



## **BULKY DOCUMENTS**

(Exceeds 100 pages)

Proceeding/Serial No: **91184197**

Filed: 3/01/10

Title: Notice of Filing Testimony of Christopher T.  
Schenken

---

Part 1 of 1



## BULKY EXHIBITS

Proceeding/Serial No: 91184197

Filed: 3/01/2010

Title: Notices of Filing Testimony

Christopher T. Schenken

EXHIBITS 1-CD

# KING & SPALDING

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February 25, 2010

Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
600 Dulany Street  
Madison East, Concourse Level, Room 37A  
Alexandria, VA 22314

VIA UPS GROUND

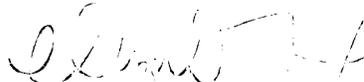
**Re: Notices of Filing Testimony of Christopher T. Schenken  
UNITED PARCEL SERVICE OF AMERICA, INC. v.  
POWERTECH INDUSTRIAL CO. LTD.  
Opposition No. 91184197  
K&S File No. 00853.113170**

Dear Sir/Madam:

Enclosed for filing in the above-referenced matter is the Notice of Filing Testimony of Christopher T. Schenken.

Thank you for your assistance with this matter.

Sincerely yours,



Elizabeth M. Fox

Enclosures



03-01-2010



**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the foregoing Opposer's NOTICE OF FILING TESTIMONY OF CHRISTOPHER T. SCHENKEN was served this day via US mail addressed to:

Morton J. Rosenberg  
ROSENBERG, KLEIN AND LEE  
3458 Ellicott Center Drive  
Suite 101  
Ellicott City, Maryland 21043-4178

This 25th day of February, 2010.

  
\_\_\_\_\_  
Elizabeth M. Fox

**Certified Copy**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application  
Serial No. 77/176,134 Published  
on March 18, 2008

UNITED PARCEL SERVICE  
OF AMERICA, INC.,

Opposer,

vs.

