b> [4] - 108:3, 108:9, 135:25, 267:1</p> <p><b>mission</b> [1] - 214:16</p> <p><b>Mississippi</b> [1] - 75:17</p> <p><b>mistake</b> [6] - 41:18, 42:19, 103:3, 206:20, 228:10, 262:14</p> <p><b>misuse</b> [1] - 36:10</p> <p><b>mitigation</b> [1] - 77:15</p> <p><b>mix</b> [1] - 214:3</p>
---	---	---	---	---

<p><b>mixed</b> [1] - 62:6  <b>mock</b> [1] - 192:9  <b>model</b> [9] - 84:15, 84:18, 214:10, 238:11, 240:6, 240:15, 241:4, 241:25, 242:4  <b>modelling</b> [1] - 214:20  <b>modification</b> [3] - 33:11, 39:17, 40:24  <b>modified</b> [4] - 32:25, 58:9, 187:25, 256:18  <b>modifier</b> [1] - 97:25  <b>modify</b> [4] - 88:21, 88:22, 257:21, 258:5  <b>modular</b> [2] - 80:2, 82:19  <b>moment</b> [57] - 7:17, 9:13, 10:25, 11:1, 12:8, 12:12, 13:11, 13:20, 15:5, 15:25, 28:7, 32:18, 33:1, 40:11, 46:14, 55:3, 60:1, 71:13, 81:22, 82:25, 94:2, 96:1, 96:22, 108:12, 111:18, 128:11, 144:19, 148:11, 165:21, 173:19, 183:25, 193:18, 194:6, 198:4, 203:1, 205:11, 205:23, 205:24, 207:13, 209:1, 209:8, 217:5, 233:21, 242:13, 244:20, 246:14, 252:20, 252:22, 257:10, 259:7, 261:15, 262:22, 264:14, 266:3, 274:14, 284:21, 291:20  <b>moments</b> [4] - 7:25, 74:22, 137:1, 222:12  <b>Monday</b> [9] - 117:16, 144:8, 146:21, 159:20, 159:21, 159:25, 162:20, 163:8, 172:11  <b>monetize</b> [1] - 177:3  <b>monetized</b> [1] - 114:4  <b>money</b> [70] - 9:4, 9:16, 9:19, 19:16, 21:10, 21:21, 24:5, 24:18, 24:23, 25:8, 25:12, 28:20, 50:5, 61:10, 61:11, 61:14, 62:6, 63:5, 63:6, 63:8,</p>	<p>63:13, 63:24, 64:5, 69:4, 72:18, 72:25, 73:1, 73:13, 73:18, 73:20, 73:24, 74:3, 74:7, 74:9, 74:11, 75:5, 75:15, 75:19, 77:5, 77:7, 77:12, 77:13, 77:23, 78:21, 79:7, 95:4, 95:9, 150:24, 151:14, 174:18, 235:6, 235:11, 235:21, 239:15, 239:17, 239:24, 239:25, 240:3, 240:6, 244:7, 244:15, 244:22, 245:1, 245:5, 291:11  <b>monies</b> [6] - 56:24, 61:9, 61:12, 63:18, 67:2, 110:15  <b>monitor</b> [2] - 162:13, 163:16  <b>monitoring</b> [1] - 189:10  <b>monitors</b> [1] - 189:8  <b>month</b> [1] - 50:4  <b>monthly</b> [2] - 191:25, 192:17  <b>months</b> [1] - 23:21  <b>Morning</b> [1] - 60:9  <b>morning</b> [27] - 6:8, 6:9, 6:17, 6:19, 25:2, 34:4, 39:18, 145:3, 145:14, 146:21, 160:2, 160:11, 160:13, 160:15, 163:15, 163:18, 163:21, 163:25, 165:25, 166:16, 167:8, 169:6, 183:4, 188:17, 228:23, 229:4, 238:9  <b>most</b> [22] - 17:4, 83:6, 83:16, 90:14, 98:20, 193:23, 214:17, 215:3, 220:18, 220:19, 222:25, 223:10, 223:11, 223:12, 223:24, 224:1, 224:3, 224:5, 224:10, 245:3, 248:16, 258:6  <b>mostly</b> [1] - 172:16  <b>motion</b> [1] - 292:24  <b>move</b> [29] - 8:2, 12:19, 44:4, 45:15, 46:7, 52:8, 55:22, 56:11, 58:24, 92:20, 142:13, 153:17, 155:13, 157:9,</p>	<p>158:15, 172:20, 174:11, 179:7, 183:13, 224:16, 251:25, 254:15, 257:17, 257:23, 258:22, 265:5, 274:3, 279:5, 291:23  <b>moved</b> [3] - 157:4, 193:13, 202:16  <b>moving</b> [2] - 36:5, 64:25  <b>MR</b> [275] - 6:12, 6:16, 7:14, 7:16, 8:2, 8:6, 12:9, 12:11, 12:19, 12:23, 14:23, 15:7, 15:17, 15:22, 16:1, 16:6, 16:7, 18:18, 18:20, 20:25, 23:10, 23:14, 25:1, 25:5, 25:21, 25:23, 26:11, 27:22, 28:10, 31:17, 31:25, 32:2, 32:9, 32:11, 33:6, 33:9, 33:17, 34:10, 34:12, 37:11, 38:16, 39:15, 39:19, 39:25, 40:10, 41:6, 41:9, 41:14, 41:16, 43:22, 43:24, 44:4, 44:7, 45:15, 45:18, 46:7, 46:10, 46:13, 47:13, 48:9, 49:5, 49:8, 50:20, 50:25, 51:8, 52:8, 52:11, 52:14, 52:15, 55:8, 55:10, 55:22, 56:1, 56:5, 56:11, 56:14, 58:17, 59:2, 59:5, 59:7, 59:9, 59:12, 59:15, 60:1, 60:4, 60:8, 60:15, 60:18, 60:20, 60:22, 65:11, 73:17, 74:20, 76:6, 76:22, 77:1, 78:5, 82:1, 82:15, 85:12, 85:19, 86:10, 87:19, 94:1, 94:6, 94:12, 94:15, 94:19, 95:10, 95:13, 95:20, 96:10, 96:14, 97:12, 100:20, 108:11, 111:5, 111:8, 111:17, 111:22, 126:9, 126:13, 126:16, 126:18, 126:21, 126:24, 127:24, 128:8, 131:13, 131:17, 135:17, 135:19, 135:22, 136:1, 137:12, 139:24, 140:20, 141:4, 142:12, 147:3,</p>	<p>147:7, 147:8, 148:1, 148:2, 148:16, 149:14, 149:18, 150:4, 150:5, 153:17, 153:21, 153:22, 155:11, 155:16, 155:18, 157:9, 157:12, 157:15, 157:23, 158:3, 158:15, 158:17, 158:19, 158:22, 161:11, 161:17, 161:18, 164:11, 166:18, 167:21, 167:22, 168:16, 168:24, 169:11, 169:15, 169:21, 170:5, 170:8, 170:11, 170:17, 170:20, 171:4, 172:6, 172:20, 172:24, 173:21, 173:22, 178:18, 178:20, 179:7, 179:10, 182:19, 182:21, 182:24, 183:12, 183:15, 183:17, 183:18, 193:17, 193:22, 194:23, 198:24, 199:6, 199:11, 200:12, 200:14, 200:16, 201:1, 201:10, 201:13, 201:18, 201:23, 202:1, 202:4, 202:6, 203:14, 204:1, 204:12, 204:14, 205:11, 205:15, 205:19, 205:21, 212:4, 212:5, 213:14, 213:17, 215:19, 215:22, 216:2, 216:14, 216:18, 216:22, 216:25, 217:7, 217:10, 217:12, 217:18, 224:16, 224:18, 224:24, 225:15, 225:18, 228:7, 228:17, 228:20, 228:25, 229:3, 229:8, 229:10, 229:14, 229:16, 233:19, 233:25, 234:3, 239:4, 239:6, 241:11, 241:21, 242:3, 242:12, 242:16, 242:21, 242:25, 243:2, 245:16, 245:22, 245:24, 281:14, 281:18,</p>	<p>292:20, 293:18, 293:23, 294:1, 294:10  <b>MS</b> [68] - 246:10, 246:14, 246:20, 247:1, 247:24, 248:3, 248:6, 249:6, 250:3, 250:4, 250:25, 251:12, 251:14, 251:25, 252:4, 252:24, 253:3, 253:6, 253:13, 253:17, 253:20, 253:22, 253:25, 254:2, 254:5, 254:12, 255:1, 255:5, 258:8, 258:9, 258:22, 259:1, 259:8, 259:12, 259:15, 260:23, 261:2, 261:3, 261:18, 262:23, 263:7, 263:13, 264:17, 264:18, 266:6, 266:7, 269:7, 269:8, 274:13, 274:17, 274:18, 274:24, 275:3, 275:13, 276:16, 277:4, 278:10, 279:19, 279:21, 281:11, 283:2, 283:19, 285:21, 288:18, 291:4, 291:5, 291:18, 291:21  <b>multi</b> [1] - 24:18  <b>multi-year</b> [1] - 24:18  <b>multiple</b> [1] - 78:4  <b>multiplied</b> [1] - 201:3  <b>multiplier</b> [1] - 281:15  <b>multiply</b> [1] - 240:23  <b>multiplying</b> [2] - 181:4, 281:17</p>
<b>N</b>				
<p><b>N.W</b> [1] - 2:23  <b>name</b> [21] - 72:20, 97:1, 97:3, 97:16, 101:11, 102:17, 113:3, 135:16, 135:21, 135:23, 143:4, 143:11, 154:9, 247:7, 247:9, 247:13, 247:16, 247:17, 247:19, 247:20, 248:1  <b>named</b> [2] - 111:3, 184:20  <b>namely</b> [1] - 257:2  <b>names</b> [1] - 186:15  <b>naming</b> [1] - 143:22  <b>nation</b> [1] - 70:16  <b>national</b> [2] - 269:23,</p>				

<p>289:11  <b>National</b> [6] - 62:24, 236:8, 236:12, 236:15, 236:17, 240:14  <b>nationally</b> [2] - 133:11, 133:21  <b>nationwide</b> [8] - 69:20, 69:21, 70:14, 73:6, 220:6, 289:8, 289:15, 289:16  <b>Natural</b> [1] - 10:22  <b>nature</b> [6] - 29:21, 48:18, 89:11, 136:3, 184:11, 184:12  <b>navigate</b> [1] - 96:23  <b>NCA</b> [2] - 236:15, 236:20  <b>NCAA</b> [1] - 156:22  <b>near</b> [8] - 16:20, 88:11, 250:13, 272:5, 273:19, 273:24, 287:16, 287:23  <b>nearly</b> [1] - 245:1  <b>necessarily</b> [5] - 21:11, 61:10, 202:2, 223:2, 289:24  <b>necessary</b> [9] - 51:17, 51:18, 53:18, 53:24, 88:17, 89:16, 90:20, 96:7, 245:11  <b>need</b> [35] - 17:10, 21:20, 34:5, 42:17, 67:1, 67:4, 74:11, 75:8, 79:6, 84:13, 84:19, 93:17, 145:5, 145:7, 145:17, 148:13, 164:5, 186:20, 193:6, 214:11, 238:20, 239:25, 246:14, 252:21, 257:13, 259:5, 261:21, 277:19, 279:18, 280:8, 285:18, 287:18, 290:22, 291:16, 294:11  <b>needed</b> [7] - 17:7, 17:19, 24:7, 36:24, 73:12, 95:5, 131:4  <b>needs</b> [15] - 19:23, 62:3, 81:8, 89:19, 89:23, 171:14, 184:22, 193:4, 209:19, 214:8, 219:6, 242:3, 245:9, 249:8, 282:2  <b>negative</b> [1] - 241:17  <b>negotiate</b> [2] - 32:21, 53:20</p>	<p><b>negotiated</b> [2] - 30:13, 175:3  <b>negotiating</b> [1] - 181:3  <b>negotiation</b> [5] - 43:18, 177:5, 205:4, 205:5, 210:7  <b>negotiations</b> [1] - 175:6  <b>neighborhood</b> [3] - 101:21, 106:18, 198:7  <b>neighborhoods</b> [1] - 271:9  <b>net</b> [1] - 50:3  <b>nets</b> [1] - 121:8  <b>network</b> [6] - 24:6, 62:8, 62:9, 74:5, 74:7, 237:1  <b>networks</b> [3] - 73:25, 74:2, 244:21  <b>never</b> [26] - 67:25, 76:9, 110:18, 124:20, 128:16, 128:19, 134:7, 137:14, 137:16, 137:21, 140:5, 141:5, 141:16, 164:3, 177:16, 178:11, 178:14, 199:14, 200:17, 201:12, 232:13, 236:2, 249:14, 249:17, 250:18, 251:2  <b>new</b> [44] - 11:24, 30:22, 33:3, 33:23, 35:4, 35:21, 35:23, 42:9, 48:2, 58:6, 61:13, 66:8, 83:17, 86:15, 86:16, 86:23, 102:14, 102:17, 154:5, 167:3, 169:25, 205:4, 221:7, 226:21, 230:14, 231:12, 231:14, 231:17, 231:22, 232:4, 232:6, 232:16, 232:22, 243:20, 255:24, 257:4, 265:16, 266:21, 269:3, 269:10, 270:15, 288:4, 288:13  <b>New</b> [8] - 70:6, 154:14, 171:21, 185:15, 185:17, 186:17, 191:23, 192:14  <b>newer</b> [2] - 84:22, 84:23  <b>news</b> [4] - 66:19, 70:24, 71:8, 255:11  <b>next</b> [36] - 9:10,</p>	<p>10:18, 18:3, 23:4, 24:11, 24:21, 39:10, 51:22, 66:13, 87:12, 96:2, 96:6, 96:13, 99:23, 102:2, 145:20, 152:13, 152:22, 153:5, 153:11, 156:12, 165:9, 170:15, 174:24, 194:7, 210:14, 215:24, 216:1, 220:13, 222:14, 246:8, 246:19, 252:23, 279:19, 292:24, 293:14  <b>nice</b> [2] - 97:13, 190:16  <b>night</b> [6] - 146:21, 146:22, 163:2, 163:4, 188:17, 217:5  <b>nights</b> [2] - 156:17, 157:4  <b>Nike</b> [1] - 154:19  <b>nimbyism</b> [2] - 290:24, 290:25  <b>nine</b> [4] - 51:3, 51:5, 250:15, 271:15  <b>NO</b> [3] - 1:21, 5:2, 295:20  <b>nobody</b> [6] - 48:25, 162:15, 168:7, 168:11, 197:23, 250:22  <b>noise</b> [1] - 87:12  <b>nonclinical</b> [6] - 218:23, 219:8, 222:6, 223:12, 223:14, 224:7  <b>noncompliance</b> [1] - 173:3  <b>noncompliant</b> [7] - 11:12, 11:17, 13:1, 31:12, 32:22, 54:23, 243:9  <b>nonconcurrency</b> [1] - 16:15  <b>nondoctor</b> [1] - 221:13  <b>none</b> [2] - 74:1, 267:19  <b>nonetheless</b> [1] - 11:7  <b>nonmedical</b> [1] - 19:18  <b>nonparty</b> [1] - 95:16  <b>nonrecurring</b> [4] - 23:19, 23:22, 64:4, 65:5  <b>nonveteran</b> [2] - 138:23, 140:1  <b>nonveterans</b> [3] -</p>	<p>139:15, 140:2, 151:1  <b>normal</b> [1] - 170:1  <b>North</b> [2] - 85:14, 87:20  <b>north</b> [7] - 26:9, 30:8, 43:8, 66:7, 87:20, 87:23, 88:13  <b>Northern</b> [1] - 74:1  <b>northern</b> [2] - 86:21, 87:9  <b>notch</b> [1] - 154:18  <b>note</b> [3] - 10:18, 14:20, 59:18  <b>noted</b> [2] - 18:22, 220:10  <b>notes</b> [4] - 18:11, 39:21, 292:12  <b>nothing</b> [12] - 81:13, 96:19, 145:6, 146:18, 212:5, 213:14, 215:19, 226:5, 227:10, 227:17, 227:18, 262:15  <b>noticed</b> [1] - 159:15  <b>notify</b> [2] - 283:4, 292:21  <b>notion</b> [2] - 89:19, 238:13  <b>November</b> [2] - 167:13, 174:24  <b>NRM</b> [3] - 23:19, 65:3, 65:5  <b>number</b> [94] - 10:8, 11:10, 15:12, 15:24, 25:2, 27:16, 28:25, 29:1, 61:23, 62:1, 62:16, 63:1, 66:24, 70:23, 76:4, 84:19, 84:20, 90:25, 92:8, 99:23, 104:11, 105:20, 108:8, 113:13, 114:8, 114:13, 118:15, 121:12, 121:15, 121:21, 121:22, 122:2, 122:18, 123:12, 124:17, 129:2, 129:3, 137:4, 137:7, 137:21, 137:23, 138:10, 138:12, 138:25, 139:3, 140:1, 144:20, 151:1, 151:2, 163:13, 163:16, 167:10, 176:14, 176:21, 180:20, 181:8, 181:23, 181:25, 182:1, 182:4, 182:7, 182:10, 182:11, 182:12, 182:13,</p>	<p>186:10, 193:25, 194:2, 197:9, 199:23, 200:7, 200:22, 200:23, 200:25, 201:7, 202:12, 203:12, 204:8, 209:7, 220:3, 230:1, 240:23, 248:14, 249:7, 250:8, 251:21, 273:24, 281:15, 287:23  <b>Number</b> [14] - 12:10, 13:3, 13:8, 15:3, 15:22, 32:3, 32:12, 33:5, 40:3, 53:10, 86:16, 193:11, 203:18, 243:3  <b>numbering</b> [2] - 44:9, 202:8  <b>numbers</b> [19] - 8:20, 62:5, 62:7, 65:13, 74:21, 74:22, 76:12, 80:10, 101:6, 101:7, 104:22, 121:20, 139:2, 142:24, 214:1, 242:1, 245:3, 282:23  <b>numerous</b> [2] - 60:12, 195:25  <b>nurse</b> [1] - 224:3  <b>nurses</b> [1] - 221:3  <b>nursing</b> [2] - 43:15, 78:9  <b>nuts</b> [1] - 282:14  <b>NVA</b> [1] - 36:19</p> <p style="text-align: center;"><b>O</b></p> <p><b>o'clock</b> [18] - 163:2, 163:4, 163:7, 167:18, 169:6, 169:9, 171:24, 171:25, 210:22, 210:23, 210:24, 212:24, 292:11, 292:15, 294:18  <b>OACL</b> [1] - 64:17  <b>OAM</b> [1] - 17:23  <b>Oasis</b> [1] - 191:22  <b>oath</b> [1] - 246:22  <b>objection</b> [17] - 111:17, 126:13, 127:24, 131:13, 140:20, 147:1, 147:24, 148:1, 161:11, 168:16, 169:15, 170:8, 182:19, 217:14, 239:4, 241:11, 242:3  <b>objections</b> [1] - 12:6  <b>objective</b> [7] - 131:18, 131:19, 132:20, 133:3,</p>
--	--	---	---	--



