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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, ET AL.,

Plaintiffs,

vs.

SYSCO CORPORATION, ET AL.

Defendants.

CA No. 15-256
Washington, DC
May 7, 2015
1:30 P.M.

OPEN AND SEALED
PORTIONS

DAY 3, AFTERNOON SESSION
TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT COURT JUDGE

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I N D E X

<u>WITNESS</u>	<u>PAGE</u>
<u>For the Plaintiffs:</u>	
<u>GEORGE HOLM (Resumed)</u>	
Cross-Examination by Mr. Parker	809
<u>DR. MARK ISRAEL</u>	
Direct Examination by Mr. Mohr	900

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P R O C E E D I N G S

THE COURT: All right. Just to make sure that we're in closed session, is everybody in the courtroom either affiliated with the party or the witness or the lawyers for the parties or the witness?

(No response.)

THE COURT: Okay. Mr. Parker, I know you just got started, but again, I'd just ask you to confine this portion of your cross to the in-camera. I understand why you started where you started, but I just --

MR. PARKER: I worked on it over the -- over the -- and I think I can finish up where I am, and then I got some paying clients who really want to be in here.

THE COURT: I bet they do, that's a good incentive.

MR. PARKER: I'm motivated, Your Honor.

THE COURT: That's good incentive.

MR. PARKER: Our incentives are in line.

MR. WEISSMAN: I don't want to overcomplicate things, but some of the stuff that -- some of the material on redirect is going to be really sensitive to the witness, and I don't want to overcomplicate things, but I just want to alert the Court to that.

THE COURT: Well, what if we -- I don't want to -- we'll just -- we'll have to deal with this. Unless, Mr. Parker, you think you can literally on the fly do the

1 non-in-camera part now, that way we can do back-to-back closed
2 sessions with the end of your cross-examination and the start
3 of your redirect.

4 MR. PARKER: That isn't what I had in mind, but I
5 think I can do it on the fly, but you've got to realize I may
6 be confused every once in awhile.

7 THE COURT: I understand.

8 MR. PARKER: I will do it, Judge.

9 THE COURT: All right, okay. Well, let's do that.

10 MR. PARKER: We will do that.

11 THE COURT: Let's do that, and I apologize, I
12 should have thought that through over the lunch break.

13 Mr. Parker, I really appreciate --

14 MR. PARKER: No, I'll --

15 THE COURT: All right. So let's go ahead, we'll
16 open the courtroom, and Mr. Parker, you'll let me know when we
17 need to go back into in-camera session.

18 MR. PARKER: Yes.

19 THE COURT: Thank you. So this portion of the
20 proceedings will be public.

21 MR. PARKER: Should I wait for the folks to come in
22 here or what do you --

23 THE COURT: Well, you may, if you want to wait for
24 your clients to come in, sure.

25 MR. PARKER: It's important to me, Judge.

1 (Spectators allowed back in the courtroom.)

2 THE COURT: All right, Mr. Parker, why don't you go
3 ahead and proceed.

4 MR. PARKER: All right. Your Honor, you can see
5 how nonconfidential this is.

6 Thereupon,

7 GEORGE HOLM, resumed the stand,
8 the witness, having been previously sworn, was examined and
9 testified as follows:

10 CROSS-EXAMINATION (Cont'd)

11 BY MR. PARKER:

12 Q. Mr. Holm, I had a very fine ham and cheese on rye, I'll
13 link this up, Your Honor, in the cafeteria a few minutes ago.
14 PFG have anything to do with that?

15 A. I saw several of our labels in there, yes.

16 Q. And what distribution center would you serve the
17 courthouse in Washington, D.C.?

18 A. It would be Carroll County, which is just outside
19 Baltimore.

20 Q. All right. And there was one area, one town I forgot
21 this morning, and that's Albuquerque, can you explain to the
22 Court how you would intend to serve Albuquerque, New Mexico
23 after you got the divested assets?

24 A. Yeah. First of all, today we have business in
25 Albuquerque that we do out of Denver, which is Roma business,

1 which is pizza, and we do Hispanic product there. And we do
2 Vistar as well into Albuquerque.

3 We shuttle five days a week and deliver five days
4 a week into Albuquerque from our Roma facility. Our top sales
5 person in that company, his name is Mark Gallagos, actually
6 lives in Albuquerque and all his customers are in Albuquerque.

7 When we look at that market, we would always like
8 to have a distribution center there at some point, but I
9 wouldn't see that as a distribution center that we would do
10 any significant national broadline business out of because I
11 don't think from an inbound standpoint, when I think there's,
12 I don't know, a million and a half or so people in that state,
13 I don't -- I don't see us utilizing the facility there for
14 that type of account.

15 Q. All right. Sir, does PFG today do business in
16 southwest Virginia, by that I mean Roanoke, Roanoke,
17 Blackburg -- Blacksburg, Virginia Tech, Hokie country, do you
18 serve that area?

19 A. We service that area from Richmond, Virginia. And we
20 also service part of the area from Hickory, North Carolina.

21 Q. How far is it from Richmond to Blacksburg, Virginia?

22 A. You know, I really don't know. A hundred miles.

23 Q. A hundred miles or so. All right.

24 A. That's a guesstimate.

25 Q. Do you do business, sir, in Charleston and Columbia,

1 South Carolina?

2 A. Yes.

3 Q. Where do you service them from?

4 A. Florence, South Carolina.

5 Q. All right. You have a distribution center there?

6 A. Yes.

7 Q. Broadline?

8 A. Yes.

9 Q. How's it doing?

10 A. It's doing very well. It's our -- actually our top
11 growth company today. Forty-one percent growth through 44
12 weeks of the fiscal year.

13 Q. And those sales are principally or heavily in
14 Charleston and Columbia?

15 A. And we go from Myrtle Beach to Savannah there as well.

16 Q. All right. Hired any salesmen recently in that area?

17 A. We've hired several.

18 Q. From where?

19 A. From both US and Sysco and other places, too, we've
20 been adding salespeople there at a fairly fast rate. But the
21 primary source for our salespeople there have been Sysco and
22 US.

23 Q. And do the new sales in woman -- men and women from
24 time to time bring their customers from their previous
25 employer?

1 A. They've done a good job with that.

2 Q. All right. Raleigh, North Carolina, you do business
3 there?

4 A. We do some business out of Florence, South Carolina, we
5 do some out of Hickory, North Carolina, and then we have
6 accounts that we go in from Richmond.

7 Q. From Richmond, Virginia?

8 A. Yes.

9 Q. All right. I want to talk about the negotiation of the
10 divestiture package and the relevant documents, sir.

11 A. Okay.

12 Q. Do you have that in mind? All right.

13 So, as we discussed this morning, you had been
14 preparing for these negotiations starting in the winter or the
15 spring of 2014?

16 A. Yes, the month -- probably late December.

17 Q. And you had an idea of what you would need to compete
18 effectively?

19 A. And that would be 2013.

20 Q. Yes, sir.

21 A. Okay.

22 Q. And you would have what you needed -- and you had in
23 mind what you needed to be competitive; am I right?

24 A. Correct.

25 Q. And so when you got the call from Mr. DeLaney, I

1 believe you said it was September; am I correct?

2 A. That's correct.

3 Q. 2014? You were ready to begin discussions; am I right?

4 A. Yes.

5 Q. And who was your negotiating team, sir?

6 A. I was in most meetings. Jim Hope was in all of the
7 meetings. Mike Miller, general counsel, was in all the
8 meetings. A little bit with Blackstone people, Mitchell
9 Habeeb, who is the ex-chief technology officer of G.E. and the
10 chief operating of Nielson, was there on kind of behalf of
11 Blackstone, he's now a consultant. And he's handling the IT
12 type function for us. Bruce McEvoy from Blackstone was in
13 some of the meetings.

14 And then our, I guess I would call him our
15 functional experts in IT, HR, procurement, sales, shared
16 services, they were all in attendance when it was appropriate
17 to have them there.

18 Q. And over what period of time did those negotiations
19 take place?

20 A. The TSA negotiations, I would -- I would say they
21 started, like I said, I'm not doing too good with dates here
22 today. Shortly after, you know, the deal was announced, very
23 shortly after. So it would have been January and February --
24 wait. Shortly after it was -- we kind of announced it
25 internally. You know, it was when we started the

1 negotiations, but, and we met with them several times, you
2 know, 20 times, maybe more than that.

3 Q. Starting in late September or -- but basically over the
4 fall of 2014?

5 A. And into the winter.

6 Q. Tell me what the TSA is?

7 A. It's a transition service agreement. What we did with
8 that is we made sure that the functions that were done at the
9 OpCo level, all the assets at the OpCo level, all the people
10 at the OpCo level, that we had all those things in place, that
11 we had the IT in place, and that we also had the shared
12 services.

13 Q. I'm going to go to some documents, I'm going to have --
14 MR. PARKER: Please pass those out, please, thank
15 you.

16 BY MR. PARKER:

17 Q. And turn, if you would, to tab one. And this is a
18 document that I will now mark as DX 6100, besting Steve by a
19 hundred points.

20 MR. PARKER: And I will represent to the Court that
21 the Asset Purchase Agreement is DX 00064, and that Transition
22 Services Agreement is DX 1382.

23 BY MR. PARKER:

24 Q. Sir, what does this chart depict?

25 A. It's, I would say the highlights of the APA and the

1 highlights of the TSA.

2 Q. Why don't we talk about the TSA. You say all systems
3 in technology clone of existing USF operating system. Do you
4 obtain that in the course of this negotiation?

5 A. Yes, and we have use of it for a ten-year period of
6 time. Up to a ten-year period of time.

7 Q. There was a gentleman here, a customer saying he just
8 loves this USF system where you can load contracts in. Do you
9 have that, sir?

10 A. We will have that as part of this TSA.

11 THE COURT: I'm sorry, can I ask, the system, will
12 that be available for all of your customers or just for the
13 customers that you acquire through the divestiture?

14 THE WITNESS: Just for the OpCos that we acquire
15 through it, yes.

16 THE COURT: -- apply to your existing --

17 THE WITNESS: Yes. So it would not, and it
18 would -- but it would imply to any customers that we added
19 into that distribution center.

20 THE COURT: Okay.

21 BY MR. PARKER:

22 Q. All right. Complete access to US Foods private label
23 products for up to three years for 11 OpCo. Do you see that,
24 sir?

25 A. Yes.

1 Q. Can you please describe that or describe the
2 significance of that, sir?

3 A. Yeah. Well, it's any product that is packed in an
4 exclusive brand that only US Foods today can sell. And we
5 will have the ability to sell all those items into that
6 marketplace for a three-year period of time.

7 Q. And you negotiated for a contractual privilege
8 provision covering that?

9 A. Yes.

10 Q. And you obtained that?

11 A. Yes.

12 Q. You're satisfied?

13 A. Yes, very.

14 Q. All right. Third one says earned income arrangements
15 with food manufacturers for 11 OpCos in existence at closing
16 for up to three years. Can you please describe that, sir?

17 A. That would be rebates that will come back from
18 suppliers or there would be some suppliers in there that they
19 purchased the product at a net price. They handle all the
20 marketing for the manufacturer, in some cases the sales
21 representation forum.

22 And therefore, they kind of build up the price of
23 that product from that cost and they use a typical delivered
24 price into their distribution center for that product, and the
25 difference between what it sold into that distribution center

1 and their net cost is their earned income, which we would then
2 recover as well the same as they do.

3 Q. And the importance of that is what?

4 A. So that we don't see a margin erosion as we pick up
5 these assets.

6 Q. And you negotiated for a provision covering that with
7 Sysco and USF?

8 A. For a three-year period, yes.

9 Q. And you're satisfied with that, sir?

10 A. Yes.

11 Q. All right. Turning to the --

12 THE COURT: I'm sorry to interrupt. I want to make
13 sure I understand that.

14 How does that work, for example, if there's a
15 national supply contract to supply chicken, for example?

16 THE WITNESS: Okay.

17 THE COURT: How does that work, do you then get
18 sort of the 21 percent or the percentage that's sold to those
19 OpCos over the life of the three years?

20 THE WITNESS: This would be activity based. So it
21 would be what we purchase. We get the earned income on that
22 purchase, and there's actually a daily feed with that so we
23 can see all the time exactly what we're getting.

24 THE COURT: I see. So it's realtime.

25 THE WITNESS: It's realtime.

1 THE COURT: Understood. All right.

2 Thanks, Mr. Parker.

3 MR. PARKER: All set, okay.

4 BY MR. PARKER:

5 Q. All right. Turning to the Asset Purchase Agreement.

6 Does this on the left here sort of summarize what you think

7 are the key parts of that agreement, sir?

8 A. Yes.

9 Q. So you got 11 distribution centers comprising
10 3.2 million square feet, correct?

11 A. Correct.

12 Q. And along that, you got trucks?

13 A. Yeah, a little over a thousand trucks.

14 Q. Working capital?

15 A. Yes.

16 Q. Please describe the people you're getting along with
17 these assets?

18 A. Okay. It's everybody that works at the OpCo.

19 Q. Everybody?

20 A. Yeah there's 4400 approximate people there. We get
21 regional leadership, we'll have four national salespeople --
22 four regional leadership, that's the different functions, it's
23 like an HR person, a procurement person, an operations person.
24 And then national sales, we'll get 14 people. National sales,
25 market basket and credit will get ten people.

1 Corporate function will get 23 people that are in
2 IT, and because of the critical nature of the IT, we have a
3 non-compete that goes both ways where we won't take their
4 people and they won't take our people. We get 19
5 merchandising people and 46 people in their shared services
6 office. And then over a hundred national account experts and
7 66 healthcare associates that are at the 11 distribution
8 centers.

9 Q. Customers. You had all customers at the distribution
10 centers?

11 A. Yes.

12 Q. There was some talk today from Mr. Weissman about
13 contractual consents; am I right?

14 A. Uh-huh.

15 Q. Is there any way you could possibly get contractual
16 consents before you actually own the distribution centers?

17 MR. WEISSMAN: Objection, Your Honor, that's a
18 legal conclusion.

19 MR. PARKER: He said he didn't have --

20 THE COURT: I'll allow him to answer that question.
21 I understand he's not --

22 BY MR. PARKER:

23 Q. As a business -- I'm sorry. As a business --

24 THE COURT: I understand he's not being asked a
25 legal question.

1 MR. PARKER: No, I'm not.

2 BY MR. PARKER:

3 Q. As a business person, would you expect to have those
4 consents before you actually owned the assets?

5 A. No, I would not. That's not something that we can
6 consider critically important.

7 Q. And do you have -- well, what's your confidence level
8 that you're going to be able to attract these key customers
9 who are already customers at those OpCos?

10 A. I'll go back to the fact that we're the incumbent, and
11 that means a great deal in the business. So for them to go to
12 somebody other than us, and that would include the acquiring
13 company, they would have -- they would experience a different
14 salesperson, a different driver, a different route, different
15 brands, if they're preference is to use private brands. A
16 different IT system, a different order entry system.

17 It's just a whole lot for a customer to go
18 through. So it gives us an opportunity to get in there,
19 develop a relationship. If we already have one, strengthen
20 that relationship, and we're very confident that we're going
21 to keep that business.

22 Q. Please describe the non-solicits, the two bottom dots
23 that you have with USF and Sysco, please?

24 A. Well, we'll have a 12 month non-solicitation agreement
25 for the PFG employees, for the ones that become PFG employees.

1 Q. Yes, sir.

2 A. And we'll also have a one-year non-compete for
3 salespeople and others as well, but primarily salespeople.

4 Q. Are you satisfied with the terms --

5 A. Very.

6 Q. -- you were able to obtain from Sysco and US Foods?

7 A. Yes.

8 Q. Okay. Let's talk about -- very important to talk about
9 from the customer perspective? And it's possible to lose
10 customers in a transition; am I right?

11 A. Yes.

12 Q. And you're trying to make the transition seamless; am I
13 right?

14 A. That's correct.

15 Q. All right. Can you please turn to tab six, please, in
16 the book that you have up there, please. Thank you.

17 All right. So the first -- please describe what
18 this first chart is, first demonstrative?

19 A. Yeah, it's a visual that shows where that warehouse is
20 located, an assortment of the private brands that today are
21 marketed from that distribution center. The personnel, the US
22 Foods' trucks, the routing, and the ordering system or order
23 entry system, and just kind of highlights what those six
24 things are today.

25 Q. And you picked those six things because they'd all be

1 important to customers?

2 A. Yes.

3 Q. Customers want to make sure that the location from
4 where their product is coming from is the same or at least
5 they know what it is; am I right?

6 A. Right.

7 Q. And the customer wants to be able to access the private
8 brands?

9 A. Correct.

10 Q. And the customers generally, hopefully like the people
11 they've been dealing with and want to keep dealing with them?

12 A. Yes.

13 Q. Same trucks?

14 A. Same trucks.

15 Q. Driving the same routes?

16 A. Yes.

17 Q. Now, ordering system is particularly important because
18 your customers are dialing in orders all the time, right?

19 A. Yes. Or they're transmitting them over the Internet.
20 There's all kind of ways people order, but.

21 Q. All right. So turn to the next chart where everything
22 is in red. And please describe the first box on the location,
23 you're going to have the same location?

24 A. Same location.

25 Q. And how about the private brands?

1 A. Same brands.

2 Q. Three years?

3 A. Three years.

4 Q. And after three years you're going to transition them
5 to the PFG private brands?

6 A. Yes.

7 Q. Three years enough time for you?

8 A. More than enough.

9 Q. How long do you think it would take you to make the
10 transition?

11 A. I think that that's going to be somewhat fluid based on
12 the people that we have involved and how satisfied they get
13 that we're putting the right quality levels and all of that.
14 I don't see us touching anything unless it's exactly the same
15 product for a year. We're not going to take any risk with
16 this at all.

17 Q. Then do a gradual changeover?

18 A. Yes.

19 Q. All right. So the customer is going to be able to deal
20 with the --

21 A. Let me go back to that.

22 Q. I'm sorry, go ahead.

23 A. Because it did come up earlier today. It's not what I
24 would call a gradual changeover because we are going to make
25 sure that when we change the brand, that we have the exact

1 same product, and the customers are going continually tell
2 them that. And where we do, because I envision us down the
3 road, there's some things that we will change that will make
4 sure that we communicate that change, and if the customer
5 wants a cutting, we will go in and cut the product. A cutting
6 would be comparing one versus the other. Sometimes it's not
7 as simple as just looking at the two side-by-side, it could be
8 an ingredient, so we want to make sure they're preparing their
9 product with it.

10 Q. People, so if somebody is dealing with the gentleman in
11 the picture today, they will be dealing with the same
12 gentleman after the close of the deal?

13 A. Correct.

14 Q. Same trucks?

15 A. Yes, and I can't remember the exact timeframe that we
16 have, but we won't even change the logo on the truck until we
17 have to, and I'm sorry I can't remember when that is. But
18 we'll continue to run them as US Foods' trucks.

19 Q. It will still say USF?

20 A. Yes.

21 Q. All right. And you got the rights to do that under the
22 contract?

23 A. Yes, I'm sorry, but I forget when that expires.

24 Q. All right. And they're going to be driving the same
25 routes to get from point A to point B?

1 A. Right, and routing is very important, delivery times
2 are important to a customer.

3 Q. And talk to us about the ordering system, you know, the
4 customer, say, on Monday is ordering from USF and on Tuesday
5 is ordering from you, what's that experience --

6 A. It will be the same exact system, whether they are
7 giving their order to a salesperson, they're going to give it
8 to the same sales person. If they're using their mobile order
9 entry system, they'll be using that. If they transmit it over
10 the Internet to them, that's exactly how they'll be
11 transmitting the order, and for that matter if they fax it or
12 if they phone it in, it will be to the same fax number and
13 they'll be phoning the order in to the same person.

14 Q. Now, there's been points raised by Steve Weissman about
15 splitting the business. So, say, on Monday there are USF
16 customer all over the country, and on Tuesday they're half USF
17 and half PFG, right? That's going to happen; am I right?

18 A. It will not happen initially, that's -- that's -- we
19 made sure it --

20 Q. That's what I want -- what I want to talk about is how
21 you're dealing with that circumstance?

22 A. We are going to run the company with the same people
23 doing the same things they always did. We have no intentions
24 of touching that for a significant period of time. At least a
25 year.

1 Q. And you and your sales team are going to make efforts
2 to retain these customers?

3 A. That's right.

4 Q. From day one. All right.

5 Some things that I think this record has needed
6 for a period of time is the term "national customer." And
7 you've used that term in documents and in your testimony.
8 What do you mean when you say "national customer," sir?

9 A. Well, what we internally -- in our internal reporting,
10 as far as sales results, we have three different categories of
11 customers. We have what we call, for some reason it's called
12 pure street, but I guess it's -- it would be an independent
13 operator, and as soon as they hit five units or restaurants or
14 nursing homes or whatever, then we start to track that as a
15 regional.

16 And then national account, the way we use it
17 internally, not always the way we present it externally where
18 people might have a different way of looking at it, a national
19 account to us is an account that is managed by a person in our
20 national account department who reports in to Troy Curtis,
21 who's our senior VP of sales. So that's what we -- that's how
22 we account for it.

23 Now, because we always seem to have exceptions to
24 everything, we have a significant account called Zaxby's,
25 which is actually handled from a sales standpoint at a

1 distribution location, but we register that as in our sales
2 growth into national because we supply all of them. They like
3 the sales representation they have now, but we don't want to
4 distort our growth in regional because they are growing so
5 fast. So that's how we would look at it.

6 Q. You were at Sysco for how many years?

7 A. Eighteen.

8 Q. Eighteen years, and you're familiar with Sysco's, what
9 they call corporate multi-unit accounts?

10 A. I'm very familiar with what it was 14 years ago, and I
11 understand that their definition really has not changed, so
12 I'm assuming that I got good information there that has not
13 changed.

14 Q. And would you say that's similar to the way you have it
15 set up at PFG?

16 A. Yes, it would be where the sales contact is. So they
17 may have something that could be perceived in some definitions
18 at the national account because everywhere in the country, and
19 they only have it in one region, but it may be handled by a
20 national account person so they would register that as a
21 corporate multi-unit account.

22 They may have an account that they supply around
23 the country, but the relationship may be a local relationship
24 and handled locally at each OpCo, so that might be a local
25 contract business or a territory program or a territory

1 street. They have one more definition than we do.

2 Q. And somebody who, say, operates three or four locations
3 in the midwest could be called a national account at PFG; am I
4 right?

5 A. If it's -- if the sales representation is someone that
6 works out of our corporate office, it could be.

7 Q. And you would call that a national account internally?

8 A. We could call it internally, yes.

9 Q. All right. And the same, at least in your experience
10 when you were at Sysco, the same would be true there as well?

11 A. Yes.

12 Q. All right. Now, when you in your declaration that you
13 supplied to the FTC were talking about national customers.

14 A. Uh-huh.

15 Q. What was it that you had in mind, sir?

16 A. Well, those eight large ones that are in healthcare and
17 contract feeding and hospitality, and a large restaurant chain
18 that would have a SKU base, which wouldn't fit, by SKU base, I
19 mean number of items that wouldn't fit into a systems or a
20 customized type environment.

21 And then you have some personal preference where,
22 you know, some -- some may be in broadline that actually may
23 be to me personally fits in a customized environment, but that
24 was the main thing, that bulk of large customers.

25 Q. All right. And the -- you said the eight big ones

1 would be, Compass is one of them?

2 A. Yes.

3 Q. Aramark?

4 A. Yes.

5 Q. Sodexo?

6 A. Correct.

7 Q. Premier?

8 A. Yes.

9 Q. Novation.

10 A. Yes.

11 Q. Avendra?

12 A. Yes.

13 Q. Hilton?

14 A. Yes.

15 Q. Star Wood?

16 A. Yes.

17 Q. That's the big eight?

18 A. I certainly though that at the time, you know, some of
19 them weren't as big as I thought. Some were bigger than I
20 thought. But that's what I use as a reason in my mind, I
21 thought there could potentially be issues with the deal and,
22 that's why I started to prepare our people.

23 Q. And that's -- and when you signed the declaration, that
24 was what you had in mind; am I right?

25 A. Yes.

1 Q. All right. Now, would you consider hypothetically your
2 national accounts customers as a whole to be -- all to fit
3 into the same definition -- let me start over.

4 Would it be fair to describe all of your,
5 quote/unquote, national accounts as truly national in the same
6 way as these eight?

7 A. No, because some of them we don't cover the country,
8 and a lot of our national account business, which is very
9 unlike our two competitors, a lot of ours is QSR business
10 because we don't handle very much of that in our customized or
11 quick service restaurants, limited menu restaurants.

12 Q. And based on your knowledge of operations within Sysco,
13 recognizing that it's somewhat dated, would it be fair to call
14 Sysco's CMU account list national customers?

15 A. Some yes, some no.

16 Q. It would be a mix?

17 A. It would be a mix, yes.

18 Q. All right. Okay. Give me a minute, sir, I'm looking
19 for some more --

20 (Pause.)

21 BY MR. PARKER:

22 Q. Do you recall speaking to Mr. Weissman about systems
23 distribution?

24 A. Yes.

25 Q. And your customized business?

1 A. Yes.

2 Q. What type of restaurants do you serve through
3 customized?

4 A. We have an assortment of large casual dining
5 restaurants, which would be Outback, TGI Fridays, Chili's, not
6 the whole country, but a significant portion of Chili's
7 business. Ruby Tuesday, O'Charley's, those type of accounts.
8 We have a large family dining account in Cracker Barrel, and
9 then we have a few -- we have a couple QSR and a couple fast
10 casual that three of those four we share with broadline.

11 Q. All right. So it's true that some restaurant chains,
12 you service through your broadline group?

13 A. Yes.

14 Q. And some through customized?

15 A. Yes.

16 Q. And some both?

17 A. Yes.

18 Q. How about Applebee's, broadline or customized?

19 THE COURT: Mr. Parker, I'm sorry to interrupt.

20 MR. PARKER: Excuse me.

21 THE COURT: The list you just provided, Outback,
22 TGI Friday's, that's served through your systems?

23 THE WITNESS: That is all through our systems,
24 every one of those accounts I mentioned.

25 THE COURT: Outback, TGI Friday's.

1 BY MR. PARKER:

2 Q. Let me go through some of these. Chili's -- I'm sorry.

3 Applebee's, broadline or customized?

4 A. We only supply them in broadline.

5 Q. Chili's?

6 A. Only in customized.

7 Q. TGI Friday?

8 A. Customized.

9 Q. Kentucky Fried Chicken?

10 A. We supply them in customized part of our geography that
11 we supply them and out of broadline in part.

12 Q. Zaxby's?

13 A. Both customized and broadline.

14 Q. Not everybody here is from the South, tell me what
15 Zaxby's is?

16 A. You know, they're a chicken chain, and I would say, you
17 know, their big item is chicken tenders, but, you know, a
18 fairly extensive menu, kind of a little bit like a Chick
19 Filet.

20 Q. Church's, broadline or customized?

21 A. That is both.

22 Q. Blue Moon brands, Outback and Carrabba's?

23 A. That's all out of broadline -- I mean, I'm sorry, all
24 out all customized.

25 Q. Carmine's Italian restaurant?

1 A. Broadline.

2 Q. And Shake Shack, broadline or customized?

3 A. Broadline.

4 Q. It's broadline?

5 A. Yes.

6 Q. All right. We talked about RFPs awhile ago, but I just
7 want to go back on a couple of points.

8 A. Okay.

9 Q. How often do RFP's occur?

10 A. By a specific account?

11 Q. Yes, sir.

12 A. Okay. I would say three years would probably be on the
13 short end that they would do one. Five years would be maybe a
14 little bit on the longer. Some of them are -- there a term
15 for it. But they just continue with the same agreement in
16 place even though there's no RFP. It may be a three-year
17 agreement, they just renew after three years.

18 Q. Well, what percentage of your -- of potential
19 customers' business in your experience, just roughly, is
20 awarded through RFPs?

21 A. What type of customer?

22 Q. Broadline customer, any kind of -- customize or
23 broadline.

24 A. Any kind of customer.

25 Q. Yeah.

1 A. It would be -- percentage of customers or percentage of
2 dollar, sales?

3 Q. Start with customers.

4 A. Okay. It would be a very small percent of customers.
5 I mean, we have 35,000 independent customers, and, you know,
6 very, very few of them do an RFP.

7 Q. Dollar sales would be what?

8 A. It would be much more significant. I think it would
9 be, for our company in performance food service, it would be
10 in the -- the percent that are contractual would be about 48
11 to -- I'm sorry, it would be 58 percent or some type of
12 contractual arrangement. Those that do RFPs within that,
13 maybe a third.

14 Q. A third. So a third of 58 percent is what we're
15 talking about?

16 A. Yeah. And that's my guesstimate.

17 Q. Right. So there's a bid process, am I right?

18 A. Right.

19 Q. Everybody puts in a bid? Is the outcome typically
20 determined by the bid process in your experience?

21 A. It may to a certain degree. It's one of those things
22 that are different by account. But I would call it rare that
23 you do an RFP. They go through the RFP. You don't hear from
24 them again, and then they award the business, that would be
25 very rare. Rare enough to why I have not had that happen.

1 For the most part, you'd start to get a feel as
2 you get the phone call and you get questions. Quite often
3 the -- it ends up getting awarded by them, let's just say
4 they've got three people involved in the process. They may
5 kind of pick and choose what they like best among those three
6 and say, well, if you want the business, this is what you need
7 to do or this is how you need to price it. That would be very
8 common.

9 Q. So there's a series of negotiations that occur after
10 the RFP is --

11 A. Is submitted, yes.

12 Q. All right. And that's -- and those negotiations are
13 outcome determinative, sir? Generally?

14 A. The negotiations?

15 Q. Yes.

16 A. Yes.

17 Q. Okay.

18 A. It is also common to continue to supply someone long
19 past the agreement ending, particularly in contract feeding.

20 Q. Let me change to the fold-outs and expansions, and
21 we'll -- when we're in in-camera we'll talk about your
22 business plan. I just want to talk generally now.

23 A. Okay.

24 Q. Are you at all concerned about your ability to be able
25 to do a plan fold-out?

1 A. No, I am not.

2 Q. How many employees do you have at PFG?

3 A. Thirteen thousand.

4 Q. You have people there who are capable of doing a
5 fold-out?

6 A. We have people that are, yes.

7 Q. All right. Have you ever done any rebuilds at PFG?

8 A. South Georgia, Springfield, Massachusetts would both be
9 re-builds, and, oh, God, we've done in the Vistar side, we've
10 replaced most of them actually, seven or eight years.

11 THE COURT: And can you specify what you mean by
12 rebuild?

13 THE WITNESS: That would be building a new facility
14 for a distribution center and then moving the business into
15 the new facility.

16 THE COURT: Understood.

17 THE WITNESS: Several comes to mind.

18 THE COURT: Within the same geographic area?

19 THE WITNESS: That's correct, yeah. Matter of
20 fact, as close as you can get it because you don't want to
21 displace employees.

22 BY MR. PARKER:

23 Q. Sort of what you have planned for Corona, I believe you
24 said?

25 A. Yes.

1 Q. In your testimony you talked about four to five years
2 for a standard fold-out to become optimally efficient. Please
3 describe that process, sir?

4 A. Well, when you go to build one, you're not -- you're
5 not going to build it for your needs that day, it's for
6 growth. So typically you're going to move into a facility
7 that's, I don't know a better word to use than oversized. And
8 typically when you're in a facility that's oversized, you're
9 not going to have the kind of through puts and sales per
10 square foot that you would have as a company matures. And,
11 you know, you're going to build out at least, you know, to get
12 to four to five years before you're thinking about adding
13 additional capacity. Or additional building.

14 Q. All right. If the divestiture goes through, which
15 fold-outs will you prioritize, sir?

16 A. Well, the biggest priority would be Cincinnati.
17 Detroit would be a priority, something between Buffalo,
18 Pittsburgh, that area would be a priority, as would
19 Montgomery. Eventually we would want to do Orlando and
20 southern and northern Cal.

21 Q. I'm sorry, I didn't hear that.

22 A. Southern California and northern California.

23 Q. And you would be using the \$236 million of capital
24 committed by Blackstone for fold-outs?

25 A. Correct.

1 Q. And you have the approximate same amount -- same sum
2 for upgrades and expansions and the like; am I right?

3 A. Right, that's correct.

4 Q. And when do you expect the priority fold-outs to be --
5 to be completed?

6 A. We feel that it's about an 18 month process. We think
7 that we can get it quicker by not going through -- we have a
8 very rigorous RFP, if you like, before we pick a contractor,
9 and with the amount of work that we think that we will have
10 out there, we think that we can cut deals across kind of a
11 broader area. It would be a little business for them, and we
12 feel that we can get them to start earlier because of that.

13 Q. And you're already working on those in Cincinnati?

14 A. We're working on the land, yes.

15 Q. And in Montgomery?

16 A. Same thing, working on the land.

17 Q. All right. I want to talk about capacity expansions.
18 You talked with Mr. Weissman about that. Are you concerned
19 about your company's capacity in terms of being able to bid on
20 day one for national contracts?

21 A. I'm not concerned about responding to an RFP day one,
22 no.

23 Q. Why not?

24 A. Well, the sales cycle is long, okay, that would be
25 number one. The bigger the account is typically the longer

1 the sale cycle is. And we, or at least I feel that we can be
2 someone that keeps this market really competitive because I
3 think our competition will take us very serious with this.
4 And, you know, when you're going to get more, we talked a lot
5 about capacity constraints, and probably a term that we
6 shouldn't have in our language. As I said, we're way over a
7 hundred percent in many facilities that are continuing to
8 grow. And to increase your ability to grow sales in a
9 distribution center, a lot of it is around the slot and the
10 dock.

11 In other words, you have to keep those picking
12 slots full, so that you're efficient from a warehousing
13 standpoint, which we have much better expense ratios actually
14 than our two biggest competitors. And you also have to make
15 sure that when the product comes to the dock, it gets on the
16 truck, and the trucks gets out. It gets out of the way, okay.

17 So if you're filling those slots from an overhead
18 slot within your distribution center, if you're filling those
19 slots from a truck that is in your yard or if you're filling
20 those slots from outside storage, if you are running your
21 business to fill in that manner, then as long as that slot's
22 full, you're going to be fine, okay.

23 Now, it used to be in our business that when you
24 received an order from the manufacturer, you would go fill the
25 slot as much as you could, and then you would put overhead as

1 close as you could the rest of the product so that you could
2 find it when you needed to fill the slot. And you had people
3 at night that filled slots.

4 So, what we have, and by the way, our two large
5 competitors have the same type of system, maybe not exactly,
6 but when that product comes in, and we wind it into the
7 system, the system says okay, these are where our available
8 overhead space is, and it sends the stocker to that. And that
9 may say it's in the yard, okay, or it may say it's an outside
10 storage item.

11 Now, when the selection people come in to start
12 selecting the orders, as all those orders are dropped into the
13 system, it prioritizes when those orders are going to be
14 selected. So that you can tell these people that drop product
15 at night approximately when that order is going to get
16 selected. Okay.

17 So you want to make sure those slots are always
18 got enough product at your productivity rates that you're
19 going to be able to get the product in there before they go to
20 pick it. And before those systems were available, that was a
21 big issue because somebody would come and call and say, drop
22 in Q3 aisle four or something, okay.

23 So for us, it's a matter of when those loads are
24 dropped you got to make sure that you're getting enough
25 product in the slot or off the truck into the building or out

1 of outside storage into your warehouse. And that enables you
2 to do a lot more business out of a footprint.

3 Now, there is a constraint to that, there is a
4 limit to what you can do with that. Okay. But we have
5 facilities, there are 125, 140 percent of capacity where we
6 are continuing today to grow. Now, that's not the ideal
7 100 percent utilization that we want, you know, we want to be
8 ahead of it and we want to build. And we have an incredible
9 opportunity now to do just that.

10 Q. Incredible opportunity?

11 A. To -- to -- we have a lot of money available to do
12 these additions and to do the fold-outs, and then, you know,
13 those will eventually get to the same situation where we're
14 managing our ability to grow sales in spite of being capacity
15 constrained and then we'll build again or we'll do another
16 fold-out or --

17 Q. Have you been involved in capacity expansions before,
18 you personally?

19 A. Yes.

20 Q. How many times approximately?

21 A. Well, I've -- when I ran OpCos, of course, that was at
22 Sysco. I don't think I ever went three years without doing an
23 addition, probably less than that because we were, you know,
24 we had some great growth rates.

25 Q. You had hand's on -- including a PFG, but involving

1 capacity expansions before?

