

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN TRANSPARENCY,)	
)	
Plaintiff,)	
)	CV No. 21-2821
vs.)	Washington, D.C.
)	March 10, 2026
U.S. DEPARTMENT)	11:00 a.m.
OF HEALTH AND HUMAN SERVICES,)	
)	
Defendant.)	
)	

TRANSCRIPT OF EVIDENTIARY HEARING PROCEEDINGS
BEFORE THE HONORABLE AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	Kathryn Blankenberg Michael Bekesha Paul Orfanedes JUDICIAL WATCH, INC. 425 Third Street, SW Suite 800 Washington, D.C. 20024 (202) 646-5172 Email: mbekesha@judicialwatch.org
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For the Defendant:	Kaitlin Kerry Eckrote DOJ-USAO Civil Division 601 D Street NW Room 7.1525 Washington, D.C. 20530 (202) 252-2485 Email: kaitlin.eckrote@usdoj.gov
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APPEARANCES CONTINUED

Court Reporter:

William P. Zaremba
Registered Merit Reporter
Certified Realtime Reporter
Official Court Reporter
E. Barrett Prettyman CH
333 Constitution Avenue, NW
Washington, D.C. 20001
(202) 354-3249

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- - -

WITNESS INDEX

- - -

WITNESSES	DIRECT	CROSS	REDIRECT
-----------	--------	-------	----------

DEFENDANT'S:

TARA KIRBY	9	41	89
KAREN LAMPE	95	101	

- - -

WITNESS INDEX

- - -

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
-----------	--------	-------	----------	---------

PLAINTIFF'S:

AMBER TODOROFF	107	126		
----------------	-----	-----	--	--

- - -

INDEX OF EXHIBITS

- - -

DEFENDANT'S

ADMITTED

4

130

- - -

INDEX OF EXHIBITS

- - -

PLAINTIFF'S

ADMITTED

1, 4, 7

130

12, 13

130

1 P R O C E E D I N G S

2 COURTROOM DEPUTY: All rise. The Court is now in
3 session; the Honorable Amit P. Mehta now presiding.

4 THE COURT: Good morning, everyone. Please be
5 seated.

6 COURTROOM DEPUTY: Your Honor, we're now calling
7 for the record Civil Case 21-2821, American Transparency
8 versus U.S. Department of Health and Human Services.

9 Your Honor, present for the parties on behalf of
10 the plaintiff, Kathryn Blankenberg, Michael Bekesha,
11 and Paul Orfanedes.

12 On behalf of the government defendant,
13 Kaitlin Eckrote.

14 THE COURT: Good morning, everyone. It's good to
15 see everybody.

16 So we're here this morning for what is a unicorn
17 and that is an evidentiary hearing on a FOIA matter.

18 So I've received -- thank you, all, for sending in
19 the witness lists and the exhibit lists, and so that's a
20 good place to get started.

21 But is there anything we need to discuss before we
22 begin?

23 MS. ECKROTE: If I may approach?

24 THE COURT: Sure. Of course.

25 MS. ECKROTE: Kaitlin Eckrote on behalf of the

1 government.

2 We have two witnesses; definitely one, potentially
3 the second one.

4 I didn't know if you wanted the second witness to
5 be sequestered outside or if it's okay if she sits in at the
6 same time.

7 I just wanted to touch base with the Court about
8 that.

9 THE COURT: Does the plaintiff have a view?

10 MR. BEKESHA: Plaintiff has no issue with the
11 other witness sitting in.

12 Our witness was planning on sitting around.

13 THE COURT: I think in a case like this,
14 it probably is helpful to have that so they can respond to
15 one another, if that's appropriate.

16 MS. ECKROTE: Okay. Thank you.

17 THE COURT: All right.

18 Okay. So anything from the plaintiff before we
19 begin?

20 MR. BEKESHA: No, Your Honor.

21 THE COURT: All right.

22 Why don't we start then with the government.

23 Ms. Eckrote.

24 MS. ECKROTE: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MS. ECKROTE: So as you said, we are here today
2 for a FOIA matter.

3 We are discussing Exemption 4 and why the
4 government, HHS, and the National Institutes of Health
5 withheld the inventor amount, which is a dollar amount that
6 has appeared on the pages that were produced to plaintiff
7 59,000 times, and over almost 3,000 pages of records.

8 So each amount represents what NIH pays to an
9 inventor who was employed by NIH and invented an invention
10 and then that was patented by NIH and then NIH licenses that
11 patent to a company and then the company pays NIH a royalty
12 amount and a royalty rate and then based on that, NIH pays
13 the inventors. It is a bit of -- it's a complicated -- it's
14 not that complicated and we're going to explain it to you,
15 we're going to break it down for you.

16 But the government withheld that information under
17 Exemption 4.

18 There are three requirements to withhold
19 information under Exemption 4. The first is that it is
20 commercial or financial information.

21 I don't believe in the plaintiff's cross-motion or
22 motion that they are disputing that this is commercial or
23 financial; we're talking about literal dollar amounts.

24 And I think what we're arguing over here is the
25 second and the third portion, which is that it was obtained

1 from a person and that it was privileged or confidential
2 information.

3 The reason that NIH withheld this information is
4 because if it discloses that amount, it is possible that the
5 public, that an individual could take that amount and use it
6 to back-calculate the amount that the licensee pays to NIH.
7 And in 2002, this Court found that that information is
8 properly withheld under Exemption 4 in the *Public Citizen*
9 *Health Research Group versus NIH* case. And that is at
10 209 F.Supp.2d 37.

11 The payment amount that NIH pays to the inventor
12 and the royalty amount that the licensee pays to NIH are
13 inextricably intertwined. And the amount that NIH pays to
14 the inventor is triggered by a payment from the licensee to
15 NIH. And it is possible to extrapolate from that
16 information how much the royalty amounts are, and we have a
17 PowerPoint to walk through how that is possible.

18 If the agency were required to go through every
19 single line, it would be approximately 70,000 lines,
20 to determine if they could back-calculate for each
21 individual one. That would take a very large number of
22 hours, as we will discuss.

23 And there's really no way to be sure what --
24 based on what public information there is, whether something
25 actually could not be back-calculated. There are people far

1 smarter than me that, I'm sure, have tools and the abilities
2 to do this back-calculation.

3 So that is what we are here to explain.

4 The D.C. Circuit has held that under Exemption 4,
5 it is possible to withhold information if it will
6 disclose -- even if it is information that is being
7 reanalyzed and reformulated and will disclose confidential
8 information, and that's essentially what's happening here.

9 NIH negotiates these royalty terms with the
10 licensee, and then based on that and based on the amount
11 that is paid is what determines how much an inventor
12 receives.

13 And that amount is calculated pursuant to a
14 well-established formula that has been on NIH's website and
15 has not changed since, as far back as we could tell, 1996.
16 And it may be before that, but that's as far back as we
17 could definitively find.

18 So I think at this point, I would introduce our
19 first witness.

20 THE COURT: Great.

21 MS. ECKROTE: So, Tara, if you could come on up.

22 Your Honor, I have courtesy copies of exhibits
23 I can give you and the plaintiff if you would like if that
24 would be easier.

25 THE COURT: Sure. I'm happy to have them.

1 A Yes, very familiar.

2 As someone who negotiates those licenses, I'm very
3 familiar with the terms.

4 And as the director of the OTT, the Office of
5 Technology Transfer, then I'm also well-versed in our
6 royalty payment process.

7 THE COURT: Dr. Kirby, if I could just interrupt
8 you.

9 If you could keep your voice up and speak into the
10 microphone, that would be helpful. Thank you.

11 THE WITNESS: Sorry. It's a little bit --

12 THE COURT: That's all right. You can move the
13 chair up. I don't know why we have the microphone fixed,
14 but thank you.

15 THE WITNESS: All right. Thanks.

16 BY MS. ECKROTE:

17 Q Can you just discuss what your duties are --
18 can you explain what your duties are now as the Director of
19 the Office of Technology Transfer.

20 A Yes.

21 Well, I manage the operations of the Office of
22 Technology Transfer, which includes a number of activities
23 that support broadly the NIH Intramural Program. That
24 includes managing contracts for our patent portfolio. It
25 also includes maintaining our database that NIH uses for all

1 of its technology transfer activities.

2 We also have a group that is dedicated to the
3 monitoring and enforcement of executed licenses,
4 NIH licenses, and also manages the receipt of royalty
5 payments from licensees.

6 We also work very closely with the Office of
7 Financial Management at the NIH to determine the appropriate
8 distribution of royalties to inventors and others.

9 MS. ECKROTE: Thank you.

10 So I would like to mark as Exhibit 1.

11 It will be number 3 in the tabs that I gave to
12 you.

13 May I approach the witness?

14 THE COURT: Sure.

15 BY MS. ECKROTE:

16 Q Are you familiar with this document?

17 A Yes, I am.

18 Q And what is this?

19 A It is a declaration that I prepared for this case
20 and that was submitted sometime earlier.

21 Q Okay.

22 So I'm not asking you to reiterate everything
23 that's in here. This is a very detailed -- it has a lot of
24 information.

25 So we're just going to talk on a bit more of a

1 high level.

2 But if there's anything in here that we need to
3 refer to, I think we can do that.

4 Okay. So can you explain on a very high level the
5 license process that NIH uses?

6 A Yes.

7 So we are mandated to license technologies under
8 the law. It's 35 U.S.C. 207 through 209.

9 And the purpose of doing that is to promote the
10 utilization of technologies that have been developed by the
11 NIH, including inventions.

12 Q So these inventions are created by whom?

13 A They're created by intramural researchers at the
14 NIH.

15 So scientists are actually working at the NIH as
16 NIH employees.

17 Q Okay.

18 And then NIH patents -- does NIH then patent some
19 of these inventions?

20 A Yes.

21 If we determine that it would be beneficial to the
22 public to do so.

23 So, for example, if it's an incentive for a
24 company to develop a technology that would otherwise be very
25 risky to develop, which is often the case with things like

1 drugs and vaccines and diagnostics.

2 Q Okay.

3 So then does a company come to NIH to license
4 these patents or does NIH approach a company to license it?

5 A They can happen both ways.

6 If a company is already familiar with our
7 technologies, either through reading journal articles by
8 investigators or by looking at our website, they may come to
9 us.

10 We also reach out to companies that we think might
11 be a good fit for license to our technologies.

12 Q Okay.

13 And if NIH and the company agrees, then what
14 happens -- they agree to, you know, work together, what
15 happens then?

16 A Well, so after we review their application to
17 determine they're an appropriate applicant for our
18 technology, we will negotiate a license agreement generally
19 based on our model licenses that are publicly available on
20 our website, and that includes all aspects of the license,
21 including the financial terms and other terms of the license
22 that may impact their performance under the license and
23 their rights under that license.

24 Q Okay.

25 So is this something that you work on in your role

1 currently?

2 A Yes.

3 Not as often as I used to, but I am still involved
4 in license negotiations.

5 Q You mentioned the standard license agreement, the
6 model agreement that's on the website. Is it -- is each --
7 strike that. I apologize.

8 Do licenses deviate from that or is it always just
9 pretty standard based on that?

10 A Well, there can certainly be changes to the
11 license, although we try to stay largely in line with the
12 overall model, especially when it comes to things like
13 government rights and our ability to monitor the progress of
14 the license.

15 We do have a pretty broad variety of terms,
16 though, the financial terms, upfront royalties, earned
17 royalties, things like that based on a lot of different
18 factors, but -- including the type of technology that's
19 being licensed, the company's capabilities, how broad of a
20 license do they want, other things.

21 Q Okay.

22 So we have a license and we have this -- executed
23 this license between NIH and a company.

24 If it -- if then this company, say they create a
25 product and it comes on the market and then what does that

1 company, what is their responsibility to do?

2 A Well, once they have a product on the market,
3 they're obligated to pay earned royalties on sales, which is
4 usually a percentage of sales, according to the agreement,
5 which can -- it usually has a prescribed deadline for those
6 payments and other information that's pertinent.

7 Just to point out, they also make other payments
8 on the license well before that, including upfront payments,
9 benchmark royalties. So they're making payments all
10 throughout their license.

11 Q And once NIH receives royalty payments from a
12 licensee, what does NIH do with that money?

13 A Once we've been able to verify the payment,
14 we look at the license and determine which top technologies
15 are involved, who the -- which ICs, institutes, and centers
16 of the NIH are part of this, which technologies of theirs it
17 came from, the inventors that -- of those technologies,
18 and any other factors that might affect royalty
19 distribution; for example, if we have an agreement with a
20 partner who co-owns the technology with us, we may be
21 obligated to give them some portion of the royalties.

22 So once we've got all that information,
23 we calculate the distribution due to each inventor based on
24 a well-defined formula, initiated -- the base formula is in
25 the statute. NIH has a slightly modified format that

1 I think you've mentioned we've had for decades.

2 And we use a system that takes into account all
3 that information in a very well-defined order of operations
4 to calculate those distributions.

5 Q So is NIH able to pay the inventors without having
6 received funds from a licensee --

7 A No.

8 Q -- for this instance?

9 A No. We only pay on money actually received.

10 Q And does NIH exercise discretion on how much each
11 different individual inventor gets?

12 A Only in the sense that if there are multiple
13 inventors, they can determine whether the inventor shares
14 are going to be identical or not.

15 But the overall amount that is paid to the
16 inventors as a whole is always going to be the same;
17 it's based on that formula. And that's actually hard coded
18 into our system so we can't adjust that.

19 Q Can you just tell us what the formula is that NIH
20 uses.

21 And we're going to explain it in the PowerPoint
22 more further but just to preview it.

23 A Sure.

24 So as I explained, this is for all inventors taken
25 together; we don't do this on an inventor-by-inventor basis.

1 The formula is the first -- they receive the first
2 2,000 of any royalties that are received. After that, they
3 get 15 percent of the next 48,000. So a maximum of \$7,200.
4 And then after \$50,000, they get 25 percent of those
5 royalties.

6 Once that amount is calculated, then the
7 distribution to the individual inventors is calculated. And
8 if there's -- if someone hits the cap, there's a
9 recalculation to ensure that everything's distributed.

10 Q Yes. Thank you.

11 So I was going to ask, is there a maximum amount
12 that an inventor can receive in a fiscal year?

13 A Well, we usually -- yes, it's a fiscal year
14 calculation.

15 It's \$150,000. And that is in total across any
16 licenses that they may be receiving income for. So it's not
17 per license.

18 So if they've already received money as a
19 distribution for another license payment for another
20 company, that still counts towards their total.

21 Q So if an individual would be entitled to \$155,000,
22 would they -- they would get the cap of 150,000, correct?

23 A That's right.

24 Q And so there's a leftover, say, \$5,000.

25 What happens with that \$5,000?

1 A Uh-huh.

2 Q Okay.

3 This will be number 4 on your sheet. I printed it
4 as a PDF, but it's a PowerPoint.

5 So we're going to go through this PowerPoint.
6 This is -- an example of how this could be used to
7 back-calculate if we were to disclose the information.

8 And, Tara, did you make this PowerPoint?

9 A I did.

10 Q And can you tell us how you made it.

11 A Yes.

12 I reviewed the royalty reports that were produced
13 under FOIA and looked at particular licenses and payments
14 and found an example of a case where I was able to
15 back-calculate the royalty payment.

16 So this information is based on that same fact
17 pattern; but to make sure it's completely anonymous, I've
18 changed all of the details that are not relevant to the
19 calculation. So the license number, the company name,
20 you know, the inventors, but the calculation and the result
21 is the same.

22 Q So you really looked at the documents we produced
23 to plaintiff to determine if you could back-calculate it?

24 A Yes.

25 Yes. I have a number of examples where I've done

1 that explicitly.

2 This is only provided as an illustration.

3 Q Okay. Thank you.

4 Okay. So can you explain what we have here on the
5 first page.

6 A Sure.

7 So I'll start by what has already been produced
8 under FOIA, which is royalty reports. These are produced
9 every half year and have two parts. There's a detail
10 section where every payment from a licensee is broken down
11 and showing the amounts that would be going to that -- each
12 inventor that belongs to that technology and that license.

13 It also has some other information less relevant
14 to this. For example, patent reimbursement payments which
15 are not part of the -- are not received by inventors under
16 the formula.

17 There's also another section that provides
18 summaries of the payments that inventors receive. So over
19 the entire six-month period, there is a total amount that
20 they received.

21 So looking -- so I'm assuming that I'm using the
22 royalty reports as redacted and produced with one change;
23 un-redacting the inventor payment information on that
24 summary page.

25

1 BY MS. ECKROTE:

2 Q So the top column, the top picture is what we have
3 produced to the plaintiff, correct?

4 A Yes, generally.

5 Yes.

6 Q Right. It's a mock-up of what we have produced.
7 We have not produced these payment summaries to
8 plaintiff, correct?

9 A Right.

10 The inventor names are there.

11 And in most cases, the institute total amounts
12 that were distributed to inventors are there. But no
13 individual inventor summary amounts were produced.

14 Q Okay.

15 So we're imagining if we were to redact these
16 payment summaries, which is what plaintiff wants in this
17 matter?

18 A Uh-huh.

19 Q Okay.

20 THE COURT: So just to be clear, this top portion
21 that is to the right of Payment Details from Redacted
22 Royalty Report, that's an example of what's been produced
23 thus far --

24 THE WITNESS: Yes.

25 THE COURT: -- with the redactions?

1 THE WITNESS: Yes.

2 THE COURT: Okay.

3 And then what's below that is what is redacted but
4 you are --

5 THE WITNESS: Un-redacting.

6 THE COURT: -- unsealing it for our current
7 discussions and you've changed the numbers to protect the --

8 THE WITNESS: Yes, exactly.

9 THE COURT: Okay.

10 THE WITNESS: In this case in particular, just for
11 illustration, I put two different licenses on there. So
12 that's why you're seeing two sets of inventors and two
13 groups in the top part.

14 THE COURT: Okay. Got you.

15 BY MS. ECKROTE:

16 Q Okay.

17 So I think we can go to the next page, the next
18 slide.

19 A Right.

20 Q So can you explain how it would be possible to
21 back-calculate based on if we were to disclose to plaintiff
22 what we have withheld.

23 A Sure.

24 So we already have -- so we have lots of
25 information from the royalty report in that unredacted

1 portion.

2 So because it's not redacted in the produced
3 version of the documents, we know that NIH deposited royalty
4 funds from this company, which I'm calling Biotech,
5 on January 28th, 1985, for a particular license number.

6 We also know that inventors A through D are
7 associated with this license. And also the IC they're from
8 if that's of interest.

9 We also know from looking at those summaries that
10 each inventor received total royalties of \$48,900 for that
11 six-month reporting period.

12 We also know, from looking at the entire report,
13 that there are no other deposits from Biotech, the company,
14 for this reporting period, and the inventors are not
15 receiving distributions for any other license. So anything
16 that's on the summary page is due to that particular license
17 and that particular payment.

18 And this is -- I mean, it's not every instance,
19 but there's many, many examples of this in our royalty
20 reports.

21 Q And so then from this amount, we then can use the
22 formula that NIH has publicly available. And how would we
23 do that? Can you explain?

24 A Right.

25 So we start off by adding up the total received

1 for the four inventors, which is \$146,700.

2 Q Okay.

3 A So from the formula, we know that if they got more
4 than \$2,000 -- the payment from the licensee is more than
5 that. So they got more than \$2,000. So that part, from the
6 formula, is 2,000. We're doing it in three steps. So that
7 first step is \$2,000.

8 And then we know that they got more than the
9 maximum at the next step because they got more than 7,200
10 plus 2,000. So that part must -- the second part is
11 \$48,000, because if you go backwards, that gives you that
12 amount.

13 THE COURT: So I'm sorry to interrupt.

14 So just to make sure I understand, the 146,700
15 here, that is the total royalty amount that is being paid to
16 NIH based upon some negotiated percentage?

17 THE WITNESS: We're a step back from that.

18 The 146,700 is the amount that the inventors were
19 paid.

20 THE COURT: Okay.

21 THE WITNESS: There's more money that is not being
22 captured there because they don't get all the royalty
23 payments.

24 THE COURT: So the NIH amount is greater than
25 146,700?

1 THE WITNESS: Yes.

2 THE COURT: So whatever -- and can you just tell
3 me.

4 So say just hypothetically that the total payment
5 received by NIH was \$500,000 or whatever, well, how is this
6 146,700 calculated from the total that is received by NIH?

7 THE WITNESS: Using the formula that we mentioned.
8 So we look at the total payment and we say, okay.

9 THE COURT: I see, okay.

10 So these dollars that you're coming --

11 THE WITNESS: Yes, exactly.

12 THE COURT: I got you. Okay.

13 THE WITNESS: So, yeah, the inventors must have
14 gotten \$2,000 from that payment.

15 So we know the company paid at least 2,000.

16 We know that they got an additional \$7,200. So we
17 know we also got paid \$48,000.

18 And since the amount the inventors received is
19 more than that, we know that they were paid based on the
20 third part of the formula, which is 25 percent of any
21 licensee payment over \$50,000.

22 So that amount times four is \$550,000.

23 And then if you add them all up, you get a payment
24 of \$600,000. So that is what the licensee paid to the NIH.

25

1 BY MS. ECKROTE:

2 Q And just to be clear, that \$146,700, that's if you
3 add up from the page before --

4 A Yes.

5 Q -- right, the four inventors A through D who
6 worked on the Biotech?

7 A Right. Right.

8 And so in this case, they all happened to be the
9 same amount.

10 It would also work if they had been paid different
11 amounts for some reason, because they're all being paid
12 according to this formula.

13 Q Okay.

14 Okay.

15 So when you have here -- I apologize; math is not
16 my strong suit.

17 So just so I understand properly, 25 percent of
18 the license payment over \$50,000.

19 So you said the remaining payout is 173 once you
20 get to that step.

21 So you're saying -- so basically you're
22 multiplying 137,500 by four --

23 A Right.

24 Q -- because it would be -- to make it -- you're
25 back-calculating it obviously?

1 A Right.

2 So that tells me that last chunk of the payment.

3 Q Okay.

4 A So in this case, we know for sure that they paid
5 us \$600,000. Us meaning NIH. And that we deposited it on
6 January 28th, which is -- so just by itself, we know the
7 amounts that licensees are paying in many circumstances,
8 the actual total amount, but sometimes we can get more
9 information.

10 Q Okay.

11 So I think we're going to move to the next slide.

12 So this is what you said, right, that, based on
13 this, biotech paid NIH \$600,000 for this license.

14 So the next -- can you explain how we know that
15 this next -- what we know and how we know it for this next
16 slide.

17 A We know the payment was made, we know the amount,
18 but we don't necessarily know what term in the agreement
19 that applies to.

20 As I mentioned before, there are different terms
21 that licensees pay; upfront payments, benchmark payments
22 when they achieve something, you know, like they use one
23 clinical trial or something, and then also commonly, they
24 pay earned royalties on sales. That percentage. Go ahead.

25

1 BY MS. ECKROTE:

2 Q No. Go ahead.

3 A So in this case, from the report, we know when
4 they pay January 28th, using public information, which could
5 be an NIH license list that we have published on our website
6 or from other sources like company press releases if a
7 license was executed November 30th, 1984.

8 And if you look at our model agreements, license
9 issue payments, the payments for actually, you know,
10 executing the license are due 60 days after the license is
11 executed.

12 So this is, you know, just about a little bit
13 under 60 days. And it's a new license. So we can
14 reasonably assume this was a license issue payment.
15 So this is what the company paid for us to grant the license
16 to them.

17 Q And why does that matter?

18 A It matters because it is an indication of the
19 value of the technology, also what the company is able to
20 and willing to pay to obtain this license. If you have
21 other information, you may be able to find even, you know,
22 more things.

23 In this case, the example is that this is a
24 technology with high commercial potential, like a cancer
25 therapeutic. So this is a case where this information would

1 be extremely valuable and they would probably be not just
2 looking at this but all the other payments made by this
3 company to see what else they can determine.

4 Q And who would be looking for this information?

5 A Often, competitors.

6 Others who specialize in business intelligence.
7 They have access to a lot of information, public
8 information. Also, things that are made only available
9 through subscriptions or because they've done some deep
10 research. So this is something that would be very easy for
11 them to determine.

12 Q Okay.

13 I think we can go to the next slide.

14 And now we're going to go a little bit deeper in
15 the math.

16 So the last -- we were just -- the last few
17 slides, we were discussing the royalty amount that was paid
18 by a licensee to NIH; is that correct?

19 A Uh-huh.

20 Q Okay.

21 So what does this next slide explain?

22 A This is an example, based, again, on a real entry,
23 series of entries I found in these royalty reports, of how
24 you can get even more information; for example, earned
25 royalty rate on sales, which is a very, very popular area

1 for a practitioner's license -- negotiators, as well as
2 competitors.

3 Q Okay.

4 So for this one, we have what? What information
5 do we have?

6 A For this, even though it's based on a real
7 example, to spare everyone the time, we're just going to
8 assume that it's the same company paying the same amount on
9 the same date but with different factors to consider.

10 Q Okay.

11 What are the other factors that we have and how do
12 we know that?

13 A So in this case, the license wasn't recently
14 executed, it was licensed several years prior, in this case,
15 March 15th, 1980. And, again, you can pull this information
16 from our license list and other sources.

17 We also know that this company already has
18 products on the market. So they're reporting sales, they
19 have the products listed on their catalog, they have
20 financial reports. So they are going to be obligated to pay
21 us a percentage of sales. So that says royalty, or
22 royalties on sales.

23 Q So a company would only pay NIH royalties on sales
24 when they're selling something; is that correct?

25 A Right.

1 Q Okay.

2 And sorry to interrupt. You can continue.

3 A Sure.

4 So if we look at the model license, royalty
5 payments for selling products are usually paid twice a year,
6 due by August and February.

7 Q Okay.

8 A So we know that since this is an older license,
9 this is not an upfront payment.

10 Since they're selling a product, they're probably
11 not paying us a benchmark based on product development,
12 which is another common payment.

13 So there's a good chance, based on the timing and
14 where the company is with development of this product, that
15 this is a royalty payment for product sales.

16 Q And why does knowing that matter?

17 A Because that gives competitors an idea of how much
18 in sales they're making.

19 And then as I point out in a minute, it gives you
20 some even deeper information.

21 Q On the next slide, we're going to do a little bit
22 more math, right?

23 A Yeah.

24 Q So what are we going to discuss?

25 A So in this case, we can even calculate the actual

1 percentage that Biotech is obligated to pay NIH for product
2 sales under the license. So the actual license term.

3 And we know this because this particular license
4 covers all products sold by this company. And, again, we
5 can look at -- find this out from various public
6 information, including our information on our website and
7 other places.

8 We also know that because the payment was
9 deposited in January 1985, it was probably made based on
10 sales made in the second half of calendar 1984.

11 Q Okay.

12 A And that's based on our model license.

13 So if we look at their public financial reports or
14 other places, we can see that their revenue that they report
15 publicly was 20 million for that time period.

16 Q Okay.

17 That is public information that is required to be
18 reported?

19 A Yes, if they're a public company.

20 Q Okay.

21 And, again, this is based on a true example?

22 A Uh-huh.

23 Q Okay.

24 So using that information, what could you
25 determine?

1 A Right.

2 So if we want to understand what the earned
3 rate -- earned royalty rate is, the percentage, then they're
4 paying us X percent, which is \$600,000 of \$20 million.

5 So if we divide 600,000 by 20 million, we get
6 3 percent, which, in this case, was exactly what was in the
7 license.

8 Q Okay.

9 And why is that important? What does that tell --
10 what could that tell a competitor?

11 A It tells them, well, one, how much we are willing
12 to license for, but also how much they are obligated to pay
13 us.

14 Also, if they want to compete with us. Maybe if
15 this is a nonexclusive license, they could try to get a
16 lower earned royalty rate so they get a better deal; or they
17 could outcompete them for other products because they know
18 they're obligated to pay this amount. So they could make
19 sure they're paying less.

20 MS. ECKROTE: Okay.

21 So I think that is the math part of this.

22 Yes, please, Your Honor.

23 THE COURT: So this last example, what would be
24 the -- would this example not be possible, this kind of
25 calculation, if it was a privately held company that doesn't

1 do public reporting of its revenues?

2 THE WITNESS: It depends.

3 First of all, I'm not an expert at business
4 intelligence, but it is certainly true that companies will
5 sometimes advertise or like maybe trying to do fundraising,
6 they'll say, well, we sold X million dollars for this
7 product.

8 There's also other ways to get at this information
9 that is not necessarily like broadly public information.
10 But if you're working for a company and you're doing this
11 kind of business intelligence, you can obtain it.

12 THE COURT: Okay.

13 BY MS. ECKROTE:

14 Q Okay.

15 I think we're good on the PowerPoint.

16 So we have established that it is possible to back
17 calculate.

18 Now, we discussed a lot about why that matters,
19 why that's important. I just want to pivot a little bit to
20 the confidentiality piece of this.

21 Now, to be clear, in *Public Citizen*, this Court
22 already found that these royalty rates and these royalty
23 amounts are withheld under Exemption 4 because this is
24 closely held.

25 But I would like to discuss with you, Tara,

1 a little bit about the confidentiality piece since this is
2 something that you have worked on and do work on these
3 licenses with licensees.

4 So is NIH itself worried about releasing this
5 information to protect itself?

6 A No.

7 Q Okay.

8 Are licensees required to keep this information
9 confidential?

10 A Not at all.

11 If they want to publish the license, they can do
12 so.

13 Q Okay.

14 And may they?

15 A Yes. They don't need to ask us for permission.

16 Q Has that happened before?

17 A Yes, in some cases, in some filings of theirs.

18 They've also disclosed parts of a license.

19 So, for example, there was a settlement that was
20 completed not too long ago, and because the company wanted
21 to announce that the settlement had happened, they said the
22 amount of the settlement so that their investors and others
23 would be -- feel comfortable, they knew what the risk was
24 and what was going to be involved with that.

25 Q Okay.

1 So in your experience of negotiating these
2 licenses, is confidentiality a concern of the companies that
3 are licensing the products?

4 A It most certainly is.

5 We do include that in our models because we know
6 that companies will not agree to license anything from us if
7 we don't include that. Because that is their business
8 confidential information. As we explained, it can be very
9 valuable to competitors and others who are interested in
10 seeing and learning more about their business that isn't
11 public.

12 And, I mean, we often will get pushback that we
13 should be more restrictive, you know, more guarantees of
14 what we are not going to provide. Even with these
15 provisions, sometimes they're reluctant to provide us with
16 some information, especially if it involves them working
17 with another company, because that exposes them to more risk
18 if they're sharing that information with us.

19 Q Okay.

20 So how often are confidentiality provisions in
21 these agreements?

22 A They're always in these agreements.

23 Q Have you ever -- are you aware of any that don't
24 have the confidentiality clause or are part of it?

25 A I am not aware of any -- certainly not any NIH

1 agreements, and I think it would be very unusual to not have
2 something like that.

3 MS. ECKROTE: Okay.

4 THE COURT: I'm sorry, I may have missed this, but
5 the confidentiality clauses that you're referring to,
6 to what does that extend, to what information does the
7 confidentiality clause cover?

8 THE WITNESS: Well, so I'm not going to provide a
9 legal analysis, but my understanding is it covers all of
10 their confidential information.

11 So that includes what they've provided in their
12 license application, what ends up in the agreement in terms
13 of their commercial development plan and timelines and other
14 information they provide to support the granting of the
15 license and the negotiated terms, which include certainly
16 the financial terms but also other terms that may be
17 important to keep confidential.

18 THE COURT: And the financial terms would be
19 essentially the royalty rate?

20 THE WITNESS: The royalty rate, but also the
21 amounts of the payments, right. In fact, they've made those
22 payments. So like I said, you know, the amount that they
23 pay upfront.

24 If they're paying benchmark royalties and they're
25 paying benchmark royalties for these things, because we can

1 look and see they just finished something, there's a lot of
2 information.

3 They can provide information about their strategy,
4 what they value, and what the total, like, financial package
5 might look like in the license that we've negotiated.

6 BY MS. ECKROTE:

7 Q So based on your conversations and your
8 negotiations, have you -- are you aware of, like, why
9 companies are so concerned about confidentiality?

10 A Because they are in the competitive business and
11 they need to know that certain information is not going to
12 be disclosed if it is important for them to keep it
13 confidential.

14 And what we're doing is only -- it's in line with
15 what would normally be expected for these kinds of licenses;
16 it's not unique to the NIH. There's always going to be
17 confidentiality provisions.

18 And, in fact, I mean, ours is actually a little
19 bit more permissive than some because we have FOIA. And so
20 you know, there are -- we can't -- we have to disclose the
21 existence of a license, for example, but we don't disclose
22 their confidential information.

23 Q Okay.

24 And would releasing these royalty amounts, would
25 this harm NIH?

1 A Yes.

2 Q In what way?

3 A Well, first of all, I think it would be reasonable
4 to think that we might be considered to be breaching our
5 contract since this is in every agreement that we have.

6 But more than that, I think if it became known
7 that NIH is not necessarily going to keep companies'
8 information confidential, these companies might be unwilling
9 and are likely to be unwilling to work with us anymore.

10 And that would be pretty terrible because we rely
11 on these companies to develop technologies that we can't
12 develop ourselves.

13 So there are around 53 FDA-approved drugs and
14 vaccines and even more other products that come out of NIH
15 technologies, and, you know, we wouldn't have that anymore
16 if we couldn't ensure confidentiality.

17 Q Do you know if confidentiality of this information
18 expires or runs out if there's a certain point where
19 companies just don't care about it anymore, about this
20 information being public?

21 A No.

22 I mean, if there were formerly an expiration date
23 for that, we would put that in our license, and that is not
24 a thing we would typically do.

25 I mean, I think in the end, we rely on the

1 companies to tell us, for them to determine what is
2 important to them. We can't make decisions for them about
3 what's important and what's not.

4 But in general, I think even having historical
5 information could be potentially damning -- or damaging for
6 a company because it discloses trends, historical agreements
7 that they've done. And it might give insights into the
8 future, it might give them other information that if, say,
9 they were going to court for some reason, they might be able
10 to use that information too.

11 There's just a lot of reasons why you wouldn't
12 want to disclose this information, and you don't necessarily
13 know if there's a safe time to do it.

14 MS. ECKROTE: Thank you.

15 I think that is all I have, Your Honor. I'm happy
16 to turn it over to the plaintiff.

17 THE COURT: Okay. All right.

18 Cross-examination?

19 MR. BEKESHA: Yes, Your Honor.

20 If we can take a two-minute break so I can make
21 sure the technology is working.

22 THE COURT: Sure.

23 (Pause)

24

25

1 - - -

2 CROSS-EXAMINATION

3 BY MR. BEKESHA:

4 Q Good morning, Dr. Kirby.

5 A Good morning.

6 Q My name is Michael Bekesha. I'm an attorney
7 representing American Transparency in this case.

8 Let's begin with the PowerPoint exhibit that you
9 were discussing previously.

10 Looking at the first page of the PowerPoint, can
11 you tell me what the difference is between the investor
12 payment summaries and -- or, sorry, the inventor payment
13 summaries and the Inventor Awards?

14 A If you mean the Inventor Awards in this detail
15 section?

16 Q Yes.

17 A The inventor awards are the individual calculated
18 distributions for each payment made by a licensee.

19 So in this case under this one license, they made
20 a payment, and so it was split among four inventors. So
21 that inventor award is the calculated amount based on the
22 formula that we discussed already.

23 Q And the summaries are a total that the inventor --
24 so, for example, Inventor A received that amount of money
25 total for the year from all licenses?

1 A For six months.

2 Q For six months.

3 A But, yes, for all licenses -- any payments that
4 they received for this time period.

5 Q Okay.

6 Have you reviewed the summary judgment brief in
7 this case?

8 A I have, but I have not looked at it recently.
9 I would need to see a copy if you have questions based on
10 that.

11 Q Have you reviewed the Judge's order in this case?

12 A Again, I have, but I have -- I can't tell you
13 anything specific right now unless I have a copy of it.

14 Q Are you aware that plaintiff in this case is
15 challenging the redaction of the Inventor Awards and not the
16 summaries that you've been discussing here this morning?

17 A Yes.

18 My example was just showing with the least --
19 like the most restrictive release of information, what can
20 be calculated.

21 If Inventor Awards were disclosing, there could be
22 much, much more determined from these reports.

23 Q Could you explain that.

24 I mean, we're interested in the inventor awards.

25 So what is the difference between the two?

1 What would be different based on your testimony
2 this morning and if we were talking about the actual
3 information at issue in this case?

4 A Well, certainly in some cases, if it's not one of
5 these cases where there's a single license payment and there
6 are multiple licenses or multiple payments, you would be
7 able to see inventor payments for each one of those
8 situations.

9 So for every single license, for every single
10 payment, you could figure out exactly what that was much
11 more easily than you could if you only had the summary
12 information.

13 Q Okay.

14 But the calculation --

15 THE COURT: I'm sorry to interrupt you.

16 In the summary of -- what you called the inventor
17 summaries, those are, what, available every six months,
18 you said?

19 THE WITNESS: Right.

20 They're calculated -- this whole report is
21 calculated every six months. And as part of the report,
22 there's a summary of the total amount they're receiving for
23 that time period.

24 THE COURT: And is the summary a single amount or
25 is it broken down by license?

1 THE WITNESS: It's a single amount.

2 THE COURT: Okay.

3 Per inventor?

4 THE WITNESS: Yes.

5 BY MR. BEKESHA:

6 Q So the inventor awards would be calculated in the
7 same way?

8 The calculation, you would back-calculate using
9 the same formula?

10 A Yes.

11 All of them are used using the same formula.

12 Q And because in your example Biotech has the only
13 license -- each inventor here only gets money from those
14 licenses, the summary is almost equivalent to the Inventor
15 Awards in this one instance?