<p>133:10, 133:14, 133:19  <b>obligated</b> [1] - 61:15  <b>obligation</b> [2] - 46:20, 173:4  <b>obligations</b> [3] - 58:10, 61:13, 246:2  <b>obliged</b> [1] - 127:5  <b>obtain</b> [4] - 57:11, 57:17, 264:12, 284:24  <b>obtained</b> [1] - 217:4  <b>obviously</b> [3] - 38:2, 164:20, 291:15  <b>occasion</b> [1] - 192:13  <b>occasionally</b> [2] - 67:10, 108:1  <b>occasions</b> [1] - 60:12  <b>occupation</b> [2] - 220:20, 220:23  <b>occupational</b> [8] - 49:25, 217:2, 218:11, 219:15, 220:7, 220:18, 222:20, 245:14  <b>occupations</b> [3] - 218:24, 219:8, 222:7  <b>occupied</b> [1] - 108:14  <b>occur</b> [2] - 92:3, 92:5  <b>occurred</b> [5] - 35:2, 61:14, 132:11, 145:2, 230:12  <b>occurrence</b> [1] - 231:8  <b>October</b> [1] - 290:4  <b>odds</b> [1] - 273:20  <b>OF</b> [7] - 1:2, 1:13, 2:1, 2:19, 295:1, 295:3, 295:4  <b>offended</b> [1] - 167:15  <b>offer</b> [12] - 58:23, 62:4, 152:3, 154:12, 184:18, 185:6, 186:15, 187:14, 191:21, 191:24, 192:14, 192:16  <b>offered</b> [1] - 156:1  <b>offering</b> [1] - 154:15  <b>offerings</b> [2] - 190:22, 205:7  <b>offers</b> [3] - 179:4, 186:21, 187:20  <b>Office</b> [35] - 7:5, 11:17, 12:25, 14:1, 16:10, 16:22, 22:5, 22:8, 31:11, 32:6, 32:22, 35:18, 57:5, 64:15, 64:16, 64:17,</p>	<p>64:23, 69:8, 69:11, 93:2, 93:3, 132:15, 132:22, 133:9, 133:15, 134:20, 217:23, 218:5, 218:21, 222:5, 243:8, 244:6, 244:7, 260:1  <b>office</b> [3] - 64:16, 115:25, 135:1  <b>OFFICIAL</b> [2] - 1:22, 295:1  <b>official</b> [1] - 156:22  <b>Official</b> [1] - 295:6  <b>officials</b> [2] - 131:5, 234:25  <b>often</b> [9] - 85:13, 181:21, 185:19, 186:14, 186:22, 187:2, 196:16, 238:4, 285:23  <b>oftentimes</b> [2] - 243:12, 243:13  <b>OIG</b> [51] - 7:7, 11:1, 11:3, 11:8, 11:10, 11:21, 12:2, 13:4, 13:5, 13:12, 14:1, 14:5, 14:6, 15:3, 16:11, 30:21, 30:23, 31:1, 36:3, 36:9, 36:14, 36:15, 36:19, 38:1, 38:4, 39:6, 39:8, 50:18, 50:19, 52:17, 58:3, 58:12, 134:11, 217:2, 218:10, 218:22, 222:5, 223:21, 225:4, 225:7, 225:12, 226:3, 227:2, 227:6, 227:16, 231:4, 232:19, 232:25, 245:12  <b>OIG's</b> [3] - 12:5, 19:9, 233:6  <b>oil</b> [3] - 53:5, 54:11, 55:18  <b>old</b> [1] - 232:5  <b>older</b> [2] - 164:19, 192:21  <b>Olympic</b> [3] - 3:4, 123:23, 123:25  <b>Olympic-sized</b> [1] - 123:23  <b>on-site</b> [1] - 190:1  <b>once</b> [9] - 6:12, 41:5, 70:4, 78:18, 206:7, 236:14, 236:15, 236:20, 288:15  <b>one</b> [172] - 7:13, 7:24, 12:1, 12:2, 13:20, 14:20, 17:10, 18:21, 19:6, 19:20,</p>	<p>19:25, 20:7, 20:17, 22:2, 26:12, 26:14, 37:12, 38:17, 39:9, 39:10, 41:4, 41:7, 41:13, 42:22, 43:21, 45:3, 51:4, 51:5, 52:12, 52:18, 55:21, 56:2, 57:3, 57:4, 58:17, 59:7, 60:1, 62:3, 63:9, 65:22, 66:16, 67:20, 68:8, 69:2, 69:4, 75:7, 75:8, 77:2, 78:3, 78:15, 81:12, 81:22, 84:16, 88:8, 88:24, 89:5, 89:18, 90:3, 90:16, 91:14, 92:15, 102:17, 103:1, 106:14, 120:15, 126:20, 129:19, 137:6, 142:7, 144:19, 144:21, 146:10, 150:15, 150:23, 159:12, 161:1, 161:7, 161:8, 161:21, 162:1, 162:7, 162:20, 162:23, 164:6, 164:10, 165:4, 167:17, 168:4, 169:12, 170:17, 171:16, 173:25, 176:25, 178:8, 179:18, 181:19, 183:25, 187:22, 188:22, 188:23, 190:11, 191:5, 192:2, 192:3, 192:15, 192:22, 193:4, 194:19, 197:7, 199:23, 199:25, 201:18, 203:3, 204:13, 205:11, 212:7, 213:18, 213:21, 217:10, 221:3, 221:18, 223:23, 224:18, 225:16, 226:13, 226:21, 227:13, 228:13, 228:18, 228:25, 229:25, 232:11, 233:3, 233:21, 234:15, 238:6, 238:8, 239:2, 240:12, 243:3, 244:5, 245:13, 246:13, 252:23, 253:3, 253:6, 253:8, 258:4, 260:10, 260:20, 261:7, 261:15, 262:22, 266:3, 270:5, 271:18, 271:20, 274:14, 275:16, 276:8, 278:8,</p>	<p>279:9, 280:10, 284:3, 287:14, 291:6  <b>one-minute</b> [1] - 52:12  <b>one-time</b> [1] - 102:17  <b>one-week</b> [1] - 150:15  <b>one-year</b> [1] - 51:4  <b>ones</b> [6] - 11:21, 39:2, 93:19, 186:4, 186:13  <b>ongoing</b> [5] - 86:14, 86:21, 93:25, 131:9, 187:5  <b>online</b> [4] - 189:16, 190:10, 190:11, 192:20  <b>oOo</b> [1] - 6:3  <b>open</b> [13] - 41:10, 94:4, 94:7, 145:5, 145:7, 145:25, 159:20, 159:23, 165:16, 166:5, 169:9, 200:5, 215:13  <b>opened</b> [1] - 165:16  <b>opening</b> [1] - 90:7  <b>operate</b> [1] - 19:16  <b>operated</b> [1] - 171:11  <b>operates</b> [2] - 185:11, 267:10  <b>Operating</b> [4] - 10:22, 255:12, 258:15, 263:16  <b>operating</b> [14] - 24:16, 50:2, 61:17, 130:24, 151:15, 180:21, 180:22, 197:14, 203:20, 262:8, 264:4, 265:16, 265:21, 266:21  <b>operation</b> [9] - 144:5, 144:7, 148:4, 199:4, 201:2, 211:1, 211:14, 249:12, 277:21  <b>operational</b> [6] - 207:21, 211:2, 211:9, 211:21, 212:21, 268:24  <b>operations</b> [2] - 203:21, 248:11  <b>opinion</b> [7] - 31:10, 31:20, 31:22, 32:5, 58:7, 205:4, 283:10  <b>opinions</b> [1] - 79:14  <b>opponent</b> [1] - 138:8  <b>opportunities</b> [8] - 156:9, 184:21, 185:2, 185:7, 190:15, 190:16, 191:2, 273:20</p>	<p><b>opportunity</b> [14] - 7:4, 16:12, 16:20, 43:9, 49:22, 49:25, 51:23, 84:18, 93:10, 189:9, 217:6, 217:25, 238:5, 244:1  <b>opposed</b> [2] - 181:15, 241:4  <b>opposing</b> [1] - 183:23  <b>opposite</b> [1] - 195:5  <b>optimize</b> [1] - 192:9  <b>option</b> [9] - 13:9, 35:22, 35:25, 67:12, 88:10, 232:1, 232:2, 243:18, 243:19  <b>optional</b> [1] - 103:10  <b>options</b> [10] - 67:23, 87:9, 88:1, 129:14, 129:16, 189:5, 189:6  <b>optometrists</b> [1] - 221:4  <b>optometry</b> [1] - 221:14  <b>order</b> [15] - 14:23, 25:8, 26:20, 54:14, 66:6, 77:17, 147:24, 184:25, 203:19, 222:24, 223:10, 240:2, 264:11, 268:14  <b>ordered</b> [2] - 57:23, 167:14  <b>organization</b> [4] - 21:5, 21:6, 68:4, 81:10  <b>organizations</b> [1] - 64:21  <b>organize</b> [1] - 156:16  <b>original</b> [6] - 8:22, 30:15, 44:1, 46:16, 82:18, 167:6  <b>originally</b> [4] - 30:13, 47:19, 47:25, 235:6  <b>Orphan</b> [1] - 18:1  <b>ORs</b> [1] - 66:9  <b>Otero</b> [3] - 113:2, 113:7, 125:15  <b>Otero's</b> [1] - 129:13  <b>otherwise</b> [8] - 76:24, 99:14, 136:8, 225:8, 239:18, 240:7, 241:5, 249:14  <b>ourselves</b> [2] - 29:10, 192:22  <b>outage</b> [1] - 91:18  <b>outcome</b> [1] - 19:4  <b>outlined</b> [1] - 235:15  <b>outperform</b> [1] - 191:15  <b>outreach</b> [2] - 69:14,</p>
---	--	---	--	--

<p>185:3  <b>outside</b> [2] - 31:2,  89:25  <b>outsourcing</b> [1] -  268:16  <b>overall</b> [10] - 23:18,  24:2, 24:7, 24:9, 31:4,  48:16, 61:17, 64:20,  93:24, 272:9  <b>Overflow</b> [1] - 46:18  <b>overflow</b> [13] - 42:3,  42:25, 44:12, 44:15,  44:19, 46:6, 46:21,  47:1, 236:7, 236:10,  236:11, 236:22  <b>overnight</b> [1] - 104:8  <b>overruled</b> [5] -  128:1, 131:15,  161:14, 169:18, 242:8  <b>overspend</b> [1] - 69:4  <b>overspending</b> [1] -  66:21  <b>overview</b> [2] - 62:14,  253:11  <b>own</b> [6] - 103:11,  168:21, 197:10,  201:25, 277:5, 284:20  <b>owned</b> [4] - 49:22,  120:4, 148:21, 180:22  <b>owner</b> [1] - 286:9  <b>owners</b> [1] - 272:17  <b>ownership</b> [1] -  57:13</p>	<p>194:3, 194:4, 194:11,  194:12, 202:24,  203:3, 203:18, 204:8,  205:12, 206:4,  206:12, 207:13,  208:5, 210:14, 218:3,  218:14, 220:13,  221:16, 221:17,  221:20, 221:25,  222:14, 222:16,  223:5, 223:8, 226:24,  228:5, 233:11,  233:14, 233:18,  252:5, 252:13,  252:14, 252:15,  252:23, 253:10,  253:13, 253:14,  253:15, 253:16,  253:17, 253:18,  253:21, 253:22,  253:23, 254:1, 254:3,  254:5, 254:8, 254:15,  255:17, 256:8,  256:16, 257:8,  257:17, 257:23,  259:2, 262:21, 263:6,  264:20, 265:6, 266:9,  295:12  <b>pages</b> [9] - 16:4,  17:14, 18:6, 28:6,  28:7, 40:12, 40:21,  194:7, 217:13  <b>paginated</b> [3] -  222:16, 255:15,  275:14  <b>pagination</b> [8] - 8:22,  15:12, 15:23, 194:11,  202:24, 204:3,  221:20, 221:24  <b>paid</b> [12] - 51:24,  61:16, 109:21,  109:24, 110:4, 112:5,  113:12, 130:18,  174:18, 179:20,  221:12, 271:2  <b>painters</b> [1] - 63:20  <b>pandemic</b> [1] -  188:23  <b>pantries</b> [2] - 196:4,  196:5  <b>paper</b> [3] - 34:4,  158:10, 233:17  <b>papers</b> [4] - 15:4,  96:4, 193:12, 290:2  <b>paragraph</b> [48] -  10:19, 18:9, 19:8,  32:13, 32:14, 32:15,  32:18, 32:19, 32:23,  32:25, 37:16, 44:11,  44:12, 46:15, 53:2,</p>	<p>53:3, 179:11, 199:1,  203:4, 203:9, 206:3,  206:22, 207:5,  207:23, 207:24,  208:9, 208:12, 209:3,  252:6, 252:21, 253:1,  253:4, 253:11, 257:9,  257:12, 257:17,  257:19, 257:24,  257:25, 259:3, 259:4,  259:8, 262:21,  264:20, 266:9, 266:11  <b>Paragraph</b> [4] -  46:18, 180:16, 180:19  <b>paragraphs</b> [5] -  52:22, 54:3, 54:5,  257:8, 257:12  <b>parameters</b> [1] -  293:11  <b>parcel</b> [6] - 77:14,  108:17, 114:5, 125:6,  127:10, 127:13  <b>parcels</b> [8] - 81:19,  81:23, 81:25, 82:5,  82:13, 84:18, 84:20  <b>parenthesis</b> [1] -  222:21  <b>parenthetical</b> [2] -  44:19, 44:20  <b>parents</b> [1] - 156:7  <b>park</b> [2] - 49:24,  167:8  <b>Park</b> [1] - 88:5  <b>parking</b> [27] - 42:3,  42:25, 43:5, 43:6,  44:12, 44:15, 44:18,  44:19, 44:21, 46:2,  46:6, 46:21, 47:1,  49:23, 51:16, 86:16,  88:6, 236:7, 236:10,  236:11, 236:19,  236:20, 236:21,  236:22  <b>Parking</b> [1] - 46:18  <b>Part</b> [2] - 34:2, 231:4  <b>part</b> [58] - 13:7,  13:23, 20:8, 26:13,  26:25, 27:1, 27:3,  32:7, 34:23, 36:2,  37:1, 43:8, 43:9, 46:4,  46:11, 66:7, 74:4,  75:20, 80:12, 86:7,  86:20, 86:22, 87:2,  87:5, 87:8, 87:9,  88:13, 89:14, 93:7,  99:25, 108:25, 187:6,  187:9, 193:24, 196:1,  198:7, 205:5, 226:13,  227:9, 230:8, 236:14,  236:19, 236:21,</p>	<p>236:25, 237:8,  237:10, 238:1,  238:10, 238:11,  238:22, 239:20,  242:1, 243:19,  260:13, 267:1, 283:17  <b>part-time</b> [1] - 187:6  <b>partial</b> [2] - 17:17,  289:2  <b>participants</b> [2] -  171:2, 255:20  <b>participate</b> [3] -  286:9, 290:18, 290:20  <b>participating</b> [3] -  265:13, 286:16,  286:18  <b>participation</b> [3] -  267:16, 267:21,  293:25  <b>particular</b> [23] -  33:12, 78:21, 104:1,  104:14, 122:24,  133:4, 133:8, 133:16,  143:4, 180:20,  185:20, 186:22,  188:10, 188:13,  188:16, 193:2, 193:5,  194:10, 194:13,  195:14, 237:15,  239:25, 289:3  <b>particularly</b> [2] -  196:9, 267:10  <b>particulars</b> [1] -  293:7  <b>parties</b> [8] - 6:7,  6:22, 10:8, 60:11,  60:14, 150:2, 216:10,  246:19  <b>partition</b> [1] - 72:7  <b>partner</b> [1] - 67:13  <b>partnered</b> [1] - 192:4  <b>partners</b> [2] - 188:8,  290:16  <b>partnership</b> [14] -  131:6, 131:9, 184:18,  185:6, 187:9, 204:15,  204:18, 204:21,  205:1, 205:6, 205:10,  215:4, 248:18, 248:24  <b>parts</b> [4] - 54:22,  141:19, 239:2, 294:7  <b>partway</b> [1] - 14:21  <b>party</b> [10] - 31:20,  41:11, 53:17, 54:1,  145:11, 173:11,  243:18, 260:9,  260:19, 261:6  <b>Party</b> [1] - 3:8  <b>pass</b> [2] - 76:23,  281:11</p>	<p><b>passed</b> [1] - 32:20  <b>past</b> [5] - 8:9, 9:21,  38:10, 61:12, 129:8  <b>patently</b> [1] - 19:4  <b>path</b> [21] - 166:20,  166:21, 166:23,  168:5, 168:8, 168:9,  168:11, 168:18,  168:21, 169:1, 169:5,  169:13, 169:15,  169:22, 169:24,  170:2, 170:12,  170:21, 213:8  <b>pathway</b> [1] - 184:11  <b>patience</b> [1] - 216:21  <b>Patino</b> [1] - 131:23  <b>pause</b> [3] - 27:19,  65:12, 76:7  <b>Pause</b> [4] - 261:16,  264:15, 266:4, 292:17  <b>pavilion</b> [13] - 115:9,  115:12, 119:8,  119:16, 119:19,  120:6, 120:7, 120:24,  121:3, 121:6, 121:24,  152:23, 163:14  <b>paving</b> [1] - 9:8  <b>pay</b> [11] - 25:12,  63:24, 66:1, 92:22,  102:11, 110:15,  110:19, 111:13,  111:25, 178:12,  239:15  <b>payment</b> [37] -  102:18, 270:25,  271:1, 271:2, 274:4,  274:6, 274:11,  274:19, 275:20,  275:22, 276:2, 276:4,  276:14, 277:8,  277:22, 278:5, 278:6,  278:14, 278:20,  279:14, 282:3, 282:9,  282:17, 282:24,  283:7, 283:20,  283:22, 284:3,  284:18, 286:5, 286:6,  286:11, 287:2, 287:7,  287:12, 287:14,  287:22  <b>payments</b> [7] -  28:21, 234:12,  252:10, 256:1,  271:12, 274:16, 276:9  <b>PDF</b> [1] - 158:10  <b>PDs</b> [1] - 90:15  <b>pedestrian</b> [2] -  165:15, 166:5  <b>pencil</b> [1] - 280:1  <b>pending</b> [1] - 96:17</p>
<b>P</b>				
<p><b>p.m</b> [6] - 144:8,  144:11, 144:13,  148:19, 148:23,  294:21  <b>package</b> [1] - 99:6  <b>FACT</b> [3] - 66:25,  67:12, 77:10  <b>Page</b> [2] - 4:2, 5:2  <b>page</b> [109] - 8:19,  8:22, 8:23, 9:10, 9:11,  9:12, 10:5, 10:18,  10:24, 15:11, 15:23,  17:24, 18:3, 18:4,  18:8, 18:10, 27:24,  27:25, 28:4, 32:12,  33:11, 33:14, 33:15,  40:5, 40:21, 44:8,  46:11, 49:7, 52:21,  52:23, 112:14,  151:25, 152:13,  152:22, 153:5,  154:25, 155:25,  156:12, 158:23,  158:24, 193:25,</p>				

<p><b>people</b> [25] - 9:20, 29:16, 87:7, 88:25, 89:5, 89:10, 89:12, 89:21, 90:5, 90:20, 90:22, 92:13, 145:15, 145:17, 151:2, 167:10, 181:20, 213:4, 221:8, 234:13, 237:18, 282:4, 282:18, 291:16</p> <p><b>Per</b> [3] - 69:18, 73:4, 244:15</p> <p><b>per</b> [15] - 44:16, 81:21, 82:22, 82:23, 84:2, 84:3, 102:8, 102:23, 103:1, 103:9, 103:10, 240:15, 242:10, 271:23</p> <p><b>percent</b> [102] - 70:17, 70:21, 71:1, 71:6, 71:16, 71:22, 72:11, 72:12, 72:19, 76:5, 90:9, 90:19, 92:20, 92:21, 102:8, 103:13, 105:9, 136:20, 156:24, 180:11, 180:23, 180:24, 180:25, 181:4, 181:5, 181:7, 181:8, 181:13, 191:6, 198:10, 199:18, 200:10, 200:23, 201:3, 201:4, 201:8, 205:13, 206:8, 207:24, 211:5, 211:23, 211:24, 220:10, 244:23, 244:24, 245:1, 245:4, 266:21, 269:2, 269:9, 269:14, 269:16, 269:19, 269:22, 269:24, 269:25, 270:1, 274:7, 275:23, 275:24, 276:4, 276:10, 276:15, 276:21, 277:6, 277:9, 277:10, 277:11, 277:22, 277:25, 278:1, 278:8, 278:14, 278:21, 279:6, 279:16, 279:23, 280:24, 280:25, 281:3, 281:8, 281:17, 281:23, 283:9, 284:13, 284:14, 284:16, 284:19, 288:15, 288:20, 289:3, 289:12, 289:14, 289:17</p> <p><b>percentage</b> [13] - 70:13, 71:3, 71:9,</p>	<p>75:8, 75:10, 181:6, 182:8, 201:8, 245:6, 274:20, 285:7, 285:9, 285:25</p> <p><b>percentages</b> [1] - 280:12</p> <p><b>perfect</b> [3] - 147:18, 158:12, 172:19</p> <p><b>perfectly</b> [1] - 291:4</p> <p><b>performance</b> [1] - 154:17</p> <p><b>period</b> [26] - 26:18, 42:10, 78:3, 89:1, 89:2, 89:6, 89:10, 89:15, 109:8, 110:20, 114:1, 116:3, 116:6, 116:9, 118:22, 121:3, 121:13, 122:2, 122:19, 124:10, 124:21, 125:24, 128:15, 137:24, 211:2, 211:14</p> <p><b>permanent</b> [19] - 80:3, 80:14, 82:21, 83:25, 88:15, 89:7, 89:13, 89:17, 91:12, 92:9, 92:11, 177:9, 177:18, 177:21, 177:25, 237:6, 262:25, 265:18, 266:23</p> <p><b>permission</b> [4] - 95:15, 109:16, 109:17, 281:11</p> <p><b>permit</b> [3] - 198:1, 198:2, 198:8</p> <p><b>permitting</b> [1] - 53:6</p> <p><b>perpetual</b> [1] - 13:24</p> <p><b>persisted</b> [1] - 11:21</p> <p><b>person</b> [9] - 50:8, 74:21, 98:20, 135:18, 186:23, 187:8, 240:16, 242:10, 279:24</p> <p><b>personal</b> [3] - 90:1, 152:3, 229:6</p> <p><b>personalized</b> [1] - 156:1</p> <p><b>personally</b> [3] - 187:4, 249:21, 249:23</p> <p><b>personnel</b> [5] - 63:19, 77:17, 189:15, 221:1, 244:14</p> <p><b>persons</b> [2] - 234:15, 240:23</p> <p><b>perspective</b> [9] - 20:1, 25:6, 36:7, 40:18, 72:23, 183:20, 232:21, 233:6, 290:13</p> <p><b>persuaded</b> [1] -</p>	<p>257:20</p> <p><b>pet</b> [2] - 196:13, 196:19</p> <p><b>Peter</b> [1] - 192:4</p> <p><b>pets</b> [2] - 196:16, 196:17</p> <p><b>PETTY</b> [2] - 2:21, 281:11</p> <p><b>PHA</b> [3] - 277:8, 277:21, 277:24</p> <p><b>pharmaceuticals</b> [1] - 63:10</p> <p><b>PHAs</b> [2] - 279:15, 288:23</p> <p><b>phase</b> [1] - 170:16</p> <p><b>Phoenix</b> [1] - 66:11</p> <p><b>photograph</b> [3] - 152:14, 152:17, 153:11</p> <p><b>photographs</b> [3] - 152:12, 152:23, 153:5</p> <p><b>photos</b> [2] - 121:6, 153:3</p> <p><b>phrase</b> [6] - 62:19, 129:17, 168:1, 223:7, 239:7, 239:10</p> <p><b>phrases</b> [1] - 238:8</p> <p><b>physical</b> [7] - 125:6, 125:9, 141:20, 185:5, 207:18, 272:12</p> <p><b>PIAZZA</b> [1] - 2:8</p> <p><b>picked</b> [1] - 252:21</p> <p><b>picture</b> [1] - 153:10</p> <p><b>pictures</b> [1] - 154:25</p> <p><b>piece</b> [6] - 19:20, 19:25, 22:15, 36:5, 43:12, 233:7</p> <p><b>pieces</b> [2] - 19:12, 260:16</p> <p><b>pile</b> [1] - 43:22</p> <p><b>pilot</b> [3] - 188:6, 188:10, 215:11</p> <p><b>pipes</b> [2] - 23:24, 91:17</p> <p><b>PIT</b> [2] - 245:3, 245:7</p> <p><b>pitching</b> [1] - 72:17</p> <p><b>PITZ</b> [2] - 2:22, 246:14</p> <p><b>pivoted</b> [1] - 189:3</p> <p><b>place</b> [22] - 9:19, 48:3, 51:21, 86:12, 87:10, 89:17, 117:16, 129:7, 129:19, 148:20, 154:6, 155:7, 157:6, 163:25, 189:11, 212:12, 212:15, 236:3, 245:25, 266:24, 267:12, 289:11</p> <p><b>Place</b> [2] - 106:15,</p>	<p>106:24</p> <p><b>placed</b> [5] - 35:15, 155:12, 157:13, 216:22, 225:16</p> <p><b>places</b> [3] - 67:18, 87:23, 87:25</p> <p><b>plain</b> [1] - 232:8</p> <p><b>PLAINTIFF</b> [1] - 2:3</p> <p><b>Plaintiff's</b> [1] - 4:8</p> <p><b>plaintiffs</b> [8] - 41:9, 58:23, 79:13, 96:14, 97:9, 247:2, 248:4, 292:22</p> <p><b>Plaintiffs</b> [1] - 1:7</p> <p><b>Plaintiffs'</b> [1] - 97:11</p> <p><b>plaintiffs'</b> [8] - 61:3, 79:9, 79:10, 93:9, 93:13, 94:22, 246:10, 292:23</p> <p><b>plan</b> [13] - 7:12, 14:12, 27:3, 77:8, 80:12, 81:11, 82:18, 87:8, 92:10, 93:15, 186:22, 292:23</p> <p><b>planned</b> [4] - 81:13, 81:15, 81:18, 197:15</p> <p><b>planning</b> [2] - 77:18, 79:11</p> <p><b>plans</b> [4] - 62:9, 83:19, 93:13, 288:24</p> <p><b>plant</b> [2] - 86:23, 87:16</p> <p><b>plate</b> [1] - 76:22</p> <p><b>play</b> [14] - 40:1, 41:4, 87:17, 116:21, 117:11, 120:24, 121:3, 140:9, 156:25, 162:12, 162:16, 231:23, 233:7, 236:23</p> <p><b>playable</b> [1] - 116:2</p> <p><b>played</b> [1] - 40:25, 41:10, 113:18, 115:11, 116:18, 116:19, 117:8, 117:10, 121:10, 121:12, 122:25</p> <p><b>players</b> [3] - 116:23, 117:22, 124:25</p> <p><b>plays</b> [2] - 21:6, 140:12</p> <p><b>pleasure</b> [1] - 246:7</p> <p><b>plumbers</b> [1] - 63:20</p> <p><b>plural</b> [1] - 115:5</p> <p><b>plus</b> [4] - 80:5, 80:6, 81:1, 175:2</p> <p><b>podiatrists</b> [1] - 221:4</p> <p><b>podiatry</b> [1] - 221:13</p> <p><b>podium</b> [1] - 183:25</p> <p><b>point</b> [27] - 10:2,</p>	<p>10:13, 22:18, 72:15, 74:3, 88:19, 109:5, 110:24, 118:12, 123:16, 126:18, 126:19, 129:13, 164:17, 164:19, 164:24, 165:11, 171:23, 174:25, 191:18, 201:13, 202:14, 206:11, 220:5, 220:17, 242:22</p> <p><b>Point</b> [2] - 146:15, 147:19</p> <p><b>points</b> [4] - 10:1, 16:12, 232:25, 242:11</p> <p><b>pole</b> [1] - 184:11</p> <p><b>police</b> [5] - 90:13, 90:17, 90:20, 91:5, 224:7</p> <p><b>policies</b> [1] - 283:5</p> <p><b>policing</b> [2] - 90:14, 90:15</p> <p><b>policy</b> [13] - 14:3, 14:15, 37:4, 37:6, 255:24, 257:4, 260:6, 261:11, 261:12, 262:1, 262:15, 263:17, 264:7</p> <p><b>polo</b> [1] - 143:8</p> <p><b>pond</b> [1] - 195:23</p> <p><b>pool</b> [13] - 22:16, 22:18, 22:19, 22:20, 22:21, 23:8, 123:23, 159:19, 159:20, 160:17, 160:22, 162:3, 272:16</p> <p><b>poor</b> [1] - 243:6</p> <p><b>poorly</b> [1] - 160:19</p> <p><b>popular</b> [1] - 192:3</p> <p><b>population</b> [7] - 71:9, 192:23, 192:24, 215:2, 215:3, 215:6, 215:12</p> <p><b>pork</b> [1] - 189:5</p> <p><b>pork-free</b> [1] - 189:5</p> <p><b>portion</b> [15] - 23:9, 30:15, 79:1, 86:2, 86:4, 157:7, 165:1, 167:23, 167:24, 177:9, 194:7, 212:20, 259:16, 293:2</p> <p><b>portions</b> [1] - 77:25</p> <p><b>position</b> [11] - 13:17, 97:19, 97:23, 133:12, 199:21, 237:14, 243:8, 243:16, 260:3, 261:21, 262:9</p> <p><b>positions</b> [3] - 221:6, 221:8, 223:14</p> <p><b>possibility</b> [2] -</p>
---	--	---	--	--