Opposition No. 91184197

POWERTECH INDUSTRIAL  
CO., LTD,

Applicant.  
~~~~~

**DEPOSITION OF**

**CHRISTOPHER T. SCHENKEN**

**NON-CONFIDENTIAL PORTIONS**

October 9, 2009  
9:38 a.m.

55 Glenlake Parkway  
Atlanta, Georgia

Margaret L. Messer, RPR, CCR-B-2024



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IN THE UNITED STATES PATENT AND TRADEMARK  
OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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INDEX OF EXAMINATION

|                                  |      |
|----------------------------------|------|
| WITNESS: CHRISTOPHER T. SCHENKEN | PAGE |
| Examination by Mr. Schaetzel     | 10   |

CONFIDENTIAL EXCERPTS BOUND UNDER  
SEPARATE COVER

- Pages 67-70
- Pages 77-78
- Pages 118-127
- Page 137
- Pages 144-145

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
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25



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|    | INDEX TO EXHIBITS |                                             |      |
|----|-------------------|---------------------------------------------|------|
|    | Exhibit           | Description                                 | PAGE |
| 1  |                   |                                             |      |
| 2  |                   |                                             |      |
| 3  | 1                 | Opposer's Notice of<br>Testimony Deposition | 11   |
| 4  |                   |                                             |      |
| 5  | 2                 | U.S. Trademark<br>Registration 2,483,193    | 12   |
| 6  | 3                 | U.S. Trademark<br>Registration 3,160,062    | 14   |
| 7  |                   |                                             |      |
| 8  | 4                 | U.S. Trademark<br>Registration 2,973,108    | 17   |
| 9  | 5                 | U.S. Trademark<br>Registration 2,830,249    | 18   |
| 10 |                   |                                             |      |
| 11 | 6                 | U.S. Trademark<br>Registration 2,278,090    | 25   |
| 12 | 7                 | U.S. Trademark<br>Registration 2,128,739    | 25   |
| 13 |                   |                                             |      |
| 14 | 8                 | U.S. Trademark<br>Registration 2,098,168    | 26   |
| 15 | 9                 | U.S. Trademark<br>Registration 1,878,918    | 30   |
| 16 |                   |                                             |      |
| 17 | 10                | U.S. Trademark<br>Registration 1,878,016    | 31   |
| 18 | 11                | U.S. Trademark<br>Registration 1,876,943    | 32   |
| 19 |                   |                                             |      |
| 20 | 12                | U.S. Trademark<br>Registration 1,460,348    | 33   |
| 21 | 13                | U.S. Trademark<br>Registration 1,874,248    | 33   |
| 22 |                   |                                             |      |
| 23 | 14                | U.S. Trademark<br>Registration 1,375,109    | 35   |
| 24 | 15                | U.S. Trademark<br>Registration 1,277,400    | 36   |
| 25 |                   |                                             |      |



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|    | INDEX TO EXHIBITS (continued) |      |
|----|-------------------------------|------|
| 1  | Exhibit Description           | PAGE |
| 2  | 16 U.S. Trademark             | 36   |
| 3  | Registration 966,774          |      |
| 4  | 17 U.S. Trademark             | 37   |
| 5  | Registration 514,285          |      |
| 6  | 18 CD and Brochure - UPS      | 29   |
| 7  | Trackpad                      |      |
| 8  | 19 UPS.COM Pressroom          | 43   |
| 9  | publication - Airlines        |      |
| 10 | 20 UPS.COM Pressroom          | 44   |
| 11 | publication - UPS Air         |      |
| 12 | Operations Facts              |      |
| 13 | 21 UPS.COM Pressroom          | 48   |
| 14 | publication - UPS Freight     |      |
| 15 | Less-Than-Truckload and       |      |
| 16 | Truckload Services            |      |
| 17 | 22 UPS Professional Services  | 52   |
| 18 | publication - UPS             |      |
| 19 | Trackpad                      |      |
| 20 | 23 UPS.COM Pressroom          | 54   |
| 21 | publication - Technology      |      |
| 22 | Facts: UPS                    |      |
| 23 | 24 UPS.COM Pressroom - UPS    | 60   |
| 24 | Fact Sheet                    |      |
| 25 | 25 UPS.COM Pressroom - About  | 64   |
|    | UPS                           |      |
|    | 26 The average number of      | 67   |
|    | miles covered per day         |      |
|    | within the past 5 years       |      |
|    | 27 The corporate funded       | 72   |
|    | domestic sponsorships for     |      |
|    | the last five years           |      |
|    | 28 UPS Enterprise Portal -    | 74   |
|    | London 2012 Olympic Games     |      |



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|    | INDEX TO EXHIBITS (continued) |                                                                                                     |      |
|----|-------------------------------|-----------------------------------------------------------------------------------------------------|------|
|    | Exhibit                       | Description                                                                                         | PAGE |
| 1  |                               |                                                                                                     |      |
| 2  |                               |                                                                                                     |      |
| 3  | 29                            | UPS.COM Pressroom - DIAD<br>IV                                                                      | 79   |
| 4  |                               |                                                                                                     |      |
| 5  | 30                            | Photograph                                                                                          | 79   |
| 6  |                               |                                                                                                     |      |
| 7  | 31                            | Photograph                                                                                          | 80   |
| 8  |                               |                                                                                                     |      |
| 9  | 32                            | Photographs                                                                                         | 81   |
| 10 |                               |                                                                                                     |      |
| 11 | 33                            | Photographs                                                                                         | 82   |
| 12 |                               |                                                                                                     |      |
| 13 | 34                            | Calendar - Decision Green                                                                           | 84   |
| 14 |                               |                                                                                                     |      |
| 15 | 35                            | CD - "Green" TV Spots on<br>Whiteboard site                                                         | 85   |
| 16 |                               |                                                                                                     |      |
| 17 | 36                            | Photograph                                                                                          | 86   |
| 18 |                               |                                                                                                     |      |
| 19 | 37                            | Operating in Unison, UPS<br>2002 Corporate<br>Sustainability Report                                 | 89   |
| 20 |                               |                                                                                                     |      |
| 21 | 38                            | Operating in Unison, 2004<br>UPS Corporate<br>Sustainability Report                                 | 90   |
| 22 |                               |                                                                                                     |      |
| 23 | 39                            | Operating in Unison, 2007<br>UPS Corporate<br>Sustainability Report                                 | 91   |
| 24 |                               |                                                                                                     |      |
| 25 | 40                            | BrandFinance250, The<br>Annual Report on the<br>World's Most Valuable<br>Brands, January 2007       | 95   |
| 26 |                               |                                                                                                     |      |
| 27 | 41                            | BrandFinance Global 500,<br>The Annual Report on the<br>World's Most Valuable<br>Brands, April 2009 | 96   |
| 28 |                               |                                                                                                     |      |
| 29 | 42                            | 2.0 Letter from the<br>Chairman                                                                     | 97   |
| 30 |                               |                                                                                                     |      |
| 31 | 43                            | UPS Enterprise Portal -<br>Bob Stoffel Emphasizes<br>Going Green<br>Going Green                     | 98   |



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|    | INDEX TO EXHIBITS (continued)                                                            |      |
|----|------------------------------------------------------------------------------------------|------|
| 1  | Exhibit Description                                                                      | PAGE |
| 2  |                                                                                          |      |
| 3  | 44 UPS.COM Pressroom - Ten Things you May Not Know About UPS's Environmental Initiatives | 99   |
| 4  |                                                                                          |      |
| 5  |                                                                                          |      |
| 6  | 45 Composite Exhibit. UPS Enterprise Portal - The Many Ways that Brown is Green          | 99   |
| 7  |                                                                                          |      |
| 8  | 46 Decision Green: Frequently Asked Questions                                            | 107  |
| 9  |                                                                                          |      |
| 10 | 47 UPS Carbon Neutral Frequently Asked Questions                                         | 107  |
| 11 |                                                                                          |      |
| 12 | 48 Alternate Fuel Vehicles, January 9, 2009                                              | 108  |
| 13 |                                                                                          |      |
| 14 | 49 Alternative Fuels and Technology                                                      | 109  |
| 15 | 50 UPS.COM Pressroom - Fuel Management and Conversation at the UPS Airlines              | 112  |
| 16 |                                                                                          |      |
| 17 |                                                                                          |      |
| 18 | 51 UPS.COM Pressroom - UPS Uses Telematics To Go - And Save - Green                      | 113  |
| 19 |                                                                                          |      |
| 20 | 52 "The Many Ways That Brown is Green"                                                   | 113  |
| 21 | 53 7.0 Environmental Stewardship                                                         | 114  |
| 22 |                                                                                          |      |
| 23 | 54 UPS.COM Pressroom - UPS First in Industry to Purchase Hydraulic Hybrid Vehicles       | 115  |
| 24 |                                                                                          |      |
| 25 |                                                                                          |      |



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## INDEX TO EXHIBITS (continued)

| Exhibit | Description                                                  | PAGE |
|---------|--------------------------------------------------------------|------|
| 55      | BusinessWeek - UPS Takes<br>the Lead on Hydraulic<br>Hybrids | 116  |
| 56      | Advertisement Measurement<br>Study                           | 116  |
| 57      | Page from Powertech<br>Industrial Co., Ltd.<br>website       | 128  |
| 58      | Patent Application<br>Publication Number: US<br>2008/0238205 | 130  |
| 59      | The UPS Collection,<br>Fall/Winter 2009 catalog              | 147  |
| 60      | The UPS Collection,<br>Capture the UPS Spirit<br>catalog     | 146  |
| 61      | 2009 Daron Worldwide<br>Trading Inc. catalog                 | 133  |
| 62      | List of Licensees                                            | 142  |

(Original Exhibits 1-25, 27-55, 57-58 are attached to Original transcript. Copies of Exhibits 59, 60 and 61 are attached to Original transcript. Exhibits 26, 56, and 62 are confidential and bound separately.)



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1 Deposition of Christopher T. Schenken

2 October 9, 2009

3 (Reporter disclosure made pursuant  
4 to Article 8.B. of the Rules and  
5 Regulations of the Board of Court  
6 Reporting of the Judicial Council of  
7 Georgia.)

8 CHRISTOPHER SCHENKEN, having been  
9 first duly sworn, was examined and testified  
10 as follows:

11 MR. SCHAETZEL: Good morning,  
12 Mr. Schenken. This is the testimonial  
13 deposition of United Parcel Service of  
14 America, Inc., and the person of  
15 Mr. Christopher T. Schenken in Opposition  
16 No. 91184197, styled United Parcel  
17 Service of America, Incorporated, V.  
18 Powertech Industrial Company, Limited.  
19 The deposition is being taken pursuant  
20 notice.

21 We have just had a telephone  
22 conversation with counsel for Powertech,  
23 Mr. Morton Rosenberg, who has informed us  
24 that he is not going to attend the  
25 deposition, so we will proceed as



1 noticed.

2 EXAMINATION

3 BY-MR.SCHAETZEL:

4 Q. Mr. Schenken, would you state your  
5 full name for the record.

6 A. Christopher Todd Schenken.

7 Q. And where are you employed?

8 A. UPS.

9 Q. Are you employed at any particular  
10 division or company within UPS?

11 A. Yes. I'm employed UPS Global  
12 Innovations, Inc.

13 Q. What is your position at UPS Global  
14 Innovations, Inc.?

15 A. Vice president.

16 Q. And what do you do as vice  
17 president of UPS Global Innovations?

18 A. Manage UPS's intellectual property  
19 portfolio.

20 Q. Would that portfolio include  
21 trademarks?

22 A. Yes.

23 Q. Do you have any other  
24 responsibilities as vice president of Global  
25 Innovations?



1 A. Manage people who work in that  
2 group.

3 Q. So you have others that work in  
4 Global Innovations with you?

5 A. Correct.

6 Q. How many people do you supervise?

7 A. Three in UPS Global Innovations.

8 Q. Do I understand from that answer  
9 that you supervise others as well, but they're  
10 not necessarily Global Innovations employees?

11 A. Correct.

12 (Exhibit-1 was marked for  
13 identification.)

14 Q. (By Mr. Schaetzel) I'd like to hand  
15 you what has been marked as Exhibit 1 for  
16 identification. I'll represent to you that  
17 this is the notice of deposition that was  
18 provided to Powertech Industrial Company in  
19 this opposition. Do you understand that you  
20 testify here today pursuant to this notice of  
21 deposition?

22 A. Yes.

23 Q. What is UPS Market Driver?

24 A. UPS Market Driver is the licensor  
25 of UPS's intellectual property portfolio.



1 Q. And what is the relationship  
2 between Market Driver and UPS Global  
3 Innovations?

4 A. UPS Global Innovations is the  
5 parent corporation to UPS Market Driver, and  
6 UPS Global Innovations provides intellectual  
7 property and management assistance services to  
8 UPS Market Driver as UPS Market Driver pursues  
9 its mission of licensing UPS intellectual  
10 property.

11 Q. Do you participate in the providing  
12 of that assistance to Market Driver as an  
13 employee of UPS Global Innovations?

14 A. Yes, I do.  
15 (Exhibit-2 was marked for  
16 identification.)

17 Q. (By Mr. Schaetzel) I'd like to hand  
18 you what's been marked as Exhibit 2 for  
19 identification and ask if you recognize this  
20 as U.S. Registration No. 2,483,193 for the  
21 mark UPS.COM.

22 A. Yes.

23 Q. What is UPS.COM as a website first  
24 before we talk about the trademark?

25 A. It is the portal through which we



1 communicate with our customers and our  
2 customers largely communicate with UPS on the  
3 internet, on the worldwide web.

4 Q. And so there is a website at just  
5 UPS.COM; is that correct?

6 A. Correct.

7 Q. And if I put in that website or I  
8 type it into my computer, what will I see on  
9 the screen as it first appears?

10 A. You'll see an entry page, which  
11 will ask you a question about your preferred  
12 language.

13 Q. Will that entry page display any  
14 trademarks?

15 A. Off the top of my head, I'd have to  
16 look to see which ones it would display, but  
17 it would display likely the UPS Shield, likely  
18 the name UPS, and likely the color brown.

19 Q. And when you say the UPS Shield,  
20 what you are you referring to?

21 A. It is the -- among our most famous  
22 trademark symbols, and it -- it appears on our  
23 package cars, on our aircraft, on our  
24 uniforms, on many of our buildings. The  
25 current iteration of the shield has been



1 around since 2003. But we've been using the  
2 shield since -- I'm not exactly sure the date.  
3 I would have to look back at the  
4 registrations, but probably around 1919 or  
5 something.

6 Q. To your knowledge, is the company  
7 still using the trademark UPS.COM?

8 A. Yes.

9 (Exhibit-3 was marked for  
10 identification.)

11 Q. (By Mr. Schaetzel) I'd like to hand  
12 you what's been marked as Exhibit 3 for  
13 identification. Do you recognize this as  
14 Registration No. 3,160,062, the mark UPS  
15 Worldship?

16 A. Yes.

17 Q. What is UPS Worldship?

18 A. UPS Worldship is a software  
19 solution that we provide to our customers that  
20 allow our customers to prepare packages so  
21 that they are ready to go into the UPS system.  
22 It allows our customers to look at pricing for  
23 our services, select various services, weigh  
24 the packages, that sort of thing.

25 Q. One of the services recited in the



1 registration is computerized tracking and  
2 tracing of packages in transit.

3 A. Yes.

4 Q. Could you please explain what that  
5 means.

6 A. When a package is submitted to UPS  
7 for delivery by one of our shippers, it gets  
8 picked up at each point from the -- at  
9 significant points where -- where decisions  
10 are made about how the package is moved  
11 through our system to delivery, they are  
12 scanned. They're scanned with a laser  
13 scanner. The label is read. It shows  
14 essentially or provides evidence that the  
15 package passed a particular location in our  
16 distribution network. That information is  
17 populated into a database that exists in  
18 our -- or our servers in New Jersey.

19 When you would go to, for example,  
20 UPS.COM or use UPS Worldship, you could then  
21 make a query about the package that you're  
22 interested in and find out from that database  
23 what the latest scan information is for that  
24 package. And that scan information is linked  
25 to a location, and therefore, you can tell



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1 where the package is in the cycle.

2 Q. Would any of the equipment used to  
3 perform those tasks of tracing or tracking the  
4 package through the various points, as you  
5 said, scanning it or reading information,  
6 would any of those tasks include electronic  
7 equipment that would bear a UPS trademark?

8 A. Yes.

9 Q. What, for example?

10 A. The -- well, the -- at both ends.  
11 At the consumer end, you're talking about a  
12 software application that will have many of  
13 UPS's trademarks in it, and then at the -- on  
14 the -- on the internet side, same kind of  
15 thing.

16 But in our infrastructure, if  
17 you're a customer, when we pick up your  
18 package, we're likely to scan it with a device  
19 called the DIAD, Delivery Information  
20 Acquisition Device, and that device contains  
21 our trademarks as well. And so 60,000 of our  
22 drivers are out there every day in the U.S.  
23 showing that device to literally millions of  
24 customers, both at the origin end of the  
25 shipment cycle and at the destination end. It



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1 is in the single millions on the pickup side  
2 and the multimillions on the destination side  
3 of those interactions on a daily basis.

4 (Exhibit-4 was marked for  
5 identification.)

6 Q. (By Mr. Schaetzel) I'd like to hand  
7 you what's been marked as Exhibit 4 for  
8 identification. Do you recognize this to be  
9 U.S. -- or the registration for the UPS Shield  
10 shown at Registration No. 2,973,108?

11 A. Yes.

12 Q. And you referred to the UPS Shield  
13 as, is that what you were referring to?

14 A. Yes. In various three-dimensional  
15 and two-dimensional representations.

16 Q. And, for example, would the UPS  
17 Shield perhaps appear on a DIAD as you've  
18 described it?

19 A. Yes, it typically does. In the  
20 Worldship situation, if there's a printer, it  
21 may very well appear on that printer as well.

22 Q. And by "the Worldship situation,"  
23 what do you mean?

24 A. You'd mentioned UPS Worldship.

25 Q. Yes.



1           A.     That software solution often is  
2 provided to customers with a printer device as  
3 well.  Sometimes we provide the computer that  
4 it runs on.

5           Q.     So if I were a customer and I  
6 purchased Worldship, I would not only get the  
7 software that would come on a disk, but I  
8 would also receive a printer?

9           A.     You might receive both a computer  
10 and a printer from UPS.

11          Q.     And that computer, if I do receive  
12 them, that computer and that printer could  
13 potentially bear the UPS Shield; is that  
14 correct?

15          A.     It may.

16          Q.     And to your knowledge, is the UPS  
17 Shield in use today?

18          A.     Yes, it is.

19                 (Exhibit-5 was marked for  
20                         identification.)

21          Q.     (By Mr. Schaetzel) Okay.  I'd like  
22 to hand you what's been marked as Exhibit 5  
23 for identification, which is a copy of  
24 Registration No. 2,830,249.  Do you recognize  
25 this as the registration for UPS Internet



1 Tools?

2 A. Yes, I do.

3 Q. And could you please describe what  
4 UPS Internet Tools is used for?

5 A. UPS -- some of our customers have  
6 much more -- one way to describe it is much  
7 more complex needs for how they run their  
8 shipping within their business overall, and  
9 UPS Internet Tools is a set of tools that  
10 allow customers to integrate UPS shipping,  
11 tracking, tracing, billing functionality  
12 within their own systems. And they can either  
13 make it a very streamlined system or they can  
14 integrate it within much, much more robust  
15 software applications that they have either  
16 homegrown or licensed from large vendors like  
17 Microsoft or Oracle, things like that.

18 Q. And if I were one of these more  
19 sophisticated customers that were using the  
20 UPS Internet Tools services, would I utilize  
21 that service through a computer?

22 A. Yes.

23 Q. And would that computer potentially  
24 have, for example, a power pack or something  
25 affiliated with it that would drive the



1 computer or power the computer?

2 A. I -- and I don't know if every  
3 computer that's made, but almost every  
4 computer that's made has some sort of  
5 rechargeable power source within it, including  
6 this laptop here and most desktops, if only to  
7 maintain the clock. Let me add one thing to  
8 the Internet Tools.

9 Q. Please.

10 A. If you're a -- if your  
11 infrastructure is primarily web-based,  
12 internet tools is also compatible with that.  
13 So you may have a very -- what they call kind  
14 of a light shell on your business, and  
15 Internet Tools will allow you to incorporate  
16 things like tracking and shipping within your  
17 site. If you, for example, started up -- if  
18 you were selling candy bars on the internet,  
19 you might set up a website, and you might use  
20 some of those tools for that as well.

21 Q. And when you say "a light shell,"  
22 what do you mean by that?

23 A. Well, again, I'm trying to be  
24 careful not to put our customers and how they  
25 use our technology within a category of their



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1 level of sophisticated, because some very,  
2 very high end IT shops may use Internet Tools,  
3 and at the same time, some very -- very  
4 targeted, very focused smaller customers may  
5 also use it. The tools, the software  
6 solutions that we provide to our customers  
7 aren't targeted based on their level of  
8 technology sophistication. It's based on  
9 their need for a particular solution.

10 Q. Let's go back, then, to the  
11 web-based. Can you give me an example of a  
12 customer that might have a web-based  
13 application where they would have, for  
14 example, the computer, and that computer would  
15 bring up perhaps Worldship or some other  
16 program that would, you know, interface with  
17 UPS Internet Tools?

18 A. Well, Worldship would typically sit  
19 behind the customer's website, so their  
20 consumer would never see Worldship. That  
21 would be a system that they would use  
22 internally. Whereas, the Internet Tools could  
23 be both inside that customer and not visible  
24 to their own customers, or it could be out  
25 there on the web.



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1           So an example is a large customer,  
2 like an Amazon, may have many implementations  
3 of both: Worldship internally for one campus  
4 or another or many campuses and -- and  
5 Internet Tools for various web sites that they  
6 have both internally and externally.

7           Q.     Using the Amazon example, would it  
8 be conceivable that even a customer of Amazon  
9 might see the UPS Internet Tools interface?

10          A.     Mm-hmm.   Yes.

11          Q.     Could you give an example of that  
12 perhaps?

13          A.     If they were -- and again, I'm  
14 speaking more hypothetically about Amazon,  
15 because, I mean, they have lots and lots of  
16 servers and a very complex system.   So I'm not  
17 an expert in how they run their business.

18                 But one of their customers may have  
19 a -- its own website where they're selling a  
20 product, a widget, for example.   Amazon is  
21 doing the back-end fulfillment.   That customer  
22 might want to provide visibility to where the  
23 packages are that are shipped by Amazon on  
24 their behalf via UPS, and that customer may  
25 have incorporated some of the UPS Internet



1 Tools on the website that -- where you or I  
2 might go and make the orders, not knowing that  
3 Amazon is actually doing the fulfillment.  
4 Amazon facilitates those kind of  
5 relationships.

6 UPS Internet Tools can be used for  
7 that sort of thing so you could go to that  
8 widget seller, their site, enter your tracking  
9 number, and find out the status of the package  
10 without ever directly going to UPS.COM. Tools  
11 will go to UPS.COM, pull out the information,  
12 provide it to you on the widget retailer site.

13 That same information, the order  
14 information might be behind the scenes going  
15 to Amazon, who is fulfilling the order.  
16 Amazon is populating, hey, we've got the order  
17 prepared and ready. And that information  
18 winds up going again back kind of to UPS.COM  
19 to be available both to the widget retailer  
20 and to Amazon shopper who might be interested  
21 in buying the same product.

22 Q. So I, as the customer, would have  
23 my UPS tracking number, and I could go to the  
24 widget site or the widget owner site and input  
25 my UPS tracking number, correct?



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1 A. Correct.

2 Q. And then through the use of UPS  
3 Internet Tools, that tracking number could be  
4 used in cooperation with Amazon to determine,  
5 for example, where the package is in transit?

6 A. Correct.

7 Q. And I, as the customer, then using  
8 my UPS tracking number and UPS Internet Tools  
9 would be able to get that information even  
10 though I did not go directly to UPS.COM?

11 A. Correct. The tools would do that.  
12 But you, as the customer, are just entering  
13 your tracking number. You're not developing a  
14 website. You're -- the seller has developed  
15 that, incorporating the UPS tools.

16 Q. But I, as the customer, would know  
17 that I was using my UPS tracking number and  
18 that I was essentially tapping into UPS  
19 Internet Tools to learn where my shipment was?

20 A. If you are the shipper, you will  
21 certainly know, because you will have  
22 requested and received a license to the UPS  
23 Internet Tools. If you're a customer, you may  
24 not know that the tools themselves exist, but  
25 you will certainly know that the tracking



1 information has been provided via UPS.

2 Q. In that process, will I see either  
3 the designation UPS or the UPS Shield perhaps  
4 or the color brown?

5 A. Yeah. You'll likely see one of our  
6 significant distinguishing trademarks, yes.

7 (Exhibit-6 was marked for  
8 identification.)

9 Q. (By Mr. Schaetzel) I'd like to show  
10 you what's been marked as Opposer's Exhibit 6  
11 for identification. Do you recognize this to  
12 be a UPS Shield design registered at U.S.  
13 Registration No. 2,278,090?

14 A. Yes.

15 Q. And do you know if this mark is  
16 still in use today?

17 A. Yes, it is.

18 (Exhibit-7 was marked for  
19 identification.)

20 Q. (By Mr. Schaetzel) I'd like to hand  
21 you what's been marked as Opposer's Exhibit 7  
22 for identification. Do you recognize this as  
23 Registration No. 2,128,739 for the mark  
24 UPS Online?

25 A. Yes.



1 Q. And is the mark UPS Online in use  
2 today?

3 A. Yes.

4 Q. The services cited in this  
5 application are software for use in preparing  
6 and printing shipping documents and invoices  
7 and tracking the shipped packages. How is the  
8 mark used in association with those services?

9 A. Again, UPS Online is a family of  
10 solutions that UPS has provided over the last,  
11 I'd say decade or so, maybe a little bit  
12 longer than that, where our customers have  
13 said, hey, we need a very simple system that  
14 can just stand by its own, run on a laptop,  
15 and I can run it in a hotel, for example, all  
16 the way up on I need a system that I can  
17 integrate into all of my back-end processes in  
18 my distribution infrastructure. And UPS  
19 Online is the nomenclature we use to describe  
20 this family of solutions.

21 (Exhibit-8 was marked for  
22 identification.)

23 Q. (By Mr. Schaetzel) I'd like to hand  
24 you what's been marked as Opposer's Exhibit 8  
25 for identification. Do you recognize this to



1 be a copy of U.S. Registration No. 2,098,168  
2 for the mark UPS Trackpad?

3 A. Yes.

4 Q. And how is UPS Trackpad used?

5 A. UPS Trackpad is the name we've  
6 given to a solution that allows our customers  
7 who need it to track packages as if they're  
8 using our DIAD, but they're using it inside of  
9 their corporate campus. So it could be in the  
10 university setting or a large corporate campus  
11 where there's multi buildings or many floors.  
12 Once the package is delivered to the mailroom,  
13 typically, by UPS, UPS scans it, accepts the  
14 signature, and as far as UPS is concerned, our  
15 visibility stops, unless a customer is using  
16 Trackpad.

17 Trackpad is a multi-hardware PDA  
18 platform. In other words, you take a typical  
19 PDA and you take the Trackpad software  
20 combined, that makes UPS Trackpad. And then  
21 with the people who work in, for example, your  
22 mailroom, can take the UPS Trackpad, and when  
23 they deliver it to your desk, they can scan  
24 the package, the same bar code, collect that  
25 they delivered it to your desk, they can



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1 collect your signature. That information can  
2 then be uploaded to our infrastructure.

3 And so people who are trying to  
4 track that package, whether it be in your  
5 building or at our building or at the  
6 shipper's building, those people can enter the  
7 tracking number, find that UPS delivered it,  
8 for example, let's say at 11:00 a.m., and it  
9 was delivered by your mailroom at 12:03 to  
10 your desk. So if the package is missing  
11 somewhere in the large campus, people can know  
12 who the last person in your infrastructure  
13 was -- who touched it.

14 Q. And when you use the nomenclature  
15 "PDA"?

16 A. Personal --

17 Q. Personal Digital Assistant?

18 A. Personal Digital Assistant. That's  
19 right.

20 Q. Can you give me an example? Would  
21 that like a Blackberry or --

22 A. I'm trying to think of the hardware  
23 that I'm most familiar with. Who is the  
24 predecessor to the Blackberry? A Palm, a Palm  
25 Pilot is probably the most pervasive PDA



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1 that's out there. And I can't tell you the  
2 exact number of Trackpads that are out there  
3 licensed, but it's in the many thousands.

4 MR. SCHAETZEL: If I could get this  
5 marked, as Exhibit 18.

6 (Exhibit-18 was marked for  
7 identification.)

8 Q. (By Mr. Rosenberg) I'd like to hand  
9 you what's been marked as opposer's Exhibit 18  
10 for identification. What is this?

11 A. This looks to be a brochure that --  
12 there's a piece of paper here, and it looks to  
13 be a brochure that explains the benefits of  
14 Trackpad and why somebody might want it. And  
15 it has a description of the hardware required  
16 to run what appears to be either a CD or a  
17 DVD. A CD, it looks like. And so I presume  
18 on this CD is a -- you know, a little  
19 product -- an electronic product brochure that  
20 describes how Trackpad wants -- or how  
21 Trackpad works and -- and why you might want  
22 to use it.

23 What I can't tell from this without  
24 popping it into a computer is whether or not  
25 this may contain the Trackpad software. It



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1 may very well contain the Trackpad software.  
2 It makes reference to Trackpad 4.1. It's a  
3 version control, and it says, your Trackpad CD  
4 is inside. So that's the presumption that I  
5 have.

6 Q. And if we presume that it's the  
7 Trackpad software that is contained on the CD,  
8 in use of that, then, would I just -- if, for  
9 example, I was going to employ the Trackpad at  
10 our office, would I load that into my computer  
11 and then transfer that software to my PDA  
12 accordingly?

13 A. Yes. And another PDA format that's  
14 very popular is the Pocket PC, which is  
15 supported by Microsoft. And, yeah, it  
16 would -- it would synch up the files between  
17 the desktop and the PDA. And then you --  
18 presuming you had some way to scan or you  
19 could key enter that tracking number when you  
20 collect the signature. You could collect  
21 signature information or signature  
22 clarification that said, C. Schenken is the  
23 recipient of it, depending again on the  
24 capabilities of your PDA.

25 (Exhibit-9 was marked for



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1 identification.)

2 Q. (By Mr. Schaetzel) Thank you. Just  
3 some other registrations to look at quickly.  
4 I'd like to show you what's been marked as  
5 Opposer's Exhibit 9 for identification. Do  
6 you recognize this as a copy of the U.S.  
7 Registration No. 1,878,918 for the mark UPS  
8 2nd Day Air?

9 A. I do.

10 Q. And what is UPS 2nd Day Air?

11 A. UPS 2nd Day Air is the name of the  
12 service that we provide which guarantees that  
13 we will deliver the product that is provided  
14 to us and paid for under that service name by  
15 the second day from the time we receive it.

16 Q. And that mark is still in use  
17 today, is it not?

18 A. Yes.

19 (Exhibit-10 was marked for  
20 identification.)

21 Q. (By Mr. Schaetzel) I'd like to show  
22 you what's been marked as Opposer's Exhibit  
23 No. 10 for identification. Do you recognize  
24 this as a copy of U.S. Registration  
25 No. 1,878,016 for the mark UPS Next Day Air?



1 A. Yes.

2 Q. And what is UPS Next Day Air?

3 A. UPS Next Day Air is our overnight  
4 service whereby you drop a package into our  
5 system or ask us to pick it up, somehow tender  
6 it to us, we deliver it the next day by 10:30.

7 Q. And UPS Next Day Air is in use  
8 today, is it not?

9 A. It is used today.

10 (Exhibit-11 was marked for  
11 identification.)

12 Q. (By Mr. Schaetzel) I'd like to show  
13 you what's been marked as opposers Exhibit 11  
14 for identification. Do you recognize this as  
15 a copy of U.S. Registration No. 1,876,943 for  
16 the mark UPS Preferred and certain design  
17 elements?

18 A. Yes.

19 Q. Do you know if the mark UPS  
20 Preferred is still in use today?

21 A. I don't know with a high degree of  
22 certainty, but I believe it is. I couldn't  
23 tell you 100 percent. That's something I  
24 would be able to verify pretty quickly if we  
25 need to.



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1 Q. Maybe at a break.

2 A. Yeah.

3 (Exhibit-13 was marked for  
4 identification.)

5 Q. (By Mr. Schaetzel) I'm going to go  
6 out of order here and show you what's been  
7 marked as Opposer's Exhibit 13 for  
8 identification.

9 A. Okay.

10 Q. Do you recognize this as a copy of  
11 Registration No. 1,874,248 for the word mark  
12 UPS Preferred?

13 A. Yes.

14 Q. And would your answer to the  
15 question be the same here, that you believe  
16 that this mark is still in use, but not to a  
17 high degree of certainty --

18 A. Well, not to a hundred percent  
19 certainty. I'm very confident, but I  
20 wouldn't, you know, stake my life on it.

21 Q. Okay. We can check at a break to  
22 be sure.

23 (Exhibit-12 was marked for  
24 identification.)

25 Q. (By Mr. Schaetzel) I'd like to show



1 you what's been marked as opposers 12 for  
2 identification. Do you recognize this as a  
3 copy of U.S. Trademark Registration  
4 No. 1,460,348 for the mark UPS Air Cargo  
5 Service?

6 A. Mm-hmm. Yes, I do.

7 Q. And what is this mark used in  
8 connection with?

9 A. UPS has the ninth largest airline  
10 in the world, and -- and our airline no longer  
11 carries passengers, other than the crew. And  
12 it only carries freight. And we have  
13 sometimes excess capacity in these aircraft.  
14 They're jumbo jets: 747, 757s, that sort of  
15 thing, and sometimes we have extra capacity.  
16 We would rather fill that capacity with  
17 something than fill it with nothing,  
18 particularly if the something is compatible  
19 with our distribution network.

20 So we will sell off that extra  
21 capacity to carry cargo. And so that's the  
22 name of the service that we -- that's how we  
23 describe the name of the service that we use  
24 for that excess capacity.

25 So sometimes -- I have to be



1 honest. Sometimes customers are so in need of  
2 the service that they do have guaranteed  
3 space. It's not just, hey, we have some extra  
4 space, would you be interested. It's like  
5 every day I need this much space. And it's  
6 still sold as cargo rather than small  
7 packages.

8 Q. And that mark is still in use  
9 today, is it not?

10 A. Yes.

11 (Exhibit-14 was marked for  
12 identification.)

13 Q. (By Mr. Schaetzel) I'd like to show  
14 you what's been marked as Opposer's Exhibit 14  
15 for identification. Do you recognize this as  
16 a copy of U.S. Registration No. 1,375,109 for  
17 the mark UPS Next Day Air in a stylized form?

18 A. Yes.

19 Q. And what is this mark used for?

20 A. It is a graphic of the previous UPS  
21 Next Day Air, and it would appear on packaging  
22 labels, that sort of thing related to the  
23 service that I described earlier.

24 Q. So that mark is still in use today;  
25 is that correct?



1 A. I believe so.

2 (Exhibit-15 was marked for  
3 identification.)

4 Q. (By Mr. Schaetzel) I'd like to show  
5 you what's been marked as Opposer's 15 for  
6 identification. Another graphic  
7 representation. This one is for UPS 2nd Day  
8 Air. It's a copy of -- do you recognize this  
9 as a copy of U.S. Registration No. 1,277,400?

10 A. Yes.

11 Q. And is the graphic as shown here  
12 for UPS 2nd Day Air used in conjunction with  
13 the UPS 2nd Day Air services that you  
14 described earlier?

15 A. Yes.

16 Q. Would that graphic also appear, for  
17 example, on labels and things associated with  
18 that service?

19 A. Yep.

20 Q. And to your knowledge, is this mark  
21 still in use today?

22 A. I believe so.

23 (Exhibit-16 was marked for  
24 identification.)

25 Q. (By Mr. Schaetzel) I'd like to show



1 you what has been marked as Opposer's  
2 Exhibit 16 for identification. Do you  
3 recognize this as a copy of U.S. Trademark  
4 Registration No. 966,774 for the word mark  
5 UPS?

6 A. Yes.

7 Q. And does this registration refresh  
8 your recollection as to when the company might  
9 have first started using the designation UPS?

10 A. I mean, yes, it says there 1933. I  
11 wasn't alive then, so I have no personal  
12 knowledge of it, but I was going to suggest I  
13 think it might -- it certainly in that range  
14 of years.