16 A This is an actual example, but, yeah, it's a
17 simplified example to demonstrate the potential to
18 back-calculate.

19 Q Okay.

20 A But, again, the more information that is
21 disclosed, the more you can determine.

22 And you may also have information from elsewhere,
23 especially if you're in business intelligence, that can also
24 help with your analysis.

25 Q Do you know how common it is for inventors to

1 receive royalties from just one license?

2 A It's relatively common.

3 Q If I said roughly 42 percent of inventors received
4 royalties from one license between 2010 and 2020,
5 would you...

6 A It would be hard for me to say.

7 I know it's a significant percentage, but
8 I haven't tried to calculate it.

9 And I mean, for the purpose of what gets disclosed
10 about our licenses, I don't think that's pertinent.

11 Q Okay.

12 But it would be, if over 50 percent of inventors
13 had received royalties for more than one license, that would
14 be relevant to the ability to back-calculate related to any
15 particular license or to any particular company?

16 A Well, again, it depends.

17 If there are two licenses, and one is a
18 blockbuster cancer drug and another one is a research
19 material, you're probably going to have a pretty good idea
20 of that blockbuster cancer drug payment even if it's not
21 down to the penny.

22 And also, this is, again, assuming that we only
23 see the summary amounts. If we provide more detail and
24 provide either individual Inventor Awards or awards by
25 licensee, then it's going to be much easier to determine all

1 of that information.

2 Q But not if -- but what if an inventor had -- was
3 receiving royalties from four different licenses from three
4 different companies?

5 A It's certainly possible that you might not be able
6 to calculate it depending on the circumstances and how much
7 is being disclosed.

8 But I don't think the question is whether there
9 are any that can't be back-calculated. It's the fact that
10 there are ones that can be back-calculated.

11 Q How many would you say can be back-calculated?

12 A I can't tell you because I don't have the
13 requisite expertise to give you a firm number.

14 The fact that I can skim through a royalty report
15 and find several examples to work up says to me that there's
16 probably quite a few. And if it's an area that a competitor
17 is very interested in, you know, it's going to be easy for
18 them to find the information they're interested in.

19 Q Looking at the PowerPoint, the first page,
20 Inventor A, Inventor B, C, and D all receive \$48,900.

21 A Uh-huh.

22 Q For our purposes, I mean, I understand these are
23 summaries, but this -- you know, if it was the same number
24 for Inventor Awards, you would go through the same process
25 on the calculations; is that correct?

1 A Right.

2 The summaries are adding up the Inventor Awards in
3 the report.

4 It's not doing a separate calculation.

5 Q But if the summaries, if it came from two
6 different licenses, then the calculations would be
7 different, because if you calculate -- if it was two
8 licenses from two different companies, you couldn't do the
9 math you were doing before on it to back-calculate for a
10 particular license or a particular company;
11 isn't that correct?

12 A I don't think that's necessarily correct.

13 I just cited an instance where if you know that a
14 certain license is -- you know, is selling an expensive
15 product and another one is for research materials, which is
16 not an uncommon scenario, then you can pretty well say that
17 almost all of that money is coming from the big license, the
18 one that's making a lot of money.

19 And, again, it may not be to the penny, but you're
20 going to get pretty close to what the actual amounts paid
21 were.

22 And I think it's for a company to decide if that's
23 important or not, but I think they would.

24 Q So question on that.

25 Let's take example Inventor A. Inventor A has

1 received money from two licenses. Let's use the two
2 examples of the companies that you cited to there.

3 How much money out of the 48,900 was received from
4 the company with a blockbuster, and how much money was
5 received from the other one?

6 A So you're asking me to look at this hypothetical
7 example and tell you something, but I already explained that
8 other factors are important. I have nothing else -- this is
9 based on just a hypothetical. I would need to see an actual
10 fact pattern to tell you whether I personally could
11 back-calculate it or not. And, again, it may be the case
12 that others can.

13 So, for example, if there are two licenses but one
14 is a company that, you know, is interested in finding out
15 information about that other company, they know what they've
16 paid, they know what part of the inventor's summary payment
17 is. So they just subtract that and figure out how much
18 their competitor paid.

19 Q Does NIH inform the companies how much they're
20 paying each individual inventor?

21 A No.

22 THE COURT: I'm sorry, what was the question?

23 MR. BEKESHA: If NIH provided to the companies how
24 much they were paying each individual inventor.

25 THE COURT: NIH does not provide that information

1 to the companies?

2 THE WITNESS: No. But if it were made public,
3 of course they would have access to it.

4 BY MR. BEKESHA:

5 Q Moving on for the time being to the next page.

6 Or, actually, we can look down at the bottom,
7 the total licensee payment amount is 600,000.

8 When creating this hypothetical, did you or
9 someone else go and look to see if a company paid \$600,000
10 on January 28th, 1985?

11 A No, because I changed the numbers to something
12 that is still relevant and not going to change the outcome.

13 The number was not exactly \$600,000 so -- but I
14 changed it so that it would not be -- I could make sure I'm
15 protecting that information.

16 Q Do you know what that number was?

17 A I would have to go back and look at my files.
18 I don't have that information available.

19 And I couldn't tell you even if I did because,
20 again, I don't want to risk disclosing confidential
21 information.

22 Q Right, I understand that.

23 But I'd like to go through the math, because the
24 math doesn't -- 600,000 isn't the number that you get to if
25 you plug the numbers you give into the formula, and so I'm

1 trying to get a sense of if -- where there's a mistake with
2 the number or with the formula.

3 For example, if you add up 48 -- if you multiply
4 48,900 times four, the result is 195,600.

5 A Then I must have made a technical mistake.
6 The outcome is not any different.

7 Q Well, the outcome, if you run it through, would be
8 745,600.

9 And so a question I have is, if you're looking at
10 the amount paid by the licensee, is it 600,000 or is it
11 745,600?

12 A It doesn't matter because I made up these numbers
13 and I added them incorrectly when I looked at the inventor
14 royalties.

15 Q So how is this Court to know whether or not you
16 can back-calculate anything if you can't tell us whether or
17 not your back-calculations ended in a correct, accurate
18 amount?

19 A I can say that because I've repeated the actual
20 calculation multiple times and in different situations.

21 This is a technical error, something that I have
22 not copied over from a wrong line in a document perhaps,
23 because I did go through all these calculations, but I must
24 have picked the wrong number on that particular one.

25 I don't think that changes this at all,

1 and pointing the problem out, I think, is not necessarily --
2 especially since I've already said I'm not an experienced
3 person, I think people who are competitors in business
4 intelligence are going to have sophisticated algorithms to
5 determine all this and verify the information. Because
6 I just made a basic error, I think, does not invalidate this
7 whole premise.

8 Q So your testimony today is that the total licensee
9 payment received on January 28th, 1985, from this made-up
10 hypo is actually 745,000 and not 600, and not 600,000?

11 A It can be either way.

12 I'm not sure which number I misquoted.

13 But I could do a calculation for you right here if
14 you like, if that would make you feel more comfortable that
15 I can back-calculate.

16 Q The question isn't whether or not we can reach a
17 number if we plug a number into a calculator. The question
18 is whether or not that number is confidential commercial
19 information received from a company.

20 And the question I have is the number received --
21 the amount received from Biotech on January 20th, 1985, is
22 that number 600,000, 745,600, or another number?

23 Do you know the answer to that?

24 A This is a hypothetical. It can be any number that
25 we choose. It's based on a real example with real numbers

1 that can be checked and shown that that formula is correct
2 and provides the right result.

3 Q So if it's a real number that can be checked,
4 what is that real number?

5 A I can't tell you because that discloses
6 confidential information.

7 I'd be happy, under a situation where this is
8 protected information, to go through and show you the exact
9 example, but I can't do that here, which is why I have the
10 hypothetical.

11 THE COURT: And I'm sorry --

12 THE WITNESS: And I apologize for the error that I
13 made, Your Honor.

14 THE COURT: That's okay.

15 I just -- can you backtrack a little bit and just
16 help me understand what the mathematical error calculation
17 is that you believe occurred here.

18 THE WITNESS: So if you multiply 48,900 by four,
19 it's greater than 146,700. So obviously I made an error
20 there.

21 So I copied and pasted the total payment based on
22 that calculation. But I did not look at the original
23 calculation; I did this hypothetical. So I made a mistake.

24 I should have either changed the total payout
25 amount to make it correct or reduced the total royalties for

1 each individual inventor so it agreed with the 600,000.

2 Again, these are all arbitrary numbers that I've
3 selected.

4 BY MR. BEKESHA:

5 Q Looking at -- up above in the bullet points,
6 discussing the date of January 20th, 1985, is that --
7 was that a hypothetical -- I'm just trying to get a sense,
8 is that a hypothetical date as well?

9 A Yes. But the month and day were within the range
10 that the originals were in.

11 Q Okay.

12 Is it common that there's only one deposit per
13 company in a reporting period?

14 A It is relatively common, but it depends, again, on
15 the circumstances. If there is an upfront payment, then it
16 usually is by itself.

17 It's also possible that they can send multiple
18 payments and we record them on different days.

19 Q And can a company have more than one license
20 agreement with NIH?

21 A Yes, they can.

22 Q And how common is that?

23 A It is not incredibly common, but it does happen,
24 especially with licenses for things like reagents,
25 diagnostic tests, things that can be adopted very easily or

1 developed relatively easy compared to something that is very
2 high risk.

3 Q If I said about 25 percent of the companies
4 between 2010 and 2020 had more than one license agreement
5 with NIH, would that number sound accurate?

6 A It sounds like it would be within the range.

7 Q And I think we already addressed this, but it says
8 that inventors A through D do not receive distributions from
9 any other license.

10 And that is common or rare?

11 A It's common.

12 Q I think we may have gone over that before,
13 42 percent during that time period, inventors may have
14 received royalties from just one license; would that sound
15 accurate?

16 A I mean, I think that's possible, because although
17 we license a lot of technologies, the inventorship is not
18 always the same.

19 So, you know, in order to actually give you a
20 definitive answer, I would have to look. But there are
21 certainly many examples of where there's a single license
22 for that company at some point, may be always, may be
23 earlier in their career or later in their career. It really
24 depends; it varies over time. But you can tell that from
25 looking at the reports who's paying for that, who's paying

1 those royalties and how often.

2 Q And turning to the next page, you say that it's
3 easy to determine, to reasonably assume that the payment was
4 a license issue payment because it was received within
5 30 days from when the license was executed?

6 A I think that's closer to 60 days but...

7 Q I'm sorry, 60 days.

8 Could it be any other payment?

9 A Theoretically, this is the most common situation.
10 The other payment that typically we would receive
11 is like a pro-rated MAR, which is usually much smaller than
12 the amount of the upfront payment. So, again, that might
13 introduce a small amount of error, but you'd see the
14 additional payment.

15 Q And are you referring to the first minimum annual
16 royalty?

17 A Yes.

18 Q And according to the model agreement, that's also
19 due within the first 60 days of the effective date?

20 A I would have to look at the model agreements
21 again. I think it's somewhere in that realm.

22 So it is typically 60 days. I didn't want to
23 commit without seeing that.

24 But, yes.

25 But, again, MARs are typically -- an experienced

1 practitioner would know that MARs typically are much smaller
2 than an upfront would be.

3 THE COURT: I'm sorry, what did you call it, MARs?

4 THE WITNESS: Sorry.

5 Minimum annual royalty.

6 It's a payment that the company makes essentially
7 to make sure it's not just sitting on the license, that it's
8 continuing to develop it, because if they're not doing
9 anything, they don't want to keep paying us money.

10 It's mostly intended for the case where once
11 they're making sales, you know you're going to get at least
12 that amount.

13 But we also have them earlier in the agreement as
14 well.

15 BY MR. BEKESHA:

16 Q So it is possible that there could -- that the
17 January 20th payment could be for one of two different types
18 of payments?

19 A It's certainly possible.

20 But I think it's unlikely.

21 But also you might look at the rest of the other
22 royalty reports and there might have been an additional
23 payment that fell outside of that range.

24 And in that case if it's still the single license,
25 it's probably going to be a lot smaller number and then you

1 can compare and say, well, this is probably the MAR and then
2 the other one is probably the upfront payment.

3 Q And then do companies ever -- are they ever late
4 on their payment?

5 A Sometimes, but we encourage them not to be.

6 Q But it is possible that this payment could be a
7 late payment for annual sales royalties from the previous
8 year?

9 A Yes.

10 And I actually did not present it, but I worked up
11 a separate example where that happened and you could
12 determine that it was the payment for the previous period
13 because the amounts came out exactly.

14 Q So could you explain that.

15 A I'm saying that I have an example that I did not
16 present here where the licensee made two payments at the
17 same time.

18 But they were separate. So separate payments.
19 And we -- I said, this looks like a case where they've paid
20 two earned royalties, because these other things are not
21 applicable.

22 And if at that point if you're paying the MAR, it
23 is just part of that too because it's part and parcel of
24 that whole earned royalty on sales, which I won't explain
25 right now.

1 So I said this looks like it may be two payments.
2 So I looked at the time period that I thought the payment
3 was for. I looked at the previous time period and did the
4 calculation based on the total and both of those and got the
5 correct earned royalty rate.

6 And that's just an example of me doing something
7 not having any background. I don't think the dispute --
8 or the question here is whether there are cases where it
9 can't be back-calculated by me or even back-calculated at
10 all. It's whether any of these can be back-calculated,
11 because even one is disclosing a company's confidential
12 information.

13 Q But you're not here to testify about how many
14 times those 70,000 lines, how many of those can lead to
15 back-calculation versus not?

16 A No.

17 That's -- because I don't have enough expertise to
18 give you an upper level number.

19 And also as I explained, depending on the
20 information whether individual payment amounts were
21 disclosed or the aggregate summaries at the beginning of
22 each document, that also determines how easy it is to
23 back-calculate these.

24 It's not whether I can back-calculate. It's not
25 whether the plaintiff can back-calculate it. It's whether

1 an expert who's motivated to do so can back-calculate.

2 Q But the question is whether or not it can be
3 back-calculated to a specific number that is received from a
4 company.

5 And the question I have then is, aren't these just
6 all sorts of variables that you need to know what the end
7 result is to know if you're accurate?

8 A No.

9 I -- you know, I can calculate the -- what
10 I think -- you know, what an amount is, and I can look at
11 public information and make a calculation and then see the
12 total amount. I did that in some cases too.

13 Q Let's look at -- I'm talking about late payments.

14 Isn't it true that under the model agreement,
15 late payments incur a 1 percent service charge or late fee?

16 A We have the option to charge that. It's an
17 optional 1 percent. It's not always 1 percent.

18 Q And how often does NIH charge the 1 percent late
19 fee?

20 A I can't tell you a specific number.

21 I think it's relatively rare, because we
22 understand that sometimes payments are late for a lot of
23 different reasons. And so if they make prompt payment once
24 they become aware, then it's not -- there's no benefit in
25 charging that 1 percent.

1 Q And if NIH charges that one percent, is that
2 1 percent tacked on to the royalty amounts received by the
3 individual inventor?

4 A That would be counted as part of the overall
5 royalties, and it would be -- it would be calculated
6 separately because it is payment for a different term.

7 Q And would that make it more difficult to
8 back-calculate, to the extent you could, a royalty rate,
9 based on net sales if a 1 percent is added on, or more
10 directly, the public wouldn't know if the 1 percent was
11 added on in that instance or not?

12 A A 1 percent increase in the amount would make a
13 tiny difference in the calculated earned royalty rate.

14 If it's 2 percent or 2.1 percent, I think the
15 company would still be very concerned about that information
16 being public, and that would be more than if it were a
17 1 percent interest rate that we charge them.

18 Q Talking briefly about the confidentiality clause
19 and this being confidential information, did NIH reach out
20 to the licensees and ask them or notify them about this FOIA
21 lawsuit?

22 A That's not OTT's responsibility. You'll need to
23 ask the next witness about that, about what actually
24 occurred.

25 Q Do you know, based on conversations with other

1 individuals, not your lawyer, but other individuals in NIH
2 if that occurred in this case?

3 A I'm not aware that it occurred.

4 Q Are you familiar with Executive Order 12600?

5 A If you could refresh my memory, I would appreciate
6 that.

7 Q In that executive order in Section 6, it requires
8 an agency to notify a submitter if material contains
9 confidential commercial information if it's under
10 litigation, under FOIA litigation.

11 Are you familiar with that?

12 A I'm not familiar with that executive order. I am
13 not usually involved in litigation.

14 Q Are individual inventors barred from sharing with
15 the public their royalty amounts that they receive?

16 A They aren't, although I'll point out they only
17 know the summary amounts and not their payouts for each
18 license payment.

19 Q But, for example, on the PowerPoint, each of
20 Inventor A, B, C, and D would know how much they received
21 for an individual license, because they only had one license
22 during that summary period?

23 A They might.

24 I mean, I think they would also need to know for
25 sure how the royalties were distributed to them. So they

1 would have to discuss it, I suppose.

2 Q What do you mean they would have to know how the
3 royalties are distributed?

4 A Well, if they knew they got \$48,900, they don't
5 necessarily know how much the other inventors received.

6 Q I thought you testified that they get them in
7 equal share?

8 A No.

9 I said that the formula that -- the calculation,
10 which applies to all inventors together, is the same.

11 There are some cases, not a lot, where the
12 institute or center may determine to not use a standard
13 calculation, which means one inventor might receive more or
14 less than the others.

15 But the total amount that is distributed to all
16 those inventors is the same regardless of that part.

17 Q So if inventor A had one license -- receiving
18 royalties from one license, Inventor B was receiving
19 royalties from three licenses, Inventor C was receiving
20 royalties from two licenses, and Inventor D was receiving
21 royalties from ten licenses, and they had varying amounts of
22 money, how would somebody be able to do the back-calculation
23 if they didn't know from your hypothetical here of these
24 summaries where the money was coming from?

25 A I don't know. I think that, again, will depend on

1 how much information is disclosed. This example is only the
2 summaries.

3 What plaintiff has asked for is the inventor
4 awards, which would be much more granular and provide
5 exactly that information that you're talking about.

6 Q If an inventor reaches the \$150,000 cap -- I guess
7 the first question is; I was confused.

8 Today you said fiscal year was the 150- cap.
9 Your declaration said annual. Is it --

10 A It's -- well, it's correct depending on whether
11 you're talking about when the -- when the royalties were
12 received and the distribution was calculated versus when the
13 distributions are actually made.

14 So the distributions are calculated using that
15 \$150,000 cap during the fiscal year; and because of the
16 timing of the payouts, they all occur in the same calendar
17 year.

18 So it's going to be \$150,000 for that calendar
19 year based on the payments we received during the fiscal
20 year.

21 Q And so if there's several inventors and one or two
22 of them have reached the 150,000 cap, that also would make
23 it more difficult to back-calculate any amount, because you
24 wouldn't know the full amount received per license?

25 A Certainly.

1 But there was a relatively small number of
2 inventors who reach maximum every year and even fewer who
3 reached the maximum in the first half of the year.

4 THE COURT: I'm sorry, say that last part again.

5 THE WITNESS: So there's a lot of inventors who
6 receive royalties, but a relatively small number have
7 licenses that make enough money for NIH that they hit the
8 cap, the cap of \$150,000 that they can receive.

9 And I was pointing out too that if you're looking
10 at just half years, if you're looking at the first half of
11 the year, there's going to be even fewer, because maybe they
12 get \$100,000 and don't hit the cap until the second half.
13 So in that case, you could look at the first half and still
14 do the calculation.

15 BY MR. BEKESHA:

16 Q What about the second half when you have more
17 inventors reaching 150,000?

18 A Again, in most cases, that's not going to be
19 applicable.

20 Q And when you say "most cases," how many are we
21 talking about?

22 A I think a very rough estimate of the number of
23 inventors that reach \$150,000 a year is maybe 20 to 30.
24 I could be a little bit off, but it's certainly not a lot
25 more than that. And there are hundreds and hundreds of

1 inventors that receive royalties a year.

2 And I'll just also point out that if they do reach
3 the cap in a particular year, you can go back in time and
4 look at earlier royalty reports, because usually companies
5 make less money in the beginning when they launch a program.

6 So you still might be able to use that to
7 calculate the earned royalty rate. You can't use it -- use
8 that formula later on.

9 Because you look at the entire universe. And if
10 the -- you know, this is a certain number of years.

11 But there's nothing saying that if this --
12 you know, we start disclosing inventor payment amounts that
13 we don't get FOIA requests for a much longer period of time.

14 So there will be a large amount of data that can
15 be mined.

16 Q Let's turn to, I believe, Your Honor, what's in
17 your book as Exhibit 3.

18 It's, Dr. Kirby, your declaration in this case.

19 I just want to highlight a couple of paragraphs
20 and have some questions related to them.

21 In paragraph 3, you refer to the royalty amounts
22 paid to inventors as compensation NIH scientists receive for
23 their work in their inventions.

24 Is that a fair statement?

25 A Right. It is compensation, as far as I understand

1 it.

2 Q Okay.

3 And who sets that compensation, is it NIH or is it
4 the licensees, the companies?

5 THE COURT: I'm sorry, what compensation?

6 I thought we were talking about the --

7 MR. BEKESHA: The royalty amounts, which is
8 referred to as compensation.

9 THE WITNESS: Yes.

10 So, you know, they receive, you know, a payment as
11 part of their jobs; they get their salary.

12 THE COURT: Right.

13 THE WITNESS: This other income has been
14 determined in the court to be employee compensation.

15 So when you say how does NIH determine that, it is
16 determined by NIH using the formula.

17 The licensee has no input into how much
18 compensation an inventor would receive.

19 BY MR. BEKESHA:

20 Q That's not a negotiated term?

21 A No. I've never been aware of that.

22 I would be very surprised to see something like
23 that, and I've looked at many, many licenses.

24 Q At the bottom of paragraph 5, the last sentence,
25 royalties are also distributed to non-agency inventor or

1 co-inventors or entities as required under associated
2 inter-institutional agreements, settlement agreements,
3 or other appropriate agreements.

4 What are non-agency inventors?

5 A Well, there are various circumstances where that
6 could be the case.

7 So there are individuals who are obligated to
8 assign their rights in patents to the NIH, in which case we
9 would manage their royalty distributions under that -- the
10 same policy we use for inventors.

11 We also have individual inventors who have
12 ownership of IP due to, for example, the laws that may be in
13 play in that particular company -- I mean, country.

14 There are some countries that allow -- that are
15 then to have first right to take title to an invention,
16 rather than a university.

17 So there's just a couple of examples, but there
18 could be more.

19 It's basically any situation where we have an
20 obligation to distribute royalties, whether it's because
21 they have assigned rights to us, because we've done an
22 agreement with them, like an inter-institutional agreement,
23 or some other agreement.

24 Q And how are those royalty amounts paid to those
25 non-agency inventors calculated?

1 A Well, if they're individuals, if they have
2 assigned their rights to the NIH, and they're obligated to
3 do so under the pertinent executive order, we use the same
4 formula and the same limits; we treat them exactly the same.

5 If they have not assigned our rights to us,
6 it depends on what they've negotiated with us.

7 Q And if they have negotiated something different,
8 taking the Biotech example, would their money come out of
9 the 600,000 that was paid by the company on that day or
10 would it come out from somewhere else?

11 A Yes.

12 All distributions come from -- are calculated from
13 those royalty payments.

14 Q In paragraph 6, you state, although licenses are
15 generally based on NIH standard license models, details of
16 these licenses, including financial terms, are negotiated
17 individually.

18 How many licenses are negotiated individually?

19 A I would say essentially all, because even if we
20 have worked with that company before, the circumstances may
21 be different, and so there may be differences in some of the
22 terms.

23 Q And that could include the financial terms?

24 A Yes. It includes any part of the agreement.

25 Q And so if a standard license model is just a

1 standard, it may deviate, it may not from it?

2 A That's certainly true.

3 Although it's a model agreement for a reason.
4 There are certain aspects of it that we either can't change
5 or would have great difficulty changing. So we'll push back
6 on those.

7 And that can include how payments are made.

8 THE COURT: Sorry, Counsel, can I just interject.
9 How much more time do you think you have on cross?

10 MR. BEKESHA: Maybe 30 minutes.

11 THE COURT: Okay.

12 So it's 12:30 now. I want to go ahead and just
13 break for lunch then. We've been at it for about
14 90 minutes. So I'll ask everybody just to be back here at
15 1:30 so we can resume.

16 And, Counsel, I'll just ask you to sort of focus
17 on what you have left so we can try and get all this done
18 this afternoon, okay?

19 MR. BEKESHA: Thank you.

20 THE COURT: Thanks, everybody.

21 COURTROOM DEPUTY: All rise. The court is now in
22 recess.

23 (Recess from 12:30 p.m. to 1:34 p.m.)

24 COURTROOM DEPUTY: All rise. This Honorable Court
25 is now in session; the Honorable Amit P. Mehta presiding.

1 THE COURT: Thank you, everyone. Please be
2 seated.

3 All right. Welcome back, everybody.

4 All right. Ready to continue with
5 cross-examination?

6 MR. BEKESHA: Yes, Your Honor.

7 BY MR. BEKESHA:

8 Q Dr. Kirby, I want to go back to the PowerPoint,
9 the first page.

10 Looking at the redacted information in the
11 right-hand corner, there's several columns, and I just
12 wanted to walk through the columns.

13 The "Inventory Awards" column is the one that
14 we're interested in.

15 And so my question is, if you back-calculate,
16 according to the formulas that we've been talking about
17 today, which number in the -- does that lead you to one of
18 the numbers in the prior columns?

19 A Yes, it does.

20 Q And which number is that?

21 A It's going to be that first column where it says
22 "Percent of Sales," "Annual Min," "Executive Fees."

23 So it's basically any royalties that are not
24 patent prosecution costs.

25 Q Okay.

1 And what is the "Patent Prosecution Costs" column?

2 A That is money that we receive from a licensee
3 specifically to reimburse our costs associated with
4 prosecuting and maintaining our patents. Those are
5 eliminated from the inventor distribution by statute.

6 Q And what is the total January income?

7 A I think that is usually the same as that. But if
8 there's also some other line item, they'll -- like, so if
9 they make two payments in a month, then that will show the
10 sum for both of those payments.

11 Q But in the normal course, you would add the first
12 column, the "Percent of Sales" column, the "Patent
13 Prosecution" column, and that would give you total January
14 income?

15 A They're on different lines.

16 But for each month, yes, they look at all the
17 different payments made during that month.

18 So not every line is filled in on this, I guess is
19 the way to put it.

20 So you would see maybe a royalty payment on one
21 line, and then -- like, for all the inventors, that would be
22 there.

23 And then on another set, there would be the patent
24 prosecution costs.

25 So it's kind of rolling up the information from

1 those other columns.

2 Q So what I see is, for example, line 1 for
3 Inventor A, patent prosecution costs is redacted, but that
4 most likely is a blank line?

5 A It could be.

6 THE COURT: I'm sorry, what was the question?

7 MR. BEKESHA: If it's a blank line.

8 THE COURT: Oh, okay.

9 THE WITNESS: It could be.

10 And, of course, patent prosecution costs are not
11 received by the inventor so we can redact that.

12 BY MR. BEKESHA:

13 Q Right.

14 We're not asking for that.

15 I'm just trying to figure out the math that,
16 if you have the inventor award, it back-calculates to the
17 column you said the percent of sales award.

18 But if the percentage of sales and the patent
19 prosecution costs all come in in, say, one check, I know
20 things are probably not done by check anymore, but if it
21 comes in in one check and you have that total amount...

22 A We divide those up so that we can make sure we
23 follow the right distribution rules.

24 Q But NIH divides that up after that amount is
25 received from the licensee?

1 A We receive the total amount and then we apply it
2 to the terms that are due under the license.

3 So if we received the patent prosecution
4 reimbursement and it earns royalty on sales, we put those as
5 two separate payments on the same day.

6 Q So, for example, say you receive a million dollars
7 from a licensee on today's date, doesn't matter the date,
8 what happens to that million dollars?

9 I want to walk through how we get from the million
10 dollars, the number that you say is the confidential
11 information, to the inventor award, how do we get there,
12 if you could walk us through.

13 A Well, that's -- can be very complicated. There's
14 lots of steps. I can give you the high-level overview.

15 Once we've received the money, we verify that it
16 is for a term in the agreement and it's appropriately been
17 sent.

18 Once we've verified that, we, each month, do a
19 report of all the income we've received over that month and
20 look at the documentation we have for each license, showing,
21 again, I think I mentioned like which ICs were part of that
22 license, the inventors, other information, like if we have
23 an IA partner who might be receiving some portion of
24 royalties, that information is used to populate the data in
25 the OFM system, Office of Financial Management system.

1 Once that's in there, it starts making
2 calculations based on its order of operations and that
3 formula.

4 So, for example, if it's a patent prosecution
5 cost, that is just going to go straight to the IC.

6 THE COURT: So the IC?

7 THE WITNESS: I'm sorry, institute or center.

8 THE COURT: Okay.

9 THE WITNESS: So like the NCI or -- sorry, jargon.

10 THE COURT: That's okay.

11 THE WITNESS: If there is -- if they're an
12 IA partner, that usually is paid out before there's a
13 distribution to inventors, for example.

14 BY MR. BEKESHA:

15 Q What does IA stand for?

16 A Inter-institutional agreement.

17 So that is an agreement between NIH and another
18 party, often an academic institution where we've
19 co-developed an invention. And so we have inventors from
20 both us and the other institution and we have co-ownership.

21 So that helps us administer the patent rights and
22 provides like who's going to lead, like, license
23 negotiations, who's going to be responsible for what.

24 Q Okay.

25 So if you receive money in, you start putting it

1 in this machine, you know, this computer program. And
2 you've got a million dollars in. Some of that money may
3 be -- may be patent prosecution, may be this IA column?

4 A Yeah.

5 So usually -- I mean, certainly if it's for a
6 specific term like patent prosecution. That just processed
7 it. If it's something like other income, then that might be
8 other factors.

9 But generally what happens is we determine the
10 amount that is -- basically, the NIH is going to have.
11 Like, they receive all or a portion of that amount, right.
12 If there's no partners, we receive all of it. If there's a
13 partner, we get part of that.

14 From that, for each payment in order that we
15 receive them, we do this inventor distribution calculation.

16 So we determine what is the amount the inventors
17 would receive with no caps. And then we look at what the
18 the inventors have already received in that fiscal year and
19 determine whether they can receive the full amount or a
20 partial amount because they're hitting the cap. And so that
21 proceeds.

22 And if all of the inventors had hit the cap, then
23 that money goes to the IC, the institute.

24 So all that money is distributed.

25 Q And once it comes out of this, what seems to be

1 maybe a complicated computer program, it ends up on this
2 "Inventor Award" line?

3 A Right.

4 And then that information is verified monthly
5 and -- twice a year by OFM, the Office of Financial
6 Management, my office, Office of Tech Transfer, and the
7 institute or center tech transfer people who are responsible
8 for that institute or center to verify that all the payments
9 have been made, that they have been made correctly based on
10 the information that has been provided to OFM. And so once
11 that's been verified, then the OFM can make those payments
12 twice a year out to the inventors.

13 Q So in the Biotech example, assuming the math was
14 correct and you take the 48,900 and you get to the 600,000
15 through the formula, that 600,000 may just be a portion of
16 the money received on January 28th from Biotech because it
17 may have IA or patent prosecution or there may be other
18 stuff that was taken out before the machine started
19 calculating for the inventors?

20 A Well, so for patent prosecution, we know whether
21 or not it's being -- how -- that is not included in the
22 inventor calculation. So we -- that's considered
23 separately. It is not subject to distribution to the
24 inventors.

25 Q Right.

1 But it could come in together in the same check?

2 A Yes, but we apply that.

3 So we make sure -- you know, we say -- they said
4 it's for this. Here's the terms from the agreement. That
5 matches up. If it doesn't match up, we reach out to them to
6 clarify so that we know for sure this amount was for patent
7 prosecution reimbursement, this amount was for the earned
8 royalty payment, for example.

9 Q Right.

10 The information you're receiving from the company
11 is that total number, it's not the individual buckets?

12 A No.

13 They'll tell us which terms they're paying for.
14 And if it's something that's variable, they will tell us,
15 like an earned royalty payment, how much of that is the
16 earned royalty payment.

17 And they'll actually show us the calculations they
18 used to determine that earned royalty payment, because they
19 have to show us their sales number and show us how they come
20 to those calculations.

21 And if we don't have that information, we verify
22 it with them, what is applicable to what specifically.
23 And we break them out on that report.

24 Q But does the public have all that information?

25 A Excuse me, what?

1 Q Does the public have all that information?

2 A They have the information about generally how
3 payments are made and what for in those model agreements and
4 the timing of such payments.

5 Q But if a payment came in that had various buckets
6 and you're being told what buckets -- you know, Biogen gives
7 you one payment and says it goes in three buckets, one of
8 the buckets being that the inventor award would be
9 calculated from.

10 And if you have the inventor award and you
11 back-calculate using the formula you've said, you come up
12 with a number. But that number may not be the same as the
13 total number received in that check from that company;
14 isn't that correct? It's just a piece of it?

15 A Yes.

16 But you know that -- what it is applicable to,
17 right.

18 You would -- it's going to be broken -- even if
19 you just look at the redacted report --

20 THE COURT: I'm sorry to interrupt.

21 So the bottom line is that the Inventor Awards
22 come out of a particular bucket.

23 So even if the money comes in in some larger sum,
24 your back-calculation hypothesis still is only applying to
25 that discrete number that goes toward Inventor Awards,

1 correct?

2 THE WITNESS: Right.

3 So for each item -- like let's say they paid an
4 earned royalty payment and, I don't know, benchmark royalty,
5 even if they put in one check, those will show up separately
6 on the report, you can see even from the redacted report
7 they are separate payments, and all of those will eventually
8 be used for the summaries.

9 But if you look at the "Inventor Awards" column,
10 which, unfortunately, is not right here, you will see
11 payments for each thing that we determined. So for the
12 licensee, this part is an earned royalty, the inventor gets
13 this much. This part is a benchmark royalty, the inventor
14 gets this much for that.

15 So it is definitely more complicated if you only
16 see the summaries, although I've pointed out, there are
17 certainly many instances where you can still make those
18 calculations.

19 But if you have further information on this
20 redacted area, then it starts getting a lot easier to get
21 much more specific.

22 THE COURT: And the royalty calculation -- or the
23 inventor award, is that the same formula regardless of what
24 kind of royalty is coming in?

25 THE WITNESS: Yes, it's always the same.

1 THE COURT: Thank you.

2 BY MR. BEKESHA:

3 Q Okay.

4 But it's only a percent -- it may be only a
5 percentage of the total number that comes in on a day,
6 right?

7 It's just one -- I just want to be clear that the
8 inventor award number could -- is -- would be Column A, and
9 there may be coming in in bucket or Column B and Column C to
10 reach the total amount received from the company?

11 A Yes.

12 But that's not how this report would look, because
13 you would see individual payments to each inventor for each
14 term, not each check.

15 So if there's one term, then you would just have
16 one set. If you had two terms that were being satisfied by
17 that payment, you would see them broken out.

18 There's payment for each.

19 Q But you wouldn't see the other payments that are
20 coming out on -- coming out before you start doing the
21 calculations?

22 A I'm not sure I understand what you're saying.

23 Q The money going to the IAs or the patent
24 prosecution costs?

25 A Well, the patent prosecution cost doesn't factor

1 into the calculation so that --

2 Q That's my point.

3 THE COURT: Let's move on. I think I understand.

4 MR. BEKESHA: Okay.

5 THE WITNESS: But you don't need that information.

6 And that's something that's clearly confidential
7 because it's the amount they're paying to us under the terms
8 of the license.

9 BY MR. BEKESHA:

10 Q And we're not seeking that information in this
11 lawsuit, are we, the patent prosecution costs?

12 A Right.

13 So I mean that -- we're redacting it under FOIA.

14 BY MR. BEKESHA:

15 Q Look at paragraph ten in your declaration, the
16 last sentence, "Distribution to inventors and institutes and
17 centers are calculated in accordance with the statute and
18 NIH policy and standard procedures."

19 You've referenced -- and then there's a Footnote 1
20 that references the Transfer Policy Manual Chapter 700.
21 What is that?

22 A That is the patent, I mean, the policy that
23 discusses distribution of royalties from licenses.

24 Q And is that public?

25 A Yes.

1 Q So if we went to the website, the public
2 website --

3 A It should be available. And if it's not, then
4 please tell us and we'll fix that.

5 Q OpenTheBooks has a FOIA litigation also filed
6 about a month ago seeking that manual that you say is
7 public?

8 A Part -- well --

9 THE COURT: That's not for present purposes.

10 BY MR. BEKESHA:

11 Q I was just trying -- you say that it's publicly
12 available information so I was just trying to get a sense
13 of, in your view, is it publicly available?

14 A May I make a clarification?

15 The policy chapters in that manual are public.

16 There are also procedure manuals that are part of
17 that document. Those are mostly not public. But all the
18 policies are.

19 BY MR. BEKESHA:

20 Q And are the procedural manuals what are used to
21 make these calculations and distributions that we've been
22 talking about today?