<p>177:8, 294:4  <b>possible</b> [8] - 62:13, 156:9, 177:7, 177:25, 210:9, 238:4, 251:4, 271:18  <b>possibly</b> [1] - 286:12  <b>post</b> [1] - 136:9  <b>post-2011</b> [1] - 140:9  <b>posting</b> [1] - 275:7  <b>postings</b> [2] - 183:8, 184:2  <b>potential</b> [2] - 26:15, 178:7  <b>potentially</b> [10] - 19:13, 26:24, 76:18, 93:14, 168:16, 168:21, 241:14, 242:5, 271:25, 272:17  <b>power</b> [6] - 91:20, 91:23, 92:2, 271:9, 282:4, 282:12  <b>POWERS</b> [1] - 1:6  <b>practical</b> [2] - 18:11, 224:3  <b>practice</b> [5] - 47:4, 105:5, 115:21, 117:19, 285:23  <b>practices</b> [13] - 115:14, 117:3, 117:6, 117:13, 119:3, 119:12, 120:6, 120:9, 120:13, 122:1, 122:11, 138:11, 138:12  <b>precedes</b> [1] - 204:25  <b>precisely</b> [1] - 126:18  <b>precision</b> [1] - 61:22  <b>precludes</b> [1] - 243:10  <b>preCOVID</b> [1] - 195:21  <b>predate</b> [1] - 58:20  <b>predated</b> [1] - 13:15  <b>predates</b> [1] - 11:5  <b>predicate</b> [2] - 227:13, 240:12  <b>prefer</b> [1] - 205:24  <b>preferably</b> [1] - 89:6  <b>prejudicial</b> [1] - 39:22  <b>premises</b> [1] - 210:16  <b>prepare</b> [1] - 192:10  <b>prepared</b> [9] - 8:7, 18:1, 41:12, 174:8, 174:13, 209:23, 218:4, 228:18, 228:23  <b>prepares</b> [2] - 8:7,</p>	<p>173:9  <b>preparing</b> [1] - 193:10  <b>PRESENT</b> [1] - 3:6  <b>present</b> [16] - 6:7, 12:3, 60:11, 84:21, 117:23, 150:2, 175:7, 216:10, 232:22, 246:19, 269:18  <b>presented</b> [3] - 98:14, 213:20, 228:14  <b>presenting</b> [1] - 44:24  <b>President</b> [1] - 38:15  <b>press</b> [3] - 255:11, 255:13, 266:8  <b>presumably</b> [1] - 261:20  <b>presume</b> [2] - 23:2, 23:3  <b>pretty</b> [10] - 24:4, 26:4, 42:2, 67:7, 67:22, 87:1, 189:2, 189:3, 207:12, 227:6  <b>prevent</b> [2] - 53:18, 53:24  <b>prevention</b> [1] - 69:9  <b>prevents</b> [2] - 36:5, 262:15  <b>preview</b> [1] - 258:18  <b>previous</b> [4] - 9:22, 186:13, 197:8, 283:22  <b>previously</b> [13] - 7:3, 7:9, 15:2, 29:13, 43:19, 155:4, 195:17, 225:25, 231:16, 245:17, 259:21, 272:15, 283:24  <b>pride</b> [1] - 192:22  <b>primaries</b> [1] - 11:24  <b>primarily</b> [4] - 9:7, 109:10, 109:11, 263:2  <b>primary</b> [3] - 49:21, 201:5, 215:2  <b>principal</b> [5] - 18:13, 132:20, 133:3, 201:5, 226:20  <b>principally</b> [4] - 21:18, 36:21, 50:16, 233:6  <b>print</b> [1] - 156:3  <b>priority</b> [1] - 65:19  <b>private</b> [2] - 108:21, 205:6  <b>problem</b> [17] - 43:5, 75:5, 91:25, 95:24, 137:11, 137:13, 162:6, 204:7, 262:11, 272:13, 272:19, 273:3, 273:6, 283:23,</p>	<p>284:6, 286:6, 287:3  <b>problematic</b> [1] - 21:24  <b>problems</b> [3] - 83:22, 84:4, 91:14  <b>PROCEEDINGS</b> [1] - 1:13  <b>proceedings</b> [7] - 245:19, 261:16, 264:15, 266:4, 292:17, 294:21, 295:11  <b>process</b> [15] - 14:11, 32:10, 41:18, 41:22, 43:18, 49:1, 62:14, 67:23, 128:14, 156:2, 156:8, 242:7, 272:21, 273:4, 286:8  <b>processed</b> [1] - 199:25  <b>processing</b> [2] - 66:4, 66:5  <b>procurement</b> [1] - 93:18  <b>productive</b> [1] - 205:8  <b>Program</b> [7] - 69:8, 69:11, 78:13, 93:2, 93:3, 244:6, 244:7  <b>program</b> [60] - 50:11, 68:14, 69:15, 69:16, 75:20, 77:8, 77:11, 109:6, 148:25, 150:11, 156:23, 171:2, 188:6, 188:10, 191:23, 192:15, 237:1, 241:5, 247:25, 249:2, 249:5, 251:22, 255:21, 256:19, 257:5, 257:14, 258:16, 262:8, 263:19, 265:13, 267:10, 267:14, 267:17, 267:18, 267:19, 267:25, 268:1, 268:5, 268:8, 268:23, 270:24, 272:23, 274:3, 275:23, 276:5, 276:8, 276:11, 276:13, 277:8, 277:20, 282:22, 284:12, 284:14, 286:3, 286:16, 286:19, 288:11, 288:14, 290:18  <b>program's</b> [1] - 258:5  <b>program-funded</b> [1] - 68:14</p>	<p><b>programming</b> [1] - 74:8  <b>programs</b> [36] - 43:14, 68:15, 68:16, 68:17, 69:7, 69:19, 73:4, 73:21, 74:4, 74:12, 74:16, 74:18, 74:24, 75:7, 148:5, 148:7, 148:12, 148:17, 148:18, 148:24, 149:4, 244:14, 244:15, 248:9, 256:12, 256:18, 256:25, 263:3, 263:22, 264:7, 265:3, 265:11, 265:15, 266:14, 266:19, 267:5  <b>PROGRAMS</b> [1] - 2:20  <b>Programs</b> [1] - 248:9  <b>programs'</b> [1] - 248:11  <b>progress</b> [4] - 92:20, 179:5, 186:7, 188:9  <b>progressed</b> [1] - 294:7  <b>prohibit</b> [1] - 47:16  <b>prohibited</b> [1] - 29:19  <b>project</b> [12] - 89:25, 237:20, 249:22, 250:6, 263:1, 264:11, 265:22, 265:23, 266:23, 269:13, 284:23, 288:25  <b>project's</b> [1] - 285:9  <b>project-base</b> [1] - 249:22  <b>project-based</b> [8] - 89:25, 250:6, 263:1, 265:22, 265:23, 266:23, 269:13, 288:25  <b>projected</b> [3] - 158:1, 273:9, 273:13  <b>projects</b> [2] - 65:9, 267:6  <b>promise</b> [2] - 168:13, 245:25  <b>promises</b> [1] - 168:15  <b>promotion</b> [1] - 209:16  <b>pronouncing</b> [2] - 19:6, 101:10  <b>proof</b> [1] - 203:6  <b>proper</b> [1] - 75:8  <b>properly</b> [1] - 90:11  <b>properties</b> [1] -</p>	<p>286:2  <b>property</b> [31] - 19:25, 21:13, 44:16, 44:20, 44:21, 53:9, 100:24, 107:21, 108:13, 108:17, 112:9, 113:17, 114:4, 115:24, 118:7, 120:4, 127:6, 129:16, 155:4, 157:7, 165:12, 166:24, 168:19, 169:16, 181:14, 189:12, 189:19, 190:13, 285:19  <b>proportionate</b> [1] - 181:6  <b>proportioned</b> [1] - 211:12  <b>proposal</b> [2] - 80:1, 240:1  <b>proposals</b> [2] - 79:9, 79:23  <b>proposed</b> [2] - 80:15, 136:3  <b>prorated</b> [2] - 211:16, 211:18  <b>prospective</b> [1] - 232:22  <b>prospectively</b> [2] - 36:3, 36:22  <b>protected</b> [1] - 162:4  <b>protocol</b> [1] - 241:3  <b>proud</b> [2] - 236:25, 237:2  <b>provide</b> [33] - 9:14, 14:24, 16:21, 18:13, 20:3, 20:17, 22:14, 29:6, 42:24, 49:20, 53:23, 55:19, 66:6, 76:14, 79:14, 89:9, 93:11, 142:25, 184:21, 186:24, 187:2, 187:23, 188:3, 188:22, 192:7, 196:20, 229:1, 243:25, 244:1, 277:21, 284:12, 286:17, 293:1  <b>provided</b> [12] - 8:8, 8:17, 63:2, 92:11, 101:6, 114:16, 179:1, 188:25, 195:9, 217:3, 249:15  <b>providers</b> [2] - 221:14, 268:12  <b>provides</b> [8] - 40:17, 77:13, 187:1, 190:8, 191:20, 193:9, 195:11, 195:12  <b>providing</b> [8] - 21:7,</p>
---	---	--	--	---

<p>24:3, 29:7, 54:16, 92:17, 248:19, 268:20, 289:20  <b>provision</b> [12] - 34:18, 44:24, 46:24, 132:21, 133:4, 133:7, 133:14, 133:24, 204:4, 243:14  <b>provisions</b> [2] - 32:1, 243:16  <b>proximity</b> [1] - 238:20  <b>PSH</b> [2] - 84:1, 84:11  <b>psychiatry</b> [1] - 224:5  <b>psychology</b> [2] - 220:17, 223:24  <b>psychotic</b> [1] - 214:3  <b>PTSD</b> [3] - 161:5, 161:15, 161:23  <b>Public</b> [1] - 248:8  <b>public</b> [35] - 17:19, 33:21, 70:25, 95:23, 108:25, 109:3, 129:14, 129:16, 189:22, 205:6, 209:12, 248:25, 250:15, 267:12, 267:16, 268:2, 268:13, 268:17, 269:2, 269:9, 270:24, 271:11, 271:15, 271:23, 275:20, 276:2, 276:13, 282:21, 283:3, 288:8, 288:9, 288:19, 291:7  <b>PUBLIC</b> [2] - 2:7, 2:14  <b>public-private</b> [1] - 205:6  <b>public/private</b> [1] - 67:9  <b>publish</b> [1] - 271:6  <b>published</b> [4] - 255:12, 258:17, 258:18, 264:4  <b>publishes</b> [1] - 271:4  <b>pull</b> [7] - 15:1, 27:22, 33:2, 33:7, 193:11, 274:23, 274:25  <b>pulled</b> [3] - 37:13, 40:7, 265:7  <b>purchase</b> [4] - 103:11, 103:13, 108:20, 177:1  <b>purchased</b> [2] - 106:20, 108:13  <b>pure</b> [1] - 11:25  <b>purports</b> [1] - 241:10  <b>purpose</b> [12] - 18:13,</p>	<p>69:7, 93:1, 127:14, 141:14, 222:1, 222:4, 234:8, 253:12, 256:2, 265:12  <b>purposes</b> [17] - 61:2, 98:14, 175:16, 176:3, 235:15, 236:17, 252:18, 254:9, 254:17, 254:18, 254:24, 255:25, 257:2, 259:18, 265:11  <b>pursuant</b> [5] - 27:8, 34:15, 109:17, 261:12, 295:9  <b>push</b> [1] - 34:8  <b>pushing</b> [2] - 72:18, 75:15  <b>put</b> [36] - 9:19, 10:25, 16:1, 21:21, 25:6, 26:21, 37:13, 42:6, 45:5, 51:21, 72:22, 78:11, 91:24, 106:11, 107:7, 117:13, 127:20, 151:17, 163:25, 178:18, 196:24, 202:10, 205:23, 205:24, 210:2, 214:1, 228:23, 230:25, 233:15, 241:24, 251:13, 253:1, 254:3, 255:1, 265:24, 286:14  <b>puts</b> [2] - 68:17, 90:5  <b>putting</b> [5] - 21:6, 76:7, 82:18, 202:12, 289:5</p>	<p>185:9, 190:5, 196:23, 196:25, 201:19, 201:24, 202:14, 205:16, 205:21, 212:2, 212:3, 213:13, 241:16, 242:17, 242:25, 245:20, 251:22, 252:16, 254:6, 288:3, 291:18  <b>quick</b> [1] - 214:1  <b>quickly</b> [5] - 152:11, 189:2, 252:23, 286:19, 286:23  <b>quite</b> [7] - 10:9, 145:17, 170:13, 192:3, 192:6, 196:18, 235:3  <b>quote</b> [8] - 33:21, 33:23, 237:14, 240:18, 252:17, 254:7, 256:11, 259:6</p>	<p>44:13, 44:22, 46:15, 46:17, 46:22, 53:2, 53:4, 54:3, 54:5, 59:8, 93:16, 152:4, 154:22, 156:10, 157:2, 179:17, 179:23, 205:25, 206:2, 219:1, 229:24, 241:12, 241:17, 241:18, 243:7, 254:20, 256:22, 257:18, 257:25, 259:11, 259:13, 263:14, 265:7, 276:6  <b>readiness</b> [1] - 192:5  <b>reading</b> [7] - 253:2, 253:3, 253:16, 253:17, 253:19, 254:1, 254:3  <b>reads</b> [2] - 34:18, 290:2  <b>ready</b> [2] - 149:23, 203:2  <b>real</b> [6] - 80:18, 137:2, 175:13, 175:15, 280:13, 280:18  <b>reality</b> [1] - 176:10  <b>realize</b> [2] - 56:15, 194:25  <b>realized</b> [3] - 157:25, 167:7, 200:3  <b>really</b> [19] - 54:21, 68:16, 77:3, 77:4, 86:13, 95:3, 140:20, 146:24, 164:8, 164:18, 167:9, 199:17, 200:24, 204:1, 207:17, 211:12, 214:2, 215:13, 293:8  <b>Realtime</b> [1] - 295:6  <b>reason</b> [6] - 124:5, 265:1, 283:25, 286:15, 286:18, 289:19  <b>reasonable</b> [2] - 241:1, 293:17  <b>reasons</b> [4] - 13:2, 174:13, 256:25, 291:14  <b>rebut</b> [1] - 246:4  <b>rebuttal</b> [2] - 94:18, 134:15  <b>recalled</b> [1] - 4:11  <b>recapture</b> [1] - 43:7  <b>receipts</b> [1] - 50:2  <b>receive</b> [6] - 16:19, 39:20, 51:24, 74:9, 224:22, 288:22</p>	<p><b>received</b> [50] - 8:4, 8:5, 12:21, 12:22, 28:20, 28:23, 39:23, 39:24, 44:5, 44:6, 45:16, 45:17, 46:8, 46:9, 52:9, 52:10, 55:24, 55:25, 56:12, 56:13, 59:23, 59:25, 153:19, 153:20, 155:15, 155:17, 157:10, 157:11, 157:14, 158:20, 158:21, 172:22, 172:23, 179:8, 179:9, 187:4, 188:1, 188:6, 188:7, 197:12, 224:17, 224:23, 228:19, 235:8, 252:2, 252:3, 258:24, 258:25, 291:25, 292:1  <b>receives</b> [4] - 39:13, 49:17, 50:12, 224:19  <b>receiving</b> [4] - 16:11, 21:11, 191:11, 285:11  <b>recent</b> [5] - 171:20, 186:4, 186:8, 229:21, 245:3  <b>recently</b> [7] - 185:12, 192:25, 196:12, 251:4, 251:5, 251:7, 255:12  <b>recess</b> [6] - 60:9, 149:20, 149:22, 215:25, 246:17, 293:13  <b>recognize</b> [17] - 7:18, 12:15, 43:25, 45:8, 45:23, 49:9, 52:4, 55:14, 56:6, 79:9, 158:12, 178:23, 193:18, 195:6, 217:22, 238:11, 252:6  <b>recognizing</b> [2] - 77:25, 244:2  <b>recollection</b> [2] - 177:15, 177:19  <b>recommendation</b> [5] - 17:11, 18:21, 19:1, 19:9, 30:16  <b>recommendations</b> [6] - 12:5, 14:6, 35:12, 37:19, 38:1, 230:22  <b>recommended</b> [3] - 22:4, 22:8, 232:20  <b>recommending</b> [1] - 65:2  <b>record</b> [24] - 6:6, 14:2, 28:1, 30:5, 45:4, 46:17, 60:10, 60:12, 97:16, 139:22, 150:1,</p>
<b>Q</b>		<b>R</b>		
		<p><b>R-1956</b> [1] - 53:10  <b>radius</b> [2] - 270:10, 270:13  <b>raise</b> [1] - 162:6  <b>raises</b> [1] - 88:19  <b>Ralph</b> [3] - 111:3, 111:4, 234:15  <b>ramp</b> [2] - 195:16  <b>Randy</b> [1] - 79:17  <b>range</b> [8] - 65:20, 71:6, 102:8, 104:17, 104:19, 188:18, 191:1, 196:13  <b>rate</b> [11] - 90:18, 92:21, 174:16, 174:20, 175:3, 269:19, 270:2, 288:10, 288:20, 289:3  <b>rates</b> [1] - 284:7  <b>rather</b> [9] - 35:18, 41:21, 48:11, 84:22, 103:11, 137:25, 181:3, 262:11, 289:20  <b>ratio</b> [2] - 71:5, 182:1  <b>ravines</b> [1] - 109:10  <b>re</b> [4] - 111:21, 126:22, 201:22  <b>re-ask</b> [3] - 111:21, 126:22  <b>reach</b> [3] - 14:13, 58:25, 156:4  <b>reaching</b> [1] - 176:21  <b>read</b> [44] - 10:4, 18:10, 19:6, 32:17, 33:18, 33:19, 33:25, 34:15, 34:19, 35:14,</p>		