15 Q. So the early 1900s at least, is  
16 that --

17 A. Yes.

18 (Exhibit-17 was marked for  
19 identification.)

20 Q. (By Mr. Schaetzel) Maybe this next  
21 Exhibit will help us on this one some as well.  
22 I'd like to show you what's been marked as  
23 Opposer's Exhibit 17 for identification. This  
24 is a stylized form of the mark UPS. You see  
25 here -- first of all, do you recognize this as



1 a copy of U.S. Registration No. 514,285?

2 A. Yes.

3 Q. And do you see the stylized mark  
4 for UPS in a shield-like design?

5 A. Yes.

6 Q. Okay. And it bears the designation  
7 "since 1907." What is your understanding of  
8 what occurred in 1907?

9 A. UPS was founded in 1907, I  
10 believe -- I don't believe it was called UPS  
11 in 1907. I believe it might have been called  
12 Merchant's Parcel Delivery or Merchant's  
13 Parcel Service. But somewhere between 1907  
14 and around 1919, there were a couple of  
15 mergers of a couple of companies who were in  
16 the courier business, and the result was the  
17 name United Parcel Services.

18 Q. And to your knowledge is the mark  
19 UPS still in use today?

20 A. Yes, it is. Very much.

21 Q. As the mark is used in various  
22 services today, other than as a trademark,  
23 does the designation have some sort of generic  
24 meaning in the transportation or package  
25 delivery industries?



1 A. Outside of the trademark use?

2 Q. Outside of the trademark.

3 A. No.

4 Q. If we can, why don't we back up and  
5 talk a bit about the various ways in which the  
6 mark UPS is used by the company. For example,  
7 you mentioned small package. How would you  
8 describe the small package business.

9 A. Small package business is the --  
10 the kind of first and central part of our  
11 delivery services. It's the one that most  
12 people are most familiar with, and that is the  
13 pickup and delivery of packages that weigh  
14 less than 150 pounds. So I guess they can be  
15 comparatively large, but we tend to refer to  
16 that as contrasted to our freight business or  
17 our cargo business. It's small package. And  
18 it has been around for, you know, essentially  
19 since 1907 in some form or another.

20 Q. You mentioned cargo or freight.  
21 What is the difference between, for example,  
22 small package and cargo or small package and  
23 freight?

24 A. Small package is delivered by  
25 drivers wearing a -- the famous brown UPS



1 uniform, driving the famous brown delivery  
2 trucks, which we refer to as package cars, but  
3 they're fairly sizable delivery trucks. And  
4 all of our small package business is delivered  
5 through that infrastructure.

6           Whereas, freight might be delivered  
7 through a tractor-trailer. Cargo can be  
8 delivered or transported by both  
9 tractor-trailer and aircraft. Small package  
10 sometimes is delivered by aircraft.

11           Q.     What about UPS Supply Chain  
12 Solutions?

13           A.     UPS Supply Chain Solutions. We  
14 have a huge variety of customers in virtually  
15 every industry that there is, and our  
16 customers ask us for things that don't  
17 necessarily fit on a dolly that could be  
18 rolled into a building. Services ranging from  
19 repair of PCs, which we provide through that  
20 group. Supply Chain Solutions is a group of  
21 UPS-ers and companies and subsidiaries that  
22 provide all kinds of kind of nontraditional  
23 transportation logistics related services.

24                     And the purpose is to make the  
25 lives of our customers easier, so we fix



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1 things, we diagnose problems, we provide  
2 warehousing, we provide fulfillment services,  
3 we provide pick, pack, and ship kind of  
4 services.

5 So an order comes in to one of our  
6 customers' order processing systems. UPS  
7 might actually be behind the scenes at the  
8 warehouse going to the shelf, pulling it off  
9 the shelf, dropping it in a box, taping the  
10 box shut, applying the label, and delivering  
11 it.

12 Those are not services that are  
13 typically viewed as small package or kind of  
14 core to the transportation services that our  
15 industry collectively provides. They're more  
16 in -- they're more in the line that our  
17 customers would have historically provided  
18 them, and they've said, we don't want to do  
19 this anymore, we'd prefer somebody else to do  
20 it, can you do that, UPS. We say, sure, yes,  
21 we can.

22 Q. And if I were, for example, a UPS  
23 Worldship customer and I had one of the  
24 printers or one of the computers that might  
25 bear the UPS logo on it and I needed to have



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1 that serviced or fixed, is that something that  
2 I could look to UPS Supply Chain Solutions to  
3 help me?

4 A. Yes, you could. I don't know off  
5 the top of my head whether we have customers  
6 who have requested that, but certainly it  
7 would be well within the realm of services  
8 that we could provide. And Supply Chain  
9 Solutions -- well, I don't know.

10 Q. Okay. What about Logistics?

11 A. What do you want to know?

12 Q. If you could just describe what the  
13 UPS Logistics service offering is in a broad  
14 sense.

15 A. We -- and that is a very broad term  
16 for a lot of services, so I will not be able  
17 to do it complete justice, but we have  
18 literally thousands of people who each one  
19 will describe it slightly differently, because  
20 it is very customer centric.

21 But in the macro sense, the concept  
22 of logistics that we provide to our customers  
23 is if you want something, no matter what it  
24 is, moved from Point A to Point B, we will try  
25 to figure out the most efficient way to get



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1 that done, even if that involves not using  
2 UPS's physical infrastructure or UPS's IT  
3 infrastructure.

4 So we may very well recommend to  
5 the customer to use different transportation  
6 services. We may say to the customer, hey,  
7 all your centralized warehouse and inventory,  
8 it would be better for you, the customer, to  
9 distribute that into regional warehouses, even  
10 though it may end up reducing our shipping  
11 revenue, but it's more efficient for the  
12 customer.

13 Q. You mentioned the website at  
14 UPS.COM. Are you aware that UPS.COM has a, if  
15 you will, a Pressroom at which certain  
16 materials are kept and published through the  
17 UPS.COM website?

18 A. Yes.

19 MR. SCHAEZEL: If I could get this  
20 marked as Exhibit 19, please.  
21 identification.)

22 (Exhibit-19 was marked for  
23 identification.)

24 Q. (By Mr. Schaezel) I'd like to hand  
25 you what's been marked as Opposer's Exhibit 19



1 for identification. Do you recognize this as  
2 a printout of one of the publications that  
3 appears at the UPS.COM Pressroom website?

4 A. Yes.

5 Q. And this one is directed to the  
6 airline business of UPS. You see, first of  
7 all, that it bears or it shows a plane. It  
8 appears at the mark UPS and UPS Shield appears  
9 on the plane; is that correct?

10 A. That is correct.

11 Q. And would that be true for a  
12 substantial number, if not all of them?

13 A. Every -- every plane that UPS owns.  
14 I can't tell you off the top of my head how  
15 many it is, but it is -- I know I have  
16 reference material that references. It is  
17 hundreds of jumbo jets.

18 MR. SCHAETZEL: Why don't we get  
19 this marked as the next exhibit.

20 THE WITNESS: Yeah. It's hundreds.  
21 (Exhibit-20 was marked for  
22 identification.)

23 Q. (By Mr. Schaetzel) I'd like to show  
24 you what's been marked as Opposer's  
25 Exhibit 20.



1 A. Yes.

2 Q. Do you recognize Exhibit 20 as  
3 another page of -- or the printout of a page  
4 that appears at the UPS.COM Pressroom website?

5 A. Yes.

6 Q. Okay. If you will, look here. Do  
7 you see that it appears that the company at  
8 least charters 300 aircraft, and then UPS jet  
9 aircraft are listed at 263?

10 A. Yes. Those are the jet aircraft  
11 that we own, and then the chartered aircraft  
12 are aircraft that we either hire or fly, but  
13 we don't actually own the asset.

14 Q. But the UPS logo would appear on at  
15 least the 263 aircraft; is that correct?

16 A. Correct.

17 Q. And how many employees are --  
18 approximately are involved in UPS air?

19 A. Just in our -- just in our airline  
20 separations, it's over 20,000 employees.

21 Q. And if I were at one of the hubs  
22 that are mentioned here, for example,  
23 Louisville or Dallas or Rockford, Illinois,  
24 whatever, would I be able to distinguish those  
25 UPS employees? Would they be wearing a



1 uniform or would they in some fashion --

2 A. Not all of them. Some would be  
3 management people, and so they would be  
4 walking around in, you know, jackets or dress  
5 shirts or wearing ties. And some of our  
6 people would be internal operations people who  
7 you wouldn't be able to see unless you went to  
8 the inside of our facilities in those  
9 locations, and they might be dressed very  
10 casually, because they're doing very physical  
11 labor. But there would certainly be plenty of  
12 them who you would recognize to be UPS  
13 employees, including the aircraft mechanics,  
14 who would be busy working on the aircraft  
15 while they're sitting there. And the pilots  
16 and flight crew, they would all be in some UPS  
17 uniform.

18 Q. And then both Exhibit 19 and  
19 Exhibit 20 contain various pieces of  
20 information. Rather than asking you to go  
21 through each of those and try to confirm them,  
22 could you just state for the record whether  
23 this information would have been gathered and  
24 published at or about the time that this was  
25 made known on the internet so that this



1 information is reasonably true and correct as  
2 of today?

3 A. Yes. And it would have been out  
4 there for quite some time, and as it changes,  
5 it is updated.

6 Q. And as you can see, this was  
7 printed off, you know --

8 A. September 30th, 2009. Yeah. It  
9 would have been accurate as of that date, but  
10 there might have been another draft of that  
11 that reflected a previous reality a year  
12 earlier.

13 Q. Sure. So these website pages are  
14 maintained and updated from time to time; is  
15 that correct?

16 A. That is correct. And what I was  
17 going to say is the -- we refer to all the  
18 aircraft that we own as brown tails. And the  
19 reason we refer to them as brown tails is  
20 because the tail end of the aircraft is  
21 painted brown and it's got this enormous UPS  
22 Shield on it, which is very visible. If  
23 you've traveled to any of the airports where  
24 we fly to, and it's hundreds of airports  
25 daily, and waited for an aircraft, or as



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1 you're taxiing down the runway and if you look  
2 out the window, you're likely to see one, if  
3 not many of these aircraft in places like  
4 Louisville, Philadelphia, Dallas. I don't see  
5 it listed here. Baltimore, Atlanta, et  
6 cetera.

7 Q. Well, if would look with me, do you  
8 have an idea, judging from this, of  
9 approximately how many domestic airports are  
10 served by UPS?

11 A. Yeah. Approximately 400.

12 (Exhibit-21 was marked for  
13 identification.)

14 Q. (By Mr. Schaetzel) I'd like to hand  
15 you what's been marked as Exhibit 21 for --  
16 Opposer's Exhibit 21 for identification. Do  
17 you recognize this as a page from the UPS.COM  
18 Pressroom website?

19 A. Yes.

20 Q. And it was printed on -- also on  
21 September the 30th; is that correct?

22 A. Yes.

23 Q. What is UPS Freight  
24 Less-Than-Truckload service?

25 A. If you are -- if you're someone who



1 needs your products moved from one place to  
2 another, you might have something small enough  
3 to fit in an envelope. You might have  
4 something small enough to be carried in a  
5 small box, but you may have something that is  
6 large enough that it's likely to need a pallet  
7 jack to move it. And for -- and you may --  
8 may have, let's say, 300 items that you all  
9 want to get from Point A to Point B exactly at  
10 the same time and -- because they are somehow  
11 related to one another.

12 So you might use the  
13 Less-Than-Truckload service from UPS to have  
14 somebody from our freight division show up  
15 with a pallet jack, pick up your pallet worth  
16 of stuff. You might have shrinkwrapped it.  
17 We might have shrinkwrapped it. That just  
18 means basically taking plastic wrap, wrapping  
19 it tightly, lifting it up with the pallet  
20 jack, and then getting it into a -- what some  
21 might consider kind of a large panel truck or  
22 a semi, and putting it in the back end of the  
23 semi and driving it to some distribution hub  
24 where it ultimately gets distributed.

25 Q. And you mentioned the term



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1 "distribution hub." If you would, look down  
2 the page with me. It says, "network  
3 infrastructure." It mentions 200-plus North  
4 American facilities.

5 A. Yeah.

6 Q. What would that be a reference to?

7 A. That would be those -- likely  
8 those -- it would include those facilities as  
9 well as some handful of kind of office  
10 facilities. But mostly they are warehouses  
11 where someone -- UPS would show up with a  
12 tractor-trailer, drop off a number of these  
13 pallets, resort them, other tractor-trailer  
14 would come and pick them up and distribute  
15 them.

16 Q. And would those facilities in some  
17 way be recognizable as UPS facilities?

18 A. Yes. Typically, and not in all  
19 cases, but typically in those facilities,  
20 there would be a big UPS logo hanging on the  
21 side of the physical building.

22 Q. So there would be, for example,  
23 exterior signage in most instances?

24 A. Yeah. And there would also be  
25 exterior markings on the vehicles that we're



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1 bringing in and out of those facilities.

2 Q. And would that signage or the  
3 marking on the vehicles most likely include  
4 the designation UPS?

5 A. Oh, yes.

6 Q. It would not be, for example, just  
7 the color brown?

8 A. Oh, no. It would have the UPS  
9 Shield. It may also have separate from the  
10 shield the three letters: UPS.

11 Q. And you mentioned trailers. What  
12 do you understand the reference of 22,100  
13 trailers to be a reference to?

14 A. Most people refer to -- refer to  
15 them as semis. We refer to them as -- the  
16 tail end of a semi is the trailer. The front  
17 end of the semi is the tractor. That's what  
18 pulls the trailer. And those range from  
19 20-foot up to, I think, 53 feet long.

20 Q. And I see here that the number 6700  
21 for the tractors?

22 A. Right.

23 Q. Would the tractors and the trailers  
24 bear any signage or marking?

25 A. Yes. They almost invariably will



1 have a large UPS logo on them and mostly will  
2 have the name UPS somewhere on them as well.

3 This is just for the freight side  
4 of the business. We have many more facilities  
5 in the small package side than this -- these  
6 200. I think on the small package we may have  
7 some statistics, but it's more than a  
8 thousand, and they also will have tractors and  
9 trailers.

10 MR. SCHAEZEL: Let's go back for  
11 second. If I could get this marked as  
12 the next exhibit.

13 (Exhibit-22 was marked for  
14 identification.)

15 Q. (By Mr. Schaetzel) I'd like to show  
16 you what's been marked as Opposer's Exhibit 22  
17 for identification. Do you recognize this?

18 A. This looks to be from UPS  
19 Professional Services' website, all part of  
20 the UPS.COM, and UPS -- and it's in reference  
21 to the UPS Trackpad.

22 Q. And we had talked about or you had  
23 explained how UPS Trackpad would allow you,  
24 for example, to use a PDA to keep track and  
25 learn of delivery or to see where a particular



1 package is in the shipping process; is that  
2 correct?

3 A. Mm-hmm.

4 Q. What would you understand the  
5 information here to show in terms of how that  
6 process is implemented?

7 A. It looks like, if you're interested  
8 in being able to enable the full Trackpad  
9 functionality to be able to track that second  
10 signature inside the facility kind of  
11 tracking, we are requiring that you provide  
12 some information about who you are and give us  
13 password information so that not just anybody  
14 can either populate that database or retrieve  
15 information from that database. So this is  
16 our way of authenticating who you are and  
17 granting you permission.

18 Q. At the top of this, I'm going to go  
19 ahead and point to it, it appears that there's  
20 either a PDA screen or a computer screen.

21 A. Yeah. It looks like a PDA to me.

22 Q. Okay. Can you tell either from  
23 that or from just general knowledge, if I have  
24 a PDA and I'm going to access the Trackpad  
25 functionality, would the UPS logo appear when



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1 I do so?

2 A. Yes.

3 Q. And so the logo would appear, and  
4 then I might get asked, you know, certain  
5 information, for example, what is the tracking  
6 number, so that I can then learn where the  
7 package is in process; is that correct?

8 A. Well, think of Trackpad as the  
9 device that's like a DIAD. And so what --  
10 what you would -- you wouldn't necessarily use  
11 Trackpad to track the package. You would use  
12 Trackpad to capture data about the package  
13 that you have with you. That data would then  
14 be offloaded from the Trackpad device up into  
15 UPS's servers, so then you could find out the  
16 status of it there. So this is more like  
17 your -- your in-building delivery driver is  
18 using the Trackpad. You as a consumer would  
19 not likely have any interest in using  
20 Trackpad.

21 (Exhibit-23 was marked for  
22 identification.)

23 Q. (By Mr. Schaetzel) I'd like to show  
24 you what's been marked as Opposer's Exhibit 23  
25 for identification. Do you recognize this as



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1 a page that has come from the UPS.COM website,  
2 particularly the Pressroom?

3 A. Yes.

4 Q. I can represent to you that it was  
5 not highlighted. That was a little extra done  
6 by us, but it will at least direct us to where  
7 we need to go for purposes of this deposition.  
8 Whether we refer, first of all, to UPS  
9 technology facts, what does that mean?

10 A. They're kind of general facts about  
11 UPS's technology infrastructure.

12 Q. And it mentions data centers. What  
13 are the data centers that are in New Jersey  
14 and Georgia?

15 A. Those are our two largest IT  
16 buildings and infrastructure. Both contain  
17 significant rows of mainframes and lots of our  
18 IT employees.

19 Q. And working down the page, we see  
20 the DIADs. Looking at this, can you tell us  
21 how many DIADs are in use?

22 A. About 108,000. A little more than  
23 108,000 are used daily.

24 Q. And would that have been true as of  
25 September of 2009?



1 A. Yes.

2 Q. And in that use, how are the DIADs  
3 used?

4 A. One way to think of a DIAD is back  
5 in -- a long time ago, when UPS or other  
6 carriers would deliver a package, they would  
7 ask you to sign a clipboard. Well, taking  
8 that as kind of the analogy, this is an  
9 electronic clipboard, but it's used -- it's  
10 used by every driver who does a delivery in  
11 UPS's system and every driver who does a  
12 pickup. Most of our drivers do both.

13 And so at the origin, when the  
14 driver picks up the package, the driver will  
15 scan the bar code that's on the package. That  
16 bar code may have been produced by UPS  
17 Worldship system or off of UPS.COM or one of  
18 the UPS tools, the internet tools that we  
19 talked about earlier. So that package likely  
20 has a bar code. And the driver will scan that  
21 bar code, enter some data about the package to  
22 essentially say we now have custody of that  
23 package.

24 That data is uploaded into  
25 mainframes that exist, and it's updated via



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1 various wireless technology to mainframes we  
2 have in Mahwah or down here in Atlanta so that  
3 we now know that the package is in our system.  
4 And we then use lots of very complicated math  
5 to figure out when that package is going to  
6 get delivered and how to get it delivered the  
7 most efficient way that we can.

8           Then at the other end of the  
9 transaction, when that package is being  
10 delivered, obviously a different driver will  
11 take -- use the DIAD to know which package is  
12 in their vehicle and which package is next in  
13 the queue to be delivered at a particular  
14 address. The DIAD is location aware, so it  
15 knows that it's at 123 Elm Street, and it  
16 says, oh, here are the packages that you need  
17 to deliver here.

18           The driver gets those, scans the  
19 package, again confirming that they have  
20 physical custody of them, prepares the package  
21 for delivery, presents it to the customer, and  
22 asks the customer for a signature, signature  
23 clarification, and it goes on.

24           Every customer who receives a  
25 package, if there's a physical person there,



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58

1 they will be asked to sign the DIAD, do an  
2 electronic signature, kind of like they do the  
3 credit card capture today. It's not with pen  
4 and ink. It's digitally. And then the driver  
5 will often clarify my signature. For example,  
6 my handwriting is not so good. So the driver  
7 doesn't know what my name is when they see the  
8 cursive. So they'll ask me what is my name,  
9 and I'll tell them, and they'll type it into  
10 the DIAD. And if you were to track that  
11 package, you would get that signature  
12 clarification information.

13 Q. Further on down the page, also  
14 highlighted for our convenience is 2008 peak  
15 day page views?

16 A. Yes.

17 Q. At 26.2 million. What does that  
18 mean to you?

19 A. That is how many unique views have  
20 been made of web pages on UPS.COM during the  
21 highest day of 2008, whenever the day of  
22 highest activity might have been, and that's  
23 contrasted. Right above it, it says page  
24 views. That is our typical average, which is  
25 18.5 million. But on the peak day, it spikes



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1 up to 26.2. I would suspect that that peak is  
2 somewhere late in the year, between  
3 Thanksgiving and Christmas when our package  
4 volume increases and lots of people are  
5 wondering where things that they've ordered  
6 are.

7 Q. What are the tracking requests?

8 A. Tracking requests are different  
9 than just page views, because page views might  
10 be somebody is looking for information, where  
11 can I drop off a package or what services are  
12 available to me or how do I contact UPS or  
13 that sort of thing. Tracking, people are  
14 looking for the status of a particular  
15 package. And so on a typical day, as of  
16 September this year, typical day we're  
17 approaching 23 million of those inquiries a  
18 day. And during peak day of last year, we  
19 were at almost 36 million of those tracking  
20 requests.

21 Q. And when I make that tracking  
22 request -- well, how would one make that  
23 tracking request?

24 A. Typically, would you go to UPS.COM,  
25 you would select the country, you would



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60

1 enter -- you would look across the top of the  
2 page, and it asks you whether you want to  
3 track a package or ship a package or it gives  
4 you tabs. It doesn't really ask any  
5 questions. You select tab for tracking, you  
6 enter the tracking number, and seconds later,  
7 the status of your package is provided.

8 Q. So in that hypothetical that you  
9 gave, when I went to input my tracking  
10 request, I would have gone, for example, to  
11 UPS.COM, and as a result, not only would I  
12 input that information, but I'd also see the  
13 UPS logo and the UPS mark, would I not?

14 A. Yes. You would see it in several  
15 places during that exercise, and that's  
16 happening about 23 million times a day.

17 (Exhibit-24 was marked for  
18 identification.)

19 Q. (By Mr. Schaetzel) I'd like to hand  
20 you what's been marked as Exhibit 24 for  
21 identification. Do you recognize this as a  
22 page from the UPS.COM website again from the  
23 Pressroom area?

24 A. Yes.

25 Q. Okay. This is the -- obviously,



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1 the UPS fact sheet that has various pieces of  
2 information on it, just like to get you to  
3 take a look at those. For example, the first  
4 one has been highlighted. How many employees  
5 are there, approximately, in the United States  
6 operation?

7 A. About 345,000.

8 Q. And approximately how many packages  
9 are delivered on a daily basis?

10 A. About 15-1/2 million.

11 Q. And how are those delivered?

12 A. All of them are delivered by  
13 drivers in the brown uniform using the DIAD.

14 Q. And how much air volume is done on  
15 a daily basis?

16 A. About 2.1 million packages and  
17 documents go through our system a day.

18 Q. If you look down, if you would just  
19 for the record let us know approximately how  
20 many customers the company serves on a day.

21 A. Sure. 7.9 million customers are  
22 served. 1.8 million of those are picked up.  
23 And their volume is then distributed to about  
24 6.1 million customers.

25 Q. And what operation are we talking



1 about here? What is it that we're actually  
2 delivering to these six-point-plus million  
3 customers?

4 A. This is just our small package  
5 operations.

6 Q. Just talked about UPS.COM. So if  
7 you go down to retail access, what is the UPS  
8 Store that's mentioned there, and what's the  
9 significance of the 4,693 number?

10 A. That is the number of locations  
11 that are branded with the UPS Store logo and  
12 name and colors and trade dress and so on.

13 Q. And when you say they're branded by  
14 that, for example, would the designation UPS  
15 appear in a store front? Would it appear  
16 elsewhere in association with those  
17 businesses?

18 A. Yeah. It would appear in all their  
19 advertising as well as their store front, and  
20 then once you're inside the store, it's  
21 prominently throughout the store.

22 Q. With reference to delivery fleet,  
23 approximately how many package cars are in  
24 operation today? Well, I'm sorry, cars, vans,  
25 tractors, motorcycles.



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1 A. Yeah. All of our vehicles, it's at  
2 almost a hundred thousand.

3 Q. And how are those vehicles  
4 typically branded?

5 A. They're branded, typically painted  
6 somehow prominently with the color brown, as  
7 well as with a large gold shield, a UPS  
8 Shield, and they, depending on which part of  
9 the business they represent, they may also  
10 have other trademarks associated with them.

11 Q. And what to you is the significance  
12 of the alternative-fuel vehicle number there:  
13 1,783?

14 A. Well, that represents UPS's  
15 significant commitment to finding alternative  
16 fuels, to reducing our carbon footprint in the  
17 marketplace, and kind of being environmentally  
18 sensitive.

19 Q. If you'd turn to the next page of  
20 the exhibit.

21 A. Okay.

22 Q. We've already discussed the airline  
23 part of the business for a bit. There's a  
24 heading for supply chain and freight. Do you  
25 see that?



1 A. Yes, I do.

2 Q. Okay. And below that, when we  
3 reference the fleet, in this one, there are,  
4 you know, basically 6,300 tractors, and  
5 21,000-plus trailers.

6 A. Correct.

7 Q. Would this again be a reference to  
8 the vehicles and the trailers that are branded  
9 with the UPS logo?

10 A. Most of them will be branded with  
11 the UPS logo. I'm certain there are some that  
12 are probably not.

13 The reason I say some, but probably  
14 not all of them is because we've done a number  
15 of acquisitions over the last decade of  
16 companies that fall within this corporate  
17 structure, and not all of them have been  
18 re-branded yet.

19 Q. Just not time to paint them all  
20 yet?

21 A. It takes time and money. Yeah.

22 (Exhibit-25 was marked for  
23 identification.)

24 Q. (By Mr. Schaetzel) Sure. I'd like  
25 to show you what's been marked as Opposer's



1 Exhibit 25 for identification. Do you  
2 recognize this as a page from the UPS  
3 Pressroom UPS.COM website?

4 A. Yes.

5 Q. And it's a page regarding the About  
6 UPS for the years of 1999 to 2009, is it not?

7 A. Yes.

8 Q. You've said on several occasions  
9 that the UPS Shield would appear, for example,  
10 on a truck in association with a brown  
11 uniform?

12 A. Mm-hmm.

13 Q. Is that a reference -- or do you  
14 see that on this photo that's on this page?

15 A. Yeah. That's a typical UPS package  
16 car and a typical driver uniform.

17 Q. And that uniform appears --

18 A. I even notice the UPS Next Day Air  
19 envelopes also have it.

20 Q. And it appears to the driver's cap  
21 as well, does it not, the UPS logo?

22 A. Yes. The cap and the shirt.

23 Q. Do you happen to recall off the top  
24 of your head approximately how many miles are  
25 covered by trucks and drivers and such on a



1 yearly basis?

2 A. On a yearly basis, as I recall,  
3 it's north of a billion miles, but I don't  
4 know the precise number off the top of my  
5 head. It is a known number.

6 MR. SCHAETZEL: I'd like to have  
7 this marked as the next exhibit, please.

8 (Whereupon, the testimony from page 67  
9 to page 70 has been marked  
10 confidential, excerpted, and bound  
11 separately.)  
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1 (Non-confidential testimony resumes.)

2 MR. SCHAETZEL: For purposes of all  
3 testimony regarding Opposer's Exhibit 26,  
4 we'll designate that as highest level of  
5 confidentiality under the standard  
6 protective order which is the protective  
7 order in place in this opposition.

8 And in addition, at this point in  
9 time, we'll take a break. I'll move the  
10 admissions of Exhibit 1 through 26.

11 Thank you.

12 (Whereupon, a recess was taken from  
13 10:56 to 11:36 a.m.)

14 Q. (By Mr. Schaetzel) Mr. Schenken,  
15 does UPS enter into sponsorships with third  
16 parties?

17 A. Yes, we do.

18 Q. Under what terms or conditions  
19 would those sponsorships take place? What  
20 types of situations?

21 A. You're talking like sporting events  
22 versus, you know, a charity kind of --

23 Q. Really under either now. For  
24 example, you would sponsor sporting events?

25 A. Yeah. Sporting events. We might



1 sponsor various charitable fundraising kind of  
2 activities. Sporting events run almost the  
3 gambit of type of sporting activities.

4 Q. What are some examples of things  
5 that the company sponsors in terms of sporting  
6 events?

7 A. We have a NASCAR sponsorship where  
8 we sponsor Roush Fenway Racing, that  
9 particular team, and we've sponsored major  
10 golf tournaments, yeah, National Hot Rod  
11 Association. We sponsored the double crown, I  
12 guess, winner, Big Brown. Missed the triple  
13 crown. So teams and events.

14 Q. Okay. I presume there are enough  
15 of these that it's difficult for you to  
16 remember them all off the top of your head.  
17 Is that --

18 A. I think that's fair.

19 MR. SCHAEZEL: I'd like to get  
20 this marked as the next exhibit. Thank  
21 you.

22 (Exhibit-27 was marked for  
23 identification.)

24 Q. (By Mr. Schaetzel) I'd like to show  
25 you what's been marked as Opposer's



1 Exhibit 27. As a part of preparing for today,  
2 under your direction and supervision, did you  
3 have anyone identify some of the sponsorships  
4 for you that the company had entered into in  
5 recent years?

6 A. Yes.

7 Q. And do you recognize this as the  
8 work that was done pursuant to your direction  
9 and supervision?

10 A. Yes.

11 Q. And would this be a comprehensive  
12 list of all sponsorships that the company has  
13 entered into over the last five years?

14 A. No. No. They -- it represents  
15 many of the highest profile sponsorships.

16 Q. And just looking down this, you  
17 mentioned Big Brown. I think that's the  
18 double crown winner, correct?

19 A. Right.

20 Q. What is the NHRA?

21 A. That's the National Hot Rod  
22 Association.

23 Q. And there's one down at number  
24 eight, Longitudes?

25 A. Yeah. That's a conference that UPS



1 hosts, and we invite in executives and  
2 dignitaries from around the world. And we've  
3 held it in a number of locations around the  
4 world, including one in the U.S.

5 Q. The last one is Phillips Arena. Is  
6 that the arena in downtown Atlanta?

7 A. It is in downtown Atlanta.

8 Q. That would be a venue that's used  
9 sporting events and concerts and such; is that  
10 correct?

11 A. Yeah.

12 Q. And another sponsorship I believe  
13 the company has participated in the past was  
14 the Olympics; is that correct?

15 A. Yes.

16 Q. And the company has a certain  
17 history of participating in the Olympics; is  
18 that correct?

19 A. That is correct, yep.

20 Q. Does the company intend to  
21 participate in the upcoming games in London?

22 A. It is my understanding we have made  
23 that announcement, yes.

24 (Exhibit-28 was marked for  
25 identification.)



1 Q. (By Mr. Schaetzel) I'd like to show  
2 you what was been marked as Opposer's Exhibit  
3 No. 28 for identification.

4 A. Mm-hmm.

5 Q. What do you recognize this to be?

6 A. This comes from the UPS Enterprise  
7 Portal, which is the employee portal where the  
8 company kind of shares all the information  
9 that they can about what's happening at UPS to  
10 UPS-ers.

11 Q. And in this particular example from  
12 the portal, is this informing of the upcoming  
13 sponsorship of the Olympic games?

14 A. Yes, it does. The London 2012  
15 Olympic games.

16 Q. Do you recall from memory the total  
17 amount of money that the company would have  
18 spent advertising UPS and the UPS marks over  
19 last five years?

20 A. Not from memory, no.

21 Q. Okay. Again, pursuant to your  
22 preparation for this deposition, did you have  
23 someone under your supervision and direction  
24 collect that information for you?

25 A. Yes.



1 Q. And would seeing that information  
2 refresh your recollection as to approximately  
3 how much money was spent?

4 A. Sure.

5 Q. I'd like to show you this document.  
6 Do you recognize it as a summary that was  
7 pulled together for you that would provide  
8 information as to how much money was spent  
9 over the last five years on advertising?

10 A. Yes.

11 MR. SCHAEZEL: Let's go off the  
12 record for a second.

13 (Discussion ensued off the record.)

14 MR. SCHAEZEL: Thank you for  
15 letting us go off the record. We wanted  
16 to be certain that this next part of the  
17 deposition was designated as  
18 confidential, because it does contain  
19 some very sensitive business information.

20 (Whereupon, the testimony from page 77  
21 to page 78 has been marked  
22 confidential, excerpted, and bound  
23 separately.)  
24  
25



1 (Non-confidential testimony resumes.)

2 (Exhibit-29 was marked for  
3 identification.)

4 Q. I'd like to show you Exhibit 29.  
5 Do you recognize this as a page printed from  
6 the UPS.COM website, in particular the  
7 Pressroom area.

8 A. Yes.

9 Q. And what is the shown there?

10 A. There's an image of the DIAD four.  
11 It's shown as DIAD IV, but it's DIAD four, the  
12 fourth generation of our DIAD device.

13 Q. If you could, would you circle on  
14 that exhibit where the UPS logo appears on the  
15 DIAD?

16 A. Even when the DIAD is turned off,  
17 the logo appears as a raised sticker on the  
18 front surface.

19 Q. And when the DIAD is turned on,  
20 does UPS appear on the screen?

21 A. I believe so.

22 (Exhibit-30 was marked for  
23 identification.)

24 Q. (By Mr. Schaetzel) I'd like to show  
25 you what's been marked as Exhibit 30 for



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1 identification. Can you tell me what this is?

2 A. I think that is a -- a tug for our  
3 airline operations.

4 Q. Okay. Let me go back. I need to  
5 ask this for both questions. For the DIAD,  
6 looking on the Opposer's Exhibit 29, is that a  
7 fair and accurate representation of the  
8 DIAD four?

9 A. Yes.

10 Q. And then I have the same question  
11 for Opposer's Exhibit 30. Is this a fair and  
12 accurate representation of the tug as used in  
13 the airline operation?

14 A. Yeah. Yeah. And I'm noticing some  
15 of them in the background as well. Yeah.

16 Q. And the tug bears the stylized  
17 UPS -- or a stylized UPS logo, does it not?

18 A. Correct.

19 (Exhibit-31 was marked for  
20 identification.)

21 Q. (By Mr. Schaetzel) I'd like to show  
22 you Opposer's Exhibit 31 and ask you to  
23 identify this, please.

24 A. Yeah. That is a souped-up NASCAR  
25 logo'd UPS mini racing truck-shaped golf cart.



1 Q. And with that introduction, where  
2 is it used? I mean, how is it --

3 A. It will typically appear at  
4 NASCAR-related events, including the races.

5 Q. And is this picture a true and  
6 accurate representation of the golf cart?

7 A. Yes.

8 Q. How does it run?

9 A. Fast. It runs fast, I understand.  
10 I've never driven it, so I don't know for  
11 certain, but my understanding is it's an  
12 electric driven, but looking at the racing  
13 slicks on it, the environment in which it's  
14 used, certainly it runs a lot faster than any  
15 golf cart that you and I are likely to...

16 (Exhibit-32 was marked for  
17 identification.)

18 Q. (By Mr. Schaetzel) I'd like to hand  
19 you what has been marked as Exhibit 32 for  
20 identification and point out that it consists  
21 of three photographs. Do you recognize these  
22 photographs to show a person dressed in the  
23 UPS uniform?

24 A. I do.

25 Q. And are each of those a fair and



1 accurate representation of the UPS uniform?

2 A. They are.

3 Q. And in particular, looking at the  
4 second photograph, what is it that the driver  
5 is stepping from?

6 A. He is -- earlier, I think you had  
7 asked me about alternative-fuel fleet. He is  
8 stepping out of one of them. That is a hybrid  
9 electric vehicle.

10 Q. And is this hybrid electric vehicle  
11 actually in use as a package car?

12 A. Yeah, it is. It's a UPS package  
13 car, and -- and is that particular one  
14 currently in use, I would assume so. That is  
15 something we could verify there. 666143 is  
16 the car identifier. We could confirm that.

17 Q. Does the company have hybrid  
18 electric vehicles in use for -- for delivery  
19 purposes?

20 A. Yes, we do. Sprinkled throughout  
21 the country.

22 (Exhibit-33 was marked for  
23 identification.)

24 Q. (By Mr. Schaetzel) I'd like to hand  
25 you what's been marked as Exhibit 33 for



1 identification. Can you tell us what this is?

2 A. That is a photograph of the  
3 packaging and the CD that comes as part of the  
4 Worldship 6.0 software release. And the  
5 second -- that's on the first page. On the  
6 second page, there's the UPS Worldship 2009  
7 packaging. And moving through the deck is  
8 just various front, back, center unfolded  
9 images from that Worldship packaging.

10 Q. In terms of the advertising that is  
11 done, what media are used for UPS advertising?  
12 For example, does UPS advertise on television?

13 A. Yes, we do.

14 Q. Does UPS advertise on the radio?

15 A. Yes, we do.

16 Q. Any other media?

17 A. We advertise on the internet. We  
18 advertise in magazines and newspapers. We  
19 advertise on billboards. You asked radio?

20 Q. Yes.

21 A. Yes. We advertise on radio.

22 Q. Do you do any, for example, like  
23 direct mails to customers?

24 A. We do significant direct mail as  
25 well.



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1 MR. SCHAETZEL: Off the record.

2 (Discussion ensued off the record.)

3 (Exhibit-34 was marked for  
4 identification.)

5 Q. (By Mr. Schaetzel) I'd like to show  
6 you what's been marked as Opposer's Exhibit 34  
7 for identification. Do you recognize this as  
8 a calendar?

9 A. Yes, I do.

10 Q. And it includes something called --  
11 or at the bottom, the statement "Decision  
12 Green," what do you understand that to be?

13 A. Decision Green is part of a program  
14 that UPS has implemented which captures kind  
15 of the message around all of our  
16 environmentally conscientious efforts here at  
17 UPS. And this calendar is part of a long  
18 tradition that UPS has had of producing a  
19 calendar that we distribute to our customers,  
20 and we produce millions of these. And then  
21 this particular year was the first year where  
22 we made an enormous change in the way the  
23 calendar was both formatted and the materials  
24 and the inks that we used in order to be more  
25 environmentally conscientious.



1 Q. On the this first page, the title,  
2 if you will, is "Brown Thinks Green."

3 A. Yes.

4 Q. What does the word "green" mean in  
5 this context?

6 A. We're environmentally  
7 conscientious. We use that term generally to  
8 kind of describe being conscientious about our  
9 environmental impact.

10 (Exhibit-35 was marked for  
11 identification.)

12 Q. (By Mr. Schaetzel) I'd like to show  
13 you what's been marked as Opposer's Exhibit 35  
14 for identification. Again, in preparation for  
15 testifying today, did you have someone under  
16 your -- at your direction and under your  
17 supervision pull together some example  
18 television advertising of, if you will, green  
19 TV spots, and reusable envelope advertising?

20 A. Mm-hmm. Yes.

21 Q. And to your understanding, is that  
22 advertising contained on this CD?

23 A. I believe that it is.

24 Q. And do you understand that the --  
25 these advertising pieces, do they relate to



1 the Decision Green program that you mentioned  
2 a few minutes ago?

3 A. Yes. Decision Green is kind of an  
4 overarching theme, and these commercials fall  
5 underneath that overarching theme.

6 (Exhibit-36 was marked for  
7 identification.)

8 Q. (By Mr. Schaetzel) What efforts has  
9 the company made to try and look at the issue  
10 of sustainability on a going-forward basis?

11 A. That's a long story, and unless you  
