

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 9:25-CV-80526-DMM

GOOD SAMARITAN MEDICAL
CENTER, INC., et al.,

Plaintiffs,

v.

THE LEAPFROG GROUP,

Defendant.

THE COMMUNITY HOSPITALS' DEPOSITION DESIGNATIONS

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Attorneys for the Community Hospitals

The Community Hospitals, by and through their undersigned counsel, submit the deposition designations and Leapfrog's counter-designation previously presented to the Court in connection with the Community Hospitals' rebuttal case on January 22, 2026. The highlighted deposition designations are attached as Exhibit A. The Community Hospitals' affirmative designations are highlighted in yellow, and Leapfrog's counter-designations are highlighted in blue.

The Community Hospitals' Deposition Designations of Michael Vredenburg - 9/30/2025			
Plaintiffs' Designations		Leapfrog's Counter-Designations	
From: Page:Line	To: Page:Line	From: Page:Line	To: Page:Line
50:14	51:1	160:12	160:22
161:19	162:3		
166:4	166:10		
167:4	169:10		
170:5	170:12		
170:23	172:3		
173:5	173:7		
173:15	173:25		
174:15	174:22		
179:3	183:14		
183:18	184:1		
185:13	186:2		
186:9	186:13		
194:5	195:1		
258:18	258:21		

Dated: January 22, 2026

Respectfully submitted,

By: /s/ Jeffrey Marcus

By: /s/ Daniel Chung

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
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WEST PALM BEACH DIVISION
CASE NO. 9:25-CV-80526-DMM

GOOD SAMARITAN MEDICAL
CENTER, INC., et al.,

Plaintiffs,

v.

THE LEAPFROG GROUP,

Defendant.

VIDEO-RECORDED VIDEOCONFERENCE DEPOSITION OF
MICHAEL VREDENBURGH
San Diego, California
Tuesday, September 30, 2025
Volume 1

Reported by:
LESLIE JOHNSON
RPR, CCRR, CSR No. 11451
Job No.: 7616281
PAGES 1 - 317

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FOR THE SOUTHERN DISTRICT OF FLORIDA
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GOOD SAMARITAN MEDICAL
CENTER, INC., et al.,

Plaintiffs,

v.

THE LEAPFROG GROUP,

Defendant.

VIDEO-RECORDED VIDEOCONFERENCE DEPOSITION OF
MICHAEL VREDENBURGH, Volume 1, taken on behalf of
Plaintiffs, at 401 West A Street, Suite 1900, San Diego,
California, beginning at 9:04 a.m. and ending at
5:21 p.m., on Tuesday, September 30, 2025, before
LESLIE JOHNSON, Certified Shorthand Reporter No. 11451.

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2

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19 BENJAMIN ZICCARDI, Videographer

20

21

22

23

24

25

I N D E X

WITNESS EXAMINATION

MICHAEL VREDENBURGH

Volume 1

BY MR. CRAIN 8, 309

BY MS. WOOD 308

EXHIBITS

MICHAEL VREDENBURGH

NUMBER	DESCRIPTION	PAGE
--------	-------------	------

Exhibit 1	Expert Report of Michael Vredenburgh, M.S., September 4, 2025	19
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Exhibit 2	Amendment to Expert Report of Michael Vredenburgh, M.S., September 19, 2025	19
-----------	---	----

Exhibit 3	Expert Report of Jonah Berger, Ph.D., August 7, 2025	41
-----------	--	----

Exhibit 4	Transcript entitled "Four Hospital's Safety Grade"	61
-----------	--	----

Exhibit 5	Leapfrog Webpage; West Boca Medical Center	66
-----------	--	----

Exhibit 6	Webpage printout for User Experience (UX) and Design Thinking Graduate Certificate	99
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Exhibit 7	Article titled "Public Health: An epidemiological Study to Explore the Relationship Between Literacy, Language, Aging, and Familiarity on Comprehension of Health Information"	114
-----------	--	-----

Exhibit 8	Vredenburgh & Zackowitz, Inc. webpage	120
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1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS (Cont.)		
MICHAEL VREDENBURGH		
NUMBER	DESCRIPTION	PAGE
Exhibit 9	Cherry Tomato Engineering webpage	127
Exhibit 10	Bermudez v. Crunch Sunset LLC Opinion	135
Exhibit 11	Scoring Methodology	173
Exhibit 12	Leapfrog webpage for White Rock Medical Center	180
Exhibit 13	Leapfrog webpage for Lima Memorial Health System	180
Exhibit 14	Leapfrog "About the Grade" webpage	186
Exhibit 15	Leapfrog "Frequently asked Questions About the Leapfrog Hospital Safety Guide" webpage	201
Exhibit 16	Study titled "Readability of Sports Medicine -- Related Patient Education Materials From the American Academy of Orthopaedic Surgeons and the American Orthopaedic Society for Sports Medicine"	209
Exhibit 17	Final Narrative Report	219
Exhibit 18	Leapfrog Project Contract	223
Exhibit 19	Biographical Sketch	224
Exhibit 20	Email chain; LEAPFROG000427863 to 427868	261
Exhibit 21	TLG Graded Hospitals spreadsheet	275
Exhibit 22	Spreadsheet	279
Exhibit 23	Reports [GA4] Events report	281
Exhibit 24	Document Bates stamped LEAPFROG02864718	286

1 San Diego, California, Tuesday, September 30, 2025

2 9:04 a.m.

3
4 THE VIDEOGRAPHER: Good morning. We are
5 going on the record at 9:04 a.m. Pacific Time on
6 September 30, 2025. Please note that the
7 microphones are sensitive and may pick up whispering
8 and private conversations. Please mute your phones
9 at this time. Audio and video recording will
10 continue to take place unless all parties agree to
11 go off the record.

12 This is Media Unit 1 of the video-recorded
13 deposition of Michael Vredenburg taken by counsel
14 for Plaintiff in the matter of "Good Samaritan
15 Medical Center, Inc., et al." versus the Leapfrog
16 Group, filed in the United States District Court for
17 the Southern District of Florida, West Palm Beach
18 Division, Case No. 9:25-CV-80526-DMM.

19 The location of the deposition is 401
20 West A Street, Suite 1900, San Diego, California
21 92101.

22 My name is Benjamin Ziccardi, representing
23 Veritext Legal Solutions, and I am the videographer.
24 I am not authorized to administer an oath. I am not
25 related to any party in this action nor am I

Page 6

1 financially interested in the outcome.

2 If there are any objections to proceeding,
3 please state them at the time of your appearance.

4 Counsel and all present will now state
5 their appearances and affiliations for the record,
6 beginning with the noticing attorney.

7 MR. CRAIN: Good morning. This is Lee
8 Crain from Gibson Dunn & Crutcher for the
9 plaintiffs. I'm here with my colleague, Adam
10 Garnick.

11 MS. WOOD: Courtney Wood of Wilson Elser
12 on behalf of the defendant, the Leapfrog Group.

13 THE VIDEOGRAPHER: Will the court reporter
14 please introduce herself and administer the oath to
15 the witness, and then counsel may proceed.

16 THE REPORTER: Good morning. Leslie
17 Johnson, License No. 11451.

18 Mr. Vredenburgh, please raise your right
19 hand. I'll swear you in before we get started.

20
21 MICHAEL VREDENBURGH,
22 having been first duly sworn, was examined and
23 testified as follows:

24
25 / / / /

EXAMINATION

BY MR. CRAIN:

Q Good morning, Mr. Vredenburg. My name is Lee Crain, and I'm counsel for the plaintiffs, as I said, in this lawsuit, what the videographer read out.

We've not met before today, correct?

A Correct.

Q We met just briefly before the video started, right?

A Yes, sir.

Q And my understanding is you've been deposed, I think, 11 times; is that right?

A Yes.

Q And you've testified at trial twice?

A Yes.

Q So I'm going to go through some ground rules which might be old hat to you, but I want it to be clear for the record, if that sounds fair enough.

A Not a problem.

Q Great.

And before you start, can you state your full name again for the record?

A Michael Vredenburg.

1 Q Have you ever gone by any other names?

2 A No.

3 Q Just in terms of the ground rules, I think
4 you know these, but just in case, you know the court
5 reporter is transcribing our discussion today; is
6 that right?

7 A Yes.

8 Q And you know, you know, we need do our
9 best, at least in this sort of unnatural deposition
10 phase to not talk over each other, correct?

11 A Correct.

12 Q And I'll do my best to let you finish, and
13 you do your best to let me finish, and Leslie will
14 tell us if we're doing a good job; is that fair?

15 A That's fair.

16 Q You understand your oath today is if you
17 were testifying in a court of law?

18 A Yes.

19 Q You understand you need to give audible
20 answers so Leslie can get them down. No shaking,
21 nodding, all that sort of stuff?

22 A That's correct.

23 Q Are you taking any medications today,
24 anything that would impair you from giving truthful
25 testimony?

1 A Just a cup of coffee this morning.

2 Q Fair enough. If anything, that enhances
3 the truth. At least that's any experience.

4 And then the other thing I'll say, just in
5 terms of ground rule, I'm going to assume you
6 understand my questions. They won't all be good, as
7 Courtney has seen from other depositions we've been
8 in.

9 If you have any questions, clarifications,
10 don't hesitate to ask. But I'll assume, if you
11 answer the question, you understand.

12 Fair enough?

13 A Fair enough.

14 Q We talked a little bit about breaks. I'm
15 happy to accommodate any break you need, any break
16 anybody needs. The only thing we'd ask is no break
17 while a question is pending. We'll finish the
18 answer, and then we can take a break, if that sounds
19 good to you.

20 A Yes.

21 Q Great.

22 I assume you know this from your
23 experience, but from time to time, Ms. Wood may
24 object. Unless she instructs you not to and you
25 take that instruction, you'll need to answer the

1 question.

2 Sound fair enough?

3 A Yes.

4 Q Perfect. Okay. We've got that out of the
5 way.

6 Now, starting at the top. So you are
7 currently a retained expert in this case, correct?

8 A Correct.

9 Q And who retained you?

10 A That would be the defense law firm.

11 Q The Wilson Elser firm?

12 A Yes.

13 Q Do you know who originally reached out to
14 you to retain you?

15 A So originally, it was a query through the
16 Expert Institute.

17 Q Okay.

18 A And then I had a Zoom meeting with Kavi.

19 Q With Kavi?

20 A Yeah. I'm not sure his last name.

21 Q Modi?

22 MS. WOOD: Yeah.

23 BY MR. CRAIN:

24 Q Kavi Modi. Okay.

25 And what is the Expert Institute?

1 A It's kind of like a referral agency for
2 expert witnesses, but it's more digitized than most.
3 And I think it's one of the better ones.

4 Q What do you mean "more digitized"?

5 A Like, for some agencies, they'll be kind
6 of a middleman for giving you all of the materials.
7 And they, like, add onto your billing on top of what
8 you're doing. And I don't believe that the Expert
9 Institute does that. They're just like a referral
10 agency where they just help connect people.

11 Q Got it. Okay. So like a matchmaker?

12 A Yeah.

13 Q Now, you are currently the CEO and founder
14 of Cherry Tomato Engineering, right?

15 A Yes.

16 Q Do you have any other current roles beyond
17 testifying expert?

18 A Yes.

19 Q Can you tell us what those are?

20 A Sure. So I am designing and building
21 several different engineering projects and going
22 through the patenting process for them. And the
23 biggest one that most of the other projects rely
24 upon is a 3D printer that's actually larger than
25 this room, the printer. I've got it set up here in

1 San Diego.

2 And I'm on the twelfth iteration of
3 designing that printer. And its purpose is for
4 printing houses and printing buildings. And I take
5 a different approach for that than any company has
6 done before. Instead of printing in concrete, which
7 is typically how the large 3D printers, especially
8 in the Austin area, how they've been going. And
9 they have to get set up and torn down for every
10 single project.

11 My approach is centralized into warehouses
12 and to factories and to print concrete forms rather
13 than the concrete itself, to then have foam forms
14 that get printed in a factory, finished, so the
15 outside and inside are already textured and painted
16 finished, and then set up on site like gigantic Lego
17 blocks. And then concrete is poured into them. And
18 then you have a cost-effective ICF building, which
19 is an insulated concrete-formed building.

20 Q That is super cool. Setting that aside,
21 that's fascinating.

22 So you're a testifying expert, you are the
23 founder and CEO of Cherry Tomato, and you separately
24 work on the 3D printer project; is that right?

25 A Sometimes there can be a little bit of

1 overlap between the expertises. For example, I plan
2 on doing research at The Human Factors and
3 Ergonomics Society.

4 Q Okay.

5 A That kind of melts between the two,
6 between forensics and what I'm doing.

7 So the printer that I use prints in
8 polyurethane foam. And that foam, I believe, has
9 more applications than how it's being currently
10 used. So I am putting together research to coat
11 concrete surfaces with this polyurethane -- sprayed
12 polyurethane foam, and test trip-and-fall
13 biomechanics to evaluate what thickness and how
14 cost-effective that thickness would be for trying to
15 treat surfaces, say like memory care facilities or
16 walkways in areas with people who are more
17 vulnerable, to see if there's a way to reduce
18 damages from trip and falls.

19 Q And you mentioned forensics. What do you
20 mean by that?

21 A Expert witness work.

22 Q Got it. Okay. We'll come to that in a
23 second.

24 So anything else you do? So it sounds
25 like we have testifying, we have Cherry Tomato.

1 Fair to say it's sort of freelance
2 engineering products -- projects?

3 A Yes.

4 Q And freelance research, that sort of
5 thing?

6 A Yes. And I'd say I'm a dad as well. And
7 that's pretty much a full-time job on top of that.

8 Q I can attest to that one too.

9 How old are your kids?

10 A Two months and two years.

11 Q Oh, man. You're in the thick of it. I'm
12 six and three. So I feel like it gets better. That
13 should have been off the record.

14 All right. Let's talk a little bit about
15 your testimony in this case.

16 So what is your rate in this case?

17 A So I can pull up the rate sheet that I
18 have here.

19 Q Uh-huh.

20 A When it gets big, it's a little hard to
21 turn through the pages.

22 So the general rate for this case was \$450
23 an hour. And to my knowledge, the deposition fee
24 rate today is \$600 an hour.

25 Q Okay. Was that -- the deposition fee, was

1 that disclosed in your report?

2 A I don't think it was, actually. I
3 remember reading it last night and thinking "Oh,
4 that probably should have been there."

5 Q Okay. So you're getting \$450 for the
6 report, \$650 for the deposition, correct?

7 A \$600.

8 Q \$600. Sorry.

9 And are you getting a different rate to
10 testify at trial?

11 A No. Also \$600.

12 Q Okay. And then just before we go on, you
13 have a binder in front of you. Before we went on
14 the record, your counsel told me a little bit about
15 what that binder is.

16 Can you, for the record, explain what that
17 binder is?

18 A Sure. So this is just a selection of the
19 discovery that I've decided to print out and have in
20 front of me just for my own reference. I have a
21 couple of highlights here and there.

22 So, for example, on this page, it looks
23 like it is a piece of research that I downloaded and
24 printed out. And I just highlighted something in
25 case we're talking about it. It might be easier for

1 me to reference at some points. Or it was just to
2 help me prepare kind of, depending on how it goes.

3 Q And then the other question, is -- are the
4 documents in your binder everything that's
5 referenced in your appendix or does it --
6 appendices, or do -- are those documents -- are
7 there additional materials in there?

8 A I think that this rate sheet would be the
9 only additional material that I can recall.

10 Q The other thing you showed me before the
11 break, if I can refresh your recollection, were
12 deposition transcripts; is that right?

13 A I think I have two in there.

14 Q Okay. Which ones?

15 A Dr. Sean Nicholson. For some reason, the
16 name is not showing up readily on the front of this
17 one because they're uncertified. So it's not -- it
18 doesn't have the cover page they typically have.

19 Q And you checked the first page where the
20 person gets sworn in?

21 A I didn't see getting sworn in at the
22 beginning.

23 Q Okay.

24 A I am 95 percent sure this is the CEO,
25 Leah.

1 Q Okay. Ms. Binder?

2 A Yeah. But for some reason -- maybe I'm
3 missing a first page, because it's not -- it's not
4 doing the swearing in at the beginning.

5 Q Okay.

6 A But I'm confident that this is for Leah
7 Binder.

8 Q Okay.

9 MR. CRAIN: And I think we mentioned
10 before the break, but I assume counsel is
11 comfortable, on the next break, if we can just take
12 a look through the binder, right?

13 MS. WOOD: Yeah. Correct.

14 MR. CRAIN: So we'll do that.

15 BY MR. CRAIN:

16 Q So you prepared a report, an expert report
17 in this case, correct?

18 A Yes, sir.

19 Q And I handed you -- if you close the
20 binder. And I'm going to ask generally today if we
21 can look at the exhibits we mark. And obviously, if
22 you need a document to refresh, we might have to
23 mark it as an exhibit or we can give you an exhibit.
24 Probably a bunch of things you have in that binder.

25 But generally, so we're on the same page

1 and the record is clear, I'm going to ask you to
2 look at the exhibits.

3 Is that fair enough?

4 A That's totally fair.

5 Q We gave you what's been premarked as
6 Exhibit 1 and Exhibit 2.

7 (Exhibit 1 marked for identification.)

8 (Exhibit 2 marked for identification.)

9 BY MR. CRAIN:

10 Q Do you recognize those documents?

11 A Yes.

12 Q What are those two documents that?

13 A That would be my expert reports and the
14 amendment.

15 Q Great.

16 And did you have anyone help you draft --
17 did you draft these reports? Let's start with that.

18 A Yes.

19 Q Did you have anybody help you draft them?

20 A No.

21 Q Did counsel prepare a draft of the
22 reports?

23 A No.

24 Q Did counsel edit the reports?

25 A I really don't think so. I'd have to

1 recall for this case, but I'm pretty sure no.

2 Q Did anybody from Leapfrog help you prepare
3 these reports?

4 A No.

5 Q Anybody from Leap Frog edit the reports?

6 A No.

7 Q So to the best of your recollection, every
8 word on that page -- on those pages is yours; is
9 that right?

10 A Yes.

11 Q How many hours did you spend preparing
12 each of those documents?

13 A I meant to print that out and have that
14 as -- just after --

15 Q Ballpark is fine.

16 A Typically, for matters like this, it would
17 be 20 to -- probably around 20 hours.

18 Q 20 for both of them or 20 for one, then
19 more for the other?

20 A For both of them. The amendment was
21 short.

22 Q And what was the purpose of the amendment?

23 A So looking over my report, I realized that
24 I had made an error in the computer code that I
25 wrote. It didn't have an impact on the results or

1 the analysis, but there was a bug. And so I was
2 able to identify that and fix it.

3 Q And what was the code you're referencing?

4 A That was to basically produce the charts
5 that are throughout the report, the data analysis.

6 Q Yeah.

7 A I used a software called Python for doing
8 data analysis. It gets used for all sorts of
9 things, but in this case, it was used for data
10 analysis, similar to other softwares like -- another
11 one that's very similar in this case is called R.

12 Q Uh-huh. Okay.

13 And then, to your knowledge, that code has
14 been produced?

15 A Yes. And I have it in the binder as well,
16 if you need it.

17 Q Oh, man. I've never seen a hard copy of
18 code. I might want to take a look at that.

19 Then just to -- I think we know this
20 already, but is your compensation contingent on the
21 outcome of this litigation or any of your opinions?

22 A No.

23 Q What percentage of your income -- we
24 talked about your different roles. What percentage
25 of your income comes from expert work for

1 litigation?

2 A That can really vary, depending on when it
3 is. I would say that -- so I explained my other
4 business right now with the 3D printing. So right
5 now, that is prerevenue. And so right now, my focus
6 within, I'd say the last three to four months, it's
7 been mostly on forensics for income. But it's
8 been -- it hasn't really been primary before that.

9 Q And "forensics" means litigation expert
10 work; is that right?

11 A Yeah. I'm sorry. I use the terms
12 interchangeably.

13 Q Yeah. That's fine. I just want to make
14 sure it's clear.

15 A Yeah.

16 Q You can obviously use whatever terms you
17 like. I just want to make sure we're on the same
18 page.

19 And then so, I guess, separating from
20 income -- I take that point on the prerevenue --
21 what percentage of your time is forensics or expert
22 work?

23 A I'd say probably 40 to 50 percent.

24 Q And is that consistent?

25 A I'd say that the last three, four months,

1 it's been higher. In the past, it's been a bit
2 lower than that. Like the prior year before that
3 was pretty much exclusively dedicated to the
4 patenting process and development of the technology.

5 Q Okay. And then prior to this case, have
6 you ever been retained by the Wilson Elser firm?

7 A Not to my recollection.

8 Q And prior to this case, have you ever been
9 retained by the Leapfrog Group?

10 A No.

11 Q Prior to this case, had you ever heard of
12 the Leapfrog Group?

13 A No.

14 Q Forgive me for asking, but prior to this
15 case, have you ever had any interaction with
16 hospitals for your own care or your loved one's care
17 or something like that?

18 A Yes.

19 Q At a high level, just give me a sense of
20 what that entails.

21 A Sure. I've had two daughters, and I've
22 broken my leg before. And just general care.

23 Q Fair enough. I've had that experience of
24 the kid at the hospital too, so I get it.

25 Let's talk a little bit about deposition

1 prep. We'll get these preliminaries out of the way.

2 Did you prepare for your deposition today?

3 A Yes.

4 Q What did you do to prepare?

5 A Created this binder.

6 Q Did you review the binder?

7 A Yes.

8 Q Sort of top to bottom?

9 A More or less, yes.

10 Q Did you meet with counsel to prepare?

11 A We had a Zoom for, I think, about an hour.

12 Q When was that?

13 A That would be sometime last week. I don't
14 recall the exact day.

15 Q Was that with Ms. Wood?

16 A Yes.

17 Q Anybody else?

18 A I believe Kavi was on the call as well.

19 Q Mr. Modi?

20 A Yes.

21 Q And how many hours did you spend
22 separately from counsel preparing?

23 A This is just an estimate, but I think
24 seven or eight hours.

25 Q And did you review -- you reviewed all the

1 documents in that binder to prepare?

2 A Yes.

3 Q Did you review any documents beyond what's
4 in that binder?

5 A Yes.

6 Q What are the ones that you reviewed that
7 are not in the binder?

8 A So I skimmed through all the depositions
9 that were provided to me.

10 Q And which were those? You have
11 Ms. Binder. You had Dr. Nicholson?

12 A Yep.

13 Q Did you review the deposition transcript
14 of Professor Berger?

15 A Yes.

16 Q Did you review other Leapfrog employees?

17 A Yes. I believe all of them.

18 Q That would be Ms. Stanford?

19 A Yes.

20 Q Ms. Champion?

21 A Yes.

22 Q Who else there? Ms. Jupiter?

23 A Yes.

24 Q Ms. Bailey?

25 A Yes.

1 Q Mr. Banerjee?

2 A I'm not sure. That name is not ringing a
3 bell for me.

4 Q He's sort of the revenue guy. Does that
5 ring a bell?

6 A Yeah, that does. I believe I did.

7 Q He talked a lot about licensing?

8 A For his -- I basically saw it wasn't
9 relevant, so I didn't read his. But I skimmed it,
10 just to see if it was relevant or not.

11 Q Got it. Okay.

12 And how did you decide what was relevant
13 and what wasn't?

14 A Their focus of what they did in the
15 company, what their role was and so forth.

16 Q Can you give me just the general buckets
17 of which roles you deemed relevant and which roles
18 you deemed not relevant?

19 A So I think a good way to jump into that
20 would be my assignment. So, if I can go over that
21 in my report.

22 Q Yeah. Sure. So you're going to your
23 report?

24 A Yeah.

25 Q And you're going to tell me now what was

1 the scope of your assignment here?

2 A Right.

3 Q Before we go through that,
4 Mr. Vredenburgh, I just want to close the loop.

5 Are there any other documents you looked
6 at that are not in that binder?

7 A Yes. So there were all sorts of
8 appendices that Dr. Berger produced.

9 Q So you reviewed Dr. Berger's reports and
10 his appendices?

11 A Yes.

12 Q Did you review other expert reports?

13 A Yes.

14 Q **Mr. Jakerda?

15 A Not in depth.

16 Q And then any other -- I'm trying to think
17 any other -- did you review the depositions of any
18 of the plaintiffs' witnesses, the CEOs of the
19 hospitals?

20 A No.

21 Q Any other documents you can recall
22 reviewing?

23 A So I was pretty good about referencing
24 everything that I relied upon. So I feel like there
25 was all these accessory documents that I wanted to

1 make sure that -- you know, whether I was going to
2 rely upon them or not. And for most of them, they
3 weren't relevant, but I just went through them real
4 quick just to make sure.

5 Q When you say -- what documents are we
6 talking about here? What accessory documents?

7 A So that would be, you know, these
8 depositions.

9 Q Got it.

10 Did you look at the exhibits to the
11 depositions? Is that what you mean?

12 A No, I didn't.

13 Q Did you look at Leapfrog -- any of
14 Leapfrog's websites to prepare for the deposition?

15 A Yes.

16 Q Which pages, to the best of your
17 recollection?

18 A So that would be the leapfroggroup.org
19 website and the --

20 Q Just the home page or pages within too?

21 A Pages within too.

22 Q Okay. Do you remember generally which
23 ones on the leapfroggroup.org you reviewed, just to
24 the best of your recollection?

25 A I believe the ones that I reviewed most

1 significantly should be in the report.

2 Q Okay. So I guess we'll come to that.

3 And what about for

4 hospitalsafetygrade.org?

5 A Yeah. So I reviewed that pretty

6 significantly as well.

7 Q And you reviewed all this in seven to

8 eight hours?

9 A So -- I'm sorry. I think I might have
10 miscommunicated. Because your previous question
11 about review, that was just depo prep --

12 Q Uh-huh.

13 A -- is how I interpreted that question.

14 Q Got it.

15 A In terms of writing the report and
16 reviewing the material before that, I think all that
17 would have been closer to 20 hours.

18 Q Okay. So the depositions came after you
19 served your report, right?

20 A Yes.

21 Q So you reviewed the depositions with the
22 depo prep?

23 A Yes.

24 Q And so just to -- the sum total,
25 approximately, of your time on this case is about 27

1 or 37 hours?

2 A You know, I would need to look through my
3 billing to be sure, but typically, for a case like
4 this, it would be between 20 to 30 hours.

5 Q And that includes the report plus the depo
6 prep?

7 A Yes.

8 Q And then figuring whatever it is today,
9 right?

10 A Right.

11 Q That's helpful.

12 So then let's go to your assignment. You
13 were starting to tell me, and I apologize for
14 cutting you off. I just wanted to make sure we
15 closed the loop.

16 Tell me, what you were retained -- what
17 was the scope of your assignment?

18 A Great. So to summarize it in just a few
19 words, it was to evaluate the clarity and
20 transparency and usability of the hospital safety
21 grade website.

22 Q Let's break that down a little bit.

23 What does "clarity" mean?

24 A So, if you look at paragraph 13.

25 Q Uh-huh.

1 A I think that that's a good introduction to
2 how I evaluated that. Determining the likelihood
3 that a reasonable consumer would misunderstood the
4 website's content.

5 Q Got it. So "clarity" is defined for you
6 as the likelihood that a reasonable consumer would
7 misunderstood the website's content?

8 A Yes.

9 Q And then how do you define "transparency"?

10 A So in the context of this case, I think
11 transparency is making sure that the information
12 that each consumer needs to get to is available to
13 them, and that for each step, for each different
14 level of consumer, that that clarity is available to
15 them. So there's this idea in user experience
16 called progression disclosure.

17 Q Uh-huh.

18 A And it is a way to make sure that a lay
19 audience and an expert audience, or just somebody
20 who is progressing through, doesn't get overwhelmed
21 so you're getting information as you need it. And
22 if you get interested and you want to dive deeper,
23 that's always available for you.

24 Q Is transparency the same as or related to
25 accessibility?

1 A No. I wouldn't say those are the same
2 thing.

3 Q Are they related?

4 A I think that accessibility can be a
5 prerequisite to transparency. Because if you have
6 certain populations that are struggling to find it
7 accessible, then that could be an issue.

8 Q Yeah. So just to make sure I understand,
9 the more -- if it is more accessible, it is more
10 transparent, but it's not necessarily a direct
11 one-to-one; is that fair?

12 A Well, it can be accessible but not
13 transparent, or transparent to some but not
14 accessible.

15 Q How does that work? Yeah. Can you sort
16 of -- if it's accessible to some, but not
17 transparent, I think you said, can you give me an
18 example?

19 A If it's accessible, and say that it has a
20 reading level that matches the person who is
21 reading, so, A, we know that they can go in and read
22 it. And, you know, say if they have limited vision,
23 that it's able to be brought up to whatever size
24 that they need for their vision. So those would be
25 examples of accessibility.

1 But you could have that and still have
2 someone get led astray, even though they have that
3 accessibility. So that's why they're not
4 necessarily always the same, because they could read
5 something that's not necessarily a truth, and then
6 it's not transparent.

7 Q Got it. Okay.

8 A Or they're getting the accessibility and
9 they're not necessarily getting to where they need
10 to get to. So the progressive disclosure is not
11 there, and they hit a brick wall before they're
12 ready, then it's accessible but not transparent.

13 Q Okay. And then what is usability? That
14 was the third word you used.

15 A In the context of human factors, usability
16 is usually related to this concept user experience,
17 Use X, UX. And so usability is to make sure that
18 your content is made for humans; that whoever your
19 users are, that it's going to be successful for them
20 to get to where they need to go.

21 Q Are these related concepts, the three of
22 them?

23 A Yes.

24 Q And then in assessing for clarity,
25 transparency and usability -- I got that right,

1 right? Those three?

2 A Yes.

3 Q Did you assess the content of the
4 underlying things you reviewed for clarity,
5 transparency, and usability?

6 A Now, that's a bit of nuanced question.

7 Q The first of many.

8 A So I would say -- I want to look through
9 my assignment carefully here.

10 Q Yep.

11 A But I think I would say that I evaluated
12 the content only so far as that it relates to
13 clarity, transparency and usability.

14 Q Okay. So let me sort of make it more
15 concrete.

16 A website can be clear, transparent and
17 usable, and yet, at the same time, still convey
18 inaccurate information; is that fair to say?

19 MS. WOOD: Object to form.

20 THE WITNESS: Could you give a more
21 specific example? Because I think that transparency
22 would be the word that kind of would be -- make it a
23 little ambiguous for me.

24 BY MR. CRAIN:

25 Q Yeah. You want a hypothetical, you mean?

1 A Sure.

2 Q Let's say there's a website that offers
3 discounts on cleaning products, right?

4 A Uh-huh.

5 Q And the reading level is super low. It's
6 very clear. It says: "We're offering Clear X for \$5
7 a bottle. Great discount." Right?

8 A Uh-huh.

9 Q Fair to say, with no other facts, right up
10 there, that's the reading level, is it fair to say
11 that that website clear, transparent and usable?

12 A I feel like you're implying that the --
13 that there might be some sort of transparency issue.
14 But based on just, you know, the information you
15 provided, if the user can get all the information
16 they're supposed to get to, then I think that it
17 would be those things.

18 Q Now, what if it's just wrong, right? Like
19 instead of Clorox, it's Borax, right? Does that
20 affect any one of the three measures that you've
21 been looking at?

22 A So you're saying --

23 Q Same website, just different product.
24 They made a mistake.

25 A So you think you're buying one product,

1 but a different product arrives?

2 Q You think what's being offered is a
3 discount for Clorox for \$5, but it turns out that
4 was an accident. It was a typo, and everything in
5 the warehouse is Borax.

6 A That sounds like a transparency issue.

7 Q Okay. Why?

8 A Because they're not providing you the
9 information. You know, with each level of the
10 progressive disclosure, you're supposed to get the
11 information that is relevant for that level. So I
12 think you're presenting this initial page, the first
13 part, and it's presenting -- presenting a product,
14 and it's the incorrect product. So that sounds like
15 a transparency issue to me.

16 Q So transparency relates to whether the
17 information on the page is accurate or not?

18 A I think it would relate to that, yes.

19 Q Okay. All right. We'll come back to that
20 in a minute.

21 Anything else -- within the scope of your
22 assignment, anything beyond those three that sort
23 of -- we'll get to your opinions in a little bit,
24 but with regard to what you were retained to do, is
25 there anything else you were retained to do beyond

1 those three?

2 A Everything written in this report for the
3 assignment section, I feel like it goes into more
4 depth than what we talked about. But I think it's
5 covered by those three words as well.

6 Q So nothing beyond the scope of paragraphs
7 12, 13, 14, 15, and 16, right?

8 A Correct.

9 Q Okay. I want to step back, just while
10 we're looking at your report, and I want to talk
11 about your appendices, just to make sure we're on
12 the same page.

13 If you go to page -- Appendix C on page 23
14 of Exhibit 1, which is your report, right?

15 So I want to understand. This page of
16 references, is that supposed to be the universe of
17 materials that you considered in forming your
18 decision?

19 A Yes.

20 Q Are there any other materials beyond this
21 page -- beyond those listed on this page that you
22 considered in coming to your conclusion?

23 A So I think that documents that I've read
24 throughout my education and professional experience
25 have helped shape me in, you know, how I form my

1 words, how I form my opinions. And so I think that
2 they're shaping me in terms of, you know --

3 Q Fair enough. Yeah. It's sort of a bad
4 question. Let me fine-tune it.

5 From the moment you were retained on this
6 case to the moment you served your report, you
7 reviewed documents to render a decision -- an
8 opinion in this case, right?

9 A Yes.

10 Q Are there any documents during that time
11 period, setting aside your education and broader
12 history, that you reviewed to come to your opinions
13 in this case?

14 A So I would say, in general, this is pretty
15 conclusive, but I was provided some documents in the
16 review. So, you know, just for example --

17 Q Yeah.

18 A -- if I were to pull up Leah Binder, if
19 I'm remembering her name correctly.

20 Q Ms. Binder. Yeah.

21 A Ms. Binder's deposition, I've got a few
22 things highlighted here.

23 Q Well, set that aside for a moment.
24 Because that happened after you served your
25 report; is that true?

1 A Correct. That's true.

2 Q Okay. I thought it was true. But if it's
3 not true, you can correct me.

4 I want to understand what went into your
5 report first. And so I'll give you a concrete
6 example.

7 This list of documents on page 23 does not
8 mention, at least as far as I see, any of the
9 Leapfrog Group's web pages.

10 A So those are referenced directly in the
11 footnotes in the report as they appear. So those
12 are referenced, but they don't show up in the
13 references, which is a good point that you're
14 making. It probably should have appeared there.

15 Q It just makes it hard for us to figure out
16 what you looked at, right?

17 A Yeah. So every time there's a screenshot
18 of one of the pages on the bottom, there should be a
19 footnote to the website there. And so that's
20 definitely included as well.

21 Q So I want to go through this. And there
22 are 20 footnotes. Do you see that? The last
23 footnote is page 16.

24 A Uh-huh. Yes.

25 Q And as far as I can tell -- that was a

1 "yes"?

2 A Yes.

3 Q As far as I can tell, there are either no
4 or very few websites cited. And you can flip with
5 me. And whoever finds a website first can win. I
6 see one at footnote 7 and footnote 8.

7 A Yeah. So there's the home page as well as
8 the -- a specific hospital's page.

9 Q And that's for Good Samaritan?

10 A Yes.

11 Q So what I want to understand is, did you
12 consider other pages beyond those in these
13 footnotes? For instance, are you aware there's a
14 "frequently asked questions" page on the website?

15 A Yes.

16 Q Did you review that website?

17 A Yes.

18 Q Did that factor into your opinion?

19 A Yes.

20 Q Where is that cited in your report?

21 A It's not.

22 Q Did you review the "about the grade" page
23 on your website?

24 A I believe so, yes.

25 Q Is that one referenced in your report?

1 A No, sir.

2 Q What other ones do we have? I mean,
3 there's a long list.

4 But is there any other page that you -- I
5 mean, we can go through them, but you see my
6 challenge.

7 Do you understand where I'm going?

8 A So a good roadmap would be, anything that
9 Dr. Berger referenced, I've reviewed in reviewing
10 his report.

11 Q So Dr. Berger's report, which we can
12 mark -- let's get that out. Page 3. Let's mark --
13 this will be Exhibit 3. Thank you.

14 (Exhibit 3 marked for identification.)

15 BY MR. CRAIN:

16 Q Do you have it in front of you?

17 A Yes, sir.

18 Q Do you recognize Exhibit 3?

19 A Yes.

20 Q What is it?

21 A This is Dr. Berger's report.

22 Q And I want you to go to Appendix C, which
23 is -- actually, it says "page 1," but it's towards
24 the end. It's page 1 of Appendix C. The last
25 appendix.

1 You there?

2 A Yes.

3 Q Great.

4 And do you see, flipping to the end, it's
5 10 pages of documents considered?

6 A Yes, sir.

7 Q Did you review all of these?

8 A No.

9 Q Okay. Which ones did you review, in a
10 nutshell?

11 Let's start with, do you see there's a
12 first page that says "Academic Articles"? It's on
13 page 1 of Appendix C. I think you're on a different
14 appendix.

15 A Appendix C, you said?

16 Q C, as in cat. It says "Documents
17 Considered List."

18 A Uh-huh.

19 Q Do you see that?

20 A Yeah.

21 Q Do you see the "Academic Articles"?

22 A Right.

23 Q Did you review all of these?

24 A No.

25 Q They're lengthy.

1 A Right. Well, I think that's something
2 that's going to come up through this deposition, is
3 I feel like were a little bit parallel to each other
4 in terms of what we evaluated.

5 Q What do you mean "parallel"?

6 A So Dr. Berger's background and expertise
7 is different than my background and expertise. And
8 so the -- you know, the way of going about it --
9 like he's bringing up Journal of Economics, and
10 that's just not relevant to my background.

11 Q Okay. Can you give me your understanding
12 of what Dr. Berger's expertise is?

13 A So, if I'm recalling correctly, he's a
14 marketing professor.

15 Q And has some expertise in terms of
16 consumer choice, consumer psychology? Does that
17 sound right?

18 A Yes.

19 Q And do you have any expertise in
20 marketing, consumer choice or consumer psychology?

21 A Only insofar as they relate to human
22 factors and human factors engineering.

23 Q How do they relate to human factors and
24 human factors engineering?

25 A So, from my evaluation, it was a user

1 experience evaluation. So as far as it's related to
2 user experience.

3 Q Okay. So human -- we'll come back to
4 that.

5 So "Academic Articles," if you flip to
6 page 5, there's book chapters, expert reports, and
7 legal documents.

8 Do you see that?

9 A Yes.

10 Q Did you review any of those?

11 A I believe I reviewed the expert reports --

12 Q Of Dr. Nicholson?

13 A -- the complaint. Yeah. The complaint.

14 Q Your footnotes cite the amended
15 complaint; is that right?

16 A Yeah. I saw the original complaint too.

17 Q Okay. Any other motions under the "legal
18 documents" page?

19 A The legal documents can sometimes get a
20 little bit jargony for me.

21 Q Fair enough.

22 A But I did skim through them. If you said
23 "Was it this document or this document you skimmed
24 through," I wouldn't necessarily be able to estimate
25 well.

1 Q So you considered legal documents beyond
2 the amended complaint?

3 A Initially, when I -- everything I
4 received, I skimmed through it real quick to see
5 whether I thought it was relevant to me or not.

6 Q So certain documents you were given, but
7 deemed not relevant?

8 A Yes.

9 Q And certain documents you reviewed, you
10 deemed relevant?

11 A Yes.

12 Q In terms of legal filings, was the only
13 thing you deemed relevant the amended complaint?

14 A That's certainly the most relevant.

15 Q And what were the other things that were
16 less relevant but still relevant?

17 A Anything that was in my file.

18 Q What is in your file?

19 A Anything that was sent to me by the
20 defense.

21 Q Is that in the binder?

22 A No. It would be like five of these
23 binders.

24 Q Okay. So did you -- so you reviewed other
25 legal filings, right? Just to make sure I

1 understand.

2 A Yes.

3 Q And some you deemed not relevant, so you
4 set aside?

5 A Yes.

6 Q Some you deemed relevant, so you
7 considered them, right?

8 A Correct.

9 Q One of those documents was the amended
10 complaint, correct?

11 A Yes.

12 Q But not all of those documents, right?
13 That was a bad question. Let me make -- that was a
14 bad question.

15 What I mean to say is, of the documents
16 that were legal filings that you deemed relevant,
17 there were other documents beyond the amended
18 complaint that you considered, correct?

19 A Yes.

20 Q Okay. And they are not in your report
21 anywhere, right?

22 A Correct.

23 Q Okay. Let's keep going.

24 You see Dr. Berger's page 6, produced
25 documents -- do you know what a Bates number is?

1 A Yes.

2 Q There's a bunch of Bates-numbered
3 documents. Did you review any of those?

4 A Yeah. They're a little jargony. You
5 know, there's large -- large numbers at the end of
6 each, so it's hard to differentiate.

7 Q Fair enough.

8 Do you remember reviewing any documents
9 with Bates numbers, any internal emails, things like
10 that?

11 A Yes. And I definitely relied on documents
12 that are very similar to this. You know, if it's
13 00065 or some other number, I'm not sure.

14 Q Fair enough. That's just the numbers, so
15 it's hard to say.

16 A Yeah.

17 Q Let's put it into words.

18 Did you rely on, in forming your report,
19 internal Leapfrog emails?

20 A At least a few, yeah.

21 Q Do you recall what those emails were?

22 A Yeah. You know what? I think that there
23 might actually be one document that I have in here
24 that I recall that may not have been in the folder
25 that was produced.

1 Q We'll look at the binder after. If you
2 can't remember now, that's fine. That's a perfectly
3 fine answer. But I want to set the binder aside,
4 and I want to just talk about what you recall
5 reviewing.

6 So you reviewed a number of internal
7 Leapfrog emails in coming to your opinion, right?

8 A Yes. Specifically about the user
9 experience testing.

10 Q Got it. From 2014?

11 A I believe so.

12 Q Do you remember reviewing any other emails
13 about, for instance, like the methodology for
14 grading?

15 A They may or may not have been provided to
16 me. It's ringing a bell to have skimmed it and
17 think, you know, it's in the "good to know" folder,
18 but probably not going in the report.

19 Q Did you review any emails about how
20 Leapfrog drafted the website content?

21 A Yes.

22 Q Okay. From 2014 or subsequently?

23 A So that's the document that I want to pull
24 up. I believe that I referenced the CV for the
25 woman who was hired to help them with their user

1 experience and with their website creation.

2 Q Back in 2014?

3 A I believe so, yes.

4 Q Anything more recent, is what I'm trying
5 to understand.

6 A Not that I recall.

7 Q Let's keep going with Dr. Berger. We're
8 on page 6 of appendix C.

9 Tell me when you're there. It's right
10 towards the end. It's like the last three pages.

11 A Uh-huh.

12 Q You see there's website online content,
13 right?

14 A Right.

15 Q And he has like one, two, three, four --
16 five pages of websites that he reviewed.

17 Do you see that?

18 A Right.

19 Q Did you review all of these?

20 A You know, this is a lot of pages to look
21 through, a lot of links.

22 Q Yeah.

23 A I don't think, just looking at these pages
24 here, I would be able to tell you or not if we
25 pulled up the websites and we went to each one and I

1 said "yes" or "no." I could do it that way,
2 but . . .

3 Q Fair enough. I'll have some documents for
4 you later. Let me ask you this question.

5 Your report, we just looked at footnotes 7
6 and 8, right?

7 A Yes.

8 Q And those list two websites that you
9 considered in forming your opinion, right?

10 A Yes.

11 Q The home page, and I think the other one
12 was Good Samaritan, right?

13 A Right.

14 Q Is it correct that you considered other
15 pages of the Leapfrog website -- of Leapfrog's
16 websites in coming to your opinions?

17 A Yes.

18 Q Do you have a ballpark of how many?

19 A I think that a good ballpark would
20 actually be the amount of time that I spent browsing
21 the website. I would say that I spent probably
22 about two hours browsing the website, so that gets
23 you through pretty extensively.

24 Q So you did a fairly deep dive of the
25 website?

1 A Yes.

2 Q But you did not put a list of what you
3 looked at in your report anywhere, right?

4 A Right. And, you know, maybe Dr. Berger
5 does have the best, you know, style here for listing
6 everything out. But I guess the philosophy that I
7 was following, writing the report, is I wanted it to
8 be easy to follow, you know, have good UX, user
9 experience. I didn't want it to overwhelm people.
10 I wanted to follow the idea of progressive
11 disclosure myself, where, you know, I wanted to make
12 sure it was easy to follow along for the reader.

13 Q Yeah. No, I hear you. And I get his page
14 is lengthy and it's hard to read. It's a lot of
15 numbers.

16 So you understand to -- that to testify as
17 an expert in federal court, your report needs to
18 satisfy Federal Rules of Civil Procedure 26 and
19 Federal Rule of Evidence 702.

20 Do you have an understanding of that?

21 A Yes.

22 Q And Federal Rule of Civil Procedure 26
23 requires you to disclose the facts and documents you
24 relied on; is that fair?

25 A Yes.

1 Q Fair to say you didn't do that completely?

2 MS. WOOD: Objection to form.

3 You can answer.

4 THE WITNESS: I wouldn't necessarily say
5 that's fair because I do -- I do reference with
6 footnotes -- was it, 7 and 8?

7 BY MR. CRAIN:

8 Q 7 and 8.

9 A -- that those were the main pages that I
10 relied on. And for the report, that was the focus
11 of the analysis.

12 So, you know, if you and I here want to
13 discuss today specifics of Dr. Berger's report where
14 he's referring to these other pages, likely I have
15 dived in and looked at what he was saying. But a
16 lot of it was kind of, like I said, parallel to or
17 askew to what my analysis -- what the scope of my
18 analysis was. So that's why it didn't necessarily
19 make it into my report.

20 Q I totally hear you. I'm actually trying
21 to understand your analysis, not necessarily
22 Dr. Berger's. We might come to him later. But I'm
23 trying to understand what you considered.

24 For instance, we talked about the
25 "frequently asked questions" page, right? You

1 considered that, right?

2 A Yes.

3 Q Is that something, in your view, that -- I
4 think you say the typical user -- does the typical
5 user consult "frequently asked questions"?

6 A So I think that goes back to the
7 progressive disclosure, where very likely the
8 typical user is not going to go past the first page.
9 And they are going to focus on that first primary
10 page. And, you know, as someone becomes interested
11 or as someone has more expertise or a reason to dive
12 in, they can go further. So that seems like a
13 next -- you know, second or third step, you know,
14 past. So --

15 Q What page are you?

16 A I'm on page 6. If we look at --

17 Q 6 of Exhibit 1? Your report, right?

18 A Yes.

19 Q Exhibit 1. Okay.

20 A I'm looking at figures 1 and 2.

21 Q Uh-huh.

22 A So you're -- you know, you're asking --
23 and it's totally fair -- you know, "Is this
24 sufficient to say this is the amount of website that
25 you reviewed?" And I would say that this covers,

1 you know, step 1 and 2 of the progressive
2 disclosure.

3 Q Got it.

4 When you say this covers step 1 or 2 --
5 and 2, you're saying you start with Figure 1.
6 That's the main landing page for
7 hospitalsafetygrade.org, fair?

8 A Yes.

9 Q And then you search a hospital, right?

10 A Correct.

11 Q Now, there's an intermediate step. It
12 doesn't just go right to Figure 2, right?

13 A That's fair. Yes.

14 Q Did you review that page?

15 A Yes.

16 Q But that's not in this report, right?

17 A No. That's not a figure in this report.

18 Q Is it cited or referenced anywhere in the
19 report?

20 A No, sir.

21 Q Then when you click on -- from the search
22 page -- I've got it up here. I looked at it a lot,
23 more than two hours.

24 When you click on the search page, it goes
25 into what is effectively Figure 2, right?

1 A Yes.

2 Q Now, then you can go and click onto a more
3 detailed view, right?

4 A Correct.

5 Q Is that referenced in your report?

6 A No, sir. So it's referenced insofar as
7 that I talk about the progressive disclosure.

8 Q Yeah.

9 A But I feel like that's starting to go
10 beyond the scope of what I analyzed. That's
11 starting to get into a different kind of expert
12 territory.

13 Q Why is that?

14 A So I've evaluated that the progressive
15 disclosure is there, that we have, you know,
16 increasing amounts of information for different
17 users. But to, you know, analyze the transparency
18 and accuracy going into these further pages, that's
19 better covered by another one of the experts who was
20 focused more on the algorithm and the clarity.
21 That's starting to go beyond what I analyzed.

22 Q So does your analysis stop at Figure 2?

23 A So I would say that my analysis
24 acknowledges that it goes beyond this page and, you
25 know, acknowledges the progressive disclosure that

1 further -- further, you know, expert information
2 becomes available to expert users.

3 Q So you said your scope was to assess the
4 clarity, transparency -- and help me on the last
5 one -- usability of the website generally, right?
6 That was the scope of your assignment?

7 Paragraph 13, I think you said.

8 A And there's probably some sort of clause
9 for like a reasonably prudent user.

10 Q So here -- yeah. Paragraph 12, "I have
11 been asked by counsel for defendant, the Leapfrog
12 Group" -- that's Ms. Wood and her team, right?

13 A Uh-huh. Yes.

14 Q -- "to evaluate the clarity, transparency,
15 and usability of the Leapfrog hospital safety grade
16 website, www.hospitalsafetygrade.org, from the
17 perspective of a reasonable consumer seeking
18 healthcare information."

19 That's what you're referring to?

20 A Yes. If I can respond.

21 Q Please.

22 A So a -- someone seeking healthcare
23 information, at least the way that I interpreted it
24 for this assignment, is not going to be necessarily
25 a doctor or a hospital administrator.

1 Q I was going to ask. Yeah. So these are
2 average people, right?

3 A Yes.

4 Q Seeking for their care, their loved ones,
5 right?

6 A Right. And you'll see later, you know,
7 I'm analyzing the grade level. So, you know, trying
8 to hit a specific, you know, grade level like 8th
9 grade. That's not going to be very relevant for the
10 hospital administrator.

11 Q Yeah. So we'll come back to that.

12 But when you say you're evaluating the
13 grade level, is that just for the website reflected
14 in Figure 2?

15 A Yes.

16 Q Did you evaluate the grade level of any
17 other website?

18 A No.

19 Q That's all.

20 Now, going back to 12, sentence 1, you say
21 "I've been asked by counsel for defendant, the
22 Leapfrog Group, to evaluate the clarity,
23 transparency and usability of the Leapfrog hospital
24 safety grade website, right?

25 Now, is that under-inclusive or

1 over-inclusive? And what I mean by that is, the
2 hospitalsafetygrade.org website includes a lot of
3 pages under it, right?

4 A Correct.

5 Q Are you saying you're evaluating just the
6 landing page, which I think is Figure 1?

7 A I would say the majority of the focus
8 would be for Figure 2.

9 Q So is it more accurate to say the scope of
10 your assignment was to evaluate the clarity,
11 transparency and usability of
12 www.hospitalsafetygrade.org, as well as -- I think
13 it's in footnote -- the URL in footnote 8, which
14 refers to Figure 2?

15 MS. WOOD: Objection to form.

16 BY MR. CRAIN:

17 Q You can answer.

18 A That's correct. That was my primary
19 focus.

20 Q What I'm trying to understand, you said
21 "primary."

22 Were there other focuses, or is that the
23 only focus?

24 A So I believe I have an opinion about
25 progressive disclosure and the fact that it

1 continues to disclose beyond this point to different
2 levels of expert users. I consider that, that that
3 exists. But the primary focus would really be on
4 Figure 2 and the analysis.

5 Q Figure 2. And Figure 1?

6 A And Figure 1, yeah.

7 Q So then going back to your opinion, did
8 you consider -- well, I'll leave that. Strike that.
9 Sorry.

10 In making your opinion, did you consider
11 the long detailed table view or no? And I can show
12 you a document.

13 A Just that it exists.

14 Q Was it relevant to your opinion or no?

15 A It's relevant for the progressive
16 disclosure, in that, you know, these next steps
17 exist. But it's not -- it's not intended for or
18 pointed to the users that I evaluated in my scope,
19 in my analysis.

20 Q Again, not cited in your report, right?

21 A I'm not sure that's true. I think when I
22 talked about the progressive disclosure, I think
23 that it does talk about the increased levels of
24 information that come up.

25 Q Okay. But you didn't actually disclose

1 which pages you had considered beyond Figure 2,
2 right?

3 A That's correct.

4 Q And you did consider pages beyond Figure
5 2, right?

6 A That's correct.

7 Q Did you consider videos on the website?

8 A Just that they exist.

9 Q Did you review the videos in coming to
10 your decision?

11 A One video.

12 Q What video?

13 A So it would have just been Figure 2, just
14 the first video that's available right on that page,
15 on the top left.

16 Q View. Let's see. Where is that, top
17 left? Oh, I see the pop-up. Okay.

18 So I want to make sure we're just talking
19 about the same video. So we're looking at Figure 2
20 in your report on page 7, which is Exhibit 1 of this
21 deposition. There's a little "play" arrow right
22 under the "D", right?

23 A Yeah.

24 Q Great. Shut that down.

25 Now, we went to that video, and we got a

1 transcript of it. So let's mark as Exhibit 4.

2 (Exhibit 4 marked for identification.)

3 BY MR. CRAIN:

4 Q This is a certified transcript of the
5 video that comes up on that page. Take a look at
6 it. Flip through it. It's short.

7 And I just want to make sure for the
8 record, can you confirm whether or not this was the
9 video that you considered?

10 MS. WOOD: Objection to form.

11 BY MR. CRAIN:

12 Q Do you have that, Mr. Vredenburg?

13 A Yes, sir.

14 Q Does this refresh your recollection as to
15 why you reviewed this video?

16 A Yes.

17 Q And did you consider it in coming to your
18 conclusion?

19 A Yes.

20 Q And is it cited in your report or
21 otherwise referenced? You referenced videos. Do
22 you reference this as the specific video?

23 A So I believe that it would be referenced
24 because it's shown on the screenshot that's in the
25 report.

1 Q Okay. So you're saying is the video
2 that's in the top left corner under the "D" is
3 sufficient to put the other side on notice that you
4 considered the video there in forming your opinions?

5 MS. WOOD: Objection to form.

6 THE WITNESS: So the content of the video,
7 that goes beyond the -- that goes beyond the scope
8 of my analysis. But the fact that this video exists
9 and is on the page and is clearly shown to be a
10 video on this paper shows that -- you know, that
11 there is this progressive disclosure, and that it's
12 a tool for accessibility to help more users.

13 BY MR. CRAIN:

14 Q Yeah. I hear you on progressive
15 disclosure. Let's set that aside for a second.

16 I'm trying to understand what the universe
17 of materials were that you decided on, which is an
18 important prerequisite in the Federal Rules because
19 it gives us notice on what you evaluated, which is
20 for today, right? And for trial, right?

21 A Yeah.

22 Q Are you saying that any link on this page,
23 we were on notice that you considered in forming
24 your opinion?

25 MS. WOOD: Objection to form.

1 THE WITNESS: So the page that you get to
2 from the link, I would say no, that wouldn't be
3 fair. But the content of the leak itself, like
4 saying "show recent past grades" --

5 BY MR. CRAIN:

6 Q Yeah.

7 A -- and like that actual content and what's
8 implied by that link. Yes.

9 Q So let's -- I take -- so do you see on the
10 top right, it says "detailed table view"?

11 A Yes.

12 Q And you know the website that -- you know
13 the website that goes to when you click that link?

14 A Right.

15 Q It's the long table, right?

16 A Yeah. It's not oriented towards a casual
17 user.

18 Q Yeah. It's more -- a little more
19 expertise, right?

20 A Yes.

21 Q Did you consider that table in forming
22 your opinions?

23 A I would say more so that I considered this
24 link and going into -- going into it, seeing like
25 "Is this relevant for the user that I'm looking at?"

1 No. This is more relevant for the expert user."

2 Q Okay. So the user that you were looking
3 at is only looking at Figure 1 and Figure 2?

4 A Well, the statistics show that that's
5 pretty likely.

6 Q What statistics?

7 A The Google Analytics. That that is where
8 most users go. I've got some other research that I
9 cited that I think -- three scrolls below the fold.

10 Q Yeah.

11 A So this first page would be the first
12 scroll. This page and this third in scrolling down,
13 that's where most users are going to end.

14 Q I want to come back to that point in a
15 second because that's just -- he knows what I'm
16 talking about. I give him in code. He can't figure
17 it out.

18 So what I want to understand -- setting
19 aside the content of your opinion, right? You're
20 talking about you had an opinion about progressive
21 disclosures, right?

22 In forming that opinion, did you consider
23 the video under the "D" on Exhibit 2 -- Figure 2 on
24 page 7? Did you consider the table -- all these
25 links, did you actually consider those in forming

1 your opinion?

2 A Yeah. So they were certainly considered.
3 I looked at them, and I considered them. And I
4 thought that I presented, you know, the information
5 that was necessary to then support the -- support
6 the opinions that I have here in this report.

7 Q And you do not cite or reference beyond
8 these links on Figure 2 those other pages, right?

9 A Yeah. I believe that's correct. I think
10 that the citations for the websites and to get to
11 particular pages -- I think page 6 and page 7 is the
12 extent to which they've been cited in this report.

13 Q And you mean footnote 7 and 8?

14 A Yes, sir.

15 Q Just for clarity.

16 Now, a couple other questions.

17 Do you know that -- you reference in your
18 report the 29-page methodology document.

19 Do you know what I'm talking about when I
20 say that?

21 A Yes.

22 Q Did you consider that document?

23 A Yes.

24 Q On the website page on Figure 2, just
25 going back to your Figure 2, there are multiple tabs

1 here.

2 Do you see that?

3 A Yes.

4 Q There's the tabs in blue at the top.
5 There's the different hospital gauges, right?

6 A Yes.

7 Q Did you consider each of those?

8 A Yes.

9 Q You looked at all of them?

10 A Yes.

11 Q Okay. Now I want to go -- I want to mark
12 Exhibit 5.

13 (Exhibit 5 marked for identification.)

14 BY MR. CRAIN:

15 Q Let's look at Exhibit 5 for a second.
16 Because you were starting to talk about -- I'm
17 sorry.

18 Do you have it, Mr. Vredenburg?

19 A Yeah. Can I make a point of clarification
20 on the last question?

21 Q Sure. Yes. Of course.

22 A So I could be wrong, I would need to
23 double-check it, but I don't think that the URL
24 changes depending on which tab that you click on. I
25 believe that this URL does encompass each of the

1 tabs.

2 Q Fair.

3 A I don't believe that it changes. But, you
4 know, if that estimation is not correct, you know, I
5 would like to say that each of the URLs that are
6 relevant, that that would be, you know, what I did,
7 and it should be listed here.

8 And, you know, depending on how the
9 website is actually structured, you know, that's
10 already encompassed in this URL or, potentially, if
11 it does change URLs, that that would be, you know, a
12 typo in this report, and each one of those should be
13 included as well.

14 Q Should have been?

15 A Yes.

16 Q Let me just -- to make sure we're on the
17 same page.

18 On you your Figure 2, do you see where it
19 says "hand washing" in the middle?

20 A Yes.

21 Q And it says "Healthcare workers can help,"
22 et cetera, et cetera?

23 A Yes.

24 Q If you look at what I've given you as
25 Exhibit 5, on the first page, there's sort of a

1 highlight over the MRSA infection.