<p>201:21, 212:19, 212:23, 216:9, 217:17, 246:18, 248:2, 276:6, 277:15, 277:17, 281:14, 292:18, 293:12</p> <p><b>recording</b> [2] - 40:24, 40:25</p> <p><b>records</b> [4] - 17:19, 109:21, 110:7, 120:12</p> <p><b>Recreation</b> [3] - 165:14, 184:9, 184:13</p> <p><b>recreation</b> [5] - 46:5, 83:4, 83:14, 107:17, 188:16</p> <p><b>recreational</b> [4] - 25:19, 43:13, 107:19, 159:4</p> <p><b>recross</b> [3] - 95:12, 242:18</p> <p><b>Recruited</b> [1] - 155:23</p> <p><b>recruiting</b> [5] - 154:18, 156:2, 156:8, 156:18, 157:6</p> <p><b>recruitment</b> [1] - 90:17</p> <p><b>REDIRECT</b> [1] - 243:1</p> <p><b>Redirect</b> [1] - 4:13</p> <p><b>redirect</b> [4] - 95:11, 183:16, 242:19, 242:20</p> <p><b>redress</b> [8] - 263:18, 272:4, 272:19, 273:2, 273:6, 286:6, 286:17, 287:3</p> <p><b>redressing</b> [2] - 264:5, 273:14</p> <p><b>refer</b> [7] - 38:19, 85:25, 88:20, 206:1, 206:23, 223:4, 234:12</p> <p><b>reference</b> [4] - 37:15, 164:13, 192:13, 217:7</p> <p><b>referenced</b> [4] - 108:12, 109:17, 202:22, 274:3</p> <p><b>referencing</b> [1] - 133:24</p> <p><b>referral</b> [4] - 249:1, 267:13, 267:20, 268:17</p> <p><b>referrals</b> [6] - 249:7, 270:6, 273:7, 287:3, 290:15, 291:13</p> <p><b>referred</b> [9] - 6:25, 7:24, 27:6, 85:13, 157:6, 161:15, 191:17, 204:15, 238:23</p>	<p><b>referring</b> [15] - 10:2, 15:21, 72:25, 85:21, 86:1, 101:4, 120:25, 154:11, 186:4, 199:3, 208:2, 248:25, 249:4, 253:5, 256:8</p> <p><b>refers</b> [4] - 10:20, 53:8, 203:3, 234:11</p> <p><b>reflect</b> [13] - 35:14, 60:12, 110:7, 153:1, 155:6, 181:13, 181:22, 182:1, 182:5, 182:7, 182:10, 182:12, 183:1</p> <p><b>reflected</b> [1] - 243:5</p> <p><b>reflective</b> [1] - 191:14</p> <p><b>reflects</b> [5] - 152:17, 181:16, 181:20, 183:3, 220:6</p> <p><b>refresh</b> [1] - 49:19</p> <p><b>refurbishment</b> [1] - 208:20</p> <p><b>refused</b> [1] - 53:23</p> <p><b>regard</b> [6] - 58:8, 98:4, 175:13, 185:7, 190:18, 191:1</p> <p><b>regarding</b> [19] - 18:5, 29:5, 40:24, 41:18, 41:19, 46:25, 49:13, 54:10, 57:24, 58:18, 80:1, 99:12, 101:6, 139:17, 148:4, 179:25, 243:4, 251:22, 255:11</p> <p><b>regardless</b> [2] - 48:10, 102:21</p> <p><b>regards</b> [5] - 8:15, 8:16, 93:17, 222:1, 269:12</p> <p><b>Regents</b> [1] - 10:14</p> <p><b>region</b> [3] - 70:3, 73:22, 75:22</p> <p><b>register</b> [1] - 190:23</p> <p><b>Register</b> [1] - 258:19</p> <p><b>registered</b> [2] - 159:5, 190:11</p> <p><b>regular</b> [3] - 184:23, 191:10, 284:13</p> <p><b>regularly</b> [1] - 156:6</p> <p><b>regulation</b> [2] - 114:21, 122:5</p> <p><b>regulations</b> [2] - 254:23, 295:13</p> <p><b>regulatory</b> [2] - 257:14, 264:2</p> <p><b>rehab</b> [2] - 192:5, 285:18</p> <p><b>rehabilitate</b> [3] - 66:1, 111:12, 111:24</p>	<p><b>Rehabilitation</b> [1] - 88:3</p> <p><b>rehabilitation</b> [3] - 9:7, 43:14, 64:6</p> <p><b>rein</b> [1] - 31:14</p> <p><b>relate</b> [2] - 69:7, 180:4</p> <p><b>related</b> [9] - 17:15, 22:1, 53:10, 144:3, 211:5, 250:21, 250:24, 251:21, 285:10</p> <p><b>relates</b> [8] - 107:5, 133:11, 184:6, 186:22, 186:25, 191:3, 194:8, 203:9</p> <p><b>relating</b> [6] - 32:15, 33:12, 34:22, 35:1, 230:4, 230:11</p> <p><b>relationship</b> [7] - 97:18, 98:4, 98:16, 110:9, 147:17, 187:19, 205:10</p> <p><b>relative</b> [1] - 139:1</p> <p><b>relatively</b> [2] - 101:7, 186:4</p> <p><b>release</b> [5] - 35:17, 255:11, 255:13, 266:8</p> <p><b>releases</b> [1] - 70:25</p> <p><b>relevant</b> [8] - 34:17, 68:21, 77:3, 77:4, 79:15, 144:3, 161:13</p> <p><b>relieved</b> [1] - 293:2</p> <p><b>reluctance</b> [1] - 290:25</p> <p><b>rely</b> [3] - 20:16, 92:24, 229:5</p> <p><b>relying</b> [1] - 31:22</p> <p><b>remain</b> [1] - 101:7</p> <p><b>remained</b> [2] - 98:6, 228:2</p> <p><b>remaining</b> [3] - 73:24, 192:25, 293:2</p> <p><b>mediation</b> [2] - 77:14, 129:3</p> <p><b>remember</b> [3] - 169:3, 225:1, 235:25</p> <p><b>remind</b> [1] - 60:19</p> <p><b>reminded</b> [2] - 288:2, 291:23</p> <p><b>reminder</b> [1] - 291:22</p> <p><b>remove</b> [5] - 43:9, 132:21, 133:4, 133:14, 133:24</p> <p><b>removed</b> [1] - 132:19</p> <p><b>removing</b> [1] - 26:3</p> <p><b>renegotiate</b> [6] - 30:25, 31:2, 31:11, 35:16, 54:24, 57:7</p>	<p><b>renegotiated</b> [2] - 31:21, 36:20</p> <p><b>renegotiating</b> [2] - 30:11, 35:23</p> <p><b>renegotiation</b> [4] - 31:3, 35:21, 231:25, 232:2</p> <p><b>renew</b> [6] - 35:5, 35:16, 51:1, 51:22, 230:16, 243:18</p> <p><b>renewable</b> [1] - 13:9</p> <p><b>renewal</b> [2] - 51:22, 243:13</p> <p><b>renewed</b> [8] - 50:22, 51:19, 225:13, 226:5, 231:6, 231:11, 231:17, 232:5</p> <p><b>renewing</b> [5] - 35:22, 35:24, 35:25, 243:10, 243:20</p> <p><b>renovation</b> [2] - 64:7, 84:23</p> <p><b>rent</b> [38] - 28:20, 28:21, 109:21, 109:25, 110:4, 111:14, 112:1, 113:12, 113:13, 113:18, 114:1, 125:19, 125:24, 127:22, 128:9, 128:11, 179:20, 254:10, 254:19, 256:3, 270:19, 272:14, 272:18, 272:20, 273:3, 273:10, 273:14, 274:8, 274:21, 277:7, 282:25, 283:23, 284:1, 284:2, 284:4, 286:7, 286:13</p> <p><b>rental</b> [4] - 272:1, 283:11, 283:15, 290:14</p> <p><b>rented</b> [2] - 175:24, 176:5</p> <p><b>rents</b> [7] - 271:3, 271:5, 271:6, 271:22, 273:23, 275:8, 283:22</p> <p><b>reopen</b> [1] - 94:5</p> <p><b>reopening</b> [1] - 94:7</p> <p><b>repair</b> [5] - 21:15, 64:7, 180:5, 203:10, 207:6</p> <p><b>repair/replacement</b> [1] - 208:20</p> <p><b>repairs</b> [2] - 64:8, 64:9</p> <p><b>repayment</b> [1] - 127:6</p> <p><b>repeat</b> [15] - 13:12,</p>	<p>38:6, 113:24, 125:23, 128:3, 131:16, 140:22, 148:9, 161:20, 182:25, 260:13, 269:6, 272:25, 275:25, 288:6</p> <p><b>repeating</b> [2] - 106:23, 264:22</p> <p><b>replace</b> [4] - 128:16, 128:23, 176:17, 176:23</p> <p><b>replaced</b> [1] - 78:16</p> <p><b>replacement</b> [13] - 65:18, 66:9, 66:10, 78:19, 114:4, 125:21, 126:2, 176:16, 176:22, 177:2, 203:10, 207:6</p> <p><b>replacements</b> [3] - 78:9, 78:10</p> <p><b>replayed</b> [1] - 41:25</p> <p><b>report</b> [77] - 7:8, 7:21, 8:12, 10:10, 11:3, 11:8, 11:10, 11:21, 12:2, 12:3, 13:5, 15:3, 16:4, 16:10, 16:11, 16:20, 16:22, 17:18, 18:22, 27:21, 27:23, 28:2, 28:16, 30:16, 34:24, 35:13, 36:9, 36:23, 37:17, 37:25, 38:4, 39:8, 40:4, 40:14, 49:6, 49:12, 49:15, 52:17, 52:19, 58:20, 59:10, 59:13, 59:16, 59:17, 59:18, 59:22, 79:17, 132:14, 134:11, 134:14, 172:25, 173:2, 173:3, 173:5, 173:17, 173:25, 217:1, 217:11, 217:12, 217:14, 217:23, 218:4, 218:16, 219:6, 221:21, 221:25, 222:5, 222:16, 224:20, 230:9, 230:23, 232:25, 233:23, 245:12</p> <p><b>reported</b> [7] - 134:11, 220:7, 220:18, 220:19, 224:11, 225:8, 295:11</p> <p><b>Reporter</b> [12] - 47:12, 74:13, 86:9, 142:10, 203:23, 247:11, 249:3, 250:23, 260:22, 272:24, 295:7, 295:20</p>
---	--	---	---	---

<p><b>reporter</b> [5] - 142:15, 149:13, 246:16, 247:1, 277:16  <b>REPORTER</b> [2] - 1:22, 295:1  <b>REPORTER'S</b> [1] - 1:13  <b>reports</b> [18] - 7:6, 7:11, 7:13, 7:24, 8:17, 11:1, 14:5, 29:23, 37:24, 38:2, 38:4, 53:8, 58:16, 58:20, 79:20, 79:22, 193:8, 227:6  <b>represent</b> [2] - 193:23, 294:6  <b>representation</b> [2] - 130:19, 131:4  <b>Representative</b> [1] - 3:8  <b>representative</b> [1] - 95:18  <b>representatives</b> [3] - 59:20, 134:20, 188:8  <b>Representatives</b> [6] - 35:9, 35:10, 35:11, 230:19, 230:20, 230:21  <b>representing</b> [1] - 294:5  <b>represents</b> [3] - 35:11, 230:21, 273:17  <b>request</b> [10] - 24:11, 62:5, 145:13, 172:15, 185:13, 186:5, 186:8, 189:2, 224:18, 292:25  <b>requested</b> [10] - 24:21, 65:1, 66:4, 137:16, 137:22, 140:5, 141:5, 141:16, 188:24, 215:13  <b>requesting</b> [1] - 145:10  <b>requests</b> [1] - 171:21  <b>require</b> [10] - 26:19, 67:10, 84:16, 84:17, 103:16, 263:24, 264:7, 266:17, 266:18, 273:4  <b>required</b> [10] - 10:10, 29:12, 42:24, 81:20, 81:23, 222:8, 234:12, 257:3, 267:22, 271:11  <b>requirement</b> [19] - 27:15, 29:13, 42:24, 46:6, 46:20, 58:14, 58:15, 83:8, 93:8, 125:9, 125:12, 198:7, 225:9, 226:3, 238:16, 261:23, 261:24,</p>	<p>265:21  <b>requirements</b> [28] - 8:10, 8:15, 22:19, 28:20, 28:21, 33:12, 77:17, 78:11, 90:18, 90:21, 93:4, 93:17, 236:14, 237:10, 257:14, 259:17, 262:8, 264:4, 265:17, 265:23, 266:22, 267:4, 272:23, 276:9, 277:21, 285:11, 286:2  <b>Requirements</b> [3] - 255:12, 258:15, 263:16  <b>requires</b> [7] - 18:23, 30:21, 37:17, 90:13, 218:21, 272:21, 286:8  <b>research</b> [1] - 67:20  <b>reserve</b> [1] - 245:18  <b>residence</b> [1] - 166:1  <b>resident</b> [1] - 165:25  <b>residential</b> [3] - 92:1, 106:18, 213:24  <b>residents</b> [3] - 91:8, 91:12, 196:15  <b>residing</b> [1] - 188:11  <b>resolve</b> [3] - 36:25, 58:6, 68:24  <b>resolved</b> [11] - 11:20, 36:25, 38:1, 38:2, 38:3, 38:5, 38:7, 38:9, 39:8, 48:14, 58:5  <b>resolves</b> [1] - 13:21  <b>resolving</b> [2] - 36:11, 38:19  <b>resource</b> [1] - 21:25  <b>Resources</b> [2] - 6:25, 10:22  <b>resources</b> [10] - 22:25, 23:5, 61:4, 61:8, 61:9, 154:14, 196:16, 239:16, 239:18, 239:20  <b>respect</b> [20] - 18:15, 18:21, 35:2, 98:24, 113:12, 118:17, 124:16, 136:15, 143:22, 226:2, 226:5, 226:8, 227:9, 227:17, 230:12, 233:13, 261:13, 267:13, 273:10, 273:14  <b>respond</b> [2] - 94:22, 187:22  <b>responds</b> [1] - 14:9  <b>response</b> [2] - 187:25, 251:20  <b>responses</b> [1] - 7:5  <b>responsibilities</b> [5] -</p>	<p>20:4, 98:1, 98:4, 98:5, 268:10  <b>responsibility</b> [5] - 19:22, 91:7, 248:7, 248:19, 248:24  <b>responsive</b> [1] - 90:15  <b>rest</b> [3] - 29:14, 70:15, 292:12  <b>restate</b> [1] - 250:1  <b>restitution</b> [8] - 9:19, 234:5, 234:8, 234:9, 234:11, 234:24, 235:5, 235:8  <b>restored</b> [1] - 195:21  <b>restrict</b> [1] - 68:10  <b>restricted</b> [3] - 210:24, 211:15, 212:21  <b>restriction</b> [2] - 68:17, 284:23  <b>restrictions</b> [6] - 263:18, 263:21, 264:6, 264:11, 266:1, 284:22  <b>restrictive</b> [4] - 260:10, 260:20, 261:7, 263:2  <b>restroom</b> [1] - 195:24  <b>restrooms</b> [1] - 195:24  <b>result</b> [2] - 20:22, 266:21  <b>results</b> [1] - 241:25  <b>resume</b> [1] - 292:10  <b>resumes</b> [1] - 192:9  <b>retaining</b> [1] - 130:15  <b>retake</b> [1] - 149:24  <b>retirement</b> [1] - 99:10  <b>retracting</b> [1] - 262:15  <b>retreat</b> [2] - 104:6, 104:21  <b>retreats</b> [2] - 104:2, 104:3  <b>retroactively</b> [1] - 110:19  <b>return</b> [9] - 44:8, 95:20, 149:19, 256:5, 262:18, 288:2, 289:6, 290:4, 290:10  <b>returned</b> [2] - 216:11, 235:12  <b>returning</b> [2] - 221:16, 292:15  <b>returns</b> [1] - 289:9  <b>REUBEN</b> [1] - 3:3  <b>revenue</b> [12] - 8:15,</p>	<p>9:3, 9:4, 9:18, 50:2, 50:6, 50:12, 55:18, 61:20, 197:12, 235:9  <b>revenues</b> [2] - 51:24, 235:14  <b>review</b> [19] - 7:4, 32:18, 32:24, 36:3, 49:16, 49:19, 52:22, 62:8, 79:14, 93:10, 114:10, 114:19, 174:5, 217:25, 222:1, 222:4, 226:11, 283:3, 292:25  <b>reviewed</b> [3] - 79:16, 87:25, 173:5  <b>reviewing</b> [1] - 55:11  <b>reviews</b> [1] - 173:3  <b>revised</b> [2] - 17:7, 264:4  <b>Revised</b> [3] - 255:12, 258:15, 263:16  <b>revision</b> [1] - 7:9  <b>revocable</b> [6] - 53:1, 54:16, 56:17, 57:3, 57:8, 110:11  <b>revokable</b> [1] - 10:21  <b>reword</b> [1] - 82:16  <b>RICHARD</b> [2] - 1:9, 2:18  <b>Rick</b> [1] - 143:17  <b>ride</b> [1] - 171:2  <b>right-hand</b> [8] - 8:20, 8:23, 44:10, 85:16, 194:1, 194:12, 202:12, 208:7  <b>rights</b> [1] - 53:12  <b>ring</b> [1] - 146:15  <b>risk</b> [4] - 21:12, 22:22, 90:6, 91:24  <b>RL</b> [7] - 52:23, 52:24, 53:8, 53:9, 53:18, 53:21, 53:24  <b>RN</b> [1] - 221:13  <b>road</b> [6] - 9:8, 27:4, 165:5, 166:25, 170:13, 237:9  <b>roads</b> [2] - 77:16, 109:13  <b>Robert</b> [2] - 3:8, 135:24  <b>ROBINS</b> [1] - 2:4  <b>Robinson</b> [2] - 47:7, 48:12  <b>robust</b> [1] - 197:10  <b>role</b> [10] - 7:3, 62:8, 86:8, 86:11, 111:7, 190:24, 248:7, 248:21, 249:4, 268:15  <b>rolled</b> [1] - 267:25  <b>ROMAN</b> [3] - 2:4,</p>	<p>2:9, 2:15  <b>roof</b> [1] - 64:8  <b>room</b> [2] - 34:4, 153:11  <b>ROOM</b> [1] - 1:22  <b>rooted</b> [1] - 152:3  <b>ROSENBAUM</b> [96] - 2:8, 59:2, 96:14, 97:12, 100:20, 108:11, 111:5, 111:8, 111:22, 126:9, 126:18, 126:21, 126:24, 128:8, 131:17, 135:17, 135:19, 135:22, 136:1, 137:12, 139:24, 141:4, 142:12, 148:2, 148:16, 149:14, 149:18, 150:4, 150:5, 153:17, 153:21, 153:22, 155:11, 155:16, 155:18, 157:9, 157:12, 157:15, 157:23, 158:3, 158:15, 158:17, 158:19, 158:22, 161:17, 161:18, 164:11, 166:18, 167:21, 167:22, 169:11, 169:21, 170:5, 170:11, 170:17, 170:20, 171:4, 172:6, 172:20, 172:24, 173:21, 173:22, 178:18, 178:20, 179:7, 179:10, 182:21, 182:24, 183:12, 205:21, 212:4, 213:17, 215:22, 216:2, 216:18, 216:22, 216:25, 217:12, 217:18, 224:16, 224:24, 225:15, 225:18, 228:7, 229:8, 229:10, 229:14, 229:16, 233:19, 233:25, 234:3, 239:6, 241:21, 242:12, 242:16, 245:22  <b>Rosenbaum</b> [5] - 4:8, 4:12, 216:15, 216:20, 243:6  <b>Rosenbaum's</b> [1] - 30:3  <b>ROSENBERG</b> [166] - 2:20, 6:12, 6:16, 7:14, 7:16, 8:2, 8:6, 12:9,</p>
---	---	--	---	---