12 need me to, I won't bore you with all the  
13 details. But it dates back to probably the  
14 '30s, when UPS started looking at  
15 alternative-fuel vehicles and started  
16 implementing them in our fleet. We had  
17 electric vehicles, pedal-powered vehicles,  
18 that sort of thing, and we've been doing  
19 experimentation in that area as the technology  
20 kind of catches up to our needs.

21 We, starting in I believe 2002, UPS  
22 began getting more disciplined about  
23 communicating that message than we had been in  
24 the past. We just did it because it made good  
25 business sense.



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1 Give you an example. When we moved  
2 here from Greenwich, Connecticut to Atlanta,  
3 and we built the facilities that you're  
4 sitting in right now, we were very  
5 conscientious about the environmental impact  
6 that this facility made on the environment  
7 here in Atlanta. One of the draws to Atlanta  
8 actually was the greenness, the amount of  
9 trees, lush forest here, and UPS obviously  
10 didn't want to deforest, like a lot of  
11 corporations have, deforest an entire area and  
12 then build their building and replant trees.

13 So we actually worked with some  
14 pioneering architects and engineers to build  
15 this building from the center of it outwards.  
16 So everything got trucked in a very narrow  
17 path, and built from the center, and then it  
18 attached. So they cleared the smallest  
19 footprint possible when they were building  
20 this. And you'll notice that around our  
21 facility the trees are very close to the  
22 building.

23 And of those trees that were  
24 removed, they were not cut down and destroyed.  
25 They were literally picked up with arborists



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1 and those kind of people, experts, and  
2 relocated, so that no trees were killed during  
3 the construction of this building. We have a  
4 natural-running stream that actually runs  
5 underneath our building rather than disrupt  
6 the flow of it, and that was back in the early  
7 '90s when that was implemented.

8 So our history is rich in this kind  
9 of thing, but in 2002, we began to publish our  
10 first formal sustainability report, because we  
11 wanted people to understand that UPS is very,  
12 very concerned about the environmental impact  
13 that we have in all the communities in which  
14 we operate, which are all communities in North  
15 America.

16 Q. Well, thinking of the historical  
17 that you just mentioned, let me hand you  
18 what's been marked as Opposer's Exhibit 36.  
19 Can you tell us what this is?

20 A. Yeah. I couldn't give you the  
21 exact year, but I guess it's probably around a  
22 1930 vintage electric vehicle that UPS was  
23 operating at that time. Might be a little  
24 earlier than that. Might be a little later  
25 than that, but it's in that general vintage.



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1 (Exhibit-37 was marked for  
2 identification.)

3 Q. (By Mr. Schaetzel) And then you  
4 mentioned the sustainability effort that began  
5 in 2002. Could you please identify for the  
6 record what is at Opposer's Exhibit 37?

7 A. Yeah. It's a document marked or  
8 titled "Operating in Unison," the UPS 2002  
9 corporate sustainability report. What it  
10 contains is our collective snapshot of where  
11 UPS is in terms of maintaining itself as an  
12 ongoing enterprise. And there are a couple of  
13 areas that were of importance in this, and one  
14 is economic, the next is social, and the third  
15 is environmental. And I'll talk just quickly  
16 about each one --

17 Q. Please.

18 A. -- for those who haven't read it.  
19 The economic is kind of how the world economy  
20 looks and how it impacts our business and how  
21 UPS fits into the sustainable future of the  
22 change in the world economy.

23 Social contains things that how's  
24 UPS sustainable in a social sense, how we  
25 recognize and encourage diversity among our



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1 employees, how we treat people fairly, both  
2 our customers and our employees, our high  
3 standard of ethics, and our compliance  
4 program, safety programs, et cetera. How our  
5 environment -- how our -- how active we are in  
6 our community, charitable types of  
7 organization, like the United Way. Charitable  
8 giving. Employee volunteerism.

9 And then the final in the  
10 environmental is all the kinds of initiatives  
11 that UPS was taking in 2002 related to the  
12 environment, things like alternative-fuel  
13 vehicles, greening the supply chain,  
14 greenhouse gas emissions reduction strategy,  
15 our recycling initiatives that took place in  
16 2002 and the impact that our operations have  
17 on the environment and how we're trying to  
18 manage that and reduce that. And then the  
19 final section is just about UPS's prospective  
20 view of each of those three.

21 Q. And in the sustainability process,  
22 has the company used the words "hybrid" and  
23 "green"?

24 A. Yes.

25 (Exhibit-38 was marked for



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1 identification.)

2 Q. (By Mr. Schaetzel) Let me first  
3 just get you to identify for the record what  
4 is found at Opposer's Exhibit 38.

5 A. That is the 2004 UPS Corporate  
6 Sustainability Report entitled "Operating in  
7 Unison," and that was published in June of  
8 2005.

9 (Exhibit-39 was marked for  
10 identification.)

11 Q. (By Mr. Schaetzel) Okay. If you  
12 would, for the record, identify what's in  
13 Opposer's Exhibit 39.

14 A. And that is the 2007 UPS Corporate  
15 Sustainability Report, the Centennial Edition,  
16 also entitled "Operating in Unison," and the  
17 cover of which has a photograph of one of our  
18 low emission hybrid electric vehicles, and  
19 that was published in 2008.

20 One thing I'll highlight about the  
21 publications, although we are entering them  
22 into the record in paper form, UPS has been  
23 very careful not to publish these, generally  
24 speaking, in paper form, and only produces  
25 them as PDFs. I know there are printed copies



1 around, but unlike an annual report or  
2 whatnot, we've pushed to have them available  
3 to people on the web in a PDF format so that  
4 there's not such an environmental impact.

5 Q. And as reflected on the truck of  
6 the front of the 2007 report published in  
7 2008, is that an example of how the company  
8 would use the word "hybrid" as it's in  
9 reference to the vehicle that's shown there?

10 A. Yeah. For that vehicle, that's a  
11 hybrid electric vehicle. And there are other  
12 hybrid vehicles in our fleet, and they'll have  
13 the other -- I'm trying to think. There's the  
14 hybrid -- what's the name of the technology?  
15 It's how your brakes work in your car.

16 Q. Hydraulic?

17 A. Hydraulic thank you. It's a hybrid  
18 hydraulic vehicle technology. So it's a  
19 hybrid hydraulic, and there are other hybrid  
20 technologies that will be used kind of  
21 generically.

22 Q. And would the word "hybrid," could  
23 it be found in close approximation to the UPS  
24 gold shield that's shown there on the --

25 A. Yeah. In the photograph, it's



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1 right beneath. In articles, it will be right  
2 beneath. It will be sprinkled into the  
3 article wherever it's appropriate. But, yes,  
4 it's often used in proximity to our name or  
5 our shield.

6 Q. And if you would, please turn to  
7 page 5 of the 2007 report. As a part of the  
8 economic component that you mentioned in this  
9 report, does the company report revenues?

10 A. Yes.

11 Q. And in looking at that chart that's  
12 shown on page five, would it be true that the  
13 information that is shown for revenues and,  
14 you know, net of course and so on and so  
15 forth, that would be true and correct to the  
16 best of your knowledge; is that correct?

17 A. Yes.

18 Q. So, for example, looking just at  
19 the 2007 column, if -- it would be accurate to  
20 state, would it not, that, for example, based  
21 on advertising amounts, I believe you said  
22 there were somewhat less than a hundred  
23 million dollars in 2007, that the company  
24 enjoyed revenues of better than \$49 billion;  
25 is that correct?



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1 A. That's correct.

2 Q. You mentioned that --

3 Let's go off the record for a  
4 second.

5 (Discussion ensued off the record.)

6 Q. (By Mr. Schaetzel) Where in the  
7 United States does the company provide  
8 services?

9 A. We deliver to every address in the  
10 United States.

11 Q. Is there any, you know, market  
12 segment, for example, that the company does  
13 not work with? I mean, would there be a --  
14 for example, you know, like a medical device  
15 or something that the company says, no, we  
16 don't ship packages from that particular  
17 segment, or is the company active in all  
18 markets?

19 A. We attempt to be active in all  
20 markets. It is possible there is some segment  
21 out there that we have not identified and  
22 therefore can't service, but we have been  
23 unable to -- it isn't for lack of trying.  
24 We've been able to identify -- as soon as we  
25 identify it, we go and try to provide services



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1 to them. But geographically, we know every  
2 address that exists we will deliver to.

3 Q. As a result of its advertising  
4 efforts and its sales efforts, do you believe  
5 that the public has come to recognize the name  
6 UPS?

7 A. Yes.

8 (Exhibit-40 was marked for  
9 identification.)

10 Q. (By Mr. Schaetzel) I'd like to hand  
11 you what's been marked as Opposer's Exhibit 40  
12 for identification. Do you recognize this as  
13 the BrandFinance250s report on the most  
14 valuable trademarks or brands as of  
15 January 2007?

16 A. I do.

17 Q. If you would, please, turn back to  
18 page 25. See the League Table?

19 A. Yes.

20 Q. And if you would turn over to page  
21 27, do you see UPS?

22 A. I do.

23 Q. And at what position was UPS ranked  
24 in 2007?

25 A. It looks like 42.



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1 Q. And so did you understand that to  
2 be at least the brand finance folks rank of  
3 UPS as being the 42nd most valuable trademark  
4 in the world at that point in time?

5 A. It looks like -- yeah. It looks  
6 that way.

7 MR. SCHAETZEL: Go off the record  
8 for a second.

9 (Discussion ensued off the record.)

10 (Exhibit-41 was marked for  
11 identification.)

12 Q. (By Mr. Schaetzel) I'd like to hand  
13 you what's been marked as Exhibit 41 for  
14 identification. Do you recognize this as the  
15 BrandFinance Global 500 report that was  
16 published in April of 2009?

17 A. Yes.

18 Q. And again, it relates to the  
19 world's most valuable trademarks or brands.  
20 Do you see that?

21 A. Mm-hmm.

22 Q. And I'd like to ask you to turn to  
23 page 8 of that report. And do you see UPS  
24 there? And if so, what do you see?

25 A. I do. I see that UPS in 2009 is



1 ranked No. 32. 2008, it's ranked 38. So  
2 we're climbing. Brand value is  
3 \$11.87 billion. The enterprise value,  
4 56 billion. Brand rating, we have a double A  
5 plus. Not quite sure what that means, but I'm  
6 sure there's a lexicon in here somewhere, and  
7 the 2008 -- that was the 2009 statistics.  
8 These are the 2008 that the brand values  
9 14.8 billion. And the enterprise value of  
10 81 -- roughly 81-1/2 billion. So we're moving  
11 up.

12 (Exhibit-42 was marked for  
13 identification.)

14 (Discussion ensued off the record.)

15 Q. (By Mr. Schaetzel) Has upper  
16 management promoted the sustainability  
17 campaign?

18 A. Upper management has been directing  
19 the sustainability campaign, and they do talk  
20 about it in their public speeches.

21 Q. I'd like to hand you what's been  
22 marked as Exhibit 42 for identification. What  
23 is this document?

24 A. This is the -- from the UPS -- 2008  
25 UPS corporate sustainability report, and this



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1 is the letter from our chairman, Scott Davis.

2 (Exhibit-43 was marked for  
3 identification.)

4 Q. (By Mr. Schaetzel) I'd like to hand  
5 you what's been marked as Opposer's Exhibit 43  
6 for identification. What is this document?

7 A. This is again from the UPS  
8 Enterprise Portal, and it is -- it's an  
9 article that references Bob Stoffel, who is  
10 our corporate engineering, strategy, and  
11 supply chain manager, emphasizing UPS is going  
12 green. And he's the cochair of the  
13 sustainability committee.

14 Q. And how is the term green used in  
15 that heading where you say Mr. Stoffel  
16 emphasizes going green near the top?

17 A. Kind of descriptively, generically,  
18 you know. In the first quote in the article,  
19 he says, "For the first time, Compass has an  
20 environmental focus." Compass is a  
21 communication tool. He says, "The reason is  
22 simple: As customers like you continue to  
23 leverage UPS to help manage your own supply  
24 chains, you are increasingly asking us to help  
25 you green up for today's marketplace."



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1                   Again, being environmentally  
2 sensitive, reducing your emissions, pollution,  
3 et cetera.

4                   (Exhibit-44 was marked for  
5 identification.)

6           Q.       (By Mr. Schaetzel) I'd like to hand  
7 you what's been marked as Exhibit 44 for  
8 identification. Do you recognize this as a  
9 printout from the UPS.COM website, and in  
10 particular from the Pressroom area?

11           A.       Yes, I do.

12           Q.       What is this document?

13           A.       What this document is, it's  
14 entitled "Ten Things You May Not Know About  
15 UPS's Environmental Initiatives." It lists  
16 out a bunch of examples of interesting things  
17 that UPS has done to reduce our impact on the  
18 environment.

19           Q.       And would the 10 things that are  
20 listed here have been true and correct to the  
21 best of your knowledge as of September in  
22 2009?

23           A.       Yes.

24           (Exhibit-45 was marked for  
25 identification.)



1 Q. (By Mr. Schaetzel) I'd like to hand  
2 you a collective exhibit that we'll just kind  
3 of throw through and identify various things.  
4 That's been marked as Exhibit 45 for  
5 identification. The first one appears to be  
6 an article that's entitled "The Many Ways That  
7 Brown is Green." What is this document?

8 A. It's an article talking about how  
9 UPS is very focused on environmental  
10 sustainability. And it has a picture of a UPS  
11 package car. On top of the package car is a  
12 service of grass, and on top of the grass is a  
13 tree, essentially growing out of the top of  
14 one of UPS's vehicles.

15 Q. And was this published at the UPS  
16 Enterprise Portal?

17 A. Yes.

18 Q. And next is an article, "A Lesson  
19 in Green Living;" is that correct?

20 A. That is correct.

21 Q. And was this also published at the  
22 UPS Portal?

23 A. Yep.

24 Q. Next is an article entitled  
25 "Recognizing our Green Side." Was this



1 published at the UPS Enterprise Portal?

2 A. Yes.

3 Q. Next appears to be an article  
4 entitled "UPS to FedEx: We're Greener Than  
5 You."

6 A. Yes.

7 Q. It appears at the end that there  
8 are responses to the article. Is it possible  
9 at the UPS Portal for UPS-ers to respond to  
10 articles posted there?

11 A. Not that I know of.

12 Q. Do you know where this article is  
13 posted -- where this article is published?

14 A. I assume it's out on a blog  
15 somewhere on the internet. I don't know. But  
16 I'm not sure.

17 Q. All right. Do you recognize the  
18 next article to be one that was published at  
19 the DailyFinance on the internet?

20 A. Yes.

21 Q. And the title of the article is  
22 UPS -- or I'm sorry, "Eco Dogfight: UPS Says  
23 It's Way Greener Than FedEx."

24 A. Yes.

25 Q. And how do you understand the term



1 "greener" to be used in this context?

2 A. Again, consistent with the  
3 description of environmentally conscientious,  
4 trying to have a small impact -- negative  
5 impact on the environment.

6 Q. The next article is entitled "Des  
7 Moines Centers Making a Difference. Des  
8 Moines Centers recycle to raise money for  
9 United Way." Do you see that article?

10 A. Yes.

11 Q. And was that published at the UPS  
12 Enterprise Portal?

13 A. Yes.

14 Q. And in the first sentence of the  
15 article, it talks about "Green is more than a  
16 slogan at UPS," and it carries on. "It's a  
17 commitment to operating in an environmentally  
18 friendly way." How is the term "green" used  
19 in that context?

20 A. Again, it has to do with  
21 environmental sustainability and being a good  
22 steward, trying not to pollute more than is  
23 absolutely required.

24 Q. The next item in this exhibit  
25 appears to be from a website that relates to



1 the Decision Green eStore. What is that?

2 A. It's a store where we make  
3 available products, UPS branded products that  
4 are environmentally sensitive, that are made  
5 with sustainable resources, like bamboo, and  
6 organic cotton, that sort of thing, to kind of  
7 minimize the footprint, the environmental  
8 footprint of the manufacturing of the  
9 products.

10 Q. And so would that apply to the  
11 various items that are shown here in this  
12 website, for example, a baseball cap or a  
13 visor and so on and so forth?

14 A. Yeah. Yeah.

15 Q. Do you recognize the next item to  
16 be an article that was published at the UPS  
17 Enterprise Portal entitled "Decision Green  
18 Materials"?

19 A. Yes.

20 Q. And this one carries on, "Preview  
21 Decision Green materials used to show UPS is  
22 making an impact in the environment."

23 A. Mm-hmm.

24 Q. "Division Green is the  
25 communications platform developed to help



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104

1 articulate UPS's environmental commitment and  
2 sustainable business practices, products and  
3 services." Is this the Decision Green  
4 campaign that you were referring to  
5 previously?

6 A. Yes.

7 Q. I'd like to show you the next item  
8 in this exhibit, which is "Decision Green,  
9 UPS's Approach to Environmental  
10 Sustainability." What is this document?

11 A. This document is a template that  
12 I'm sure our communications people put  
13 together. And what it kind of -- what it's  
14 used for is if I were going to go out and give  
15 a presentation where I needed to have a  
16 statement about where UPS is with its  
17 environmental commitment or it's  
18 sustainability commitment related to it, I  
19 would pull from this template kind of standard  
20 pieces.

21 They have, for example, an org  
22 structure that talks about our corporate  
23 sustainability steering committee. They have  
24 a couple of slides that describe, you know,  
25 what kinds of things we're doing with helping



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1 our customers green up their supply chain, how  
2 we have alternative-fuel vehicles and so on.

3 So I don't have to go do the basic  
4 research myself to figure out exactly how we  
5 match up versus what our objectives are. I  
6 can just pull from this, add a couple slides  
7 to my presentation on a topic I may -- I give  
8 public presentations on intellectual property,  
9 but the forum might ask or might call for,  
10 hey, what's UPS's position on recycling or  
11 alternative-fuel vehicles or greening up the  
12 supply chain.

13 Q. On the front page of this template  
14 is the title "Decision Green" with an SM after  
15 the word green. What does the SM service?

16 A. Service mark.

17 Q. And does the service mark there  
18 include both words Decision Green or just the  
19 word green?

20 A. It's both words: Decision Green.

21 Q. The next item in this collective  
22 exhibit appears to be an article that was  
23 published at UPS Business Solutions. Do you  
24 see that?

25 A. Yes.



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1 Q. This article also uses the word  
2 green. "Go green. Ship green." How is the  
3 word green being used in those instances?

4 A. The same thing. If you want to be  
5 environmentally conscientious, you might  
6 consider shipping via UPS, because we're  
7 trying very hard to make sure that the  
8 pollution associated with the shipping  
9 transaction is minimized.

10 Q. Just in the interest of time, do  
11 you recognize the rest of the items in this  
12 exhibit to refer to instances where the  
13 company has used the word green or shown the  
14 mark UPS in association with the  
15 sustainability efforts that you've already  
16 described today?

17 A. Yes. And the thing that these  
18 don't show in addition to that, because  
19 they're black and white, is the original color  
20 versions often have kind of a greenish hue to  
21 them, and obviously UPS is trying to -- we're  
22 a very color-conscious organization, with  
23 brown being our primary color, and for us,  
24 it's a big color thematic change to  
25 incorporate the hues of green around our



1 environmental efforts.

2 (Exhibit-46 was marked for  
3 identification.)

4 Q. (By Mr. Schaetzel) I'd like to hand  
5 you what's been marked as Exhibit 46 for  
6 identification. What is this document?

7 A. This document is entitled "Decision  
8 Green: Frequently asked questions." And it's  
9 just an FAQ for people to understand where is  
10 UPS with regard to its environmental posture  
11 in the marketplace. So it just answers  
12 questions related to that.

13 Q. And is this document a business  
14 record of UPS?

15 A. Yes.

16 (Exhibit-47 was marked for  
17 identification.)

18 Q. (By Mr. Schaetzel) I'd like to hand  
19 you what's been marked as Exhibit 47 for  
20 identification. What is this document?

21 A. This is a document entitled "UPS  
22 Carbon Neutral Frequently Asked Questions."  
23 Subtitled "Employee Version." And what this  
24 is, is a document that was created by our  
25 branding group and our marketing group to



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108

1 explain UPS's carbon neutral service offering.  
2 And so it's an FAQ that just contains  
3 questions and answers about how that service  
4 offering works, things like, why is UPS  
5 offering it, do we have any third parties  
6 verifying the way we approach this offering,  
7 those kinds of things.

8 Q. And is this document also a  
9 business record of UPS?

10 A. Yes.

11 (Exhibit-48 was marked for  
12 identification.)

13 Q. (By Mr. Schaetzel) I'd like to hand  
14 you what's been marked as Exhibit 48 for  
15 identification. What is this document?

16 A. This appears to be a presentation  
17 that was put together by our corporate  
18 automotive engineering group, and it's  
19 entitled "Alternate Fuel Vehicles" dated  
20 January 9th, 2000 of this year -- January 9th,  
21 2009. Sorry. 2000 of this year. Okay.

22 And it just described the various  
23 types of alternative-fuel vehicles that UPS  
24 has in its fleet. Has a couple of pictures  
25 and just gives you an overview.



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1 Q. I think we might have inadvertently  
2 separated two parts of it. Does this appear  
3 to you to be also part?

4 A. No.

5 MR. SCHAETZEL: Okay. Let's get  
6 this marked then as our next exhibit.

7 (Exhibit-49 was marked for  
8 identification.)

9 Q. (By Mr. Schaetzel) Before we leave  
10 Exhibit 48, there are several facts and  
11 figures, starting on the second page, for  
12 example, the total alternative number of fuel  
13 vehicles, hybrid electric, compressed natural  
14 gas, and so on and so forth. Would these  
15 figures have been true and accurate as of the  
16 date of the presentation, January 9th, 2009?

17 A. Yes.

18 Q. I'd like to hand you what's been  
19 marked as Opposer's Exhibit 49 for  
20 identification?

21 A. Okay.

22 Q. Can you tell us what this is?

23 A. This is appears to be a  
24 presentation. It's entitled "Alternative  
25 Fuels and Technology." And it is -- well,



1 I've actually seen this presentation presented  
2 within the last six months. And what this is  
3 in the context where I saw it presented was  
4 kind of showing how the automotive group and  
5 the vehicles that UPS has, what they're doing,  
6 where they're doing it, and types of  
7 technology that we're implementing.

8 Q. And if you look back about six or  
9 seven pages, there's a heading: Alternative  
10 Fuels and Technology.

11 A. Yep.

12 Q. Long history of testing and  
13 innovation.

14 A. Yep.

15 Q. Would you understand this page to  
16 basically give some of the highlights of over  
17 the years what UPS has done in the  
18 environmentally friendly effort?

19 A. Yes. And it shows dating back to  
20 the '30s that we had 15 electric vans in New  
21 York City. In the '40s, we were experimenting  
22 with propane-powered vans in California. In  
23 the '70s, we worked with Texaco to develop a  
24 multi-fuel engine. And the '80s are when I  
25 started paying attention to UPS, and back then



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1 UPS was spending a fair amount of energy  
2 working with various natural gas providers to  
3 create and test compressed natural gas vans.

4 And it moves forward to LNG  
5 tractors, hybrid electric, hybrid hydraulic  
6 electric and fuel cell demonstrations in 2000,  
7 and then we've implemented some of those in  
8 pilots. We call them pilots because they're  
9 not our entire fleet, but they do add up to  
10 more than a thousand vehicles.

11 Q. And when you've used the term  
12 "going green" or "decision green" -- not so  
13 much decision green, but greening things and  
14 going green, are these examples of the things  
15 that you're talking about that the company has  
16 done to try and be more environmentally  
17 sensitive?

18 A. These are things that relate just  
19 to -- yes, they are examples, but obviously we  
20 view it even more broadly than just our  
21 vehicles. You know, using recyclable, and  
22 recycled materials, changing the way we  
23 dispatch our drivers, changing our routing  
24 algorithms so that we take right-hand turns to  
25 save distance, changing the way we recycle



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1 ethylene glycol for de-icing fluid in the  
2 airline and antifreeze and oil in our regular  
3 domestic ground fleet. Those sorts of things.

4 Including, you know, our PCs all  
5 are now automatically programmed to time out  
6 if we don't touch them for a while, which  
7 reduces power consumption. The lights, almost  
8 all the lights in all of our facilities are on  
9 motion switches so they shut off. We're  
10 constantly looking for opportunities.

11 You may have noticed in the men's  
12 bathroom here, our urinals are now waterless  
13 urinals. And that's also part of it. They  
14 save, they say, about 40,000 gallon per urinal  
15 per year in water not going into the sewer  
16 system, and then the energy is not required to  
17 clean that water that doesn't go into the  
18 sewer system and so on. So it's -- this is  
19 just one subset related to vehicles. But,  
20 yes, it all ties back to our green efforts.

21 (Exhibit-50 was marked for  
22 identification.)

23 Q. (By Mr. Schaetzel) I'd like to hand  
24 you what's been marked as Opposer's Exhibit 50  
25 for identification. Do you recognize this as



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1 again a page that was printed from UPS.COM in  
2 the Pressroom relating to fuel management and  
3 conservation in the airline end of the  
4 business?

5 A. Yes.

6 (Exhibit-51 was marked for  
7 identification.)

8 Q. (By Mr. Schaetzel) I'd like to hand  
9 you what's been marked as Exhibit 51 for  
10 identification. Is this a document that has  
11 been printed from UPS.COM and in particular  
12 the Pressroom area relating to how UPS uses  
13 telematics to conserve?

14 A. Yes.

15 Q. And how is the term green being  
16 used here in that heading at the top of that?

17 A. It says, "UPS Uses Telematics To Go  
18 And Save Green." And in that sense, we are  
19 referring -- it's a double entendre. We're  
20 referring to both saving green in terms of  
21 being environmentally conscientious, but we're  
22 also saving dollars by saving energy  
23 consumption and waste.

24 (Exhibit-52 was marked for  
25 identification.)



1 Q. (By Mr. Schaetzel) I'd like to hand  
2 you what's been marked as Exhibit 52 for  
3 identification. I would ask you to just look  
4 through these and confirm for the record, if  
5 you could, these are a series of articles  
6 relating to UPS's use of various techniques to  
7 try and, as you say, go green or to be more  
8 environmentally sensitive.

9 A. Yes, they are. And it looks like a  
10 lot of them make reference to the term green  
11 the way I've described it before. It looks  
12 like there's an interview, like a transcript  
13 of an interview in here from Bob Stoffel,  
14 reference to our green fleets. Yep. These  
15 are all about our environmental efforts.

16 Q. In all such efforts, in addition to  
17 the use of the word green, does the trademark  
18 UPS often also appear?

19 A. Yes. It's -- I would venture that  
20 it always appears. I also notice that hybrid  
21 appears quite a bit in these as well when it  
22 refers to the technology.

23 (Exhibit-53 was marked for  
24 identification.)

25 Q. (By Mr. Schaetzel) I'd like to hand



1 you what's been marked as Exhibit 53 for  
2 identification. Do you recognize this as  
3 portions of the 2008 Sustainability Report?

4 A. Yes.

5 Q. And this would have been, for  
6 example, parts of the Operating in Unison  
7 report as we'd seen for other years, but just  
8 for the year 2008, is that not correct?

9 A. Right. And I suspect it was  
10 published sometime this year.

11 (Exhibit-54 was marked for  
12 identification.)

13 Q. (By Mr. Schaetzel) I'd like to hand  
14 you what's been marked as Exhibit 54 for  
15 identification. Can you confirm for the  
16 record that these are several articles that  
17 were published on the UPS website relating to  
18 in particular hydraulic vehicles or hybrid  
19 vehicles?

20 A. Yes. They -- they came from the  
21 UPS Pressroom, and they refer to the -- our  
22 purchase of hydraulic hybrid vehicles and our  
23 participation in the EPA's climate leaders  
24 program, and our deployment of 300 new  
25 compressed natural gas -- what we refer to in



1 this article as green trucks. Interestingly  
2 enough, one of the articles references that  
3 144 million miles in our green fleet have been  
4 traveled. So a lot of miles.

5 Q. Has the company received  
6 recognition outside of UPS for the leadership  
7 role it's taken in hybrids?

8 A. Yes.

9 (Exhibit-55 was marked for  
10 identification.)

11 Q. (By Mr. Schaetzel) I'd like to hand  
12 you what's been marked as Exhibit 55 for  
13 inspection. Can you tell me what this  
14 document is?

15 A. This is article from BusinessWeek,  
16 and its title is "UPS Takes the Lead on  
17 Hydraulic Hybrids," and it makes reference to  
18 our cooperation working with the EPA.

19 Q. Does the company track or measure  
20 in some fashion how well the UPS brand is  
21 being noticed or how aware the public is of  
22 the UPS brand?

23 A. Mm-hmm. Yes.

24 (Exhibit-56 was marked for  
25 identification.)



1 MR. SCHAEZEL: I'd like to hand  
2 you what has been marked as Exhibit 56  
3 for identification. And for purposes of  
4 the record, as we talk about this  
5 exhibit, we will designate this as  
6 confidential at the highest level for  
7 purposes of this opposition proceeding.

8 (Whereupon, the testimony from page 118  
9 to page 127 has been marked  
10 confidential, excerpted, and bound  
11 separately.)  
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128

1 (Non-confidential testimony resumes.)

2 MR. SCHAETZEL: As you know, this  
3 opposition is directed to an attempt to  
4 register the intent to use application  
5 for the designation Hybrid Green UPS.  
6 Since it's intent to use, we don't  
7 actually have an example that we can show  
8 you, but we do have a page from the  
9 Powertech website that I'd like to get  
10 marked as the next exhibit, which is  
11 Opposer's Exhibit 57. I'd like to have  
12 you take a look at that for a second, if  
13 you can.

14 (Exhibit-57 was marked for  
15 identification.)

16 Q. (By Mr. Schaetzel) If you can look  
17 at this, you'll see that they use the term  
18 "hybrid green power" about approximately  
19 halfway down the page. How would you  
20 understand the terms hybrid and green to be  
21 used in this context?

22 A. Well, I think they're using them  
23 kind of generically in the sense that they  
24 seem to provide definitions, you know. Their  
25 use of the term hybrid says, "coexist power



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1 system provide AC and multi-range DC output  
2 simultaneously." So they apparently can do AC  
3 and DC at the same time. So I guess that's  
4 the hybrid of alternating and direct current.

5 And then green, they use it very  
6 similarly to the way we use it, which is,  
7 "energy saving and material resources  
8 economically." I assume what that means  
9 loosely is it's environmentally conscientious  
10 and efficient and that sort of stuff.

11 Q. Does the company have concerns that  
12 if they were to use the designation UPS as in  
13 hybrid green UPS rather than where they have  
14 hybrid green power that there may be confusion  
15 or a likelihood of confusion that would  
16 result?

17 A. Yes. I would suspect that we would  
18 receive inquiries from customers and from our  
19 employee base saying, Is this us? Are we now  
20 in this business? You know, I got a defective  
21 product, where do I return it? Where can I  
22 buy one of those, et cetera.

23 Q. In the context of a hybrid green  
24 UPS, how do you think the public would  
25 perceive the designation UPS if that were to



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1 appear in association, even with a unit such  
2 as this shown in Exhibit 57?

3 A. I would suspect that a number of  
4 them would think somehow UPS, the company that  
5 picks up and delivers millions of packages,  
6 that company is somehow engaged in this  
7 business or with this product.

8 (Exhibit-58 was marked for  
9 identification.)

10 Q. (By Mr. Schaetzel) I'd like you to  
11 please take a look, if you would, at what's  
12 been marked as Opposer's Exhibit 58 for  
13 identification. What is this document?

14 A. This appears to be a U.S. patent  
15 application, Publication No. U.S.  
16 2008/0238205 A1. And the title of this is  
17 hybrid green uninterruptible power system and  
18 bidirectional converter module and power  
19 conversion method thereof.

20 Q. And do you see if the designation  
21 hybrid green uninterruptible power system  
22 appears anywhere else other than in the title?

23 A. It appears in the abstract, and it  
24 also appears in the first diagram. And that's  
25 all on the first page. And then it looks like



1 it appears also in Figure 3. And then in  
2 Figure 5, it's in the diagram saying  
3 "Providing a hybrid green uninterruptible  
4 power system having a multi-winding  
5 transformer." And then it's used liberally  
6 throughout the text describing the invention,  
7 and it's also used in the claims.

8 Q. I'd like to direct your attention  
9 to the first page of the patent, or at least  
10 the application, and do you see a designation  
11 there for the inventor?

12 A. Yes.

13 Q. And who is the inventor?

14 A. I may be mispronouncing this, but  
15 it is Yu-Lung Lee, Y-u-L-u-n-g Lee, L-e-e.

16 Q. And I'd like to just show you  
17 without introducing it as evidence in the  
18 record just a copy of the applicant's answer.  
19 The applicant in this case would of course be  
20 Powertech to the opposer's first set of  
21 interrogatories to applicant. So would you  
22 recognize this document to be Powertech's  
23 responses to United Parcel Services, or UPS's  
24 interrogatories?

25 A. Yes.



1 Q. If you would, please, could you  
2 state for the record who it is that verified  
3 the answers for Powertech as shown on page 16  
4 of that document?

5 A. It appears to be someone named  
6 Yu-Lung, L-U-N-G, Lee, L-E-E.

7 MR. SCHAETZEL: I think we're about  
8 done. If we can take about five minutes.

9 (Whereupon, a recess was taken from 1:23  
10 to 1:50 p.m.)

11 Q. (By Mr. Schaetzel) Mr. Schenken,  
12 does the company prepare what might be  
13 considered brand usage guidelines?

14 A. Yes.

15 Q. Could you describe those for us,  
16 please?

17 A. They describe -- they're a  
18 document, a paper document or an electronic  
19 document, and what they contain within them  
20 are rules about how you ought to use any one  
21 of UPS's trademarks or a generic term that  
22 might be similar to a UPS trademark. And they  
23 are distributed to the people who maintain and  
24 develop our communications pieces, they're  
25 distributed through our legal group, they're



1 distributed to our group, to our  
2 communications folks and our PR people, public  
3 affairs people so they know the proper use of  
4 a term.

5 Q. And in that way, do you consider  
6 the guidelines to be a method by which the  
7 company further protects its trademark rights?

8 A. Yes. We feel that consistency is  
9 helpful in that regard.

10 (Exhibit-61 was marked for  
11 identification.)

12 Q. (By Mr. Schaetzel) I'd like to  
13 first ask you to take a look at what's been  
14 marked as Exhibit 61 for identification.

15 A. Yes.

16 Q. What is this?

17 A. This is a catalog produced by one  
18 of our licensees, Daron, D-a-r-o-n, Worldwide  
19 Trading, Inc., and they are a licensee of a  
20 couple of UPS marks. And what they -- what  
21 they do with this catalog is they take it to  
22 trade shows and they take it to distributors  
23 and toy dealers who would carry the kinds of  
24 merchandise that they manufacture, and they  
25 show them and let the folks order them



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1 wholesale for eventual retail sales.

2 Q. Are there any goods in there that  
3 would be related to electronics or related to  
4 other service offers of the company?

5 A. Yeah. They have some  
6 representations of our various aircraft in  
7 their executive series, their sky mark series,  
8 and their Gemini jet series. They have  
9 images, as well as replicas referenced, but  
10 not shown, of a number of our aircraft. And  
11 they're very kind of high quality. Fairly  
12 expensive models.

13 And then for the electronic side, a  
14 number of their products that are SKUs that  
15 are targeted towards children contain sounds  
16 or lights that are battery powered.

17 Q. And would those be battery powered  
18 as in you just need 2AA batteries, or are they  
19 more robust than that?

20 A. Probably some of them contain like  
21 watch-sized batteries, and others would be AA  
22 batteries. There's a radio-controlled plane.  
23 It's on the ground. It rolls around as  
24 opposed to flies. There's one that you pull  
25 back. It's like a friction-powered plane, but



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1 it's got lights and sounds on it. There's a  
2 couple of key chains that make lights and  
3 sounds, including a UPS package car shaped key  
4 chain. So that's their current SKUs.

5 Q. You mentioned that the Daron  
6 catalog, that they are a licensee.

7 A. Yeah. They are a licensee.

8 Q. Do you have other licensees of the  
9 UPS trademark?

10 A. Yes. Yes.

11 Q. In what circumstances might you  
12 also license -- and just for the record, I  
13 guess before we leave Exhibit 61, what page?

14 A. It's page 28, and the page numbers  
15 appear in kind of center of the page as  
16 opposed to the corners.

17 Q. So, for example, we've talked some  
18 already about Roush Fenway. Would you have a  
19 license with Roush Fenway?

20 A. We do.

21 Q. And what would be the nature of  
22 that license?

23 And before you answer, I think I'm  
24 going to ask that this portion of the  
25 transcript be designated as confidential again



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1 so that we don't publicize the relationship or  
2 the details of the relationship with Roush  
3 Fenway. But please go ahead.

4 (Whereupon, the testimony from page 137  
5 to page 137 has been marked  
6 confidential, excerpted, and bound  
7 separately.)  
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1 (Non-confidential testimony resumes.)

2 Q. And how many other licensees might  
3 you have, approximately, in -- of the UPS  
4 mark?

5 A. I would say in the neighborhood of  
6 maybe eight hundred, seven, eight hundred, in  
7 that range.

8 Q. And do you draw any distinction in  
9 the type of license that you grant?

10 A. In other words, are there certain  
11 types of items we would not license?

12 Q. I think I've heard in the past  
13 automated and nonautomated license. What's  
14 that a reference to?

15 A. Yeah. That's just a reference to  
16 the process we use internally for processing  
17 the licenses. The scope of the licenses range  
18 pretty broadly.

19 Q. And then are there products or  
20 services that you would not license?

21 A. Yes. We would not license,  
22 generally speaking, weapons, anything that is  
23 considered of an adult nature, anything that  
24 we would consider kind of harmful to our  
25 reputation. So things that, you know, the



1 general public might consider offensive.

2 Q. Was there ever a license agreement  
3 with any sort of product or an item that used  
4 power packs or power supplies?

5 A. Sure. We have a number of our  
6 licenses with folks who manufacture and/or  
7 sell, distribute electronics components as  
8 well as finished products.

9 Q. What about the train? I understand  
10 there was one for a train.

11 A. Yeah. We have an ongoing  
12 relationship with Lionel, the toy train  
13 company or collectors train company, and  
14 they -- the products -- two years ago, we  
15 licensed them, and they produced for about 24  
16 months a complete train set that was branded  
17 with UPS trademarks, and in that train set,  
18 they contained a power supply.