23 A That is part of it.

24 Q Paragraph 17, you start off, "Distributions to
25 inventors and other recipients are also not disclosed

1 because the amounts can be used in many cases to
2 back-calculate the amount of royalties paid by a licensee,
3 which has already been established as confidential
4 commercial information obtained from a person."

5 What do you mean -- where has that been
6 established that it's confidential commercial information?

7 A I believe in case law.

8 I would have to look at documentation to tell you
9 specifically which one, but there's actually more --
10 I believe there's more than one case that speaks to this.

11 Q That speaks specifically relating to the amount of
12 royalties paid by a company to NIH?

13 A Yes, I believe so.

14 Q A few minutes ago you were talking about all the
15 review that goes on after -- I guess after all the
16 calculations are made to make sure that everything is
17 correct.

18 Sometimes are there mistakes and they have to be
19 fixed in future payments or future months?

20 A Those are relatively rare because of the amount of
21 reconciliation that happens.

22 There may be occasional errors due to information
23 that was incorrect on the licensee information form. So,
24 for example, one inventor was inadvertently left off.

25 But those can be corrected in the future, but only

1 if royalty payments from the licensee are sufficient to make
2 those payments.

3 But there are other small things like that that we
4 correct, using still the same inventor formula. But, say,
5 for example, providing more of that for a short period of
6 time to one inventor who was left off until they received
7 the amount they were entitled to.

8 Q I'm trying to find a page on my next exhibit.

9 There was one page in the production that said,
10 "Denotes" -- there was an asterisk next to an inventor name
11 or, you know, one of the lines, and it said, "Denotes an
12 adjustment to fix a problem from a previous month."
13 And there was a similar plus sign that said, "Denotes a
14 manual adjustment which already has been paid to an
15 inventor."

16 Is that usually just there was some type of error
17 and...

18 A As far as I'm aware.

19 And that is, for example, when we make a temporary
20 change in the distribution percentages each inventor
21 receives to correct an error.

22 But it does not affect the overall calculation and
23 the limits. The \$150,000 limit still applies.

24 Q But would it make it more difficult for somebody
25 to backdate -- use the formula if it's unclear where -- what

1 the amounts were in error?

2 A I don't think so, because the total amount of the
3 payment is -- that the inventors receive is the same
4 regardless of how it's distributed among the inventors. So
5 you will still get the total amount. You just add them up
6 even if they were getting different amounts.

7 Because the calculation is based -- it gives
8 royalties to all the inventors as a group and then divides
9 it up by their respective contributions.

10 The formula is not used on an inventor-by-inventor
11 basis.

12 So the only difference is how you divide that
13 fixed amount up.

14 Q How does NIH decide whether or not they're going
15 to disclose this information that you say is confidential?

16 A Can you be a little more specific?

17 Q Are you aware that NIH told *The Washington Post*
18 how much Dr. Fauci made in royalty payments on a given year?

19 A That is something that was determined based on the
20 risk benefit. And also I think was just a summary amount,
21 not a breakdown based on half-year royalty payments.
22 So I think that information is general enough that they felt
23 that the risk was low enough that they could do that. But
24 I can't tell you more without knowing the specifics.

25 I know very generally about Dr. Fauci and the fact

1 that he has received royalty payments. But I would have to
2 look and see if there was anything that might lead to
3 disclosure of information, but I doubt it because if they
4 did provide it as a total amount, for example, and I don't
5 know that, that would make it extremely difficult to
6 back-calculate.

7 But that's not what we're talking about here.

8 Q Well, do you know if he received payments for more
9 than one license for that given year?

10 A I honestly don't know.

11 Q And if it was one license, it would make it easier
12 to back-calculate, according to your theory?

13 A Well, I can't really comment on this because
14 I don't know the specifics.

15 I'd have to know the specifics to make at least a
16 reasonable guess as to whether that could lead to the
17 disclosure of, this is confidential information.

18 Q Do you know if NIH reached out to the company and
19 asked them if it was okay to disclose this information
20 before they did so?

21 A I don't know anything about that. I was not
22 involved.

23 Q Do you know who would have information about
24 whether or not the agency thought this information was
25 confidential information or -- and if it could be

1 back-calculated?

2 THE COURT: I think we're getting a little far
3 afield here.

4 BY MR. BEKESHA:

5 Q I guess my question is, if we have one instance
6 where NIH was willing to provide information about an
7 inventor and you don't know if anything could be
8 back-calculated, how are you so confident that for these
9 lines that are being withheld, that the same could or
10 couldn't be done?

11 A I can't speak to specific -- a general
12 circumstance where I don't have much information.

13 I can speak to actual examples that I have seen in
14 the royalty report that I personally have been able to
15 back-calculate.

16 I cannot speak to others who might be interested
17 in doing something like this and what they might be able to
18 use.

19 It is certainly possible that whatever form the
20 government disclosed, Dr. Fauci's information could be used
21 to back-calculate something, but I imagine that they
22 considered that very carefully when they chose to disclose
23 that.

24 And that is an example of one inventor and not a
25 large number of inventors for multiple licenses for years.

1 It's a very different situation.

2 And the risk to those licensees and to the NIH is
3 much less if it's a single inventor.

4 MR. BEKESHA: May I have just one moment?

5 THE COURT: Sure.

6 (Plaintiff's counsel conferred off the record.)

7 BY MR. BEKESHA:

8 Q I just have one last question.

9 In your declaration, the last sentence in
10 paragraph 1, you say you're considered an expert in the
11 area?

12 A Yes.

13 Q Can you just describe the area that you consider
14 yourself an expert in?

15 A In the negotiation and administration of invention
16 licenses for the NIH.

17 Also for the overall process for determining the
18 components that are needed to calculate distributions of
19 royalties, which includes, as I said, not only the number of
20 inventors and the formula but other factors like potential
21 co-inventing institutions.

22 And then the process by which the OFM,
23 in collaboration with OTT and the institute and centers,
24 makes those distribution calculations, verifies them,
25 and makes payments.

1 And certainly for some details, you know, I have
2 documents to refer to, but I understand the overall process
3 and enough that I understand the content of these reports.

4 MR. BEKESHA: Okay. Thank you.

5 No further questions, Your Honor.

6 THE COURT: All right. Thank you, Counsel.

7 Any redirect?

8 MS. ECKROTE: I'll be brief, I promise.

9 - - -

10 REDIRECT EXAMINATION

11 BY MS. ECKROTE:

12 Q Briefly, we are going to just look back -- I just
13 want to be clear.

14 In your hypothetical here, you said that --
15 I think it was on the next page, but that inventors A
16 through D only got one payment from -- in this document,
17 correct?

18 A Yes.

19 From the individual payments on the detailed
20 pages.

21 Q From the individual pages or from the summaries?

22 A Well, both.

23 In the detailed pages, there's only one page for
24 each inventor. That is reflected in the summaries.

25 Q That's what I was --

1 A -- which is why it was easy to do the calculation.

2 Q That's what I was going to ask.

3 So in this instance if you would, you know, give
4 the plaintiffs the inventor award for that column, you would
5 be giving them the number in the summary?

6 A Yes.

7 Q Would you need to -- if you give them everybody's
8 individual awards for the whole time period, do you need to
9 give them the summaries?

10 A No.

11 Q Why?

12 A Because that's already captured in the detail
13 report that is broken down.

14 You add up all that information to come to the
15 summary. So there's nothing new.

16 Q Okay.

17 A You could calculate -- anyone could calculate
18 those summary pages based on information in the detailed
19 report section.

20 Q So this example is what we're arguing over,
21 these inventor awards, correct?

22 A Yes.

23 Q You pulled them out of a summary but --
24 for these --

25 A Well, yes.

1 And to show that even more consolidated
2 information can still reveal information about the licensee.

3 Q Are you disputing that there are various variables
4 that, in some instances, may make it difficult or hard to --
5 or maybe impossible to back-calculate?

6 A No, I don't dispute that at all.

7 I mean, there may be, I can't say myself for sure,
8 because I am not an expert, but I'm sure there are things
9 that would be very hard to calculate, especially, you know,
10 if you don't have all the information on the report.

11 Q Is it possible to know for sure -- if you get
12 these Inventor Awards, would it be possible to know for sure
13 that your back-calculation was correct?

14 A I think in many cases you could.

15 Certainly if a company subsequently released
16 information that backs that up.

17 I think also, when you say "for sure," that's a
18 very precise thing --

19 THE COURT: I'm sorry, when you say "confirm the
20 information," do you mean her or in the world?

21 Because she's got access to things the world does
22 not.

23 MS. ECKROTE: Sorry.

24 I mean the public. I would mean the public.

25 THE COURT: Okay.

1 MS. ECKROTE: Like if I went and did it, which I
2 couldn't.

3 BY MS. ECKROTE:

4 Q But if I -- could I do a calculation -- could
5 somebody?

6 So could a competitor go and do this calculation?

7 And they don't have access to the unredacted
8 documents, but could a competitor go and do numbers and get
9 to a number and be like, this is right?

10 A I think they could certainly note to a high degree
11 of certainty that it's probably right.

12 And I think also there are cases when companies
13 have information that is not public on their competitors
14 that they can use to corroborate the information they've
15 calculated from these reports.

16 Q Just two more things.

17 Plaintiff was talking a lot about these separate
18 buckets that these dollar amounts would come in.

19 Does the patent prosecution cost on this chart
20 factor into the royalty amount or the royalty rate that's
21 paid?

22 A No. It's excluded.

23 And the statute says that all income must be
24 distributed according to the formula to inventors except for
25 those related to patent costs.

1 Q So are we saying here, when we back-calculate,
2 that we can figure out the total amount that is being paid
3 by a company or the royalty rates and royalty amounts?

4 A It's the total amount of that payment.

5 So if you're looking at the detail report, each
6 set of payments is based on one royalty term.

7 So one is an earned royalty, one is a benchmark,
8 one is an upfront.

9 So on that basis, you know what they are.

10 When you look at the summary, you know that only
11 the payments that are not patent prosecution reimbursement
12 went into that calculation.

13 Q Okay.

14 And last question: If the Court wants it, would
15 you submit in-camera declarations with these actual numbers
16 just to show that this is not, like, hypothetical?

17 A Yes, I'm happy to do that.

18 MS. ECKROTE: Okay.

19 I think that's all for Tara.

20 THE COURT: Okay. Terrific.

21 MS. ECKROTE: But we're happy to answer any of
22 your questions, Your Honor, as well.

23 THE COURT: No.

24 You may step down. Thank you.

25 All right. Does the government have an additional

1 witness?

2 MS. ECKROTE: So we have our acting FOIA officer.

3 If you think it would be helpful, we're happy to
4 bring her up to discuss additional information, but...

5 THE COURT: Look, it's not -- it's not my burden.

6 MS. ECKROTE: Sure.

7 THE COURT: And if you think it would be helpful,
8 then bring her up.

9 But I'm not going to -- it's hard for me to
10 telegraph whether it would be helpful, not knowing what you
11 might propose to have her testify about.

12 MS. ECKROTE: Okay.

13 I will call Karen Lampe, please. It will not be
14 long.

15 THE COURT: Okay.

16 COURTROOM DEPUTY: Please remain standing and
17 raise your right hand.

18 (Witness is placed under oath.)

19 THE COURT: All right. Dr. Lampe, welcome.

20 THE WITNESS: Thank you.

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KAREN LAMPE, WITNESS FOR THE DEFENDANT, SWORN

DIRECT EXAMINATION

BY MS. ECKROTE:

Q Can you introduce yourself for the record, please.

A Sure.

My name is Karen Lampe.

I am currently the acting FOIA officer for the
National Institutes of Health.

Q And how long have you been in that position?

A Since August 31st of 2025.

Q And how long -- were you employed by NIH prior to
that?

A I was.

I have been with NIH since May of 2018.

Q Okay.

And what has been your role since then, or roles?

A I began as a FOIA reviewer.

And before taking the Acting position, I was
managing the litigations for -- the FOIA litigations for
NIH.

Q Okay.

Are you familiar with this matter and what the
redaction -- the documents we produced that were redacted?

A I am.

1 Q Okay.

2 Are you familiar with executive order 12600?

3 A I am.

4 Q Okay.

5 Can you explain that executive order or just give
6 me your understanding of it.

7 A In essence, that executive order requires us to
8 send pre-disclosure notifications to anyone where we may
9 have their business confidential information.

10 Q And in what instance would you do that?

11 A In every instance where we believe we have CCI.

12 Q In every instance just when you have it or when
13 you're going to do something with it?

14 A We send pre-disclosure notifications when we have
15 FOIA requests where we have potential company confidential
16 information and we don't have additional knowledge that
17 would previously suggest that it was CCI.

18 For example, if we have a grant application that
19 we have already sent out on pre-disclosure notification and
20 someone else asks for it, we're not going to send it again.

21 Q Okay.

22 So would this be an instance, if you were --
23 sorry, I will rephrase.

24 Did NIH send out pre-disclosure notices in this
25 case?

1 A To my knowledge, we did not.

2 Q Did this case pre-date your time as acting FOIA
3 officer?

4 A Yes.

5 Q Okay.

6 But have you gotten up to speed as far as --
7 as much as you can?

8 A As much as I possibly can, yes.

9 Q Are you aware why NIH did not send those
10 documents?

11 A It is my understanding that the decision was made
12 that because we already had information and a court decision
13 outlining the fact that this particular royalty rate
14 information was considered company confidential and
15 financial information, the decision was made not to do those
16 pre-disclosure notifications.

17 Q What would doing the pre-disclosure notifications
18 in this case entail?

19 A In this particular case, it would entail redacting
20 the 29-odd-hundred pages of the production 1700 times,
21 because we cannot send records to one company containing
22 information from another company.

23 Q And how many companies would you have to send that
24 to?

25 A Approximately 1700.

1 Q Okay.

2 THE COURT: I'm sorry, how many pages total?

3 THE WITNESS: It's 29 and change, 2900.

4 THE COURT: 2900.

5 So the 2900 with the total spreadsheet and...

6 THE WITNESS: Right, correct.

7 THE COURT: Yeah, okay.

8 BY MS. ECKROTE:

9 Q Okay.

10 So you said NIH did not do that in this instance
11 because of the *Public Citizen* case, correct?

12 A Uh-huh.

13 THE COURT: So, I'm sorry, just to be clear,
14 in one of these instances where you do have company
15 confidential information, is it the case that you send the
16 potentially responsive materials --

17 THE WITNESS: Yes.

18 THE COURT: -- to the contributor so they can
19 say...

20 THE WITNESS: Yes.

21 THE COURT: Got you.

22 All right. Thank you.

23 THE WITNESS: So we will redact out anything that
24 they're not entitled to see.

25 THE COURT: All right. Okay.

1 BY MS. ECKROTE:

2 Q Okay.

3 So pivoting a little bit, if NIH was required to
4 determine in every line on the production whether or not
5 that back-calculation was possible, what would that look
6 like for NIH?

7 A Well, that would look like training, either
8 training FOIA personnel to do that, or requesting that the
9 OTT personnel do that.

10 If we estimate that doing the research and
11 conducting the calculation maybe takes half an hour in each
12 instance at approximately 70,000 lines, that's about 36,000
13 hours.

14 Q Okay.

15 I don't know how many working hours are in a year.

16 A 2080.

17 Q Okay.

18 And so a large number of years?

19 A It would take an enormous effort.

20 Q Okay.

21 And would it be possible for NIH to be sure that
22 they've gone through and they only are releasing the ones
23 that -- they're saying we can't back-calculate.

24 Is there a way to guarantee that nobody could
25 back-calculate?

1 A There is not.

2 Q And just if -- what would be NIH's process if it
3 were ordered to release this information now?

4 A We would have to then notify all of those
5 companies that we had been compelled to release their
6 information.

7 MS. ECKROTE: I think that that is all I have for
8 Ms. Lampe.

9 THE COURT: I'm sorry, when you say "notify them
10 as to potential released information," what do you mean?

11 Because what the request here is, the payments to
12 the inventors, the concern is back-calculated amounts.

13 So when you say "disclose the information to the
14 companies," do you mean potentially back-calculated amounts
15 that they would regard as confidential?

16 THE WITNESS: Do you mean before or after a
17 decision?

18 THE COURT: Well, say hypothetically you were --
19 I guess either.

20 But say hypothetically you were required to
21 disclose and say, look, you know, there was a request for
22 Inventor Awards. What would you -- and the Court compelled
23 its disclosure. What would you say to the companies, what
24 would you disclose to the companies as potential
25 confidential information?

1 THE WITNESS: At a minimum, we would tell them
2 that we were being required to release the individual
3 payments, the individual Inventor Awards.

4 I'm not an attorney. I don't know what else the
5 Institute would -- or the agency would decide to let them
6 know. I don't -- I can't answer any -- beyond at a minimum,
7 we would tell them exactly what we were being asked to
8 release.

9 THE COURT: Okay.

10 MS. ECKROTE: Okay.

11 THE COURT: Okay.

12 MS. ECKROTE: Okay. Thank you.

13 - - -

14 CROSS-EXAMINATION

15 BY MR. BEKESHA:

16 Q Good afternoon.

17 A Hi.

18 Q I think you testified that NIH did not send
19 letters out because of the *Public Citizen* case?

20 A That's my understanding.

21 I did not make that decision.

22 Q And is it your understanding that that case
23 concerned royalty rates?

24 A It is my understanding that that case concerned
25 royalty rates.

1 It is also my understanding that the FOIA office
2 consulted with the people who would know, the Office of Tech
3 Transfer, and possibly the Office of Financial Management
4 but I'm not sure on that, about what information in that
5 spreadsheet should be withheld and why.

6 Q But there was no communication to the companies
7 about the amount paid to NIH?

8 THE COURT: I'm sorry?

9 THE WITNESS: What do you mean?

10 THE COURT: Yeah, what do you mean?

11 MR. BEKESHA: Sure.

12 BY MR. BEKESHA:

13 Q I mean, so you have the amount paid, right --
14 we're here today because the argument is that if the public
15 has vendor awards, it can back-calculate the amount paid on
16 a given date?

17 A It can back-calculate the royalty rates.

18 Q Not rates. Amount?

19 A Well, you can get to the amount. And then from
20 there, you can figure out the royalty rate.

21 Q How can you figure out the royalty rate?

22 A That's what the previous witness testified to and
23 that's what she's an expert in.

24 I am not an expert in that.

25 But that's --

1 Q Is NIH withholding the amount because the amount
2 itself is confidential commercial --

3 A Which amount?

4 Q The total amount -- the amount that this case is
5 about, the number. It's a totally --

6 THE COURT: Hang on. We cannot talk over one
7 another.

8 MR. BEKESHA: I'm sorry.

9 THE WITNESS: I'm sorry.

10 THE COURT: So if you would just allow him to
11 finish his question and then you can answer.

12 Go ahead.

13 BY MR. BEKESHA:

14 Q The total amount paid in the example here today
15 was Biogen \$600,000 on January 28th, 1985?

16 A Okay.

17 Q Is that \$600,000, does NIH consider that amount
18 confidential commercial information in itself or because NIH
19 believes you can back-calculate -- you can calculate a
20 royalty rate based on knowing that information?

21 A So from what I heard this morning, that particular
22 payment was a payment, a single payment for a single term in
23 the license.

24 So that particular payment, yes, you could use to
25 back-calculate the royalty rate.

1 Q Okay.

2 Well, I want to step away from the royalty rate.

3 If the royalty rate doesn't exist, is NIH's
4 position that that amount itself in itself, regardless of
5 whether you can back-calculate the royalty rate from that,
6 that that amount itself is confidential commercial
7 information that cannot be disclosed pursuant to
8 Exemption 4?

9 A I am not an expert in licenses.

10 I would imagine, from my own personal experience,
11 that the amount a company paid to the NIH they would
12 consider financial and they would consider confidential.

13 Q Is that the position that the agency is --
14 I'm just trying to figure out what the agency's position is
15 at the hearing today; if that information, and you're the
16 FOIA officer, is that amount itself the confidential
17 commercial information that is protected under Exemption 4,
18 is that NIH's position?

19 A I think the records that were released make it
20 clear that the NIH considers that information to be
21 confidential commercial information to the companies.

22 Q To the companies?

23 A Uh-huh.

24 Q And because that is different from the royalty
25 rate, has letters been sent out to the companies pursuant to

1 the Executive Order related specifically to the amount not
2 related to the royalty rate?

3 A I already told you, it -- to my knowledge, the NIH
4 did not send pre-disclosure notifications.

5 Q And would they need to send disclosure
6 notifications with the inventor line -- the 70,000 lines
7 redacted or could they just send a letter asking, is the
8 total amount, royalty amount we receive monthly --
9 or however it's received protected confidential commercial
10 information?

11 Because that's what --

12 A We would send -- I'm sorry. Go ahead, finish.

13 Q Because that's the information that's trying to
14 be -- that is the confidential commercial information,
15 right?

16 A Our procedure is to send the records themselves
17 and let the owners of the information tell us what they
18 consider to be company confidential information.

19 So we would not just send a letter, we would send
20 the records.

21 THE COURT: I take it you wouldn't send all 70,000
22 lines, you would just send the relevant lines with
23 redactions?

24 THE WITNESS: Yes, but we still would have to go
25 through --

1 THE COURT: I got you.

2 THE WITNESS: -- and redact the pages, because
3 it's not just one company per page, and make sure we had
4 every instance of every company's -- it's still an enormous
5 effort.

6 THE COURT: Right.

7 Got you.

8 BY MR. BEKESHA:

9 Q Are these reports in Excel -- are they Excel
10 files?

11 A What I looked at was PDF.

12 Q Okay.

13 I'm just wondering, is it possible to sort them by
14 company and license so that redacting of everything else --

15 A I don't know.

16 What I looked at was a PDF.

17 MR. BEKESHA: Okay.

18 No other questions.

19 THE COURT: Okay.

20 Any redirect?

21 MS. ECKROTE: No, thank you.

22 THE COURT: Okay. Dr. Lampe, thank you very much.
23 You may step down.

24 Does the defendant have any additional witnesses
25 or evidence you wish to present?

1 MS. ECKROTE: We don't.

2 THE COURT: Okay.

3 All right. Why don't we turn then to plaintiff
4 and call your witness, please.

5 MS. BLANKENBERG: Good afternoon, Your Honor.
6 I am representing OpenTheBooks as the plaintiff in this
7 matter, and my name is Kathryn Blankenberg.

8 And our witness is Amber Todoroff.

9 THE COURT: Ms. Todoroff, if you would just stand
10 for a minute and we'll have you sworn in.

11 COURTROOM DEPUTY: Please raise your right hand.

12 (Witness is placed under oath.)

13 Thank you. You may be seated.

14 THE COURT: All right. Welcome.

15 - - -

16 AMBER TODOROFF, WITNESS FOR THE PLAINTIFF, SWORN

17 DIRECT EXAMINATION

18 BY MS. BLANKENBERG:

19 Q Ms. Todoroff, can you please state your name for
20 the record.

21 A Amber Todoroff.

22 Q And can you please describe your involvement in
23 this case.

24 A I am the Deputy Policy Editor at OpenTheBooks.

25 And OpenTheBooks has been -- and I'm the lead

1 researcher on this particular case involving NIH royalties
2 and transparency thereof.

3 Q Okay. Great.

4 I'm trying to get this to go on the computer.

5 I'm going to show you what has been marked as
6 Plaintiff's Exhibit 1.

7 Do you see that on your screen?

8 A Yes.

9 Q And can you identify this document, please.

10 A Yes.

11 This is my résumé.

12 Q And can you briefly describe your background to
13 the Court.

14 A Sure.

15 I attended the University of Florida for English
16 and geography.

17 And went on to the University of Oxford for my
18 master's degree in environmental policy.

19 Afterwards, I went to D.C. to -- I worked in a
20 couple environmental-focused nonprofits and think tanks.

21 And later moved to OpenTheBooks where I don't
22 entirely -- I mean, I don't really focus on environmental
23 policy anymore; my portfolio has expanded a lot.

24 Since then in two topics of general government
25 transparency and operations.

1 Q And has your work at both OpenTheBooks and at
2 previous positions involved data analysis?

3 A Yes.

4 I took quantitative methods and statistical
5 coursework throughout my academic education and used that in
6 both my work in environmental policy and especially today at
7 OpenTheBooks.

8 Q And what is your understanding of the issue
9 presented here today?

10 A My understanding of the issue today is, we are
11 seeking individual royalty payments to scientists because
12 there's a public interest in understanding their total
13 compensation -- their total federal compensation as federal
14 employees or consultants.

15 Q And what is OpenTheBooks' interest in the royalty
16 payments to investors -- inventors?

17 A OpenTheBooks has the largest private database of
18 federal, state, and local salaries and checkbooks.

19 So we are very interested in topics related to
20 conflicts of interest as they pertain to employee salaries.

21 And this particular issue of third-party royalty
22 payments is, of course, especially interesting to
23 OpenTheBooks because this federal compensation comes from
24 pharmaceutical companies that could be regulated or
25 otherwise relationship managed by the people receiving them.

1 Q I am now going to turn to what's marked as
2 Plaintiff's Exhibit 4.

3 And if you see that on your screen.

4 A Yes.

5 Q Can you please identify this.

6 A This is a report I wrote, it was published in
7 2004, called Corruption and Conflict. And it was generally
8 about royalty transparency at NIH, and it used a lot of the
9 data that we're talking about today.

10 Q I'm going to now turn to page 4 of this report and
11 focus on the first half on the flows of funds of inventors,
12 ICs, and licensees.

13 So where does the data from this report come from?

14 A All this data comes from the documents obtained
15 from our litigation with the NIH for royalty transparency
16 documents.

17 Q And what were your findings regarding direct
18 payments to NIH, institutes, and centers, which are listed
19 as the inventors in the columns that we have the names of
20 other inventors that are employed by NIH?

21 A So we have about a billion or so dollars marked
22 for inventor awards, which could also include institutes or
23 centers.

24 And then 1.6 billion in -- paid directly to
25 institute and centers.

1 And this is from fiscal year 2010 to 2023.

2 Q And do you know if this formula that we've been
3 discussing today -- first of all, are you familiar with the
4 formula?

5 A Yes.

6 Q And does that formula apply to these payments to
7 NIH institutes and centers, these direct payments?

8 A I'm not sure.

9 Q And is there really any way to know?

10 A I don't know.

11 I think -- I could only speculate that the
12 payments to the institutes and centers themselves,
13 if they're marked as Inventor Awards, could be the patent
14 prosecution costs, but I truly do not know.

15 Q And do you know if any of the data produced so far
16 in this litigation, if it has included royalty payments to
17 non-inventor employees?

18 A I do not know that.

19 Based on what we heard today, it sounds that
20 non- -- or -- non-inventor employees, yeah, I don't think
21 so, but I don't know.

22 Q Is it your understanding that the law allows NIH
23 to distribute royalty payments to non-inventors?

24 A Yes.

25 Q And -- but you can't tell if that has happened?

1 A No.

2 Q And do you know if the formula applies to these
3 payments to non-inventors?

4 A I wouldn't imagine that it would, because the
5 formula is for inventors, but -- well, maybe they do it for
6 non-inventors too. I don't know.

7 Q Right.

8 And do you know if payments made to, let's say,
9 a non-government institute such as -- that partners with NIH
10 such as, let's say, Stanford University School of Medicine,
11 and there is an agreement signed, an inter-institutional
12 agreement between Stanford and NIH, is the payment made
13 pursuant to that agreement subject to the formula that is --
14 what the formula is used for the inventor distribution?

15 A Well, it was something I was always curious about.

16 But it seems from the testimony we heard earlier
17 today, that it would not be.

18 And it would not appear on the inventor awards
19 either.

20 Q Would it make sense for an agreement to say, this
21 institute is going to get the same amount as one individual
22 inventor at NIH?

23 A I wouldn't know.

24 Q Okay.

25 What other research have you conducted on inventor

1 royalty payments?

2 A So in addition to this study, I have been seeking
3 information on the statutory cap of \$150,000 and also
4 documents described earlier on the general procedures.

5 Q And why are you interested in this 150- cap?

6 A Well, because of the disclosures we had
7 previously, you cannot find the amount given to inventors
8 obviously, but you can determine the number of times
9 inventors were paid.

10 This does not necessarily mean that they're
11 getting more money, we don't know, but I am going to assume
12 that those who receive more payments are getting more money.

13 So I looked at all of the inventors getting the
14 most number of payments, and I emailed them, and I asked
15 them a couple of questions.

16 Q I'm going to actually stop you there and turn to
17 what's been marked as Plaintiff's Exhibit 7, and it should
18 be on your screen.

19 I'm going to ask you: Can you identify this
20 document?

21 A Yes.

22 This is my correspondence with Dr. Peter Kwong.

23 Q And who is Peter Kwong?

24 A Peter Kwong is a current professor at Columbia
25 University.

1 He's a former NIH employee.

2 And he's one of the top royalty recipients by
3 number of payments that I found.

4 Q So he was an inventor employee at NIH?

5 A Correct.

6 Q And what did you ask Professor Kwong?

7 A I asked Professor Kwong how much in royalties he
8 had personally received.

9 And I also asked -- see, during COVID, there was a
10 huge increase in inventor payment amounts. It was about
11 \$700 million to maybe like 1,000, 2,000 scientists.

12 So if that's true, then those scientists --
13 there's no way they could get 150,000 -- like, that would be
14 far too little if 150,000 was given to all of them even.
15 So I was like, so what happens -- how could that be?

16 I expected him to say something like, oh, the
17 money goes to the IC or this is an interesting case.
18 I don't know. I just wanted him to explain.

19 And instead he told me that, actually, there's
20 some sort of trust. After they hit \$150,000, it goes into
21 another account where it's sort of like a savings account
22 which pays out at a later date.

23 And I'd never heard of this before. And I was
24 quite shocked to hear that. So I asked him some follow-up
25 questions. And, I don't know, maybe he looked up

1 OpenTheBooks, and he stopped answering me.

2 But -- and I have filed several FOIA requests
3 asking about this cap and if there are documents related to
4 a possible extension of that cap. But we haven't heard back
5 yet, but Judicial Watch has filed a FOIA litigation to help
6 us out.

7 I filed my FOIA request back in 2024.

8 MS. ECKROTE: Objection. This is beyond the scope
9 of what we're discussing.

10 THE WITNESS: I mean -- well --

11 THE COURT: So let's -- hang on.

12 Let me just overrule the objection.

13 Go ahead. You can continue.

14 BY MR. BEKESHA:

15 Q And based on what you learned, did -- well, first
16 of all, did Professor Kwong say at any point, I can't talk
17 about this, this is confidential information?

18 A No.

19 Q Okay.

20 And has anybody told you that?

21 A No.

22 I mean, I've reached out to a lot of these
23 scientists, but they usually just don't respond at all.

24 Q Okay.

25 So does a 150,000k annual cap affect anyone's

1 ability, expert or not, to try to back-calculate the total
2 royalty payment made by a licensee to the NIH?

3 A Yeah.

4 If there's a \$150,000 cap and the scientist hits
5 it, then theoretically it would be -- if Kwong is wrong,
6 then theoretically it would be distributed to the other
7 scientists and then -- and there could be like some sort of
8 cascade where, you know, scientists hit their 150- and then
9 their co-inventors get more or whatever down the line.

10 I'm not even sure how it would be calculated
11 between inventors and licenses as scientists would hit
12 \$150,000.

13 Q Now I'm going to move you on to what's marked
14 as -- well, I guess now it's Defendant's Exhibit 2, but it
15 was originally Defendant's Exhibit 4, which is the
16 PowerPoint presentation.

17 And have you had a chance to review this
18 PowerPoint?

19 A Yes.

20 Q So I'm going to take you to the first page of
21 data.

22 And I don't know why that's marked on here.

23 Well, besides this squiggly line that just
24 appeared, it is the same PowerPoint.

25 So does any of the data in this exhibit from any

1 of the scenarios presented by NIH, does it have any
2 instances where the NIH institute is paid directly as an
3 inventor?

4 A Yes.

5 Q The NIH --

6 A Oh, the NIH?

7 Q -- institute or center?

8 A Occasionally, an institute or center will appear
9 under "inventor."

10 Q But in this PowerPoint?

11 A Oh, no, no. Sorry.

12 Q And would you say that this exhibit in its
13 totality individually at any point provides a scenario or
14 scenarios that are representative of the productions that
15 you have received in this litigation or through other FOIA
16 requests?

17 A The situation seems unusual.

18 Q Unusual.

19 Okay. Well, let's actually go into that.

20 So if you look at the first page, we have
21 inventors A, B, C, and D.

22 Can you tell me if we know the inventor share
23 percent in any of the productions you have received?

24 A No.

25 Q And based on your understanding, based on the

1 research, do you know if it's always the case that inventors
2 receive equal shares or amounts?

3 A It's my understanding that inventors can have
4 unequal shares.

5 Q And would that affect your ability to
6 back-calculate the total royalty payment from a licensee to
7 NIH just based on this Inventor Award data?

8 A I suppose so. It could.

9 I mean, as we discussed, it would be hard to know
10 where the extra funds were necessarily coming from when an
11 inventor is distributed funds more than his co-inventors,
12 his or her co-inventors.

13 Q And are you asking for the NIH to disclose the
14 "Share Percent" column?

15 A No.

16 Q Now, let's go to page 2.

17 Take a moment to look it over.

18 How many licenses are used in this example?

19 A One.

20 Q And is it always the case that all inventors of
21 one license will only receive payments from one license?

22 A It's not always the case, and I think it might be
23 a minority of cases.

24 Q And this is based on the statistical research you
25 have done based on the productions?

1 A Yes.

2 Q And in the productions you have received, are the
3 inventors who are receiving royalty payments, are they
4 usually receiving payments for more than one license?

5 A Frequently.

6 Q I'm going to take you to the last slide here.

7 What does this slide say about the products that
8 the NIH license covers?

9 A "All products sold by Biotech."

10 Q Are?

11 A "Are under one single license from the NIH."

12 Q And the productions you have received and
13 throughout all of your research, are there licensees that
14 sell products other than products covered by a single NIH
15 license?

16 A Certainly, I would wager many -- many
17 technology -- or pharmaceutical companies would sell many
18 products under -- many licenses from both NIH and non-NIH
19 under various licenses from each for -- like, just as an
20 example, like, Abbott is one of the big royalty payors and
21 licensees. They have hundreds of products like Pedialyte
22 and, like, the heart monitoring devices. I don't imagine
23 they're all using the same license.

24 Q And do the licensees you have researched sell
25 products that use more than one license, whether it be from

1 the NIH or any other entity?

2 A Typically, I haven't seen personally -- I mean,
3 supposedly they exist, but I would find it unusual.

4 Q So now we're going to go to --

5 THE COURT: I'm sorry, you find what unusual?

6 THE WITNESS: If a company sold all of its
7 products under one license --

8 THE COURT: Okay.

9 THE WITNESS: -- from the NIH.

10 BY MS. BLANKENBERG:

11 Q So now I'm going to take you to the "Payment Type"
12 slide.

13 And can you identify what type of payment is
14 discussed on this slide?

15 A Oh, it's the license execution payment, correct?

16 Q Okay.

17 So in your research, have you seen any SEC filings
18 when there is a license issue payment disclosed?

19 A Yes.

20 Q And does it appear, based on this slide, that this
21 is the sort of information that is being protected through
22 the withholding of the Inventor Award?

23 A Evidently, yes.

24 Q So now I'm going to take you to Exhibit 12.

25 And can you identify this exhibit, please.

1 A Yes.

2 This is a non-exclusive patent license agreement
3 with the NIH with -- from -- called Noachis Terra.

4 Q And this is one of the licenses that you reviewed?

5 A Yeah.

6 It's publicly available on the SEC website.

7 Q I'm going to turn to Appendix C of that license,
8 which goes over the royalties.

9 A Okay.

10 THE COURT: I'm sorry, what was the exhibit number
11 again?

12 MR. BEKESHA: It's Plaintiff's Exhibit 12.

13 THE COURT: Okay. Thanks.

14 BY MR. BEKESHA:

15 Q And on this page, does the agreement disclose the
16 license issue royalty payment?

17 A Yes.

18 Q And what's that number?

19 A \$30,000.

20 Q Does it say when it's due?

21 A Within 60 days.

22 Q Does it give other numbers?

23 A \$75,000 for each year after the first commercial
24 sale.

25 That's the only other major number.

1 Yeah, sorry.

2 Q And now I'm going to turn to what's been marked as
3 Plaintiff's Exhibit 13.

4 A Okay.

5 Q Can you identify this document, please.

6 A This is a Securities and Exchange Commission
7 registrations form as one registration statement from
8 Kyverna Therapeutics.

9 Q And is this one of the SEC filings that you
10 reviewed in your research?

11 A Yes.

12 Q I'm going to take you to a page on here, which is
13 really annoying, because the PDF pages don't align with
14 actual pages.

15 So this is page 99 of that registration statement.

16 And I want to direct your attention to the patent
17 license agreements with the National Institutes of Health.

18 And could you take a moment to just -- have you
19 read this document, read this section before?

20 A Yes.

21 Q How many licenses with the NIH does Kyverna have?

22 A Two.

23 Q And how many products do those two licenses cover?

24 A Three -- or two.

25 Q You can take a moment.

1 THE COURT: Is there a way to blow this up so she
2 doesn't have to squint?

3 MR. BEKESHA: I'm sorry, it's like a little --

4 THE WITNESS: Yes, it's two.

5 BY MS. BLANKENBERG:

6 Q So two licenses, two products.

7 And what does it say about upfront consideration?

8 A So 50 percent of upfront consideration of
9 \$3.3 million for the licenses will be paid in July 2021,
10 and the rest of the 50 percent will be paid in May 2022.