2 Do you see that?

3 A Yes.

4 Q Now, if you go to the second page, it
5 says -- in the place where "hand washing" is on your
6 Figure 2, it says "MRSA infection" with a little
7 blurb.

8 Do you see that?

9 A I on my Figure 2 --

10 Q On your Figure 2, do you see "hand
11 washing" and the blurb that we just talked about?

12 A Yes.

13 Q And go to figure -- to Exhibit 5, page 2.

14 Do you see where it says "MRSA infection"?

15 A Yes, sir.

16 Q That's the same spot on the page, right?

17 A Yes, sir.

18 Q Did you look at the "MRSA infection" tab?

19 A Yes.

20 Q And did you look at for all five of the
21 Plaintiff hospitals or just one?

22 A I don't think it was all five, but it was
23 several. And there was also other example hospitals
24 as well that I looked at that wasn't necessarily the
25 Plaintiff hospitals.

1 Q Okay. So in footnote 8, do you see the
2 URL there in your report? Going back to your
3 report, sir, footnote 8. Sorry. I'm whipping you
4 around, but tell me if you're confused at any time.

5 Do you see footnote 8?

6 A Yes, sir.

7 Q And do you see there's a URL?

8 A Yes, sir.

9 Q And it says "HTTPS://www.
10 hospitalsafetygrade.org/H/Good Samaritan/medical/
11 center."

12 Do you see that?

13 A Yes, sir.

14 Q And then a whole bunch of gobbledygook.

15 Do you see that?

16 A Yes.

17 Q So there should have, if I'm understanding
18 you right, been pages or references to pages for
19 other hospitals here beyond Good Samaritan, right?

20 MS. WOOD: Objection to form.

21 THE WITNESS: I guess I don't completely
22 understand the question.

23 BY MR. CRAIN:

24 Q Let me fix it. Fair enough. I'll take
25 counsel's objection.

1 So you cite the URL here for the Good
2 Samaritan page in Figure 2, right?

3 A Yes, sir.

4 Q But you just told me you also looked at
5 other pages like this for other hospitals, right?

6 A Yes, sir.

7 Q So there should have been URLs for those
8 other hospitals too here, right?

9 MS. WOOD: Objection to form.

10 BY MR. CRAIN:

11 Q Well, do you disagree or do you agree?

12 A I guess --

13 Q Let me strike the question.

14 You told me you reviewed other hospitals'
15 pages like Figure 2 beyond several of
16 the plaintiff -- including several of the plaintiff
17 hospitals and others not in this case, right?

18 A Correct.

19 Q You can't tell me today which ones you
20 reviewed, right? Because you don't remember it.

21 A Well, it may be in the report. I do
22 remember that there was an example where there was a
23 hospital that still received an A grade that had
24 imputed scores. So . . .

25 Q Imputed. That's gonna be the word that's

1 coming up.

2 So that's one other hospital, but there
3 are others that you looked at in forming your
4 opinion, right?

5 A So I guess --

6 Q I don't mean to belabor the point. We can
7 move on in a second. I'm just trying to confirm if
8 it's right. It may not be. You can tell me not.

9 You -- in addition to the Good Samaritan
10 website you reviewed in Figure 2, you reviewed other
11 hospital websites, including all the tabs on those
12 pages, for at least -- well, you tell me.

13 How many other hospitals?

14 A Probably about four other hospitals.

15 Q And they are not cited or referenced
16 specifically in this report, right?

17 A Right. Well, I -- I was not aware that,
18 you know, if -- if the URL was slightly different,
19 where you would have a different name at the end,
20 where almost everything would be the same except for
21 a few numbers, you know --

22 Q That you had to list it?

23 A Yeah. I wasn't aware that I would need to
24 list that separately.

25 Q And would you agree that it's a different

1 website, right? Webpage.

2 A Different webpage.

3 Q Not website. Website is the umbrella; is
4 that fair to say?

5 A Right. Yes.

6 Q And the webpage is the ones underneath the
7 umbrella, right?

8 A Correct.

9 Q So Leapfrog safety --
10 hospitalsafetygrade.org is the website, and the URL
11 in footnote 8 is a webpage, right?

12 A Correct.

13 Q I'm going to move on from that in a
14 second, but I just want to understand a couple
15 things.

16 Did counsel review your expert report
17 before it was served?

18 A Yes.

19 Q Did counsel advise you at any time of your
20 obligations under Rule 26 or Rule 702 of the Federal
21 Rules of Evidence?

22 MS. WOOD: Objection to form.

23 THE WITNESS: Not that I recall.

24 BY MR. CRAIN:

25 Q So you told me about 20 minutes ago that

1 you had an understanding of what Rule 26 and 702
2 provide.

3 Where did that understanding come from?

4 A So I -- you know, this is my first federal
5 report, and I did some research, when accepting this
6 case, into what requirements are specific to federal
7 reports versus state court reports.

8 So I do remember that coming up in my
9 initial research of what I would be doing
10 differently for this report.

11 Q So you self-checked whether your report
12 was compliant with the Federal Rules, correct?

13 A Yes.

14 Q Are you a lawyer?

15 A No.

16 Q Do you have a law degree?

17 A No.

18 Q Have you ever practiced law?

19 A No.

20 MR. CRAIN: Why don't -- we've been going
21 for more than an hour. Do you want to take a break?

22 THE WITNESS: Sure.

23 MR. CRAIN: Let's go off the record.

24 THE VIDEOGRAPHER: We are going off the
25 record. The time is 10:17 a.m.

1 (Recess taken.)

2 THE VIDEOGRAPHER: The time is 10:34 a.m.

3 We are back on the record.

4 BY MR. CRAIN:

5 Q Thank you, Mr. Vredenburg. Welcome back.

6 A Thank you.

7 Q I want to go back to Exhibit 5. You had
8 started to say something, and then I redirected us
9 back. But I want to make sure you got a chance to
10 say what you were going to say.

11 So you were looking at your Exhibit --
12 your Figure 2, which is the Hospital Safety Grade
13 website -- webpage. I'm going to get that right
14 today. And you started talking about folds.

15 Do you know what I'm talking about?

16 A Yes, sir.

17 Q I want to just -- can you -- if it works
18 for this exhibit -- maybe it doesn't -- can you tell
19 me what is above the fold, what is below the fold?
20 You talked about second or third.

21 Can you give me the analysis you were
22 starting to give me before on this exhibit?

23 A Yes.

24 Q Okay. Let's do it.

25 A Great. So one of the research papers that

1 I cite in my report talks -- talks about that and
2 talks about the frequencies of how far people go
3 down the fold and how that's actually been changing
4 over time. And that's been changing for several
5 reasons.

6 So one of them is that screens are higher
7 resolution, and they can be larger. Obviously,
8 Smartphones kind of change that whole equation too
9 because they're smaller. But that, in the past,
10 being above the fold was pretty much everything,
11 where, you know, 80 percent of the time looking, and
12 eyeballs would be above the fold. And that was kind
13 of a more narrow area too because we had smaller,
14 lower-resolution screens.

15 Now, because screens are becoming larger
16 and people are becoming more used to going deeper
17 into websites and reading deeper into content,
18 that's pretty dramatically changed. And most people
19 make it to at least 80 percent down pages, as a
20 general rule.

21 Q Where does that number come from? Is that
22 from the paper you referenced?

23 A Yeah, it comes from the paper that I
24 referenced. I think it's from The Nielsen Group.

25 Q Yeah. And I think it said it used to be

1 that 80 percent of people don't scroll down the
2 page, but now it's 57 percent?

3 MS. WOOD: Objection to form.

4 THE WITNESS: That sounds correct to me.

5 BY MR. CRAIN:

6 Q Perhaps it's changing now because of
7 phones, as you noted, right?

8 A Yes.

9 Q My question is a little bit different.

10 On Exhibit 5, can you tell me what's above
11 and below the fold, or it doesn't work that way?

12 A That large bit leading in was just to kind
13 of say it depends on a specific person's computer.
14 So it's not always going to be the same. But, you
15 know, I think that the way that this is printed out
16 actually is a decent representation. It's going to
17 be true for at least a lot of average users.

18 First page is above the fold. The second
19 page would be the second fold. Third page would be
20 the third fold.

21 Q And does fold correspond to scrolls?

22 A No.

23 Q Okay.

24 A I think it might be a reference to
25 physical paper.

1 Q Okay. Got it.

2 A But that's my understanding of it, is each
3 fold would be completely scrolled down from the
4 last.

5 Q On Exhibit 5?

6 A Yeah. Well, yeah. So I think it's well
7 represented by each page. So --

8 Q Got it.

9 A -- first page, first fold; second page,
10 second fold and so forth.

11 Q Okay. Got it. That's all.

12 I want to change gears. I just didn't
13 want to leave that, you know, thread. You can set
14 that aside for now.

15 I want to go back. We talked a little bit
16 about your assignment, but we didn't start with your
17 opinions. I want to go into your opinions and also
18 your history and your qualifications. You know,
19 sort of go through that.

20 I assume you've gone through that dance
21 before in other depositions, right?

22 A Yes, sir.

23 Q So can you -- so you talked about the
24 scope of your assignment.

25 Can you tell me what are the -- feel free

1 to reference your report -- what are the opinions
2 you're rendering in this case?

3 And just for the record, can you say which
4 page of your report, which is Exhibit 1, you're
5 going to?

6 A Not a problem. So page 9 for Opinion 1.

7 Q Okay.

8 A And I'm just going to read it verbatim
9 here.

10 Q Great.

11 A "The website's design ensures high clarity
12 and transparency for reasonable consumers."

13 Q And stopping you there, when you say "the
14 website," are we just now talking about Figure 1 and
15 Figure 2?

16 A So, in the way that I see it, I would
17 answer "yes," but I want to put like a disclaimer,
18 just to make sure it's clear.

19 So the -- if we go back to Figure 2.

20 Q Yep.

21 A So Figure 1, that's going to be identical,
22 you know, who whoever is loading in because, you
23 know, it's not to a particular hospital or anything
24 like that. So that's always going to be the same.

25 Q Yep.

1 A And we had a discussion earlier about, you
2 know, this is for the Good Samaritan Medical Center.

3 Q Yeah. I take that point. You're saying
4 that the page -- regardless of the ultimate
5 hospital, the layout, the content of the Figure 2
6 model, right?

7 A Yeah. So the user experience is identical
8 between the different hospitals; while there are
9 different pages, the user experience between the
10 pages is identical. So this is used as, you know,
11 an example of a subject page.

12 Q Yep.

13 A The user experience in terms of where
14 everything is laid out, where all the buttons are,
15 all the links, they're identical for this hospital
16 versus another hospital.

17 Q Sure.

18 A So I'm encompassing all possible
19 hospitals.

20 Q So, in Opinion 1, "The website's design
21 ensures high clarity and transparency for reasonable
22 consumers."

23 When you say "the website," that means the
24 landing page of Figure 1 and any hospitals' page as
25 modeled by Figure 2; is that fair?

1 A Yes, sir.

2 Q And no other pages are the subject of
3 Opinion 1?

4 A So I would say that there is reference to
5 other pages because of the links on this page. So
6 the actual content of them, you know, goes beyond --
7 except for that I evaluated them and said that, you
8 know, this is getting, you know, for an expert user.

9 Q So let me just be a little concrete.
10 We talked about in Figure 2, the top right
11 corner where it says the detailed table.

12 Do you remember that?

13 A Yes.

14 Q Does your Opinion 1 that "The website's
15 design ensures high clarity and transparency for
16 reasonable consumers" -- do you also opine that the
17 detailed table webpage ensures high clarity and
18 transparency for reasonable consumers, or no?

19 A No.

20 Q Got it. Okay.

21 Are there any other webpages for which
22 Opinion 1's -- that you say the design ensures high
23 clarity and transparency for reasonable consumers
24 apply to?

25 A Yeah. So my analysis was focused on these

1 two pages. You know --

2 Q I just want to make sure we're closing the
3 loop.

4 Are there any other pages beyond the ones
5 reflected at Figure 1 and 2. It's not a gotcha
6 question. The models. Any other pages to which
7 this applies?

8 For instance, the FAQ, the "about the
9 grade," the methodology, or is it just those two?

10 A It's an important question. I want to
11 read this over and give that a little bit of
12 thought, if that's okay.

13 Q Okay. You want to read Opinion 1?

14 A Yeah. I'm just going to --

15 Q It's a paragraph. Feel free to read
16 Opinion 1. And then we'll go on to Opinion 2.

17 A Is it all right for me to begin again?

18 Q Yes. I just want to know -- your
19 Opinion 1 says "The website's design ensures high
20 clarity and transparency for reasonable consumers."

21 We've established that your opinion on the
22 clarity and transparency applies to the website
23 at -- webpage at Figure 1 and the model of the
24 website at Figure 2, regardless of hospital,
25 correct?

1 A Correct.

2 Q Are there any other page webpages to which
3 your Opinion 1 applies?

4 A So I think that the last part of the last
5 sentence --

6 Q Where?

7 A -- as well, for the --

8 Q Sorry, which sentence?

9 A It's on the top of page 10. So I think
10 what you said is fair. I just want to throw in "and
11 links to educational video on using the grade and
12 making the site an effective tool for informed
13 decisions without requiring technical expertise."
14 I'm sorry. I probably should have started a little
15 bit earlier.

16 But it's just talking about the different
17 links that are available. So I just wanted to point
18 out that I did evaluate those links, but the focus
19 definitely is on Figures 1 and 2 on those pages.

20 Q Just to make sure, when you say you
21 evaluated -- just because I need to be -- and I
22 don't mean to be difficult, but we need to know what
23 you're going to testify to at trial. And that's the
24 whole purpose of the rules, the whole purpose of
25 today, right?

1 So my question is, when you say
2 "evaluate," is your opinion that the design ensures
3 high clarity and transparency -- are the links
4 informing your view of the website at Exhibit --
5 webpage at Exhibit 2, or are you saying those other
6 pages that are linked have high clarity and
7 transparency?

8 A So, yeah, I'm not opining on those other
9 pages and those other links --

10 Q Great.

11 A -- in terms of their clarity and
12 transparency.

13 Q That's helpful. Thank you. I just want
14 to make sure we understand where we're going.

15 Now, you also say here "educational
16 videos." Is that a typo and there's one, or are
17 there more videos than the one we talked about
18 today?

19 A So it would only be the one, because those
20 are the pages that I evaluated, and I don't believe
21 Figure 1 has any shown, which I'm just going to
22 double-check here. But . . .

23 Q So to the best of your recollection today,
24 that sentence should have been referring to one
25 video?

1 A Yeah. That's fair to say.

2 Q Okay. Again, I'm just asking for your
3 best recollection today. If you don't remember,
4 that's fine too.

5 Okay. So that's Opinion 1. We'll come
6 back and do a little deeper dive.

7 Do you want to go into Opinion 2?

8 A Yes, sir.

9 Q So we're looking at page 10 of Exhibit 1?

10 A Yes.

11 Q Great. Go ahead.

12 A "The website's readability enables
13 accessibility for a general audience."

14 Q You know what my question will be. Just
15 to make sure, is it -- when you say -- we can do it
16 throughout. When you say "the website" in your
17 opinions, are we still just talking about Figure 1
18 and the model of Figure 2?

19 A Yes, sir.

20 Q And again, when I say "the model of Figure
21 2," I mean any hospital page, but just that page,
22 right?

23 A Yeah. I would also say it applies to the
24 search page between them, the link.

25 Q Okay.

1 A You've got your initial home page, your
2 search page, the landing page, which is shown in
3 Figure 2.

4 Q Okay. So that was three, the first of
5 which is Figure 1, the third of which is Figure 2,
6 the second of which is not referenced, right?

7 A Correct.

8 Q But it is part of your opinion?

9 A Yes.

10 Q Okay. All right. So that's Opinion 2.
11 How are Opinions 1 and 2 different?

12 A So Opinion 2 has a focus on readability
13 level based on a couple popular yardsticks. But --

14 Q Is that what "accessibility" means in that
15 context?

16 A Yes. So the main sort of quantitative
17 analysis for Opinion 2 was performing the reading
18 grade -- the reading grade analysis for what reading
19 level the page was at.

20 Q Okay. Got it. We'll come back to it. I
21 just wanted to make sure I understood.

22 And the headers on 1 and 2, 1 says
23 "Transparency and Clarity," 2 says "Accessibility."

24 Is that the primary difference too at a
25 big-picture level?

1 A Yes.

2 Q Go on to 3, which is on page 11.

3 A "Imputed scores are readily clear to users
4 with a basic reading comprehension."

5 Q We'll come back to that one.

6 You want to go Opinion 4, page 12?

7 A "Leapfrogs' UX testing validates the
8 website's clarity in contrast to Berger's untested
9 methodology."

10 Q And then the last one, I think is page 14.

11 A "Google Analytics data demonstrates high
12 user engagement with full-page content, ensuring
13 visibility of key disclosures."

14 Q Now, "full-page content," again, similar
15 question to Opinions 4 and 5.

16 Are we referring to those same webpages
17 only?

18 A Yes.

19 Q Okay. Now, just to make sure we've closed
20 the loop, do you have any other opinions in this
21 case that you intend to present at trial beyond
22 those five?

23 A No.

24 Q Okay. And you've not -- have you
25 developed any additional opinions since serving your

1 report?

2 A No.

3 Q And your supplemental report does not
4 contain new opinions. It just fixes certain
5 ministerial errors?

6 A Computer bug that didn't end up changing
7 any analysis, but it was a bug, and I wanted to fix
8 it.

9 Q Okay. But no opinion change?

10 A No opinion change.

11 Q Okay. So let's shift gears. You can set
12 this aside for now.

13 I want to talk -- we'll go -- I promised
14 you the dance of your qualifications and expertise.
15 Let's talk about that.

16 So your -- so can you -- can you tell me
17 what the area of expertise you or counsel are
18 seeking to offer you at trial as? How would you
19 describe it?

20 A So I would say the umbrella of my
21 expertise is human factors engineering. And a
22 subset of that, which I received the certification
23 in, is user experience.

24 Q So let's start with -- let's take each of
25 those in turn.

1 Human factors engineering. I didn't know
2 what it was before I looked it up, but what is it?

3 A Great. So human factors -- I'll start
4 just there. What's human factors.

5 Q Uh-huh.

6 A So human factors is trying to make
7 products or systems that we live in for humans. So,
8 if you run a factory and you've got robots going on
9 in a factory and you don't have people in there,
10 there's no human factors going on because that's
11 just an industrial system.

12 And I do have a degree in human factors
13 and industrial engineering, a master's in that. And
14 so industrial engineering would be like, you know,
15 you've got this automated factory, and that's just
16 industrial engineering. And human factors would be
17 "How I do make a machine for a human to work with in
18 a factory?" or "How do I make a car safe? How do I
19 do make an interface on a plane safe? How I do make
20 a website understandable?"

21 So it's what are the limitations of
22 humans, and how do we apply that to design and the
23 systems that we create.

24 Q I had read that one example of human
25 factors engineering is just a keyboard; is that fair

1 to say?

2 A Sure.

3 Q Like the design of whether -- and my
4 understanding is our keyboard is a terrible design,
5 and there are better ones.

6 Is that right?

7 A That's correct.

8 Q That's one example of human factors
9 engineering?

10 A Yeah, human computer interface.

11 Q Yeah. Okay. And then -- so -- and then
12 talk to me about what UX is for a second.

13 Is that a subspecialty?

14 A It is a subspecialty. And it stands for
15 "user experience." So that's applying human factors
16 to computer interaction. So it is kind of broad
17 because just a website, that's an obvious
18 computer/human interaction, but now computer/human
19 interactions are getting pretty complex. It would
20 be virtual reality or talking to your virtual
21 assistant and any way that you interact with a
22 computer or a system, that's user experience.

23 Q Is it fair to say that like your human
24 factors engineering is almost like your medical
25 school degree, and UX is like neurology? Like some

1 subspecialty within that broader umbrella?

2 A Sure.

3 Q And then is UX specific to computers only,
4 or are there other applications?

5 A There's definitely other applications.
6 The birth of it, in terms of being heavily studied
7 and documented in the literature, what, you know,
8 students are going to learn about first is pilots
9 working with their instruments and their interface.
10 That's the user experience for, like, flying a
11 plane.

12 Q Got it.

13 That strikes me as a little more analogous
14 to the industrial engineering we were talking about
15 a moment ago; is that fair, or no? I mean, tell me
16 how they're different.

17 A So I would definitely put that under the
18 category of "user experience" and more like a
19 repetitive task with the machine being more like
20 industrial.

21 Q Got it.

22 A But there can definitely be overlap. So
23 you can have user experience of a machine in a
24 factory. So . . .

25 Q Got it. Okay.

1 And then you had said earlier your
2 expertise in human factors engineering, UX, is very
3 different from Professor Berger's, right?

4 A Yes.

5 Q And his is more about -- well, you tell me
6 what his -- what you understand his expertise to be.

7 A So I believe his expertise to be in -- as
8 a marketing professor.

9 Q And consumer choice and consumer
10 psychology?

11 A As it relates to his profession and what
12 he teaches in marketing.

13 Q Okay. And then let me go back to
14 something you said when you were talking about human
15 factors engineering more broadly.

16 You talked about website
17 understandability, I think; is that right?

18 A Usability?

19 Q Usability. I'm sorry. I couldn't even
20 read my own handwriting. Usability. That's not
21 very usable.

22 Tell me -- so what is your experience with
23 website usability?

24 A So I have created several websites that
25 get used for my company, as well as I've done

1 published research on evaluating the usability of
2 online learning platform for WINGS, I believe it's
3 called. So I performed that research and got that
4 published as well.

5 Q So starting -- let's go to that. I want
6 to go to your report again, Exhibit 1, if you could
7 pull it out. Appendix A. Yeah.

8 You mentioned a moment ago that you have
9 done research for online -- for learning platform
10 for WINGS, right?

11 A Yes.

12 Q What is WINGS?

13 A So it's the online learning platform for
14 Wright State, which is the university I got my
15 master's degree on.

16 Q Got it. Okay.

17 And then is that -- so, if you can go to
18 page 20. This is your Appendix A.

19 Do you see that?

20 A Yes.

21 Q And Appendix A, you understand under Rule
22 26, you have to give a list of your publications for
23 the last 10 years, right?

24 A Yes.

25 Q Is that WINGS research reflected here?

1 A Yes. It's at the top of the page.

2 Q Where is -- 2021?

3 A Yes.

4 Q Got it. Okay.

5 So user -- "An evaluation of pilot
6 education platform an online at Wright State
7 University." That's it?

8 A Yes.

9 Q And what was the thesis of that paper?

10 Go ahead. Yeah.

11 A So I started as kind of like a pilot
12 program for Wright State as one of the first online
13 students to ever be at the school. And I believe
14 that that actually started immediately before the
15 pandemic. So it was by coincidence that I had --

16 Q Good timing.

17 A -- that I had already been remote.

18 But they told me it was going to be a
19 hybrid program because they were just trialing it
20 out, and so I would need to fly to campus
21 periodically. But the pandemic hit. Everybody got
22 forced online. And everybody had to do some rapid
23 iteration, really quick learning on how does online
24 learning work.

25 And so they knew that they had some big

1 holes in their program, that it wasn't, you know, a
2 final polished version. It was more like "We got
3 forced onto this, and this is, you know, one of the
4 earlier iterations. So we need to start working on
5 this and how to improve it."

6 So it evaluated different aspects on
7 how -- how it could be improved and what the
8 strengths and weaknesses were. And so it was kind
9 of a proposal for them on how to keep improving.

10 Q And you were getting your master's degree
11 at the time?

12 A Yes.

13 Q So what expertise did you draw on to write
14 this paper?

15 A So the coursework that I was working on in
16 user experience, I published this alongside user
17 experience professor, Dr. Cao, as well as a Ph.D.
18 student, Paul Stone.

19 Q And you're the first author?

20 A Yep.

21 Q Pretty good.

22 A And I had also done a lot of publications
23 before that. This isn't all the publications.
24 There's some more beyond this page. I just did 10
25 years.

1 Q Okay.

2 A And so I'm just in the habit of
3 periodically, when the right opportunity arises,
4 doing a publication. And like I had told you, I'm
5 already kind of working on the next one.

6 Q Yep. So let me ask you, just going back
7 to this one, was this peer-reviewed?

8 A Yes.

9 Q And do you know who -- like, how that
10 process unfolded?

11 A Absolutely. Yeah. This is through the
12 Human Factors and Ergonomics Society. So they are
13 the biggest, you know, sort of authority on the
14 subject. And so it's kind of a professional
15 membership as well as a research membership, and it
16 encompasses a lot. It's a big organization.

17 They throw absolutely huge conferences.
18 And I enjoy attending. I've even -- I've even ended
19 up chairing sessions before through them. And I was
20 the secretary for the Forensics Professionals Group
21 there as well and --

22 Q Let me go back to my original question.

23 I asked you about -- you had mentioned
24 website usability, and I asked you about your
25 experience with that, right?

1 A Yes.

2 Q And you referenced this paper, right?

3 A Yes.

4 Q What other experience do you have with
5 expect to website usability?

6 A So that would be the certification and UX.

7 Q UX. Okay. Tell me more about that.

8 A So after completing my master's and
9 receiving that degree, at that time, I was still
10 pursuing a Ph.D. as well. And so I thought, you
11 know, I might as well add on this certification, do
12 some classes relevant to it. I feel like it's a
13 really useful specialty.

14 And I -- you know, master's through 95 to
15 99 percent of the coursework through Ph.D. Made it
16 through with a 4.0 straight As and --

17 Q Why did you not complete the Ph.D.?

18 A So the problem is, whatever research that
19 you're doing, the university ends up owning at least
20 half of it. And the work that I'm patenting and
21 working on, I definitely don't want to give up half
22 of the ownership of. So it just wasn't a smart move
23 to -- you know, I've only got so much time to be
24 working on patents and research. And, you know, as
25 kind of a tactical decision, I decided that I didn't

1 want the university to own half of it.

2 Q You're saying anything you patent,
3 regardless of how related to the university it is,
4 they would own half of it?

5 A If it's a part of your dissertation
6 research, yes.

7 Q Got it.

8 So for you -- so what was your
9 dissertation going to be on?

10 A On digital warnings.

11 Q And you've not published that?

12 A No.

13 Q Okay. You have another piece I think I
14 saw about digital warnings, right? Or not digital.
15 About warnings generally.

16 A Risk communication?

17 Q Yeah. And there was a hierarchy of three
18 things, right?

19 A Yes.

20 Q Yeah. Okay.

21 Separate from that, that's not your
22 dissertation?

23 A Separate from that, yeah, that's not the
24 dissertation.

25 Q Got it. Okay.

1 So, ultimately, anything relating to
2 digital warnings was going to be owned half by the
3 school?

4 A Yes.

5 Q Did you sign a contract for that?

6 A That's just standard procedure for --
7 that's how schools make almost all their money.
8 The, like, undergraduate tuition and stuff, that's a
9 drop in the bucket. They make all their money off
10 intellectual property.

11 Q Even if you're not -- even if you're
12 researching something separately, like off campus?

13 A If it's a part of your dissertation.

14 Q If it's part of your dissertation. Got
15 it.

16 So like your 3D printer, for instance --
17 right? -- that business, would that have been part
18 owned by the school?

19 A So I wanted to pivot to that because
20 that's -- I've made incredible strides on that, and
21 I didn't have time to do both. So I was thinking,
22 well, do I want to make this my dissertation focus.
23 And then when I found out that the university would
24 own half of whatever, you know, becomes a part of
25 that patent, that is a real business killer.

1 Q And that business was related to your
2 dissertation?

3 A So the Ph.D. was just a Ph.D. of
4 engineering. So anything related to engineering
5 could have been the focus of the dissertation.

6 Q That is crazy. Wow. Okay.

7 So your entire business, they could have
8 claimed half of?

9 A Yes.

10 (Exhibit 6 marked for identification.)

11 BY MR. CRAIN:

12 Q I want to mark as Exhibit 6. Okay. Thank
13 you.

14 Do you recognize this document? Have you
15 ever seen it before?

16 A I recognize it. I'm not sure if I've seen
17 it before or not. Likely I have.

18 Q What does it appear to be?

19 A The graduate certificate information
20 about, I guess, what courses are required for it.

21 Q Now, can you flip through it quickly? I
22 think it's just a page.

23 Is this a true and accurate depiction of
24 the experience you went through when you got the UX
25 certification?

1 A Yes.

2 Q So, for instance, the required courses, do
3 you see that in the middle of the page?

4 A Yes.

5 Q Did you take those three courses?

6 A To the best of my memory, yes.

7 Q Did you take other courses?

8 A Yes.

9 Q Did you take any course specifically about
10 website design?

11 A Well, they definitely accompany that. I
12 don't know if there was -- I don't recall if that
13 was specifically the focus of any, but, you know,
14 doing mockups for websites as definitely the focus
15 for them. So how you do the mockups, how you do the
16 testing for the user experience to see, you know, if
17 you've got an effective design, how to do the
18 iteration, what software gets used for that.

19 Q Got it.

20 So it was covered at least to some degree?

21 A Heavily, yeah.

22 Q And, for instance, the IAG 7340 user
23 experience design for mobile computing, do you see
24 that?

25 A Yes.

1 Q Is that like design for phones?

2 A Yes.

3 Q And that's like website for phones or like
4 phone interface?

5 A Websites or apps.

6 Q Or apps. Got it. Okay. I'm just taking
7 a look.

8 And I think it was nine credits; is that
9 right?

10 A Yes.

11 Q How many courses does that amount to?

12 A Three.

13 Q So it's just these three required courses
14 get you the certification?

15 A Right.

16 Q Did you take those at the same time you
17 were doing your master's?

18 A No. That was after I received the
19 master's.

20 Q Got it. Okay.

21 So you came back to do the certification?

22 A Well, so I entered Wright State as a part
23 of their Ph.D. program initially and received a
24 master's along the way.

25 Q Got it.

1 A And after receiving the master's, I just
2 so happened -- the timing was that I got interested
3 in this certification. And so I received that
4 immediately after the -- receiving the master's.

5 Q Got it. Okay.

6 And just stepping back a little bit, you
7 walked me through your education. You went to high
8 school in Carlsbad?

9 A Yes.

10 Q You graduated in 2012?

11 A 2010.

12 Q 2010. Okay.

13 Then you went to Berkeley? Am I recalling
14 right?

15 A UC Berkeley. Yes.

16 Q What degree did you get there?

17 A Bioengineering.

18 Q Okay. And then from Berkeley, where did
19 you go?

20 A To Wright State University.

21 Q Did you work in between or you went
22 direct?

23 A I did work in between.

24 Q Where did you work?

25 A At Vredenburg & Associates.

1 Q We'll come back to that.

2 But then you went to Wright State to get
3 the master's?

4 A So I got accepted into the Ph.D.
5 program --

6 Q Yeah.

7 A -- and received the master's along the
8 way.

9 Q And then the certification?

10 A Yes.

11 Q Any other educational history?

12 A No.

13 Q Besides middle school and all that. I
14 assume you got those.

15 Going back to the Ph.D. Why did you want
16 to get a Ph.D.?

17 A So you can see from my background that I
18 like research, and I like doing publications. And
19 so the idea of a dissertation and focusing heavily
20 on one topic and really putting together kind of a
21 more substantial research than a typical research
22 paper really appealed to me.

23 Q You were an aspiring academic?

24 A I don't think I wanted to be a professor,
25 but I really like research.

1 Q Okay. And then why did you want your
2 Ph.D. to be in human factors engineering, if that's
3 right?

4 A So the Ph.D. would have just been
5 engineering, a Ph.D. of engineering. So it wouldn't
6 have been attributed to -- you know, it is whatever
7 the dissertation is, basically.

8 Q Got it. Okay.

9 So your specialty would have been whatever
10 your dissertation yielded in the end, right?

11 A Right.

12 Q How far did you get into doing your
13 dissertation?

14 A About a year.

15 Q How far did you -- how much did you write,
16 if anything?

17 A I'd say probably only about 10 pages. I
18 think the focus was more on the background research
19 and figuring out how I wanted to go about conducting
20 the research.

21 Q Okay. And then how long were you at
22 Wright State all told? I think it's there. Feel
23 free to reference. Just figure you're the expert in
24 you.

25 A So it doesn't say exactly. I would have

1 to give my best estimation. I believe I started in
2 2018 or 2019.

3 Q Okay.

4 A And I estimate that I went on hold in
5 2022.

6 Q Okay.

7 A So technically, everything is on hold, and
8 I could pick up there if I wanted to.

9 Q Got it.

10 A But at this time, I don't have the
11 intention to.

12 Q So you were there for like two or three
13 years?

14 A Yeah. Well, I think it was a little bit
15 longer than that. 20- --

16 Q It says your UX certificate was 2021.
17 Do you see that?

18 A I think I was there about four years.

19 Q So what years?

20 A I think between 2018 to 2022.

21 Q Okay. And you had one year of your
22 dissertation?

23 A Well, yeah.

24 Q And how long did it take to get your
25 master's?

1 A Two years.

2 Q Okay. And going back, you said you
3 graduated high school in 2010, right?

4 A Yes.

5 Q And you graduated from Berkeley in 2016,
6 right?

7 A Yes.

8 Q Love Berkeley. Fabulous food. Set that
9 aside.

10 What did you do -- how long did it take to
11 get your degree at Berkeley?

12 A It took six years.

13 Q Did you do extra degrees or it just took
14 more time?

15 A So I, believe it or not, was two classes
16 short from a minor in practice of art. So I did
17 take some extra time to do practice of art, like oil
18 painting.

19 Q Uh-huh.

20 A But at the end, I was pretty ready to go,
21 and I knew that a minor in practice of art was not
22 necessary for, you know, anything that I was doing
23 going forward. So it was more about the process
24 than -- than -- and also, Berkeley is impacted, and
25 it's tough. It's pretty normal for it to take

1 longer than four years for people to get through.

2 Q Got it. Okay.

3 And you got a BS in bioengineering?

4 A Yes.

5 Q And you were going to get a minor in --
6 what was it again?

7 A Practice of art.

8 Q Practice of art. Okay. Got it.

9 And you ultimately decided to set aside
10 the practice of art?

11 A Correct. Yeah.

12 Q Okay. Let's see. Okay.

13 And your BS, were you pursuing that the
14 whole time you were there, or you changed major?

15 A I was always pursuing that.

16 Q Just a challenging degree?

17 A Yes.

18 Q Okay. Let's set that aside.

19 Are you a member of any professional
20 organizations?

21 A Yes. The Human Factors and Ergonomics
22 Society.

23 Q Okay. What is that?

24 A So they have a -- I think they have two
25 conferences a year, actually, now, one focused on

1 healthcare, and one focused on the general human
2 factors. And you can see I published with them and
3 presented with them a decent number of times.

4 Q Yeah.

5 A I mentioned that I've chaired a session,
6 and I was the secretary as well for one of the
7 groups there.

8 Q What session did you chair?

9 A That's a great question.

10 Q I try. Every 10 questions or so.

11 A I remember the process of chairing it. I
12 just want to make sure I give you the right answer.

13 Q I can narrow the question, if it's
14 helpful.

15 A Oh, here we go. I've got it listed. Risk
16 prevention and assessment.

17 Q What does that mean?

18 A In 2017.

19 So I would summarize that by saying hazard
20 management.

21 Q Okay. Got it.

22 And what does "hazard management" mean?

23 A Sure. So it would be taking the design
24 philosophy of designing a system or a thing or a
25 product to not hurt people. And if for whatever

1 reason you can't design that out -- like say a
2 circular saw. You can't remove the blade. It's
3 inherent to the design.

4 Q Yep.

5 A Then the next area is a barrier. So
6 modern saws typically have a barrier that will go
7 over the blade. And then the final hazard
8 management technique is warnings.

9 So, if you've tried to design and barrier
10 out the hazard, then you go through the whole gambit
11 of doing warnings.

12 Q And your paper, I think, says warnings are
13 the least effective to avoid the hazard, right?

14 A Correct.

15 Q And then I'm trying to think.

16 Any of your work for the Ergonomics
17 Institute? I'm trying to say that right.

18 A Human Factors and Ergonomics Society.
19 It's a mouthful.

20 Q Yeah. It is a mouthful. I'll say "the
21 society." How about that?

22 A Yeah.

23 Q Does any of your work for the society
24 involve website design?

25 A No.

1 Q Any other papers or expertise in your
2 history relating to website design?

3 A No.

4 Q Okay. So just to summarize, you have the
5 article from 2021, right?

6 A Correct.

7 Q Anything else I'm missing?

8 A Related to user experience in particular?

9 Q Well, related, sorry, first to website
10 design.

11 A Correct.

12 Q Okay. And then related to user
13 experience.

14 A I want to say yes. I feel like there
15 might be tangentially related to user experience
16 because it's pretty broad for some of the other
17 ones --

18 Q Yep.

19 A -- like risk communication.

20 Q That's on page 21 of your report, Appendix
21 A?

22 A Page 20, I think.

23 Q 20. I see risk communication for consumer
24 products.

25 A Yeah. That could be related to user

1 experience.

2 Q But that one was not about websites,
3 right? I think that was the one you just gave the
4 example about the saw.

5 A My apologies for the delay. I was just
6 reading through it.

7 Q Yeah.

8 A I believe that you're correct.

9 Q Okay. Got it.

10 And correct -- sorry, just so we're clear,
11 because I lost my question. My question was, any
12 other experience, published article, presentation
13 about user experience beyond -- it looks like risk
14 communication. There's a paper and a presentation.

15 Anything else?

16 A User experience of websites.

17 Q Yeah.

18 A Yes.

19 Q Nothing else?

20 A Correct. For user experience of websites.

21 Q Okay. What about user experience more
22 broadly?

23 A Using consumer products, that's definitely
24 a type of user experience. Risk communication --

25 Q Sorry. What's an example of -- just for

1 the record, consumer products, what does that mean
2 in this context?

3 A How you use a consumer product. So a car
4 is a consumer product. How you use a car, that's
5 definitely deep into user experience.

6 Q Does my cleaning product example work from
7 earlier or no?

8 A I think it could.

9 Q So physical products more?

10 A Yeah.

11 Q Got it. Go ahead. Sorry.

12 A And so risk communication of consumer
13 products, that's related to user experience.

14 Q Okay. Anything else?

15 A And then I had an older publication too.
16 They requested it yesterday.

17 Q That was the one --

18 A That was the one was related to user
19 experience as well.

20 Q That was referenced, I think, in one of
21 the paragraphs of your report, right?

22 A No, it wasn't.

23 Q Oh, it wasn't. We're talking about the
24 2019 article?

25 A Yeah. I don't think I referenced it.

1 Q Got it.

2 Take a look at paragraph 5.

3 A Oh, yeah. No, actually, I did. You're
4 right. It's a not footnote. That's what I was
5 thinking.

6 Q It's not a footnote. Yeah. It's not
7 listed in your publications, right?

8 A Yeah.

9 Q Because it's beyond 10 years.

10 A Yeah. I know which paragraph you're
11 talking about now, yeah.

12 Q What's your recollection of what that
13 paper provided?

14 A Sure. So the main thing was that
15 communicating health literature, communicating
16 health information to consumers is challenging. And
17 it's been a major challenge for pharmaceutical
18 companies and for healthcare providers for a while,
19 figuring out how to do it effectively.

20 And that particular research found that,
21 for the drug that was a part of the study -- I
22 believe it was Warfarin, a blood thinner, that was
23 evaluated with a comprehension test with a -- I
24 believe it was a pretty decent number of
25 participants, and found that even college-educated

1 participants were making kind of life-critical
2 errors.

3 So it was just an indication that the
4 patient information sheet was not written to an
5 accessible level. So it was evaluation of when and
6 how and why health information is accessible.

7 Q And this is not a piece about websites,
8 right?

9 A No. This is about the written word.

10 Q I just want to mark the exhibit, just so
11 we're sure what we're talking about.

12 MR. CRAIN: This is exhibit what, 7?

13 (Exhibit 7 marked for identification.)

14 BY MR. CRAIN:

15 Q And I apologize, this one is not stapled.
16 Just for identification, Mr. Vredenburgh,
17 is this the article you were referring to?

18 A Yes.

19 Q Great. Okay.

20 Let me shift gears. I'm not going to ask
21 you about it. I just wanted to make sure we were
22 talking about the same thing.

23 Do you have any experience with respect to
24 healthcare beyond the topic of this article?

25 A So I did an internship at UCSD med school

1 for a summer as well, doing research on studying --
2 and this is going to sound obvious, but this was
3 what the research was on -- on the link of people --
4 children being exposed to cigarette smoke at home
5 and adverse events from that.

6 Q Got it.

7 A So I got the opportunity to do that as
8 well.

9 Q Okay. Anything else?

10 A No.

11 Q Okay. You can -- oh, and one last
12 question.

13 That was published in 2009, right?

14 A Correct.

15 Q So you were in high school, right?

16 A Correct.

17 Q Okay. Got it. Okay. You can set that
18 aside.

19 A Yeah. The context for this -- because you
20 might be thinking, like, why is a high school
21 student publishing --

22 Q You love research.

23 A -- in the Human -- in this professional
24 society. I was very competitive with the science
25 fairs as a high schooler. I believe I got first

1 place in sweepstakes every year and first place in
2 the International Science Fair. And that was the
3 research that ended up getting published here.

4 Q Okay. Got it.

5 So that's -- that paper is the product of
6 the sweepstakes?

7 A Yes.

8 Q And what's the name of the sweepstakes, if
9 you recall?

10 A So there's the Greater San Diego
11 Sweepstakes, and then that leads on to the state and
12 international science fairs. And for the state
13 science fair, this got first place as well. And I
14 think for the international, it was fourth.

15 Q Got it. Okay.

16 A So it was pretty substantial research to
17 get to that point to be able to, you know, make it
18 through those competitions.

19 Q Yeah. Okay. You can set that aside.

20 I want to talk -- you mentioned briefly
21 employment history, right?

22 So you -- I think you -- the first thing
23 on your CV is Vredenburg & Zackowitz.

24 What is Vredenburg & Zackowitz?

25 A So at the time -- for most of the time

1 that I was working for the company, it just would
2 have been Vredenburg & Associates. It's the
3 company that my mom owns. She is also a human
4 factors expert witness and consultant.

5 Q Runs in the blood.

6 A And so I grew up in the firm. I was going
7 to inspections since middle school and --

8 Q Inspections of what?

9 A Of accidents for litigation.

10 Q Got it.

11 What type of cases were those for?

12 A One that really stuck out in my head early
13 on was for an underwater welding system, which I
14 thought was super cool.

15 Q That is cool.

16 A And got to use the welder, and I thought
17 that was -- that really stuck with me.

18 Q That's interesting.

19 Did you go underwater?

20 A I didn't. I didn't get to go underwater,
21 but that was fun.

22 Q That's cool.

23 Is it fair to say most of your experience
24 in human factors is more like about the physical
25 engineering?

1 A Well, user experience doesn't really have
2 much to do -- well, it's 50/50. It does have to do
3 with the physical world too.

4 Q Yeah.

5 A But that's an interesting question. I
6 feel like, you know, my -- my engineering degree at
7 Berkeley, I would say didn't have too much focus on
8 the physical world because it was focused in
9 computational biology for bioengineering.

10 Q Got it.

11 A So that doesn't have much focus on
12 physical products in the physical world.

13 Q Thus the interest in med school?

14 A The interest in --

15 Q You did the internship at UCSD --
16 right? -- medical?

17 A Oh, yeah, yeah. That was between -- that
18 was either going to college or like one of the first
19 summers of college. And yeah, I was interested in
20 premed at first and quickly wised up.

21 Q Fair enough.

22 So post that, what have you been -- well,
23 I'll come to that.

24 Then just your roles at the firm. So is
25 it fair to say, just to make sure we're on the same

1 page, from 2006 to 2010, you were a forensic and
2 research intern?

3 A Yes.

4 Q From 2010 -- in 2010, you graduated high
5 school, right?

6 A Yes.

7 Q From 2010 to 2016, while you were in
8 college, you were a systems and research analyst?

9 A Correct.

10 Q And then after college, including when you
11 were at Wright State, you were an industrial and
12 human factors engineer, right?

13 A Yes.

14 Q And I'm just trying to think. Did your
15 role change while you were at Vredenburg &
16 Zackowitz? Or Vredenburg?

17 A Certainly. So, you know, before receiving
18 my degree or entering undergraduate, I actually was
19 attending a lot of inspections. And I was even
20 attending depositions. And so I got a lot of early
21 exposure. I got to participate -- or actually, I
22 wasn't participating. I was helping run a lot of
23 big research projects.

24 The firm was doing a lot of research into
25 wheelchair accessibility, so there was a very large

1 study that got put together for that. So I got to
2 set up ramps, set up rooms for that, as well as,
3 like, you know, give the participants, you know,
4 water bottles and stuff to drink and doing -- so
5 things were not automated back then. So I did a lot
6 of data analysis too where there would be, you know,
7 binders like this full of -- full of surveys and
8 tests. And so I would be the one inputting them
9 into the computer at that early point.

10 Q And now you can do it in a minute.

11 A That's probably a good thing.

12 Q Yeah. I'm going to mark as Exhibit 8.

13 (Exhibit 8 marked for identification.)

14 BY MR. CRAIN:

15 Q Do you recognize this document?

16 A Yes.

17 Q What is it?

18 A This is the Vredenburgh & Zackowitz
19 webpage.

20 Q And just flip through it. I just want to
21 get a sense, is this an accurate depiction of the
22 types of work you did during your time at
23 Vredenburgh & Zackowitz or just Vredenburgh?

24 A Yes.

25 Q If you go to page -- there's no page

1 number, but if you go to page -- the third page, do
2 you see it says "Our Expertise"?

3 A Yes.

4 Q "Our consultants serve as forensic, the
5 application of science to law, human factors experts
6 for product liability, personal injury and
7 employment cases in the area of human factors safety
8 and industrial organizational psychology."

9 Is that a fair reflection of Vredenburg
10 or Vredenburg & Zackowitz's expertise?

11 A So now that I have my own firm, I would
12 definitely say that is true. There was a period of
13 time where I was the firm's engineer because they
14 don't have engineering degrees. Their focus is on
15 pure human factors. Dr. Alison Vredenburg and
16 Dr. Ileen Zackowitz, the partners. And so --

17 Q What's the distinction that you're drawing
18 between human factors and engineering? Can you just
19 articulate it?

20 A Sure. We touched on it earlier. I was
21 going the umbrella of human factors, and then
22 underneath it can be various different things, like
23 user experience and human factors engineering.

24 So human factors engineering, I would say,
25 is definitely a specialty within it where you

1 focus -- so on the design hierarchy, as I was
2 telling you about, in order to really opine on what
3 designs are possible or what barriers are possible,
4 doing rapid iterations, making mockups, making
5 models on computers and imprinting them, performing,
6 you know, testing, like destructive testing and so
7 forth.

8 Q Sounds fun.

9 So just the design hierarchy, can you lay
10 it out for me again, the one, two, three?

11 A Sure. So design is the primary first
12 focus of hazard management. So when you're creating
13 a product, creating a saw, first you try to figure
14 out "How do I make this saw so that it can't hurt
15 someone?"

16 Q And then it's guardrail?

17 A And then it's guarding.

18 Q Guarding.

19 A Guarding or barriers.

20 Q And then it's warnings?

21 A And then it's warnings, yes.

22 Q Does the engineer focus on one and two?

23 A No. The engineer will focus on all three.

24 Q Does do all three?

25 A Yeah.

1 Q So the engineer helps with the warnings
2 too?

3 A Yes.

4 Q Going back to this page, it says there's
5 experience for products liability, personal injury,
6 and employment cases.

7 Is that a fair depiction of the types of
8 cases that you worked on at Vredenburgh & Zackowitz?

9 A I never did any employment cases.

10 Q Did you do any cases beyond those three,
11 products liability, personal injury, and I guess not
12 employment cases?

13 A I'm not sure if you included it or not,
14 but there was industrial accidents. That would be
15 something that would come up pretty regularly.

16 Q Okay. That may be personal injury. It
17 may be different. That's the question?

18 A Yeah. I would say like factory accidents,
19 that would treat differently than personal injury.

20 Q Okay. And did you serve as a testifying
21 expert at any point for Vredenburgh & Zackowitz or
22 Vredenburgh?

23 A Yes.

24 Q How many times did you serve as a
25 testifying expert?

1 A I'm going to have to give you --

2 Q Ballpark is okay.

3 A -- an estimate.

4 Q Well, you were deposed 11 times, right?

5 You have been deposed 11 times?

6 A Right. Especially early on, I was
7 retained and worked on a ton of cases, but didn't
8 get deposed.

9 Q Got it.

10 A A lot of the smaller cases would settle
11 early on.

12 Q Of those 11 depositions, how many of those
13 happened while you were at the Vredenburg company,
14 approximately?

15 A I can give you a good approximation on
16 that.

17 Q Okay.

18 A That would be 100 percent of them.

19 Q Got it. Okay.

20 And when was the last time you were
21 deposed?

22 A Looks like August 2nd of 2024.

23 Q So last year?

24 A Yes.

25 Q And when -- well, we'll come to that.

1 Okay.

2 So you are no longer with the Vredenburg
3 firm in any iteration, right?

4 A So I'm still on great terms with them. I
5 don't know if you're going to find it here or not,
6 but I actually still am on their website, still get
7 referrals from them. But I wanted to create my own
8 company because I'm doing so much more beyond --
9 than what they were doing in their company. And
10 so --

11 Q Just to close the loop, are you an
12 employee or contractor, or you're just affiliated?

13 A Just affiliated.

14 Q And then when you say your own company, is
15 that Cherry Tomato?

16 A Yes.

17 Q Tell me about Cherry Tomato.

18 A Sure. So I believe I brought it up
19 before, but there's two primary focuses. It would
20 be consulting and litigation support, as well as
21 product creation, patenting, and kind of the more
22 hard core engineering.

23 Q The case you were deposed in last year,
24 was that a Vredenburg case or a Cherry Tomato case?

25 A Vredenburg.

1 Q Have you gotten any cases through Cherry
2 Tomato yet?

3 A Yes. I believe that I -- I just checked
4 this the other day. I think I'm currently
5 designated on about 20 cases.

6 Q Okay. When you say "designated," do you
7 mean retained or you've been --

8 A Retained, yeah.

9 Q So you're currently serving as a retained
10 expert in 20 cases through Cherry Tomato?

11 A Yes.

12 Q Got it. Okay.

13 And you had said you've been, all told,
14 retained in about a hundred cases, right?

15 A Yes.

16 Q And 70 percent of them have settled; is
17 that right?

18 A Oh, I think it's a higher percent than
19 that.

20 Q Higher percent. Okay. Got it.

21 Because you've only testified at trial
22 twice, right?

23 A Correct.

24 Q I want to just -- before we leave -- we'll
25 come to that in a second. I want to just get --

1 talk a little about Cherry Tomato. We're going to
2 mark as Exhibit 9.

3 (Exhibit 9 marked for identification.)

4 BY MR. CRAIN:

5 Q I've handed you what is marked as
6 Exhibit 9.

7 Can you tell me what this document is?

8 A Sure. This is just like a little
9 AI-generated placeholder project that I did right as
10 I incorporated the company. This isn't -- this
11 isn't like -- I didn't even know that this was even
12 live. This is just -- this is just like a little
13 placeholder for the website.

14 I think the main website that I'm using is
15 sculptedspaces.com for the 3D printed. So this
16 was -- this was just like a little fun weekend thing
17 to show kind of my wife like "Hey, I incorporated.
18 I made a website. Check this out."

19 Q Got it. Okay.

20 This is, I'll represent to you, what comes
21 up when you Google "Cherry Tomato." Engineering,
22 which is of course what we did as counsel in this
23 case.

24 So you're saying -- is this not accurate
25 or it's just not live?

1 A I didn't even know this was live. And
2 it's definitely not accurate.

3 Q Okay. What is not accurate in here? Can
4 we just go through it so we're on the same page?

5 A So none of these products exist. They're
6 just theoretical.

7 Q Got it. So start -- let's work through it
8 a little more methodically, if we could.

9 Page 1 says "Cherry Tomato Engineering,
10 welcome to the future of sustainable living."

11 Is that actually a phrase that Cherry
12 Tomato Engineering uses?

13 A No.

14 Q Does Cherry Tomato have any employees?

15 A I am in the process of hiring one person
16 now, and I have a partner for the printer aspect of
17 the company.

18 Q Is the printer owned under Cherry Tomato,
19 or you said there was a separate website.

20 A It is owned under Cherry Tomato, but the
21 branding for the printer is Sculpted Spaces.

22 Q Got it. Okay.

23 So "Welcome to the future of sustainable
24 living," is that something you actually say, or
25 that's like an AI-generated phrase?

1 A Yeah. This was just like -- I think it
2 was Squarespace. They just said, like, you know,
3 "Throw in some stuff, and we'll generate a website
4 for you." That's all this is.

5 Q Got it.

6 So then let me just go -- the "about us"
7 page. You have dogs named Cherry and Tomato?

8 A Unfortunately, just one of them now.

9 Q Oh, I'm sorry to hear that.

10 A The golden retriever there has moved on,
11 but, yeah, those are my dogs.

12 Q And that's what the company is named
13 after?

14 A Yes.

15 Q Okay. Got it.

16 So that's accurate, at least in a broad
17 sense, right?

18 A Yes.

19 Q And then when we look at "products," so
20 these products and photos are not -- so tell me what
21 these are, I guess.

22 A These are not real products. These are
23 just -- so these are just little projects that I've
24 either done at home with the fish tank or just
25 nonexistent, not real things.

1 Q Which one is not -- which one is an idea,
2 and which one has actually been created?

3 A So the --

4 Q You know I'm going to ask about the Pooch
5 Potty Palace.

6 A Ask away.

7 Q Real or not real?

8 A Unfortunately, it's not real. I think
9 it's a cool idea.

10 Q I have a dog too, so I agree. Okay. So
11 just an idea?

12 A Yeah. This is just -- this was meant just
13 as a joke for my wife.

14 Q Got it.

15 I mean, tell me, like, is there -- there's
16 a human factors design element to that idea, right?

17 A Yeah.

18 Q Tell me a little bit more about that
19 notion.

20 A So I've been working on the project of
21 creating the house construction 3D printer for a
22 long time now. And I was trying to think of
23 applications for it beyond -- beyond just making
24 houses. And so a few of those ideas are proposed
25 here.

1 Q I'm sorry, I'm just looking at the
2 Sculpted Spaces, and it's nice-looking art there.

3 A Thank you.

4 Q Going back to Fish Foster Flora. Real or
5 idea?

6 A So that's a very old picture there. That
7 was like something that I created in college. It's
8 just a fish tank with custom 3D printed inserts.

9 Q Okay. So I won't run you through -- I was
10 going to ask about the Clucky Clean Coop too.

11 So generally, these ideas are -- like,
12 this is not the business, right?

13 A No, not at all.

14 Q The business is the 3D printer that you're
15 growing to create the prefab type houses, right?

16 A Yes.

17 Q So this was just for fun, so to speak?

18 A Yeah. I didn't even know this was on the
19 internet. I thought that I had relinked to Sculpted
20 Spaces. I thought that it just jumps there. So
21 this is a surprise to me. But it's a fun surprise.
22 You're welcome to ask about any of it.

23 Q I mean, Pooch Potty Palace was really
24 exciting. I was like, has someone figured out that
25 problem?

1 And then -- so the real website for Cherry
2 Tomato is supposed to go to Sculpted Spaces?

3 A No. It actually -- in a lot of my
4 materials, I just link back to Vredenburg &
5 Zackowitz because it's HFexpert.com.

6 Q Got it.

7 A So I've just been kind of piggybacking off
8 their website for the human factors stuff now.

9 But you make a very good point. It's
10 probably time for me to have Cherry Tomato have its
11 own forensics spacing.

12 Q I mean, fair to say it's at the top of
13 your CV, right?

14 A I thought it was the HF expert.

15 Q Let's double-check.

16 A Yeah, I'm seeing "HF expert" on here.

17 Q Oh, was I wrong?

18 A I'm not seeing it anywhere on the CV.

19 Q Oh, it's not on the top. It's
20 "professional experience" at the top. You see that?
21 Page 19 of Exhibit 1.

22 A I see "HF expert" at the bottom.

23 Q Where are you looking?

24 A I see "Sculpted Spaces" on there as well.

25 Q What page are you on?

1 A Page 19, I thought you said.

2 Q 19 is -- yeah. I have 19 as Cherry
3 Tomato.

4 A I see the words "Cherry Tomato
5 Engineering." I don't see the website, though.

6 Q Oh, not the website. I was saying the
7 company is --

8 A Oh, yeah. That is the company's name. It
9 is incorporated as that.

10 Q Yeah. So my question, just to fix it, is
11 not the website at the top of your page.

12 My question is, isn't it true that the
13 lead professional experience in your CV is Cherry
14 Tomato?

15 A Yes.

16 Q Yeah. Okay. Okay. I want to do that.
17 We have another Poochy Potty Palace exhibit. I love
18 the idea. I just want to see, is there anything
19 else?

20 Let's talk about your testifying history.
21 So you've testified at trial twice, right?

22 A Yes.

23 Q Were you qualified as an expert by those
24 courts?

25 A Yes.

1 Q And has any court rejected your testimony
2 in full or in part?

3 A Not to my knowledge.

4 Q Okay. Do you -- so tell me what the
5 two -- what were you qualified as an expert in those
6 two cases as?

7 A So I believe it was human factors and
8 biomechanics. And I think both of the cases that
9 went to trial were about car accidents.

10 Q Okay. Can you tell just generally, what
11 were your opinions in those two cases?

12 A I believe that they related to conspicuity
13 and foreseeable and reasonable behavior.

14 Q And what is conspicuity?

15 A So it's just like a derivation of the word
16 "conspicuous." So it's like how conspicuous is
17 something, the conspicuity.

18 Q And were you retained -- which side were
19 you retained in those cases?

20 A It was both plaintiff and defense for one
21 and for -- for one and two for the trials.

22 Q One was plaintiff, one was defense?

23 A Yes.

24 Q And then do you recall a case called
25 Torres v. Rivera? Is that one of those cases?

1 A Yes.

2 Q Do you recall the Court rejecting your
3 testimony in part in that case, or no?

4 A I was never informed on that.

5 Q Let's just go -- oh, I'm sorry, my
6 colleague tells me I was wrong.

7 My question is, do you know the Bermudez
8 case? We can refresh --

9 A Yes. Yes. I'm starting to remember that
10 one.

11 Q Is that one of the two?

12 A No. That never went to trial.

13 Q Got it. Okay.

14 So you testified -- were you deposed in
15 that case?

16 A It was a while ago. If you can refresh my
17 memory.

18 Q Yeah. I want to give you -- this will be
19 Exhibit 10. This is a court opinion.

20 (Exhibit 10 marked for identification.)

21 BY MR. CRAIN:

22 Q Have you ever seen this document?

23 A No.

24 Q You see it's a court decision. The
25 caption is "Bermudez versus Crunch Holdings, LLC."

1 Do you recall that?

2 A Yes.

3 Q And if you just look at the introduction,
4 it says:

5 "Appellant Christina M. Bermudez
6 fell and injured her wrist during an
7 exercise class at a gym owned by
8 Respondent Crunch Holdings. She then sued
9 Respondent for premises liability,
10 claiming it caused her injuries through
11 gross negligence."