19 Q. And when you say the train was  
20 branded with UPS, where would the logo or the  
21 designation UPS, both the shield and the term  
22 UPS, where would that have appeared?

23 A. It would be in the -- on the  
24 outside of the packaging prominently and also  
25 on the sides of the -- each of the train cars.



140

1 And in the user manual, on the cover of user  
2 manual, as well as elsewhere in the literature  
3 that was packed within the packing.

4 Q. I believe that the -- and maybe  
5 this is part of the London games effort. I  
6 believe there may be a UPS widget, UPS widget  
7 software?

8 A. Yes. It's related to the London  
9 games, but created before the London games.  
10 And what it is is if you're familiar with  
11 Apple MacIntosh, their computers have --  
12 they're the first ones to popularize the  
13 concept called a widget, and that's just a  
14 very, very small piece of software that will  
15 provide some valuable service to you. It will  
16 stay on your desktop. They have these for  
17 Windows too, but in the Mac world, it's much  
18 more common. And floating on your desktop as  
19 an icon, kind of a live thing might be a stock  
20 price ticker or the weather or travel,  
21 anything that you might want to track on an  
22 ongoing basis.

23 So UPS developed a character we  
24 refer to as UPS Widget, and Widget is a down  
25 loadable piece of tiny piece of software code



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141

1 that can exist in a Windows environment. And  
2 this character then provides answers to  
3 certain questions you might have about your  
4 packages.

5 As UPS expands in this arena,  
6 Widget will become more and more capable of  
7 doing more and more things for you as the  
8 consumer. Might inform you that there's a  
9 special price for services. Certainly you  
10 can -- for all the packages that you prepare  
11 using that same computer, Widget will collect  
12 all the tracking numbers from those packages  
13 automatically and then let you know what the  
14 status is of those packages as they move  
15 through our system ultimately for delivery.  
16 Might let you know about UPS licensed  
17 merchandise being available for sale, if you'd  
18 be interested in that. So Widget is a -- it's  
19 fairly new. I think he's been around two  
20 years.

21 Q. Whether it's in regard to licensing  
22 Widget or licensing anything else, do you have  
23 any information in recent years as to whether  
24 or not UPS has enjoyed any financial  
25 enumeration, what kind of money, if any, have



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1 you made on trademark license agreements?

2 A. Trademark license agreements I  
3 would have to look up to get you the precise  
4 dollar, but over the last few years, in the  
5 seven-figure range. It's well north of a  
6 million dollars.

7 Q. As a part of getting prepared  
8 today, did you ask someone under your  
9 supervision and direction to collect that  
10 information for you?

11 A. I probably didn't. Not  
12 specifically. But we have to report on that  
13 on a quarterly basis, and it's going off to  
14 our chain of command. And so I'm going off of  
15 my -- my recollection of roughly what we've  
16 been reporting. It's a knowable figure. I  
17 know there have been individual years a couple  
18 years ago where we were closer to 2 million in  
19 that single year.

20 MR. SCHAETZEL: I'd like to get  
21 this marked as the next exhibit.

22 (Exhibit-62 was marked for  
23 identification.)

24 MR. SCHAETZEL: I'd like to ask you  
25 to take a look at what has been marked as



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1 Exhibit 62 for identification. And I'm  
2 going to go ahead and indicate on this  
3 one, this exhibit is being marked as  
4 confidential the highest level. And I'll  
5 initial that with my initial, and then  
6 also we'd like to designate any testimony  
7 given in regards to Opposer's Exhibit No.  
8 62 also as confidential.

9 (Whereupon, the testimony from page 144  
10 to page 145 has been marked  
11 confidential, excerpted, and bound  
12 separately.)  
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1 (Non-confidential testimony resumes.)

2 (Exhibit-60 was marked for  
3 identification.)

4 Q. (By Mr. Schaetzel) If you could,  
5 please identify for us what's been marked as  
6 Opposer's Exhibit 60 for identification.

7 A. This is called The UPS Collection,  
8 and it's subtitled "capture the UPS spirit."  
9 It's a 2008 catalog of UPS licensed  
10 merchandise. This merchandise is largely  
11 available to -- or was at the time largely  
12 available to UPS employees, and I don't know  
13 what else you want.

14 Q. Is there anything in there that  
15 would -- could be used in association with a  
16 battery or some sort of power supply?

17 A. Yes. On page 31, there's item M --  
18 Items M, N, and O are all watches, and I  
19 believe all three of them are battery powered  
20 electric watches. And on page 32, there are a  
21 number of electronic flashlights, Items A, B,  
22 C, D, and E. And E is a nickel metal hydride  
23 rechargeable battery flashlight that you hand  
24 crank to generate the power to charge the  
25 batteries. So just some examples of that.



147

1 (Exhibit-59 was marked for  
2 identification.)

3 Q. (By Mr. Schaetzel) If you would,  
4 please identify for the record what's been  
5 marked as Opposer's 59 for identification.

6 A. This is The UPS Collection for fall  
7 and winter of 2009, and it contains on  
8 page 10, Item H is a zipped leather portfolcio  
9 with a solar-powered calculator, which is part  
10 of one of the licensed items.

11 Q. When we first started today, we  
12 looked at several trademark registrations, all  
13 of which include the term UPS, the mark UPS as  
14 a root in some fashion. Are those all of the  
15 marks that the company has that pend from that  
16 UPS root?

17 A. No. UPS has a very large number of  
18 marks that start with the three letters UPS.  
19 We tend to refer to those as the UPS family of  
20 marks, which itself is a subset of all of our  
21 marks.

22 Q. And in that UPS family of marks,  
23 approximately how many marks are there?

24 A. You're just talking about the U.S.  
25 marks?



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1 Q. In the U.S., yes.

2 A. I don't know that detail off the  
3 top of my head, but I would say north of 50.  
4 Of the ones that start with just the three  
5 initials UPS. I just don't know off the top  
6 of my head how many that is. It's sizable.

7 MR. SCHAETZEL: Let's go off the  
8 record.

9 (Discussion ensued off the record.)

10 Q. (By Mr. Schaetzel) Are the 50 or  
11 north of 50 number of marks that you've  
12 identified as part of the UPS family promoted  
13 in such a way as to tie them back or reinforce  
14 the connection to UPS in some fashion?

15 A. Yes.

16 Q. How so?

17 A. Well, they're always going to be  
18 used in at least one of these two contexts.  
19 One is in the context of our service  
20 offerings, or the other is closely associated  
21 with our shield. And in many cases, both.

22 Q. So if, for example, we looked at a  
23 mark today, UPS Internet Tools, would that  
24 mark traditionally appear as UPS Internet  
25 Tools in its entirety?



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A. Yes.

Q. And then it would also perhaps appear in context with the shield?

A. Correct.

MR. SCHAETZEL: Thank you very much. We appreciate your time today.

(Whereupon, the deposition was concluded at 2:12 p.m.)



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I hereby certify that the foregoing transcript was taken down as stated in the caption, that the witness was first duly sworn, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 149 represent a true, correct, and complete transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case. The witness did reserve the right to read and sign the transcript.

This, the 22nd day of October, 2009.

\_\_\_\_\_  
MARGARET L. MESSER, CCR-B-2024

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I, Margaret L. Messer, provide the following disclosure to all parties and attorneys attending:

That I am not disqualified for a relationship of interest under the provisions of O.C.G.A Sec. 9-11-28(c),

That I am a Certified Court Reporter in and for the State of Georgia,

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Dated this 22nd day of October, 2009.

*151 Margaret L. Messer*

Margaret L. Messer, RPR, CCR-B-2024



CAPTION

The Deposition of CHRISTOPHER T. SCHENKEN,  
taken in the matter, on the date, and at the time and  
place set out on the title page hereof.

It was requested that the deposition be taken  
by the reporter and that same be reduced to  
typewritten form.

It was agreed by and between counsel and the  
parties that the Deponent will read and sign the  
transcript of said deposition.

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CERTIFICATE

STATE OF :

COUNTY/CITY OF :

Before me, this day, personally appeared,  
CHRISTOPHER T. SCHENKEN, who, being duly sworn, states that  
the foregoing transcript of his/her Deposition, taken in the  
matter, on the date, and at the time and place set out  
on the title page hereof, constitutes a true and accurate  
transcript of said deposition.

\_\_\_\_\_  
CHRISTOPHER T. SCHENKEN

SUBSCRIBED and SWORN to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ in the  
jurisdiction aforesaid.

\_\_\_\_\_  
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File No. 68283

Case Caption: UNITED PARCEL SERVICE

vs. POWERTECH INDUSTRIAL CO., LTD

Deponent: CHRISTOPHER T. SCHENKEN

Deposition Date: October 9, 2009

To the Reporter:

I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me.

I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the Errata Sheet and the appropriate Certificate and authorize you to attach both to the original transcript.

Page No. 23 Line No. 18 Change to: Wife's up going back to UPS.com

Reason for change: Doesn't make sense otherwise

Page No. 24 Line No. 24 Change to: "Tools" should start w/ uppercase "T"

Reason for change: Proper Noun

Page No. 26 Line No. 16 Change to: The way up - I need a system that I can

Reason for change: Doesn't make sense otherwise



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Page No. 24 Line No. 8 Change to: Paraphrased "By Mr Rosenberg"  
- I don't recall a Mr Rosenberg asking any questions or being present

Reason for change: \_\_\_\_\_

Page No. 35 Line No. 21 Change to: add comma after  
The word packaging

Reason for change: It is a list

Page No. 38 Line No. 17 Change to: Name United Parcel Service  
- No "S"

Reason for change: typo

Page No. 41 Line No. 20 Change to: it. Can you do that, UPS?  
We say, sure, yes

Reason for change: It is a question

Page No. 45 Line No. 20 Change to: Operations, it's over  
20,000 employees.

Reason for change: typo

Page No. 49 Line No. 5 Change to: small box. But you may  
have something that is

Reason for change: Typo

SIGNATURE: \_\_\_\_\_

DATE: 1-6-10

CHRISTOPHER T. SCHENKEN



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Deposition of CHRISTOPHER T. SCHENKEN

Page No. 50 Line No. 13 Change to: pallets, re-sort them,  
other motor-trailer

Reason for change: typo

Page No. 60 Line No. 5 Change to: questions, You select the  
tab for tracking, you

Reason for change: typo

Page No. 84 Line No. 14 Change to: that UPS has implemented  
which captures a kind of

Reason for change: typo

Page No. 87 Line No. 17 Change to: path, and built it from  
the center.

Reason for change: incomplete sentence / typo

Page No. 87 Line No. 18 Change to: So they cleared the  
smallest

Reason for change: incomplete sentence / typo

Page No. 89 Line No. 23 Change to: Social contains things  
that describe how

Reason for change: typo

SIGNATURE: \_\_\_\_\_ DATE: 1/8/2010

CHRISTOPHER T. SCHENKEN



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~~155~~ 157

1 Deposition of CHRISTOPHER T. SCHENKEN

2  
3 Page No. 89 Line No. 24 Change to: UPS is sustainable in  
4 a social sense, how we

5 Reason for change: typo

6 Page No. 93 Line No. 21-23 Change to: I believe this information  
7 is supposed to be Marked as confidential

8 Reason for change: should be Marked as confidential

9 Page No. 96 Line No. 2 Change to: be at least the  
10 Brand Finance folus rank of

11 Reason for change: "Brand Finance" is a proper Name

12 Page No. 100 Line No. 3 Change to: of thumb through and  
13 identify various things

14 Reason for change: typo

15 Page No. 100 Line No. 12 Change to: surface of grass, and  
16 on top of the grass is a

17 Reason for change: typo

18 Page No. 108 Line No. 21 Change to: 2009. Sorry.

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20 Reason for change: Loon: like typo

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24 SIGNATURE: ( )

DATE: 1/8/2010

25 CHRISTOPHER T. SCHENKEN



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| <p><b>A</b></p> <p><b>AA</b><br/>134:21</p> <p><b>able</b><br/>24:9 32:24<br/>42:16 45:24<br/>46:7 53:8,9<br/>94:24</p> <p><b>absolutely</b><br/>102:23</p> <p><b>abstract</b><br/>130:23</p> <p><b>AC</b><br/>129:1,2</p> <p><b>accepts</b><br/>27:13</p> <p><b>access</b><br/>53:24 62:7</p> <p><b>accurate</b><br/>47:9 80:7,12<br/>81:6 82:1<br/>93:19<br/>109:15<br/>153:8</p> <p><b>Acquisition</b><br/>16:20</p> <p><b>acquisitions</b><br/>64:15</p> <p><b>active</b><br/>90:5 94:17<br/>94:19</p> <p><b>activities</b><br/>72:2,3</p> <p><b>activity</b><br/>58:22</p> <p><b>add</b><br/>20:7 105:6<br/>111:9</p> <p><b>addition</b><br/>71:8 106:18<br/>114:16</p> <p><b>address</b><br/>57:14 94:9<br/>95:2</p> <p><b>admissions</b><br/>71:10</p> <p><b>adult</b></p> | <p>138:23</p> <p><b>advertise</b><br/>83:12,14,17<br/>83:18,19,21</p> <p><b>Advertise...</b><br/>8:5</p> <p><b>advertising</b><br/>62:19 75:18<br/>76:9 83:10<br/>83:11 85:18<br/>85:19,22,25<br/>93:21 95:3</p> <p><b>affairs</b><br/>133:3</p> <p><b>affiliated</b><br/>19:25</p> <p><b>aforesaid</b><br/>153:16</p> <p><b>ago</b><br/>56:5 86:2<br/>139:14<br/>142:18</p> <p><b>agreed</b><br/>152:8</p> <p><b>agreement</b><br/>139:2</p> <p><b>agreements</b><br/>142:1,2</p> <p><b>ahead</b><br/>53:19 136:3<br/>143:2</p> <p><b>air</b><br/>5:9 31:8,10<br/>31:11,25<br/>32:2,3,7<br/>34:4 35:17<br/>35:21 36:8<br/>36:12,13<br/>45:18 61:14<br/>65:18</p> <p><b>aircraft</b><br/>13:23 34:13<br/>40:9,10<br/>45:8,9,10<br/>45:11,12,15<br/>46:13,14<br/>47:18,20,25<br/>48:3 134:6</p> | <p>134:10</p> <p><b>airline</b><br/>34:9,10 44:6<br/>45:19 63:22<br/>80:3,13<br/>112:2 113:3</p> <p><b>Airlines</b><br/>5:8 7:16</p> <p><b>airports</b><br/>47:23,24<br/>48:9</p> <p><b>algorithms</b><br/>111:24</p> <p><b>alive</b><br/>37:11</p> <p><b>allow</b><br/>14:20 19:10<br/>20:15 52:23</p> <p><b>allows</b><br/>14:22 27:6</p> <p><b>already</b><br/>63:22 106:15<br/>135:18</p> <p><b>also</b><br/>2:8 18:8<br/>20:12 21:5<br/>36:16 48:20<br/>50:24 51:9<br/>52:8 58:13<br/>60:12 63:9<br/>65:19 91:16<br/>100:21<br/>106:1 108:8<br/>109:3<br/>112:13<br/>113:22<br/>114:18,20<br/>130:24<br/>131:1,7<br/>135:12<br/>139:24<br/>143:6,8<br/>149:2</p> <p><b>Alternate</b><br/>7:12 108:19</p> <p><b>alternating</b><br/>129:4</p> <p><b>alternative</b></p> | <p>7:13 63:15<br/>109:12,24<br/>110:9</p> <p><b>alternati...</b><br/>63:12 82:7<br/>86:15 90:12<br/>105:2,11<br/>108:23</p> <p><b>although</b><br/>91:21</p> <p><b>always</b><br/>114:20<br/>148:17</p> <p><b>Amazon</b><br/>22:2,7,8,14<br/>22:20,23<br/>23:3,4,15<br/>23:16,20<br/>24:4</p> <p><b>America</b><br/>1:6 9:14,17<br/>88:15</p> <p><b>American</b><br/>50:4</p> <p><b>among</b><br/>13:21 89:25</p> <p><b>amount</b><br/>75:17 87:8<br/>111:1</p> <p><b>amounts</b><br/>93:21</p> <p><b>analogy</b><br/>56:8</p> <p><b>and/or</b><br/>139:6</p> <p><b>announcement</b><br/>74:23</p> <p><b>annual</b><br/>6:18,21 92:1</p> <p><b>another</b><br/>22:4 30:13<br/>36:6 39:19<br/>45:3 47:10<br/>49:2,11<br/>74:12</p> <p><b>answer</b><br/>11:8 33:14<br/>131:18</p> | <p>135:23</p> <p><b>answers</b><br/>107:11 108:3<br/>132:3 141:2<br/>150:9</p> <p><b>antifreeze</b><br/>112:2</p> <p><b>anybody</b><br/>53:13</p> <p><b>anymore</b><br/>41:19</p> <p><b>anywhere</b><br/>130:22</p> <p><b>anywise</b><br/>150:17</p> <p><b>apparently</b><br/>129:2</p> <p><b>APPEAL</b><br/>1:2</p> <p><b>appear</b><br/>17:17,21<br/>35:21 36:16<br/>45:14 53:25<br/>54:3 62:15<br/>62:15,18<br/>65:9 79:20<br/>81:3 109:2<br/>114:18<br/>130:1<br/>135:15<br/>148:24<br/>149:3</p> <p><b>APPEARANCES</b><br/>2:1</p> <p><b>appeared</b><br/>139:22 153:4</p> <p><b>appears</b><br/>13:9,22<br/>29:16 44:3<br/>44:8,8 45:4<br/>45:7 53:19<br/>65:17,20<br/>79:14,17<br/>100:5 101:3<br/>101:7<br/>102:25<br/>105:22<br/>108:16</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



|                     |                   |                     |                     |                  |
|---------------------|-------------------|---------------------|---------------------|------------------|
| 109:23              | <b>area</b>       | 45:13               | <b>automatic...</b> | <b>base</b>      |
| 114:20,21           | 60:23 79:7        | <b>assistance</b>   | 112:5 141:13        | 129:19           |
| 130:14,22           | 86:19 87:11       | 12:7,12             | <b>automotive</b>   | <b>baseball</b>  |
| 130:23,24           | 99:10             | <b>Assistant</b>    | 108:18 110:4        | 103:12           |
| 131:1 132:5         | 113:12            | 28:17,18            | <b>available</b>    | <b>based</b>     |
| <b>Apple</b>        | <b>areas</b>      | <b>associated</b>   | 23:19 59:12         | 21:7,8 93:20     |
| 140:11              | 89:13             | 36:17 63:10         | 92:2 103:3          | <b>basic</b>     |
| <b>applicant</b>    | <b>arena</b>      | 106:8               | 141:17              | 105:3            |
| 1:11 131:19         | 74:5,6 141:5      | 148:20              | 146:11,12           | <b>basically</b> |
| 131:21              | <b>around</b>     | <b>association</b>  | <b>average</b>      | 49:18 64:4       |
| <b>applicant's</b>  | 14:1,4 38:14      | 26:8 62:16          | 5:20 58:24          | 110:16           |
| 131:18              | 39:18 46:4        | 65:10 72:11         | <b>aware</b>        | <b>basis</b>     |
| <b>application</b>  | 74:2,3            | 73:22               | 43:14 57:14         | 17:3 61:9,15     |
| 1:3 8:8             | 84:15 87:20       | 106:14              | 116:21              | 66:1,2           |
| 16:12 21:13         | 88:21 92:1        | 130:1               | <b>a.m</b>          | 86:10            |
| 26:5 128:4          | 106:25            | 146:15              | 1:16 28:8           | 140:22           |
| 130:15              | 134:23            | <b>assume</b>       | 71:13               | 142:13           |
| 131:10              | 141:19            | 82:14 101:14        | <b>Al</b>           | <b>bathroom</b>  |
| <b>applications</b> | <b>article</b>    | 129:8               | 130:16              | 112:12           |
| 19:15               | 9:4 93:3          | <b>Atlanta</b>      |                     | <b>batteries</b> |
| <b>apply</b>        | 98:9,18           | 1:18 2:5            | <b>B</b>            | 134:18,21,22     |
| 103:10              | 100:6,8,18        | 48:5 57:2           | <b>B</b>            | 146:25           |
| <b>applying</b>     | 100:24            | 74:6,7 87:2         | 42:24 49:9          | <b>battery</b>   |
| 41:10               | 101:3,8,12        | 87:7,7              | 146:21              | 134:16,17        |
| <b>appreciate</b>   | 101:13,18         | <b>attach</b>       | <b>back</b>         | 146:16,19        |
| 149:6               | 101:21            | 154:15              | 14:3 21:10          | 146:23           |
| <b>approach</b>     | 102:6,9,15        | <b>attached</b>     | 23:18 39:4          | <b>bear</b>      |
| 104:9 108:6         | 103:16            | 8:17,17             | 49:22 52:10         | 16:7 18:13       |
| <b>approaching</b>  | 105:22            | 87:18               | 56:4 80:4           | 41:25 51:24      |
| 59:17               | 106:1 116:1       | <b>attempt</b>      | 83:8 86:13          | <b>bears</b>     |
| <b>appropriate</b>  | 116:15            | 94:19 128:3         | 88:6 95:17          | 38:6 44:7        |
| 93:3 154:14         | <b>articles</b>   | <b>attend</b>       | 110:8,19,25         | 80:16            |
| <b>approxima...</b> | 93:1 101:10       | 9:24                | 112:20              | <b>began</b>     |
| 45:18 48:9          | 114:5             | <b>attending</b>    | 134:25              | 86:22 88:9       |
| 48:11 61:5          | 115:16            | 151:5               | 148:13              | 89:4             |
| 61:8,19             | 116:2             | <b>attention</b>    | <b>background</b>   | <b>behalf</b>    |
| 62:23 65:24         | <b>articulate</b> | 110:25 131:8        | 80:15               | 2:2 22:24        |
| 76:2 128:18         | 104:1             | <b>ATTORNEY</b>     | <b>back-end</b>     | <b>being</b>     |
| 138:3               | <b>asked</b>      | 2:3                 | 22:21 26:17         | 9:19 53:8        |
| 147:23              | 7:8,10 54:4       | <b>attorneys</b>    | <b>Baltimore</b>    | 57:9 63:17       |
| <b>approxima...</b> | 58:1 82:7         | 151:5               | 48:5                | 85:8 96:3        |
| 92:23               | 83:19 107:8       | <b>authentic...</b> | <b>bamboo</b>       | 99:1 102:21      |
| <b>April</b>        | 107:22            | 53:16               | 103:5               | 106:3,23         |
| 6:22 96:16          | <b>asking</b>     | <b>authorize</b>    | <b>bar</b>          | 113:15,21        |
| <b>arborists</b>    | 46:20 98:24       | 154:15              | 27:24 56:15         | 116:21           |
| 87:25               | <b>asks</b>       | <b>automated</b>    | 56:16,20,21         | 141:17           |
| <b>architects</b>   | 57:22 60:2        | 138:13              | <b>bars</b>         | 143:3 153:5      |
| 87:14               | <b>asset</b>      |                     | 20:18               | <b>believe</b>   |



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|---------------------|---------------------|------------------|---------------------|---------------------|
| 32:22 33:15         | <b>bore</b>         | <b>break</b>     | 105:23              | <b>candy</b>        |
| 36:1,22             | 86:12               | 33:1,21 71:9     | 107:13              | 20:18               |
| 38:10,10,11         | <b>both</b>         | <b>bring</b>     | 108:9 113:4         | <b>cap</b>          |
| 74:12 79:21         | 16:10,24            | 21:15            | 129:20              | 65:20,22            |
| 85:23 86:21         | 18:9 21:23          | <b>bringing</b>  | 130:7               | 103:12              |
| 93:21 95:4          | 22:3,6              | 51:1             | <b>businesses</b>   | <b>capabilities</b> |
| 140:4,6             | 23:19 40:8          | <b>broad</b>     | 62:17               | 30:24               |
| 146:19              | 46:18 55:16         | 42:13,15         | <b>BusinessWeek</b> | <b>capable</b>      |
| <b>beneath</b>      | 56:12 80:5          | <b>broadly</b>   | 8:3 116:15          | 141:6               |
| 93:1,2              | 84:23 90:1          | 111:20           | <b>busy</b>         | <b>capacity</b>     |
| <b>benefits</b>     | 105:18,20           | 138:18           | 46:14               | 34:13,15,16         |
| 29:13               | 113:20              | <b>brochure</b>  | <b>buy</b>          | 34:21,24            |
| <b>best</b>         | 139:21              | 5:6 29:11,13     | 129:22              | <b>caption</b>      |
| 93:16 99:21         | 148:21              | 29:19            | <b>buying</b>       | 150:8 152:1         |
| <b>better</b>       | 154:15              | <b>brown</b>     | 23:21               | 154:5               |
| 43:8 93:24          | <b>bottom</b>       | 7:6,19 13:18     | <b>BY-MR.SCH...</b> | <b>captioned</b>    |
| <b>between</b>      | 84:11               | 25:4 39:25       | 10:3                | 154:11              |
| 12:2 30:16          | <b>bound</b>        | 40:1 47:18       |                     | <b>capture</b>      |
| 38:13 39:21         | 3:9 8:18            | 47:19,21         |                     | 8:12 54:12          |
| 59:2 152:8          | 66:10 76:22         | 51:7 61:13       | <b>C</b>            | 58:3 146:8          |
| <b>bidirecti...</b> | 117:10              | 63:6 65:10       | <b>C</b>            | <b>captures</b>     |
| 130:18              | 136:6               | 72:12 73:17      | 30:22 146:22        | 84:14               |
| <b>big</b>          | 143:11              | 85:2 100:7       | 150:1,1             | <b>car</b>          |
| 50:20 72:12         | <b>box</b>          | 106:23           | <b>calculator</b>   | 65:16 82:11         |
| 73:17               | 41:9,10 49:5        | <b>build</b>     | 147:9               | 82:13,16            |
| 106:24              | <b>brakes</b>       | 87:12,14         | <b>calendar</b>     | 92:15               |
| <b>billboards</b>   | 92:15               | <b>building</b>  | 6:8 84:8,17         | 100:11,11           |
| 83:19               | <b>brand</b>        | 28:5,5,6         | 84:19,23            | 135:3               |
| <b>billing</b>      | 96:2 97:2,4         | 40:18 50:21      | <b>California</b>   | <b>carbon</b>       |
| 19:11               | 97:8 116:20         | 87:12,15,19      | 110:22              | 7:10 63:16          |
| <b>billion</b>      | 116:22              | 87:22 88:3       | <b>call</b>         | 107:22              |
| 66:3 93:24          | 132:13              | 88:5             | 20:13 105:9         | 108:1               |
| 97:3,4,9,10         | <b>branded</b>      | <b>buildings</b> | 111:8               | <b>card</b>         |
| <b>bit</b>          | 62:11,13            | 13:24 27:11      | <b>called</b>       | 58:3                |
| 26:11 39:5          | 63:4,5 64:8         | 55:16            | 16:19 38:10         | <b>careful</b>      |
| 63:23               | 64:10 103:3         | <b>built</b>     | 38:11 84:10         | 20:24 91:23         |
| 114:21              | 139:16,20           | 87:3,17          | 140:13              | <b>cargo</b>        |
| <b>black</b>        | <b>BrandFinance</b> | <b>bunch</b>     | 146:7               | 34:4,21 35:6        |
| 106:19              | 6:20 96:15          | 99:16            | <b>came</b>         | 39:17,20,22         |
| <b>Blackberry</b>   | <b>BrandFina...</b> | <b>business</b>  | 115:20              | 40:7                |
| 28:21,24            | 6:18                | 19:8 20:14       | <b>campaign</b>     | <b>carried</b>      |
| <b>blog</b>         | <b>BrandFina...</b> | 22:17 38:16      | 97:17,19            | 49:4                |
| 101:14              | 95:13               | 39:8,9,16        | 104:4               | <b>carriers</b>     |
| <b>Board</b>        | <b>branding</b>     | 39:17 40:4       | <b>campus</b>       | 56:6                |
| 1:2 9:5             | 107:25              | 44:6 52:4        | 22:3 27:9,10        | <b>carries</b>      |
| <b>Bob</b>          | <b>brands</b>       | 63:9,23          | 28:11               | 34:11,12            |
| 6:25 98:9           | 6:19,22             | 76:19 86:25      | <b>campuses</b>     | 102:16              |
| 114:13              | 95:14 96:19         | 89:20 104:2      | 22:4                |                     |



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|-------------------|--------------------|---------------------|---------------------|---------------------|
| 103:20            | <b>centralized</b> | 155:14,15           | 58:12               | 51:7 63:6           |
| <b>carry</b>      | 43:7               | 155:17,18           | <b>clarify</b>      | 106:19,23           |
| 34:21 133:23      | <b>centric</b>     | 155:20              | 58:5                | 106:24              |
| <b>cars</b>       | 42:20              | <b>changes</b>      | <b>clean</b>        | <b>colors</b>       |
| 13:23 40:2        | <b>certain</b>     | 47:4 153:22         | 112:17              | 62:12               |
| 62:23,24          | 32:16 43:15        | 154:12              | <b>cleared</b>      | <b>color-con...</b> |
| 139:25            | 54:4 64:11         | <b>changing</b>     | 87:18               | 106:22              |
| <b>cart</b>       | 74:16 76:16        | 111:22,23,25        | <b>climate</b>      | <b>column</b>       |
| 80:25 81:6        | 81:11              | <b>character</b>    | 115:23              | 93:19               |
| 81:15             | 138:10             | 140:23 141:2        | <b>climbing</b>     | <b>combined</b>     |
| <b>case</b>       | 141:3              | <b>charge</b>       | 97:2                | 27:20               |
| 131:19            | <b>certainly</b>   | 146:24              | <b>clipboard</b>    | <b>come</b>         |
| 150:15,18         | 24:21,25           | <b>charitable</b>   | 56:7,9              | 18:7 50:14          |
| 154:5             | 37:13 42:6         | 72:1 90:6,7         | <b>clock</b>        | 55:1 95:5           |
| <b>cases</b>      | 46:11 81:14        | <b>charity</b>      | 20:7                | <b>comes</b>        |
| 50:19 148:21      | 141:9              | 71:22               | <b>close</b>        | 41:5 75:6           |
| <b>casually</b>   | <b>certainty</b>   | <b>chart</b>        | 87:21 92:23         | 83:3                |
| 46:10             | 32:22 33:17        | 93:11               | <b>closely</b>      | <b>command</b>      |
| <b>catalog</b>    | 33:19              | <b>chartered</b>    | 148:20              | 142:14              |
| 8:11,13,14        | <b>Certificate</b> | 45:11               | <b>closer</b>       | <b>commercials</b>  |
| 133:17,21         | 153:1 154:14       | <b>charters</b>     | 142:18              | 86:4                |
| 135:6 146:9       | <b>Certified</b>   | 45:8                | <b>cochair</b>      | <b>Commission</b>   |
| <b>catches</b>    | 150:24 151:9       | <b>check</b>        | 98:12               | 153:20              |
| 86:20             | <b>certify</b>     | 33:21 153:23        | <b>code</b>         | <b>commitment</b>   |
| <b>category</b>   | 150:6,14           | <b>children</b>     | 27:24 56:15         | 63:15 102:17        |
| 20:25             | <b>cetera</b>      | 134:15              | 56:16,20,21         | 104:1,17,18         |
| <b>CCR-B-2024</b> | 48:6 90:4          | <b>Christmas</b>    | 140:25              | <b>committee</b>    |
| 1:24 150:23       | 99:3 129:22        | 59:3                | <b>coexist</b>      | 98:13 104:23        |
| 151:23            | <b>chain</b>       | <b>Christopher</b>  | 128:25              | <b>common</b>       |
| <b>CD</b>         | 40:11,13,20        | 1:14 3:2 9:1        | <b>collect</b>      | 140:18              |
| 5:6 6:9           | 42:2,8             | 9:8,15 10:6         | 27:24 28:1          | <b>communicate</b>  |
| 29:16,17,18       | 63:24 90:13        | 152:2 153:5         | 30:20,20            | 13:1,2              |
| 30:3,7 83:3       | 98:11 105:1        | 153:12              | 75:24               | <b>communica...</b> |
| 85:22             | 105:12             | 154:7 155:1         | 141:11              | 86:23               |
| <b>cell</b>       | 135:4              | 155:25              | 142:9               | <b>communica...</b> |
| 111:6             | 142:14             | <b>circle</b>       | <b>Collection</b>   | 98:21               |
| <b>Centennial</b> | <b>chains</b>      | 79:13               | 8:10,12             | <b>communica...</b> |
| 91:15             | 98:24 135:2        | <b>circumsta...</b> | 146:7 147:6         | 103:25              |
| <b>center</b>     | <b>chairman</b>    | 135:11              | <b>collective</b>   | 104:12              |
| 83:8 87:15        | 6:23 98:1          | <b>cited</b>        | 89:10 100:2         | 132:24              |
| 87:17             | <b>change</b>      | 26:4                | 105:21              | 133:2               |
| 135:15            | 84:22 89:22        | <b>City</b>         | <b>collectively</b> | <b>communities</b>  |
| <b>centers</b>    | 106:24             | 110:21              | 41:15               | 88:13,14            |
| 55:12,13          | 154:17,19          | <b>claims</b>       | <b>collectors</b>   | <b>community</b>    |
| 102:7,8           | 154:20,22          | 131:7               | 139:13              | 90:6                |
| <b>central</b>    | 154:23,25          | <b>clarifica...</b> | <b>color</b>        | <b>companies</b>    |
| 39:10             | 155:3,5,6,8        | 30:22 57:23         | 13:18 25:4          | 38:15 40:21         |
|                   | 155:9,11,12        |                     |                     |                     |



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|---------------------|---------------------|---------------------|---------------------|---------------------|
| 64:16               | 109:13 111:3        | 57:19               | 151:14              | <b>copy</b>         |
| <b>company</b>      | 115:25              | <b>confusion</b>    | <b>contain</b>      | 18:23 27:1          |
| 9:18 10:10          | <b>computer</b>     | 129:14,15           | 29:25 30:1          | 31:6,24             |
| 11:18 14:6          | 13:8 18:3,9         | <b>conjunction</b>  | 46:19 55:16         | 32:15 33:10         |
| 37:8 39:6           | 18:11,12            | 36:12               | 76:18               | 34:3 35:16          |
| 45:7 61:20          | 19:21,23            | <b>Connecticut</b>  | 132:19              | 36:8,9 37:3         |
| 72:5 73:4           | 20:1,1,3,4          | 87:2                | 134:15,20           | 38:1 131:18         |
| 73:12 74:13         | 21:14,14            | <b>connection</b>   | <b>contained</b>    | <b>core</b>         |
| 74:16,20            | 29:24 30:10         | 34:8 148:14         | 30:7 85:22          | 41:14               |
| 75:8,17             | 53:20               | <b>conscient...</b> | 139:18              | <b>corners</b>      |
| 82:17 86:9          | 141:11              | 84:16,25            | <b>contains</b>     | 135:16              |
| 90:22 92:7          | <b>computerized</b> | 85:7,8 87:5         | 16:20 89:10         | <b>corporate</b>    |
| 93:9,23             | 15:1                | 102:3 106:5         | 89:23 108:2         | 5:22 6:12,14        |
| 94:7,12,15          | <b>computers</b>    | 113:21              | 147:7               | 6:16 27:9           |
| 94:17               | 41:24 140:11        | 129:9               | <b>context</b>      | 27:10 64:16         |
| 106:13              | <b>conceivable</b>  | <b>conservation</b> | 85:5 102:1          | 89:9 91:5           |
| 111:15              | 22:8                | 113:3               | 102:19              | 91:14 97:25         |
| 116:5,19            | <b>concept</b>      | <b>conserve</b>     | 110:3               | 98:10               |
| 129:11              | 42:21 140:13        | 113:13              | 128:21              | 104:22              |
| 130:4,6             | <b>concerned</b>    | <b>consider</b>     | 129:23              | 108:17              |
| 132:12              | 27:14 88:12         | 49:21 106:6         | 148:19              | <b>corporation</b>  |
| 133:7 134:4         | <b>concerns</b>     | 133:5               | 149:3               | 12:5                |
| 139:13,13           | 129:11              | 138:24              | <b>contexts</b>     | <b>corporations</b> |
| 147:15              | <b>concerts</b>     | 139:1               | 148:18              | 87:11               |
| <b>comparati...</b> | 74:9                | <b>considered</b>   | <b>continue</b>     | <b>correct</b>      |
| 39:15               | <b>concluded</b>    | 132:13              | 98:22               | 11:5,11 13:5        |
| <b>Compass</b>      | 149:7               | 138:23              | <b>continued</b>    | 13:6 18:14          |
| 98:19,20            | <b>conditions</b>   | <b>consistency</b>  | 5:1 6:1 7:1         | 23:25 24:1          |
| <b>compatible</b>   | 71:18               | 133:8               | 8:1                 | 24:6,11             |
| 20:12 34:18         | <b>conference</b>   | <b>consistent</b>   | <b>contract</b>     | 35:25 44:9          |
| <b>complete</b>     | 73:25               | 102:2               | 151:18              | 44:10 45:15         |
| 42:17 139:16        | <b>confident</b>    | <b>consists</b>     | <b>contrasted</b>   | 45:16 47:1          |
| 150:12              | 33:19               | 81:20               | 39:16 58:23         | 47:15,16            |
| <b>complex</b>      | <b>confidential</b> | <b>constantly</b>   | <b>control</b>      | 48:21 53:2          |
| 19:7 22:16          | 3:9 8:18            | 112:10              | 30:3                | 54:7 64:6           |
| <b>compliance</b>   | 66:10 76:18         | <b>constitutes</b>  | <b>convenience</b>  | 73:18 74:10         |
| 90:3                | 76:22 117:6         | 153:8               | 58:14               | 74:14,18,19         |
| <b>complicated</b>  | 117:10              | <b>construction</b> | <b>conversation</b> | 80:18 93:15         |
| 57:4                | 135:25              | 88:3                | 7:16 9:22           | 93:16,25            |
| <b>component</b>    | 136:6 143:4         | <b>consumer</b>     | <b>conversion</b>   | 94:1 99:20          |
| 93:8                | 143:8,11            | 16:11 21:20         | 130:19              | 100:19,20           |
| <b>components</b>   | <b>confident...</b> | 54:18 141:8         | <b>converter</b>    | 115:8 149:4         |
| 139:7               | 71:5                | <b>consumption</b>  | 130:18              | 150:12              |
| <b>Composite</b>    | <b>confirm</b>      | 112:7 113:23        | <b>cooperation</b>  | <b>cotton</b>       |
| 7:5                 | 46:21 82:16         | <b>contact</b>      | 24:4 116:18         | 103:6               |
| <b>comprehen...</b> | 114:4               | 59:12               | <b>copies</b>       | <b>couldn't</b>     |
| 73:11               | 115:15              | <b>contacted</b>    | 8:17 91:25          | 32:22 88:20         |
| <b>compressed</b>   | <b>confirming</b>   |                     |                     | <b>Council</b>      |



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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9:6<br><b>counsel</b><br>2:1 9:22<br>150:15,16<br>152:8<br><b>country</b><br>59:25 82:21<br><b>COUNTY</b><br>150:4<br><b>COUNTY/CITY</b><br>153:3<br><b>couple</b><br>38:14,15<br>89:12<br>104:24<br>105:6<br>108:24<br>133:20<br>135:2<br>142:17<br><b>courier</b><br>38:16<br><b>course</b><br>93:14 131:19<br><b>court</b><br>9:5 150:24<br>151:1,9,12<br>151:15<br><b>cover</b><br>3:9 91:17<br>140:1<br><b>covered</b><br>5:21 65:25<br><b>crank</b><br>146:24<br><b>create</b><br>111:3<br><b>created</b><br>107:24 140:9<br><b>credit</b><br>58:3<br><b>crew</b><br>34:11 46:16<br><b>crown</b><br>72:11,13<br>73:18<br><b>current</b> | 13:25 129:4<br>135:4<br><b>currently</b><br>82:14<br><b>cursive</b><br>58:8<br><b>custody</b><br>56:22 57:20<br><b>customer</b><br>16:17 18:5<br>21:12,23<br>22:1,8,21<br>22:24 23:22<br>24:7,12,16<br>24:23 27:15<br>41:23 42:20<br>43:5,6,8,12<br>57:21,22,24<br><b>customers</b><br>13:1,2 14:19<br>14:20,22<br>16:24 18:2<br>19:5,10,19<br>20:24 21:4<br>21:6,24<br>22:18 26:12<br>27:6 35:1<br>40:14,16,25<br>41:6,17<br>42:5,22<br>61:20,21,24<br>62:3 83:23<br>84:19 90:2<br>98:22 105:1<br>129:18<br><b>customer's</b><br>21:19<br><b>cut</b><br>87:24<br><b>cycle</b><br>16:1,25<br><br><b>D</b><br><br><b>D</b><br>146:22<br><b>daily</b><br>17:3 47:25<br>55:23 61:9 | 61:15<br><b>DailyFinance</b><br>101:19<br><b>Dallas</b><br>45:23 48:4<br><b>Daron</b><br>8:14 133:18<br>135:5<br><b>data</b><br>54:12,13<br>55:12,13<br>56:21,24<br><b>database</b><br>15:17,22<br>53:14,15<br><b>date</b><br>14:2 47:9<br>109:16<br>152:3 153:7<br>154:8<br>155:24<br><b>dated</b><br>108:19<br>151:20<br><b>dates</b><br>86:13<br><b>dating</b><br>110:19<br><b>Davis</b><br>98:1<br><b>day</b><br>5:21 16:22<br>31:8,10,11<br>31:15,25<br>32:2,3,6,7<br>35:5,17,21<br>36:7,12,13<br>58:15,21,21<br>58:25 59:15<br>59:16,18,18<br>60:16 61:17<br>61:20 65:18<br>150:21<br>151:20<br>153:4,15<br><b>DC</b><br>129:1,3<br><b>dealers</b> | 133:23<br><b>decade</b><br>26:11 64:15<br><b>decision</b><br>6:8 7:8<br>84:11,13<br>86:1,3<br>103:1,17,21<br>104:3,8<br>105:14,18<br>105:20<br>107:7<br>111:12,13<br><b>decisions</b><br>15:9<br><b>deck</b><br>83:7<br><b>defective</b><br>129:20<br><b>definitions</b><br>128:24<br><b>deforest</b><br>87:10,11<br><b>degree</b><br>32:21 33:17<br><b>deliver</b><br>27:23 31:13<br>32:6 56:6<br>57:17 94:9<br>95:2<br><b>delivered</b><br>27:12,25<br>28:7,9<br>39:24 40:4<br>40:6,8,10<br>57:6,6,10<br>57:13 61:9<br>61:11,12<br><b>delivering</b><br>41:10 62:2<br><b>delivers</b><br>130:5<br><b>delivery</b><br>15:7,11<br>16:19 38:12<br>38:25 39:11<br>39:13 40:1<br>40:3 52:25 | 54:17 56:10<br>57:21 62:22<br>82:18<br>141:15<br><b>demonstra...</b><br>111:6<br><b>depending</b><br>30:23 63:8<br><b>deployment</b><br>115:24<br><b>Deponent</b><br>152:9 154:7<br><b>deposition</b><br>1:13 4:3 9:1<br>9:13,19,25<br>11:17,21<br>55:7 75:22<br>76:17 149:7<br>151:12,16<br>151:18<br>152:2,5,10<br>153:6,9<br>154:1,3,8<br>154:10<br>155:1<br><b>Des</b><br>102:6,7<br><b>describe</b><br>19:3,6 26:19<br>34:23 39:8<br>42:12,19<br>85:8 104:24<br>132:15,17<br><b>described</b><br>17:18 35:23<br>36:14<br>106:16<br>108:22<br>114:11<br><b>describes</b><br>29:20<br><b>describing</b><br>131:6<br><b>description</b><br>4:2 5:2 6:2<br>7:2 8:2<br>29:15 102:3<br><b>descripti...</b> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>98:17<br/><b>design</b><br/>25:12 32:16<br/>38:4<br/><b>designate</b><br/>71:4 117:5<br/>143:6<br/><b>designated</b><br/>76:17 135:25<br/><b>designation</b><br/>25:3 37:9<br/>38:6,23<br/>51:4 62:14<br/>128:5<br/>129:12,25<br/>130:20<br/>131:10<br/>139:21<br/><b>desk</b><br/>27:23,25<br/>28:10<br/><b>desktop</b><br/>30:17 140:16<br/>140:18<br/><b>desktops</b><br/>20:6<br/><b>destination</b><br/>16:25 17:2<br/><b>destroyed</b><br/>87:24<br/><b>detail</b><br/>148:2<br/><b>details</b><br/>86:13 136:2<br/><b>determine</b><br/>24:4<br/><b>develop</b><br/>110:23<br/>132:24<br/><b>developed</b><br/>24:14 103:25<br/>140:23<br/><b>developing</b><br/>24:13<br/><b>device</b><br/>16:18,20,20<br/>16:23 18:2<br/>54:9,14</p> | <p>79:12 94:14<br/><b>de-icing</b><br/>112:1<br/><b>DIAD</b><br/>6:3 16:19<br/>17:17 27:8<br/>54:9 56:4<br/>57:11,14<br/>58:1,10<br/>61:13 79:10<br/>79:11,11,12<br/>79:15,16,19<br/>80:5,8<br/><b>DIADs</b><br/>55:20,21<br/>56:2<br/><b>diagnose</b><br/>41:1<br/><b>diagram</b><br/>130:24 131:2<br/><b>didn't</b><br/>87:10 142:11<br/><b>difference</b><br/>39:21 102:7<br/><b>different</b><br/>43:5 57:10<br/>59:8<br/><b>differently</b><br/>42:19<br/><b>difficult</b><br/>72:15<br/><b>Digital</b><br/>28:17,18<br/><b>digitally</b><br/>58:4<br/><b>dignitaries</b><br/>74:2<br/><b>direct</b><br/>55:6 83:23<br/>83:24 129:4<br/>131:8<br/><b>directed</b><br/>44:5 128:3<br/><b>directing</b><br/>97:18<br/><b>direction</b><br/>73:2,8 75:23</p> | <p>85:16 142:9<br/>150:11<br/><b>directly</b><br/>23:10 24:10<br/><b>disciplined</b><br/>86:22<br/><b>disclosure</b><br/>9:3 151:1,4<br/><b>discussed</b><br/>63:22<br/><b>Discussion</b><br/>76:13 84:2<br/>94:5 96:9<br/>97:14 148:9<br/><b>disk</b><br/>18:7<br/><b>dispatch</b><br/>111:23<br/><b>display</b><br/>13:13,16,17<br/><b>disqualified</b><br/>151:6<br/><b>disrupt</b><br/>88:5<br/><b>distance</b><br/>111:25<br/><b>distinction</b><br/>138:8<br/><b>distinguish</b><br/>45:24<br/><b>distingui...</b><br/>25:6<br/><b>distribute</b><br/>43:9 50:14<br/>84:19 139:7<br/><b>distributed</b><br/>49:24 61:23<br/>132:23,25<br/>133:1<br/><b>distribution</b><br/>15:16 26:18<br/>34:19 49:23<br/>50:1<br/><b>distributors</b><br/>133:22<br/><b>diversity</b><br/>89:25</p> | <p><b>division</b><br/>10:10 49:14<br/>103:24<br/><b>document</b><br/>76:5 89:7<br/>97:23 98:6<br/>99:12,13<br/>100:7<br/>104:10,11<br/>107:6,7,13<br/>107:20,21<br/>107:24<br/>108:8,15<br/>113:10<br/>116:14<br/>130:13<br/>131:22<br/>132:4,18,18<br/>132:19<br/><b>documents</b><br/>26:6 61:17<br/><b>doesn't</b><br/>58:7 60:4<br/>112:17<br/><b>Dogfight</b><br/>101:22<br/><b>doing</b><br/>22:21 23:3<br/>46:10 86:18<br/>104:25<br/>110:5,6<br/>141:7<br/><b>dollar</b><br/>142:4<br/><b>dollars</b><br/>93:23 113:22<br/>142:6<br/><b>dolly</b><br/>40:17<br/><b>domestic</b><br/>5:23 48:9<br/>112:3<br/><b>double</b><br/>72:11 73:18<br/>97:4 113:19<br/><b>down</b><br/>48:1 50:1<br/>55:19 57:2</p> | <p>58:13 61:18<br/>62:7 73:16<br/>73:23 87:24<br/>128:19<br/>140:24<br/>150:7<br/><b>downtown</b><br/>74:6,7<br/><b>draft</b><br/>47:10<br/><b>draw</b><br/>138:8<br/><b>draws</b><br/>87:7<br/><b>dress</b><br/>46:4 62:12<br/><b>dressed</b><br/>46:9 81:22<br/><b>drive</b><br/>19:25<br/><b>driven</b><br/>81:10,12<br/><b>driver</b><br/>11:23,24<br/>12:2,5,8,8<br/>12:12 54:17<br/>56:10,11,14<br/>56:14,20<br/>57:10,18<br/>58:4,6<br/>65:16 82:4<br/><b>drivers</b><br/>16:22 39:25<br/>56:12 61:13<br/>65:25<br/>111:23<br/><b>driver's</b><br/>65:20<br/><b>driving</b><br/>40:1 49:23<br/><b>drop</b><br/>32:4 50:12<br/>59:11<br/><b>dropping</b><br/>41:9<br/><b>duly</b><br/>9:9 150:8<br/>153:5</p> |