2 A. We've been doing them, I can't say I was very involved.

3 We have people that do that, a lot smarter than me.

4 Q. People among your 13,000 employees that know how to do
5 this?

6 A. Yes.

7 Q. All right. And do you foresee the need for more
8 capacity constraining your ability to bid on day one?

9 A. It does not constrain our ability to bid. No.

10 Q. In the context of this divestiture, do you have
11 priority expansion plans?

12 A. Yes, we do. And we always have priorities, and those
13 priorities can change based on where our opportunities are,
14 okay, but yes, we have it prioritize, what's the most
15 important and --

16 Q. Is Atlanta a priority?

17 A. Yes, that's why we started on it already. We bought
18 the land awhile back, it's probably been a year ago that we
19 bought the land.

20 Q. Cleveland, Ohio?

21 A. Yes, that's a U.S. facility. From what we can see it
22 can do one addition to fill the property out, which we will do
23 as quick as we can, and they actually have plans put together
24 already to do that, US does, so it's going to be a lot easier
25 because the drawings and everything else are already done.

1 Q. Springfield, Mass?

2 A. Yes.

3 Q. Temple, Texas?

4 A. Yes.

5 Q. Where is Temple, Texas?

6 A. Temple, Texas is not too far north of Austin.

7 Q. And you serve west Texas from there?

8 A. Yes.

9 Q. You do, today?

10 A. Yes. Yes.

11 Q. And you have an expansion plan there in Temple?

12 A. Yes.

13 Q. All right. Dallas, Texas?

14 A. We have expansion plans there, yes.

15 Q. In the State of Maine?

16 A. Yes.

17 Q. Talk about what your plans are for Florida in terms of
18 expansion or build-outs or fold-outs or new facilities?

19 A. Well, we recently did an addition to Miami. It was
20 cooler and dry. We had actually had plenty of freezer space.
21 We want to do a combination replacement facility and fold-out
22 in Orlando. We have a Roma company in Orlando. Unlike the
23 Dallas situation, it is not the type of company that you can
24 add on and make it a broadline so there we want to do one from
25 the ground up. But we have a complete sales force, and we

1 have a few districts in Orlando that are delivered out of
2 Dover, Florida today. So that's our game plan for Orlando.

3 Q. When do you expect these expansion projects to be
4 completed?

5 A. Well, most of the expansions we figure will take about
6 a nine-month period of time. And in some of that it may be
7 accelerating, it may be not going through the lengthy RFP that
8 we go through, and quite frankly, you know, the price we're
9 buying this at, if we pay a little bit more for a distribution
10 center, we're not going to loss any sleep on it.

11 THE COURT: Sir, I'm sorry, Mr. Parker, is it your
12 expectation that you'll do these in parallel, you'll do them
13 serially?

14 THE WITNESS: A lot of them will be done in
15 parallel, and we are beefing up, I guess, if that's the word,
16 our staff in -- on the real estate side of our business. Like
17 I said, we will probably have to rely on Blackstone somewhat
18 for it, because, you know, they're so heavily involved in the
19 real estate business. But we'll get the right people in
20 place, and we have good people now. And we have a significant
21 person that's going to about be coming from one of our
22 competitors.

23 THE COURT: And does the capacity expansion involve
24 the expansion of an existing plant?

25 THE WITNESS: That's correct.

1 THE COURT: Would it involve building on new
2 property because you've talked about purchasing real estate in
3 order to do an expansion, so I'm a little confused.

4 THE WITNESS: Yeah, that's more -- okay. I really
5 should make that real clear. Buying land would either be for
6 a fold-out, okay, or in the case of Maine, we bought adjacent
7 property that was available.

8 In Georgia, and that's our second largest company,
9 outside of Atlanta, there we bought a piece of property across
10 the street that's like 40-acres. There we plan to build a new
11 distribution center and convert our existing one eventually to
12 a customized. So different types of plans.

13 Sometimes you have additional land left that you
14 can build on, sometimes you have adjacent land that you can
15 buy to build on, and sometimes you have to do just a new
16 replacement facility because you're landlocked.

17 THE COURT: All right. I appreciate the
18 clarification. Thank you, Mr. Parker.

19 MR. PARKER: Thank you.

20 BY MR. PARKER:

21 Q. Let's move to tab eight, please. I have some maps
22 here. Do you see that, sir?

23 A. Yes.

24 Q. I want to mark the first map as DX 6101, the next one
25 is 6102, the next one is 6103, the next one is 6104, and the

1 next one is 6105, please.

2 All right. Please describe what the DX 6101 is,
3 please?

4 A. That is our current broadline network.

5 Q. And with this network you said you're growing at
6 14 percent?

7 A. Correct.

8 Q. Year to year?

9 A. Yes.

10 Q. Better than anybody in the industry?

11 A. Well, I hope so, I think so, but I don't know that
12 factually. I know we are, but two big competitors that report
13 and file --

14 Q. And you're doing that with a line up on 6101; correct?

15 A. That's correct.

16 Q. Turn to 6102, please, and that is what?

17 A. That is our current distribution centers as well as the
18 divestiture package of 11 US distribution centers.

19 Q. And so the green ones are what you're getting from US?

20 A. Correct.

21 Q. By the way, you were at US for awhile. I'm sorry, by
22 the way, in a previous life you had some experience with these
23 exact distribution centers; am I right, sir?

24 A. Yeah, 9 of the 11 are Alliant companies, I was the CO
25 of Alliant at the time it was sold. I was there for a short

1 period of time, I want to make that clear. But I know these
2 markets well, and I always kept in touch with it. I know
3 these companies.

4 Q. Okay. And I know in southern California you got two
5 greens, one of them would be the Corona facility that you
6 intend to expand?

7 A. And replace.

8 Q. And replace, excuse me, and the other is the --

9 A. San Diego.

10 Q. All right. And is that Vegas over there to the right?

11 A. Correct.

12 Q. In the Bay area, you've got the red one as your
13 ledgered?

14 A. Ledgered.

15 Q. That's in Santa Cruz?

16 A. Correct.

17 Q. And where's the other one, sir?

18 A. The other one is the Livermore distribution center for
19 US. We also have a Roma Livermore, which ironically is right
20 next door .

21 Q. Does it sound right that Livermore is about 80 miles to
22 Sacramento?

23 A. That I don't know, don't know that area well.

24 Q. All right, okay. All right. Sixty-one --

25 THE COURT: So to be clear, Mr. Parker, so you will

1 as part of the divestiture receive a US Foods distribution
2 center in northern California?

3 THE WITNESS: That's correct. It's actually the
4 largest one that we will receive, the revenues are a little
5 over 700 million.

6 THE COURT: Okay.

7 BY MR. PARKER:

8 Q. And you're referring to Livermore, California?

9 A. Yes.

10 Q. All right. 6103, what would that be, sir?

11 A. That would be our current network, those 11 centers,
12 and then it would be -- let's see. Those are ones in which we
13 have early expansions.

14 Q. The ones that sort of have the yellow --

15 A. I would call them priority expansions. The way we see
16 the business today, those would be priorities.

17 Q. All right. So about this time next year, to be
18 optimistic, get this thing in July, about this time this year,
19 this is what your lineup will look like, and the ones with the
20 yellow on them will be enhanced and larger; am I right?

21 A. Correct.

22 Q. And then please tell me what 6104 is, please, that map?

23 A. That is the same as the previous map, but it has the
24 four fold-outs or the five, I'm sorry, that we would do in
25 fairly short order.

1 Q. And this is what your footprint would look like?

2 A. Yeah, that's what, if I remember right, would take us
3 to 42, and then if you go to the West Coast we have two -- I
4 mean, to 40, we have two more that we'll do, but one more than
5 likely would be a replacement facility.

6 Q. So is it fair to say this would be like 18 to 20, 22
7 months from now, 6104?

8 A. I would have to say it's going to be a little longer in
9 California.

10 Q. What would be your outside estimate?

11 A. I think that -- I don't really know enough to say in
12 California.

13 Q. All right. 6105, what is this?

14 THE COURT: I'm sorry, let's exclude California for
15 the moment because of the challenges in California. What
16 about, if you exclude California, what would you say the
17 timeframe would be for the fold-outs?

18 THE WITNESS: I think we can do them in 18 months.

19 BY MR. PARKER:

20 Q. So it's 18 months in California is a little
21 indeterminate in your mind?

22 A. Yes.

23 Q. All right, okay. And then 6105, what would that be?

24 A. That would be our end footprint once we've accomplished
25 our 490 investments.

1 Q. Are you comfortable with that footprint to be
2 competitive for any customer who does business anywhere in the
3 United States?

4 A. A national customer, yes.

5 Q. Yes, sir. All right. And you can certainly serve
6 local customers there as well; am I right?

7 A. Yes, we'll do just fine with local customers. I should
8 add that we will do better locally where we're in the market,
9 that's just the reality of our industry today, but we'll do
10 well everywhere.

11 MR. PARKER: Give me one moment, Your Honor, I'm
12 seeing if I have some more here.

13 BY MR. PARKER:

14 Q. All right. Turn to tab nine, please?

15 A. Okay.

16 Q. Tell me when you're there, sir.

17 A. Do you want me to go through that?

18 Q. We've talked about inbound deficiencies earlier.

19 A. Right.

20 Q. We kind of touched on it, and I said I'd come back to
21 it. Well, here I am, I'm back. Please explain the inbound
22 deficiencies?

23 A. Yeah, this is very important. If you look at the
24 diagram, I guess you would call it, you know, on the left
25 where it says, "full truckload economics." And if you look on

1 the right where it says, "less than full truckload economics,"
2 kind of focus on the right to start. And if you look at those
3 five customers where we would have product that they use, and
4 these are like customers, they have the same SKU mix. When --
5 rather than bringing three trucks in to those distribution
6 centers in an LTL load or less-than-truckload, which has
7 significantly higher price, and then going outbound to those
8 same distribution centers, you can see that inbound paying a
9 higher price, you're going to put the product into your
10 distribution centers at a higher cost, okay, because of the
11 freight. And you will have a lower cost outbound because
12 you're not going as many miles to get to that customer
13 themselves.

14 On the left where we would be bringing it in a
15 full truckload into one distribution center, we're going to
16 drive past a couple other distribution centers or close to a
17 couple other distribution centers to deliver those to those
18 customers, but the cost of the inbound product into that one
19 distribution center, the savings from that are more than the
20 cost, the price savings to go deliver at each one of these
21 facilities and drive more miles.

22 Q. And you said this morning, I asked you whether you were
23 concerned that USF had 60 DC's and the combined company will
24 have a lot more than that, and you only had 42. Was this part
25 of your thinking, sir?

1 A. It's a big part of it.

2 Q. All right. Turn to tab ten. And we're back now at
3 Zaxby's. Can you explain what you're depicting, sir, in tab
4 ten?

5 A. In tab ten we have the southeast part of the country,
6 and we handle all of the southeast part of the country for
7 Zaxby's out of our broadline distribution centers. As you can
8 see, we have 11 broadline distribution centers that are in
9 this distribution area, but because of the difference between
10 the savings that we get inbound versus the outbound by
11 consolidate that volume into five distribution centers as
12 opposed to 11 distribution centers, we have more favorable
13 economics for Zaxby's, and we also ourselves get a little
14 higher fee than what we typically see for a systems or a
15 customized customer. Because we've gone through extensive
16 detail to make sure they understand exactly what the total
17 cost is as opposed to what their fee is for us to deliver it.

18 Q. Explain the arrow from the number five down to Miami.
19 What does that depict, sir?

20 A. That would show that we're going from Cairo, Georgia to
21 Miami, really past two distribution centers, to deliver that
22 product. And if I remember right, I think it's close to
23 400 miles. But it is still more economic to deliver to that
24 restaurant from there as opposed to putting that product into
25 Miami and distributing it from Miami.

1 Q. So you go -- so it's cheaper to drive past one of your
2 facilities than it is to serve the customer out of the closer
3 facility?

4 A. That's correct.

5 Q. All right.

6 THE COURT: Mr. Parker, do you want to label these
7 last two exhibits?

8 MR. PARKER: Oh, I'm sorry, yes. This would be --

9 THE WITNESS: If you had a -- actually if you had a
10 map that showed further with Zaxby's, you would see that we
11 deliver Utah out of Dallas, but it's still more economic.

12 MR. PARKER: Let me mark the tab nine, the document
13 entitled "Fewer distribution centers create inbound
14 efficiencies," that would be 6106. And tab ten, the Zaxby's
15 example, 6107, sir. And I move these in, all the 61 series
16 into evidence.

17 MR. WEISSMAN: That's fine. I wanted to, if he's
18 going to move his into evidence, I want to move mine in from
19 this morning, I'm fine with --

20 THE COURT: Okay, we can worry about the
21 housekeeping of moving everything, but unless I hear an
22 objection from either side I will assume that it will be
23 admitted into evidence.

24 MR. PARKER: No, sir, no objection.

25 THE COURT: Mr. Parker, it's now 2:40, we've been

1 going for about an hour and ten minutes. How much more --

2 MR. PARKER: I believe -- I'm sorry.

3 THE COURT: How much in-court examination do you
4 expect to have?

5 MR. PARKER: Thirty minutes in-camera, I'll try to
6 make it faster.

7 THE COURT: Well, I'm not asking you to cut it
8 short, but my question is, do you have more that you want
9 to -- that you would do with the courtroom open?

10 MR. PARKER: I'm concerned, getting concerned now,
11 and I'd prefer to move in-camera.

12 THE COURT: All right. Well, let's go ahead and do
13 that, and we'll coincide it with our break.

14 MR. PARKER: Thank you.

15 THE COURT: So why don't we plan to start up again
16 around 10 of 3:00, maybe a little bit longer, but around that
17 point in time, and then we'll make sure the courtroom is
18 closed, so for anybody that is not affiliated with a party,
19 the lawyers or the witness, we'll have to ask you,
20 unfortunately, to remain outside the courtroom for that
21 portion of the examination. And then we'll open it back up as
22 soon as we can. All right?

23 MR. PARKER: Thank you.

24 THE COURT: Thank you, everyone.

25 MR. PARKER: Thank you, that's fine.

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THE DEPUTY CLERK: All rise.

BRIEF RECESS AT 2:40 P.M.

(Whereupon, sealed proceedings were had as follows:)

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1 (Whereupon, sealed proceedings concluded and hearing
2 returned to open status).

3 THE COURT: All right. It's 4:00 o'clock, let's
4 take a break. Is Dr. Israel ready to begin his session?

5 MR. WEISSMAN: Yes, he is. And to introduce to the
6 Court, my colleague, Steve Mohr, is going to handle the
7 examination of Dr. Israel.

8 THE COURT: All right. Well, let's take -- we have
9 not had our second break, I need to give the court reporter
10 and staff a little bit of a breather. Let's take ten minutes.

11 Mr. Mohr, do you expect that we'll be able to do
12 Dr. Israel certainly for next 50 minutes of this day in open
13 court?

14 MR. MOHR: Yes, I do.

15 THE COURT: Do you expect there will be any portion
16 of his testimony where we'll need to close the courtroom?

17 MR. MOHR: No, Your Honor, what we'd propose, we do
18 have some demonstratives, and if we'd just black out the
19 videos to the public.

20 THE COURT: Okay.

21 MR. MOHR: I think we can try to avoid implicating
22 any confidential material.

23 THE COURT: All right, good. I'd like to proceed
24 that way if we can.

25 All right. So ten after 4:00, everybody. Thank

1 you.

2 COURTROOM DEPUTY: All rise.

3 BRIEF RECESS AT 4:00 P.M.

4 AFTER RECESS

5 THE COURT: Is the courtroom back open?

6 COURTROOM DEPUTY: Yes.

7 MR. MOHR: Good afternoon, Your Honor, again Steven
8 Mohr on behalf of the Federal Trade Commission. At this time
9 the FTC would like to call Dr. Mark Israel to testify.

10 THE COURT: Okay, thank you. Come on forward
11 Mr. Israel or Dr. Israel, excuse me.

12 Thereupon,

13 MARK A. ISRAEL, Ph.D.,

14 the witness herein, having been first duly sworn, was examined
15 and testified as follows:

16 THE COURT: Good afternoon.

17 DIRECT EXAMINATION

18 BY MR. MOHR:

19 Q. Good afternoon, Dr. Israel.

20 A. Good afternoon.

21 Q. Would you please state and spell your name for the
22 record.

23 A. Mark A. Israel. M-A-R-K A. I-S-R-A-E-L.

24 Q. Dr. Israel, where do you work?

25 A. I work at Compass Lexecon.

1 Q. What is your current position at Compass Lexecon?

2 A. I'm an executive vice-president and managing director
3 of the Washington, D.C. office.

4 Q. How long have you worked at Compass Lexecon?

5 A. It's been about 9 1/2 years.

6 Q. Can you please briefly describe your educational
7 background?

8 A. Sure. I'll keep it brief. Most relevantly I have a
9 Ph.D in economics from Stanford. I finished -- got my degree
10 in 2001. While at Stanford I studied -- my primary field was
11 industrial organization economics, which is really the study
12 of -- kind of competition cases where it's not perfect
13 competition but competitive issues, and generally, you can
14 think of it as competition economics.

15 Q. After earning your Ph.D. in economics from Stanford,
16 where did you begin work?

17 A. I went from there into academics. I went to
18 Northwestern University and taught in the Management and
19 Strategy Department in the Kellogg School of Management at
20 Northwestern.

21 Q. Can you please briefly describe the courses of you
22 taught at the Kellogg School of Management?

23 A. Sure. The primary course I taught was a class called
24 business strategy, which is a class that every first quarter
25 MBA student at Kellogg takes. It's basically an industrial

1 organization economics class for MBA students. It's the study
2 of -- case studies largely, but then some industrial
3 organization economics to study markets, how competition works
4 in markets. It's very much tailored towards MBA students from
5 the point of view you're going to be in a business trying to
6 compete in a marketplace, given how competition works, how you
7 think about trying to make profits in a given industry given
8 the nature of competition.

9 Q. How long did you teach at the Kellogg School of
10 Management?

11 A. I was there six years.

12 Q. Where did you work next?

13 A. I went from there to the -- at the time it was Lexecon
14 in Chicago, and Compass Lexecon came together and I came to
15 run the Washington, D.C. office of the new Compass Lexecon in
16 2008.

17 Q. Can you please briefly describe what Compass Lexecon
18 is?

19 A. Sure. We're an economic consulting firm with offices
20 all over the United States and all over the world. There's a
21 variety of practices. There are people inside the firm who do
22 finance-type issues, who do international arbitration and
23 trade. But the bulk of what we do is competition and
24 antitrust. We get involved in merger cases, in antitrust
25 litigation cases, in regulatory matters relating to

1 competition, sometimes in advising just private parties on
2 potential mergers or potential antitrust issues. I'd say
3 about two-thirds of our employees work in antitrust and
4 competition.

5 Q. What is your role at Compass Lexecon?

6 A. As I said, I'm a managing director of the Washington,
7 D.C. office. So in one hat I run the Washington, D.C. office
8 with about 50 employees. My role otherwise is to serve
9 generally as the lead or the expert on the antitrust matters.
10 About two-thirds of my time is spent on merger cases, working
11 both for the private parties and the federal government, state
12 governments in some cases. About one-third of my time is on
13 other antitrust competition matters, largely litigation
14 matters or regulatory matters.

15 But at this point I serve -- on the cases I'm
16 involved in I serve as the lead, either the testifying expert
17 or the expert who goes and talks to the competition agencies.

18 Q. Have you testified in federal court before?

19 A. I have not.

20 Q. Have you testified before any federal administrative
21 agencies before as an expert economist?

22 A. Yes. I appeared multiple times, particularly before
23 the FCC, the Federal Communications Commission. The FCC
24 started a practice with the Comcast/NBC merger where they have
25 economist hearings where the economists working on the case

1 come in. It's recorded with a transcript. It's testimony
2 sort of all day. But it's all the economists working on the
3 case come in and answer questions from the economists and the
4 lawyers at the FCC.

5 I've done that on the -- I think they've done
6 three of those and I've been involved in all of them. The
7 Comcast/NBC merger, the AT&T/T-Mobile merger and recently the
8 Comcast/Time Warner merger. I could mention that also as part
9 of the Comcast/Time Warner, I testified in front of the
10 California Public Utility Commission.

11 Q. Have you ever been retained as the lead economic expert
12 on any other merger cases?

13 A. Yes. As I mentioned, many of them -- as I just went
14 through, at the FCC I've done various things in the telecom
15 space. Comcast/Time Warner, Comcast/NBCU. I worked on
16 AT&T/T-Mobile merger. I worked on the merger of AT&T and Leap
17 Wireless. I worked on the T-Mobile/Metro PCS merger. I've
18 done other mergers in beer distribution, retail, beverage
19 distribution. I played a lead role on recent airline mergers
20 there working with other economists.

21 So I'd say all in all I have been the lead
22 economist on 10 to 12 mergers and played one of the lead roles
23 on more than 20.

24 Q. Dr. Israel, do any of your academic publications relate
25 to the work you've done in this specific case?

1 A. I mean, generally, my academic publications are on
2 topics related to industrial organization, economics, pricing,
3 consumer purchase behavior. So in some since they all relate
4 to some of the issues. I'd say, just to give one example of a
5 paper that relates most closely. Professor Dennis Carlton and
6 I wrote a paper called Proper Treatment of Buyer Power and
7 Merger Review. Where one main point we made is that in many
8 cases powerful buyers often get that power by the ability to
9 play firms off of each by the ability to negotiate with
10 multiple parties. So in many cases mergers can actually be
11 particularly harmful to powerful buyers because they may lose
12 the source of the power they had to negotiate with those
13 merging parties.

14 Q. Dr. Israel, does your CV that is attached to your
15 report in this matter accurately reflect your education and
16 qualifications and work experience?

17 A. It does.

18 MR. MOHR: Your Honor, at this time I would submit
19 Dr. Israel as an expert to testify about industrial
20 organization economics.

21 THE COURT: Any objection from the defense?

22 MR. SIMMONS: (Shook head in a negative response).

23 THE COURT: So admitted.

24 BY MR. WEISSMAN:

25 Q. As I mentioned before, we would like to show a

1 demonstrative to Dr. Israel. And in order to make sure we
2 don't disclose any confidential information, we'd just ask
3 that the screen to the public be blacked out.

4 THE COURT: Ms. White will do that. Is the entire
5 slide deck confidential or just portions of it?

6 MR. MOHR: Except for the transition slides, most
7 of it is confidential. We could do it slide-by-slide if Your
8 Honor would prefer.

9 THE COURT: I'd like to do it that way, yes,
10 please.

11 MR. MOHR: Okay.

12 BY MR. MOHR:

13 Q. Dr. Israel, when you were retained in this matter, can
14 you describe what you were asked to do?

15 A. Sure. I was retained by the Federal Trade Commission
16 to assess the likely competitive effects, the effects on
17 competition and consumers of the potential acquisition of
18 US Foods by Sysco.

19 Q. Do you have an opinion as to likely effects on
20 competition and customers of the proposed acquisition of US
21 Foods by Sysco?

22 A. Yes, I do.

23 Q. What is your opinion?

24 A. My opinion is that if the acquisition were to proceed
25 would substantially lessen the competition and harm consumers.

1 In particular, as I'm sure we'll get into more, that it would
2 harm competition in the national market for the provision of
3 broadline foodservice distribution to national customers, and
4 in several local markets where the provision of broadline
5 foodservice distribution to local customers.

6 Q. What methodology did you --

7 THE COURT: I'm sorry to interrupt you, Mr. Mohr.
8 Is your opinion -- and I know you'll get into details -- but
9 what you've just identified is your opinion, does that take
10 into account the proposed divestiture?

11 A. Yes.

12 THE COURT: Yes. All right.

13 BY MR. MOHR:

14 Q. Dr. Israel, what methodology did you apply to reach
15 your opinion in this matter?

16 A. I think it's easiest to summarize the methodology as is
17 well summarized in the Horizontal Merger Guidelines. The
18 Horizontal Merger Guidelines were revised in 2010, a process I
19 was somewhat involved with. In my view they do a good job of
20 reflecting accepted economic knowledge about the evaluation of
21 mergers and go through a process that embodies what I think of
22 as the economic science of merger analysis.

23 So I would describe my methodology as sticking
24 quite closely to the steps that are laid out in the Horizontal
25 Merger Guidelines.

1 Q. Have you ever used the Horizontal Merger Guidelines
2 before to analyze the likely effects on competition and
3 customers of a proposed merger?

4 A. Sure. I mean, I think every merger I work on, every
5 horizontal merger, meaning a merger of firms competing in the
6 same market, uses the Horizontal Merger Guidelines. In some
7 cases, certain cases of them are more or less relevant, but
8 they really are kind of the guide to me as an economist in
9 evaluating horizontal mergers, and I think they really are a
10 good description of the process that the competition agencies
11 use in evaluating mergers.

12 So whether I'm working for the competition
13 agencies or for for-private parties, they really kind of are
14 the doctrine of how I evaluate mergers.

15 Q. What are the different steps that the Horizontal Merger
16 Guidelines suggest are part of a merger analysis?

17 A. When I think of them in -- there's a number of sections
18 in the merger guidelines. Relevant to this case, I think of
19 seven steps which really are much of the merger guidelines, or
20 what the merger guidelines describe going through. So just
21 running through those quickly, the first one, which is Section
22 3 of the merger guidelines after the introductory material is
23 just identification of targeted customers. Whether there are
24 particular customers who receive differential pricing, and
25 therefore, could be differentially affected by the merger and,

1 therefore, could and should be evaluated separately.

2 After that, with those targeted customers in
3 mind, the next two steps are really market definition, product
4 market and geographic market definition. I think it's very
5 important to help make things clear -- help me to keep things
6 clear -- is that the guidelines are clear that product market
7 and geographic market are really two dimensions of a market
8 definition. That any market that is defined has a product
9 market dimension, which is what products are included in the
10 market. And it also has a geographic market dimension, which
11 is in what region are we talking about? Is the region limited
12 in any way? So it's really a market but defined as what's the
13 product market component, what's the geographic market
14 component.

15 The next step. Once the markets are defined is
16 to calculate market shares and market concentration levels,
17 HHIs. To evaluate whether the market is concentrated and
18 whether the effects of the merger on concentration exceed the
19 merger guidelines level of a presumption of harm from the
20 merger.

21 Following that, I think of the last three steps
22 going together. Once the share concentration levels have
23 bench established and consider whether they pass the merger
24 guidelines presumption of harm, the next three steps kind of
25 think about whether there are factors that would offset that

1 presumption, things that might push the other direction.

2 So, number one is competitive effects, unilateral
3 effects, which I think of here as -- are the merger parties,
4 even if their shares are high, are they distant, are they
5 separate from one another in products base, are they not very
6 close competitors such that the merger harms might be less
7 than the shares would indicate? And then there's the
8 consideration of entry.

9 And to answer Your Honor's questions, I'll talk
10 about the divestiture throughout, but in one place I'll talk
11 about it in detail is entry and expansion as something that
12 would be facilitated potentially by the divestiture. And then
13 the final question is efficiencies and whether efficiencies
14 that could be passed through to consumers would offset the
15 harms from the merger.

16 Q. All right. I'd like to turn to your analysis and spend
17 some time on each of those steps in the guidelines. So,
18 first, Dr. Israel, in your reports why did you look separately
19 at national and local customers?

20 A. This goes back to first step of the analysis, the
21 targeted customer question. I think it's easiest to start by
22 thinking about it from that point in view and that's really
23 where that breakdown comes from.

24 So the targeted customer question is really, as I
25 said, are the distinct customers who receive different prices

1 and, therefore, could be affected differently by the merger
2 when prices change. So I always think when we first teach
3 economics we think about a market for widgets and the widgets
4 cost \$5.00. If you're evaluating the merger, you would say:
5 What is the price of widgets after the merger?

6 Target customers is saying, well, in some
7 industries not everybody pays the same price. So what -- are
8 we really -- what do we mean by the price of that product? To
9 the extent that different customers can and do pay different
10 prices, that also indicates that the effects of the merger on
11 prices could be different, and so those customers are targeted
12 with different prices and the merger guidelines indicate that
13 the evaluation of those customers can and should be broken
14 down separately.

15 Q. According to the guidelines, under what conditions is
16 targeting possible?

17 A. So this is really the topic of Section 3 of the merger.

18 THE COURT: I'm sorry. You'll have to -- this can
19 be displayed on the screen. And you'll just let her know when
20 something needs to be taken down.

21 MR. MOHR: Yes, Your Honor. Thanks.

22 THE WITNESS: So this is -- what's on the screen
23 lays out some of the introductory discussion in Section 3 of
24 the merger guidelines. Really, much of this I've already
25 discussed. What's relevant here is what's at the bottom, it

1 says for price discrimination, which is differential pricing
2 according to the different characteristics of the customers.
3 For that price discrimination to be feasible, two conditions
4 typically must be met, and those are differential pricing and
5 limited arbitrage.

6 So just to explain what that means, differential
7 pricing is what it says. It is that the firms can and do
8 identify customers distinctly from one another and charge them
9 different prices. In a later section of the merger guidelines
10 it makes clear that in situations where prices are
11 individually negotiated, that's obviously a situation where
12 targeting is being done or negotiating with different
13 customers and setting different prices to them. That can
14 happen through a separate contract, as you have for many
15 buyers of foodservice, it can also happen in negotiations with
16 a sales rep that lead to different prices for different
17 people.

18 But once that pricing is distinct then the firm --
19 a rationally profit maximizing firm is going to think about
20 the characteristics of those different customers and what
21 they're buying and where they're buying it when it sets
22 prices, what their needs are.

23 That's really the main condition. And they can --
24 no arbitrage condition is fancy words for if I'm a firm and
25 I'm going to try to set different price to different people,

1 can they undo that by just reselling it to each other? Right.
2 So can the guy I sold it to cheap just resell it to somebody?
3 The guidelines are quite clear that in situations like this
4 where there's transportation costs and customers are at
5 different locations receiving different products, such
6 arbitrage would be quite unlikely.

7 Q. Did you perform any analysis to determine whether the
8 two conditions in Section 3 of the Horizontal Merger
9 Guidelines are met in this case?

10 A. I did. And sort of implicit in my last answer was the
11 analysis. It's fairly straightforward in this case. I think
12 that pricing is negotiated separately by customers. Customers
13 don't all pay the same price. Many larger customers have
14 contracts that determine their own pricing. And that even for
15 smaller customers, they negotiate to receive different
16 pricing. So it's clear that pricing is set on an
17 individualized basis. We'll talk about it more as I go, I'm
18 sure.

19 But in my report and others' reports we see
20 different margins for different customers. So even holding
21 constant the cost of providing them the product, we see that
22 the price they're getting above and beyond that cost is
23 different across different customers. Just another piece of
24 evidence that prices are different.

25 THE COURT: Let me just ask you, what is an example

1 of an industry where there wouldn't be differential pricing?

2 THE WITNESS: I mean, you could imagine retail as
3 an -- there could be some different pricing by store. But the
4 price of Pepsi is generally the price of Pepsi. And although
5 people may buy it at different stores, it would be reasonable
6 to just ask the question: What's going to happen to the price
7 of a six-pack of Pepsi?

8 I imagine other industries where there are more
9 standardized services where a lot of prices really are set
10 according to a list price, and you could really meaningfully
11 think about the change in that list price as being a measure
12 of merger harm. We have an industry where there are some
13 price lists, but they're generally negotiated. Then the issue
14 is, you know, how can I break down those customers and think
15 about what prices the different customers are paying.

16 THE COURT: Okay.

17 BY MR. MOHR:

18 Q. Dr. Israel, because you conclude that targeting is
19 possible in this industry, did you analyze the merger for
20 every customer separately?

21 A. I did not. The merger guidelines are clear, I think
22 the language that's on the screen now in Section 4.1.4 that
23 discusses this topic further makes clear that, although in
24 theory you could imagine trying to do merger analysis by
25 literally looking at every customer one-by-one. That becomes

1 unwieldy, you lose the ability to compete market shares. You
2 lose the ability to think about what I learned from
3 negotiations of customers for the situations that other
4 customers face.

5 So the guidelines indicate, and this is what I've
6 seen in every case I've done in practice, that in those cases
7 you -- if there are natural ways to group the customers
8 together, then you group them together. As you go through
9 things you can think, you know, you can think about what are
10 the appropriate groupings. But what I've done in my analysis
11 here is group customers together into national and local
12 customers, as you asked me at the beginning of this section,
13 as two groupings that I used to look at customers whose terms
14 are different.

15 Q. So, just to be clear, in your analysis of this merger,
16 how did you specifically group the separate customers?

17 A. So I grouped them into national customers and local
18 customers. I should be clear from the get-go because this
19 term is going to keep coming up, I'm sure it probably has.
20 When I say -- if I was to define those words I might call them
21 local and nonlocal. The term national, as I use it, I define
22 as customers with multiple dispersed locations covering at
23 least multiple regions and perhaps the entire country.

24 So national is a term that I took from many
25 documents from the parties and the parties' consultant,

1 McKinsey, that refer to national customers using this
2 multi-regional concept. So one group is the customers who
3 have multiple dispersed locations, and then the other group is
4 local customers, which are customers who have a single or a
5 tightly clustered set of locations. You know, I think of them
6 as basically within one city.

7 Q. Why did you decide to group customers as either a
8 national or a local?

9 A. As I generally would do in such settings, I looked to
10 the parties' records and the parties' practices. The idea is
11 to think about a good grouping that gets at a breakdown of
12 customers that are being treated differently by the parties
13 and, therefore, may be affected differently by the merger.

14 So the parties themselves break customers down
15 into national and local. I think US Foods explicitly uses
16 those words. I think at Sysco they talk about CMU or
17 corporate multiunit customers as opposed to local customers.
18 The parties' consultant, McKinsey, in analyzing the business
19 models, I believe, refer to these the companies effectively
20 having two service models -- two distinct service models to
21 serve two distinct sets of customers, is really a fundamental
22 split between national and local customers in terms of how
23 they were served.

24 That document spends some time discussing
25 national customers generally using contracts, generally being

1 larger, generally being served by a national sales force.
2 Whereas, local customers more often by price lists and they
3 are served by the local sales force. So I was just following
4 a split, that list described by the parties as a fundamental
5 split between two service models.

6 Q. And just to make sure we're clear about your analysis.
7 If a customer that Sysco has identified as CMU in its data,
8 doesn't actually have a complete national footprint, do you
9 include that customer in your analysis of national headline
10 customers?

11 A. I do. I consistently follow the break down that the
12 parties use. As I said, national can be a confusing term
13 because it's defined really in their own documents as
14 multiregional or national. But in my practice and what I've
15 stuck to completely here is to define the breakdown according
16 to the parties' own breakdown in order to stick to the
17 definitions that the parties use in defining these two
18 distinct service models.

19 Q. What impact does the inclusion of a customer who may
20 not have a complete national footprint have on your analysis
21 of national customers here?

22 A. Since customers are included in my national customer
23 targeted customer grouping throughout -- so it's going to
24 impact, those customers will be reflected in all of my
25 analysis as part of that group. I mean, one explicit thing

1 that it does is to the extent that such customers can be
2 served by a regional distributor who only serves one part of
3 the country, those regional distributors will be reflected in
4 the market shares that I compute for this group. That ability
5 to serve that regional customer will be reflected in the
6 market shares for this overall set of customers. To the
7 extent that regional distributors are more able to serve
8 customers who are in one region but not the whole country,
9 that will tend to bring up the market shares for the regional
10 competitors and bring down the market shares for the merging
11 parties, which would be conservative in favor of the parties.

12 I just should note quickly that to the extent
13 that some customers who are sort of on the bubble, you know,
14 maybe have two locations that end in the local category. I
15 also take care to make sure that they deal with that in a way
16 that is conservative in favor of the parties. For those
17 customers I -- any customer that gets in the local bucket, I
18 apply my local estimate of the harm from the merger based on
19 local analyses, even though those customers with multiple
20 locations may have a broader footprint that would need a
21 distributor with more locations.

22 THE COURT: I'm sorry. Did you make an effort to
23 isolate and segregate, if you will, customers that have a -- a
24 tricky word here but -- a true national footprint? That is,
25 customers who actually are truly in multiple regions

1 throughout the country and, of course, there's some -- there
2 is a sliding scale there, I understand, but there's a
3 difference between customers who are clustered in a particular
4 region versus customers that are in 48 states?

5 THE WITNESS: Sure. I mean, for the bulk of my
6 analysis I use these two splits that the parties use in they
7 analysis. I can say that I did do some breakdowns that are in
8 the report of certain classes of customers who are more often
9 national. One of them would be -- I looked at healthcare
10 customers, in particular, healthcare GPOs, those customers
11 tend to more often have the national footprints.