12 Do you see that?

13 A Yes.

14 Q Does this refresh your recollection about
15 facts of this case?

16 A Yes.

17 Q Tell me a little bit about what you
18 remember about this case.

19 A I remember flying out for the inspection
20 for this case. It was an inspection at a gym. And
21 I remember taking measurements at that gym.

22 Q Okay. And do you recall, did you testify?

23 A I don't recall.

24 Q Did you serve a report?

25 A It was a while ago. I don't remember.

1 Q Let's go to page -- it says "*10" at the
2 top. And you'll see number 2, "Analysis."

3 A Star eight? I don't see a star 10.

4 Q Star 10. Oh, I'm sorry, I'm on the wrong
5 document. You have the right one. I was looking at
6 the wrong one.

7 Go to star eight.

8 Do you see that?

9 A Yes.

10 Q And it says:

11 "Next, Plaintiff relies on
12 expert declaration of Michael Vredenburgh
13 to support our argument the defendant was
14 grossly negligent."

15 Does this refresh your recollection maybe
16 it was an expert declaration, not a report?

17 A You know, that's what the document says.
18 I don't recall one way or the other.

19 Q Okay. And then it says:

20 "Vredenburgh opines that 'the
21 personal training room was inappropriate
22 for the L.E.F.T. test exercise.' However,
23 there is no evidence showing that the
24 L.E.F.T. test exercise was conducted. In
25 support of the statement. Vredenburgh

1 cites to pages 56 and 58 of the deposition
2 transcript of Adele Albano, the trainer
3 who led the class, but the portions of her
4 deposition which were submitted do not
5 include these pages. Therefore,
6 Vredenburg's opinion is based on
7 assumption of fact without evidentiary
8 support."

9 Do you see that language?

10 A Yes.

11 Q Were you aware of this decision?

12 A No.

13 Q Okay. No, the counsel on the case didn't
14 show it to you?

15 A No.

16 Q Are you aware whether it was appealed?

17 A I do actually remember the client not
18 paying for this case.

19 Q Got it. Okay.

20 So you remember the client not paying your
21 fees for this case?

22 A Yeah.

23 Q But you don't recall that the Court
24 concluded that your opinion was based on an
25 assumption of fact without evidentiary support?

1 A Yeah. He never showed me this document.

2 Q And are you aware of any other instance
3 where a court has rejected, criticized, or otherwise
4 discarded one of your opinions?

5 A Not that I'm aware of.

6 Q Okay. Okay.

7 A So, if I'm understanding correctly, if you
8 can walk me through what this means. Because I'm
9 not always sure about the legal language. It looks
10 like the main issue is that pages weren't
11 included --

12 Q Yeah.

13 A -- of a transcript?

14 Q Mr. Vredenburg, there is no question
15 pending. If your counsel wants to go back over it
16 later. But I have no more questions about this
17 document. You can set it aside. Okay?

18 A Sure.

19 MR. CRAIN: So we've been going how long?
20 A little over an hour. Are you good? Do you want
21 to keep going for lunch or do you want to --

22 THE WITNESS: I'd like to take a break, if
23 that's okay.

24 MR. CRAIN: Absolutely. You can take a
25 break any time. Let's go off. Courtney?

1 MS. WOOD: Yeah.

2 THE VIDEOGRAPHER: We are going off the
3 record. The time is 11:46 a.m.

4 (Recess taken.)

5 THE VIDEOGRAPHER: The time is 12:48 p.m.
6 We are back on the record.

7 BY MR. CRAIN:

8 Q Welcome back, Mr. Vredenburg. Hope you
9 had a nice lunch.

10 Before we turn to the next topic, I just
11 wanted to note for the record -- so we inspected the
12 binder during the break, and we noted the second
13 deposition, I think, was Ms. Binder, Leah Binder not
14 white binder. And then we noted also you have the
15 Harris report in your binder.

16 Do you know what I mean when I say "the
17 Harris report"?

18 A Yes.

19 Q Did you review that as well?

20 A Yes.

21 Q Did you review, prior to when you drafted
22 your report, the Harris report?

23 A No. I believe that was after.

24 Q So you reviewed it in preparation for your
25 deposition?

1 A Yes.

2 Q Just to set that aside.

3 I want to talk a little bit -- we were
4 talking about your opinions generally -- right? --
5 before the break.

6 Do you recall that?

7 A Yes.

8 Q And then one of the things you were asked
9 to opine on -- and this is in paragraph 15 of your
10 report -- is to rebut, you said, certain notions of
11 Processor Berger's opinions.

12 Do you recall that language?

13 A Yes.

14 Q What -- just can you tell me, what were
15 the notions of Professor Berger's report that you
16 were asked to evaluate and rebut? Let's just get it
17 on record. And it's paragraph 15.

18 A So a little bit farther down in the
19 paragraph, it talks about that, "Counter to the
20 implication that stakeholders such as hospital CEOs,
21 doctors, and other healthcare professionals
22 inherently do not understand the imputation
23 methodology."

24 Q So do you have -- are you saying that's
25 the notion that you were responding to in Professor

1 Berger's report?

2 A That wouldn't really be the main focus.
3 The main focus would be how it educates a broad
4 audience.

5 Q Okay. Because your analysis focuses on
6 the typical user -- right? -- not the users
7 reflected in paragraph 15 you just read?

8 A Yeah, the upper sentence. A little bit
9 lower in 15, it talks about the broad audience.

10 Q Do you have any opinion about how
11 stakeholders, such as hospital CEOs, doctors and
12 other healthcare professionals, do or do not
13 understand the imputation methodology?

14 A So --

15 Q Just start first with "yes" or "no,"
16 please. I can repeat it, if helpful.

17 A Can you please repeat it?

18 Q Yeah. My question is, do you intend to
19 offer at trial any opinion as to whether
20 stakeholders, such as hospital CEOs, doctors and
21 other healthcare professionals understand the
22 imputation methodology?

23 A So I would offer that they should at least
24 understand it just as well as the broad audience, if
25 not better. And that there was a progressive

1 disclosure specifically designed for those users.

2 Q Got it. Okay.

3 Your point is, to the extent that the
4 typical user, as you have framed it in your report,
5 can understand something, those with higher
6 expertise should be able to understand it too?

7 A At least to that point. And potentially
8 further, with these extra resources that are
9 available to them.

10 Q Okay. So just to be clear, you have no
11 medical training, right?

12 A That's correct.

13 Q And you have no experience running a
14 hospital?

15 A That's correct.

16 Q And beyond the UCSD internship, you have
17 no experience working in the medical field, right?

18 A That's correct.

19 Q Do you have any expertise to opine how
20 hospital CEOs, doctors, or other healthcare
21 professionals do or do not understand something?

22 A So based on my understanding of
23 populations, you know, they should at least have the
24 understanding of the general population.

25 Q Okay.

1 A So the design of these websites is
2 typically for lower -- lower reading level, you
3 know, the -- I'm trying to think of the phrase.

4 Q The average?

5 A You're trying to focus on, you know,
6 accessibility first. And so the first pages should
7 be the most understandable. And as you progress,
8 there's a little bit less focus on accessibility and
9 a little bit more focus on transparency.

10 Q Okay. Got it. Okay.

11 On the first and second pages, Figure 1
12 and Figure 2 we talked about before.

13 Do you know what I'm referencing?

14 A Yes.

15 Q There's less focus on transparency on
16 those pages and more on accessibility?

17 A So I would say that there is definitely
18 still a significant focus on transparency, but
19 transparency that's appropriate for the audience.

20 Q Okay. And transparency, again, as you
21 said earlier, goes to the accuracy or the truth?

22 MS. WOOD: Objection to form.

23 THE WITNESS: So accuracy is definitely a
24 component of transparency. I would say that it has
25 to be read, understood, and be true. So the --

1 BY MR. CRAIN:

2 Q Got it.

3 A There's the component of reading and
4 understanding it too.

5 Q Okay. So read, understood, and be true is
6 what you said?

7 A Yeah.

8 Q Okay. Got it. We'll come back to that.

9 Are there any other notions in
10 Dr. Berger's report that you respond to in your
11 report?

12 A So my rebuttal for Dr. Berger is limited
13 to user experience.

14 Q Okay.

15 A So that's what the focus of my report was.
16 And so any part of his report that's talking about
17 the marketing, that definitely doesn't apply to me
18 outside the scope of my assignment.

19 Q Is that specific to your Opinion 4, or is
20 that one of the other opinions too? Feel free to
21 look. The summary is on the bottom of page 8 of
22 your five opinions.

23 A Okay. So the main point there --

24 Q Uh-huh.

25 A -- is that in UX, the gold standard is to

1 do -- to do studies, to do hard science, to do
2 iteration and to test with users. So testing is
3 absolutely key.

4 And so you need to -- you need to be -- so
5 say he had a criticism of the webpage saying it's
6 not understandable. He should try to -- try to show
7 it beyond just saying, like, "I looked at it, and I
8 thought this."

9 It should be "I presented it to these
10 users, you know, following the standard protocols
11 for UX, and I conducted this study, and the study
12 indicated that there was a problem with
13 comprehension."

14 Q Okay.

15 A That's the gold standard for the industry.

16 Q Let me break that down just to make sure I
17 understand.

18 So his opinion, as you understand it, is
19 that the website is not sufficiently understandable.

20 Is that fair enough?

21 A Yes.

22 Q Your opinion is that it is? I think
23 that's Opinions 1, 2, 3 and 4?

24 A With the information available, I would
25 say that, you know, the best practice for evaluating

1 this question as a whole for all of us would be to
2 do these studies and to truly find out with
3 scientific rigor an answer to all these questions.

4 And I believe that Leapfrog attempted to
5 do that when they were first creating this website,
6 hiring, you know, experts in that field. But, you
7 know, he had sufficient time and ability and
8 resources to be able to do this testing, and I think
9 it's fair to point out saying, you know, it would
10 have been -- it would have been a much better
11 practice and added a lot of credibility to the
12 claims to say "Not only I do believe these things
13 and, you know, I found research one way or the
14 other, but I did scientific testing that can be
15 repeatable and followed the scientific method."

16 Q So here's what I'm struggling with. Isn't
17 that same critique equally applicable to your
18 opinions?

19 A So I think that that's fair, and I -- you
20 know, I anticipated that you were going to say that.

21 I don't think it was feasible to give me
22 that scope for this case, given -- given the time
23 constraints that were placed on -- placed on me.

24 Q Okay. So I take that point. We can only
25 do what we can do, right?

1 A Yeah.

2 Q The issue I have, though, in response, is
3 isn't your opinion more conclusive than his?

4 A I would say that my opinions are more
5 quantitatively based and --

6 Q But you have no data.

7 A Well, the page is a page full of data.
8 Every, you know, piece of information on the page is
9 data. So we can apply algorithms to the page, which
10 I did. I applied several algorithms to the page.

11 Q Three minutes ago, you told me that
12 testing is key, right?

13 A It's the gold standard.

14 Q And you didn't do any testing?

15 A That's correct.

16 Q And he didn't do any testing?

17 A That's correct.

18 Q And his opinion was "Many consumers would
19 be unlikely to understand that Leapfrog assigns the
20 minimum score on the imputed measures on the impact
21 of this practice on the safety grades."

22 Do you recall that opinion in his report?

23 A Yes.

24 Q And he says: "Many consumers would be
25 unlikely."

1 So he hedges to some degree, right?

2 A Uh-huh.

3 Q Because he doesn't have the data.

4 A Right.

5 Q You say imputed scores are readily clear
6 to users with basic reading comprehension, right?

7 A Yes, sir.

8 Q Isn't that more conclusive than his?

9 A I would put them as pretty similar. I put
10 them on different ends of the spectrum.

11 Q If he didn't do any testing -- sorry,
12 let's go back to what you said. You said different
13 ends of the spectrum.

14 What do you mean by that?

15 A Can you read his statement again to me?

16 Q Yeah. His says -- if you want to look at
17 it, it's Exhibit 3, I think. 3. Exhibit 3. I'm
18 just looking at the table of contents. Tell me when
19 you have it. And it's Roman VIII.

20 And he says:

21 "Many consumers would be
22 unlikely to understand that TLG assigns
23 the minimum score on the imputed measures
24 and the impact of his practice on the
25 safety grades TLG assigns to

1 non-participating hospitals based on TLG's
2 impugnation disclosures."

3 Do you see that?

4 A Yes.

5 Q Now, aside from being three lines long and
6 rather a mouthful -- our side can take
7 responsibility for that -- he does hedge to a
8 certain degree, right? He says "many consumers,"
9 not "all," right?

10 A Uh-huh.

11 Q And he says they're likely, but he doesn't
12 state the position that -- well, he says they're
13 unlikely. He doesn't state the position that
14 consumers -- he knows for sure that consumers don't
15 understand, right?

16 A Right.

17 Q But you do. Right? You say "Imputed
18 scores are readily clear to users with basic reading
19 comprehension."

20 And I guess my question is, if your
21 critique of him is that he doesn't have enough data
22 to make his opinion, which is more qualified than
23 yours, how do you have enough data to make your
24 opinion?

25 A Well, I feel like that's why we're

1 discussing it now. I think, you know, I have the
2 data and the analysis that -- that's here to support
3 it. But I would say the gold standard of actually
4 doing the research and going forth and using the --
5 the standards at hand would be the way to make the
6 strongest statement.

7 So I would say that the purpose of this
8 was brevity, not, like, finality, saying, like, this
9 is the -- this is certain, this is to, you know, a
10 reasonable professional estimation.

11 Q What is the -- you mentioned a few minutes
12 ago -- let's see. You said "I have the data and the
13 analysis that's here to support it."

14 What were you referring to?

15 A So for Opinion 2, you were --

16 Q I think -- I'm looking at Opinion 3, but
17 we can go to -- 1, 2 and 3 I see as related.

18 Is that fair to say?

19 A Yes.

20 Q So for any of 1, 2 and 3, what is the --
21 just give me buckets, and we can dig deeper. But
22 what is the data you were referring to there?

23 A So the actual words on the webpage is
24 data, and that data can be applied to grade-level
25 algorithms, which I did.

1 Q Yeah.

2 A And so that would be well studied, super
3 well established practice used across the board in
4 study after study. To be a yardstick, it's not
5 definitive. The original authors give examples
6 where their algorithms don't always hold up.

7 So it's, again, not a substitute for
8 doing -- doing user experience testing, but it is a
9 yardstick to use, and it's a well respected
10 yardstick that's been used for decades.

11 Q I hear you, and I appreciate the
12 qualification too.

13 Just to clarify, the readability
14 algorithms test how easy it is to read something,
15 not the message that's conveyed, right?

16 A Correct.

17 Q I want to dig deeper into your opinions,
18 but I just want to make sure, with respect to
19 Professor Berger, we close the loop.

20 I just want to make sure -- your report --
21 does your report respond to Professor Berger's
22 opinion that D and F grades likely impact consumer
23 perceptions of the plaintiffs' hospitals and/or
24 deter consumers from choosing to receive care there?

25 A No.

1 Q Does your report respond to Professor
2 Berger's opinion that if Leapfrog continues to
3 publish low or failing grades for the Plaintiff
4 hospitals in the future these effects are likely to
5 be amplified?

6 A No.

7 Q And this may be a little tedious, but I
8 have to close the loop, so I apologize in advance.

9 Does your report address or respond to
10 Professor Berger's opinion that D and F grades
11 likely negative -- negatively impact consumers'
12 perceptions of Plaintiff hospital's quality?

13 A No.

14 Q Does your report to respond to Professor
15 Berger's opinion that D and F grades likely affect
16 consumers' choices and deter consumers from choosing
17 the plaintiffs' hospitals?

18 A No.

19 Q You don't rebut Professor Berger's opinion
20 that D and F grades are likely to evoke negative
21 emotions from consumers about Plaintiff hospitals,
22 right?

23 A No.

24 Q And you don't rebut Professor Berger's
25 opinions that the effect of the D and F grades for

1 plaintiff hospitals would be intensified if Leapfrog
2 continues to repeatedly publish the grades in the
3 future?

4 A No.

5 Q You don't rebut Professor Berger's opinion
6 that Leapfrog's imputation disclosures are unlikely
7 to help user -- sorry. Strike that.

8 Let's see.

9 You don't rebut Professor Berger's opinion
10 that the only disclosure that explains the
11 imputation methodology is found on page 16 of TLG's
12 28-page spring 2025 scoring methodology document, do
13 you?

14 A I do.

15 Q We'll come to that.

16 That's one you respond to?

17 A Yes.

18 Q Got it.

19 And then -- I think that may be it for
20 now.

21 And all the ones that you just noted that
22 you do not rebut in your report, you don't intend to
23 offer trial testimony rebutting those opinions
24 either, right?

25 A Correct.

1 Q So let's talk a little bit about your
2 Opinion 1. And I want to talk about -- so with
3 respect to transparency, we talked a little bit.
4 You said something has to be read, understood, and
5 be true, right?

6 And you evaluated the transparency of the
7 disclosures on the page that your lay out as
8 Figure 2 with respect to how it communicates the
9 imputational model, right?

10 Do you understand what I mean when I say
11 that?

12 A I was turning pages there. If you could
13 just say that one more time.

14 Q No worries. Let me start over.
15 Absolutely.

16 So I'm going to talk about your Opinions
17 1, 2 and 3 together, if that's fair with you.

18 A Yes.

19 Q They're overlapping to some degree, right?

20 A Yes.

21 Q So you evaluated in Opinion 1 the clarity
22 and transparency and, in Opinion 2, the
23 accessibility of the websites depicted at Figure 1
24 and Figure 2, right?

25 A Yes.

1 Q And going forward, I'm just going to say
2 "the website" and "the webpages," and unless we're
3 talking about something else, it will refer to those
4 two. Fair enough?

5 A Fair enough.

6 Q Just to make it a little less cumbersome.
7 And then in Opinion 3, you sort of round
8 it out and say "the imputed scores are readily clear
9 to consumers with basic reading comprehension,"
10 right?

11 A Yes.

12 Q So, to make those opinions, you had to
13 have some understanding of what the imputation
14 methodology prescribes, right?

15 A Yes.

16 Q Can you tell me in your words, how does
17 Leapfrog's imputation methodology post-2024 work?

18 MS. WOOD: Objection to form.

19 BY MR. CRAIN:

20 Q Fair enough. Let me break it down.
21 You understand Leapfrog assigns a hospital
22 safety grade, right?

23 A Yes.

24 Q And you understand Leapfrog has a
25 methodology that puts that all together, right?

1 A Correct.

2 Q And you understand part of that
3 methodology for certain missing data scores,
4 measures, includes imputation?

5 A Yes.

6 Q And what does "imputation" mean?

7 A It means it's an assigned score.

8 Q Okay. And do you understand how the
9 imputation in Leapfrog's grading system works?

10 A So that was actually outside --

11 Q First "yes" or "no." Do you understand
12 how the imputation methodology works?

13 A So I have a high-level understanding. I
14 definitely don't have a detailed technical
15 understanding.

16 Q Where did you get the high-level
17 understanding?

18 A So that would be from what's presented on
19 these pages. For example, the webpage showing this
20 hospital score 15 with an asterisk, and the asterisk
21 below is describing "This hospital declined to
22 report on their performance on this measure, so a
23 score was assigned to reflect the lack of available
24 information."

25 Q And you're quoting on Figure 2, on

1 Exhibit 1 to this deposition, your report, the
2 asterisk's footnote at the bottom of the page,
3 right?

4 A Yes, sir.

5 Q Is it your testimony that that language
6 explains how a score is imputed?

7 MS. WOOD: Objection to form.

8 THE WITNESS: So I believe that, on this
9 page, it is shown that this hospital's score, 15
10 with the asterisk, and then below it shows average
11 and worst. The fact that that's clearly displayed
12 and the two line up, it's clearly that the imputed
13 score is the worst hospital score. They're the same
14 number right next to each other.

15 BY MR. CRAIN:

16 Q Yeah. So it shows that it got the worst
17 score for that measure, right?

18 A Yes.

19 Q Does it show why it got that score? Maybe
20 "why" is the wrong word, but answer that first.

21 A Because it was assigned.

22 Q Does it show how it was assigned?

23 MS. WOOD: Objection to form.

24 THE WITNESS: So that goes beyond the
25 scope of what I analyzed.

1 BY MR. CRAIN:

2 Q Okay. Is it your view -- and you write
3 about this a little bit in your report -- that the
4 imputed score -- which I think on that page is the
5 worst score, right? That's what you just said?

6 A Yes. Worst hospital score and this
7 hospital score.

8 Q That's for hand washing -- right? -- on
9 that page?

10 A Yes.

11 Q And you're looking at Figure 2 of
12 Exhibit 1, which is your report, right?

13 A Yes.

14 Q Does that lowest score convey that the
15 hospital failed in its performance on hand washing
16 or that it failed to participate in Leapfrog's
17 hospital survey?

18 MS. WOOD: Objection to form.

19 THE WITNESS: It says, in red bolded text,
20 that "the hospital declined to report their
21 performance on the measure, so a score was assigned
22 to reflect the lack of information available."

23 BY MR. CRAIN:

24 Q So what does that convey? I'm sorry. I
25 don't think that answered my question. I'm going to

1 ask it again.

2 Does the lowest score convey that the
3 hospital failed in its performance on hand washing
4 or that it failed to participate in Leapfrog's
5 hospital survey on hand washing?

6 A I think that it does display that they did
7 not respond and that data was not available, so this
8 lowest score was assigned.

9 Q So you're opining on how a typical user
10 would view this page, right?

11 A Yes.

12 Q Would the typical user, in your opinion,
13 come away from that language thinking that the
14 hospital is a poor performer at hand washing or just
15 that they didn't respond to the survey?

16 A I think that there's different things that
17 they could think, depending on the person. And,
18 again, following the gold standard of actually doing
19 the user experience testing and finding out from
20 people firsthand is -- is honestly what I think
21 should be done for -- for trying to -- trying to
22 settle questions like this.

23 But that said, somebody needs to -- needs
24 to start somewhere. And so, you know, come to
25 expert estimations before -- before you do those

1 tests usually, you know, leads to the first
2 iterations of those tests to figure out.

3 So I were being proposed to put together
4 these first iterations of the testing, what I would
5 say is that they would believe a couple -- a couple
6 of different possibilities.

7 Q Uh-huh. What are they?

8 A One, you know, they read it as written.
9 And, you know, maybe, you know, they have good
10 comprehension and they believe that the hospital did
11 not respond to a survey, and so a minimum score was
12 assigned due to lack of information. And they may
13 think, "Well, you know, I'd rather err on the side
14 of caution. If the information is not available,
15 then I'd rather err on the side of caution. If I
16 don't know, it could be good, could be not. I would
17 rather be careful than to just assume that's it good
18 if we don't know."

19 Q So you would agree that at least some
20 users can walk away from that webpage thinking
21 that -- I think it's Del Rey -- or no, it's Good
22 Samaritan?

23 A Good Samaritan.

24 Q -- thinking that Good Samaritan actually
25 performs poorly on hand hygiene?

1 MS. WOOD: Objection to form.

2 THE WITNESS: I think that's a reasonable
3 hypothesis, but until we test it, it's hard to know.

4 BY MR. CRAIN:

5 Q Fair enough.

6 It's possible. You just don't have the
7 data, right?

8 A Correct.

9 Q You say something different in your
10 report.

11 Do you know that?

12 A If you want to read it to me.

13 Q You say "This ensures users can understand
14 that grades reflect non-participation rather than
15 direct performance data."

16 Isn't that a little consistent?

17 A We're talking about edge cases, though.

18 Q Why are they edge cases? How do you know
19 they're edge cases?

20 A Because we tested the reading level for
21 the statements, and the reading level was to a good
22 standard that most of these users are going to be
23 able to meet. And the statement is straightforward
24 saying "The hospital declined to report on their
25 performance on this measure. So a score was

1 assigned to reflect the lack of information
2 possible."

3 And furthermore, we saw that the average
4 user actually was seeing that asterisk because they
5 were scrolling down further --

6 Q Scrolling.

7 A -- past that part of the page. And in
8 user experience, the eye is drawn to bold and to red
9 text. So, you know, within the research provided,
10 that is a very good indicator of conspicuity. And
11 so this statement would have stood out, and it's
12 written in plain language.

13 Q You mentioned -- I'm going to just pull
14 some of the threads a little bit.

15 You mentioned the scroll data, right?

16 A Yes.

17 Q The scroll data is your Opinion 5, right?

18 A Yes.

19 Q Would you say it's material to your
20 Opinion 1, 2, 3 and/or 4?

21 A Can you define for me what you mean
22 "material" in this case?

23 Q Fair enough.

24 So your scroll data opinion is that --
25 tell me if this is a fair characterization or not --

1 that most users scroll down the page when they get
2 to the websites, right?

3 A Yes.

4 Q And that allows them to see the asterisks?

5 A Yes.

6 Q Is that an important part of your Opinions
7 1, 2, 3 and 4?

8 A Yes.

9 Q If that data were wrong, would that cause
10 you to change your Opinions 1, 2, 3 and 4?

11 A It wouldn't change 4. 4 that, you know,
12 the UX testing is the gold standard and that it
13 should have been done on the untested methodology,
14 that would stay the same.

15 It would potentially have an effect on 3.
16 I would say that the scores and the numbers are
17 still clear. So it would be -- it would be clear
18 that scores are being imputed, or at least the score
19 assigned is the lower score.

20 Q But if no one scrolled to the footnote --
21 right? -- doesn't your opinion depend on the
22 footnote?

23 A It's definitely an important factor. So
24 it kind of depends. Like on the right-hand side
25 with the question mark, "declined to report" --

1 Q Yeah.

2 A -- "for staff working together to prevent
3 errors." You know, my opinion would be that that
4 would be a good practice to be using for these other
5 gas meters as well when the data is missing, and
6 that would help bridge the gap for the asterisk.

7 Q Just to make sure I understand, you're
8 aware that, when Leapfrog does its imputation model,
9 for instance, on hand hygiene -- are you aware of
10 that?

11 A Yes.

12 Q And Leapfrog has no data as to hand
13 hygiene performance.

14 Do you understand that as well?

15 MS. WOOD: Objection to form.

16 BY MR. CRAIN:

17 Q If you don't, I can walk you through it a
18 little bit.

19 Do you understand that?

20 A Yeah. So they don't have data from that
21 hospital. And then, you know, I would say, if the
22 imputation is fair and that whole process, that's
23 beyond the scope of my analysis.

24 Q I hear you. But I'm trying to get to what
25 you just said a moment ago.

1 So you just said -- you were talking about
2 staff worked together to prevent errors, right?

3 A Yes.

4 Q And you said that was -- I think you said
5 a good practice to put the question mark and decline
6 to report, right?

7 A Yes.

8 Q Because Leapfrog has no data about how
9 staff work together, correct?

10 A Yes.

11 Q Because that's informed by the hospital
12 survey.

13 Are you aware of that?

14 A Yes.

15 Q So, if the hospital doesn't participate in
16 the hospital survey, there's no data about how staff
17 are working together, right?

18 A Yes.

19 Q So the clearest thing to do there is just
20 decline to report, right?

21 MS. WOOD: Objection to form.

22 MR. CRAIN: That's what he just said.

23 BY MR. CRAIN:

24 Q Do you want me to read it back to you?

25 A If you could just put the sentence all

1 together without saying, like, this and --

2 Q Fair. It's a leading question. Let me
3 see.

4 You said "For staff working together to
5 prevent errors, my opinion would be that would be a
6 good practice to be using for these other gas meters
7 as well when data is missing."

8 Do you recall saying that?

9 A Yes.

10 Q Hand washing --

11 A Yes.

12 Q -- is similarly situated to "staff work
13 together to prevent errors."

14 Would you agree with me?

15 A Yes.

16 Q There's no data, right?

17 A Correct.

18 Q And yet Leapfrog does something different
19 on that, right?

20 A Correct.

21 Q And the gas gauge you analyzed in your
22 report, right?

23 A Yes.

24 Q Does gas gauge convey something about
25 performance?

1 A Yes. So continue.

2 Q What does it convey? It's red.

3 A Yeah. So it shows a low score.

4 Q And is that consistent with what you said
5 was a good practice for something that Leapfrog has
6 no data as to?

7 A So, if I were putting together, you know,
8 testing for constant improvement on the website,
9 that would be one of the things that I would test,
10 for improvement to see if this practice would
11 also -- if including that practice on all the
12 imputed values would increase comprehension.

13 Q So you just said it was a good practice as
14 to staff work together to prevent errors, right?

15 A Yes.

16 Q Are you refusing to say it's a good
17 practice for hand washing too?

18 A No. I'm not saying that.

19 Q Okay. Would it be a good practice for
20 hand washing too?

21 A Likely, it would be a good practice.

22 Q Okay. I want to talk a little bit -- so I
23 want to go back to your understanding of the
24 imputation methodology.

25 And your testimony -- is it your testimony

1 that consumers looking at Figure 2 can understand
2 how the imputation methodology works?

3 A I think, looking at Figure 2, they can see
4 what the imputed value is.

5 Q Different question. Do they understand
6 how it works?

7 A I don't quite see how it's a different
8 question. They're definitely not seeing under the
9 hood of how the experts got to produce that number,
10 but they are seeing the number themselves.

11 Q What is your understanding of how Leapfrog
12 imputes for scores like hand washing for
13 nonparticipating hospitals?

14 A So that's outside the scope of my
15 assignment.

16 Q So then you have no opinion as to how it
17 works?

18 A I believe that's being covered by another
19 expert.

20 Q But how can you opine as to whether
21 consumers will understand it if you don't know how
22 it's assigned?

23 A What I'm saying is that they can
24 understand what score is assigned. I think that --

25 Q Got it.

1 A -- it's fair for it to be -- you know, as
2 you pointed out, I'm not a medical expert. I think
3 it's fair to have another expert who is cover that
4 material.

5 Q So you are opining that -- if you look at
6 Figure 2, it's really clear that Good Samaritan gets
7 a 15 on hand washing, right?

8 A Yes.

9 Q And it's also really clear what safer
10 hospitals do.

11 Do you see that language?

12 A Yes.

13 Q So does this website effectively state
14 that this hospital doesn't do what safer hospitals
15 do because it's a worse hospital?

16 MS. WOOD: Objection to form.

17 BY MR. CRAIN:

18 Q It's a little confusing. Fair. Let me
19 take that back a little bit.

20 Do you see the language under what safer
21 hospitals do?

22 A Yes.

23 Q Can you read that into the record?

24 A "Hospitals provide training and implement
25 policies to make sure that all hospital staff cleans

1 their hands before touching a patient."

2 Q Now, on the left, it says "Best hospitals
3 score 100," right?

4 A Yes.

5 Q Does a reasonable consumer, a typical user
6 in your analysis, understand that a best hospital
7 does what safer hospitals do?

8 A Yes.

9 Q Would that same typical user understand
10 that this hospital, because it's so conspicuous that
11 they're 15, doesn't do what safer hospitals do?

12 A So I think that, if they read the
13 statement, the hospital declined to report on their
14 performance on this measure, so a score was assigned
15 to reflect the lack of information. They would know
16 that, you know, we don't know what their hand
17 washing procedure was.

18 Q Okay. And what if a user didn't scroll
19 down to the footnote?

20 A If they didn't scroll down to the
21 footnote, then they would likely believe that they
22 received the worst score, and they would not
23 necessarily know about the imputation.

24 Q They would think they do the opposite of
25 what best hospitals do, right?

1 A Yes.

2 Q Because it's a worst hospital?

3 A Yes.

4 Q Now, how would consumer -- strike that.

5 Okay. I want to talk a little bit -- you
6 have no understanding of step 1 and step 2 in the
7 methodology?

8 A Of how imputation takes place?

9 Q Yeah.

10 A So a little bit was explained to me, but
11 that's not really relevant to this assignment or
12 what I'm doing.

13 Q Okay.

14 A It was more of a curiosity. I feel like
15 it's not relevant to my testimony.

16 Q Because all you're opining on is that the
17 number is clear, not how it's derived?

18 A Correct. How it's derived is by a
19 different expert with that background.

20 Q Which expert?

21 A I believe that's Dr. Harris.

22 Q Okay. Fair enough.

23 He's doing the mathematical analysis,
24 right?

25 A Yes.

1 Q I'm asking for you to do something more
2 qualitative.

3 Do you understand what I mean by that?

4 A Not yet. If you could explain more.

5 Q Yeah.

6 MR. CRAIN: Let's go -- give me the spring
7 methodology document. It's tab 12.

8 BY MR. CRAIN:

9 Q So I want to -- this is Exhibit 11.

10 All right. Do you have in front of you
11 Exhibit 11?

12 A Yes, sir.

13 (Exhibit 11 marked for identification.)

14 BY MR. CRAIN:

15 Q Do you recognize this document?

16 A This was in my file.

17 Q Okay. So you considered this document in
18 forming your opinions?

19 A Yes.

20 Q You referred to, if I recall, this
21 document as "dense," right?

22 A Yeah. It appears that way.

23 Q This is not a document that you said a
24 typical user would read, right?

25 A Correct.

1 Q And in fact, in Dr. Berger's report, do
2 you recall a supplemental report said only 3 percent
3 of users actually download this document from the
4 website?

5 A Yes.

6 Q Does that surprise you?

7 A No.

8 Q And in fact, you have -- you've cited
9 research that says only about 3 percent of consumers
10 actually look at user manuals.

11 Do you recall that research?

12 A I don't recall that figure.

13 Q Okay. I was pulling that out of my memory
14 there. If you don't remember, that's okay.

15 So did you review this when you were
16 drafting your opinion or preparing your opinions?

17 A Not heavily. I did scan through it,
18 because I feel like this isn't relevant to my
19 analysis.

20 Q Because a typical user wouldn't really
21 look at this, right?

22 A Correct.

23 Q I want you -- just so we're on the same
24 page, I'm going to educate you a little bit about
25 how it works.

1 Let's go to page -- first of all, I want
2 to go to page 4. I'll just ask you some questions
3 about this one.

4 Actually, go to page 5. Let's stick with
5 hand hygiene.

6 So you see this table, right?

7 A Yes.

8 Q Do you see there's a table, and there's a
9 second column at the top that says "Primary Data
10 Source"?

11 A Yes.

12 Q And under "Hand hygiene" -- it's the third
13 row down -- it says "2024 Leapfrog Hospital Survey,"
14 right?

15 A Yes.

16 Q Now, if you go to "Secondary Data Source,"
17 do you see where it says "Imputation model applied"?

18 A Yes.

19 Q Now, reading this, is there a secondary
20 data source for hospitals like Good Samaritan?

21 A That's outside of the scope of my
22 analysis.

23 Q Because you just looked at Figure 2 and
24 Figure 1, essentially -- right? -- of your report?

25 A Yeah.

1 Q And Figure 2 and Figure 1 don't speak to
2 this concept -- right? -- reflected on page 5 of
3 Exhibit 11?

4 A I don't have any opinions about page 5.

5 Q You have an opinion about Figure 2,
6 though, right?

7 A Yes.

8 Q Does Figure 2 convey the information that
9 you see on page 5?

10 A I have not read or understood, you know,
11 the content of page 5. That's outside of my
12 expertise.

13 Q Okay. So you have no opinion as to
14 whether Figure 2 conveys the information on page 5?

15 A Correct, I have no opinion to that.

16 Q So let's go down then -- I want to go to
17 page 15.

18 You're a researcher, right?

19 A Yes, sir.

20 Q Do you understand the distinction between
21 primary and secondary data?

22 A You know, that hasn't been something
23 that's come up for me before.

24 Q It was worth a shot.

25 We can move on from it if you don't know.

1 So I want you to look at page 15 of this
2 document.

3 Now, if you look at the top, it says --
4 see "using secondary data sources"?

5 A Yes.

6 Q And it says:

7 "12 of the 22 measures,
8 including the safety grade, are derived
9 from the Leapfrog Hospital Survey. The
10 Leapfrog Hospital Survey is voluntary and,
11 as such, hospitals may choose not to
12 submit a survey. To address this gap in
13 available data, the safety grade
14 methodology uses secondary data when
15 available."

16 Do you see all that?

17 A Yes.

18 Q Then it gives -- further down the page and
19 onto 16, it gives a step 1 and step 2.

20 Do you see that?

21 A Yes.

22 Q Step 1, it says:

23 "If the hospital had a score
24 assigned by Leapfrog in the two previous
25 rounds of grades, i.e., fall 2024, spring

1 2024, excluding imputed scores, the
2 hospital is assigned the most recent score
3 on that measure in the current hospital
4 safety grade, i.e., spring 2025."

5 Do you see that language?

6 A Yes.

7 Q Do you have a general understanding as to
8 what that means now? I could break it down for you,
9 if it's helpful.

10 A You know, I hear the words that are said
11 here. But, you know, I haven't made an attempt to
12 get into the weeds for how this is done.

13 Q So the first step is essentially taking an
14 historical score for measure and imputing it into
15 the hospital grade for that measure.

16 Does that make sense to you?

17 A Yes.

18 Q It's taking -- if you have a prior hand
19 hygiene score for fall 2024 you're not reporting
20 now, we're just going to use the last score, right?

21 Make sense?

22 A Yeah. I'll take your word for it.

23 Q Okay. I mean, it's here, but -- I'm not
24 trying to pull a fast one. I just want you to
25 understand before we turn to the next sequence.

1 Step 2 is different. That's what we've
2 been talking about.

3 Do you understand the automatic assignment
4 of limited achievement?

5 Does that mean something to you?

6 A Yes.

7 Q So, if a non-participating hospital in
8 step 2 doesn't have an historical score, Leapfrog
9 just gives them limited achievement.

10 Is that your understanding of how it
11 works?

12 A Yes.

13 Q So there are two ways to impute.

14 Do you understand that now?

15 A Yes.

16 Q You didn't understand that before, right?

17 A No.

18 Q This is a new concept to you, right?

19 A Correct.

20 Q So step 1 is you get some historical
21 score, if there is one. And step 2 is you get the
22 limited achievement.

23 Do you understand that now?

24 A Yes.

25 Q And limited achievement is the lowest

1 possible score, right?

2 A Yes.

3 Q So I want to show you --

4 MR. CRAIN: Let's get tab 24, please, and
5 25.

6 THE WITNESS: Page 24?

7 BY MR. CRAIN:

8 Q No. It's tabs -- I'm going to give you
9 two new exhibits. This will be Exhibit 12 and 13.

10 This is Exhibit 12. This is Exhibit 13.

11 (Exhibit 12 marked for identification.)

12 (Exhibit 13 marked for identification.)

13 BY MR. CRAIN:

14 Q Do you have Exhibit 12 and 13 in front of
15 you?

16 A Yes.

17 Q So Exhibit 12, you see, is for White Rock
18 Medical Center.

19 Do you see that?

20 A Correct.

21 Q You don't know anything about White Rock
22 Medical Center, right?

23 A No.

24 Q Have you ever been to Dallas, Texas?

25 A I've passed through.

1 Q Passed through. But you've not been to
2 White Rock in Dallas, right?

3 A No.

4 Q Okay. Exhibit 13 is for Lima Memorial
5 Health System, right?

6 A Yes.

7 Q And it's 1001 Bellefontaine in Lima, Ohio.
8 Have you ever been there?

9 A Yes. I have not.

10 Q And you see both of them have -- are
11 highlighted on the "Safe medication administration."

12 Do you see that?

13 You can sort of put them side by side.

14 Do you see that?

15 A Do you need me to turn the page? I'm not
16 sure --

17 Q Yeah. Fair enough.

18 So do you see all of them -- all of the
19 little tabs there are a grade except for one?

20 A Yes.

21 Q That's the one that's highlighted, right?

22 A Okay. I see now.

23 Q See it now?

24 So if you go to page 2 of both documents,
25 you see they both have the lowest score.

1 Do you see that?

2 A Yes.

3 Q And they both have a 25 on "safe
4 medication administration."

5 Do you see that?

6 A Yes.

7 Q And again, this says: "What safer
8 hospitals do: When hospitals use barcoding
9 technology effectively for all orders, medication
10 errors happen far less frequently," right?

11 A Yes.

12 Q And in theory, as you said before, if
13 somebody is just looking at the worst hospital
14 score, it means they didn't do those things, right?
15 If they don't see the footnote.

16 MS. WOOD: Objection to form.

17 BY MR. CRAIN:

18 Q Well, strike that. Let me take that back.

19 So I'm going to represent to you that one
20 of these -- both of these hospitals are imputed.

21 You see that from the footnotes, right?

22 A Yes.

23 Q One of these hospitals is from step 1, one
24 of these hospitals is from step 2.

25 Which is which?

1 A That information is not displayed on this.

2 Q Correct. It's not anywhere on this page,
3 right?

4 A Correct.

5 Q So the hospital that has the historical
6 score imputed is totally indistinguishable from the
7 hospital that has the automatic assignment of
8 limited achievement, right?

9 A Correct.

10 Q The typical user will have no idea which
11 is which, right?

12 A Correct.

13 Q It's all the same?

14 A Yes.

15 Q Okay. Well, there we go. I can move on.
16 All right. I want to look at a couple
17 other things.

18 And again, just to round out, the
19 footnotes that you relied on and looked at in your
20 report, they don't say anything about step 1 or
21 step 2, right?

22 A Correct.

23 Q They don't disclose whether the score is
24 historically imputed or automatically assigned,
25 right?

1 A Correct.

2 Q Do you have any understanding as to
3 whether Leapfrog deems the automatic assignment
4 arbitrary?

5 A That's outside of the scope of my
6 analysis.

7 Q Would it change your opinion if Leapfrog,
8 when they drafted the asterisks, believed that they
9 were arbitrarily assigning a score?

10 A I think getting into the specifics of the
11 imputation and how it's done and what's fair and
12 what's not fair is best left to the medical experts.
13 I'm, you know, a user experience expert. I want to
14 focus on that lane.

15 Q So if, when drafting this footnote,
16 somebody said "We can't put in the footnote external
17 data sources because we're arbitrarily assigning
18 them the points assigned with the bottom scoring
19 category," would that have any impact on your
20 opinion?

21 A I think that would be something for
22 Dr. Harris to consider. That wouldn't be relevant
23 to the user experience.

24 Q What if they were drafting the footnote to
25 make it sound like the expert panel approved it and

1 the assigning of these points was legitimate? Would
2 that have any impact on your decision?

3 A That's outside of the scope of my
4 analysis.

5 Q Does it have any impact on whether you
6 think these footnotes are fairly drafted?

7 A I truly believe that to be outside of, you
8 know, my knowledge base. I don't know if it's fair
9 or not.

10 Q So you don't have an opinion one way or
11 another?

12 A I don't have an opinion.

13 Q And what is your opinion with respect to
14 the footnotes? What message do they convey?

15 A That the value -- I mean, I think it's
16 pretty clear the way it's written. "Hospital
17 declined to report on performance." So that's
18 implying they were given a chance, but they chose
19 not to. And a score was assigned to reflect a lack
20 of information. And that, paired with the fact that
21 the numbers line up to being the worst, show that
22 they were assigned the lowest score.

23 Q But it doesn't show how, right? It
24 doesn't show where that lowest score came from, does
25 it?

1 A It doesn't show under the hood, but it
2 does show that it is the lowest score.

3 Q And do you think it's transparent to not
4 show under the hood, at least in that regard?

5 A You know, I don't think I'm the right guy
6 to ask for that question, but I do think that it's a
7 good practice they showed the number. I think that
8 definitely does help with the transparency.

9 Q But it would have been a better practice
10 to say they declined to report, question mark,
11 right?

12 A For these gas gauges, I agree with that.
13 I think that could be a future improvement.

14 Q Okay. Dr. Berger, in his opinion -- in
15 his report opines that there are only four places on
16 the Leapfrog website that describe how the
17 imputation model works.

18 Do you dispute that opinion or no?

19 A I didn't find anything to the contrary.

20 Q You don't have an opinion one way or
21 another or you just -- you don't disagree with him?

22 A Yeah. I don't have an opinion.

23 Q I want to go to -- there. Tab 14.

24 This is going to be Exhibit 14.

25 (Exhibit 14 marked for identification.)

1 BY MR. CRAIN:

2 Q Do you recognize the page in front of you?

3 A Yes. In the time that I went through the
4 website, I went through this page. But I didn't
5 read it in any kind of detail.

6 Q Before -- you went through this webpage
7 before you wrote your report?

8 A Yes. In getting ready to write the
9 report, yeah.

10 Q In your opinion, does your typical user,
11 as you frame it in your report, go to a page like
12 this to look at this information?

13 A You know, that's a great question. I
14 think Google Analytics and looking at that would be
15 a good way to analyze that. And at this point, I
16 don't know.

17 Q Okay. Fair enough. You don't know.

18 So, looking at this page, let's just
19 assume for a minute that a typical user will go to
20 this page, or any user, right? I want to go to
21 page 3. There are no pages on it.

22 And if you look at -- do you see a line,
23 "How the Leapfrog Hospital safety grade is
24 produced"?

25 A Yes. On the second page or third page.

1 Q Right. Third page, I think, yeah.

2 And do you see there's a paragraph that
3 says "The expert panel selected"?

4 A Yes.

5 Q If you go about halfway down, there's a
6 sentence starting "In some cases."

7 Do you see that?

8 A Yes.

9 Q And it says:

10 "In some cases where a
11 hospital's information is not available
12 for a certain measure, Leapfrog uses a
13 supplemental data source. In cases where
14 a hospital's information is not available
15 from any data source, Leapfrog has
16 outlined a methodology for dealing with
17 the missing data."

18 Do you see that language?

19 A Yes.

20 Q Okay. You didn't consider this language
21 when rendering your opinions, right?

22 A No. This page was not a focus of my
23 analysis.

24 Q Do you have an opinion one way or another
25 as to whether -- as to how this communicates the

1 grade is calculated?

2 A Well, just giving you, like, a rough
3 professional estimation, this does look like it's
4 written for a higher grade level than the main
5 pages. If you look, there's a lot -- there's longer
6 sentences, and there's longer words.

7 Q Okay.

8 A That's what the algorithm focuses on, is
9 length of words and length of sentences. You know,
10 I'm estimating that these are longer.

11 So, if this was to be consumer-facing, it
12 might -- it might -- well, not consumer-facing. If
13 this was the typical consumer -- if the Google
14 Analytics data shows that the typical consumer is
15 reading this, there may be a little bit of
16 accessibility issue. So that's a potential --
17 potential criticism.

18 But it does -- it does look like they are
19 definitely trying to go for transparency, giving
20 lots of information. My analysis is that this is
21 likely for that next step, you know, for the
22 progressive disclosure, where if somebody wants to
23 get to the next step and wants to know information,
24 I would say this is the -- a reasonable next step.

25 Q Got it. Okay.

1 Now, given what you now know about the
2 imputation methodology, is the language I read to
3 you, the "in some cases," actually transparent?

4 A Well, my understanding is that, you know,
5 it gets analyzed every year with the -- with the
6 board and is subject to change.

7 Q The language I read to you. Sorry. Go
8 down -- I'm not talking about the expert panel at
9 the top. Do you see that? I'm talking about the
10 sentence starting "In some cases."

11 Do you see that at the end of the
12 paragraph?

13 A Yes.

14 Q You said transparency requires that
15 language to be read, understood, and be true, right?

16 A Yes.

17 Q Assuming this is read -- maybe it is,
18 maybe it isn't. I take your point, Google Analytics
19 will reveal. Assuming it's understood to some
20 degree, is it your view, conducting your
21 transparency analysis, that it's true?

22 A I think at this point, getting into
23 whether it's true or not is going to go beyond the
24 scope of my analysis and fall more onto Dr. Harris.

25 Q Okay. Is it consistent with what's

1 communicated in Figure 2 of your report?

2 A So I feel like the meat and potatoes
3 of 2 -- of Figure 2 and what we compare it to is the
4 red bolded asterisk saying -- so I'll read them in
5 parallel to kind of help my brain think about the
6 two:

7 "The hospital declined to report
8 their performance on this measure, so a
9 score was assigned to reflect the lack of
10 information available. In some cases
11 where a hospital's information is not
12 available for certain measures, Leapfrog
13 uses supplemental data sources. In a case
14 where a hospital's information is not
15 available from any data source, Leapfrog
16 has outlined a methodology for dealing
17 with the missing data."

18 So, yeah, to me, this seems like a great
19 next progressive disclosure, where it starts with
20 what bare basics is needed with the first sentence,
21 and this next sentence is introducing more
22 information and helping to point you to where you
23 could get more data if you want to go even deeper.

24 Q So on Exhibit 14, it says:

25 "In some cases where a

1 hospital's information is not available
2 for a certain measure, Leapfrog uses a
3 supplemental data source," right?

4 A Yes.

5 Q Is it your testimony that Figure 2
6 communicates that same content?

7 A There is overlap, but this is introducing
8 more information, which is typical for progressive
9 disclosure.

10 Q What's the more?

11 A The more is, you know, multiple data
12 sources.

13 Q Okay. So it's not clear you're saying in
14 Figure 2 whether Leapfrog uses a supplemental data
15 source; is that your testimony?

16 A Yes.

17 Q Okay. Then you go to this about the
18 grade, and Leapfrog says it uses a supplemental data
19 source for missing data, right?

20 A Yes.

21 Q And that's not true -- is it? -- for
22 certain measures?

23 A Does it -- it's saying in some cases.

24 Q Uh-huh.

25 A So it's not saying they always do.

1 Q Well, they say they have a methodology for
2 dealing with missing data, right?

3 A Yes.

4 Q And that methodology we just looked at,
5 and at least in step 2, there is no supplemental
6 data source, right?

7 A In step 2. Are you referring to Figure 2?

8 Q No. Step 2 that we looked at a moment ago
9 from the methodology document where they assigned
10 limited achievement, right?

11 A Yes.

12 Q They just automatically assign it, right?

13 A Yes.

14 Q In fact, their internal employees say they
15 arbitrarily assign it.

16 MS. WOOD: Objection to form.

17 MR. CRAIN: I'll withdraw it. I didn't
18 put the document in the record. Where was my
19 question? I broke my rhythm because of that aside.

20 MS. WOOD: Sorry.

21 MR. CRAIN: No, no. It's a fair
22 objection. I withdrew it.

23 BY MR. CRAIN:

24 Q So a consumer reading this page of the
25 "about the grade" could, at least in theory, come

1 away thinking Leapfrog, for a hospital like Good
2 Samaritan in your report, has a supplemental data
3 source for the missing data, right?

4 A Yes.

5 Q And in fact, isn't it worse because of the
6 good practice you highlighted? Because some of the
7 gas gauges say there is missing data because they
8 declined to report, and others say there is bad
9 performance, right?

10 MS. WOOD: Objection to form.

11 THE WITNESS: So I do agree with you.
12 You're making a good point. I want to be objective
13 and fair on both sides here. And I do see that as
14 being a reasonable criticism.

15 BY MR. CRAIN:

16 Q It's confusing, right?

17 A I don't think that it takes away from the
18 analysis that I have in this report. I do share
19 that criticism with you.

20 Q Okay. And just so it's clear, what is
21 that criticism?

22 A That the question mark with the claim
23 report is used for staff work together to prevent
24 errors; whereas, you know, with the other imputed
25 values, they don't -- they don't have -- they don't

1 have that. So . . .

2 Q And fair to say that looking at those gas
3 gauges implies that there is data for things like
4 hand washing?

5 A No. Because they do clearly have an
6 asterisk, and users were clearly getting that far
7 down. It is bolded, and it is in red. So I feel
8 like this is an iterative improvement that they need
9 to get to over time, especially with, you know, the
10 community reaching out and saying, like, "Hey, you
11 know, you're making this change, and we want you to
12 improve on this."

13 Nobody starts perfect. Everybody has to
14 iterate and get better and better. That's just how
15 everything works.

16 Q Fair enough.

17 But circling back to what you said a
18 moment ago when I asked you about comparing the two
19 gas gauges. You went back to the footnote --
20 right? -- the asterisk?

21 A Yes.

22 Q So does your opinion on the clarity of the
23 gas gauges depend on users actually scrolling down
24 to that footnote? Right?

25 A Yes.

1 Q And that's the Google Analytics data in
2 Opinion 5, right?

3 A Yes.

4 Q And the fact your data, as you calculated
5 it, showed that every user scrolls down at least
6 once, right?

7 A That's not quite.

8 Q Tell me what I'm missing.

9 A So it's saying the average user scrolls
10 down a little bit over once.

11 Q Fair enough.

12 A So you'll have some users that don't and
13 some users that do it multiple times.

14 Q Fair enough. It's an average. I take --
15 that's a fair point. Okay.

16 Let's go back to "About the Grade,"
17 Exhibit 14. I want to take you through one more
18 thing.

19 Let's go to what's the third page from the
20 end. And the first full paragraph starts "A
21 hospital."

22 Do you see that?

23 A I'm sorry. Am I on the right page here?

24 Q No.

25 A What page did you say?

1 Q I said I'm looking from the third page
2 from the end. What page do you have?

3 A (Indicating.)

4 Q The next page. Do you see that first
5 paragraph on top starts "A hospital"?

6 A Yeah.

7 Q I'm going to read this into the record as
8 well:

9 "A hospital must have enough
10 safety data available for our experts to
11 issue them a letter grade. Hospitals
12 missing more than six process measures,
13 more than five outcome measures, or PSI
14 90, are not graded. All hospitals" --
15 blah, blah, blah.

16 Do you see that language there?

17 A Yes.

18 Q And I assume you would say this is a
19 higher degree of readability?

20 A What do you mean by "higher degree of
21 readability"?

22 Q When we looked at the prior page, you were
23 talking about it was a higher grade level of
24 readability.

25 Do you recall that?

1 A Yes.

2 Q Is that the same for here, or is this the
3 lower grade reading level?

4 A Without running the algorithm, it's
5 difficult to say. I can only give you a
6 professional estimation here on the spot. But the
7 words actually seem to be, you know, smaller, and
8 the sentences aren't too long here. So this would
9 probably have a lower grade level.

10 Q So this would have a lower grade level?

11 A Yeah.

12 Q So I want to just focus on the language.
13 You see "Hospitals missing more than six process
14 measures," and I'm going to give an ellipses, dot,
15 dot, dot, "are not graded."

16 Do you see that?

17 A Yes.

18 Q I'm going to represent to you that, when a
19 hospital does not respond to the Leapfrog Hospital
20 Survey, Leapfrog is missing seven of these process
21 measures.

22 Were you aware of that before?

23 MS. WOOD: Objection to form.

24 THE WITNESS: So that's outside of the
25 scope of what I analyzed.

1 BY MR. CRAIN:

2 Q You've never heard that before?

3 A No.

4 Q So I want to just understand. If a
5 typical user was looking at this, "six process
6 measures are missing, then we don't give a grade,"
7 do you think the user would understand that Leapfrog
8 assigns grades and doesn't count them in the six if
9 they're imputed?

10 Did that make any sense? Maybe not.

11 MS. WOOD: Objection to form. I'm
12 confused.

13 MR. CRAIN: Fair enough. Okay.

14 BY MR. CRAIN:

15 Q When a hospital does not respond to a
16 survey, it's missing seven process measures.

17 Do you understand that?

18 A Yes.

19 Q What Leapfrog does is, for three of those
20 measures, it discards them. It doesn't use them.

21 Were you aware of that?

22 A Again, that's outside the scope of my
23 analysis.

24 Q But you do know there are four imputed
25 measures, right?

1 A So there is the ones that were -- that we
2 clearly talked about on that page.

3 Q There's the hand hygiene. You remember
4 that one?

5 A Yes.

6 Q And then there's the safe administration
7 of medicines, right?

8 A Yes.

9 Q And then there's the computerized order of
10 medicines, right?

11 A Yes.

12 Q And the fourth one is ICU physician
13 staffing. Are you aware of that?

14 A Yes.

15 Q Those four, when a hospital doesn't report
16 it, is it your understanding that Leapfrog has no
17 data as to the hospital's actual performance on
18 those four measures?

19 MS. WOOD: Objection to form.

20 THE WITNESS: I'm going to have to defer
21 to Dr. Harris on that. That's starting to get out
22 of the scope of, you know, the user experience on
23 the website.

24 BY MR. CRAIN:

25 Q Okay. Fair enough.

1 So going to your experience on the user
2 experience -- going to your expertise of the user
3 advice on the website, do you think it's clear to a
4 typical user, looking at this, that hospitals that
5 get imputed four of these process measures are
6 missing data for seven?

7 MS. WOOD: Objection to form.

8 THE WITNESS: I'm going to have to defer
9 that to Dr. Harris. That's getting outside of the
10 scope. I'm having trouble following.

11 BY MR. CRAIN:

12 Q Fair enough. Me too. It's a confusing
13 website.

14 Okay. I'll set it aside.

15 Let's go to just one more document.

16 We're going to take you to the "Frequently
17 Asked Questions."

18 (Exhibit 15 marked for identification.)

19 BY MR. CRAIN:

20 Q This will be Exhibit 15.

21 Okay. Mr. Vredenburgh, do you have in
22 front of you a document entitled "Frequently Asked
23 Questions about the Leapfrog Hospital Safety Grade"?

24 A Yes.

25 Q And you reviewed this when you were

1 drafting your report, right?

2 A I saw the page. I didn't get into the
3 details of reading it.

4 Q Okay. So did you -- this report has been
5 discussed. It's not subject to your opinions in 1,
6 2 and 3, right?

7 A This webpage you mean or this report?

8 Q I'm sorry, did I say "report"? Let me fix
9 that.

10 This webpage is not one of the webpages to
11 which your Opinions 1, 2 and 3 apply, right?

12 A Yeah. This was outside the scope. I feel
13 like, you know, if it -- if I was asked to analyze
14 it and there was the time to do so, it would have
15 made sense. But my analysis is more concise.

16 Q Okay. Are you aware of the scholarly
17 research about whether consumers look at Frequently
18 Asked Questions pages?

19 A So, yeah. Again, it was outside the scope
20 of what I looked at. But I think a good starting
21 point would be looking at the Google Analytics and
22 seeing how many people look at it.

23 Q Fair enough.

24 Okay. So I want to take you to page 3 of
25 this document.

1 And it's one of the FAQs. In the middle
2 of the page, do you see "Does a hospital get a
3 better safety grade if it reports to the Leapfrog
4 Hospital survey?"

5 Do you see that?

6 A Yes.

7 Q And the answer says:

8 "The hospital safety grade
9 reflects how well a hospital does on
10 safety, not whether they complete the
11 Leapfrog Hospital survey."

12 Do you see that?

13 A Yes.

14 Q How readable, in your professional
15 estimation, is that language?

16 A It's on par with a lot of the other pages.
17 It's probably at that eighth grade level.

18 Q Consumer friendly?

19 A Yeah.

20 Q And you say in your report -- let me just
21 go back to the language -- that users can understand
22 that grades reflect non-participation rather than
23 performance data.

24 Do you recall saying that in your report?

25 A I'm sorry. Can you repeat it one more

1 time?

2 Q Yeah. You say in your report "Users can
3 understand that grades reflect non-participation
4 rather than direct performance data."