<p>12:11, 12:19, 12:23, 14:23, 15:7, 15:17, 15:22, 16:1, 16:6, 16:7, 18:18, 18:20, 20:25, 23:10, 23:14, 25:1, 25:5, 25:21, 25:23, 26:11, 27:22, 28:10, 31:17, 31:25, 32:2, 32:9, 32:11, 33:6, 33:9, 33:17, 34:10, 34:12, 37:11, 38:16, 39:15, 39:19, 39:25, 40:10, 41:6, 41:9, 41:16, 43:22, 43:24, 44:4, 44:7, 45:15, 45:18, 46:7, 46:10, 46:13, 47:13, 48:9, 49:5, 49:8, 50:20, 50:25, 51:8, 52:8, 52:11, 52:14, 52:15, 55:8, 55:10, 55:22, 56:1, 56:5, 56:11, 56:14, 58:17, 59:5, 59:7, 59:9, 59:12, 59:15, 60:1, 60:4, 60:8, 60:18, 60:20, 60:22, 65:11, 73:17, 74:20, 76:6, 76:22, 77:1, 78:5, 82:1, 82:15, 85:12, 85:19, 86:10, 87:19, 94:1, 94:6, 94:12, 94:15, 94:19, 111:17, 126:13, 126:16, 127:24, 131:13, 140:20, 147:3, 148:1, 161:11, 168:16, 168:24, 169:15, 170:8, 182:19, 183:17, 183:18, 193:17, 193:22, 194:23, 198:24, 199:6, 199:11, 200:12, 200:14, 200:16, 201:1, 201:10, 201:13, 201:18, 201:23, 202:1, 202:4, 202:6, 203:14, 204:1, 204:12, 204:14, 205:11, 205:15, 205:19, 212:5, 213:14, 215:19, 216:14, 217:10, 224:18, 228:17, 228:20, 228:25, 229:3, 239:4, 241:11, 242:3, 242:21, 242:25, 243:2, 245:16, 245:24, 281:14, 281:18</p>	<p><b>Rosenberg</b> [12] - 4:4, 4:9, 4:13, 6:12, 229:18, 234:7, 235:24, 238:7, 239:1, 240:11, 241:22, 242:2</p> <p><b>Rosenberg's</b> [2] - 228:8, 229:18</p> <p><b>rough</b> [4] - 75:11, 95:3, 95:6, 199:17</p> <p><b>roughly</b> [12] - 62:16, 63:2, 80:11, 81:20, 81:21, 100:17, 177:11, 180:23, 180:24, 206:16, 244:23, 279:22</p> <p><b>round</b> [2] - 158:5, 244:24</p> <p><b>rounding</b> [1] - 281:16</p> <p><b>rounds</b> [1] - 242:24</p> <p><b>route</b> [1] - 185:10</p> <p><b>routes</b> [1] - 88:16</p> <p><b>routine</b> [1] - 206:20</p> <p><b>RPR</b> [1] - 295:20</p> <p><b>rubric</b> [1] - 210:1</p> <p><b>rude</b> [2] - 145:3, 167:7</p> <p><b>Rule</b> [1] - 248:13</p> <p><b>rule</b> [1] - 102:5</p> <p><b>rules</b> [3] - 93:21, 156:22, 258:6</p> <p><b>rumor</b> [2] - 144:24, 145:20</p> <p><b>run</b> [11] - 31:24, 32:1, 49:23, 83:22, 109:13, 160:4, 160:6, 160:7, 160:20, 163:2, 163:4</p> <p><b>running</b> [10] - 71:5, 71:8, 80:20, 123:2, 123:9, 163:6, 188:5, 197:16, 213:4, 244:14</p> <p><b>runs</b> [3] - 148:25, 172:8, 283:9</p> <p><b>rural</b> [1] - 241:9</p>	<p>88:6, 227:9</p> <p><b>SAFMR</b> [1] - 270:19</p> <p><b>sakes</b> [1] - 147:14</p> <p><b>salaries</b> [1] - 197:14</p> <p><b>salary</b> [1] - 99:3</p> <p><b>Saltair</b> [1] - 106:21</p> <p><b>San</b> [1] - 66:12</p> <p><b>sanctions</b> [1] - 58:5</p> <p><b>sandpit</b> [1] - 123:11</p> <p><b>Sandra</b> [2] - 131:22, 131:23</p> <p><b>satisfied</b> [1] - 205:18</p> <p><b>Saturday</b> [4] - 117:17, 145:3, 167:8, 172:13</p> <p><b>Savage</b> [3] - 4:15, 247:2, 248:3</p> <p><b>SAVAGE</b> [68] - 2:9, 2:15, 246:10, 246:20, 247:1, 247:24, 248:3, 248:6, 249:6, 250:3, 250:4, 250:25, 251:12, 251:14, 251:25, 252:4, 252:24, 253:3, 253:6, 253:13, 253:17, 253:20, 253:22, 253:25, 254:2, 254:5, 254:12, 255:1, 255:5, 258:8, 258:9, 258:22, 259:1, 259:8, 259:12, 259:15, 260:23, 261:2, 261:3, 261:18, 262:23, 263:7, 263:13, 264:17, 264:18, 266:6, 266:7, 269:7, 269:8, 274:13, 274:17, 274:18, 274:24, 275:3, 275:13, 276:16, 277:4, 278:10, 279:19, 279:21, 283:2, 283:19, 285:21, 288:18, 291:4, 291:5, 291:18, 291:21</p> <p><b>save</b> [4] - 239:18, 240:6, 240:15, 241:4</p> <p><b>saves</b> [1] - 59:3</p> <p><b>savings</b> [2] - 239:21, 242:10</p> <p><b>saw</b> [4] - 39:16, 228:15, 245:12, 263:12</p> <p><b>scale</b> [1] - 21:12</p> <p><b>scarcity</b> [1] - 272:5</p> <p><b>schedule</b> [6] - 146:3, 171:11, 171:13, 171:25, 221:10, 293:14</p>	<p><b>schedulers</b> [1] - 63:15</p> <p><b>schedules</b> [1] - 188:18</p> <p><b>schizophrenia</b> [2] - 161:5, 161:24</p> <p><b>scholarship</b> [3] - 191:3, 191:5, 191:7</p> <p><b>scholarships</b> [3] - 29:2, 191:6, 196:8</p> <p><b>School</b> [67] - 6:24, 10:3, 12:7, 18:2, 18:5, 18:12, 18:13, 18:23, 20:14, 20:18, 23:6, 27:8, 28:15, 29:7, 29:18, 29:20, 29:24, 30:12, 39:9, 39:12, 97:19, 98:9, 98:16, 99:13, 106:8, 106:9, 108:13, 108:20, 109:5, 113:9, 113:17, 118:10, 128:20, 131:5, 136:12, 144:7, 151:14, 151:23, 152:1, 154:1, 155:21, 156:1, 164:6, 164:20, 171:12, 173:13, 179:1, 180:23, 184:10, 186:6, 187:1, 191:10, 193:24, 194:8, 195:10, 195:12, 197:1, 197:3, 197:5, 197:21, 198:13, 199:14, 201:6, 203:21, 204:16, 204:18, 210:7</p> <p><b>school</b> [95] - 25:22, 97:20, 99:15, 99:18, 100:1, 100:3, 100:6, 100:11, 100:13, 100:25, 101:3, 101:16, 102:19, 102:25, 103:7, 103:8, 103:12, 103:14, 105:6, 105:9, 106:5, 106:13, 106:14, 106:20, 107:4, 107:5, 107:20, 107:24, 108:1, 108:6, 108:7, 108:14, 108:21, 108:22, 108:24, 108:25, 109:3, 111:13, 111:14, 111:16, 111:25, 112:2, 112:5, 112:16, 116:12, 118:22, 119:2, 120:4, 120:5, 120:7, 121:4, 122:12, 125:10, 129:3, 131:3, 137:13, 141:13,</p>	<p>143:21, 144:2, 144:5, 144:8, 144:16, 144:21, 145:14, 147:14, 147:15, 148:4, 148:21, 152:10, 154:3, 154:9, 155:1, 155:4, 166:14, 167:7, 187:20, 191:7, 193:5, 195:21, 197:16, 198:1, 198:2, 199:21, 207:18, 210:16, 211:13, 212:19</p> <p><b>school's</b> [1] - 147:17</p> <p><b>School's</b> [2] - 172:8, 204:21</p> <p><b>schools</b> [8] - 117:11, 120:21, 122:15, 124:25, 138:16, 138:17, 138:18</p> <p><b>Schreck</b> [1] - 130:11</p> <p><b>SCHRECK</b> [1] - 130:11</p> <p><b>SCIP</b> [1] - 78:12</p> <p><b>Scott</b> [1] - 143:19</p> <p><b>screen</b> [10] - 10:6, 16:2, 158:1, 193:16, 221:18, 228:15, 228:21, 228:24, 233:20, 263:8</p> <p><b>screenwriting</b> [1] - 191:25</p> <p><b>screwed</b> [1] - 244:4</p> <p><b>scribbles</b> [1] - 229:4</p> <p><b>search</b> [1] - 192:10</p> <p><b>searching</b> [1] - 282:16</p> <p><b>season</b> [4] - 42:13, 117:14, 138:10, 140:24</p> <p><b>seasons</b> [1] - 120:18</p> <p><b>seated</b> [3] - 97:1, 246:25, 247:3</p> <p><b>second</b> [19] - 33:10, 33:15, 46:1, 53:3, 59:7, 63:12, 158:23, 192:3, 212:24, 213:20, 224:1, 237:9, 240:2, 255:19, 262:21, 264:19, 270:23, 274:3, 276:7</p> <p><b>secretary</b> [10] - 64:19, 134:23, 230:14, 230:17, 261:19, 262:4, 262:5, 262:7</p> <p><b>Secretary</b> [7] - 35:3, 35:7, 39:6, 67:10, 134:24, 135:1, 248:8</p> <p><b>Section</b> [6] - 33:11,</p>
--	---	---	---	---



<p>33:20, 265:9, 290:3, 291:1, 295:9  <b>section</b> [7] - 34:20, 34:21, 40:14, 49:9, 49:12, 229:25, 236:13  <b>sections</b> [1] - 49:15  <b>secure</b> [2] - 273:19, 287:16  <b>security</b> [5] - 90:9, 91:8, 209:12, 210:15  <b>see</b> [71] - 9:25, 10:2, 10:20, 14:24, 34:17, 38:14, 42:16, 44:11, 60:3, 68:2, 72:3, 77:20, 85:15, 85:21, 85:22, 86:21, 93:21, 97:13, 127:17, 145:7, 147:19, 152:23, 154:7, 154:20, 157:24, 159:13, 163:11, 168:23, 169:5, 170:15, 170:16, 179:21, 194:1, 195:4, 195:14, 195:15, 195:25, 196:7, 201:7, 204:7, 208:9, 208:10, 208:15, 208:18, 209:25, 215:23, 229:17, 234:4, 252:6, 252:8, 252:11, 254:13, 255:17, 256:10, 256:13, 256:19, 259:4, 259:5, 259:16, 262:24, 264:23, 266:12, 275:16, 279:23, 291:15, 292:15, 292:16, 294:15, 294:17, 294:18  <b>SEEGER</b> [2] - 4:14, 247:4  <b>Seeger</b> [4] - 247:8, 247:10, 247:18, 247:19  <b>seeing</b> [2] - 91:14, 198:14  <b>seek</b> [2] - 132:21, 133:4  <b>seeking</b> [5] - 35:16, 136:4, 185:20, 185:23, 187:15  <b>seem</b> [1] - 200:21  <b>segment</b> [1] - 91:21  <b>segregate</b> [1] - 214:9  <b>selling</b> [1] - 285:17  <b>semi</b> [1] - 171:24  <b>seminar</b> [2] - 192:6, 192:7  <b>Senate</b> [7] - 35:8,</p>	<p>35:9, 35:10, 132:3, 230:18, 230:20, 230:21  <b>senators</b> [1] - 59:20  <b>send</b> [2] - 76:17, 147:23  <b>sends</b> [1] - 37:7  <b>senior</b> [4] - 116:13, 116:23, 124:13, 247:25  <b>sense</b> [2] - 200:7, 200:9  <b>sent</b> [1] - 251:23  <b>sentence</b> [18] - 44:13, 44:22, 154:14, 218:18, 254:20, 256:22, 257:18, 257:25, 259:11, 259:12, 259:13, 263:14, 264:23, 264:25, 265:6, 265:7, 266:10, 266:11  <b>sentences</b> [1] - 53:3  <b>separate</b> [8] - 25:11, 64:14, 64:16, 68:24, 84:17, 91:19, 238:13, 256:12  <b>separately</b> [1] - 37:25  <b>September</b> [3] - 7:23, 28:2, 59:9  <b>Sepulveda</b> [1] - 22:17  <b>sequence</b> [1] - 110:12  <b>series</b> [5] - 10:1, 58:20, 109:10, 186:21, 188:13  <b>serious</b> [1] - 91:1  <b>serve</b> [2] - 192:13, 215:5  <b>served</b> [2] - 192:25, 215:2  <b>serves</b> [2] - 58:1, 185:25  <b>service</b> [17] - 9:7, 29:1, 29:16, 49:25, 185:2, 188:24, 189:4, 196:3, 196:14, 250:15, 252:9, 255:21, 256:1, 265:10, 266:24, 268:11  <b>service-connected</b> [5] - 252:9, 255:21, 256:1, 265:10, 266:24  <b>Services</b> [3] - 69:18, 88:3, 244:16  <b>services</b> [31] - 63:9, 63:14, 81:4, 92:11,</p>	<p>92:14, 184:17, 184:22, 185:4, 185:7, 185:24, 187:1, 187:2, 187:25, 190:8, 193:7, 195:10, 195:12, 196:13, 196:19, 205:7, 212:15, 240:8, 240:16, 248:19, 248:22, 249:15, 268:3, 268:9, 268:17  <b>session</b> [3] - 144:16, 150:15, 190:25  <b>sessions</b> [8] - 185:14, 186:2, 186:3, 186:12, 186:14, 186:25, 188:1, 190:2  <b>set</b> [9] - 61:11, 64:4, 77:7, 86:2, 174:13, 205:3, 213:5, 222:24, 277:9  <b>set-asides</b> [1] - 64:4  <b>setting</b> [6] - 68:22, 80:24, 81:16, 91:25, 108:21, 238:9  <b>settlement</b> [4] - 57:24, 188:8, 292:21, 293:4  <b>seven</b> [1] - 107:12  <b>seventy</b> [1] - 200:18  <b>several</b> [4] - 95:17, 137:1, 188:3, 194:7  <b>severe</b> [15] - 217:2, 218:11, 219:15, 219:21, 220:7, 220:18, 220:20, 220:22, 222:20, 223:10, 223:11, 223:12  <b>severely</b> [1] - 223:14  <b>Shakespeare</b> [2] - 20:8, 20:12  <b>shall</b> [3] - 44:17, 46:20, 96:18  <b>shape</b> [4] - 20:20, 21:2, 21:3  <b>share</b> [2] - 187:17, 214:21  <b>shared</b> [6] - 61:3, 127:7, 185:12, 205:1, 205:2, 215:9  <b>sharing</b> [16] - 33:22, 33:23, 35:4, 35:6, 110:11, 110:24, 112:4, 112:6, 112:11, 113:9, 114:9, 114:11, 127:4, 230:15, 230:16, 231:15  <b>shelf</b> [3] - 291:9, 291:12, 291:15  <b>shelter</b> [2] - 74:17,</p>	<p>241:5  <b>Sherman</b> [1] - 131:22  <b>shift</b> [1] - 24:23  <b>shoes</b> [2] - 167:15, 267:20  <b>shoot</b> [1] - 166:7  <b>short</b> [7] - 10:23, 24:10, 33:18, 72:19, 89:1, 234:23, 242:22  <b>shortage</b> [7] - 218:24, 219:16, 219:22, 220:19, 220:20, 220:22, 222:7  <b>shortaged</b> [1] - 223:14  <b>shortages</b> [12] - 24:12, 217:2, 218:11, 219:6, 219:24, 220:7, 222:20, 223:3, 223:7, 223:24, 224:11, 245:14  <b>shortcut</b> [1] - 140:16  <b>shorter</b> [2] - 89:6, 89:10  <b>shortfall</b> [1] - 66:23  <b>shortly</b> [1] - 132:13  <b>shoving</b> [1] - 72:18  <b>show</b> [14] - 43:19, 45:7, 45:22, 52:2, 55:3, 55:5, 55:7, 55:12, 55:21, 164:18, 198:24, 209:1, 209:12, 229:22  <b>showed</b> [2] - 9:22, 237:5  <b>shut</b> [1] - 91:23  <b>shuttle</b> [20] - 29:15, 29:16, 160:4, 160:6, 160:7, 160:9, 160:18, 160:19, 163:1, 164:13, 171:25, 172:8, 172:14, 172:15, 184:24, 185:8, 185:9, 185:10, 185:16  <b>shuttled</b> [1] - 171:11  <b>shuttles</b> [2] - 172:13, 184:23  <b>side</b> [13] - 14:7, 26:23, 65:17, 94:4, 94:8, 201:5, 201:6, 228:19, 229:17, 290:8, 290:9, 292:2  <b>sides</b> [2] - 96:12, 242:23  <b>sign</b> [6] - 166:6, 166:10, 184:2, 189:15, 190:3, 190:23  <b>signage</b> [2] - 184:6,</p>	<p>184:10  <b>signed</b> [2] - 189:16, 190:10  <b>significance</b> [2] - 48:10, 61:7  <b>significant</b> [11] - 21:9, 35:2, 48:18, 154:5, 195:11, 195:13, 230:12, 258:3, 258:4, 262:10, 262:11  <b>significantly</b> [1] - 25:12  <b>SILBERFELD</b> [6] - 2:4, 41:14, 95:13, 95:20, 96:10, 147:7  <b>silly</b> [2] - 95:6, 289:10  <b>similar</b> [7] - 8:8, 29:23, 29:25, 64:24, 177:1, 184:11, 184:12  <b>similarity</b> [1] - 175:19  <b>similarly</b> [2] - 155:5, 264:5  <b>simple</b> [5] - 80:10, 83:10, 209:17, 210:8, 276:22  <b>simplify</b> [1] - 75:4  <b>simply</b> [3] - 47:7, 79:6, 82:20  <b>single</b> [7] - 82:2, 82:5, 82:13, 83:15, 84:2, 84:9, 84:11  <b>single-acre</b> [2] - 82:5, 82:13  <b>sit</b> [1] - 291:8  <b>site</b> [10] - 47:21, 47:22, 47:23, 48:5, 48:16, 51:10, 51:12, 54:11, 146:3, 190:1  <b>sites</b> [3] - 249:17, 249:22, 250:6  <b>siting</b> [1] - 291:15  <b>sits</b> [1] - 47:24  <b>sitting</b> [2] - 266:20, 291:12  <b>situation</b> [1] - 89:9  <b>six</b> [8] - 38:3, 38:7, 75:25, 115:8, 121:7, 124:8, 138:13, 200:18  <b>sixth</b> [1] - 224:5  <b>size</b> [3] - 123:24, 123:25, 124:2  <b>sized</b> [1] - 123:23  <b>skills</b> [1] - 237:16  <b>slant</b> [1] - 53:10  <b>slight</b> [2] - 171:14, 243:24  <b>slow</b> [7] - 135:15,</p>
---	--	--	--	--

<p>165:17, 252:22, 253:24, 260:25, 277:19, 290:15</p> <p><b>slower</b> [4] - 173:19, 250:2, 253:1, 276:12</p> <p><b>small</b> [17] - 148:19, 271:5, 272:4, 272:22, 273:2, 275:11, 275:19, 275:21, 276:1, 276:3, 277:10, 277:24, 277:25, 278:15, 278:18, 279:11</p> <p><b>Small</b> [9] - 270:19, 271:22, 273:9, 273:13, 273:17, 273:23, 274:21, 277:6, 283:21</p> <p><b>smaller</b> [5] - 66:17, 156:3, 200:23, 200:25, 201:8</p> <p><b>smidge</b> [1] - 101:23</p> <p><b>smooth</b> [2] - 170:6, 170:12</p> <p><b>Soboroff</b> [2] - 79:20, 95:1</p> <p><b>soccer</b> [3] - 139:19, 140:14, 140:19</p> <p><b>social</b> [10] - 69:14, 92:23, 93:1, 190:16, 196:1, 213:23, 224:1, 245:10, 245:12</p> <p><b>society</b> [1] - 214:7</p> <p><b>softball</b> [4] - 26:14, 30:4, 115:20, 122:8</p> <p><b>sold</b> [5] - 176:2, 176:5, 176:6, 176:9, 176:10</p> <p><b>soldiers</b> [1] - 213:24</p> <p><b>solemnly</b> [1] - 96:16</p> <p><b>solution</b> [1] - 89:14</p> <p><b>solve</b> [5] - 46:25, 272:13, 283:23, 283:25, 284:5</p> <p><b>someone</b> [3] - 52:12, 88:22, 280:8</p> <p><b>sometime</b> [2] - 116:5, 293:14</p> <p><b>sometimes</b> [13] - 6:20, 6:25, 8:21, 34:10, 115:20, 118:15, 120:6, 120:24, 181:10, 186:15, 196:4, 208:3</p> <p><b>somewhat</b> [3] - 167:7, 211:15, 213:24</p> <p><b>somewhere</b> [4] - 126:10, 127:20, 134:3, 219:20</p> <p><b>son</b> [1] - 147:19</p>	<p><b>son's</b> [1] - 146:15</p> <p><b>soon</b> [3] - 26:2, 121:6, 294:15</p> <p><b>Sorry</b> [1] - 103:3</p> <p><b>sorry</b> [52] - 10:5, 15:19, 20:11, 22:11, 40:6, 47:22, 47:23, 59:21, 71:18, 76:1, 80:8, 82:8, 82:21, 85:3, 94:6, 100:16, 103:1, 103:3, 108:9, 108:23, 113:24, 115:3, 119:13, 146:25, 148:9, 150:22, 157:23, 164:8, 179:16, 182:20, 194:22, 213:18, 217:9, 235:4, 250:1, 252:20, 253:7, 253:14, 260:13, 260:23, 263:10, 264:21, 267:1, 272:16, 274:12, 274:24, 275:9, 276:24, 284:22, 288:6, 291:2, 292:16</p> <p><b>sort</b> [18] - 17:20, 61:21, 63:11, 63:15, 76:18, 87:13, 91:17, 93:20, 140:16, 142:2, 187:5, 189:2, 189:21, 190:16, 214:16, 215:11, 237:10, 271:8</p> <p><b>sorted</b> [1] - 215:8</p> <p><b>sorts</b> [3] - 77:16, 84:4, 142:21</p> <p><b>sound</b> [1] - 165:8</p> <p><b>sounds</b> [1] - 225:10</p> <p><b>source</b> [1] - 67:8</p> <p><b>sources</b> [1] - 67:5</p> <p><b>South</b> [7] - 2:10, 2:16, 85:14, 85:25, 86:12, 106:15, 106:24</p> <p><b>south</b> [5] - 26:12, 86:1, 86:7, 87:2, 88:2</p> <p><b>southeastern</b> [1] - 87:5</p> <p><b>Southern</b> [8] - 70:6, 70:14, 70:15, 71:3, 73:8, 74:5, 244:18, 283:11</p> <p><b>southern</b> [2] - 70:8, 86:22</p> <p><b>southwest</b> [1] - 86:17</p> <p><b>space</b> [13] - 26:7, 26:8, 26:24, 86:14, 86:18, 86:24, 88:12, 109:14, 165:6, 165:13, 200:3, 200:6</p>	<p><b>spaces</b> [3] - 42:25, 43:7, 44:18</p> <p><b>spans</b> [1] - 134:3</p> <p><b>speaking</b> [8] - 8:12, 9:1, 29:5, 98:2, 133:13, 187:8, 188:15, 286:4</p> <p><b>speaks</b> [2] - 231:25, 241:8</p> <p><b>special</b> [1] - 277:14</p> <p><b>specially</b> [1] - 132:7</p> <p><b>specific</b> [20] - 8:15, 17:4, 28:24, 55:6, 68:14, 68:16, 69:7, 73:20, 93:1, 98:24, 110:7, 123:17, 142:20, 159:5, 163:17, 164:5, 173:4, 184:2, 222:19, 287:11</p> <p><b>specifically</b> [16] - 52:21, 60:17, 94:19, 133:13, 160:7, 164:7, 190:18, 195:19, 199:1, 202:22, 240:13, 241:8, 244:11, 250:11, 273:12, 273:16</p> <p><b>specifics</b> [1] - 265:20</p> <p><b>spectators</b> [3] - 125:1, 138:17, 139:9</p> <p><b>spell</b> [3] - 97:3, 135:16, 247:9</p> <p><b>spelled</b> [2] - 97:15, 247:13</p> <p><b>spend</b> [6] - 23:20, 68:18, 183:21, 239:24, 239:25, 241:5</p> <p><b>spending</b> [6] - 9:4, 19:23, 24:4, 25:7, 74:9</p> <p><b>spent</b> [8] - 9:2, 9:22, 61:12, 61:13, 121:15, 235:21, 239:19, 240:7</p> <p><b>spinal</b> [1] - 78:10</p> <p><b>spoken</b> [4] - 195:20, 250:18, 251:2, 251:7</p> <p><b>sponsorship</b> [1] - 154:19</p> <p><b>sport</b> [2] - 140:24, 156:25</p> <p><b>sports</b> [8] - 115:11, 122:24, 124:24, 129:20, 140:3, 140:8, 154:13, 155:2</p> <p><b>spot</b> [1] - 76:8</p> <p><b>spring</b> [3] - 119:11, 119:13, 119:14</p> <p><b>sprint</b> [1] - 119:13</p> <p><b>SPV</b> [1] - 10:21</p>	<p><b>squad</b> [4] - 116:14, 118:15</p> <p><b>squads</b> [2] - 116:19</p> <p><b>squeezing</b> [1] - 65:23</p> <p><b>SSVF</b> [2] - 69:17, 73:3</p> <p><b>St</b> [1] - 66:12</p> <p><b>stable</b> [1] - 101:8</p> <p><b>stack</b> [3] - 15:4, 84:19, 193:12</p> <p><b>Stadium</b> [3] - 47:7, 47:20, 48:12</p> <p><b>stadium</b> [6] - 43:1, 47:4, 47:17, 47:23, 48:17, 152:23</p> <p><b>staff</b> [6] - 46:5, 131:23, 165:15, 251:21, 290:5, 290:10</p> <p><b>staffed</b> [3] - 49:23, 189:14, 190:1</p> <p><b>staffing</b> [10] - 160:23, 217:2, 218:11, 218:24, 219:7, 219:16, 219:24, 220:19, 222:7, 222:20</p> <p><b>staffs</b> [1] - 161:1</p> <p><b>stage</b> [3] - 213:5, 213:20, 213:21</p> <p><b>stand</b> [4] - 94:13, 118:7, 149:24, 216:11</p> <p><b>standard</b> [22] - 189:4, 271:1, 274:16, 275:21, 275:22, 276:2, 276:14, 277:8, 277:22, 278:5, 278:14, 278:21, 279:14, 282:3, 282:9, 282:17, 282:24, 283:7, 284:3, 286:11, 287:13, 289:12</p> <p><b>standards</b> [21] - 270:25, 271:3, 271:12, 271:17, 274:5, 274:7, 274:11, 274:20, 276:4, 276:10, 278:6, 283:20, 283:22, 284:19, 285:12, 286:5, 286:6, 287:2, 287:7, 287:14, 287:22</p> <p><b>standpoint</b> [1] - 214:23</p> <p><b>Stanford</b> [1] - 67:20</p> <p><b>Stars</b> [1] - 2:6</p> <p><b>start</b> [26] - 7:13, 27:25, 28:13, 32:3, 55:14, 60:8, 62:15, 97:21, 126:10, 133:1,</p>	<p>136:6, 139:4, 145:15, 160:1, 160:11, 160:13, 160:15, 163:25, 183:23, 194:4, 223:22, 252:13, 260:24, 277:19, 292:5, 294:19</p> <p><b>started</b> [5] - 9:3, 9:4, 42:13, 43:21, 106:9</p> <p><b>starting</b> [5] - 119:24, 159:19, 163:9, 243:20, 259:10</p> <p><b>starts</b> [1] - 221:3</p> <p><b>state</b> [19] - 21:14, 73:10, 97:1, 109:21, 125:12, 170:1, 247:7, 248:1, 263:21, 264:6, 264:7, 265:15, 265:25, 266:12, 266:18, 266:19, 266:25, 267:4, 289:1</p> <p><b>STATE</b> [1] - 295:4</p> <p><b>statement</b> [4] - 214:16, 241:20, 252:8, 284:25</p> <p><b>STATES</b> [1] - 1:1</p> <p><b>States</b> [7] - 6:13, 53:19, 53:24, 265:9, 295:7, 295:9, 295:14</p> <p><b>states</b> [4] - 36:9, 218:19, 252:15, 254:6</p> <p><b>Station</b> [1] - 222:22</p> <p><b>stationed</b> [1] - 165:15</p> <p><b>stations</b> [1] - 9:8</p> <p><b>statistics</b> [1] - 91:4</p> <p><b>status</b> [1] - 190:12</p> <p><b>statute</b> [8] - 34:15, 134:17, 225:11, 225:23, 227:17, 232:6, 232:13, 257:3</p> <p><b>statutes</b> [2] - 34:5, 222:9</p> <p><b>statutory</b> [8] - 32:1, 34:18, 225:9, 257:14, 258:5, 261:12, 261:21, 261:25</p> <p><b>stay</b> [2] - 96:10, 190:17</p> <p><b>stenographically</b> [1] - 295:11</p> <p><b>step</b> [8] - 31:9, 31:10, 32:9, 68:2, 95:25, 104:2, 246:21, 267:20</p> <p><b>stepping</b> [1] - 183:25</p> <p><b>Steve</b> [1] - 79:20</p> <p><b>STEVEN</b> [2] - 4:3, 4:11</p> <p><b>Stigers</b> [1] - 192:5</p>
--	---	---	--	---