12 And I did find that when I did the breakdown of
13 that -- that the share of the merging parties in that group
14 was substantially higher, which would indicate that there
15 would be larger merger harms in that group. So when I did
16 that breakdown and the shares that are in my analysis that
17 I'll talk about -- I did find that if you do that break down,
18 you identify types of customers for whom the parties have even
19 larger shares.

20 The effect of that, and this is described in more
21 detail on the report, was to not just identify a specific
22 group of customers who would have more arm, but when I did
23 that break down it lead to larger estimates of harm overall
24 because you are -- it was identifying these certain groups of
25 customers, as you say, who are likely to particularly face

1 larger price effects. I can describe that more as I go
2 through some of the analysis.

3 But the primary analysis in the report was to stick
4 to the breakdown between national and local, these two
5 fundamental service models that the parties describe.

6 THE COURT: All right.

7 BY MR. MOHR:

8 Q. Dr. Israel, are you aware whether any customers may
9 switch between being a national versus local account for the
10 parties?

11 A. Yeah. Sure. One good example that is described in
12 some detail in this McKinsey document that I was referring to
13 and in various materials from the parties is that some
14 customers grow. I mean, an example would be a restaurant
15 might expand into more markets, we know that happens. That
16 customer at some point would switch from being able to be
17 served well by a local area to having a more national
18 footprint. And then over time, based on that growth, would
19 switch from being a local customer to a national customer, at
20 least potentially.

21 I would note that in materials I've seen from US
22 Foods, like a white paper written by US Foods, that is
23 described in my report, they really tout the fact that a
24 national distributor such as themselves can offer these
25 customers the ability to grow in that way so that if the

1 company goes to a new city, it doesn't have to find a new
2 distributor, it can stick with the distributor that it has, as
3 a service that a national distributor can offer.

4 That's one example of switching, and I'm sure
5 that there are others, in which firms that are sort of close
6 to the border between local and national may switch back and
7 forth. Possibly, I don't know specific examples, but I would
8 imagine that could happen. I would note that in any case in
9 which you identify targeted customers and group them, there's
10 going to be a line between those groups.

11 The merger guidelines themselves have an example
12 in Section 3, which you might group together small customers
13 and large customers. And as they indicated in the guidelines,
14 that's not going to be a bright line distinction. But the
15 presence of that, even if there's not a discreet gap, it's
16 still reasonable to split them because you get a better
17 analysis of the overall groups because the groups are clearly
18 distinct?

19 BY MR. MOHR:

20 Q. Does the existence of switching between local and
21 national or national and local impact your conclusion at all
22 as to whether to group customers as national or local?

23 A. No. For the reasons I just described, I mean, the
24 grouping is really about whether these groups are treated
25 differently, priced differently, have different service. As

1 the parties described, these are fundamental distinctions in
2 their service model. The fact that there is a border between
3 them doesn't stop the parties from treating them differently
4 and identifying them as two distinct service models. And,
5 therefore, my analysis follows that by saying as long as those
6 two separate service models are seen by the company, it's
7 important to analyze them separately as far as what the merger
8 effects could be.

9 Q. How does the division of customers into these two
10 groups, national and local, affect your overall analysis of
11 the merger?

12 A. It's really going to effect everything we say from this
13 point forward. For the rest of the sections of the report,
14 the rest of the discussion I'm going to have here, there is a
15 set of local customers and a set of national customers. As
16 the guidelines say, once they are targeted in that way, the
17 guidelines are clear that you should think about those
18 separate customers when you do a market definition. That you
19 should think about those separate groups of customers when you
20 do competitive effects analysis so on. That they really are
21 distinct customers who are being identified and analyzed
22 separately for purposes of my analysis.

23 THE COURT: I may be getting ahead of you, but --
24 and if forgive me if I am. How did you decide which -- how to
25 put a given customer in each bucket? What's the source

1 material for how you segregated two groups?

2 A. I strictly followed the parties' segregations. So for
3 our Sysco customers, CMU customers are defined as national
4 customers. And others -- on non-CMU, I think they called them
5 LCC or TRX, but the other customers are defined as local,
6 following the split in their documents, including the McKinsey
7 document.

8 For USF, they have a designation of national and
9 local, and I used that designation. We'll get into this more.
10 Your question may get into what about other firms or their
11 competing market shares? I mean, there in the CID responses
12 during the FTC's investigation there were breakdowns used for
13 national versus local versus regional.

14 I'll talk about this a lot in market shares. But
15 in order to make sure that my findings are not sensitive to
16 how I treat something that's called regional on a particular
17 firm's production, I computed the shares on a variety of
18 methodology for those breakdowns.

19 THE COURT: So just so I'm clear in my head, you
20 didn't have, for example, a long list of customers, and you
21 personally did not put one in one bucket and put the other in
22 the other. Whatever the customers themselves self-identified
23 for each category, however they labeled it and whatever the
24 rationale was for the labeling, that's what you followed?

25 THE WITNESS: Yes.

1 THE COURT: Got it. Thank you.

2 BY MR. MOHR:

3 Q. Dr. Israel, now that we've discussed targeting a bit,
4 let's move to the next step in the guidelines, market
5 definition. And, first, just generally, when analyzing a
6 merger with groups of targeted customers, what is your
7 approach to defining the relevant market or markets?

8 A. So this follows what I said a couple answers ago. I
9 mean, the target customers are distinct. The whole idea of
10 targeted customers is that you're analyzing two groups that
11 might be affected differently by the merger. So you should do
12 the analysis for each group.

13 So the approach to market definition is to take
14 each of those groups and to figure out the appropriate market
15 definition that applies to each group. So for national
16 customers -- and as I said earlier, just to be clear, market
17 definition to me means you have to define a product market
18 dimension and a geographic market dimension. The two -- the
19 guidelines say that the two together determine the market.

20 So for national customers, the process is to
21 figure out what the product market is that applies to national
22 customers, figure out what the geographic market is. As I
23 described, what I conclude, and we'll go through this in
24 detail, the product market is broadline foodservice
25 distribution, and the geographic market is national.

1 For local customers you have to separately ask
2 the same questions. What I find there is that the product
3 market again is broadline foodservice distribution, but there
4 are several local geographic markets that correspond to the
5 different localities where these firms operate.

6 So just to be clear because I want to avoid any
7 confusion. The product markets that I find for the two groups
8 each end up being broadline foodservice distribution. When
9 you have targeted customers that wouldn't have to be true.
10 But I find that common product market defines -- is relevant
11 for each of those groups.

12 And when we talk about product market, what I do
13 in the report and what will be useful to do is I generally
14 talk about product market once because there is a lot of
15 common issues between the two groups, but I'll try to make
16 quite clear as I go where my analysis differs between local
17 and national.

18 Q. So speaking of product market, can you describe your
19 approach to product market definition?

20 A. Sure. My approach is -- now we're into Section 4,
21 Part 1 of the merger guidelines, just walking through them.
22 My approach follows the merger guidelines closely. This
23 methodology has been around in previous versions of the merger
24 guidelines, it's well-accepted.

25 And Your Honor has probable looked -- read of it

1 some, this so-called hypothetical monopolist or SSNIP test.
2 I'll just take a minute to describe that test. The key
3 elements of it -- so one key element or a key sort of starting
4 place is that when you're doing a hypothetical monopolist
5 test, the guidelines are clear that the logic is to start with
6 a product sold by the merging parties, that's where you start.

7 And then the question is, I'm going to build a
8 market around the product sold by the merging parties. And
9 the question is to sort of how far do I need to go in order to
10 have a relevant market. The guidelines are quite clear that
11 in general what you're looking for is the narrowest market
12 that would satisfy the test. So you build out until you have
13 a market.

14 The logic of the hypothetical monopolist testing
15 simply, as I add more products sold by different firms, those
16 products are competing with each other today. And as I add
17 more of those products, I put them inside a hypothetical
18 monopolist, I'm turning off that competition. One firm
19 controls them, that competition is turned off. To an
20 economist, as you turn off that competition, prices are going
21 to go up at least to some degrees if they were competing
22 before.

23 And the hypothetical monopolist standard is when
24 you get to the point where a hypothetical monopolist could
25 impose a SSNIP, small but significant non-transitory increase

1 in price, which is in practice always that I've understood it
2 defined as 5-percent. Once the monopolist could increase
3 prices by 5-percent, then you got enough products, you've got
4 your market. That's the test.

5 It's sort of a thought experiment. It's a way to
6 organize thoughts in some ways. It can also be, as we'll talk
7 about, a more formal empirical test. But that's the logic of
8 the test. So that's the --

9 Q. And in your report in connection with the hypothetical
10 monopolist test you refer to the word diversion. Can you just
11 explain how the concept of diversion relates to the
12 hypothetical monopolist test?

13 A. Sure. So diversion is really -- it's central to sort
14 of modern, the 2010 guidelines and modern analysis of mergers.
15 In this context it really is a way to operationalize both
16 conceptually and in practice what it means to say, you've got
17 enough products inside the hypothetical monopolist. That's
18 sort of vague the way I said it the first time.

19 The notion of diversion is -- to think of the
20 following question. If one of those products inside your
21 candidate market were to raise its price, it would lose some
22 sales by raising its price. Diversion is where do those sales
23 go? And the relevant term I talk about is aggregate
24 diversion. And the question there is what percentage of those
25 lost sales stay inside the candidate market, and what

1 percentage go outside the candidate market. That's the notion
2 of aggregate diversion.

3 If one product inside the candidate market raises
4 its price, economics says it loses sales. What percentage of
5 them stay inside the candidate market controlled by the
6 hypothetical monopolist? What percentage go outside? And
7 what the modern economic understanding says is that once
8 you've got enough aggregate diversion that says inside -- so
9 what's the aggregate diversion ratio that stays inside the
10 candidate market high enough. Then you've relaxed enough of
11 that competition that existed pre-merger that a SSNIP could be
12 imposed.

13 So diversion is really fundamental to the modern
14 understanding of what competition and substitution means.
15 It's the question of -- once you've got enough of the sales
16 that would have been lost by one product, staying inside your
17 hypothetical monopolist, economics says that monopolist will
18 have an incentive to raise prices.

19 We'll talk a lot about it and I'll present the
20 formal details, but the analysis that I go through indicates
21 that for this market that the relevant amount of aggregate
22 diversion would be no more than 50 percent. So if 50 percent
23 of the diversion is staying inside the candidate market, even
24 though some is weighing out elsewhere, that's enough of the
25 substitution being captured by the hypothetical monopolist,

1 that would have the incentive to impose that SNIPP. So, that
2 is really the standard of when you have enough products.

3 Q. And so just to make things concrete here, when you
4 applied the hypothetical monopolist test in this case, what
5 product did you start with in the candidate market?

6 A. Again, it's building a market around the broadline
7 foodservices distribution sold by the merging parties. So
8 Sysco's and US Foods's broadline foodservice distribution.
9 And I should make, you know, concrete that what's given in the
10 complaint and given my conclusion in report, the question is:
11 Is broadline a market?

12 So the question is: If you were to merge
13 together all the broadline foodservice distribution, would
14 that monopolist -- you know, it wouldn't be just on the
15 merging parties, it would on PFG, Gordon and Reinhart and
16 other broadliners. The question is: Would that monopolist be
17 able to impose a SSNIP. That's the market definition
18 question: Is all the broadline enough that that monopolist
19 could impose the SSNIP?

20 THE COURT: Is there any presumption or starting
21 with either the narrowest or broadest product basket? I guess
22 the question is here, you've started essentially with
23 broadline foodservice as the market ultimately ended up there
24 and there are other modes of distribution. So I'm curious as
25 to how these other modes of distribution factored into your

1 analysis, and maybe you'll get there and I apologize for --

2 THE WITNESS: This is very useful. Just to be
3 clear, basically what I did was start with the broadlines
4 foodservice sold by the merging parties. Then the question
5 is, if you were to include all the broadline foodservice
6 distribution sold by the merging parties and other firms,
7 would that be enough to be a market.

8 Your question is -- so to answer your question
9 directly, the merger guidelines are quite clear that the
10 approach starts from the merging parties' products and builds
11 out. And that the merger guidelines, multiple places, say
12 that the general standard is to look for the narrowest market
13 that meets that definition.

14 So the idea is you start with the merging parties'
15 products and you build out. And once you've got enough
16 products that you're capturing enough of the diversion that a
17 SSNIP would be profitable, you got your market and you stop.
18 There's multiple places in the guidelines, many times in
19 Section 4, where it says the narrowest market or it says
20 things like even though there may be substitution that goes
21 outside the market, even though there may be other substitutes
22 that capture some of the diversion, if you got enough products
23 around the merging parties' products, that you've got enough
24 diversion to make that SSNIP profitable, then you've got a
25 market. And you get what -- the guidelines basically say its

1 competitive analysis is more accurate to stick to that narrow
2 market. Substitutes might be out there but they're not part
3 of that market that is most useful to analyze in mergers.

4 Q. Dr. Israel, in the course of your analysis of product
5 market, did you analyze whether to add any other products to
6 your candidate market?

7 A. Sure. And, again, just to make sure it's clear --
8 ultimately, the core question is: Does broadline foodservice
9 distribution -- is the aggregate diversion such that if one
10 broadliner raised its price, it would its sales go?

11 The core question is: Is enough of the answer to
12 that other broadliners, that you meet the standard and have a
13 market. So in some sense what you're talking about is just
14 how much stays within broadline. And when we get to some
15 empirical work I've done on that, that will be the question.

16 But obviously a part of that is to think about
17 what are these other modes of foodservice distribution? How
18 close are they as substitutes. So there's sort of a process
19 of going through the other modes. And I explicitly though
20 about systems distribution, specialty distribution and
21 cash-and-carry outlets as potential other modes.

22 THE COURT: You assume that those were other
23 products. In other words, that they weren't within -- in
24 other words, those are not -- strike that.

25 Is it your assumption that those other modes are

1 not substitutes for broadline?

2 THE WITNESS: Not at all. My assumption is, only
3 to start with, that they are distinct products sold by other
4 firms. They could well be substitutes, that's the analysis.

5 BY MR. MOHR:

6 Q. And, generally speaking, what categories of information
7 did you analyze in applying this hypothetical monopolist test?

8 A. So there's really three types of evidence that are
9 throughout everything I did in my report. There's sort of the
10 characteristics of these products, kind of just factually:
11 What are they? What do they sell? What is their service
12 they're offering?

13 The second one is, you know, testimony and
14 documentary evidence, to an economists that's kind of
15 testimony and documents and more qualitative evidence about
16 how customers use these products, how they view these
17 products, what services they fill for the customers.

18 The third type of evidence is empirical evidence,
19 where here I looked at company ordinary course records and
20 data that indicates who the companies are competing with and
21 losing business to. Who are the competitors that show up in
22 the company's data the most.

23 I think for purposes of analysis, sort of in
24 order to step through each of the other modes of distribution,
25 it's useful to first think about the kind of characteristics

1 and the testimony and the documents. Just to define what are
2 these modes of distribution, how do they differ? How are they
3 the same? What are on the characteristics of substitution?

4 And then I'll ideally talk about the empirical
5 evidence at the end because that kind of answers the all end
6 question of: Is the diversion within broadline enough to
7 define a market?

8 THE COURT: Mr. Mohr, I just want to let you know
9 it's about three of 5:00. So if there's a natural breaking
10 point in your examination you should think about that. We can
11 go a little bit past 5:00, but not too much more than that.

12 MR. MOHR: Thank you, Your Honor.

13 BY THE COURT:

14 Q. Lets me turn to the first of one of these analyses
15 here, Dr. Israel.

16 Did you analyze whether systems distribution
17 should be included in the relevant product market?

18 A. I did.

19 Q. What was your conclusion?

20 A. Again, just to make sure I'm clear. My ultimate
21 conclusion is that broadline is enough. So broadline captures
22 enough of the -- the aggregate diversion within broadline is
23 sufficient to define a market. For systems, in particular, my
24 conclusion is that systems is a distance enough substitute,
25 and in particular, a substitute that is not available to a

1 substantial portion of customers who purchase broadline
2 services that a SSNIP on broadline services would not lead to
3 significant diversion to systems, such that systems does not
4 need to be included in the market.

5 Q. What types of information did you consider in analyzing
6 whether systems distribution should be included in the
7 relevant product market?

8 A. I mean, again, I looked at characteristics of the
9 product. I looked at testimony and documents. I mean, the
10 simple -- for systems, the most basic piece of information is
11 really -- it's in all the testimony and documents that I
12 reviewed, it's sort of what customers can and cannot make use
13 of systems distribution.

14 So for systems distribution -- here's a place
15 where I'll bring up the local national split. I think it's
16 clear in everything that I reviewed in this case that systems
17 distribution isn't really an option for local customers, it's
18 really a scale-based chain service business that serves chain
19 restaurants. So one point is that systems really isn't a
20 substitute for the local set.

21 For the national set systems distribution, and I
22 think this is fully acknowledged, systems distribution is
23 optimized, targeted, the business model is to serve chain
24 restaurants and really particularly quick service chain
25 restaurants like Burger King or Popeyes or quick service chain

1 restaurants. It really is a business model that serves that
2 group. That group makes up my report indicates 10 to
3 15 percent of the revenue of the merging parties, so it's
4 there. But that's really the only set we're talking about
5 that could potentially make use of the systems.

6 If you're thinking about a SSNIP increasing the
7 price on broadline and asking who might go to systems, it
8 wouldn't be any local customers, and it would be only a very
9 small subset of national customers, should we even consider
10 it.

11 Q. As part of your analysis did you examine any
12 distribution facilities yourself?

13 A. I did. I toured a systems facility in Manassas,
14 Virginia. I also toured a broadline facility outside of
15 Pittsburgh. I mean, the systems facility in Manassas was
16 quite instructive in the sense that it's a facility that
17 serves five or six customers only, they're all chain
18 restaurants.

19 When you walk in you see there's no sales reps.
20 They're not out trying to compete for business, they are
21 serving these five or six customers. And from talking to
22 them, every part of the facility is optimized to serving
23 these -- they have specific rooms for the tomatoes that go to
24 one customer, and they have bottles of Dasani water, but they
25 are divided by the type of customer. Everything is optimized

1 to serve these chain --

2 It was quite clear that it's really a logistics
3 distribution business to serve large chain restaurants, and
4 that's all they're capable of doing. I actually had asked the
5 guy who ran the facility: If you wanted to serve broadline
6 customers, what would you need to do? And his answer was:
7 Get rid of all the chain restaurants that I serve now and
8 completely start over and redesign my warehouse. It really
9 was clear that it was quite a different business.

10 MR. MOHR: Your Honor, I know that I went about
11 five minutes. This would be a good place for a break.

12 THE COURT: That's all right. Okay. Dr. Israel,
13 why don't you step down. We'll conclude for today, and then
14 let's talk about tomorrow and going forward.

15 (The witness, Dr. Israel, exits the courtroom).

16 THE COURT: All right. Mr. Weissman, is Dr. Israel
17 your final witness?

18 MR. WEISSMAN: He's our final and then we'll have a
19 rebuttal case.

20 THE COURT: Other than your rebuttal?

21 MR. WEISSMAN: Yes.

22 THE COURT: How much more direct examination do you
23 expect?

24 MR. MOHR: I'd estimate, Your Honor, about an hour
25 and a half to two hours.

1 THE COURT: Okay. And Mr. Parker?

2 MR. SIMMONS: Ian Simmons. Probably about an hour
3 and a half to two hours of cross.

4 THE COURT: I assume you'll probably have 45
5 minutes of -- a half hour to 45 minutes of redirect?

6 MR. MOHR: Correct, Your Honor.

7 THE COURT: So we're talking about the better part
8 of tomorrow for Dr. Israel. It's Friday tomorrow, Mr. Parker,
9 would you be prepared to put on your first witness tomorrow?

10 MR. PARKER: Yes, we definitely would. No
11 question. We have three witnesses we could put on tomorrow,
12 sir.

13 THE COURT: Okay. Are any of them likely to be
14 substantial in length? In other words, are we going to get an
15 hour in of somebody's direct and have to restart on Monday or
16 are there witnesses who are short enough that perhaps we can
17 actually get them in and completed tomorrow?

18 MR. PARKER: Yes, sir. There is one customer who
19 will be short. And then there is one company witness who will
20 be short. And there's one company witness who would be a
21 little bit longer, maybe an hour or so.

22 THE COURT: Well, realistically, I doubt we'll get
23 to all three. Why don't you be prepared to have at least one
24 of them available tomorrow and ideally two. Let's start again
25 at 9:00 o'clock. We've got a full docket ahead of us. I know

1 this comes as unfortunate news to our court staff. But we'll
2 start at 9:00 and we'll go to 5:00. We'll have the same
3 schedule we had today, and then we'll figure out where we're
4 going to go from there.

5 I know we're off in terms of time allocation or at
6 least the expectation that your case would be done in about
7 three days. I think we're probably a little over that, but
8 we'll work through it. We'll work through it.

9 MR. WEISSMAN: We started Tuesday afternoon, so
10 we're 2 1/2 days, we're a half day, we're close. We're going
11 to have an hour or so in rebuttal. So, I'm not -- I hear you,
12 Your Honor, but --

13 THE COURT: Okay. Look, everybody is working hard
14 on our schedule and I appreciate that, but let's just maximize
15 the time we have tomorrow. Let's start at 9:00 and we'll
16 conclude at 5:00 and we'll see everybody in the morning.
17 Thanks very much.

18 COURT ADJOURNED AT 5:05 P.M.

19 C E R T I F I C A T E

20 I, Lisa M. Foradori, RPR, FCRR, certify that
21 the foregoing is a correct transcript from the record of
22 proceedings in the above-titled matter.

23

24 Date: _____

Lisa M. Foradori, RPR, FCRR

25

<p>\$ Case 1:15-cv-00256-APM</p>	<p>Document 184 Filed 06/26/15 Page 137 of 164</p>	<p>58 percent [2] 834/11 834/14</p>
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<p>1.5 billion [1] 862/7 1/2 [2] 901/5 938/10 10 [3] 854/16 904/22 935/2 100 percent [1] 841/7 10017 [1] 805/6 1076 [1] 893/3 11 [25] 815/23 816/15 818/9 819/7 846/18 846/24 848/11 852/8 852/12 855/20 858/11 858/12 858/16 859/3 875/19 879/1 879/2 881/19 882/16 887/10 889/4 894/25 896/12 896/24 898/1 1155 [2] 805/10 805/13 11th [1] 886/6 12 [2] 820/24 904/22 125 [1] 841/5 12:30 [2] 871/23 871/24 13 [1] 870/10 13,000 [2] 842/4 861/16 1382 [1] 814/22 14 [2] 818/24 827/10 14 billion [1] 859/8 14 percent [1] 846/6 140 percent [1] 841/5 15 [1] 859/8 15 percent [1] 935/3 15-256 [1] 803/5 1625 [4] 804/16 804/20 804/24 805/2 170 [1] 856/3 18 [4] 838/6 849/6 849/18 849/20 180 [1] 856/3 19 [1] 819/4 1:30 [1] 803/6</p>	<p>3.2 million [1] 818/10 326-2030 [1] 803/20 326-2579 [1] 803/24 326-2673 [1] 804/8 326-3296 [1] 804/4 3269 [1] 805/19 3296 [1] 804/4 333 [1] 805/18 35 [10] 891/23 892/1 892/5 892/10 892/15 892/17 893/17 894/1 894/14 894/17 35,000 [1] 834/5 3500 [2] 871/12 871/18 354-3269 [1] 805/19 383-5300 [2] 804/21 804/25 383-5380 [1] 804/17 3840 [1] 805/7 3:00 [1] 854/16</p>	<p>7</p> <p>70 [1] 892/15 700 million [1] 848/5</p> <p>8</p> <p>80 miles [1] 847/21 80 percent [3] 862/13 863/3 863/7 80 versus [1] 862/17 80/20 [1] 865/3 809 [1] 806/5</p>
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A Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15 Page 138 of 164	835/18 839/14 847/19 852/13 858/16 864/7 867/23 868/12
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[68] 881/10 881/15 882/19 883/13 884/18 886/6 886/21 889/18 890/19 890/20 891/5 891/6 891/15 892/20 894/20 896/12 897/1 897/7 901/5 902/7 903/3 903/8 903/10 903/12 905/19 907/20 909/11 909/25 910/10 910/11 910/22 911/3 912/19 913/17 914/11 914/15 915/2 915/9 916/11 916/16 917/6 919/17 921/24 922/17 922/19 923/10 923/14 925/12 925/14 927/7 927/23 928/19 931/13 931/16 931/20 932/15 932/25 933/4 933/9 933/10 935/4 935/6 936/10 936/14 936/24 937/2 937/7 938/6 above [3] 859/22 913/22 938/22 above-titled [1] 938/22 absolutely [1] 871/6 academic [2] 904/24 905/1 academics [1] 901/17 accelerating [1] 844/7 accepted [2] 907/20 925/24 accepting [1] 873/24 access [2] 815/22 822/7 accomplished [1] 849/24 according [6] 880/24 885/24 911/15 912/2 914/10 917/15 account [27] 810/14 819/6 826/16 826/19 826/19 826/20 826/22 826/24 827/18 827/20 827/21 827/22 828/3 828/7 830/8 830/14 831/8 833/10 834/22 838/25 865/9 868/18 868/20 873/1 874/25 907/10 920/9 accounts [12] 812/6 827/9 830/2 830/5 831/7 831/24 862/9 864/1 867/2 867/10 875/15 897/22 accurate [1] 931/1 accurately [1] 905/15 achieve [1] 861/2 acknowledged [2] 896/18 934/22 acquire [2] 815/13 815/14 acquiring [1] 820/12 acquisition [10] 884/5 884/8 884/10 886/6 887/6 887/9 892/2 906/17 906/20 906/24 acquisitions [1] 887/8 acres [1] 845/10 across [4] 838/10 845/9 894/6 913/23 acted [1] 881/11 activity [1] 817/20 actual [1] 890/22 actually [28] 810/5 811/10 817/22 819/16 820/4 826/25 828/22 836/10 839/13 842/23 843/20 848/3 853/9 856/1 857/13 862/17 865/3 871/22 873/13 874/22 875/1 880/2 885/12 905/10 917/8 918/25 936/4 937/17 add [5] 843/24 850/8 926/15 926/16 931/5 added [3] 815/18 865/13 875/13 adding [2] 811/20 837/12</p>	<p>addition [3] 841/23 842/22 843/19 additional [3] 837/13 837/13 845/13 additions [1] 841/12 adjacent [2] 845/6 845/14 ADJOURNED [1] 938/18 administrative [1] 903/20 admitted [2] 853/23 905/23 advantage [3] 891/15 891/19 891/21 advising [1] 903/1 affect [3] 888/22 888/24 922/10 affected [4] 908/25 911/1 916/13 924/11 affiliated [2] 807/4 854/18 after [20] 809/23 813/22 813/23 813/24 823/4 824/12 833/17 835/9 855/4 856/25 872/16 878/14 879/12 892/1 899/25 900/4 901/15 908/22 909/2 911/5 afternoon [7] 803/13 883/7 900/7 900/16 900/19 900/20 938/9 again [21] 807/8 834/24 841/15 854/15 869/12 871/22 873/11 875/11 879/22 883/7 884/12 892/14 895/14 896/11 900/7 925/3 929/6 931/7 933/20 934/8 937/24 agencies [4] 903/17 903/21 908/10 908/13 aggregate [7] 927/23 928/2 928/8 928/9 928/21 931/9 933/22 aggressive [2] 859/13 882/24 aggressively [2] 882/13 882/14 Agilman [1] 803/24 ago [7] 809/13 827/10 833/6 842/18 877/19 880/14 924/8 agree [1] 880/20 agreed [1] 886/5 agreement [14] 814/7 814/21 814/22 818/5 818/7 820/24 833/15 833/17 835/19 892/13 894/21 897/7 897/21 897/25 ahead [8] 808/15 809/3 823/22 841/8 854/12 872/1 922/23 937/25 aided [1] 805/24 airline [1] 904/19 aisle [1] 840/22 AL [2] 803/4 803/8 Albuquerque [8] 809/21 809/22 809/25 810/2 810/4 810/6 810/6 855/16 alert [1] 807/21 ALEXIS [1] 803/22 all [161] Alliant [2] 846/24 846/25 allocation [1] 938/5 allow [2] 819/20 883/10 allowed [2] 809/1 897/25 almost [2] 868/24 897/14 along [3] 818/12 818/16 858/25 already [12] 820/9 820/19 838/13 842/17 842/24 842/25 866/9 871/1 875/22 875/23 877/2 911/24 also [32] 810/20 814/11 821/2</p>	<p>869/6 869/8 869/24 870/3 870/20 872/24 874/7 875/23 875/23 876/21 877/9 883/16 889/18 895/7 904/8 909/10 911/10 912/15 918/15 927/6 935/14 alternative [3] 883/1 883/1 883/8 although [3] 860/4 914/4 914/23 always [11] 810/7 825/23 826/17 826/23 840/17 842/12 847/2 861/1 880/13 911/2 927/1 am [26] 807/12 812/23 813/1 813/3 819/13 821/10 821/12 822/5 825/17 828/3 829/24 834/17 836/1 838/2 846/23 848/20 850/6 850/21 863/12 865/21 871/22 876/23 881/20 882/1 882/7 922/24 America [1] 889/19 American [3] 869/14 870/16 875/16 AMIT [1] 803/14 among [2] 835/5 842/4 amount [7] 838/1 838/9 861/24 873/19 876/2 886/12 928/21 analyses [2] 918/19 933/14 analysis [33] 907/22 908/16 910/16 910/20 913/7 913/11 914/24 915/10 915/15 917/6 917/9 917/20 917/25 919/6 919/7 919/16 920/2 920/3 921/17 922/5 922/10 922/20 922/22 924/12 925/16 927/14 928/20 930/1 931/1 931/4 932/4 932/23 935/11 analyze [7] 908/2 914/19 922/7 931/3 931/5 932/7 933/16 analyzed [1] 922/21 analyzing [4] 916/18 924/5 924/10 934/5 announced [2] 813/22 813/24 announcement [1] 855/10 another [8] 841/15 867/11 881/2 881/4 889/9 910/5 912/8 913/23 answer [9] 819/20 883/24 891/24 904/3 910/9 913/10 930/8 931/11 936/6 answers [2] 924/8 933/5 antitrust [6] 902/24 902/24 903/2 903/3 903/9 903/13 any [47] 810/10 811/16 815/18 816/3 819/15 823/15 833/22 833/24 836/7 844/10 850/2 859/3 859/23 866/11 867/12 867/13 870/9 870/18 872/18 873/7 876/10 881/17 882/12 889/4 889/14 894/14 894/16 894/16 899/15 899/22 903/20 904/12 904/24 905/21 906/2 909/8 909/12 913/7 918/17 920/8 921/8 925/6 929/20 931/5 935/8 935/11 937/13 anybody [2] 846/10 854/18 anyone [1] 887/7 anything [5] 809/14 823/14 860/11 890/13 898/13 anywhere [1] 850/2</p>

A	Case 1:15-cv-00256-APM Document 184-3 Filed 06/26/15 Page 139 of 164	Aurora [1] 885/3 Austin [1] 843/6 919/24 921/16 921/17 925/6 925/14 933/5
<p>APA [1] 814/25</p> <p>apologize [3] 808/11 864/15 930/1</p> <p>APPEARANCES [1] 803/17</p> <p>appeared [1] 903/22</p> <p>Applebee's [2] 831/18 832/3</p> <p>applied [1] 929/4</p> <p>applies [2] 924/15 924/21</p> <p>apply [3] 815/16 907/14 918/18</p> <p>applying [1] 932/7</p> <p>appreciate [5] 808/13 845/17 855/22 898/21 938/14</p> <p>approach [7] 884/24 924/7 924/13 925/19 925/20 925/22 930/10</p> <p>appropriate [4] 813/16 861/8 915/10 924/14</p> <p>approximate [2] 818/20 838/1</p> <p>approximately [3] 840/15 841/20 862/11</p> <p>Aramark [8] 829/3 868/4 868/25 869/12 870/23 872/18 872/20 880/11</p> <p>arbitrage [3] 912/5 912/24 913/6</p> <p>arbitration [1] 902/22</p> <p>are [188]</p> <p>area [18] 809/20 810/18 810/19 810/20 811/16 836/18 837/18 838/11 847/12 847/23 852/9 856/11 875/3 878/25 880/25 885/2 894/6 920/17</p> <p>aren't [1] 878/9</p> <p>arm [1] 919/22</p> <p>around [15] 827/22 839/9 854/16 854/16 856/8 861/1 863/12 866/6 869/3 873/4 880/9 925/23 926/8 929/6 930/23</p> <p>arrangement [1] 834/12</p> <p>arrangements [1] 816/14</p> <p>arrow [1] 852/18</p> <p>as [165]</p> <p>ask [8] 807/8 815/11 854/19 897/12 906/2 913/25 914/6 925/1</p> <p>asked [7] 819/24 851/22 862/15 863/3 906/14 915/12 936/4</p> <p>asking [5] 854/7 890/20 892/22 894/2 935/7</p> <p>assess [2] 866/18 906/16</p> <p>asset [5] 814/21 818/5 897/7 897/21 897/25</p> <p>assets [10] 809/23 814/9 817/5 818/17 820/4 881/25 882/9 882/16 883/14 883/20</p> <p>associates [1] 819/7</p> <p>assortment [2] 821/20 831/4</p> <p>assume [4] 853/22 898/9 931/22 937/4</p> <p>assuming [1] 827/12</p> <p>assumption [5] 858/19 893/18 893/20 931/25 932/2</p> <p>Atlanta [2] 842/16 845/9</p> <p>Atlantic [1] 875/3</p> <p>attached [1] 905/14</p> <p>attempting [1] 864/18</p> <p>attendance [1] 813/16</p> <p>Attorney [1] 804/10</p> <p>attract [1] 820/8</p> <p>attributed [1] 876/23</p>	<p>available [8] 815/12 840/7 840/20 841/11 845/7 882/23 933/25 937/24</p> <p>Avendra [8] 829/11 867/18 867/19 870/23 871/10 871/24 880/7 893/16</p> <p>Avenue [6] 803/19 803/23 804/3 804/7 805/6 805/18</p> <p>average [1] 884/19</p> <p>avoid [2] 899/21 925/6</p> <p>award [1] 834/24</p> <p>awarded [2] 833/20 835/3</p> <p>aware [1] 920/8</p> <p>away [1] 890/3</p> <p>awhile [4] 808/6 833/6 842/18 846/21</p>	<p>become [2] 820/25 837/2</p> <p>becomes [1] 914/25</p> <p>beefing [1] 844/15</p> <p>been [38] 809/8 811/20 811/21 812/13 813/23 822/11 825/14 841/17 842/2 842/18 853/25 859/18 859/21 860/17 860/19 865/19 866/5 872/20 875/14 879/5 879/9 881/20 882/6 882/19 885/5 887/6 887/18 888/1 890/22 898/13 898/14 900/14 901/5 904/6 904/11 904/21 925/23 928/16</p> <p>beer [1] 904/18</p> <p>before [25] 803/14 819/16 820/4 837/12 838/8 840/19 840/20 841/17 842/1 876/22 876/24 877/15 878/23 880/15 881/10 883/12 886/14 886/15 903/18 903/20 903/21 903/22 905/25 908/2 926/22</p> <p>begin [3] 813/3 899/4 901/16</p> <p>beginning [1] 915/12</p> <p>behalf [3] 813/10 855/6 900/8</p> <p>behavior [1] 905/3</p> <p>being [18] 819/24 838/19 841/14 861/23 878/10 883/13 898/19 912/12 914/11 916/12 916/25 917/1 920/9 920/16 920/19 922/21 925/8 928/25</p> <p>believe [9] 813/1 836/23 854/2 857/21 872/15 882/17 882/21 895/21 916/19</p> <p>bench [1] 909/23</p> <p>benefits [1] 896/5</p> <p>best [6] 835/5 862/11 863/21 887/17 887/20 894/3</p> <p>besting [1] 814/18</p> <p>bet [1] 807/14</p> <p>better [9] 837/7 839/13 846/10 850/8 859/17 876/18 892/17 921/16 937/7</p> <p>between [17] 816/25 837/17 852/9 856/18 864/16 898/7 916/22 917/5 919/3 920/4 920/9 921/6 921/10 921/20 922/2 925/15 925/16</p> <p>beverage [1] 904/18</p> <p>beyond [2] 881/18 913/22</p> <p>bid [14] 834/17 834/19 834/20 838/19 842/8 842/9 871/10 876/3 876/6 882/10 882/12 882/13 882/14 895/3</p> <p>bidding [1] 882/23</p> <p>big [11] 828/25 829/17 829/19 832/17 840/21 846/12 852/1 868/12 870/7 870/8 877/23</p> <p>bigger [5] 829/19 838/25 869/1 869/1 872/12</p> <p>biggest [2] 837/16 839/14</p> <p>billion [7] 859/8 859/8 862/7 862/9 882/16 893/23 894/18</p> <p>binder [2] 893/7 893/8</p> <p>bit [16] 813/8 832/18 833/14 844/9 854/16 856/21 860/12 873/25 883/23 890/19 891/14 894/20 899/10 924/3 933/11 937/21</p> <p>black [1] 899/18</p> <p>Blackburg [1] 810/17</p>
	<p>B</p> <p>back [29] 808/1 808/1 808/17 809/1 816/17 820/10 823/21 833/7 842/18 850/20 850/21 852/2 854/21 856/14 856/16 857/2 857/4 871/22 873/8 874/12 874/19 876/17 877/18 880/25 892/19 893/2 900/5 910/20 921/6</p> <p>back-to-back [1] 808/1</p> <p>background [1] 901/7</p> <p>Baker [2] 869/18 875/20</p> <p>bakery [1] 878/25</p> <p>Baltimore [2] 804/12 809/19</p> <p>banks [1] 861/4</p> <p>banner [1] 872/10</p> <p>banquet [3] 877/23 878/1 878/5</p> <p>banquets [1] 878/9</p> <p>Barrel [4] 831/8 878/21 879/5 879/8</p> <p>Bartlett [3] 805/5 805/9 805/12</p> <p>base [7] 828/18 828/18 856/10 862/12 868/6 872/13 910/5</p> <p>based [11] 817/20 823/11 830/12 842/13 861/25 863/24 871/8 875/10 918/18 920/18 934/18</p> <p>basic [1] 934/10</p> <p>basically [9] 814/3 859/7 874/21 877/25 883/9 901/25 916/6 930/3 930/25</p> <p>basis [4] 878/15 892/3 892/16 913/17</p> <p>basket [2] 818/25 929/21</p> <p>Bay [1] 847/12</p> <p>be [236]</p> <p>be 2013 [1] 812/19</p> <p>Beach [1] 811/15</p> <p>because [60] 810/10 819/2 821/25 822/17 823/23 823/24 824/2 826/23 827/2 827/4 827/18 830/7 830/10 836/20 838/12 839/2 840/21 841/23 842/25 844/18 845/2 845/16 849/15 851/10 851/11 852/9 852/15 856/20 858/18 862/17 862/24 863/15 865/2 865/13 870/25 878/3 878/3 878/25 883/8 884/18 886/7 886/13 887/18 887/22 889/1 889/16 890/6 892/5 894/5 894/15 905/11 914/18 915/18 917/13</p>	

B Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15	Page 140 of 164
<p>blacked [1] 906/3 Blacksburg [2] 810/17 810/21 Blackstone [6] 813/8 813/11 813/12 837/24 844/17 861/5 Blue [4] 832/22 869/14 870/16 875/16 Bob [1] 860/17 book [7] 821/16 892/23 892/23 892/25 893/2 893/3 893/5 border [2] 921/6 922/2 boss [1] 874/18 both [10] 811/19 819/3 831/16 832/13 832/21 836/8 868/1 886/12 903/11 927/15 bother [1] 862/24 bottles [1] 935/24 bottom [2] 820/22 911/25 bought [10] 842/17 842/19 845/6 845/9 880/15 885/4 885/17 887/10 887/12 888/11 box [1] 822/22 Boy [1] 871/9 brand [3] 816/4 823/25 872/10 brands [8] 820/15 820/15 821/20 822/8 822/25 823/1 823/5 832/22 break [10] 808/12 854/13 899/4 899/9 914/14 916/14 917/11 919/17 919/23 936/11 breakdown [7] 910/23 916/11 917/15 917/16 919/12 919/16 920/4 breakdowns [3] 919/7 923/12 923/18 breaking [1] 933/9 breather [1] 899/10 brief [3] 855/2 900/3 901/8 briefly [3] 901/6 901/21 902/17 bright [1] 921/14 bring [7] 811/24 856/6 856/13 858/20 918/9 918/10 934/15 bringing [3] 851/5 851/14 868/18 Brinker [1] 870/2 broader [2] 838/11 918/20 broadest [1] 929/21 headline [66] 810/10 811/7 828/22 831/10 831/12 831/18 832/3 832/4 832/11 832/13 832/20 832/23 833/1 833/2 833/3 833/4 833/22 833/23 843/24 846/4 852/7 852/8 858/4 859/20 863/17 870/13 876/12 878/7 878/13 878/15 878/15 883/17 884/6 884/10 884/12 885/16 887/13 890/11 891/17 893/22 896/6 907/3 907/4 917/9 924/24 925/3 925/8 929/6 929/8 929/11 929/13 929/18 929/23 930/5 931/8 931/14 932/1 933/6 933/21 933/21 933/22 934/1 934/2 935/7 935/14 936/5 broadliner [3] 889/9 889/22 931/10 broadliners [2] 929/16 931/12 broadlines [1] 930/3 broken [1] 911/13 brother [1] 888/4 brought [2] 857/2 878/2</p>	<p>Bruce [1] 813/12 bubble [1] 918/13 bucket [3] 918/17 922/25 923/21 budget [1] 861/5 budgets [1] 861/6 Buffalo [2] 837/17 874/25 build [14] 816/22 837/4 837/5 837/11 841/8 841/15 843/18 845/10 845/14 845/15 882/17 926/7 926/12 930/15 build-outs [2] 843/18 882/17 building [8] 836/13 837/13 840/25 845/1 887/16 888/3 888/3 929/6 builds [2] 836/9 930/10 built [3] 879/8 887/24 887/24 bulk [3] 828/24 902/23 919/5 Burger [1] 934/25 business [117] 809/24 809/25 810/10 810/15 810/25 812/2 812/4 819/23 819/23 820/3 820/11 820/21 825/15 827/25 830/8 830/9 830/25 831/7 833/19 834/24 835/6 835/22 836/14 838/11 839/21 839/23 841/2 844/16 844/19 848/16 850/2 857/18 857/20 857/22 857/24 859/11 859/12 859/13 859/18 859/19 860/8 860/12 862/10 862/12 862/13 862/23 862/25 863/8 863/9 863/11 865/6 865/14 866/2 867/3 867/4 867/5 867/20 867/20 868/11 868/19 868/23 869/11 870/10 870/17 870/17 870/18 872/8 872/10 872/15 872/19 873/17 875/2 875/13 875/14 875/21 875/24 876/3 876/19 876/21 876/24 876/25 877/15 877/23 878/7 878/11 878/23 881/3 881/5 881/15 881/16 887/15 888/15 888/18 888/23 888/24 889/9 889/10 889/11 889/12 890/7 890/15 892/3 892/16 892/19 893/22 893/23 895/4 901/24 902/5 916/18 932/21 934/18 934/23 935/1 935/20 936/3 936/9 businesses [1] 888/16 buy [5] 845/15 878/10 886/10 889/7 914/5 Buyer [1] 905/6 buyers [3] 905/8 905/11 912/15 buying [5] 844/9 845/5 889/1 912/21 912/21</p>	<p>867/16 868/24 871/4 871/24 874/4 874/16 900/9 915/20 called [20] 826/11 826/24 828/3 866/6 867/6 867/8 867/9 867/10 868/7 868/16 868/17 868/22 873/2 874/12 879/1 901/23 905/6 923/4 923/16 926/1 Callender [1] 870/20 calls [1] 873/14 came [4] 865/11 875/9 902/14 902/14 camera [6] 807/9 808/1 808/17 835/21 854/5 854/11 campus [1] 872/25 can [101] 807/12 807/25 808/1 808/5 809/4 809/21 815/8 815/11 816/1 816/4 816/16 817/23 820/5 821/15 836/11 836/20 838/7 838/10 838/12 839/1 840/14 841/4 842/13 842/21 842/22 842/23 843/23 845/14 845/14 849/18 850/5 851/8 852/3 852/7 853/20 854/22 855/19 855/25 856/1 856/3 856/4 856/23 857/14 857/24 858/7 861/2 863/21 866/15 872/15 875/4 876/10 877/25 881/15 883/23 884/24 891/15 895/4 895/4 895/9 895/14 895/15 895/15 896/17 896/19 896/23 897/2 897/12 897/24 899/21 899/24 901/6 901/13 901/21 902/17 905/10 906/13 911/9 911/13 911/18 912/7 912/13 912/15 912/23 913/1 913/2 914/14 915/9 915/9 917/12 918/1 919/7 920/1 920/24 921/2 921/3 925/18 927/6 927/10 933/10 934/12 937/16 can't [7] 824/15 824/17 842/2 859/3 881/1 889/7 898/4 candidate [9] 927/21 927/25 928/1 928/3 928/5 928/10 928/23 929/5 931/6 cannot [1] 934/12 capabilities [2] 873/4 895/9 capable [3] 836/4 887/23 936/4 capacity [11] 837/13 838/17 838/19 839/5 841/5 841/14 841/17 842/1 842/8 844/23 890/23 capital [2] 818/14 837/23 capture [1] 930/22 captured [1] 928/25 captures [1] 933/21 capturing [1] 930/16 care [1] 918/15 Carlton [1] 905/5 Carmine's [1] 832/25 Carolina [6] 810/20 811/1 811/4 812/2 812/4 812/5 Carrabba's [1] 832/22 Carroll [1] 809/18 carry [1] 931/21 case [17] 845/6 856/1 859/21 895/21 902/2 903/25 904/3 904/25 908/18 913/9 913/11 915/6 921/8 929/4 934/16 936/19 938/6 cases [14] 816/20 866/5 901/12</p>
	<p>C CA [1] 803/5 cafes [1] 869/24 cafeteria [1] 809/13 Cairo [1] 852/20 Cal [1] 837/20 calculate [2] 863/21 909/16 California [12] 837/22 837/22 847/4 848/2 848/8 849/9 849/12 849/14 849/15 849/16 849/20 904/10 call [23] 812/25 813/14 823/24 826/11 827/9 828/7 828/8 830/13 834/22 835/2 840/21 848/15 850/24 855/24 860/1</p>	

C Case 1:15-cv-00256-APM	Chili's [7], 831/5 831/6 832/2 Document 184 Filed 06/26/15 Page 141 of 164	commitment [3] 867/12 875/11 875/18
<p>cases... [11] 902/24 902/25 903/10 903/12 903/15 904/12 905/8 905/10 908/7 908/7 915/6 cash [1] 931/21 cash-and-carry [1] 931/21 casino [1] 869/24 casual [2] 831/4 831/10 categories [2] 826/10 932/6 category [2] 918/14 923/23 cautious [1] 891/10 center [25] 809/16 810/8 810/9 811/5 815/19 816/24 816/25 821/21 836/14 839/9 839/18 844/10 845/11 847/18 848/2 851/15 851/19 855/23 856/9 856/17 856/19 856/25 883/17 885/17 887/4 Centerplate [13] 868/11 868/11 870/14 870/15 870/23 873/13 873/15 874/1 874/4 874/5 874/12 874/13 874/13 centers [35] 818/9 819/8 819/10 819/16 846/17 846/18 846/23 848/11 851/6 851/8 851/10 851/16 851/17 852/7 852/8 852/11 852/12 852/21 853/13 887/10 887/12 888/12 888/13 888/25 889/5 889/8 889/19 890/1 891/15 891/23 892/4 892/10 893/17 894/1 898/2 central [1] 927/13 certain [6] 834/21 870/6 872/6 908/7 919/8 919/24 certainly [10] 829/18 850/5 859/1 860/5 862/1 862/22 864/4 881/14 886/2 899/12 certify [1] 938/20 CFO [1] 860/18 chain [11] 828/17 832/16 934/18 934/18 934/23 934/24 934/25 935/17 936/1 936/3 936/7 chains [1] 831/11 challenges [1] 849/15 change [8] 823/25 824/3 824/4 824/16 835/20 842/13 911/2 914/11 changed [2] 827/11 827/13 changeover [2] 823/17 823/24 channel [1] 869/13 channels [2] 867/20 869/1 characteristics [6] 912/2 912/20 932/10 932/25 933/3 934/8 charge [2] 860/19 912/8 charity [1] 875/8 Charleston [2] 810/25 811/14 chart [4] 814/24 821/18 822/21 891/6 cheap [1] 913/2 cheaper [1] 853/1 cheese [1] 809/12 Cheesecake [2] 869/19 876/1 Chicago [2] 886/8 902/14 Chick [1] 832/18 chicken [4] 817/15 832/9 832/16 832/17 chief [4] 813/9 813/10 895/6 895/7</p>	<p>choose [1] 835/5 Church's [1] 832/20 CID [1] 923/11 Cincinnati [3] 837/16 838/13 891/8 circumstance [1] 825/21 cities [2] 869/21 870/3 city [4] 869/22 875/14 916/6 921/1 clarification [1] 845/18 clarify [1] 864/18 class [3] 901/23 901/24 902/1 classes [1] 919/8 clear [28] 845/5 847/1 847/25 909/5 909/6 909/6 912/10 913/3 913/16 914/21 914/23 915/15 915/18 917/6 922/17 923/19 924/16 925/6 925/16 926/5 926/10 930/3 930/9 931/7 933/20 934/16 936/2 936/9 clearly [2] 865/19 921/17 Cleveland [1] 842/20 client [1] 879/5 clients [2] 807/13 808/24 clone [1] 815/3 close [15] 824/12 836/20 840/1 851/16 852/22 858/22 877/3 879/3 884/18 886/14 899/16 910/6 921/5 931/18 938/10 closed [6] 807/3 808/1 854/18 871/3 886/15 888/17 closely [3] 905/5 907/24 925/22 closer [1] 853/2 closing [1] 816/15 clustered [2] 916/5 919/3 CMU [5] 830/14 916/16 917/7 923/3 923/4 CO [1] 846/24 Coast [2] 849/3 859/1 coffee [1] 872/23 coincide [1] 854/13 colleague [1] 899/6 college [1] 872/25 COLUMBIA [3] 803/1 810/25 811/14 combination [3] 843/21 878/12 896/8 combine [1] 889/2 combined [1] 851/23 Comcast [6] 903/24 904/7 904/8 904/9 904/15 904/15 Comcast/NBC [2] 903/24 904/7 Comcast/NBCU [1] 904/15 Comcast/Time [3] 904/8 904/9 904/15 come [14] 808/21 808/24 816/17 823/23 840/11 840/21 850/20 856/19 878/12 892/5 895/3 900/10 904/1 904/3 comes [6] 836/17 839/15 840/6 882/12 910/23 938/1 comfortable [1] 850/1 coming [5] 822/4 844/21 862/13 875/7 915/19 comment [3] 873/14 880/12 881/9 COMMISSION [10] 803/4 803/18 803/18 803/22 804/2 804/6 900/8 903/23 904/10 906/15</p>	<p>commitments [2] 867/15 881/17 committed [1] 837/24 common [4] 835/8 835/18 925/10 925/15 communicate [1] 824/4 Communications [1] 903/23 companies [9] 846/24 847/3 859/20 864/2 870/9 870/25 889/3 916/19 932/20 company [24] 810/5 811/11 820/13 825/22 834/9 837/10 843/22 843/23 845/8 851/23 858/14 861/25 863/6 872/4 879/9 879/23 886/7 886/8 886/10 921/1 922/6 932/19 937/19 937/20 company's [2] 838/19 932/22 compared [1] 888/19 comparing [1] 824/6 Compass [17] 829/1 868/21 868/23 868/25 869/12 870/14 870/15 870/23 874/16 880/23 900/25 901/1 901/4 902/14 902/15 902/17 903/5 compete [7] 812/17 819/3 821/2 898/4 902/6 915/1 935/20 competing [7] 858/8 858/8 908/5 923/11 926/16 926/21 932/20 competition [26] 839/3 859/1 898/7 901/12 901/13 901/14 902/3 902/6 902/8 902/23 903/1 903/4 903/13 903/17 906/17 906/20 906/25 907/2 908/2 908/10 908/12 926/18 926/19 926/20 928/11 928/14 competitive [11] 812/23 839/2 850/2 858/3 858/13 858/24 901/13 906/16 910/2 922/20 931/1 competitors [8] 830/9 839/14 840/5 844/22 846/12 910/6 918/10 932/21 complaint [1] 929/10 complete [4] 815/22 843/25 917/8 917/20 completed [3] 838/5 844/4 937/17 completely [2] 917/15 936/8 component [2] 909/13 909/14 comprising [1] 818/9 compute [1] 918/4 computed [1] 923/17 computer [2] 805/24 886/17 computer-aided [1] 805/24 concede [1] 864/4 conceded [1] 862/22 concentrated [1] 909/17 concentration [3] 909/16 909/18 909/22 concept [3] 870/6 916/2 927/11 concepts [1] 872/6 conceptually [1] 927/16 concern [1] 876/15 concerned [6] 835/24 838/18 838/21 851/23 854/10 854/10 concerns [1] 876/3 conclude [4] 914/18 924/23 936/13 938/16 concluded [1] 899/1</p>

C Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15	Page 142 of 164
<p>conclusion [6] 819/18 921/21 929/10 933/19 933/21 933/24 concrete [2] 929/3 929/9 condition [2] 912/23 912/24 conditions [3] 911/15 912/3 913/8 confess [1] 866/17 confidence [4] 820/7 858/17 871/8 872/19 confident [10] 820/20 861/13 882/25 883/13 883/16 883/20 883/25 884/1 889/18 890/4 confidential [4] 899/22 906/2 906/5 906/7 confine [1] 807/8 confirm [2] 855/5 858/17 confused [2] 808/6 845/3 confusing [1] 917/12 confusion [2] 862/3 925/7 connection [1] 927/9 consents [3] 819/13 819/16 820/4 conservatism [2] 861/1 861/10 conservative [5] 859/14 859/15 861/9 918/11 918/16 consider [7] 820/6 830/1 859/15 879/24 909/23 934/5 935/9 consideration [1] 910/8 consistently [1] 917/11 consolidate [1] 852/11 constant [1] 913/21 Constitution [1] 805/18 constrain [1] 842/9 constrained [1] 841/15 constraining [1] 842/8 constraint [1] 841/3 constraints [1] 839/5 constructions [1] 890/20 consultant [3] 813/11 915/25 916/18 consulting [1] 902/19 consumer [1] 905/3 consumers [3] 906/17 906/25 910/14 Cont'd [2] 809/10 855/14 contact [1] 827/16 contacts [1] 870/25 context [2] 842/10 927/15 continually [1] 824/1 continue [5] 824/18 833/15 835/18 860/6 871/20 continuing [2] 839/7 841/6 contract [12] 817/15 824/22 827/25 828/17 835/19 863/22 868/5 868/12 869/3 871/21 873/18 912/14 contractor [1] 838/8 contracts [8] 815/8 838/20 867/13 867/14 867/15 882/10 913/14 916/25 contractual [5] 816/7 819/13 819/15 834/10 834/12 control [1] 860/2 controlled [1] 928/5 controls [1] 926/19 convenience [1] 872/24 conversations [1] 880/8 convert [1] 845/11 convince [6] 890/13 892/3</p>	<p>convicted [2] 889/21 890/13 cooler [1] 843/20 core [2] 931/8 931/11 Corona [2] 836/23 847/5 corporate [7] 819/1 827/9 827/21 828/6 860/3 860/14 916/17 CORPORATION [2] 803/8 804/15 correct [80] 812/24 813/1 813/2 818/10 818/11 821/14 822/9 824/13 829/6 836/19 837/25 838/3 844/25 846/7 846/14 846/15 846/20 847/11 847/16 848/3 848/21 853/4 857/7 857/10 859/9 859/10 863/10 881/22 882/5 883/10 883/14 883/15 883/21 884/6 884/7 884/8 884/13 884/15 884/21 885/2 885/17 885/24 885/25 886/1 886/23 887/1 887/3 887/11 888/9 888/15 889/19 889/22 890/23 890/24 891/1 891/9 891/16 892/2 892/17 892/18 893/17 893/23 894/18 894/19 894/25 895/1 895/11 895/16 895/17 895/19 896/7 896/23 897/3 898/2 898/3 898/5 898/6 898/8 937/6 938/21 corrections [1] 869/13 correspond [1] 925/4 cost [13] 816/23 817/1 851/10 851/11 851/18 851/20 852/17 858/3 858/10 858/13 911/4 913/21 913/22 costly [1] 886/19 costs [1] 913/4 could [41] 819/15 824/7 827/17 828/3 828/6 828/8 829/21 839/25 840/1 840/1 855/12 855/20 855/21 861/12 865/14 874/10 882/21 883/20 885/6 887/20 896/22 904/8 906/7 908/25 909/1 910/14 911/1 911/11 914/2 914/3 914/10 914/24 921/8 922/8 926/24 927/2 928/11 929/19 932/4 935/5 937/11 couldn't [1] 890/7 counsel [1] 813/7 country [13] 810/17 825/16 827/18 827/23 830/7 831/6 852/5 852/6 855/25 915/23 918/3 918/8 919/1 County [1] 809/18 couple [7] 831/9 831/9 833/7 851/16 851/17 877/5 924/8 course [7] 815/4 841/21 895/12 901/23 919/1 931/4 932/19 courses [1] 901/21 court [16] 803/1 803/15 805/17 805/17 807/22 809/22 814/20 854/3 863/3 894/9 899/6 899/9 899/13 903/18 938/1 938/18 Court's [1] 873/24 courthouse [2] 805/18 809/17 courtroom [9] 807/3 808/16 809/1 854/9 854/17 854/20 899/16 900/5 936/15 Courtyard [1] 872/8 Courtyards [1] 867/25 cover [1] 830/7</p>	<p>coverage [1] 873/16 894/15 894/17 covering [3] 816/8 817/6 915/22 covers [1] 870/6 Cracker [3] 831/8 878/21 879/8 Cranker [1] 879/5 create [1] 853/13 credit [1] 818/25 critical [1] 819/2 critically [1] 820/6 cross [6] 806/5 807/9 808/2 809/10 855/14 937/3 cross-examination [4] 806/5 808/2 809/10 855/14 crowd [1] 871/9 Cruz [1] 847/15 culturally [1] 876/11 curious [1] 929/24 current [7] 846/4 846/17 848/11 861/25 880/12 896/9 901/1 currently [4] 869/17 870/10 871/17 875/24 Curtis [1] 826/20 customer [53] 815/7 820/17 821/9 822/7 823/19 824/4 825/2 825/4 825/16 826/6 826/8 833/21 833/22 833/24 850/2 850/4 851/12 852/15 853/2 856/10 860/11 862/12 865/25 866/6 868/6 868/9 869/2 872/21 879/5 890/12 891/17 895/3 895/15 895/18 896/16 910/21 910/24 914/20 914/25 917/7 917/9 917/19 917/22 917/23 918/5 918/17 920/16 920/19 920/19 922/25 935/24 935/25 937/18 customers [160] customers' [1] 833/19 customize [2] 833/22 876/8 customized [24] 828/20 828/23 830/10 830/25 831/3 831/14 831/18 832/3 832/6 832/8 832/10 832/13 832/20 832/24 833/2 845/12 852/15 876/14 878/13 878/14 878/23 878/24 887/13 888/12 cut [3] 824/5 838/10 854/7 cutting [2] 824/5 824/5 CV [1] 905/14 cycle [2] 838/24 839/1 D D.C [5] 809/17 901/3 902/15 903/7 903/7 daily [1] 817/22 Dallas [5] 843/13 843/23 853/11 877/19 877/20 Dasani [1] 935/24 dash [2] 885/10 885/14 data [3] 917/7 932/20 932/22 date [2] 874/23 938/24 dated [1] 830/13 dates [1] 813/21 DAVENPORT [1] 804/6 day [16] 803/13 826/4 837/5 838/20 838/21 842/8 856/13 876/9 876/9 876/10 881/17 887/17 894/8 899/12 904/2 938/10</p>

D Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15 Page 143 of 164	diligence [1] 886/13 dimension [4] 909/9 909/10
days [4] 810/3 810/3 938/7 938/10	descended [1] 862/3 describe [22] 816/1 816/1 816/16 818/16 820/22 821/17	924/18 924/18 dimensions [1] 909/7
DC [12] 803/5 803/19 803/23 804/3 804/7 804/16 804/20 804/24 805/2 805/10 805/13 805/19	822/22 830/4 837/3 846/2 871/7 897/24 901/6 901/21 902/17 906/14 907/23 908/20 920/1 920/5 925/18 926/2	dining [3] 831/4 831/8 870/6 dinner [1] 873/2 direct [4] 806/8 900/17 936/22 937/15
DC's [1] 851/23	described [7] 917/4 919/20	direction [1] 910/1
deal [19] 807/24 813/22 820/11 823/19 824/12 829/21 858/10	920/11 920/23 921/23 922/1 924/23	directly [3] 868/19 868/24 930/9
860/3 870/21 871/3 873/16 875/18 877/10 880/17 881/6	description [2] 868/6 908/10	director [2] 901/2 903/6
881/14 896/25 897/2 918/15	designation [2] 923/8 923/9	disappointment [1] 886/3
dealing [5] 822/11 822/11 824/10 824/11 825/21	detail [5] 852/16 910/11 919/21 920/12 924/24	disciplines [2] 876/12 876/22 disclose [1] 906/2
deals [1] 838/10	details [2] 907/8 928/20	disconnect [1] 864/16
December [1] 812/16	determinative [1] 835/13	discreet [1] 921/15
decent [1] 865/14	determine [3] 913/7 913/14 924/19	discrepancy [1] 872/2
decide [2] 916/7 922/24	determined [1] 834/20	discrimination [2] 912/1 912/3
decided [1] 873/9	Detroit [1] 837/17	discussed [3] 812/13 911/25 924/3
deck [2] 885/9 906/5	develop [1] 820/19	discusses [1] 914/23
declaration [3] 828/12 829/23 879/13	diagram [1] 850/24	discussing [1] 916/24
decline [1] 858/18	dialing [1] 822/18	discussion [2] 911/23 922/14
defeat [1] 882/21	dialogue [1] 871/20	discussions [2] 813/3 879/12
defendant's [3] 866/9 892/23 892/25	did [58] 813/18 814/7 823/23 825/23 843/19 862/15 863/23	dispersed [3] 894/6 915/22 916/3
defendants [4] 803/9 804/15 805/5 855/6	865/5 868/1 871/10 871/17 871/19 873/19 877/2 880/7	displace [1] 836/21
defense [1] 905/21	884/8 884/9 887/8 888/7 888/12 888/19 890/5 890/9 890/10	displayed [1] 911/19
deficiencies [2] 850/18 850/22	890/15 890/16 898/13 901/16 902/9 902/12 907/6 907/14	distance [1] 933/24
define [8] 886/2 915/20 915/21 917/15 924/17 933/1 933/7 933/23	910/18 913/7 913/10 914/19 914/21 915/16 916/7 918/22	distant [1] 910/4
defined [7] 909/8 909/12 909/15 917/13 923/3 923/5 927/2	919/7 919/12 919/12 919/15 919/17 919/22 922/24 923/21	distinct [10] 910/25 912/18 916/20 916/21 917/18 921/18 922/4 922/21 924/9 932/3
defines [1] 925/10	929/5 930/3 931/5 932/7 932/9 933/16 933/18 934/5 935/11 935/13	distinction [1] 921/14
defining [2] 917/17 924/7	didn't [19] 819/19 837/21 862/18 864/8 865/15 871/16	distinctions [1] 922/1
definitely [1] 937/10	873/6 873/6 873/18 874/1 874/11 874/11 876/5 876/22	distinctly [1] 912/8
definition [14] 827/11 828/1 830/3 909/3 909/4 909/8 922/18 924/5 924/13 924/15 924/17 925/19 929/17 930/13	884/21 884/22 886/12 890/6 923/20	distort [1] 827/4
definitions [2] 827/17 917/17	Diego [1] 847/9	distributing [1] 852/25
degree [3] 834/21 881/16 901/9	differ [1] 933/2	distribution [88] 809/16 810/8 810/9 811/5 815/19 816/24 816/25 818/9 819/7 819/9 819/16 821/21 827/1 830/23 836/14 839/9 839/18 844/9 845/11 846/17 846/18 846/23 847/18 848/1 851/5 851/8 851/10 851/15 851/16 851/17 851/19 852/7 852/8 852/9 852/11 852/12 852/21 853/13 855/23 856/9 856/17 856/19 856/25 883/17 885/17 887/4 887/10 887/12 888/12 888/25 889/4 889/8 891/15 891/23 892/4 892/10 893/17 894/1 894/25 898/1 904/18 904/19 907/3 907/5 924/25 925/3 925/8 929/7 929/8 929/13 929/24 929/25 930/6 931/9 931/17 931/20 931/20 932/24 933/2 933/16 934/6 934/13 934/14 934/17 934/21 934/22 935/12 936/3
degrees [1] 926/21	difference [6] 816/25 852/9 856/18 868/25 897/5 919/3	distributors [2] 918/3 918/7
DeLaney [1] 812/25	different [54] 818/22 820/13 820/14 820/14 820/14 820/16 820/16 826/10 826/18 834/22 845/12 861/6 861/7 865/11 867/24 867/25 871/17 872/4 872/6 877/14 878/11 880/10 881/13 908/15 910/25 911/9 911/9 911/11 911/12 912/2 912/9 912/12 912/13 912/16 912/16 912/20 912/25 912/25 913/5 913/5 913/15 913/20 913/20 913/23 913/23 913/24 914/3 914/5 914/15 915/14 921/25 925/5 926/15 936/9	DISTRICT [3] 803/1 803/1 803/15
Delaware [7] 869/5 869/6 870/15 870/24 874/24 874/25 881/4	differentially [1] 908/25	districts [1] 844/1
deliver [7] 810/3 851/17 851/20 852/17 852/21 852/23 853/11	differently [8] 876/13 911/1 916/12 916/13 921/25 921/25 922/3 924/11	diversion [19] 927/10 927/11 927/13 927/19 927/22 927/24 928/2 928/8 928/9 928/13
delivered [2] 816/23 844/1	differs [1] 925/16	
deliveries [3] 856/12 856/25 857/1	difficult [2] 886/20 886/21	
delivery [3] 825/1 857/5 876/10		
demanding [1] 876/25		
demonstrative [3] 821/18 897/8 906/1		
demonstratives [1] 899/18		
Dennis [1] 905/5		
Denver [2] 809/25 855/16		
department [2] 826/20 901/19		
depend [1] 881/17		
depends [1] 856/9		
depict [2] 814/24 852/19		
depicting [1] 852/3		
deposition [3] 864/10 864/16		

D Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15	Page 144 of 164
<p>diversion... [9] 928/22 928/23 930/16 930/22 930/24 931/9 933/6 933/22 934/3</p> <p>divested [1] 809/23</p> <p>divestiture [17] 812/10 815/13 837/14 842/10 846/18 848/1 858/12 862/10 866/3 872/16 878/7 880/22 883/8 890/21 907/10 910/10 910/12</p> <p>divestitures [3] 865/20 896/9 896/25</p> <p>divided [1] 935/25</p> <p>dividing [3] 864/6 864/6 864/7</p> <p>division [1] 922/9</p> <p>do [200]</p> <p>dock [2] 839/10 839/15</p> <p>docket [1] 937/25</p> <p>doctrine [1] 908/14</p> <p>document [9] 814/18 853/12 860/15 863/19 866/19 885/7 916/24 920/12 923/7</p> <p>documentary [1] 932/14</p> <p>documents [10] 812/10 814/13 826/7 915/25 917/13 923/6 932/15 933/1 934/9 934/11</p> <p>does [27] 810/15 814/24 817/14 817/17 818/6 842/9 842/24 844/23 847/21 850/2 852/19 870/10 877/10 877/10 877/10 879/20 881/15 881/16 905/14 905/17 907/9 917/19 918/1 921/20 922/9 931/8 934/3</p> <p>doesn't [13] 862/23 880/19 887/15 888/22 891/11 891/11 891/12 891/12 891/19 894/11 917/8 921/1 922/3</p> <p>doing [19] 811/9 811/10 813/21 825/23 836/4 841/22 842/2 846/14 863/13 866/2 867/5 873/3 876/20 877/1 886/13 887/11 888/3 926/4 936/4</p> <p>dollar [2] 834/2 834/7</p> <p>dollars [1] 882/17</p> <p>don't [78] 807/18 807/21 807/23 809/2 810/11 810/12 810/13 810/13 810/22 815/2 817/4 823/14 827/3 830/7 830/10 834/23 836/20 837/7 841/22 846/11 847/23 847/23 849/11 854/15 859/2 859/22 860/2 860/3 861/3 861/21 862/1 862/8 862/17 862/21 863/22 864/3 864/5 865/7 865/12 866/19 866/24 867/12 867/12 869/13 870/11 870/16 870/18 873/18 874/20 874/23 876/20 877/23 886/10 886/25 888/9 889/2 889/2 889/3 889/15 889/16 889/16 890/10 891/24 894/2 894/15 895/9 895/11 895/12 895/12 895/20 895/21 896/21 897/4 906/2 913/13 921/7 936/13 937/23</p> <p>done [24] 812/1 814/8 836/7 836/9 842/25 844/14 855/12 865/23 875/11 875/12 877/2 881/23 887/6 897/14 904/5 904/5 904/14 904/18 904/25 912/12 915/6 915/10 931/15 938/6</p>	<p>door [1] 847/30</p> <p>dots [1] 820/22</p> <p>double [3] 866/15 873/22 873/24</p> <p>doubles [2] 856/7 856/16</p> <p>doubt [1] 937/22</p> <p>Dover [1] 844/2</p> <p>down [14] 824/2 852/18 858/3 889/25 890/15 911/14 911/20 914/14 916/14 917/11 918/10 919/17 919/23 936/13</p> <p>downside [1] 861/21</p> <p>DR [24] 806/7 899/4 899/7 899/12 900/9 900/11 900/19 900/24 904/24 905/14 905/19 906/1 906/13 907/14 910/18 914/18 920/8 924/3 931/4 933/15 936/12 936/15 936/16 937/8</p> <p>drawings [1] 842/25</p> <p>drive [3] 851/16 851/21 853/1</p> <p>driver [3] 820/14 856/4 857/3</p> <p>drivers [1] 856/10</p> <p>driving [2] 822/15 824/24</p> <p>drop [3] 840/14 840/21 888/22</p> <p>dropped [2] 840/12 840/24</p> <p>dry [1] 843/20</p> <p>due [1] 886/12</p> <p>duly [1] 900/14</p> <p>duplicate [1] 895/9</p> <p>during [1] 923/12</p> <p>DX [11] 814/18 814/21 814/22 845/24 846/2 857/23 866/9 879/18 893/3 893/5 897/8</p>	<p>efficient [2] 837/2 839/12</p> <p>effort [1] 918/22</p> <p>efforts [1] 826/1</p> <p>Ehassi [1] 804/25</p> <p>eight [10] 828/16 828/25 829/17 830/6 836/10 845/21 859/21 864/21 887/13 888/12</p> <p>eight percent [2] 859/21 864/21</p> <p>Eighteen [2] 827/7 827/8</p> <p>either [16] 807/3 845/5 853/22 858/15 858/15 866/4 866/6 872/24 875/25 878/6 878/12 879/22 880/1 903/16 916/7 929/21</p> <p>element [1] 926/3</p> <p>elements [1] 926/3</p> <p>eleventh [2] 884/14 884/20</p> <p>else [2] 842/25 898/16</p> <p>elsewhere [1] 928/24</p> <p>embodies [1] 907/21</p> <p>empirical [4] 927/7 931/15 932/18 933/4</p> <p>employees [7] 820/25 820/25 836/2 836/21 842/4 903/3 903/8</p> <p>employer [1] 811/25</p> <p>empty [1] 856/13</p> <p>enables [1] 841/1</p> <p>end [14] 808/2 833/13 849/24 856/13 871/11 873/9 876/19 878/10 886/14 886/16 918/14 925/8 933/5 933/5</p> <p>ended [3] 868/17 873/19 929/23</p> <p>ending [1] 835/19</p> <p>ends [1] 835/3</p> <p>engage [1] 867/4</p> <p>England [1] 870/7</p> <p>enhanced [1] 848/20</p> <p>enough [27] 823/7 823/8 834/25 840/18 840/24 849/11 877/3 927/3 927/17 928/8 928/10 928/10 928/15 928/24 929/2 929/18 930/7 930/15 930/16 930/22 930/23 931/11 933/6 933/21 933/22 933/24 937/16</p> <p>entertainment [1] 868/13</p> <p>entire [2] 906/4 915/23</p> <p>entitled [2] 853/13 866/25</p> <p>entry [5] 820/16 821/23 825/9 910/8 910/11</p> <p>environment [3] 828/20 828/23 878/13</p> <p>envision [1] 824/2</p> <p>equation [1] 863/13</p> <p>equipped [2] 876/20 887/23</p> <p>equity [2] 861/25 869/16</p> <p>Erma's [2] 869/18 875/23</p> <p>erosion [1] 817/4</p> <p>error [2] 855/11 862/7</p> <p>ESQUIRE [12] 803/18 803/22 804/2 804/6 804/10 804/15 804/19 804/23 805/1 805/5 805/9 805/12</p> <p>essentially [1] 929/22</p> <p>established [1] 909/23</p> <p>estate [3] 844/16 844/19 845/2</p> <p>estimate [6] 849/10 893/24 893/25 894/3 918/18 936/24</p> <p>estimates [1] 919/23</p> <p>ET [2] 803/4 803/8</p> <p>evaluate [2] 908/14 909/17</p>
	<p>E</p> <p>each [14] 827/24 851/20 905/9 910/17 913/1 922/25 923/23 924/12 924/14 924/15 925/8 925/11 926/16 932/24</p> <p>earlier [9] 823/23 838/12 850/18 856/20 868/6 879/10 891/5 891/14 924/16</p> <p>early [1] 848/13</p> <p>earned [3] 816/14 817/1 817/21</p> <p>earning [1] 901/15</p> <p>easier [3] 842/24 870/12 892/24</p> <p>easiest [2] 907/16 910/21</p> <p>East [1] 859/1</p> <p>easy [3] 888/19 888/20 894/16</p> <p>economic [7] 852/23 853/11 902/19 904/11 907/20 907/22 928/7</p> <p>economics [14] 850/25 851/1 852/13 901/9 901/11 901/14 901/15 902/1 902/3 905/2 905/20 911/3 928/4 928/17</p> <p>economist [5] 903/21 903/25 904/22 908/8 926/20</p> <p>economists [5] 903/25 904/2 904/3 904/20 932/14</p> <p>education [1] 905/15</p> <p>educational [1] 901/6</p> <p>EDWARD [1] 804/23</p> <p>effect [2] 919/20 922/12</p> <p>effectively [2] 812/18 916/19</p> <p>effects [11] 906/16 906/16 906/19 908/2 909/18 910/2 910/3 911/10 920/1 922/8 922/20</p> <p>efficiencies [3] 853/14 910/13</p>	