11 Q And so there is a license payment divvied up
12 that's split between two fiscal years?

13 A Yes.

14 Q And now for the second paragraph of this section,
15 does it tell you anything about the range of rates for
16 various payments?

17 A Yeah.

18 There's the minimum annual royalty payments of
19 \$200,000.

20 Some information on the sale -- or the -- or the
21 rates paid on -- based on net sales, certain other rates
22 related to sublicensing, and other payments made if
23 benchmarks are made.

24 Q And would you say that these percentage rates are
25 wildly, say, a range that you couldn't make an estimate of

1 what the rate is that's actually paid or is it a limited
2 number of possibilities it could be?

3 A Well, they give a range. So presumably it would
4 be within that range.

5 Q And does it appear that there are different rates
6 for different types of payments?

7 A Yes.

8 Q And has NIH in this litigation told you exactly
9 why they're withholding Inventor Awards to protect a certain
10 rate or a certain payment?

11 A No.

12 Q And now I'm going to have you go to page --
13 so it's their page 106.

14 And could you take a moment to look over the first
15 paragraph.

16 So we said earlier that there's two products
17 covered by two licenses by the NIH.

18 So for product KYV-201, is there any other license
19 included in that product that is not an NIH license?

20 A Yes.

21 There's a license from Intellia worth
22 \$7.2 million.

23 Q So would you say that this license information
24 here is similar or different from the scenarios presented in
25 defendant's PowerPoint?

1 A I would say it's quite different.

2 Q One last exhibit.

3 I'm going to take you to Defendant's Exhibit,
4 the Kirby Declaration. I believe that defendant has now
5 marked it as Exhibit 1.

6 Have you had a chance to review the Kirby
7 Declaration?

8 A Yes.

9 Q So I want to direct your attention to paragraph
10 10.

11 And there's a footnote at the end of that.
12 I'm going to take you to the footnote now.

13 Do you see that footnote that is referring to the
14 Public Health Service Technology Transfer Policy Manual
15 Chapter 700?

16 A Yes.

17 Q Have you gone to this website?

18 A Yes.

19 Q And were you able to view that document?

20 A You can view one of the documents.

21 But the General Procedures documents you cannot
22 view, and I have asked for them via FOIA two years ago.

23 Q Great.

24 And do you know if there are other procedures
25 within that document that might affect the total --

1 your ability to back-calculate the total payments made by a
2 licensee to the NIH?

3 A I have no idea.

4 MS. BLANKENBERG: Thank you.

5 No more questions.

6 THE COURT: Okay.

7 Any cross-examination?

8 MS. ECKROTE: Can I just have one minute to
9 confer? Thank you.

10 THE COURT: Sure.

11 (Defense counsel conferred off the record.)

12 - - -

13 CROSS-EXAMINATION

14 BY MS. ECKROTE:

15 Q We'll be brief.

16 Can I pull up again Plaintiff's Exhibit -- the
17 email with Dr. Kwong; I'm not sure what it was marked as.

18 Exhibit 7, can you just explain -- can you scroll
19 down, Elena, to the bottom of this, please.

20 So is this the email you sent to Dr. Kwong
21 originally?

22 A Yes.

23 Q So you asked if he was still at NIH, what his
24 position was, how much royalties he earned, correct?

25 A Yeah.

1 Q And if we scroll back up.

2 So how much did he say his royalties were for?

3 A He didn't give an amount.

4 Q He did not?

5 A Oh, yes.

6 About \$100,000.

7 That was for 2023, yes.

8 Q So was that over the cap of \$150,000?

9 A No.

10 Q So in the second paragraph here, he said, in terms
11 of how NIAID scientists can earn 700 million, it turns out
12 that if you exceed it, the rest goes into an account to pay
13 out to you.

14 Where did he base that information off of?

15 A I don't know.

16 I assume as a former NIH alum and a top scientist,
17 he would have some sort of knowledge about this.

18 Q Did he work in the Tech Transfer office?

19 A No.

20 Q Okay.

21 So he did not give any information about where he
22 got that information from?

23 A No.

24 Q Have you gotten any information to verify that
25 that is accurate?

1 A No.

2 That's what I've been trying to get via FOIA,
3 though.

4 Q Okay.

5 And did you reply to him?

6 A Yes, I did.

7 Q Did he ever respond back?

8 A Yeah, but it was just to end the communication.

9 Q Okay.

10 So no further -- did you get any further
11 information from him --

12 A No.

13 Q -- about this alleged \$150,000 payout, additional?

14 MS. ECKROTE: Okay. I think that's all I have for
15 you. Thank you.

16 THE COURT: Okay.

17 Any redirect?

18 MS. BLANKENBERG: No further questions,

19 Your Honor.

20 THE COURT: Okay. Thank you very much,
21 Ms. Todoroff.

22 MR. BEKESHA: Your Honor, in terms of one piece of
23 housekeeping, we didn't, like --

24 THE COURT: You can step down.

25 MR. BEKESHA: -- formally introduce and have you

1 admit exhibits into evidence.

2 THE COURT: Yeah, we can take care of that piece
3 of housekeeping in a moment.

4 MR. BEKESHA: Okay.

5 THE COURT: So let me just confirm: Are there any
6 additional witnesses from plaintiff?

7 MR. BEKESHA: No, Your Honor.

8 THE COURT: Any rebuttal case wish to put on?

9 MS. ECKROTE: No.

10 THE COURT: Okay.

11 All right.

12 So let's just make sure we have the exhibits that
13 were admitted.

14 Well, we have the defendant's exhibit. At least I
15 think it's only the declaration and the PowerPoint were at
16 least offered.

17 And I think really only the PowerPoint is what you
18 want to admit, right?

19 MS. ECKROTE: Right.

20 The declarations were submitted with our summary
21 judgment motion.

22 So the only thing new is the PowerPoint, yes.

23 THE COURT: Okay.

24 So that's Defendant's 4 is the PowerPoint.

25

(Defendant's Exhibit 4
received into evidence.)

1
2
3 THE COURT: And then in terms of Plaintiff's
4 Exhibits, I think we have --

5 MS. BLANKENBERG: So I can go over the list.

6 THE COURT: Okay. Great.

7 MS. BLANKENBERG: Would you like me to come up
8 here?

9 THE COURT: Yeah, if you would, please.

10 MS. ECKROTE: So the exhibits that we used that we
11 seek to introduce are Plaintiff's Exhibit 1, which is the
12 curriculum vitae; Plaintiff's Exhibit 4, the corruption
13 report; Plaintiff's Exhibit 7; Plaintiff's Exhibit 12;
14 and Plaintiff's Exhibit 13.

15 THE COURT: Okay.

16 MS. BLANKENBERG: Thank you.

17 THE COURT: All right those will be admitted.

18 (Plaintiff's Exhibits 1, 4, 7, 12, 13
19 received into evidence.)

20 THE COURT: If I could just make sure that you all
21 forward all those exhibits to Mr. Burton.

22 All right. So if you would just make sure he has
23 those, either in electronic or hard copy, that would be
24 great.

25 Okay. So I think the next question is, in terms

1 of next steps, do you all want to submit something in
2 writing in light of the evidence or how do you wish to
3 proceed?

4 Happy to take some additional submissions if you'd
5 like, or if that's not necessary, then we can just move
6 forward.

7 MR. BEKESHA: I think additional submissions would
8 make sense to help Your Honor.

9 THE COURT: Okay.

10 How long do you all want?

11 And I'm going to put a page limit, 15 pages.

12 Does that seem reasonable?

13 MS. ECKROTE: Yes.

14 MR. BEKESHA: Yes, Your Honor.

15 THE COURT: Okay.

16 And I don't know how long it will take to get the
17 transcript. So you want to just say, I don't know, 30 days?
18 So April 10th.

19 April 10th work for everyone?

20 MS. ECKROTE: Yes, Your Honor.

21 MR. BEKESHA: One second, Your Honor.

22 Yes, Your Honor, that's fine for plaintiff.

23 THE COURT: All right.

24 So why don't we just set April 10th for sort of
25 supplemental submissions, 15-page limit to that filing, and

1 then we'll get your submissions.

2 If we want some additional argument, we'll call
3 you in, but I think we'll probably be okay with the written
4 submissions.

5 All right. Thank you, all, appreciate it. This
6 was very helpful and informative.

7 Take care. Thank you.

8 COURTROOM DEPUTY: All rise. The Court is now
9 adjourned.

10 (Proceedings concluded at 2:58 p.m.)

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C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Date: March 17, 2026

The image shows a handwritten signature in red ink that reads "William P. Zaremba". The signature is written over a circular official seal. The seal is partially obscured by the signature but appears to have text around its perimeter, possibly including "RMR" and "CRR".

William P. Zaremba, RMR, CRR

<p>BY MR. BEKESHA: [23] 41/3 44/5 49/4 53/4 56/15 64/15 66/19 70/7 72/12 74/14 80/2 81/9 81/14 82/10 82/19 87/4 88/7 101/15 102/12 103/13 106/8 115/14 121/14</p> <p>BY MS. BLANKENBERG: [3] 107/18 120/10 123/5</p> <p>BY MS. ECKROTE: [16] 9/11 10/16 11/15 18/22 20/25 22/15 25/25 27/25 34/13 38/6 89/11 92/3 95/4 98/8 99/1 126/14</p> <p>COURTROOM DEPUTY: [9] 4/2 4/6 9/3 9/5 69/21 69/24 94/16 107/11 132/8</p> <p>MR. BEKESHA: [24] 5/10 5/20 40/19 48/23 66/7 69/10 69/19 70/6 72/7 81/4 88/4 89/4 102/11 103/8 106/17 121/12 123/3 128/22 128/25 129/4 129/7 131/7 131/14 131/21</p> <p>MS. BLANKENBERG: [6] 107/5 126/4 128/18 130/5 130/7 130/16</p> <p>MS. ECKROTE: [32] 4/23 4/25 5/16 5/24 6/1 8/21 11/9 18/17 33/20 37/3 40/14 89/8 91/23 92/1 93/18 93/21 94/2 94/6 94/12 100/7 101/10 101/12 106/21 107/1 115/8 126/8 128/14 129/9 129/19 130/10 131/13 131/20</p> <p>THE COURT: [116] 4/4 4/14 4/24 5/9 5/13 5/17 5/21 5/25 8/20 8/25 9/6 10/7 10/12 11/14 21/20 21/25 22/2 22/6 22/9 22/14 24/13 24/20 24/24 25/2 25/9 25/12 33/23 34/12 37/4 37/18 40/17 40/22 43/15 43/24 44/2 48/22 48/25 52/11 52/14 56/3 64/4 66/5 66/12 69/8 69/11 69/20 70/1 72/6 72/8 74/6 74/8 74/10 78/20 79/22 80/1 81/3 82/9 87/2 88/5 89/6 91/19</p>	<p>91/25 93/20 93/23 94/5 94/7 94/15 94/19 98/2 98/4 98/7 98/13 98/18 98/21 98/25 100/9 100/18 101/9 101/11 102/8 102/10 103/6 103/10 105/21 106/1 106/6 106/19 106/22 107/2 107/9 107/14 115/11 120/5 120/8 121/10 121/13 123/1 126/6 126/10 128/16 128/20 128/24 129/2 129/5 129/8 129/10 129/23 130/3 130/6 130/9 130/15 130/17 130/20 131/9 131/15 131/23</p> <p>THE WITNESS: [50] 9/7 10/11 10/15 21/24 22/1 22/5 22/8 22/10 24/17 24/21 25/1 25/7 25/11 25/13 34/2 37/8 37/20 43/19 44/1 44/4 49/2 52/12 52/18 56/4 64/5 66/9 66/13 72/9 74/7 74/9 74/11 79/2 79/25 81/5 94/20 98/3 98/6 98/17 98/20 98/23 100/16 101/1 102/9 103/9 105/24 106/2 115/10 120/6 120/9 123/4</p>	<p>\$500,000 [1] 25/5 \$550,000 [1] 25/22 \$600,000 [8] 25/24 27/5 27/13 33/4 49/9 49/13 103/15 103/17 \$7,200 [2] 17/3 25/16 \$7.2 [1] 124/22 \$7.2 million [1] 124/22 \$700 [1] 114/11 \$75,000 [1] 121/23</p> <hr/> <p>1</p> <p>1 percent [2] 60/2 60/17 1,000 [1] 114/11 1.6 billion [1] 110/24 10 [2] 1/5 125/10 106 [1] 124/13 10th [3] 131/18 131/19 131/24 11:00 [1] 1/6 12 [4] 120/24 121/12 130/13 130/18 12600 [2] 61/4 96/2 12:30 [2] 69/12 69/23 13 [3] 122/3 130/14 130/18 137,500 [1] 26/22 146,700 [5] 24/14 24/18 24/25 25/6 52/19 15 [2] 17/3 131/11 15-page [1] 131/25 150 [3] 63/8 113/5 116/8 150,000 [5] 17/22 63/22 64/17 114/13 114/14 150,000k [1] 115/25 15th [1] 30/15 17 [2] 82/24 133/7 1700 [2] 97/20 97/25 173 [1] 26/19 195,600 [1] 50/4 1980 [1] 30/15 1984 [2] 28/7 32/10 1985 [7] 23/5 32/9 49/10 51/9 51/21 53/6 103/15 1996 [1] 8/15 1:30 [1] 69/15 1:34 [1] 69/23</p>	<p>2002 [1] 7/7 20024 [1] 1/16 2004 [1] 110/7 201 [1] 124/18 2010 [3] 45/4 54/4 111/1 2018 [1] 95/15 202 [3] 1/16 1/21 2/5 2020 [2] 45/4 54/4 2021 [1] 123/9 2022 [1] 123/10 2023 [2] 111/1 127/7 2024 [1] 115/7 2025 [1] 95/11 2026 [2] 1/5 133/7 20530 [1] 1/21 207 [1] 12/8 2080 [1] 99/16 209 [1] 12/8 209 F.Supp.2d [1] 7/10 20th [3] 51/21 53/6 56/17 21-2821 [2] 1/4 4/7 2485 [1] 1/21 25 [4] 17/4 25/20 26/17 54/3 252-2485 [1] 1/21 2821 [2] 1/4 4/7 28th [7] 23/5 27/6 28/4 49/10 51/9 76/16 103/15 29 [1] 98/3 29-odd-hundred [1] 97/20 2900 [3] 98/3 98/4 98/5 2:58 [1] 132/10</p>
	<p>\$</p> <p>\$100,000 [2] 64/12 127/6 \$146,700 [2] 24/1 26/2 \$150,000 [14] 17/15 18/6 63/6 63/15 63/18 64/8 64/23 84/23 113/3 114/20 116/4 116/12 127/8 128/13 \$155,000 [2] 17/21 18/6 \$2,000 [4] 24/4 24/5 24/7 25/14 \$20 [1] 33/4 \$200,000 [1] 123/19 \$3.3 [1] 123/9 \$3.3 million [1] 123/9 \$30,000 [1] 121/19 \$48,000 [2] 24/11 25/17 \$48,900 [3] 23/10 46/20 62/4 \$5,000 [3] 17/24 17/25 18/9 \$50,000 [3] 17/4 25/21 26/18</p>	<p>2</p> <p>2,000 [5] 17/2 24/6 24/10 25/15 114/11 2.1 [1] 60/14 20 [3] 32/15 33/5 64/23 20 years [1] 9/17 20001 [1] 2/5</p>	<p>3</p> <p>3 percent [1] 33/6 3,000 [1] 6/7 30 [2] 64/23 69/10 30 days [2] 55/5 131/17 30th [1] 28/7 31st [1] 95/11 3249 [1] 2/5 333 [1] 2/4 35 [1] 12/8 354-3249 [1] 2/5 36,000 [1] 99/12 37 [1] 7/10</p> <hr/> <p>4</p> <p>42 [1] 45/3 42 percent [1] 54/13 425 [1] 1/15 48 [1] 50/3 48,000 [1] 17/3 48,900 [4] 48/3 50/4 52/18 76/14</p> <hr/> <p>5</p> <p>5,000 [1] 18/7</p>

5	99/12 102/4 102/7 103/5 110/8 110/9 110/21 112/15 114/10 115/3 115/17 119/7 123/7 123/15 127/6 127/17 127/21 128/13	adopted [1] 53/25 advertise [1] 34/5 affect [5] 15/18 84/22 115/25 118/5 125/25 afield [1] 87/3 after [10] 13/16 17/2 17/4 28/10 72/24 83/15 83/15 100/16 114/20 121/23 afternoon [3] 69/18 101/16 107/5 Afterwards [1] 108/19 again [23] 29/22 30/15 32/4 32/21 42/12 44/20 45/16 45/22 47/19 48/11 49/20 53/2 53/14 55/12 55/21 55/25 62/25 64/4 64/18 73/21 96/20 121/11 126/16 agency [8] 7/18 61/8 66/25 67/4 67/25 86/24 101/5 104/13 agency's [1] 104/14 aggregate [1] 58/21 ago [4] 35/20 82/6 83/14 125/22 agree [2] 13/14 36/6 agreed [1] 53/1 agreement [28] 13/18 14/5 14/6 15/4 15/19 27/18 37/12 39/5 53/20 54/4 55/18 56/13 59/14 67/22 67/22 67/23 68/24 69/3 73/16 74/16 74/17 77/4 112/11 112/12 112/13 112/20 121/2 121/15 agreements [11] 28/8 36/21 36/22 37/1 40/6 55/20 67/2 67/2 67/3 78/3 122/17 agrees [1] 13/13 ahead [6] 27/24 28/2 69/12 103/12 105/12 115/13 aided [1] 2/7 algorithms [1] 51/4 align [1] 122/13 all [103] 4/2 4/18 5/17 5/21 9/6 10/12 10/15 10/25 13/20 15/9 15/22 16/2 16/24 18/9 19/18 24/22 25/23 26/8 26/11 29/2 32/4 34/3 35/10 37/9 39/3 40/15 40/17 41/25 42/3 44/11 45/25 46/20 47/17 50/23 50/25 51/5 53/2	58/10 59/6 62/10 62/15 63/16 68/12 68/19 69/17 69/21 69/24 70/3 70/4 71/16 71/21 72/19 73/19 75/11 75/12 75/22 75/24 76/8 77/24 78/1 79/7 82/17 83/14 83/15 85/8 89/6 90/14 91/6 91/10 92/23 93/19 93/25 94/19 98/22 98/25 100/4 100/7 105/21 107/3 107/14 110/14 111/3 113/13 114/14 115/16 115/23 118/20 119/9 119/13 119/23 120/6 128/14 129/11 130/17 130/20 130/21 130/22 131/1 131/10 131/23 132/5 132/5 132/8 All right [2] 98/22 130/22 alleged [1] 128/13 allow [2] 67/14 103/10 allows [1] 111/22 almost [3] 6/7 44/14 47/17 already [17] 13/6 17/18 20/7 22/24 30/17 34/22 41/22 48/7 51/2 54/7 75/18 83/3 84/14 90/12 96/19 97/12 105/3 also [53] 10/5 10/25 11/2 11/4 11/6 13/10 15/7 18/3 20/13 20/17 23/6 23/7 23/9 23/12 25/17 26/10 27/23 28/19 29/8 30/17 32/8 33/12 33/14 34/8 35/18 37/16 37/20 44/22 44/23 45/22 53/17 55/18 56/13 56/21 58/19 58/22 61/24 63/22 65/2 66/25 67/11 71/8 82/5 82/16 82/25 85/20 88/17 91/17 92/12 102/1 110/22 113/3 114/9 although [6] 14/11 54/16 61/16 68/14 69/3 79/16 alum [1] 127/16 always [12] 14/8 16/16 36/22 38/16 54/18 54/22 59/17 79/25 112/15 118/1 118/20 118/22 am [16] 9/15 11/17 14/3 18/9 36/25
50 [3] 45/12 123/8 123/10 5172 [1] 1/16 53 [1] 39/13 59,000 [1] 6/7	above [2] 53/5 133/4 above-titled [1] 133/4 academic [2] 74/18 109/5 access [4] 29/7 49/3 91/21 92/7 accordance [1] 81/17 according [6] 15/4 26/12 55/18 70/16 86/12 92/24 account [4] 16/2 114/21 114/21 127/12 accurate [5] 50/17 54/5 54/15 59/7 127/25 achieve [1] 27/22 across [1] 17/15 acting [4] 94/2 95/8 95/19 97/2 activities [2] 10/22 11/1 actual [11] 27/8 31/25 32/2 43/2 44/16 47/20 48/9 50/19 87/13 93/15 122/14 actually [18] 7/25 12/15 16/9 16/17 28/9 38/18 49/6 51/10 54/19 57/10 60/23 63/13 77/17 83/9 113/16 114/19 117/19 124/1 add [6] 25/23 26/3 50/3 71/11 85/5 90/14 added [3] 50/13 60/9 60/11 adding [2] 23/25 47/2 addition [1] 113/2 additional [12] 25/16 55/14 56/22 93/25 94/4 96/16 106/24 128/13 129/6 131/4 131/7 132/2 addressed [1] 54/7 adjourned [1] 132/9 adjust [1] 16/18 adjustment [2] 84/12 84/14 administer [1] 74/21 administration [1] 88/15 admit [2] 129/1 129/18 admitted [4] 3/16 3/21 129/13 130/17		
6			
60 days [7] 28/10 28/13 55/6 55/7 55/19 55/22 121/21 600 [1] 51/10 600,000 [10] 33/5 49/7 49/24 50/10 51/10 51/22 53/1 68/9 76/14 76/15 601 [1] 1/20 646-5172 [1] 1/16			
7			
7,200 [1] 24/9 7.1525 [1] 1/20 70,000 [5] 7/19 58/14 99/12 105/6 105/21 700 [3] 81/20 125/15 127/11 745,000 [1] 51/10 745,600 [3] 50/8 50/11 51/22			
8			
800 [1] 1/15			
9			
90 minutes [1] 69/14 99 [1] 122/15			
A			
a.m [1] 1/6 Abbott [1] 119/20 abilities [1] 8/1 ability [5] 14/13 45/14 116/1 118/5 126/1 able [13] 15/13 16/5 19/14 28/19 28/21 40/9 43/7 46/5 62/22 65/6 87/14 87/17 125/19 about [62] 5/7 6/23 9/16 9/17 28/12 34/18 35/1 35/4 36/10 38/3 38/9 39/19 39/19 40/2 43/2 45/10 48/15 54/3 58/13 59/13 60/15 60/18 60/20 60/23 60/23 63/5 63/11 64/16 64/21 66/6 69/13 70/16 78/2 82/6 82/22 83/14 85/25 86/7 86/21 86/23 87/6 91/2 92/17 94/11			

A	31/12 36/17 45/18 47/15 51/22 71/23 74/17 97/22 103/7 114/21 answer [5] 51/23 54/20 93/21 101/6 103/11 answering [1] 115/1 any [46] 15/18 17/2 17/15 18/20 23/15 25/20 36/23 36/25 36/25 42/3 45/14 45/15 46/9 50/6 51/24 54/9 55/8 58/7 58/10 63/23 67/19 68/24 70/23 89/7 93/21 101/6 106/20 106/24 111/9 111/15 115/16 116/25 116/25 117/1 117/13 117/23 120/1 120/17 124/18 126/7 127/21 127/24 128/10 128/17 129/5 129/8 anybody [1] 115/20 anymore [5] 39/9 39/15 39/19 72/20 108/23 anyone [2] 90/17 96/8 anyone's [1] 115/25 anything [13] 4/21 5/18 12/2 23/15 36/6 42/13 50/16 56/9 86/2 86/21 87/7 98/23 123/15 apologize [3] 14/7 26/15 52/12 appear [4] 112/18 117/8 120/20 124/5 APPEARANCES [2] 1/12 1/24 appeared [2] 6/6 116/24 Appendix [1] 121/7 applicable [4] 57/21 64/19 77/22 78/16 applicant [1] 13/17 application [3] 13/16 37/12 96/18 applies [4] 27/19 62/10 84/23 112/2 apply [3] 73/1 77/2 111/6 applying [1] 78/24 appreciate [2] 61/5 132/5 approach [3] 4/23 11/13 13/4 appropriate [4] 5/15 11/7 13/17 67/3 appropriately [1] 73/16 approved [1] 39/13 approximately [3]	7/19 97/25 99/12 April [3] 131/18 131/19 131/24 arbitrary [1] 53/2 are [171] area [5] 29/25 46/16 79/20 88/11 88/13 aren't [2] 59/5 61/16 arguing [2] 6/24 90/20 argument [2] 102/14 132/2 around [2] 5/12 39/13 articles [1] 13/7 as [80] 6/1 7/22 8/15 8/15 8/16 8/16 10/2 10/4 10/18 11/10 12/15 14/3 14/3 16/16 16/24 17/18 18/24 19/4 20/2 20/22 27/20 30/1 30/1 31/19 36/8 43/21 53/8 56/13 58/19 60/4 65/17 65/22 65/25 65/25 66/8 66/10 67/1 71/7 73/4 78/12 83/3 84/18 84/18 85/8 86/4 86/16 88/19 93/22 95/18 97/2 97/6 97/6 97/7 97/7 97/8 97/8 100/10 100/15 100/24 107/6 108/5 109/13 109/20 110/1 110/19 111/13 112/9 112/10 112/21 113/17 116/11 116/14 117/2 118/9 119/19 122/2 122/7 125/5 126/17 127/16 as much [1] 97/7 as we will [1] 7/22 ask [9] 17/11 35/15 60/20 60/23 69/14 69/16 90/2 113/19 114/6 asked [9] 63/3 86/19 101/7 113/14 114/7 114/9 114/24 125/22 126/23 asking [6] 11/22 48/6 72/14 105/7 115/3 118/13 asks [1] 96/20 aspects [2] 13/20 69/4 assign [1] 67/8 assigned [3] 67/21 68/2 68/5 associated [3] 23/7 67/1 71/3 assume [5] 28/14 30/8 55/3 113/11	127/16 assuming [3] 20/21 45/22 76/13 asterisk [1] 84/10 attended [1] 108/15 attention [2] 122/16 125/9 attorney [2] 41/6 101/4 August [2] 31/6 95/11 available [11] 13/19 18/13 18/21 23/22 29/8 43/17 49/18 82/3 82/12 82/13 121/6 Avenue [1] 2/4 award [12] 41/21 72/16 72/17 73/11 76/2 78/8 78/10 79/23 80/8 90/4 118/7 120/22 awards [27] 41/13 41/14 41/17 42/15 42/21 42/24 44/6 44/15 45/24 45/24 46/24 47/2 63/4 70/13 78/21 78/25 79/9 90/8 90/21 91/12 100/22 101/3 102/15 110/22 111/13 112/18 124/9 aware [10] 36/23 36/25 38/8 42/14 59/24 61/3 66/21 84/18 85/17 97/9 away [1] 104/2
		B	
		back [75] 7/6 7/20 7/25 8/2 8/15 8/16 18/19 19/7 19/15 19/23 22/21 24/17 26/25 34/16 44/8 44/18 45/14 46/9 46/10 46/11 47/9 48/11 49/17 50/16 50/17 51/15 58/9 58/9 58/10 58/15 58/23 58/24 58/25 59/1 59/3 60/8 62/22 63/23 65/3 69/5 69/14 70/3 70/8 70/15 72/16 78/11 78/24 83/2 86/6 86/12 87/1 87/8 87/15 87/21 89/12 91/5 91/13 93/1 99/5 99/23 99/25 100/12 100/14 102/15 102/17 103/19 103/25 104/5 115/4 115/7 116/1 118/6 126/1 127/1 128/7 back-calculate [38]	

B	because [84] 7/4 23/2 24/9 24/11 24/22 26/11 26/24 28/18 29/9 31/17 32/3 32/8 33/17 34/23 35/20 36/5 36/7 36/17 37/25 38/10 38/19 39/10 40/6 44/12 46/12 47/7 49/11 49/19 49/23 50/12 50/19 50/23 51/5 52/5 54/16 55/4 56/8 57/13 57/20 57/23 58/11 58/17 59/21 60/6 61/21 63/15 63/23 64/11 65/4 65/9 67/20 67/21 68/19 75/20 76/16 77/18 80/12 81/7 83/1 83/20 85/2 85/7 86/3 86/13 90/12 91/8 91/21 97/12 97/21 98/11 100/11 101/19 102/14 103/1 103/18 104/24 105/11 105/13 106/2 109/11 109/23 112/4 113/6 122/13	believe [8] 6/21 52/17 65/16 83/7 83/10 83/13 96/11 125/4 believes [1] 103/19 belongs [1] 20/12 below [1] 22/3 benchmark [8] 15/9 27/21 31/11 37/24 37/25 79/4 79/13 93/7 benchmarks [1] 123/23 beneficial [1] 12/21 benefit [2] 59/24 85/20 besides [1] 116/23 better [1] 33/16 between [9] 14/23 41/11 42/25 45/4 54/4 74/17 112/12 116/11 123/12 beyond [2] 101/6 115/8 big [2] 47/17 119/20 billion [2] 110/21 110/24 Biogen [2] 78/6 103/15 biotech [11] 23/4 23/13 26/6 27/13 32/1 44/12 51/21 68/8 76/13 76/16 119/9 bit [12] 6/13 10/11 11/25 28/12 29/14 31/21 34/19 35/1 38/19 52/15 64/24 99/3 blank [2] 72/4 72/7 Blankenberg [3] 1/13 4/10 107/7 blockbuster [3] 45/18 45/20 48/4 blow [1] 123/1 book [1] 65/17 both [8] 13/5 58/4 71/10 74/20 89/22 109/1 109/6 119/18 bottom [4] 49/6 66/24 78/21 126/19 breaching [1] 39/4 break [4] 6/15 40/20 69/13 77/23 breakdown [1] 85/21 brief [3] 42/6 89/8 126/15 briefly [3] 60/18 89/12 108/12 bring [2] 94/4 94/8 broad [2] 14/15 14/19 broadly [2] 10/23 34/9 broken [5] 20/10	43/25 78/18 80/17 90/13 bucket [2] 78/22 80/9 buckets [6] 77/11 78/5 78/6 78/7 78/8 92/18 bullet [1] 53/5 burden [1] 94/5 Burton [1] 130/21 business [9] 29/6 34/3 34/11 36/7 36/10 38/10 44/23 51/3 96/9
back-calculate... [38] 7/6 7/20 19/7 19/15 19/23 22/21 44/8 44/18 45/14 47/9 48/11 50/16 51/15 58/23 58/24 58/25 59/1 60/8 63/23 70/15 78/11 83/2 86/6 86/12 87/15 87/21 91/5 93/1 99/23 99/25 102/15 102/17 103/19 103/25 104/5 116/1 118/6 126/1	become [1] 59/24 been [35] 8/14 9/16 12/10 15/13 20/7 21/22 26/10 42/16 56/22 66/13 66/21 69/13 70/16 73/16 76/9 76/9 76/10 76/11 82/21 83/3 83/5 84/14 87/14 95/10 95/15 95/17 100/5 104/25 107/25 108/5 111/2 113/2 113/17 122/2 128/2 before [19] 1/10 4/21 5/18 8/16 15/8 26/3 27/20 35/16 47/9 54/12 68/20 74/12 76/18 80/20 86/20 95/19 100/16 114/23 122/19 began [1] 95/18 begin [3] 4/22 5/19 41/8 beginning [2] 58/21 65/5 behalf [5] 4/9 4/12 4/25 9/20 9/23 being [19] 8/6 14/19 24/15 24/21 26/11 39/20 46/7 49/5 60/16 60/19 76/21 78/6 78/8 80/16 87/9 93/2 101/2 101/7 120/21 Bekesha [3] 1/13 4/10 41/6	calculate [52] 7/6 7/20 15/23 16/4 19/7 19/15 19/23 22/21 31/25 34/17 44/8 44/18 45/8 45/14 46/6 47/7 47/9 48/11 50/16 51/15 58/23 58/24 58/25 59/1 59/9 60/8 63/23 65/7 70/15 78/11 83/2 86/6 86/12 87/15 87/21 88/18 90/17 90/17 91/5 91/9 93/1 99/23 99/25 102/15 102/17 103/19 103/19 103/25 104/5 116/1 118/6 126/1 calculated [33] 7/25 8/13 17/6 17/7 18/12 25/6 41/17 41/21 42/20 43/20 43/21 44/6 46/9 46/10 46/11 58/9 58/9 58/10 59/3 60/5 60/13 63/12 63/14 67/25 68/12 78/9 81/17 87/1 87/8 92/15 100/12 100/14 116/10 calculates [1] 72/16 calculating [2] 26/25 76/19 calculation [35] 8/2 17/14 18/19 19/19 19/20 33/25 43/14 44/8 47/4 50/20 51/13 52/16 52/22 52/23 58/4 58/15 59/11 62/9 62/13 62/22 64/14 75/15 76/22 78/24 79/22 81/1 84/22 85/7 90/1 91/13 92/4 92/6 93/12 99/5 99/11 calculations [12] 46/25 47/6 50/17 50/23 74/2 77/17 77/20 79/18 80/21 82/21 83/16 88/24	
back-calculated [12] 7/25 46/9 46/10 46/11 58/9 58/9 58/10 59/3 87/1 87/8 100/12 100/14		C	
back-calculates [1] 72/16			
back-calculating [1] 26/25			
back-calculation [7] 8/2 18/19 58/15 62/22 78/24 91/13 99/5			
back-calculations [1] 50/17			
backdate [1] 84/25			
background [2] 58/7 108/12			
backs [1] 91/16			
backtrack [1] 52/15			
backwards [1] 24/11			
barred [1] 61/14			
Barrett [1] 2/4			
base [3] 5/7 15/24 127/14			
based [50] 6/12 7/24 8/10 8/10 13/19 14/9 14/17 15/23 16/17 19/16 22/21 24/16 25/19 27/12 29/22 30/6 31/11 31/13 32/9 32/12 32/21 38/7 41/21 42/9 43/1 48/9 51/25 52/21 58/4 60/9 60/25 63/19 68/15 74/2 76/9 85/7 85/19 85/21 90/18 93/6 103/20 111/19 115/15 117/25 117/25 118/7 118/24 118/25 120/20 123/21			
based on [1] 7/24			
basic [1] 51/6			
basically [4] 26/21 67/19 70/23 75/10			
basis [4] 16/25 18/12 85/11 93/9			
be [196]			
became [1] 39/6			

C	59/12 62/11 64/18 64/20 83/1 91/14 92/12 118/23	87/12	coming [8] 25/10 47/17 62/24 79/24 80/9 80/20 80/20 118/10
calculator [1] 51/17	catalog [1] 30/19	circumstances [5] 27/7 46/6 53/15 67/5 68/20	comment [1] 86/13
calendar [3] 32/10 63/16 63/18	CCI [2] 96/11 96/17	cited [2] 47/13 48/2	commercial [16] 6/20 6/22 28/24 37/13 51/18 61/9 83/4 83/6 103/2 103/18 104/6 104/17 104/21 105/9 105/14 121/23
call [4] 56/3 94/13 107/4 132/2	CDC [1] 9/20	Citizen [4] 7/8 34/21 98/11 101/19	Commission [1] 122/6
called [3] 43/16 110/7 121/3	center [7] 18/4 62/12 74/7 76/7 76/8 117/7 117/8	Civil [2] 1/19 4/7	commit [1] 55/23
calling [2] 4/6 23/4	centers [8] 15/15 81/17 88/23 110/18 110/23 110/25 111/7 111/12	Civil Case [1] 4/7	common [10] 31/12 44/25 45/2 53/12 53/14 53/22 53/23 54/10 54/11 55/9
came [4] 15/17 47/5 57/13 78/5	certain [8] 38/11 39/18 47/14 65/10 69/4 123/21 124/9 124/10	clarification [1] 82/14	commonly [1] 27/23
camera [1] 93/15	certainly [19] 14/10 34/4 36/4 36/25 37/15 43/4 46/5 54/21 56/19 63/25 64/24 69/2 75/5 79/17 87/19 89/1 91/15 92/10 119/16	clarify [1] 77/6	communication [2] 102/6 128/8
can [135]	certainty [1] 92/11	clause [3] 36/24 37/7 60/18	companies [31] 13/10 34/4 36/2 36/6 38/9 39/8 39/11 39/19 40/1 46/4 47/8 48/2 48/19 48/23 49/1 54/3 57/3 65/4 66/4 92/12 97/23 100/5 100/14 100/23 100/24 102/6 104/21 104/22 104/25 109/24 119/17
can you [1] 10/18	Certified [1] 2/3	clear [7] 21/20 26/2 34/21 80/7 89/13 98/13 104/20	companies' [1] 39/7
can't [22] 16/18 38/20 39/11 40/2 42/12 46/9 46/12 50/16 52/5 52/9 58/9 59/20 65/7 69/4 85/24 86/13 87/11 91/7 99/23 101/6 111/25 115/16	certify [1] 133/2	clearly [1] 81/6	company [64] 6/11 6/11 12/24 13/3 13/4 13/6 13/13 14/23 14/24 15/1 17/20 19/19 23/4 23/13 25/15 28/6 28/15 28/19 29/3 30/8 30/17 30/23 31/14 32/4 32/19 33/25 34/10 35/20 36/17 40/6 45/15 47/10 47/22 48/4 48/14 48/15 49/9 51/19 53/13 53/19 54/22 56/6 59/4 60/15 67/13 68/9 68/20 77/10 78/13 80/10 83/12 86/18 91/15 93/3 96/15 97/14 97/21 97/22 98/14 104/11 105/18 106/3 106/14 120/6
cancer [3] 28/24 45/18 45/20	CH [1] 2/4	clinical [1] 27/23	compared [1] 54/1
cannot [6] 87/16 97/21 103/6 104/7 113/7 125/21	chair [1] 10/13	close [1] 47/20	compelled [2] 100/5 100/22
cap [21] 17/8 17/22 18/1 18/3 63/6 63/8 63/15 63/22 64/8 64/8 64/12 65/3 75/20 75/22 113/3 113/5 115/3 115/4 115/25 116/4 127/8	challenge [1] 42/15	closely [2] 11/6 34/24	compensation [10] 65/22 65/25 66/3 66/5 66/8 66/14 66/18 109/13 109/13 109/23
capabilities [1] 14/19	chance [3] 31/13 116/17 125/6	closer [1] 55/6	compete [1] 33/14
caps [1] 75/17	change [5] 20/22 49/12 69/4 84/20 98/3	co [8] 15/20 67/1 74/19 74/20 88/21 116/9 118/11 118/12	
captured [2] 24/22 90/12	changed [6] 8/15 19/18 22/7 49/11 49/14 52/24	co-developed [1] 74/19	
care [3] 39/19 129/2 132/7	changes [2] 14/10 50/25	co-inventing [1] 88/21	
career [2] 54/23 54/23	changing [1] 69/5	co-inventors [4] 67/1 116/9 118/11 118/12	
carefully [1] 87/22	Chapter [2] 81/20 125/15	co-ownership [1] 74/20	
carry [1] 18/13	Chapter 700 [1] 81/20	co-owns [1] 15/20	
cascade [1] 116/8	chapters [1] 82/15	coded [1] 16/17	
case [50] 4/7 5/13 7/9 11/19 12/25 19/14 22/10 26/8 27/4 28/3 28/23 28/25 30/13 30/14 31/25 33/6 41/7 41/19 42/7 42/11 42/14 43/3 48/11 56/10 56/24 57/19 61/2 64/13 65/18 67/6 67/8 83/7 83/10 96/25 97/2 97/18 97/19 98/11 98/15 101/19 101/22 101/24 103/4 107/23 108/1 114/17 118/1 118/20 118/22 129/8	charge [4] 59/15 59/16 59/18 60/17	collaboration [1] 88/23	
cases [13] 21/11 35/17 43/4 43/5 58/8	charges [1] 60/1	COLUMBIA [2] 1/1 113/24	
	charging [1] 59/25	column [15] 21/2 70/13 70/21 71/1 71/12 71/12 71/13 72/17 75/3 79/9 80/8 80/9 80/9 90/4 118/14	
	chart [1] 92/19	Column B [1] 80/9	
	check [7] 72/19 72/20 72/21 77/1 78/13 79/5 80/14	Column C [1] 80/9	
	checkbooks [1] 109/18	columns [5] 70/11 70/12 70/18 72/1 110/19	
	checked [2] 52/1 52/3	come [17] 8/21 9/1 13/3 13/8 39/14 68/8 68/10 68/12 72/19 77/1 77/19 78/11 78/22 90/14 92/18 110/13 130/7	
	chief [1] 9/19	comes [8] 14/12 14/25 72/21 75/25 78/23 80/5 109/23 110/14	
	choose [1] 51/25	comfortable [2] 35/23 51/14	
	chose [1] 87/22		
	chunk [1] 27/2		
	Circuit [1] 8/4		
	circumstance [1]		