5 A Yes.

6 Q Seeing this FAQ, does that change your
7 view about what users can understand?

8 A I think, based on the page that I
9 analyzed, that that statement would --

10 Q Maintain?

11 A -- maintain, yeah.

12 Q Now does this change your opinion, this
13 language? I mean, this is a consumer-facing
14 website, right?

15 A Yeah, it is.

16 Q Readability about eighth grade level,
17 right?

18 A "The hospital safety grade reflects how
19 well a hospital does on safety, not whether they
20 complete the Leapfrog Hospital survey." So --

21 Q This is how Leapfrog is depicting what its
22 methodology shows, right?

23 MS. WOOD: Objection to form.

24 THE WITNESS: Yeah. So I would say this
25 is outside of the scope of what I analyzed, and it's

1 getting into the realm of how things are imputed.
2 So I would want to defer to Dr. Harris on this.

3 BY MR. CRAIN:

4 Q It was also outside the scope of your
5 analysis whether this is readable or not, right?

6 A That's correct. I just gave you a
7 professional -- you know, I want to try to be
8 agreeable, you know, in deposition and not just say
9 "no" to everything. So . . .

10 Q And I appreciate that. I'm asking you to
11 do the same with this language in this question.

12 Does this language, how Leapfrog is
13 putting out what its safety grade terminology do,
14 affect your opinion about what a typical user would
15 understand about how the safety grade works?

16 A Yeah. I feel like there may be -- there
17 may be an issue here with this statement.

18 Q What's the issue?

19 A My estimation is that this was written
20 before they changed the imputation to become
21 punitive, because this seems to reflect the way that
22 the company was before that point.

23 Q So this is inconsistent with how you
24 understand the methodology to work today?

25 A Yes.

1 Q Okay. You can set that aside. Unless
2 Adam tells me I'm missing something.

3 MR. CRAIN: How long have we been going?

4 MR. GARNICK: I think a little over an
5 hour now. Yeah, about an hour and 15.

6 MR. CRAIN: You want to take a break?

7 THE WITNESS: Yeah. Let's take a break.

8 THE VIDEOGRAPHER: We are going off the
9 record. The time is 1:59 p.m.

10 (Recess taken.)

11 THE VIDEOGRAPHER: The time is 2:18 p.m.
12 We are back on the record.

13 BY MR. CRAIN:

14 Q Okay. Mr. Vredenburg, welcome back. I
15 want to turn to Opinion 2. We talked a little bit
16 about, I guess, sort of 1, 2 and 3 together. But I
17 want to focus on Opinion 2.

18 Is this fair enough?

19 A Yes.

20 Q Opinion 2, just looking at your report, is
21 "The website's readability enables accessibility for
22 a general audience."

23 Do you see that?

24 A Yes.

25 Q And in Opinion 2, the crux of it is you

1 conducted the Flesch-Kincaid Grade Level and the
2 Gunning analysis of readability, right?

3 A Yes.

4 Q And you conducted it for the home page,
5 Figure 1, and the model, I'll say, of Figure 2,
6 right?

7 A Correct.

8 Q And your ultimate conclusion was, based on
9 those analyses, those two pages had an eighth grade
10 reading level?

11 A Between 7.9 to 8.3.

12 Q Okay. And the 7.9 and 8.3, those are the
13 grade levels?

14 A Yes.

15 Q Got it. Okay.

16 And again, this opinion does not test the
17 content -- right? -- just the readability?

18 A It tests sentence length and word lengths.

19 Q Okay. You did not analyze the readability
20 under Opinion 2 of the methodology document, the
21 29-pager right?

22 A Correct.

23 Q Would it surprise you that, when we ran it
24 through Flesch-Kincaid, that it scored a 45?

25 A No.

1 Q Okay. And that -- to the best of your
2 professional understanding, that's a college level
3 or even a graduate level reading level?

4 A Yes.

5 Q Okay. Now, you opine, based on research
6 that you cite, that for healthcare, an eighth grade
7 reading level is what you need, right? Feel free to
8 correct me, but I think that's what you said, right?
9 Or sorry, you said the metric -- strike that.

10 You say in your opinions, page 10 of
11 Exhibit 1:

12 "These metrics are widely used
13 in healthcare to evaluate patient
14 education materials where research
15 recommends aiming for sixth to eighth
16 grade levels to accommodate diverse
17 literary abilities and reduce
18 comprehension barriers in health
19 information."

20 Do you see that?

21 A Yes.

22 Q And then you cite Footnote 13, which is an
23 article about readability of patient education
24 materials on the American Orthopedic Society for
25 Sports Medicine website.

1 Do you see that?

2 A Yes.

3 Q I have that -- what I think is that
4 article. We'll find out. This is Exhibit 16.

5 (Exhibit 16 marked for identification.)

6 BY MR. CRAIN:

7 Q Is this the article cited in Footnote 13
8 of your report?

9 A Yes, sir.

10 Q I apologize for the watermark. I think --
11 did we get it this way?

12 MR. GARNICK: This is the only way we
13 could find it.

14 MR. CRAIN: Oh, okay.

15 THE WITNESS: Yeah. I have a version
16 without a watermark if you want to make photocopies.

17 MR. CRAIN: Yeah. We actually may -- with
18 your permission, may want to scan the binder, if
19 that's okay.

20 THE WITNESS: Sure.

21 MR. CRAIN: We may need to take that back
22 to our house and ship it to you. But we'll maybe
23 talk to counsel about that off the record.

24 THE WITNESS: Okay.

25 MR. CRAIN: You guys have a scanner here?

1 MS. WOOD: Yeah, we can scan it here.

2 MR. CRAIN: You can scan it. Okay.

3 MS. WOOD: Yep.

4 BY MR. CRAIN:

5 Q I want to just go through a couple of
6 things in this letter -- in this article.

7 Now, this is -- is this a peer-reviewed
8 study, to the best of your knowledge?

9 A American Journal of Orthopedics. I would
10 assume so, yes.

11 Q Okay. Now, I want to look at -- if you go
12 to page E65, which is the first page.

13 Do you see that?

14 A Yes.

15 Q And the first paragraph under the
16 watermark, do you see the footnote 2,12.13? Kind of
17 funny, but . . .

18 A I'm not quite sure what you're pointing
19 out.

20 Q Fair enough.

21 Do you see the footnotes -- I mean, it
22 says 2, comma, 12, dot -- I'm just trying to orient
23 you.

24 Do you see the language "Many healthcare
25 organizations"?

1 A Yes, I see that text.

2 Q It says:

3 "Many healthcare organizations
4 have called for patient education
5 materials to be written at or below the
6 sixth grade level."

7 Do you see that?

8 A Yes.

9 Q And then it cites a bunch of sources.

10 And then if you go to page E67. And sort
11 of in the middle of the page, do you see the
12 paragraph that starts "Previous reports"?

13 A Yes.

14 Q And it says:

15 "Given the average readability
16 of U.S. adults, the National Institutes of
17 Health has recommended that patient
18 education materials be written between
19 sixth and seventh grade reading levels."

20 Do you see that?

21 A Yes.

22 Q Is that what your citation is to?

23 A Let me take a look.

24 Q Yeah. It's your citation to Footnote 13.

25 A Yeah. So, if you look at the abstract,

1 it's saying that the average reading level for U.S.
2 adults is about eighth grade. So that -- that is
3 how I got to eighth grade level that's in the
4 report.

5 Q Where is that language on my exhibit?

6 A It would be right kind of in the middle
7 right of the abstract.

8 Q Got it. Okay. "15 of the 170 articles
9 had a readability level at or below eighth grade."

10 Do you see that?

11 Is that what you're talking about?

12 A Yeah.

13 Q Got it. Okay.

14 And then -- okay. So I see where you're
15 pointing to now.

16 If you go back to page E67.

17 And do you see at the top of the page the
18 sentence beginning "According to"?

19 A "According to Nationwide Survey"?

20 Q Yep. Why don't you read the rest of that
21 sentence.

22 A "About 20 percent of all U.S. adults read
23 at a level below fifth grade."

24 Q Okay. So this article, I take your point
25 on the abstract saying that the average readability

1 level was below eighth grade. But you also see that
2 many healthcare organizations on page 1 have called
3 for patient education materials to be written at or
4 below the sixth grade level.

5 And on page 2, the NIH says that
6 educational materials have to be -- should be
7 written between the sixth and seventh grade levels,
8 right?

9 A Correct.

10 Q That's lower than the one you have in your
11 report, right?

12 A Yes.

13 Q Okay. And 20 percent read at or below
14 fifth grade reading level, right?

15 A Yes.

16 Q Now, your analysis shows that Figure 1 and
17 Figure 2 are at the higher end of the spectrum --
18 right? -- 7.9 and 8.3?

19 A That's correct.

20 Q And that would be above what this article
21 is recommending as readable for medical --
22 medicine-related patient education materials?

23 MS. WOOD: Objection to form.

24 THE WITNESS: I think it's important to be
25 reasonable. If you look at this pie chart in this

1 same publication, they're looking at the
2 distribution of readability for their own
3 publications in this. And they're saying "Within
4 our own publication," you know, "less than 1 percent
5 meet the sixth grade standard."

6 And I found that with my own research, and
7 it is pretty well established. It's really hard to
8 write health information at a sixth grade level.
9 And oftentimes, it's written at the college level,
10 like you were pointing out with that other document.

11 So is there room for improvement?
12 Possibly. You know, getting it there is a great
13 standard to try to get to. But it's very rare. And
14 getting at an eighth grade level is still actually
15 pretty good.

16 BY MR. CRAIN:

17 Q Okay. Fair enough.

18 And when you say your own research, that's
19 the 2009 article we looked at before?

20 A Yes.

21 Q Got it. Okay.

22 I think that may be all I have on this.
23 So you can set -- that's all I have on 2.

24 I think I want to go to Opinion 3, if I
25 can. And I don't have a lot on Opinion 3 because we

1 covered some of these concepts before; fair to say?

2 Do you agree?

3 A I'm sorry. I was flipping through.

4 Can you repeat the question?

5 Q Of course.

6 I said I don't think I have a lot on
7 Opinion 3 because a lot of the concepts in 3 overlap
8 to some degree with 1 and 2; is that fair?

9 A Sure. Whatever questions you want to ask,
10 that's fine.

11 Q Well, I'm asking you about the content.
12 Do you think that -- like, is it fair to say that
13 Opinions 1, 2 and 3 overlap in content?

14 A Yes. Yeah, 3 is just focused on the fact
15 that the -- and we've talked about it plenty. I
16 feel like we've covered 3.

17 Q Okay. And 3 -- so just looking at 3, I
18 want to ask -- if we look at paragraph 26 -- I think
19 you have -- so does your Opinion 3 revolve around
20 your progressive disclosures concept?

21 A Yes.

22 Q So tell me a little bit about -- can you
23 describe for me how that works?

24 A Great. So it's a large challenge to be
25 trying to tailor towards, you know, entry-level

1 grade reading, as well as making something that's
2 also engaging and challenging for experts. And so
3 this idea of progressive disclosure, which this
4 website utilizes, where you're going to present the
5 basic information first that is going to apply to
6 almost everyone, actually -- most people -- people
7 fall off very quickly on these levels making it
8 further.

9 And that was reflected in the analytics
10 data, that they used, you know, their experts to
11 determine what was -- what was needed to -- to be
12 displayed to users at this accessibility level. And
13 then they kind of removed the reins and brought it
14 up to a college level or even, you know, research
15 level for, you know, these further documents.

16 Q Your Opinion 3 is that the imputed scores
17 are readily clear to users with a basic reading
18 comprehension, right?

19 That's the header?

20 A Yes.

21 Q The progressive -- so you didn't analyze
22 the websites that come after Figure 2 in the
23 progressive disclosure, right?

24 A Correct.

25 Q So can the content of those websites

1 inform your opinion in 3?

2 A So just in -- so that I saw that they're
3 written at a higher level, I agree with your
4 analysis that they were written at a college level,
5 at least the document that you showed, that made
6 sense.

7 Q That's the scoring methodology?

8 A Yes. That follows and makes sense, based
9 off of this progressive disclosure. And so they are
10 analyzed insofar as that they exist and that they're
11 more advanced. But beyond that doesn't really
12 matter to me.

13 Q The content doesn't matter to you, right?

14 A Correct.

15 Q Again going to Opinion 3 -- we covered
16 this before, but I just want to make sure I
17 understand this right -- your opinion is just the
18 scores themselves are clear, the 15, the 25, the 5?

19 A Yes.

20 Q We're just conferring. See, Adam keeps me
21 focused. Okay.

22 So I want to talk about -- okay. In
23 Opinion 3, you wrote that Leapfrog's use the score
24 comparisons reflects UX best practices; is that
25 right?

1 A So near the middle? Top?

2 Q It's towards the end. Do you see "this
3 consumer-facing design" --

4 A Yes.

5 Q -- "informed by readability standards and
6 UX best practices provides adequate tools for lay
7 users and expert users through progressive
8 disclosures," et cetera, et cetera.

9 Do you see that?

10 A Yes.

11 Q What is the UX best practice you're
12 referring to there?

13 A Using progressive disclosure.

14 Q Got it. Okay.

15 That's the only practice there?

16 A Yes.

17 Q Okay. Any other?

18 A So related to the -- I think that -- I
19 think that sums it up for that particular opinion.
20 I think the other opinions speak for themselves.

21 Q Okay. So should this have been singular?
22 UX best practice, meaning progressive disclosure?

23 A Well, they also -- no. I think plural is
24 correct because we talk about the conspicuity in the
25 earlier opinions. So that still applies here.

1 Q Conspicuity of just the number grade --
2 number score?

3 A Yeah. Conspicuity of the number grade of
4 the red bolded asterisk, which is linked to
5 interpreting, you know, the scores.

6 Q And you have to scroll down to see it,
7 right?

8 A Yes.

9 Q Okay. Anything else there?

10 Okay. Let's go to 4, Opinion 4.

11 And your Opinion 4 is "Leapfrog's UX
12 testing validates the website's clarity in contrast
13 to Berger's untested methodology."

14 Do you see that?

15 A Yes.

16 Q Now, let's break this down.

17 So Leapfrog's UX testing. You reviewed a
18 document for that, right?

19 A Yes.

20 Q And Adam is giving me the document, so I
21 will pass that to you because he thinks ahead. This
22 is Exhibit 17.

23 (Exhibit 17 marked for identification.)

24 BY MR. CRAIN:

25 Q Are you going to --

1 A I'm just pulling up the same document in
2 here.

3 Q Got it. Okay.

4 So let's just start maybe at the basics,
5 stepping back.

6 What does UX testing typically look like?

7 A Sure. So it involves creating a mockup of
8 websites or, you know, actual functional websites
9 and doing user testing on a large number of users, a
10 comprehension test or, you know, some sort of
11 biometrics, like eye tracking, are then used to try
12 to ascertain how to improve and comprehension.

13 Q Wow. So they actually use eye tracking to
14 figure out where people are looking?

15 A Oh, absolutely.

16 Q That's very cool. Sorry. Setting that
17 aside.

18 So a lot of data?

19 A Yes.

20 Q And when someone conducts a UX test, what
21 is the format through which it's ultimately
22 communicated?

23 Do you understand the question?

24 A It's usually published research.

25 Q Like a peer-reviewed document?

1 A Yes.

2 Q Spreadsheet maybe with the data?

3 A A lot of the research doesn't publish the
4 data like that. It would be more publishing the
5 analysis.

6 Q Like the conclusions?

7 A Yeah.

8 Q Okay. So my question is, did you review
9 anything like that in this case for the UX testing
10 that you claim Leapfrog did?

11 A So that -- can you rephrase the question?

12 Q Yeah.

13 Is there any peer-reviewed research of the
14 UX testing that Leapfrog allegedly did in 2014?

15 A Oh, okay. I see what you're saying.
16 Yeah. So I feel like it's different for a company
17 than a researcher. So a company is not going to do
18 a peer-reviewed publication about their own website.
19 But they would still follow the same process, the
20 same sort of validation and so forth.

21 Q There would be some sort of a report?

22 A There could be an internal report.

23 Q Okay. So my question, is this the
24 document you relied on, Exhibit 17, to underlie your
25 opinions in Opinion 4 about Leapfrog's UX testing?

1 A This is one of them.

2 Q What are the other documents?

3 A So this was a document that I mentioned
4 before that I think was not disclosed that gets tied
5 to the document that was disclosed and --

6 Q What document are you talking about?

7 A I'm not sure if you have this or not.

8 Q Should we mark it?

9 A It's the contract for consulting services.
10 And this was for the -- the doctor that they
11 hired -- I apologize to her -- Zarcadoolas.

12 Q Do you know if that was produced to us?

13 MR. CRAIN: Ms. Wood, do you know if that
14 was produced to us?

15 MS. WOOD: I thought it was. I'm trying
16 to double-check.

17 MR. CRAIN: Is there a Bates stamp on
18 those documents?

19 THE WITNESS: (Handing document.)

20 MR. CRAIN: Thank you.

21 THE WITNESS: And you mentioned at the
22 beginning, is there anything like this. I alluded
23 to it and wanted to show it to you guys. I think
24 that that document was not referred to in the
25 report.

1 BY MR. CRAIN:

2 Q Let's do this. I think we're going to
3 need that binder to scan in.

4 A Of course.

5 MR. CRAIN: Courtney, do you want to mark
6 the binder? Like, should we do that and give it to
7 the court reporter, or how do you want to handle
8 that? Or should we talk about that off record?

9 MS. WOOD: I just plan to scan it in as it
10 is. I don't think it makes sense to make it an
11 exhibit.

12 MR. CRAIN: Do you have tabs, numbered
13 tabs on this? I think we should mark these
14 documents because I've never seen this. Courtney,
15 do you have any objection to that, these documents?

16 MS. WOOD: No.

17 MR. CRAIN: This will be Exhibit 18.
18 Okay. Exhibit 19 we've seen.

19 Can we go off for a second?

20 THE VIDEOGRAPHER: We are going off the
21 record. The time is 2:40 p.m.

22 (Discussion held off the record.)

23 THE VIDEOGRAPHER: The time is 2:46 p.m.
24 We are back on the record.

25 (Exhibit 18 marked for identification.)

1 (Exhibit 19 marked for identification.)

2 BY MR. CRAIN:

3 Q Okay. Before the break, Mr. Vredenburg
4 handed us a document that, to our knowledge, we had
5 not seen before. We only have one copy, so Ms. Wood
6 graciously agreed to copy it and used the Wilson
7 Elser facilities to give us multiple copies. We've
8 now marked that document as Exhibit 18.
9 Mr. Vredenburg has the 18 that will become part of
10 the record.

11 And Ms. Wood has agreed to copy
12 Mr. Vredenburg's binder, scan it in as-is and
13 produce it to us hopefully later today, if the
14 scanning facility works.

15 MS. WOOD: Correct.

16 MR. CRAIN: So we're all on the same page.

17 BY MR. CRAIN:

18 Q I want to ask you about -- so you gave me
19 two documents before the break. One was Exhibit 18.
20 One was Exhibit 19.

21 18 is a contract for consulting services;
22 is that right?

23 A Yes.

24 Q And it's dated October 21, 2013.

25 Do you see that?

1 A Yes.

2 Q And we're going to go through this a
3 little bit because I'm seeing it for the first time.
4 So I apologize, it's a little tedious.

5 And it says:

6 "The purpose is the client
7 wishes to engage the services of
8 contractor to recommend strategies for
9 usability and navigability of hospital
10 safety score website and app."

11 Do you see that?

12 A Yes.

13 Q Is that the UX testing we're talking
14 about?

15 A Whatever iteration that they did, whatever
16 the standard was in 2013. I know things have
17 progressed since then.

18 Q Fair enough.

19 And this is a document you relied on in
20 rendering your opinions, right?

21 A Yes.

22 Q And now, this is a contract with how to
23 health literacy contractor.

24 Do you see that at the top?

25 A Yes.

1 Q And if you go to the next page, on page 2,
2 it says "Dr. Christina Zarcadoolas,"
3 Z-A-R-C-A-D-O-O-L-A-S, "will provide oversight
4 direction."

5 Do you see that?

6 A Yes.

7 Q And Dr. Zarcadoolas is the person for whom
8 Exhibit 19 is the biography, right?

9 A Yes.

10 Q And she was, to your understanding, the
11 lead UX tester; is that right?

12 A I believe so.

13 Q You've not spoken to her, right?

14 A No.

15 Q Now, just looking at this, if you go back
16 to page 1, there's a "Scope of Work" section.

17 Do you see that?

18 A Yes.

19 Q And it says:

20 "Working under the direction of
21 Leah Binder, president and CEO, contractor
22 shall perform the following scope of
23 work."

24 Do you see that?

25 A Yes.

1 Q It says "The scope of work shall include
2 but deliver the following." That's a strange
3 phrasing. And there's a list of bullets.

4 Do you see that?

5 A Yes.

6 Q Okay. And then bullet 1 says:

7 "A report and full analysis of
8 website app and media messaging as it
9 pertains to literacy load and effective
10 communication with diverse populations."

11 Do you see that?

12 A Yes.

13 Q Is this consistent with what we were
14 talking about before, how something might -- how
15 these UX testings might be communicated, once
16 complete?

17 A Yes.

18 Q Have you seen the report contemplated in
19 this first bullet?

20 A No.

21 Q Are you aware that it was ultimately
22 produced?

23 A No.

24 Q Okay. So are you certain that this
25 contract was performed?

1 A So I spoke with the VP, Missy Danforth,
2 and she told me that it was and that this was the
3 person that did it.

4 Q Okay.

5 A When speaking with her, she said that it
6 was.

7 Q Did she give you -- how long did you speak
8 with her for?

9 A Probably like 20 minutes to a half hour.

10 Q How many times?

11 A One time.

12 Q Was this the only topic covered?

13 A It was -- it was the main topic for sure.

14 Q What else was covered?

15 A So for my curiosity. It's outside of the
16 scope of the work. She just gave me a quick rundown
17 of, you know, how the scores are computed.

18 And on that topic, actually, I want to
19 just kind of generally say -- I've said it a bunch
20 before, but it seems like we might be getting past
21 that section now. You know, the methodology, how it
22 was created, how the scores were created, you know,
23 the fairness of the scores are not -- that's outside
24 of the scope of my work.

25 And I believe that I used the word

1 "punitive," and that was outside of the scope. It's
2 really not a term that I should have used because I
3 don't -- I don't know one way or the other. That's
4 outside of the scope of what I analyzed. I didn't
5 analyze the Frequently Asked Questions or --

6 Q Why did you use the word "punitive" then?

7 A I guess it would be based off of my
8 limited knowledge. But it's really -- really
9 outside of the scope, so it's not something for me
10 to opine on one way or the other. That would be
11 Dr. Harris' court there.

12 Q And the scope of your analysis is how a
13 reasonable user -- typical user would interact with
14 Figure 1 and Figure 2?

15 A Yes.

16 Q And that's the scope of your understanding
17 of how the methodology works, right?

18 A No. No scope for methodology. That's
19 outside.

20 Q Well, you have some understanding --
21 right? -- because you've opined on the accuracy of
22 the pages -- the transparency of the pages?

23 A Just insofar as they convey the
24 information that we've discussed here today.
25 Anything that goes into the methodology would exceed

1 the scope of what I was asked to do, as well as
2 exceed my expertise. So the -- I've got no opinion
3 on the methodologies.

4 Q The question of whether the methodology is
5 punitive, you're saying -- so you said it was
6 punitive before, right?

7 MS. WOOD: Objection to form.

8 THE WITNESS: I believe I used that term
9 when you had two documents in front of me and the
10 sentences and trying to interpret between the
11 difference.

12 BY MR. CRAIN:

13 Q And now you're walking that word back,
14 right?

15 A I am, yes.

16 Q After a break where you spoke with
17 counsel, right?

18 A Yes.

19 Q Okay. During that break -- I don't want
20 to know what was discussed. Did you discuss the
21 substance of your testimony with counsel?

22 MS. WOOD: Objection to form.

23 THE WITNESS: Is it okay to answer?

24 BY MR. CRAIN:

25 Q I'm not asking for the content, just

1 whether it was discussed.

2 MS. WOOD: You can answer as to "yes" or
3 "no."

4 THE WITNESS: Yes.

5 BY MR. CRAIN:

6 Q Okay. And now you are walking back the
7 word "punitive," right?

8 A Yes.

9 Q Following that break?

10 A Yes.

11 Q Okay. In which you discussed with counsel
12 the substance of your testimony?

13 A Yes.

14 Q Got it. Okay.

15 Going back to this contract. So you spoke
16 with Ms. Danforth.

17 Did you speak with any other Leapfrog
18 employees at any time about this case?

19 A No.

20 Q About the weather?

21 A No.

22 Q About a barbecue?

23 A No.

24 Q Okay. Just Ms. Danforth?

25 A Correct.

1 Q Now, did she communicate to you that this
2 report and full analysis was actually issued, bullet
3 1?

4 A I got this document after speaking with
5 her. So that wouldn't have been exactly how we
6 would talk about it. She was more like that
7 conversation led me to here.

8 Q Now, the only document you had when you
9 wrote your report was Exhibit what?

10 MR. GARNICK: 19.

11 MR. CRAIN: Tab 27.

12 MR. GARNICK: 17.

13 BY MR. CRAIN:

14 Q Exhibit 17; is that right? Do you have
15 that in front of you? It's the final narrative
16 report. That one (indicating.)

17 A So I would have had 17, 18 and 19.

18 Q When you rendered your opinions, you had
19 17, the final narrative report; 18, the contract,
20 and 19, the bio of Dr. Zarcadoolas, correct?

21 A Correct.

22 Q Only one of which I think was disclosed in
23 your Appendix C, right?

24 A No.

25 Q The biography was disclosed?

1 A It was disclosed.

2 Q So two of the three were disclosed, right?

3 A Yeah. So I apologize. That was a
4 mistake. This document I reviewed, and it should
5 have been on there. It was just an honest mistake.

6 Q Okay. Fair enough.

7 So I want to talk about this final
8 narrative report.

9 A Okay.

10 Q Is this the only evidence, besides your
11 discussion with Ms. Danforth, that UX testing was
12 actually done?

13 A Well, there is also Exhibit 18.

14 Q Well, Exhibit 18 says it was contracted
15 for, but it doesn't say it was done, right?

16 A Well, it's a good step towards getting it
17 done, to get the ball rolling.

18 Q Fair enough.

19 But we don't have the report that was
20 promised here, right?

21 A Correct.

22 Q Okay. So what is Exhibit 17, the final
23 narrative report? I can be more precise if it's
24 helpful. Just let me know.

25 A So my understanding is that they had

1 applied for a grant.

2 Q Uh-huh.

3 A And within the grant process, you know,
4 there's monitoring and questioning and seeing how
5 things went with the grant. And so this is
6 answering the questions. For example, "What are the
7 post-grant plans for the project if it does not
8 conclude with the grant?" I guess they're trying to
9 analyze, you know, do they want to continue funding
10 or -- you know, from that perspective.

11 Q And this is not written by
12 Dr. Zarcadoolas, right? This is written by
13 Ms. Binder?

14 A I don't see a signature at the end.

15 Q You see the email address on the bottom of
16 page 1?

17 A Yeah. That's --

18 Q Does that at least suggest she wrote it?

19 A That does suggest it, yes.

20 Q Okay. Now, did you ask, when you were
21 conducting your analysis for Opinion 4, for a copy
22 of the report and full analysis of the UX testing?

23 A Yeah. I asked them to give me everything
24 they had.

25 Q And this was all they had?

1 A Yeah. This is what was produced.

2 Q Okay. And this is not actually a report
3 of the UX analysis, right?

4 A Correct.

5 Q This is a -- almost like a -- well, as you
6 said, a grant recap in a way, right?

7 A Yes.

8 Q And almost trying to, in some ways, as you
9 read this, justify further grants, right?

10 A Yes.

11 Q In your expert opinion, is this the type
12 of document an expert analyzing UX testing should
13 rely on to evaluate the merits of a test?

14 A It doesn't paint the full picture. I feel
15 like -- you know, like you were saying, having the
16 actual report in front of me would say more than
17 what's here. But I think that there is important
18 information that is here, you know, saying that they
19 do have a focus on UX and that they have a credible,
20 qualified person doing so.

21 So I feel like the information that's here
22 is useful, but, you know, there could be further
23 documents that are even further useful.

24 Q Do you acknowledge in your report that you
25 don't have the full UX testing? I'm looking at

1 pages 12 to 14.

2 A Without going further through all of it, I
3 feel like the footnotes do paint pretty clearly
4 what's there.

5 Q The footnotes cite the document you relied
6 on, right?

7 A Yeah.

8 Q Now, you say "Leapfrog's UX testing
9 validates the website's clarity, in contrast to
10 Berger's untested methodology."

11 That's your opinion, right?

12 A Yeah. So assuming that they did go
13 through with the contract, that she did perform her
14 services, that is definitely an attempt on their
15 part to hire, you know, licensed -- not licensed,
16 because there is no license for that, but, you know,
17 a reputable professional to work on that and to
18 perform the UX testing.

19 And based off of the scope of work that's
20 given to them, it looks really reasonable to me of
21 the things that they were looking to do.

22 Q But you haven't read their conclusions --
23 right? -- the UX test report conclusions?

24 A That's correct.

25 Q For all you know, it could have told

1 Leapfrog to do the opposite of what they did, right?

2 MS. WOOD: Objection to form.

3 THE WITNESS: I don't have those
4 documents.

5 BY MR. CRAIN:

6 Q Yeah. And we've already discussed today
7 problems with the websites, right?

8 MS. WOOD: Objection to form.

9 BY MR. CRAIN:

10 Q At times, you characterize it as an issue,
11 right?

12 A I would say that there is always room for
13 constant improvement. And, you know, when we put
14 something under the microscope this much, we're
15 going to find stuff.

16 So I would say that, if I were being hired
17 to conduct further improvement, that I would
18 definitely have some suggestions of how to conduct
19 testing and proceed on that.

20 Q Then how can you opine that the UX testing
21 validates the website's clarity?

22 A The fact that they're following the
23 method. So the -- if I can draw an analogy to the
24 scientific method is you don't always start in a
25 perfect place. You can make a hypothesis and you

1 can be wrong. And it's true for companies too. You
2 don't always start perfect. It's about constant
3 improvement and iteration.

4 Q But that's not your opinion. Your opinion
5 is this -- isn't "This is pretty good, but we all
6 can do better." Your opinion is the UX testing
7 validates the website's clarity.

8 Do you want to withdraw or change that
9 opinion?

10 A No.

11 Q So you just said -- you referred back to
12 the scientific method.

13 The scientific method requires testing of
14 hypotheses, right?

15 A Yes.

16 Q What hypotheses did the UX testing test?

17 A It looks like it's related to literacy and
18 effective communication --

19 Q No, no. That's the contract you're
20 looking at, right?

21 A Right. But the scope of work, that's -- I
22 feel like they're one and the same in this case.

23 Q But how do you know it was done that way?

24 A That would be based off of the interview
25 with Ms. Danforth.

1 Q So she said this contract that you didn't
2 have at the time you were talking to her was fully
3 complied with?

4 A No. She --

5 MS. WOOD: Objection to form.

6 THE WITNESS: She said that this expert
7 was relied upon for fulfilling, you know, the
8 obligations.

9 BY MR. CRAIN:

10 Q So in the UX testing, presumably the
11 expert offered, as you see bullet 2,
12 "recommendations for revisions and new messaging,"
13 right?

14 A Yes.

15 Q That's your assumption?

16 A Yes.

17 Q You have no idea whether any of those were
18 actually followed, right?

19 A Correct.

20 Q Because we don't know what they are,
21 right?

22 A Well, I do remember them -- them saying
23 that they -- they were able to make, you know, large
24 strides and improvements based on -- based on the
25 work.

1 Q I'm asking a different question. They may
2 have done better, but let's set that aside.

3 You don't know -- so I said "You have no
4 idea whether any of those were actually followed,
5 right?" And you said "correct." And I said
6 "Because we don't know what those recommendations
7 are," right?

8 A Well, to me, it does look like they hired
9 an expert to do user experience on their website, as
10 I've said throughout my report.

11 Q So it's your opinion that it's enough to
12 hire an expert?

13 A I think that that's -- that's the start.
14 And --

15 Q So I go out and hire an expert to look at
16 my website, and then I can opine that UX testing
17 validates the website's clarity?

18 MS. WOOD: Objection to form.

19 BY MR. CRAIN:

20 Q I assume that's not your testimony, right?

21 A Do you want to rephrase the question?

22 Q Fair enough.

23 So you just told me that they hired an
24 expert, right?

25 A Yes.

1 Q And I asked you whether that was enough.
2 And you said "I think that's the start," right?

3 A So, in some cases, that can be enough and
4 that can be the end. It kind of depends on the
5 company and the webpage and, you know, if there
6 is -- if there is problems or not. And then, like,
7 a good practice that is encouraged in human factors
8 and industrial engineering is continuous monitoring
9 and receiving feedback, which, to my understanding,
10 you know, Leapfrog does do with, you know, having
11 open forum and opening up to the public, asking
12 about potential changes. And so --

13 Q Changes to the methodology, though, not
14 the website.

15 MS. WOOD: Objection to form.

16 THE WITNESS: So those specifics, you
17 know, I don't know.

18 BY MR. CRAIN:

19 Q But you just made a statement about them.
20 So where is that statement coming from?

21 A That they hired a professional to perform
22 UX testing. And, you know, I've got the bread crumb
23 trail of their work and who they are. You know, I
24 only have what's available. And I see the website,
25 and the website, you know, based on my other

1 opinions, does follow UX principles. So I think
2 it's reasonable to conclude what I did with my
3 opinion.

4 Q So is your opinion that the website
5 follows UX principles, or is your opinion that the
6 testing validates the website's clarity?

7 A Yeah. So the testing that she did
8 definitely did help validate the clarity.

9 Q What testing did she do?

10 A So she was hired to do testing related to
11 clarity. That was the main scope of her work.

12 Q Name everything that she did to test.

13 MS. WOOD: Objection to form.

14 THE WITNESS: You and I both know what
15 information is available here for us.

16 BY MR. CRAIN:

17 Q My view is none. But I'm trying to get
18 your view.

19 A So we have her credentials. We have that
20 she is --

21 Q Did she conduct the biometric eye movement
22 test that you talked about before?

23 MS. WOOD: Objection to form.

24 THE WITNESS: It's unlikely at that age,
25 you know, when she did it. I think it was like

1 2013.

2 BY MR. CRAIN:

3 Q Okay. How many types of UX testings
4 methodologies are available for this type of review?
5 Just in general.

6 You're reviewing the contract now,
7 Mr. Vredenburgh?

8 A Yes.

9 So would you please repeat the question
10 for me?

11 Q Yeah. The question was, how many types of
12 UX testing methodologies, techniques are available
13 for someone conducting this type of review? Just a
14 ballpark. I'm trying to understand.

15 A Two or three.

16 Q Okay. So one of those is the biometric
17 eye movement thing, right?

18 A Yeah. Which I think we can rule out.

19 Q Okay. Because that was developed later?

20 A Yeah.

21 Q What are the other techniques? Just two
22 or three.

23 A One would be just applying best practices,
24 you know, expert consultation, essentially, where
25 someone goes in and, based on their expertise, makes

1 the changes.

2 Q Is that like qualitative, as opposed to
3 quantitative?

4 A You can have a little of both, but I think
5 bringing in qualitative is fair.

6 Q Is there data in that analysis?

7 A Depending on their education and how they
8 choose to do it. So I think that would be the
9 straightforward approach that the majority of
10 websites and companies are going to choose.

11 Q What type of data would you use there?

12 A So for me personally?

13 Q Like, you're saying one way that somebody
14 would test is somebody would go in and look and give
15 feedback, right?

16 A Yeah.

17 Q And I asked you whether that's qualitative
18 or quantitative, and you said it could be both,
19 right?

20 A Uh-huh.

21 Q And I asked you what type of data informs
22 the quantitative side. And that's what I'm trying
23 to figure out.

24 What data goes into that, if any?

25 A Sure. Like font sizes, determining --

1 Q Got it.

2 A -- if it's going to be appropriate for
3 your users.

4 Q Okay. So data, just to make sure I'm
5 understanding, is not data like a consumer test of
6 what they view. It's the facts of how the page is
7 constructed, so to speak?

8 A Right.

9 Q And would this person also use, like,
10 scholarly research?

11 A Yes.

12 Q Like peer-reviewed academic journals?

13 A Yes.

14 Q Do you see where I'm going with this?

15 A Yes.

16 Q Isn't this exactly what Dr. Berger did?

17 A Yes.

18 Q And it's one of the two or three ways of
19 UX testing that you said were the ways that
20 Dr. Zarcadoolas could have done this, right?

21 A Yes.

22 Q So do you want to withdraw your opinion
23 that he did the wrong thing here? Because I assume
24 you want to be consistent.

25 MS. WOOD: Objection to form.

1 MR. CRAIN: Fair enough.

2 BY MR. CRAIN:

3 Q I'll just ask the question.

4 Do you want to withdraw your opinion as to
5 the permissibility, I'll just say in contrast to
6 Berger's untested methodology, which I think you
7 just said was the right way to do it?

8 A So I see the point that you're making, and
9 I think one issue is that a lot has changed over
10 time, and that 2013 is, you know, in technical terms
11 and with computers and websites, a different era
12 than, you know, the modern day.

13 Q So is it no longer permissible for someone
14 to analyze the data, meaning the facts on the page,
15 and academic research to identify the user
16 experience?

17 I mean, isn't that kind of what you did?

18 MS. WOOD: Objection to form.

19 THE WITNESS: So as I've been saying, I
20 think that it's important to, you know, apply the
21 gold standards that are available at the time now.

22 BY MR. CRAIN:

23 Q What gold standard did Dr. Berger not
24 apply?

25 A Research on participants, on users.

1 Q On users. Okay.

2 And Leapfrog has never done that --
3 right? -- to your knowledge?

4 A We don't know. I feel like this
5 information here, it doesn't say to me one way or
6 the other. They very well may have. Likely, they
7 did. But I can't say with certainty one way or
8 another with the documents in front of me.

9 Q So you are not withdrawing your opinion as
10 to Dr. Berger's methodology, right?

11 A I still stand by what I said before, that
12 I feel like that would have been the right way of
13 going about it, to use -- yes, to use the, you know,
14 efficient, quick, inexpensive UX testing that can be
15 done, that's taught, you know, in universities and
16 that's widely done by a lot of companies.

17 So I think, you know, following --
18 following the scientific method and doing -- doing
19 a -- doing an iterative set of testing with real
20 data, real users, I feel like that critique still
21 stands.

22 Q So you need user data to validate the
23 clarity of the website today, right?

24 A Yes. That's how it's taught.

25 Q And you didn't need that as of 2014?

1 A So it definitely was -- it was a different
2 time back then where, you know, it was still a
3 maturing field.

4 Q Okay. So your opinion was issued after
5 this gold standard came to be, right?

6 A My opinion was issued after -- can you
7 repeat that?

8 Q Yeah, let me fix that question.

9 In 2013, it was not the gold standard to
10 test website UX, user experience, with actual user
11 data, right?

12 A I would say it was still the gold standard
13 then as well.

14 Q Even though you say that the UX testing
15 validates the website's clarity?

16 A So my reading -- and this may be my own
17 bias. My reading of these documents was that she
18 did do user testing and --

19 Q Where does it say that?

20 A As I'm saying, that may be my own bias.
21 So, you know, in the writing of this report, you
22 know, I assumed that. And there very well may be
23 information that comes up to support that. But this
24 is the information that I have now.

25 Q Fair to say you just assumed that she had

1 done the gold standard, but you have no actual
2 evidence to support that?

3 MS. WOOD: Objection to form.

4 THE WITNESS: Based on the scope of work,
5 it would be reasonable.

6 BY MR. CRAIN:

7 Q To assume it?

8 A Yes.

9 Q But you have no data that actually shows
10 it occurred?

11 A Well, we have the website on the other end
12 that does follow the best practices.

13 Q Except for the issues we've talked about
14 today, right?

15 A Yes.

16 Q So for all you know, her recommendations
17 were against those problems, right?

18 MS. WOOD: Objection to form.

19 THE WITNESS: So based on that
20 conversation with Ms. Danforth, I don't think that
21 would be the case.

22 BY MR. CRAIN:

23 Q Ms. Danforth told you that they
24 implemented everything she recommended?

25 MS. WOOD: Objection to form.

1 THE WITNESS: That she was an expert that
2 they utilized and was useful.

3 BY MR. CRAIN:

4 Q That's different from what I'm asking,
5 though.

6 What I'm asking is, did Ms. Danforth tell
7 you that Dr. Zarcadoolas gave recommendations and
8 Leapfrog followed them?

9 A I don't know that detail.

10 Q Okay. So you see why I'm struggling,
11 right? You have an opinion that says Leapfrog's UX
12 testing validates the website's clarity, but you
13 have no conception of what the UX testing actually
14 resulted in, right?

15 A Well, you know, I do have a disclaimer on
16 the report as information becomes available and my
17 best estimation, and we discussed here that I
18 estimate that she did use, you know, the best UX
19 methods of the time. But, you know, with the
20 information available, we don't know.

21 Q Okay. So is it fair to say that the sum
22 total of facts relied upon for your decision -- your
23 opinion in Opinion 4 are that Leapfrog hired someone
24 with good credentials, Ms. Binder sent a response to
25 the grant agency that gave the money to do the

1 testing, and the website came into being in its
2 current form?

3 A Yes.

4 Q Let me change one other point.

5 The UX testing done was done in 2013,
6 right?

7 A Yes.

8 Q Way before the imputation model ever
9 existed, right?

10 A That's outside of the scope of my
11 analysis.

12 Q Okay. Is it outside the scope of your
13 analysis to assess whether your opinion -- well, let
14 me strike that.

15 You say Leapfrog's UX testing validates
16 the website's clarity, right?

17 A Yes.

18 Q You don't qualify as to time, right?

19 A So what I'm saying is that, to the -- you
20 know, the best of their ability hiring experts at
21 the time, they thought about UX and tried to tackle
22 the problem head on, and that, you know, the website
23 reflects it, and that it does reflect that UX was
24 thought about for creating this website and
25 progressive disclosure. And, you know, I think that

1 the website was well made and still stands today to
2 being -- to holding to that.

3 What I'm saying is, if you're going to
4 make a bold claim, if you're -- you know, in
5 science, if you want to make a bold claim -- say
6 you've got a bold hypothesis. Well, you need great
7 evidence to support it.

8 Q I agree.

9 A You know, nobody is going to agree with a
10 bold claim unless you have strong evidence. And so
11 I think, you know, coming forth and making a bold
12 claim that, you know, somebody's website is
13 misleading, you know, that would be a bold claim.

14 And I would say that, you know, taking --
15 and you guys have -- you hired Dr. Berger, and you
16 have taken it seriously with him. But I would
17 wonder -- you know, it's easy, it's inexpensive.
18 Large amounts of data can be collected quickly. And
19 it's the gold standard. Why wouldn't you do it?

20 Q Is your claim not equally as bold?

21 A I don't see where you're coming from. Can
22 you --

23 Q You say UX testing validates the website's
24 clarity, right?

25 A Right.

1 Q That's not a bold claim?

2 A So --

3 Q Yes or no?

4 You said our claim that the website was
5 misleading is a bold claim, right?

6 A Yes.

7 Q Why is a claim that the website is a
8 beacon of clarity not a bold claim?

9 MS. WOOD: Objection to form.

10 BY MR. CRAIN:

11 Q Okay. Strike "beacon."

12 A So I think that we can -- we can walk
13 through opinions 1 through 3 again to talk about
14 clarity. But I think there's --

15 Q None of them are bold, right?

16 MS. WOOD: Objection to form.

17 THE WITNESS: You're saying that Opinions
18 1 through 3 are not bold?

19 BY MR. CRAIN:

20 Q That's my question to you. Are they bold
21 claims? You said Dr. Berger's claim was -- or our
22 claim was bold -- right? -- our client's claim that
23 the website was misleading?

24 A Yes.

25 Q Are any of your opinions bold?

1 A I don't think so. I think that they hold
2 to the standards pretty straightforward.

3 Q Okay. Back to the UX testing point.

4 Do you have any present understanding of
5 what the website looked like, the
6 leapfroghospitalsafetygroup.org, leapfroggroup.org,
7 in 2013, '14 or '15?

8 A You know, I don't think so.

9 Q Do you have any understanding of what the
10 hospital safety grade pages in Figure 2 looked like
11 back at that time?

12 A I don't have that information.

13 Q Do you have any understanding as to
14 whether the website has been changed in the last 10
15 years, since the UX testing was purportedly done?

16 A I'm not sure.

17 Q Okay. So your assumption -- your opinion
18 relies on a further assumption that what was tested
19 back then vis-à-vis the website that existed at the
20 time is sufficiently close to what exists today?

21 MS. WOOD: Objection to form.

22 THE WITNESS: Or that, you know,
23 continued, you know -- so my understanding of the
24 documents that I read is that it has stayed pretty
25 consistent in terms of its form, and that it hasn't

1 changed much since then. I'd need to kind of dive
2 through the documents, but that is my recollection
3 of what I've seen.

4 BY MR. CRAIN:

5 Q What document says that?

6 A That's a good question. I can start
7 diving for it if you like.

8 Q I would be very keen.

9 Are you -- is it any document on your
10 Appendix C?

11 A Well, I do -- I do have -- let's see. I
12 do have some of their earlier documents. Like
13 they've got an archive that goes back to the prior
14 years, and so -- of reports that they've published.

15 Q What reports?

16 A So I think it's all reports.

17 Q Reports of what, though?

18 A Any kind of reports that they put out to
19 the public. And it's structured by year. And so I
20 have looked at the earlier year.

21 I remember printing out their very first
22 report. I think that it was like an analysis of
23 2013, and it was a dated 2014 document.

24 Q Was this a document you considered in
25 forming your opinion?

1 We're back to the beginning.

2 A Yeah. I think I might need to let the
3 point go, but I do remember somewhere in the
4 discovery review, there is so much about that. It
5 has remained relatively the same, the gas gauges and
6 so forth.

7 Q The gas gauges have remained the same,
8 you're saying?

9 A Yes.

10 Q But you don't know what document says
11 that, if any?

12 A I don't recall at this time, but I do --
13 my memory is telling me that that has -- that that's
14 been constant.

15 Q And do you know whether it's on your
16 Appendix C? You can look at it if you want. Page
17 23 of Exhibit 1.

18 A I think what I have, looking at the final
19 narrative report, is probably going to be my best
20 bet.

21 Q That's from 2014, isn't it?

22 A Right. But that's getting pretty close to
23 the years that we're talking about here.

24 Q It's 10 years ago, isn't it?

25 A Yeah. That's my point, is looking back to

1 an older document to seeing the similarity.

2 Q I see. You're saying the fact that the
3 gas gauges are in that document suggests at least
4 some degree of continuity in that respect?

5 A Yes.

6 Q Got it. I didn't understand that. Okay.
7 Got it.

8 A I feel like what you're asking is a little
9 bit out of the scope of what I looked at. But it's
10 a reasonable question, so I'm trying to find what I
11 have available for it.

12 Q No. I appreciate your trying. You know,
13 it's a little challenging when we don't have it.
14 Okay.

15 So outside of the gas gauge, is there any
16 other component of the Figure 2 type website?

17 A Yeah. So you can see here that there is
18 definitely a lot of similarity. This, I think, was
19 the document that I was thinking about.

20 Q What page are you on?

21 A It's the final narrative report. And, you
22 know, we've got such a large amount of paper, it's
23 hard to think of the particular page, but I know it
24 was here.

25 Q So you have -- what page are you on?

1 Bates No. 2723?

2 A One, two, three, four -- yeah, 2723.

3 Q Okay. So I see that. And let's just look
4 at this together. Okay.

5 And I see the gas gauges. That's what
6 you're referring to?

7 A Yeah, as well as other UX elements. Like
8 the tabs that they use, that looks like it's
9 remained the same as well.

10 Q Got it. Okay.

11 So this figure on page 2723, right?

12 A Yes. That validates -- that answers your
13 question about, you know, has it changed. I would
14 say that this is the core of the UX here. This is
15 the most important element that we've all been
16 talking about. This looks like it's remained
17 relatively unchanged.

18 Q Those gas gauges are the core?

19 A I would say, along with the tabs and the
20 information below, it's definitely part of the core.
21 It's an important part.

22 Q And you don't know whether any other
23 component of the website has been consistent, right?

24 A I think that, you know, as we sit here
25 today with this information, this is going to be the

1 best source to look at for that kind of historical
2 information, historical site.

3 Q So this is all we've got, right?

4 A You know, at the moment, with what we
5 have, I think this is the best source, without
6 trying to dig around.

7 Q I'm just trying to make sure you don't
8 come to trial with something new. I'm just saying
9 today, your opinion relies on this document, page
10 2723, right?

11 A Yeah. I mean, I'm confident in saying
12 that the UX is similar to this. That's not a
13 substantial change.

14 Q Okay. Got it. So that's the basis.
15 Okay.

16 One other question. The footnote, the
17 asterisk's footnote we've been talking about a lot
18 today.

19 Do you know the one I'm referring to?

20 A Yes.

21 Q The one that you've got to scroll down to,
22 right?

23 A Yes.

24 Q That did not exist in 2014, right?

25 A I don't know.

1 Q I can show you a document if it's helpful.

2 Well, I'll represent to you Ms. Danforth
3 has testified that imputation didn't even start
4 until 2020, 2021.

5 MS. WOOD: Objection to form.

6 MR. CRAIN: You were there.

7 MS. WOOD: I don't think that's what she
8 said or met Austin.

9 BY MR. CRAIN:

10 Q Do you have any knowledge to think that
11 imputation existed as of 2013 and 2014?

12 A That's outside of the scope of my
13 analysis.

14 MR. CRAIN: Give me the Campione document.
15 We're just going to get this, lock this down a
16 little bit.

17 MR. GARNICK: Email?

18 MR. CRAIN: Yep.

19 BY MR. CRAIN:

20 Q I'm going to show you the email. Well,
21 let me not narrate. I'll give you the document.

22 MR. CRAIN: I'll ask Courtney to narrate.

23 MS. WOOD: Please do. I need something to
24 do.

25 I do just want to put on the record that

1 the project contract was produced in discovery,
2 along with --

3 MR. CRAIN: It was. Is there a Bates
4 number?

5 MS. WOOD: Yes. Along with
6 Mr. Vredenburgh's report.

7 MR. CRAIN: Can you read the Bates number
8 in, just so we have it?

9 MS. WOOD: Yes, I can.

10 MR. CRAIN: I appreciate your copying it,
11 nonetheless.

12 MS. WOOD: No problem.

13 The first page of the Bates for that
14 Leapfrog project contract is LEAPFROG 03632712. And
15 it goes on for seven pages. So the last Bates No.
16 is LEAPFROG 03632718.

17 MR. CRAIN: Thank you.

18 (Exhibit 20 marked for identification.)

19 BY MR. CRAIN:

20 Q This is going to be Exhibit 20.

21 Mr. Vredenburgh, I've handed you an email
22 marked as Exhibit 20. It also has an Exhibit 21
23 from another deposition.

24 Do you see that in blue?

25 A Yes.

1 Q And the Bates number is ending 7863.

2 Do you see that on the bottom right?

3 A Yes.

4 Q You said earlier today you reviewed some
5 internal emails.

6 Am I recalling that right?

7 A So it's not anything that I have relied
8 upon in the report.

9 Q Okay.

10 A Kind of a frenzy of a lot of documents I
11 looked at real quickly. But it does jog my memory
12 that I reviewed it, and I remember reviewing this
13 too. It just took me a little while to remember and
14 find it.

15 Q I hear you. You're saying, looking at
16 this email, you think you reviewed this and
17 considered it in rendering your opinion? Take a
18 second to read it, if it's helpful.

19 A I don't think so.

20 Q All right.

21 A This looks outside of the scope of what I
22 would have analyzed.

23 Q But you're saying you remember looking at
24 other internal emails that you considered in
25 rendering your opinion?

1 A Honestly, I don't recall.

2 Q I'm just trying to understand.

3 So this is an email. If you look back to
4 the beginning -- and it goes in reverse order, so
5 you have to go to the end, page 7868. Okay.

6 And do you see there's an email from
7 Alexandra Campione at 4:45 p.m. on May 29, 2024?
8 It's the last one.

9 A Yeah. When you get to a good stopping
10 point in your questions, I'd love to take a break
11 soon.

12 Q Do you want to take a break now, or can we
13 finish this email?

14 A Let's finish the question, finish the
15 email. Whenever you think is a good stopping time.
16 I just want to put that on the radar.

17 Q Let's take a break now. We'll come back
18 to do this email, if that's okay with Ms. Wood.

19 MS. WOOD: Sure.

20 MR. CRAIN: Okay. Take a break.

21 THE VIDEOGRAPHER: We are going off the
22 record. The time is 3:33 p.m.

23 (Recess taken.)

24 THE VIDEOGRAPHER: The time is 3:48 p.m.
25 We are back on the record.

1 BY MR. CRAIN:

2 Q Okay. So we were looking at Exhibit 20.
3 This is Exhibit 20. It's an email that we started
4 talking about. The first page is 7863, Bates
5 ending.

6 Do you see that?

7 A Yes.

8 Q Okay. Let's go to the last page. And the
9 last page is 7868.

10 Do you see that?

11 A Yes.

12 Q And there's an email from Ms. Campione to
13 Paulina Litter dated May 29th at 4:45 p.m.

14 Do you see that?

15 A Yes.

16 Q And it's 2024, right?

17 A Correct.

18 Q Do you know who Ms. Campione is?

19 A I reviewed her deposition.

20 Q Do you know who she is or . . .

21 A It will take me a little while to
22 remember. I remember she's one of the Leapfrog
23 employees.

24 Q When you say you reviewed her deposition,
25 did you read it closely or just sort of scan it?

1 A No. I just scanned it.

2 Q Her title -- I don't know if it says here.
3 Let me just see. Yeah. If you look at page 7865,
4 it says she's a program analyst healthcare ratings,
5 for what it's worth.

6 I want to go to her email.

7 Do you see "Here's the final mockup and
8 description. Thanks again."

9 Do you see that language?

10 A No.

11 Q Are you on page 7868?

12 A Yeah.

13 Q Okay. Look right under the subject matter
14 of her email.

15 A Yeah. Oh, okay. Yeah, I see it.

16 Q Do you see it?

17 A Yeah.

18 Q And then after the next paragraph, she
19 provides the mockup, right?

20 A Yes.

21 Q And what does the mockup look like to you?

22 A The -- similar to the current site.

23 Q And do you see she has an arrow towards
24 the bottom?

25 A Yes.

1 Q And what's that towards?

2 A The asterisk.

3 Q And then you can see -- let's go to the
4 first page. Actually, go to the second page,
5 please. Page 7864.

6 Do you see that?

7 A Yes.

8 Q And if you look at the top, you're going
9 to see Paulina Litter writes to Ms. Campione at
10 11:42 a.m.

11 Do you see that?

12 A Yes.

13 Q And a couple lines down from the subject,
14 she says "A few thoughts on the language."

15 Do you see that?

16 A Yes.

17 Q And if you scan through those bullets,
18 fair to say that those are like drafts of the
19 asterisk's footnote?

20 A Yes.

21 Q Now go one more forward, page 7863. And
22 look at the subject.

23 Do you see it says "New imputation
24 denotation"?

25 A 7865 or --

1 Q I'm sorry, 63. It's the first page of the
2 document.

3 A Okay. My mistake.

4 Q No worries. You got it?

5 A Yes.

6 Q See at the bottom. Look at the subject
7 note on Ms. Campione's email from 12:29 p.m.

8 Do you see that?

9 A Yes.

10 Q And she says "New imputation denotation."
11 Do you see that?

12 A Yes.

13 Q And she says:

14 "Thanks for doing this. But we
15 can't say 'external data sources' because
16 we're arbitrarily assigning them the
17 points associated with the bottom scoring
18 category, limited achievement, or old data
19 from the previous survey, internal data
20 source. Leo wanted us to make it sound
21 like the expert panel approved it, and the
22 assigning of these points was legitimate.
23 What about this? The hospital declined to
24 report data for this measure, so a score
25 was calculated using an imputation model

1 approved by patient safety experts."

2 Do you see that?

3 A Yes.

4 Q That's not the ultimate footnote they
5 adopted, right?

6 A Correct.

7 Q But reviewing this email now, does this
8 give you a -- does this refresh your recollection as
9 to when the footnote was developed, the asterisk's
10 footnote?

11 A So this the first time I've seen this
12 document.

13 Q Did you have an understanding of when the
14 footnote was first drafted?

15 A That was, yeah, outside of the scope of
16 what I analyzed. I didn't -- I didn't focus on that
17 in the report.

18 Q Okay. So you had -- when you issued your
19 Opinion 4, that you UX testing from 2014 and 2013
20 validated the clarity of the website, you did not
21 consider whether the footnote was on the website at
22 the time?

23 A Correct.

24 Q Okay. Did you ask Ms. Danforth, when you
25 spoke to her, whether the footnote had been on the

1 website at the time?

2 A No.

3 Q Okay. And the footnote is pretty
4 important to your analysis, right?

5 A Well, you know, back in the -- 2013, 2014,
6 it wasn't -- it wasn't important, so . . .

7 Q No, but you -- I'm talking about you
8 sitting here today in 2025, right?

9 A Yes.

10 Q It's important to your analysis, right?

11 A Yes.

12 Q And the fact of people scrolling down and
13 reading it is important to your analysis, right?

14 A Yes.

15 Q Okay. And so, if -- I'm going to
16 represent, based on this document and other
17 depositions, that the footnote did not get put on
18 the website until 2024.

19 You didn't know that until this moment,
20 right?

21 MS. WOOD: Objection to form.

22 BY MR. CRAIN:

23 Q Assuming it's right.

24 A Yes.

25 Q Okay. And so you have no knowledge to

1 suggest that the UX testing from 2013 and 2014
2 validated the clarity of the footnote, right?

3 A The 2013, 2014 UX validation predates
4 that.

5 Q Okay. And just to be clear, if it
6 predates it, it can't have analyzed it, right?

7 A Correct.

8 Q Okay. All right. You can set that aside.
9 I want to ask, going back to your
10 report -- you say -- I think this is Footnote 3. So
11 I'm on page 13. Here we go. You there?

12 A Sorry. I think I had what I needed in
13 front of me, but I -- no, that's not it. I'm
14 looking for my report.

15 Q Yeah. Look for Exhibit 1, your report.

16 A I've got a lot of paper in front of me.

17 Q Yeah. I agree. And make sure the
18 exhibits go, at the end, to the court reporter, by
19 the way.

20 A I'm pretty sure this is it.

21 Okay. What page do you want to look at?

22 Q Page 13, please.

23 A All right.

24 Q This is in Opinion 4.

25 Do you see that?

1 A Yes.

2 Q And it says "Leapfrog adopted." I'm
3 looking -- it's about six, eight lines from the end.

4 Do you see that?

5 A Yes.

6 Q Okay. And it says:

7 "Leapfrog adopted the 'Worst
8 Hospital Score' benchmark in their
9 methodology because consumer testing
10 revealed potential confusion with scales
11 where low values are worst in outcome
12 measures (e.g., infection rates) and high
13 values are worst in process/structural
14 measures (e.g., compliance scores); this
15 is also why they employ a 'gas meter'
16 visual with colors to clearly indicate
17 good or bad performances," et cetera,
18 et cetera.