E Case 1:15-cv-00256-APM	Expansion [9] 842/11 843/11 843/14 843/18 844/3 844/23 844/24 845/3 910/11	fall [1] 814/4 familiar [2] 827/8 827/10 family [2] 831/8 870/6 fancy [1] 912/24 far [9] 810/21 826/10 843/6 862/21 869/20 871/8 886/5 922/7 926/9 fast [4] 811/20 827/5 831/9 895/25 faster [2] 854/6 858/19 favor [2] 918/11 918/16 favorable [1] 852/12 fax [2] 825/11 825/12 FCC [4] 903/23 903/23 904/4 904/14 FCRR [3] 805/17 938/20 938/25 feasible [1] 912/3 February [1] 813/23 federal [12] 803/4 803/18 803/18 803/22 804/2 804/6 900/8 903/11 903/18 903/20 903/23 906/15 FedEx [1] 874/10 fee [2] 852/14 852/17 feed [1] 817/22 feeder [2] 868/5 868/12 feeders [1] 863/22 feeding [4] 828/17 835/19 869/3 869/8 feel [12] 835/1 838/6 838/12 839/1 858/20 858/22 858/23 859/17 862/24 881/18 882/9 889/6 feet [1] 818/10 felt [6] 861/13 865/13 876/11 877/15 880/15 886/8 few [4] 809/13 831/9 834/6 844/1 Fewer [1] 853/13 field [2] 874/10 901/10 figure [5] 844/5 924/14 924/21 924/22 938/3 figured [2] 881/25 882/3 file [1] 846/13 Filet [1] 832/19 fill [5] 839/21 839/24 840/2 842/22 932/17 filled [1] 840/3 filling [3] 839/17 839/18 839/19 final [4] 878/19 910/13 936/17 936/18 finance [1] 902/22 finance-type [1] 902/22 find [8] 840/2 860/8 919/12 919/17 921/1 925/2 925/7 925/10 findings [1] 923/15 fine [7] 809/12 839/22 850/7 853/17 853/19 854/25 890/11 finish [2] 807/12 874/1 finished [1] 901/9 firm [7] 869/16 902/19 902/21 912/18 912/19 912/24 926/18 firm's [1] 923/17 firms [9] 905/9 908/5 912/7 921/5 923/10 925/5 926/15 930/6 932/4 first [22] 809/24 821/17 821/18 821/18 822/22 845/24 855/10 868/18 879/8 880/22 894/13 900/14 901/24 908/21
<p>evaluated [1] 909/1 evaluating [3] 908/9 908/11 911/4 evaluation [2] 907/20 911/13 Evans [2] 860/17 860/19 even [18] 824/16 833/16 865/3 878/2 886/20 888/25 895/12 896/18 910/4 913/14 913/20 918/19 919/18 921/15 928/23 930/20 930/21 935/9 event [3] 866/2 875/6 875/8 eventually [4] 837/19 841/13 845/11 876/8 ever [7] 836/7 841/22 861/6 887/17 889/8 904/11 908/1 every [14] 808/6 831/24 869/21 875/6 887/5 887/19 894/13 901/24 908/4 908/4 914/20 914/25 915/6 935/22 everybody [10] 807/3 818/18 818/19 832/14 834/19 855/21 899/25 911/7 938/13 938/16 everyone [2] 854/24 855/5 everything [8] 822/21 826/24 842/25 853/21 922/12 932/9 934/16 935/25 everywhere [3] 827/18 850/10 872/23 evidence [10] 853/16 853/18 853/23 913/24 932/8 932/14 932/15 932/18 932/18 933/5 EVIDENTIARY [1] 803/14 ex [1] 813/9 ex-chief [1] 813/9 exact [5] 823/25 824/15 825/6 846/23 873/18 exactly [7] 817/23 823/14 825/10 840/5 852/16 874/21 890/10 examination [12] 806/5 806/8 808/2 809/10 854/3 854/21 855/14 883/5 899/7 900/17 933/10 936/22 examine [1] 935/11 examined [2] 809/8 900/14 example [10] 817/14 817/15 853/15 905/4 913/25 920/11 920/14 921/4 921/11 923/20 examples [1] 921/7 exceed [1] 909/18 except [3] 857/23 869/12 906/6 exception [1] 887/5 exceptions [1] 826/23 excited [1] 889/6 exclude [4] 849/14 849/16 874/3 892/11 exclusive [1] 816/4 excuse [3] 831/20 847/8 900/11 excused [1] 898/24 executed [1] 885/23 executive [1] 901/2 exhibit [2] 892/23 892/23 exhibits [1] 853/7 existed [1] 928/11 existence [2] 816/15 921/20 existing [7] 815/3 815/16 844/24 845/11 878/8 888/20 888/21 exits [1] 936/15 expand [3] 847/6 872/15 920/15</p>	<p>expansions [9] 835/20 838/2 838/17 841/17 842/1 844/5 848/13 848/15 890/23 expect [7] 820/3 838/4 844/3 854/4 899/11 899/15 936/23 expectation [2] 844/12 938/6 expense [6] 839/13 858/14 858/18 858/21 859/2 860/13 expenses [1] 860/2 experience [11] 820/13 825/5 828/9 833/19 834/20 846/22 858/22 887/22 890/8 890/9 905/16 experiment [1] 927/5 expert [6] 903/9 903/16 903/17 903/21 904/11 905/19 experts [2] 813/15 819/6 expires [1] 824/23 expiring [1] 871/21 explain [10] 809/21 850/21 852/3 852/18 855/19 855/21 866/15 891/20 912/6 927/11 explicit [1] 917/25 explicitly [2] 916/15 931/19 expressed [1] 876/15 expressions [1] 867/16 extends [2] 857/5 857/5 extension [2] 871/22 877/2 extensive [3] 832/18 852/15 860/14 extent [6] 866/14 879/13 911/9 918/1 918/7 918/12 externally [1] 826/17 extra [2] 856/20 882/16 extraordinarily [1] 891/10 extrapolate [1] 864/21 extremely [1] 885/5 Eye [4] 804/16 804/20 804/24 805/2</p>	<p>fall [1] 814/4 familiar [2] 827/8 827/10 family [2] 831/8 870/6 fancy [1] 912/24 far [9] 810/21 826/10 843/6 862/21 869/20 871/8 886/5 922/7 926/9 fast [4] 811/20 827/5 831/9 895/25 faster [2] 854/6 858/19 favor [2] 918/11 918/16 favorable [1] 852/12 fax [2] 825/11 825/12 FCC [4] 903/23 903/23 904/4 904/14 FCRR [3] 805/17 938/20 938/25 feasible [1] 912/3 February [1] 813/23 federal [12] 803/4 803/18 803/18 803/22 804/2 804/6 900/8 903/11 903/18 903/20 903/23 906/15 FedEx [1] 874/10 fee [2] 852/14 852/17 feed [1] 817/22 feeder [2] 868/5 868/12 feeders [1] 863/22 feeding [4] 828/17 835/19 869/3 869/8 feel [12] 835/1 838/6 838/12 839/1 858/20 858/22 858/23 859/17 862/24 881/18 882/9 889/6 feet [1] 818/10 felt [6] 861/13 865/13 876/11 877/15 880/15 886/8 few [4] 809/13 831/9 834/6 844/1 Fewer [1] 853/13 field [2] 874/10 901/10 figure [5] 844/5 924/14 924/21 924/22 938/3 figured [2] 881/25 882/3 file [1] 846/13 Filet [1] 832/19 fill [5] 839/21 839/24 840/2 842/22 932/17 filled [1] 840/3 filling [3] 839/17 839/18 839/19 final [4] 878/19 910/13 936/17 936/18 finance [1] 902/22 finance-type [1] 902/22 find [8] 840/2 860/8 919/12 919/17 921/1 925/2 925/7 925/10 findings [1] 923/15 fine [7] 809/12 839/22 850/7 853/17 853/19 854/25 890/11 finish [2] 807/12 874/1 finished [1] 901/9 firm [7] 869/16 902/19 902/21 912/18 912/19 912/24 926/18 firm's [1] 923/17 firms [9] 905/9 908/5 912/7 921/5 923/10 925/5 926/15 930/6 932/4 first [22] 809/24 821/17 821/18 821/18 822/22 845/24 855/10 868/18 879/8 880/22 894/13 900/14 901/24 908/21</p>
	<p>F face [2] 915/4 919/25 facilitated [1] 910/12 facilities [10] 839/7 841/5 843/18 851/21 853/2 884/12 887/24 887/25 894/25 935/12 facility [20] 810/4 810/13 836/13 836/15 837/6 837/8 842/21 843/21 845/16 847/5 849/5 853/3 877/20 884/6 935/13 935/14 935/15 935/16 935/22 936/5 facing [1] 860/11 fact [7] 820/10 836/20 865/24 886/1 887/16 920/23 922/2 factored [1] 929/25 factors [1] 909/25 Factory [1] 869/19 factual [1] 891/12 factually [3] 846/12 894/2 932/10 fail [1] 895/10 failures [1] 889/4 fair [10] 830/4 830/13 849/6 881/23 883/16 884/20 885/23 886/23 893/16 896/4 fairly [9] 811/20 832/18 848/25 868/12 870/7 874/16 874/22 881/12 913/11</p>	

F Case 1:15-cv-00256-APM	Document 184-23 Filed 06/26/15 Page 146 of 164	840/15 840/19 841/13 844/19 848/18 851/12 852/10 852/13 858/9 858/11 858/21 859/21 860/1 860/4 862/25 872/19 873/7 873/17 874/1 876/8 876/10 876/10 876/21 878/8 882/4 882/4 882/15 887/25 889/23 890/3 890/7 892/2 892/16 896/6 897/2 897/4 902/24 905/8 907/1 907/8 915/18 921/16 923/9 923/10 926/24 930/1 930/25 931/14 936/7 937/14 937/17 937/22 get-go [1] 915/18 gets [8] 839/15 839/16 839/16 856/8 876/12 877/3 916/11 918/17 getting [13] 817/23 818/16 835/3 840/24 846/19 854/10 856/22 858/16 868/18 873/5 895/22 913/22 922/23 ghonick [1] 804/13 GILMAN [1] 803/22 give [11] 825/7 830/18 850/11 874/3 875/24 889/3 894/3 895/15 896/17 899/9 905/4 given [8] 861/12 881/5 902/6 902/7 902/7 922/25 929/9 929/10 gives [1] 820/18 giving [2] 825/7 875/15 gmail.com [1] 805/20 GNA [1] 858/18 go [65] 808/15 808/17 809/2 811/15 812/6 814/13 820/10 820/11 820/17 823/21 823/22 824/5 832/2 833/7 834/23 837/4 839/24 840/19 844/8 849/3 850/17 851/20 853/1 854/12 856/4 862/10 871/10 872/1 877/10 877/20 878/14 880/25 881/14 881/15 884/21 884/22 884/22 886/5 887/23 888/9 891/20 893/5 895/14 895/15 895/18 897/25 907/21 913/17 915/8 915/18 920/1 924/23 925/16 926/9 926/21 927/23 928/1 928/6 928/20 931/10 933/11 935/7 935/23 938/2 938/4 God [1] 836/9 goes [19] 819/3 837/14 862/21 866/3 873/16 875/10 875/19 877/6 877/6 877/18 879/2 880/17 881/6 882/15 890/21 903/17 910/20 921/1 930/20 going [106] 807/20 814/13 814/13 820/8 820/20 822/23 823/4 823/11 823/15 823/19 823/24 824/1 824/24 825/7 825/17 825/22 826/1 837/5 837/6 837/9 837/11 838/7 839/4 839/22 840/13 840/15 840/19 842/24 844/7 844/10 844/21 849/8 851/7 851/9 851/12 851/15 852/20 853/18 854/1 858/8 858/9 858/10 858/18 858/19 859/8 859/17 860/4 860/5 860/6 862/25 864/2 864/14 871/4 871/21 873/9 874/2 874/21 875/9 875/14 875/19 875/20 875/23 877/3
<p>first... [8] 910/18 910/20 911/2 924/5 927/18 932/25 933/14 937/9 fiscal [1] 811/12 fit [4] 828/18 828/19 830/2 890/6 fits [1] 828/23 five [22] 810/3 810/3 826/13 833/13 837/1 837/12 848/24 851/3 852/11 852/18 857/21 862/16 862/17 864/6 864/8 865/2 865/4 872/4 880/9 935/17 935/21 936/11 flags [1] 880/10 floating [1] 863/12 Florence [2] 811/4 812/4 Florida [3] 843/17 844/2 870/8 fluid [1] 823/11 fly [2] 807/25 808/5 focus [1] 851/2 fold [21] 835/20 835/25 836/5 837/2 837/15 837/24 838/4 841/12 841/16 843/18 843/21 845/6 848/24 849/17 887/11 887/14 887/16 887/22 888/1 888/2 891/7 fold-out [8] 835/25 836/5 837/2 841/16 843/21 845/6 887/16 888/2 fold-outs [13] 835/20 837/15 837/24 838/4 841/12 843/18 848/24 849/17 887/11 887/14 887/22 888/1 891/7 folded [1] 889/9 folding [1] 889/11 folks [3] 808/21 868/2 871/4 follow [3] 871/4 895/2 917/11 followed [2] 923/2 923/24 following [4] 909/21 917/3 923/6 927/20 follows [6] 809/9 855/3 900/15 922/5 924/8 925/22 food [5] 816/15 834/9 859/20 874/10 896/23 Foods [16] 805/5 815/22 816/4 821/6 848/1 891/22 894/24 895/15 896/17 898/1 898/8 906/18 906/21 916/15 920/22 920/22 Foods' [2] 821/22 824/18 Foods's [1] 929/8 foodservice [17] 858/4 870/11 874/12 884/9 907/3 907/5 912/15 924/24 925/3 925/8 929/8 929/13 929/23 930/4 930/5 931/8 931/17 foodservices [1] 929/7 foot [1] 837/10 footprint [11] 841/2 849/1 849/24 850/1 888/20 888/21 917/8 917/20 918/20 918/24 920/18 footprints [1] 919/11 for-private [1] 908/13 Foradori [3] 805/17 938/20 938/25 force [3] 843/25 917/1 917/3 force's [1] 878/17 foregoing [1] 938/21 foresee [1] 842/7</p>	<p>forget [1] 824/23 forgive [2] 864/18 922/24 forgot [1] 809/20 format [2] 927/7 928/20 format [1] 896/9 forth [2] 873/8 921/7 Forty [1] 811/11 Forty-one percent [1] 811/11 forum [2] 816/21 865/13 forward [3] 900/10 922/13 936/14 foundation [1] 866/19 four [12] 818/21 818/22 828/2 831/10 837/1 837/12 840/22 848/24 862/18 865/4 879/17 881/2 Fox [7] 883/17 883/18 884/5 885/2 885/12 885/16 888/7 frankly [1] 844/8 freezer [1] 843/20 freight [1] 851/11 Friday [2] 832/7 937/8 Friday's [2] 831/22 831/25 Fridays [1] 831/5 Fried [1] 832/9 front [2] 871/9 904/9 FTC [5] 828/13 855/6 860/21 861/8 900/9 FTC's [1] 923/12 ftc.com [1] 803/24 ftc.gov [3] 803/20 804/4 804/8 full [7] 839/12 839/22 850/25 851/1 851/15 887/19 937/25 fully [1] 934/22 function [2] 813/12 819/1 functional [1] 813/15 functions [2] 814/8 818/22 fundamental [5] 916/21 917/4 920/5 922/1 928/13 further [3] 853/10 875/13 914/23</p>	<p>840/15 840/19 841/13 844/19 848/18 851/12 852/10 852/13 858/9 858/11 858/21 859/21 860/1 860/4 862/25 872/19 873/7 873/17 874/1 876/8 876/10 876/10 876/21 878/8 882/4 882/4 882/15 887/25 889/23 890/3 890/7 892/2 892/16 896/6 897/2 897/4 902/24 905/8 907/1 907/8 915/18 921/16 923/9 923/10 926/24 930/1 930/25 931/14 936/7 937/14 937/17 937/22 get-go [1] 915/18 gets [8] 839/15 839/16 839/16 856/8 876/12 877/3 916/11 918/17 getting [13] 817/23 818/16 835/3 840/24 846/19 854/10 856/22 858/16 868/18 873/5 895/22 913/22 922/23 ghonick [1] 804/13 GILMAN [1] 803/22 give [11] 825/7 830/18 850/11 874/3 875/24 889/3 894/3 895/15 896/17 899/9 905/4 given [8] 861/12 881/5 902/6 902/7 902/7 922/25 929/9 929/10 gives [1] 820/18 giving [2] 825/7 875/15 gmail.com [1] 805/20 GNA [1] 858/18 go [65] 808/15 808/17 809/2 811/15 812/6 814/13 820/10 820/11 820/17 823/21 823/22 824/5 832/2 833/7 834/23 837/4 839/24 840/19 844/8 849/3 850/17 851/20 853/1 854/12 856/4 862/10 871/10 872/1 877/10 877/20 878/14 880/25 881/14 881/15 884/21 884/22 884/22 886/5 887/23 888/9 891/20 893/5 895/14 895/15 895/18 897/25 907/21 913/17 915/8 915/18 920/1 924/23 925/16 926/9 926/21 927/23 928/1 928/6 928/20 931/10 933/11 935/7 935/23 938/2 938/4 God [1] 836/9 goes [19] 819/3 837/14 862/21 866/3 873/16 875/10 875/19 877/6 877/6 877/18 879/2 880/17 881/6 882/15 890/21 903/17 910/20 921/1 930/20 going [106] 807/20 814/13 814/13 820/8 820/20 822/23 823/4 823/11 823/15 823/19 823/24 824/1 824/24 825/7 825/17 825/22 826/1 837/5 837/6 837/9 837/11 838/7 839/4 839/22 840/13 840/15 840/19 842/24 844/7 844/10 844/21 849/8 851/7 851/9 851/12 851/15 852/20 853/18 854/1 858/8 858/9 858/10 858/18 858/19 859/8 859/17 860/4 860/5 860/6 862/25 864/2 864/14 871/4 871/21 873/9 874/2 874/21 875/9 875/14 875/19 875/20 875/23 877/3</p>
	<p>G G.E [2] 813/9 895/6 Gallagos [1] 810/5 game [2] 844/2 876/16 gap [1] 921/15 GARY [1] 804/10 gave [3] 872/3 875/2 885/7 geared [1] 876/14 general [4] 804/11 813/7 926/11 930/12 generally [15] 822/10 835/13 835/22 901/13 903/9 905/1 914/4 914/13 916/9 916/25 916/25 917/1 924/5 925/13 932/6 generically [2] 866/9 866/25 gentleman [3] 815/7 824/10 824/12 geographic [9] 836/18 909/4 909/7 909/10 909/13 924/18 924/22 924/25 925/4 geographies [1] 870/7 geography [2] 832/10 873/4 GEORGE [3] 806/4 809/7 855/9 Georgia [3] 836/8 845/8 852/20 get [71] 817/17 817/21 818/20 818/24 818/25 819/1 819/4 819/15 820/18 823/12 824/25 835/1 835/2 835/2 836/20 837/11 838/7 838/12 839/4</p>	

G Case 1:15-cv-00256-APM

going... [43] 877/4 877/25
 878/4 879/2 879/3 881/5 882/24
 886/5 887/5 888/23 888/24
 888/25 889/13 890/4 891/13
 892/1 893/18 893/19 894/16
 895/25 897/2 897/12 898/15
 899/6 902/5 908/20 909/22
 912/19 912/25 914/6 915/19
 917/23 921/10 921/14 922/12
 922/14 926/7 926/20 931/19
 936/14 937/14 938/4 938/10

gone [1] 852/15

good [34] 807/14 807/16 812/1
 813/21 827/12 844/20 855/7
 858/22 858/23 862/25 867/17
 873/1 877/16 883/7 886/23
 886/24 888/5 890/2 890/2 890/8
 890/8 890/23 890/25 894/18
 899/23 900/7 900/16 900/19
 900/20 907/19 908/10 916/11
 920/11 936/11

Gordon [1] 929/15

gosh [1] 879/7

got [36] 807/7 807/12 808/5
 809/23 812/25 818/9 818/12
 824/21 827/12 835/4 840/18
 840/24 847/4 847/12 856/20
 857/9 865/9 874/4 876/11
 876/16 893/2 896/2 896/17
 901/9 924/1 927/3 927/3 927/16
 928/8 928/15 930/15 930/17
 930/22 930/23 930/24 937/25

government [2] 860/23 903/11

governments [1] 903/12

GPO [1] 867/19

GPOs [2] 894/13 919/10

gradual [4] 823/17 823/24
 860/10 889/15

great [9] 820/11 841/24 857/16
 860/3 887/22 888/6 888/7
 890/12 896/21

green [1] 846/19

greens [1] 847/5

ground [1] 843/25

group [23] 831/12 859/20
 870/22 872/14 915/7 915/8
 915/11 915/16 916/2 916/3
 916/7 917/25 918/4 919/13
 919/15 919/22 921/9 921/12
 921/22 924/12 924/15 935/2
 935/2

grouped [1] 915/17

grouping [3] 916/11 917/23
 921/24

groupings [2] 915/10 915/13

groups [14] 919/24 921/10
 921/17 921/17 921/24 922/10
 922/19 923/1 924/6 924/10
 924/14 925/7 925/11 925/15

grow [7] 839/8 839/8 841/6
 841/14 858/19 920/14 920/25

growing [2] 827/4 846/5

growth [8] 811/11 811/11 827/2
 827/4 837/6 841/24 859/21
 920/18

guess [9] 813/14 826/12 844/15
 850/24 860/1 861/3 874/20
 890/4 929/21

guesstimate [2] 810/24 834/16

guide [1] 908/8

guidelines [38] 907/17 887/18
 907/25 908/1 908/6 908/16
 908/18 908/19 908/20 908/22
 909/6 909/19 909/24 910/17
 911/12 911/15 911/24 912/9
 913/3 913/9 914/21 915/5
 921/11 921/13 922/16 922/17
 924/4 924/19 925/21 925/22
 925/24 926/5 926/10 927/14
 930/9 930/11 930/18 930/25

guilty [1] 888/7

gut [1] 891/24

guy [3] 875/9 913/2 936/5

H

Habeeb [1] 813/9

had [48] 808/4 809/12 812/13
 812/17 812/22 814/10 814/11
 814/11 819/9 828/15 829/24
 834/25 840/2 841/24 841/25
 843/20 843/20 846/22 851/23
 851/24 853/9 853/9 855/3
 859/19 861/1 862/12 864/25
 865/10 865/12 865/14 872/18
 873/2 874/6 874/13 874/18
 874/19 876/7 876/24 879/12
 880/2 886/13 886/17 887/9
 887/21 899/9 905/12 936/4
 938/3

half [9] 810/12 825/16 825/17
 862/10 882/16 936/25 937/3
 937/5 938/10

halfway [1] 858/3

ham [1] 809/12

Hampton [2] 867/24 872/7

hand's [1] 841/25

handle [5] 816/19 830/10 852/6
 877/16 899/6

handled [3] 826/25 827/19
 827/24

handling [2] 813/11 895/8

Hang [1] 873/21

happen [10] 825/17 825/18
 834/25 886/25 886/25 888/8
 912/14 912/15 914/6 921/8

happened [1] 887/3

happening [2] 874/15 887/1

happens [3] 873/10 888/4
 920/15

happy [1] 889/6

hard [6] 869/23 869/24 870/19
 875/18 877/8 938/13

hardly [1] 864/11

harm [7] 906/25 907/2 909/19
 909/24 914/12 918/18 919/23

harmful [1] 905/11

harms [3] 910/6 910/15 919/15

has [23] 826/5 827/11 827/12
 848/23 851/6 864/2 866/5
 866/14 872/20 879/5 881/4
 887/6 889/8 892/25 897/17
 898/14 909/8 909/10 915/19
 917/7 921/2 925/23 925/25

HASSI [1] 804/23

hat [1] 903/7

have [268]

have thought [1] 808/12

haven't [3] 890/13 890/22
 895/24

having [7] 809/8 864/21 882/23
 891/15 900/14 916/20 920/17

he [35] 815/7 819/19 819/19

856/8 873/2 873/17 876/4 876/4
 876/4 876/5 876/5 876/7 876/8
 876/11 876/12 877/2 878/11
 878/23 879/1 879/1 880/13
 880/14 880/15 880/15 880/17
 880/20 880/21 890/3 891/6
 891/7 891/11 892/25 895/8
 898/17 899/5

he'll [2] 856/6 856/7

he's [15] 813/11 813/11 819/21
 819/24 853/17 875/19 875/20
 875/23 877/1 877/2 877/19
 878/8 888/5 888/6 936/18

head [5] 873/15 875/9 879/7
 905/22 923/19

headquarters [1] 860/14

healthcare [4] 819/7 828/16
 919/9 919/10

hear [5] 834/23 837/21 853/21
 866/20 938/11

heard [1] 879/1

hearing [2] 803/14 899/1

hearings [1] 903/25

hearsay [5] 866/15 866/15
 866/15 873/22 873/24

heavily [2] 811/13 844/18

heavy [1] 876/9

help [3] 864/14 909/5 909/5

her [2] 874/18 911/19

here [35] 807/13 808/22 813/21
 815/7 818/6 832/14 845/22
 850/12 850/21 855/5 859/18
 863/16 863/18 864/18 871/22
 872/5 873/23 877/7 884/14
 887/3 893/2 894/8 898/14
 898/19 910/3 911/25 915/11
 917/15 917/21 918/24 922/14
 929/3 929/22 932/19 933/15

here's [1] 934/14

herein [1] 900/14

HERRICK [1] 805/9

HHIs [1] 909/17

Hickory [2] 810/20 812/5

high [5] 864/3 864/4 864/5
 910/4 928/10

higher [6] 851/7 851/9 851/10
 852/14 862/18 919/14

highlighting [1] 864/1

highlights [3] 814/25 815/1
 821/23

Hilton [1] 829/13

him [9] 813/14 819/20 873/2
 873/6 876/7 876/12 877/19
 892/22 898/15

hired [2] 811/16 811/17

his [13] 810/5 810/6 853/18
 873/17 873/18 875/21 880/12
 880/14 895/6 897/8 899/4
 899/16 936/6

Hispanic [1] 810/1

hit [1] 826/13

Hokie [1] 810/17

Hold [1] 866/11

holding [1] 913/20

Holdings [2] 869/15 870/16

HOLM [8] 806/4 809/7 809/12
 855/9 883/7 896/18 898/12
 898/14

homes [1] 826/14

HONICK [1] 804/10

Honor [21] 807/15 809/4 809/13
 819/17 850/11 855/10 864/13

H Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15 Page 148 of 164	inclusion [1] 917/19 income [3] 816/14 817/1 817/21
<p>Honor... [14] 883/3 884/24 898/10 899/17 900/7 905/18 906/8 911/21 925/25 933/12 936/10 936/24 937/6 938/12</p> <p>Honor's [1] 910/9</p> <p>HONORABLE [1] 803/14</p> <p>hook [2] 857/4 861/14</p> <p>hooked [2] 856/15 857/9</p> <p>hope [4] 813/6 846/11 858/9 872/17</p> <p>hoped [1] 886/4</p> <p>hopefully [1] 822/10</p> <p>horizontal [9] 907/17 907/18 907/24 908/1 908/5 908/6 908/9 908/15 913/8</p> <p>hospital [1] 872/25</p> <p>hospitality [3] 828/17 867/19 893/14</p> <p>hotel [2] 867/21 867/23</p> <p>hotels [6] 867/22 872/2 872/3 872/11 872/12 880/9</p> <p>hour [8] 854/1 886/6 936/24 937/2 937/5 937/15 937/21 938/11</p> <p>hours [3] 856/21 936/25 937/3</p> <p>House [1] 894/14</p> <p>housekeeping [1] 853/21</p> <p>how [61] 809/5 809/22 810/21 817/14 817/17 822/25 823/9 823/12 825/10 825/20 826/21 827/5 827/6 831/18 833/9 835/7 836/2 841/20 842/4 854/1 854/3 858/7 858/10 865/6 870/21 871/7 874/21 874/21 875/10 875/16 877/6 879/5 891/1 891/22 892/9 893/25 896/18 901/4 902/3 902/6 902/6 902/9 908/14 914/14 915/16 916/22 922/9 922/24 922/24 923/1 923/16 926/9 927/11 929/25 931/14 931/17 932/16 932/16 933/2 933/2 936/22</p> <p>How's [1] 811/9</p> <p>however [1] 923/23</p> <p>HR [2] 813/15 818/23</p> <p>huge [1] 876/2</p> <p>huh [4] 819/14 828/14 893/15 893/24</p> <p>hundred [7] 810/22 810/23 814/19 819/6 839/7 863/8 880/16</p> <p>hypothetical [14] 926/1 926/4 926/14 926/17 926/23 926/24 927/9 927/12 927/17 928/6 928/17 928/25 929/4 932/7</p> <p>hypothetically [1] 830/1</p>	<p>827/10 827/12 830/18 831/19 832/2 832/23 834/11 837/21</p> <p>838/21 844/11 845/3 846/21 848/24 849/14 850/11 850/21 853/8 853/19 854/2 854/7 854/10 856/24 857/11 857/18 857/21 859/4 859/5 859/7 864/15 866/17 870/14 871/24 872/18 874/2 877/11 879/2 879/2 882/25 883/24 885/12 886/5 887/5 887/7 888/6 889/7 893/18 893/19 894/16 895/2 895/14 895/18 896/16 897/10 897/14 898/17 901/2 903/6 903/15 907/1 907/7 908/12 911/18 912/24 912/25 913/17 915/19 918/22 921/4 922/14 923/19 926/7 926/18 929/24 933/20 938/11</p> <p>I've [17] 841/21 867/10 868/22 872/4 876/24 904/5 904/6 904/14 904/17 911/24 915/5 915/6 915/10 917/14 920/21 927/1 931/15</p> <p>I-S-R-A-E-L [1] 900/23</p> <p>IAN [2] 804/19 937/2</p> <p>idea [6] 812/17 865/15 872/5 916/10 924/9 930/14</p> <p>ideal [1] 841/6</p> <p>ideally [2] 933/4 937/24</p> <p>identification [1] 908/23</p> <p>identified [5] 863/18 907/9 917/7 922/21 923/22</p> <p>identify [5] 867/1 912/8 919/18 919/21 921/9</p> <p>identifying [2] 919/24 922/4</p> <p>Illinois [1] 885/3</p> <p>imagine [4] 914/2 914/8 914/24 921/8</p> <p>immediately [1] 877/11</p> <p>impact [4] 887/15 917/19 917/24 921/21</p> <p>implicating [1] 899/21</p> <p>implicit [1] 913/10</p> <p>imply [1] 815/18</p> <p>importance [1] 817/3</p> <p>important [13] 808/25 820/6 821/8 822/1 822/17 825/1 825/2 842/15 850/23 864/15 896/19 909/5 922/7</p> <p>impose [4] 926/25 929/1 929/17 929/19</p> <p>imposed [1] 928/12</p> <p>in 2001 [1] 901/10</p> <p>in 2010 [1] 907/18</p> <p>in 2013, 2014 [1] 885/4</p> <p>in 2019 [1] 859/8</p> <p>in-camera [5] 807/9 808/17 835/21 854/5 854/11</p> <p>in-court [1] 854/3</p> <p>inbound [7] 810/11 850/18 850/21 851/8 851/18 852/10 853/13</p> <p>incentive [4] 807/14 807/16 928/18 929/1</p> <p>incentives [1] 807/17</p> <p>include [5] 820/12 879/20 891/3 917/9 930/5</p> <p>included [5] 909/9 917/22 933/17 934/4 934/6</p> <p>includes [1] 870/20</p> <p>including [2] 841/25 923/6</p>	<p>increase [4] 839/8 883/10 926/25 927/2</p> <p>increases [3] 879/11 882/18 882/21</p> <p>increasing [1] 935/6</p> <p>incredible [3] 841/8 841/10 887/17</p> <p>incredibly [1] 888/20</p> <p>incumbent [2] 820/10 871/13</p> <p>indelicate [1] 861/23</p> <p>independent [3] 826/12 834/5 859/19</p> <p>indeterminate [1] 849/21</p> <p>indicate [4] 910/7 911/12 915/5 919/14</p> <p>indicated [1] 921/13</p> <p>indicates [4] 911/10 928/20 932/20 935/2</p> <p>individualized [1] 913/17</p> <p>individually [1] 912/11</p> <p>industrial [5] 901/11 901/25 902/2 905/2 905/19</p> <p>industries [2] 911/7 914/8</p> <p>industry [6] 846/10 850/9 902/7 914/1 914/12 914/19</p> <p>information [9] 827/12 865/10 880/2 880/3 880/11 906/2 932/6 934/5 934/10</p> <p>ingredient [1] 824/8</p> <p>initially [1] 825/18</p> <p>Inn [3] 869/18 872/7 875/20</p> <p>inside [11] 902/21 926/17 927/17 927/20 927/25 928/3 928/5 928/8 928/9 928/16 928/23</p> <p>instead [1] 875/14</p> <p>instructive [1] 935/16</p> <p>integrate [2] 883/13 883/20</p> <p>integrated [3] 888/16 888/17 895/22</p> <p>integrating [1] 889/12</p> <p>integration [3] 884/21 885/23 889/14</p> <p>intend [4] 809/22 847/6 878/14 882/13</p> <p>intentions [1] 825/23</p> <p>interest [2] 867/16 872/9</p> <p>interested [4] 857/12 873/5 874/6 874/7</p> <p>internal [1] 826/9</p> <p>internally [6] 813/25 826/9 826/17 828/7 828/8 878/8</p> <p>international [1] 902/22</p> <p>Internet [2] 822/19 825/10</p> <p>interrupt [4] 817/12 831/19 897/10 907/7</p> <p>Interstate [9] 867/22 870/14 870/23 872/2 872/16 880/8 894/5 894/8 894/9</p> <p>introduce [1] 899/5</p> <p>introductory [2] 908/22 911/23</p> <p>inventory [2] 878/10 878/24</p> <p>investigation [1] 923/12</p> <p>investments [1] 849/25</p> <p>invests [1] 869/16</p> <p>involve [2] 844/23 845/1</p> <p>involved [13] 823/12 835/4 841/17 842/2 844/18 861/4 868/18 872/22 890/22 902/24 903/16 904/6 907/19</p>
<p>I</p> <p>I'd [12] 807/8 850/20 854/11 855/22 864/4 899/23 903/2 904/21 905/4 906/9 910/16 936/24</p> <p>I'll [19] 808/14 809/12 819/20 820/10 854/5 860/10 866/20 871/10 874/3 901/8 910/9 910/10 919/17 923/14 925/15 926/2 928/19 933/4 934/15</p> <p>I'm [86] 807/15 813/21 814/13 814/13 815/11 817/12 819/23 820/1 823/22 824/17 824/23</p>		

I Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15 Page 149 of 164	890/2 891/20 892/2 897/18 871/15 872/12 873/13 872/21 873/2 873/6 873/6 873/10
involves [1] 886/21 involving [1] 841/25 ironically [1] 847/19 is [359] Isimmons [1] 804/21 isn't [4] 808/4 886/11 934/17 934/19 isolate [1] 918/23 ISRAEL [27] 806/7 899/4 899/7 899/12 900/9 900/11 900/11 900/13 900/19 900/23 900/24 904/24 905/14 905/19 906/1 906/13 907/14 910/18 914/18 920/8 924/3 931/4 933/15 936/12 936/15 936/16 937/8 issue [5] 840/21 877/22 880/9 886/18 914/13 issues [7] 829/21 886/22 901/13 902/22 903/2 905/4 925/15 it [310] it's [127] 808/25 811/10 811/10 814/7 814/25 816/3 817/24 817/25 818/18 818/22 820/17 821/9 821/19 823/14 823/23 824/6 826/11 826/12 828/5 830/13 831/11 833/4 834/21 837/5 838/6 840/9 840/9 840/23 842/18 842/24 848/3 849/8 849/20 852/1 852/22 853/1 853/11 853/25 856/2 860/25 860/25 861/9 861/11 862/16 862/16 862/17 862/18 862/18 862/22 862/23 864/4 866/15 867/20 870/17 872/8 872/8 873/1 873/13 874/3 875/7 875/7 876/11 876/25 878/3 878/11 878/12 878/13 878/22 879/8 880/13 883/16 884/18 885/3 885/12 885/13 885/14 885/23 886/23 887/22 888/21 889/4 889/4 889/5 891/19 893/3 893/7 893/8 896/4 897/8 898/13 899/3 901/5 901/12 901/25 902/1 902/4 904/1 904/1 904/2 907/16 909/4 909/12 910/21 913/11 913/16 917/13 917/23 921/15 922/6 922/12 925/24 927/5 927/5 927/13 928/15 929/6 931/7 932/25 933/9 934/11 934/12 934/15 934/17 935/3 935/16 936/2 937/8 Italian [2] 832/25 878/4 Italy [1] 870/1 item [2] 832/17 840/10 items [4] 816/5 828/19 871/16 871/18 iterations [1] 865/11 its [7] 917/7 927/21 927/22 928/4 930/25 931/10 931/10 itself [1] 864/2	JOSEPH [1] 805/5 jtringali [1] 805/7 JUDGE [4] 803/15 808/8 808/25 868/5 July [2] 848/18 875/7 June [1] 875/7 jurisdiction [1] 857/14 just [97] 807/2 807/7 807/8 807/10 807/21 807/24 809/18 815/7 815/12 815/14 820/17 821/23 824/7 831/21 833/6 833/15 833/17 833/19 835/3 835/22 841/9 845/15 850/7 850/9 855/5 857/11 857/16 858/22 858/23 859/2 859/4 860/23 861/11 861/11 863/1 863/13 863/18 864/8 865/13 866/15 869/21 871/2 873/14 875/19 877/24 878/4 878/11 879/2 881/2 881/7 881/9 885/7 888/18 889/7 890/10 894/5 895/9 896/12 899/18 903/1 904/13 905/4 906/2 906/5 907/9 908/20 908/23 911/19 912/6 913/1 913/2 913/23 913/25 914/6 915/15 917/3 917/6 918/12 919/21 921/23 923/19 924/5 924/16 925/6 925/21 926/2 927/10 929/3 929/14 930/2 931/7 931/13 932/10 933/1 933/8 933/20 938/14 just don't [1] 859/2	knowledge [3] 830/12 893/16 907/20 krobson [1] 805/3
J January [1] 813/23 Jeff [1] 891/10 Jersey [4] 803/19 803/23 804/3 804/7 Jim [1] 813/6 Joan [1] 881/12 job [7] 812/1 888/7 890/2	K KATRINA [1] 805/1 keep [11] 820/21 822/11 839/11 859/17 860/5 877/3 890/1 896/12 901/8 909/5 915/19 keeping [1] 896/12 keeps [1] 839/2 Kellogg [4] 901/19 901/22 901/25 902/9 Kentucky [1] 832/9 kept [1] 847/2 key [5] 818/7 820/8 926/2 926/3 926/3 kind [24] 813/10 813/24 816/22 821/23 822/20 832/18 833/22 833/24 835/5 837/9 838/10 850/20 851/2 876/16 878/17 881/16 901/12 908/8 908/13 909/24 932/10 932/14 932/25 933/5 King [1] 934/25 knew [2] 886/4 886/17 know [108] 807/7 808/16 810/12 810/22 810/22 813/22 813/25 814/2 822/5 825/3 828/22 829/18 832/16 832/17 832/17 834/5 837/7 837/11 837/11 839/4 841/7 841/12 841/23 842/4 844/8 844/18 846/11 846/12 847/1 847/2 847/4 847/23 847/23 849/11 850/24 857/17 858/25 860/7 860/8 861/3 861/19 861/24 862/16 862/18 862/21 862/24 863/16 863/21 863/21 863/22 864/3 864/3 864/5 864/5 865/3 865/12 865/13 865/15 867/4 867/25 868/13 869/7 869/19 869/20	L L4dori18 [1] 805/20 label [2] 815/22 853/6 labeled [1] 923/23 labeling [1] 923/24 labels [1] 809/15 laid [1] 907/24 land [7] 838/14 838/16 842/18 842/19 845/5 845/13 845/14 landlocked [1] 845/16 language [2] 839/6 914/22 large [14] 828/16 828/17 828/24 831/4 831/8 840/4 870/4 870/8 872/13 882/10 882/19 894/6 921/13 936/3 largely [2] 902/2 903/13 larger [7] 848/20 913/13 917/1 919/15 919/19 919/23 920/1 largest [2] 845/8 848/4 Las [1] 869/25 last [9] 853/7 875/8 880/14 884/8 884/9 884/10 886/7 909/21 913/10 late [5] 812/16 814/3 865/11 876/9 885/5 late 2012 [1] 885/5 later [1] 912/9 law [1] 857/11 lawyers [3] 807/4 854/19 904/4 lay [1] 866/19 layered [1] 860/13 lays [1] 911/23 LCC [1] 923/5 lead [9] 903/9 903/16 904/11 904/19 904/21 904/22 912/16 919/23 934/2 leadership [2] 818/21 818/22 Leap [1] 904/16 learned [1] 915/2 least [17] 822/4 825/24 828/9 837/11 839/1 858/14 865/20 869/2 874/18 876/23 880/24 880/25 915/23 920/20 926/21 937/23 938/6 leave [2] 856/9 856/20 leaving [2] 855/24 886/12 ledgered [2] 847/13 847/14 left [6] 818/6 845/13 850/24 851/14 873/19 881/2 legacy [1] 888/19 legal [4] 819/18 819/25 857/11 886/22 length [1] 937/14 lengthy [2] 844/7 889/14 less [10] 841/23 851/1 851/6 860/13 873/13 891/15 893/19 894/1 908/7 910/6

L Case 1:15-cv-00256-APM	Local [42] 827/23 827/24 850/6 850/7 860/9 907/4 907/5 910/19	majority [3] 892/12 892/13 892/14 892/15 892/16 892/17 892/18 892/19 892/20 892/21 892/22 892/23 892/24 892/25 892/26 892/27 892/28 892/29 892/30 892/31 892/32 892/33 892/34 892/35 892/36 892/37 892/38 892/39 892/40 892/41 892/42 892/43 892/44 892/45 892/46 892/47 892/48 892/49 892/50 892/51 892/52 892/53 892/54 892/55 892/56 892/57 892/58 892/59 892/60 892/61 892/62 892/63 892/64 892/65 892/66 892/67 892/68 892/69 892/70 892/71 892/72 892/73 892/74 892/75 892/76 892/77 892/78 892/79 892/80 892/81 892/82 892/83 892/84 892/85 892/86 892/87 892/88 892/89 892/90 892/91 892/92 892/93 892/94 892/95 892/96 892/97 892/98 892/99 892/100
<p>less-than-truckload [1] 851/6</p> <p>lessen [1] 906/25</p> <p>let [20] 808/16 823/21 830/3 832/2 835/20 853/12 863/15 883/12 888/23 889/18 889/21 892/19 894/7 897/6 897/11 897/24 898/15 911/19 913/25 933/8</p> <p>let's [26] 808/9 808/11 808/15 821/8 835/3 845/21 848/12 849/14 854/12 857/20 870/13 883/23 884/5 889/23 890/19 891/14 893/1 893/14 899/3 899/8 899/10 924/4 936/14 937/24 938/14 938/15</p> <p>Lets [1] 933/14</p> <p>level [8] 814/9 814/9 814/10 820/7 859/22 871/7 876/24 909/19</p> <p>levels [3] 823/13 909/16 909/22</p> <p>Lexecon [8] 900/25 901/1 901/4 902/13 902/14 902/15 902/17 903/5</p> <p>Lexington [1] 805/6</p> <p>life [2] 817/19 846/22</p> <p>like [36] 810/7 813/21 818/23 822/10 827/2 832/18 835/5 838/2 838/8 844/16 845/10 848/19 849/1 849/6 851/4 856/2 857/13 861/16 865/13 875/7 876/8 880/7 880/8 884/22 890/3 896/18 898/17 899/23 900/9 905/25 906/9 910/16 913/3 920/22 930/20 934/25</p> <p>likely [6] 849/5 906/16 906/19 908/2 919/25 937/13</p> <p>limit [1] 841/4</p> <p>limited [3] 830/11 909/11 912/5</p> <p>line [6] 807/17 846/14 859/7 861/14 921/10 921/14</p> <p>lineup [1] 848/19</p> <p>link [1] 809/13</p> <p>Lisa [3] 805/17 938/20 938/25</p> <p>list [17] 830/14 831/21 866/10 866/18 866/25 867/1 867/2 870/9 870/9 879/20 879/20 879/21 892/21 914/10 914/11 917/4 923/20</p> <p>listed [1] 893/21</p> <p>lists [2] 914/13 917/2</p> <p>literally [2] 807/25 914/25</p> <p>litigation [2] 902/25 903/13</p> <p>little [27] 813/8 818/13 832/18 833/14 838/11 844/9 845/3 848/4 849/8 849/20 852/13 854/16 856/21 860/12 870/1 872/2 873/25 876/13 877/14 883/23 890/19 891/14 894/20 899/10 933/11 937/21 938/7</p> <p>live [1] 856/11</p> <p>Livermore [4] 847/18 847/19 847/21 848/8</p> <p>lives [1] 810/6</p> <p>LLP [7] 804/15 804/19 804/23 805/1 805/5 805/9 805/12</p> <p>load [2] 815/8 851/6</p> <p>loads [1] 840/23</p>	<p>localities [1] 925/5</p> <p>locally [3] 827/24 850/8 860/12</p> <p>located [1] 821/20</p> <p>location [6] 822/3 822/22 822/23 822/24 827/1 883/18</p> <p>locations [10] 828/2 855/17 895/16 913/5 915/22 916/3 916/5 918/14 918/20 918/21</p> <p>logic [3] 926/5 926/14 927/7</p> <p>logistics [1] 936/2</p> <p>logo [1] 824/16</p> <p>long [14] 823/9 835/18 838/24 839/21 872/25 879/5 879/8 882/6 890/5 890/9 901/4 902/9 922/5 923/20</p> <p>longer [5] 833/14 838/25 849/8 854/16 937/21</p> <p>longest [1] 878/22</p> <p>longest-standing [1] 878/22</p> <p>longterm [1] 872/20</p> <p>look [19] 810/7 827/5 848/19 849/1 850/23 850/25 851/2 858/25 873/3 885/9 885/9 892/22 893/21 897/8 897/21 910/18 915/13 930/12 938/13</p> <p>looked [7] 877/14 916/9 919/9 925/25 932/19 934/8 934/9</p> <p>looking [10] 824/7 826/18 830/18 857/22 859/5 859/7 871/16 885/12 914/25 926/11</p> <p>lose [5] 821/9 905/11 915/1 915/2 927/21</p> <p>loses [1] 928/4</p> <p>losing [1] 932/21</p> <p>loss [1] 844/10</p> <p>lost [2] 927/25 928/16</p> <p>lot [21] 820/17 830/8 830/9 839/4 839/9 841/2 841/11 842/3 842/24 844/14 851/24 871/11 873/13 877/23 878/3 881/23 898/7 914/9 923/14 925/14 928/19</p> <p>loves [1] 815/8</p> <p>lower [3] 851/11 858/14 859/2</p> <p>lowest [1] 858/9</p> <p>LTL [1] 851/6</p> <p>lunch [1] 808/12</p> <p>M</p> <p>M-A-R-K [1] 900/23</p> <p>made [14] 814/8 825/19 855/11 856/25 857/1 860/23 861/6 862/7 874/18 879/21 880/13 881/17 887/7 905/7</p> <p>Maggiano's [5] 870/1 870/16 877/13 877/14 877/17</p> <p>main [3] 828/24 905/7 912/23</p> <p>Maine [2] 843/15 845/6</p> <p>major [4] 869/21 869/21 870/3 897/22</p>	<p>make [52] 807/2 817/12 821/12 822/3 823/9 823/24 824/3 824/8 826/1 839/14 840/17 840/24 843/24 845/5 847/1 852/16 854/6 854/17 856/12 856/14 856/22 858/18 861/1 861/11 861/18 863/15 864/2 864/8 870/12 877/25 887/25 891/12 891/13 893/18 893/20 894/16 895/8 902/7 906/1 909/5 917/6 918/15 918/22 923/15 925/15 929/3 929/9 930/24 931/7 933/20 934/12 935/5</p> <p>makes [3] 912/10 914/23 935/2</p> <p>making [1] 861/14</p> <p>man [1] 895/10</p> <p>managed [1] 826/19</p> <p>Management [4] 901/18 901/19 901/22 902/10</p> <p>managing [3] 841/14 901/2 903/6</p> <p>Manassas [2] 935/13 935/15</p> <p>manner [1] 839/21</p> <p>manufacturer [2] 816/20 839/24</p> <p>manufacturers [1] 816/15</p> <p>many [27] 827/6 836/2 839/7 841/20 851/12 865/11 865/23 867/23 870/21 871/12 871/16 872/6 880/10 880/13 880/14 880/14 887/7 891/22 892/9 893/25 904/13 905/7 905/10 912/14 913/13 915/24 930/18</p> <p>map [4] 845/24 848/22 848/23 853/10</p> <p>maps [2] 845/21 873/8</p> <p>margin [2] 817/4 886/19</p> <p>margins [1] 913/20</p> <p>Marie [1] 870/20</p> <p>mark [10] 804/2 806/7 810/5 814/18 845/24 853/12 863/1 900/9 900/13 900/23</p> <p>marked [1] 866/9</p> <p>market [87] 810/7 818/25 839/2 850/8 862/15 863/17 881/10 893/22 907/2 908/6 909/3 909/4 909/4 909/6 909/7 909/7 909/8 909/9 909/10 909/10 909/12 909/13 909/13 909/16 909/16 909/17 911/3 915/1 918/4 918/6 918/9 918/10 922/18 923/11 923/14 924/4 924/7 924/13 924/14 924/16 924/17 924/18 924/19 924/21 924/22 924/24 924/25 925/3 925/10 925/12 925/14 925/18 925/19 926/8 926/10 926/11 926/13 927/4 927/21 927/25 928/1 928/3 928/5 928/10 928/21 928/23 929/5 929/6 929/11 929/17 929/23 930/7 930/12 930/17 930/19 930/21 930/25 931/2 931/3 931/5 931/6 931/13 933/7 933/17 933/23 934/4 934/7</p> <p>marketed [1] 821/21</p> <p>marketing [1] 816/20</p> <p>marketplace [2] 816/6 902/6</p> <p>markets [18] 847/2 859/23 871/13 871/14 872/7 874/19 875/10 881/1 881/2 896/24 902/3 902/4 907/4 909/15 920/15 924/7 925/4 925/7</p>

M Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15 Page 151 of 164	mobile [4] 825/8 904/7 904/16 mentioned [11] 831/24 865/1 904/17
<p>Maryland [1] 804/10 Mass [1] 843/1 Massachusetts [1] 836/8 material [4] 807/19 899/22 908/22 923/1 materials [2] 920/13 920/21 matter [8] 825/11 836/19 840/23 887/16 905/15 906/13 907/15 938/22 matters [5] 902/25 903/9 903/13 903/14 903/14 matures [1] 837/10 Max [2] 869/18 875/23 maximize [1] 938/14 maximizing [1] 912/19 may [33] 803/6 808/5 808/23 827/17 827/19 827/22 827/23 828/22 828/22 833/16 834/21 835/4 840/9 840/9 844/6 844/7 860/8 860/8 872/7 872/7 881/6 894/5 905/11 914/5 916/13 917/19 918/20 920/8 921/6 922/23 923/10 930/20 930/21 maybe [9] 814/2 833/13 834/13 840/5 854/16 856/3 918/14 930/1 937/21 MBA [3] 901/25 902/1 902/4 McEvoy [1] 813/12 McKinsey [4] 916/1 916/18 920/12 923/6 MD [1] 804/12 Mdavenport [1] 804/8 me [53] 808/16 808/25 814/6 823/21 828/23 830/3 830/18 831/20 832/2 832/14 835/20 842/3 847/8 848/22 850/11 850/16 850/17 853/12 862/15 863/15 864/14 864/18 866/5 866/6 867/10 867/18 875/9 877/11 879/22 883/12 889/18 891/11 891/12 891/24 892/19 894/2 894/7 894/11 895/2 895/15 896/17 896/19 897/6 897/12 897/24 900/11 908/8 909/5 913/25 915/12 922/24 924/17 933/14 mean [31] 810/16 826/8 828/19 832/23 834/5 836/11 849/4 857/17 857/25 858/7 870/7 873/23 877/6 880/19 882/25 891/19 894/14 894/14 905/1 908/4 911/8 914/2 917/25 919/5 920/14 921/23 923/11 924/9 934/8 934/9 935/15 meaning [1] 908/5 meaningfully [1] 914/10 means [5] 820/11 912/6 924/17 927/16 928/14 measure [1] 914/11 mechanical [1] 805/24 meet [5] 861/12 871/23 874/22 877/11 931/12 meeting [4] 869/9 869/10 871/8 876/7 meetings [4] 813/6 813/7 813/8 813/13 meets [1] 930/13 MEHTA [1] 803/14 MELISSA [1] 804/6 men [1] 811/23</p>	<p>mention [1] 804/8 mentioned [11] 831/24 865/1 877/5 880/23 883/12 888/11 890/21 891/9 894/23 904/13 905/25 menu [5] 830/11 832/18 876/17 877/24 878/9 merchandising [1] 819/5 merge [1] 929/12 merged [1] 878/17 merger [67] 877/6 882/15 882/18 883/9 902/24 903/10 903/24 904/7 904/7 904/8 904/12 904/16 904/16 904/17 905/7 907/17 907/18 907/22 907/25 908/1 908/3 908/4 908/5 908/5 908/6 908/15 908/16 908/18 908/19 908/20 908/22 908/25 909/18 909/19 909/20 909/23 910/3 910/6 910/15 911/1 911/4 911/5 911/10 911/12 911/17 911/24 912/9 913/8 914/12 914/19 914/21 914/24 915/15 916/13 918/18 919/15 921/11 922/7 922/11 924/6 924/11 925/21 925/22 925/23 928/11 930/9 930/11 mergers [11] 903/2 904/18 904/19 904/22 905/10 907/21 908/9 908/11 908/14 927/14 931/3 merging [13] 905/13 918/10 919/13 926/6 926/8 929/7 929/15 930/4 930/6 930/10 930/14 930/23 935/3 met [4] 814/1 875/1 912/4 913/9 methodology [6] 907/6 907/14 907/16 907/23 923/18 925/23 metro [4] 875/13 881/3 886/8 904/17 Mexico [1] 809/22 Miami [5] 843/19 852/18 852/21 852/25 852/25 Mid [1] 875/3 Mid-Atlantic [1] 875/3 midwest [2] 828/3 885/2 might [12] 826/18 827/24 872/3 894/11 910/1 910/6 915/20 920/15 921/12 924/11 931/2 935/7 Mike [1] 813/7 miles [7] 810/22 810/23 847/21 851/12 851/21 852/23 856/3 Miller [1] 813/7 million [5] 810/12 818/10 837/23 848/5 869/2 mind [11] 808/4 812/12 812/23 828/15 829/20 829/24 836/17 849/21 860/9 862/2 909/3 mine [1] 853/18 Minneapolis [1] 870/8 minute [3] 830/18 886/6 926/2 minutes [8] 809/13 854/1 854/5 899/10 899/12 936/11 937/5 937/5 MIRROR [1] 805/12 MIRROR-SINGER [1] 805/12 missed [3] 855/12 861/5 863/1 Mitchell [1] 813/8 mix [3] 830/16 830/17 851/4 mixed [1] 878/2</p>	<p>model [3] 922/2 934/23 935/1 models [8] 916/19 916/20 916/20 917/5 917/18 920/5 922/4 922/6 modern [4] 927/14 927/14 928/7 928/13 modes [8] 929/24 929/25 931/17 931/19 931/21 931/25 932/24 933/2 Mohr [6] 806/8 899/6 899/11 900/8 907/7 933/8 moment [2] 849/15 850/11 Monarch [1] 880/15 Monday [5] 825/4 825/15 871/23 871/24 937/15 money [1] 841/11 monopolist [19] 926/1 926/4 926/14 926/18 926/23 926/24 927/2 927/10 927/12 927/17 928/6 928/17 928/17 928/25 929/4 929/14 929/16 929/18 932/7 Montgomery [2] 837/19 838/15 month [4] 812/16 820/24 838/6 844/6 months [5] 849/7 849/18 849/20 896/20 896/22 Moon [1] 832/22 more [68] 814/2 823/8 828/1 830/19 834/8 839/4 841/2 842/7 844/9 845/4 849/4 849/4 850/12 851/19 851/21 851/24 852/12 852/23 853/11 854/1 854/8 855/11 856/21 860/9 860/12 860/13 864/12 865/20 866/5 867/3 872/10 873/25 876/13 881/16 883/2 886/20 891/23 892/10 892/15 893/16 894/14 894/17 896/14 898/18 904/23 907/1 908/7 913/17 914/8 917/2 918/7 918/21 919/8 919/11 919/20 919/22 920/1 920/15 920/17 923/9 926/15 926/17 927/7 928/22 931/1 932/15 933/11 936/22 morning [10] 809/21 812/13 851/22 853/19 857/25 858/1 862/4 863/4 898/15 938/16 most [12] 813/6 835/1 836/10 842/14 844/5 867/10 901/8 905/5 906/6 931/3 932/22 934/10 mostly [1] 867/20 motivated [1] 807/15 move [18] 837/6 845/21 853/15 853/18 853/18 854/11 874/19 875/19 875/21 877/15 878/23 879/2 879/3 880/14 880/16 889/18 897/6 924/4 moved [2] 874/19 880/14 moving [3] 836/14 853/21 878/7 Mr [38] 806/5 806/8 807/7 807/24 808/13 808/16 809/2 809/12 812/25 818/2 819/12 830/22 831/19 838/18 844/11 845/18 847/25 853/6 853/25 864/18 866/12 883/4 883/7 892/20 893/5 894/7 896/18 897/6 897/10 898/12 898/13 898/14 899/11 907/7 933/8</p>

M Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15 Page 152 of 164	non-compete [2] 819/3 821/2 non-in-camera [1] 808/1
<p>Mr... [3] 936/16 937/1 937/8 Mr. [6] 860/19 866/11 890/20 891/3 891/5 900/11 Mr. Evans [1] 860/19 Mr. Israel [1] 900/11 Mr. Parker [2] 866/11 890/20 Mr. Williamson [2] 891/3 891/5 Ms [2] 865/25 906/4 Mseidman [1] 804/4 much [21] 830/10 834/8 839/13 839/25 854/1 854/3 862/24 865/6 868/25 869/1 873/19 896/18 898/12 898/22 902/4 908/19 911/24 931/14 933/11 936/22 938/17 multi [3] 827/9 827/21 916/2 multi-regional [1] 916/2 multi-unit [2] 827/9 827/21 multiple [9] 903/22 905/10 915/22 915/23 916/3 918/19 918/25 930/11 930/18 multiply [1] 862/17 multiplying [3] 864/6 864/7 864/8 multiregional [1] 917/14 multiunit [1] 916/17 must [1] 912/4 my [54] 829/20 834/16 854/8 855/10 862/11 869/9 875/1 876/3 879/7 887/7 888/4 888/8 890/18 891/20 891/22 891/24 893/3 894/3 895/3 895/16 899/6 901/9 901/10 903/8 903/10 903/12 905/1 906/24 907/19 907/23 913/10 913/19 915/10 917/14 917/22 917/24 918/18 919/5 919/16 920/23 922/5 922/22 923/15 923/19 925/16 925/20 925/22 929/10 932/2 932/9 933/20 933/23 935/2 936/8 Myers [4] 804/15 804/19 804/23 805/1 Myrtle [1] 811/15 myself [2] 861/16 889/25</p>	<p>920/17 920/19 920/24 921/3 921/6 921/21 921/21 921/22 922/10 922/15 923/3 923/8 923/13 924/15 924/20 924/21 924/25 925/17 934/15 934/21 935/9 nationally [3] 875/4 877/16 895/4 nationwide [2] 892/3 892/16 natural [2] 915/7 933/9 nature [3] 819/2 861/11 902/8 navigator [1] 865/12 NBC [2] 903/24 904/7 NBCU [1] 904/15 necessarily [1] 880/20 need [20] 808/17 812/17 835/6 835/7 842/7 856/5 882/25 883/7 889/2 889/2 889/3 889/16 889/16 892/4 899/9 899/16 918/20 926/9 934/4 936/6 needed [8] 812/22 812/23 826/5 840/2 860/9 881/25 882/3 886/8 needs [4] 837/5 897/15 911/20 912/22 negative [1] 905/22 negotiate [4] 871/20 905/9 905/12 913/15 negotiated [7] 816/7 817/6 882/1 882/4 912/11 913/12 914/13 negotiating [2] 813/5 912/12 negotiation [2] 812/9 815/4 negotiations [9] 812/14 813/18 813/20 814/1 835/9 835/12 835/14 912/15 915/3 net [2] 816/19 817/1 network [4] 846/4 846/5 848/11 880/12 never [7] 857/17 861/4 862/2 881/10 881/13 881/17 887/10 new [21] 803/19 803/23 804/3 804/7 805/6 809/22 811/23 836/13 836/15 843/18 845/1 845/10 845/15 870/7 875/13 875/13 875/15 881/3 902/15 921/1 921/1 news [1] 938/1 next [15] 822/21 845/24 845/25 845/25 846/1 847/20 848/17 874/15 876/9 899/12 902/12 909/3 909/15 909/24 924/4 Nielson [2] 813/10 895/8 night [3] 840/3 840/15 856/4 nine [3] 844/6 850/14 853/12 nine-month [1] 844/6 Niner [2] 869/18 875/24 Ninety [2] 869/18 875/24 Ninety-Niner [2] 869/18 875/24 no [39] 803/5 807/6 808/14 820/1 820/5 825/23 830/7 830/15 833/16 836/1 838/22 842/9 853/24 853/24 857/14 857/16 863/13 864/11 867/14 867/15 872/5 874/13 875/11 875/11 883/2 883/8 884/2 889/13 890/3 890/12 893/7 894/11 896/13 899/17 912/24 921/23 928/22 935/19 937/10 non [8] 808/1 819/3 820/22 820/24 821/2 897/22 923/4 926/25 non-CMU [1] 923/4</p>	<p>819/3 821/2 808/1 non-solicit [1] 897/22 non-solicitation [1] 820/24 non-solicits [1] 820/22 non-transitory [1] 926/25 nonconfidential [1] 809/5 nonlocal [1] 915/21 Nope [1] 857/21 normal [3] 856/8 856/18 856/23 north [10] 810/20 812/2 812/5 843/6 869/5 869/6 870/15 870/24 874/25 881/4 northern [3] 837/20 837/22 848/2 Northwestern [2] 901/18 901/20 not [108] 813/21 815/17 819/21 819/24 820/1 820/5 820/5 823/15 823/23 824/6 825/18 826/17 827/11 827/12 831/5 832/14 834/25 836/1 837/4 837/5 837/9 838/7 838/21 838/23 840/5 841/6 842/9 843/6 843/23 844/7 844/10 851/12 854/7 854/18 857/15 857/18 860/23 860/24 864/10 864/11 864/19 865/4 866/15 866/17 869/9 870/15 871/12 871/18 872/12 872/25 873/19 874/2 874/17 875/19 875/25 876/16 877/10 877/17 878/10 879/2 880/17 881/6 882/20 883/22 883/25 884/1 885/23 887/7 887/14 888/7 888/23 888/25 889/11 889/12 889/20 890/1 890/2 890/3 890/8 890/16 894/5 896/12 896/12 897/2 897/25 899/9 901/12 903/19 910/5 911/7 914/21 917/20 918/8 919/21 921/14 921/15 923/15 923/21 931/2 931/24 932/1 932/2 933/11 933/25 934/2 934/3 935/20 938/11 note [3] 918/12 920/21 921/8 nothing [1] 898/18 notion [2] 927/19 928/1 Novation [1] 829/9 now [40] 808/1 813/11 814/18 822/17 825/14 826/23 827/3 828/12 830/1 835/22 839/23 840/11 841/3 841/6 841/9 844/20 849/7 852/2 853/25 854/10 860/10 866/14 872/11 875/12 875/22 878/6 879/10 879/18 880/19 888/2 891/14 892/19 895/2 896/17 896/20 896/22 914/22 924/3 925/20 936/7 number [11] 825/12 828/19 838/25 852/18 874/17 876/15 878/21 880/24 889/8 908/17 910/2 numbers [3] 861/15 865/3 865/8 nursing [1] 826/14 NW [11] 803/19 803/23 804/3 804/7 804/16 804/20 804/24 805/2 805/10 805/13 805/18 NY [1] 805/6</p>
<p>N</p> <p>name [2] 810/5 900/21 named [1] 866/10 narrow [1] 931/1 narrowest [4] 926/11 929/21 930/12 930/19 national [93] 810/10 817/15 818/21 818/24 818/24 819/6 826/6 826/8 826/16 826/18 826/20 827/2 827/18 827/20 828/3 828/7 828/13 830/2 830/5 830/5 830/8 830/14 838/20 850/4 858/4 863/9 863/11 869/7 873/16 877/21 879/11 881/7 883/9 889/22 891/17 891/22 892/9 892/13 893/22 894/15 894/17 895/2 895/14 896/5 896/16 896/19 898/1 907/2 907/3 910/19 915/11 915/17 915/21 915/24 916/1 916/8 916/15 916/22 916/25 917/1 917/8 917/9 917/12 917/14 917/20 917/21 917/22 918/24 919/9 919/11 920/4 920/9</p>	<p>next [15] 822/21 845/24 845/25 845/25 846/1 847/20 848/17 874/15 876/9 899/12 902/12 909/3 909/15 909/24 924/4 Nielson [2] 813/10 895/8 night [3] 840/3 840/15 856/4 nine [3] 844/6 850/14 853/12 nine-month [1] 844/6 Niner [2] 869/18 875/24 Ninety [2] 869/18 875/24 Ninety-Niner [2] 869/18 875/24 no [39] 803/5 807/6 808/14 820/1 820/5 825/23 830/7 830/15 833/16 836/1 838/22 842/9 853/24 853/24 857/14 857/16 863/13 864/11 867/14 867/15 872/5 874/13 875/11 875/11 883/2 883/8 884/2 889/13 890/3 890/12 893/7 894/11 896/13 899/17 912/24 921/23 928/22 935/19 937/10 non [8] 808/1 819/3 820/22 820/24 821/2 897/22 923/4 926/25 non-CMU [1] 923/4</p>	<p>now [40] 808/1 813/11 814/18 822/17 825/14 826/23 827/3 828/12 830/1 835/22 839/23 840/11 841/3 841/6 841/9 844/20 849/7 852/2 853/25 854/10 860/10 866/14 872/11 875/12 875/22 878/6 879/10 879/18 880/19 888/2 891/14 892/19 895/2 896/17 896/20 896/22 914/22 924/3 925/20 936/7 number [11] 825/12 828/19 838/25 852/18 874/17 876/15 878/21 880/24 889/8 908/17 910/2 numbers [3] 861/15 865/3 865/8 nursing [1] 826/14 NW [11] 803/19 803/23 804/3 804/7 804/16 804/20 804/24 805/2 805/10 805/13 805/18 NY [1] 805/6</p> <p>O</p> <p>O'Charley's [3] 831/7 869/17 875/22</p>

O Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15 Page 153 of 164	935/25 option [1] 934/17
o'clock [3] 898/15 899/3 937/25	838/20 838/21 838/25 842/8 842/22 843/24 844/21 845/11	order [20] 820/16 821/22 822/20 825/7 825/8 825/11
O'Melveny [4] 804/15 804/19 804/23 805/1	845/24 845/25 845/25 846/1 847/5 847/12 847/17 847/18	825/13 839/24 840/15 845/3 848/25 866/18 876/9 876/13
oag.state.md.us [1] 804/13	847/24 848/4 849/4 850/11	892/15 906/1 917/16 923/15 926/9 932/24
objection [9] 819/17 853/22 853/24 866/11 866/13 866/18	851/15 851/18 851/20 853/1 855/11 856/4 860/25 861/7	ordering [5] 821/22 822/17 825/3 825/4 825/5
866/20 873/22 905/21	864/1 865/7 865/24 866/4 866/6 866/8 866/10 866/25 867/1	orders [4] 822/18 840/12 840/12 840/13
obtain [2] 815/4 821/6	867/2 867/11 868/17 869/6 869/9 870/3 871/3 872/20	ordinary [1] 932/19
obtained [1] 816/10	873/17 874/25 875/18 877/9 877/9 877/16 878/19 879/3	organization [6] 880/19 901/11 902/1 902/3 905/2 905/20
obviously [5] 856/9 856/20 867/13 912/11 931/16	879/23 880/9 880/16 880/17 881/4 881/4 884/14 884/20	organize [1] 927/6
occur [2] 833/9 835/9	886/3 886/10 886/20 887/3 887/10 887/12 887/13 888/2	Orlando [5] 837/19 843/22 843/22 844/1 844/2
OCS [1] 869/4	889/4 893/1 894/13 896/5 897/6 897/8 897/17 897/17 903/7	other [58] 811/19 820/12 824/6 839/11 847/8 847/17 847/18
of 2014 [2] 812/15 814/4	903/12 904/22 905/4 905/7 908/21 910/2 910/5 910/10	851/16 851/17 855/17 861/2 861/16 863/20 863/22 866/1
of my [1] 893/3	912/8 914/25 914/25 916/2 916/6 917/25 918/2 918/8 919/9	866/5 867/20 872/21 877/24 878/9 881/13 882/16 890/14
off [8] 840/25 877/24 879/7 905/9 926/18 926/19 926/20	920/11 921/4 923/21 923/21 926/3 926/18 927/20 928/3	891/8 893/19 894/8 903/13 904/12 904/18 904/20 910/1
938/5	928/16 931/9 932/13 933/14 934/19 935/24 937/18 937/19	913/1 914/8 915/3 916/3 923/5 923/10 923/21 923/22 926/16
offer [5] 872/25 877/24 895/5 920/24 921/3	937/20 937/23	929/16 929/24 929/25 930/6 930/21 931/5 931/12 931/17
offering [1] 932/12	one person [1] 880/17	931/19 931/21 931/22 931/23 931/24 931/25 932/3 932/24
office [8] 804/10 819/6 828/6 872/23 901/3 902/15 903/7	one's [1] 873/13	936/20 937/14
903/7	one-by-one [1] 914/25	others [4] 821/3 872/18 921/5 923/4
officer [3] 813/9 895/6 895/7	one-eleventh [2] 884/14 884/20	others' [1] 913/19
offices [1] 902/19	one-third [1] 903/12	otherwise [1] 903/8
Official [1] 805/17	one-year [1] 821/2	ought [1] 892/5
offset [2] 909/25 910/14	ones [11] 820/25 828/16 828/25 846/19 848/12 848/14 848/19	our [79] 807/17 809/15 810/4 810/4 811/10 811/10 811/21
often [7] 833/9 835/2 881/12 905/8 917/2 919/8 919/11	867/25 878/9 880/6 893/19	813/14 813/14 819/4 826/9 826/19 826/21 827/1 827/4
oh [4] 836/9 853/8 871/6 879/7	ongoing [1] 880/7	828/6 829/22 830/8 830/9 830/10 831/23 832/10 834/9
Ohio [1] 842/20	only [17] 816/4 827/19 832/4 832/6 851/24 861/6 868/25	839/3 839/6 839/14 839/23 840/4 840/7 841/14 842/9
okay [105] 807/7 808/9 812/11 812/21 815/20 817/16 818/3	870/3 878/9 888/8 892/1 894/25 918/2 932/2 935/4 935/8 935/17	842/13 844/2 844/16 844/16 844/21 845/8 845/11 846/4
818/18 821/8 830/18 833/8	OpCo [7] 814/9 814/9 814/10 815/23 818/18 827/24 855/24	846/17 848/11 849/24 849/25 850/9 852/7 854/13 858/23
833/12 834/4 835/17 835/23	OpCos [12] 815/14 816/15 817/19 820/9 841/21 858/11	858/25 859/1 860/1 860/2 860/9 860/17 861/11 861/25 863/24
838/24 839/16 839/22 840/7	858/16 858/25 873/5 875/19 881/19 882/16	865/5 868/17 868/19 869/8 872/4 873/4 877/9 878/22
840/9 840/16 840/22 841/4	open [10] 803/8 808/16 854/9 854/21 886/21 894/9 897/13	879/23 880/12 886/6 886/7 888/23 888/23 889/11 890/6
842/14 845/4 845/6 847/4	899/2 899/12 900/5	893/24 899/9 903/3 923/3 936/18 938/1 938/14
847/24 848/6 849/23 850/15	operate [5] 860/3 860/4 860/6 860/11 925/5	ours [1] 830/9
851/10 853/20 855/23 857/2	operates [1] 828/2	ourselves [2] 852/13 889/3
857/11 859/6 862/11 862/20	operating [4] 813/10 815/3 858/21 895/7	out [55] 809/25 810/10 812/4 812/5 814/14 828/6 832/11
863/14 863/23 863/25 864/4	operationalize [1] 927/15	832/23 832/24 835/25 836/5 837/2 837/11 838/10 839/16
864/20 864/22 864/24 865/16	operationally [1] 888/3	839/16 840/25 841/2 841/16 842/22 843/21 844/1 845/6
866/21 870/14 877/8 881/14	operations [2] 818/23 830/12	852/7 853/2 853/11 856/3 856/19 858/11 874/22 875/3
881/25 882/3 882/15 883/12	operator [2] 826/13 867/23	875/13 876/20 881/25 882/3 882/12 887/16 888/2 889/8
883/23 884/3 884/20 885/6	opinion [6] 906/19 906/23 906/24 907/8 907/9 907/15	890/11 895/3 899/18 906/3 907/24 911/23 924/14 924/21
885/8 885/16 885/21 887/23	opportunities [1] 842/13	
888/1 888/4 888/7 888/11	opportunity [5] 820/18 841/9 841/10 881/18 889/3	
889/18 889/21 889/23 889/23	opposed [4] 852/12 852/17 852/24 916/17	
889/24 890/8 890/17 891/5	optimally [1] 837/2	
891/18 892/1 892/9 892/14	optimistic [1] 848/18	
893/5 893/14 893/14 894/5	optimized [3] 934/23 935/22	
894/12 894/20 895/2 895/8		
895/11 895/14 895/24 896/1		
896/4 896/16 897/6 897/16		
897/19 898/23 899/20 900/10		
906/11 914/16 936/12 937/1		
937/13 938/13		
omm.com [4] 804/17 804/21 804/25 805/3		
on Tuesday [1] 825/4		
once [16] 808/6 849/24 859/19 869/12 875/10 879/22 879/22		
909/15 909/22 912/18 922/16		
925/14 927/2 928/7 928/15 930/15		
one [129] 809/20 809/20 811/11 814/17 816/14 820/19 821/2		

P Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15 Page 155 of 164	845/7 845/8 propose [1] 899/17 proposed [3] 906/20 907/10 908/3 proprietary [1] 878/2 provided [1] 831/21 provider [1] 896/7 providing [1] 913/21 provision [4] 816/8 817/6 907/2 907/4 public [5] 808/20 894/9 899/19 904/10 906/3 publications [2] 904/24 905/1 publicly [1] 855/12 purchase [10] 814/21 817/21 817/22 818/5 894/1 897/7 897/21 897/25 905/3 934/1 purchased [2] 816/19 883/17 purchasing [4] 845/2 873/15 878/20 880/24 pure [1] 826/12 purposes [3] 886/14 922/22 932/23 push [1] 910/1 put [19] 839/25 842/23 851/9 859/14 861/3 861/7 862/1 867/17 880/2 881/7 888/18 888/25 891/11 922/25 923/21 923/21 926/17 937/9 937/11 puts [2] 834/19 837/9 putting [7] 823/13 852/24 863/24 876/21 880/3 887/18 896/2 PX [4] 885/6 885/10 885/14 892/20 PY [1] 880/14
<p>please... [5] 900/21 901/6 901/21 902/17 906/10 plenty [1] 843/20 plus [1] 874/7 Pmirrir [1] 805/14 Pmirrir-singer [1] 805/14 point [19] 810/8 824/25 824/25 854/17 856/14 856/15 858/10 868/9 888/8 891/22 902/5 903/15 905/7 910/22 920/16 922/13 926/24 933/10 934/19 points [3] 814/19 825/14 833/7 poorly [2] 886/1 886/2 Popeyes [1] 934/25 portion [6] 807/8 808/19 831/6 854/21 899/15 934/1 portions [3] 803/9 897/11 906/5 position [1] 901/1 possibility [1] 883/11 possible [4] 821/9 858/9 911/16 914/19 possibly [3] 819/15 887/20 921/7 potential [6] 833/18 866/2 903/2 903/2 906/17 931/21 potentially [4] 829/21 910/12 920/20 935/5 power [3] 905/6 905/8 905/12 powerful [2] 905/8 905/11 practicalities [1] 855/18 practice [5] 903/24 915/6 917/14 927/1 927/16 practices [2] 902/21 916/10 pre [1] 928/11 pre-merger [1] 928/11 prefer [2] 854/11 906/8 preference [2] 820/15 828/21 Premier [5] 829/7 865/9 869/14 875/16 881/12 prepare [1] 829/22 prepared [4] 860/15 860/17 937/9 937/23 preparing [2] 812/14 824/8 presence [1] 921/15 present [3] 826/17 862/18 928/19 president [1] 901/2 presumption [4] 909/19 909/24 910/1 929/20 pretty [2] 881/18 895/25 previous [4] 811/24 846/22 848/23 925/23 previously [1] 809/8 price [34] 816/19 816/22 816/24 835/7 844/8 851/7 851/9 851/20 879/11 882/18 882/21 889/1 911/5 911/7 911/8 912/1 912/3 912/25 913/13 913/22 914/4 914/4 914/6 914/10 914/11 914/13 917/2 920/1 927/1 927/21 927/22 928/4 931/10 935/7 priced [1] 921/25 prices [17] 883/10 910/25 911/2 911/10 911/11 911/12 912/9 912/10 912/13 912/16 912/22 913/24 914/9 914/15 926/20 927/3 928/18 pricing [12] 905/2 908/24</p>	<p>912/1 912/4 913/7 912/18 913/12 913/14 913/16 913/16 914/1 914/3 primarily [5] 821/3 860/17 867/19 878/4 886/7 primary [4] 811/21 901/10 901/23 920/3 principally [1] 811/13 priorities [3] 842/12 842/13 848/16 prioritize [2] 837/15 842/14 prioritizes [1] 840/13 priority [7] 837/16 837/17 837/18 838/4 842/11 842/16 848/15 private [10] 815/22 820/15 821/20 822/7 822/25 823/5 869/16 903/1 903/11 908/13 privilege [1] 816/7 probable [1] 925/25 probably [18] 812/16 833/12 839/5 841/23 842/18 844/17 863/23 870/11 877/18 884/18 892/11 893/19 894/17 897/15 915/19 937/2 937/4 938/7 problem [2] 874/14 876/5 problematic [3] 886/3 886/4 886/22 problems [1] 886/25 proceed [3] 809/3 899/23 906/24 proceedings [5] 805/24 808/20 855/3 899/1 938/22 process [12] 834/17 834/20 835/4 837/3 838/6 876/11 895/22 907/18 907/21 908/10 924/20 931/18 procurement [3] 813/15 818/23 880/21 produced [1] 805/24 product [51] 810/1 816/3 816/19 816/23 816/24 822/4 823/15 824/1 824/5 824/9 839/15 840/1 840/6 840/14 840/18 840/19 840/25 851/3 851/9 851/18 852/22 852/24 855/24 878/2 878/3 909/3 909/6 909/8 909/13 911/8 913/21 924/17 924/21 924/24 925/2 925/7 925/10 925/12 925/14 925/18 925/19 926/6 926/8 928/3 928/16 929/5 929/21 931/4 933/17 934/7 934/9 production [1] 923/17 productivity [1] 840/18 products [24] 815/23 876/18 877/24 909/9 910/5 913/5 926/15 926/16 926/17 927/3 927/17 927/20 929/2 930/10 930/15 930/16 930/22 930/23 931/5 931/23 932/3 932/10 932/16 932/17 Professor [1] 905/5 profit [1] 912/19 profitable [2] 930/17 930/24 profits [1] 902/7 program [2] 827/25 877/21 project [1] 895/8 projected [2] 891/6 891/7 projects [1] 844/3 Proper [1] 905/6 property [4] 842/22 845/2</p>	<p>Q Q3 [1] 840/22 QSR [2] 830/9 831/9 qualifications [1] 905/16 qualify [1] 863/16 qualitative [1] 932/15 quality [1] 823/13 quarter [1] 901/24 question [28] 819/20 819/25 854/8 866/23 869/23 910/13 910/21 910/24 914/6 923/10 926/7 926/9 927/20 927/24 928/15 929/10 929/12 929/16 929/18 929/22 930/4 930/8 930/8 931/8 931/11 931/15 933/6 937/11 questions [6] 835/2 864/12 883/2 904/3 910/9 925/2 quick [4] 830/11 842/23 934/24 934/25 quicker [1] 838/7 quickly [3] 855/13 908/21 918/12 quite [12] 835/2 844/8 870/8 907/24 913/3 913/6 925/16 926/10 930/9 935/16 936/2 936/9 quote [2] 830/5 863/9 quote/unquote [2] 830/5 863/9 R raise [2] 927/21 928/18 raised [2] 825/14 931/10 raises [1] 928/3 raising [1] 927/22</p>

R Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15	Page 156 of 164
<p>Raleigh [1] 812/2 Ralph [1] 865/25 ramp [1] 859/25 ramp-up [1] 859/25 ran [5] 841/21 886/18 886/18 895/7 936/5 range [2] 857/6 859/13 rare [3] 834/22 834/25 834/25 rate [1] 811/20 rates [2] 840/18 841/24 rather [1] 851/5 ratio [1] 928/9 rationale [1] 923/24 rationally [1] 912/19 ratios [4] 839/13 858/15 858/21 859/2 re [1] 836/9 re-builds [1] 836/9 reach [1] 907/14 read [1] 925/25 ready [3] 813/3 877/21 899/4 real [10] 844/16 844/19 845/2 845/5 858/22 860/24 860/25 879/3 896/2 896/3 realistically [1] 937/22 reality [1] 850/9 realize [1] 808/5 really [57] 807/13 807/20 808/13 810/22 827/11 839/2 845/4 849/11 852/21 856/3 861/13 861/13 862/21 865/15 873/14 876/8 884/18 888/5 890/23 894/15 896/18 901/11 908/8 908/9 908/13 908/19 909/3 909/7 909/12 910/22 910/24 911/8 911/17 911/24 912/23 914/9 914/10 916/21 917/13 920/23 921/24 922/12 922/20 927/13 927/15 928/13 929/2 932/8 934/11 934/17 934/18 934/19 934/24 935/1 935/4 936/2 936/8 realtime [2] 817/24 817/25 reason [7] 826/11 829/20 859/3 859/23 861/9 877/7 878/17 reasonable [2] 914/5 921/16 reasons [1] 921/23 rebates [1] 816/17 rebuild [1] 836/12 rebuilt [1] 836/7 rebuttal [3] 936/19 936/20 938/11 recall [3] 830/22 863/4 879/14 receive [5] 848/1 848/4 908/24 910/25 913/15 received [1] 839/24 receiving [1] 913/5 recent [1] 904/19 recently [3] 811/16 843/19 904/7 RECESS [4] 855/2 855/4 900/3 900/4 recognize [1] 857/24 recognizing [1] 830/13 recollection [1] 862/11 recommendation [1] 874/18 record [4] 826/5 894/9 900/22 938/21 recorded [2] 805/24 904/1 records [2] 916/10 932/19</p>	<p>recover [1] 817/2 red [2] 822/22 847/12 redesign [1] 936/8 redirect [4] 807/20 808/3 883/5 937/5 Redskins [1] 874/5 reduce [1] 876/17 reengage [1] 877/4 refer [3] 916/1 916/19 927/10 referring [3] 848/8 863/18 920/12 reflect [1] 905/15 reflected [3] 917/24 918/3 918/5 reflecting [1] 907/20 regard [1] 869/23 regardless [1] 895/16 region [6] 827/19 873/3 909/11 909/11 918/8 919/4 regional [14] 818/21 818/22 826/15 827/4 860/4 860/6 916/2 918/2 918/3 918/5 918/7 918/9 923/13 923/16 regionalization [1] 879/14 regionalize [3] 879/16 880/18 881/5 regionalizing [1] 879/25 regions [2] 915/23 918/25 register [2] 827/1 827/20 regularly [1] 874/16 regulatory [2] 902/25 903/14 Reinhart [1] 929/15 relate [2] 904/24 905/3 related [1] 905/2 relates [2] 905/5 927/11 relating [1] 902/25 relationship [6] 820/19 820/20 827/23 827/23 878/22 879/4 relaxed [2] 873/23 928/10 relevant [11] 812/10 908/7 908/18 911/25 924/7 925/10 926/10 927/23 928/21 933/17 934/7 relevantly [1] 901/8 rely [1] 844/17 remain [1] 854/20 remember [9] 824/15 824/17 849/2 852/22 865/7 873/18 874/20 874/23 881/1 removed [1] 879/22 renew [1] 833/17 rep [1] 912/16 replace [2] 847/7 847/8 replaced [1] 836/10 replacement [3] 843/21 845/16 849/5 report [13] 846/12 905/15 913/19 919/8 919/21 920/3 920/23 922/13 925/13 927/9 929/10 932/9 935/2 reporter [3] 805/17 805/17 899/9 reporting [2] 826/9 896/7 reports [3] 826/20 910/18 913/19 represent [1] 814/20 representation [3] 816/21 827/3 828/5 represented [1] 862/9 reps [1] 935/19 request [1] 877/25 reracked [1] 888/17</p>	<p>resell [1] 913/2 reselling [1] 913/1 resident [1] 856/10 Resorts [1] 867/22 respect [1] 859/16 responding [1] 838/21 response [2] 807/6 905/22 responses [1] 923/11 rest [4] 840/1 888/23 922/13 922/14 restart [1] 937/15 restaurant [7] 828/17 831/11 832/25 852/24 869/17 878/4 920/14 restaurants [13] 826/13 830/11 830/11 831/2 831/5 870/4 934/19 934/24 934/25 935/1 935/18 936/3 936/7 result [1] 882/18 results [1] 826/10 resumed [3] 806/4 809/7 855/9 retail [2] 904/18 914/2 retain [1] 826/2 retained [3] 904/11 906/13 906/15 returned [1] 899/2 returns [1] 856/24 revenue [1] 935/3 revenues [1] 848/4 Review [1] 905/7 reviewed [2] 934/12 934/16 revised [1] 907/18 RFP [11] 833/16 834/6 834/23 834/23 835/10 838/8 838/21 844/7 875/11 881/7 882/12 RFP's [1] 833/9 RFPs [4] 833/6 833/20 834/12 882/24 Ribbon [3] 869/14 870/16 875/17 RICHARD [1] 804/15 Richmond [4] 810/19 810/21 812/6 812/7 rid [1] 936/7 right [139] rights [3] 824/21 882/4 894/24 rigorous [1] 838/8 rise [2] 855/1 900/2 risk [5] 823/15 861/23 862/1 876/19 889/1 River [7] 883/18 883/18 884/5 885/2 885/12 885/16 888/7 road [1] 824/3 Roanoke [2] 810/16 810/16 ROBSON [1] 805/1 Rock [4] 869/23 869/24 870/19 877/8 role [3] 903/5 903/8 904/19 roles [1] 904/22 Roma [15] 809/25 810/4 843/22 847/19 876/4 876/4 876/4 876/20 877/15 877/20 878/3 878/13 888/17 888/25 890/2 room [2] 805/18 886/21 rooms [1] 935/23 roughly [1] 833/19 route [2] 820/14 856/19 routes [2] 822/15 824/25 routing [3] 821/22 825/1 856/10 Rparker [1] 804/17 RPR [3] 805/17 938/20 938/25</p>

R Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15 Page 157 of 164	936/5 936/7 served 161 831/22 916/23 917/1
Ruby [1] 831/7 rules [1] 873/23 run [9] 824/18 825/22 858/14 858/15 860/8 888/24 889/13 902/15 903/7 running [5] 839/20 886/11 887/15 889/5 908/21 runs [1] 878/20 rye [1] 809/12	904/21 905/4 911/4 915/28 919/7 919/25 922/12 922/16 924/19 927/16 930/11 930/25 saying [3] 815/7 911/6 922/5 says [18] 816/14 840/7 850/25 851/1 858/3 859/11 859/12 863/17 879/20 897/22 912/1 912/7 928/4 928/7 928/8 928/17 930/19 930/19 scale [2] 919/2 934/18 scale-based [1] 934/18 schedule [3] 885/11 938/3 938/14 School [3] 901/19 901/22 902/9 science [1] 907/22 scope [1] 882/10 screen [4] 906/3 911/19 911/22 914/22 seal [2] 885/19 897/12 sealed [3] 803/8 855/3 899/1 season [1] 874/15 second [4] 845/8 873/21 899/9 932/13 section [10] 908/21 911/17 911/23 912/9 913/8 914/22 915/12 921/12 925/20 930/19 sections [2] 908/17 922/13 see [42] 809/4 810/9 810/13 815/23 817/4 817/23 817/24 823/14 842/21 845/22 848/12 848/15 851/8 852/8 852/14 853/10 858/3 858/5 858/17 859/3 859/22 863/20 868/1 873/9 874/21 875/3 877/5 877/20 877/21 879/18 880/21 885/16 886/25 896/5 897/4 897/9 897/22 897/24 913/19 913/21 935/19 938/16 seeing [1] 850/12 seem [1] 826/23 seemless [1] 821/12 seen [3] 915/6 920/21 922/6 segregate [1] 918/23 segregated [1] 923/1 segregations [1] 923/2 SEIDMAN [1] 804/2 selected [2] 840/14 840/16 selecting [1] 840/12 selection [1] 840/11 self [1] 923/22 self-identified [1] 923/22 sell [3] 816/4 816/5 932/11 sells [1] 862/20 sends [1] 840/8 senior [2] 826/21 880/21 sense [3] 864/8 931/13 935/16 sensitive [2] 807/20 923/15 separate [8] 857/2 889/13 910/5 912/14 915/16 922/6 922/18 922/19 separately [9] 888/24 909/1 910/18 911/14 913/12 914/20 922/7 922/22 925/1 September [2] 813/1 814/3 serially [1] 844/13 series [4] 835/9 853/15 857/24 873/8 serious [1] 839/3 serve [18] 809/16 809/22 810/18 831/2 843/7 850/5 853/2 903/8 903/15 903/16 916/21 918/5 918/7 934/23 936/1 936/3	936/5 936/7 served 161 831/22 916/23 917/1 917/3 918/2 920/17 serves [4] 918/2 934/18 935/1 935/17 service [21] 810/19 810/20 811/3 814/7 830/11 831/12 834/9 916/20 916/20 917/5 917/18 920/5 921/3 921/25 922/2 922/4 922/6 932/11 934/18 934/24 934/25 services [9] 813/16 814/12 814/22 819/5 894/21 914/9 932/17 934/2 934/2 servicing [1] 889/19 servicing [3] 855/16 935/21 935/22 session [4] 803/13 807/3 808/17 899/4 sessions [1] 808/2 set [16] 818/3 827/15 856/2 856/16 865/20 878/24 912/25 913/16 914/9 916/5 918/6 922/15 922/15 934/20 934/21 935/4 sets [2] 912/21 916/21 setting [1] 912/13 settings [1] 916/9 seven [4] 836/10 872/3 887/11 908/19 several [7] 809/15 811/17 814/1 836/17 867/25 907/4 925/4 Shack [1] 833/2 Shake [1] 833/2 Shamrock [1] 871/15 share [11] 831/10 862/15 862/21 862/21 862/23 864/3 864/3 864/22 864/22 909/22 919/13 shared [3] 813/15 814/11 819/5 shares [14] 861/19 909/16 910/4 910/7 915/1 918/4 918/6 918/9 918/10 919/16 919/19 923/11 923/14 923/17 she [7] 874/18 874/20 877/9 877/11 881/12 881/14 881/14 she's [1] 881/17 shipping [1] 887/18 Shook [1] 905/22 short [8] 833/13 846/25 848/25 854/8 855/11 937/16 937/19 937/20 shortly [3] 813/22 813/23 813/24 should [17] 808/12 808/21 845/5 850/7 879/7 909/1 911/13 915/18 918/12 922/17 922/19 924/11 929/9 933/10 933/17 934/6 935/9 shouldn't [5] 839/6 863/23 864/5 890/6 892/12 show [5] 852/20 861/8 892/19 905/25 932/21 showed [3] 853/10 860/21 891/6 shows [3] 821/19 855/23 855/24 shuttle [8] 810/3 856/4 856/6 856/7 856/14 856/23 857/3 857/3 shuttling [2] 855/19 855/21 sic [1] 871/1 side [8] 824/7 824/7 836/9
S Sacramento [1] 847/22 said [37] 813/1 813/21 819/19 828/25 836/24 839/6 844/17 846/5 850/20 851/22 857/13 861/9 862/7 863/6 865/2 871/19 873/2 874/6 874/13 874/17 874/20 875/9 876/5 876/7 877/9 879/1 879/11 880/7 880/8 880/15 894/11 903/6 910/25 917/12 924/8 924/16 927/18 sale [1] 839/1 sales [37] 810/4 811/13 811/23 813/15 816/20 818/24 818/24 825/8 826/1 826/10 826/21 826/25 827/1 827/3 827/16 828/5 834/2 834/7 837/9 838/24 839/8 841/14 843/25 859/8 862/20 878/17 886/19 912/16 917/1 917/3 927/22 927/22 927/25 928/4 928/15 931/10 935/19 salesmen [1] 811/16 salespeople [5] 811/20 811/21 818/21 821/3 821/3 salesperson [2] 820/14 825/7 same [51] 817/2 822/4 822/13 822/14 822/15 822/23 822/24 823/1 823/14 824/1 824/11 824/14 824/24 825/6 825/8 825/12 825/13 825/22 825/23 828/9 828/10 830/3 830/5 833/15 836/18 838/1 838/1 838/16 840/5 841/13 848/23 851/4 851/8 856/8 857/22 858/17 868/24 869/4 869/23 870/17 875/2 877/1 895/19 896/7 896/9 908/6 911/7 913/13 925/2 933/3 938/2 San [1] 847/9 Santa [1] 847/15 SAP [1] 895/20 sat [1] 889/25 satisfied [4] 816/12 817/9 821/4 823/12 satisfy [1] 926/12 Savannah [1] 811/15 savings [3] 851/19 851/20 852/10 saw [1] 809/15 say [52] 813/20 814/25 815/2 824/19 825/4 825/15 826/8 827/14 828/2 832/16 833/12 835/3 835/6 840/9 840/9 840/21 842/2 849/6 849/8 849/11 849/16 861/4 861/5 861/16 861/19 877/5 883/7 883/16 884/20 885/23 886/5 886/23 887/5 888/12 892/12 893/16 895/3 896/4 896/16 903/2		

S Case 1:15-cv-00256-APM	Document 184-1 Filed 06/26/15	Page 158 of 164
<p>side... [5] 844/16 853/22 869/9 874/12 876/4 side-by-side [1] 824/7 signed [2] 829/23 879/13 significance [1] 816/2 significant [10] 810/10 825/24 826/24 831/6 834/8 844/20 861/24 862/23 926/25 934/3 significantly [1] 851/7 similar [2] 827/14 869/12 SIMMONS [2] 804/19 937/2 simple [2] 824/7 934/10 simply [2] 863/8 926/15 Simpson [3] 805/5 805/9 805/12 since [4] 879/8 898/14 905/3 917/22 singer [2] 805/12 805/14 single [12] 883/17 884/5 884/12 887/19 888/15 895/5 895/15 896/6 896/6 896/7 896/17 916/4 sir [53] 810/15 810/25 812/10 812/20 813/5 814/24 815/9 815/24 816/2 816/16 817/9 818/7 821/1 826/8 828/15 830/18 833/11 835/13 837/3 837/15 844/11 845/22 846/23 847/17 848/10 850/5 850/16 851/25 852/3 852/19 853/15 853/24 855/19 858/5 859/14 860/15 861/10 861/15 862/3 866/2 879/14 879/18 880/6 882/9 882/13 882/22 883/2 885/6 892/19 892/24 898/19 937/12 937/18 sitting [1] 880/11 situation [4] 841/13 843/23 877/1 912/11 situations [4] 872/22 912/10 913/3 915/3 six [11] 821/15 821/23 821/25 859/22 862/3 896/20 896/22 902/11 914/7 935/17 935/21 six-pack [1] 914/7 Sixty [1] 847/24 Sixty-one [1] 847/24 sizable [1] 886/8 size [10] 863/17 865/10 865/15 878/1 878/5 878/24 882/10 884/14 884/19 884/20 SKU [4] 828/18 828/18 851/4 872/13 SKUs [5] 871/12 872/14 876/16 876/17 890/7 sleep [1] 844/10 slide [6] 863/17 864/17 885/9 906/5 906/7 906/7 slide-by-slide [1] 906/7 slides [1] 906/6 sliding [1] 919/2 slight [1] 855/11 slightly [1] 859/22 slot [6] 839/9 839/18 839/25 840/2 840/25 887/19 slot's [1] 839/21 slots [6] 839/12 839/17 839/19 839/20 840/3 840/17 slotted [2] 887/20 887/21 small [5] 834/4 872/13 921/12 926/25 935/9</p>	<p>smaller [1] 933/15 smarter [1] 842/3 SNIPP [1] 929/1 so [180] so-called [1] 926/1 Sodexo [8] 829/5 869/11 870/15 870/24 875/5 875/6 881/9 881/10 sold [11] 816/25 817/18 846/25 913/2 926/6 926/8 926/15 929/7 930/4 930/6 932/3 solicit [2] 897/22 898/1 solicitation [1] 820/24 solicits [1] 820/22 some [99] 807/12 807/19 807/19 810/8 812/4 812/5 813/13 814/13 816/18 816/20 819/12 824/3 826/5 826/11 827/17 828/21 828/22 828/22 829/18 829/19 830/7 830/15 830/15 830/19 831/11 831/14 831/16 832/2 833/14 834/11 841/24 844/6 845/21 846/22 850/12 855/17 855/25 861/1 861/18 861/19 861/20 861/21 865/14 866/5 866/14 866/19 867/9 867/9 867/14 867/20 867/24 867/24 869/6 872/9 872/19 872/21 874/6 875/2 875/10 879/12 880/3 880/5 881/5 881/16 886/21 888/19 892/6 892/7 893/19 895/20 895/20 896/2 899/18 902/2 903/12 905/3 905/4 908/6 910/17 911/6 911/23 914/3 914/12 916/24 918/13 919/1 919/7 920/2 920/12 920/13 920/16 926/1 926/21 927/6 927/21 928/24 930/22 931/13 931/14 somebody [5] 820/12 824/10 828/2 840/21 913/2 somebody's [1] 937/15 someone [5] 828/5 835/18 839/2 871/15 882/23 something [15] 820/5 827/17 837/17 840/22 861/12 864/6 865/5 865/14 871/17 875/7 881/7 898/15 910/11 911/20 923/16 sometimes [8] 824/6 845/13 845/14 845/15 856/14 856/21 856/21 903/1 somewhat [4] 823/11 830/13 844/17 907/19 somewhere [1] 869/2 soon [4] 826/13 854/22 874/22 877/10 sorry [29] 815/11 817/12 819/23 823/22 824/17 824/23 831/19 832/2 832/23 834/11 837/21 844/11 846/21 848/24 849/14 853/8 854/2 856/24 857/21 859/5 870/15 871/24 872/18 883/24 889/7 897/10 907/7 911/18 918/22 sort [17] 817/18 818/6 836/23 848/14 904/2 913/10 918/13 921/5 926/3 926/9 927/5 927/13 927/18 931/18 932/9 932/23 934/12 sound [1] 847/21 source [3] 811/21 905/12</p>	<p>South [5] 811/1 811/4 812/4 832/14 836/8 southeast [2] 852/5 852/6 southern [3] 837/20 837/22 847/4 southwest [1] 810/16 space [4] 840/8 843/20 869/17 904/15 speaking [3] 830/22 925/18 932/6 specialty [1] 931/20 specific [8] 833/10 862/19 872/13 874/6 904/25 919/21 921/7 935/23 specifically [2] 867/3 915/16 specify [1] 836/11 Spectators [1] 809/1 spell [1] 900/21 spend [1] 910/16 spends [1] 916/24 spent [3] 871/10 876/2 903/10 spite [1] 841/14 split [6] 916/22 917/4 917/5 921/16 923/6 934/15 splits [1] 919/6 splitting [1] 825/15 sports [2] 868/13 869/7 spot [1] 856/23 spring [1] 812/15 Springfield [2] 836/8 843/1 square [4] 818/10 837/10 869/18 875/20 SSNIP [9] 926/1 926/25 928/11 929/17 929/19 930/17 930/24 934/2 935/6 St [1] 804/11 stable [1] 886/18 Stadiums [2] 868/14 868/15 staff [4] 844/16 895/7 899/10 938/1 stand [2] 809/7 855/9 standard [5] 837/2 926/23 929/2 930/12 931/12 standardized [1] 914/9 standing [1] 878/22 standpoint [6] 810/11 826/25 839/13 858/13 886/19 886/20 Stanford [3] 901/9 901/10 901/15 Star [2] 829/15 865/7 start [26] 808/2 826/14 830/3 834/3 835/1 838/12 840/11 851/2 854/15 856/23 858/11 870/13 876/21 880/2 887/18 910/21 926/5 926/6 929/5 930/3 930/14 932/3 936/8 937/24 938/2 938/15 started [11] 807/8 807/9 807/10 813/21 813/25 829/22 842/17 895/24 903/24 929/22 938/9 starting [4] 812/14 814/3 926/3 929/20 starts [1] 930/10 state [6] 810/12 843/15 857/11 881/23 900/21 903/11 statement [1] 879/21 statements [2] 879/24 880/1 states [7] 803/1 803/15 850/3 869/20 882/11 902/20 919/4 status [1] 899/2</p>

S	Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15 Page 159 of 164
<p>stay [3] 889/6 927/25 928/5 stayed [1] 890/9 staying [4] 862/13 886/11 928/16 928/23 stays [3] 876/12 928/9 931/14 stblaw.com [2] 805/7 805/14 steak [1] 878/1 stenography [1] 805/24 step [6] 876/11 909/15 910/20 924/4 932/24 936/13 STEPHEN [1] 803/18 steps [7] 907/24 908/15 908/19 909/3 909/21 909/24 910/17 Steve [9] 814/18 825/14 857/23 862/15 862/22 864/4 895/9 897/5 899/6 Steven [1] 900/7 stick [4] 917/16 920/3 921/2 931/1 sticking [1] 907/23 still [9] 824/19 852/23 853/11 866/20 876/5 877/21 889/21 890/12 921/16 stock [2] 871/11 871/16 stocked [1] 871/12 stocker [1] 840/8 stop [3] 894/7 922/3 930/17 storage [3] 839/20 840/10 841/1 store [1] 914/3 stores [2] 872/24 914/5 story [2] 877/14 878/11 straight [1] 889/23 straightforward [1] 913/11 strategy [2] 901/19 901/24 street [9] 804/16 804/20 804/24 805/2 805/10 805/13 826/12 828/1 845/10 strengthen [1] 820/19 strictly [1] 923/2 strike [1] 931/24 strong [2] 881/18 896/3 stuck [1] 917/15 student [1] 901/25 students [2] 902/1 902/4 studied [1] 901/10 studies [1] 902/2 study [3] 901/11 902/1 902/3 stuff [2] 807/19 891/1 submit [1] 905/18 submitted [1] 835/11 subset [1] 935/9 substantial [2] 934/1 937/14 substantially [2] 906/25 919/14 substitute [3] 933/24 933/25 934/20 substitutes [5] 930/21 931/2 931/18 932/1 932/4 substitution [4] 928/14 928/25 930/20 933/3 successful [2] 887/6 887/9 such [8] 856/7 910/6 913/5 916/9 918/1 920/24 931/9 934/3 sufficient [1] 933/23 suggest [1] 908/16 sum [1] 838/1 summarize [2] 818/6 907/16 summarized [1] 907/17 summary [1] 885/12</p>	<p>supplied [2] 828/13 873/20 suppliers [2] 816/18 816/18 supplies [1] 874/8 supply [16] 817/15 817/15 827/2 827/22 832/4 832/10 832/11 835/18 869/8 872/23 872/24 874/11 875/4 875/20 875/22 875/23 supplying [1] 872/11 supporting [1] 890/18 sure [49] 807/2 808/24 814/8 817/13 822/3 823/25 824/4 824/8 825/19 839/15 840/17 840/24 852/16 854/17 856/22 861/1 861/11 863/15 866/17 872/17 876/23 884/23 887/7 887/25 888/6 888/10 893/25 895/8 898/17 901/8 901/23 902/19 906/1 906/15 907/1 908/4 913/18 915/19 917/6 918/15 919/5 920/11 921/4 923/15 925/20 927/13 931/7 931/7 933/20 surprise [4] 891/11 891/12 894/7 894/11 surprised [2] 879/13 879/15 SUS [1] 895/21 swissman [1] 803/20 switch [5] 874/14 920/9 920/16 920/19 921/6 switching [2] 921/4 921/20 sworn [2] 809/8 900/14 SYGMA [1] 892/11 synergies [1] 889/16 synergy [1] 889/2 SYSCO [35] 803/8 804/15 811/19 811/21 817/7 820/23 821/6 827/6 828/10 830/12 841/22 858/8 858/15 863/7 868/9 871/14 871/22 872/21 872/22 874/20 875/14 875/25 876/24 877/16 880/15 887/7 892/9 895/18 897/25 898/7 906/18 906/21 916/16 917/7 923/3 Sysco's [3] 827/8 830/14 929/8 system [18] 815/3 815/8 815/11 820/16 820/16 821/22 821/23 822/17 825/3 825/6 825/9 840/5 840/7 840/7 840/13 889/4 895/13 896/10 systems [27] 815/2 828/19 830/22 831/22 831/23 840/20 852/14 886/17 895/4 931/20 933/16 933/23 933/24 934/3 934/3 934/6 934/10 934/13 934/14 934/16 934/19 934/21 934/22 935/5 935/7 935/13 935/15</p>	<p>823/9 823/15 839/3 844/5 849/2 856/21 857/4 876/19 882/25 888/22 893/14 893/21 899/4 899/8 899/10 907/9 918/15 924/13 926/2 taken [3] 856/16 889/8 911/20 takes [1] 901/25 taking [1] 884/14 talent [2] 896/2 896/3 talk [37] 812/9 815/2 819/12 821/8 821/8 825/3 825/20 835/21 835/22 838/17 843/17 855/17 855/18 858/7 861/3 861/5 862/8 873/10 875/10 881/12 881/15 883/23 886/21 890/19 910/9 910/10 913/17 916/16 919/17 923/14 925/12 925/14 927/6 927/23 928/19 933/4 936/14 talked [23] 833/6 837/1 838/18 839/4 845/2 850/18 855/16 865/23 865/24 865/24 866/1 869/11 869/14 871/15 872/4 874/13 875/16 881/10 890/14 891/5 891/14 894/20 897/7 talking [18] 828/13 834/15 857/25 862/6 863/11 871/13 878/6 879/10 882/6 882/19 883/12 896/11 897/1 909/11 931/13 935/4 935/21 937/7 talks [2] 892/20 903/17 target [2] 911/6 924/9 targeted [12] 908/23 909/2 910/21 910/24 911/11 917/23 921/9 922/16 924/6 924/10 925/9 934/23 targeting [4] 911/16 912/12 914/18 924/3 taught [3] 901/18 901/22 901/23 tax [1] 886/14 teach [2] 902/9 911/2 team [3] 813/5 826/1 896/21 Tech [1] 810/17 technology [3] 813/9 815/3 895/6 telecom [1] 904/14 tell [10] 814/6 824/1 832/14 840/14 848/22 850/16 860/10 867/18 890/2 891/24 Temple [4] 843/3 843/5 843/6 843/11 ten [11] 815/5 815/6 818/25 852/2 852/4 852/5 853/14 854/1 894/23 899/10 899/25 ten-year [2] 815/5 815/6 tend [2] 918/9 919/11 tenders [1] 832/17 term [10] 826/6 826/7 833/14 839/5 855/18 915/19 915/21 915/24 917/12 927/23 terms [7] 821/4 838/19 843/17 884/17 915/13 916/22 938/5 territory [2] 827/25 827/25 test [12] 887/21 926/1 926/2 926/5 926/12 927/4 927/7 927/8 927/10 927/12 929/4 932/7 testified [10] 809/9 860/21 866/14 879/10 894/8 896/4 900/15 903/18 903/20 904/9 testify [2] 900/9 905/19 testifying [1] 903/16</p>
T		
<p>T-Mobile/Metro [1] 904/17 T/T-Mobile [2] 904/7 904/16 tab [20] 814/17 821/15 845/21 850/14 852/2 852/3 852/5 853/12 853/14 855/20 857/21 857/21 866/8 879/17 893/3 893/5 893/9 893/10 897/8 897/17 table [1] 858/20 tabled [1] 874/22 tailored [1] 902/4 take [22] 813/19 819/3 819/4</p>		