C	consultants [1] 109/14	92/8 92/10 99/24 103/24 105/7 109/24 110/22 111/11 111/13 114/13 114/15 116/7 118/8 122/18 124/2 124/14 130/20	data [10] 65/14 73/24 109/2 110/9 110/13 110/14 111/15 116/21 116/25 118/7
competitive [1] 38/10	consulted [1] 102/2	couldn't [6] 39/16 47/8 49/19 87/10 92/2 123/25	database [2] 10/25 109/17
competitor [5] 33/10 46/16 48/18 92/6 92/8	containing [1] 97/21	counsel [5] 69/8 69/16 88/6 89/6 126/11	date [11] 30/9 39/22 53/6 53/8 55/19 73/7 73/7 97/2 102/16 114/22 133/7
competitors [6] 29/5 30/2 31/17 36/9 51/3 92/13	contains [1] 61/8	counted [1] 60/4	day [4] 53/9 68/9 73/5 80/5
completed [1] 35/20	content [1] 89/3	countries [1] 67/14	days [10] 28/10 28/13 53/18 55/5 55/6 55/7 55/19 55/22 121/21 131/17
completely [1] 19/17	continue [3] 31/2 70/4 115/13	country [1] 67/13	deadline [1] 15/5
complicated [5] 6/13 6/14 73/13 76/1 79/15	CONTINUED [1] 2/1	counts [1] 17/20	deal [1] 33/16
components [1] 88/18	continuing [1] 56/8	couple [4] 65/19 67/17 108/20 113/15	decades [1] 16/1
computer [4] 2/7 75/1 76/1 108/4	contract [1] 39/5	course [5] 4/24 49/3 71/11 72/10 109/22	decide [3] 47/22 85/14 101/5
computer-aided [1] 2/7	contracts [1] 10/24	coursework [1] 109/5	decision [5] 97/11 97/12 97/15 100/17 101/21
concern [2] 36/2 100/12	contributions [1] 85/9	court [17] 1/1 2/2 2/3 4/2 5/7 7/7 34/21 40/9 50/15 66/14 69/21 69/24 93/14 97/12 100/22 108/13 132/8	decisions [1] 40/2
concerned [4] 38/9 60/15 101/23 101/24	contributor [1] 98/18	courtesy [1] 8/22	declaration [8] 11/19 63/9 65/18 81/15 88/9 125/4 125/7 129/15
concluded [1] 132/10	conversations [2] 38/7 60/25	cover [2] 37/7 122/23	declarations [2] 93/15 129/20
conducted [1] 112/25	copied [2] 50/22 52/21	covered [2] 119/14 124/17	dedicated [1] 11/2
conducting [1] 99/11	copies [1] 8/22	covers [3] 32/4 37/9 119/8	deep [1] 29/9
confer [1] 126/9	copy [3] 42/9 42/13 130/23	COVID [1] 114/9	deeper [2] 29/14 31/20
conferred [2] 88/6 126/11	corner [1] 70/11	create [1] 14/24	defendant [7] 1/7 1/18 4/12 9/9 95/2 106/24 125/4
confident [1] 87/8	correct [28] 17/22 21/3 21/8 29/18 30/24 46/25 47/11 47/12 50/17 52/1 52/25 58/5 63/10 76/14 78/14 79/1 83/17 84/4 84/21 89/17 90/21 91/13 98/6 98/11 114/5 120/15 126/24 133/3	created [3] 12/12 12/13 18/23	defendant's [9] 3/5 3/16 116/14 116/15 124/25 125/3 129/14 129/24 130/1
confidential [38] 7/1 8/7 35/9 36/8 37/10 37/17 38/13 38/22 39/8 49/20 51/18 52/6 58/11 60/19 61/9 73/10 81/6 83/3 83/6 85/15 86/17 86/25 96/9 96/15 97/14 98/15 100/15 100/25 103/2 103/18 104/6 104/12 104/16 104/21 105/9 105/14 105/18 115/17	corrected [1] 83/25	creating [1] 49/8	defendant's exhibit [2] 125/3 129/14
confidentiality [12] 34/20 35/1 36/2 36/20 36/24 37/5 37/7 38/9 38/17 39/16 39/17 60/18	correctly [1] 76/9	cross [10] 3/4 3/10 6/21 40/18 41/2 69/9 70/5 101/14 126/7 126/13	Defendant's Exhibit 4 [1] 116/15
confirm [2] 91/19 129/5	correspondence [1] 113/22	cross-examination [6] 40/18 41/2 70/5 101/14 126/7 126/13	Defense [1] 126/11
Conflict [1] 110/7	corroborate [1] 92/14	cross-motion [1] 6/21	defined [2] 15/24 16/3
conflicts [1] 109/20	corruption [2] 110/7 130/12	CRR [2] 133/2 133/8	definitely [2] 5/2 79/15
confused [1] 63/7	cost [3] 74/5 80/25 92/19	curious [1] 112/15	definitive [1] 54/20
consider [6] 30/9 88/13 103/17 104/12 104/12 105/18	costs [11] 70/24 71/1 71/3 71/24 72/3 72/10 72/19 80/24 81/11 92/25 111/14	current [3] 9/18 22/6 113/24	definitively [1] 8/17
consideration [2] 123/7 123/8	could [71] 7/5 7/20 7/25 8/15 8/17 8/21 10/7 10/9 19/6 19/23 28/4 32/24 33/10 33/15 33/17 33/18 40/5 42/21 42/23 43/10 43/11 48/10 49/14 51/13 55/8 56/16 56/17 57/6 57/11 57/14 60/8 61/5 64/13 64/24 67/6 67/18 68/23 72/5 72/9 73/12 77/1 80/8 85/23 86/16 86/25 87/7 87/9 87/20 90/17 90/17 91/14 92/4 92/4 92/6	currently [2] 14/1 95/8	degree [2] 92/10 108/18
considered [5] 39/4 76/22 87/22 88/10 97/14	costs [11] 70/24 71/1 71/3 71/24 72/3 72/10 72/19 80/24 81/11 92/25 111/14	curriculum [1] 130/12	demonstrate [1] 44/17
considers [1] 104/20	could [71] 7/5 7/20 7/25 8/15 8/17 8/21 10/7 10/9 19/6 19/23 28/4 32/24 33/10 33/15 33/17 33/18 40/5 42/21 42/23 43/10 43/11 48/10 49/14 51/13 55/8 56/16 56/17 57/6 57/11 57/14 60/8 61/5 64/13 64/24 67/6 67/18 68/23 72/5 72/9 73/12 77/1 80/8 85/23 86/16 86/25 87/7 87/9 87/20 90/17 90/17 91/14 92/4 92/4 92/6	CV [1] 1/4	Denotes [3] 84/10 84/11 84/13
consolidated [1] 91/1	costs [11] 70/24 71/1 71/3 71/24 72/3 72/10 72/19 80/24 81/11 92/25 111/14	D	DEPARTMENT [2] 1/6 4/8
Constitution [1] 2/4	costs [11] 70/24 71/1 71/3 71/24 72/3 72/10 72/19 80/24 81/11 92/25 111/14	D.C [5] 1/5 1/16 1/21 2/5 108/19	depend [1] 62/25
	costs [11] 70/24 71/1 71/3 71/24 72/3 72/10 72/19 80/24 81/11 92/25 111/14	D.C. [1] 8/4	depending [3] 46/6 58/19 63/10
	costs [11] 70/24 71/1 71/3 71/24 72/3 72/10 72/19 80/24 81/11 92/25 111/14	D.C. Circuit [1] 8/4	
	costs [11] 70/24 71/1 71/3 71/24 72/3 72/10 72/19 80/24 81/11 92/25 111/14	damaging [1] 40/5	
	costs [11] 70/24 71/1 71/3 71/24 72/3 72/10 72/19 80/24 81/11 92/25 111/14	damning [1] 40/5	

D	42/25 60/13 85/12	distribute [2] 67/20 111/23	122/5 122/19 125/19 125/25
depends [5] 34/2 45/16 53/14 54/24 68/6	differences [1] 68/21	distributed [11] 17/9 21/12 61/25 62/3 62/15 66/25 75/24 85/4 92/24 116/6 118/11	documentation [2] 73/20 83/8
deposit [1] 53/12	different [29] 14/17 16/11 22/11 26/10 27/20 30/9 43/1 46/3 46/4 47/6 47/7 47/8 50/6 50/20 53/18 56/17 59/23 60/6 68/7 68/21 71/15 71/17 85/6 88/1 104/24 124/5 124/6 124/24 125/1	distribution [16] 11/8 15/19 15/23 17/7 17/19 63/12 71/5 72/23 74/13 75/15 76/23 81/16 81/23 84/20 88/24 112/14	documents [12] 19/22 23/3 89/2 92/8 95/24 97/10 110/14 110/16 113/4 115/3 125/20 125/21
deposited [3] 23/3 27/5 32/9	difficult [5] 60/7 63/23 84/24 86/5 91/4	distributions [11] 16/4 23/15 41/18 54/8 63/13 63/14 67/9 68/12 82/21 82/24 88/18	does [47] 5/9 12/18 13/3 13/4 14/25 15/12 16/10 28/17 29/21 31/16 33/9 37/6 37/6 48/19 48/25 51/6 53/23 59/18 66/15 70/17 70/19 74/15 77/24 78/1 84/22 85/14 91/21 92/19 93/25 103/17 106/24 110/13 111/6 113/10 115/25 116/25 117/1 119/7 120/20 121/15 121/20 121/22 122/21 123/7 123/15 124/5 131/12
deposits [1] 23/13	difficulty [1] 69/5	Division [1] 1/19	Does that [1] 131/12
Deputy [1] 107/24	direct [9] 3/4 3/10 9/10 95/3 107/17 110/17 111/7 122/16 125/9	divided [1] 123/11	doesn't [8] 33/25 49/24 50/12 73/7 77/5 80/25 104/3 123/2
describe [3] 88/13 107/22 108/12	directly [4] 9/22 60/10 110/24 117/2	do [80] 8/2 12/3 12/22 14/8 14/15 14/20 15/1 15/12 16/25 23/23 30/5 30/11 31/21 34/1 34/5 35/2 35/11 36/5 39/17 39/24 40/13 44/25 47/8 49/16 51/13 51/23 52/9 54/8 57/3 59/1 60/25 62/2 62/22 64/14 65/2 68/3 69/9 73/11 73/18 75/15 83/5 85/23 86/8 86/18 86/23 90/1 90/8 91/20 92/4 92/6 92/8 93/17 96/10 96/13 97/15 98/10 98/14 99/8 99/9 100/10 100/14 100/16 102/9 102/10 108/7 111/2 111/14 111/15 111/18 112/2 112/5 112/8 118/1 119/24 122/23 125/13 125/24 131/1 131/2 131/10	doing [12] 12/9 24/6 34/10 38/14 47/4 47/9 56/8 58/6 80/20 87/17 97/17 99/10
described [1] 113/4	director [3] 9/15 10/4 10/18	divides [2] 72/24 85/8	DOJ [1] 1/19
detail [5] 20/9 41/14 45/23 90/12 93/5	disclose [15] 8/6 8/7 19/7 22/21 38/20 38/21 40/12 85/15 86/19 87/22 100/13 100/21 100/24 118/13 121/15	Division [1] 1/19	DOJ-USAO [1] 1/19
detailed [4] 11/23 89/19 89/23 90/18	disclosed [11] 35/18 38/12 44/21 45/9 46/7 58/21 63/1 82/25 87/20 104/7 120/18	divvied [1] 123/11	dollar [4] 6/5 6/23 9/24 92/18
details [4] 19/18 21/21 68/15 89/1	discloses [3] 7/4 40/6 52/5	do [80] 8/2 12/3 12/22 14/8 14/15 14/20 15/1 15/12 16/25 23/23 30/5 30/11 31/21 34/1 34/5 35/2 35/11 36/5 39/17 39/24 40/13 44/25 47/8 49/16 51/13 51/23 52/9 54/8 57/3 59/1 60/25 62/2 62/22 64/14 65/2 68/3 69/9 73/11 73/18 75/15 83/5 85/23 86/8 86/18 86/23 90/1 90/8 91/20 92/4 92/6 92/8 93/17 96/10 96/13 97/15 98/10 98/14 99/8 99/9 100/10 100/14 100/16 102/9 102/10 108/7 111/2 111/14 111/15 111/18 112/2 112/5 112/8 118/1 119/24 122/23 125/13 125/24 131/1 131/2 131/10	dollars [7] 25/10 34/6 73/6 73/8 73/10 75/2 110/21
determine [24] 7/20 11/7 12/21 13/17 15/14 16/13 19/23 29/3 29/11 32/25 40/1 44/21 45/25 51/5 55/3 57/12 62/12 66/15 75/9 75/16 75/19 77/18 99/4 113/8	disclosure [11] 86/3 86/17 96/8 96/14 96/19 96/24 97/16 97/17 100/23 105/4 105/5	do you [4] 90/8 131/1 131/2 131/10	don't [65] 5/22 6/21 9/1 10/13 16/25 18/13 24/22 27/18 35/15 36/7 36/23 38/21 39/19 40/12 45/10 46/8 46/12 47/12 49/18 49/20 50/25 56/9 58/7 58/17 62/4 62/25 64/12 65/13 77/21 79/4 81/5 85/2 86/4 86/10 86/14 86/21 87/7 87/12 91/6 91/10 92/7 96/16 99/15 101/4 101/6 106/15 107/1 107/3 108/21 108/22 111/10 111/20 111/21 112/6 113/11 114/18 114/25 115/23 116/22 119/22 122/13 127/15 131/16 131/17 131/24
determined [5] 42/22 66/14 66/16 79/11 85/19	disclosing [4] 42/21 49/20 58/11 65/12	do you know [8] 51/23 86/8 111/2 111/15 112/2 112/8 118/1 125/24	done [8] 19/25 29/9 40/7 67/21 69/17
determines [2] 8/11 58/22	disclosure [11] 86/3 86/17 96/8 96/14 96/19 96/24 97/16 97/17 100/23 105/4 105/5	Do you see [2] 108/7 125/13	
determining [1] 88/17	discloses [3] 7/4 40/6 52/5	dockets [1] 9/23	
develop [5] 12/24 12/25 39/11 39/12 56/8	disclosing [4] 42/21 49/20 58/11 65/12	document [11] 11/16 50/22 58/22 82/17 89/16 108/9 113/20	
developed [3] 12/10 54/1 74/19	disclosure [11] 86/3 86/17 96/8 96/14 96/19 96/24 97/16 97/17 100/23 105/4 105/5		
development [3] 31/11 31/14 37/13	disclosures [1] 113/6		
deviate [2] 14/8 69/1	discrete [1] 78/25		
devices [1] 119/22	discretion [1] 16/10		
diagnostic [1] 53/25	discuss [8] 4/21 7/22 10/17 18/18 31/24 34/25 62/1 94/4		
diagnostics [1] 13/1	discussed [4] 34/18 41/22 118/9 120/14		
did [36] 19/8 19/9 49/8 49/19 50/23 52/22 52/23 56/3 57/10 57/15 58/3 59/12 60/19 86/4 86/20 92/1 96/24 97/1 97/2 97/9 98/10 101/18 101/21 105/4 114/6 115/15 115/16 127/2 127/4 127/14 127/18 127/21 128/5 128/6 128/7 128/10	discusses [1] 81/23		
did you [6] 19/8 49/8 56/3 114/6 128/5 128/10	discussing [8] 6/3 9/25 29/17 41/9 42/16 53/6 111/3 115/9		
didn't [5] 5/4 55/22 62/23 127/3 128/23	discussions [1] 22/7		
difference [4] 41/11	dispute [2] 58/7 91/6		
	disputing [2] 6/22 91/3		

D	53/25	55/13 84/16 84/21 85/1	52/9 57/11 57/15 58/6 61/19 63/1 67/12 68/8 72/2 73/6 74/4 74/13 76/13 77/8 83/24 84/5 84/19 86/4 87/24 90/20 96/18 103/14 118/18 119/20
done... [3] 72/20 87/10 118/25	easy [6] 29/10 46/17 54/1 55/3 58/22 90/1	errors [1] 83/22	examples [7] 19/25 23/19 46/15 48/2 54/21 67/17 87/13
doubt [1] 86/3	Eckrote [4] 1/18 4/13 4/25 5/23	especially [8] 14/12 36/16 44/23 51/2 53/24 91/9 109/6 109/22	exceed [1] 127/12
down [11] 6/15 20/10 43/25 45/21 49/6 90/13 93/24 106/23 116/9 126/19 128/24	Editor [1] 107/24	essence [1] 96/7	Excel [2] 106/9 106/9
Dr [1] 94/19	education [1] 109/5	essentially [4] 8/8 37/19 56/6 68/19	except [1] 92/24
Dr. [13] 9/1 9/6 10/7 41/4 65/18 70/8 85/18 85/25 87/20 106/22 113/22 126/17 126/20	effective [1] 55/19	established [4] 8/14 34/16 83/3 83/6	Exchange [1] 122/6
Dr. Fauci [2] 85/18 85/25	effort [2] 99/19 106/5	estimate [3] 64/22 99/10 123/25	excluded [1] 92/22
Dr. Fauci's [1] 87/20	either [9] 13/7 45/24 51/11 52/24 69/4 99/7 100/19 112/19 130/23	even [24] 8/6 28/21 29/24 30/6 31/20 31/25 36/14 39/14 40/4 45/20 49/19 58/9 58/11 64/2 64/11 68/19 78/18 78/23 79/5 79/6 85/6 91/1 114/14 116/10	exclusive [1] 121/2
Dr. Kirby [6] 9/1 9/6 10/7 41/4 65/18 70/8	electronic [1] 130/23	eventually [1] 79/7	Excuse [1] 77/25
Dr. Kwong [2] 126/17 126/20	Elena [1] 126/19	ever [4] 36/23 57/3 57/3 128/7	executed [6] 11/3 14/22 28/7 28/11 30/14 55/5
Dr. Lampe [1] 106/22	eliminated [1] 71/5	everybody [1] 79/7	executing [1] 28/10
Dr. Peter [1] 113/22	else [7] 29/3 48/8 49/9 68/10 96/20 101/4 106/14	everybody's [1] 90/7	execution [1] 120/15
drug [2] 45/18 45/20	elsewhere [1] 44/22	everyone [5] 4/4 4/14 30/7 70/1 131/19	executive [9] 61/4 61/7 61/12 68/3 70/22 96/2 96/5 96/7 105/1
drugs [2] 13/1 39/13	email [4] 1/17 1/22 126/17 126/20	everything [3] 11/22 83/16 106/14	Exemption [8] 6/3 6/17 6/19 7/8 8/4 34/23 104/8 104/17
due [9] 15/23 23/16 28/10 31/6 55/19 67/12 73/2 83/22 121/20	emailed [1] 113/14	everything's [1] 17/9	Exemption 4 [1] 104/8
during [6] 54/13 61/22 63/15 63/19 71/17 114/9	employed [3] 6/9 95/12 110/20	evidence [5] 106/25 129/1 130/1 130/18 131/2	exercise [1] 16/10
duties [2] 10/17 10/18	employee [4] 66/14 109/20 114/1 114/4	evidentiary [2] 1/9 4/17	exhibit [30] 4/19 11/10 18/24 41/8 65/17 84/8 108/6 110/2 113/17 116/14 116/15 116/25 117/12 120/24 120/25 121/10 121/12 122/3 125/2 125/3 125/5 126/16 126/18 129/14 130/1 130/11 130/12 130/13 130/13 130/14
E	employees [4] 12/16 109/14 111/17 111/20	Evidently [1] 120/23	exhibits [9] 3/14 3/19 8/22 129/1 129/12 130/4 130/10 130/18 130/21
each [32] 6/8 7/20 14/6 15/23 16/10 20/11 23/10 41/18 43/7 44/13 48/20 48/24 53/1 58/22 61/17 61/19 71/16 73/18 73/20 75/14 79/3 79/11 80/13 80/13 80/14 80/18 84/20 89/24 93/5 99/11 119/19 121/23	encourage [1] 57/5	exact [1] 52/8	exist [2] 104/3 120/3
earlier [7] 11/20 54/23 56/13 65/4 112/16 113/4 124/16	end [4] 39/25 59/6 125/11 128/8	exactly [10] 22/8 25/11 33/6 43/10 49/13 57/13 63/5 68/4 101/7 124/8	existence [1] 38/21
earn [1] 127/11	ended [1] 50/17	examination [10] 9/10 40/18 41/2 70/5 89/10 95/3 101/14 107/17 126/7 126/13	expanded [1] 108/23
earned [20] 14/16 15/3 27/24 29/24 33/2 33/3 33/16 57/20 57/24 58/5 60/13 65/7 77/7 77/15 77/16 77/18 79/4 79/12 93/7 126/24	ends [2] 37/12 76/1	example [49] 12/23 15/19 19/6 19/14 20/14 21/22 28/23 29/22 29/24 30/7 32/21 33/23 33/24 35/19 38/21 41/24 42/18 44/12 44/16 44/17 47/25 48/7 48/13 50/3 51/25	expected [2] 38/15 114/16
earns [1] 73/4	enforcement [1] 11/3		expensive [1] 47/14
easier [4] 8/24 45/25 79/20 86/11	English [1] 108/15		experience [2] 36/1 104/10
easily [2] 43/11	enormous [2] 99/19 106/4		experienced [2] 51/2 55/25
	enough [5] 58/17 64/7 85/22 85/23 89/3		expert [9] 34/3 59/1 88/10 88/14 91/8 102/23 102/24 104/9 116/1
	ensure [2] 17/9 39/16		expertise [2] 46/13
	entail [2] 97/18 97/19		
	entire [3] 20/19 23/12 65/9		
	entirely [1] 108/22		
	entities [1] 67/1		
	entitled [5] 17/21 18/5 18/9 84/7 98/24		
	entity [1] 120/1		
	entries [1] 29/23		
	entry [1] 29/22		
	environmental [4] 108/18 108/20 108/22 109/6		
	environmental-focused [1] 108/20		
	equal [2] 62/7 118/2		
	equivalent [1] 44/14		
	error [9] 50/21 51/6 52/12 52/16 52/19		

E	106/10	format [1] 15/25	85/6 87/2 113/11
expertise... [1] 58/17	filing [1] 131/25	former [2] 114/1 127/16	113/12 113/13
expiration [1] 39/22	filings [3] 35/17 120/17 122/9	formerly [1] 39/22	give [18] 8/23 15/21 40/7 40/8 46/13
expires [1] 39/18	filled [1] 71/18	formula [39] 8/14 15/24 15/24 16/17	49/25 54/19 58/18 71/13 73/14 90/3
explain [16] 6/14 8/3 10/18 12/4 16/21 20/4 22/20 23/23 27/14 29/21 42/23 57/14 57/24 96/5 114/18 126/18	financial [17] 6/20 6/23 11/7 13/21 14/16 30/20 32/13 37/16 37/18 38/4 68/16 68/23 73/25 76/5 97/15 102/3 104/12	16/19 17/1 20/16 23/22 24/3 24/6 25/7 25/20 26/12 41/22 44/9 44/11 49/25 50/2 52/1 62/9 65/8 66/16 68/4 74/3 76/15 78/11 79/23 84/4 84/25 85/10 88/20 92/24 111/2 111/4 111/6 112/2 112/5 112/13 112/14	90/7 90/9 96/5 121/22 124/3 127/3 127/21
explained [4] 16/24 36/8 48/7 58/19	find [9] 8/17 28/21 32/5 46/15 46/18 84/8 113/7 120/3 120/5	found [5] 7/7 19/14 29/23 34/22 114/3	given [5] 85/18 86/9 102/16 113/7 114/14
explicitly [1] 20/1	findings [1] 110/17	four [8] 24/1 25/22 26/5 26/22 41/20 46/3 50/4 52/18	gives [5] 24/11 31/17 31/19 78/6 85/7
exposes [1] 36/17	finding [1] 48/14	formulas [1] 70/16	giving [1] 90/5
extend [1] 37/6	findings [1] 110/17	forward [2] 130/21 131/6	go [30] 7/18 19/5 22/17 24/11 27/24 28/2 29/13 29/14 46/24 49/9 49/17 49/23 50/23 52/8 65/3 69/12 70/8 74/5 92/6 92/8 103/12 105/12 105/24 108/4 115/13 117/19 118/16 120/4 124/12 130/5
extension [1] 115/4	fine [1] 131/22	found [5] 7/7 19/14 29/23 34/22 114/3	Go ahead [5] 27/24 28/2 103/12 105/12 115/13
extent [1] 60/8	finish [2] 103/11 105/12	fundraising [1] 34/5	goes [9] 18/3 75/23 78/7 78/25 83/15 114/17 114/20 121/8 127/12
extra [1] 118/10	finished [1] 38/1	funds [6] 16/6 18/13 23/4 110/11 118/10 118/11	going [67] 6/14 6/15 11/25 16/14 16/16 16/21 17/11 18/23 19/5 20/11 27/11 29/14 30/7 30/20 31/21 31/24 35/24 36/14 37/8 38/11 38/16 39/7 40/9 45/19 45/25 46/17 47/20 49/12 51/4 56/11 56/25 63/18 64/11 64/18 70/21 74/5 74/22 74/23 75/10 78/18 80/23 85/14 89/12 90/2 94/9 96/13 96/20 108/5 110/1 110/10 112/21 113/11 113/16 113/19 116/13 116/20 119/6 120/4 120/11 120/24 121/7 122/2 122/12 124/12 125/3 125/12 131/11
extrapolate [1] 7/15	firm [1] 46/13	future [4] 40/8 83/19 83/19 83/25	
extremely [2] 29/1 86/5	first [27] 6/19 8/19 17/1 17/1 20/5 24/7 34/3 39/3 41/10 46/19 55/15 55/19 63/7 64/3 64/10 64/13 67/15 70/9 70/21 71/11 110/11 111/3 115/15 116/20 117/20 121/23 124/14	G	
F	fiscal [8] 17/12 17/13 63/8 63/15 63/19 75/18 111/1 123/12	gave [1] 11/11	
F.Supp.2d [1] 7/10	fit [1] 13/11	general [6] 40/4 85/22 87/11 108/24 113/4 125/21	
fact [8] 19/16 37/21 38/18 46/9 46/14 48/10 85/25 97/13	five [1] 9/16	generally [7] 13/18 21/4 68/15 75/9 78/2 85/25 110/7	
factor [2] 80/25 92/20	fix [2] 82/4 84/12	geography [1] 108/16	
factors [7] 14/18 15/18 30/9 30/11 48/8 75/8 88/20	fixed [3] 10/13 83/19 85/13	get [43] 4/20 17/3 17/4 17/22 18/6 24/22 25/23 26/20 27/8 29/24 33/5 33/15 33/16 34/8 36/12 47/20 49/24 50/1 53/7 56/11 62/6 64/12 65/13 66/11 69/17 73/9 73/11 75/13 76/14 79/20 82/12 85/5 91/11 92/8 102/19 108/4 112/21 114/13 116/9 128/2 128/10 131/16 132/1	
fair [1] 65/24	Florida [1] 108/15	gets [5] 16/11 44/13 45/9 79/12 79/14	
familiar [11] 9/24 10/1 10/3 11/16 13/6 61/4 61/11 61/12 95/23 96/2 111/3	flows [1] 110/11	getting [6] 79/20	
far [10] 7/25 8/15 8/16 21/23 65/25 84/18 87/2 97/6 111/15 114/14	focus [3] 69/16 108/22 110/11		
Fauci [2] 85/18 85/25	focused [1] 108/20		
Fauci's [1] 87/20	FOIA [25] 4/17 6/2 19/13 20/8 38/19 60/20 61/10 65/13 81/13 82/5 94/2 95/8 95/18 95/20 96/15 97/2 99/8 102/1 104/16 115/2 115/5 115/7 117/15 125/22 128/2		
FDA [1] 39/13	follow [2] 72/23 114/24		
FDA-approved [1] 39/13	follow-up [1] 114/24		
February [1] 31/6	following [1] 18/15		
federal [4] 109/13 109/13 109/18 109/23	footnote [4] 81/19 125/11 125/12 125/13		
fee [2] 59/15 59/19	foregoing [1] 133/3		
feel [2] 35/23 51/14	form [3] 83/23 87/19 122/7		
Fees [1] 70/22	formally [1] 128/25		
fell [1] 56/23			
felt [1] 85/22			
few [3] 29/16 46/16 83/14			
fewer [2] 64/2 64/11			
figure [7] 43/10 48/17 72/15 93/2 102/20 102/21 104/14			
filed [4] 82/5 115/2 115/5 115/7			
files [2] 49/17			

G	8/4 8/14 8/15 11/23 15/5 15/25 18/1 20/7 20/13 23/22 30/17 35/16 44/12 47/25 63/3 66/13 66/17 76/10 82/5 83/3 83/5 84/14 86/1 95/17 102/15 104/25 107/25 108/5 108/23 109/1 109/17 111/16 111/25 115/5 115/20 124/8 125/4 130/22	highlight [1] 65/19 him [6] 103/10 114/16 114/18 114/24 128/5 128/11 his [5] 103/11 118/11 118/12 126/23 127/2 historical [2] 40/4 40/6 hit [8] 18/1 18/3 64/7 64/12 75/22 114/20 116/8 116/11 hits [2] 17/8 116/4 hitting [1] 75/20 honestly [1] 86/10 Honor [23] 4/6 4/9 5/20 5/24 8/22 18/20 33/22 40/15 40/19 52/13 65/16 70/6 89/5 93/22 107/5 128/19 128/22 129/7 131/8 131/14 131/20 131/21 131/22 HONORABLE [4] 1/10 4/3 69/24 69/25 hour [1] 99/11 hours [3] 7/22 99/13 99/15 housekeeping [2] 128/23 129/3 how [76] 7/16 7/17 8/11 14/19 16/10 19/6 19/10 22/20 23/22 25/5 27/14 27/15 29/23 30/11 31/17 33/11 33/12 36/20 44/25 46/6 46/11 48/3 48/4 48/17 48/19 48/23 50/15 53/22 55/1 58/13 58/14 58/22 59/18 61/20 61/25 62/2 62/5 62/22 63/1 64/20 66/15 66/17 67/24 68/18 69/7 69/9 73/9 73/11 76/21 77/15 77/19 78/2 80/12 85/4 85/12 85/14 85/18 87/8 95/10 95/12 97/23 98/2 99/15 102/21 114/7 114/15 116/10 118/18 122/21 122/23 126/24 127/2 127/11 131/2 131/10 131/16 however [1] 105/9 huge [1] 114/10 huh [7] 19/1 21/18 29/19 32/22 46/21 98/12 104/23 HUMAN [2] 1/6 4/8 hundred [1] 97/20 hundreds [3] 64/25 64/25 119/21	hypo [1] 51/10 hypothesis [1] 78/24 hypothetical [11] 48/6 48/9 49/8 51/24 52/10 52/23 53/7 53/8 62/23 89/14 93/16 hypothetically [3] 25/4 100/18 100/20
got... [16] 24/3 24/5 24/8 24/9 25/12 25/16 25/17 58/4 62/4 75/2 89/16 91/21 98/21 106/1 106/7 127/22 gotten [4] 18/9 25/14 97/6 127/24 government [10] 4/12 5/1 5/22 6/4 6/16 14/13 87/20 93/25 108/24 112/9 grant [2] 28/15 96/18 granting [1] 37/14 granular [1] 63/4 great [6] 8/20 69/5 108/3 125/23 130/6 130/24 greater [2] 24/24 52/19 group [4] 7/9 9/19 11/2 85/8 groups [1] 22/13 guarantee [1] 99/24 guarantees [1] 36/13 guess [7] 63/6 71/18 83/15 86/16 87/5 100/19 116/14	have [192] haven't [3] 45/8 115/4 120/2 having [3] 16/5 40/4 58/7 he [20] 86/1 86/8 114/4 114/7 114/19 114/25 115/1 126/23 126/24 127/2 127/3 127/4 127/10 127/14 127/17 127/18 127/21 127/21 128/7 130/22 he said [1] 127/10 he's [2] 114/1 114/2 HEALTH [7] 1/6 4/8 6/4 7/9 95/9 122/17 125/14 hear [1] 114/24 heard [5] 103/21 111/19 112/16 114/23 115/4 hearing [3] 1/9 4/17 104/15 heart [1] 119/22 held [3] 8/4 33/25 34/24 help [4] 44/24 52/16 115/5 131/8 helpful [6] 5/14 10/10 94/3 94/7 94/10 132/6 helps [1] 74/21 her [5] 91/20 94/4 94/8 94/11 118/12 here [36] 4/16 6/1 6/24 8/3 8/8 9/25 11/23 12/2 20/4 24/15 26/15 42/16 44/13 51/13 52/9 52/17 57/16 58/8 58/13 62/23 69/14 79/10 86/7 87/3 89/14 93/1 100/11 102/14 103/14 109/9 116/22 119/6 122/12 124/24 127/10 130/8 Here's [1] 77/4 HHS [1] 6/4 Hi [1] 101/17 high [6] 12/1 12/4 28/24 54/2 73/14 92/10 high-level [1] 73/14	I	
H		I	
had [20] 16/1 26/10 35/21 43/11 45/13 46/2 54/4 61/21 62/17 62/21 75/22 78/5 80/16 97/12 100/5 106/3 113/6 114/8 116/17 125/6 half [11] 20/9 32/10 64/3 64/10 64/10 64/12 64/13 64/16 85/21 99/11 110/11 half-year [1] 85/21 hand [4] 9/3 70/11 94/17 107/11 hang [2] 103/6 115/11 happen [2] 13/5 53/23 happened [5] 26/8 35/16 35/21 57/11 111/25 happening [1] 8/8 happens [7] 13/14 13/15 17/25 73/8 75/9 83/21 114/15 happy [7] 8/25 40/15 52/7 93/17 93/21 94/3 131/4 hard [7] 16/17 45/6 91/4 91/9 94/9 118/9 130/23 harm [1] 38/25 has [40] 5/10 6/6		I also [1] 114/9 I am [12] 14/3 36/25 61/12 91/8 95/8 95/25 96/3 102/24 104/9 107/6 110/1 113/11 I apologize [2] 14/7 26/15 I assume [1] 127/16 I believe [4] 65/16 83/7 83/10 125/4 I can [12] 8/23 18/6 40/20 46/14 50/19 51/15 58/24 59/9 59/10 73/14 87/13 130/5 I can't [10] 42/12 46/12 52/5 52/9 59/20 85/24 86/13 87/11 101/6 115/16 I cannot [1] 87/16 I could [1] 64/24 I couldn't [1] 49/19 I did [6] 50/23 52/22 52/23 57/15 59/12 101/21 I didn't know [1] 5/4 I don't [28] 6/21 10/13 45/10 46/8 47/12 49/18 50/25 58/7 62/25 79/4 86/4 86/14 86/21 99/15 101/4 101/6 106/15 108/21 108/22 111/10 111/21 112/6 114/18 114/25 119/22 127/15 131/16 131/17 I don't have [1] 58/17 I guess [6] 63/6 71/18 83/15 87/5 100/19 116/14 I have [20] 40/15 42/8 42/8 42/12 50/9 50/21 51/20 52/9 57/15 59/5 87/13 88/4 89/1 95/15 100/7 113/2 115/2 125/22 126/3 128/14 I haven't [2] 45/8 120/2 I just [5] 34/19 47/13 51/6 52/15	