19 My question to you is, you say Leapfrog
20 adopted the worst benchmark score because of
21 consumer testing.

22 What consumer testing are you referring
23 to?

24 A So that would be based off of the --
25 Dr. Zarcadoolas and the discussion there. And I

1 think that everything that could be found was
2 produced to me. So this is the information that we
3 have to work off of.

4 Q But didn't we, in the last session,
5 conclude that we have no knowledge of her doing
6 consumer testing? Right?

7 MS. WOOD: Objection to form.

8 THE WITNESS: Correct.

9 BY MR. CRAIN:

10 Q And you said that was the gold standard
11 now, but not necessarily then, right?

12 A Correct.

13 Q Okay. So what were you referring to here?
14 Is that just a slip-up?

15 A Yeah. So I told you my assumption, while
16 I was writing this report, that that was the testing
17 that was done.

18 Q But that was not something Ms. Danforth
19 communicated to you, right?

20 A I can't recall from the conversation.

21 Q Okay. And you're not aware of any actual
22 consumer testing having been done, despite this
23 language, right?

24 A I think that there's evidence here that,
25 you know, it definitely could have been done. But

1 we don't know for certain.

2 Q Okay. I want to go back to something you
3 mentioned earlier, which is -- you said there were
4 two or three best practices for UX testing.

5 And we started talking about the first two
6 and then went in a different direction.

7 Can you just tell us for completeness what
8 the third is?

9 A Can you read back the testimony from --

10 Q I don't have it readily, but my
11 recollection -- and tell me if this is wrong -- is
12 you said the first one was the biometric eye-catch
13 system; is that right?

14 A Would the court reporter be able to read
15 back that testimony?

16 Q Okay. Why don't we come back to it after
17 a break, and we'll find it, and we'll come back to
18 that. But I want to close the loop as to what the
19 third is. We'll come back to it.

20 Tab 29. There is one last thing you say
21 in your fourth opinion I want to ask you about.

22 You say in your fourth opinion that
23 hospitals can still receive an A rating, even with
24 imputed scores.

25 Do you recall that?

1 A Yes.

2 Q That's in paragraph 27.

3 What's that based on?

4 A What page?

5 Q It's in paragraph 27, towards the end.

6 MR. GARNICK: "It is important to note."

7 MR. CRAIN: Page 13?

8 MR. GARNICK: 13.

9 BY MR. CRAIN:

10 Q It's about eight lines from the bottom.
11 There it is. Okay.

12 The sentence -- do you see where we were
13 before, Mr. Vredenburg? "Leapfrog adopted"?

14 A Yes.

15 Q Go, like, three lines up. And you say "It
16 is important to note that hospitals can still
17 receive an A rating, even with imputed scores."

18 A Yes.

19 Q Where did that come from?

20 A That was based on the conversation with
21 Ms. Danforth. So I remember that clearly, her
22 telling me that. And that was via Zoom. So she was
23 able to show me an example.

24 Q And she -- okay. She did not show you an
25 example.

1 And did she distinguish between hospitals
2 subject to step 1 imputation versus step 2
3 imputation?

4 A You said she did not show an example, but
5 my understanding is she did show an example.

6 Q Oh, I'm sorry. I misunderstood you. She
7 showed an example?

8 A Yes.

9 Q Got it.

10 Do you recall the example?

11 A I don't recall now.

12 Q Do you remember how many there were?

13 A My estimation, based on the conversation,
14 was maybe about five.

15 Q Okay. Pretty good estimation.

16 And then do you recall whether there was
17 step 1 or step 2 imputation?

18 A That wasn't disclosed.

19 (Exhibit 21 marked for identification.)

20 BY MR. CRAIN:

21 Q Okay. I'm going to mark as Exhibit 21.
22 This is a demonstrative summarizing data, the
23 grading data.

24 And this is not a document I think you've
25 seen before, right?

1 A No.

2 Q So this is a demonstrative that lays out
3 non-participating A-graded hospitals on the right
4 side.

5 Do you see that at the top of the chart?

6 A Yes.

7 Q And you can see a dramatic difference
8 between the first three rows and the bottom two
9 rows.

10 Do you see that?

11 A Yes.

12 Q And do you see it says "Subject to step 1
13 imputation" in about the middle column?

14 A Yes.

15 Q And in fall 2024, there are only two
16 hospitals that got an A, subject to step 1.

17 Do you see that?

18 A Yes.

19 Q Whereas, before there had been 96?

20 A Yes.

21 Q And then in spring 2025, there are four.

22 Do you see that?

23 A Yes.

24 Q And then subject to step 2, it's three and
25 two respectively.

1 Do you see that?

2 A Yes.

3 Q And then, finally, subject to step 2
4 imputation, excluding hospitals that are missing IPS
5 score, is zero.

6 Do you see that?

7 A Yes.

8 Q Okay. So is it more accurate to say that
9 hospitals subject to certain forms of imputation can
10 still get an A, but not all?

11 MS. WOOD: Objection to form.

12 THE WITNESS: That's outside of the scope
13 of my analysis.

14 BY MR. CRAIN:

15 Q So that line in your opinion is not within
16 the scope?

17 A I believe that line holds up to what this
18 chart is saying.

19 Q Okay. A hospital can still get an A,
20 regardless of the form of imputation, right?

21 A Yeah. So that wasn't based on this chart.
22 That was based on the conversation with
23 Ms. Danforth. And this chart seems to confirm that.

24 Q And you don't have any idea as to which of
25 these three buckets the five Plaintiff hospitals

1 fall in, right?

2 A No.

3 Q All right. You can set that aside. We'll
4 come back to the last UX exhibit, but let's turn to
5 your Opinion 5 now. Okay.

6 We've talked about Opinion 5 throughout
7 the day, right? Would you agree?

8 A Yeah, we've touched on it.

9 Q So your Opinion 5 is "Google Analytics
10 data demonstrates high user engagement with full
11 page content, ensuring visibility to key
12 disclosures."

13 Do you see that?

14 A Yes.

15 Q That's based on -- you have a figure that
16 looks -- it's Figure 4 -- that has the average, as
17 you said earlier, scrolls per user, right?

18 A Yes.

19 Q Now, I want to take a look at some of the
20 analytics data.

21 Will you give me, Adam -- now, just to
22 make sure I understand how you did this -- let's get
23 the scroll data. Tab 30, please.

24 You reviewed the Google Analytics data
25 that was procured through the inspection with

1 Cornerstone; is that right?

2 A Yes.

3 Q And it was a fairly lengthy set of
4 analytics data, right?

5 A Yes.

6 (Exhibit 22 marked for identification.)

7 BY MR. CRAIN:

8 Q So I'm going to mark as Exhibit 22 -- it's
9 a subset of that data for -- I'm sorry -- for you to
10 use.

11 All right. So this is just the analytics
12 data for the five Plaintiff hospitals.

13 Do you see that?

14 A Yeah. I did a similar thing in this file
15 here. I want to compare.

16 Q Okay. When you say "a similar thing," you
17 mean narrow the analytics data to just the five
18 plaintiffs hospitals?

19 A Yeah. I've got a nearly identical
20 document in here. I want to just --

21 Q Oh, I see that. Okay. Did you get into
22 our files?

23 Tell me if it looks consistent with yours,
24 which I'd love to see too.

25 A Yeah. I'm not going to jump into

1 everything, but I think this looks consistent.

2 Q Now, just to make sure I understand, when
3 you -- so your analysis relied on what is in our
4 Exhibit E, right, "Events count per active user"?

5 A Yes.

6 Q And that's the scrolls for the total user
7 in D, right?

8 A Yes.

9 Q And event count in column C is the
10 scrolls, right?

11 A Yes.

12 Q So you basically took C and divided it by
13 D to output an average, right?

14 A Correct. And when you say "scrolls," it's
15 actually got a little bit more of a technical
16 definition.

17 Q Okay. What is it?

18 A It would be the time that a user has
19 scrolled to at least 80 percent of the page.

20 Q Okay.

21 A So it's when they've made it to the
22 bottom, essentially, that that event count triggers.

23 Q Yes. Okay.

24 Now, in analyzing this data, did you
25 evaluate Google Analytics' definitions of these

1 concepts?

2 A Yes.

3 Q Okay. I want to look at tab 31, which I'm
4 going to mark as Exhibit 23.

5 (Exhibit 23 marked for identification.)

6 BY MR. CRAIN:

7 Q Mr. Vredenburg, do you recognize this
8 document?

9 A This is a little bit different than the
10 document that I provided.

11 Q What document did you provide?

12 A So it would have been in the file that I
13 produced, and it's here in my references. It looks
14 like it's from a similar page, but a slightly
15 different page from the Google Analytics. But you
16 can proceed with your questions on it, and I'm going
17 to find another document too.

18 Q Can you find the other document? Because
19 I just want to see if there is any inconsistency.

20 And you're saying -- was this produced to
21 us as well?

22 A Yes, it was produced. And it should be
23 cited on the report.

24 Q So yours, we think, is
25 support.Google.com/analytics/answer.

1 Is that right?

2 A That sounds right to me.

3 Q This, I think, is a slightly different
4 page, which has definitions for the analytics.

5 A Yeah.

6 Q Does that sound right?

7 A Yeah.

8 Q You tell me when you're ready.

9 A Here we go. Similar page, but also
10 different in some important ways.

11 Q May I see that? Thank you.

12 So I'm looking at a document called
13 "Enhanced Measurement Events."

14 Okay. Yeah, it looks like it has some
15 definitions, but not all, right?

16 A Yes.

17 Q And this is an additional -- the page that
18 we have handed you says "GA 4," and yours says
19 "GA 4" too. That's interesting. Okay.

20 So I want to look at our document. That's
21 helpful. So your document has different -- certain
22 different definitions than the one that we've pulled
23 from Google Analytics.

24 A This one includes the definition for
25 scroll.

1 Q Yes. It doesn't include the definition
2 for total users, right?

3 A That's a good question.

4 Q Take a look.

5 A No, it does not.

6 Q Go to the last page of Exhibit 23. And
7 you'll see the bottom, it says "Total users."

8 Do you see that?

9 A Yes.

10 Q It says "The number of unique users or
11 user IDs who triggered at least one event."

12 Do you see that?

13 A Yes.

14 Q What does that mean?

15 A Unique users. So, if -- let me take a
16 second and think about that.

17 Q Take a look.

18 A Great. So I think a good way to think
19 about this is if one user, you know, triggered it a
20 bunch of times, they're only going to get counted as
21 one user. Like if they come back and forth to the
22 page again, they're still just one user. So that's
23 what makes them unique users. And --

24 Q This number is not all users who access
25 the website, right?

1 A I believe that it is all unique users.

2 Q Who triggered at least one event?

3 A Right. But I think just loading a page is
4 triggering an event.

5 Q Isn't the event the scroll?

6 A There's a "page view" event. There's all
7 sorts of different events. It's saying if you
8 trigger at least one of them.

9 Q So your total users -- let's go to St.
10 Mary's, right? Do you see St. Mary's on the page?

11 A Yeah.

12 Q Look at your Figure 4. Sorry, look at
13 your Figure 5 for St. Mary's.

14 A I'm sorry. What was that document, Figure
15 5?

16 Q Exhibit 1, your report.

17 A Okay.

18 Q Okay. Page 16. Next one, page 16.

19 A Yeah. My fingers aren't quite turning the
20 page.

21 Q I hear you.

22 A A little slippery. Okay.

23 Q Okay. So first St. Mary's. You
24 calculate, based on this graph, about 100 total
25 users, right?

1 A Correct. And the number of users, if
2 we're going to go into that, that's the main point
3 of the amendment. Because that was the information
4 that was the most off from this original analysis.

5 Q Fair enough.

6 I'm not quarreling with your numbers,
7 actually. You were -- if I look at Figure 5 in your
8 supplemental report, which feel free to pull out,
9 it's similar. It's a hundred in change or maybe
10 around 100 in your Exhibit 2.

11 A Yeah.

12 Q So St. Mary's wasn't that different,
13 right?

14 A Yeah. I think the main one that changed
15 was Good Samaritan.

16 Q Okay. So let's stick with St. Mary's.

17 Now, if you look at the exhibit I gave
18 you, Exhibit 23 of the analytics data, do you see
19 St. Mary's is row 12?

20 A Yes.

21 Q And it says "Total users, 104," right?

22 A Yes.

23 Q Now, I want to give you another document
24 from Google Analytics. And this is going to be
25 Exhibit 24.

1 (Exhibit 24 marked for identification.)

2 BY MR. CRAIN:

3 Q Do you recognize this document?

4 A Yes.

5 Q What is this?

6 A This is a chart of St. Mary's grade page
7 and St. Mary's methodology download page.

8 Q Okay. And it says -- do you see where it
9 says "Active users"?

10 A Yes.

11 Q What's the number under St. Mary's grade
12 page?

13 A That looks like 547.

14 Q So isn't it right that the number of users
15 on the page was 547, but the number of users who
16 scrolled was 104?

17 A So that comes down to the discretion of
18 unique users because you're going to have repeats.
19 So this is for unique. This is total.

20 Q Okay. But that's unique users who
21 triggered an event, right?

22 A Yes. But just loading a page is
23 triggering an event.

24 Q How do you know that?

25 A Because that was the first event on this

1 page.

2 Q Do you see on Exhibit 23, it says the
3 event name?

4 MR. GARNICK: Exhibit 22.

5 BY MR. CRAIN:

6 Q Exhibit 22. Sorry. Column A says "Event
7 name"?

8 A Yes.

9 Q It says "scroll," doesn't it?

10 A Yes.

11 Q Doesn't that mean the event here for the
12 total users who triggered an event was scroll?

13 A Yes.

14 Q So this means 104 is the number of users
15 who triggered a scroll, right?

16 A So this is -- I feel like the discretion
17 is between unique users and total users. Because
18 this isn't saying unique users here. This is just
19 active users.

20 Q Is it your position -- I'm not sure I
21 understand that. Say more of what you mean. How
22 are you getting that?

23 A Because this is just saying active users,
24 and this one is unique users.

25 Q Okay. It's not unique users who triggered

1 a scroll?

2 Let me ask you this question: If a unique
3 user went to this same website and did not scroll,
4 would they show up in column D?

5 A I believe they would.

6 Q Why?

7 A Because this is the -- because it's
8 showing the total number of users.

9 Q Who triggered an event.

10 A Right.

11 Q Which is scroll.

12 A But it's the event count per active user.

13 So --

14 Q So if some active user did not trigger the
15 event, they would not be counted; isn't that right?

16 A No. It should be counted because it's
17 event count per active user, per unique user.

18 Q That triggered an event. Why are you
19 omitting that from your statement?

20 A It doesn't say here event count per active
21 user that triggered the event. It's just saying per
22 active users.

23 Q This is saying, the Google Analytics
24 definition, that total users means the total number
25 of unique users or user IDs who triggered at least

1 one event.

2 Do you think that definition is wrong?

3 A No. That's the definition.

4 Q So, if an active user did not trigger at
5 least one event, meaning scroll here, they wouldn't
6 show up in column D, right?

7 A But it's saying active count per active
8 user.

9 Q I want an answer to my question.
10 If a user did not trigger at least one
11 event, scroll, would they show up in column D?

12 MS. WOOD: Objection to form.

13 THE WITNESS: I believe that they would.

14 BY MR. CRAIN:

15 Q What is the basis for your opinion?

16 A Because it's saying "event count per
17 active user," not per user that did a scroll.

18 Q Are you just saying this definition
19 doesn't apply, or are you refusing to read it?

20 A I've read the definition. I'm not sure
21 what the discrepancy is.

22 Q What is the readability level of this
23 definition?

24 MS. WOOD: Objection to form.

25 THE WITNESS: I'm not sure.

1 BY MR. CRAIN:

2 Q You've been giving me your best
3 professional estimate all day. Can you give it to
4 me for this one?

5 A It looks similar to the rest of the page.

6 Q Which is what?

7 A About eighth grade.

8 Q About eighth grade.

9 Okay. So my question to you is what does
10 the triggered at least one event mean to you, if not
11 scroll here?

12 A Triggered one event means that, in any
13 event has been triggered, that makes them a unique
14 user.

15 Q What is that based on?

16 Let me ask you this question: That's not
17 based on the definition on the Google Analytics
18 page, right?

19 A Yeah, it is.

20 So, you know, someone would become a
21 unique user that triggered at least one event if
22 they did a page view. So someone who viewed the
23 page, that should trigger it.

24 Q Is this data, which you said was
25 materially identical to the one that you compiled --

1 is the data showing the events of scrolling?

2 A Yes.

3 Q Okay. It's not showing any other events,
4 right?

5 A Correct.

6 Q Okay. And this data for St. Mary's says
7 104 unique users scrolled, right?

8 A Right. By saying "per active user."

9 Q I'm asking you, in column D -- right? --
10 it says "total users," right?

11 A Yes.

12 Q That's not the total number of people who
13 visited the website during this time period, right?

14 A I believe that's the total unique -- total
15 unique users.

16 Q What is that based on?

17 A That it lines up with this definition of
18 "total users." It's the same term.

19 Q Who triggered at least one event.

20 A Right. And a page view would be
21 triggering an event.

22 Q So your testimony under oath today is that
23 104 unique users went to the website, not that 104
24 unique users scrolled?

25 A That's my understanding of how this reads,

1 yes.

2 Q And if that's wrong, if the number in your
3 denominator, the calculation was higher, your scroll
4 data would be wrong, right?

5 A Yes.

6 Q If the number of unique users who were
7 using a -- were accessing the page was higher than
8 what's in column D, your whole analysis on Opinion 5
9 would be incorrect, right?

10 MS. WOOD: Objection to form.

11 THE WITNESS: That's correct.

12 BY MR. CRAIN:

13 Q Okay. Is that why you're fighting the
14 definition?

15 A I'm reading the definition here of unique
16 users who triggered at least one event, and it's
17 saying total users and active users. So I'm just
18 reading the definition that you're giving me.

19 Q Okay. But just -- okay.

20 A Because it says "total users" here, but on
21 this other page that you produced, it doesn't say
22 "total users." It says "active users" --

23 Q That's fair.

24 A -- which has a different definition.

25 Q What's the definition?

1 A I'm not sure. I don't think I have that
2 here in front of me. But the -- these terms have
3 precise meanings.

4 Q So what did you calculate?

5 A I calculated based off of this document
6 here.

7 Q What is the -- what did you calculate,
8 though? What were you trying to show with your
9 calculation?

10 A User engagement with the website and
11 scrolling.

12 Q Were you trying to show, the number of
13 users who access the page, how many of them scroll?

14 A So --

15 Q Can you give me your analytics document
16 again, Mr. Vredenburgh?

17 Okay. I'm going to do something a little
18 bit -- what we've been doing in different
19 depositions. I'm going to show you a computer
20 screen. So I'm going to read into the record, the
21 website is [https://support.Google.com/analytics/](https://support.Google.com/analytics/answer/12253918?HL=EN)
22 [answer/12253918?HL=EN](https://support.Google.com/analytics/answer/12253918?HL=EN). And the title of the page is
23 "Understand User Metrics."

24 MR. CRAIN: I'm going to share with
25 counsel, make sure I read that mostly right.

1 Hopefully all right. Confirmed?

2 MS. WOOD: Yeah.

3 BY MR. CRAIN:

4 Q Now, Mr. Vredenburg, you said definitions
5 are precise, right?

6 A Yes.

7 Q Okay. On this page, there's a definition
8 for "active users."

9 Can you read the definition?

10 A Sure. "The number of unique users who
11 engaged with your site or app in specified data
12 range."

13 Q Okay. So the active users' number on
14 Exhibit 24 includes the total number of unique users
15 who engage in your site in a specific range, right?

16 A Yes.

17 Q The active -- the total users on
18 Exhibit 23 is the total number of unique users who
19 scrolled, right?

20 A Can you repeat the question?

21 Q Yes.

22 I started with, the active users on
23 Exhibit 24 is the total number of unique users who
24 engaged with the site at all. And you said
25 "correct," right?

1 A Yes.

2 Q The total users on Exhibit 23 in column D
3 is the number of unique users that triggered a
4 scroll, correct?

5 A I think it's an important question that
6 you're asking. If we could potentially take a
7 break. I want to take some time to --

8 Q No. No breaks while a question is
9 pending. I want an answer to my question.

10 A I don't know.

11 Q Based on the definitions that I have shown
12 you today, total users is the active -- the number
13 of unique users who trigger a scroll, right?

14 A I'm not sure.

15 Q Okay. If that's correct, what you have
16 calculated is the number of scrolls per users who
17 triggered a scroll, right?

18 A Like I said, I would need to look in to
19 double-check. I feel like --

20 Q Yes. I'm asking you to accept a
21 hypothetical. We've been doing hypotheticals all
22 day. You invited one earlier today, five hours ago.

23 My hypothetical is, if I'm right that the
24 definitions say what they mean, what you have
25 calculated -- and you can fight the premise later,

1 but if I'm right, what you have calculated is the
2 number of scrolls per user that triggered a scroll,
3 right?

4 MS. WOOD: Objection to form.

5 THE WITNESS: I don't believe that's what
6 I said. Can you repeat the question, the
7 hypothetical?

8 BY MR. CRAIN:

9 Q If I'm correct that column D is just the
10 number of unique users who triggered a scroll, what
11 your calculations show is the number of scrolls per
12 user who scrolled.

13 MS. WOOD: Objection to form.

14 BY MR. CRAIN:

15 Q Correct?

16 A Yes.

17 Q That is a very different number than the
18 number of scrolls per user -- unique user who
19 accessed the website, right?

20 A Yes.

21 Q Okay. Now, I want to do the math with you
22 because your number, I think you said earlier today,
23 was a high proportion of scrolls, right? Do you
24 remember the approximate number?

25 A Yes.

1 Q What was it for St. Mary's? Can you tell
2 me?

3 A A little bit over one.

4 Q A little bit over one.

5 So each -- in your calculation, as you
6 presented it, the average user scrolled one time,
7 right?

8 A Yes.

9 Q Now, if I'm right, what you calculated is
10 the average user who scrolled scrolled one time,
11 right?

12 A Yes.

13 Q Okay. Now, if we do the math based on
14 this, do you know what percentage of people actually
15 scrolled? Let's take it -- I can walk you through
16 it.

17 St. Mary's. Let's go to the event count.
18 You see it's row 12 in column C?

19 A Roughly one-fifth.

20 Q One-fifth. So 20 percent, right?

21 A Yeah.

22 Q That's impressive math. I was going to
23 have to do it on my calculator.

24 So, if the numbers -- if the numbers
25 actually reflect that only 20 percent of people

1 scroll, that means, at most, 20 percent of users to
2 the website even get to the portion of the page
3 where the footnote exists, right?

4 MS. WOOD: Objection to form.

5 THE WITNESS: Yes.

6 BY MR. CRAIN:

7 Q And the footnote doesn't appear on every
8 page, right?

9 MS. WOOD: Objection to form.

10 THE WITNESS: Correct.

11 BY MR. CRAIN:

12 Q If you don't click into the right tab, it
13 doesn't show, right?

14 A I would need to double-check that.

15 Q Let's bring it up and make sure the record
16 is clear. Just pull the page up. We're going to
17 hospitalsafetygrades.org at St. Mary's. Okay.

18 MR. CRAIN: I'm showing counsel, this is
19 the St. Mary's safety grade page.

20 Do you see, Counsel?

21 MS. WOOD: Correct.

22 BY MR. CRAIN:

23 Q Do you see, Mr. Vredenburgh?

24 A Yes.

25 Q Now, if you click on -- let's go to hand

1 washing.

2 Do you see I've clicked on "hand washing"?

3 A Yes.

4 Q The footnote appears, right?

5 A Yes.

6 Q That's one of approximately 30 of those
7 tabs, right?

8 A Uh-huh.

9 Q If I click on another one, let's say MRSA
10 infection -- do you see that, "MRSA infection"?

11 A Yes.

12 Q -- the footnote doesn't appear, right?

13 A Correct.

14 Q So that means, of that 20 percent of users
15 who scroll, that's likely an overcount of people who
16 actually see the footnote, right?

17 MS. WOOD: Objection to form.

18 THE WITNESS: Yes.

19 BY MR. CRAIN:

20 Q And it's a further overcount of people who
21 actually read it, right?

22 MS. WOOD: Objection to form.

23 THE WITNESS: It's likely, if they scroll
24 and they have it on their page, that red bolded text
25 is going to get read.

1 BY MR. CRAIN:

2 Q So, if the numbers are as I've suggested
3 they are, and it's about, as you said, 20 percent of
4 users who scroll, it's a smaller number who actually
5 see the footnote.

6 And of that proportion, you're saying it's
7 a high likelihood that they read it?

8 A Yes.

9 Q Do you want to take that break?

10 A Sure.

11 Q Okay. Let me -- before we go off, do you
12 still have reason to doubt that we're right about
13 the numbers here?

14 MS. WOOD: Objection to form.

15 THE WITNESS: I think, in these kind of
16 matters, it's always really important to do a
17 careful analysis and not just speak before, you
18 know, checking.

19 BY MR. CRAIN:

20 Q Are you saying you want to take a break to
21 check?

22 A Yes.

23 MR. CRAIN: Okay. Let's take that break
24 if counsel agrees.

25 MS. WOOD: Uh-huh.

1 MR. CRAIN: Take that break.

2 THE VIDEOGRAPHER: We are going off the
3 record. The time is 4:30 p.m.

4 (Recess taken.)

5 THE VIDEOGRAPHER: The time is 4:58 p.m.
6 We are back on the record.

7 BY MR. CRAIN:

8 Q So Mr. Vredenburg, welcome back.

9 We were talking about your Opinion 5 and
10 Google Analytics before. And then you asked to take
11 a break for about 20 minutes; is that right?

12 A Yes, sir.

13 Q And it's been about 30 minutes, right?

14 A Yes.

15 Q And I -- what I had asked you before
16 was -- that prompted the break -- let's see. I
17 should have had this before. Here we go.

18 I had asked you if the total users on
19 Exhibit 23 in column D is the number of unique users
20 that triggered a scroll.

21 Do you recall that question?

22 A Yes.

23 Q And then we went through a bunch of
24 calculations, just assuming for a second that that
25 was right, correct?

1 A Yes.

2 Q And before we go on, we did the
3 calculation for St. Mary's, right?

4 A Yes.

5 Q And you estimated -- you did the math on
6 the spot, which was very impressive, and you said
7 the -- if I was right about what column D
8 represented, that it would be about 20 percent of
9 users that scroll down the page, right?

10 A Yes.

11 Q And that would be approximately the same
12 for the other five hospitals, if I was right,
13 correct?

14 A Yes.

15 Q During the break, did you have a chance to
16 assess the definitions?

17 A I did.

18 Q Okay. Do you have a view as to whether we
19 got it right as to what "total users" here means?

20 A Yes. So, you know, I really thank you. I
21 believe that you caught an important mistake. And
22 I'd like to withdraw that opinion because your
23 analysis was correct there.

24 And my goal here is to, you know, try to
25 find and get towards the truth. And I'm glad that

1 you're helping to aid at doing that. That was a
2 mistake.

3 Q We appreciate it. And we appreciate your
4 integrity in doing that. So thank you, sir.

5 So just for the record, it's clear you are
6 withdrawing Opinion 5, correct?

7 A Yes.

8 Q Just give me one second.

9 We talked during the day that Opinion 5
10 had spillover -- had relevance to the other
11 opinions, right?

12 A Yes.

13 Q Do you -- does your withdrawal of Opinion
14 5 change your opinions 1, 2, 3, or 4?

15 A So, in looking at the data, based on what
16 you said, I find that the Google Analytic data is
17 actually inconclusive. It doesn't say whether there
18 was low engagement or high engagement. It really
19 just didn't say much one way or the other because --
20 if I pull up this example of the webpage that you
21 printed out -- it's going to take me a little bit
22 here to find it.

23 Q What are you looking for? We can help
24 you.

25 A It was the exhibit that had an example of

1 the webpage. And we used it as an example for the
2 fold, to show what percent of the page is showing.

3 I believe Exhibit 5.

4 Q Exhibit 5. Okay.

5 Is this the West Boca Medical Center
6 exhibit?

7 A Yes.

8 Q Got it. Okay.

9 A So, if you look, there's a lot that comes
10 after the asterisk.

11 Q Uh-huh.

12 A So scrolling down to all this, you know,
13 kind of legalese text at the bottom of the page, it
14 would require doing that to trigger the event.
15 So --

16 Q I see.

17 A -- what we're seeing is the number -- the
18 percent of the people that got down to this part,
19 not -- we don't have data on how far getting to the
20 asterisk.

21 Q Okay. Got it.

22 Your opinion, though, relied earlier on
23 the notion that people did scroll down, right?

24 A Sure. So we can go through the opinions
25 again if you like.

1 Q Okay. Ultimately, though, your new
2 opinion on 5 is that it's inconclusive how far down
3 the page people go?

4 A Yes.

5 Q Does that affect, if at all, Opinion 1?
6 I'm looking at page 9 for the header.

7 A Yeah. So it looks like 1 is mostly
8 focused on the effect of bold text and the effects
9 of colors. So I would say that that's not affected.

10 Q Okay. And what about 2?

11 A So 2 would be unaffected as well because
12 that's based off of the readability algorithms. So
13 that would have no effect.

14 Q Does that cover the whole page?

15 A Yeah.

16 Q Okay. And 1 -- I'm just looking back
17 again. Does 1 rely on -- well, 1 relies on the
18 footnote to some degree or no?

19 I'm sorry, did you answer the question?

20 A Can you repeat the question?

21 Q Yeah. Let me go back to it.

22 Does 1 -- 1 relies on the footnote to some
23 degree or no?

24 A The 2 footnote. Which footnote? Because
25 there's footnotes on this page too, which --

1 Q Oh, I'm sorry. Yeah. The asterisk's
2 footnote on Figure 2.

3 Does the question of whether users scroll
4 down the page to the footnote affect your Opinion
5 No. 1?

6 A So the asterisk would need to be seen on
7 the screen in order for its red and bold text to
8 then be seen.

9 Q Okay. So on certain screens, it won't be
10 seen without a scroll, right?

11 A Correct.

12 Q And you don't know how many users scroll
13 down, right?

14 A Correct. The data is inconclusive.

15 Q Okay. Opinion 3 says "Imputed scores are
16 readily clear to users with basic reading
17 comprehension."

18 Does this opinion rely on users having
19 read the asterisk's footnote?

20 A So it looks like the focus of this was
21 assuming that there was typically about an eighth
22 grade reading level, that we went over the idea of
23 progressive disclosure and how the page was designed
24 for different users, and different information being
25 presented. And that the numbers that are being

1 shown in Figure 2, the matching of the 15 to the 15,
2 that that would be readily clear.

3 Q So this opinion is not about the footnote?

4 A Correct.

5 Q It's about the number?

6 A I think that the -- the asterisk helps
7 with the comprehension, comparing the numbers. And
8 I think when someone sees the asterisk, that's going
9 to draw them to want to go to the bottom of the
10 page.

11 Q But you don't know how many people went to
12 that area of the page, right?

13 A Correct. I don't think that information
14 is knowable at this point to anyone.

15 Q Okay. And that point you just made is not
16 in your report, correct?

17 A Correct.

18 Q Okay. Opinion 4, does that rely on users
19 having viewed the asterisk's footnote?

20 A No.

21 Q Okay. Give me one more second.

22 Mr. Vredenburgh, I'm going to pass the
23 witness and reserve.

24 MR. CRAIN: Ms. Wood, do you have any
25 questions?

1 MS. WOOD: I do, but I'm going to need a
2 moment. So if we could take a quick break.

3 MR. CRAIN: Going off.

4 THE VIDEOGRAPHER: We are going off the
5 record. The time is 5:08 p.m.

6 (Recess taken.)

7 THE VIDEOGRAPHER: The time is 5:13 p.m.
8 We are back on the record.

9 EXAMINATION

10 BY MS. WOOD:

11 Q Mr. Vredenburgh, I just have a couple
12 follow-up questions for you.

13 Are you a retained expert in this case?

14 A Yes.

15 Q And are you retained expert for the
16 Leapfrog Group?

17 A Yes.

18 Q Are you a user experience expert?

19 A Yes.

20 Q Are you a digital low-literacy expert?

21 A Yes.

22 Q Okay. And then can you just grab
23 Exhibit 1, which is your report. And I'll have you
24 flip to page 7 of that report.

25 And then you see here on page 7 -- we've

Page 308

1 been talking about Figure 2 extensively, but this is
2 a webpage from Leapfrog's Hospital Safety Grade for
3 Good Samaritan Medical Center; is that correct?

4 A Yes.

5 Q And as an expert, is it your opinion, to a
6 reasonable degree of certainty, that Figure 2
7 transparently displays to a reasonable consumer that
8 a hospital is assigned the worst hospital score to
9 reflect the lack of information available?

10 MR. CRAIN: Objection to form.

11 THE WITNESS: Yes.

12 BY MS. WOOD:

13 Q And is it your opinion, to a reasonable
14 degree of certainty, that this webpage shown in
15 Figure 2 is displayed at an eighth grade reading
16 level?

17 MR. CRAIN: Objection to form.

18 THE WITNESS: Yes.

19 MS. WOOD: That is all I have for you.

20 FURTHER EXAMINATION

21 BY MR. CRAIN:

22 Q Just to follow up on that.

23 Counsel said "Are you an expert in digital
24 low literacy?"

25 Do you recall that question?

1 A Yes.

2 Q What does that mean?

3 A So that would be, I would say, a subset of
4 UX, to make sure that the literacy of what you're
5 writing matches the -- matches your user.

6 Q Where is that in your report?

7 A So that would be, I think, mostly handled
8 by, I think, Opinion 2.

9 Q No. I'm asking where is -- where is your
10 expertise in that regard identified?

11 A Sure. So I think that that would be --
12 that would be covered with the -- my publications,
13 such as public health and epidemiological study to
14 explore the relationship between literacy, language,
15 age -- aging, and familiarity on comprehension of
16 health information, as well as the publication that
17 we talked about with the user experience for the
18 online learning platform.

19 Q That you wrote while at Wright State?

20 A Yes.

21 Q And the other one was the one you wrote in
22 high school?

23 A Yes. And --

24 Q Okay. Do you recall maybe five hours ago
25 now I asked you to identify your areas of expertise?

1 A Yes.

2 Q You did not identify yourself as an expert
3 in low literacy, right?

4 A So I would say that that would be a
5 subtopic of user experience.

6 Q Okay. But you did not say those words,
7 right?

8 A I have not used those words.

9 Q Okay. And it's not anywhere in your
10 report, right?

11 A Well, my report does talk about literacy
12 and literacy-appropriate grade levels. And so I
13 think that that's what it's referring to.

14 Q Is it correct that your report nowhere
15 strings together the words "low literacy"?

16 A I don't think that the report has those
17 two words together.

18 Q And is it fair to say, until Ms. Woods'
19 redirect, that we had no notice of this new claimed
20 expertise?

21 A So I don't think that that's necessarily
22 fair because this talks about literacy throughout
23 it. I feel like talking about whether it's a sixth
24 grade level or an eighth grade level or a college
25 level, that is talking about low literacy.

1 Q What is a low-literacy expert as compared
2 to the UX expert you previously identified yourself
3 as?

4 A I would say it's a UX expert that's
5 analyzing the reading level.

6 Q So how is that different from being an
7 expert in UX?

8 A I think it's just being a little more
9 specific about what the analysis entails.

10 Q And what is your experience in
11 low-literacy expert?

12 A Sure. So like I said, the title of the
13 report that specifically talks about literacy, about
14 online learning platform, which, again, is
15 thinking -- thinking about education level and
16 literacy and making sure that it's understandable.

17 And I have a paper for risk communication
18 for consumer products, which heavily relates to
19 literacy and making sure that the literacy level is
20 appropriate for consumer products.

21 Q Is that the paper you just referenced
22 before from 2009?

23 A No. This is a different paper --

24 Q What's the title?

25 A -- from 2017. Risk communication for

1 consumer products.

2 Q That's the hierarchy of warning? There's
3 three hierarchy we discussed earlier today?

4 A I believe so.

5 Q Why does that make you an expert on low
6 literacy?

7 A Because risk communication for consumer
8 products is very important to consider the
9 low-literacy populations that may be working with a
10 product.

11 Q And again, why didn't you identify
12 yourself specifically as a low-literacy expert
13 earlier in the day?

14 MS. WOOD: Objection to form. Asked and
15 answered.

16 THE WITNESS: So I see it as one and the
17 same. I feel like that analysis has been all
18 throughout. I think it's just changing the words.

19 BY MR. CRAIN:

20 Q Okay. So then what is your understanding
21 as to why counsel is now trying to proffer you as a
22 low-literacy expert?

23 A So I feel like they've been consistent
24 about that since retention, saying that that's what
25 they're looking for in their assignment. So I think

1 it's just their word choice.

2 Q What document that went to our side
3 identified you as an expert in that regard?

4 A Well, I would say this report.

5 Q Okay. So you're an expert now, you're
6 saying, in three things?

7 A No. I wouldn't say this is a distinct
8 thing. I would say that this is a part of a user
9 experience analysis.

10 Q Okay. So --

11 A I would say that it's a part of human
12 factors. You always have to think about literacy.
13 It's foundational for human factors, for anything
14 that's written for consumer product or for, like,
15 warnings. I've got a lot of -- a lot of experience
16 and work in warnings. Absolutely critical to
17 literacy -- low-literacy writing for warnings.

18 MR. CRAIN: Okay. I'm just going to lodge
19 an objection, to the extent that counsel is
20 expanding the areas of your expertise five hours and
21 something minutes into this deposition.

22 With that, I think no further questions.
23 Anything?

24 MS. WOOD: No.

25 MR. CRAIN: You're free to go.

1 THE VIDEOGRAPHER: Before I take us off
2 the record, Leslie, do you want to get orders?

3 No?

4 Ms. Wood, did you want to order a video
5 today?

6 MS. WOOD: Yes, please.

7 THE VIDEOGRAPHER: Would you like that
8 synced?

9 MS. WOOD: What does that mean?

10 MR. CRAIN: With the transcript.

11 MS. WOOD: Oh, sure. Yeah.

12 THE VIDEOGRAPHER: Understood.

13 And you have a standing order, correct,
14 Counsel?

15 MS. WOOD: Yeah. I think we want synced,
16 but yeah.

17 THE VIDEOGRAPHER: Thank you very much.

18 We are off the record at 5:21 p.m. Pacific
19 Time. And this concludes today's testimony given by
20 Michael Vredenburgh. The total number of media used
21 was eight and will be retained by Veritext Legal
22 Solutions.

23 (TIME NOTED: 5:21 P.M.)
24
25

DECLARATION UNDER PENALTY OF PERJURY

I, MICHAEL VREDENBURGH, the witness herein, declare under penalty of perjury that I have read the foregoing in its entirety; and that the testimony contained therein, as corrected by me, is a true and accurate transcription of my testimony elicited at said time and place.

Executed this _____ day of _____ 2025, at

_____, _____.

(City)

(State)

MICHAEL VREDENBURGH

REPORTER'S CERTIFICATION

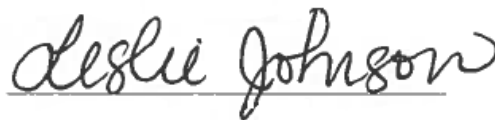
I, Leslie Johnson, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were administered an oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript [] was [] was not requested. I further certify I am neither financially interested in the action nor a relative or employee of any attorney or any party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: October 2, 2025

A handwritten signature in cursive script that reads "Leslie Johnson". The signature is written in dark ink and is positioned above the printed name.

LESLIE JOHNSON

CSR No. 11451, RPR, CCRR

Page 317

Good Samaritan Medical Center Inc, Et Al. v. The Leapfrog Group
Michael Vredenburgh Job No. 7616281

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REASON_____

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REASON_____

Michael Vredenburgh Date

[& - 170]

&	146:23 151:17	100 124:18	12:48 140:5
& 3:4,12 4:24	151:20 155:2	171:3 284:24	13 5:8 30:24
7:8 102:25	155:17,21,23	285:10	37:7 56:7
116:23,24	158:1 159:12	1001 181:7	180:9,10,12,14
117:2 119:15	163:20 164:7	10166 3:8	181:4 208:22
120:18,23	164:10 172:6	104 285:21	209:7 211:24
121:10 123:8	175:24 176:1	286:16 287:14	270:11,22
123:21 132:4	177:19,22	291:7,23,23	274:7,8
0	179:20 182:23	10:17 73:25	135 5:5
00065 47:13	183:20 202:5	10:34 74:2	14 5:10 37:7
03632712	202:11 206:16	11 5:6 8:13	86:10 186:23
261:14	207:5 208:11	86:2 124:4,5	186:24,25
03632718	213:2,16 214:4	124:12 173:9	191:24 196:17
261:16	215:8,13	173:11,13	236:1 254:7
1	226:16 227:6	176:3	15 5:11 37:7
1 1:17,24 2:18	229:14 232:3	114 4:21	141:9,17 142:7
4:4,12 6:12	234:16 253:13	11451 1:22	142:9 157:20
19:6,7 37:14	253:18 256:17	2:22 7:17	158:9 170:7
41:23,24 42:13	270:15 275:2	317:25	171:11 176:17
53:17,19,20	275:17 276:12	11:42 266:10	177:1 201:18
54:1,4,5 57:20	276:16 284:16	11:46 140:3	201:20 206:5
58:6 59:5,6	303:14 305:5,7	12 5:7 37:7	212:8 217:18
60:20 64:3	305:16,17,17	56:10 57:20	254:7 307:1,1
78:4,6,14,21	305:22,22	86:6 173:7	16 5:13 37:7
79:20,24 80:3	306:5 308:23	177:7 180:9,10	39:23 154:11
80:14 81:5,13	1's 80:22	180:11,14,17	177:19 209:4,5
81:16,19,23	10 5:5 42:5	210:22 236:1	284:18,18
82:3,19 83:21	82:9 84:9	285:19 297:18	161 3:14
84:5,9,17 85:5	92:23 94:24	120 4:24	17 5:16 219:22
85:11,22,22	104:17 108:10	12253918	219:23 221:24
92:6 128:9	113:9 135:19	293:22	232:12,14,17
132:21 144:11	135:20 137:1,3	127 5:4	232:19 233:22
	137:4 208:10	12:29 267:7	170 212:8
	254:14 256:24		

[173 - 219]

173 5:6	85:17,22,23	2,12.13 210:16	256:21 259:24
18 5:17 223:17	137:2 144:12	20 5:19 20:17	260:11 268:19
223:25 224:8,9	146:23 151:15	20:17,18,18	269:5 270:1,3
224:19,21	151:17,20	29:17 30:4	2016 106:5
232:17,19	155:8,17,22,24	39:22 72:25	119:7
233:13,14	157:25 159:11	92:18 105:15	2017 108:18
180 5:7,8	163:20 164:7	110:22,23	312:25
186 5:10	164:10 169:1,3	126:5,10	2018 105:2,20
19 4:12,13,14	170:6 172:6	212:22 213:13	2019 105:2
5:18 132:21	175:23 176:1,5	228:9 261:18	112:24
133:1,2,2	176:8,14	261:20,22	2020 260:4
223:18 224:1	177:19 179:1,8	264:2,3 297:20	2021 93:2
224:20 226:8	179:21 181:24	297:25 298:1	105:16 110:5
232:10,17,20	182:24 183:21	299:14 300:3	260:4
1900 2:19 6:20	191:1,3,3	301:11 302:8	2022 105:5,20
1:59 206:9	192:5,14 193:5	200 3:7	2024 124:22
2	193:7,7,8	2006 119:1	156:17 175:13
2 4:13 19:6,8	202:6,11	2009 115:13	177:25 178:1
53:20 54:1,4,5	206:15,16,17	214:19 312:22	178:19 263:7
54:12,25 55:22	206:20,25	201 5:11	264:16 269:18
57:14 58:8,14	207:5,20	2010 102:11,12	276:15
59:4,5 60:1,5	210:22 213:5	106:3 119:1,4	2025 1:16 2:21
60:13,19 64:3	213:17 214:23	119:4,7	4:12,14,15 6:1
64:23,23 65:8	215:8,13	2012 102:10	6:6 154:12
65:24,25 67:18	216:22 226:1	2013 224:24	178:4 269:8
68:6,9,10,13	229:14 239:11	225:16 243:1	276:21 316:9
70:2,15 71:10	254:10 257:16	246:10 248:9	317:22
74:12 78:15,19	275:2,17	251:5 254:7	209 5:13
79:5,25 80:10	276:24 277:3	255:23 260:11	21 5:20 110:20
81:5,16,24	285:10 303:14	268:19 269:5	224:24 261:22
82:19 83:5	305:10,11,24	270:1,3	275:19,21
84:7,18,21	306:2 307:1	2014 48:10,22	212 3:9
85:3,5,10,11,12	309:1,6,15	49:2 221:14	219 5:16
	310:8 317:22	247:25 255:23	

[22 - 5:21]

22 5:21 177:7 279:6,8 287:4 287:6 223 5:17 224 5:18 23 5:22 37:13 39:7 256:17 281:4,5 283:6 285:18 287:2 294:18 295:2 301:19 24 5:23 180:4,6 285:25 286:1 294:14,23 25 180:5 182:3 217:18 26 51:18,22 72:20 73:1 92:22 215:18 261 5:19 27 29:25 232:11 274:2,5 2723 258:1,2,11 259:10 275 5:20 279 5:21 28 154:12 281 5:22 286 5:23 29 65:18 207:21 263:7 273:20 29th 264:13	2:18 206:11 2:40 223:21 2:46 223:23 2nd 124:22	317 1:24 351-4000 3:9 37 30:1 3:33 263:22 3:48 263:24 3d 12:24 13:7 13:24 22:4 98:16 127:15 130:21 131:8 131:14	4:30 301:3 4:45 263:7 264:13 4:58 301:5
	3		5
	3 4:15 41:12,13 41:14,18 86:2 146:23 149:17 149:17,17 151:16,17,20 155:17 156:7 163:20 164:7 164:10,15 174:2,9 187:21 202:6,11,24 206:16 214:24 214:25 215:7,7 215:13,14,16 215:17,17,19 216:16 217:1 217:15,23 253:13,18 270:10 303:14 306:15 30 1:16 2:21 6:1,6 30:4 278:23 299:6 301:13 308 4:7 309 4:6 31 281:3 312 3:16	4 4 4:12,16 61:1 61:2 86:6,15 145:19 146:23 163:20 164:7 164:10,11,11 175:2 219:10 219:10,11 221:25 234:21 250:23 268:19 270:24 278:16 282:18,19 284:12 303:14 307:18 4.0 96:16 40 22:23 401 2:19 6:19 41 4:15 427868 5:19 45 207:24 450 15:22 16:5 4500 3:14	5 4:18 35:6 36:3 44:6 66:12,13,15 67:25 68:13 74:7 76:10 77:5 86:15 113:2 163:17 175:4 176:2,4 176:9,11,14 196:2 217:18 278:5,6,9 284:13,15 285:7 292:8 301:9 303:6,9 303:14 304:3,4 305:2 50 22:23 50/50 118:2 547 286:13,15 56 138:1 57 76:2 58 138:1 5:08 308:5 5:13 308:7 5:21 2:21 315:18,23

[6 - achievement]

6	7868 263:5 264:9 265:11	140:3 266:10 abilities 208:17 ability 147:7 251:20 able 21:2 32:23 44:24 49:24 116:17 143:6 147:8 162:23 239:23 273:14 274:23 above 74:19 75:10,12 76:10 76:18 213:20 absolutely 95:11,17 139:24 146:3 155:15 220:15 314:16 abstract 211:25 212:7,25 academic 42:12 42:21 44:5 103:23 245:12 246:15 academy 5:14 accept 295:20 accepted 103:4 accepting 73:5 access 283:24 293:13 accessed 296:19 accessibility 31:25 32:4,25	33:3,8 62:12 84:13 85:14,23 119:25 144:6,8 144:16 155:23 189:16 206:21 216:12 accessible 32:7 32:9,12,14,16 32:19 33:12 114:5,6 accessing 292:7 accessory 27:25 28:6 accident 36:4 accidents 117:9 123:14,18 134:9 accommodate 10:15 208:16 accompany 100:11 accuracy 55:18 144:21,23 229:21 accurate 36:17 58:9 99:23 120:21 127:24 128:2,3 129:16 277:8 316:6 achievement 179:4,9,22,25 183:8 193:10 267:18
6 4:19 46:24 49:8 53:16,17 65:11 99:10,12 600 15:24 16:7 16:8,11 60601 3:15 61 4:16 63 267:1 650 16:6 66 4:18 6637 317:23	8 8 4:6,24 40:6 50:6 52:6,8 58:13 65:13 69:1,3,5 72:11 120:12,13 145:21 8.3 207:12 213:18 8.3. 207:11 80 75:11,19 76:1 280:19 80526 1:4 2:4 6:18 8th 57:8		
7	9 9 5:4 78:6 127:2,3,6 305:6 90 197:14 92101 6:21 95 17:24 96:14 96 276:19 99 4:19 96:15 9:04 2:20 6:2,5 9:25 1:4 2:4 6:18		
7 4:15,21 40:6 50:5 52:6,8 60:20 64:24 65:11,13 114:12,13 308:24,25 7.9 207:11,12 213:18 70 126:16 702 51:19 72:20 73:1 704-0550 3:16 7340 100:22 7616281 1:23 318:2 7863 262:1 264:4 266:21 7864 266:5 7865 265:3 266:25	a a.m. 2:20 6:2,5 73:25 74:2		

[acknowledge - allegedly]

acknowledge 235:24	174:3,10 175:4 190:3 195:23	administrator 56:25 57:10	agree 6:10 70:11 71:25
acknowledges 55:24,25	198:7 209:17 214:14 216:6	adopted 268:5 271:2,7,20	130:10 161:19 167:14 186:12
action 6:25 317:18,19	220:13 228:18 232:2 233:12	274:13	194:11 215:2 217:3 252:8,9
active 280:4 286:9 287:19	235:2 239:18 240:4 249:9	adults 211:16 212:2,22	270:17 278:7
287:23 288:12 288:14,17,20	250:13 266:4 280:15 285:7	advance 153:8	agreeable 205:8
288:22 289:4,7 289:7,17 291:8	297:14,25 299:16,21	advanced 217:11	agreed 224:6 224:11
292:17,22 294:8,13,17,22	300:4 303:17	adverse 115:5	agrees 300:24
295:12	adam 3:6 7:9 206:2 217:20	advise 201:3 advise 72:19	ahead 84:11 93:10 112:11
actual 63:7 80:6 151:23	219:20 278:21	affect 35:20 153:15 205:14	219:21
200:17 220:8 235:16 248:10	add 12:7 96:11	305:5 306:4	ai 127:9 128:25
249:1 272:21	added 147:11	affected 305:9	aid 303:1
actually 12:24 16:2 41:23	addition 71:9	affiliated 125:12,13	aiming 208:15
47:23 50:20 52:20 59:25	additional 17:7 17:9 86:25	affiliations 7:5	al 1:6 2:6 6:15 318:1
64:25 67:9 75:3 76:16	282:17	age 242:24 310:15	albano 138:2
93:14 107:25 113:3 119:18	address 153:9 177:12 234:15	agencies 12:5	alexandra 263:7
119:21 125:6 128:11,24	adele 138:2	agency 12:1,10 250:25	algorithm 55:20 189:8
130:2 132:3 138:17 151:3	adequate 218:6	aging 4:23 310:15	198:4
157:10 160:18 161:24 163:4	administer 6:24 7:14	ago 72:25 90:15 92:8	algorithms 148:9,10 151:25 152:6 152:14 305:12
	administered 317:8	135:16 136:25 148:11 151:12	alison 121:15
	administration 181:11 182:4	165:25 193:8 195:18 256:24	allegedly 221:14
	200:6	295:22 310:24	

[allows - appendix]

allows 164:4	165:23 171:6	285:24 288:23	anticipated
alluded 222:22	172:23 174:19	290:17 293:15	147:20
alongside 94:16	175:22 184:6	293:21 301:10	anybody 10:16
ambiguous	185:4 188:23	analyze 55:17	19:19 20:2,5
34:23	189:20 190:21	187:15 202:13	24:17
amended 44:14	190:24 194:18	207:19 216:21	apologies 111:5
45:2,13 46:9	199:23 202:15	229:5 234:9	apologize 30:13
46:17	205:5 207:2	246:14	114:15 153:8
amendment	213:16 217:4	analyzed 55:10	209:10 222:11
4:13 19:14	221:5 227:7	55:21 158:25	225:4 233:3
20:20,22 285:3	229:12 232:2	167:21 190:5	app 225:10
american 5:14	234:21,22	198:25 204:9	227:8 294:11
5:14 208:24	235:3 244:6	204:25 217:10	appealed
210:9	251:11,13	229:4 262:22	103:22 138:16
amount 50:20	255:22 260:13	268:16 270:6	appear 39:11
53:24 101:11	269:4,10,13	analyzing 57:7	99:18 298:7
257:22	277:13 280:3	235:12 280:24	299:12
amounts 55:16	285:4 292:8	312:5	appearance 7:3
252:18	300:17 302:23	answer 10:11	appearances
amplified	312:9 313:17	10:18,25 48:3	3:1 7:5
153:5	314:9	52:3 58:17	appeared 39:14
analogous	analyst 119:8	78:17 108:12	appears 173:22
90:13	265:4	147:3 158:20	299:4
analogy 237:23	analytic 303:16	203:7 230:23	appellant 136:5
analyses 207:9	analytics 64:7	231:2 281:25	appendices
analysis 21:1,5	86:11 187:14	289:9 293:22	17:6 27:8,10
21:8,10 52:11	189:14 190:18	295:9 305:19	37:11
52:17,18,21	196:1 202:21	answered	appendix 17:5
55:22,23 59:4	216:9 278:9,20	159:25 313:15	37:13 41:22,24
59:19 62:8	278:24 279:4	answering	41:25 42:13,14
74:21 80:25	279:11,17	234:6	42:15 49:8
85:17,18 87:7	280:25 281:15	answers 9:20	92:7,18,21
120:6 137:2	281:25 282:4	258:12	110:20 232:23
142:5 151:2,13	282:23 285:18		255:10 256:16

[applicable - assignment]

applicable 147:17	approximately 29:25 124:14	212:8	215:11 230:25
application 121:5	299:6 302:11	articulate 121:19	240:1 241:11
applications 14:9 90:4,5 130:23	approximation 124:15	ascertain 220:12	250:4,6 257:8 291:9 295:6,20 310:9
applied 148:10 151:24 175:17 234:1	apps 101:5,6	aside 13:20	aspect 128:16
applies 81:7,22 82:3 84:23 218:25	arbitrarily 184:9,17 193:15 267:16	38:11,23 46:4 48:3 62:15 64:19 77:14 87:12 106:9 107:9,18 115:18 116:19 139:17 141:2 150:5 193:19 201:14 206:1 220:17 240:2 270:8 278:3	aspects 94:6 aspiring 103:23 assess 34:3 56:3 251:13 302:16
apply 80:24 88:22 145:17 148:9 202:11 216:5 246:20 246:24 289:19	arbitrary 184:4 archive 255:13 area 13:8 75:13 87:17 109:5 121:7 307:12	asked 5:11 40:14 52:25 53:5 56:11 57:21 95:23,24 141:8,16 195:18 201:17 201:22 202:13 202:18 229:5 230:1 234:23 241:1 244:17 244:21 301:10 301:15,18 310:25 313:14	assessing 33:24 assessment 108:16 assign 193:12 193:15 assigned 157:7 157:23 158:21 158:22 159:21 160:8 161:12 163:1 164:19 169:22,24 171:14 177:24 178:2 183:24 184:18 185:19 185:22 191:9 193:9 309:8
applying 89:15 243:23	argument 137:13	asking 23:14 53:22 84:2 173:1 205:10	assigning 184:9 184:17 185:1 267:16,22
appreciate 152:11 205:10 257:12 261:10 303:3,3	arises 95:3 arrives 36:1 arrow 60:21 265:23		assignment 26:20 27:1 30:12,17 34:9 36:22 37:3
art 106:16,17 106:21 107:7,8 107:10 131:2	article 4:21 110:5 111:12 112:24 114:17 114:24 208:23 209:4,7 210:6 212:24 213:20 214:19		
approach 13:5 13:11 244:9	articles 42:12 42:21 44:5		
appropriate 144:19 245:2 311:12 312:20			
approved 184:25 267:21 268:1			
approximate 296:24			

[assignment - back]

56:6,24 58:10 77:16,24 145:18 169:15 172:11 179:3 183:7 184:3 313:25 assigns 148:19 149:22,25 156:21 199:8 assistant 89:21 associated 267:17 associates 102:25 117:2 assume 10:5,10 10:22 18:10 77:20 103:14 161:17 187:19 197:18 210:10 240:20 245:23 249:7 assumed 248:22,25 assuming 190:17,19 236:12 269:23 301:24 306:21 assumption 138:7,25 239:15 254:17 254:18 272:15 asterisk 157:20 157:20 158:10 163:4 165:6	191:4 195:6,20 219:4 266:2 304:10,20 306:6 307:6,8 asterisk's 158:2 259:17 266:19 268:9 306:1,19 307:19 asterisks 164:4 184:8 astray 33:2 attempt 178:11 236:14 attempted 147:4 attending 95:18 119:19 119:20 attest 15:8 attorney 7:6 317:18 attributed 104:6 audible 9:19 audience 31:19 31:19 84:13 142:4,9,24 144:19 206:22 audio 6:9 august 4:15 124:22 austin 13:8 260:8	author 94:19 authority 95:13 authorized 6:24 authors 152:5 automated 88:15 120:5 automatic 179:3 183:7 184:3 automatically 183:24 193:12 available 31:12 31:14,23 56:2 60:14 82:17 143:9 146:24 157:23 159:22 160:7 161:14 177:13,15 188:11,14 191:10,12,15 192:1 197:10 241:24 242:15 243:4,12 246:21 250:16 250:20 257:11 309:9 avenue 3:7 average 57:2 76:17 144:4 158:10 163:3 196:9,14 211:15 212:1 212:25 278:16	280:13 297:6 297:10 avoid 109:13 aware 40:13 71:17,23 138:11,16 139:2,5 165:8 165:9 166:13 198:22 199:21 200:13 202:16 227:21 272:21 b back 36:19 37:9 44:3 49:2 53:6 57:11,20 59:7 64:14 65:25 69:2 74:3,5,7,9 77:15 78:19 84:6 85:20 86:5 91:13 95:6,22 101:21 102:6 103:1,15 106:2 120:5 123:4 131:4 132:4 139:15 140:6,8 145:8 149:12 166:24 168:23 170:19 182:18 195:17 195:19 196:16 203:21 206:12 206:14 209:21
---	--	---	--

[back - berger's]