<p><b>still</b> [17] - 15:1, 23:21, 51:24, 60:4, 60:18, 61:25, 62:1, 127:24, 128:6, 133:19, 174:1, 196:17, 200:8, 221:9, 267:5, 288:24, 292:8</p> <p><b>stipulate</b> [3] - 58:23, 59:2, 59:3</p> <p><b>stipulation</b> [2] - 59:24, 61:1</p> <p><b>stop</b> [9] - 55:3, 74:19, 88:8, 160:9, 160:18, 171:21, 185:13, 185:15, 185:16</p> <p><b>stopped</b> [2] - 165:1, 165:2</p> <p><b>stops</b> [3] - 163:6, 185:17, 185:25</p> <p><b>storage</b> [1] - 64:8</p> <p><b>storied</b> [9] - 83:5, 83:6, 83:16, 84:3, 84:10, 84:11, 84:12</p> <p><b>stories</b> [5] - 83:9, 84:23, 84:25, 85:5</p> <p><b>story</b> [6] - 72:22, 72:24, 83:11, 83:15, 121:25, 179:12</p> <p><b>straight</b> [2] - 20:2, 197:10</p> <p><b>strategies</b> [1] - 287:18</p> <p><b>street</b> [6] - 88:6, 106:17, 214:6, 214:7, 214:12, 214:18</p> <p><b>Street</b> [2] - 2:13, 2:23</p> <p><b>STREET</b> [1] - 1:22</p> <p><b>streets</b> [2] - 91:15, 282:15</p> <p><b>strength</b> [1] - 154:16</p> <p><b>strengthen</b> [1] - 205:7</p> <p><b>strike</b> [9] - 24:13, 70:14, 115:3, 132:19, 177:23, 183:2, 226:24, 233:12, 237:3</p> <p><b>striking</b> [1] - 33:21</p> <p><b>structure</b> [7] - 47:10, 47:14, 47:16, 48:11, 57:13, 98:8, 189:13</p> <p><b>structures</b> [2] - 85:8, 208:21</p> <p><b>struggle</b> [1] - 19:5</p> <p><b>struggled</b> [1] - 20:4</p> <p><b>struggling</b> [1] - 292:7</p> <p><b>stuck</b> [2] - 31:5, 55:1</p> <p><b>student</b> [34] - 29:1, 101:16, 101:25,</p>	<p>102:14, 102:17, 102:18, 103:9, 103:10, 103:19, 108:4, 112:17, 116:18, 116:22, 116:25, 122:19, 123:13, 124:17, 137:2, 137:5, 139:25, 140:24, 156:4, 156:6, 156:8, 156:15, 156:17, 156:21, 156:25, 157:4, 185:2, 191:3, 193:3</p> <p><b>students</b> [58] - 20:19, 99:20, 100:3, 100:9, 100:14, 102:6, 102:11, 102:12, 103:13, 103:16, 103:18, 104:1, 104:11, 105:9, 107:24, 108:1, 112:6, 112:10, 112:16, 116:6, 116:19, 119:1, 119:19, 120:20, 121:12, 121:16, 121:20, 121:21, 122:2, 122:18, 123:12, 124:17, 134:6, 136:12, 136:21, 136:24, 137:6, 137:7, 137:17, 137:25, 138:16, 139:2, 139:3, 140:1, 149:7, 154:3, 154:4, 181:14, 181:23, 182:5, 182:10, 182:12, 187:20, 191:11, 197:9, 197:21</p> <p><b>studied</b> [1] - 287:6</p> <p><b>studies</b> [2] - 237:5, 240:5</p> <p><b>study</b> [7] - 93:17, 240:13, 240:17, 240:19, 241:2, 287:11, 288:1</p> <p><b>stuff</b> [1] - 241:9</p> <p><b>subject</b> [6] - 6:20, 94:17, 114:10, 164:7, 206:21, 286:10</p> <p><b>submits</b> [2] - 173:11, 223:20</p> <p><b>submitted</b> [4] - 79:17, 79:20, 217:14, 223:21</p> <p><b>submitting</b> [2] - 210:25, 211:4</p> <p><b>subregulatory</b> [1] - 264:3</p> <p><b>subsection</b> [1] - 34:21</p>	<p><b>subsequent</b> [8] - 34:15, 45:2, 129:6, 129:8, 174:9, 174:14, 262:5, 293:4</p> <p><b>subset</b> [1] - 122:9</p> <p><b>subsidize</b> [1] - 263:3</p> <p><b>subsidy</b> [5] - 265:3, 265:15, 266:1, 266:14, 271:1</p> <p><b>substance</b> [3] - 18:3, 41:22, 91:2</p> <p><b>substantial</b> [3] - 77:23, 92:8, 93:12</p> <p><b>subsurface</b> [1] - 53:12</p> <p><b>succeed</b> [1] - 237:16</p> <p><b>success</b> [1] - 34:10</p> <p><b>successful</b> [2] - 155:1, 237:23</p> <p><b>successfully</b> [1] - 250:9</p> <p><b>successor</b> [1] - 10:21</p> <p><b>sufficient</b> [2] - 249:7, 257:21</p> <p><b>suggest</b> [1] - 39:16</p> <p><b>suggests</b> [1] - 102:17</p> <p><b>suicide</b> [1] - 69:8</p> <p><b>suitable</b> [1] - 51:17</p> <p><b>Suite</b> [2] - 2:6, 2:13</p> <p><b>suits</b> [1] - 192:8</p> <p><b>sum</b> [5] - 54:5, 258:1, 258:2, 265:6, 265:9</p> <p><b>summarize</b> [3] - 10:20, 19:8, 49:16</p> <p><b>summary</b> [9] - 28:4, 151:4, 218:16, 218:19, 220:6, 260:7, 260:17, 261:5, 293:12</p> <p><b>Summer</b> [3] - 159:16, 191:5</p> <p><b>summer</b> [15] - 119:3, 148:5, 148:7, 148:11, 148:17, 148:18, 148:24, 148:25, 149:4, 149:7, 150:11, 159:13, 160:1, 191:5</p> <p><b>summertime</b> [2] - 167:13, 169:8</p> <p><b>sums</b> [1] - 21:21</p> <p><b>Sunday</b> [1] - 172:13</p> <p><b>Sundays</b> [1] - 182:17</p> <p><b>sunset</b> [2] - 283:8, 287:2</p> <p><b>Sunset</b> [1] - 106:21</p> <p><b>sunsetting</b> [1] - 286:5</p> <p><b>supersede</b> [1] -</p>	<p>64:21</p> <p><b>superseded</b> [1] - 13:18</p> <p><b>supplement</b> [2] - 24:5, 24:7</p> <p><b>supplements</b> [1] - 24:15</p> <p><b>supplied</b> [1] - 234:23</p> <p><b>supplies</b> [3] - 63:11, 86:25, 196:6</p> <p><b>supply</b> [4] - 63:15, 272:9, 272:10, 272:12</p> <p><b>supplying</b> [1] - 29:20</p> <p><b>support</b> [25] - 50:11, 50:13, 53:21, 63:12, 66:7, 69:12, 77:7, 77:11, 77:17, 85:8, 92:17, 92:25, 93:4, 154:15, 156:1, 184:17, 185:2, 187:10, 187:19, 195:25, 197:11, 197:13, 205:1, 205:2, 268:3</p> <p><b>supported</b> [1] - 215:4</p> <p><b>supporters</b> [2] - 118:4, 118:19</p> <p><b>supporting</b> [4] - 69:6, 92:11, 196:18, 196:22</p> <p><b>supportive</b> [20] - 80:14, 83:25, 84:1, 84:11, 89:13, 91:12, 92:9, 92:11, 177:10, 177:18, 177:21, 177:25, 178:1, 237:6, 248:19, 262:25, 265:18, 266:15, 266:23, 268:9</p> <p><b>Supportive</b> [2] - 69:18, 244:16</p> <p><b>supports</b> [1] - 69:5</p> <p><b>suppose</b> [1] - 25:17</p> <p><b>supposed</b> [1] - 146:15</p> <p><b>Supreme</b> [1] - 14:3</p> <p><b>surface</b> [1] - 53:9</p> <p><b>surplus</b> [1] - 24:3</p> <p><b>surprised</b> [2] - 145:20, 197:24</p> <p><b>surprisingly</b> [1] - 26:5</p> <p><b>surrounding</b> [1] - 57:24</p> <p><b>survey</b> [3] - 187:15, 219:23, 223:21</p> <p><b>surveyed</b> [1] - 178:12</p> <p><b>Susie</b> [2] - 187:12,</p>	<p>192:12</p> <p><b>suspend</b> [1] - 19:2</p> <p><b>sustainable</b> [1] - 205:8</p> <p><b>sustained</b> [2] - 111:21, 170:10</p> <p><b>swear</b> [2] - 96:16, 201:14</p> <p><b>swimming</b> [7] - 22:16, 23:8, 123:23, 124:16, 142:3, 143:7, 160:17</p> <p><b>swipe</b> [1] - 189:15</p> <p><b>switch</b> [1] - 189:7</p> <p><b>sworn</b> [2] - 97:6, 247:5</p> <p><b>sync</b> [1] - 222:11</p> <p><b>synopsizes</b> [1] - 179:3</p> <p><b>System</b> [5] - 66:3, 78:12, 222:21, 223:17, 224:12</p> <p><b>system</b> [6] - 19:22, 22:24, 63:7, 64:2, 109:1, 109:3</p> <p><b>systems</b> [1] - 81:12</p>
<b>T</b>				
<p><b>T-I-L-L-M-A-N</b> [1] - 111:5</p> <p><b>T-R-I-N-H</b> [1] - 135:17</p> <p><b>table</b> [7] - 8:23, 9:1, 9:2, 9:12, 9:15, 9:25, 294:5</p> <p><b>Table</b> [4] - 8:24, 9:13, 222:19, 234:4</p> <p><b>tables</b> [1] - 27:23</p> <p><b>takeaways</b> [1] - 68:3</p> <p><b>tale</b> [1] - 48:7</p> <p><b>talks</b> [1] - 205:13</p> <p><b>tall</b> [1] - 85:1</p> <p><b>Tampa</b> [1] - 289:8</p> <p><b>tangible</b> [2] - 187:3, 187:21</p> <p><b>tanks</b> [1] - 64:8</p> <p><b>tape</b> [2] - 41:12, 41:25</p> <p><b>targeted</b> [1] - 26:15</p> <p><b>Tax</b> [2] - 263:19, 285:11</p> <p><b>tax</b> [13] - 105:25, 106:3, 263:21, 264:6, 264:12, 265:25, 284:24, 285:6, 285:7, 285:14, 285:16, 286:3</p> <p><b>TAYLOR</b> [1] - 2:22</p> <p><b>TBI</b> [2] - 161:5, 161:15</p>				

<p><b>teacher</b> [1] - 199:15  <b>teaches</b> [1] - 187:14  <b>team</b> [29] - 60:2, 63:10, 94:3, 109:13, 109:15, 116:10, 116:12, 117:3, 119:25, 120:15, 120:23, 120:25, 121:1, 124:11, 138:2, 140:9, 140:19, 142:5, 142:7, 154:5, 205:17, 223:20, 291:19  <b>teams</b> [20] - 116:21, 117:10, 118:17, 120:3, 120:8, 120:9, 120:13, 121:2, 122:14, 124:14, 124:24, 125:5, 140:14, 140:19, 142:3, 154:9, 154:10, 154:12, 155:2, 156:20  <b>tear</b> [4] - 48:12, 170:3, 170:4, 170:8  <b>tearing</b> [1] - 48:17  <b>Technology</b> [1] - 64:24  <b>temporary</b> [26] - 26:15, 80:1, 80:2, 81:20, 81:24, 82:4, 82:9, 82:21, 83:15, 84:10, 84:15, 85:7, 86:12, 87:7, 87:24, 88:9, 88:14, 88:20, 88:21, 88:25, 89:8, 89:12, 177:14, 178:1  <b>ten</b> [7] - 13:8, 51:6, 51:7, 60:8, 130:20, 166:2, 243:17  <b>ten-minute</b> [1] - 166:2  <b>ten-year</b> [1] - 13:8  <b>tenant</b> [2] - 237:18, 249:17  <b>tenant-based</b> [1] - 249:17  <b>tend</b> [1] - 172:17  <b>tennis</b> [20] - 23:8, 115:1, 115:3, 122:6, 122:12, 139:19, 141:10, 149:9, 150:12, 153:5, 162:18, 162:19, 163:10, 163:14, 163:22, 164:25, 166:8, 167:15, 208:19  <b>tent</b> [1] - 189:25  <b>tents</b> [1] - 74:17  <b>term</b> [15] - 6:21, 9:17, 50:21, 52:25, 55:19, 61:7, 84:1, 84:11,</p>	<p>88:21, 107:4, 227:4, 235:10, 243:14, 257:3  <b>terminate</b> [3] - 18:23, 53:22, 54:1  <b>terminated</b> [3] - 36:24, 204:21  <b>terminating</b> [1] - 39:11  <b>termination</b> [1] - 19:2  <b>terms</b> [37] - 29:12, 31:2, 44:16, 54:12, 61:17, 71:11, 74:8, 81:8, 112:11, 121:5, 121:20, 127:10, 127:19, 137:17, 138:23, 176:9, 176:14, 177:2, 177:7, 178:13, 183:1, 202:8, 222:12, 222:25, 223:23, 224:10, 226:17, 227:15, 227:18, 228:1, 231:12, 241:18, 275:22, 276:3, 279:14, 282:23, 285:24  <b>TERRI</b> [4] - 1:21, 295:6, 295:19, 295:20  <b>Terri</b> [2] - 216:5, 216:6  <b>terrible</b> [1] - 148:10  <b>test</b> [1] - 169:22  <b>testified</b> [19] - 11:8, 17:1, 24:13, 41:17, 58:21, 77:21, 79:4, 79:10, 79:13, 80:23, 93:9, 97:7, 189:8, 213:22, 224:13, 243:8, 243:23, 247:6, 268:1  <b>testify</b> [1] - 241:13  <b>testifying</b> [1] - 76:14  <b>testimony</b> [13] - 6:18, 27:9, 27:10, 40:23, 61:2, 61:24, 67:25, 79:3, 79:14, 93:10, 96:17, 147:10, 213:3  <b>thankful</b> [2] - 67:25, 205:19  <b>that..</b> [1] - 89:2  <b>THE</b> [714] - 1:3, 2:3, 2:18, 3:2, 6:6, 6:9, 6:10, 8:4, 12:21, 13:11, 13:14, 13:20, 13:22, 13:25, 14:5, 14:8, 14:9, 14:11, 14:12, 14:13, 14:17, 14:20, 15:6, 15:16,</p>	<p>15:20, 15:25, 16:3, 16:5, 18:16, 20:11, 20:12, 20:14, 20:15, 23:8, 23:11, 23:12, 24:13, 24:16, 24:22, 24:24, 25:4, 25:6, 25:19, 25:22, 26:10, 26:12, 31:13, 31:14, 31:19, 31:23, 32:5, 32:7, 32:8, 33:5, 33:14, 33:15, 34:7, 36:8, 36:14, 36:15, 36:16, 37:3, 37:8, 37:10, 38:6, 38:8, 38:9, 38:12, 38:13, 38:14, 39:18, 39:20, 40:7, 40:9, 41:4, 41:7, 41:11, 41:15, 44:5, 45:16, 46:8, 47:18, 47:19, 47:21, 47:22, 47:23, 47:25, 48:2, 48:4, 48:5, 48:7, 48:8, 48:25, 49:3, 49:4, 50:18, 50:19, 50:23, 50:24, 51:3, 51:5, 51:7, 52:9, 52:13, 55:24, 56:4, 56:12, 58:25, 59:3, 59:6, 59:8, 59:11, 59:14, 59:23, 60:2, 60:7, 60:10, 60:16, 60:19, 65:4, 65:5, 65:7, 65:8, 69:25, 70:1, 70:2, 70:3, 70:4, 70:6, 70:8, 70:9, 70:10, 70:12, 70:13, 70:20, 70:24, 71:11, 71:13, 71:14, 71:15, 71:18, 71:19, 71:20, 71:21, 71:23, 71:24, 71:25, 72:1, 72:2, 72:3, 72:5, 72:6, 72:7, 72:8, 72:10, 72:11, 72:14, 72:15, 72:16, 72:17, 72:21, 72:24, 72:25, 73:6, 73:7, 73:10, 73:11, 73:12, 73:15, 74:14, 75:11, 75:13, 75:14, 75:16, 75:17, 75:18, 75:22, 75:24, 76:3, 76:4, 76:20, 76:25, 78:3, 81:22, 82:3, 82:5, 82:7, 82:10, 82:11, 82:12, 82:16, 82:17, 82:20, 82:23, 82:25, 83:2, 83:3, 83:8, 83:10, 83:12, 83:13, 83:19, 83:21, 83:23, 83:24, 84:5, 84:8, 84:14, 84:21, 85:2, 85:3, 85:4, 85:5,</p>	<p>85:7, 85:9, 85:18, 87:11, 87:12, 87:14, 87:15, 87:18, 94:3, 94:7, 94:11, 94:14, 94:17, 94:25, 95:8, 95:11, 95:19, 95:22, 95:24, 95:25, 96:3, 96:5, 96:11, 96:16, 96:20, 96:21, 96:24, 96:25, 97:2, 97:3, 97:4, 97:8, 100:16, 100:18, 100:19, 108:3, 108:7, 108:9, 111:4, 111:6, 111:18, 126:8, 126:15, 126:19, 126:22, 128:1, 128:4, 128:5, 128:6, 131:15, 131:16, 135:15, 135:18, 135:21, 135:25, 137:10, 139:22, 140:21, 140:23, 140:25, 141:1, 141:2, 141:3, 142:11, 144:19, 144:23, 144:24, 144:25, 145:1, 145:9, 145:10, 145:21, 145:22, 145:23, 145:24, 146:5, 146:6, 146:7, 146:8, 146:10, 146:11, 146:12, 146:13, 146:14, 146:17, 146:20, 146:23, 146:24, 147:1, 147:5, 147:9, 147:10, 147:12, 147:13, 147:16, 147:18, 147:20, 147:22, 148:11, 148:14, 148:15, 149:12, 149:15, 149:19, 149:23, 153:19, 155:15, 157:10, 157:14, 157:17, 157:19, 157:20, 157:22, 157:24, 157:25, 158:16, 158:18, 158:20, 161:14, 164:10, 164:12, 164:14, 164:15, 164:21, 164:22, 165:3, 165:9, 165:11, 165:17, 165:19, 165:21, 165:22, 165:23, 165:24, 166:3, 166:4, 166:12, 166:15, 166:17, 167:5, 168:10, 168:13, 168:14,</p>	<p>168:15, 168:22, 169:3, 169:17, 169:20, 170:4, 170:10, 170:15, 170:19, 170:25, 171:1, 171:23, 172:2, 172:3, 172:4, 172:22, 173:19, 179:8, 182:23, 183:14, 183:16, 193:14, 193:15, 193:19, 193:21, 194:17, 194:18, 194:19, 198:21, 198:22, 198:25, 199:12, 199:19, 199:20, 200:13, 200:15, 200:18, 201:2, 201:11, 201:12, 201:14, 201:15, 201:20, 201:25, 202:2, 203:8, 203:9, 203:12, 203:24, 203:25, 204:6, 204:9, 204:11, 205:12, 205:14, 205:17, 205:20, 205:22, 206:5, 206:6, 206:10, 206:11, 206:15, 206:16, 206:17, 206:18, 206:24, 207:1, 207:2, 207:3, 207:4, 207:5, 207:8, 207:9, 207:15, 207:16, 207:20, 207:21, 208:1, 208:3, 208:6, 208:7, 208:8, 208:9, 208:11, 208:12, 208:13, 208:14, 208:16, 208:17, 208:22, 208:23, 208:24, 209:1, 209:3, 209:4, 209:5, 209:6, 209:7, 209:8, 209:9, 209:10, 209:11, 209:14, 209:15, 209:17, 209:19, 209:20, 209:21, 209:22, 209:25, 210:2, 210:4, 210:5, 210:6, 210:8, 210:12, 210:14, 210:18, 210:20, 211:4, 211:7, 211:17, 211:18, 211:19, 211:20, 211:23, 211:25, 212:1, 212:2, 212:7, 212:8, 212:10, 212:17, 213:2, 213:3, 213:11, 213:13,</p>
--	--	---	--	---