I	37/8 40/15 41/6 43/15 48/22 49/14 49/25 51/2 51/12 52/11 53/7 55/7 56/3 57/15 59/13 61/3 61/12 64/4 66/5 72/6 72/15 74/7 78/20 80/22 84/8 84/18 91/8 91/19 93/17 94/9 98/2 98/13 100/9 101/4 102/4 102/8 103/8 103/9 104/14 105/12 106/13 107/25 108/4 108/5 110/10 111/8 113/16 113/19 116/10 116/13 116/20 119/6 120/5 120/11 120/24 121/7 121/10 122/2 122/12 123/3 124/12 125/3 125/12 126/17 131/11	83/24 INC [1] 1/14 incentive [1] 12/23 include [6] 36/5 36/7 37/15 68/23 69/7 110/22 included [3] 76/21 111/16 124/19 includes [7] 10/22 10/24 10/25 13/20 37/11 68/24 88/19 including [6] 12/11 13/21 14/18 15/8 32/6 68/16 income [8] 17/16 18/15 66/13 71/6 71/14 73/19 75/7 92/23 incorrect [1] 83/23 incorrectly [1] 50/13 increase [2] 60/12 114/10 incredibly [1] 53/23 incur [1] 59/15 INDEX [4] 3/2 3/8 3/14 3/19 indication [1] 28/18 individual [25] 7/5 7/21 16/11 17/7 17/21 21/13 41/17 45/24 48/20 48/24 53/1 58/20 60/3 61/14 61/21 67/11 77/11 80/13 89/19 89/21 90/8 101/2 101/3 109/11 112/21 individually [3] 68/17 68/18 117/13 individuals [4] 61/1 61/1 67/7 68/1 inextricably [1] 7/13 inform [1] 48/19 information [156] informative [1] 132/6 initiated [1] 15/24 input [1] 66/17 insights [1] 40/7 instance [14] 16/8 23/18 44/15 47/13 60/11 87/5 90/3 96/10 96/11 96/12 96/22 98/10 99/12 106/4 instances [4] 79/17 91/4 98/14 117/2 instead [1] 114/19 institute [15] 18/4 21/11 62/12 74/7 75/23 76/7 76/8 88/23 101/5 110/25 112/9 112/21 117/2 117/7 117/8	institutes [9] 6/4 15/15 81/16 95/9 110/18 110/22 111/7 111/12 122/17 institution [2] 74/18 74/20 institutional [4] 67/2 67/22 74/16 112/11 institutions [1] 88/21 Intellia [1] 124/21 intelligence [5] 29/6 34/4 34/11 44/23 51/4 intended [1] 56/10 inter [4] 67/2 67/22 74/16 112/11 inter-institutional [4] 67/2 67/22 74/16 112/11 interest [5] 23/8 60/17 109/12 109/15 109/20 interested [9] 36/9 42/24 46/17 46/18 48/14 70/14 87/16 109/19 113/5 interesting [2] 109/22 114/17 interject [1] 69/8 interrupt [5] 10/7 24/13 31/2 43/15 78/20 intertwined [1] 7/13 intramural [2] 10/23 12/13 introduce [6] 8/18 9/12 55/13 95/5 128/25 130/11 invalidate [1] 51/6 invented [1] 6/9 inventing [1] 88/21 invention [4] 6/9 67/15 74/19 88/15 inventions [4] 12/11 12/12 12/19 65/23 inventor [109] 6/5 6/9 7/11 7/14 8/11 15/23 16/11 16/13 16/25 16/25 17/12 18/1 20/12 20/23 21/10 21/13 23/10 41/12 41/13 41/14 41/17 41/21 41/23 41/24 42/15 42/21 42/24 43/7 43/16 44/3 44/6 44/13 44/14 45/24 46/2 46/20 46/20 46/24 47/2 47/25 47/25 48/20 48/24 50/13 53/1 60/3 61/20 62/13 62/17 62/18 62/19 62/20 63/3
I just... [1] 88/8 I know [2] 45/7 85/25 I mean [19] 23/18 36/12 38/18 39/22 39/25 42/24 45/9 46/22 54/16 61/24 67/13 75/5 81/13 81/22 91/7 102/13 115/10 118/9 120/2 I should [2] 18/9 52/24 I think [49] 5/13 6/24 12/3 16/1 29/13 34/15 37/1 39/3 39/6 39/25 40/4 40/15 47/22 47/23 51/1 51/3 51/6 54/7 54/12 54/16 55/6 55/21 56/20 59/10 59/21 60/14 61/24 62/25 64/22 71/7 73/21 81/3 85/20 87/2 89/15 91/14 91/17 92/10 92/12 93/19 100/7 101/18 104/19 111/11 118/22 128/14 129/17 131/7 132/3 I thought [2] 62/6 66/6 I took [1] 109/4 I understand [9] 24/14 26/17 46/22 49/22 65/25 80/22 81/3 89/2 89/3 I want [5] 69/12 70/8 73/9 122/16 125/9 I was [11] 9/19 9/21 17/11 63/7 64/9 82/12 86/21 89/25 95/14 95/19 112/15 I went [1] 108/19 I will [2] 94/13 96/23 I worked [2] 57/10 108/19 I would [18] 8/18 11/10 34/25 42/9 48/9 49/17 54/20 55/20 61/5 66/22 68/19 83/8 86/1 91/24 104/10 119/16 120/3 125/1 I wouldn't [1] 112/4 I'd [4] 49/23 52/7 86/15 114/23 I'll [6] 20/7 61/16 65/2 69/14 69/16 89/8 I'm [77] 8/1 8/25 10/2 10/5 11/22 18/23 20/21 20/21 23/4 24/13 34/3 37/4	I'm going [1] 125/12 I'm just [3] 53/7 104/14 106/13 I'm not sure [4] 51/12 80/22 111/8 126/17 I'm sorry [18] 37/4 48/22 52/11 55/7 64/4 66/5 72/6 74/7 91/19 98/2 100/9 102/8 103/8 103/9 105/12 120/5 121/10 123/3 I'm sure [1] 91/8 I've [12] 4/18 9/16 19/17 19/25 50/19 51/2 53/2 66/21 66/23 79/16 115/22 128/2 IA [5] 73/23 74/12 74/15 75/3 76/17 IA partner [1] 74/12 IAs [1] 80/23 IC [5] 23/7 74/5 74/6 75/23 114/17 ICs [3] 15/15 73/21 110/12 idea [3] 31/17 45/19 126/3 identical [1] 16/14 identify [6] 108/9 110/5 113/19 120/13 120/25 122/5 illustration [2] 20/2 22/11 imagine [4] 87/21 104/10 112/4 119/22 imagining [1] 21/15 impact [1] 13/22 important [8] 33/9 34/19 37/17 38/12 40/2 40/3 47/23 48/8 impossible [1] 91/5 inadvertently [1]		

I			K
inventor... [56]	involves [1] 36/16	123/3 123/4 124/13	Kaitlin [3] 1/18
63/6 65/12 66/18	involving [1] 108/1	125/1 129/15	4/13 4/25
66/25 71/5 72/3	IP [1] 67/12	it's based [1] 16/17	Kaitlin Eckrote [1]
72/11 72/16 73/11	is [399]	it's like [1] 123/3	4/13
75/15 76/2 76/22	is that correct [2]	item [2] 71/8 79/3	kaitlin.eckrote [1]
78/10 78/21 78/25	29/18 46/25	its [6] 11/1 34/1	1/22
79/9 79/12 79/13	is there [6] 4/21	74/2 100/23 117/12	Karen [3] 94/13 95/2
79/23 80/8 80/13	17/11 99/24 111/9	120/6	95/7
83/24 84/4 84/6	123/1 124/18	itself [10] 27/6	Kathryn [3] 1/13
84/10 84/15 84/20	isn't [6] 36/10	35/4 35/5 53/16	4/10 107/7
85/10 85/10 87/7	47/11 49/24 51/16	103/2 103/18 104/4	Kathryn Blankenberg
87/24 88/3 89/24	59/14 78/14	104/4 104/6 104/16	[2] 4/10 107/7
90/4 90/21 91/12	isn't that correct	J	keep [6] 10/9 35/8
100/22 101/3 105/6	[2] 47/11 78/14	January [13] 23/5	37/17 38/12 39/7
110/22 111/13 111/17	issue [11] 5/10	27/6 28/4 32/9 49/10	56/9
111/20 112/14 112/18	18/19 28/9 28/14	51/9 51/21 53/6	Kerry [1] 1/18
112/22 112/25 114/4	43/3 55/4 109/8	56/17 71/6 71/13	kind [4] 33/24 34/11
114/10 117/3 117/9	109/10 109/21 120/18	76/16 103/15	71/25 79/24
117/22 118/7 118/11	121/16	jargon [1] 74/9	kinds [1] 38/15
120/22 124/9	it [277]	jobs [1] 66/11	Kirby [10] 9/1 9/6
Inventor A [1] 72/3	it depends [1] 68/6	journal [1] 13/7	9/9 9/14 10/7 41/4
inventor's [1] 48/16	it probably [1] 5/14	JUDGE [1] 1/10	65/18 70/8 125/4
inventors [84] 6/13	it would be [18]	Judge's [1] 42/11	125/6
11/8 15/17 16/5	7/19 12/21 22/20	judgment [2] 42/6	knew [2] 35/23 62/4
16/13 16/16 16/24	26/24 37/1 39/3 45/6	129/21	know [129] 5/4 10/13
17/7 18/2 18/14	45/12 54/6 60/5 60/5	JUDICIAL [2] 1/14	13/14 19/20 23/3
19/20 20/15 20/18	94/3 94/7 94/10	115/5	23/6 23/9 23/12 24/3
21/12 22/12 23/6	116/5 116/6 116/10	judicialwatch.org [1]	24/8 25/15 25/16
23/14 24/1 24/18	118/9	1/17	25/17 25/19 27/4
25/13 25/18 26/5	it's [120] 4/14 5/5	July [1] 123/9	27/6 27/14 27/15
41/20 44/25 45/3	6/13 6/13 10/11 12/8	just [98] 5/7 10/7	27/15 27/17 27/17
45/12 54/8 54/13	12/23 16/17 17/13	10/17 11/25 14/8	27/18 27/22 28/3
61/14 62/5 62/10	17/15 17/16 18/1	15/7 16/19 16/22	28/9 28/12 28/21
62/16 63/21 64/2	19/4 19/17 21/6 23/2	21/20 22/10 24/14	30/12 30/17 31/8
64/5 64/17 64/23	23/18 28/13 30/6	25/2 25/4 26/2 26/17	32/3 32/8 33/17 36/5
65/1 65/22 67/1 67/4	30/8 38/14 38/16	27/6 28/12 29/1	36/13 37/22 38/11
67/10 67/11 67/25	43/4 44/1 44/16 45/2	29/16 30/7 34/19	38/20 39/15 39/17
71/21 73/22 74/13	45/7 45/20 45/25	38/1 39/19 40/11	40/13 44/25 45/7
74/19 75/16 75/18	46/5 46/9 46/16	42/18 45/1 47/13	46/17 46/23 47/13
75/22 76/12 76/19	46/17 47/4 47/22	48/9 48/17 51/6	47/14 48/14 48/15
76/24 81/16 82/25	51/25 52/3 52/19	52/15 52/15 53/7	48/16 49/16 50/15
85/3 85/4 85/8 87/25	53/17 54/11 55/2	54/14 56/7 57/23	51/23 54/19 56/1
88/20 89/15 92/24	55/21 56/6 56/7 56/7	58/6 59/5 64/10 65/2	56/11 59/6 59/7 59/9
100/12 109/16 110/11	56/10 56/19 56/20	65/19 67/17 68/25	59/10 60/10 60/25
110/19 110/20 111/23	56/24 56/25 57/23	69/8 69/12 69/14	61/17 61/20 61/24
112/3 112/5 112/6	58/10 58/24 58/24	69/16 70/11 72/15	62/2 62/5 62/23
113/7 113/9 113/13	58/25 59/16 59/17	74/5 75/6 76/15	62/25 63/24 65/10
116/9 116/11 117/21	59/21 59/24 60/14	78/14 78/19 80/7	65/12 66/10 66/10
118/1 118/3 118/11	61/9 63/10 63/10	80/7 80/15 82/11	72/19 75/1 76/20
118/12 118/20 119/3	63/18 64/24 65/18	82/12 84/16 85/5	77/3 77/6 78/6 78/16
inventorship [1]	67/19 67/20 69/3	85/20 88/4 88/8	79/4 84/11 85/25
54/17	69/12 70/21 70/23	88/13 89/12 89/12	86/5 86/8 86/10
Inventory [1] 70/13	71/25 72/7 73/16	92/16 93/16 96/5	86/14 86/15 86/18
investigators [1]	74/4 75/5 75/7 76/21	96/12 98/13 100/2	86/21 86/23 87/7
13/8	77/4 77/11 77/14	103/10 104/14 105/7	89/1 90/3 91/9 91/11
investor [2] 41/11	78/14 78/18 79/25	105/19 105/22 106/3	91/12 93/9 93/10
78/8	80/4 80/7 81/7 82/3	106/13 107/9 114/18	99/15 100/21 101/4
investors [2] 35/22	82/11 83/6 84/25	115/12 115/23 116/23	101/6 102/2 106/15
109/16	85/4 88/1 88/3 92/11	118/7 119/19 122/18	111/2 111/9 111/10
involved [6] 14/3	92/22 93/4 94/5 94/5	126/8 126/18 128/8	111/14 111/15 111/18
15/15 35/24 61/13	94/9 98/3 103/5	129/5 129/12 130/20	111/21 112/2 112/6
86/22 109/2	105/9 106/3 106/4	130/22 131/5 131/17	112/8 112/23 113/11
involvement [1]	114/21 116/14 118/1	131/24	114/18 114/25 116/8
107/22	118/3 118/22 120/15		116/22 117/22 118/1
	121/6 121/12 121/20		

K	47/25 48/1 59/13 65/16 79/3 81/3 112/8 112/10 115/11 117/19 118/16 129/12	119/24 licenses [47] 6/10 9/22 10/2 11/3 11/4 13/19 14/8 17/16 19/13 22/11 35/3 36/2 38/15 41/25 42/3 43/6 44/14 45/10 45/17 46/3 47/6 47/8 48/1 48/13 53/24 62/19 62/20 62/21 64/7 66/23 68/14 68/16 68/18 81/23 87/25 88/16 104/9 116/11 118/18 119/18 119/19 121/4 122/21 122/23 123/6 123/9 124/17	110/15 111/16 115/5 117/15 124/8 litigations [2] 95/20 95/20 little [14] 10/11 28/12 29/14 31/21 34/19 35/1 38/18 52/15 64/24 85/16 87/2 99/3 114/14 123/3 local [1] 109/18 long [6] 35/20 94/14 95/10 95/12 131/10 131/16 longer [1] 65/13 look [39] 15/14 25/8 28/8 31/4 32/5 32/13 38/1 38/5 48/6 49/6 49/9 49/17 52/22 54/20 55/20 56/21 59/10 59/13 64/13 65/4 65/9 71/16 73/20 75/17 78/19 79/9 80/12 81/15 83/8 86/2 89/12 93/10 94/5 99/5 99/7 100/21 117/20 118/17 124/14
know... [5] 118/9 125/24 127/15 131/16 131/17 knowing [4] 31/16 85/24 94/10 103/20 knowledge [4] 96/16 97/1 105/3 127/17 known [1] 39/6 Kwong [9] 113/22 113/23 113/24 114/6 114/7 115/16 116/5 126/17 126/20 KYV [1] 124/18 KYV-201 [1] 124/18 Kyverna [2] 122/8 122/21	letter [2] 105/7 105/19 letters [2] 101/19 104/25 level [4] 12/1 12/4 58/18 73/14 license [118] 12/5 12/7 13/3 13/4 13/11 13/18 13/20 13/21 13/22 13/23 14/4 14/5 14/11 14/14 14/20 14/22 14/23 15/8 15/10 15/14 17/17 17/19 19/19 20/12 23/5 23/7 23/15 23/16 26/18 27/13 28/5 28/7 28/8 28/10 28/10 28/13 28/14 28/15 28/20 30/1 30/13 30/16 31/4 31/8 32/2 32/2 32/3 32/12 33/7 33/12 33/15 35/11 35/18 36/6 37/12 37/15 38/5 38/21 39/23 41/19 43/5 43/9 43/25 44/13 45/1 45/4 45/13 45/15 47/10 47/14 47/17 53/19 54/4 54/9 54/14 54/17 54/21 55/4 55/5 56/7 56/24 61/18 61/21 61/21 62/17 62/18 63/24 68/15 68/25 73/2 73/20 73/22 74/22 81/8 86/9 86/11 103/23 106/14 118/21 118/21 119/4 119/8 119/11 119/15 119/23 119/25 120/7 120/15 120/18 121/2 121/7 121/16 122/17 123/11 124/18 124/19 124/21 124/23	licensing [3] 9/20 9/21 36/3 light [1] 131/2 like [62] 5/13 8/23 11/10 12/25 14/12 14/17 18/5 27/22 28/6 28/24 34/5 34/9 34/25 37/2 37/22 38/4 38/5 38/8 42/19 49/23 51/14 53/24 54/6 55/11 57/19 58/1 66/22 67/22 71/8 71/21 73/21 73/22 74/9 74/22 74/22 75/6 75/7 75/11 77/15 79/3 84/3 87/17 88/20 92/1 92/9 93/16 99/6 99/7 114/11 114/13 114/15 114/16 114/21 116/7 119/19 119/20 119/21 119/22 123/3 128/23 130/7 131/5 like the [1] 42/19 likely [2] 39/9 72/4 limit [3] 84/23 131/11 131/25 limited [1] 124/1 limits [2] 68/4 84/23 line [16] 7/19 14/11 38/14 50/22 71/8 71/18 71/21 72/2 72/4 72/7 76/2 78/21 99/4 105/6 116/9 116/23 lines [9] 7/19 58/14 71/15 84/11 87/9 99/12 105/6 105/22 105/22 list [3] 28/5 30/16 130/5 listed [2] 30/19 110/18 lists [2] 4/19 4/19 literal [1] 6/23 litigation [9] 61/10 61/10 61/13 82/5	
L	17/17 17/19 19/19 20/12 23/5 23/7 23/15 23/16 26/18 27/13 28/5 28/7 28/8 28/10 28/10 28/13 28/14 28/15 28/20 30/1 30/13 30/16 31/4 31/8 32/2 32/2 32/3 32/12 33/7 33/12 33/15 35/11 35/18 36/6 37/12 37/15 38/5 38/21 39/23 41/19 43/5 43/9 43/25 44/13 45/1 45/4 45/13 45/15 47/10 47/14 47/17 53/19 54/4 54/9 54/14 54/17 54/21 55/4 55/5 56/7 56/24 61/18 61/21 61/21 62/17 62/18 63/24 68/15 68/25 73/2 73/20 73/22 74/22 81/8 86/9 86/11 103/23 106/14 118/21 118/21 119/4 119/8 119/11 119/15 119/23 119/25 120/7 120/15 120/18 121/2 121/7 121/16 122/17 123/11 124/18 124/19 124/21 124/23	litigations [2] 95/20 95/20 little [14] 10/11 28/12 29/14 31/21 34/19 35/1 38/18 52/15 64/24 85/16 87/2 99/3 114/14 123/3 local [1] 109/18 long [6] 35/20 94/14 95/10 95/12 131/10 131/16 longer [1] 65/13 look [39] 15/14 25/8 28/8 31/4 32/5 32/13 38/1 38/5 48/6 49/6 49/9 49/17 52/22 54/20 55/20 56/21 59/10 59/13 64/13 65/4 65/9 71/16 73/20 75/17 78/19 79/9 80/12 81/15 83/8 86/2 89/12 93/10 94/5 99/5 99/7 100/21 117/20 118/17 124/14 looked [11] 19/13 19/22 42/8 50/13 58/2 58/3 66/23 106/11 106/16 113/13 114/25 looking [15] 13/8 20/21 23/9 23/12 29/2 29/4 41/10 46/19 50/9 53/5 54/25 64/9 64/10 70/10 93/5 looks [2] 57/19 58/1 lot [18] 11/23 14/17 29/7 34/18 38/1 40/11 47/18 54/17 56/25 59/22 62/11 64/5 64/24 79/20 92/17 108/23 110/8 115/22 lots [2] 22/24 73/14 low [1] 85/23 lower [1] 33/16 lunch [1] 69/13	
Lampe [6] 94/13 94/19 95/2 95/7 100/8 106/22 large [4] 7/21 65/14 87/25 99/18 largely [1] 14/11 larger [1] 78/23 largest [1] 109/17 last [13] 18/10 27/2 29/16 29/16 33/23 64/4 66/24 81/16 88/8 88/9 93/14 119/6 125/2 late [7] 57/3 57/7 59/13 59/15 59/15 59/18 59/22 late payments [1] 59/15 later [5] 18/14 54/23 65/8 108/21 114/22 launch [1] 65/5 law [3] 12/8 83/7 111/22 laws [1] 67/12 lawsuit [2] 60/21 81/11 lawyer [1] 61/1 lead [6] 58/14 70/17 74/22 86/2 86/16 107/25 learned [1] 115/15 learning [1] 36/10 least [6] 25/15 42/18 56/11 86/15 129/14 129/16 left [3] 69/17 83/24 84/6 leftover [2] 17/24 18/7 legal [1] 37/9 less [5] 20/13 33/19 62/14 65/5 88/3 let [4] 101/5 105/17 115/12 129/5 let's [13] 41/8	licensed [2] 14/19 30/14 licensee [29] 7/6 7/12 7/14 8/10 15/12 16/6 20/10 24/4 25/21 25/24 29/18 41/18 45/25 49/7 50/10 51/8 57/16 66/17 71/2 72/25 73/7 79/12 83/2 83/23 84/1 91/2 116/2 118/6 126/2 licensees [12] 11/5 27/7 27/21 35/3 35/8 60/20 66/4 88/2 110/12 119/13 119/21	M machine [2] 75/1 76/18 made [34] 19/10 27/17 29/2 29/8 32/9 32/10 37/21 41/18 41/19 49/2 50/5 50/12 51/6 51/9 52/13 52/19 52/23 57/16 63/13 69/7 71/17 76/9 76/9 78/3 83/16 85/18 97/11 97/15 112/8 112/12	

M	master's [1] 108/18	MEHTA [3] 1/10 4/3	119/22
made... [4] 116/2	match [1] 77/5	69/25	month [10] 20/19
123/22 123/23 126/1	matches [1] 77/5	memory [1] 61/5	23/11 53/9 71/9
made-up [1] 51/9	material [2] 45/19	mentioned [5] 14/5	71/16 71/17 73/18
maintaining [2]	61/8	16/1 25/7 27/20	73/19 82/6 84/12
10/25 71/4	materials [2] 47/15	73/21	monthly [2] 76/4
major [1] 121/25	98/16	Merit [1] 2/2	105/8
make [44] 15/7 18/13	math [9] 26/15 29/15	methods [1] 109/4	months [5] 42/1 42/2
19/8 19/17 24/14	31/22 33/21 47/9	Michael [3] 1/13	43/17 43/21 83/19
26/24 33/18 40/2	49/23 49/24 72/15	4/10 41/6	more [58] 11/25
40/20 49/14 51/14	76/13	microphone [2] 10/10	16/22 24/3 24/4 24/5
52/25 56/7 59/11	mathematical [1]	10/13	24/8 24/9 24/21
59/23 60/7 60/12	52/16	might [23] 13/10	25/19 27/8 28/22
63/22 64/7 65/5 71/9	matter [10] 4/17 6/2	15/18 38/5 39/4 39/8	29/24 31/22 36/10
72/22 76/11 77/3	21/17 28/17 31/16	40/7 40/8 40/9 46/5	36/13 36/13 36/17
79/17 82/14 82/21	50/12 73/7 95/23	55/12 56/21 56/22	38/19 39/6 39/14
83/16 84/1 84/19	107/7 133/4	61/23 62/13 65/6	42/22 43/11 44/20
84/24 86/5 86/11	matters [2] 28/18	73/23 75/7 86/2	44/21 45/13 45/23
86/15 91/4 101/21	34/18	87/16 87/17 94/11	51/14 53/19 54/4
104/19 106/3 112/20	maximum [5] 17/3	118/22 125/25	60/7 60/9 60/16
123/25 129/12 130/20	17/11 24/9 64/2 64/3	million [12] 32/15	62/13 63/4 63/23
130/22 131/8	may [45] 4/23 8/16	33/4 33/5 34/6 73/6	64/16 64/25 67/18
makes [3] 56/6 88/24	11/13 13/8 13/22	73/8 73/9 75/2	69/9 79/15 79/21
88/25	15/20 17/16 28/21	114/11 123/9 124/22	83/9 83/10 84/5
making [5] 15/9	35/14 37/4 37/16	127/11	84/24 85/16 85/24
31/18 47/18 56/11	44/22 47/19 48/11	Min [1] 70/22	86/8 91/1 92/16
74/1	54/12 54/13 54/22	mined [1] 65/15	113/11 113/12 113/12
manage [2] 10/21	54/22 58/1 62/12	minimum [5] 55/15	116/9 118/11 119/4
67/9	67/12 68/20 68/21	56/5 101/1 101/6	119/25 126/5
managed [3] 9/20	69/1 69/1 75/2 75/3	123/18	morning [10] 4/4
9/22 109/25	75/3 76/15 76/17	minority [1] 118/23	4/14 4/16 5/24 5/25
Management [4] 11/7	76/17 78/12 80/4	minute [4] 31/19	41/4 41/5 42/16 43/2
73/25 76/6 102/3	80/9 82/14 83/22	40/20 107/10 126/8	103/21
manager [1] 9/22	88/4 91/4 91/7 93/24	minutes [3] 69/10	most [8] 21/11 36/4
manages [1] 11/4	95/15 96/8 106/23	69/14 83/14	42/19 55/9 64/18
managing [2] 10/24	107/13 123/10	misquoted [1] 51/12	64/20 72/4 113/14
95/20	maybe [12] 33/14	missed [1] 37/4	mostly [2] 56/10
mandated [1] 12/7	34/5 64/11 64/23	mistake [3] 50/1	82/17
manual [5] 81/20	69/10 71/20 76/1	50/5 52/23	motion [3] 6/21 6/22
82/6 82/15 84/14	91/5 99/11 112/5	mistakes [1] 83/18	129/21
125/14	114/11 114/25	mock [1] 21/6	motivated [1] 59/1
manuals [2] 82/16	mbekesha [1] 1/17	mock-up [1] 21/6	move [5] 10/12 27/11
82/20	me [20] 8/1 18/8	model [12] 13/19	81/3 116/13 131/5
many [24] 23/19	25/3 27/2 41/11 45/6	14/6 14/12 28/8 31/4	moved [1] 108/21
23/19 27/7 46/11	46/15 48/6 52/16	32/12 55/18 55/20	Moving [1] 49/5
54/21 58/13 58/14	58/6 58/9 77/25 94/9	59/14 68/25 69/3	Mr. [1] 130/21
64/20 66/23 66/23	96/6 114/19 115/1	78/3	Mr. Burton [1]
68/18 79/17 83/1	115/12 117/22 129/5	models [2] 36/5	130/21
91/14 97/23 98/2	130/7	68/15	Ms. [5] 5/23 100/8
99/15 118/18 119/16	mean [33] 23/18	modified [1] 15/25	107/9 107/19 128/21
119/16 119/17 119/18	36/12 38/18 39/22	moment [6] 88/4	Ms. Eckrote [1] 5/23
122/21 122/23	39/25 41/14 42/24	118/17 122/18 122/25	Ms. Lampe [1] 100/8
MAR [3] 55/11 57/1	45/9 46/22 54/16	124/14 129/3	Ms. Todoroff [3]
57/22	61/24 62/2 67/13	money [31] 15/12	107/9 107/19 128/21
March [3] 1/5 30/15	75/5 81/13 81/22	16/9 17/18 18/3 18/8	much [39] 7/16 8/11
133/7	83/5 91/7 91/20	24/21 41/24 44/13	16/10 31/17 33/11
mark [2] 11/10 18/23	91/24 91/24 100/10	47/17 47/18 48/1	33/12 42/22 42/22
marked [10] 108/5	100/14 100/16 102/9	48/3 48/4 56/9 62/22	43/10 45/25 46/6
110/1 110/21 111/13	102/10 102/13 108/22	62/24 64/7 65/5 68/8	48/3 48/4 48/17
113/17 116/13 116/22	113/10 115/10 115/22	71/2 73/15 74/25	48/19 48/24 55/11
122/2 125/5 126/17	118/9 120/2	75/2 75/23 75/24	56/1 61/20 62/5 63/1
market [3] 14/25	meaning [1] 27/5	76/16 78/23 80/23	63/4 65/13 66/17
15/2 30/18	means [1] 62/13	113/11 113/12 114/17	69/9 77/15 79/13
MARs [3] 55/25 56/1	mechanical [1] 2/6	monitor [1] 14/13	79/14 79/21 85/18
56/3	Medicine [1] 112/10	monitoring [2] 11/3	87/12 88/3 97/7 97/8