212:16 220:5	barriers 122:3	bates 5:23	134:7,12
223:24 226:15	122:19 208:18	46:25 47:2,9	140:23 147:4
230:13 231:6	base 185:8	222:17 258:1	147:12 158:8
231:15 238:11	based 35:14	261:3,7,13,15	161:5,10
248:2 254:3,11	85:13 138:6,24	262:1 264:4	169:18 171:21
254:19 255:13	143:22 148:5	beach 1:3 2:3	172:21 185:7
256:1,25 263:3	150:1 204:8	6:17	226:12 228:25
263:17,25	207:8 208:5	beacon 253:8	230:8 277:17
269:5 270:9	217:8 229:7	253:11	284:1 288:5
273:2,9,15,16	236:19 238:24	becoming	289:13 291:14
273:17,19	239:24,24	75:15,16	296:5 302:21
278:4 283:21	241:25 243:25	beginning 2:20	304:3 313:4
301:6,8 305:16	249:4,19	7:6 17:22 18:4	believed 184:8
305:21 308:8	269:16 271:24	212:18 222:22	bell 26:3,5
background	274:3,20	256:1 263:4	48:16
43:6,7,10	275:13 277:21	behalf 2:18	bellefontaine
103:17 104:18	277:22 278:15	7:12	181:7
172:19	284:24 290:15	behavior	benchmark
bad 38:3 46:13	290:17 291:16	134:13	271:8,20
46:14 194:8	293:5 295:11	belabor 71:6	benjamin 3:19
271:17	297:13 303:15	believe 12:8	6:22
bailey 25:24	305:12	14:8 24:18	berger 4:15
ball 233:17	basic 86:4	25:17 26:6	25:14 27:8
ballpark 20:15	149:6 150:18	28:25 40:24	41:9 49:7 51:4
50:18,19 124:2	156:9 216:5,17	44:11 48:11,24	145:12 152:19
243:14	306:16	49:3 58:24	186:14 245:16
banerjee 26:1	basically 21:4	61:23 65:9	246:23 252:15
barbecue	26:8 104:7	66:25 67:3	berger's 27:9
231:22	280:12	83:20 91:7	41:11,21 43:6
barcoding	basics 191:20	92:2 93:13	43:12 46:24
182:8	220:4	105:1 106:15	52:13,22 86:8
bare 191:20	basis 259:14	111:8 113:22	91:3 141:11,15
barrier 109:5,6	289:15	113:24 115:25	142:1 145:10
109:9		125:18 126:3	152:21 153:2

[berger's - bolded]

153:10,15,19 153:24 154:5,9 174:1 219:13 236:10 246:6 247:10 253:21 berkeley 102:13,15,18 106:5,8,11,24 118:7 bermudez 5:5 135:7,25 136:5 best 9:9,12,13 20:7 28:16,24 51:5 83:23 84:3 100:6 105:1 146:25 171:2,6,25 184:12 208:1 210:8 217:24 218:6,11,22 243:23 249:12 250:17,18 251:20 256:19 259:1,5 273:4 290:2 bet 256:20 better 12:3 15:12 55:19 89:5 142:25 147:10 186:9 195:14,14 203:3 238:6 240:2	beyond 12:16 25:3 36:22,25 37:6,20,21 40:12 45:1 46:17 55:10,21 55:24 59:1 60:1,4 62:7,7 65:7 69:19 70:15 80:6 81:4 86:21 94:24 111:13 113:9 114:24 123:10 125:8 130:23,23 143:16 146:7 158:24 165:23 190:23 217:11 bias 248:17,20 big 15:20 85:25 93:25 95:16 119:23 biggest 12:23 95:13 billing 12:7 30:3 binder 16:13 16:15,17 17:4 18:1,7,12,20,24 21:15 24:5,6 25:1,4,7,11 27:6 38:18,20 45:21 48:1,3 140:12,13,13 140:14,15	209:18 223:3,6 224:12 226:21 234:13 250:24 binder's 38:21 binders 45:23 120:7 bio 232:20 bioengineering 102:17 107:3 118:9 biographical 5:18 biography 226:8 232:25 biology 118:9 biomechanics 14:13 134:8 biometric 242:21 243:16 273:12 biometrics 220:11 birth 90:6 bit 10:14 13:25 15:14 16:14 23:1,25 30:22 34:6 36:23 43:3 44:20 76:9,12 77:15 81:11 82:15 102:6 105:14 130:18 136:17 141:3,18 142:8 144:8,9 155:1	155:3 159:3 163:14 165:18 168:22 170:19 172:5,10 174:24 189:15 196:10 206:15 215:22 225:3 257:9 260:16 280:15 281:9 293:18 297:3,4 303:21 blade 109:2,7 blah 197:15,15 197:15 blocks 13:17 blood 113:22 117:5 blue 66:4 261:24 blurb 68:7,11 board 152:3 190:6 boca 4:18 304:5 bold 163:8 252:4,5,6,10,11 252:13,20 253:1,5,8,15,18 253:20,22,25 305:8 306:7 bolded 159:19 191:4 195:7 219:4 299:24
---	--	---	---

[book - case]

book 44:6 borax 35:19 36:5 bottle 35:7 bottles 120:4 bottom 24:8 39:18 132:22 145:21 158:2 184:18 234:15 262:2 265:24 267:6,17 274:10 276:8 280:22 283:7 304:13 307:9 brain 191:5 branding 128:21 bread 241:22 break 10:15,15 10:16,18 17:11 18:10,11 30:22 73:21 139:22 139:25 140:12 141:5 146:16 156:20 178:8 206:6,7 219:16 224:3,19 230:16,19 231:9 263:10 263:12,17,20 273:17 295:7 300:9,20,23 301:1,11,16 302:15 308:2	breaks 10:14 295:8 brevity 151:8 brick 33:11 bridge 165:6 briefly 8:9 116:20 bring 298:15 bringing 43:9 244:5 broad 89:16 110:16 129:16 142:3,9,24 broader 38:11 90:1 broadly 91:15 111:22 broke 193:19 broken 23:22 brought 32:23 125:18 216:13 browsing 50:20 50:22 bs 107:3,13 bucket 98:9 buckets 26:16 151:21 277:25 bug 21:1 87:6,7 building 12:20 13:18,19 buildings 13:4 bullet 227:6,19 232:2 239:11	bullets 227:3 266:17 bunch 18:24 47:2 69:14 211:9 228:19 283:20 301:23 business 22:4 98:17,25 99:1 99:7 131:12,14 buttons 79:14 buying 35:25	california 1:15 2:20 6:1,20 317:4 call 24:18 called 21:7,11 31:16 92:3 134:24 211:4 213:2 282:12 campion 25:20 campione 260:14 263:7 264:12,18 266:9 campione's 267:7 campus 93:20 98:12 cao 94:17 caption 135:25 car 88:18 112:3 112:4 134:9 care 14:15 23:16,16,22 57:4 152:24 careful 161:17 300:17 carefully 34:9 carlsbad 102:8 case 1:4 2:4 6:18 9:4 11:7 15:15,16,22 16:25 18:17 20:1 21:9,11 23:5,8,11,15
		c	
		c 37:13 41:22 41:24 42:13,15 42:16 49:8 226:3 232:23 255:10 256:16 280:9,12 297:18 calculate 284:24 293:4,7 calculated 189:1 196:4 267:25 293:5 295:16,25 296:1 297:9 calculation 292:3 293:9 297:5 302:3 calculations 296:11 301:24 calculator 297:23	

[case - cherry]

29:25 30:3 31:10 38:6,8 38:13 70:17 73:6 78:2 86:21 125:23 125:24,24 127:23 134:24 135:3,8,15 136:15,18,20 138:13,18,21 147:22 163:22 191:13 221:9 231:18 238:22 249:21 308:13 317:15 cases 117:11 121:7 123:6,8 123:9,10,12 124:7,10 126:1 126:5,10,14 134:6,8,11,19 134:25 162:17 162:18,19 188:6,10,13 190:3,10 191:10,25 192:23 241:3 casual 63:16 cat 42:16 catch 273:12 category 90:18 184:19 267:18 caught 302:21	cause 164:9 caused 136:10 caution 161:14 161:15 ccrr 1:22 317:25 center 1:6 2:6 4:18 5:7 6:15 69:11 79:2 180:18,22 304:5 309:3 318:1 centralized 13:11 ceo 12:13 13:23 17:24 226:21 ceos 27:18 141:20 142:11 142:20 143:20 certain 32:6 45:6,9 87:4 141:10 150:8 151:9 157:3 188:12 191:12 192:2,22 227:24 273:1 277:9 282:21 306:9 certainly 45:14 65:2 119:17 certainty 247:7 309:6,14 certificate 4:20 99:19 105:16	certification 87:22 96:6,11 99:25 101:14 101:21 102:3 103:9 317:1 certified 2:22 61:4 317:3 certify 317:4,17 cetera 67:22,22 218:8,8 271:17 271:18 chain 5:19 chair 108:8 chaired 108:5 chairing 95:19 108:11 challenge 41:6 113:17 215:24 challenging 107:16 113:16 216:2 257:13 chance 74:9 185:18 302:15 change 67:11 75:8 77:12 87:9,10 119:15 164:10,11 184:7 190:6 195:11 204:6 204:12 238:8 251:4 259:13 285:9 303:14 318:4,7,10,13 318:16,19	changed 75:18 107:14 205:20 246:9 254:14 255:1 258:13 285:14 changes 66:24 67:3 241:12,13 244:1 changing 75:3 75:4 76:6 87:6 313:18 chapters 44:6 characterizati... 163:25 characterize 237:10 chart 213:25 276:5 277:18 277:21,23 286:6 charts 21:4 check 66:23 83:22 127:18 132:15 222:16 295:19 298:14 300:21 checked 17:19 73:11 126:3 checking 300:18 cherry 5:4 12:14 13:23 14:25 125:15 125:17,24
--	---	---	---

[cherry - collected]

126:1,10 127:1 127:21 128:9 128:11,14,18 128:20 129:7 132:1,10 133:2 133:4,13 chicago 3:15 children 115:4 choice 43:16,20 91:9 314:1 choices 153:16 choose 177:11 244:8,10 choosing 152:24 153:16 chose 185:18 christina 136:5 226:2 cigarette 115:4 circling 195:17 circular 109:2 citation 211:22 211:24 citations 65:10 cite 44:14 65:7 70:1 75:1 208:6,22 236:5 cited 40:4,20 54:18 59:20 61:20 64:9 65:12 71:15 174:8 209:7 281:23	cites 138:1 211:9 city 316:11 civil 51:18,22 claim 194:22 221:10 252:4,5 252:10,12,13 252:20 253:1,4 253:5,7,8,21,22 253:22 claimed 99:8 311:19 claiming 136:10 claims 147:12 253:21 clarification 66:19 clarifications 10:9 clarify 152:13 clarity 30:19,23 31:5,14 33:24 34:4,13 55:20 56:4,14 57:22 58:10 65:15 78:11 79:21 80:15,17,23 81:20,22 83:3 83:6,11 85:23 86:8 155:21 195:22 219:12 236:9 237:21 238:7 240:17	242:6,8,11 247:23 248:15 250:12 251:16 252:24 253:8 253:14 268:20 270:2 clark 3:14 class 136:7 138:3 classes 96:12 106:15 clause 56:8 clean 131:10 cleaning 35:3 112:6 cleans 170:25 clear 8:19 19:1 22:14 34:16 35:6,6,11 78:18 86:3 111:10 143:10 149:5 150:18 156:8 164:17 164:17 170:6,9 172:17 185:16 192:13 194:20 201:3 216:17 217:18 270:5 298:16 303:5 306:16 307:2 clearest 166:19 clearly 62:9 158:11,12 195:5,6 200:2	236:3 271:16 274:21 click 54:21,24 55:2 63:13 66:24 298:12 298:25 299:9 clicked 299:2 client 138:17 138:20 225:6 client's 253:22 clorox 35:19 36:3 close 18:19 27:4 125:11 152:19 153:8 254:20 256:22 273:18 closed 30:15 86:19 closely 264:25 closer 29:17 closing 81:2 clucky 131:10 coat 14:10 code 20:24 21:3 21:13,18 64:16 coffee 10:1 coincidence 93:15 colleague 7:9 135:6 collected 252:18
--	--	--	--

[college - computer]

college 113:25 118:18,19 119:8,10 131:7 208:2 214:9 216:14 217:4 311:24 colors 271:16 305:9 column 175:9 276:13 280:9 287:6 288:4 289:6,11 291:9 292:8 295:2 296:9 297:18 301:19 302:7 come 14:22 29:2 36:19 38:12 43:2 44:3 52:22 57:11 59:24 64:14 73:3 75:21 84:5 85:20 86:5 103:1 118:23 123:15 124:25 126:25 145:8 154:15 160:13 160:24 176:23 193:25 216:22 259:8 263:17 273:16,17,19 274:19 278:4 283:21	comes 21:25 61:5 75:23 127:20 248:23 286:17 304:9 comfortable 18:11 coming 37:22 48:7 50:16 60:9 61:17 71:1 73:8 241:20 252:11 252:21 comma 210:22 communicate 232:1 communicated 191:1 220:22 227:15 272:19 communicates 155:8 188:25 192:6 communicating 113:15,15 communication 97:16 110:19 110:23 111:14 111:24 112:12 227:10 238:18 312:17,25 313:7 community 195:10 companies 113:18 238:1	244:10 247:16 company 13:5 26:15 91:25 117:1,3 124:13 125:8,9,14 127:10 128:17 129:12 133:7 205:22 221:16 221:17 241:5 company's 133:8 compare 191:3 279:15 compared 312:1 comparing 195:18 307:7 comparisons 217:24 compensation 21:20 competitions 116:18 competitive 115:24 compiled 290:25 complaint 44:13,13,15,16 45:2,13 46:10 46:18 complete 96:17 203:10 204:20 227:16	completely 52:1 69:21 77:3 completeness 273:7 completing 96:8 completion 317:15 complex 89:19 compliance 271:14 compliant 73:12 complied 239:3 component 144:24 145:3 257:16 258:23 comprehension 4:23 86:4 113:23 146:13 149:6 150:19 156:9 161:10 168:12 208:18 216:18 220:10 220:12 306:17 307:7 310:15 computational 118:9 computed 228:17 computer 20:24 76:13 87:6 89:10,16
---	---	--	---

[computer - consumers]

89:18,18,22 120:9 293:19 computerized 200:9 computers 90:3 122:5 246:11 computing 100:23 concept 33:16 176:2 179:18 215:20 conception 250:13 concepts 33:21 215:1,7 281:1 concise 202:15 conclude 234:8 242:2 272:5 concluded 138:24 concludes 315:19 conclusion 37:22 61:18 207:8 conclusions 221:6 236:22 236:23 conclusive 38:15 148:3 149:8 concrete 13:6 13:12,13,17,19 14:11 34:15	39:5 80:9 conduct 237:17 237:18 242:21 conducted 137:24 146:11 207:1,4 conducting 104:19 190:20 234:21 243:13 conducts 220:20 conferences 95:17 107:25 conferring 217:20 confident 18:6 259:11 confirm 61:8 71:7 277:23 confirmed 294:1 confused 69:4 199:12 confusing 170:18 194:16 201:12 confusion 271:10 connect 12:10 consider 40:12 59:2,8,10 60:4 60:7 61:17 63:21 64:22,24 64:25 65:22	66:7 184:22 188:20 268:21 313:8 considered 37:17,22 42:5 42:17 45:1 46:7,18 50:9 50:14 52:23 53:1 60:1 61:9 62:4,23 63:23 65:2,3 173:17 255:24 262:17 262:24 consistent 22:24 162:16 168:4 190:25 227:13 245:24 254:25 258:23 279:23 280:1 313:23 conspicuity 134:12,14,17 163:10 218:24 219:1,3 conspicuous 134:16,16 171:10 constant 168:8 237:13 238:2 256:14 constraints 147:23 constructed 245:7	construction 130:21 consult 53:5 consultant 117:4 consultants 121:4 consultation 243:24 consulting 125:20 222:9 224:21 consumer 31:3 31:6,12,14 43:16,16,20,20 56:17 91:9,9 110:23 111:23 112:1,3,4,12 152:22 171:5 172:4 189:11 189:12,13,14 193:24 203:18 204:13 218:3 245:5 271:9,21 271:22 272:6 272:22 309:7 312:18,20 313:1,7 314:14 consumers 78:12 79:22 80:16,18,23 81:20 113:16 148:18,24 149:21 150:8
---	---	---	---

[consumers - correct]

150:14,14 152:24 153:11 153:16,16,21 156:9 169:1,21 174:9 202:17 cont 5:1 contain 87:4 contained 316:5 contemplated 227:18 content 31:4,7 33:18 34:3,12 48:20 49:12 62:6 63:3,7 64:19 75:17 79:5 80:6 86:12,14 176:11 192:6 207:17 215:11 215:13 216:25 217:13 230:25 278:11 contents 149:18 context 31:10 33:15 85:15 112:2 115:19 contingent 21:20 continue 6:10 168:1 234:9 continued 254:23	continues 59:1 153:2 154:2 continuity 257:4 continuous 241:8 contract 5:17 98:5 222:9 224:21 225:22 227:25 231:15 232:19 236:13 238:19 239:1 243:6 261:1,14 contracted 233:14 contractor 125:12 225:8 225:23 226:21 contrary 186:19 contrast 86:8 219:12 236:9 246:5 conversation 232:7 249:20 272:20 274:20 275:13 277:22 conversations 6:8 convey 34:17 159:14,24 160:2 167:24 168:2 176:8 185:14 229:23	conveyed 152:15 conveys 176:14 cool 13:20 117:14,15,22 130:9 220:16 coop 131:10 copies 224:7 copy 21:17 224:5,6,11 234:21 copying 261:10 core 125:22 258:14,18,20 corner 62:2 80:11 cornerstone 279:1 correct 8:7,8 9:10,11,22 11:7,8 16:6 18:13,17 37:8 39:1,3 46:8,10 46:18,22 50:14 54:10 55:4 58:4,18 60:3,6 65:9 67:4 70:18 72:8,12 73:12 76:4 81:25 82:1 85:7 89:7 107:11 109:14 110:6,11 111:8 111:10,20	115:14,16 119:9 126:23 143:12,15,18 148:15,17 152:16 154:25 157:1 162:8 166:9 167:17 167:20 172:18 173:25 174:22 176:15 179:19 180:20 183:2,4 183:9,12,22 184:1 205:6 207:7,22 208:8 213:9,19 216:24 217:14 218:24 224:15 231:25 232:20 232:21 233:21 235:4 236:24 239:19 240:5 264:17 268:6 268:23 270:7 272:8,12 280:14 285:1 291:5 292:11 294:25 295:4 295:15 296:9 296:15 298:10 298:21 299:13 301:25 302:13 302:23 303:6 306:11,14 307:4,13,16,17
--	--	---	---

[correct - crain]

309:3 311:14 315:13 corrected 316:6 correctly 38:19 43:13 139:7 correspond 76:21 cost 13:18 14:14 counsel 6:13 7:4,15 8:4 16:14 18:10 19:21,24 24:10 24:22 56:11 57:21 72:16,19 87:17 127:22 138:13 139:15 209:23 230:17 230:21 231:11 293:25 298:18 298:20 300:24 309:23 313:21 314:19 315:14 counsel's 69:25 count 199:8 280:4,9,22 288:12,17,20 289:7,16 297:17 counted 283:20 288:15,16 counter 141:19 couple 16:21 65:16 72:14	85:13 161:5,5 183:16 210:5 266:13 308:11 course 66:21 100:9 127:22 215:5 223:4 courses 99:20 100:2,5,7 101:11,13 coursework 94:15 96:15 court 1:1 2:1 6:16 7:13 9:4 9:17 51:17 73:7 134:1 135:2,19,24 138:23 139:3 223:7 229:11 270:18 273:14 courtney 3:13 7:11 10:7 139:25 223:5 223:14 260:22 courtney.wood 3:17 courts 133:24 cover 17:18 170:3 305:14 covered 37:5 55:19 100:20 169:18 215:1 215:16 217:15 228:12,14 310:12	covers 53:25 54:4 crain 3:5 4:6 7:7,8 8:2,4 11:23 18:9,14 18:15 19:9 34:24 41:15 52:7 58:16 61:3,11 62:13 63:5 66:14 69:23 70:10 72:24 73:20,23 74:4 76:5 99:11 114:12 114:14 120:14 127:4 135:21 139:19,24 140:7 145:1 156:19 158:15 159:1,23 162:4 165:16 166:22 166:23 170:17 173:6,8,14 180:4,7,13 182:17 187:1 193:17,21,23 194:15 199:1 199:13,14 200:24 201:11 201:19 205:3 206:3,6,13 209:6,14,17,21 209:25 210:2,4 214:16 219:24	222:13,17,20 223:1,5,12,17 224:2,16,17 230:12,24 231:5 232:11 232:13 237:5,9 239:9 240:19 241:18 242:16 243:2 246:1,2 246:22 249:6 249:22 250:3 253:10,19 255:4 260:6,9 260:14,18,19 260:22 261:3,7 261:10,17,19 263:20 264:1 269:22 272:9 274:7,9 275:20 277:14 279:7 281:6 286:2 287:5 289:14 290:1 292:12 293:24 294:3 296:8,14 298:6 298:11,18,22 299:19 300:1 300:19,23 301:1,7 307:24 308:3 309:10 309:17,21 313:19 314:18 314:25 315:10
--	--	--	--

[crazy - decades]

crazy 99:6 create 88:23 125:7 131:15 created 24:5 91:24 130:2 131:7 228:22 228:22 creating 122:12 122:13 130:21 147:5 220:7 251:24 creation 49:1 125:21 credentials 242:19 250:24 credibility 147:11 credible 235:19 credits 101:8 critical 114:1 314:16 criticism 146:5 189:17 194:14 194:19,21 criticized 139:3 critique 147:17 150:21 247:20 crumb 241:22 crunch 5:5 135:25 136:8 crutcher 3:4 7:8 crux 206:25	csr 1:22 317:25 cumbersome 156:6 cup 10:1 curiosity 172:14 228:15 current 12:16 178:3 251:2 265:22 currently 11:7 12:13 14:9 126:4,9 custom 131:8 cutting 30:14 cv 1:4 2:4 6:18 48:24 116:23 132:13,18 133:13	dance 77:20 87:14 danforth 228:1 231:16,24 233:11 238:25 249:20,23 250:6 260:2 268:24 272:18 274:21 277:23 data 21:5,8,9 86:11 120:6 148:6,7,9 149:3 150:21 150:23 151:2 151:12,22,24 151:24 157:3 160:7 162:7,15 163:15,17,24 164:9 165:5,12 165:20 166:8 166:16 167:7 167:16 168:6 175:9,16,20 176:21 177:4 177:13,14 184:17 188:13 188:15,17 189:14 191:13 191:15,17,23 192:3,11,14,18 192:19 193:2,6 194:2,3,7 195:3 196:1,4 197:10 200:17	201:6 203:23 204:4 216:10 220:18 221:2,4 244:6,11,21,24 245:4,5 246:14 247:20,22 248:11 249:9 252:18 267:15 267:18,19,24 275:22,23 278:10,20,23 278:24 279:4,9 279:12,17 280:24 285:18 290:24 291:1,6 292:4 294:11 303:15,16 304:19 306:14 date 317:20 318:24 dated 224:24 255:23 264:13 317:22 daughters 23:21 day 24:14 126:4 246:12 278:7 290:3 295:22 303:9 313:13 316:9 dealing 188:16 191:16 193:2 decades 152:10
	d		
	d 4:1 60:22 62:2 64:23 152:22 153:10 153:15,20,25 226:3 280:7,13 288:4 289:6,11 291:9 292:8 295:2 296:9 301:19 302:7 dad 15:6 dallas 180:24 181:2 damages 14:18		

[decent - deposition]

decent 76:16 108:3 113:24	151:21 152:17 191:23	291:17 292:14 292:15,18,24	denotation 266:24 267:10
decide 26:12	defendant 1:10	292:25 294:7,9	dense 173:21
decided 16:19 62:17 96:25 107:9	2:10 3:11 7:12 56:11 57:21 137:13	definitions 280:25 282:4 282:15,22	depend 164:21 195:23
decision 37:18 38:7 60:10 96:25 135:24 138:11 185:2 250:22	defense 11:10 45:20 134:20 134:22	294:4 295:11 295:24 302:16	depending 17:2 22:2 66:24 67:8 160:17 244:7
decisions 82:13	defer 200:20 201:8 205:2	definitive 152:5	depends 76:13 164:24 241:4
declaration 137:12,16 316:1	define 31:9 163:21	degree 73:16 88:12 89:25 92:15 94:10 96:9 100:20 102:16 106:11 107:16 118:6 119:18 149:1 150:8 155:19 190:20 197:19 197:20 215:8 257:4 305:18 305:23 309:6 309:14	depicted 155:23
declare 316:3	defined 31:5	102:16 106:11 107:16 118:6 119:18 149:1 150:8 155:19 190:20 197:19 197:20 215:8 257:4 305:18 305:23 309:6 309:14	depicting 204:21
decline 166:5 166:20	definitely 39:20 47:11 82:19 90:5,17,22 96:21 100:11 100:14 111:23 112:5 121:12 121:25 128:2 144:17,23 145:17 157:14 164:23 169:8 186:8 189:19 236:14 237:18 242:8 248:1 257:18 258:20 272:25	degrees 106:13 121:14	depiction 99:23 120:21 123:7
declined 157:21 159:20 162:24 164:25 171:13 185:17 186:10 191:7 194:8 267:23	164:23 169:8 186:8 189:19 236:14 237:18 242:8 248:1 257:18 258:20 272:25	del 161:21	depo 29:11,22 30:5
dedicated 23:3	definition 280:16 282:24 283:1 288:24 289:2,3,18,20 289:23 290:17	delay 111:5	deposed 8:13 124:4,5,8,21 125:23 135:14
deemed 26:17 26:18 45:7,10 45:13 46:3,6 46:16		deliver 227:2	deposition 1:13 2:17 6:13,19 9:9 15:23,25 16:6 17:12 23:25 24:2 25:13 28:14 38:21 43:2 60:21 138:1,4 140:13,25 158:1 205:8 261:23 264:19 264:24 314:21
deems 184:3		demonstrates 86:11 278:10	
deep 50:24 112:5		demonstrative 275:22 276:2	
deeper 31:22 75:16,17 84:6		denominator 292:3	

[deposition - disclosure]

317:14 depositions 10:7 25:8 27:17 28:8,11 29:18,21 77:21 119:20 124:12 269:17 293:19 depth 27:15 37:4 derivation 134:15 derived 172:17 172:18 177:8 describe 87:19 186:16 215:23 describing 157:21 description 4:11 5:3 265:8 design 4:20 78:11 79:20 80:15,22 81:19 83:2 88:22 89:3,4 100:10 100:17,23 101:1 108:23 109:1,3,9,24 110:2,10 122:1 122:9,11 130:16 144:1 218:3 designated 126:5,6	designed 143:1 306:23 designing 12:20 13:3 108:24 designs 122:3 despite 272:22 destructive 122:6 detail 187:5 250:9 detailed 55:3 59:11 63:10 80:11,17 157:14 details 202:3 deter 152:24 153:16 determine 216:11 determining 31:2 244:25 developed 86:25 243:19 268:9 development 23:4 dicker 3:12 diego 1:15 2:19 6:1,20 13:1 116:10 difference 85:24 230:11 276:7	different 12:21 13:5 16:9 21:24 31:13 35:23 36:1 42:13 43:7 55:11,16 59:1 66:5 71:18,19 71:25 72:2 76:9 79:8,9 82:16 85:11 90:16 91:3 94:6 121:22 123:17 149:10 149:12 160:16 161:6 162:9 167:18 169:5,7 172:19 179:1 221:16 240:1 246:11 248:1 250:4 273:6 281:9,15 282:3 282:10,21,22 284:7 285:12 292:24 293:18 296:17 306:24 306:24 312:6 312:23 differentiate 47:6 differently 73:10 123:19 difficult 82:22 198:5	dig 151:21 152:17 259:6 digital 97:10,14 97:14 98:2 308:20 309:23 digitized 12:2,4 direct 32:10 102:22 162:15 204:4 direction 226:4 226:20 273:6 317:10 directly 39:10 disagree 70:11 186:21 discarded 139:4 discards 199:20 disclaimer 78:17 250:15 disclose 51:23 59:1,25 183:23 disclosed 16:1 222:4,5 232:22 232:25 233:1,2 275:18 disclosure 31:16 33:10 36:10 51:11 53:7 54:2 55:7 55:15,25 58:25 59:16,22 62:11 62:15 143:1
---	--	--	--

[disclosure - doing]

154:10 189:22 191:19 192:9 216:3,23 217:9 218:13,22 251:25 306:23 disclosures 64:21 86:13 150:2 154:6 155:7 215:20 218:8 278:12 discount 35:7 36:3 discounts 35:3 discovery 16:19 256:4 261:1 discrepancy 289:21 discretion 286:17 287:16 discuss 52:13 230:20 discussed 202:5 229:24 230:20 231:1,11 237:6 250:17 313:3 discussing 151:1 discussion 9:5 79:1 223:22 233:11 271:25 display 160:6 displayed 158:11 183:1	216:12 309:15 displays 309:7 dispute 186:18 dissertation 97:5,9,22,24 98:13,14,22 99:2,5 103:19 104:7,10,13 105:22 distinct 314:7 distinction 121:17 176:20 distinguish 275:1 distribution 214:2 district 1:1,2 2:1,2 6:16,17 dive 31:22 50:24 53:11 84:6 255:1 dived 52:15 diverse 208:16 227:10 divided 280:12 diving 255:7 division 1:3 2:3 6:18 dmm 1:4 2:4 6:18 doctor 56:25 222:10 doctors 141:21 142:11,20	143:20 document 5:23 18:22 44:23,23 47:23 48:23 59:12 65:18,22 99:14 120:15 127:7 135:22 137:5,17 139:1 139:17 154:12 173:7,15,17,21 173:23 174:3 177:2 193:9,18 201:15,22 202:25 207:20 214:10 217:5 219:18,20 220:1,25 221:24 222:3,5 222:6,19,24 224:4,8 225:19 232:4,8 233:4 235:12 236:5 255:5,9,23,24 256:10 257:1,3 257:19 259:9 260:1,14,21 267:2 268:12 269:16 275:24 279:20 281:8 281:10,11,17 281:18 282:12 282:20,21 284:14 285:23 286:3 293:5,15	314:2 documented 90:7 documents 17:4,6 19:10 19:12 20:12 25:1,3 27:5,21 27:25 28:5,6 37:23 38:7,10 38:15 39:7 42:5,16 44:7 44:18,19 45:1 45:6,9 46:9,12 46:15,17,25 47:3,8,11 50:3 51:23 181:24 216:15 222:2 222:18 223:14 223:15 224:19 230:9 235:23 237:4 247:8 248:17 254:24 255:2,12 262:10 dog 130:10 dogs 129:7,11 doing 9:14 12:8 14:2,6 18:4 21:7 73:9 95:4 96:19 100:14 101:17 103:18 104:12 106:22 109:11 115:1 119:24 120:4
--	---	---	--

[doing - elements]

122:4 125:8,9 151:4 152:8,8 160:18 172:12 172:23 220:9 235:20 247:18 247:18,19 267:14 272:5 293:18 295:21 303:1,4 304:14 dot 198:14,15 198:15 210:22 double 66:23 83:22 132:15 222:16 295:19 298:14 doubt 300:12 download 174:3 286:7 downloaded 16:23 dr 17:15 25:11 27:8,9 41:9,11 41:21 43:6,12 44:12 46:24 49:7 51:4 52:13,22 94:17 121:15,16 145:10,12 172:21 174:1 184:22 186:14 190:24 200:21 201:9 205:2 226:2,7 229:11 232:20 234:12	245:16,20 246:23 247:10 250:7 252:15 253:21 271:25 draft 19:16,17 19:19,21 drafted 48:20 140:21 184:8 185:6 268:14 drafting 174:16 184:15,24 202:1 drafts 266:18 dramatic 276:7 dramatically 75:18 draw 94:13 237:23 307:9 drawing 121:17 drawn 163:8 drink 120:4 drop 98:9 drug 113:21 due 161:12 duly 7:22 dunn 3:4 7:8	e67 211:10 212:16 earlier 79:1 82:15 91:1 94:4 112:7 121:20 144:21 218:25 255:12 255:20 262:4 273:3 278:17 295:22 296:22 304:22 313:3 313:13 early 117:12 119:20 120:9 124:6,11 easier 16:25 easy 51:8,12 152:14 252:17 economics 43:9 edelman 3:12 edge 162:17,18 162:19 edit 19:24 20:5 educate 174:24 educated 113:25 educates 142:3 education 5:13 37:24 38:11 93:6 102:7 208:14,23 211:4,18 213:3 213:22 244:7 312:15	educational 82:11 83:15 103:11 213:6 effect 153:25 164:15 305:8 305:13 effective 13:18 14:14 82:12 100:17 109:13 227:9 238:18 effectively 54:25 113:19 170:13 182:9 effects 153:4 305:8 efficient 247:14 eight 24:24 29:8 137:3,7 271:3 274:10 315:21 eighth 203:17 204:16 207:9 208:6,15 212:2 212:3,9 213:1 214:14 290:7,8 306:21 309:15 311:24 either 40:3 118:18 129:24 154:24 element 130:16 258:15 elements 258:7
	e e 4:1 280:4 318:3,3,3 e.g. 271:12,14 e65 210:12		

[elicited - et]

elicited 316:7	encompassed 67:10	121:18,23,24	err 161:13,15
ellipses 198:14	encompasses 95:16	125:22 127:21	error 20:24
elser 3:12 7:11	encompassing 79:18	128:9,12 133:5	errors 87:5
11:11 23:6	encouraged 241:7	241:8	114:2 165:3
224:7	ended 95:18	enhanced 282:13	166:2 167:5,13
email 5:19	116:3	enhances 10:2	168:14 182:10
234:15 260:17	ends 96:19	enjoy 95:18	194:24
260:20 261:21	149:10,13	ensures 78:11	especially 13:7
262:16 263:3,6	engage 225:7	79:21 80:15,17	124:6 195:9
263:13,15,18	294:15	80:22 81:19	esq 3:5,6,13
264:3,12 265:6	engaged 294:11	83:2 162:13	essentially
265:14 267:7	294:24	ensuring 86:12	175:24 178:13
268:7	engagement 86:12 278:10	278:11	243:24 280:22
emails 47:9,19	293:10 303:18	entails 23:20	established
47:21 48:7,12	303:18	312:9	81:21 152:3
48:19 262:5,24	engaging 216:2	entered 101:22	214:7
emotions	engineer 119:12 121:13	entering 119:18	estimate 24:23
153:21	122:22,23	entire 99:7	44:24 105:4
employ 271:15	123:1	entirety 316:5	124:3 250:18
employee	engineering 5:4	entitled 4:16	290:3
125:12 317:18	12:14,21 15:2	201:22	estimated
employees	43:22,24 87:21	entry 215:25	302:5
25:16 128:14	88:1,13,14,16	epidemiologi...	estimating
193:14 231:18	88:25 89:9,24	4:22 310:13	189:10
264:23	90:14 91:2,15	equally 147:17	estimation 67:4
employment	99:4,4 104:2,5	252:20	105:1 151:10
116:21 121:7	104:5 117:25	equation 75:8	189:3 198:6
123:6,9,12	118:6 121:14	era 246:11	203:15 205:19
en 293:22		ergonomics	250:17 275:13
enables 84:12		14:3 95:12	275:15
206:21		107:21 109:16	estimations
encompass		109:18	160:25
66:25			et 1:6 2:6 6:15
			67:22,22 218:8

[et - exhibit]

218:8 271:17 271:18 318:1 evaluate 14:13 30:19 56:14 57:16,22 58:10 82:18 83:2 141:16 208:13 235:13 280:25 evaluated 31:2 34:11 43:4 55:14 59:18 62:19 80:7 82:21 83:20 94:6 113:23 155:6,21 evaluating 57:12 58:5 92:1 146:25 evaluation 43:25 44:1 93:5 114:5 event 280:9,22 283:11 284:2,4 284:5,6 286:21 286:23,25 287:3,6,11,12 288:9,12,15,17 288:18,20,21 289:1,5,11,16 290:10,12,13 290:21 291:19 291:21 292:16 297:17 304:14	events 5:22 115:5 280:4 282:13 284:7 291:1,3 everybody 93:21,22 195:13 evidence 51:19 72:21 137:23 233:10 249:2 252:7,10 272:24 evidentiary 138:7,25 evoke 153:20 exact 24:14 exactly 104:25 232:5 245:16 examination 4:3 8:1 308:9 309:20 examined 7:22 example 14:1 16:22 32:18 34:21 38:16 39:6 68:23 70:22 79:11 88:24 89:8 111:4,25 112:6 157:19 234:6 274:23,25 275:4,5,7,10 303:20,25 304:1	examples 32:25 152:5 exceed 229:25 230:2 except 71:20 80:7 181:19 249:13 exciting 131:24 excluding 178:1 277:4 exclusively 23:3 executed 316:9 exercise 136:7 137:22,24 exhibit 4:12,13 4:15,16,18,19 4:21,24 5:4,5,6 5:7,8,10,11,13 5:16,17,18,19 5:20,21,22,23 18:23,23 19:6 19:6,7,8 37:14 41:13,14,18 53:17,19 60:20 61:1,2 64:23 66:12,13,15 67:25 68:13 74:7,11,18,22 76:10 77:5 78:4 83:4,5 84:9 92:6 99:10,12 114:10,12,13	120:12,13 127:2,3,6 132:21 133:17 135:19,20 149:17,17 158:1 159:12 173:9,11,13 176:3 180:9,10 180:10,11,12 180:14,17 181:4 186:24 186:25 191:24 196:17 201:18 201:20 208:11 209:4,5 212:5 219:22,23 221:24 223:11 223:17,18,25 224:1,8,19,20 226:8 232:9,14 233:13,14,22 256:17 261:18 261:20,22,22 264:2,3 270:15 275:19,21 278:4 279:6,8 280:4 281:4,5 283:6 284:16 285:10,17,18 285:25 286:1 287:2,4,6 294:14,18,23 295:2 301:19 303:25 304:3,4
--	---	--	---

[exhibit - fact]

304:6 308:23 exhibits 4:9 5:1 18:21 19:2 28:10 180:9 270:18 exist 59:17 60:8 128:5 217:10 259:24 existed 251:9 254:19 260:11 exists 59:3,13 62:8 254:20 298:3 expanding 314:20 expect 96:5 experience 4:19 10:3,23 23:23 31:15 33:16 37:24 44:1,2 48:9 49:1 51:9 79:7,9,13 87:23 89:15,22 90:10,18,23 91:22 94:16,17 95:25 96:4 99:24 100:16 100:23 110:8 110:13,15 111:1,12,13,16 111:20,21,24 112:5,13,19 114:23 117:23 118:1 121:23	123:5 132:20 133:13 143:13 143:17 145:13 152:8 160:19 163:8 184:13 184:23 200:22 201:1,2 240:9 246:16 248:10 308:18 310:17 311:5 312:10 314:9,15 expert 4:12,13 4:15 11:7,16 11:25 12:2,8 12:17 13:22 14:21 18:16 19:13 21:25 22:9,21 27:12 31:19 44:6,11 51:17 55:11 56:1,2 59:2 64:1 72:16 80:8 104:23 117:4 123:21 123:25 126:10 132:14,16,22 133:23 134:5 137:12,16 160:25 169:19 170:2,3 172:19 172:20 184:13 184:25 188:3 190:8 218:7 235:11,12	239:6,11 240:9 240:12,15,24 243:24 250:1 267:21 308:13 308:15,18,20 309:5,23 311:2 312:1,2,4,7,11 313:5,12,22 314:3,5 expertise 43:6 43:7,12,15,19 53:11 63:19 82:13 87:14,17 87:21 91:2,6,7 94:13 110:1 121:2,10 143:6 143:19 176:12 201:2 230:2 243:25 310:10 310:25 311:20 314:20 expertises 14:1 experts 55:19 121:5 147:6 169:9 184:12 197:10 216:2 216:10 251:20 268:1 explain 16:16 173:4 explained 22:3 172:10 explains 154:10 158:6	explore 4:22 310:14 exposed 115:4 exposure 119:21 extensively 50:23 309:1 extent 65:12 143:3 314:19 external 184:16 267:15 extra 106:13,17 143:8 eye 163:8 220:11,13 242:21 243:17 273:12 eyeballs 75:12
f			
f 152:22 153:10 153:15,20,25 fabulous 106:8 facilities 14:15 224:7 facility 224:14 facing 189:11 189:12 204:13 218:3 fact 58:25 62:8 138:7,25 158:11 174:1,8 185:20 193:14 194:5 196:4			

[fact - fighting]

215:14 237:22 257:2 269:12 factor 40:18 164:23 factories 13:12 factors 14:2 33:15 43:22,22 43:23,24 87:21 88:1,3,4,6,10 88:12,16,25 89:8,15,24 91:2,15 95:12 104:2 107:21 108:2 109:18 117:4,24 119:12 121:5,7 121:15,18,21 121:23,24 130:16 132:8 134:7 241:7 314:12,13 factory 13:14 88:8,9,15,18 90:24 123:18 facts 35:9 51:23 136:15 245:6 246:14 250:22 failed 159:15 159:16 160:3,4 failing 153:3 fair 8:19 9:14 9:15 10:2,12 10:13 11:2	15:1 19:3,4 23:23 32:11 34:18 35:9,10 38:3 44:21 47:7,14 50:3 51:24 52:1,5 53:23 54:7,13 63:3 67:2 69:24 72:4 79:25 82:10 84:1 88:25 89:23 90:15 116:2,13 117:23 118:21 118:25 121:9 123:7 132:12 146:20 147:9 147:19 151:18 155:17 156:4,5 156:20 162:5 163:23,25 165:22 167:2 170:1,3,18 172:22 181:17 184:11,12 185:8 187:17 193:21 194:13 195:2,16 196:11,14,15 199:13 200:25 201:12 202:23 206:18 210:20 214:17 215:1,8 215:12 225:18	233:6,18 240:22 244:5 246:1 248:25 250:21 266:18 285:5 292:23 311:18,22 fairly 50:24 185:6 279:3 fairness 228:23 fairs 115:25 116:12 fall 14:12 177:25 178:19 190:24 216:7 276:15 278:1 falls 14:18 familiarity 4:23 310:15 faq 81:8 204:6 faqs 203:1 far 34:12 39:8 39:25 40:3 44:1 75:2 104:12,15 182:10 195:6 304:19 305:2 farther 141:18 fascinating 13:21 fast 178:24 feasible 147:21 federal 51:17 51:18,19,22 62:18 72:20	73:4,6,12 317:14 fee 15:23,25 feedback 241:9 244:15 feel 15:12 27:24 35:12 37:3 43:3 55:9 77:25 81:15 96:12 104:22 110:14 118:6 145:20 150:25 172:14 174:18 191:2 195:7 202:12 205:16 208:7 215:16 221:16 235:14 235:21 236:3 238:22 247:4 247:12,20 257:8 285:8 287:16 295:19 311:23 313:17 313:23 fees 138:21 fell 136:6 field 143:17 147:6 248:3 fifth 212:23 213:14 297:19 297:20 fight 295:25 fighting 292:13
---	---	---	---

[figure - flipping]

figure 39:15 54:5,12,17,25 55:22 57:14 58:6,8,14 59:4 59:5,5,6 60:1,4 60:13,19 64:3 64:3,16,23 65:8,24,25 67:18 68:6,9 68:10,13 70:2 70:15 71:10 74:12 78:14,15 78:19,21 79:5 79:24,25 80:10 81:5,23,24 83:21 84:17,18 84:20 85:3,5,5 104:23 122:13 144:11,12 155:8,23,24 157:25 159:11 161:2 169:1,3 170:6 174:12 175:23,24 176:1,1,5,8,14 191:1,3 192:5 192:14 193:7 207:5,5 213:16 213:17 216:22 220:14 229:14 229:14 244:23 254:10 257:16 258:11 278:15 278:16 284:12	284:13,14 285:7 306:2 307:1 309:1,6 309:15 figured 131:24 figures 53:20 82:19 figuring 30:8 104:19 113:19 file 45:17,18 173:16 279:14 281:12 filed 6:16 files 279:22 filings 45:12,25 46:16 final 5:16 94:2 109:7 232:15 232:19 233:7 233:22 256:18 257:21 265:7 finality 151:8 finally 277:3 financially 7:1 317:17 find 32:6 125:5 147:2 186:19 209:4,13 237:15 257:10 262:14 273:17 281:17,18 302:25 303:16 303:22	finding 160:19 finds 40:5 fine 20:15 22:13 38:4 48:2,3 84:4 215:10 fingers 284:19 finish 9:12,13 10:17 263:13 263:14,14 finished 13:14 13:16 firm 11:10,11 23:6 117:6 118:24 119:24 121:11 125:3 firm's 121:13 first 7:22 17:19 18:3 34:7 36:12 39:5 40:5 42:12 53:8,9 60:14 64:11,11 67:25 73:4 76:18 77:9,9 85:4 90:8 93:12 94:19 110:9 115:25 116:1 116:13,22 118:18,20 122:11,13 142:15 144:6,6 144:11 147:5 157:11 158:20	161:1,4 175:1 178:13 191:20 196:20 197:4 210:12,15 216:5 225:3 227:19 255:21 261:13 264:4 266:4 267:1 268:11,14 273:5,12 276:8 284:23 286:25 firsthand 160:20 fish 129:24 131:4,8 five 45:22 49:16 68:20,22 86:22 145:22 197:13 275:14 277:25 279:12 279:17 295:22 302:12 310:24 314:20 fix 21:2 69:24 87:7 133:10 202:8 248:8 fixes 87:4 flesch 207:1,24 flip 40:4 44:5 61:6 99:21 120:20 308:24 flipping 42:4 215:3
---	---	--	---

[flora - form]

flora 131:4	fold 64:9 74:19	184:16,24	foreseeable
florida 1:2 2:2	74:19 75:3,10	195:19,24	134:13
6:17	75:12 76:11,18	208:22 209:7	forgive 23:14
fly 93:20	76:19,20,21	210:16 211:24	form 34:19
flying 90:10	77:3,9,10	259:16,17	37:25 38:1
136:19	304:2	266:19 268:4,9	52:2 58:15
foam 13:13	folder 47:24	268:10,14,21	61:10 62:5,25
14:8,8,12	48:17	268:25 269:3	69:20 70:9
focus 22:5	folds 74:14	269:17 270:2	72:22 76:3
26:14 52:10	follow 51:8,10	270:10 298:3,7	144:22 156:18
53:9 58:7,19	51:12 221:19	299:4,12,16	158:7,23
58:23 59:3	242:1 249:12	300:5 305:18	159:18 162:1
82:18 85:12	308:12 309:22	305:22,24,24	165:15 166:21
98:22 99:5	followed	306:2,4,19	170:16 182:16
100:13,14	147:15 239:18	307:3,19	193:16 194:10
104:18 118:7	240:4 250:8	footnotes 39:11	198:23 199:11
118:11 121:14	following 51:7	39:22 40:13	200:19 201:7
122:1,12,22,23	146:10 160:18	44:14 50:5	204:23 213:23
142:2,3 144:5	201:10 226:22	52:6 182:21	230:7,22 237:2
144:8,9,15,18	227:2 231:9	183:19 185:6	237:8 239:5
145:15 184:14	237:22 247:17	185:14 210:21	240:18 241:15
188:22 198:12	247:18	236:3,5 305:25	242:13,23
206:17 235:19	follows 7:23	forced 93:22	245:25 246:18
268:16 306:20	217:8 242:5	94:3	249:3,18,25
focused 55:20	font 244:25	foregoing	251:2 253:9,16
80:25 107:25	food 106:8	316:4 317:5,7	254:21,25
108:1 118:8	footnote 39:19	317:11,13	260:5 269:21
215:14 217:21	39:23 40:6,6	forensic 119:1	272:7 277:11
305:8	58:13,13 65:13	121:4	277:20 289:12
focuses 58:22	69:1,3,5 72:11	forensics 14:6	289:24 292:10
125:19 142:5	113:4,6 158:2	14:19 22:7,9	296:4,13 298:4
189:8	164:20,22	22:21 95:20	298:9 299:17
focusing	171:19,21	132:11	299:22 300:14
103:19	182:15 184:15		309:10,17

[form - generate]

313:14 format 220:21 formed 13:19 forming 37:17 47:18 50:9 62:4,23 63:21 64:22,25 71:3 173:18 255:25 forms 13:12,13 277:9 forth 26:15 77:10 122:7 151:4 221:20 252:11 256:6 283:21 317:6 forum 241:11 forward 106:23 156:1 266:21 foster 131:4 found 98:23 113:20,25 147:13 154:11 214:6 272:1 foundational 314:13 founder 12:13 13:23 four 4:16 22:6 22:25 49:15 71:14 105:18 107:1 186:15 199:24 200:15 200:18 201:5 258:2 276:21	fourth 116:14 200:12 273:21 273:22 frame 187:11 framed 143:4 free 77:25 81:15 104:23 145:20 208:7 285:8 314:25 freelance 15:1 15:4 frenzy 262:10 frequencies 75:2 frequently 5:11 40:14 52:25 53:5 182:10 201:16,22 202:17 229:5 friendly 203:18 frog 20:5 front 16:13,20 17:16 41:16 173:10 180:14 187:2 201:22 230:9 232:15 235:16 247:8 270:13,16 293:2 fulfilling 239:7 full 8:24 15:7 86:12,14 120:7 120:7 134:2 148:7 196:20	227:7 232:2 234:22 235:14 235:25 278:10 fully 239:2 fun 117:21 122:8 127:16 131:17,21 functional 220:8 funding 234:9 funny 210:17 further 53:12 55:18 56:1,1 143:8 163:5 177:18 216:8 216:15 235:9 235:22,23 236:2 237:17 254:18 299:20 309:20 314:22 317:13,17 furthermore 163:3 future 128:10 128:23 153:4 154:3 186:13 g ga 282:18,19 ga4 5:22 gambit 109:10 gap 165:6 177:12	garnick 3:6 7:10 206:4 209:12 232:10 232:12 260:17 274:6,8 287:4 gas 165:5 167:6 167:21,24 186:12 194:7 195:2,19,23 256:5,7 257:3 257:15 258:5 258:18 271:15 gauge 167:21 167:24 257:15 gauges 66:5 186:12 194:7 195:3,19,23 256:5,7 257:3 258:5,18 gears 77:12 87:11 114:20 general 15:22 23:22 26:16 38:14 75:20 84:13 108:1 143:24 178:7 206:22 243:5 generally 18:20 18:25 28:22 56:5 97:15 131:11 134:10 141:4 228:19 generate 129:3
--	--	--	---

[generated - going]

generated	278:21 285:23	104:19 106:20	285:2 297:17
127:9 128:25	290:3 293:15	108:15 109:6	298:25 300:11
getting 16:5,9	303:8 307:21	109:10 112:11	301:17 302:2
17:21 31:21	given 45:6	117:19,20	304:24 305:3
33:8,9 80:8	67:24 147:22	120:25 121:1	305:21 307:9
89:19 94:10	147:22 185:18	128:4 129:6	314:25
116:3 184:10	190:1 211:15	132:2 135:5	goal 302:24
187:8 190:22	236:20 315:19	137:1,7 139:15	gobbledygook
195:6 201:9	317:12	139:25 149:12	69:14
205:1 214:12	gives 62:19	151:17 168:23	goes 17:2 37:3
214:14 228:20	177:18,19	173:6 175:1,2	53:6 54:24
233:16 256:22	179:9	175:4,16	55:24 62:7,7
287:22 304:19	giving 9:24	176:16,16	63:13 80:6
gibson 3:4 7:8	12:6 189:2,19	181:24 183:15	144:21 158:24
gibsondunn.c...	219:20 290:2	186:23 187:11	229:25 243:25
3:10	292:18	187:19,20	244:24 255:13
gigantic 13:16	glad 302:25	188:5 189:19	261:15 263:4
give 9:19 18:23	go 6:11 8:17	190:7,23	going 6:5 8:17
23:19 26:16	16:12 26:20	191:23 192:17	10:5 12:21
32:17 34:20	27:3 30:12	196:16,19	13:8 18:20
39:5 43:11	32:21 33:20	201:15 203:21	19:1 26:22,25
64:16 74:21,22	37:13 39:21	210:5,11	28:1 33:19
81:11 92:22	41:5,22 53:8	211:10 212:16	41:7 43:2,8
96:21 105:1	53:12 54:12	214:24 219:10	46:23 48:18
108:12 120:3	55:2,9,21 64:8	223:19 225:2	49:7 53:8,9
124:1,15	66:11 68:4,13	226:1,15	55:18 56:24
135:18 147:21	73:23 74:7	236:12 240:15	57:1,9,20 59:7
151:21 152:5	75:2 77:15,17	244:14 256:3	63:24,24 64:13
173:6 180:8	77:19 78:19	263:5 264:8	65:25 69:2
198:5,14 199:6	81:16 84:7,11	265:6 266:3,4	72:13 73:20,24
223:6 224:7	86:2,6 87:13	266:21 270:11	74:10,13 75:16
228:7 234:23	91:13 92:5,6	270:18 273:2	76:14,16 78:5
244:14 260:14	92:17 93:10	274:15 282:9	78:8,21,24
260:21 268:8	95:22 102:19	283:6 284:9	81:14 82:23

[going - grades]

83:14,21 88:8	266:8 269:15	161:9,16,17,21	56:15 57:7,8,9
88:10 90:8	270:9 275:21	161:23,24	57:13,16,24
93:18 95:6	279:8,25 281:4	162:21 163:10	70:23 74:12
97:9 98:2	281:16 283:20	165:4 166:5	81:9 82:11
103:15 106:2	285:2,24	167:6 168:5,13	85:18,18
106:23 107:5	286:18 293:17	168:16,19,21	151:24 156:22
114:20 115:2	293:19,20,24	170:6 175:20	177:8,13 178:4
117:6 118:18	297:22 298:16	186:7 187:15	178:15 181:19
120:12 121:21	299:25 301:2	194:1,6,12	187:23 189:1,4
123:4 124:1	303:21 307:8	202:20 214:15	192:18 193:25
125:5 127:1	307:22 308:1,3	233:16 238:5	196:16 197:11
130:4 131:4,10	308:4 314:18	241:7 250:24	197:23 198:3,9
139:19,21	gold 145:25	255:6 263:9,15	198:10 199:6
140:2 147:20	146:15 148:13	271:17 275:15	201:23 203:3,8
151:4 155:16	151:3 160:18	283:3,18	203:17 204:16
156:1,1 159:25	164:12 246:21	285:15 309:3	204:18 205:13
162:22 163:13	246:23 248:5,9	318:1	205:15 207:1,9
174:24 178:20	248:12 249:1	google 64:7	207:13 208:6
180:8 182:19	252:19 272:10	86:11 127:21	208:16 211:6
186:24 190:23	golden 129:10	187:14 189:13	211:19 212:2,3
197:7 198:14	gonna 70:25	190:18 196:1	212:9,23 213:1
198:18 200:20	good 1:6 2:6	202:21 278:9	213:4,7,14
201:1,2,8,16	6:4,14 7:7,16	278:24 280:25	214:5,8,14
206:3,8 216:4	8:3 9:14 10:6	281:15 282:23	216:1 219:1,3
216:5 217:15	10:19 26:19	285:24 288:23	254:10 286:6
219:25 221:17	27:23 31:1	290:17 301:10	286:11 290:7,8
223:2,20 225:2	39:13 40:9	303:16	298:19 306:22
231:15 236:2	41:8 48:17	gotcha 81:5	309:2,15
237:15 244:10	50:12,19 51:8	gotten 126:1	311:12,24,24
245:2,14	69:10,19 70:1	grab 308:22	graded 5:20
247:13 252:3,9	71:9 79:2	graciously	197:14 198:15
256:19 258:25	93:16 94:21	224:6	276:3
260:15,20	120:11 124:15	grade 4:17 5:10	grades 63:4
261:20 263:21	132:9 139:20	30:21 40:22	148:21 149:25

[grades - healthcare]

152:22 153:3 153:10,15,20 153:25 154:2 162:14 177:25 199:8 203:22 204:3 grading 48:14 157:9 275:23 graduate 4:20 99:19 208:3 graduated 102:10 106:3,5 119:4 grant 234:1,3,5 234:7,8 235:6 250:25 grants 235:9 graph 284:24 great 8:22 10:21 19:15 30:18 35:7 42:3 60:24 74:25 78:10 83:10 84:11 88:3 108:9 114:19 125:4 187:13 191:18 214:12 215:24 252:6 283:18 greater 116:10 grew 117:6 gross 136:11 grossly 137:14	ground 8:17 9:3 10:5 group 1:9 2:9 6:16 7:12 23:9 23:12 56:12 57:22 75:24 95:20 308:16 318:1 group's 39:9 groups 108:7 growing 131:15 guarding 122:17,18,19 guardrail 122:16 guess 22:19 29:2 51:6 69:21 70:12 71:5 99:20 123:11 129:21 150:20 206:16 229:7 234:8 guide 5:12 gunning 207:2 guy 26:4 186:5 guys 209:25 222:23 252:15 gym 136:7,20 136:21	half 96:20,21 97:1,4 98:2,24 99:8 228:9 halfway 188:5 hand 7:19 67:19 68:5,10 151:5 159:8,15 160:3,5,14 161:25 164:24 165:9,12 167:10 168:17 168:20 169:12 170:7 171:16 175:5,12 178:18 195:4 200:3 298:25 299:2 handed 18:19 127:5 224:4 261:21 282:18 hanging 222:19 handle 223:7 handled 310:7 hands 171:1 handwriting 91:20 happen 182:10 happened 38:24 102:2 124:13 happy 10:15 hard 15:20 21:17 39:15 47:6,15 51:14	125:22 146:1 162:3 214:7 257:23 harris 140:15 140:17,22 172:21 184:22 190:24 200:21 201:9 205:2 229:11 hat 8:18 hazard 108:19 108:22 109:7 109:10,13 122:12 head 117:12 251:22 header 216:19 305:6 headers 85:22 health 4:21,23 5:9 113:15,16 114:6 181:5 208:18 211:17 214:8 225:23 310:13,16 healthcare 56:18,22 67:21 108:1 113:18 114:24 141:21 142:12,21 143:20 208:6 208:13 210:24 211:3 213:2 265:4
	h		
	h 69:10 318:3 habit 95:2		

[hear - hospital]

hear 51:13 52:20 62:14 129:9 152:11 165:24 178:10 262:15 284:21 heard 23:11 199:2 heavily 90:6 100:21 103:19 174:17 312:18 hedge 150:7 hedges 149:1 held 223:22 help 12:10 17:2 19:16,19 20:2 48:25 56:4 62:12 67:21 154:7 165:6 186:8 191:5 242:8 303:23 helped 37:25 helpful 30:11 83:13 108:14 142:16 178:9 233:24 260:1 262:18 282:21 helping 119:22 191:22 303:1 helps 123:1 307:6 hesitate 10:10 hey 127:17 195:10	hf 132:14,16,22 hfexpert.com. 132:5 hierarchy 97:17 122:1,9 313:2,3 high 23:19 78:11 79:21 80:15,17,22 81:19 83:3,6 86:11 102:7 106:3 115:15 115:20,25 119:4 157:13 157:16 271:12 278:10 296:23 300:7 303:18 310:22 higher 23:1 75:6 126:18,20 143:5 189:4 197:19,20,23 213:17 217:3 292:3,7 highlight 68:1 highlighted 16:24 38:22 181:11,21 194:6 highlights 16:21 hire 236:15 240:12,15	hired 48:25 222:11 237:16 240:8,23 241:21 242:10 250:23 252:15 hiring 128:15 147:6 251:20 historical 178:14 179:8 179:20 183:5 259:1,2 historically 183:24 history 38:12 77:18 103:11 110:2 116:21 133:20 hit 33:11 57:8 93:21 hl 293:22 hold 105:4,7 152:6 254:1 holding 252:2 holdings 135:25 136:8 holds 277:17 holes 94:1 home 28:20 40:7 50:11 85:1 115:4 129:24 207:4 honest 233:5 honestly 160:20 263:1	hood 169:9 186:1,4 hope 140:8 hopefully 224:13 294:1 hospital 5:11 23:24 30:20 54:9 56:15,25 57:10,23 66:5 70:23 71:2,11 74:12 78:23 79:5,15,16 81:24 84:21 141:20 142:11 142:20 143:14 143:20 156:21 157:20,21 158:13 159:6,7 159:15,17,20 160:3,5,14 161:10 162:24 165:21 166:11 166:15,16 170:14,15,25 171:6,10,13 172:2 175:13 177:9,10,23 178:2,3,15 179:7 182:13 183:5,7 185:16 187:23 191:7 194:1 196:21 197:5,9 198:19 198:19 199:15
--	--	--	---