<p>213:16, 213:18, 214:21, 214:23, 215:1, 215:7, 215:9, 215:15, 215:21, 215:23, 216:4, 216:9, 216:16, 216:24, 217:9, 217:16, 224:17, 224:21, 228:12, 228:18, 228:21, 229:2, 229:5, 229:9, 229:15, 233:20, 233:21, 233:22, 233:24, 234:2, 239:5, 241:16, 242:8, 242:9, 242:15, 242:18, 242:19, 242:20, 242:23, 245:20, 245:23, 245:25, 246:3, 246:4, 246:6, 246:8, 246:12, 246:15, 246:18, 246:21, 246:23, 246:24, 247:3, 247:7, 247:8, 247:9, 247:10, 247:12, 247:13, 247:15, 247:16, 247:17, 247:18, 247:19, 247:20, 247:21, 247:22, 248:1, 249:4, 250:1, 250:24, 252:2, 252:20, 252:25, 253:4, 253:10, 253:15, 253:18, 253:21, 253:24, 254:1, 254:3, 254:11, 255:3, 258:24, 259:7, 259:10, 259:14, 260:25, 261:15, 261:17, 262:22, 263:5, 263:9, 263:12, 264:14, 264:16, 266:3, 266:5, 269:5, 274:12, 274:14, 275:9, 275:11, 275:25, 276:7, 276:12, 276:13, 276:18, 276:20, 276:21, 276:23, 276:24, 276:25, 277:2, 277:3, 277:15, 277:20, 278:1, 278:2, 278:3, 278:4, 278:8, 278:11, 278:13, 278:16, 278:17, 278:23, 278:25, 279:2, 279:3, 279:4, 279:7, 279:8, 279:11, 279:17, 279:18, 279:20, 279:22, 279:25, 280:1, 280:2,</p>	<p>280:3, 280:6, 280:8, 280:10, 280:14, 280:15, 280:17, 280:18, 280:20, 280:21, 280:22, 280:23, 280:25, 281:2, 281:3, 281:5, 281:7, 281:13, 281:16, 281:19, 281:20, 281:22, 281:23, 281:25, 282:1, 282:2, 282:6, 282:8, 282:10, 282:12, 282:14, 282:16, 282:19, 282:21, 283:1, 283:10, 283:13, 283:15, 283:16, 283:17, 284:7, 284:9, 284:10, 284:12, 284:15, 284:17, 284:21, 285:2, 285:4, 285:5, 285:20, 288:15, 288:17, 289:1, 289:13, 289:15, 289:16, 289:17, 289:18, 290:1, 290:12, 290:19, 290:21, 290:24, 291:17, 291:19, 291:25, 292:2, 292:9, 292:10, 292:18, 293:3, 293:19, 293:24, 294:2, 294:11 <b>the..</b> [1] - 134:8 <b>Theater</b> [2] - 20:8, 20:13 <b>themselves</b> [2] - 7:4, 265:16 <b>therapeutic</b> [1] - 172:17 <b>therapy</b> [2] - 22:17, 22:20 <b>thereafter</b> [1] - 132:13 <b>therefore</b> [7] - 14:15, 212:22, 232:22, 241:17, 279:4, 289:8, 289:11 <b>therein</b> [1] - 114:10 <b>thereto</b> [1] - 243:5 <b>they've</b> [1] - 185:14 <b>thinking</b> [6] - 28:16, 83:24, 83:25, 145:3, 178:9, 206:21 <b>thinks</b> [1] - 76:19 <b>third</b> [13] - 6:22, 63:17, 94:13, 173:11, 176:7, 218:14, 224:3,</p>	<p>237:9, 257:24, 260:9, 260:19, 261:6, 266:10 <b>third-party</b> [4] - 173:11, 260:9, 260:19, 261:6 <b>thoughts</b> [1] - 293:1 <b>thousand</b> [2] - 78:25, 80:5 <b>thousands</b> [3] - 48:3, 78:16, 80:11 <b>three</b> [17] - 6:17, 7:7, 32:9, 64:22, 84:25, 85:2, 85:3, 85:4, 85:5, 117:7, 150:17, 150:21, 159:21, 173:24, 186:16, 221:2, 293:20 <b>three-step</b> [1] - 32:9 <b>threshold</b> [5] - 165:5, 165:6, 184:8, 269:15, 288:17 <b>throw</b> [1] - 83:13 <b>Thursday</b> [7] - 144:9, 145:20, 146:5, 146:8, 146:20, 159:23, 162:20 <b>tickets</b> [1] - 29:2 <b>tie</b> [3] - 88:16, 202:14, 204:9 <b>tied</b> [2] - 285:10 <b>ties</b> [3] - 203:15, 203:17, 211:5 <b>tight</b> [3] - 272:1, 286:22, 290:14 <b>Tillman</b> [3] - 111:3, 234:15, 234:18 <b>tillman</b> [1] - 111:5 <b>timely</b> [2] - 270:6, 293:10 <b>tip</b> [1] - 233:6 <b>title</b> [6] - 59:8, 97:24, 155:23, 191:18, 218:9, 221:6 <b>Title</b> [8] - 220:20, 220:22, 221:3, 221:7, 221:8, 221:9, 221:11, 295:9 <b>Tobin</b> [1] - 3:7 <b>today</b> [20] - 49:16, 76:16, 79:3, 79:6, 108:13, 109:6, 124:10, 129:9, 130:16, 134:4, 136:13, 136:15, 137:20, 183:20, 224:14, 266:20, 273:22, 281:24, 287:21, 292:16 <b>together</b> [7] - 34:3, 82:19, 107:7, 117:13,</p>	<p>204:9, 229:24, 231:1 <b>toiletries</b> [1] - 184:23 <b>token</b> [1] - 167:12 <b>Tommy</b> [3] - 251:12, 255:1, 274:24 <b>TOMMY</b> [1] - 2:5 <b>tomorrow</b> [8] - 262:16, 292:10, 292:15, 292:16, 293:11, 294:14, 294:17, 294:18 <b>tonight</b> [4] - 292:5, 292:13, 294:14 <b>took</b> [10] - 48:3, 54:17, 129:7, 133:13, 136:7, 149:12, 181:8, 206:18, 236:16, 236:20 <b>top</b> [19] - 9:12, 15:13, 18:10, 73:3, 73:19, 73:21, 75:6, 76:10, 76:14, 154:18, 219:25, 223:23, 254:5, 254:8, 254:15, 256:8, 271:21, 276:20, 289:22 <b>topic</b> [2] - 29:25, 186:9 <b>topics</b> [2] - 248:14, 248:16 <b>torn</b> [1] - 48:2 <b>toss</b> [1] - 30:4 <b>total</b> [16] - 9:3, 9:21, 51:6, 75:2, 80:4, 80:6, 80:8, 80:14, 137:5, 163:16, 179:19, 180:11, 183:3, 201:8, 207:25, 220:7 <b>totaled</b> [1] - 203:21 <b>totals</b> [2] - 9:5, 191:12 <b>touch</b> [2] - 190:17, 197:7 <b>touched</b> [1] - 196:8 <b>touches</b> [1] - 185:6 <b>tour</b> [1] - 146:3 <b>toward</b> [1] - 18:10 <b>towards</b> [7] - 25:12, 58:25, 78:21, 99:8, 99:9, 99:10, 186:7 <b>tower</b> [5] - 66:3, 66:8, 78:20, 81:3, 86:15 <b>town</b> [4] - 90:4, 94:21, 186:21, 186:23 <b>track</b> [17] - 23:9, 74:22, 122:21, 122:25, 123:10, 136:19, 136:21, 138:2, 138:6, 138:10,</p>	<p>138:24, 163:13, 190:7, 190:8, 190:9, 208:19 <b>tradeoffs</b> [1] - 68:5 <b>trailer</b> [1] - 115:24 <b>train</b> [1] - 272:25 <b>trained</b> [2] - 90:13, 90:15 <b>trainer</b> [1] - 190:1 <b>training</b> [6] - 50:1, 154:17, 161:4, 161:10, 161:13, 161:22 <b>transcends</b> [1] - 212:12 <b>transcribing</b> [1] - 277:17 <b>TRANSCRIPT</b> [1] - 1:13 <b>transcript</b> [4] - 41:11, 41:24, 295:10, 295:12 <b>transitioning</b> [2] - 89:7, 271:22 <b>transparent</b> [1] - 41:18 <b>transparently</b> [1] - 289:1 <b>transpired</b> [1] - 43:17 <b>transport</b> [2] - 172:16, 184:25 <b>transportation</b> [11] - 55:19, 56:25, 88:16, 103:16, 103:17, 103:18, 103:19, 103:24, 164:3, 184:24, 195:14 <b>traumatic</b> [2] - 161:15, 161:23 <b>travel</b> [2] - 29:17, 79:12 <b>treasury</b> [6] - 235:6, 235:8, 263:24, 264:1, 264:2, 285:3 <b>treat</b> [1] - 214:8 <b>treated</b> [1] - 176:3 <b>Treatment</b> [1] - 88:3 <b>treatment</b> [2] - 9:6, 214:11 <b>trial</b> [6] - 41:15, 79:13, 94:21, 245:19, 293:2, 293:20 <b>TRIAL</b> [2] - 1:13, 1:14 <b>trick</b> [1] - 123:8 <b>tricky</b> [2] - 32:10, 255:15 <b>trigger</b> [1] - 19:1 <b>Trinh</b> [1] - 135:7</p>
---	---	---	---	---

<p><b>TRINH</b> [1] - 135:7  <b>trip</b> [1] - 104:7  <b>triple</b> [2] - 123:6, 211:22  <b>trouble</b> [2] - 252:25, 280:11  <b>true</b> [22] - 48:14, 58:2, 89:4, 109:22, 125:12, 127:21, 128:21, 134:17, 137:18, 170:2, 170:21, 175:12, 176:17, 177:10, 177:18, 178:15, 179:13, 226:6, 226:8, 237:24, 288:4, 295:10  <b>TRUJILLO</b> [1] - 3:3  <b>truly</b> [1] - 118:17  <b>Trump</b> [1] - 38:10  <b>trust</b> [1] - 240:21  <b>Trustees</b> [1] - 130:6  <b>trustees</b> [3] - 98:10, 98:11  <b>truth</b> [3] - 96:18, 96:19  <b>try</b> [15] - 20:17, 30:12, 62:12, 66:1, 68:13, 75:7, 88:14, 154:4, 169:7, 176:19, 196:13, 238:4, 246:12, 261:2, 282:4  <b>trying</b> [13] - 10:5, 75:4, 85:9, 150:7, 199:9, 213:6, 213:19, 241:19, 285:13, 289:23, 290:16, 292:3, 292:4  <b>Tuesday</b> [3] - 144:8, 146:22, 159:23  <b>tuition</b> [10] - 101:16, 101:25, 102:5, 102:10, 104:24, 108:4, 197:3, 197:8, 197:9, 197:12  <b>tune</b> [1] - 66:5  <b>turn</b> [35] - 6:20, 8:19, 8:22, 9:10, 10:18, 12:7, 15:11, 17:24, 27:24, 32:12, 33:10, 39:10, 40:2, 40:5, 46:11, 49:6, 52:16, 52:21, 71:4, 75:12, 76:20, 79:9, 95:7, 171:5, 193:25, 206:11, 208:5, 222:14, 233:11, 253:18, 266:8, 267:9, 269:1, 286:19, 286:23  <b>turned</b> [1] - 43:6  <b>turning</b> [6] - 60:20,</p>	<p>152:22, 218:14, 220:13, 228:6, 260:6  <b>turnover</b> [1] - 77:14  <b>twice</b> [2] - 41:12, 225:4  <b>two</b> [63] - 11:24, 13:25, 34:3, 34:5, 38:2, 38:4, 44:13, 45:2, 45:3, 48:3, 52:22, 54:3, 54:5, 56:15, 58:16, 60:6, 65:23, 66:25, 72:9, 78:15, 81:12, 83:9, 83:10, 84:25, 85:2, 85:3, 85:4, 85:13, 89:3, 89:6, 94:10, 94:13, 105:16, 115:17, 118:2, 132:6, 132:11, 150:14, 150:17, 150:21, 156:16, 157:3, 159:12, 165:4, 171:1, 174:22, 180:4, 186:25, 187:6, 192:18, 195:17, 201:18, 213:21, 219:25, 227:6, 229:6, 240:16, 242:23, 242:25, 260:10, 260:15, 260:20, 261:7  <b>type</b> [1] - 13:21  <b>types</b> [2] - 185:3, 241:8  <b>typically</b> [6] - 16:19, 17:10, 58:3, 84:6, 269:15, 271:4</p>	<p>76:8  <b>uncommon</b> [2] - 118:3, 286:23  <b>under</b> [22] - 9:25, 44:11, 64:19, 64:21, 93:1, 113:10, 195:15, 226:4, 227:2, 232:18, 235:17, 236:8, 236:12, 254:16, 254:21, 256:22, 261:20, 262:5, 265:14, 268:8, 284:10, 284:13  <b>undergo</b> [1] - 48:19  <b>underground</b> [3] - 92:6, 92:7, 93:24  <b>underlying</b> [2] - 53:15, 56:16  <b>underneath</b> [1] - 9:25  <b>understood</b> [4] - 76:18, 82:14, 180:25, 215:4  <b>undertaken</b> [1] - 126:20  <b>unfortunate</b> [1] - 17:25  <b>unhoused</b> [9] - 89:19, 185:20, 240:8, 241:23, 248:19, 272:15, 273:24, 283:24, 287:23  <b>unimpeded</b> [1] - 164:24  <b>unique</b> [1] - 81:8  <b>unit</b> [6] - 66:17, 78:10, 81:21, 271:23, 286:16, 286:19  <b>United</b> [7] - 6:13, 53:18, 53:24, 265:9, 295:7, 295:9, 295:14  <b>UNITED</b> [1] - 1:1  <b>units</b> [30] - 66:9, 80:2, 80:11, 80:12, 80:14, 81:20, 81:24, 82:9, 82:21, 83:15, 83:18, 84:7, 84:15, 84:20, 91:11, 92:9, 92:12, 185:1, 263:1, 264:11, 272:17, 282:24, 284:23, 285:10, 285:15, 285:25, 286:10, 286:24, 290:21  <b>universe</b> [2] - 184:17, 215:14  <b>universities</b> [1] - 67:14  <b>university</b> [1] - 156:16</p>	<p><b>unless</b> [6] - 36:20, 54:24, 66:13, 76:23, 136:8, 288:22  <b>unofficial</b> [1] - 156:21  <b>unquote</b> [1] - 33:22  <b>unreasonable</b> [1] - 19:4  <b>unspent</b> [1] - 239:20  <b>unwilling</b> [5] - 272:14, 272:20, 273:3, 283:23, 286:7  <b>up</b> [9] - 7:14, 10:6, 12:10, 13:23, 15:1, 16:1, 19:17, 20:2, 20:9, 24:4, 33:2, 33:7, 36:1, 38:17, 39:15, 42:24, 44:17, 50:3, 60:14, 62:6, 65:8, 68:3, 68:19, 76:9, 77:20, 77:23, 80:2, 88:9, 89:6, 91:11, 92:15, 92:21, 96:6, 96:8, 105:19, 108:21, 113:12, 129:10, 130:8, 142:14, 145:5, 145:7, 145:17, 163:21, 164:17, 166:19, 171:23, 172:7, 176:7, 179:14, 186:9, 189:16, 189:25, 190:10, 193:11, 202:10, 202:14, 205:23, 205:24, 206:4, 213:4, 214:14, 214:25, 222:24, 228:15, 228:23, 241:4, 244:4, 245:3, 251:12, 253:1, 253:4, 254:3, 255:1, 258:8, 260:15, 265:7, 274:23, 274:25, 275:23, 276:10, 276:15, 277:6, 277:9, 277:22, 282:17, 284:13, 285:22, 286:14, 289:18, 292:2  <b>upcoming</b> [2] - 86:14, 196:18  <b>updated</b> [1] - 171:16  <b>upkeep</b> [7] - 23:25, 63:18, 199:5, 199:21, 199:22, 201:9, 206:20  <b>upper</b> [5] - 101:3, 103:7, 107:4, 152:10  <b>ups</b> [1] - 190:23  <b>upside</b> [1] - 164:20  <b>urban</b> [1] - 241:8  <b>Urban</b> [1] - 108:14  <b>urged</b> [1] - 215:13</p>	<p><b>US</b> [1] - 2:19  <b>usable</b> [1] - 57:21  <b>useful</b> [1] - 105:5  <b>usefulness</b> [1] - 22:20  <b>uses</b> [3] - 119:12, 138:12, 236:7  <b>utilities</b> [5] - 9:8, 64:8, 91:16, 197:14, 208:19  <b>utility</b> [6] - 66:4, 66:5, 66:6, 86:23, 87:15, 87:16  <b>utilization</b> [15] - 268:4, 269:1, 269:16, 269:19, 269:24, 270:2, 270:5, 270:12, 273:11, 287:9, 287:10, 287:13, 288:10, 288:20, 289:3  <b>utilize</b> [3] - 163:16, 289:24, 291:7  <b>utilized</b> [5] - 136:12, 174:17, 175:16, 250:9, 270:10</p>
		<b>U</b>		
		<p><b>U.S</b> [3] - 1:3, 218:4, 221:2  <b>U.S.C</b> [1] - 67:15  <b>UCLA</b> [2] - 6:24, 7:10, 10:14, 30:17, 37:22, 40:2, 40:15, 40:17, 40:24, 42:7, 42:9, 43:10, 44:1, 45:12, 67:14, 145:5, 235:24, 236:3, 236:7, 236:10  <b>UCLA's</b> [4] - 7:8, 46:25, 47:3, 167:8  <b>ultimate</b> [1] - 224:19  <b>ultimately</b> [3] - 13:22, 42:15, 68:23  <b>unable</b> [1] - 92:25  <b>unannounced</b> [1] - 167:6  <b>unclear</b> [1] - 38:20  <b>uncomfortable</b> [1] -</p>	<b>V</b>	