M	27/11 27/14 27/15 27/15 29/13 29/21 31/21 49/5 55/2 60/23 84/8 84/10 89/15 130/25 131/1	10/18 29/14 34/18 34/21 42/13 57/25 69/12 69/21 69/25 100/3 110/1 110/10 116/13 116/14 118/16 120/4 120/11 120/24 122/2 123/14 124/12 125/4 125/12 132/8	102/3 127/18 officer [4] 94/2 95/8 97/3 104/16 Official [1] 2/3 OFM [5] 73/25 76/5 76/10 76/11 88/22 often [8] 12/25 14/3 29/5 36/12 36/20 55/1 59/18 74/18
much... [5] 106/22 114/7 126/24 127/2 128/20	NIAID [1] 127/11 NIH [137] NIH licenses [1] 11/4 NIH's [4] 8/14 100/2 104/3 104/18	number [57] 7/21 10/22 11/11 19/3 19/19 19/25 23/5 46/13 46/23 49/13 49/16 49/24 50/2 50/24 51/12 51/17 51/17 51/18 51/20 51/22 51/22 51/24 52/3 52/4 54/5 56/25 58/18 59/3 59/20 64/1 64/6 64/22 65/10 70/17 70/20 73/10 77/11 77/19 78/12 78/12 78/13 78/25 80/5 80/8 87/25 88/19 90/5 92/9 99/18 103/5 113/8 113/14 114/3 121/10 121/18 121/25 124/2	oh [6] 72/8 114/16 117/6 117/11 120/15 127/5 okay [128] 5/5 5/16 5/18 11/21 12/4 12/17 13/2 13/12 13/24 14/21 18/17 18/23 19/2 20/3 20/4 21/14 21/19 22/2 22/9 22/14 22/16 24/2 24/20 25/8 25/9 25/12 26/13 26/14 27/3 27/10 29/12 29/20 30/3 30/10 31/1 31/7 32/11 32/16 32/20 32/23 33/8 33/20 34/12 34/14 35/7 35/13 35/25 36/19 37/3 38/23 40/17 42/5 43/13 44/2 44/19 45/11 52/14 53/11 66/2 69/11 69/18 70/25 72/8 74/8 74/10 74/24 80/3 81/4 86/19 89/4 90/16 91/25 93/13 93/18 93/20 94/12 94/15 95/16 95/22 96/1 96/4 96/21 97/5 98/1 98/7 98/9 98/25 99/2 99/14 99/17 99/20 101/9 101/10 101/11 101/12 103/16 104/1 106/12 106/17 106/19 106/22 107/2 108/3 112/24 115/19 115/24 117/19 120/8 120/16 121/9 121/13 122/4 126/6 127/20 128/4 128/9 128/14 128/16 128/20 129/4 129/10 129/23 130/6 130/15 130/25 131/9 131/15 132/3
multiple [6] 16/12 43/6 43/6 50/20 53/17 87/25	no [54] 1/4 5/10 5/20 7/23 16/7 16/9 18/8 18/11 18/15 21/12 23/13 28/2 35/6 39/21 48/21 49/2 49/11 58/16 59/8 59/24 62/8 66/17 66/21 75/12 75/17 77/12 89/5 90/10 91/6 92/22 93/23 102/6 106/18 106/21 112/1 114/13 115/18 115/21 117/11 117/11 117/24 118/15 124/11 126/3 126/5 127/9 127/19 127/23 128/1 128/10 128/12 128/18 129/7 129/9	numbers [10] 22/7 49/11 49/25 50/12 51/25 53/2 70/18 92/8 93/15 121/22	often [8] 12/25 14/3 29/5 36/12 36/20 55/1 59/18 74/18 oh [6] 72/8 114/16 117/6 117/11 120/15 127/5 okay [128] 5/5 5/16 5/18 11/21 12/4 12/17 13/2 13/12 13/24 14/21 18/17 18/23 19/2 20/3 20/4 21/14 21/19 22/2 22/9 22/14 22/16 24/2 24/20 25/8 25/9 25/12 26/13 26/14 27/3 27/10 29/12 29/20 30/3 30/10 31/1 31/7 32/11 32/16 32/20 32/23 33/8 33/20 34/12 34/14 35/7 35/13 35/25 36/19 37/3 38/23 40/17 42/5 43/13 44/2 44/19 45/11 52/14 53/11 66/2 69/11 69/18 70/25 72/8 74/8 74/10 74/24 80/3 81/4 86/19 89/4 90/16 91/25 93/13 93/18 93/20 94/12 94/15 95/16 95/22 96/1 96/4 96/21 97/5 98/1 98/7 98/9 98/25 99/2 99/14 99/17 99/20 101/9 101/10 101/11 101/12 103/16 104/1 106/12 106/17 106/19 106/22 107/2 108/3 112/24 115/19 115/24 117/19 120/8 120/16 121/9 121/13 122/4 126/6 127/20 128/4 128/9 128/14 128/16 128/20 129/4 129/10 129/23 130/6 130/15 130/25 131/9 131/15 132/3
multiply [2] 50/3 52/18	NIH's [4] 8/14 100/2 104/3 104/18	number [57] 7/21 10/22 11/11 19/3 19/19 19/25 23/5 46/13 46/23 49/13 49/16 49/24 50/2 50/24 51/12 51/17 51/17 51/18 51/20 51/22 51/22 51/24 52/3 52/4 54/5 56/25 58/18 59/3 59/20 64/1 64/6 64/22 65/10 70/17 70/20 73/10 77/11 77/19 78/12 78/12 78/13 78/25 80/5 80/8 87/25 88/19 90/5 92/9 99/18 103/5 113/8 113/14 114/3 121/10 121/18 121/25 124/2	oh [6] 72/8 114/16 117/6 117/11 120/15 127/5 okay [128] 5/5 5/16 5/18 11/21 12/4 12/17 13/2 13/12 13/24 14/21 18/17 18/23 19/2 20/3 20/4 21/14 21/19 22/2 22/9 22/14 22/16 24/2 24/20 25/8 25/9 25/12 26/13 26/14 27/3 27/10 29/12 29/20 30/3 30/10 31/1 31/7 32/11 32/16 32/20 32/23 33/8 33/20 34/12 34/14 35/7 35/13 35/25 36/19 37/3 38/23 40/17 42/5 43/13 44/2 44/19 45/11 52/14 53/11 66/2 69/11 69/18 70/25 72/8 74/8 74/10 74/24 80/3 81/4 86/19 89/4 90/16 91/25 93/13 93/18 93/20 94/12 94/15 95/16 95/22 96/1 96/4 96/21 97/5 98/1 98/7 98/9 98/25 99/2 99/14 99/17 99/20 101/9 101/10 101/11 101/12 103/16 104/1 106/12 106/17 106/19 106/22 107/2 108/3 112/24 115/19 115/24 117/19 120/8 120/16 121/9 121/13 122/4 126/6 127/20 128/4 128/9 128/14 128/16 128/20 129/4 129/10 129/23 130/6 130/15 130/25 131/9 131/15 132/3
multiplying [1] 26/22	no [54] 1/4 5/10 5/20 7/23 16/7 16/9 18/8 18/11 18/15 21/12 23/13 28/2 35/6 39/21 48/21 49/2 49/11 58/16 59/8 59/24 62/8 66/17 66/21 75/12 75/17 77/12 89/5 90/10 91/6 92/22 93/23 102/6 106/18 106/21 112/1 114/13 115/18 115/21 117/11 117/11 117/24 118/15 124/11 126/3 126/5 127/9 127/19 127/23 128/1 128/10 128/12 128/18 129/7 129/9	numbers [10] 22/7 49/11 49/25 50/12 51/25 53/2 70/18 92/8 93/15 121/22	oh [6] 72/8 114/16 117/6 117/11 120/15 127/5 okay [128] 5/5 5/16 5/18 11/21 12/4 12/17 13/2 13/12 13/24 14/21 18/17 18/23 19/2 20/3 20/4 21/14 21/19 22/2 22/9 22/14 22/16 24/2 24/20 25/8 25/9 25/12 26/13 26/14 27/3 27/10 29/12 29/20 30/3 30/10 31/1 31/7 32/11 32/16 32/20 32/23 33/8 33/20 34/12 34/14 35/7 35/13 35/25 36/19 37/3 38/23 40/17 42/5 43/13 44/2 44/19 45/11 52/14 53/11 66/2 69/11 69/18 70/25 72/8 74/8 74/10 74/24 80/3 81/4 86/19 89/4 90/16 91/25 93/13 93/18 93/20 94/12 94/15 95/16 95/22 96/1 96/4 96/21 97/5 98/1 98/7 98/9 98/25 99/2 99/14 99/17 99/20 101/9 101/10 101/11 101/12 103/16 104/1 106/12 106/17 106/19 106/22 107/2 108/3 112/24 115/19 115/24 117/19 120/8 120/16 121/9 121/13 122/4 126/6 127/20 128/4 128/9 128/14 128/16 128/20 129/4 129/10 129/23 130/6 130/15 130/25 131/9 131/15 132/3
must [5] 24/10 25/13 50/5 50/23 92/23	Noachis [1] 121/3 nobody [1] 99/24 non [12] 66/25 67/4 67/25 111/17 111/20 111/20 111/23 112/3 112/6 112/9 119/18 121/2 non-agency [3] 66/25 67/4 67/25 non-exclusive [1] 121/2 non-inventor [2] 111/17 111/20 non-inventors [3] 111/23 112/3 112/6 non-NIH [1] 119/18 nonexclusive [1] 33/15 nonprofits [1] 108/20 normal [1] 71/11 normally [1] 38/15 not [165] note [1] 92/10 nothing [4] 18/16 48/8 65/11 90/15 notices [1] 96/24 notification [1] 96/19 notifications [6] 96/8 96/14 97/16 97/17 105/4 105/6 notify [4] 60/20 61/8 100/4 100/9 November [1] 28/7 now [27] 4/2 4/3 4/6	NW [2] 1/20 2/4	often [8] 12/25 14/3 29/5 36/12 36/20 55/1 59/18 74/18 oh [6] 72/8 114/16 117/6 117/11 120/15 127/5 okay [128] 5/5 5/16 5/18 11/21 12/4 12/17 13/2 13/12 13/24 14/21 18/17 18/23 19/2 20/3 20/4 21/14 21/19 22/2 22/9 22/14 22/16 24/2 24/20 25/8 25/9 25/12 26/13 26/14 27/3 27/10 29/12 29/20 30/3 30/10 31/1 31/7 32/11 32/16 32/20 32/23 33/8 33/20 34/12 34/14 35/7 35/13 35/25 36/19 37/3 38/23 40/17 42/5 43/13 44/2 44/19 45/11 52/14 53/11 66/2 69/11 69/18 70/25 72/8 74/8 74/10 74/24 80/3 81/4 86/19 89/4 90/16 91/25 93/13 93/18 93/20 94/12 94/15 95/16 95/22 96/1 96/4 96/21 97/5 98/1 98/7 98/9 98/25 99/2 99/14 99/17 99/20 101/9 101/10 101/11 101/12 103/16 104/1 106/12 106/17 106/19 106/22 107/2 108/3 112/24 115/19 115/24 117/19 120/8 120/16 121/9 121/13 122/4 126/6 127/20 128/4 128/9 128/14 128/16 128/20 129/4 129/10 129/23 130/6 130/15 130/25 131/9 131/15 132/3
my [31] 9/14 26/16 37/9 41/6 42/18 49/17 61/5 70/15 76/6 81/2 84/8 87/5 94/5 95/7 97/1 97/11 101/20 101/24 102/1 104/10 105/3 107/7 108/11 108/17 108/23 109/5 109/6 109/10 113/22 115/7 118/3	NIH's [4] 8/14 100/2 104/3 104/18	numbers [10] 22/7 49/11 49/25 50/12 51/25 53/2 70/18 92/8 93/15 121/22	oh [6] 72/8 114/16 117/6 117/11 120/15 127/5 okay [128] 5/5 5/16 5/18 11/21 12/4 12/17 13/2 13/12 13/24 14/21 18/17 18/23 19/2 20/3 20/4 21/14 21/19 22/2 22/9 22/14 22/16 24/2 24/20 25/8 25/9 25/12 26/13 26/14 27/3 27/10 29/12 29/20 30/3 30/10 31/1 31/7 32/11 32/16 32/20 32/23 33/8 33/20 34/12 34/14 35/7 35/13 35/25 36/19 37/3 38/23 40/17 42/5 43/13 44/2 44/19 45/11 52/14 53/11 66/2 69/11 69/18 70/25 72/8 74/8 74/10 74/24 80/3 81/4 86/19 89/4 90/16 91/25 93/13 93/18 93/20 94/12 94/15 95/16 95/22 96/1 96/4 96/21 97/5 98/1 98/7 98/9 98/25 99/2 99/14 99/17 99/20 101/9 101/10 101/11 101/12 103/16 104/1 106/12 106/17 106/19 106/22 107/2 108/3 112/24 115/19 115/24 117/19 120/8 120/16 121/9 121/13 122/4 126/6 127/20 128/4 128/9 128/14 128/16 128/20 129/4 129/10 129/23 130/6 130/15 130/25 131/9 131/15 132/3
myself [1] 91/7	no [54] 1/4 5/10 5/20 7/23 16/7 16/9 18/8 18/11 18/15 21/12 23/13 28/2 35/6 39/21 48/21 49/2 49/11 58/16 59/8 59/24 62/8 66/17 66/21 75/12 75/17 77/12 89/5 90/10 91/6 92/22 93/23 102/6 106/18 106/21 112/1 114/13 115/18 115/21 117/11 117/11 117/24 118/15 124/11 126/3 126/5 127/9 127/19 127/23 128/1 128/10 128/12 128/18 129/7 129/9	NW [2] 1/20 2/4	oh [6] 72/8 114/16 117/6 117/11 120/15 127/5 okay [128] 5/5 5/16 5/18 11/21 12/4 12/17 13/2 13/12 13/24 14/21 18/17 18/23 19/2 20/3 20/4 21/14 21/19 22/2 22/9 22/14 22/16 24/2 24/20 25/8 25/9 25/12 26/13 26/14 27/3 27/10 29/12 29/20 30/3 30/10 31/1 31/7 32/11 32/16 32/20 32/23 33/8 33/20 34/12 34/14 35/7 35/13 35/25 36/19 37/3 38/23 40/17 42/5 43/13 44/2 44/19 45/11 52/14 53/11 66/2 69/11 69/18 70/25 72/8 74/8 74/10 74/24 80/3 81/4 86/19 89/4 90/16 91/25 93/13 93/18 93/20 94/12 94/15 95/16 95/22 96/1 96/4 96/21 97/5 98/1 98/7 98/9 98/25 99/2 99/14 99/17 99/20 101/9 101/10 101/11 101/12 103/16 104/1 106/12 106/17 106/19 106/22 107/2 108/3 112/24 115/19 115/24 117/19 120/8 120/16 121/9 121/13 122/4 126/6 127/20 128/4 128/9 128/14 128/16 128/20 129/4 129/10 129/23 130/6 130/15 130/25 131/9 131/15 132/3
N	Noachis [1] 121/3 nobody [1] 99/24 non [12] 66/25 67/4 67/25 111/17 111/20 111/20 111/23 112/3 112/6 112/9 119/18 121/2 non-agency [3] 66/25 67/4 67/25 non-exclusive [1] 121/2 non-inventor [2] 111/17 111/20 non-inventors [3] 111/23 112/3 112/6 non-NIH [1] 119/18 nonexclusive [1] 33/15 nonprofits [1] 108/20 normal [1] 71/11 normally [1] 38/15 not [165] note [1] 92/10 nothing [4] 18/16 48/8 65/11 90/15 notices [1] 96/24 notification [1] 96/19 notifications [6] 96/8 96/14 97/16 97/17 105/4 105/6 notify [4] 60/20 61/8 100/4 100/9 November [1] 28/7 now [27] 4/2 4/3 4/6	O	oh [6] 72/8 114/16 117/6 117/11 120/15 127/5 okay [128] 5/5 5/16 5/18 11/21 12/4 12/17 13/2 13/12 13/24 14/21 18/17 18/23 19/2 20/3 20/4 21/14 21/19 22/2 22/9 22/14 22/16 24/2 24/20 25/8 25/9 25/12 26/13 26/14 27/3 27/10 29/12 29/20 30/3 30/10 31/1 31/7 32/11 32/16 32/20 32/23 33/8 33/20 34/12 34/14 35/7 35/13 35/25 36/19 37/3 38/23 40/17 42/5 43/13 44/2 44/19 45/11 52/14 53/11 66/2 69/11 69/18 70/25 72/8 74/8 74/10 74/24 80/3 81/4 86/19 89/4 90/16 91/25 93/13 93/18 93/20 94/12 94/15 95/16 95/22 96/1 96/4 96/21 97/5 98/1 98/7 98/9 98/25 99/2 99/14 99/17 99/20 101/9 101/10 101/11 101/12 103/16 104/1 106/12 106/17 106/19 106/22 107/2 108/3 112/24 115/19 115/24 117/19 120/8 120/16 121/9 121/13 122/4 126/6 127/20 128/4 128/9 128/14 128/16 128/20 129/4 129/10 129/23 130/6 130/15 130/25 131/9 131/15 132/3
name [7] 9/14 19/19 41/6 84/10 95/7 107/7 107/19	Noachis [1] 121/3 nobody [1] 99/24 non [12] 66/25 67/4 67/25 111/17 111/20 111/20 111/23 112/3 112/6 112/9 119/18 121/2 non-agency [3] 66/25 67/4 67/25 non-exclusive [1] 121/2 non-inventor [2] 111/17 111/20 non-inventors [3] 111/23 112/3 112/6 non-NIH [1] 119/18 nonexclusive [1] 33/15 nonprofits [1] 108/20 normal [1] 71/11 normally [1] 38/15 not [165] note [1] 92/10 nothing [4] 18/16 48/8 65/11 90/15 notices [1] 96/24 notification [1] 96/19 notifications [6] 96/8 96/14 97/16 97/17 105/4 105/6 notify [4] 60/20 61/8 100/4 100/9 November [1] 28/7 now [27] 4/2 4/3 4/6	oath [3] 9/4 94/18 107/12 objection [2] 115/8 115/12 obligated [8] 15/3 15/21 30/20 32/1 33/12 33/18 67/7 68/2 obligation [1] 67/20 obtain [2] 28/20 34/11 obtained [3] 6/25 83/4 110/14 obviously [3] 26/25 52/19 113/8 occasional [1] 83/22 Occasionally [1] 117/8 occur [1] 63/16 occurred [4] 52/17 60/24 61/2 61/3 odd [1] 97/20 off</	

O	30/11 30/16 32/7 32/14 33/17 34/8 37/13 37/16 39/14 40/8 48/5 48/8 48/15 54/9 55/8 55/10 56/21 57/2 57/20 60/25 61/1 62/5 66/13 67/3 67/23 71/8 72/1 73/22 74/20 75/7 75/8 76/17 80/19 82/25 84/3 88/20 106/18 110/20 112/25 116/6 117/15 119/14 120/1 121/22 121/25 123/21 123/22 124/18 125/24	118/17 121/8 124/14 127/8 130/5 overall [6] 14/12 16/15 60/4 84/22 88/17 89/2 overrule [1] 115/12 overview [1] 73/14 own [1] 104/10 owners [1] 105/17 ownership [2] 67/12 74/20 owns [1] 15/20 Oxford [1] 108/17	particular [21] 18/1 19/13 22/10 23/5 23/16 23/17 32/3 45/15 45/15 47/10 47/10 50/24 65/3 67/13 78/22 97/13 97/19 103/21 103/24 108/1 109/21 parties [1] 4/9 partner [4] 15/20 73/23 74/12 75/13 partners [2] 75/12 112/9 parts [2] 20/9 35/18 party [2] 74/18 109/21 pasted [1] 52/21 patent [31] 6/11 9/20 9/22 10/24 12/18 20/14 70/24 71/1 71/12 71/23 72/3 72/10 72/18 73/3 74/4 74/21 75/3 75/6 76/17 76/20 77/6 80/23 80/25 81/11 81/22 92/19 92/25 93/11 111/13 121/2 122/16 patented [1] 6/10 patenting [1] 9/21 patents [4] 12/18 13/4 67/8 71/4 pattern [2] 19/17 48/10 Paul [2] 1/14 4/11 Pause [1] 40/23 pay [14] 15/3 16/5 16/9 27/21 27/24 28/4 28/20 30/20 30/23 32/1 33/12 33/18 37/23 127/12 paying [15] 27/7 30/8 31/11 33/4 33/19 37/24 37/25 48/20 48/24 54/25 54/25 56/9 57/22 77/13 81/7 payment [88] 7/11 7/14 10/6 15/13 17/19 19/15 20/10 20/23 21/7 21/16 21/21 23/17 24/4 25/4 25/8 25/14 25/21 25/23 26/18 27/2 27/17 28/14 31/9 31/12 31/15 32/8 41/12 41/12 41/18 41/20 43/5 43/10 45/20 48/16 49/7 51/9 52/21 53/15 55/3 55/4 55/8 55/10 55/12 55/14 56/6 56/17 56/23 57/2 57/4 57/6 57/7 57/12 58/2 58/20
one... [72] 45/13 45/17 45/18 47/15 47/18 48/5 48/13 50/24 53/12 53/19 54/4 54/14 56/17 57/2 58/11 60/1 61/21 62/13 62/17 62/18 63/21 70/13 70/17 71/20 72/19 72/21 78/7 78/7 79/5 80/7 80/15 80/16 83/9 83/10 83/24 84/6 84/9 84/11 86/9 86/11 87/5 87/24 88/4 88/8 89/16 89/23 93/6 93/7 93/7 93/8 97/21 98/14 103/6 106/3 112/21 114/2 118/19 118/21 118/21 119/4 119/11 119/20 119/25 120/7 121/4 122/7 122/9 125/2 125/20 126/8 128/22 131/21 ones [2] 46/10 99/22 only [32] 16/9 16/12 18/6 20/2 29/8 30/23 38/14 43/11 44/12 44/13 45/22 53/12 61/16 61/21 63/1 78/24 79/15 80/4 80/4 83/25 85/12 88/19 89/16 89/23 93/10 99/22 111/11 118/21 121/25 129/15 129/17 129/22 OpenTheBooks [10] 82/5 107/6 107/24 107/25 108/21 109/1 109/7 109/17 109/23 115/1 OpenTheBooks' [1] 109/15 operations [4] 10/21 16/3 74/2 108/25 option [1] 59/16 optional [1] 59/17 order [13] 16/3 42/11 54/19 61/4 61/7 61/12 68/3 74/2 75/14 96/2 96/5 96/7 105/1 ordered [1] 100/3 Orfanedes [2] 1/14 4/11 original [1] 52/22 originally [2] 116/15 126/21 originals [1] 53/10 other [62] 5/11 13/21 14/20 15/6 15/7 15/18 18/2 20/13 23/13 23/15 28/6 28/21 29/2	others [7] 11/8 29/6 35/22 36/9 48/12 62/14 87/16 otherwise [2] 12/24 109/25 OTT [3] 10/4 88/23 99/9 OTT's [1] 60/22 our [34] 5/12 8/18 10/5 10/24 10/25 13/6 13/8 13/11 13/17 13/19 13/20 14/13 16/18 22/6 23/19 28/5 28/8 30/16 32/6 32/6 32/12 36/5 39/4 39/23 45/10 46/22 68/5 71/3 71/4 94/2 105/16 107/8 110/15 129/20 ours [1] 38/18 ourselves [1] 39/12 out [46] 13/10 15/7 31/19 32/5 39/14 39/18 43/10 48/3 48/14 48/17 51/1 57/13 60/19 61/16 64/9 65/2 68/8 68/10 72/15 74/12 75/25 76/12 76/18 77/5 77/23 78/22 79/16 80/17 80/20 80/20 86/18 90/23 93/2 96/19 96/24 98/23 101/19 102/20 102/21 104/14 104/25 114/22 115/6 115/22 127/11 127/13 outcome [3] 49/12 50/6 50/7 outcompete [1] 33/17 outlining [1] 97/13 outside [2] 5/5 56/23 over [19] 6/7 6/24 18/13 20/18 25/21 26/18 40/16 45/12 50/22 54/12 54/24 73/19 90/20 103/6	p.m [3] 69/23 69/23 132/10 package [1] 38/4 page [26] 20/5 20/24 22/17 23/16 26/3 41/10 46/19 49/5 55/2 70/9 84/8 84/9 89/15 89/23 106/3 110/10 116/20 117/20 118/16 121/15 122/12 122/15 124/12 124/13 131/11 131/25 page 106 [1] 124/13 page 2 [1] 118/16 pages [12] 6/6 6/7 89/20 89/21 89/23 90/18 97/20 98/2 106/2 122/13 122/14 131/11 paid [43] 8/11 16/15 24/15 24/19 25/15 25/17 25/19 25/24 26/10 26/11 27/4 27/13 28/15 29/17 31/5 47/20 48/16 48/18 49/9 50/10 57/19 65/22 67/24 68/9 74/12 79/3 83/2 83/12 84/14 92/21 93/2 102/7 102/13 102/15 103/14 104/11 110/24 113/9 117/2 123/9 123/10 123/21 124/1 paragraph [10] 65/21 66/24 68/14 81/15 82/24 88/10 123/14 124/15 125/9 127/10 paragraphs [1] 65/19 parcel [1] 57/23 part [25] 15/16 20/15 22/13 24/5 24/10 24/10 25/20 33/21 36/24 43/21 48/16 57/23 57/23 60/4 62/16 64/4 66/11 68/24 73/21 75/13 79/12 79/13 82/8 82/16 82/23 partial [1] 75/20	

P	71/12 72/17 80/4 117/23 118/14 123/8 123/10	plaintiffs [1] 90/4 plan [1] 37/13 planning [1] 5/12 play [1] 67/13 please [19] 4/4 9/3 9/12 33/22 70/1 82/4 94/13 94/16 95/5 107/4 107/11 107/19 107/22 108/9 110/5 120/25 122/5 126/19 130/9 plug [2] 49/25 51/17 plus [2] 24/10 84/13 point [11] 8/18 15/7 31/19 39/18 54/22 57/22 61/16 65/2 81/2 115/16 117/13 pointed [1] 79/16 pointing [2] 51/1 64/9 points [1] 53/5 policies [1] 82/18 policy [10] 67/10 81/18 81/20 81/22 82/15 107/24 108/18 108/23 109/6 125/14 popular [1] 29/25 populate [1] 73/24 portfolio [2] 10/24 108/23 portion [7] 6/25 15/21 21/20 23/1 73/23 75/11 76/15 position [7] 95/10 95/19 104/4 104/13 104/14 104/18 126/24 positions [1] 109/2 possibilities [1] 124/2 possible [20] 7/4 7/15 7/17 8/5 22/20 33/24 34/16 46/5 53/17 54/16 56/16 56/19 57/6 87/19 91/11 91/12 99/5 99/21 106/13 115/4 possibly [2] 97/8 102/3 Post [1] 85/17 potential [6] 28/24 44/17 88/20 96/15 100/10 100/24 potentially [4] 5/2 40/5 98/16 100/14 PowerPoint [20] 7/17 16/21 19/4 19/5 19/8 34/15 41/8 41/10 46/19 61/19 70/8 116/16 116/18 116/24 117/10 124/25 129/15 129/17 129/22 129/24 practitioner [1] 56/1 practitioner's [1] 30/1	pre [8] 96/8 96/14 96/19 96/24 97/2 97/16 97/17 105/4 pre-date [1] 97/2 pre-disclosure [7] 96/8 96/14 96/19 96/24 97/16 97/17 105/4 precise [1] 91/18 premise [1] 51/7 prepared [1] 11/19 prescribed [1] 15/5 present [5] 4/9 57/10 57/16 82/9 106/25 presentation [1] 116/16 presented [3] 109/9 117/1 124/24 presiding [2] 4/3 69/25 press [1] 28/6 presumably [1] 124/3 pretty [6] 14/9 14/15 39/10 45/19 47/16 47/20 Prettyman [1] 2/4 preview [1] 16/22 previous [6] 57/7 57/12 58/3 84/12 102/22 109/2 previously [4] 9/19 41/9 96/17 113/7 printed [1] 19/3 prior [5] 9/18 9/21 30/14 70/18 95/12 private [1] 109/17 privately [1] 33/25 privileged [1] 7/1 pro [1] 55/11 pro-rated [1] 55/11 probably [12] 5/14 29/1 31/10 32/9 45/19 46/16 56/25 57/1 57/2 72/20 92/11 132/3 problem [2] 51/1 84/12 procedural [1] 82/20 procedure [2] 82/16 105/16 procedures [4] 81/18 113/4 125/21 125/24 proceed [1] 131/3 proceedings [4] 1/9 2/6 132/10 133/4 proceeds [1] 75/21 process [7] 10/6 12/5 46/24 88/17 88/22 89/2 100/2 processed [1] 75/6 produced [15] 2/7 6/6 19/12 19/22 20/7 20/8 20/22 21/3 21/6 21/7 21/13 21/22
payment... [34] 59/23 60/6 61/18 65/12 66/10 71/20 75/14 77/8 77/15 77/16 77/18 78/5 78/7 79/4 80/17 80/18 85/3 89/16 93/4 103/22 103/22 103/22 103/24 112/12 114/10 116/2 118/6 120/11 120/13 120/15 120/18 121/16 123/11 124/10	percentage [10] 15/4 24/16 27/24 30/21 32/1 33/3 45/7 72/18 80/5 123/24 percentages [1] 84/20 performance [1] 13/22 perhaps [1] 50/22 period [15] 20/19 23/11 23/14 32/15 42/4 43/23 53/13 54/13 57/12 58/2 58/3 61/22 65/13 84/5 90/8 permission [1] 35/15 permissive [1] 38/19 person [3] 7/1 51/3 83/4 personal [1] 104/10 personally [4] 48/10 87/14 114/8 120/2 personnel [2] 99/8 99/9 pertain [1] 109/20 pertinent [3] 15/6 45/10 68/3 Peter [3] 113/22 113/23 113/24 pharmaceutical [2] 109/24 119/17 picked [1] 50/24 picture [1] 21/2 piece [5] 34/20 35/1 78/14 128/22 129/2 pivot [1] 34/19 pivoting [1] 99/3 place [1] 4/20 placed [3] 9/4 94/18 107/12 places [2] 32/7 32/14 plaintiff [23] 1/4 1/13 4/10 5/9 5/10 5/18 6/6 8/23 19/23 21/3 21/8 21/16 22/21 40/16 42/14 58/25 63/3 92/17 107/3 107/6 107/16 129/6 131/22 plaintiff's [17] 3/11 3/21 6/21 88/6 108/6 110/2 113/17 121/12 122/3 126/16 130/3 130/11 130/12 130/13 130/13 130/14 130/18 Plaintiff's Exhibit [10] 108/6 110/2 113/17 121/12 122/3 126/16 130/11 130/12 130/13 130/13	payments [80] 11/5 15/6 15/7 15/8 15/9 15/11 19/13 20/14 20/18 24/23 27/21 27/21 28/9 28/9 29/2 31/5 37/21 37/22 42/3 43/6 43/7 53/18 56/18 57/16 57/18 58/1 59/13 59/15 59/22 63/19 68/13 69/7 71/9 71/10 71/17 73/5 76/8 76/11 78/3 78/4 79/7 79/11 80/13 80/19 83/19 84/1 84/2 85/18 85/21 86/1 86/8 88/25 89/19 93/6 93/11 100/11 101/3 109/11 109/16 109/22 110/18 111/6 111/7 111/12 111/16 111/23 112/3 112/8 113/1 113/12 113/14 114/3 118/21 119/3 119/4 123/16 123/18 123/22 124/6 126/1 payors [1] 119/20 payout [3] 26/19 52/24 128/13 payouts [2] 61/17 63/16 pays [8] 6/8 6/11 6/12 7/6 7/11 7/12 7/13 114/22 PDF [4] 19/4 106/11 106/16 122/13 Pedialyte [1] 119/21 penny [2] 45/21 47/19 people [5] 7/25 51/3 76/7 102/2 109/25 per [5] 17/17 44/3 53/12 63/24 106/3 percent [31] 17/3 17/4 25/20 26/17 33/4 33/6 45/3 45/12 54/3 54/13 59/15 59/17 59/17 59/18 59/25 60/1 60/2 60/9 60/10 60/12 60/14 60/14 60/17 70/22	

P	78/1 81/24 82/1 82/7 82/15 82/17 91/24 91/24 92/13 98/11 101/19 102/14 109/12 125/14	124/5 rather [1] 67/16 reach [8] 13/10 51/16 60/19 64/2 64/23 65/2 77/5 80/10 reached [4] 63/22 64/3 86/18 115/22 reaches [1] 63/6 reaching [1] 64/17 read [2] 122/19 122/19 reading [1] 13/7 ready [2] 18/18 70/4 reagents [1] 53/24 real [6] 29/22 30/6 51/25 51/25 52/3 52/4 really [8] 7/23 19/22 54/23 86/13 108/22 111/9 122/13 129/17 realm [1] 55/21 Realtime [1] 2/3 reanalyzed [1] 8/7 reason [4] 7/3 26/11 40/9 69/3 reasonable [3] 39/3 86/16 131/12 reasonably [2] 28/14 55/3 reasons [2] 40/11 59/23 rebuttal [1] 129/8 recalculation [1] 17/9 receipt [1] 11/4 receive [30] 17/1 17/12 18/16 20/18 45/1 46/20 54/8 55/10 61/15 62/13 64/6 64/8 65/1 65/22 66/10 66/18 71/2 73/1 73/6 74/25 75/11 75/12 75/15 75/17 75/19 85/3 105/8 113/12 118/2 118/21 received [52] 4/18 16/6 16/9 17/2 17/18 20/15 20/20 23/10 23/25 25/5 25/6 25/18 41/24 42/4 45/3 45/13 48/1 48/3 48/5 51/9 51/19 51/20 51/21 54/14 55/4 59/3 60/2 61/20 62/5 63/12 63/19 63/24 72/11 72/25 73/3 73/15 73/19 75/18 76/16 78/13 80/10 84/6 86/1 86/8 105/9 114/8 117/15 117/23 119/2 119/12 130/1 130/18	receives [3] 8/12 15/11 84/21 receiving [13] 17/16 23/15 43/22 46/3 62/17 62/18 62/19 62/20 73/23 77/10 109/25 119/3 119/4 recently [2] 30/13 42/8 recess [2] 69/22 69/23 recipients [2] 82/25 114/2 reconciliation [1] 83/21 record [8] 4/7 9/12 53/18 88/6 95/5 107/20 126/11 133/3 recorded [1] 2/6 records [5] 6/7 97/21 104/19 105/16 105/20 RE CROSS [1] 3/10 redact [4] 21/15 72/11 98/23 106/2 redacted [11] 20/22 21/21 22/3 23/2 70/10 72/3 78/19 79/6 79/20 95/24 105/7 redacting [5] 20/23 22/5 81/13 97/19 106/14 redaction [2] 42/15 95/24 redactions [2] 21/25 105/23 redirect [6] 3/4 3/10 89/7 89/10 106/20 128/17 redistributed [1] 18/2 reduced [1] 52/25 refer [3] 12/3 65/21 89/2 referenced [1] 81/19 references [1] 81/20 referred [1] 66/8 referring [3] 37/5 55/15 125/13 reflected [1] 89/24 reformulated [1] 8/7 refresh [1] 61/5 regard [1] 100/15 regarding [1] 110/17 regardless [4] 62/16 79/23 85/4 104/4 Registered [1] 2/2 registration [2] 122/7 122/15 registrations [1] 122/7 regulated [1] 109/24 reimburse [1] 71/3 reimbursement [4]
produced... [3] 23/2 95/24 111/15 product [11] 14/25 15/2 31/10 31/11 31/14 31/15 32/1 34/7 47/15 124/18 124/19 production [3] 84/9 97/20 99/4 productions [5] 117/14 117/23 118/25 119/2 119/12 products [18] 30/18 30/19 31/5 32/4 33/17 36/3 39/14 119/7 119/9 119/14 119/14 119/18 119/21 119/25 120/7 122/23 123/6 124/16 professor [4] 113/24 114/6 114/7 115/16 Professor Kwong [3] 114/6 114/7 115/16 program [4] 10/23 65/5 75/1 76/1 progress [1] 14/13 promise [1] 89/8 promote [1] 12/9 prompt [1] 59/23 properly [2] 7/8 26/17 propose [1] 94/11 prosecuting [1] 71/4 prosecution [20] 70/24 71/1 71/13 71/24 72/3 72/10 72/19 73/3 74/4 75/3 75/6 76/17 76/20 77/7 80/24 80/25 81/11 92/19 93/11 111/14 protect [3] 22/7 35/5 124/9 protected [4] 52/8 104/17 105/9 120/21 protecting [1] 49/15 provide [11] 36/14 36/15 37/8 37/14 38/3 45/23 45/24 48/25 63/4 86/4 87/6 provided [4] 20/2 37/11 48/23 76/10 provides [4] 20/17 52/2 74/22 117/13 providing [1] 84/5 provisions [3] 36/15 36/20 38/17 public [35] 7/5 7/8 7/24 12/22 28/4 29/7 32/5 32/13 32/17 32/19 34/1 34/9 34/21 36/11 39/20 49/2 59/11 60/10 60/16 61/15 77/24	publicly [6] 13/19 23/22 32/15 82/11 82/13 121/6 publish [1] 35/11 published [2] 28/5 110/6 pull [2] 30/15 126/16 pulled [1] 90/23 purpose [2] 12/9 45/9 purposes [2] 46/22 82/9 pursuant [4] 8/13 104/7 104/25 112/13 push [1] 69/5 pushback [1] 36/12 put [7] 22/11 39/23 71/19 73/4 79/5 129/8 131/11 putting [1] 74/25		
	Q		
	quantitative [1] 109/4 question [18] 46/8 47/24 48/22 50/9 51/16 51/17 51/20 58/8 59/2 59/5 63/7 70/15 72/6 87/5 88/8 93/14 103/11 130/25 questions [10] 18/20 42/9 65/20 89/5 93/22 106/18 113/15 114/25 126/5 128/18 quite [3] 46/16 114/24 125/1		
	R		
	raise [3] 9/3 94/17 107/11 range [7] 53/9 54/6 56/23 123/15 123/25 124/3 124/4 rare [3] 54/10 59/21 83/20 rate [25] 6/12 29/25 33/3 33/3 33/16 37/19 37/20 58/5 60/8 60/13 60/17 65/7 92/20 97/13 102/20 102/21 103/20 103/25 104/2 104/3 104/5 104/25 105/2 124/1 124/10 rated [1] 55/11 rates [11] 34/22 93/3 101/23 101/25 102/17 102/18 123/15 123/21 123/21 123/24		

R	32/17 35/8 67/1 99/3 100/20 101/2	rights [7] 13/23 14/13 67/8 67/21 68/2 68/5 74/21	118/6 119/3 119/20 121/16 123/18
reimbursement... [4] 20/14 73/4 77/7 93/11	requirements [1] 6/18	rise [4] 4/2 69/21 69/24 132/8	rules [1] 72/23
reiterate [1] 11/22	requires [2] 61/7 96/7	risk [7] 35/23 36/17 49/20 54/2 85/20 85/23 88/2	run [1] 50/7
related [8] 45/14 65/20 92/25 105/1 105/2 109/19 115/3 123/22	requisite [1] 46/13	risky [1] 12/25	runs [1] 39/18
relating [1] 83/11	research [11] 7/9 29/10 45/18 47/15 99/10 112/25 118/1 118/24 119/13 120/17 122/10	RMR [2] 133/2 133/8	résumé [1] 108/11
relationship [1] 109/25	researched [1] 119/24	role [5] 9/16 9/18 9/18 13/25 95/17	S
relatively [7] 45/2 53/14 54/1 59/21 64/1 64/6 83/20	researcher [1] 108/1	roles [1] 95/17	safe [1] 40/13
release [5] 42/19 100/3 100/5 101/2 101/8	researchers [1] 12/13	rolling [1] 71/25	said [26] 6/1 18/5 26/19 27/12 35/21 37/22 43/18 45/3 51/2 54/3 57/19 58/1 62/9 63/8 63/9 72/17 77/3 78/11 84/9 84/11 84/13 88/19 89/14 98/10 124/16 127/10
released [3] 91/15 100/10 104/19	respective [1] 85/9	Room [1] 1/20	salaries [2] 109/18 109/20
releases [1] 28/6	respond [3] 5/14 115/23 128/7	rough [1] 64/22	salary [1] 66/11
releasing [3] 35/4 38/24 99/22	responsibility [2] 15/1 60/22	roughly [1] 45/3	sale [2] 121/24 123/20
relevant [5] 19/18 20/13 45/14 49/12 105/22	responsible [2] 74/23 76/7	royalties [48] 11/8 14/16 14/17 15/3 15/9 15/21 17/2 17/5 23/10 27/24 30/22 30/23 37/24 37/25 45/1 45/4 45/13 46/3 50/14 52/25 54/14 55/1 57/7 57/20 60/5 61/25 62/3 62/18 62/19 62/20 62/21 63/11 64/6 65/1 66/25 67/20 70/23 73/24 81/23 83/2 83/12 85/8 88/19 108/1 114/7 121/8 126/24 127/2	sales [23] 15/3 15/4 27/24 29/25 30/18 30/21 30/22 30/23 31/15 31/18 32/2 32/10 56/11 57/7 57/24 60/9 70/22 71/12 72/17 72/18 73/4 77/19 123/21
reluctant [1] 36/15	responsive [1] 98/16	royalty [102] 6/11 6/12 7/12 7/16 8/9 10/6 11/4 15/11 15/18 18/15 19/12 19/15 20/8 20/22 21/22 22/25 23/3 23/19 24/15 24/22 29/17 29/23 29/25 30/21 31/4 31/15 33/3 33/16 34/22 34/22 37/19 37/20 38/24 46/14 55/16 56/5 56/22 57/24 58/5 60/2 60/8 60/13 61/15 65/4 65/7 65/21 66/7 67/9 67/24 68/13 71/20 73/4 77/8 77/15 77/16 77/18 79/4 79/4 79/12 79/13 79/22 79/24 84/1 85/18 85/21 86/1 87/14 92/20 92/20 93/3 93/3 93/6 93/7 97/13 101/23 101/25 102/17 102/20 102/21 103/20 103/25 104/2 104/3 104/5 104/24 105/2 105/8 109/11 109/15 109/21 110/8 110/15 111/16 111/23 113/1 114/2 116/2	same [34] 5/6 16/16 19/16 19/21 26/9 30/8 30/8 30/9 44/7 44/9 44/11 46/23 46/24 54/18 57/17 62/10 62/16 63/16 67/10 68/3 68/4 68/4 71/7 73/5 77/1 78/12 79/23 79/25 84/4 85/3 87/9 112/21 116/24 119/23
rely [2] 39/10 39/25	rest [3] 56/21 123/10 127/12		satisfied [1] 80/16
remain [1] 94/16	restrictive [2] 36/13 42/19		savings [1] 114/21
remaining [1] 26/19	result [4] 19/20 50/4 52/2 59/7		say [51] 14/24 17/24 25/4 25/8 34/6 40/8 45/6 46/11 47/16 50/19 55/2 57/1 64/4 64/20 66/15 68/19 72/19 73/6 73/10 77/3 79/3 82/6 82/11 84/4 85/15 88/10 91/7 91/17 91/19 98/19 100/9 100/13 100/18 100/20 100/21 100/23 112/8 112/10 112/20 114/16 115/16 117/12 119/7 121/20 123/7 123/24 123/25 124/23 125/1 127/2 131/17
repeated [1] 50/19	resume [1] 69/15		saying [6] 26/21 57/15 65/11 80/22 93/1 99/23
rephrase [1] 96/23	reveal [1] 91/2		says [6] 30/21 46/15
reply [1] 128/5	revenue [1] 32/14		
report [24] 21/22 22/25 23/12 28/3 32/14 43/20 43/21 46/14 47/3 73/19 77/23 78/19 79/6 79/6 80/12 87/14 90/13 90/19 91/10 93/5 110/6 110/10 110/13 130/13	revenues [1] 34/1		
reported [1] 32/18	review [4] 13/16 83/15 116/17 125/6		
Reporter [4] 2/2 2/2 2/3 2/3	reviewed [5] 19/12 42/6 42/11 121/4 122/10		
reporting [5] 23/11 23/14 30/18 34/1 53/13	reviewer [1] 95/18		
reports [14] 19/12 20/8 20/22 23/20 29/23 30/20 32/13 42/22 54/25 56/22 65/4 89/3 92/15 106/9	right [70] 5/17 5/21 9/3 9/6 10/12 10/15 17/23 21/6 21/9 21/21 22/19 23/24 26/5 26/7 26/7 26/23 27/1 27/12 30/25 31/22 33/1 37/21 40/17 42/13 43/19 47/1 49/22 51/13 52/2 57/25 65/25 66/12 67/15 70/3 70/4 70/11 72/13 72/23 75/11 76/3 76/25 77/9 78/17 79/2 79/10 80/6 81/12 89/6 92/9 92/11 93/25 94/17 94/19 98/6 98/22 98/25 102/13 105/15 106/6 107/3 107/11 107/14 112/7 129/11 129/18 129/19 130/17 130/22 131/23 132/5		
representative [1] 117/14	right-hand [1] 70/11		
representing [2] 41/7 107/6			
represents [1] 6/8			
request [3] 100/11 100/21 115/7			
requesting [1] 99/8			
requests [4] 65/13 96/15 115/2 117/16			
required [7] 7/18			