[hospital - identification]

200:15 201:23 203:2,4,8,9,11 204:18,19,20 225:9 254:10 267:23 271:8 277:19 309:2,8 309:8 hospital's 4:16 40:8 153:12 158:9 188:11 188:14 191:11 191:14 192:1 200:17 hospitals 5:20 23:16 27:19 68:21,23,25 69:19 70:5,8 70:14,17 71:13 71:14 79:8,19 79:24 150:1 152:23 153:4 153:17,21 154:1 169:13 170:10,14,21 170:24 171:2,7 171:11,25 175:20 177:11 182:8,8,20,23 182:24 197:11 197:14 198:13 201:4 273:23 274:16 275:1 276:3,16 277:4 277:9,25	279:12,18 302:12 hospitalsafet... 29:4 54:7 58:2 69:10 72:10 hospitalsafet... 298:17 hour 15:23,24 24:11 73:21 139:20 206:5,5 228:9 hours 20:11,17 24:21,24 29:8 29:17 30:1,4 50:22 54:23 295:22 310:24 314:20 house 130:21 209:22 houses 13:4 130:24 131:15 https 69:9 293:21 huge 95:17 huh 15:19 21:12 29:12 30:25 31:17 35:4,8 39:24 42:18 49:11 53:21 56:13 88:5 106:19 145:24 149:2 150:10 161:7 192:24 234:2	244:20 299:8 300:25 304:11 human 14:2 33:15 43:21,22 43:23,24 44:3 87:21 88:1,3,4 88:6,10,12,16 88:17,24 89:8 89:10,15,18,18 89:23 91:2,14 95:12 104:2 107:21 108:1 109:18 115:23 117:3,24 119:12 121:5,7 121:15,18,21 121:23,24 130:16 132:8 134:7 241:7 314:11,13 humans 33:18 88:7,22 hundred 126:14 285:9 hurt 108:25 122:14 hybrid 93:19 hygiene 161:25 165:9,13 175:5 175:12 178:19 200:3 hypotheses 238:14,16	hypothesis 162:3 237:25 252:6 hypothetical 34:25 295:21 295:23 296:7 hypotheticals 295:21 i i.e. 177:25 178:4 iag 100:22 icf 13:18 icu 200:12 idea 31:15 51:10 103:19 130:1,9,11,16 131:5 133:18 183:10 216:3 239:17 240:4 277:24 306:22 ideas 130:24 131:11 identical 78:21 79:7,10,15 279:19 290:25 identification 19:7,8 41:14 61:2 66:13 99:10 114:13 114:16 120:13 127:3 135:20 173:13 180:11
---	---	---	--

[identification - increasing]

180:12 186:25 201:18 209:5 219:23 223:25 224:1 261:18 275:19 279:6 281:5 286:1 identified 310:10 312:2 314:3 identify 21:2 246:15 310:25 311:2 313:11 ids 283:11 288:25 ileen 121:16 illinois 3:15 immediately 93:14 102:4 impact 20:25 148:20 149:24 152:22 153:11 184:19 185:2,5 impacted 106:24 impair 9:24 implement 170:24 implemented 249:24 implication 141:20 implied 63:8 implies 195:3	implying 35:12 185:18 important 62:18 81:10 164:6,23 213:24 235:17 246:20 258:15 258:21 269:4,6 269:10,13 274:6,16 282:10 295:5 300:16 302:21 313:8 impressive 297:22 302:6 imprinting 122:5 improve 94:5 195:12 220:12 improved 94:7 improvement 168:8,10 186:13 195:8 214:11 237:13 237:17 238:3 improvements 239:24 improving 94:9 impugnation 150:2 imputation 141:22 142:13 142:22 154:6 154:11 156:13	156:17 157:4,6 157:9,12 165:8 165:22 168:24 169:2 171:23 172:8 175:17 184:11 186:17 190:2 205:20 251:8 260:3,11 266:23 267:10 267:25 275:2,3 275:17 276:13 277:4,9,20 imputational 155:9 impute 179:13 imputed 70:24 70:25 86:3 148:20 149:5 149:23 150:17 156:8 158:6,12 159:4 164:18 168:12 169:4 178:1 182:20 183:6,24 194:24 199:9 199:24 201:5 205:1 216:16 273:24 274:17 306:15 imputes 169:12 imputing 178:14 inaccurate 34:18	inappropriate 137:21 include 138:5 227:1 283:1 included 39:20 67:13 123:13 139:11 includes 30:5 58:2 157:4 282:24 294:14 including 70:16 71:11 119:10 168:11 177:8 inclusive 57:25 58:1 income 21:23 21:25 22:7,20 inconclusive 303:17 305:2 306:14 inconsistency 281:19 inconsistent 205:23 incorporated 127:10,17 133:9 incorrect 36:14 292:9 increase 168:12 increased 59:23 increasing 55:16
--	---	--	--

[incredible - intern]

incredible 98:20	113:16 114:4,6 146:24 148:8	injured 136:6	integrity 303:4
indicate 271:16	157:24 159:22	injuries 136:10	intellectual 98:10
indicated 146:12	161:12,14 163:1 171:15	injury 121:6 123:5,11,16,19	intend 86:21 142:18 154:22
indicating 197:3 232:16	176:8,14 183:1 185:20 187:12	inputting 120:8	intended 59:17
indication 114:3	188:11,14 189:20,23	inserts 131:8	intensified 154:1
indicator 163:10	191:10,11,14 191:22 192:1,8	inside 13:15	intention 105:11
indistinguish... 183:6	208:19 214:8 216:5 229:24	insofar 43:21 55:6 217:10 229:23	interact 89:21 229:13
industrial 88:11,13,14,16 90:14,20 119:11 121:8 123:14 241:8	235:18,21 242:15 247:5 248:23,24 250:16,20 254:12 258:20 258:25 259:2 272:2 285:3 306:24 307:13 309:9 310:16	inspection 136:19,20 278:25	interaction 23:15 89:16,18
industry 146:15	inspections 117:7,8 119:19	instances 40:13 48:13 52:24 81:8 98:16 100:2,22 139:2 165:9	interactions 89:19
inexpensive 247:14 252:17	informed 82:12 135:4 166:11 218:5	institute 11:16 11:25 12:9 109:17	interchangea... 22:12
infection 68:1,6 68:14,18 271:12 299:10 299:10	informing 83:4 informs 244:21	instruction 10:25	interest 118:13 118:14
inform 217:1	inherent 109:3	instructs 10:24	interested 7:1 31:22 53:10 102:2 118:19 317:17
information 4:23 31:11,21 34:18 35:14,15 36:9,11,17 55:16 56:1,18 56:23 59:24 65:4 99:19	inherently 141:22 initial 36:12 73:9 85:1 initially 45:3 101:23	instruments 90:9 insulated 13:19	interesting 117:18 118:5 282:19
			interface 88:19 89:10 90:9 101:4 intermediate 54:11 intern 119:2

[internal - know]

internal 47:9 47:19 48:6 193:14 221:22 262:5,24 267:19 international 116:2,12,14 internet 131:19 internship 114:25 118:15 143:16 interpret 230:10 interpreted 29:13 56:23 interpreting 219:5 interview 238:24 introduce 7:14 introducing 191:21 192:7 introduction 31:1 136:3 invited 295:22 involve 109:24 involves 220:7 ips 277:4 issue 32:7 35:13 36:6,15 139:10 148:2 189:16 197:11 205:17,18 237:10 246:9	issued 232:2 248:4,6 268:18 issues 249:13 iterate 195:14 iteration 13:2 93:23 100:18 125:3 146:2 225:15 238:3 iterations 94:4 122:4 161:2,4 iterative 195:8 247:19	justify 235:9	304:13
		k	knew 93:25 106:21
		kavi 11:18,19 11:24 24:18 keen 255:8 keep 46:23 49:7 94:9 139:21 keeps 217:20 key 86:13 146:3 148:12 278:11 keyboard 88:25 89:4 kid 23:24 kids 15:9 killer 98:25 kincaid 207:1 207:24 kind 12:1,5 14:5 17:2 34:22 52:16 55:11 75:8,12 76:12 89:16 93:11 94:8 95:5,14 96:25 103:20 114:1 125:21 127:17 132:7 164:24 187:5 191:5 210:16 212:6 216:13 228:19 241:4 246:17 255:1,18 259:1 262:10 300:15	know 9:4,4,8,8 10:22 11:13 21:19 28:1,7 30:2 32:21,22 35:14 36:9 37:25 38:2,16 43:8 46:25 47:5,12,22 48:17,17 49:20 51:4,5,8,11 52:12 53:10,13 53:13,22,23 54:1 55:15,17 55:25 56:1 57:6,7,8 59:16 62:10 63:12,12 65:4,17,19 67:4,4,6,8,9,11 71:18,21 73:4 74:15 75:11 76:15 77:13,18 78:22,23 79:2 79:10 80:6,8,8 81:1,18 82:22 84:14 88:1,14 90:7 94:1,3 95:9,13 96:11 96:14,23,24 98:24 100:12 100:13,16 104:6 106:22
	j		
	jakerda 27:14 jargony 44:20 47:4 job 1:23 9:14 15:7 318:2 jog 262:11 johnson 1:21 2:22 7:17 317:3,24 joke 130:13 jonah 4:15 journal 43:9 210:9 journals 245:12 jump 26:19 279:25 jumps 131:20 jupiter 25:22		

[know - leading]

113:10 116:17 118:6 119:17 120:3,3,6 122:6 125:5 127:11 128:1 129:2 130:4 131:18 135:7 137:17 140:16 143:23 144:3,5 144:13 146:10 146:25 147:6,7 147:9,13,20 148:8 151:1,9 160:24 161:1,8 161:9,9,13,16 161:18 162:3 162:11,18 163:9 164:11 165:3,21 168:7 169:21 170:1 171:15,16,16 171:23 176:10 176:22,25 178:10,11 180:21 184:13 185:8,8 186:5 187:13,16,17 189:9,21,23 190:1,4 192:11 194:24 195:9 195:11 198:7 199:24 200:22 202:13 205:7,8 214:4,12	215:25 216:10 216:14,15 219:5 220:8,10 222:12,13 225:16 228:17 228:21,22 229:3 230:20 233:24 234:3,9 234:10 235:15 235:18,22 236:15,16,25 237:13 238:23 239:7,20,23 240:3,6 241:5 241:10,10,17 241:17,22,23 241:25 242:14 242:25 243:24 246:10,12,20 247:4,13,15,17 248:2,21,22 249:16 250:9 250:15,18,19 250:20 251:20 251:22,25 252:4,9,11,12 252:13,14,17 254:8,22,23 256:10,15 257:12,22,23 258:13,22,24 259:4,19,25 264:18,20 265:2 269:5,19	272:25 273:1 283:19 286:24 290:20 295:10 297:14 300:18 302:20,24 304:12 306:12 307:11 knowable 307:14 knowledge 15:23 21:13 134:3 185:8 210:8 224:4 229:8 247:3 260:10 269:25 272:5 knows 64:15 150:14 l l 3:13 226:3 l.e.f.t. 137:22 137:24 lack 157:23 159:22 161:12 163:1 171:15 185:19 191:9 309:9 laid 79:14 landing 54:6 58:6 79:24 85:2 lane 184:14	language 4:22 138:9 139:9 141:12 158:5 160:13 163:12 170:11,20 178:5 188:18 188:20 190:2,7 190:15 197:16 198:12 203:15 203:21 204:13 205:11,12 210:24 212:5 265:9 266:14 272:23 310:14 large 13:7 47:5 47:5 76:12 119:25 215:24 220:9 239:23 252:18 257:22 larger 12:24 75:7,15 law 9:17 11:10 73:16,18 121:5 lawsuit 8:5 lawyer 73:14 lay 31:18 122:9 155:7 218:6 layout 79:5 lays 276:2 lcrain 3:10 lead 133:13 226:11 leading 76:12 167:2
---	--	---	---

[leads - likely]

leads 116:11 161:1 leah 17:25 18:6 38:18 140:13 226:21 leak 63:3 leap 20:5 leapfrog 1:9 2:9 4:18 5:7,8 5:10,11,11,17 6:15 7:12 20:2 23:9,12 25:16 28:13 39:9 47:19 48:7,20 50:15 56:11,15 57:22,23 72:9 147:4 148:19 153:2 154:1 156:21,24 165:8,12 166:8 167:18 168:5 169:11 175:13 177:9,10,24 179:8 184:3,7 186:16 187:23 188:12,15 191:12,15 192:2,14,18 194:1 198:19 198:20 199:7 199:19 200:16 201:23 203:3 203:11 204:20 204:21 205:12	221:10,14 231:17 237:1 241:10 247:2 250:8,23 261:14,14,16 264:22 271:2,7 271:19 274:13 308:16 318:1 leapfrog's 28:14 50:15 154:6 156:17 157:9 159:16 160:4 217:23 219:11,17 221:25 236:8 250:11 251:15 309:2 leapfrog0004... 5:19 leapfrog0286... 5:23 leapfroggrou... 28:18,23 254:6 leapfroghosp... 254:6 leapfrogs 86:7 learn 90:8 learning 92:2,9 92:13 93:23,24 310:18 312:14 leave 59:8 77:13 126:24 led 33:2 138:3 232:7	lee 3:5 7:7 8:4 left 60:15,17 62:2 171:2 184:12 leg 23:22 legal 6:23 44:7 44:17,19 45:1 45:12,25 46:16 139:9 315:21 legalese 304:13 legitimate 185:1 267:22 lego 13:16 length 189:9,9 207:18 lengths 207:18 lengthy 42:25 51:14 279:3 leo 267:20 leslie 1:21 2:22 7:16 9:13,20 315:2 317:3,24 letter 197:11 210:6 level 23:19 31:14 32:20 35:5,10 36:9 36:11 57:7,8 57:13,16 85:13 85:19,25 114:5 144:2 151:24 157:13,16 162:20,21 189:4 197:23	198:3,9,10 203:17 204:16 207:1,10 208:2 208:3,3,7 211:6 212:1,3 212:9,23 213:1 213:4,14 214:8 214:9,14 215:25 216:12 216:14,15 217:3,4 289:22 306:22 309:16 311:24,24,25 312:5,15,19 levels 59:2,23 207:13 208:16 211:19 213:7 216:7 311:12 liability 121:6 123:5,11 136:9 license 7:17 236:16 licensed 236:15 236:15 licensing 26:7 life 114:1 likelihood 31:2 31:6 300:7 likely 52:14 53:7 64:5 99:17 150:11 152:22 153:4 153:11,15,20 168:21 171:21
---	--	--	---

[likely - look]

189:21 247:6 299:15,23 lima 5:8 181:4 181:7 limitations 88:21 limited 32:22 145:12 179:4,9 179:22,25 183:8 193:10 229:8 267:18 line 158:12 185:21 187:22 277:15,17 318:4,7,10,13 318:16,19 lines 150:5 266:13 271:3 274:10,15 291:17 link 62:22 63:2 63:8,13,24 84:24 115:3 132:4 linked 83:6 219:4 links 49:21 64:25 65:8 79:15 80:5 82:11,17,18 83:3,9 list 39:7 41:3 42:17 50:8 51:2 71:22,24	92:22 227:3 listed 37:21 67:7 108:15 113:7 listing 51:5 literacy 4:22 225:23 227:9 238:17 308:20 309:24 310:4 310:14 311:3 311:11,12,15 311:22,25 312:1,11,13,16 312:19,19 313:6,9,12,22 314:12,17,17 literary 208:17 literature 90:7 113:15 litigation 21:21 22:1,9 117:9 125:20 litter 264:13 266:9 little 10:14 13:25 15:14,20 16:14 23:25 30:22 34:23 36:23 43:3 44:20 47:4 60:21 63:18 68:6 76:9 77:15 80:9 81:11 82:14	84:6 90:13 102:6 105:14 127:1,8,12,16 128:8 129:23 130:18 136:17 139:20 141:3 141:18 142:8 144:8,9 153:7 155:1,3 156:6 159:3 162:16 163:14 165:18 168:22 170:18 170:19 172:5 172:10 174:24 181:19 189:15 196:10 206:4 206:15 215:22 225:3,4 244:4 257:8,13 260:16 262:13 264:21 280:15 281:9 284:22 293:17 297:3,4 303:21 312:8 live 88:7 127:12,25 128:1 living 128:10 128:24 llc 5:5 135:25 llp 3:4 load 227:9 loading 78:22 284:3 286:22	location 6:19 lock 260:15 lodge 314:18 long 41:3 59:11 63:15 104:21 105:24 106:10 130:22 139:19 150:5 198:8 206:3 228:7 longer 105:15 107:1 125:2 189:5,6,10 246:13 look 18:12,21 19:2 21:18 28:10,13 30:2 30:24 34:8 48:1 49:20 53:16 61:5 66:15 67:24 68:18,20 101:7 113:2 129:19 136:3 145:21 149:16 170:5 174:10,21 177:1,3 183:16 187:12,22 189:3,5,18 202:17,22 210:11 211:23 211:25 213:25 215:18 220:6 240:8,15 244:14 256:16
--	---	--	--

[look - make]

258:3 259:1 263:3 265:3,13 265:21 266:8 266:22 267:6 270:15,21 278:19 281:3 282:20 283:4 283:17 284:12 284:12 285:7 285:17 295:18 304:9 looked 27:5 39:16 50:5 51:3 52:15 54:22 65:3 66:9 68:24 70:4 71:3 88:2 146:7 175:23 183:19 193:4,8 197:22 202:20 214:19 254:5 254:10 255:20 257:9 262:11 looking 20:23 35:21 37:10 49:23 53:20 60:19 63:25 64:2,3 74:11 75:11 84:9 131:1,2 132:23 137:5 149:18 151:16 159:11 169:1,3 182:13 187:14,18	195:2 197:1 199:5 201:4 202:21 206:20 214:1 215:17 220:14 226:15 235:25 236:21 238:20 256:18 256:25 262:15 262:23 264:2 270:14 271:3 282:12 303:15 303:23 305:6 305:16 313:25 looks 16:22 111:13 124:22 139:9 236:20 238:17 258:8 258:16 262:21 278:16 279:23 280:1 281:13 282:14 286:13 290:5 305:7 306:20 loop 27:4 30:15 81:3 86:20 125:11 152:19 153:8 273:18 lost 111:11 lot 26:7 49:20 49:21 51:14 52:16 54:22 58:2 76:17 94:22 95:16 119:19,20,22	119:24 120:5 124:10 132:3 147:11 189:5 203:16 214:25 215:6,7 220:18 221:3 246:9 247:16 257:18 259:17 262:10 270:16 304:9 314:15,15 lots 189:20 love 106:8 115:22 133:17 263:10 279:24 loved 23:16 57:4 low 35:5 153:3 168:3 271:11 303:18 308:20 309:24 311:3 311:15,25 312:1,11 313:5 313:9,12,22 314:17 lower 23:2 75:14 142:9 144:2,2 164:19 198:3,9,10 213:10 lowest 159:14 160:2,8 179:25 181:25 185:22 185:24 186:2	lunch 139:21 140:9 m m 136:5 m.s. 4:12,14 machine 88:17 90:19,23 317:9 made 20:24 33:18 35:24 96:15 98:20 127:18 178:11 202:15 217:5 241:19 252:1 280:21 307:15 317:9 main 52:9 54:6 85:16 113:14 127:14 139:10 142:2,3 145:23 189:4 228:13 242:11 285:2 285:14 maintain 204:10,11 major 107:14 113:17 majority 58:7 244:9 make 22:13,17 28:1,4 30:14 31:18 32:8 33:17 34:14,22 37:11 45:25
--	---	---	--

[make - mean]

46:13 51:11	making 31:11	224:1,8 261:18	208:24 211:5
52:19 60:18	39:14 59:10	261:22 275:19	211:18 213:3,6
61:7 66:19	82:12 114:1	279:6 281:5	213:22
67:16 74:9	122:4,4 130:23	286:1	math 296:21
75:19 78:18	194:12 195:11	marketing	297:13,22
81:2 82:20	216:1,7 246:8	43:14,20 91:8	302:5
83:14 84:15	252:11 312:16	91:12 145:17	mathematical
85:21 86:19	312:19	mary's 284:10	172:23
88:6,17,18,19	man 15:11	284:10,13,23	matter 6:14
88:19 98:7,9	21:17	285:12,16,19	217:12,13
98:22 108:12	management	286:6,7,11	265:13
114:21 116:17	108:20,22	291:6 297:1,17	matters 20:16
118:25 122:14	109:8 122:12	298:17,19	300:16
132:9 146:16	manuals	302:3	maturing 248:3
150:22,23	174:10	master's 88:13	mean 12:4
151:5 152:18	mark 18:21,23	92:15 94:10	14:20 28:11
152:20 156:6	41:12,12 61:1	96:8,14 101:17	30:23 34:25
156:12 165:7	66:11 99:12	101:19,24	41:2,5 43:5
170:25 178:16	114:10 120:12	102:1,4 103:3	46:15 58:1
178:21 184:25	127:2 164:25	103:7 105:25	65:13 71:6
199:10 209:16	166:5 186:10	matches 32:20	82:22 84:21
217:16 223:10	194:22 222:8	310:5,5	90:15 108:17
237:25 239:23	223:5,13	matching 307:1	108:22 112:1
245:4 252:4,5	275:21 279:8	matchmaker	126:7 130:15
259:7 267:20	281:4	12:11	131:23 132:12
270:17 278:22	marked 19:7,8	material 17:9	140:16 149:14
280:2 293:25	41:14 61:2	29:16 163:19	155:10 157:6
298:15 310:4	66:13 99:10	163:22 170:4	163:21 173:3
313:5	114:13 120:13	materially	178:23 179:5
makes 39:15	127:3,5 135:20	290:25	185:15 197:20
217:8 223:10	173:13 180:11	materials 5:14	202:7 204:13
243:25 283:23	180:12 186:25	12:6 17:7	210:21 246:17
290:13	201:18 209:5	37:17,20 62:17	259:11 279:17
	219:23 223:25	132:4 208:14	283:14 287:11

[mean - microphones]

287:21 290:10 295:24 310:2 315:9 meaning 218:22 246:14 289:5 meanings 293:3 means 22:9 79:23 85:14 139:8 157:7 178:8 182:14 287:14 288:24 290:12 298:1 299:14 302:19 meant 20:13 130:12 measure 157:22 158:17 159:21 162:25 171:14 178:3 178:14,15 188:12 191:8 192:2 267:24 measurement 282:13 measurements 136:21 measures 35:20 148:20 149:23 157:4 177:7 191:12 192:22 197:12,13 198:14,21	199:6,16,20,25 200:18 201:5 271:12,14 meat 191:2 med 114:25 118:13 media 6:12 227:8 315:20 medical 1:6 2:6 4:18 5:7 6:15 69:10 79:2 89:24 118:16 143:11,17 170:2 180:18 180:22 184:12 213:21 304:5 309:3 318:1 medication 181:11 182:4,9 medications 9:23 medicine 5:13 5:15 208:25 213:22 medicines 200:7,10 meet 24:10 162:23 214:5 meeting 11:18 melts 14:5 member 107:19 membership 95:15,15	memorial 5:8 181:4 memory 14:15 100:6 135:17 174:13 256:13 262:11 mention 39:8 mentioned 14:19 18:9 92:8 95:23 108:5 116:20 151:11 163:13 163:15 222:3 222:21 273:3 merits 235:13 message 152:15 185:14 messaging 227:8 239:12 met 8:7,9 260:8 meter 271:15 meters 165:5 167:6 method 147:15 237:23,24 238:12,13 247:18 methodically 128:8 methodologies 230:3 243:4,12 methodology 5:6 48:13 65:18 81:9	86:9 141:23 142:13,22 154:11,12 156:14,17,25 157:3,12 164:13 168:24 169:2 172:7 173:7 177:14 188:16 190:2 191:16 193:1,4 193:9 204:22 205:24 207:20 217:7 219:13 228:21 229:17 229:18,25 230:4 236:10 241:13 246:6 247:10 271:9 286:7 methods 250:19 metric 208:9 metrics 208:12 293:23 michael 1:14 2:18 4:4,10,12 4:13 5:2 6:13 7:21 8:25 137:12 315:20 316:3,17 318:2 318:24 microphones 6:7
---	---	---	--

[microscope - need]

microscope 237:14	198:20 199:6 199:16 201:6	308:2	116:8 133:8
middle 67:19 100:3 103:13 117:7 203:1 211:11 212:6 218:1 276:13	206:2 277:4 missy 228:1 mistake 35:24 233:4,5 267:3 302:21 303:2	money 98:7,9 250:25	242:12 287:3,7 317:21
middleman 12:6	misunderstood 31:3,7 275:6	monitoring 234:4 241:8	named 129:7 129:12
minimum 148:20 149:23 161:11	mobile 100:23	months 15:10 22:6,25	names 9:1
ministerial 87:5	mockup 220:7 265:7,19,21	morning 6:4 7:7,16 8:3 10:1	narrate 260:21 260:22
minor 106:16 106:21 107:5	mockups 100:14,15 122:4	moskowitz 3:12	narrative 5:16 232:15,19 233:8,23 256:19 257:21
minute 36:20 120:10 187:19	model 79:6 81:23 84:18,20 155:9 165:8 175:17 186:17 207:5 251:8 267:25	motions 44:17	narrow 75:13 108:13 279:17
minutes 72:25 148:11 151:11 228:9 301:11 301:13 314:21	modeled 79:25	mouthful 109:19,20 150:6	national 211:16
miscommuni... 29:10	models 81:6 122:5	move 71:7 72:13 96:22 176:25 183:15	nationwide 212:19
misleading 252:13 253:5 253:23	modern 109:6 246:12	moved 129:10	navigability 225:9
missing 18:3 110:7 157:3 165:5 167:7 188:17 191:17 192:19 193:2 194:3,7 196:8 197:12 198:13	modi 11:21,24 24:19	movement 242:21 243:17	near 218:1
	mom 117:3	mrsa 68:1,6,14 68:18 299:9,10	nearly 279:19
	moment 38:5,6 38:23 90:15 92:8 165:25 193:8 195:18 259:4 269:19	multiple 65:25 192:11 196:13 224:7	necessarily 32:10 33:4,5,9 44:24 52:4,18 52:21 56:24 68:24 171:23 272:11 311:21
		mute 6:8	need 9:8,19 10:15,25 18:22 21:16 30:2 31:21 32:24 33:9,20 66:22
		n	necessary 65:5 106:22
		n 3:14 4:1 name 6:22 8:3 8:24 11:20 17:16 26:2 38:19 71:19	

[need - objection]

71:23 82:21,22 93:20 94:4 146:4,4 181:15 195:8 208:7 209:21 223:3 247:22,25 252:6 255:1 256:2 260:23 295:18 298:14 306:6 308:1 needed 191:20 216:11 270:12 needs 10:16 31:12 51:17 160:23,23 negative 153:11,20 negatively 153:11 negligence 136:11 negligent 137:14 neither 317:17 neurology 89:25 never 21:17 123:9 135:4,12 139:1 199:2 223:14 247:2 new 3:8,8 87:4 179:18 180:9 239:12 259:8 266:23 267:10	305:1 311:19 nice 131:2 140:9 nicholson 17:15 25:11 44:12 nielsen 75:24 night 16:3 nih 213:5 nine 101:8 nodding 9:21 non 150:1 162:14 179:7 203:22 204:3 276:3 nonexistent 129:25 nonparticipat... 169:13 normal 106:25 note 6:6 140:11 267:7 274:6,16 noted 76:7 140:12,14 154:21 315:23 notice 62:3,19 62:23 311:19 noticing 7:6 notion 130:19 141:25 304:23 notions 141:10 141:15 145:9 nuanced 34:6	number 4:11 5:3 46:25 47:13 48:6 75:21 108:3 113:24 121:1 137:2 158:14 169:9,10 172:17 186:7 219:1,2,3 220:9 261:4,7 262:1 283:10 283:24 285:1 286:11,14,15 287:14 288:8 288:24 291:12 292:2,6 293:12 294:10,13,14 294:18,23 295:3,12,16 296:2,10,11,17 296:18,22,24 300:4 301:19 304:17 307:5 315:20 numbered 47:2 223:12 numbers 47:5,9 47:14 51:15 71:21 164:16 185:21 285:6 297:24,24 300:2,13 306:25 307:7	nutshell 42:10 o o 226:3,3 oath 6:24 7:14 9:16 291:22 317:8 object 10:24 34:19 objection 52:2 58:15 61:10 62:5,25 69:20 69:25 70:9 72:22 76:3 144:22 156:18 158:7,23 159:18 162:1 165:15 166:21 170:16 182:16 193:16,22 194:10 198:23 199:11 200:19 201:7 204:23 213:23 223:15 230:7,22 237:2 237:8 239:5 240:18 241:15 242:13,23 245:25 246:18 249:3,18,25 253:9,16 254:21 260:5 269:21 272:7 277:11 289:12
---	---	--	--

[objection - okay]

289:24 292:10	129:9 132:17	93:4 95:1 96:7	171:18 172:5
296:4,13 298:4	132:19 133:6,8	97:13,20,25	172:13,22
298:9 299:17	135:5 137:4	99:6,12 101:6	173:17 174:13
299:22 300:14	209:14 220:15	101:20 102:5	174:14 176:13
309:10,17	221:15 265:15	102:12,18	178:23 181:4
313:14 314:19	275:6 279:21	104:1,8,21	181:22 183:15
objections 7:2	306:1 315:11	105:3,6,21	186:14 187:17
objective	ohio 181:7	106:2 107:2,8	188:20 189:7
194:12	oil 106:17	107:12,12,18	189:25 190:25
obligations	okay 11:4,17	107:23 108:21	192:13,17
72:20 239:8	11:24 12:11	110:4,12 111:9	194:20 196:15
obvious 89:17	14:4,22 15:25	111:21 112:14	199:13 200:25
115:2	16:5,12 17:14	114:19 115:9	201:14,21
obviously	17:23 18:1,5,8	115:11,17,17	202:4,16,24
18:21 22:16	21:12 23:5	116:4,15,19	206:1,14
75:7	26:11 28:22	123:16,20	207:12,15,19
occurred	29:2,18 33:7	124:2,17,19	208:1,5 209:14
249:10	33:13 34:14	125:1 126:6,12	209:19,24
october 224:24	36:7,19 37:9	126:20 127:19	210:2,11 212:8
317:22	39:2 42:9	128:3,22	212:13,14,24
offer 87:18	43:11 44:3,17	129:15 130:10	213:13 214:17
142:19,23	45:24 46:20,23	131:9 133:16	214:21 215:17
154:23	48:22 53:19	133:16 134:4	217:21,22
offered 36:2	59:25 60:17	134:10 135:13	218:14,17,21
239:11	62:1 64:2	136:22 137:19	219:9,10 220:3
offering 35:6	66:11 69:1	138:13,19	221:8,15,23
offers 35:2	74:24 76:23	139:6,6,17,23	223:18 224:3
oftentimes	77:1,11 78:7	142:5 143:2,10	227:6,24 228:4
214:9	80:20 81:12,13	143:25 144:10	230:19,23
oh 15:11 16:3	84:2,5,25 85:4	144:10,20	231:6,11,14,24
21:17 60:17	85:10,20 86:19	145:5,8,14,23	233:6,9,22
108:15 112:23	86:24 87:9,11	146:14 147:24	234:20 235:2
113:3 115:11	89:11 90:25	157:8 159:2	243:3,16,19
118:17 126:18	91:13 92:16	168:19,22	245:4 247:1

[okay - opinion]

248:4 250:10	305:1,10,16	opined 229:21	167:5 169:16
250:21 251:12	306:9,15	opines 137:20	174:16 176:5
253:11 254:3	307:15,18,21	186:15	176:13,15
254:17 257:6	308:22 310:24	opining 83:8	184:7,20
257:14 258:3,4	311:6,9 313:20	160:9 170:5	185:10,12,13
258:10 259:14	314:5,10,18	172:16	186:14,18,20
259:15 262:9	old 8:18 15:9	opinion 5:5	186:22 187:10
263:5,18,20	131:6 267:18	38:8 40:18	188:24 195:22
264:2,8 265:13	older 112:15	48:7 50:9	196:2 204:12
265:15 267:3	257:1	58:24 59:7,10	205:14 206:15
268:18,24	omitting	59:14 62:24	206:17,20,25
269:3,15,25	288:19	64:19,20,22	207:16,20
270:5,8,21	once 196:6,10	65:1 71:4 78:6	214:24,25
271:6 272:13	227:15	79:20 80:3,14	215:7,19
272:21 273:2	one's 23:16	80:22 81:13,16	216:16 217:1
273:16 274:11	ones 12:3 17:14	81:16,19,21	217:15,17,23
274:24 275:15	25:6 28:23,25	82:3 83:2 84:5	218:19 219:10
275:21 277:8	41:2 42:9 57:4	84:7 85:8,10	219:11 221:25
277:19 278:5	70:19 72:6	85:12,17 86:6	230:2 234:21
279:16,21	81:4 89:5	87:9,10 135:19	235:11 236:11
280:17,20,23	110:17 154:21	138:6,24	238:4,4,6,9
281:3 282:14	200:1	142:10,19	240:11 242:3,4
282:19 284:17	online 49:12	145:19 146:18	242:5 245:22
284:18,22,23	92:2,9,13 93:6	146:22 148:3	246:4 247:9
285:16 286:8	93:12,22,23	148:18,22	248:4,6 250:11
286:20 287:25	310:18 312:14	150:22,24	250:23,23
290:9 291:3,6	open 241:11	151:15,16	251:13 254:17
292:13,19,19	opening 241:11	152:22 153:2	255:25 259:9
293:17 294:7	opine 80:16	153:10,15,19	262:17,25
294:13 295:15	122:2 141:9	154:5,9 155:2	268:19 270:24
296:21 297:13	143:19 169:20	155:21,22	273:21,22
298:17 300:11	208:5 229:10	156:7 160:12	277:15 278:5,6
300:23 302:18	237:20 240:16	163:17,20,24	278:9 289:15
304:4,8,21		164:21 165:3	292:8 301:9

[opinion - page]

302:22 303:6,9 303:13 304:22 305:2,5 306:4 306:15,18 307:3,18 309:5 309:13 310:8 opinions 21:21 36:23 38:1,12 50:16 62:4 63:22 65:6 77:17,17 78:1 84:17 85:11 86:15,20,25 87:4 134:11 139:4 141:4,11 145:20,22 146:23 147:18 148:4 152:17 153:25 154:23 155:16 156:12 164:6,10 173:18 174:16 176:4 188:21 202:5,11 208:10 215:13 218:20,25 221:25 225:20 232:18 242:1 253:13,17,25 303:11,14 304:24 opportunity 95:3 115:7	opposed 244:2 opposite 171:24 237:1 order 122:2 200:9 263:4 306:7 315:4,13 orders 182:9 315:2 organization 95:16 organizational 121:8 organizations 107:20 210:25 211:3 213:2 orient 210:22 oriented 63:16 original 44:16 95:22 152:5 285:4 317:14 originally 11:13,15 orthopaedic 5:14,15 orthopedic 208:24 orthopedics 210:9 outcome 7:1 21:21 197:13 271:11 outlined 188:16 191:16	output 280:13 outside 13:15 145:18 157:10 169:14 175:21 176:11 184:5 185:3,7 198:24 199:22 201:9 202:12,19 204:25 205:4 228:15,23 229:1,4,9,19 251:10,12 257:15 260:12 262:21 268:15 277:12 overcount 299:15,20 overlap 14:1 90:22 192:7 215:7,13 overlapping 155:19 oversight 226:3 overwhelm 51:9 overwhelmed 31:20 own 16:20 23:16 91:20 97:1,4 98:24 121:11 125:7 125:14 132:11 214:2,4,6,18 221:18 248:16	248:20 owned 98:2,18 128:18,20 136:7 ownership 96:22 owning 96:19 owns 117:3 p p.m. 2:21 140:5 206:9,11 223:21,23 263:7,22,24 264:13 267:7 301:3,5 308:5 308:7 315:18 315:23 pacific 6:5 315:18 page 4:11 5:3 16:22 17:18,19 18:3,25 20:8 22:18 28:20 36:12,17 37:12 37:13,13,15,21 37:21 39:7,23 40:7,8,14,22 41:4,12,23,24 42:12,13 44:6 44:18 46:24 49:8 50:11 51:13 52:25 53:8,10,15,16
--	---	--	---

[page - paragraph]

54:6,14,22,24	181:15,24	287:1 290:5,18	202:18 203:16
55:24 58:6	183:2 187:2,4	290:22,23	207:9 229:22
60:14,20 61:5	187:11,18,20	291:20 292:7	229:22 236:1
62:9,22 63:1	187:21,25,25	292:21 293:13	254:10 261:15
64:11,12,24	188:1,22	293:22 294:7	paint 235:14
65:11,11,18,24	193:24 196:19	298:2,8,16,19	236:3
67:17,25 68:4	196:23,25	299:24 302:9	painted 13:15
68:13,16 70:2	197:1,2,4,22	304:2,13 305:3	painting
76:2,18,19,19	200:2 202:2,24	305:6,14,25	106:18
77:7,9,9 78:4,6	203:2 204:8	306:4,23	paired 185:20
79:4,11,24,24	207:4 208:10	307:10,12	palace 130:5
80:5 82:2,9	210:12,12	308:24,25	131:23 133:17
84:9,21,21,24	211:10,11	318:4,7,10,13	palm 1:3 2:3
85:1,2,2,19	212:16,17	318:16,19	6:17
86:2,6,10,12,14	213:2,5 224:16	pager 207:21	pandemic
92:18 93:1	226:1,1,16	pages 1:24	93:15,21
94:24 99:22	234:16 245:6	15:21 20:8	panel 184:25
100:3 110:20	246:14 256:16	28:16,20,21	188:3 190:8
110:22 119:1	257:20,23,25	39:9,18 40:12	267:21
120:25,25	258:11 259:9	42:5 49:10,16	paper 62:10
121:1,1 123:4	261:13 263:5	49:20,23 50:15	75:22,23 76:25
128:4,9 129:7	264:4,8,9	52:9,14 55:18	93:9 94:14
132:21,25	265:3,11 266:4	58:3 60:1,4	96:2 103:22
133:1,11 137:1	266:4,5,21	65:8,11 69:18	109:12 111:14
145:21 148:7,7	267:1 270:11	69:18 70:5,15	113:13 116:5
148:8,9,10	270:21,22	71:12 75:19	257:22 270:16
154:11,12	274:4,7 278:11	79:9,10 80:2,5	312:17,21,23
155:7 158:2,9	280:19 281:14	81:1,4,6 82:19	papers 74:25
159:4,9 160:10	281:15 282:4,9	83:6,9,20	110:1
163:7 164:1	282:17 283:6	104:17 138:1,5	par 203:16
174:24 175:1,2	283:22 284:3,6	139:10 144:6	paragraph
175:4 176:2,4	284:10,18,18	144:11,16	30:24 56:7,10
176:9,11,14,17	284:20 286:6,7	155:12 157:19	81:15 113:2,10
177:1,18 180:6	286:12,15,22	187:21 189:5	141:9,17,19

[paragraph - perjury]

142:7 188:2 190:12 196:20 197:5 210:15 211:12 215:18 265:18 274:2,5 paragraphs 37:6 112:21 parallel 43:3,5 52:16 191:5 park 3:7 part 36:13 82:4 85:8 97:5 98:13,14,17,24 101:22 113:21 134:2 135:3 145:16 157:2 163:7 164:6 224:9 236:15 258:20,21 304:18 314:8 314:11 participants 113:25 114:1 120:3 246:25 participate 119:21 159:16 160:4 166:15 participating 119:22 150:1 179:7 276:3 participation 162:14 203:22 204:3	particular 65:11 78:23 110:8 113:20 218:19 257:23 parties 6:10 partner 128:16 partners 121:16 party 6:25 317:19 pass 219:21 307:22 passed 180:25 181:1 past 23:1 53:8 53:14 63:4 75:9 163:7 228:20 patent 97:2 98:25 patenting 12:22 23:4 96:20 125:21 patents 96:24 patient 5:13 114:4 171:1 208:13,23 211:4,17 213:3 213:22 268:1 paul 94:18 paulina 264:13 266:9 paying 138:18 138:20	peer 95:7 210:7 220:25 221:13 221:18 245:12 penalty 316:1,4 pending 10:17 139:15 295:9 people 12:10 14:16 51:9 57:2 75:2,16 75:18 76:1 88:9 107:1 108:25 115:3 160:20 202:22 216:6,6 220:14 269:12 291:12 297:14,25 299:15,20 304:18,23 305:3 307:11 percent 17:24 22:23 75:11,19 76:1,2 96:15 124:18 126:16 126:18,20 174:2,9 212:22 213:13 214:4 280:19 297:20 297:25 298:1 299:14 300:3 302:8 304:2,18 percentage 21:23,24 22:21 297:14	perceptions 152:23 153:12 perfect 11:4 195:13 237:25 238:2 perfectly 48:2 perform 226:22 236:13,18 241:21 performance 157:22 159:15 159:21 160:3 162:15,25 165:13 167:25 171:14 185:17 191:8 194:9 200:17 203:23 204:4 performances 271:17 performed 92:3 227:25 performer 160:14 performing 85:17 122:5 performs 161:25 period 38:11 121:12 291:13 periodically 93:21 95:3 perjury 316:1,4
---	--	--	--

[permissibility - pop]

permissibility 246:5	phones 6:8 76:7 101:1,3	places 186:15	64:14 66:19
permissible 246:13	photocopies 209:16	plain 163:12	71:6 79:3
permission 209:18	photos 129:20	plaintiff 6:14 68:21,25 70:16	82:17 116:17
person 17:20 32:20 128:15 160:17 226:7 228:3 235:20 245:9	phrase 128:11 128:25 144:3	70:16 134:20 134:22 137:11 153:3,12,21 154:1 277:25 279:12	120:9 123:21 132:9 143:3,7 145:23 147:9 147:24 187:15 190:18,22 191:22 194:12 196:15 202:21 205:22 212:24 246:8 251:4 254:3 256:3,25 263:10 285:2 307:14,15
person's 76:13	phrasing 227:3	plaintiffs 1:7 2:7,19 3:3 7:9 8:4 27:18 152:23 153:17 279:18	pointed 59:18 170:2
personal 121:6 123:5,11,16,19 137:21	physical 76:25 112:9 117:24 118:3,8,12,12	plan 14:1 223:9	pointing 210:18 212:15 214:10
personally 244:12	physician 200:12	plane 88:19 90:11	points 17:1 184:18 185:1 267:17,22
perspective 56:17 234:10	pick 6:7 105:8	plans 234:7	policies 170:25
pertains 227:9 317:13	picture 85:25 131:6 235:14	platform 92:2,9 92:13 93:6 310:18 312:14	polished 94:2
ph.d. 4:15 94:17 96:10,15 96:17 99:3,3 101:23 103:4 103:15,16 104:2,4,5	piece 16:23 97:13 114:7 148:8	play 60:21	polyurethane 14:8,11,12
pharmaceutical 113:17	piggybacking 132:7	please 6:6,8 7:3 7:14,18 56:21 142:16,17 180:4 243:9 260:23 266:5 270:22 278:23 315:6	pooch 130:4 131:23
phase 9:10	pilot 93:5,11	plenty 215:15	poochy 133:17
philosophy 51:6 108:24	pilots 90:8	plural 218:23	poor 160:14
phone 101:4	pivot 98:19	plus 30:5	poorly 161:25
	place 6:10 68:5 116:1,1,13 172:8 237:25 316:7 317:6	point 22:20 39:13 59:1	pop 60:17
	placed 147:23 147:23		
	placeholder 127:9,13		

[popular - printing]

popular 85:13	166:5 167:6	174:16	256:22 269:3
population 143:24	168:5,10,11,13	prerequisite 32:5 62:18	270:20 275:15
populations 32:6 143:23 227:10 313:9	168:17,19,21	prerevenue 22:5,20	prevent 165:2 166:2 167:5,13 168:14 194:23
portion 298:2	186:7,9 194:6	prescribes 156:14	prevention 108:16
portions 138:3	218:11,15,22	present 3:18 7:4 86:21 216:4 254:4	previous 29:10 177:24 211:12 267:19
position 150:12 150:13 287:20	241:7	presentation 111:12,14	previously 312:2
possibilities 161:6	practiced 73:18	presented 65:4 108:3 146:9 157:18 297:6 306:25	primary 22:8 53:9 58:18,21 59:3 85:24 122:11 125:19 175:9 176:21
possible 79:18 122:3,3 162:6 163:2 180:1	practices 217:24 218:6 243:23 249:12 273:4	presenting 36:12,13,13	principles 242:1,5
possibly 214:12	precise 233:23 293:3 294:5	president 226:21	print 13:12 16:19 20:13
post 118:22 156:17 234:7	predates 270:3 270:6	presumably 239:10	printed 13:14 16:24 76:15 127:15 131:8 303:21
potatoes 191:2	prefab 131:15	pretty 15:7 20:1 23:3 27:23 29:5 38:14 50:23 64:5 75:10,18 89:19 94:21 106:20,25 110:16 113:24 116:16 123:15 149:9 185:16 214:7,15 236:3 238:5 254:2,24	printer 12:24 12:25 13:3,24 14:7 98:16 128:16,18,21 130:21 131:14
potential 189:16,17 241:12 271:10	preliminaries 24:1		printers 13:7
potentially 67:10 143:7 164:15 295:6	premarked 19:5		printing 13:4,4 13:6 22:4 255:21
potty 130:5 131:23 133:17	premed 118:20		
poured 13:17	premise 295:25		
practice 106:16 106:17,21 107:7,8,10 146:25 147:11 148:21 149:24 152:3 165:4	premises 136:9		
	prep 24:1 29:11 29:22 30:6		
	preparation 140:24		
	prepare 17:2 19:21 20:2 24:2,4,10 25:1 28:14		
	prepared 18:16		
	preparing 20:11 24:22		

[printout - proposal]

printout 4:19	128:15 165:22	129:19,20,22	progressing
prints 14:7	197:12 198:13	312:18,20	31:20
prior 23:2,5,8	198:20 199:5	313:1,8	progression
23:11,14	199:16 201:5	profession	31:16
140:21 178:18	221:19 234:3	91:11	progressive
197:22 255:13	271:13	professional	33:10 36:10
317:7	processor	37:24 95:14	51:10 53:7
private 6:8	141:11	107:19 115:23	54:1 55:7,14
probably 16:4	procured	132:20 133:13	55:25 58:25
18:24 20:17	278:25	151:10 189:3	59:15,22 62:11
22:23 39:14	produce 21:4	198:6 203:14	62:14 64:20
48:18 50:21	169:9 224:13	205:7 208:2	142:25 189:22
56:8 71:14	produced	236:17 241:21	191:19 192:8
82:14 104:17	21:14 27:8	290:3	215:20 216:3
120:11 132:10	46:24 47:25	professionals	216:21,23
198:9 203:17	187:24 222:12	95:20 141:21	217:9 218:7,13
228:9 256:19	222:14 227:22	142:12,21	218:22 251:25
problem 8:21	235:1 261:1	143:21	306:23
78:6 96:18	272:2 281:13	professor 25:14	project 5:17
131:25 146:12	281:20,22	43:14 91:3,8	13:10,24 127:9
251:22 261:12	292:21	94:17 103:24	130:20 234:7
problems 237:7	product 35:23	141:15,25	261:1,14
241:6 249:17	35:25 36:1,13	152:19,21	projects 12:21
procedure	36:14 108:25	153:1,10,14,19	12:23 15:2
51:18,22 98:6	112:3,4,6	153:24 154:5,9	119:23 129:23
171:17	116:5 121:6	proffer 313:21	promised 87:13
proceed 7:15	122:13 125:21	program 93:12	233:20
237:19 281:16	313:10 314:14	93:19 94:1	prompted
proceeding 7:2	products 15:2	101:23 103:5	301:16
proceedings	35:3 88:7	265:4	property 98:10
317:5,7,9,15	110:24 111:23	progress 144:7	proportion
process 12:22	112:1,9,13	progressed	296:23 300:6
23:4 95:10	118:12 123:5	225:17	proposal 94:9
106:23 108:11	123:11 128:5		

[proposed - question]

proposed 130:24 161:3	published 92:1 92:4 94:16	193:18 237:13 255:18 260:25	46:13,14 50:4 66:20 69:22
protocols 146:10	97:11 108:2 111:12 115:13	263:16 269:17	70:13 76:9
provide 73:2 170:24 226:3	116:3 220:24 255:14	puts 156:25 putting 14:10	81:6,10 83:1 84:14 86:15
281:11	publishing 115:21 221:4	103:20 168:7 205:13	95:22 108:9,13 111:11,11
provided 25:9 35:15 38:15	pull 15:17 38:18 48:23	python 21:7	115:12 118:5 123:17 133:10
48:15 113:13 163:9 281:10	92:7 163:13 178:24 285:8	q	133:12 135:7 139:14 142:18
providers 113:18	298:16 303:20	qualification 152:12	147:1 150:20 159:25 164:25
provides 218:6 265:19	pulled 49:25 282:22	qualifications 77:18 87:14	166:5 167:2 169:5,8 186:6
providing 36:8 prudent 56:9	pulling 174:13 220:1	qualified 133:23 134:5	186:10 187:13 193:19 194:22
psi 197:13 psychology 43:16,20 91:10	punitive 205:21 229:1,6 230:5	150:22 235:20 qualify 251:18	205:11 215:4 220:23 221:8
121:8	230:6 231:7 pure 121:15	qualitative 173:2 244:2,5	221:11,23 230:4 240:1,21
public 4:21 241:11 255:19	purportedly 254:15	244:17 quality 153:12	243:9,11 246:3 248:8 253:20
310:13	purpose 13:3 20:22 82:24,24	85:16 244:3,18 244:22	255:6 257:10 258:13 259:16
publication 95:4 112:15	151:7 225:6 pursuing 96:10	quantitatively 148:5	263:14 271:19 283:3 288:2
214:1,4 221:18 310:16	107:13,15 put 47:17 51:2	quarreling 285:6	289:9 290:9,16 294:20 295:5,8
publications 92:22 94:22,23	62:3 78:17 90:17 120:1	query 11:15 question 10:11	295:9 296:6 301:21 305:19
103:18 113:7 214:3 310:12	149:9,9 161:3 166:5,25	10:17 11:1 17:3 29:10,13	305:20 306:3 309:25
publish 153:3 154:2 221:3	181:13 184:16	34:6 38:4	

[questioning - really]

questioning 234:4	rapid 93:22 122:4	213:13 235:9 236:22 254:24	144:2 145:3 149:6 150:18
questions 5:11 10:6,9 40:14 52:25 53:5 65:16 108:10 139:16 147:3 160:22 175:2 201:17,23 202:18 215:9 229:5 234:6 263:10 281:16 307:25 308:12 314:22	rare 214:13 rate 15:16,17 15:22,24 16:9 17:8 rates 271:12 rather 13:12 150:6 161:13 161:15,17 162:14 203:22 204:4 rating 273:23 274:17 ratings 265:4 reached 11:13 reaching 195:10 read 8:5 26:9 32:21 33:4 37:23 51:14 78:8 81:11,13 81:15 88:24 91:20 142:7 144:25 145:5 149:15 152:14 155:4 161:8 162:12 166:24 170:23 171:12 173:24 176:10 187:5 190:2,7 190:15,17 191:4 197:7 212:20,22	261:7 262:18 264:25 273:9 273:14 289:19 289:20 293:20 293:25 294:9 299:21,25 300:7 306:19 316:4 readability 5:13 84:12 85:12 152:13 197:19,21,24 204:16 206:21 207:2,17,19 208:23 211:15 212:9,25 214:2 218:5 289:22 305:12 readable 203:14 205:5 213:21 reader 51:12 readily 17:16 86:3 149:5 150:18 156:8 216:17 273:10 306:16 307:2 reading 16:3 32:20,21 35:5 35:10 75:17 85:17,18,18 86:4 111:6	156:9 162:20 162:21 175:19 189:15 193:24 198:3 202:3 207:10 208:3,7 211:19 212:1 213:14 216:1 216:17 248:16 248:17 269:13 292:15,18 306:16,22 309:15 312:5 reads 291:25 ready 33:12 106:20 187:8 282:8 real 28:3 45:4 98:25 129:22 129:25 130:7,7 130:8 131:4 132:1 247:19 247:20 262:11 reality 89:20 realized 20:23 really 19:25 22:2,8 59:3 93:23 96:13 103:20,22,25 117:12,17 118:1 122:2 131:23 142:2 170:6,9 172:11
quoting 157:25			
r			
r 3:5 21:11 226:3 318:3,3 radar 263:16 raise 7:18 ramps 120:2 ran 207:23 range 294:12 294:15			

[really - referenced]

174:20 214:7 217:11 229:2,8 229:8 236:20 300:16 302:20 303:18 realm 205:1 reason 17:15 18:2 53:11 109:1 300:12 318:6,9,12,15 318:18,21 reasonable 31:3,6 56:17 78:12 79:21 80:16,18,23 81:20 134:13 151:10 162:2 171:5 189:24 194:14 213:25 229:13 236:20 242:2 249:5 257:10 309:6,7 309:13 reasonably 56:9 reasons 75:5 rebut 141:10 141:16 153:19 153:24 154:5,9 154:22 rebuttal 145:12 rebutting 154:23	recall 17:9 20:1 24:14 27:21 47:21,24 48:4 49:6 72:23 100:12 116:9 134:24 135:2 136:1,22,23 137:18 138:23 141:6,12 148:22 167:8 173:20 174:2 174:11,12 197:25 203:24 256:12 263:1 272:20 273:25 275:10,11,16 301:21 309:25 310:24 recalling 43:13 102:13 262:6 recap 235:6 receive 152:24 273:23 274:17 received 45:4 70:23 87:22 101:18,23 102:3 103:7 171:22 receiving 96:9 102:1,4 119:17 241:9 recent 49:4 63:4 178:2	recess 74:1 140:4 206:10 263:23 301:4 308:6 recognize 19:10 41:18 99:14,16 120:15 173:15 187:2 281:7 286:3 recollection 17:11 20:7 23:7 28:17,24 61:14 83:23 84:3 113:12 136:14 137:15 255:2 268:8 273:11 recommend 225:8 recommendat... 239:12 240:6 249:16 250:7 recommended 211:17 249:24 recommending 213:21 recommends 208:15 record 6:5,11 7:5 8:19,24 15:13 16:14,16 19:1 61:8 73:23,25 74:3	78:3 112:1 140:3,6,11 141:17 170:23 193:18 197:7 206:9,12 209:23 223:8 223:21,22,24 224:10 260:25 263:22,25 293:20 298:15 301:3,6 303:5 308:5,8 315:2 315:18 317:8 317:11 recorded 1:13 2:17 6:12 recording 6:9 red 159:19 163:8 168:2 191:4 195:7 219:4 299:24 306:7 redirect 311:19 redirected 74:8 reduce 14:17 208:17 refer 156:3 reference 16:20 17:1 52:5 61:22 65:7,17 76:24 78:1 80:4 104:23 referenced 17:5 39:10,12 40:25
--	--	---	---

[referenced - remove]

41:9 48:24 54:18 55:5,6 61:21,21,23 71:15 75:22,24 85:6 96:2 112:20,25 312:21 references 37:16 39:13 69:18 281:13 referencing 21:3 27:23 144:13 referral 12:1,9 referrals 125:7 referred 173:20 222:24 238:11 referring 52:14 56:19 83:24 86:16 114:17 151:14,22 193:7 218:12 258:6 259:19 271:22 272:13 311:13 refers 58:14 reflect 157:23 159:22 162:14 163:1 171:15 185:19 191:9 203:22 204:3 205:21 251:23 297:25 309:9	reflected 57:13 81:5 92:25 142:7 176:2 216:9 reflection 121:9 reflects 203:9 204:18 217:24 251:23 refresh 17:11 18:22 61:14 135:8,16 136:14 137:15 268:8 refusing 168:16 289:19 regard 36:24 186:4 310:10 314:3 regardless 79:4 81:24 97:3 277:20 regularly 123:15 reins 216:13 rejected 134:1 139:3 rejecting 135:2 relate 36:18 43:21,23 related 5:13 6:25 31:24 32:3 33:16,21 44:1 97:3 99:1	99:4 110:8,9 110:12,15,25 112:13,18 134:12 151:17 213:22 218:18 238:17 242:10 relates 34:12 36:16 91:11 312:18 relating 98:1 110:2 relationship 4:22 310:14 relative 317:18 relatively 256:5 258:17 relevance 303:10 relevant 26:9 26:10,12,17,18 28:3 36:11 43:10 45:5,7 45:10,13,14,16 45:16 46:3,6 46:16 57:9 59:14,15 63:25 64:1 67:6 96:12 172:11 172:15 174:18 184:22 relied 27:24 47:11 51:24 52:10 183:19 221:24 225:19	236:5 239:7 250:22 262:7 280:3 304:22 relies 137:11 254:18 259:9 305:17,22 relinked 131:19 rely 12:23 28:2 47:18 235:13 305:17 306:18 307:18 remained 256:5 256:7 258:9,16 remember 16:3 28:22 47:8 48:2,12 70:20 70:22 73:8 80:12 84:3 108:11 135:9 136:18,19,21 136:25 138:17 138:20 174:14 200:3 239:22 255:21 256:3 262:12,13,23 264:22,22 274:21 275:12 296:24 remembering 38:19 remote 93:17 remove 109:2
---	---	--	---