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|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>during</b><br>58:20 59:18<br>60:15 88:2                        | 112:20<br>114:15,16                                                                                              | <b>employed</b><br>10:7,9,11                                                              | <b>entendre</b><br>113:19                                                                                    | 141:1                                                                                                                                                   |
| <b>DVD</b><br>29:17                                               | <b>efox@ksla...</b><br>2:7                                                                                       | <b>employee</b><br>12:13 75:7<br>90:8 107:23<br>129:19                                    | <b>enter</b><br>23:8 28:6<br>30:19 56:21<br>60:1,6<br>71:15                                                  | <b>environme...</b><br>7:4,21 85:9<br>87:5 88:12<br>89:15 90:10<br>92:4 98:20<br>99:15 100:9<br>102:21<br>103:7 104:1<br>104:9,17<br>107:1,10<br>114:15 |
| <b>D-a-r-o-n</b><br>133:18                                        | 73:24 138:6<br>138:6                                                                                             | <b>employees</b><br>11:10 45:17<br>45:20,25<br>46:13 55:18<br>61:4 90:1,2<br>146:12       | <b>entered</b><br>73:4,13<br>154:12                                                                          | <b>environme...</b><br>63:17 84:16<br>84:25 85:6<br>99:1 102:3<br>102:17<br>103:4 106:5<br>110:18<br>111:16<br>113:21<br>114:8 129:9                    |
| <b>E</b>                                                          | <b>either</b><br>19:12,15<br>25:2 29:16<br>45:12 53:14<br>53:20,22<br>71:23                                      | <b>enable</b><br>53:8                                                                     | <b>entering</b><br>24:12 91:21                                                                               | <b>EPA</b><br>116:18                                                                                                                                    |
| <b>E</b>                                                          | <b>electric</b><br>81:12 82:9<br>82:10,18<br>86:17 88:22<br>91:18 92:11<br>109:13<br>110:20<br>111:5,6<br>146:20 | <b>encourage</b><br>89:25                                                                 | <b>enterprise</b><br>5:24 6:24<br>7:6 75:6<br>89:12 97:3<br>97:9 98:8<br>100:16<br>101:1<br>102:12<br>103:17 | <b>EPA's</b><br>115:23                                                                                                                                  |
| 146:22,22<br>150:1,1                                              | <b>electronic</b><br>16:6 29:19<br>56:9 58:2<br>132:18<br>134:13<br>146:21                                       | <b>end</b><br>16:11,24,25<br>21:2 43:10<br>47:20 49:22<br>51:16,17<br>57:8 101:7<br>113:3 | <b>entire</b><br>87:11 111:9<br>154:10                                                                       | <b>equipment</b><br>16:2,7                                                                                                                              |
| <b>each</b><br>15:8 42:18<br>46:21 81:25<br>89:16 90:20<br>139:25 | <b>electronics</b><br>134:3 139:7                                                                                | <b>ends</b><br>16:10                                                                      | <b>entirety</b><br>148:25                                                                                    | <b>Errata</b><br>154:1,14                                                                                                                               |
| <b>earlier</b><br>35:23 36:14<br>47:12 56:19<br>82:6 88:24        | <b>elements</b><br>32:17                                                                                         | <b>energy</b><br>111:1 112:16<br>113:22<br>129:7                                          | <b>entitled</b><br>91:6,16<br>99:14 100:6<br>100:24<br>101:4 102:6<br>103:17<br>107:7,21<br>108:19<br>109:24 | <b>Esquire</b><br>2:3 151:12<br>154:3                                                                                                                   |
| <b>early</b><br>37:15 88:6                                        | <b>ELIZABETH</b><br>2:3                                                                                          | <b>engaged</b><br>130:6                                                                   | <b>entry</b><br>13:10,13                                                                                     | <b>essentially</b><br>15:14 24:18<br>39:18 56:22<br>100:13                                                                                              |
| <b>easier</b><br>40:25                                            | <b>Elm</b><br>57:15                                                                                              | <b>engine</b><br>110:24                                                                   | <b>enumeration</b><br>141:25                                                                                 | <b>eStore</b><br>103:1                                                                                                                                  |
| <b>Eco</b><br>101:22                                              | <b>elsewhere</b><br>62:16 140:2                                                                                  | <b>engineering</b><br>98:10 108:18                                                        | <b>envelope</b><br>49:3 85:19                                                                                | <b>et</b><br>48:5 90:4<br>99:3 129:22                                                                                                                   |
| <b>economic</b><br>89:14,19<br>93:8                               | <b>emission</b><br>91:18                                                                                         | <b>engineers</b><br>87:14                                                                 | <b>envelopes</b><br>65:19                                                                                    | <b>ethics</b><br>90:3                                                                                                                                   |
| <b>economically</b><br>129:8                                      | <b>emissions</b><br>90:14 99:2                                                                                   | <b>enjoyed</b><br>93:24 141:24                                                            | <b>environment</b><br>81:13 87:6<br>90:5,12,17<br>99:18 102:5<br>103:22                                      | <b>ethylene</b><br>112:1                                                                                                                                |
| <b>economy</b><br>89:19,22                                        | <b>emphasizes</b><br>6:25 98:16                                                                                  | <b>enough</b><br>49:2,4,6<br>72:14 116:2                                                  |                                                                                                              | <b>events</b><br>71:21,24,25                                                                                                                            |
| <b>Edition</b><br>91:15                                           | <b>emphasizing</b><br>98:11                                                                                      | <b>ensued</b><br>76:13 84:2<br>94:5 96:9<br>97:14 148:9                                   |                                                                                                              |                                                                                                                                                         |
| <b>efficient</b><br>42:25 43:11<br>57:7 129:10                    | <b>employ</b><br>30:9 150:16                                                                                     |                                                                                           |                                                                                                              |                                                                                                                                                         |
| <b>effort</b><br>89:4 110:18<br>140:5                             |                                                                                                                  |                                                                                           |                                                                                                              |                                                                                                                                                         |
| <b>efforts</b><br>84:16 86:8<br>95:4,4<br>106:15<br>107:1         |                                                                                                                  |                                                                                           |                                                                                                              |                                                                                                                                                         |



|                    |                   |                   |                   |                   |
|--------------------|-------------------|-------------------|-------------------|-------------------|
| 72:2,6,13          | <b>excerpted</b>  | 104:8             | <b>Exhibit-21</b> | 98:2              |
| 74:9 81:4          | 66:10 76:22       | 105:22            | 48:12             | <b>Exhibit-44</b> |
| <b>eventual</b>    | 117:10            | 106:12            | <b>Exhibit-22</b> | 99:4              |
| 134:1              | 136:6             | 107:5,19          | 52:13             | <b>Exhibit-45</b> |
| <b>evidence</b>    | 143:11            | 108:14            | <b>Exhibit-23</b> | 99:24             |
| 15:14 131:17       | <b>EXCERPTS</b>   | 109:6,10,19       | 54:21             | <b>Exhibit-46</b> |
| 150:13             | 3:9               | 112:24            | <b>Exhibit-24</b> | 107:2             |
| <b>exact</b>       | <b>excess</b>     | 113:9 114:2       | 60:17             | <b>Exhibit-47</b> |
| 29:2 88:21         | 34:13,24          | 115:1,14          | <b>Exhibit-25</b> | 107:16            |
| <b>exactly</b>     | <b>executive</b>  | 116:12            | 64:22             | <b>Exhibit-48</b> |
| 14:2 49:9          | 134:7             | 117:2,5           | <b>Exhibit-27</b> | 108:11            |
| 105:4              | <b>executives</b> | 128:10,11         | 72:22             | <b>Exhibit-49</b> |
| <b>Examination</b> | 74:1              | 130:2,12          | <b>Exhibit-28</b> | 109:7             |
| 3:1,3 10:2         | <b>exercise</b>   | 133:14            | 74:24             | <b>Exhibit-5</b>  |
| <b>examined</b>    | 60:15             | 135:13            | <b>Exhibit-29</b> | 18:19             |
| 9:9                | <b>exhibit</b>    | 142:21            | 79:2              | <b>Exhibit-50</b> |
| <b>example</b>     | 4:2 5:2 6:2       | 143:1,3,7         | <b>Exhibit-3</b>  | 112:21            |
| 15:19 16:9         | 7:2,5 8:2         | 146:6             | 14:9              | <b>Exhibit-51</b> |
| 17:16 19:24        | 11:15 12:18       | <b>Exhibits</b>   | <b>Exhibit-30</b> | 113:6             |
| 20:17 21:11        | 14:12 17:7        | 4:1 5:1 6:1       | 79:22             | <b>Exhibit-52</b> |
| 21:14 22:1         | 18:22 25:10       | 7:1 8:1,16        | <b>Exhibit-31</b> | 113:24            |
| 22:7,11,20         | 25:21 26:24       | 8:17,18           | 80:19             | <b>Exhibit-53</b> |
| 24:5 26:15         | 29:5,9 31:5       | <b>Exhibit-1</b>  | <b>Exhibit-32</b> | 114:23            |
| 27:21 28:8         | 31:22 32:13       | 11:12             | 81:16             | <b>Exhibit-54</b> |
| 28:20 30:9         | 33:7 35:14        | <b>Exhibit-10</b> | <b>Exhibit-33</b> | 115:11            |
| 35:17 39:6         | 37:2,21,23        | 31:19             | 82:22             | <b>Exhibit-55</b> |
| 39:21 41:22        | 43:20,25          | <b>Exhibit-11</b> | <b>Exhibit-34</b> | 116:9             |
| 45:22 50:22        | 44:19,25          | 32:10             | 84:3              | <b>Exhibit-56</b> |
| 51:6 52:24         | 45:2 46:18        | <b>Exhibit-12</b> | <b>Exhibit-35</b> | 116:24            |
| 54:5 58:5          | 46:19 48:15       | 33:23             | 85:10             | <b>Exhibit-57</b> |
| 60:10 61:3         | 48:16 52:12       | <b>Exhibit-13</b> | <b>Exhibit-36</b> | 128:14            |
| 62:14 65:9         | 52:16 54:24       | 33:3              | <b>Exhibit-37</b> | <b>Exhibit-58</b> |
| 71:24 75:11        | 60:20 63:20       | <b>Exhibit-14</b> | 86:6              | 130:8             |
| 83:12,22           | 65:1 66:7         | 35:11             | <b>Exhibit-38</b> | <b>Exhibit-59</b> |
| 85:17 87:1         | 71:3,10           | <b>Exhibit-15</b> | 89:1              | 147:1             |
| 92:7 93:18         | 72:20 73:1        | 36:2              | <b>Exhibit-39</b> | <b>Exhibit-6</b>  |
| 93:20 94:12        | 75:2 79:4         | <b>Exhibit-16</b> | 90:25             | 25:7              |
| 94:14              | 79:14,25          | 36:23             | <b>Exhibit-40</b> | <b>Exhibit-60</b> |
| 103:12             | 80:6,11,22        | <b>Exhibit-17</b> | 91:9              | 146:2             |
| 104:21             | 81:19 82:25       | 37:18             | <b>Exhibit-4</b>  | <b>Exhibit-61</b> |
| 109:12             | 84:6 85:13        | <b>Exhibit-18</b> | 17:4              | 133:10            |
| 115:6 128:7        | 88:18 89:6        | 29:6              | <b>Exhibit-40</b> | <b>Exhibit-62</b> |
| 135:17             | 91:4,13           | <b>Exhibit-19</b> | 95:8              | 142:22            |
| 148:22             | 95:11 96:13       | 43:22             | <b>Exhibit-41</b> | <b>Exhibit-7</b>  |
| <b>examples</b>    | 97:22 98:5        | <b>Exhibit-2</b>  | 96:10             | 25:18             |
| 72:4 99:16         | 99:7 100:2        | 12:15             | <b>Exhibit-42</b> | <b>Exhibit-8</b>  |
| 111:14,19          | 100:4             | <b>Exhibit-20</b> | 97:12             | 26:21             |
| 146:25             | 102:24            | 44:21             | <b>Exhibit-43</b> |                   |



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|---------------------|--------------------|------------------|--------------------|------------------|
| <b>Exhibit-9</b>    | 53:10 87:6         | <b>feel</b>      | 131:9,20           | 21:4 100:9       |
| 30:25               | 87:21              | 133:8            | 133:13             | <b>folks</b>     |
| <b>exist</b>        | <b>facsimile</b>   | <b>feet</b>      | 140:12             | 96:2 133:2       |
| 24:24 56:25         | 2:6                | 51:19            | 147:11             | 133:25           |
| 141:1               | <b>fact</b>        | <b>Fenway</b>    | 150:8              | 139:6            |
| <b>exists</b>       | 5:18 61:1          | 72:8 135:18      | <b>fit</b>         | <b>following</b> |
| 15:17 95:2          | <b>facts</b>       | 135:19           | 40:17 49:3         | 151:4 153:22     |
| <b>expands</b>      | 5:10,16 55:9       | 136:3            | <b>fits</b>        | 154:12           |
| 141:5               | 55:10              | <b>figure</b>    | 89:21              | <b>follows</b>   |
| <b>expensive</b>    | 109:10             | 42:25 57:5       | <b>five</b>        | 9:10             |
| 134:12              | <b>fair</b>        | 105:4 131:1      | 5:23 73:13         | <b>footprint</b> |
| <b>experimen...</b> | 72:18 80:7         | 131:2            | 75:19 76:9         | 63:16 87:19      |
| 86:19               | 80:11 81:25        | 142:16           | 93:12 132:8        | 103:7,8          |
| <b>experimen...</b> | 111:1              | <b>figures</b>   | <b>fix</b>         | <b>foregoing</b> |
| 110:21              | <b>fairly</b>      | 109:11,15        | 40:25              | 150:6,11         |
| <b>expert</b>       | 40:3 90:1          | <b>File</b>      | <b>fixed</b>       | 153:6            |
| 22:17               | 134:11             | 154:4            | 42:1               | <b>forest</b>    |
| <b>experts</b>      | 141:19             | <b>files</b>     | <b>flashlight</b>  | 87:9             |
| 88:1                | <b>fall</b>        | 30:16            | 146:23             | <b>form</b>      |
| <b>Expires</b>      | 64:16 86:4         | <b>fill</b>      | <b>flashlights</b> | 35:17 37:24      |
| 153:20              | 147:6              | 34:16,17         | 146:21             | 39:19 91:22      |
| <b>explain</b>      | <b>Fall/Winter</b> | <b>final</b>     | <b>fleet</b>       | 91:24 151:1      |
| 15:4 108:1          | 8:11               | 90:9,19          | 62:22 64:3         | 152:7            |
| <b>explained</b>    | <b>familiar</b>    | <b>finance</b>   | 82:7 86:16         | <b>formal</b>    |
| 52:23               | 28:23 39:12        | 96:2             | 92:12              | 88:10            |
| <b>explains</b>     | 140:10             | <b>financial</b> | 108:24             | <b>format</b>    |
| 29:13               | <b>family</b>      | 141:24           | 111:9 112:3        | 30:13 92:3       |
| <b>exterior</b>     | 26:9,20            | <b>find</b>      | 116:3              | <b>formatted</b> |
| 50:23,25            | 147:19,22          | 15:22 23:9       | <b>fleets</b>      | 84:23            |
| <b>externally</b>   | 148:12             | 28:7 54:15       | 114:14             | <b>forth</b>     |
| 22:6                | <b>famous</b>      | <b>finding</b>   | <b>flies</b>       | 93:15 103:13     |
| <b>extra</b>        | 13:21 39:25        | 63:15            | 134:24             | 109:14           |
| 34:15,20            | 40:1               | <b>finished</b>  | <b>flight</b>      | <b>forum</b>     |
| 35:3 55:5           | <b>FAQ</b>         | 139:8            | 46:16              | 105:9            |
| <b>F</b>            | 107:9 108:2        | <b>firm</b>      | <b>floating</b>    | <b>forward</b>   |
|                     | <b>far</b>         | 151:12           | 140:18             | 111:4            |
|                     | 27:14              | <b>first</b>     | <b>floors</b>      | <b>found</b>     |
|                     | <b>fashion</b>     | 7:23 9:9         | 27:11              | 91:4 92:23       |
|                     | 46:1 116:20        | 12:23 13:9       | <b>flow</b>        | <b>founded</b>   |
|                     | 147:14             | 37:9,25          | 88:6               | 38:9             |
|                     | 148:14             | 39:10 44:6       | <b>fluid</b>       | <b>four</b>      |
|                     | <b>fast</b>        | 55:8 61:3        | 112:1              | 79:10,11         |
|                     | 81:9,9             | 83:5 84:21       | <b>fly</b>         | 80:8             |
|                     | <b>faster</b>      | 85:1 88:10       | 45:12 47:24        | <b>fourth</b>    |
|                     | 81:14              | 91:2 98:18       | <b>focus</b>       | 79:12            |
|                     | <b>FedEx</b>       | 98:19 100:5      | 98:20              | <b>FOX</b>       |
|                     | 101:4,23           | 102:14           | <b>focused</b>     | 2:3              |
|                     |                    | 130:24,25        |                    |                  |



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|------------------------------------------------------------------------------------|--------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>freight</b><br>5:11 34:12<br>39:16, 20, 23<br>40:6 48:23<br>49:14 52:3<br>63:24 | 89:21                                            | 28:20 53:12<br>87:1 88:20<br>104:14<br>105:7<br>110:16                                                                                                                                                                                           | 53:24 57:5<br>98:11, 16<br>104:14<br>111:12, 14<br>112:15<br>135:24<br>142:13, 14<br>143:2<br>148:17                                                                                                                         | 105:20<br>106:2, 2, 2, 3<br>106:13, 25<br>107:8<br>111:12, 12<br>111:13, 14<br>112:20<br>113:15, 18<br>113:20<br>114:7, 10, 14<br>114:17<br>116:1, 3<br>128:5, 18, 20<br>129:5, 13, 14<br>129:23<br>130:17, 21<br>131:3 |
| <b>Frequently</b><br>7:8, 10 107:8<br>107:22                                       | <b>G</b>                                         | <b>given</b><br>27:6 143:7<br>150:13                                                                                                                                                                                                             | <b>going-for...</b><br>86:10                                                                                                                                                                                                 | <b>greener</b><br>101:4, 23<br>102:1                                                                                                                                                                                    |
| <b>friction-...</b><br>134:25                                                      | <b>gallon</b><br>112:14                          | <b>gives</b><br>60:3 108:25                                                                                                                                                                                                                      | <b>gold</b><br>63:7 92:24                                                                                                                                                                                                    | <b>greenhouse</b><br>90:14                                                                                                                                                                                              |
| <b>friendly</b><br>102:18<br>110:18                                                | <b>gambit</b><br>72:3                            | <b>giving</b><br>90:8                                                                                                                                                                                                                            | <b>good</b><br>9:11 58:6<br>86:24<br>102:21                                                                                                                                                                                  | <b>greening</b><br>90:13 105:11<br>111:13                                                                                                                                                                               |
| <b>front</b><br>51:16 62:15<br>62:19 79:18<br>83:8 92:6<br>105:13                  | <b>gas</b><br>90:14 109:14<br>111:2, 3<br>115:25 | <b>Glenlake</b><br>1:17                                                                                                                                                                                                                          | <b>goods</b><br>134:2                                                                                                                                                                                                        | <b>greenish</b><br>106:20                                                                                                                                                                                               |
| <b>fuel</b><br>7:12, 15<br>108:19<br>109:12<br>111:6 113:2                         | <b>gathered</b><br>46:23                         | <b>Global</b><br>6:20 10:11<br>10:13, 17, 24<br>11:4, 7, 10<br>12:2, 4, 6, 13<br>96:15                                                                                                                                                           | <b>grant</b><br>138:9                                                                                                                                                                                                        | <b>greenness</b><br>87:8                                                                                                                                                                                                |
| <b>fuels</b><br>7:13 63:16<br>109:25<br>110:10                                     | <b>gave</b><br>60:9                              | <b>glycol</b><br>112:1                                                                                                                                                                                                                           | <b>granting</b><br>53:17                                                                                                                                                                                                     | <b>Greenwich</b><br>87:2                                                                                                                                                                                                |
| <b>fulfilling</b><br>23:15                                                         | <b>Gemini</b><br>134:8                           | <b>go</b><br>7:18 14:21<br>15:19 21:10<br>23:2, 7, 11<br>23:23 24:10<br>33:5 46:20<br>52:10 53:18<br>55:7 59:24<br>61:17 62:7<br>76:11, 15<br>80:4 94:3<br>94:25 96:7<br>104:14<br>105:3 106:2<br>112:17<br>113:17<br>114:7 136:3<br>143:2 148:7 | <b>grass</b><br>100:12, 12                                                                                                                                                                                                   | <b>ground</b><br>112:3 134:23                                                                                                                                                                                           |
| <b>fulfillment</b><br>22:21 23:3<br>41:2                                           | <b>general</b><br>53:23 55:10<br>88:25 139:1     | <b>generally</b><br>85:7 91:23<br>138:22                                                                                                                                                                                                         | <b>green</b><br>6:8, 9, 25, 25<br>7:7, 8, 18, 20<br>84:12, 13<br>85:2, 4, 18<br>86:1, 3<br>90:23 98:12<br>98:14, 16, 25<br>100:7, 19, 25<br>102:15, 18<br>103:1, 17, 21<br>103:24<br>104:3, 8<br>105:1, 14, 15<br>105:18, 19 | <b>group</b><br>11:2 40:20<br>40:20<br>107:25, 25<br>108:18<br>110:4<br>132:25<br>133:1                                                                                                                                 |
| <b>full</b><br>10:5 53:8                                                           | <b>generate</b><br>146:24                        | <b>generically</b><br>92:21 98:17<br>128:23                                                                                                                                                                                                      | <b>graphic</b><br>35:20 36:6<br>36:11, 16                                                                                                                                                                                    | <b>growing</b><br>100:13                                                                                                                                                                                                |
| <b>FULTON</b><br>150:4                                                             | <b>generation</b><br>79:12                       | <b>geographic...</b><br>95:1                                                                                                                                                                                                                     | <b>grass</b><br>100:12, 12                                                                                                                                                                                                   | <b>guaranteed</b><br>35:2                                                                                                                                                                                               |
| <b>functiona...</b><br>19:11 53:9<br>53:25                                         | <b>generic</b><br>38:23 132:21                   | <b>Georgia</b><br>1:18 2:5 9:7<br>55:14 150:3<br>151:10, 19                                                                                                                                                                                      | <b>green</b><br>6:8, 9, 25, 25<br>7:7, 8, 18, 20<br>84:12, 13<br>85:2, 4, 18<br>86:1, 3<br>90:23 98:12<br>98:14, 16, 25<br>100:7, 19, 25<br>102:15, 18<br>103:1, 17, 21<br>103:24<br>104:3, 8<br>105:1, 14, 15<br>105:18, 19 | <b>guarantees</b><br>31:12                                                                                                                                                                                              |
| <b>funded</b><br>5:22                                                              | <b>generically</b><br>92:21 98:17<br>128:23      | <b>goes</b><br>57:23                                                                                                                                                                                                                             | <b>going</b><br>6:25, 25 9:24<br>23:10, 14, 18<br>30:9 33:5<br>37:12 41:8<br>47:17 53:18                                                                                                                                     | <b>guess</b>                                                                                                                                                                                                            |
| <b>fundraising</b><br>72:1                                                         | <b>geographi...</b><br>95:1                      | <b>going</b><br>6:25, 25 9:24<br>23:10, 14, 18<br>30:9 33:5<br>37:12 41:8<br>47:17 53:18                                                                                                                                                         |                                                                                                                                                                                                                              |                                                                                                                                                                                                                         |
| <b>further</b><br>58:13 133:7<br>150:14                                            | <b>getting</b><br>49:20 86:22<br>142:7           |                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                              |                                                                                                                                                                                                                         |
| <b>future</b>                                                                      | <b>give</b><br>21:11 22:11                       |                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                              |                                                                                                                                                                                                                         |



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|--------------------|--------------------|---------------------|---------------------|-------------------|
| 39:14 72:12        | <b>haven't</b>     | 110:16              | 92:22               | 43:21,23          |
| 88:21 129:3        | 89:18              | <b>hire</b>         | 109:13              | 44:1,22           |
| 135:13             | <b>head</b>        | 45:12               | 111:5,5             | 48:13,16          |
| <b>guidelines</b>  | 13:15 42:5         | <b>historical</b>   | 114:20              | 52:14,17          |
| 132:13 133:6       | 44:14 65:24        | 88:16               | 115:18,22           | 54:22,25          |
|                    | 66:5 72:16         | <b>historically</b> | 128:5,18,20         | 60:18,21          |
|                    | 148:3,6            | 41:17               | 128:25              | 64:23 65:1        |
| <b>H</b>           | <b>heading</b>     | <b>history</b>      | 129:4,13,14         | 72:23 74:25       |
| <b>H</b>           | 63:24 98:15        | 74:17 88:8          | 129:23              | 75:3 79:3         |
| 2:3 147:8          | 110:9              | 110:12              | 130:17,21           | 79:23 80:1        |
| <b>halfway</b>     | 113:16             | <b>his/her</b>      | 131:3               | 80:20 81:17       |
| 128:19             | <b>heard</b>       | 153:6               | <b>hybrids</b>      | 81:20 82:23       |
| <b>hand</b>        | 138:12             | <b>homegrown</b>    | 8:4 116:7,17        | 83:1 84:4,7       |
| 11:14 12:17        | <b>hearing</b>     | 19:16               | <b>hydraulic</b>    | 85:11,14          |
| 14:11 17:6         | 150:14             | <b>honest</b>       | 7:23 8:3            | 86:7 89:2         |
| 18:22 25:20        | <b>held</b>        | 35:1                | 92:16,17,18         | 91:1,10           |
| 26:23 29:8         | 74:3               | <b>hosts</b>        | 92:19 111:5         | 95:9,12           |
| 43:24 48:14        | <b>help</b>        | 74:1                | 115:18,22           | 96:11,14          |
| 60:19 81:18        | 37:21 42:3         | <b>Hot</b>          | 116:17              | 97:13,22          |
| 82:24 88:17        | 98:23,24           | 72:10 73:21         | <b>hydride</b>      | 98:3,6 99:5       |
| 95:10 96:12        | 103:25             | <b>hotel</b>        | 146:22              | 99:8,25           |
| 97:21 98:4         | <b>helpful</b>     | 26:15               | <b>hypothetical</b> | 100:5 107:3       |
| 99:6 100:1         | 133:9              | <b>how's</b>        | 60:8                | 107:6,17,20       |
| 107:4,18           | <b>helping</b>     | 89:23               | <b>hypotheti...</b> | 108:12,15         |
| 108:13             | 104:25             | <b>hub</b>          | 22:14               | 109:8,20          |
| 109:18             | <b>hereby</b>      | 49:23 50:1          |                     | 112:22,25         |
| 112:23             | 150:6              | <b>hubs</b>         | <b>I</b>            | 113:7,10,25       |
| 113:8 114:1        | <b>hereof</b>      | 45:21               | <b>icon</b>         | 114:3,24          |
| 114:25             | 152:4 153:8        | <b>hue</b>          | 140:19              | 115:2,12,15       |
| 115:13             | <b>hey</b>         | 106:20              | <b>idea</b>         | 116:10,25         |
| 116:11             | 23:16 26:13        | <b>hues</b>         | 48:8                | 117:3             |
| 117:1              | 35:3 43:6          | 106:25              | <b>identific...</b> | 128:15            |
| 146:23             | 105:10             | <b>huge</b>         | 11:13,16            | 130:9,13          |
| <b>handful</b>     | <b>high</b>        | 40:14               | 12:16,19            | 133:11,14         |
| 50:9               | 21:2 32:21         | <b>hundred</b>      | 14:10,13            | 142:23            |
| <b>handwriting</b> | 33:17 90:2         | 33:18 63:2          | 17:5,8              | 143:1 146:3       |
| 58:6               | 134:11             | 93:22 138:6         | 18:20,23            | 146:6 147:2       |
| <b>hanging</b>     | <b>highest</b>     | 138:6               | 25:8,11,19          | 147:5             |
| 50:20              | 58:21,22           | <b>hundreds</b>     | 25:22 26:22         | <b>identified</b> |
| <b>happen</b>      | 71:4 73:15         | 44:17,20            | 26:25 29:7          | 94:21 148:12      |
| 65:23              | 117:6 143:4        | 47:24               | 29:10 31:1          | <b>identifier</b> |
| <b>happening</b>   | <b>highlight</b>   | <b>hybrid</b>       | 31:5,20,23          | 82:16             |
| 60:16 75:9         | 91:20              | 7:23 82:8,10        | 32:11,14            | <b>identify</b>   |
| <b>hard</b>        | <b>highlighted</b> | 82:17 90:22         | 33:4,8,24           | 73:3 80:23        |
| 106:7              | 55:5 58:14         | 91:18 92:8          | 34:2 35:12          | 89:5 91:3         |
| <b>hardware</b>    | 61:4               | 92:11,12,14         | 35:15 36:3          | 91:12 94:24       |
| 28:22 29:15        | <b>highlights</b>  | 92:17,19,19         | 36:6,24             | 94:25 100:3       |
| <b>harmful</b>     |                    |                     | 37:2,19,23          | 146:5 147:4       |
| 138:24             |                    |                     |                     |                   |



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|                       |                     |                     |                     |                    |
|-----------------------|---------------------|---------------------|---------------------|--------------------|
| 146:5 147:4           | <b>INDEX</b>        | <b>initials</b>     | 15:22 23:20         | 26:6               |
| <b>Illinois</b>       | 3:1 4:1 5:1         | 148:5               | 35:4 53:7           | <b>involved</b>    |
| 45:23                 | 6:1 7:1 8:1         | <b>initiatives</b>  | 141:18              | 45:18              |
| <b>image</b>          | <b>indicate</b>     | 7:4 90:10,15        | 150:18              | <b>involves</b>    |
| 79:10                 | 143:2               | 99:15               | <b>interesting</b>  | 43:1               |
| <b>images</b>         | <b>indicated</b>    | <b>ink</b>          | 99:16               | <b>in-building</b> |
| 83:9 134:9            | 154:13              | 58:4                | <b>Interesti...</b> | 54:17              |
| <b>impact</b>         | <b>individual</b>   | <b>inks</b>         | 116:1               | <b>issue</b>       |
| 85:9 87:5             | 142:17              | 84:24               | <b>interface</b>    | 86:9               |
| 88:12 90:16           | <b>Industrial</b>   | <b>innovation</b>   | 21:16 22:9          | <b>item</b>        |
| 92:4 99:17            | 1:9 8:7 9:18        | 110:13              | <b>internal</b>     | 102:24             |
| 102:4,5               | 11:18 154:6         | <b>Innovations</b>  | 46:6                | 103:15             |
| 103:22                | <b>industries</b>   | 10:12,14,17         | <b>internally</b>   | 104:7              |
| <b>impacts</b>        | 38:25               | 10:25 11:4          | 21:22 22:3,6        | 105:21             |
| 89:20                 | <b>industry</b>     | 11:7,10             | 138:16              | 139:3              |
| <b>implement...</b>   | 7:23 40:15          | 12:3,4,6,13         | <b>internet</b>     | 146:17             |
| 22:2                  | 41:15               | <b>input</b>        | 13:3 16:14          | 147:8              |
| <b>implemented</b>    | <b>inform</b>       | 23:24 60:9          | 18:25 19:4          | <b>items</b>       |