S	sense [6] 16/12 50/1 53/7 82/12 112/20 131/8	sitting [3] 5/11 5/12 56/7	77/14 81/6 85/19 87/17 87/21 96/13 112/15 114/16 131/1
says... [4] 54/7 70/21 78/7 92/23	sent [4] 73/17 96/19 104/25 126/20	situation [5] 52/7 55/9 67/19 88/1 117/17	sometime [1] 11/20
scenario [2] 47/16 117/13	sentence [3] 66/24 81/16 88/9	situations [2] 43/8 50/20	sometimes [6] 27/8 34/5 36/15 57/5 59/22 83/18
scenarios [3] 117/1 117/14 124/24	separate [7] 47/4 57/11 57/18 57/18 73/5 79/7 92/17	six [6] 20/19 23/11 42/1 42/2 43/17 43/21	somewhere [2] 55/21 68/10
School [1] 112/10	separately [3] 60/6 76/23 79/5	six-month [2] 20/19 23/11	sophisticated [1] 51/4
scientist [2] 116/4 127/16	sequestered [1] 5/5	skim [1] 46/14	sorry [33] 10/11 24/13 31/2 37/4 41/12 43/15 48/22 52/11 55/7 56/3 56/4 64/4 66/5 69/8 72/6 74/7 74/9 78/20 91/19 91/23 96/23 98/2 98/13 100/9 102/8 103/8 103/9 105/12 117/11 120/5 121/10 122/1 123/3
scientists [10] 12/15 65/22 109/11 114/11 114/12 115/23 116/7 116/8 116/11 127/11	series [1] 29/23	slide [11] 22/18 27/11 27/16 29/13 29/21 31/21 119/6 119/7 120/12 120/14 120/20	sort [8] 69/16 106/13 114/20 114/21 116/7 120/21 127/17 131/24
scope [1] 115/8	service [2] 59/15 125/14	slides [1] 29/17	sorts [1] 59/6
screen [3] 108/7 110/3 113/18	SERVICES [2] 1/6 4/8	slightly [1] 15/25	sound [2] 54/5 54/14
scroll [2] 126/18 127/1	session [2] 4/3 69/25	small [4] 55/13 64/1 64/6 84/3	sounds [2] 54/6 111/19
seat [1] 9/2	set [4] 71/23 80/16 93/6 131/24	smaller [3] 55/11 56/1 56/25	sources [2] 28/6 30/16
seated [3] 4/5 70/2 107/13	sets [2] 22/12 66/3	smarter [1] 8/1	spare [1] 30/7
SEC [3] 120/17 121/6 122/9	settlement [4] 35/19 35/21 35/22 67/2	so [308]	speak [4] 10/9 87/11 87/13 87/16
second [10] 5/3 5/4 6/25 24/10 32/10 64/12 64/16 123/14 127/10 131/21	several [5] 30/14 46/15 63/21 70/11 115/2	So I think [7] 8/18 18/18 22/17 27/11 33/21 85/22 130/25	speaks [2] 83/10 83/11
section [7] 20/10 20/17 41/15 61/7 90/19 122/19 123/14	share [3] 62/7 117/22 118/14	So I was [1] 114/15	specialize [1] 29/6
Securities [1] 122/6	shares [3] 16/13 118/2 118/4	so it's [3] 69/12 71/25 124/13	specific [7] 42/13 59/3 59/20 75/6 79/21 85/16 87/11
see [28] 4/15 18/25 25/9 29/3 32/14 38/1 42/9 43/7 45/23 48/9 49/9 55/13 59/11 66/22 71/20 72/2 79/6 79/10 79/16 80/13 80/17 80/19 86/2 98/24 108/7 110/3 114/9 125/13	sharing [2] 36/18 61/14	so this last [1] 33/23	specifically [5] 71/3 77/22 83/9 83/11 105/1
seeing [3] 22/12 36/10 55/23	she [2] 5/5 123/1	some [34] 12/18 15/21 20/13 24/16 26/11 29/9 31/20 35/17 35/17 36/16 38/19 40/9 43/4 54/22 59/12 62/11 65/20 67/14 67/23 68/21 71/8 73/23 75/2 78/23 84/16 89/1 91/4 114/20 114/24 116/7 123/20 127/17 131/4 132/2	specifics [3] 85/24 86/14 86/15
seek [1] 130/11	she's [2] 91/21 102/23	somebody [3] 62/22 84/24 92/5	speculate [1] 111/11
seeking [4] 81/10 82/6 109/11 113/2	sheet [1] 19/3	someone [4] 10/2 17/8 49/9 96/20	speed [1] 97/6
seem [1] 131/12	shocked [1] 114/24	something [26] 7/24 13/25 27/22 27/23 29/10 30/24 35/2 37/2 38/1 48/7 49/11 50/21 54/1 58/6 66/22 68/7 75/7	split [2] 41/20 123/12
seems [3] 75/25 112/16 117/17	short [1] 84/5		spreadsheet [2] 98/5 102/5
seen [3] 87/13 120/2 120/17	should [6] 18/9 36/13 52/24 82/3 102/5 113/17		squiggly [1] 116/23
selected [1] 53/3	show [9] 52/8 71/9 77/17 77/19 77/19 79/5 91/1 93/16 108/5		squint [1] 123/2
sell [3] 119/14 119/17 119/24	showing [3] 20/11 42/18 73/20		stand [2] 74/15 107/9
selling [4] 30/24 31/5 31/10 47/14	shown [1] 52/1		standard [7] 14/5 14/9 62/12 68/15 68/25 69/1 81/18
send [19] 53/17 96/8 96/14 96/20 96/24 97/9 97/21 97/23 98/15 101/18 105/4 105/5 105/7 105/12 105/16 105/19 105/19 105/21 105/22	sign [1] 84/13		standing [1] 94/16
sending [1] 4/18	signed [1] 112/11		Stanford [2] 112/10 112/12
	significant [1] 45/7 124/24		start [7] 5/22 20/7 23/25 65/12 74/25 80/20 82/24
	similar [2] 84/13 124/24		
	simplified [1] 44/17		
	since [11] 8/15 25/18 31/8 31/10 35/1 39/5 51/2 95/11 95/15 95/17 108/24		
	single [13] 7/19 43/5 43/9 43/9 43/24 44/1 54/21 56/24 88/3 103/22 103/22 119/11 119/14		
	sits [1] 5/5		

S	47/2 47/5 58/21 62/24 63/2 79/8 79/16 89/21 89/24 90/9	tanks [1] 108/20 Tara [7] 8/21 9/9 9/14 18/25 19/8 34/25 93/19 team [1] 9/20 tech [4] 76/6 76/7 102/2 127/18 technical [2] 50/5 50/21 technologies [11] 12/7 12/10 13/7 13/11 15/14 15/16 15/17 18/2 39/11 39/15 54/17 technology [17] 9/15 9/17 10/5 10/19 10/22 11/1 12/24 13/18 14/18 15/20 18/4 20/12 28/19 28/24 40/21 119/17 125/14 telegraph [1] 94/10 tell [28] 8/15 16/19 19/10 25/2 33/9 33/10 40/1 41/11 42/12 46/12 48/7 48/10 49/19 50/16 52/5 54/24 59/20 77/13 77/14 82/4 83/8 85/24 101/1 101/7 105/17 111/25 117/22 123/15 tells [2] 27/2 33/11 temporary [1] 84/19 ten [2] 62/21 81/15 term [10] 27/18 32/2 60/6 66/20 73/16 75/6 80/14 80/15 93/6 103/22 terms [24] 8/9 10/3 13/21 13/21 14/15 14/16 27/20 37/12 37/15 37/16 37/16 37/18 68/16 68/22 68/23 73/2 77/4 77/13 80/16 81/7 127/10 128/22 130/3 130/25 Terra [1] 121/3 terrible [1] 39/10 Terrific [1] 93/20 testified [3] 62/6 101/18 102/22 testify [2] 58/13 94/11 testimony [3] 43/1 51/8 112/16 tests [1] 53/25 than [27] 8/1 24/4 24/4 24/5 24/8 24/9 24/24 25/19 38/19 39/6 43/11 45/13 52/19 53/19 54/4 55/11 56/2 60/16 62/14 64/25 67/16	83/10 86/9 118/11 119/4 119/14 119/25 thank [29] 4/18 5/16 9/5 10/10 10/14 11/9 17/10 18/17 20/3 40/14 69/19 70/1 80/1 89/4 89/6 93/24 94/20 98/22 101/12 106/21 106/22 107/13 126/4 126/9 128/15 128/20 130/16 132/5 132/7 Thank you [19] 5/16 9/5 10/10 11/9 17/10 18/17 20/3 69/19 80/1 89/4 93/24 94/20 98/22 107/13 126/9 128/15 130/16 132/5 132/7 thank you very much [2] 106/22 128/20 Thanks [4] 9/7 10/15 69/20 121/13 that [733] that's [69] 4/19 5/15 8/8 8/16 10/12 11/23 14/6 14/18 15/6 16/17 17/23 18/12 21/22 22/12 23/8 23/16 26/2 32/12 34/19 45/10 47/12 47/18 47/22 52/14 54/16 55/6 55/18 58/6 58/17 60/22 64/18 66/20 69/2 73/13 74/1 74/10 76/11 76/22 77/14 80/12 81/2 81/6 81/6 82/9 86/7 89/25 90/2 90/12 91/17 92/20 93/19 99/12 101/20 102/22 102/23 102/25 105/11 105/13 105/13 114/12 116/22 121/25 123/12 124/1 128/2 128/14 129/24 131/5 131/22 their [41] 13/16 13/22 13/23 15/1 15/10 17/20 30/19 32/13 32/14 35/22 36/7 36/10 37/10 37/11 37/13 38/3 38/22 48/18 54/23 54/23 57/4 61/15 61/17 65/23 65/23 66/11 66/11 67/8 67/9 68/2 68/8 77/19 85/9 92/13 96/9 100/5 109/12 109/13 116/8 116/9 124/13 theirs [2] 15/16 35/17 them [52] 8/25 15/21 18/13 25/23 28/16
started [2] 4/20 76/18 starts [2] 74/1 79/20 state [3] 68/14 107/19 109/18 statement [3] 65/24 122/7 122/15 STATES [2] 1/1 1/10 statistical [2] 109/4 118/24 statute [4] 15/25 71/5 81/17 92/23 statutory [1] 113/3 stay [1] 14/11 stenography [1] 2/6 step [8] 24/7 24/9 24/17 26/20 93/24 104/2 106/23 128/24 steps [3] 24/6 73/14 131/1 still [16] 14/3 17/20 49/12 56/24 60/15 64/13 65/6 78/24 79/17 84/4 84/23 85/5 91/2 105/24 106/4 126/23 stop [1] 113/16 stopped [1] 115/1 straight [1] 74/5 strategy [1] 38/3 Street [2] 1/15 1/20 strike [1] 14/7 strong [1] 26/16 study [1] 113/2 stuff [1] 76/18 subject [2] 76/23 112/13 sublicensing [1] 123/22 submissions [5] 131/4 131/7 131/25 132/1 132/4 submit [2] 93/15 131/1 submitted [2] 11/20 129/20 submitter [1] 61/8 subscriptions [1] 29/9 subsequently [1] 91/15 subtract [1] 48/17 such [3] 78/4 112/9 112/10 sufficient [1] 84/1 suggest [1] 96/17 suit [1] 26/16 Suite [1] 1/15 sum [2] 71/10 78/23 summaries [20] 20/18 21/7 21/16 23/9 41/12 41/13 41/23 42/16 43/17 46/23	summary [20] 20/24 21/13 23/16 42/6 43/11 43/16 43/22 43/24 44/14 45/23 48/16 61/17 61/22 85/20 90/5 90/15 90/18 90/23 93/10 129/20 supplemental [1] 131/25 support [2] 10/23 37/14 suppose [2] 62/1 118/8 supposedly [1] 120/3 sure [44] 4/24 7/23 8/1 8/25 11/14 16/23 19/17 20/6 22/23 24/14 27/4 31/3 33/19 40/21 40/22 49/14 51/12 56/7 61/25 72/22 77/3 77/6 80/22 83/16 88/5 91/7 91/8 91/11 91/12 91/17 94/6 95/6 99/21 102/4 102/11 106/3 108/14 111/8 116/10 126/10 126/17 129/12 130/20 130/22 surprised [1] 66/22 SW [1] 1/15 sworn [4] 9/9 95/2 107/10 107/16 system [4] 16/2 16/18 73/25 73/25		
T	tabs [1] 11/11 tacked [1] 60/2 take [23] 7/5 7/21 40/20 47/25 67/15 76/14 99/19 105/21 116/20 118/17 119/6 120/11 120/24 122/12 122/18 122/25 124/14 125/3 125/12 129/2 131/4 131/16 132/7 taken [2] 16/24 76/18 takes [2] 16/2 99/11 taking [2] 68/8 95/19 talk [3] 11/25 103/6 115/16 talking [14] 6/23 43/2 59/13 60/18 63/5 63/11 64/21 66/6 70/16 82/22 83/14 86/7 92/17 110/9		

T	79/16 80/9 82/16	119/23 124/9	7/18 12/8 13/7 19/5
them... [47] 29/11	83/18 83/22 84/3	they've [12] 17/18	23/6 26/5 29/9 46/14
33/11 33/17 36/16	84/9 84/10 84/13	18/3 29/9 35/18	46/24 49/23 50/7
36/17 38/12 40/1	84/16 86/2 91/3 91/7	37/11 37/21 40/7	50/23 52/8 54/8
40/2 40/2 40/8 44/11	91/8 92/12 99/24	48/15 57/19 68/6	70/12 73/9 73/12
46/18 50/13 53/18	100/1 100/21 102/6	92/14 99/22	76/15 89/16 99/22
56/13 57/5 60/17	102/20 111/9 112/11	thing [4] 39/24	105/25 117/15 120/21
60/20 60/20 61/25	113/16 114/9 115/3	79/11 91/18 129/22	throughout [3] 15/10
62/6 63/22 65/20	116/7 119/13 120/18	things [15] 12/25	109/5 119/13
67/22 68/4 75/15	123/1 123/11 124/5	14/12 14/17 14/20	thus [1] 21/23
77/5 77/22 77/23	124/18 125/24 129/5	28/22 29/8 37/25	time [18] 5/6 30/7
80/17 85/5 86/19	there's [51] 7/23	53/24 53/25 57/20	32/15 40/13 42/4
88/24 90/5 90/7 90/9	12/2 17/8 17/8 17/24	72/20 84/3 91/8	43/23 49/5 54/13
90/23 100/9 101/1	18/8 18/15 20/9	91/21 92/16	54/24 57/17 58/2
101/5 101/7 106/13	20/17 23/19 24/21	think [71] 5/13 6/24	58/3 65/3 65/13 69/9
109/25 113/14 113/15	31/13 34/8 38/1	8/18 12/3 13/10 16/1	84/6 90/8 97/2
114/14 125/22	38/16 39/18 40/11	18/18 22/17 27/11	timelines [1] 37/13
themselves [2]	40/13 43/5 43/22	29/13 33/21 34/15	times [7] 6/7 25/22
105/16 111/12	46/15 50/1 53/12	37/1 39/3 39/4 39/6	50/4 50/20 58/14
then [69] 5/22 6/10	54/21 59/24 63/21	39/25 40/4 40/15	97/20 113/8
6/10 6/11 6/12 8/10	64/5 64/11 65/11	45/10 46/8 47/12	timing [3] 31/13
10/5 12/18 12/18	67/17 70/11 71/8	47/22 47/23 50/25	63/16 78/4
13/3 13/13 13/15	73/13 74/12 75/12	51/1 51/3 51/6 54/7	tiny [1] 60/13
14/24 14/25 17/4	75/12 80/15 80/18	54/12 54/16 55/6	title [1] 67/15
17/6 18/16 22/3	81/19 83/9 83/10	55/21 56/20 58/7	titled [1] 133/4
23/21 23/21 24/8	89/23 90/15 109/12	59/10 59/21 60/14	today [16] 6/1 9/25
25/23 27/23 31/19	114/13 114/19 116/4	61/24 62/25 64/22	51/8 63/8 70/17
33/3 45/25 47/6	123/18 124/16 124/21	69/9 71/7 73/21 81/3	82/22 102/14 103/14
47/16 50/5 53/15	125/11	85/2 85/20 85/22	104/15 109/6 109/9
56/25 57/1 57/3 59/5	thereof [1] 108/2	87/2 89/15 91/14	109/10 110/9 111/3
59/11 59/24 67/15	these [50] 8/9 12/12	91/17 92/10 92/12	111/19 112/17
69/13 71/9 71/21	12/19 13/4 20/8 21/7	93/19 94/3 94/7	today's [1] 73/7
71/23 73/1 75/7	21/15 25/10 29/23	100/7 101/18 104/19	Todoroff [6] 107/8
75/17 75/22 76/4	34/22 34/22 35/2	108/20 111/11 111/20	107/9 107/16 107/19
76/11 79/20 80/15	36/1 36/14 36/21	118/22 128/14 129/15	107/21 128/21
81/19 82/3 85/8	36/22 37/25 38/15	129/17 130/4 130/25	together [4] 13/14
88/22 94/8 95/17	38/24 39/8 39/11	131/7 132/3	16/25 62/10 77/1
100/4 102/19 103/11	42/22 43/5 46/22	third [4] 1/15 6/25	told [6] 78/6 85/17
107/3 108/24 110/24	50/12 50/23 53/2	25/20 109/21	105/3 114/19 115/20
114/12 116/5 116/6	57/20 58/10 58/23	third-party [1]	124/8
116/7 116/8 130/3	59/5 62/23 68/16	109/21	too [7] 35/20 40/10
131/5 132/1	82/21 87/8 89/3	this [248]	57/23 59/12 64/9
theoretically [3]	90/21 90/24 91/12	those [47] 10/2 15/5	112/6 114/14
55/9 116/5 116/6	92/15 92/17 92/18	15/17 16/4 17/4 23/9	took [1] 109/4
theory [1] 86/12	93/15 98/14 106/9	37/21 43/7 43/17	tools [1] 8/1
therapeutic [1]	111/6 111/7 112/2	44/13 55/1 58/4	top [7] 15/14 21/2
28/25	115/22 123/24	58/14 58/14 62/16	21/2 21/20 22/13
Therapeutics [1]	these inventor [1]	67/24 67/24 68/13	114/2 127/16
122/8	90/21	69/6 71/4 71/10 72/1	topics [2] 108/24
there [81] 4/21 6/18	they [150]	72/22 73/4 76/11	109/19
7/24 7/25 14/10	they'll [4] 34/6	77/20 78/3 79/5 79/7	total [47] 17/15
16/12 17/11 20/19	71/8 77/13 77/17	79/17 82/17 83/20	17/20 20/19 21/11
21/10 21/12 22/11	they're [40] 12/13	83/25 84/2 88/2	23/10 23/25 24/15
23/13 24/22 27/20	13/17 15/3 15/9 23/7	88/24 90/18 92/25	25/4 25/6 25/8 27/8
35/19 38/20 39/13	26/11 30/18 30/24	97/9 97/15 100/4	38/4 41/23 41/25
39/22 42/21 43/5	31/10 31/10 31/18	113/12 114/12 122/23	43/22 49/7 51/8
45/17 46/8 46/10	32/19 33/3 33/18	130/17 130/21 130/23	52/21 52/24 52/25
48/2 48/13 52/20	33/19 36/15 36/18	though [3] 14/16	58/4 59/12 62/15
53/15 54/20 56/16	36/22 37/24 37/24	30/6 128/3	71/6 71/13 72/21
56/22 58/8 62/11	43/20 43/22 46/18	thought [4] 58/2	73/1 77/11 78/13
64/1 64/25 65/14	48/19 56/8 56/11	62/6 66/6 86/24	80/5 80/10 85/2 85/5
67/5 67/7 67/14	68/1 68/2 71/15	three [6] 6/18 24/6	86/4 93/2 93/4 98/2
67/17 68/21 69/4	74/11 75/20 77/13	46/3 62/19 78/7	98/5 103/4 103/14
71/22 71/23 73/11	81/7 85/14 98/24	122/24	105/8 109/12 109/13
74/1 74/11 76/17	99/23 111/13 113/10	through [24] 7/17	116/1 118/6 125/25

T	U	57/10 71/25 72/22 72/24 76/1 77/5 77/5 78/11 79/5 85/5 85/9 85/13 90/14 91/16 94/4 94/8 97/6 114/24 114/25 123/1 123/11 126/16 127/1 130/7 upfront [12] 14/16 15/8 27/21 31/9 37/23 53/15 55/12 56/2 57/2 93/8 123/7 123/8 upon [1] 24/16 upper [1] 58/18 us [36] 13/9 15/20 16/19 19/10 27/5 27/5 28/15 30/21 31/11 33/4 33/13 33/14 35/15 36/6 36/15 36/18 39/9 40/1 50/16 56/9 67/21 68/5 68/6 73/12 74/20 74/21 77/13 77/14 77/17 77/19 77/19 81/7 82/4 96/7 105/17 115/6 USAO [1] 1/19 usdoj.gov [1] 1/22 use [17] 7/5 16/2 23/21 27/22 40/10 48/1 62/12 65/6 65/7 65/7 67/10 68/3 84/25 87/18 92/14 103/24 119/25 used [15] 14/3 19/6 44/11 73/24 77/18 79/8 82/20 83/1 85/10 87/20 109/5 110/8 112/14 118/18 130/10 uses [3] 10/25 12/5 16/20 using [11] 20/21 25/7 28/4 32/24 44/8 44/11 63/14 66/16 78/11 84/4 119/23 usually [14] 15/4 15/5 17/13 31/5 53/16 55/11 61/13 65/4 71/7 74/12 75/5 84/16 115/23 119/4 utilization [1] 12/10	varies [1] 54/24 variety [1] 14/15 various [6] 32/5 67/5 78/5 91/3 119/19 123/16 varying [1] 62/21 vendor [1] 102/15 verified [3] 73/18 76/4 76/11 verifies [1] 88/24 verify [6] 15/13 51/5 73/15 76/8 77/21 127/24 versed [1] 10/5 version [1] 23/3 versus [4] 4/8 7/9 58/15 63/12 very [29] 7/21 10/1 10/2 11/6 11/23 12/4 12/24 16/3 29/10 29/25 29/25 36/8 37/1 46/17 53/25 54/1 60/15 64/22 66/22 73/13 85/25 87/22 88/1 91/9 91/18 106/22 109/19 128/20 132/6 via [2] 125/22 128/2 view [5] 5/9 82/13 125/19 125/20 125/22 vitae [1] 130/12 voice [1] 10/9 vs [1] 1/5
total... [1] 126/1 totality [1] 117/13 totally [1] 103/5 touch [1] 5/7 toward [1] 78/25 towards [1] 17/20 training [2] 99/7 99/8 transcript [4] 1/9 2/6 131/17 133/3 transcription [1] 2/7 transfer [12] 9/16 9/17 10/5 10/19 10/22 11/1 76/6 76/7 81/20 102/3 125/14 127/18 transparency [7] 1/3 4/7 41/7 108/2 108/25 110/8 110/15 treat [1] 68/4 trends [1] 40/6 trial [1] 27/23 tried [1] 45/8 triggered [1] 7/14 true [5] 32/21 34/4 59/14 69/2 114/12 truly [1] 111/14 trust [1] 114/20 try [4] 14/11 33/15 69/17 116/1 trying [11] 34/5 50/1 53/7 72/15 82/11 82/12 84/8 104/14 105/13 108/4 128/2 turn [8] 40/16 65/16 107/3 110/1 110/10 113/16 121/7 122/2 turning [1] 55/2 turns [1] 127/11 twice [3] 31/5 76/5 76/12 two [35] 5/2 20/9 22/11 22/12 22/12 40/20 42/25 45/17 47/5 47/7 47/8 48/1 48/1 48/13 56/17 57/16 57/20 58/1 62/20 63/21 71/9 73/5 80/16 92/16 108/24 122/22 122/23 122/24 123/4 123/6 123/6 123/12 124/16 124/17 125/22 two-minute [1] 40/20 type [4] 14/18 84/16 120/11 120/13 types [2] 56/17 124/6 typically [6] 39/24 55/10 55/22 55/25 56/1 120/2	understand [12] 24/14 26/17 33/2 46/22 49/22 52/16 59/22 65/25 80/22 81/3 89/2 89/3 understanding [13] 37/9 96/6 97/11 101/20 101/22 101/24 102/1 109/8 109/10 109/12 111/22 117/25 118/3 unequal [1] 118/4 unfortunately [2] 18/16 79/10 unicorn [1] 4/16 unique [1] 38/16 UNITED [2] 1/1 1/10 universe [1] 65/9 university [5] 67/16 108/15 108/17 112/10 113/25 unless [1] 42/13 unlikely [1] 56/20 unredacted [2] 22/25 92/7 unsealing [1] 22/6 until [2] 64/12 84/6 unusual [5] 37/1 117/17 117/18 120/3 120/5 unwilling [2] 39/8 39/9 up [39] 8/21 9/1 10/9 10/13 21/6 23/25 25/23 26/3 37/12 46/15 47/2 50/3 50/12 51/9 53/5	W wager [1] 119/16 walk [4] 7/17 70/12 73/9 73/12 want [23] 14/20 33/2 33/14 34/19 35/11 40/12 49/20 55/22 56/9 65/19 69/12 70/8 73/9 80/7 89/13 104/2 122/16 125/9 129/18 131/1 131/10 131/17 132/2 wanted [5] 5/4 5/7 35/20 70/12 114/18 wants [2] 21/16 93/14 was [117] 5/12 6/9 6/10 6/25 7/1 9/18 9/19 9/21 11/20 17/11 19/14 25/5 27/17 28/7 28/14 29/17 30/14 32/8 32/9 32/15 33/6 33/6 33/25 35/19 35/19 35/23 35/24 41/20 42/18 43/10 46/2 46/23 47/7 48/3 48/4 48/22 49/13 49/16 53/7 55/3 55/4 55/5 57/12 58/3 60/10 62/18 62/19 62/20	
	V vaccines [2] 13/1 39/14 valuable [2] 29/1 36/9 value [2] 28/19 38/4 variable [1] 77/14 variables [2] 59/6 91/3		

W	125/17	where [39] 19/14 19/25 20/10 28/25 31/14 39/18 43/5 47/13 50/1 52/7 54/21 56/10 57/11 57/16 57/19 58/8 62/11 62/24 67/5 67/19 70/21 74/18 79/17 83/5 84/25 87/6 87/12 96/8 96/11 96/15 98/14 108/21 110/13 114/21 116/8 117/2 118/10 127/14 127/21	wildly [1] 123/25 will [27] 7/22 8/5 8/7 11/11 13/18 19/3 34/4 36/6 36/12 62/25 65/14 71/9 77/14 79/5 79/7 79/10 85/5 94/13 94/13 96/23 98/23 117/8 118/21 123/9 123/10 130/17 131/16 William [3] 2/2 133/2 133/8 willing [3] 28/20 33/11 87/6 wish [3] 106/25 129/8 131/2 withheld [8] 6/5 6/16 7/3 7/8 22/22 34/23 87/9 102/5 withhold [2] 6/18 8/5 withholding [3] 103/1 120/22 124/9 within [7] 53/9 54/6 55/4 55/19 121/21 124/4 125/25 without [3] 16/5 55/23 85/24 witness [20] 3/2 3/8 4/19 5/4 5/11 5/12 8/19 9/4 9/9 11/13 18/21 60/23 94/1 94/18 95/2 102/22 107/4 107/8 107/12 107/16 witnesses [5] 3/4 3/10 5/2 106/24 129/6 won't [1] 57/24 wondering [1] 106/13 work [12] 11/6 13/14 13/25 26/10 35/2 39/9 46/15 65/23 109/1 109/6 127/18 131/19 worked [5] 26/6 35/2 57/10 68/20 108/19 working [5] 12/15 34/10 36/16 40/21 99/15 world [2] 91/20 91/21 worried [1] 35/4 worth [1] 124/21 would [173] would you [1] 45/5 wouldn't [8] 39/15 40/11 60/10 63/24 80/19 105/21 112/4 112/23 writing [1] 131/2 written [1] 132/3 wrong [3] 50/22 50/24 116/5 wrote [1] 110/6
was... [69] 62/24 63/7 63/8 63/12 64/1 64/9 68/9 72/6 76/13 76/18 77/6 77/7 82/11 82/12 83/23 83/24 84/6 84/9 84/10 84/13 84/16 85/19 85/20 85/23 86/2 86/11 86/19 86/21 86/24 87/6 89/15 89/25 90/1 90/2 91/13 92/17 95/14 95/19 96/17 97/11 97/14 97/15 99/3 99/5 100/21 102/6 103/15 103/22 106/11 106/16 110/6 110/7 112/15 112/15 114/4 114/9 114/10 114/14 114/15 114/23 116/15 121/10 126/17 126/23 126/24 127/7 127/8 128/8 132/6 was just [1] 82/11 was that [1] 53/7 Washington [5] 1/5 1/16 1/21 2/5 85/17 wasn't [1] 30/13 WATCH [2] 1/14 115/5 way [9] 7/23 39/2 44/7 51/11 71/19 99/24 111/9 114/13 123/1 ways [2] 13/5 34/8 we [263] we believe [1] 96/11 we calculate [1] 15/23 we look [1] 15/14 we will [2] 13/18 98/23 we'll [7] 69/5 82/4 107/10 126/15 132/1 132/2 132/3 we're [36] 4/6 4/16 6/14 6/15 6/23 6/24 9/25 11/25 16/21 18/5 18/21 19/5 21/15 24/6 24/17 27/11 29/14 30/7 31/21 34/15 38/14 42/24 70/14 72/14 81/10 81/13 86/7 87/2 90/20 93/21 94/3 96/20 102/14 110/9 115/9 120/4 we've [13] 15/13 15/22 16/1 38/5 67/21 69/13 70/16 73/15 73/18 73/19 74/18 82/21 111/2 website [10] 8/14 13/8 13/20 14/6 28/5 32/6 82/1 82/2 121/6	welcome [4] 9/6 70/3 94/19 107/14 well [50] 8/14 10/5 10/21 13/16 14/10 15/2 15/8 15/24 16/3 17/13 25/5 30/1 33/11 34/6 37/8 39/3 43/4 45/16 47/16 50/7 53/8 56/14 57/1 62/4 63/10 67/5 68/1 73/13 76/20 80/25 82/8 86/8 86/13 89/22 90/25 93/22 99/7 100/18 102/19 104/2 112/5 112/15 113/6 115/10 115/15 116/14 116/23 117/19 124/3 129/14 well-defined [2] 15/24 16/3 well-established [1] 8/14 well-versed [1] 10/5 went [5] 82/1 92/1 93/12 108/17 108/19 were [52] 6/6 7/18 19/7 19/12 21/12 21/13 21/15 22/21 24/18 25/19 29/16 29/17 39/22 40/9 41/9 42/21 43/2 47/9 47/21 48/24 49/2 53/9 53/10 57/18 58/20 60/16 61/25 63/11 66/6 73/21 80/16 83/14 84/7 85/1 85/6 95/12 95/24 96/22 100/3 100/18 100/20 101/2 101/7 104/19 110/17 113/9 118/10 125/19 127/2 129/13 129/15 129/20 what [161] What happens [1] 17/25 what is [1] 52/4 what's [11] 8/8 21/22 22/3 40/3 40/3 65/16 110/1 113/17 116/13 121/18 122/2 whatever [4] 25/2 25/5 87/19 116/9 when [30] 14/12 26/15 27/22 28/3 30/24 49/8 50/13 55/5 63/11 63/11 63/12 64/16 64/20 65/5 66/15 84/19 87/22 91/17 91/19 92/12 93/1 93/10 96/12 96/12 96/14 100/9 100/13 118/10 120/18 121/20		
		whether [26] 7/24 16/13 46/8 48/10 50/15 50/16 51/16 51/18 58/8 58/10 58/20 58/24 58/25 58/25 59/2 63/10 67/20 75/19 76/20 85/14 86/16 86/24 94/10 99/4 104/5 119/25 which [52] 6/5 6/25 10/22 12/25 15/3 15/5 15/14 15/15 15/16 20/8 20/14 21/16 23/4 24/1 25/20 27/6 28/4 29/25 31/12 33/4 33/6 37/15 47/15 51/12 52/9 55/11 57/24 62/10 62/13 63/4 66/7 67/8 70/17 70/20 73/21 77/13 79/10 83/3 83/9 84/14 88/19 88/22 90/1 92/1 103/3 110/18 110/22 114/22 116/15 121/8 122/12 130/11 who [25] 6/9 9/22 10/2 15/15 15/20 26/5 29/4 29/6 36/9 51/3 64/2 64/2 64/5 66/3 67/7 67/11 73/23 76/7 84/6 86/23 87/16 102/2 113/12 113/23 119/3 who's [5] 54/25 54/25 59/1 74/22 74/23 whole [5] 16/16 43/20 51/7 57/24 90/8 whom [1] 12/12 why [22] 5/22 6/3 9/1 10/13 22/12 28/17 31/16 33/9 34/18 34/19 38/8 40/11 52/9 90/1 90/11 97/9 102/5 107/3 113/5 116/22 124/9 131/24	

<p>Y</p> <p>yeah [15] 25/13 31/23 44/16 75/4 98/7 102/10 111/20 116/3 121/5 122/1 123/17 126/25 128/8 129/2 130/9</p> <p>year [31] 17/12 17/13 18/8 18/10 18/12 18/12 18/16 20/9 31/5 41/25 57/8 63/8 63/15 63/17 63/19 63/20 64/2 64/3 64/11 64/23 65/1 65/3 75/18 76/5 76/12 85/18 85/21 86/9 99/15 111/1 121/23</p> <p>years [9] 9/16 9/17 30/14 64/10 65/10 87/25 99/18 123/12 125/22</p> <p>yes [92] 9/13 10/1 10/20 11/17 12/6 12/20 14/2 17/10 17/13 19/11 19/24 19/25 21/4 21/5 21/24 22/1 22/8 25/1 25/11 26/4 32/19 33/22 35/15 35/17 39/1 40/19 41/16 42/3 42/17 44/4 44/10 53/9 53/21 55/17 55/24 57/9 66/9 68/11 68/24 70/6 70/19 71/16 77/2 78/15 79/25 80/11 81/25 83/13 88/12 89/18 90/6 90/22 90/25 93/17 97/4 97/8 98/17 98/20 103/24 105/24 108/8 108/10 109/3 110/4 111/5 111/24 113/21 116/19 117/4 119/1 120/19 120/23 121/1 121/17 122/11 122/20 123/4 123/13 124/7 124/20 125/8 125/16 125/18 126/22 127/5 127/7 128/6 129/22 131/13 131/14 131/20 131/22</p> <p>yet [1] 115/5</p> <p>you [436]</p> <p>you know [28] 19/20 27/22 28/9 28/12 28/21 36/13 37/22 38/20 39/15 46/17 46/23 47/14 48/14 54/19 56/11 59/9 59/10 65/10 65/12 66/10 66/10 77/3 78/16 84/11 89/1 91/9 100/21 116/8</p>	<p>you said [1] 43/18</p> <p>you'd [2] 55/13 131/4</p> <p>You'll [1] 60/22</p> <p>you're [28] 22/12 25/10 26/21 26/21 26/24 34/10 34/10 37/5 44/23 45/19 47/19 48/6 50/9 56/11 57/22 58/13 59/7 63/5 63/11 64/9 64/10 77/10 78/6 80/22 88/10 93/5 96/13 104/15</p> <p>you've [6] 16/1 22/7 42/16 75/2 78/11 81/19</p> <p>your [78] 4/6 4/9 5/20 5/24 8/22 9/3 9/18 9/18 10/9 10/17 10/18 13/25 18/20 19/3 33/22 36/1 38/7 38/7 40/15 40/19 43/1 44/12 44/24 50/17 51/8 52/13 61/1 62/23 63/9 65/16 65/17 65/18 70/6 78/24 81/15 82/13 86/12 88/9 89/5 89/14 91/13 93/22 93/22 94/17 95/17 96/6 97/2 101/22 107/4 107/5 107/11 107/19 107/22 108/7 108/12 109/1 109/8 110/3 110/17 111/22 113/18 117/25 118/5 119/13 120/17 122/10 122/16 125/9 126/1 128/19 128/22 129/7 131/8 131/14 131/20 131/21 131/22 132/1</p> <p>your ability [1] 126/1</p> <p>Your declaration [1] 63/9</p> <p>Your Honor [23] 4/6 4/9 5/20 5/24 8/22 18/20 33/22 40/15 40/19 52/13 65/16 70/6 89/5 93/22 107/5 128/19 128/22 129/7 131/8 131/14 131/20 131/21 131/22</p> <p>yourself [3] 9/12 88/14 95/5</p> <hr/> <p>Z</p> <p>Zaremba [3] 2/2 133/2 133/8</p>		
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