[removed - research]

removed 216:13 render 38:7 rendered 232:18 rendering 78:2 188:21 225:20 262:17,25 repeat 142:16 142:17 203:25 215:4 243:9 248:7 294:20 296:6 305:20 repeatable 147:15 repeatedly 154:2 repeats 286:18 repetitive 90:19 rephrase 221:11 240:21 report 4:12,13 4:15 5:16,22 16:1,6 18:16 18:16 20:23 21:5 26:21,23 29:1,15,19 30:5 37:2,10 37:14 38:6,25 39:5,11 40:20 40:25 41:10,11 41:21 46:20 47:18 48:18	50:5 51:3,7,17 52:10,13,19 53:17 54:16,17 54:19 55:5 59:20 60:20 61:20,25 65:6 65:12,18 67:12 69:2,3 70:21 71:16 72:16 73:5,10,11 75:1 78:1,4 87:1,3 92:6 110:20 112:21 136:24 137:16 140:15,17,22 140:22 141:10 141:15 142:1 143:4 145:10 145:11,15,16 148:22 152:20 152:21 153:1,9 153:14 154:22 157:22 158:1 159:3,12,20 162:10,24 164:25 166:6 166:20 167:22 171:13 174:1,2 175:24 183:20 185:17 186:10 186:15 187:7,9 187:11 191:1,7 194:2,8,18,23 200:15 202:1,4	202:7,8 203:20 203:24 204:2 206:20 209:8 212:4 213:11 221:21,22 222:25 227:7 227:18 232:2,9 232:16,19 233:8,19,23 234:22 235:2 235:16,24 236:23 240:10 248:21 250:16 255:22 256:19 257:21 261:6 262:8 267:24 268:17 270:10 270:14,15 272:16 281:23 284:16 285:8 307:16 308:23 308:24 310:6 311:10,11,14 311:16 312:13 314:4 reported 1:21 reporter 2:22 7:13,16 9:5 223:7 270:18 273:14 317:4 reporter's 317:1 reporting 178:19	reports 5:22 19:13,17,22,24 20:3,5 27:9,12 44:6,11 73:7,7 203:3 211:12 255:14,15,16 255:17,18 represent 127:20 182:19 198:18 260:2 269:16 representation 76:16 represented 77:7 302:8 representing 6:22 reputable 236:17 requested 112:16 317:16 require 304:14 required 99:20 100:2 101:13 requirements 73:6 requires 51:23 190:14 238:13 requiring 82:13 research 14:2 14:10 15:4 16:23 64:8 73:5,9 74:25
---	---	--	---

[research - right]

92:1,3,9,25 95:15 96:18,24 97:6 103:18,21 103:21,25 104:18,20 113:20 115:1,3 115:22 116:3 116:16 119:2,8 119:23,24 147:13 151:4 163:9 174:9,11 202:17 208:5 208:14 214:6 214:18 216:14 220:24 221:3 221:13 245:10 246:15,25 researcher 176:18 221:17 researching 98:12 reserve 307:23 resolution 75:7 75:14 resources 143:8 147:8 respect 114:23 152:18 155:3,8 185:13 257:4 respected 152:9 respectively 276:25	respond 56:20 145:10 152:21 153:1,9,14 154:16 160:7 160:15 161:11 198:19 199:15 respondent 136:8,9 responding 141:25 response 148:2 250:24 responsibility 150:7 rest 212:20 290:5 resulted 250:14 results 20:25 retain 11:14 retained 11:7,9 23:6,9 30:16 36:24,25 38:5 124:7 126:7,8 126:9,14 134:18,19 308:13,15 315:21 retention 313:24 retriever 129:10 reveal 190:19 revealed 271:10	revenue 26:4 reverse 263:4 review 24:6,25 25:3,13,16 27:12,17 29:11 38:16 40:16,22 42:7,9,23 44:10 47:3 48:19 49:19 54:14 60:9 72:16 140:19 140:21 174:15 221:8 243:4,13 256:4 317:15 reviewed 24:25 25:6 27:9 28:23,25 29:5 29:7,21 34:4 38:7,12 41:9 44:11 45:9,24 48:6 49:16 53:25 61:15 70:14,20 71:10 71:10 95:7 140:24 201:25 210:7 219:17 220:25 221:13 221:18 233:4 245:12 262:4 262:12,16 264:19,24 278:24 reviewing 27:22 29:16	41:9 47:8 48:5 48:12 243:6 262:12 268:7 revisions 239:12 revolve 215:19 rey 161:21 rhythm 193:19 right 7:18 8:10 8:13 9:6 12:14 13:24 15:14 17:12 18:12 20:9 22:4,4,5 22:10 27:2 29:19 30:9,10 33:25 34:1 35:3,7,9,18,19 36:19 37:7,14 38:8 39:16 42:22 43:1,17 44:15 45:25 46:7,12,21 48:7 49:9,13 49:14,18 50:6 50:9,12,13 51:3,4 52:25 53:1,17 54:9 54:12,12,16,25 55:3 56:5,12 57:2,5,6,24 58:3 59:20 60:2,5,14,21,22 62:20,20 63:10 63:14,15,19
--	--	---	--

[right - right]

64:19,21 65:8	149:1,4,6	194:3,9,16	249:14,17
66:5 68:16	150:8,9,15,16	195:20,24	250:11,14
69:18,19 70:2	150:17 152:15	196:2,6,23	251:6,9,16,18
70:5,8,17,20	153:22 154:24	199:25 200:7	252:24,25
71:4,8,16,17	155:5,9,19,24	200:10 202:1,6	253:5,15,22
72:1,5,7,11	156:10,14,22	202:11 204:14	256:22 258:11
74:13 76:7	156:25 158:3	204:17,22	258:23 259:3
77:21 79:6	158:14,17	205:5 207:2,6	259:10,22,24
80:10 81:17	159:5,8,12	207:17,21	262:2,6,20
82:25 84:22	160:10 162:7	208:7,8 212:6	264:16 265:13
85:6,10 89:6	163:15,17	212:7 213:8,11	265:19 268:5
91:3,17 92:10	164:2,21,24	213:14,18	269:4,8,10,13
92:23 95:3,25	166:2,6,17,20	216:18,23	269:20,23
96:2 97:14,18	167:16,19,22	217:13,17,25	270:2,6,8,23
98:17 101:9,15	168:14 170:7	219:7,18	272:6,11,19,23
102:14 104:3	171:3,25	224:22 225:20	273:13 275:25
104:10,11	172:24 173:10	226:8,11,13	276:3 277:20
106:3,6 108:12	173:21,24	229:17,21	278:1,3,7,17
109:13,17	174:21 175:6	230:6,14,17	279:1,4,11
110:5 111:3	175:14,24	231:7 232:14	280:4,7,10,13
112:21 113:4,7	176:2,6,18	232:23 233:2	282:1,2,6,15
114:8 115:13	178:20 179:16	233:15,20	283:2,25 284:3
115:15 116:21	179:18 180:1	234:12 235:3,6	284:10,25
118:16 119:5	180:22 181:2,5	235:9 236:6,11	285:13,21
119:12 124:4,6	181:21 182:10	236:23 237:1,7	286:14,21
125:3 126:14	182:14,21	237:11 238:14	287:15 288:10
126:17,22	183:3,8,11,16	238:20,21	288:15 289:6
127:9 129:17	183:21,25	239:13,18,21	290:18 291:4,7
130:16 131:12	185:23 186:5	240:5,7,20,24	291:8,9,10,13
131:15 132:13	186:11 187:20	241:2 243:17	291:20 292:4,9
133:21 137:5	188:1,21	244:15,19	293:25 294:1,5
141:4 142:6	190:15 192:3	245:8,20 246:7	294:15,19,25
143:11,17	192:19 193:2,6	247:3,10,12,23	295:13,17,23
147:25 148:12	193:10,12	248:5,11	296:1,3,19,23

[right - says]

297:7,9,11,20 298:3,8,12,13 299:4,7,12,16 299:21 300:12 301:11,13,25 302:3,7,9,12,19 303:11 304:23 306:10,13 307:12 311:3,7 311:10 rigor 147:3 ring 26:5 ringing 26:2 48:16 risk 97:16 108:15 110:19 110:23 111:13 111:24 112:12 312:17,25 313:7 rivera 134:25 roadmap 41:8 robots 88:8 rock 5:7 180:17 180:21 181:2 role 26:15 119:15 roles 12:16 21:24 26:17,17 118:24 rolling 233:17 roman 149:19 room 12:25 137:21 214:11	237:12 rooms 120:2 rough 189:2 roughly 297:19 round 156:7 183:18 rounds 177:25 row 175:13 285:19 297:18 rows 276:8,9 rpr 1:22 317:25 rule 10:5 51:19 51:22 72:20,20 73:1 75:20 92:21 243:18 rules 8:18 9:3 51:18 62:18 72:21 73:12 82:24 run 88:8 119:22 131:9 rundown 228:16 running 143:13 198:4 runs 117:5 s s 226:3 318:3 safe 88:18,19 181:11 182:3 200:6 safer 170:9,14 170:20 171:7	171:11 182:7 safety 4:17 5:11 30:20 56:15 57:24 72:9 74:12 121:7 148:21 149:25 156:22 177:8,13 178:4 187:23 197:10 201:23 203:3,8 203:10 204:18 204:19 205:13 205:15 225:10 254:10 268:1 298:19 309:2 samaritan 1:6 2:6 6:14 40:9 50:12 69:10,19 70:2 71:9 79:2 161:22,23,24 170:6 175:20 194:2 285:15 309:3 318:1 san 1:15 2:19 6:1,20 13:1 116:10 satisfy 51:18 saw 26:8 44:16 97:14 109:2 111:4 122:13 122:14 163:3 202:2 217:2 saws 109:6	saying 35:22 52:15 54:5 58:5 62:1,22 63:4 79:3 83:5 97:2 108:19 127:24 133:6 141:24 146:5,7 147:9 151:8 162:24 167:1,8 168:18 169:23 191:4 192:13 192:23,25 195:10 196:9 203:24 212:1 212:25 214:3 221:15 230:5 235:15,18 239:22 244:13 246:19 248:20 251:19 252:3 253:17 256:8 257:2 259:8,11 262:15,23 277:18 281:20 284:7 287:18 287:23 288:21 288:23 289:7 289:16,18 291:8 292:17 300:6,20 313:24 314:6 says 35:6 41:23 42:12,16 63:10 67:19,21 68:5
---	--	---	---

[says - scroll]

68:6,14 69:9	scan 174:17	145:18 147:22	183:6,23 184:9
80:11 81:19	209:18 210:1,2	158:25 165:23	185:19,22,24
85:22,23	223:3,9 224:12	169:14 175:21	186:2 191:9
105:16 109:12	264:25 266:17	184:5 185:3	217:23 219:2
121:2 123:4	scanned 265:1	190:24 198:25	225:10 267:24
128:9 136:4	scanner 209:25	199:22 200:22	271:8,20 277:5
137:1,10,17,19	scanning	201:10 202:12	309:8
148:24 149:16	224:14	202:19 204:25	scored 207:24
149:20 150:8	scholarly	205:4 226:16	scores 70:24
150:11,12	202:16 245:10	226:22 227:1	86:3 149:5
159:19 171:2	school 89:25	228:16,24	150:18 156:8
174:9 175:9,13	93:13 98:3,18	229:1,4,9,12,16	157:3 164:16
175:17 177:3,6	102:8 103:13	229:18 230:1	164:18 169:12
177:22 182:7	106:3 114:25	236:19 238:21	178:1 216:16
188:3,9 191:24	115:15,20	242:11 249:4	217:18 219:5
192:18 203:7	117:7 118:13	251:10,12	228:17,22,23
210:22 211:2	119:5 310:22	257:9 260:12	271:14 273:24
211:14 213:5	schooler	262:21 268:15	274:17 306:15
225:5 226:2,19	115:25	277:12,16	scoring 5:6
227:1,6 233:14	schools 98:7	score 148:20	154:12 184:18
250:11 255:5	science 115:24	149:23 157:7	217:7 267:17
256:10 265:2,4	116:2,12,13	157:20,23	screen 293:20
266:14,23	121:5 146:1	158:6,9,13,13	306:7
267:10,13	252:5	158:17,19	screens 75:6,14
271:2,6 276:12	scientific 147:3	159:4,5,6,7,14	75:15 306:9
282:18,18	147:14,15	159:21 160:2,8	screenshot
283:7,10	237:24 238:12	161:11 162:25	39:17 61:24
285:21 286:8,9	238:13 247:18	164:18,19	scroll 64:12
287:2,6,9	scope 27:1	168:3 169:24	76:1 163:15,17
291:6,10	30:17 36:21	171:3,14,22	163:24 164:1
292:20,22	37:6 52:17	177:23 178:2	171:18,20
306:15	55:10 56:3,6	178:14,19,20	219:6 259:21
scales 271:10	58:9 59:18	179:8,21 180:1	278:23 282:25
	62:7 77:24	181:25 182:14	284:5 287:9,12

[scroll - see]

287:15 288:1,3	sean 17:15	67:18 68:2,8	210:24 211:1,7
288:11 289:5	search 54:9,21	68:10,14 69:1	211:11,20
289:11,17	54:24 84:24	69:5,7,12,15	212:10,14,17
290:11 292:3	85:2	78:16 92:19	213:1 217:20
293:13 295:4	second 14:23	100:3,16,23	218:2,9 219:6
295:13,17	53:13 62:15	103:17 105:17	219:14 221:15
296:2,10 298:1	64:15 66:15	107:12 108:2	224:25 225:11
299:15,23	68:4 71:7	110:23 121:2	225:24 226:5
300:4 301:20	72:14 74:20	132:20,22,24	226:17,24
302:9 304:23	76:18,19 77:9	133:4,5,18	227:4,11
306:3,10,12	77:10 85:6	135:24 136:12	234:14,15
scrolled 77:3	89:12 126:25	137:2,3,8	239:11 241:24
164:20 280:19	140:12 144:11	138:9 150:3	245:14 246:8
286:16 291:7	175:9 187:25	151:12,17	250:10 252:21
291:24 294:19	223:19 262:18	154:8 164:4	255:11 257:2
296:12 297:6	266:4 283:16	167:3 168:10	257:17 258:3,5
297:10,10,15	301:24 303:8	169:3,7 170:11	261:24 262:2
scrolling 64:12	307:21	170:20 175:6,8	263:6 264:6,10
163:5,6 195:23	secondary	175:17 176:9	264:14 265:3,7
269:12 291:1	175:16,19	177:4,16,20	265:9,15,16,23
293:11 304:12	176:21 177:4	178:5 180:17	266:3,6,9,11,15
scrolls 64:9	177:14	180:19 181:10	266:23 267:6,8
76:21 196:5,9	secretary 95:20	181:12,14,18	267:11 268:2
278:17 280:6	108:6	181:22,23,25	270:25 271:4
280:10,14	section 37:3	182:1,5,15,21	274:12 276:5,7
295:16 296:2	226:16 228:21	187:22 188:2,7	276:10,12,17
296:11,18,23	see 14:17 17:21	188:18 190:9	276:22 277:1,6
sculpted	26:10 39:8,22	190:11 194:13	278:13 279:13
128:21 131:2	40:6 41:5 42:4	196:22 197:4	279:21,24
131:19 132:2	42:11,19,21	197:16 198:13	281:19 282:11
132:24	44:8 45:4	198:16 203:2,5	283:7,8,12
sculptedspac...	46:24 49:12,17	203:12 206:23	284:10 285:18
127:15	57:6 60:16,17	208:20 209:1	286:8 287:2
	63:9 66:2	210:13,16,21	297:18 298:20

[see - showed]

298:23 299:2 299:10,16 300:5 301:16 304:16 308:25 313:16 seeing 63:24 132:16,18 163:4 169:8,10 202:22 204:6 225:3 234:4 257:1 304:17 seeking 56:17 56:22 57:4 87:18 seem 198:7 seems 53:12 191:18 205:21 228:20 277:23 seen 10:7 21:17 99:15,16 135:22 223:14 223:18 224:5 227:18 255:3 268:11 275:25 306:6,8,10 sees 307:8 selected 188:3 selection 16:18 self 73:11 sense 23:19 120:21 129:17 178:16,21 199:10 202:15 217:6,8 223:10	sensitive 6:7 sent 45:19 250:24 sentence 57:20 82:5,8 83:24 142:8 166:25 188:6 190:10 191:20,21 207:18 212:18 212:21 274:12 sentences 189:6 189:9 198:8 230:10 separate 97:21 97:23 128:19 separately 13:23 24:22 71:24 98:12 separating 22:19 september 1:16 2:21 4:12,14 6:1,6 sequence 178:25 seriously 252:16 serve 121:4 123:20,24 136:24 served 29:19 38:6,24 72:17 services 222:9 224:21 225:7	236:14 serving 86:25 126:9 session 108:5,8 272:4 sessions 95:19 set 12:25 13:9 13:16 38:23 46:4 48:3 62:15 77:13 87:11 106:8 107:9,18 115:17 116:19 120:2,2 139:17 141:2 201:14 206:1 214:23 240:2 247:19 270:8 278:3 279:3 317:6 setting 13:20 38:11 64:18 220:16 settle 124:10 160:22 settled 126:16 seven 24:24 29:7 198:20 199:16 201:6 261:15 seventh 211:19 213:7 several 12:21 68:23 70:15,16 75:4 91:24	148:10 shaking 9:20 shape 37:25 shaping 38:2 share 194:18 293:24 sheet 15:17 17:8 114:4 shift 87:11 114:20 ship 209:22 short 20:21 61:6 106:16 shorthand 2:22 317:3,9 shot 176:24 show 39:12 59:11 63:4 64:4 127:17 138:14 146:6 158:19,22 180:3 185:21 185:23,24 186:1,2,4 222:23 260:1 260:20 274:23 274:24 275:4,5 288:4 289:6,11 293:8,12,19 296:11 298:13 304:2 showed 17:10 139:1 186:7 196:5 217:5
---	---	--	--

[showed - sort]

275:7 showing 17:16 137:23 157:19 288:8 291:1,3 298:18 304:2 shown 61:24 62:9 83:21 85:2 158:9 295:11 307:1 309:14 shows 62:10 158:10,16 168:3 189:14 204:22 213:16 249:9 shut 60:24 side 62:3 134:18 150:6 161:13,15 164:24 181:13 181:13 244:22 276:4 314:2 sides 194:13 sign 98:5 signature 234:14 317:23 significant 144:18 significantly 29:1,6 similar 21:10 21:11 47:12 86:14 149:9 259:12 265:22	279:14,16 281:14 282:9 285:9 290:5 similarity 257:1,18 similarly 167:12 single 13:10 singular 218:21 sir 8:11 18:18 41:1,17 42:6 54:20 55:6 61:13 65:14 68:15,17 69:3 69:6,8,13 70:3 70:6 74:16 77:22 80:1 84:8,19 149:7 158:4 173:12 176:19 209:9 301:12 303:4 sit 258:24 site 13:16 82:12 259:2 265:22 294:11,15,24 sitting 269:8 situated 167:12 six 15:12 106:12 197:12 198:13 199:5,8 271:3 sixth 208:15 211:6,19 213:4 213:7 214:5,8	311:23 size 32:23 sizes 244:25 sketch 5:18 skim 44:22 skimmed 25:8 26:9 44:23 45:4 48:16 slightly 71:18 281:14 282:3 slip 272:14 slippery 284:22 smaller 75:9,13 124:10 198:7 300:4 smart 96:22 smartphones 75:8 smoke 115:4 society 5:15 14:3 95:12 107:22 109:18 109:21,23 115:24 208:24 software 21:7 100:18 softwares 21:10 solutions 6:23 315:22 somebody 31:19 160:23 182:13 184:16 189:22 244:13	244:14 somebody's 252:12 soon 263:11 sorry 16:8 22:11 29:9 59:9 66:17 69:3 82:8,14 91:19 110:9 111:10,25 112:11 129:9 131:1 135:5 137:4 149:11 154:7 159:24 190:7 193:20 196:23 202:8 203:25 208:9 215:3 220:16 267:1 270:12 275:6 279:9 284:12,14 287:6 305:19 306:1 sort 9:9,21 15:1 15:4 24:8 26:4 32:15 34:14 35:13 36:22 38:3 56:8 67:25 77:19 85:16 95:13 156:7 181:13 206:16 211:10 220:10 221:20 221:21 264:25
--	--	---	---

[sorts - starting]

sorts 21:8 27:7 284:7	specialty 96:13 104:9 121:25	spreadsheet 5:20,21 221:2	249:1 252:19 272:10
sound 11:2 43:17 115:2 184:25 267:20 282:6	specific 34:21 40:8 57:8 61:22 73:6 76:13 90:3 145:19 294:15 312:9	spring 154:12 173:6 177:25 178:4 276:21	standards 151:5 218:5 246:21 254:2
sounds 8:19 10:18 14:24 36:6,14 76:4 122:8 282:2	specifically 48:8 71:16 100:9,13 143:1 312:13 313:12	squarespace 129:2	standing 315:13
source 175:10 175:16,20 188:13,15 191:15 192:3 192:15,19 193:6 194:3 259:1,5 267:20	specifics 52:13 184:10 241:16	st 284:9,10,13 284:23 285:12 285:16,19 286:6,7,11 291:6 297:1,17 298:17,19 302:3	stands 89:14 247:21 252:1
sources 177:4 184:17 191:13 192:12 211:9 267:15	specified 294:11	staff 165:2 166:2,9,16 167:4,12 168:14 170:25 194:23	stanford 25:18
southern 1:2 2:2 6:17	spectrum 149:10,13 213:17	staffing 200:13	stapled 114:15
spaces 128:21 131:2,20 132:2 132:24	spend 20:11 24:21	stakeholders 141:20 142:11 142:20	star 137:3,3,4,7
spacing 132:11	spent 50:20,21	stamp 222:17	start 8:23 19:17 42:11 54:5 77:16 87:24 88:3 94:4 128:7 142:15 155:14 160:24 220:4 237:24 238:2 240:13 241:2 255:6 260:3
speak 131:17 176:1 218:20 228:7 231:17 245:7 300:17	spillover 303:10	stamped 5:23	started 7:19 8:10 74:8,14 82:14 93:11,14 105:1 264:3 273:5 294:22
speaking 228:5 232:4	spoke 228:1 230:16 231:15 268:25	stand 247:11	starting 11:6 30:13 55:9,11 55:21 66:16 74:22 92:5 135:9 188:6 190:10 200:21 202:20
	spoken 226:13	standard 98:6 145:25 146:10 146:15 148:13 151:3 160:18 162:22 164:12 214:5,13 225:16 246:23 248:5,9,12	
	sports 5:13,15 208:25		
	spot 68:16 198:6 302:6		
	sprayed 14:11		

[starts - suggestions]

starts 191:19 195:13 196:20 197:5 211:12 state 7:3,4 8:23 73:7 92:14 93:6,12 101:22 102:20 103:2 104:22 116:11 116:12 119:11 150:12,13 170:13 310:19 316:11 317:4 statement 137:25 149:15 151:6 162:23 163:11 171:13 204:9 205:17 241:19,20 288:19 statements 162:21 states 1:1 2:1 6:16 statistics 64:4,6 stay 164:14 stayed 254:24 step 31:13 37:9 53:13 54:1,4 54:11 172:6,6 177:19,19,22 178:13 179:1,8 179:20,21 182:23,24 183:20,21	189:21,23,24 193:5,7,8 233:16 275:2,2 275:17,17 276:12,16,24 277:3 stepping 102:6 220:5 steps 59:16 stick 175:4 285:16 stone 94:18 stood 163:11 stop 55:22 stopping 78:13 263:9,15 straight 96:16 straightforward 162:23 244:9 254:2 strange 227:2 strategies 225:8 street 2:19 6:20 strengths 94:8 strides 98:20 239:24 strike 59:8 70:13 154:7 172:4 182:18 208:9 251:14 253:11 strikes 90:13	strings 311:15 strong 252:10 strongest 151:6 structural 271:13 structured 67:9 255:19 struggling 32:6 147:16 250:10 stuck 117:12,17 student 94:18 115:21 students 90:8 93:13 studied 90:6 152:2 studies 146:1 147:2 study 4:22 5:13 113:21 120:1 146:11,11 152:4,4 210:8 310:13 studying 115:1 stuff 9:21 98:8 120:4 129:3 132:8 237:15 style 51:5 subject 79:11 80:2 95:14 190:6 202:5 265:13 266:13 266:22 267:6 275:2 276:12	276:16,24 277:3,9 submit 177:12 submitted 138:4 subscribed 317:21 subsequently 48:22 subset 87:22 279:9 310:3 subspecialty 89:13,14 90:1 substance 230:21 231:12 substantial 103:21 116:16 259:13 substitute 152:7 subtopic 311:5 successful 33:19 sued 136:8 sufficient 53:24 62:3 147:7 sufficiently 146:19 254:20 suggest 234:18 234:19 270:1 suggested 300:2 suggestions 237:18
---	---	--	---

[suggests - tactical]

suggests 257:3 suite 2:19 3:14 6:20 sum 29:24 250:21 summarize 30:18 108:19 110:4 summarizing 275:22 summary 145:21 summer 115:1 summers 118:19 sums 218:19 sunset 5:5 super 13:20 35:5 117:14 152:2 supplemental 87:3 174:2 188:13 191:13 192:3,14,18 193:5 194:2 285:8 support 65:5,5 125:20 137:13 137:25 138:8 138:25 151:2 151:13 248:23 249:2 252:7 support.goog... 281:25 293:21	supposed 35:16 36:10 37:16 132:2 sure 11:20 12:20 16:18 17:24 20:1 22:14,17 23:21 26:2,22 28:1,4 30:3,14 31:11 31:18 32:8 33:17 35:1 37:11 45:25 47:13 51:12 59:21 60:18 61:7 66:21 67:16 73:22 74:9 78:18 79:17 81:2 82:20 83:14 84:15 85:21 86:19 89:2 90:2 99:16 108:12,23 113:14 114:11 114:21 118:25 121:20 122:11 123:13 125:18 127:8 139:9,18 146:16 150:14 152:18,20 165:7 170:25 181:16 209:20 210:18 215:9 217:16 220:7	222:7 228:13 244:25 245:4 254:16 259:7 263:19 270:17 270:20 278:22 280:2 287:20 289:20,25 293:1,25 294:10 295:14 298:15 300:10 304:24 310:4 310:11 312:12 312:16,19 315:11 surfaces 14:11 14:15 surgeons 5:14 surprise 131:21 131:21 174:6 207:23 survey 159:17 160:5,15 161:11 166:12 166:16 175:13 177:9,10,12 198:20 199:16 203:4,11 204:20 212:19 267:19 surveys 120:7 sustainable 128:10,23 swear 7:19	swearing 18:4 sweepstakes 116:1,6,8,11 sworn 7:22 17:20,21 synced 315:8 315:15 system 5:9 88:11 89:22 108:24 117:13 157:9 181:5 273:13 systems 88:7,23 119:8
			t
			t 318:3,3 tab 66:24 68:18 173:7 180:4 186:23 232:11 273:20 278:23 281:3 298:12 table 59:11 63:10,15,21 64:24 80:11,17 149:18 175:6,8 tabs 65:25 66:4 67:1 71:11 180:8 181:19 223:12,13 258:8,19 299:7 tackle 251:21 tactical 96:25

[tailor - terms]

tailor 215:25	takes 172:8	113:11 114:11	technology
take 6:10 10:18	194:17	114:22 141:4	23:4 182:9
10:25 13:4	talk 9:10 15:14	145:16 156:3	tedious 153:7
18:11 21:18	23:25 37:10	162:17 166:1	225:4
22:20 61:5	48:4 55:7	179:2 190:8,9	tell 9:14 12:19
63:9 69:24	59:23 66:16	197:23 212:11	26:25 30:13,16
73:21 79:3	87:13,15 89:12	222:6 225:13	39:25 40:3
87:24 100:5,7	116:20 127:1	227:14 239:2	49:9,24 69:4
100:9 101:16	133:20 141:3	256:23 258:16	70:19 71:8,12
105:24 106:10	155:1,2,16	259:17 264:4	74:18 76:10
106:17,25	168:22 172:5	269:7 273:5	77:25 87:16
113:2 139:22	209:23 217:22	301:9 309:1	90:15 91:5,22
139:24 147:24	218:24 223:8	311:23,25	96:7 125:17
150:6 170:19	232:6 233:7	talks 75:1,1,2	127:7 129:20
178:22 182:18	253:13 311:11	141:19 142:9	130:15,18
190:18 196:14	talked 10:14	311:22 312:13	134:4,10
196:17 201:16	21:24 26:7	tangentially	136:17 141:14
202:24 206:6,7	37:4 52:24	110:15	149:18 156:16
209:21 211:23	59:22 68:11	tank 129:24	163:25 196:8
212:24 262:17	74:20 77:15,23	131:8	215:22 250:6
263:10,12,17	80:10 83:17	task 90:19	273:7,11
263:20 264:21	91:16 144:12	taught 247:15	279:23 282:8
278:19 283:4	155:3 200:2	247:24	297:1
283:15,17	206:15 215:15	teaches 91:12	telling 122:2
295:6,7 297:15	242:22 249:13	team 56:12	256:13 274:22
300:9,20,23	278:6 303:9	technical 82:13	tells 135:6
301:1,10	310:17	157:14 246:10	206:2
303:21 308:2	talking 16:25	280:15	term 229:2
315:1	28:6 60:18	technically	230:8 291:18
taken 2:18 6:13	64:16,20 65:19	105:7	terminology
74:1 140:4	74:14,15 78:14	technique	205:13
206:10 252:16	82:16 84:17	109:8	terms 9:3 10:5
263:23 301:4	89:20 90:14	techniques	22:11,16 29:15
308:6 317:5	91:14 112:23	243:12,21	38:2 43:4,15

[terms - think]

45:12 79:13 83:11 90:6 125:4 246:10 254:25 293:2 terrible 89:4 territory 55:12 test 14:12 113:23 137:22 137:24 146:2 152:14 162:3 168:9 207:16 220:10,20 235:13 236:23 238:16 242:12 242:22 244:14 245:5 248:10 tested 162:20 254:18 tester 226:11 testified 7:23 8:15 126:21 133:21 135:14 260:3 testify 16:10 51:16 82:23 136:22 testifying 9:17 12:17 13:22 14:25 123:20 123:25 133:20 317:8 testimony 9:25 15:15 134:1 135:3 154:23	158:5 168:25 168:25 172:15 192:5,15 230:21 231:12 240:20 273:9 273:15 291:22 315:19 316:5,7 317:12 testing 48:9 86:7 100:16 122:6,6 146:2 147:8,14 148:12,14,16 149:11 152:8 160:19 161:4 164:12 168:8 219:12,17 220:6,9 221:9 221:14,25 225:13 233:11 234:22 235:12 235:25 236:8 236:18 237:19 237:20 238:6 238:13,16 239:10 240:16 241:22 242:6,7 242:9,10 243:12 245:19 247:14,19 248:14,18 250:12,13 251:1,5,15 252:23 254:3	254:15 268:19 270:1 271:9,21 271:22 272:6 272:16,22 273:4 testings 227:15 243:3 tests 120:8 161:1,2 207:18 texas 180:24 text 159:19 163:9 211:1 299:24 304:13 305:8 306:7 textured 13:15 thank 41:13 74:5,6 83:13 99:12 131:3 222:20 261:17 282:11 302:20 303:4 315:17 thanks 265:8 267:14 themselves 169:10 theoretical 128:6 theory 182:12 193:25 thesis 93:9 thick 15:11 thickness 14:13 14:14	thing 10:4,16 15:5 17:10 32:2 45:13 108:24 113:14 114:22 116:22 120:11 127:16 166:19 196:18 243:17 245:23 273:20 279:14 279:16 314:8 things 18:24 21:9 34:4 35:17 38:22 45:15 47:9 72:15 97:18 120:5 121:22 129:25 141:8 147:12 160:16 168:9 182:14 183:17 195:3 205:1 210:6 225:16 234:5 236:21 314:6 think 8:13 9:3 12:3 16:2 17:8 17:13 18:9 19:25 21:19 24:11,23 26:19 27:16 29:9,16 31:1,10 32:4 32:17 34:11,21 35:16,25 36:2 36:12,18 37:4 37:23 38:1
---	--	--	---

[think - time]

42:13 43:1	184:10,21	280:1 281:24	132:14 133:1
47:22 48:17	185:6,15 186:3	282:3 283:16	146:8 222:15
49:23 50:11,19	186:5,6,7,13	283:18,18	251:21,24
53:4,6 56:7	187:14 188:1	284:3 285:14	thoughts
58:6,12 59:21	190:22 191:5	289:2 293:1	266:14
59:22 64:9	194:17 199:7	295:5 296:22	thread 77:13
65:9,11 66:23	201:3 202:20	300:15 307:6,8	threads 163:14
68:22 75:24,25	204:8 206:4	307:13 310:7,8	three 15:12
76:15,24 77:6	208:8 209:3,10	310:11 311:13	22:6,25 33:21
82:4,9 86:10	213:24 214:22	311:16,21	34:1 35:20
91:17 97:13	214:24 215:6	312:8 313:18	36:22 37:1,5
99:22 101:8	215:12,18	313:25 314:12	49:10,15 64:9
103:24 104:18	218:18,19,20	314:22 315:15	85:4 97:17
104:22 105:14	218:23 222:4	thinking 4:20	100:5 101:12
105:18,20	222:23 223:2	16:3 98:21	101:13 105:12
107:24 109:12	223:10,13	113:5 115:20	122:10,23,24
109:15 110:22	232:22 235:17	160:13 161:20	123:10 148:11
111:3 112:8,20	240:13 241:2	161:24 194:1	150:5 199:19
112:25 116:14	242:1,25	257:19 312:15	233:2 243:15
116:22 119:14	243:18 244:4,8	312:15	243:22 245:18
126:4,18	246:6,9,20	thinks 219:21	258:2 273:4
127:14 129:1	247:17 249:20	thinner 113:22	274:15 276:8
130:8,22 134:8	251:25 252:11	third 33:14	276:24 277:25
140:13 144:3	253:12,14	53:13 64:12	313:3 314:6
146:22 147:8	254:1,1,8	74:20 76:19,20	throw 82:10
147:19,21	255:16,22	85:5 121:1	95:17 129:3
149:17 151:1	256:2,18	175:12 187:25	tied 222:4
151:16 154:19	257:18,23	188:1 196:19	time 6:5,9 7:3
159:4,25 160:6	258:24 259:5	197:1 273:8,19	10:23,23 15:7
160:16,17,20	260:7,10	thought 39:2	22:21 29:25
161:13,21	262:16,19	45:5 65:4	34:17 38:10
162:2 166:4	263:15 270:10	81:12 96:10	39:17 50:20
169:3,24 170:2	270:12 272:1	117:14,16	69:4 72:19
171:12,24	272:24 275:24	131:19,20	73:25 74:2

[time - towards]

75:4,11 94:11	timing 93:16	168:7,14	137:2 175:9
96:9,23 98:21	102:2	194:23 206:16	177:3 190:9
101:16 105:10	title 265:2	258:4 311:15	197:5 212:17
106:14,17	293:22 312:12	311:17	218:1 225:24
107:14 116:25	312:24	told 16:14 70:4	266:8 276:5
116:25 120:22	titled 4:21 5:13	70:14 72:25	topic 103:20
121:13 124:20	tlg 5:20 149:22	93:18 95:4	114:24 140:10
130:22 132:10	149:25	104:22 126:13	228:12,13,18
139:25 140:3,5	tlg's 150:1	148:11 228:2	torn 13:9
147:7,22	154:11	236:25 240:23	torres 134:25
155:13 187:3	today 8:7 9:5	249:23 272:15	total 29:24
195:9 202:14	9:16,23 15:24	tomato 5:4	250:22 280:6
204:1 206:9,11	18:20 24:2	12:14 13:23	283:2,7 284:9
223:21,23	30:8 52:13	14:25 125:15	284:24 285:21
225:3 228:11	62:20 70:19	125:17,24	286:19 287:12
231:18 239:2	74:14 82:25	126:2,10 127:1	287:17 288:8
246:10,21	83:18,23 84:3	127:21 128:9	288:24,24
248:2 250:19	205:24 224:13	128:12,14,18	291:10,12,14
251:18,21	229:24 237:6	128:20 129:7	291:14,18
254:11,20	247:23 249:14	132:2,10 133:3	292:17,20,22
256:12 263:15	252:1 254:20	133:4,14	294:14,17,18
263:22,24	258:25 259:9	ton 124:7	294:23 295:2
268:11,22	259:18 262:4	took 106:12,13	295:12 301:18
269:1 280:18	269:8 291:22	262:13 280:12	302:19 315:20
291:13 295:7	295:12,22	tool 62:12	totally 19:4
297:6,10 301:3	296:22 313:3	82:12	52:20 53:23
301:5 308:5,7	315:5	tools 218:6	183:6
315:19,23	today's 315:19	top 11:6 12:7	touched 121:20
316:7 317:6	together 14:10	15:7 24:8	278:8
times 8:13	103:20 120:1	60:15,16 62:2	touching 171:1
108:3 123:24	155:17 156:25	63:10 66:4	tough 106:25
124:4,5 196:13	161:3 165:2	80:10 82:9	towards 41:23
228:10 237:10	166:2,9,17	93:1 132:12,19	49:10 63:16
283:20	167:1,4,13	132:20 133:11	215:25 218:2

[towards - two]

233:16 265:23	144:9,15,18,19	288:9,18,21,25	71:7 88:6
266:1 274:5	144:20,24	290:10,12,13	109:15,17
302:25	155:3,6,22	290:21 291:19	119:14 130:22
tracking	186:8 189:19	292:16 295:3	144:3,5 160:21
220:11,13	190:14,21	295:17 296:2	160:21 165:24
trail 241:23	229:22	296:10 301:20	178:24 189:19
trainer 138:2	transparent	triggering	210:22 215:25
training 137:21	32:10,13,13,17	284:4 286:23	222:15 230:10
143:11 170:24	33:6,12 34:16	291:21	234:8 235:8
transcribed	35:11 186:3	triggers 280:22	242:17 243:14
317:10	190:3	trip 14:12,18	244:22 257:10
transcribing	transparently	trouble 201:10	257:12 259:6,7
9:5	309:7	true 38:25 39:1	263:2 293:8,12
transcript 4:16	treat 14:15	39:2,3 59:21	313:21
25:13 61:1,4	123:19	76:17 99:23	tuesday 1:16
138:2 139:13	trial 8:15 16:10	121:12 133:12	2:21 6:1
315:10 317:11	62:20 82:23	144:25 145:5	tuition 98:8
317:14,16	86:21 87:18	155:5 190:15	tune 38:4
transcription	126:21 133:21	190:21,23	turn 15:21
316:6	134:9 135:12	192:21 238:1	87:25 140:10
transcripts	142:19 154:23	316:6 317:11	178:25 181:15
17:12	259:8	truly 147:2	206:15 278:4
transparency	trialing 93:19	185:7	turning 155:12
30:20 31:9,11	trials 134:21	truth 10:3 33:5	284:19
31:24 32:5	tried 109:9	144:21 302:25	turns 36:3
33:25 34:5,13	251:21	truthful 9:24	twelfth 13:2
34:21 35:13	trigger 284:8	try 108:10	twice 8:15
36:6,15,16	288:14 289:4	122:13 146:6,6	126:22 133:21
55:17 56:4,14	289:10 290:23	205:7 214:13	two 14:5 15:10
57:23 58:11	295:13 304:14	220:11 302:24	15:10 17:13
78:12 79:21	triggered	trying 14:14	19:12 23:21
80:15,18,23	283:11,19	27:16 49:4	49:15 50:8,22
81:20,22 83:3	284:2 286:21	52:20,23 57:7	54:23 81:1,9
83:7,12 85:23	287:12,15,25	58:20 62:16	105:12 106:1

[two - understanding]

106:15 107:24 122:10,22 125:19 134:5,6 134:11,21 135:11 156:4 158:12 177:24 179:13 180:9 191:6 195:18 207:9 224:19 230:9 233:2 243:15,21 245:18 258:2 273:4,5 276:8 276:15,25 311:17 type 111:24 117:11 131:15 235:11 243:4 243:13 244:11 244:21 257:16 types 120:22 123:7 243:3,11 typical 53:4,4,8 103:21 142:6 143:4 160:9,12 171:5,9 173:24 174:20 183:10 187:10,19 189:13,14 192:8 199:5 201:4 205:14 229:13 typically 13:7 17:18 20:16	30:3 109:6 144:2 220:6 306:21 typo 36:4 67:12 83:16 u u.s. 211:16 212:1,22 uc 102:15 ucsd 114:25 118:15 143:16 uh 15:19 21:12 29:12 30:25 31:17 35:4,8 39:24 42:18 49:11 53:21 56:13 88:5 106:19 145:24 149:2 150:10 161:7 192:24 234:2 244:20 299:8 300:25 304:11 ultimate 79:4 207:8 268:4 ultimately 98:1 107:9 220:21 227:21 305:1 umbrella 72:3 72:7 87:20 90:1 121:21 unaffected 305:11	uncertified 17:17 unchanged 258:17 under 44:17 57:25 58:3 60:22 62:2 64:23 72:20 90:17 92:21 128:18,20 169:8 170:20 175:12 186:1,4 207:20 210:15 226:20 237:14 265:13 286:11 291:22 316:1,4 317:10 undergraduate 98:8 119:18 underlie 221:24 underlying 34:4 underneath 72:6 121:22 understand 9:16,19 10:6 10:11 32:8 37:15 39:4 40:11 41:7 46:1 49:5 51:16 52:21,23 58:20 62:16 64:18 69:22	72:14 83:14 91:6 92:21 141:22 142:13 142:21,24 143:5,6,21 146:17,18 148:19 149:22 150:15 155:10 156:21,24 157:2,8,11 162:13 165:7 165:14,19 169:1,5,21,24 171:6,9 173:3 176:20 178:25 179:3,14,16,23 199:4,7,17 203:21 204:3,7 205:15,24 217:17 220:23 243:14 257:6 263:2 278:22 280:2 287:21 293:23 understandab... 91:17 understandable 88:20 144:7 146:6,19 312:16 understanding 8:12 43:11 51:20 69:17 73:1,3 77:2
---	---	--	--

[understanding - user]

89:4 139:7	291:24 292:6	95:24 96:5	64:2 79:7,9,13
143:22,24	292:15 294:10	225:9	80:8 86:12
145:4 156:13	294:14,18,23	usable 34:17	87:23 89:15,22
157:13,15,17	295:3,13	35:11 91:21	90:10,18,23
168:23 169:11	296:10,18	use 14:7 22:11	93:5 94:16,16
172:6 178:7	301:19	22:16 33:17	100:16,22
179:10 184:2	unit 6:12	112:3,4 117:16	110:8,12,15,25
190:4 200:16	united 1:1 2:1	152:9 178:20	111:13,16,20
208:2 226:10	6:16	182:8 199:20	111:21,24
229:16,20	universe 37:16	217:23 220:13	112:5,13,18
233:25 241:9	62:16	229:6 244:11	118:1 121:23
245:5 254:4,9	universities	245:9 247:13	142:6 143:4
254:13,23	247:15	247:13 250:18	145:13 152:8
268:13 275:5	university	258:8 279:10	154:7 160:9,12
291:25 313:20	92:14 93:7	used 14:10 21:7	160:19 163:4,8
understood	96:19 97:1,3	21:8,9 33:14	171:5,9,18
85:21 144:25	98:23 102:20	75:16,25 79:10	173:24 174:10
145:5 155:4	unnatural 9:9	91:25 100:18	174:20 183:10
176:10 190:15	untested 86:8	152:3,10	184:13,23
190:19 315:12	164:13 219:13	194:23 208:12	187:10,19,20
underwater	236:10 246:6	216:10 220:11	196:5,9 199:5
117:13,19,20	upper 142:8	224:6 228:25	199:7 200:22
unfolded 95:10	url 58:13 66:23	229:2 230:8	201:1,2,4
unfortunately	66:25 67:10	304:1 311:8	205:14 220:9
129:8 130:8	69:2,7 70:1	315:20	229:13,13
unique 283:10	71:18 72:10	useful 96:13	240:9 246:15
283:15,23	urls 67:5,11	235:22,23	247:22 248:10
284:1 286:18	70:7	250:2	248:10,18
286:19,20	usability 30:20	user 4:19 31:15	278:10,17
287:17,18,24	33:13,15,17,25	33:16 35:15	280:4,6,18
287:25 288:2	34:5,13 56:5	43:25 44:2	283:11,19,21
288:17,25	56:15 57:23	48:8,25 51:8	283:22 288:3
290:13,21	58:11 91:18,19	53:4,5,8 56:9	288:12,14,17
291:7,14,15,23	91:20,23 92:1	63:17,25 64:1	288:17,21,25

[user - video]

289:4,8,10,17 289:17 290:14 290:21 291:8 293:10,23 296:2,12,18,18 297:6,10 308:18 310:5 310:17 311:5 314:8 users 33:19 55:17 56:2 59:2,18 62:12 64:8,13 76:17 86:3 142:6 143:1 146:2,10 149:6 150:18 161:20 162:13 162:22 164:1 174:3 195:6,23 196:12,13 203:21 204:2,7 216:12,17 218:7,7 220:9 245:3 246:25 247:1,20 283:2 283:7,10,15,23 283:24 284:1,9 284:25 285:1 285:21 286:9 286:14,15,18 286:20 287:12 287:14,17,17 287:18,19,23 287:24,25	288:8,22,24,25 291:7,10,15,18 291:23,24 292:6,16,17,17 292:20,22,22 293:13 294:8 294:10,13,14 294:17,18,22 294:23 295:2,3 295:12,13,16 296:10 298:1 299:14 300:4 301:18,19 302:9,19 306:3 306:12,16,18 306:24 307:18 uses 128:12 177:14 188:12 191:13 192:2 192:14,18 using 82:11 111:23 127:14 151:4 165:4 167:6 177:4 218:13 267:25 292:7 317:9 usually 33:16 161:1 220:24 utilized 250:2 utilizes 216:4 ux 4:20 33:17 51:8 86:7 89:12,25 90:3 91:2 96:6,7	99:24 105:16 145:25 146:11 164:12 217:24 218:6,11,22 219:11,17 220:6,20 221:9 221:14,25 225:13 226:11 227:15 233:11 234:22 235:3 235:12,19,25 236:8,18,23 237:20 238:6 238:16 239:10 240:16 241:22 242:1,5 243:3 243:12 245:19 247:14 248:10 248:14 250:11 250:13,18 251:5,15,21,23 252:23 254:3 254:15 258:7 258:14 259:12 268:19 270:1,3 273:4 278:4 310:4 312:2,4 312:7	validated 268:20 270:2 validates 86:7 219:12 236:9 237:21 238:7 240:17 242:6 248:15 250:12 251:15 252:23 258:12 validation 221:20 270:3 value 169:4 185:15 values 168:12 194:25 271:11 271:13 various 121:22 vary 22:2 verbatim 78:8 veritext 6:23 315:21 version 94:2 209:15 versus 6:15 73:7 79:16 135:25 275:2 video 1:13 2:17 6:9,12 8:9 60:11,12,14,19 60:25 61:5,9 61:15,22 62:1 62:4,6,8,10 64:23 82:11 83:25 315:4
		v	
		v 1:8 2:8 5:5 134:25 318:1 validate 242:8 247:22	

[videoconference - want]

videoconfere... 1:13 2:17 videographer 3:19 6:4,23 7:13 8:5 73:24 74:2 140:2,5 206:8,11 223:20,23 263:21,24 301:2,5 308:4 308:7 315:1,7 315:12,17 videos 60:7,9 61:21 83:16,17 view 53:3 55:3 59:11 60:16 63:10 83:4 159:2 160:10 190:20 204:7 242:17,18 245:6 284:6 290:22 291:20 302:18 viewed 290:22 307:19 viii 149:19 virtual 89:20 89:20 vis 254:19,19 visibility 86:13 278:11 vision 32:22,24 visited 291:13	visual 271:16 volume 1:17 2:18 4:4 voluntary 177:10 vp 228:1 vredenburg 1:14 2:18 4:4 4:10,12,14,24 5:2 6:13 7:18 7:21 8:3,25 27:4 61:12 66:18 74:5 102:25 114:16 116:23,24 117:2 119:15 119:16 120:18 120:23,23 121:9,10,15 123:8,21,22 124:13 125:2 125:24,25 132:4 137:12 137:20,25 139:14 140:8 201:21 206:14 224:3,9 243:7 261:21 274:13 281:7 293:16 294:4 298:23 301:8 307:22 308:11 315:20 316:3,17 318:2 318:24	vredenburg's 138:6 224:12 261:6 vulnerable 14:17 w walk 139:8 161:20 165:17 253:12 297:15 walked 102:7 walking 230:13 231:6 walkways 14:16 wall 33:11 want 8:18 21:18 22:13,17 27:4 31:22 34:8,25 37:9 37:10,15 39:4 39:21 40:11 41:22 48:3,4 48:23 51:9 52:12 60:18 61:7 64:14,18 66:11,11 72:14 73:21 74:7,9 74:17 77:12,13 77:15,17 78:17 81:2,10,13,18 82:10 83:13 84:7 86:6 87:13 92:5	96:21 97:1 98:22 99:12 103:15 104:1 108:12 110:14 114:10 116:20 120:20 126:24 126:25 133:16 133:18 135:18 139:20,21 141:3 149:16 152:17,18,20 155:2 162:12 166:24 168:22 168:23 172:5 173:9 174:23 175:1 176:16 177:1 178:24 180:3 183:16 184:13 186:23 187:20 191:23 194:12 195:11 196:17 198:12 199:4 202:24 205:2,7 206:6 206:15,17 209:16,18 210:5,11 214:24 215:9 215:18 217:16 217:22 223:5,7 224:18 228:18 230:19 233:7 234:9 238:8 240:21 245:22
--	--	--	---

[want - website]

245:24 246:4	122:20,21	ways 179:13	website 28:19
252:5 256:16	123:1 314:15	235:8 245:18	30:21 34:16
260:25 263:12	314:16,17	245:19 282:10	35:2,11,23
263:16 265:6	washing 67:19	we've 8:7 10:7	39:19 40:5,14
270:9,21 273:2	68:5,11 159:8	11:4 73:20	40:16,23 48:20
273:18,21	159:15 160:3,5	81:21 86:19	49:1,12 50:15
278:19 279:15	160:14 167:10	139:19 179:1	50:21,22,25
279:20 281:3	168:17,20	215:15,16	53:24 56:5,16
281:19 282:20	169:12 170:7	223:18 224:7	57:13,17,24
285:23 289:9	171:17 195:4	229:24 237:6	58:2 60:7
295:7,9 296:21	299:1,2	249:13 257:22	63:12,13 65:24
300:9,20 307:9	water 120:4	258:15 259:3	67:9 71:10
315:2,4,15	watermark	259:17 278:6,8	72:1,3,3,10
wanted 27:25	209:10,16	282:22 293:18	74:13 78:14
30:14 51:7,10	210:16	295:21 308:25	79:23 81:22,24
51:11 82:17	way 11:5 14:17	weaknesses	83:4 84:16
85:21 87:7	24:1 26:19	94:8	88:20 89:17
98:19 103:24	31:18 43:8	weather 231:20	91:16,23 95:24
104:19 105:8	50:1 56:23	web 39:9	96:5 100:10
114:21 125:7	76:11,15 78:16	webpage 4:18	101:3 109:24
140:11 222:23	89:21 101:24	4:19,24 5:4,7,8	110:2,9 125:6
267:20	103:8 137:18	5:10,12 72:1,2	127:13,14,18
wants 139:15	147:13 151:5	72:6,11 74:13	128:19 129:3
189:22,23	173:22 185:10	80:17 81:23	132:1,8 133:5
warehouse	185:16 186:20	83:5 120:19	133:6,11
36:5	187:15 188:24	146:5 151:23	146:19 147:5
warehouses	205:21 209:11	157:19 161:20	156:2 168:8
13:11	209:12 229:3	187:6 202:7,10	170:13 174:4
warfarin	229:10 235:6	241:5 303:20	186:16 187:4
113:22	238:23 244:13	304:1 309:2,14	200:23 201:3
warning 313:2	246:7 247:5,7	webpages	201:13 204:14
warnings 97:10	247:12 251:8	80:21 82:2	208:25 216:4
97:14,15 98:2	270:19 283:18	86:16 156:2	221:18 225:10
109:8,11,12	303:19	202:10	227:8 240:9,16

[website - wood]

241:14,24,25	237:7 244:10	180:21 181:2	162:2 180:6
242:4 247:23	246:11	widely 208:12	194:11 198:24
248:10 249:11	weeds 178:12	247:16	200:20 201:8
251:1,22,24	week 24:13	wife 127:17	204:24 206:7
252:1,12 253:4	weekend	130:13	209:15,20,24
253:7,23 254:5	127:16	wilson 3:12	213:24 222:19
254:14,19	welcome 74:5	7:11 11:11	222:21 230:8
257:16 258:23	128:10,23	23:6 224:6	230:23 231:4
268:20,21	131:22 140:8	wilsonelser.c...	237:3 239:6
269:1,18	206:14 301:8	3:17	241:16 242:14
283:25 288:3	welder 117:16	win 40:5	242:24 246:19
291:13,23	welding 117:13	wings 92:2,10	249:4,19 250:1
293:10,21	went 16:13	92:12,25	253:17 254:22
296:19 298:2	28:3 39:4	wised 118:20	272:8 277:12
website's 31:4	49:25 60:25	wishes 225:7	289:13,25
31:7 78:11	99:24 102:7,13	withdraw	292:11 296:5
79:20 80:14	102:21 103:2	193:17 238:8	298:5,10
81:19 84:12	105:4 134:9	245:22 246:4	299:18,23
86:8 206:21	135:12 187:3,4	302:22	300:15 307:23
219:12 236:9	187:6 195:19	withdrawal	309:11,18
237:21 238:7	234:5 273:6	303:13	313:16 316:3
240:17 242:6	288:3 291:23	withdrawing	317:20
248:15 250:12	301:23 306:22	247:9 303:6	witnesses 12:2
251:16 252:23	307:11 314:2	withdrew	27:18 317:7
websites 28:14	west 1:3 2:3,19	193:22	woman 48:25
40:4 49:16,25	4:18 6:17,20	witness 4:3	wonder 252:17
50:8,16 65:10	304:5	7:15 14:21	wood 3:13 4:7
71:11 75:17	wheelchair	34:20 52:4	7:11,11 10:23
91:24 100:14	119:25	62:6 63:1	11:22 18:13
101:5 111:2,16	whereof 317:20	69:21 72:23	24:15 34:19
111:20 114:7	whipping 69:3	73:22 76:4	52:2 56:12
144:1 155:23	whispering 6:7	117:4 139:22	58:15 61:10
164:2 216:22	white 5:7	144:23 158:8	62:5,25 69:20
216:25 220:8,8	140:14 180:17	158:24 159:19	70:9 72:22

[wood - wrong]

76:3 140:1	309:19 313:14	236:17,19	309:8
144:22 156:18	314:24 315:4,6	238:21 239:25	worth 176:24
158:7,23	315:9,11,15	241:23 242:11	265:5
159:18 162:1	woods 311:18	249:4 272:3	wow 99:6
165:15 166:21	word 20:8	314:16	220:13
170:16 182:16	33:14 34:22	worked 123:8	wright 92:14
193:16,20	70:25 114:9	124:7 166:2	93:6,12 101:22
194:10 198:23	134:15 158:20	workers 67:21	102:20 103:2
199:11 200:19	178:22 207:18	working 90:9	104:22 119:11
201:7 204:23	228:25 229:6	94:4,15 95:5	310:19
210:1,3 213:23	230:13 231:7	96:21,24 117:1	wrist 136:6
222:13,15	314:1	130:20 143:17	write 94:13
223:9,16 224:5	words 30:19	165:2 166:17	104:15 159:2
224:11,15	37:5 38:1	167:4 226:20	187:8 214:8
230:7,22 231:2	47:17 133:4	313:9	writes 266:9
237:2,8 239:5	151:23 156:16	works 74:17	writing 29:15
240:18 241:15	178:10 189:6,9	157:9,12 169:2	51:7 248:21
242:13,23	198:7 311:6,8	169:6,17	272:16 310:5
245:25 246:18	311:15,17	174:25 179:11	314:17
249:3,18,25	313:18	186:17 195:15	written 37:2
253:9,16	work 13:24	205:15 215:23	114:4,9 161:8
254:21 260:5,7	14:21 21:25	224:14 229:17	163:12 185:16
260:23 261:5,9	22:10,22 32:15	world 118:3,8	189:4 205:19
261:12 263:18	76:11 88:17	118:12	211:5,18 213:3
263:19 269:21	93:24 96:20	worries 155:14	213:7 214:9
272:7 277:11	102:21,23,24	267:4	217:3,4 234:11
289:12,24	109:16,23	worse 170:15	234:12 314:14
292:10 294:2	112:6 120:22	194:5	wrong 35:18
296:4,13 298:4	128:7 156:17	worst 158:11	66:22 132:17
298:9,21	166:9 167:12	158:13,16	135:6 137:4,6
299:17,22	168:14 194:23	159:5,6 171:22	158:20 164:9
300:14,25	205:24 226:16	172:2 182:13	238:1 245:23
307:24 308:1	226:23 227:1	185:21 271:7	273:11 289:2
308:10 309:12	228:16,24	271:11,13,20	292:2,4

[wrote - zarcadoolas]

wrote 20:25 187:7 217:23 232:9 234:18 310:19,21 www 69:9 www.hospita... 56:16 58:12	77:6 79:3,7 80:25 81:14 83:8 84:1,23 89:10,11 92:7 93:10 95:11 97:17,20,23 100:21 103:6 105:14,23 107:11 108:4 109:20,22 110:25 111:7 111:17 112:10 112:25 113:3,6 113:8,10,11 115:19 116:19 118:4,17,17,19 120:12 122:25 123:18 126:8 129:1,11 130:12,17 131:18 132:16 133:2,8,10,16 135:18 138:22 139:1,12 140:1 142:8,18 145:7 148:1 149:16 152:1 158:16 165:1,20 168:3 172:9 173:5,22 175:25 178:22 181:17 186:22 187:9 188:1 191:18 197:6 198:11 202:12	202:19 203:19 204:2,11,15,24 205:16 206:5,7 209:15,17 210:1 211:24 211:25 212:12 215:14 219:3 221:7,12,16 233:3 234:17 234:23 235:1 236:7,12 237:6 242:7 243:11 243:18,20 244:16 248:8 256:2,25 257:17 258:2,7 259:11 263:9 265:3,12,15,15 265:17 268:15 270:15,17 272:15 277:21 278:8 279:14 279:19,25 282:5,7,14 284:11,19 285:11,14 290:19 294:2 297:21 305:7 305:15,21 306:1 315:11 315:15,16 year 23:2 104:14 105:21 107:25 116:1	124:23 125:23 190:5 255:19 255:20 years 15:10 92:23 94:25 105:13,18,19 106:1,12 107:1 113:9 254:15 255:14 256:23 256:24 yep 25:12 34:10 78:20,25 79:12 94:20 95:6 109:4 110:18 210:3 212:20 260:18 yesterday 112:16 yielded 104:10 york 3:8,8
x			z
x 4:1 33:17 35:6			z 226:3 zackowitz 4:24 116:23,24 119:16 120:18 120:23 121:16 123:8,21 132:5 zackowitz's 121:10 zarcadoolas 222:11 226:2,7 232:20 234:12 245:20 250:7
y			
yardstick 152:4 152:9,10 yardsticks 85:13 yeah 11:20,22 12:12 18:2,13 21:6 22:11,13 22:15 26:6,22 26:24 29:5 32:8,15 34:25 38:3,17,20 39:17 40:7 42:20 44:13,16 47:4,16,20,22 49:22 51:13 55:8 56:10 57:1,11 59:6 60:23 62:14,21 63:6,16,18 64:10 65:2,9 66:19 71:23 75:23,25 77:6			

[zarcadoolas - à]

271:25 zero 277:5 ziccardi 3:19 6:22 zoom 11:18 24:11 274:22
à
à 254:19

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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