| 53:6 84:14            | 141:8               | 60:12               | 19:9,20             | 49:8 103:11        |
| 88:7 111:7            | <b>information</b>  | <b>inquiries</b>    | 20:8,12,15          | 106:11             |
| <b>implementing</b>   | 15:16,23,24         | 59:17 129:18        | 20:18 21:2          | 138:11             |
| 86:16 110:7           | 16:5,19             | <b>inside</b>       | 21:17,22            | 146:18,21          |
| <b>importance</b>     | 23:11,13,14         | 21:23 27:8          | 22:5,9,25           | 147:10             |
| 89:13                 | 23:17 24:9          | 30:4 46:8           | 23:6 24:3,8         | <b>iteration</b>   |
| <b>inadvertent...</b> | 25:1 28:1           | 53:10 62:20         | 24:19,23            | 13:25              |
| 109:1                 | 30:21 46:20         | <b>inspection</b>   | 46:25 56:18         | <b>IV</b>          |
| <b>include</b>        | 46:23 47:1          | 116:13              | 83:17               | 6:3 79:11          |
| 10:20 16:6            | 53:5,12,13          | <b>instances</b>    | 101:15,19           | J                  |
| 50:8 51:3             | 53:15 54:5          | 50:23 106:3         | 148:23,24           | <b>jack</b>        |
| 105:18                | 58:12 59:10         | 106:12              | <b>interroga...</b> | 49:7,15,20         |
| 147:13                | 60:12 61:2          | <b>integrate</b>    | 131:21,24           | <b>jackets</b>     |
| <b>includes</b>       | 75:8,24             | 19:10,14            | <b>interview</b>    | 46:4               |
| 84:10                 | 76:1,8,19           | 26:17               | 114:12,13           | <b>January</b>     |
| <b>including</b>      | 93:13               | <b>intellectual</b> | <b>introducing</b>  | 6:19 7:12          |
| 20:5 46:13            | 141:23              | 10:18 11:25         | 131:17              | 95:15              |
| 74:4 81:4             | 142:10              | 12:6,9              | <b>introduction</b> | 108:20,20          |
| 112:4 135:3           | <b>informed</b>     | 105:8               | 81:1                | 109:16             |
| <b>incorporate</b>    | 9:23                | <b>intend</b>       | <b>invariably</b>   | <b>Jersey</b>      |
| 20:15 106:25          | <b>informing</b>    | 74:20               | 51:25               | 15:18 55:13        |
| <b>incorporated</b>   | 75:12               | <b>intent</b>       | <b>inventer</b>     | <b>jet</b>         |
| 9:17 22:25            | <b>infrastru...</b> | 128:4,6             | 131:11,13           | 45:8,10            |
| <b>incorpora...</b>   | 16:16 20:11         | <b>interactions</b> | <b>invention</b>    | 134:8              |
| 24:15                 | 26:18 28:2          | 17:3                | 131:6               | <b>jets</b>        |
| <b>increases</b>      | 28:12 40:5          | <b>interest</b>     | <b>inventory</b>    | 34:14 44:17        |
| 59:4                  | 43:2,3 50:3         | 54:19 106:10        | 43:7                | <b>judging</b>     |
| <b>increasingly</b>   | 55:11,16            | 151:7               | <b>invite</b>       | 48:8               |
| 98:24                 | <b>initial</b>      | <b>interested</b>   | 74:1                |                    |
|                       | 143:5,5             |                     | <b>invoices</b>     |                    |



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|                     |               |                  |                   |                     |
|---------------------|---------------|------------------|-------------------|---------------------|
| <b>Judicial</b>     | <b>key</b>    | 44:15 46:4       | 94:23             | 96:2 131:9          |
| 9:6                 | 30:19 135:2   | 47:7 54:4        | <b>language</b>   | 148:18              |
| <b>jumbo</b>        | 135:3         | 57:3,11          | 13:12             | <b>leather</b>      |
| 34:14 44:17         | <b>killed</b> | 58:7 61:19       | <b>laptop</b>     | 147:8               |
| <b>June</b>         | 88:2          | 64:4 66:4        | 20:6 26:14        | <b>leave</b>        |
| 91:7                | <b>kin</b>    | 71:22 81:10      | <b>large</b>      | 109:9 135:13        |
| <b>jurisdiction</b> | 150:15        | 91:25 93:14      | 19:16 22:1        | <b>Lee</b>          |
| 153:16              | <b>kind</b>   | 94:11,14         | 27:10 28:11       | 131:15,15           |
| <b>just</b>         | 16:14 20:13   | 95:1 98:18       | 39:15 49:6        | 132:6               |
| 9:21 13:4           | 23:4,18       | 99:14            | 49:21 52:1        | <b>legal</b>        |
| 24:12 26:14         | 39:10 40:22   | 101:11,12        | 63:7 147:17       | 132:25              |
| 30:8 31:2           | 41:3,13       | 101:15           | <b>largely</b>    | <b>less</b>         |
| 35:3 42:12          | 49:21 50:9    | 104:24           | 13:2 146:10       | 39:14 93:22         |
| 45:19,19            | 53:10 55:10   | 111:21           | 146:11            | <b>Lesson</b>       |
| 46:22 49:17         | 56:8 58:2     | 112:4 128:2      | <b>largest</b>    | 100:18              |
| 51:6 52:3           | 63:17 71:22   | 128:24           | 34:9 55:15        | <b>Less-Than...</b> |
| 53:13,23            | 72:1 75:8     | 129:20           | <b>laser</b>      | 5:12 48:24          |
| 59:9 61:2           | 84:14 85:8    | 133:3            | 15:12             | 49:13               |
| 61:18 62:4          | 86:3,20       | 138:25           | <b>last</b>       | <b>letter</b>       |
| 62:6 64:19          | 88:1,8        | 141:13,16        | 5:23 26:10        | 6:23 98:1           |
| 73:16 83:8          | 89:19 92:20   | 142:17           | 28:12 59:18       | <b>letters</b>      |
| 86:24 88:17         | 98:17 100:2   | 146:12           | 64:15 73:13       | 51:10 147:18        |
| 89:15 90:19         | 103:6         | 148:2,5          | 74:5 75:19        | <b>letting</b>      |
| 91:3 93:18          | 104:13,19     | <b>knowable</b>  | 76:9 110:2        | 76:15               |
| 100:2 105:6         | 106:20        | 142:16           | 142:4             | <b>let's</b>        |
| 105:18              | 110:4         | <b>knowing</b>   | <b>late</b>       | 21:10 28:8          |
| 106:10              | 128:23        | 23:2             | 59:2              | 49:8 52:10          |
| 107:9,11            | 134:11        | <b>knowledge</b> | <b>later</b>      | 76:11 94:3          |
| 108:2,22,25         | 135:15        | 14:6 18:16       | 60:6 88:24        | 109:5 148:7         |
| 111:18,20           | 138:24        | 36:20 37:12      | <b>latest</b>     | <b>level</b>        |
| 112:19              | 140:19        | 38:18 53:23      | 15:23             | 21:1,7 71:4         |
| 114:3 115:7         | 141:25        | 93:16 99:21      | <b>law</b>        | 117:6 143:4         |
| 131:16,18           | <b>kinds</b>  | <b>known</b>     | 2:3 151:19        | <b>leverage</b>     |
| 134:18              | 40:22 90:10   | 46:25 66:5       | <b>Lead</b>       | 98:23               |
| 135:12              | 104:25        | <b>knows</b>     | 8:3 116:16        | <b>lexicon</b>      |
| 138:15              | 108:7         | 57:15            | <b>leaders</b>    | 97:6                |
| 140:13              | 133:23        |                  | 115:23            | <b>liberally</b>    |
| 146:25              | <b>King</b>   |                  | <b>leadership</b> | 131:5               |
| 147:24              | 2:4 151:15    |                  | 116:6             | <b>license</b>      |
| 148:4,5             | <b>know</b>   |                  | <b>League</b>     | 24:22 135:12        |
| <b>justice</b>      | 7:3 20:2      |                  | 95:18             | 135:19,22           |
| 42:17               | 21:16 24:16   |                  | <b>learn</b>      | 138:9,11,13         |
|                     | 24:21,24,25   |                  | 24:19 52:25       | 138:20,21           |
|                     | 25:15 28:11   |                  | 54:6              | 139:2 142:1         |
| <b>K</b>            | 29:18 32:19   |                  | <b>least</b>      | 142:2               |
| <b>keep</b>         | 32:21 33:20   |                  | 37:15 45:8        | <b>licensed</b>     |
| 52:24               | 39:18 42:4    |                  | 45:15 55:6        | 19:16 29:3          |
| <b>kept</b>         | 42:9,11       |                  |                   |                     |
| 43:16               |               |                  |                   |                     |
|                     |               | <b>lack</b>      |                   |                     |



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|-------------------|-------------------|-------------------|-------------------|---------------------|
| 139:15            | 139:12            | 79:17 80:17       | lot               | 47:14               |
| 141:16            | <b>list</b>       | 139:20            | 42:16 81:14       | <b>maintaining</b>  |
| 146:9             | 8:15 73:12        | <b>logo'd</b>     | 87:10             | 89:11               |
| 147:10            | <b>listed</b>     | 80:25             | 114:10            | <b>major</b>        |
| <b>licensee</b>   | 45:9 48:5         | <b>London</b>     | 116:4             | 72:9                |
| 133:19 135:6      | 99:20             | 5:25 74:21        | <b>lots</b>       | <b>making</b>       |
| 135:7             | <b>lists</b>      | 75:14 140:5       | 22:15,15          | 102:7 103:22        |
| <b>licensees</b>  | 99:15             | 140:8,9           | 55:17 57:4        | <b>manage</b>       |
| 8:15 133:18       | <b>literally</b>  | <b>long</b>       | 59:4              | 10:18 11:1          |
| 135:8 138:2       | 16:23 42:18       | 51:19 56:5        | <b>Louisville</b> | 90:18 98:23         |
| <b>licenses</b>   | 87:25             | 84:17 86:11       | 45:23 48:4        | <b>management</b>   |
| 138:17,17         | <b>literature</b> | 110:12            | <b>low</b>        | 7:15 12:7           |
| 139:6             | 140:2             | <b>longer</b>     | 91:18             | 46:3 97:16          |
| <b>licensing</b>  | <b>little</b>     | 26:12 34:10       | <b>lush</b>       | 97:18 113:2         |
| 12:9 141:21       | 26:11 29:18       | <b>Longitudes</b> | 87:9              | <b>manager</b>      |
| 141:22            | 55:5,22           | 73:24             | <b>L-e-e</b>      | 98:11               |
| <b>licensor</b>   | 88:23,24          | <b>look</b>       | 131:15 132:6      | <b>manual</b>       |
| 11:24             | <b>live</b>       | 13:16 14:3        | <b>L-U-N-G</b>    | 140:1,2             |
| <b>life</b>       | 140:19            | 14:22 31:3        | 132:6             | <b>manufacture</b>  |
| 33:20             | <b>lives</b>      | 42:2 45:6         |                   | 133:24 139:6        |
| <b>lifting</b>    | 40:25             | 48:1,7 50:1       | <b>M</b>          | <b>manufactu...</b> |
| 49:19             | <b>Living</b>     | 60:1 61:3         | <b>M</b>          | 103:8               |
| <b>light</b>      | 100:19            | 61:18 86:9        | 2:3,3 146:17      | <b>March</b>        |
| 20:14,21          | <b>LLP</b>        | 110:8 114:3       | 146:18            | 1:4                 |
| <b>lights</b>     | 2:4               | 128:12,16         | <b>Mac</b>        | <b>Margaret</b>     |
| 112:7,8           | <b>LNG</b>        | 130:11            | 140:17            | 1:24 150:23         |
| 134:16            | 111:4             | 133:13            | <b>MacIntosh</b>  | 151:3,23            |
| 135:1,2           | <b>load</b>       | 142:3,25          | 140:11            | <b>mark</b>         |
| <b>likelihood</b> | 30:10             | <b>looked</b>     | <b>macro</b>      | 12:21 14:14         |
| 129:15            | <b>loadable</b>   | 147:12            | 42:21             | 25:15,23            |
| <b>likely</b>     | 140:25            | 148:22            | <b>magazines</b>  | 26:1,8 27:2         |
| 13:17,17,18       | <b>location</b>   | <b>looking</b>    | 83:18             | 31:7,16,25          |
| 16:18 25:5        | 15:15,25          | 55:20 59:10       | <b>Mahwah</b>     | 32:16,19            |
| 48:2 49:6         | 57:14             | 59:14 73:16       | 57:2              | 33:11,16            |
| 50:7 51:3         | <b>locations</b>  | 80:6 81:12        | <b>mail</b>       | 34:4,7 35:8         |
| 54:19 56:19       | 46:9 62:10        | 82:3 86:14        | 83:24             | 35:17,19,24         |
| 81:15             | 74:3              | 93:11,18          | <b>mailroom</b>   | 36:20 37:4          |
| <b>Limited</b>    | <b>logistics</b>  | 112:10            | 27:12,22          | 37:24 38:3          |
| 9:18              | 40:23 42:10       | <b>looks</b>      | 28:9              | 38:18,21            |
| <b>line</b>       | 42:13,22          | 29:11,12,17       | <b>mails</b>      | 39:6 44:8           |
| 41:16 154:17      | <b>logo</b>       | 52:18 53:7        | 83:23             | 60:13               |
| 154:20,23         | 41:25 45:14       | 53:21 89:20       | <b>mainframes</b> | 105:16,17           |
| 155:3,6,9         | 50:20 52:1        | 95:25 96:5        | 55:17 56:25       | 106:14              |
| 155:12,15         | 53:25 54:3        | 96:5 114:9        | 57:1              | 134:7 138:4         |
| 155:18            | 60:13 62:11       | 114:11            | <b>maintain</b>   | 147:13              |
| <b>linked</b>     | 64:9,11           | 130:25            | 20:7 132:23       | 148:23,24           |
| 15:24             | 65:21 79:14       | <b>loosely</b>    | <b>maintained</b> | <b>marked</b>       |
| <b>Lionel</b>     |                   | 129:9             |                   | 11:12,15            |



|             |                    |                    |                     |                     |
|-------------|--------------------|--------------------|---------------------|---------------------|
| 12:15,18    | 116:9,12,24        | 17:23 20:22        | <b>metal</b>        | 130:18              |
| 14:9,12     | 117:2,9            | 22:15 37:10        | 146:22              | <b>Moines</b>       |
| 17:4,7      | 128:10,14          | 55:9 58:18         | <b>method</b>       | 102:7,8             |
| 18:19,22    | 130:8,12           | 81:2 85:4          | 130:19 133:6        | <b>money</b>        |
| 25:7,10,18  | 133:10,14          | 94:13              | <b>Microsoft</b>    | 64:21 75:17         |
| 25:21 26:21 | 136:5              | <b>meaning</b>     | 19:17 30:15         | 76:3,8              |
| 26:24 29:5  | 142:21,22          | 38:24              | <b>miles</b>        | 102:8               |
| 29:6,9      | 142:25             | <b>means</b>       | 5:21 65:24          | 141:25              |
| 30:25 31:4  | 143:3,10           | 15:5 49:18         | 66:3 116:3          | <b>months</b>       |
| 31:19,22    | 146:2,5            | 97:5 129:8         | 116:4               | 110:2 139:16        |
| 32:10,13    | 147:1,5            | <b>measure</b>     | <b>million</b>      | <b>morning</b>      |
| 33:3,7,23   | <b>market</b>      | 116:19             | 58:17,25            | 9:11                |
| 34:1 35:11  | 11:23,24           | <b>Measurement</b> | 59:17,19            | <b>Morton</b>       |
| 35:14 36:2  | 12:2,5,8,8         | 8:5                | 60:16 61:10         | 9:23                |
| 36:5,23     | 12:12 94:11        | <b>mechanics</b>   | 61:16,21,22         | <b>most</b>         |
| 37:1,18,22  | <b>marketing</b>   | 46:13              | 61:24 62:2          | 6:19,21             |
| 43:20,22,25 | 107:25             | <b>media</b>       | 93:23 116:3         | 13:21 20:6          |
| 44:19,21,24 | <b>marketplace</b> | 83:11,16           | 142:6,18            | 28:23,25            |
| 48:12,15    | 63:17 98:25        | <b>medical</b>     | <b>millions</b>     | 39:11,12            |
| 52:11,13,16 | 107:11             | 94:14              | 16:23 17:1          | 42:25 50:23         |
| 54:21,24    | <b>markets</b>     | <b>memory</b>      | 84:20 130:5         | 51:3,14             |
| 60:17,20    | 94:18,20           | 75:16,20           | <b>mini</b>         | 56:12 57:7          |
| 64:22,25    | <b>marking</b>     | <b>mentioned</b>   | 80:25               | 64:10 95:13         |
| 66:7,9      | 51:3,24            | 17:24 39:7         | <b>minimize</b>     | 96:3,19             |
| 72:20,22,25 | <b>markings</b>    | 39:20 43:13        | 103:7               | <b>mostly</b>       |
| 74:24 75:2  | 50:25              | 45:22 49:25        | <b>minimized</b>    | 50:10 52:1          |
| 76:21 79:2  | <b>marks</b>       | 51:11 62:8         | 106:9               | <b>motion</b>       |
| 79:22,25    | 75:18 133:20       | 73:17 86:1         | <b>minutes</b>      | 112:9               |
| 80:19 81:16 | 147:15,18          | 88:17 89:4         | 86:2 132:8          | <b>motorcycles</b>  |
| 81:19 82:22 | 147:20,21          | 93:8 94:2          | <b>mispronou...</b> | 62:25               |
| 82:25 84:3  | 147:22,23          | 135:5              | 131:14              | <b>move</b>         |
| 84:6 85:10  | 147:25             | <b>mentions</b>    | <b>Missed</b>       | 49:7 71:9           |
| 85:13 86:6  | 148:11             | 50:3 55:12         | 72:12               | 141:14              |
| 88:18 89:1  | <b>match</b>       | <b>men's</b>       | <b>missing</b>      | <b>moved</b>        |
| 89:7 90:25  | 105:5              | 112:11             | 28:10               | 15:10 42:24         |
| 91:9 95:8   | <b>material</b>    | <b>merchandise</b> | <b>mission</b>      | 49:1 87:1           |
| 95:11 96:10 | 44:16 129:7        | 133:24             | 12:9                | <b>moves</b>        |
| 96:13 97:12 | <b>materials</b>   | 141:17             | <b>Mn-hmm</b>       | 111:4               |
| 97:22 98:2  | 43:16 84:23        | 146:10,10          | 22:10 34:6          | <b>moving</b>       |
| 98:5 99:4,7 | 103:18,21          | <b>Merchant's</b>  | 53:3 65:12          | 83:7 97:10          |
| 99:24 100:4 | 111:22             | 38:12,12           | 75:4 85:20          | <b>multi</b>        |
| 107:2,5,16  | <b>math</b>        | <b>mergers</b>     | 96:21               | 27:11               |
| 107:19      | 57:4               | 38:15              | 103:23              | <b>multimill...</b> |
| 108:11,14   | <b>matter</b>      | <b>message</b>     | 116:23              | 17:2                |
| 109:6,7,19  | 1:3 42:23          | 84:15 36:23        | <b>models</b>       | <b>multi-fuel</b>   |
| 112:21,24   | 152:3 153:7        | <b>Messer</b>      | 134:12              | 110:24              |
| 113:6,9,24  | 154:11             | 1:24 150:23        | <b>module</b>       | <b>multi-har...</b> |
| 114:2,23    | <b>mean</b>        | 151:3,23           |                     |                     |
| 115:1,11,14 |                    |                    |                     |                     |



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                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>27:17<br/> <b>multi-range</b><br/>                 129:1<br/> <b>multi-win...</b><br/>                 131:4<br/> <b>myself</b><br/>                 105:4</p> <p style="text-align: center;"><b>N</b></p> <p><b>N</b><br/>                 146:18<br/> <b>name</b><br/>                 10:5 13:18<br/>                 27:5 31:11<br/>                 31:14 34:22<br/>                 34:23 38:17<br/>                 52:2 58:7,8<br/>                 62:12 92:14<br/>                 93:4 95:5<br/>                 154:13<br/> <b>named</b><br/>                 132:5<br/> <b>narrow</b><br/>                 87:16<br/> <b>NASCAR</b><br/>                 72:7 80:24<br/> <b>NASCAR-re...</b><br/>                 81:4<br/> <b>National</b><br/>                 72:10 73:21<br/> <b>natural</b><br/>                 109:13 111:2<br/>                 111:3<br/>                 115:25<br/> <b>natural-r...</b><br/>                 88:4<br/> <b>nature</b><br/>                 135:21<br/>                 138:23<br/> <b>near</b><br/>                 98:16<br/> <b>necessarily</b><br/>                 11:10 40:17<br/>                 54:10<br/> <b>need</b><br/>                 21:9 26:13<br/>                 26:16 27:7</p> | <p>32:25 35:1<br/>                 35:5 49:6<br/>                 55:7 57:16<br/>                 80:4 86:12<br/>                 134:18<br/>                 153:22<br/> <b>needed</b><br/>                 41:25 104:15<br/> <b>needs</b><br/>                 19:7 49:1<br/>                 86:20<br/> <b>negative</b><br/>                 102:4<br/> <b>neighborhood</b><br/>                 138:5<br/> <b>net</b><br/>                 93:14<br/> <b>network</b><br/>                 15:16 34:19<br/>                 50:2<br/> <b>neutral</b><br/>                 7:10 107:22<br/>                 108:1<br/> <b>never</b><br/>                 21:20 81:10<br/> <b>new</b><br/>                 15:18 55:13<br/>                 110:20<br/>                 115:24<br/>                 141:19<br/> <b>newspapers</b><br/>                 83:18<br/> <b>NHRA</b><br/>                 73:20<br/> <b>nickel</b><br/>                 146:22<br/> <b>ninth</b><br/>                 34:9<br/> <b>nomenclature</b><br/>                 26:19 28:14<br/> <b>nonautomated</b><br/>                 138:13<br/> <b>nontradit...</b><br/>                 40:22<br/> <b>Non-confi...</b><br/>                 1:15 71:1<br/>                 79:1 128:1</p> | <p>138:1 146:1<br/> <b>north</b><br/>                 50:3 66:3<br/>                 88:14 142:5<br/>                 148:3,11<br/> <b>Notary</b><br/>                 153:20<br/> <b>nothing</b><br/>                 34:17<br/> <b>notice</b><br/>                 4:3 9:20<br/>                 11:17,20<br/>                 65:18 87:20<br/>                 114:20<br/> <b>noticed</b><br/>                 10:1 112:11<br/>                 116:21<br/> <b>noticing</b><br/>                 80:14<br/> <b>number</b><br/>                 5:20 8:9<br/>                 23:9,23,25<br/>                 24:3,8,13<br/>                 24:17 28:7<br/>                 29:2 30:19<br/>                 44:12 50:12<br/>                 51:20 54:6<br/>                 60:6 62:9<br/>                 62:10 63:12<br/>                 64:14 66:4<br/>                 66:5 73:23<br/>                 74:3 109:12<br/>                 130:3<br/>                 134:10,14<br/>                 139:5<br/>                 146:21<br/>                 147:17<br/>                 148:11<br/> <b>numbers</b><br/>                 135:14<br/>                 141:12<br/> <b>N.E</b><br/>                 2:4</p> <p style="text-align: center;"><b>O</b></p> <p><b>O</b><br/>                 146:18<br/> <b>objectives</b></p> | <p>105:5<br/> <b>obviously</b><br/>                 57:10 60:25<br/>                 87:9 106:21<br/>                 111:19<br/> <b>occasions</b><br/>                 65:8<br/> <b>occurred</b><br/>                 38:8<br/> <b>October</b><br/>                 1:16 9:2<br/>                 150:21<br/>                 151:20<br/>                 154:8<br/> <b>offensive</b><br/>                 139:1<br/> <b>offering</b><br/>                 42:13 108:1<br/>                 108:4,5,6<br/> <b>offerings</b><br/>                 148:20<br/> <b>offers</b><br/>                 134:4<br/> <b>office</b><br/>                 1:1 30:10<br/>                 50:9 151:14<br/> <b>offloaded</b><br/>                 54:14<br/> <b>oh</b><br/>                 51:5,8 57:16<br/> <b>oil</b><br/>                 112:2<br/> <b>Okay</b><br/>                 18:21 33:9<br/>                 33:21 38:6<br/>                 42:10 45:6<br/>                 53:22 60:25<br/>                 63:21 64:2<br/>                 72:14 75:21<br/>                 80:4 91:11<br/>                 108:21<br/>                 109:5,21<br/> <b>Olympic</b><br/>                 5:25 75:13<br/>                 75:15<br/> <b>Olympics</b><br/>                 74:14,17<br/> <b>once</b></p> | <p>27:12 62:20<br/> <b>ones</b><br/>                 13:16 140:12<br/>                 148:4<br/> <b>ongoing</b><br/>                 89:12 139:11<br/>                 140:22<br/> <b>Online</b><br/>                 25:24 26:1,9<br/>                 26:19<br/> <b>operate</b><br/>                 88:14<br/> <b>operating</b><br/>                 6:12,14,16<br/>                 88:23 89:8<br/>                 91:6,16<br/>                 102:17<br/>                 115:6<br/> <b>operation</b><br/>                 61:6,25<br/>                 62:24 80:13<br/> <b>operations</b><br/>                 5:10 46:6<br/>                 62:5 80:3<br/>                 90:16<br/> <b>opportuni...</b><br/>                 112:10<br/> <b>opposed</b><br/>                 134:24<br/>                 135:16<br/> <b>Opposer</b><br/>                 1:7 2:2<br/> <b>opposers</b><br/>                 32:13 34:1<br/> <b>opposer's</b><br/>                 4:3 25:10,21<br/>                 26:24 29:9<br/>                 31:5,22<br/>                 33:7 35:14<br/>                 36:5 37:1<br/>                 37:23 43:25<br/>                 44:24 48:16<br/>                 52:16 54:24<br/>                 64:25 71:3<br/>                 72:25 75:2<br/>                 80:6,11,22<br/>                 84:6 85:13<br/>                 88:18 89:6</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



|                     |                    |                  |                |                     |
|---------------------|--------------------|------------------|----------------|---------------------|
| 91:4,13             | 64:15 73:13        | 100:11,11        | 135:14,15      | 73:1 76:16          |
| 95:11 98:5          | 75:18 76:9         | 135:3            | 136:4,5        | 83:3 84:13          |
| 109:19              | 95:20              | <b>packages</b>  | 143:9,10       | 84:17 93:7          |
| 112:24              | 110:16             | 14:20,24         | 146:17,20      | 109:3               |
| 128:11              | 142:4              | 15:2 22:23       | 147:8 152:4    | 112:13              |
| 130:12              | <b>overall</b>     | 26:7 27:7        | 153:8,23       | 140:5 142:7         |
| 131:20              | 19:8               | 35:7 39:13       | 154:17,20      | 147:9               |
| 143:7 146:6         | <b>overarching</b> | 57:16 61:8       | 154:23         | 148:12              |
| 147:5               | 86:4,5             | 61:16 94:16      | 155:3,6,9      | <b>participate</b>  |
| <b>opposition</b>   | <b>overnight</b>   | 130:5 141:4      | 155:12,15      | 12:11 74:21         |
| 1:8 9:15            | 32:3               | 141:10,12        | 155:18         | <b>participated</b> |
| 11:19 71:7          | <b>overview</b>    | 141:14           | <b>pages</b>   | 74:13               |
| 117:7 128:3         | 108:25             | <b>packaging</b> | 3:10,11,11     | <b>participa...</b> |
| <b>Oracle</b>       | <b>owner</b>       | 35:21 83:3,7     | 3:12 47:13     | 74:17               |
| 19:17               | 23:24              | 83:9 139:24      | 58:20 110:9    | <b>participa...</b> |
| <b>order</b>        | <b>owns</b>        | <b>packed</b>    | 150:11         | 115:23              |
| 23:13,15,16         | 44:13              | 140:3            | 153:22         | <b>particular</b>   |
| 33:6 41:5,6         | <b>O.C.G.A</b>     | <b>packing</b>   | <b>paid</b>    | 10:9 15:15          |
| 71:6,7              | 151:8              | 140:3            | 31:14          | 21:9 52:25          |
| 84:24               |                    | <b>packs</b>     | <b>paint</b>   | 57:13 59:14         |
| 133:25              |                    | 139:4            | 64:19          | 72:9 75:11          |
| <b>ordered</b>      |                    | <b>page</b>      | <b>painted</b> | 79:6 82:3           |
| 59:5                | <b>pack</b>        | 3:2,12 4:2       | 47:21 63:5     | 82:13 84:21         |
| <b>orders</b>       | 19:24 41:3         | 5:2 6:2 7:2      | <b>pallet</b>  | 94:16 99:10         |
| 23:2                | <b>package</b>     | 8:2,6 13:10      | 49:6,15,15     | 113:11              |
| <b>org</b>          | 13:23 15:6         | 13:13 45:3       | 49:19          | 115:18              |
| 104:21              | 15:10,15,21        | 45:3 48:17       | <b>pallets</b> | <b>particularly</b> |
| <b>organic</b>      | 15:24 16:1         | 50:2 55:1        | 50:13          | 34:18 55:2          |
| 103:6               | 16:4,18            | 55:19 58:13      | <b>Palm</b>    | <b>parties</b>      |
| <b>organization</b> | 23:9 24:5          | 58:15,23         | 28:24,24       | 71:16 108:5         |
| 90:7 106:22         | 27:12,24           | 59:9,9 60:2      | <b>panel</b>   | 150:15,17           |
| <b>origin</b>       | 28:4,10            | 60:22 63:19      | 49:21          | 151:4 152:9         |
| 16:24 56:13         | 32:4 38:24         | 65:2,5,14        | <b>paper</b>   | <b>parts</b>        |
| <b>original</b>     | 39:7,8,9,17        | 66:8,9           | 29:12 91:22    | 109:2 115:6         |
| 8:16,17,18          | 39:22,22,24        | 76:20,21         | 91:24          | <b>passed</b>       |
| 106:19              | 40:2,4,9           | 79:5 83:5,6      | 132:18         | 15:15               |
| 154:15              | 41:13 52:5         | 85:1 93:7        | <b>Parcel</b>  | <b>passengers</b>   |
| <b>ought</b>        | 52:6 53:1          | 93:12 95:18      | 1:5 9:13,16    | 34:11               |
| 132:20              | 54:7,11,12         | 95:20 96:23      | 38:12,13,17    | <b>password</b>     |
| <b>output</b>       | 56:6,14,15         | 105:13           | 131:23         | 53:13               |
| 129:1               | 56:19,21,23        | 109:11           | 154:5          | <b>patent</b>       |
| <b>outside</b>      | 57:3,5,9,11        | 110:15           | <b>parent</b>  | 1:1 8:8             |
| 39:1,2 116:6        | 57:12,19,20        | 113:1 117:8      | 12:5           | 130:14              |
| 139:24              | 57:25 58:11        | 117:9 128:8      | <b>Parkway</b> | 131:9               |
| <b>outwards</b>     | 59:3,11,15         | 128:19           | 1:17           | <b>path</b>         |
| 87:15               | 60:3,3,7           | 130:25           | <b>part</b>    | 87:17               |
| <b>over</b>         | 62:4,23            | 131:9 132:3      | 39:10 52:19    | <b>paying</b>       |
| 26:10 45:20         | 65:15 82:11        | 135:13,14        | 63:8,23        | 110:25              |
|                     | 82:12              |                  |                |                     |



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|---------------------|---------------------|-------------------|--------------------|---------------------|
| <b>PC</b>           | <b>personal</b>     | 132:24            | 99:2 106:8         | 129:14              |
| 30:14               | 28:16,17,18         | <b>Pilot</b>      | <b>popping</b>     | 130:17,18           |
| <b>PCs</b>          | 37:11               | 28:25             | 29:24              | 130:21              |
| 40:19 112:4         | <b>personally</b>   | <b>pilots</b>     | <b>popular</b>     | 131:4 139:4         |
| <b>PDA</b>          | 153:4               | 46:15 111:8       | 30:14              | 139:4,18            |
| 27:17,19            | <b>pervasive</b>    | 111:8             | <b>popularize</b>  | 146:16,24           |
| 28:15,25            | 28:25               | <b>pioneering</b> | 140:12             | <b>powered</b>      |
| 30:11,13,17         | <b>Philadelphia</b> | 87:14             | <b>populate</b>    | 134:16,17           |
| 30:24 52:24         | 48:4                | <b>place</b>      | 53:14              | 146:19              |
| 53:20,21,24         | <b>Phillips</b>     | 49:1 71:7,19      | <b>populated</b>   | <b>Powertech</b>    |
| <b>PDF</b>          | 74:5                | 90:15 152:4       | 15:17              | 1:9 8:6 9:18        |
| 92:3                | <b>photo</b>        | 153:7,23          | <b>populating</b>  | 9:22 11:18          |
| <b>PDFs</b>         | 65:14               | <b>places</b>     | 23:16              | 128:9               |
| 91:25               | <b>photograph</b>   | 48:3 60:15        | <b>portal</b>      | 131:20              |
| <b>Peachtree</b>    | 6:4,5,11            | <b>plane</b>      | 5:24 6:24          | 132:3 154:6         |
| 2:4                 | 82:4 83:2           | 44:7,9,13         | 7:6 12:25          | <b>Powertech's</b>  |
| <b>peak</b>         | 91:17 92:25         | 134:22,25         | 75:7,7,12          | 131:22              |
| 58:14,25            | <b>photographs</b>  | <b>plastic</b>    | 98:8 100:16        | <b>PR</b>           |
| 59:1,18             | 6:6,7 81:21         | 49:18             | 100:22             | 133:2               |
| <b>pedal-pow...</b> | 81:22               | <b>platform</b>   | 101:1,9            | <b>practices</b>    |
| 86:17               | <b>physical</b>     | 27:18 103:25      | 102:12             | 104:2               |
| <b>pen</b>          | 43:2 46:10          | <b>please</b>     | 103:17             | <b>precise</b>      |
| 58:3                | 50:21 57:20         | 15:4 19:3         | <b>portfolio</b>   | 66:4 142:3          |
| <b>pend</b>         | 57:25               | 20:9 43:20        | 10:19,20           | <b>predecessor</b>  |
| 147:15              | <b>pick</b>         | 66:7 80:23        | 11:25 147:8        | 28:24               |
| <b>people</b>       | 16:17 32:5          | 89:5,17           | <b>portion</b>     | <b>prefer</b>       |
| 11:1,6 27:21        | 41:3 49:15          | 93:6 95:17        | 135:24             | 41:19               |
| 28:3,6,11           | 50:14               | 130:11            | <b>portions</b>    | <b>preferred</b>    |
| 39:12 42:18         | <b>picked</b>       | 132:1,16          | 1:15 115:3         | 13:11 32:16         |
| 46:3,6,6            | 15:8 61:22          | 136:3 146:5       | <b>position</b>    | 32:20 33:12         |
| 51:14 59:4          | 87:25               | 147:4             | 10:13 95:23        | <b>preparation</b>  |
| 59:13 88:1          | <b>picks</b>        | <b>plenty</b>     | 105:10             | 75:22 85:14         |
| 88:11 90:1          | 56:14 130:5         | 46:11             | <b>possible</b>    | <b>prepare</b>      |
| 92:3 104:12         | <b>pickup</b>       | <b>plus</b>       | 87:19 94:20        | 14:20 132:12        |
| 107:9               | 17:1 39:13          | 97:5              | 101:8              | 141:10              |
| 132:23              | 56:12               | <b>Pocket</b>     | <b>posted</b>      | <b>prepared</b>     |
| 133:2,3             | <b>picture</b>      | 30:14             | 101:10,13          | 23:17 142:7         |
| <b>perceive</b>     | 81:5 100:10         | <b>point</b>      | <b>posture</b>     | <b>prepares</b>     |
| 129:25              | <b>pictures</b>     | 15:8 42:24        | 107:10             | 57:20               |
| <b>percent</b>      | 108:24              | 42:24 49:9        | <b>potentially</b> | <b>preparing</b>    |
| 32:23 33:18         | <b>piece</b>        | 49:9 53:19        | 18:13 19:23        | 26:5 73:1           |
| <b>perform</b>      | 29:12 140:14        | 71:8 81:20        | <b>pounds</b>      | <b>present</b>      |
| 16:3                | 140:25,25           | 96:4              | 39:14              | 2:8                 |
| <b>permission</b>   | <b>pieces</b>       | <b>points</b>     | <b>power</b>       | <b>presentation</b> |
| 53:17               | 46:19 61:1          | 15:9 16:4         | 19:24 20:1,5       | 104:15 105:7        |
| <b>person</b>       | 85:25               | <b>pollute</b>    | 112:7              | 108:16              |
| 9:14 28:12          | 104:20              | 102:22            | 128:18,25          | 109:16,24           |
| 57:25 81:22         |                     | <b>pollution</b>  |                    | 110:1               |



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|                                 |                                  |                                   |                                   |                                 |
|---------------------------------|----------------------------------|-----------------------------------|-----------------------------------|---------------------------------|
| <b>presentat...</b><br>105:8    | 17:20,21<br>18:2,8,10            | 134:14<br>138:19                  | 151:3,15                          | 105:6                           |
| <b>presented</b><br>110:1,3     | 18:12                            | 139:8,14                          | <b>provided</b><br>11:18 18:2     | 134:24                          |
| <b>presents</b><br>57:21        | <b>printers</b><br>41:24         | <b>Professional</b><br>5:13 52:19 | 25:1 26:10                        | <b>pulled</b><br>76:7           |
| <b>president</b><br>10:15,17,24 | <b>printing</b><br>26:6          | <b>profile</b><br>73:15           | 31:13 41:17                       | <b>pulling</b><br>41:8          |
| <b>Pressroom</b><br>5:7,9,11,15 | <b>printout</b><br>44:2 45:3     | <b>program</b><br>21:16 84:13     | 60:7                              | <b>pulls</b><br>51:18           |
| 5:17,19 6:3                     | <b>probably</b><br>14:4 28:25    | 86:1 90:4                         | <b>providers</b><br>111:2         | <b>purchase</b><br>7:23 115:22  |
| 7:3,15,17                       | 64:12,13                         | 115:24                            | <b>provides</b><br>12:6 15:14     | <b>purchased</b><br>18:6        |
| 7:22 43:15                      | 86:13 88:21                      | <b>programmed</b><br>112:5        | 41:15 141:2                       | <b>purpose</b><br>40:24         |
| 44:3 45:4                       | 134:20                           | <b>programs</b><br>90:4           | <b>providing</b><br>12:11 131:3   | <b>purposes</b><br>55:7 71:2    |
| 48:18 55:2                      | 142:11                           | <b>prohibited</b><br>151:18       | <b>provisions</b><br>151:7        | 82:19 117:3                     |
| 60:23 65:3                      | <b>problems</b><br>41:1          | <b>prominently</b><br>62:21 63:6  | <b>proximity</b><br>93:4          | 117:7                           |
| 79:7 99:10                      | <b>proceed</b><br>9:25           | 139:24                            | <b>public</b><br>95:5 97:20       | <b>pursuant</b><br>9:3,19 11:20 |
| 113:2,12                        | <b>proceeding</b><br>117:7       | 97:16 148:12                      | 105:8                             | 73:8 75:21                      |
| 115:21                          | <b>process</b><br>25:2 53:1,6    | <b>propene-p...</b><br>110:22     | 116:21                            | <b>pursues</b><br>12:8          |
| <b>presume</b><br>29:17 30:6    | 54:7 90:21                       | <b>proper</b><br>133:3            | 129:24                            | <b>pushed</b><br>92:2           |
| 72:14                           | 138:16                           | <b>property</b><br>10:18 11:25    | 133:2 139:1                       | <b>put</b><br>13:7 20:24        |
| <b>presuming</b><br>30:18       | <b>processes</b><br>26:17        | 12:7,10                           | 153:20                            | 104:12                          |
| <b>presumption</b><br>30:4      | <b>processing</b><br>41:6 138:16 | 105:8                             | <b>publication</b><br>5:8,9,11,14 | 108:17                          |
| <b>pretty</b><br>32:24 138:18   | <b>produce</b><br>84:20          | <b>prospective</b><br>90:19       | 5:16 8:9                          | <b>putting</b><br>49:22         |
| <b>Preview</b><br>103:20        | <b>produced</b><br>56:16 133:17  | <b>protective</b><br>71:6,6       | 130:15                            | <b>p.m</b><br>132:10 149:8      |
| <b>previous</b><br>35:20 47:11  | 139:15                           | <b>protects</b><br>133:7          | <b>publications</b><br>44:2 91:21 |                                 |
| <b>previously</b><br>104:5      | <b>produces</b><br>91:24         | <b>provide</b><br>14:19 18:3      | <b>publicize</b><br>136:1         | <b>Q</b>                        |
| <b>price</b><br>140:20 141:9    | <b>producing</b><br>84:18        | 21:6 22:22                        | <b>publish</b><br>88:9 91:23      | <b>quality</b><br>134:11        |
| <b>pricing</b><br>14:22         | <b>product</b><br>22:20 23:21    | 23:12 31:12                       | <b>published</b><br>1:3 43:16     | <b>quarterly</b><br>142:13      |
| <b>primarily</b><br>20:11       | 29:19,19                         | 40:19,22                          | 46:24 91:7                        | <b>query</b><br>15:21           |
| <b>primary</b><br>106:23        | 31:13                            | 41:1,2,3                          | 91:19 92:6                        | <b>question</b><br>13:11 33:15  |
| <b>printed</b><br>47:7 48:20    | 129:21                           | 42:8,22                           | 96:16                             | 80:10                           |
| 79:5 91:25                      | 130:7 139:3                      | 53:11 76:7                        | 100:15,21                         | <b>questions</b><br>7:9,11 60:5 |
| 113:1,11                        | <b>products</b><br>49:1 103:3,3  | 94:7,25                           | 101:1,13,18                       | 80:5 107:8                      |
| <b>printer</b><br>103:9 104:2   | 128:24                           | 129:1                             | 102:11                            |                                 |
|                                 | 129:1                            | 140:15                            | 103:16                            |                                 |
|                                 |                                  |                                   | 105:23                            |                                 |
|                                 |                                  |                                   | 115:10,17                         |                                 |
|                                 |                                  |                                   | <b>pull</b><br>23:11 85:17        |                                 |
|                                 |                                  |                                   | 104:19                            |                                 |