<p>66:20, 67:12, 67:16, 67:17, 68:4, 68:22, 73:5, 77:23, 90:15, 91:7, 92:16, 93:3, 98:4, 98:16, 98:17, 109:18, 109:21, 109:25, 110:9, 110:25, 111:3, 111:9, 113:9, 123:17, 124:20, 125:20, 126:1, 128:15, 128:19, 129:23, 131:2, 131:6, 131:10, 132:24, 134:12, 134:13, 134:14, 134:16, 134:19, 134:20, 134:23, 135:4, 137:16, 137:22, 140:5, 141:5, 141:16, 144:20, 161:7, 161:8, 161:21, 162:1, 162:7, 162:15, 163:20, 164:3, 164:7, 166:20, 166:24, 168:7, 168:18, 168:20, 168:25, 169:12, 169:13, 169:16, 171:11, 173:9, 173:12, 173:13, 173:15, 174:1, 174:6, 174:17, 175:3, 177:16, 178:10, 179:1, 184:18, 185:13, 186:5, 186:21, 187:9, 188:11, 188:24, 190:12, 196:20, 201:5, 204:16, 205:2, 210:7, 214:8, 214:17, 218:20, 218:21, 219:3, 219:11, 221:1, 222:1, 222:4, 222:20, 224:12, 234:14, 234:25, 235:9, 235:11, 235:13, 236:4, 236:16, 237:1, 237:3, 237:11, 237:23, 238:1, 242:4, 243:3, 243:10, 245:10, 249:15, 252:9, 260:9, 260:19, 261:6, 265:10, 267:11, 267:12, 267:20, 267:23, 267:25, 268:1, 268:10, 268:12, 268:14, 268:16, 268:20, 270:6, 270:12, 273:7, 287:4, 290:9, 290:15, 290:16, 291:13</p>	<p><b>VA's</b> [17] - 13:17, 19:2, 31:10, 32:5, 32:21, 35:14, 40:18, 60:24, 62:14, 77:25, 168:21, 172:15, 237:14, 242:6, 243:8, 243:16, 248:21  <b>VA-wide</b> [1] - 65:13  <b>VACAA</b> [1] - 218:20  <b>vacancies</b> [7] - 219:7, 219:14, 219:17, 219:21, 220:4, 222:25, 223:2  <b>vacancy</b> [2] - 90:18, 92:21  <b>vague</b> [2] - 182:19, 239:4  <b>Valentini</b> [4] - 112:23, 112:25, 113:5, 125:14  <b>valuation</b> [4] - 126:20, 128:14, 199:2, 199:4  <b>value</b> [21] - 113:17, 114:4, 125:21, 125:24, 126:2, 126:25, 127:23, 128:12, 128:20, 129:6, 176:8, 176:16, 176:22, 177:2, 178:25, 179:4, 179:17, 179:19, 181:5, 181:8, 201:5  <b>values</b> [1] - 152:3  <b>varies</b> [1] - 237:17  <b>variety</b> [1] - 239:21  <b>various</b> [4] - 8:11, 62:20, 196:25, 287:18  <b>varsity</b> [11] - 116:14, 116:16, 116:23, 116:24, 116:25, 120:25, 121:1, 124:13, 124:14  <b>vary</b> [1] - 104:20  <b>VASH</b> [67] - 69:14, 92:19, 92:23, 93:1, 185:18, 185:23, 245:10, 248:16, 248:18, 249:2, 249:5, 249:12, 250:8, 250:21, 250:24, 251:3, 251:8, 251:22, 255:12, 255:18, 255:20, 256:13, 256:19, 257:5, 257:14, 257:22, 258:2, 258:16, 259:18, 259:22, 261:13, 262:8, 263:1, 265:13, 265:21,</p>	<p>267:10, 267:14, 267:18, 267:19, 268:8, 269:16, 270:2, 270:9, 270:13, 273:10, 273:18, 274:4, 274:6, 275:24, 276:8, 276:11, 276:13, 276:14, 277:8, 277:20, 277:21, 279:15, 284:10, 284:12, 287:8, 287:10, 287:13, 287:15, 288:11, 288:13, 291:1  <b>VBA</b> [1] - 66:22  <b>VCQEA</b> [1] - 218:21  <b>VCRE</b> [16] - 159:4, 184:13, 184:15, 184:17, 184:19, 185:4, 186:1, 186:15, 189:9, 189:13, 189:16, 189:19, 190:10, 191:18, 212:12  <b>Vega</b> [1] - 3:9  <b>vegan</b> [1] - 189:5  <b>vegetarian</b> [1] - 189:6  <b>vehicle</b> [2] - 133:22, 172:4  <b>vehicles</b> [1] - 169:25  <b>ventures</b> [1] - 67:9  <b>verbal</b> [2] - 110:10, 244:2  <b>verify</b> [2] - 189:16, 190:12  <b>Verse</b> [1] - 186:1  <b>version</b> [1] - 32:25  <b>versus</b> [25] - 17:20, 19:24, 29:20, 39:2, 64:1, 68:16, 70:15, 71:12, 78:24, 90:14, 92:17, 92:23, 151:1, 167:13, 169:8, 181:20, 181:24, 182:11, 182:12, 201:6, 232:1, 241:9, 280:12, 284:10  <b>vet</b> [1] - 192:21  <b>veteran</b> [43] - 49:22, 53:20, 56:25, 89:19, 98:22, 159:7, 159:9, 164:22, 165:12, 171:21, 185:3, 185:14, 187:13, 189:14, 189:15, 190:12, 190:13, 190:17, 190:25, 192:23, 196:11, 210:21, 211:6,</p>	<p>211:11, 211:15, 214:4, 214:6, 214:8, 214:14, 214:17, 215:12, 230:18, 237:15, 237:17, 238:17, 266:22, 273:14, 282:1, 282:20, 283:12, 284:4, 291:12  <b>Veteran</b> [2] - 165:14, 251:21  <b>veteran's</b> [1] - 188:19  <b>veteran-access</b> [1] - 189:14  <b>veteran-centric</b> [1] - 53:20  <b>veteran-owned</b> [1] - 49:22  <b>veterans</b> [147] - 19:3, 19:23, 20:21, 21:18, 21:20, 29:1, 31:4, 36:21, 40:17, 42:18, 42:20, 49:22, 49:23, 49:24, 50:17, 55:20, 57:1, 57:14, 57:20, 58:1, 63:25, 66:24, 69:14, 71:4, 71:6, 71:10, 71:12, 72:13, 78:17, 78:24, 89:24, 91:1, 92:1, 93:5, 107:17, 111:15, 112:3, 112:7, 112:9, 117:19, 131:6, 131:10, 137:25, 150:25, 151:2, 151:5, 151:7, 153:3, 153:9, 159:1, 159:5, 162:2, 162:9, 162:11, 162:12, 162:15, 162:19, 163:9, 163:13, 163:16, 164:1, 166:15, 172:16, 175:5, 178:11, 178:14, 181:15, 181:25, 182:5, 182:11, 182:13, 183:8, 184:3, 184:7, 184:18, 184:21, 184:25, 185:20, 185:23, 186:19, 187:3, 187:6, 187:10, 187:14, 187:16, 188:11, 188:12, 188:14, 189:15, 190:8, 190:10, 190:14, 190:23, 191:4, 191:9, 191:11, 191:22, 192:7, 192:13,</p>	<p>192:19, 192:20, 193:1, 195:13, 195:17, 196:14, 196:20, 197:18, 197:20, 205:2, 205:7, 212:21, 213:25, 214:11, 215:3, 215:10, 215:14, 233:7, 237:20, 238:20, 241:23, 245:4, 245:6, 248:20, 248:25, 249:2, 249:5, 249:15, 250:9, 255:18, 255:21, 262:25, 265:2, 265:13, 265:24, 266:14, 272:14, 272:16, 272:17, 273:18, 273:24, 283:4, 283:24, 284:15, 287:16, 287:23  <b>Veterans</b> [29] - 3:7, 3:7, 33:3, 33:13, 34:23, 55:18, 56:23, 56:24, 62:21, 62:23, 69:12, 69:18, 74:15, 132:1, 132:3, 184:8, 184:9, 184:12, 193:9, 218:5, 218:9, 218:10, 218:19, 218:23, 219:14, 222:6, 230:8, 244:16, 262:19  <b>veterans'</b> [2] - 258:3, 265:17  <b>Veterans'</b> [2] - 35:8, 88:11  <b>vets</b> [3] - 188:7, 188:12, 282:7  <b>VHA</b> [18] - 62:10, 63:1, 63:2, 63:6, 64:10, 64:11, 65:2, 67:1, 68:13, 69:16, 74:10, 218:24, 218:25, 219:4, 219:8, 220:6, 222:7, 222:8  <b>VHA's</b> [1] - 236:21  <b>view</b> [10] - 16:13, 26:7, 36:4, 36:21, 36:23, 38:21, 38:22, 57:22, 87:24, 214:5  <b>viewed</b> [2] - 43:9, 89:11  <b>viewing</b> [1] - 7:10  <b>views</b> [1] - 213:21  <b>violate</b> [1] - 54:24  <b>violent</b> [1] - 214:3  <b>virtual</b> [1] - 157:5  <b>virtually</b> [1] - 186:23  <b>visible</b> [1] - 189:20</p>
--	---	--	---	---

<p><b>visited</b> [2] - 29:1, 249:17  <b>visits</b> [1] - 156:22  <b>VISN</b> [16] - 24:7, 62:10, 69:22, 70:1, 70:4, 73:1, 73:25, 74:24, 75:21, 75:22, 76:5, 222:22, 244:9, 244:22, 244:24  <b>VISNs</b> [5] - 73:15, 73:19, 75:20, 76:2, 244:12  <b>voc</b> [1] - 192:5  <b>voice</b> [1] - 269:5  <b>voided</b> [1] - 204:22  <b>volatile</b> [5] - 213:25, 214:4, 214:6, 214:11, 214:18  <b>volatility</b> [1] - 214:13  <b>volleyball</b> [8] - 115:13, 115:20, 119:21, 119:24, 119:25, 120:3, 121:20  <b>voluntary</b> [2] - 267:17, 267:21  <b>volunteer</b> [1] - 29:2  <b>volunteers</b> [1] - 20:16  <b>voucher</b> [14] - 265:22, 265:23, 268:3, 269:1, 270:24, 272:20, 272:23, 273:3, 273:10, 284:8, 286:7, 287:8, 289:9, 290:23  <b>Voucher</b> [1] - 248:8  <b>vouchers</b> [26] - 250:9, 258:4, 263:1, 269:3, 269:10, 269:16, 270:2, 270:9, 270:13, 273:4, 288:4, 288:7, 288:8, 288:13, 288:21, 288:22, 288:25, 289:5, 289:20, 289:21, 289:22, 289:25, 291:7, 291:8, 291:15  <b>vs</b> [1] - 1:8  <b>VSP</b> [1] - 268:14  <b>vulnerable</b> [1] - 215:3</p>	<p>261:13, 261:22, 261:23, 261:24, 262:1, 262:6, 262:10, 262:12, 278:4  <b>walk</b> [15] - 156:7, 164:24, 164:25, 165:4, 165:13, 165:25, 166:1, 166:2, 166:11, 167:18, 168:22, 169:5, 169:8, 172:3, 213:9  <b>walking</b> [1] - 58:25  <b>wall</b> [2] - 96:25, 293:5  <b>walled</b> [1] - 293:6  <b>wants</b> [5] - 32:24, 42:8, 159:7, 204:3, 217:14  <b>War</b> [1] - 192:25  <b>Washington</b> [2] - 2:23, 3:6  <b>watch</b> [1] - 118:8  <b>water</b> [5] - 91:17, 91:21, 91:22, 92:2, 143:8  <b>Watt</b> [6] - 143:11, 143:13, 143:19, 143:21, 152:14  <b>WATT</b> [1] - 143:13  <b>ways</b> [10] - 60:4, 66:23, 78:1, 78:2, 89:3, 132:8, 133:18, 167:5, 196:13, 205:6  <b>wear</b> [5] - 167:15, 170:3, 170:4, 170:8, 189:19  <b>web</b> [1] - 275:7  <b>website</b> [7] - 151:23, 154:1, 155:21, 156:12, 158:7, 158:10, 258:18  <b>websites</b> [1] - 17:20  <b>WEDNESDAY</b> [1] - 6:1  <b>Wednesday</b> [14] - 1:14, 144:11, 146:23, 147:2, 147:4, 147:5, 147:19, 147:25, 159:21, 159:25, 165:9, 170:15, 183:21, 215:24  <b>weed</b> [1] - 20:16  <b>week</b> [12] - 79:13, 94:21, 117:6, 117:14, 150:15, 150:23, 151:13, 159:20, 215:24, 267:24, 292:24, 293:14  <b>weekdays</b> [1] - 198:2  <b>weekends</b> [3] -</p>	<p>172:18, 188:18, 198:3  <b>weekly</b> [3] - 151:12, 191:21, 191:25  <b>weeks</b> [5] - 149:1, 150:23, 151:4, 151:5, 186:10  <b>weight</b> [1] - 153:11  <b>WEINTRAUB</b> [1] - 3:3  <b>Welcome</b> [3] - 165:14, 166:5, 189:13  <b>welcome</b> [4] - 6:17, 184:10, 185:19, 189:14  <b>west</b> [4] - 75:17, 106:19, 107:8, 107:9  <b>West</b> [73] - 3:4, 6:22, 7:22, 8:10, 10:9, 13:1, 13:13, 13:15, 13:16, 13:18, 23:6, 30:6, 30:8, 30:14, 30:17, 30:21, 31:21, 32:4, 32:20, 33:13, 33:20, 34:14, 35:19, 37:21, 54:22, 58:10, 58:13, 77:10, 80:23, 81:11, 81:17, 89:20, 89:25, 129:23, 131:2, 132:24, 133:11, 134:12, 146:15, 147:19, 205:2, 215:2, 219:3, 219:11, 225:5, 226:11, 234:14, 235:7, 235:11, 235:12, 235:21, 238:1, 238:15, 238:21, 243:4, 249:24, 250:5, 250:10, 250:11, 250:13, 251:10, 265:18, 266:24, 267:7, 267:25, 270:10, 272:5, 272:8, 273:19, 273:25, 287:16, 287:24  <b>WEST</b> [1] - 1:22  <b>WG</b> [1] - 10:21  <b>wheel</b> [1] - 172:3  <b>wheelchair</b> [2] - 170:25, 171:3  <b>wheelchairs</b> [1] - 195:18  <b>whereas</b> [1] - 231:17  <b>whichever</b> [2] - 166:9, 189:24  <b>White</b> [2] - 14:16, 36:12  <b>whole</b> [11] - 83:22, 91:22, 92:6, 96:18, 99:15, 181:7, 184:17,</p>	<p>210:17, 211:24, 215:14, 259:13  <b>wide</b> [3] - 65:13, 94:7, 278:22  <b>Widow</b> [1] - 18:1  <b>Wilkie</b> [1] - 134:24  <b>WILKIE</b> [1] - 134:24  <b>Wilkie's</b> [1] - 135:1  <b>willing</b> [7] - 58:23, 192:12, 216:2, 245:10, 284:1, 286:13, 290:22  <b>willingness</b> [3] - 290:17, 290:19, 290:24  <b>Wilshire</b> [4] - 85:21, 85:22, 86:1, 87:21  <b>windows</b> [1] - 23:25  <b>wirings</b> [1] - 91:17  <b>wish</b> [1] - 167:5  <b>withdraw</b> [3] - 261:23, 261:24, 283:18  <b>WITNESS</b> [272] - 4:1, 4:2, 6:9, 13:14, 13:22, 14:5, 14:9, 14:12, 14:17, 15:6, 16:3, 20:12, 20:15, 23:12, 24:16, 24:24, 25:6, 26:12, 31:13, 31:23, 32:7, 33:15, 36:14, 36:16, 37:8, 38:8, 38:12, 38:14, 40:9, 47:19, 47:22, 47:25, 48:4, 48:7, 49:3, 50:19, 50:24, 51:5, 65:5, 65:8, 70:1, 70:3, 70:6, 70:9, 70:12, 70:20, 71:11, 71:14, 71:18, 71:20, 71:23, 71:25, 72:2, 72:5, 72:7, 72:10, 72:14, 72:16, 72:21, 72:25, 73:7, 73:11, 73:15, 74:14, 75:13, 75:16, 75:18, 75:24, 76:4, 76:25, 82:5, 82:10, 82:12, 82:17, 82:23, 83:2, 83:8, 83:12, 83:19, 83:23, 84:5, 84:14, 85:2, 85:4, 85:7, 87:12, 87:15, 94:11, 95:8, 95:24, 96:3, 96:20, 96:24, 97:2, 97:4, 100:18, 108:7, 111:6, 128:4, 128:6, 131:16, 140:23, 141:1, 141:3, 142:11, 144:23, 144:25, 145:9,</p>	<p>145:21, 145:23, 146:5, 146:7, 146:10, 146:12, 146:14, 146:20, 146:24, 147:9, 147:12, 147:16, 147:20, 148:14, 157:17, 157:20, 157:25, 164:14, 164:21, 165:3, 165:11, 165:19, 165:22, 165:24, 166:4, 166:15, 168:13, 168:15, 169:20, 171:1, 172:2, 172:4, 193:15, 193:21, 194:18, 194:20, 198:21, 198:25, 199:12, 199:20, 200:13, 200:15, 200:18, 201:2, 201:11, 201:14, 203:9, 203:25, 204:6, 204:11, 205:14, 206:5, 206:10, 206:15, 206:17, 206:24, 207:2, 207:4, 207:8, 207:15, 207:20, 208:1, 208:6, 208:8, 208:11, 208:13, 208:16, 208:22, 208:24, 209:3, 209:5, 209:7, 209:9, 209:11, 209:15, 209:19, 209:21, 209:25, 210:4, 210:6, 210:12, 210:18, 211:4, 211:17, 211:19, 211:23, 212:1, 212:7, 212:10, 213:2, 213:11, 214:21, 215:1, 215:9, 233:20, 233:22, 234:2, 239:5, 242:9, 242:19, 246:3, 246:6, 246:23, 247:8, 247:10, 247:12, 247:15, 247:17, 247:19, 247:21, 249:4, 250:24, 263:12, 275:11, 276:7, 276:13, 276:20, 276:23, 276:25, 277:3, 277:20, 278:2, 278:4, 278:13, 278:17, 278:25, 279:3, 279:7, 279:11, 279:18, 279:22, 280:1, 280:3, 280:8, 280:14, 280:17, 280:20,</p>
<b>W</b>				
<p><b>wait</b> [3] - 72:6  <b>waiting</b> [1] - 95:17  <b>waive</b> [1] - 257:13  <b>waiver</b> [15] - 257:20, 258:5, 259:6, 259:17, 259:20, 259:22,</p>				



<p>280:22, 280:25, 281:3, 281:7, 281:16, 281:19, 281:22, 281:25, 282:2, 282:8, 282:12, 282:16, 282:21, 283:13, 283:16, 284:9, 284:12, 284:17, 285:2, 285:5, 288:17, 289:13, 289:16, 289:18, 290:12, 290:21, 292:9 <b>witness</b> [31] - 31:10, 33:7, 45:7, 58:21, 58:22, 94:18, 94:20, 95:16, 96:2, 96:6, 96:13, 96:22, 98:15, 98:19, 149:24, 150:2, 151:17, 155:12, 157:16, 178:19, 201:25, 202:2, 215:18, 216:1, 216:11, 216:23, 241:12, 246:8, 246:19, 248:13, 281:11 <b>witnesses</b> [3] - 201:22, 293:9, 293:21 <b>wives'</b> [1] - 48:7 <b>WLA</b> [2] - 44:18, 77:24 <b>women's</b> [1] - 69:8 <b>wondering</b> [1] - 184:6 <b>word</b> [6] - 19:6, 36:10, 82:15, 124:1, 143:1, 231:24 <b>wording</b> [1] - 225:10 <b>words</b> [14] - 14:16, 36:12, 41:25, 42:1, 50:3, 75:14, 84:1, 88:24, 115:17, 210:15, 228:22, 235:11, 239:15, 280:11 <b>workers</b> [4] - 69:14, 92:23, 93:1, 245:10 <b>workout</b> [2] - 165:25, 190:2 <b>works</b> [8] - 16:22, 173:8, 198:12, 237:15, 268:5, 282:22, 293:18 <b>world</b> [1] - 60:20 <b>World</b> [1] - 192:25 <b>worried</b> [3] - 211:7, 212:18, 212:19 <b>worry</b> [4] - 31:15, 39:21, 204:10, 279:25 <b>worse</b> [3] - 21:2,</p>	<p>21:3, 21:14 <b>worth</b> [3] - 65:1, 239:14, 239:17 <b>wrap</b> [1] - 77:20 <b>wristband</b> [1] - 189:19 <b>write</b> [2] - 82:3, 211:8 <b>writing</b> [3] - 192:1, 212:20, 228:19 <b>written</b> [2] - 39:21, 251:20 <b>wrote</b> [2] - 41:24, 251:20</p>	<p>118:15, 124:13, 130:21, 132:11, 155:1, 174:8, 174:14, 174:22, 192:5, 232:1, 232:2, 240:16, 243:17 <b>yesterday</b> [16] - 9:9, 11:22, 13:5, 19:22, 23:17, 24:13, 41:17, 60:23, 61:2, 61:25, 69:13, 69:17, 79:4, 79:16, 92:15, 217:1 <b>yesterday's</b> [1] - 40:23 <b>yoga</b> [1] - 191:21 <b>YOSHIMARU</b> [2] - 4:7, 97:5 <b>Yoshimaru</b> [8] - 96:15, 97:2, 97:13, 97:18, 101:10, 125:25, 150:10, 183:19 <b>yoshimaru</b> [2] - 101:14, 101:15 <b>young</b> [3] - 145:15, 151:2, 192:24 <b>yourself</b> [2] - 40:13, 80:18</p>
<b>Y</b>		
	<p><b>Y-O-S-H-I-M-A-R-U</b> [1] - 97:4 <b>yard</b> [1] - 63:21 <b>Year</b> [1] - 159:15 <b>year</b> [80] - 9:24, 13:8, 23:21, 24:2, 24:4, 24:10, 24:11, 24:15, 24:18, 24:21, 28:23, 35:22, 35:25, 38:1, 38:3, 51:2, 51:3, 51:4, 51:5, 61:4, 61:10, 61:11, 61:18, 62:17, 65:23, 66:2, 66:21, 68:9, 78:4, 78:6, 78:21, 91:18, 99:4, 99:5, 99:23, 102:2, 102:8, 102:23, 103:1, 103:9, 103:10, 105:20, 110:6, 118:22, 119:2, 122:12, 129:6, 140:12, 144:8, 144:16, 149:3, 151:3, 156:16, 159:12, 159:13, 160:1, 162:20, 163:8, 173:18, 173:20, 173:24, 173:25, 174:11, 174:14, 174:20, 179:18, 186:17, 186:25, 218:7, 218:12, 220:11, 235:20, 275:12, 288:5, 288:8, 288:13, 288:19, 288:21 <b>year's</b> [4] - 24:19, 29:22, 40:8, 61:12 <b>years</b> [26] - 38:3, 38:7, 51:6, 51:7, 61:14, 65:25, 66:13, 66:25, 78:4, 78:6, 89:6, 112:16, 116:13,</p>	
<b>Z</b>		
		<p><b>zero</b> [1] - 68:13 <b>ZIP</b> [8] - 271:7, 275:15, 275:19, 276:1, 278:9, 281:7, 282:8 <b>Zoom</b> [1] - 157:5</p>