T Case 1:15-cv-00256-APM	them [117] 813/3 813/17 814/1 820/11 822/11 822/19 823/4	there's [30] 810/11 817/14 937/19 938/4
testimony [10] 826/7 837/1	824/2 824/18 825/10 827/2	817/22 818/20 822/20 824/3
864/17 899/16 904/1 932/13	829/1 829/19 830/7 832/4	825/14 833/16 834/17 835/9
932/15 933/1 934/9 934/11	832/10 832/11 833/14 834/6	857/3 857/13 873/25 883/8
testing [1] 926/14	834/24 835/3 836/10 838/11	898/7 902/20 908/17 910/7
Texas [5] 843/3 843/5 843/6	838/12 842/2 844/12 844/14	913/4 919/1 919/2 921/9 921/15
843/7 843/13	847/5 848/15 848/20 849/18	930/18 931/18 932/8 932/9
TGI [4] 831/5 831/22 831/25	856/2 861/18 866/2 866/7 867/5	933/9 935/19 937/20
832/7	867/16 868/7 868/16 868/17	therefore [6] 816/22 908/25
Thacher [3] 805/5 805/9 805/12	868/22 868/24 869/3 869/8	909/1 911/1 916/13 922/5
than [41] 814/2 820/12 823/8	871/10 871/11 871/12 871/23	Thereupon [2] 809/6 900/12
828/1 829/19 837/7 839/14	871/24 872/11 873/15 874/11	these [59] 812/14 817/5 818/17
841/23 842/3 846/10 849/4	874/14 874/16 874/22 875/2	820/8 826/2 830/6 832/2 840/7
851/1 851/5 851/6 851/19	875/4 875/11 875/22 876/2	840/14 841/12 844/3 844/12
851/24 852/14 853/2 856/21	876/3 878/5 880/4 880/5 880/15	846/22 847/1 847/3 851/4
858/15 859/18 859/18 860/13	882/1 883/10 887/1 888/18	851/20 853/6 853/15 855/17
861/2 865/20 871/17 872/21	889/6 889/9 889/21 890/1 890/4	859/3 861/15 862/9 863/24
881/13 891/23 892/10 892/15	890/9 890/13 890/13 890/14	864/1 867/8 867/10 870/9
893/16 893/19 894/1 894/14	891/7 891/20 891/25 892/3	870/21 870/25 871/4 879/12
894/17 904/23 910/7 928/22	892/6 892/7 892/12 892/13	879/24 883/13 889/2 893/21
933/11 936/20	892/17 894/13 894/16 895/5	893/25 894/14 894/16 916/19
thank [21] 808/19 814/14	904/6 904/13 908/7 908/17	917/17 919/6 919/24 920/4
821/16 845/18 845/19 854/14	912/8 912/13 913/21 915/8	920/24 921/24 922/1 922/9
854/23 854/24 854/25 855/8	915/17 915/20 916/5 919/9	925/5 929/25 931/17 932/10
865/17 883/2 883/4 898/11	921/9 921/16 922/3 922/3 922/4	932/16 932/16 933/2 933/14
898/12 898/19 898/22 899/25	922/7 923/4 925/21 926/17	935/21 935/23 936/1
900/10 924/1 933/12	926/19 928/5 935/22 937/13	they [187]
Thanks [3] 818/2 911/21 938/17	937/17 937/24	they'd [1] 821/25
that [762]	themselves [5] 851/13 916/14	they'll [5] 825/9 825/10
that's [113] 807/14 807/16	920/24 921/11 923/22	825/13 856/14 897/4
809/21 810/24 813/2 817/18	then [57] 807/12 812/5 813/14	they're [41] 820/15 822/19
818/22 819/17 820/5 821/14	817/1 817/17 818/24 819/6	824/8 824/24 825/7 825/8
823/11 825/10 825/17 825/18	823/17 826/14 826/16 828/21	825/16 832/16 844/18 856/2
825/18 825/20 826/3 826/21	831/9 834/24 836/14 839/21	868/5 868/12 869/1 869/21
826/21 827/5 827/14 829/17	839/25 841/12 841/15 848/12	870/4 870/8 872/13 872/22
829/20 829/22 829/23 831/22	848/22 849/3 849/23 851/7	872/25 873/9 873/15 874/21
832/23 834/16 835/12 836/19	854/17 854/21 856/10 856/16	878/6 880/11 881/5 889/6 889/6
837/7 837/8 838/3 841/6 842/17	865/11 866/19 873/10 874/12	890/12 890/12 894/5 895/20
842/21 844/2 844/15 844/21	876/7 876/21 877/4 877/20	895/21 912/21 912/21 913/22
844/25 845/4 845/8 845/10	881/2 889/23 892/2 897/4 902/2	914/13 931/2 932/12 935/17
846/15 847/15 848/3 849/2	910/7 910/12 912/18 914/13	935/20 936/4
850/9 853/4 853/17 854/25	915/8 916/3 920/18 926/7 927/3	they's [1] 870/8
857/11 857/17 857/17 859/10	928/10 930/4 930/24 933/4	they've [9] 812/1 822/11 835/4
859/11 859/12 863/10 863/23	936/13 936/18 937/19 938/3	875/12 875/12 875/14 879/9
864/25 865/13 869/6 869/25	theory [1] 914/24	881/10 904/5
870/2 874/14 878/16 878/16	there [105] 809/15 809/20	thing [10] 828/24 838/16
881/22 882/2 882/5 882/24	810/1 810/8 810/13 811/5	848/18 855/11 858/17 875/2
884/7 884/13 884/22 885/11	811/15 811/20 811/21 812/3	875/10 877/6 886/10 917/25
885/25 887/3 887/14 887/14	813/10 813/17 815/7 816/18	things [26] 807/19 807/21

T Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15 Page 161 of 164	912/14 915/8 920/2 924/23 925/21 928/20 931/19 932/24 903/23 906/15 907/15 873/8
<p>think... [13] 916/15 916/16 922/17 922/19 923/4 927/19 931/16 932/23 932/25 933/10 934/15 934/22 938/7 thinking [5] 837/12 851/25 881/13 910/22 935/6 third [6] 816/14 834/13 834/14 834/14 903/12 932/18 thirds [2] 903/3 903/10 Thirteen [1] 836/3 Thirty [1] 854/5 this [156] Thompson [1] 894/8 those [109] 811/13 813/18 814/10 814/14 816/5 817/18 820/3 820/9 821/23 821/25 828/16 831/7 831/10 831/24 834/12 834/21 835/5 835/12 838/13 839/11 839/17 839/18 839/20 840/12 840/13 840/17 840/20 840/23 841/13 842/12 848/11 848/12 848/16 851/2 851/5 851/7 851/17 851/17 857/2 857/4 857/4 858/11 859/19 859/23 860/5 860/7 862/20 864/2 865/3 868/2 869/7 870/3 871/2 872/9 878/9 878/17 880/7 880/9 881/19 882/4 882/21 882/23 883/20 884/19 887/8 887/18 888/16 889/2 889/16 890/25 891/3 892/14 895/9 898/1 898/4 898/8 904/6 905/12 908/21 909/2 910/17 911/11 911/13 912/4 912/20 914/14 915/6 915/20 916/16 917/24 918/3 918/16 918/19 919/10 921/10 922/5 922/17 922/19 923/18 924/14 925/11 926/15 926/17 927/20 927/22 927/24 931/22 931/24 931/25 though [8] 829/18 833/16 875/12 918/19 928/24 930/20 930/21 931/19 thought [10] 808/12 829/19 829/20 829/21 857/16 857/17 861/8 863/25 865/6 927/5 thoughts [1] 927/6 thousand [2] 818/13 836/3 three [32] 815/23 816/6 816/16 817/8 817/19 823/2 823/3 823/4 823/7 826/10 828/2 831/10 833/12 833/16 833/17 835/4 835/5 841/22 851/5 856/1 856/21 866/8 877/18 891/8 904/6 909/21 909/24 932/8 933/9 937/11 937/23 938/7 three-year [3] 816/6 817/8 833/16 through [56] 808/12 811/11 815/13 815/15 820/18 831/2 831/12 831/14 831/22 831/23 832/2 833/20 834/23 837/9 837/14 838/7 844/7 844/8 850/17 852/15 864/14 864/20 866/3 868/5 871/2 871/10 873/16 875/19 877/10 878/12 879/2 880/17 881/6 881/14 881/15 882/15 887/23 888/1 890/21 896/25 897/2 904/14 907/21 908/20 908/21 910/14</p>	<p>938/8 938/8 throughout [4] 910/10 917/23 919/1 932/9 tied [1] 872/12 tightly [1] 916/5 time [55] 811/24 811/24 813/18 815/6 815/6 816/6 817/23 822/18 823/7 825/24 826/6 829/18 844/6 846/25 847/1 848/17 848/18 854/17 856/7 856/8 856/23 859/19 860/1 861/8 867/11 871/11 873/6 873/19 876/2 877/4 877/18 882/6 887/10 887/12 887/13 887/21 888/9 889/14 890/5 891/7 898/22 900/8 902/13 903/10 903/12 904/8 904/9 904/15 905/18 910/17 916/24 920/18 927/18 938/5 938/15 timeframe [2] 824/15 849/17 times [13] 814/1 814/2 825/1 841/20 862/16 865/2 865/4 865/4 877/5 881/13 881/13 903/22 930/18 titled [1] 938/22 tobacco [1] 873/1 today [39] 809/24 810/15 811/11 813/22 816/4 819/12 821/20 821/24 823/23 824/11 841/6 843/9 844/2 848/16 850/9 858/14 858/14 858/15 858/22 859/2 859/2 862/20 875/24 880/12 891/6 891/20 891/23 892/10 895/11 895/12 895/13 895/14 896/23 897/1 897/3 898/7 926/16 936/13 938/3 together [17] 842/23 857/9 863/24 878/18 880/2 880/3 881/8 887/19 888/16 902/14 909/22 915/8 915/8 915/11 921/12 924/19 929/13 told [7] 867/2 873/6 873/15 874/11 876/3 877/19 890/1 tomatoes [1] 935/23 tomorrow [9] 857/25 936/14 937/8 937/8 937/9 937/11 937/17 937/24 938/15 too [8] 811/19 813/21 843/6 874/23 880/9 883/21 888/4 933/11 took [5] 859/20 872/5 881/1 881/2 915/24 top [5] 810/4 811/10 859/7 874/17 885/16 topic [2] 911/17 914/23 topics [1] 905/2 total [1] 852/16 totally [2] 863/1 889/13 touch [3] 847/2 877/3 889/15 touched [1] 850/20 touching [2] 823/14 825/24 tough [2] 871/9 880/13 toured [2] 935/13 935/14 tout [1] 920/23 towards [1] 902/4 town [1] 809/20 track [1] 826/14 tractor [1] 856/15 trade [9] 803/4 803/18 803/18 803/22 804/2 804/6 900/8</p>	<p>traded [1] 873/8 trailers [5] 856/1 857/2 857/2 857/4 857/9 transcript [4] 803/14 805/24 904/1 938/21 transcription [1] 805/24 transition [8] 814/7 814/21 821/10 821/12 823/4 823/10 894/21 906/6 transitory [1] 926/25 transmit [1] 825/9 transmitting [2] 822/19 825/11 transportation [1] 913/4 travel [2] 889/19 889/25 treat [1] 923/16 treated [2] 916/12 921/24 treating [1] 922/3 Treatment [1] 905/6 tricky [1] 918/24 tried [3] 864/21 878/23 890/13 TRINGALI [1] 805/5 triples [1] 856/1 Troy [1] 826/20 truck [8] 824/16 839/16 839/19 840/25 856/8 856/11 856/14 856/24 truckload [4] 850/25 851/1 851/6 851/15 trucks [10] 818/12 818/13 821/22 822/13 822/14 824/14 824/18 839/16 851/5 855/24 true [4] 828/10 831/11 918/24 925/9 truly [3] 830/5 888/20 918/25 Trust [1] 894/14 TRX [1] 923/5 try [6] 854/5 856/3 858/9 899/21 912/25 925/15 trying [11] 821/12 863/16 863/21 864/15 878/8 887/11 896/12 902/5 902/7 914/24 935/20 TSA [6] 813/20 814/6 815/1 815/2 815/10 894/20 Tuesday [4] 825/4 825/16 831/7 938/9 turn [21] 814/17 821/15 822/21 846/16 850/14 852/2 855/20 857/20 858/2 859/4 862/2 862/2 866/8 879/17 885/6 890/15 891/14 892/21 910/16 926/20 933/14 turned [1] 926/19 turning [3] 817/11 818/5 926/18 twice [1] 856/4 two [71] 820/22 824/7 830/9 839/14 840/4 846/12 847/4 849/3 849/4 852/21 853/7 855/24 856/2 856/10 856/21 857/2 857/4 857/9 857/21 861/6 864/2 870/3 871/13 871/21 872/4 874/17 875/1 876/11 877/1 877/2 878/17 878/21 879/20 879/20 879/21 880/24 881/1 883/9 886/11 888/16 891/8 893/5 893/9 893/10 903/3 903/10 909/3 909/7 912/3 913/8 915/13 916/20 916/20 916/21 917/5 917/17 918/14 919/6 920/4 922/4 922/6 922/9 923/1</p>

T Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15	Page 162 of 164
<p>two... [8] 924/10 924/18 924/19 925/7 925/15 936/25 937/3 937/24</p> <p>two-step [1] 876/11</p> <p>two-thirds [2] 903/3 903/10</p> <p>two-year [1] 877/2</p> <p>type [16] 810/14 813/12 828/20 831/2 831/7 833/21 834/11 840/5 843/23 868/6 869/7 871/9 878/5 902/22 932/18 935/25</p> <p>types [4] 845/12 919/18 932/8 934/5</p> <p>typical [1] 816/23</p> <p>typically [9] 834/19 837/6 837/8 838/25 852/14 856/2 870/3 886/13 912/4</p>	<p>us [98] 805/5 810/13 811/19 811/22 813/12 815/22 816/4 820/12 820/18 821/6 821/21 823/14 824/2 824/18 825/3 826/19 839/3 840/23 842/24 846/18 846/19 846/21 847/19 848/1 849/2 852/17 858/15 858/15 859/20 862/10 862/13 862/19 862/24 863/7 864/21 867/2 867/3 867/4 867/4 869/2 871/11 871/13 871/20 872/3 873/1 873/3 873/5 873/10 874/6 874/14 874/19 874/19 875/2 875/15 875/21 875/24 875/25 876/3 876/5 876/19 876/21 876/23 877/15 878/6 878/12 878/23 879/1 880/2 880/15 881/1 881/3 881/5 881/7 881/10 886/3 888/1 888/4 889/7 890/1 890/11 890/12 891/22 894/10 894/24 895/13 895/15 896/9 896/17 896/23 898/1 898/8 906/18 906/20 916/15 920/21 920/22 929/8 937/25</p> <p>use [28] 815/5 816/23 820/15 826/16 829/20 837/7 851/3 872/22 874/5 874/10 877/16 878/8 878/10 891/23 892/10 892/14 893/1 894/24 896/11 908/11 915/21 917/12 917/17 919/6 919/6 932/16 934/12 935/5</p> <p>used [8] 826/7 839/23 865/20 878/21 908/1 915/13 923/9 923/12</p> <p>useful [4] 925/13 930/2 931/3 932/25</p> <p>uses [4] 893/16 894/9 908/6 916/15</p> <p>USF [12] 815/3 815/8 817/7 820/23 824/19 825/4 825/15 825/16 851/23 858/8 863/9 923/8</p> <p>using [9] 825/8 825/9 837/23 872/13 874/6 894/17 896/5 916/1 916/25</p> <p>Utah [1] 853/11</p> <p>Utility [1] 904/10</p> <p>utilization [1] 841/7</p> <p>utilizing [2] 810/13 876/18</p>	<p>884/21 886/1 886/2 886/18 886/20 886/22 887/6 887/23 889/14 889/14 898/12 898/22 902/4 909/4 910/5 930/2 935/8 938/17</p> <p>vice [1] 901/2</p> <p>vice-president [1] 901/2</p> <p>videos [1] 899/19</p> <p>view [4] 902/5 907/19 910/22 932/16</p> <p>Village [2] 869/17 875/20</p> <p>Virginia [6] 810/16 810/17 810/19 810/21 812/7 935/14</p> <p>visit [1] 876/4</p> <p>visited [1] 876/4</p> <p>Vistar [8] 810/2 836/9 868/19 869/8 870/22 871/1 873/15 874/7</p> <p>visual [1] 821/19</p> <p>volume [2] 852/11 870/4</p> <p>volumes [2] 863/24 876/9</p> <p>VP [2] 826/21 880/21</p>
<p>U</p> <p>U.S [3] 805/18 842/21 858/16</p> <p>Uh [4] 819/14 828/14 893/15 893/24</p> <p>Uh-huh [4] 819/14 828/14 893/15 893/24</p> <p>ultimate [1] 933/20</p> <p>ultimately [2] 929/23 931/8</p> <p>umbrella [1] 873/17</p> <p>under [8] 824/21 857/11 873/17 885/19 897/12 897/15 897/24 911/15</p> <p>underestimated [1] 865/10</p> <p>understand [15] 807/9 808/7 817/13 819/21 819/24 827/11 852/16 863/15 864/16 864/23 872/3 872/5 874/2 890/19 919/2</p> <p>understanding [3] 864/19 928/7 928/14</p> <p>understood [3] 818/1 836/16 927/1</p> <p>undo [1] 913/1</p> <p>unfortunate [1] 938/1</p> <p>unfortunately [1] 854/20</p> <p>unhook [1] 856/7</p> <p>unilateral [1] 910/2</p> <p>unique [1] 872/21</p> <p>unit [3] 827/9 827/21 876/23</p> <p>UNITED [6] 803/1 803/15 850/3 869/20 882/11 902/20</p> <p>units [1] 826/13</p> <p>University [1] 901/18</p> <p>unless [4] 807/24 823/14 853/21 886/15</p> <p>unlike [2] 830/9 843/22</p> <p>unlikely [1] 913/6</p> <p>unquote [2] 830/5 863/9</p> <p>unsuccessful [1] 887/9</p> <p>until [4] 824/16 860/7 865/9 926/12</p> <p>unwieldy [1] 915/1</p> <p>up [39] 807/12 809/13 815/6 815/23 816/16 816/22 817/4 821/16 823/23 827/15 835/3 843/25 844/15 846/14 854/15 854/21 856/2 856/15 857/4 857/9 859/7 859/25 868/18 871/4 871/22 873/20 875/1 875/7 875/9 878/10 878/24 915/19 918/9 925/8 926/21 929/23 932/21 934/15 935/2</p> <p>upgrade [1] 874/10</p> <p>upgrades [1] 838/2</p>	<p>V</p> <p>vague [1] 927/18</p> <p>variety [2] 902/21 923/17</p> <p>various [2] 904/14 920/13</p> <p>vary [1] 856/3</p> <p>Vegas [2] 847/10 869/25</p> <p>vending [3] 869/1 869/4 872/23</p> <p>vendor [1] 865/6</p> <p>verbal [3] 867/14 875/18 879/15</p> <p>versions [1] 925/23</p> <p>versus [7] 824/6 852/10 862/17 919/4 920/9 923/13 923/13</p> <p>very [46] 809/12 811/10 813/22 816/13 820/20 821/5 821/8 825/1 827/10 830/8 830/10 834/4 834/6 834/6 834/25 835/7 838/8 839/3 842/2 850/23 858/23 860/10 869/12 870/4 872/12 872/20 879/8 882/25</p>	<p>W</p> <p>wait [4] 808/21 808/23 813/24 873/9</p> <p>waiting [1] 877/11</p> <p>walk [1] 935/19</p> <p>walking [1] 925/21</p> <p>want [51] 807/13 807/18 807/21 807/21 807/23 808/23 812/9 817/12 822/3 822/11 824/8 825/20 825/20 827/3 833/7 835/6 835/22 836/20 837/19 838/17 840/17 841/7 841/7 841/8 843/21 843/24 845/24 847/1 850/17 853/6 853/18 854/8 855/17 855/18 856/22 862/1 867/3 871/18 875/3 876/10 877/20 878/1 880/23 880/25 890/3 895/3 895/18 896/11 896/14 925/6 933/8</p> <p>wanted [12] 853/17 860/25 861/11 867/4 871/11 871/20 873/3 873/3 876/2 876/4 876/5 936/5</p> <p>wants [9] 822/7 824/5 873/17 877/11 878/11 880/18 880/21 881/14 881/15</p> <p>warehouse [5] 821/19 841/1 858/21 887/19 936/8</p> <p>warehouses [1] 888/17</p> <p>warehousing [1] 839/12</p> <p>Warner [3] 904/8 904/9 904/15</p> <p>was [97] 809/8 809/20 813/1 813/5 813/6 813/6 813/7 813/10 813/12 813/16 813/22 813/24 813/25 815/7 819/12 827/10 828/15 828/24 829/24 840/20 841/21 842/2 843/19 845/7 846/24 846/25 846/25 851/24 857/16 860/15 860/23 860/23 861/8 861/10 863/13 863/24 868/17 868/19 871/21 873/4 874/17 874/20 874/22 876/24 877/9 877/22 879/8 879/13 879/15 880/12 880/16 880/25 881/9 883/22 883/24 883/25 884/5 884/8 885/23 886/2 886/3 886/7 886/19 886/20 886/22 888/15 889/20 890/3 890/8 890/18 890/20 892/21 894/8</p>

W Case 1:15-cv-00256-APM
was... [24] 895/7 900/14
901/10 901/23 902/11 902/13
906/15 907/19 913/10 915/20
917/3 919/14 919/21 919/24
920/3 920/12 923/24 930/3
933/19 935/15 936/2 936/6
936/9 936/9
Washington [18] 803/5 803/19
803/23 804/3 804/7 804/16
804/20 804/24 805/2 805/10
805/13 805/19 809/17 874/5
901/3 902/15 903/6 903/7
wasn't [3] 866/23 878/4 890/8
water [1] 935/24
way [32] 808/1 819/15 826/16
826/17 826/18 827/14 830/6
839/6 839/16 840/4 846/21
846/22 848/15 860/8 861/3
866/5 867/17 870/20 878/12
880/25 888/4 888/9 890/14
899/24 906/9 909/12 918/15
920/25 922/16 927/5 927/15
927/18
ways [4] 819/3 822/20 915/7
927/6
we [377]
we'd [4] 886/13 899/17 899/18
906/2
we'll [50] 807/24 807/24
808/15 818/21 818/24 820/24
821/2 824/18 835/21 835/21
841/15 841/15 844/19 849/4
850/7 850/9 854/13 854/17
854/19 854/21 855/12 858/11
858/12 858/13 858/17 859/25
860/9 860/11 881/18 883/1
896/9 899/11 899/16 907/1
913/17 923/9 924/23 927/6
928/19 936/13 936/18 937/22
938/1 938/2 938/2 938/3 938/8
938/8 938/15 938/16
we're [66] 807/3 817/23 820/10
820/20 820/20 823/13 823/15
834/14 835/21 838/14 839/6
841/13 844/8 844/10 850/8
851/15 852/2 852/20 858/9
858/16 858/19 859/1 859/17
860/4 860/5 860/6 862/6 862/25
863/21 868/18 873/23 875/9
876/20 877/2 877/4 877/7
877/25 885/19 887/23 887/23
888/23 888/24 888/24 889/1
889/11 889/13 890/4 890/4
891/13 895/25 896/2 896/11
897/1 898/15 902/19 917/6
925/20 935/4 937/7 938/3 938/5
938/7 938/10 938/10 938/10
938/10
we've [18] 811/17 811/19 836/9
836/9 842/2 849/24 850/18
852/15 853/25 861/4 865/23
865/24 869/11 875/11 882/19
887/24 924/3 937/25
week [2] 810/3 810/4
weeks [1] 811/12
weighing [1] 928/24
weight [1] 874/3
WEISSMAN [9] 803/18 819/12
825/14 830/22 838/18 857/23
866/12 897/10 936/16

welcome [1] 898/20
well [61] 807/23 808/9 808/23
810/2 811/10 811/15 816/3
817/2 820/7 820/24 821/3 826/9
828/10 828/16 833/18 835/6
837/4 837/16 838/24 841/21
843/19 844/5 846/11 846/17
847/2 847/23 850/6 850/10
850/21 854/7 854/12 858/11
859/24 861/19 861/24 862/5
866/17 870/13 872/8 872/20
874/11 877/22 878/16 883/23
884/21 884/22 886/2 893/24
894/13 895/24 896/1 896/21
896/23 897/11 899/8 907/17
911/6 920/17 925/24 932/4
937/22
well-accepted [1] 925/24
went [17] 841/22 864/20 868/5
869/9 869/10 871/2 873/2 875/1
875/6 886/1 889/25 896/25
901/17 901/17 902/13 904/13
936/10
were [47] 813/3 813/16 814/8
821/6 827/6 828/10 828/13
829/19 840/20 841/23 846/21
851/22 855/3 857/22 857/25
861/12 865/3 865/15 871/13
871/14 871/16 871/21 872/5
874/6 874/7 879/10 879/13
883/16 883/20 886/11 886/12
887/8 887/13 889/18 890/11
890/11 906/13 906/14 906/24
907/18 916/23 923/12 926/21
927/21 929/12 930/5 931/22
weren't [7] 829/19 863/11
878/24 886/18 888/18 890/7
931/23
west [5] 843/7 849/3 890/1
890/11 890/15
what [189]
what's [15] 820/7 825/5 842/14
869/11 874/14 888/20 909/12
909/13 911/22 911/25 911/25
914/6 922/25 928/9 929/9
whatever [5] 826/14 863/22
892/4 923/22 923/23
when [69] 808/16 810/7 810/11
812/25 813/16 813/25 823/25
824/17 824/23 826/8 828/10
828/12 829/23 835/21 837/4
837/8 838/4 839/4 839/15
839/23 840/2 840/6 840/11
840/13 840/15 840/23 841/21
844/3 850/16 851/4 855/16
863/16 863/16 864/20 866/3
871/3 876/24 877/5 879/1
880/14 883/12 883/16 885/4
886/25 887/16 887/17 890/20
891/6 906/13 908/17 911/2
911/2 911/19 912/21 915/20
919/12 919/15 919/22 922/18
922/19 924/5 925/8 925/12
926/4 926/23 929/2 929/3
931/14 935/19
where [72] 807/10 807/12 811/3
811/18 815/8 819/3 821/19
822/4 822/21 824/2 826/17
827/16 828/21 840/7 841/5
841/13 842/13 843/5 850/8
850/25 851/1 851/3 851/14
855/25 856/2 856/4 856/23

859/14 862/3 862/20 863/23
869/8 872/7 872/12 872/18
875/3 876/7 876/12 876/20
886/10 888/18 889/1 890/11
895/16 897/22 899/16 900/24
901/12 901/16 902/12 903/24
903/25 905/7 907/4 910/23
912/10 912/11 912/21 913/4
914/1 914/8 914/9 914/12 925/5
925/16 926/6 926/24 927/22
930/19 932/19 934/15 938/3
where's [1] 847/17
Whereas [1] 917/2
Whereupon [2] 855/3 899/1
whether [22] 825/6 851/22
857/14 877/6 878/12 880/17
881/6 892/15 908/12 908/23
909/17 909/18 909/23 909/25
910/13 913/7 920/8 921/22
921/24 931/5 933/16 934/6
which [43] 809/18 809/25 810/1
817/1 826/25 828/18 830/8
831/5 837/14 839/13 842/22
847/19 848/12 851/6 855/20
857/20 861/1 862/16 871/13
873/5 876/16 878/22 879/17
880/6 885/10 892/21 892/24
901/11 901/24 908/19 908/21
909/9 909/10 910/3 912/1 916/4
918/11 919/14 921/5 921/9
921/12 922/24 927/1
while [3] 862/16 887/11 901/10
white [2] 906/4 920/22
who [43] 807/13 813/5 813/9
820/9 826/20 828/2 836/4 850/2
856/11 857/3 865/12 874/5
882/24 888/2 890/25 895/7
896/22 902/21 902/22 903/17
908/24 910/25 916/2 916/4
917/19 918/2 918/8 918/13
918/25 919/3 919/8 919/22
919/25 922/21 932/20 932/21
934/1 935/7 936/5 937/16
937/18 937/19 937/20
who's [2] 826/21 882/23
whole [8] 820/17 830/2 831/6
865/19 878/11 880/20 918/8
924/9
whom [2] 860/15 919/18
whose [1] 915/13
why [21] 807/9 809/2 815/2
829/22 834/25 838/23 842/17
854/15 857/17 859/3 859/23
862/7 866/18 870/11 887/22
890/9 891/20 910/18 916/7
936/13 937/23
widgits [3] 911/3 911/3 911/5
will [70] 808/8 808/10 808/20
814/18 814/20 815/10 815/11
816/5 816/17 818/25 819/1
824/3 824/3 824/5 824/11
824/19 825/6 825/12 825/18
837/15 838/9 839/3 841/13
842/22 844/5 844/14 844/17
847/25 848/4 848/19 848/20
850/8 851/11 851/23 853/22
853/22 856/11 856/11 856/13
856/15 856/16 857/4 858/3
858/21 860/10 880/20 882/12
882/14 887/17 887/25 889/6
889/14 890/1 890/2 892/6 892/7
895/10 896/8 899/15 906/4

W Case 1:15-cv-00256-APM	Document 184 Filed 06/26/15	Page 164 of 164
<p>will... [10] 917/24 918/3 918/5 918/9 918/23 925/13 928/17 931/15 937/19 937/19 Williamson [3] 891/3 891/5 891/10 willingness [1] 879/15 wind [1] 840/6 winter [2] 812/14 814/5 Wireless [1] 904/17 within [10] 830/12 834/12 836/18 839/18 860/16 916/6 931/14 931/23 933/6 933/22 without [1] 841/22 witness [16] 806/2 807/4 807/5 807/20 809/8 854/19 855/6 855/9 866/14 898/24 900/14 936/15 936/17 937/9 937/19 937/20 witnesses [2] 937/11 937/16 woman [1] 811/23 women [1] 811/23 won't [5] 819/3 819/4 824/16 860/11 889/15 Wood [2] 829/15 865/7 word [4] 837/7 844/15 918/24 927/10 words [7] 839/11 912/24 915/20 916/16 931/23 931/24 937/14 work [18] 817/14 817/17 838/9 867/10 871/1 878/4 881/23 900/24 900/25 901/16 902/12 903/3 904/25 905/16 908/4 931/15 938/8 938/8 worked [5] 807/11 901/4 904/15 904/16 904/17 working [14] 818/14 838/13 838/14 838/16 865/19 868/1 887/25 896/21 903/10 903/25 904/2 904/20 908/12 938/13 works [6] 818/18 828/6 866/4 888/3 902/3 902/6 world [4] 863/12 897/1 897/2 902/20 worry [1] 853/20 worth [3] 878/9 882/17 893/23 would [210] wouldn't [13] 810/9 828/18 828/19 859/23 886/4 886/15 886/15 894/15 896/24 914/1 925/9 929/14 935/8 written [1] 920/22 wrong [3] 863/13 880/16 884/16 wrote [1] 905/6</p>	<p>years [27] 815/23 816/16 817/19 823/2 823/3 823/4 823/7 827/6 827/8 827/10 833/12 833/13 833/17 836/10 837/1 837/12 841/22 859/22 877/18 880/14 881/1 887/7 887/8 891/8 894/24 901/5 902/11 yellow [2] 848/14 848/20 yes [137] yesterday [1] 896/4 yet [1] 895/24 York [3] 805/6 875/13 881/3 you [536] you'd [1] 835/1 you'll [10] 808/16 844/12 844/12 864/18 883/13 907/8 911/18 911/19 930/1 937/4 you're [63] 816/12 817/9 818/16 820/8 821/12 822/23 823/4 825/21 827/8 837/4 837/4 837/6 837/8 837/8 837/11 837/12 838/13 839/4 839/12 839/17 839/18 839/19 839/22 840/18 840/24 845/16 846/5 846/14 846/19 848/8 850/16 851/9 851/12 852/3 856/22 858/7 858/8 859/7 863/16 863/17 864/14 864/17 871/4 872/12 877/21 884/1 884/14 887/11 887/15 889/12 892/1 894/2 896/12 896/14 898/20 902/5 911/4 924/10 926/4 926/11 930/16 931/13 935/6 you've [25] 808/5 826/7 845/2 847/12 865/23 867/6 872/18 879/11 881/20 881/23 882/6 887/18 887/21 896/4 904/25 907/9 927/3 927/16 928/8 928/10 928/15 929/22 930/15 930/23 930/24 your [132] 807/9 807/15 808/2 808/3 808/24 809/4 809/13 813/5 815/12 815/16 819/17 820/7 822/18 826/1 826/7 828/9 828/12 830/1 830/4 830/12 830/25 831/12 831/22 833/18 833/19 834/20 835/21 835/24 837/1 837/5 838/19 839/8 839/18 839/19 839/20 840/18 841/1 842/4 842/8 843/17 844/11 847/12 848/19 849/1 849/10 849/21 850/11 851/9 851/25 853/1 855/10 857/5 862/7 863/6 864/12 866/18 871/5 871/7 871/8 872/15 872/19 879/12 883/3 883/24 884/24 887/15 887/18 890/19 892/2 892/17 892/23 893/2 893/16 893/22 893/25 898/10 898/21 898/21 899/17 900/7 900/21 901/1 901/6 901/15 903/5 904/24 905/14 905/14 905/15 905/18 906/7 906/23 907/8 907/9 907/15 910/9 910/16 910/18 911/21 915/15 917/6 917/9 917/20 921/21 922/10 923/10 924/6 925/18 925/25 927/4 927/9 927/20 928/16 929/25 930/8 930/8 930/17 931/4 931/6 931/25 933/10 933/12 933/19 935/11</p>	<p>936/10 936/17 936/20 936/24 937/8 937/9 938/6 938/12 yours [1] 879/6 yourself [1] 935/12 Z Zaxby's [8] 826/24 832/12 832/15 852/3 852/7 852/13 853/10 853/14 Zero [1] 889/1</p>
<p>Y yard [5] 839/19 840/9 856/6 856/7 857/3 yeah [22] 809/24 816/3 818/13 818/20 821/19 833/25 834/16 836/19 845/4 846/24 849/2 850/23 860/25 861/17 861/24 866/4 866/13 869/21 870/13 878/16 887/2 920/11 year [29] 811/12 815/5 815/6 816/6 817/8 821/2 823/15 825/25 833/16 842/18 846/8 846/8 848/17 848/18 859/21 865/20 865/21 871/21 875/6 875/8 877/1 877/2 881/20 886/14 886/16 889/15 895/2</p>		