|                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 107:12,22<br>108:3 141:3<br>150:9<br><b>queue</b><br>57:13<br><b>quickly</b><br>31:3 32:24<br>89:15<br><b>quite</b><br>47:4 97:5<br>114:21<br><b>quote</b><br>98:18 | <b>reading</b><br>16:5<br><b>ready</b><br>14:21 23:17<br><b>reality</b><br>47:11<br><b>really</b><br>60:4 71:23<br><b>realm</b><br>42:7<br><b>reason</b><br>47:19 64:13<br>98:21<br>154:19,22<br>154:25<br>155:5,8,11<br>155:14,17<br>155:20<br><b>reasonably</b><br>47:1<br><b>reasons</b><br>154:13<br><b>recall</b><br>65:23 66:2<br>75:16<br><b>receive</b><br>18:8,9,11<br>31:15<br>129:18<br><b>received</b><br>24:22 116:5<br><b>receives</b><br>57:24<br><b>recess</b><br>71:12 132:9<br><b>rechargeable</b><br>20:5 146:23<br><b>recipient</b><br>30:23<br><b>recited</b><br>14:25<br><b>recognition</b><br>116:6<br><b>recognizable</b><br>50:17<br><b>recognize</b><br>12:19 14:13 | 17:8 18:24<br>25:11,22<br>26:25 31:6<br>31:23 32:14<br>33:10 34:2<br>35:15 36:8<br>37:3,25<br>44:1 45:2<br>46:12 48:17<br>52:17 54:25<br>60:21 65:2<br>73:7 75:5<br>76:6 79:5<br>81:21 84:7<br>89:25 95:5<br>95:12 96:14<br>99:8 101:17<br>103:15<br>106:11<br>112:25<br>115:2<br>131:22<br><b>Recognizing</b><br>100:25<br><b>recollection</b><br>37:8 76:2<br>142:15<br><b>recommend</b><br>43:4<br><b>record</b><br>10:5 46:22<br>61:19 76:12<br>76:13,15<br>84:1,2 89:6<br>91:3,12,22<br>94:3,5 96:7<br>96:9 97:14<br>107:14<br>108:9 114:4<br>115:16<br>117:4<br>131:18<br>132:2<br>135:12<br>147:4 148:8<br>148:9<br>154:13<br><b>recyclable</b> | 111:21<br><b>recycle</b><br>102:8 111:25<br><b>recycled</b><br>111:22<br><b>recycling</b><br>90:15 105:10<br><b>reduce</b><br>90:18 99:17<br><b>reduced</b><br>150:10 152:6<br><b>reduces</b><br>112:7<br><b>reducing</b><br>43:10 63:16<br>99:2<br><b>reduction</b><br>90:14<br><b>refer</b><br>39:15 40:2<br>47:17,19<br>51:14,14,15<br>55:8 106:12<br>115:21,25<br>140:24<br>147:19<br><b>reference</b><br>30:2 44:16<br>50:6 51:12<br>51:13 52:20<br>62:22 64:3<br>64:7 65:13<br>92:9 114:10<br>114:14<br>116:17<br>138:14,15<br><b>referenced</b><br>134:9<br><b>references</b><br>44:16 98:9<br>116:2<br><b>referred</b><br>17:12<br><b>referring</b><br>13:20 17:13<br>104:4<br>113:19,20<br><b>refers</b> | 114:22<br><b>reflected</b><br>47:11 92:5<br><b>refresh</b><br>37:7 76:2<br><b>regard</b><br>107:10 133:9<br>141:21<br><b>regarding</b><br>65:5 71:3<br><b>regards</b><br>143:7<br><b>regional</b><br>43:9<br><b>register</b><br>128:4<br><b>registered</b><br>25:12<br><b>registration</b><br>4:5,6,8,9,11<br>4:12,14,15<br>4:17,18,20<br>4:21,23,24<br>5:3,5 12:20<br>14:14 15:1<br>17:9,10<br>18:24,25<br>25:13,23<br>27:1 31:7<br>31:24 32:15<br>33:11 34:3<br>35:16 36:9<br>37:4,7 38:1<br><b>registrat...</b><br>14:4 31:3<br>147:12<br><b>regular</b><br>112:2 150:16<br><b>Regulations</b><br>9:5<br><b>reinforce</b><br>148:13<br><b>relate</b><br>85:25 111:18<br><b>related</b><br>35:22 40:23<br>49:11 90:11<br>104:18 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



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|---------------------|---------------------|-------------------|------------------|------------------|
| 107:12              | <b>represent</b>    | 150:18            | <b>root</b>      | <b>saying</b>    |
| 112:19              | 11:16 55:4          | <b>resumes</b>    | 147:14,16        | 129:19 131:2     |
| 134:3,3             | 63:9 150:12         | 71:1 79:1         | <b>Rosenberg</b> | <b>says</b>      |
| 140:8               | <b>represent...</b> | 128:1 138:1       | 9:23 29:8        | 30:3 37:10       |
| <b>relates</b>      | 36:7 80:7,12        | 146:1             | <b>roughly</b>   | 50:2 57:16       |
| 96:18 102:25        | 81:6 82:1           | <b>retail</b>     | 97:10 142:15     | 58:23 94:15      |
| <b>relating</b>     | <b>represent...</b> | 62:7 134:1        | <b>Roush</b>     | 98:19,21         |
| 113:2,12            | 17:15 134:6         | <b>retailer</b>   | 72:8 135:18      | 101:22           |
| 114:6               | <b>represent...</b> | 23:12,19          | 135:19           | 113:17           |
| 115:17              | 151:11              | <b>retrieve</b>   | 136:2            | 128:25           |
| <b>relationship</b> | <b>represents</b>   | 53:14             | <b>routing</b>   | <b>scan</b>      |
| 12:1 136:1,2        | 63:14 73:14         | <b>return</b>     | 111:23           | 15:23,24         |
| 139:12              | <b>reputation</b>   | 129:21            | <b>rows</b>      | 16:18 27:23      |
| 151:7               | 138:25              | 153:23            | 55:17            | 30:18 56:15      |
| <b>relations...</b> | <b>request</b>      | <b>reusable</b>   | <b>RPR</b>       | 56:20            |
| 23:5                | 59:22,23            | 85:19             | 1:24 151:23      | <b>scanned</b>   |
| <b>release</b>      | 60:10               | <b>revenue</b>    | <b>rules</b>     | 15:12,12         |
| 83:4                | 154:12              | 43:11             | 9:4 132:20       | <b>scanner</b>   |
| <b>relocated</b>    | <b>requested</b>    | <b>revenues</b>   | <b>run</b>       | 15:13            |
| 88:2                | 24:22 42:6          | 93:9,13,24        | 19:7 22:17       | <b>scanning</b>  |
| <b>remember</b>     | 152:5               | <b>re-branded</b> | 26:14,15         | 16:5             |
| 72:16               | <b>requests</b>     | 64:18             | 29:16 72:2       | <b>scans</b>     |
| <b>removed</b>      | 59:7,8,20           | <b>rich</b>       | 81:8             | 27:13 57:18      |
| 87:24               | <b>required</b>     | 88:8              | <b>runs</b>      | <b>scenes</b>    |
| <b>repair</b>       | 29:15 102:23        | <b>right</b>      | 18:4 81:9,14     | 23:14 41:7       |
| 40:19               | 112:16              | 28:19 51:22       | 88:4             | <b>Schaetzel</b> |
| <b>replant</b>      | <b>requiring</b>    | 58:23 73:19       | <b>runway</b>    | 2:3 3:3 9:11     |
| 87:12               | 53:11               | 87:4 93:1,1       | 48:1             | 11:14 12:17      |
| <b>replicas</b>     | <b>research</b>     | 101:17            |                  | 14:11 17:6       |
| 134:9               | 105:4               | 115:9             | <b>S</b>         | 18:21 25:9       |
| <b>report</b>       | <b>reserve</b>      | 150:19            | <b>safety</b>    | 25:20 26:23      |
| 6:13,15,17          | 150:19              | <b>rights</b>     | 90:4             | 29:4 31:2        |
| 6:18,21             | <b>resort</b>       | 133:7             | <b>sale</b>      | 31:21 32:12      |
| 88:10 89:9          | 50:13               | <b>right-hand</b> | 141:17           | 33:5,25          |
| 91:6,15             | <b>resources</b>    | 111:24            | <b>sales</b>     | 35:13 36:4       |
| 92:1,6 93:7         | 103:5 129:7         | <b>robust</b>     | 95:4 134:1       | 36:25 37:20      |
| 93:9,9              | <b>respond</b>      | 19:14 134:19      | <b>Sanvidge</b>  | 43:19,24         |
| 95:13 96:15         | 101:9               | <b>Rockford</b>   | 2:9              | 44:18,23         |
| 96:23 97:25         | <b>responses</b>    | 45:23             | <b>save</b>      | 48:14 52:10      |
| 115:3,7             | 101:8 131:23        | <b>Rod</b>        | 7:18 111:25      | 52:15 54:23      |
| 142:12              | <b>responsib...</b> | 72:10 73:21       | 112:14           | 60:19 64:24      |
| <b>reporter</b>     | 10:24               | <b>role</b>       | 113:18           | 66:6 71:2        |
| 9:3 150:24          | <b>rest</b>         | 116:7             | <b>saving</b>    | 71:14 72:19      |
| 151:1,9             | 106:11              | <b>rolled</b>     | 113:20,22,22     | 72:24 75:1       |
| 152:6 154:9         | <b>result</b>       | 40:18             | 129:7            | 76:11,14         |
| <b>reporting</b>    | 38:16 60:11         | <b>rolls</b>      | <b>saw</b>       | 79:24 80:21      |
| 9:6 142:16          | 95:3 129:16         | 134:23            | 110:3            | 81:18 82:24      |
| 151:12,16           |                     |                   |                  | 84:1,5           |



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|-----------------|----------------|--------------------|---------------------|--------------------|
| 85:12 86:8      | 109:11         | 113:18             | 105:17              | 41:8,9             |
| 89:3 91:2       | 128:12         | 128:23             | 108:1,3             | <b>shell</b>       |
| 91:11 94:6      | <b>seconds</b> | <b>sensitive</b>   | 134:4               | 20:14,21           |
| 95:10 96:7      | 60:6           | 63:18 76:19        | 140:15              | <b>shield</b>      |
| 96:12 97:15     | <b>section</b> | 99:2 103:4         | 148:19              | 13:17,19,25        |
| 98:4 99:6       | 90:19          | 111:17             | 154:5               | 14:2 17:9          |
| 100:1 107:4     | <b>see</b>     | 114:8              | <b>serviced</b>     | 17:12,17           |
| 107:18          | 13:8,10,16     | <b>sentence</b>    | 42:1                | 18:13,17           |
| 108:13          | 21:20 22:9     | 102:14             | <b>services</b>     | 25:3,12            |
| 109:5,9         | 25:2,5         | <b>separate</b>    | 5:12,13 12:7        | 44:8 47:22         |
| 112:23          | 37:24 38:3     | 3:9 51:9           | 14:23,23,25         | 51:9,10            |
| 113:8 114:1     | 44:6 45:7      | <b>separated</b>   | 19:20 26:4          | 63:7,8 65:9        |
| 114:25          | 46:7 47:6      | 109:2              | 26:8 36:13          | 92:24 93:5         |
| 115:13          | 48:2,4         | <b>separately</b>  | 38:17,22            | 139:21             |
| 116:11          | 51:20 52:25    | 8:18 66:11         | 39:11 40:18         | 148:21             |
| 117:1 128:2     | 55:19 58:7     | 76:23              | 40:23 41:2          | 149:3              |
| 128:16          | 60:12,14       | 117:11             | 41:4,12,14          | <b>shield-like</b> |
| 130:10          | 63:25 65:14    | 136:7              | 42:7,16             | 38:4               |
| 132:7,11        | 95:18,21       | 143:12             | 43:6 52:19          | <b>ship</b>        |
| 133:12          | 96:20,23,24    | <b>separations</b> | 59:11 94:8          | 41:3 60:3          |
| 142:20,24       | 96:25 102:9    | 45:20              | 94:25 104:3         | 94:16 106:2        |
| 146:4 147:3     | 105:24         | <b>September</b>   | 131:23              | <b>shipment</b>    |
| 148:7,10        | 128:17         | 47:8 48:21         | 138:20              | 16:25 24:19        |
| 149:5           | 130:20         | 55:25 59:16        | 141:9               | <b>shipped</b>     |
| <b>Schenken</b> | 131:10         | 99:21              | 151:16              | 22:23 26:7         |
| 1:14 3:2 9:1    | <b>seeing</b>  | <b>Serial</b>      | <b>set</b>          | <b>shipper</b>     |
| 9:8,12,15       | 76:1           | 1:3                | 19:9 20:19          | 24:20              |
| 10:4,6          | <b>seen</b>    | <b>series</b>      | 131:20              | <b>shippers</b>    |
| 30:22 71:14     | 110:1 115:7    | 114:5 134:7        | 139:16,17           | 15:7               |
| 132:11          | <b>segment</b> | 134:7,8            | 152:4 153:7         | <b>shipper's</b>   |
| 152:2 153:5     | 94:12,17,20    | <b>served</b>      | <b>setting</b>      | 28:6               |
| 153:12          | <b>select</b>  | 48:10 61:22        | 27:10               | <b>shipping</b>    |
| 154:7 155:1     | 14:23 59:25    | <b>servers</b>     | <b>seven</b>        | 19:8,10            |
| 155:25          | 60:5           | 15:18 22:16        | 110:9 138:6         | 20:16 26:6         |
| <b>scope</b>    | <b>sell</b>    | 54:15              | <b>seven-figure</b> | 43:10 53:1         |
| 138:17          | 34:20 139:7    | <b>serves</b>      | 142:5               | 106:6,8            |
| <b>Scott</b>    | <b>seller</b>  | 61:20              | <b>sewer</b>        | <b>shirt</b>       |
| 98:1            | 23:8 24:14     | <b>service</b>     | 112:15,18           | 65:22              |
| <b>screen</b>   | <b>selling</b> | 1:5 9:13,17        | <b>Shannon</b>      | <b>shirts</b>      |
| 13:9 53:20      | 20:18 22:19    | 19:21 31:12        | 2:9                 | 46:5               |
| 53:20 79:20     | <b>semi</b>    | 31:14 32:4         | <b>shaped</b>       | <b>shopper</b>     |
| <b>Sec</b>      | 49:22,23       | 34:5,22,23         | 135:3               | 23:20              |
| 151:8           | 51:16,17       | 35:2,23            | <b>shares</b>       | <b>shops</b>       |
| <b>second</b>   | <b>semis</b>   | 36:18 38:13        | 75:8                | 21:2               |
| 31:15 52:11     | 51:15          | 42:13 48:24        | <b>sheet</b>        | <b>show</b>        |
| 53:9 76:12      | <b>sense</b>   | 49:13 94:22        | 5:18 61:1           | 25:9 31:4,21       |
| 82:4 83:5,6     | 42:14,21       | 100:12             | 154:1,14            | 32:12 33:6         |
| 94:4 96:8       | 86:25 89:24    | 105:15,16          | <b>shelf</b>        | 33:25 35:13        |



|                     |                     |                     |                     |                     |
|---------------------|---------------------|---------------------|---------------------|---------------------|
| 36:4,25             | 51:24               | <b>SKUs</b>         | <b>solutions</b>    | <b>Spalding</b>     |
| 37:22 44:23         | <b>signature</b>    | 134:14 135:4        | 21:6 26:10          | 2:4 151:15          |
| 49:14 50:11         | 27:14 28:1          | <b>sky</b>          | 26:20 40:12         | <b>speaking</b>     |
| 52:15 53:5          | 30:20,21,21         | 134:7               | 40:13,20            | 22:14 91:24         |
| 54:23 64:25         | 53:10 57:22         | <b>slicks</b>       | 42:2,9              | 138:22              |
| 72:24 75:1          | 57:22 58:2          | 81:13               | 105:23              | <b>special</b>      |
| 76:5 79:4           | 58:5,11             | <b>slides</b>       | 151:13              | 141:9               |
| 79:24 80:21         | 155:24              | 104:24 105:6        | 154:3               | <b>specifically</b> |
| 81:22 84:5          | <b>signed</b>       | <b>slightly</b>     | <b>somebody</b>     | 142:12              |
| 85:12               | 153:23              | 42:19               | 29:14 41:19         | <b>speeches</b>     |
| 103:21              | 154:13              | <b>slogan</b>       | 49:14 59:10         | 97:20               |
| 104:7               | <b>significance</b> | 102:16              | <b>somewhat</b>     | <b>spending</b>     |
| 106:18              | 62:9 63:11          | <b>SM</b>           | 93:22               | 111:1               |
| 128:7               | <b>significant</b>  | 105:14,15           | <b>somewhere</b>    | <b>spent</b>        |
| 131:16              | 15:9 25:6           | <b>small</b>        | 28:11 38:13         | 75:18 76:3,8        |
| 133:25              | 55:17 63:15         | 35:6 39:7,8         | 52:2 59:2           | <b>spikes</b>       |
| <b>showing</b>      | 83:24               | 39:9,17,22          | 97:6 101:15         | 58:25               |
| 16:23 110:4         | <b>similar</b>      | 39:22,24            | <b>soon</b>         | <b>spirit</b>       |
| <b>shown</b>        | 132:22              | 40:4,9              | 94:24               | 8:12 146:8          |
| 17:10 36:11         | <b>similarly</b>    | 41:13 49:2          | <b>sophistic...</b> | <b>sponsor</b>      |
| 79:9,11             | 129:6               | 49:4,5 52:5         | 19:19 21:1          | 71:24 72:1,8        |
| 92:9,24             | <b>simple</b>       | 52:6 62:4           | <b>sophistic...</b> | <b>sponsored</b>    |
| 93:12,13            | 26:13 98:22         | 102:4               | 21:8                | 72:9,11             |
| 103:11              | <b>simultane...</b> | 140:14              | <b>sorry</b>        | <b>sponsors</b>     |
| 106:13              | 129:2               | <b>smaller</b>      | 62:24 101:22        | 72:5                |
| 130:2 132:3         | <b>single</b>       | 21:4                | 108:21              | <b>sponsorship</b>  |
| 134:10              | 17:1 142:19         | <b>smallest</b>     | <b>sort</b>         | 72:7 74:12          |
| <b>shows</b>        | <b>sit</b>          | 87:18               | 14:24 20:4          | 75:13               |
| 15:13 44:7          | 21:18               | <b>snapshot</b>     | 23:7 34:14          | <b>sponsorships</b> |
| 110:19              | <b>site</b>         | 89:10               | 35:22 38:23         | 5:23 71:15          |
| 133:22              | 6:10 20:17          | <b>social</b>       | 59:13 86:18         | 71:19 73:3          |
| <b>shrinkwra...</b> | 23:8,12,24          | 89:14,23,24         | 103:6               | 73:12,15            |
| 49:16,17            | 23:24               | <b>software</b>     | 129:10              | <b>sporting</b>     |
| <b>shut</b>         | <b>sites</b>        | 14:18 16:12         | 139:3               | 71:21,24,25         |
| 41:10 112:9         | 22:5                | 18:1,7              | 146:16              | 72:2,3,5            |
| <b>side</b>         | <b>sitting</b>      | 19:15 21:5          | <b>sorts</b>        | 74:9                |
| 16:14 17:1,2        | 46:15 87:4          | 26:5 27:19          | 112:3               | <b>spots</b>        |
| 50:21 52:3          | <b>situation</b>    | 29:25 30:1          | <b>sounds</b>       | 6:9 85:19           |
| 52:5 100:25         | 17:20,22            | 30:7,11             | 134:15 135:1        | <b>sprinkled</b>    |
| 134:13              | <b>situations</b>   | 83:4 140:7          | 135:3               | 82:20 93:2          |
| <b>sides</b>        | 71:20               | 140:14,25           | <b>souped-up</b>    | <b>sschaetze...</b> |
| 139:25              | <b>six</b>          | <b>solar-pow...</b> | 80:24               | 2:6                 |
| <b>sign</b>         | 110:2,8             | 147:9               | <b>source</b>       | <b>stake</b>        |
| 56:7 58:1           | <b>six-point...</b> | <b>sold</b>         | 20:5                | 33:20               |
| 150:19              | 62:2                | 35:6                | <b>space</b>        | <b>stand</b>        |
| 152:9               | <b>sizable</b>      | <b>solution</b>     | 35:3,4,5            | 26:14               |
| <b>signage</b>      | 40:3 148:6          | 14:19 18:1          | <b>Spain</b>        | <b>standard</b>     |
| 50:23 51:2          |                     | 21:9 27:6           | 2:9                 |                     |



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|--------------------|---------------------|---------------------|--------------------|-----------------|
| 71:5 90:3          | <b>Stoffel</b>      | 37:12               | <b>sustainable</b> | 71:9,19         |
| 104:19             | 6:25 98:9,15        | <b>summary</b>      | 89:21,24           | 111:24          |
| <b>start</b>       | 114:13              | 76:6                | 103:5 104:2        | 128:12          |
| 147:18 148:4       | <b>stops</b>        | <b>supervise</b>    | <b>switches</b>    | 130:11          |
| <b>started</b>     | 27:15               | 11:6,9              | 112:9              | 132:8           |
| 20:17 37:9         | <b>store</b>        | <b>supervision</b>  | <b>sworn</b>       | 133:13,21       |
| 86:14,15           | 62:8,11,15          | 73:2,9 75:23        | 9:9 150:9          | 133:22          |
| 110:25             | 62:19,20,21         | 85:17 142:9         | 153:5,14           | 142:25          |
| 147:11             | 103:2               | <b>supplies</b>     | <b>symbols</b>     | <b>taken</b>    |
| <b>starting</b>    | <b>story</b>        | 139:4               | 13:22              | 9:19 71:12      |
| 86:21 109:11       | 86:11               | <b>supply</b>       | <b>synch</b>       | 116:7 132:9     |
| <b>state</b>       | <b>strategy</b>     | 40:11,13,20         | 30:16              | 150:7 152:3     |
| 10:4 46:22         | 90:14 98:10         | 42:2,8              | <b>system</b>      | 152:5 153:6     |
| 93:20 132:2        | <b>stream</b>       | 63:24 90:13         | 14:21 15:11        | 154:10          |
| 150:3              | 88:4                | 98:11,23            | 19:13 21:21        | <b>takes</b>    |
| 151:10             | <b>streamlined</b>  | 105:1,12            | 22:16 26:13        | 8:3 64:21       |
| 153:2              | 19:13               | 139:18              | 26:16 32:5         | 116:16          |
| <b>stated</b>      | <b>Street</b>       | 146:16              | 56:11,17           | <b>taking</b>   |
| 150:7              | 2:4 57:15           | <b>supported</b>    | 57:3 61:17         | 49:18 56:7      |
| <b>statement</b>   | <b>structure</b>    | 30:15               | 112:16,18          | 90:11           |
| 84:11 104:16       | 64:17 104:22        | <b>sure</b>         | 129:1              | 151:17          |
| <b>states</b>      | <b>Study</b>        | 14:2 33:22          | 130:17,21          | <b>talk</b>     |
| 1:1 61:5           | 8:5                 | 41:20 47:13         | 131:4              | 12:24 39:5      |
| 94:7,10            | <b>stuff</b>        | 61:21 64:24         | 141:15             | 89:15 97:19     |
| 153:5              | 49:16 129:10        | 76:4 97:5,6         | <b>systems</b>     | 117:4           |
| <b>statistics</b>  | <b>styled</b>       | 101:16              | 19:12 41:6         | <b>talked</b>   |
| 52:7 97:7          | 9:16                | 104:12              |                    | 52:22 56:19     |
| <b>status</b>      | <b>stylized</b>     | 106:7 139:5         | <b>T</b>           | 62:6 135:17     |
| 23:9 54:16         | 35:17 37:24         | <b>surface</b>      | <b>T</b>           | <b>talking</b>  |
| 59:14 60:7         | 38:3 80:16          | 79:18               | 1:14 3:2 9:1       | 16:11 61:25     |
| 141:14             | 80:17               | <b>suspect</b>      | 9:15 150:1         | 71:21 100:8     |
| <b>stay</b>        | <b>submitted</b>    | 59:1 115:9          | 150:1 152:2        | 111:15          |
| 140:16             | 15:6                | 129:17              | 153:5,12           | 147:24          |
| <b>steering</b>    | <b>SUBSCRIBED</b>   | 130:3               | 154:7 155:1        | <b>talks</b>    |
| 104:23             | 153:14              | <b>sustainab...</b> | 155:25             | 102:15          |
| <b>STEPHEN</b>     | <b>subset</b>       | 6:13,15,17          | <b>tab</b>         | 104:22          |
| 2:3                | 112:19              | 86:10 88:10         | 60:5               | <b>taping</b>   |
| <b>stepping</b>    | 147:20              | 89:4,9              | <b>Table</b>       | 41:9            |
| 82:5,8             | <b>subsidiaries</b> | 90:21 91:6          | 95:18              | <b>tapping</b>  |
| <b>steward</b>     | 40:21               | 91:15 97:16         | <b>tabs</b>        | 24:18           |
| 102:22             | <b>substantial</b>  | 97:19,25            | 60:4               | <b>targeted</b> |
| <b>Stewardship</b> | 44:12               | 98:13               | <b>tail</b>        | 21:4,7          |
| 7:21               | <b>subtitled</b>    | 100:10              | 47:20 51:16        | 134:15          |
| <b>sticker</b>     | 107:23 146:8        | 102:21              | <b>tails</b>       | <b>tasks</b>    |
| 79:17              | <b>Sue</b>          | 104:10,18           | 47:18,19           | 16:3,6          |
| <b>stock</b>       | 2:9                 | 104:23              | <b>take</b>        | <b>taxiing</b>  |
| 140:19             | <b>suggest</b>      | 106:15              | 27:18,19,22        | 48:1            |
|                    |                     | 115:3               | 57:11 61:3         | <b>team</b>     |



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|---------------------|---------------------|------------------|---------------------|-----------------|
| <b>team</b>         | 113:15              | 24:24            | <b>third</b>        | 105:14          |
| 72:9                | 114:10              | <b>therefore</b> | 71:15 89:14         | 116:16          |
| <b>teams</b>        | 128:17,25           | 15:25 94:22      | 108:5               | 130:16,22       |
| 72:13               | 132:21              | <b>thereof</b>   | <b>thousand</b>     | 152:4 153:8     |
| <b>techniques</b>   | 133:4               | 130:19           | 52:8 63:2           | <b>titled</b>   |
| 114:6               | 139:21              | <b>thereto</b>   | 111:10              | 89:8            |
| <b>technologies</b> | 147:13              | 150:9            | <b>thousands</b>    | <b>today</b>    |
| 92:20               | <b>terms</b>        | <b>thing</b>     | 29:3 42:18          | 11:20 18:17     |
| <b>technology</b>   | 53:5 71:18          | 14:24 16:15      | <b>three</b>        | 25:16 26:2      |
| 5:16 7:14           | 72:5 83:10          | 20:7 23:7        | 11:7 51:10          | 31:17 32:8      |
| 20:25 21:8          | 89:11               | 34:15 35:22      | 81:21 90:20         | 32:9,20         |
| 55:9,11             | 113:20              | 59:13 86:18      | 146:19              | 35:9,24         |
| 57:1 86:19          | 128:20              | 88:9 91:20       | 147:18              | 36:21 38:19     |
| 92:14,18            | <b>test</b>         | 103:6 106:4      | 148:4               | 38:22 47:2      |
| 109:25              | 111:3               | 106:17           | <b>three-dim...</b> | 58:3 62:24      |
| 110:7,10            | <b>testified</b>    | 140:19           | 17:14               | 73:1 85:15      |
| 114:22              | 9:9                 | <b>things</b>    | <b>throughout</b>   | 106:16          |
| <b>telematics</b>   | <b>testify</b>      | 7:3 19:17        | 62:21 82:20         | 142:8           |
| 7:18 113:13         | 11:20               | 20:16 36:17      | 131:6               | 147:11          |
| 113:17              | <b>testifying</b>   | 40:16 41:1       | <b>throw</b>        | 148:23          |
| <b>telephone</b>    | 85:15               | 59:5 72:4        | 100:3               | 149:6           |
| 9:21                | <b>testimonial</b>  | 89:23 90:12      | <b>ticker</b>       | <b>today's</b>  |
| <b>television</b>   | 9:12                | 99:14,16,19      | 140:20              | 98:25           |
| 83:12 85:18         | <b>testimony</b>    | 100:3            | <b>tie</b>          | <b>Todd</b>     |
| <b>tell</b>         | 4:3 66:8            | 104:25           | 148:13              | 10:6            |
| 15:25 29:1          | 71:1,3              | 108:4,7          | <b>ties</b>         | <b>together</b> |
| 29:23 32:23         | 76:20 79:1          | 111:13,14        | 46:5 112:20         | 76:7 85:17      |
| 44:14 53:22         | 117:8 128:1         | 111:18           | <b>tightly</b>      | 104:13          |
| 55:20 58:9          | 136:4 138:1         | 112:3            | 49:19               | 108:17          |
| 80:1 83:1           | 143:6,9             | 138:25           | <b>time</b>         | <b>tool</b>     |
| 88:19               | 146:1               | 141:7            | 21:3 31:15          | 98:21           |
| 109:22              | <b>testing</b>      | <b>think</b>     | 46:24 47:4          | <b>tools</b>    |
| 116:13              | 110:12              | 28:22 37:13      | 47:14,14            | 19:1,4,9,9      |
| <b>template</b>     | <b>Texaco</b>       | 51:19 52:6       | 49:10 56:5          | 19:20 20:8      |
| 104:11,19           | 110:23              | 54:8 56:4        | 64:19,21            | 20:12,15,20     |
| 105:13              | <b>text</b>         | 72:18 73:17      | 71:9 88:23          | 21:2,5,17       |
| <b>Ten</b>          | 131:6               | 80:2 82:6        | 96:4 98:19          | 21:22 22:5      |
| 7:3 99:14           | <b>thank</b>        | 92:13 109:1      | 106:10              | 22:9 23:1,6     |
| <b>tend</b>         | 31:2 71:11          | 128:22           | 112:5 129:3         | 23:10 24:3      |
| 39:15 147:19        | 72:20 76:14         | 129:24           | 146:11              | 24:8,11,15      |
| <b>tender</b>       | 92:17 149:5         | 130:4 132:7      | 149:6 152:3         | 24:19,23,24     |
| 32:5                | <b>Thanksgiving</b> | 135:23           | 153:7               | 56:18,18        |
| <b>term</b>         | 59:3                | 138:12           | <b>times</b>        | 148:23,25       |
| 42:15 49:25         | <b>thematic</b>     | 141:19           | 60:16               | <b>top</b>      |
| 85:7 98:14          | 106:24              | <b>thinking</b>  | <b>tiny</b>         | 13:15 42:5      |
| 101:25              | <b>theme</b>        | 88:16            | 140:25              | 44:14 53:18     |
| 102:18              | 86:4,5              | <b>Thinks</b>    | <b>title</b>        | 60:1 65:23      |
| 111:11              | <b>themselves</b>   | 85:2             | 85:1 101:21         | 66:4 72:16      |



|                    |                     |                     |                     |                     |
|--------------------|---------------------|---------------------|---------------------|---------------------|
| 98:16              | 30:1,2,3,7          | <b>trailer</b>      | 49:21 65:10         | <b>two-dimen...</b> |
| 100:11,12          | 30:9 52:21          | 51:16,18            | 92:5                | 17:15               |
| 100:13             | 52:23 53:8          | <b>trailers</b>     | <b>trucked</b>      | <b>type</b>         |
| 113:16             | 53:24 54:8          | 51:11,13,23         | 87:16               | 13:8 58:9           |
| 148:3,5            | 54:11,12,14         | 52:9 64:5,8         | <b>Truckload</b>    | 72:3 138:9          |
| <b>topic</b>       | 54:18,20            | <b>train</b>        | 5:12                | <b>types</b>        |
| 105:7              | <b>Trackpads</b>    | 139:9,10,12         | <b>trucks</b>       | 71:20 90:6          |
| <b>total</b>       | 29:2                | 139:13,16           | 40:2,3 65:25        | 108:23              |
| 75:16 109:12       | <b>tractor</b>      | 139:17,19           | 116:1               | 110:6               |
| <b>touch</b>       | 51:17               | 139:25              | <b>truck-shaped</b> | 138:11              |
| 112:6              | <b>tractors</b>     | <b>transaction</b>  | 80:25               | <b>typewriting</b>  |
| <b>touched</b>     | 51:21,23            | 57:9 106:9          | <b>true</b>         | 150:10              |
| 28:13              | 52:8 62:25          | <b>transcript</b>   | 44:11 47:1          | <b>typewritten</b>  |
| <b>tournaments</b> | 64:4 111:5          | 8:17,18             | 55:24 81:5          | 152:7               |
| 72:10              | <b>tractor-t...</b> | 114:12              | 93:12,15            | <b>typical</b>      |
| <b>towards</b>     | 40:7,9 50:12        | 135:25              | 99:20               | 27:18 58:24         |
| 134:15             | 50:13               | 150:7,13,20         | 109:15              | 59:15,16            |
| <b>toy</b>         | <b>trade</b>        | 152:10              | 150:12              | 65:15,16            |
| 133:23             | 62:12 133:22        | 153:6,9             | 153:8               | <b>typically</b>    |
| 139:12             | <b>trademark</b>    | 154:10,15           | <b>try</b>          | 17:19 21:18         |
| <b>tracing</b>     | 1:1,2 4:4,6         | <b>transfer</b>     | 42:24 46:21         | 27:13 41:13         |
| 15:2 16:3          | 4:7,9,10,12         | 30:11               | 86:9 94:25          | 50:18,19            |
| 19:11              | 4:13,15,16          | <b>transformer</b>  | 111:16              | 59:24 63:4          |
| <b>track</b>       | 4:18,19,21          | 131:5               | 114:7               | 63:5 81:3           |
| 27:7 28:4          | 4:22,24 5:3         | <b>transit</b>      | <b>trying</b>       |                     |
| 52:24 53:9         | 5:4 12:24           | 15:2 24:5           | 20:23 28:3          | U                   |
| 54:11 58:10        | 13:22 14:7          | <b>transport...</b> | 28:22 90:17         | <b>ultimately</b>   |
| 60:3 116:19        | 16:7 34:3           | 38:24 40:23         | 92:13 94:23         | 49:24 141:15        |
| 140:21             | 37:3 38:22          | 41:14 43:5          | 102:4,22            | <b>unable</b>       |
| <b>tracking</b>    | 39:1,2 96:3         | <b>transported</b>  | 106:7,21            | 94:23               |
| 15:1 16:3          | 114:17              | 40:8                | <b>tug</b>          | <b>under</b>        |
| 19:11 20:16        | 132:22              | <b>travel</b>       | 80:2,12,16          | 3:9 31:14           |
| 23:8,23,25         | 133:7 135:9         | 140:20              | <b>turn</b>         | 71:5,18,23          |
| 24:3,8,13          | 142:1,2             | <b>traveled</b>     | 63:19 93:6          | 73:2 75:23          |
| 24:17,25           | 147:12              | 47:23 116:4         | 95:17,20            | 85:15,16            |
| 26:7 28:7          | <b>trademarks</b>   | <b>treat</b>        | 96:22               | 142:8               |
| 30:19 53:11        | 10:21 13:14         | 90:1                | <b>turned</b>       | 150:10              |
| 54:5 59:7,8        | 16:13,21            | <b>tree</b>         | 79:16,19            | 151:7,18            |
| 59:13,19,21        | 25:6 63:10          | 100:13              | <b>turns</b>        | <b>underneath</b>   |
| 59:23 60:5         | 95:14 96:19         | <b>trees</b>        | 111:24              | 86:5 88:5           |
| 60:6,9             | 132:21              | 87:9,12,21          | <b>TV</b>           | <b>understand</b>   |
| 141:12             | 139:17              | 87:23 88:2          | 6:9 85:19           | 11:8,19             |
| <b>Trackpad</b>    | <b>Trading</b>      | <b>TRIAL</b>        | <b>two</b>          | 51:12 53:4          |
| 5:6,14 27:2        | 8:14 133:19         | 1:2                 | 55:15 109:2         | 81:9 84:12          |
| 27:4,5,16          | <b>tradition</b>    | <b>triple</b>       | 139:14              | 85:24 88:11         |
| 27:17,19,20        | 84:18               | 72:12               | 141:19              | 96:1 101:25         |
| 27:22 29:14        | <b>tradition...</b> | <b>truck</b>        | 148:18              | 107:9               |
| 29:20,21,25        | 148:24              |                     | 153:22              | 110:15              |



|                     |             |             |                |                |
|---------------------|-------------|-------------|----------------|----------------|
| 128:20              | 97:15,18    | 42:2,13     | 106:6,14,21    | <b>UPS.COM</b> |
| 139:9               | <b>UPS</b>  | 44:6,8,8,13 | 107:10,14      | 5:7,9,11,15    |
| <b>understan...</b> | 5:6,9,11,13 | 45:8,14,18  | 107:21         | 5:17,19 6:3    |
| 38:7 74:22          | 5:14,16,17  | 45:25 46:12 | 108:4,9,23     | 7:3,15,17      |
| 81:11 85:21         | 5:19,24     | 46:16 47:21 | 110:5,17,25    | 7:22 12:21     |
| <b>unfolded</b>     | 6:12,14,16  | 48:10,23    | 111:1          | 12:23 13:5     |
| 83:8                | 6:24 7:5,10 | 49:13 50:11 | 113:12,17      | 14:7 15:20     |
| <b>uniform</b>      | 7:16,17,22  | 50:17,20    | 114:18         | 23:10,11,18    |
| 40:1 46:1,17        | 8:3,10,12   | 51:4,8,10   | 115:17,21      | 24:10 43:14    |
| 61:13 65:11         | 8:12 10:8   | 52:1,2,18   | 116:6,16,20    | 43:14,17       |
| 65:16,17            | 10:10,11,13 | 52:20,21,23 | 116:22         | 44:3 45:4      |
| 81:23 82:1          | 10:17 11:7  | 53:25 55:8  | 128:5          | 48:17 52:20    |
| <b>uniforms</b>     | 11:23,24    | 56:5,16,18  | 129:12,13      | 55:1 56:17     |
| 13:24               | 12:2,4,5,6  | 59:12 60:13 | 129:24,25      | 58:20 59:24    |
| <b>uninterru...</b> | 12:8,8,9,13 | 60:13 61:1  | 130:4          | 60:11,22       |
| 130:17,21           | 13:2,17,18  | 62:7,11,14  | 132:22         | 62:6 65:3      |
| 131:3               | 13:19 14:14 | 63:7 64:9   | 133:20         | 79:6 99:9      |
| <b>unique</b>       | 14:17,18,21 | 64:11 55:2  | 135:3,9        | 113:1,11       |
| 58:19               | 15:6,20     | 65:6,9,15   | 138:3          | <b>urinal</b>  |
| <b>Unison</b>       | 16:7 17:9   | 65:18,21    | 139:17,20      | 112:14         |
| 6:12,14,16          | 17:12,16,24 | 71:15 73:25 | 139:21,22      | <b>urinals</b> |
| 89:8 91:7           | 18:10,13,16 | 75:6,9,18   | 140:6,6,23     | 112:12,13      |
| 91:16 115:6         | 18:25 19:4  | 75:18 79:14 | 140:24         | <b>usage</b>   |
| <b>unit</b>         | 19:5,9,10   | 79:20 80:17 | 141:5,16,24    | 132:13         |
| 130:1               | 19:20 21:17 | 80:17,25    | 146:7,8,9      | <b>use</b>     |
| <b>United</b>       | 22:9,24,25  | 81:23 82:1  | 146:12         | 15:20 18:17    |
| 1:1,5 9:13          | 23:6,23,25  | 82:12 83:6  | 147:6,13,13    | 20:19,25       |
| 9:16 38:17          | 24:2,8,8,15 | 83:11,12,14 | 147:16,17      | 21:2,5,21      |
| 61:5 90:7           | 24:17,18,22 | 84:14,17,18 | 147:18,19      | 24:2 25:16     |
| 94:7,10             | 25:1,3,3,12 | 86:14,21    | 147:22         | 26:1,5,19      |
| 102:9               | 25:24 26:1  | 87:9 88:11  | 148:5,12,14    | 28:14 29:22    |
| 131:23              | 26:9,10,18  | 88:22 89:8  | 148:23,24      | 30:8 31:16     |
| 154:5               | 27:2,4,5,13 | 89:11,21,24 | <b>UPS's</b>   | 32:7,20        |
| <b>university</b>   | 27:13,14,20 | 90:11 91:5  | 7:4 10:18      | 33:16 34:23    |
| 27:10               | 27:22 28:7  | 91:14,22    | 11:25 16:13    | 35:8,24        |
| <b>unless</b>       | 31:7,10,11  | 92:23 95:6  | 43:2,2         | 36:21 38:19    |
| 27:15 46:7          | 31:25 32:2  | 95:21,23    | 54:15 55:11    | 39:1 43:5      |
| 86:11               | 32:3,7,16   | 96:3,23,25  | 56:11 63:14    | 49:12 52:24    |
| <b>unlike</b>       | 32:19 33:12 | 97:24,25    | 90:19 99:15    | 54:10,11       |
| 92:1                | 34:4,9      | 98:7,11,23  | 100:14         | 55:21 56:2     |
| <b>upcoming</b>     | 35:17,20    | 99:17 100:9 | 104:1,9        | 57:4,11        |
| 74:21 75:12         | 36:7,12,13  | 100:10,15   | 105:10         | 82:11,14,18    |
| <b>updated</b>      | 37:5,9,24   | 100:22      | 108:1 114:6    | 85:7 92:8      |
| 47:5,14             | 38:4,9,10   | 101:1,4,9   | 131:23         | 114:6,17       |
| 56:25               | 38:19 39:6  | 101:22,22   | 132:21         | 128:4,6,17     |
| <b>uploaded</b>     | 39:25 40:11 | 102:11,16   | <b>UPS-ers</b> | 128:25         |
| 28:2 56:24          | 40:13 41:6  | 103:3,16,21 | 40:21 75:10    | 129:5,6,12     |
| <b>upper</b>        | 41:20,22,25 | 104:16      | 101:9          | 132:20         |
|                     |             | 105:23      |                |                |



|                 |                  |                     |                    |                  |
|-----------------|------------------|---------------------|--------------------|------------------|
| 133:3           | 46:19 57:1       | 22:24 25:1          | 41:8 43:7          | 22:19 23:1       |
| 138:16          | 61:1 72:1        | 56:25 106:6         | <b>warehouses</b>  | 24:14 43:13      |
| <b>user</b>     | 83:8 100:3       | <b>vice</b>         | 43:9 50:10         | 43:17 44:3       |
| 140:1,1         | 103:11           | 10:15,16,24         | <b>warehousing</b> | 45:4 47:13       |
| <b>uses</b>     | 108:22           | <b>view</b>         | 41:2               | 48:18 52:19      |
| 7:18 106:1      | 111:2 114:6      | 90:20 111:20        | <b>wasn't</b>      | 55:1 60:22       |
| 113:12,17       | 134:6            | <b>viewed</b>       | 37:11              | 65:3 79:6        |
| <b>utilize</b>  | <b>vehicle</b>   | 41:13               | <b>waste</b>       | 99:9 102:25      |
| 19:20           | 57:12 63:12      | <b>views</b>        | 113:23             | 103:12           |
| <b>U.S</b>      | 82:9,10          | 58:15,19,24         | <b>watches</b>     | 115:17           |
| 4:4,6,7,9,10    | 88:22 92:9       | 59:9,9              | 146:18,20          | 128:9            |
| 4:12,13,15      | 92:10,11,18      | <b>vintage</b>      | <b>watch-sized</b> | <b>web-based</b> |
| 4:16,18,19      | <b>vehicles</b>  | 88:22,25            | 134:21             | 20:11 21:11      |
| 4:21,22,24      | 7:12,24          | <b>virtually</b>    | <b>water</b>       | 21:12            |
| 5:3,4 12:20     | 50:25 51:3       | 40:14               | 112:15,17          | <b>weigh</b>     |
| 16:22 17:9      | 63:1,3 64:8      | <b>visibility</b>   | <b>waterless</b>   | 14:23 39:13      |
| 25:12 27:1      | 82:18 86:15      | 22:22 27:15         | 112:12             | <b>went</b>      |
| 31:6,24         | 86:17,17         | <b>visible</b>      | <b>way</b>         | 46:7 60:9        |
| 32:15 34:3      | 90:13 91:18      | 21:23 47:22         | 19:6 26:16         | <b>we'll</b>     |
| 35:16 36:9      | 92:12            | <b>visor</b>        | 30:18 42:25        | 71:4,9 100:2     |
| 37:3 38:1       | 100:14           | 103:13              | 50:17 53:16        | <b>we're</b>     |
| 74:4 130:14     | 105:2,11         | <b>volume</b>       | 56:4 57:7          | 16:18 50:25      |
| 130:15          | 108:19,23        | 59:4 61:14          | 84:22 90:7         | 59:16 62:1       |
| 147:24          | 109:13           | 61:23               | 96:6 101:23        | 85:6 90:17       |
| 148:1           | 110:5            | <b>volunteerism</b> | 102:9,18           | 97:2,10          |
| <b>V</b>        | 111:10,21        | 90:8                | 108:6              | 101:4            |
| <b>v</b>        | 112:19           | <b>vs</b>           | 111:22,25          | 104:25           |
| 9:17            | 115:18,19        | 1:8 154:6           | 114:11             | 106:6,21         |
| <b>valuable</b> | 115:22           | <b>W</b>            | 129:6 133:5        | 110:7 112:9      |
| 6:19,21         | <b>venders</b>   | <b>waited</b>       | 148:13             | 113:19,21        |
| 95:14 96:3      | 19:16            | 47:25               | <b>ways</b>        | 132:7            |
| 96:19           | <b>venture</b>   | <b>walking</b>      | 7:6,19 39:5        | <b>we've</b>     |
| 140:15          | 114:19           | 46:4                | 100:6              | 14:1 23:16       |
| <b>value</b>    | <b>venue</b>     | <b>want</b>         | <b>weapons</b>     | 27:5 63:22       |
| 97:2,3,9        | 74:8             | 22:22 29:14         | 138:22             | 64:14 72:9       |
| <b>values</b>   | <b>verified</b>  | 29:21 41:18         | <b>wearing</b>     | 74:2 86:18       |
| 97:8            | 132:2            | 42:11,23            | 39:25 45:25        | 92:2 94:24       |
| <b>vans</b>     | <b>verify</b>    | 49:9 60:2           | 46:5               | 111:7            |
| 62:24 110:20    | 32:24 82:15      | 87:10 106:4         | <b>weather</b>     | 135:17           |
| 110:22          | <b>verifying</b> | 140:21              | 140:20             | 142:15           |
| 111:3           | 108:6            | 146:13              | <b>web</b>         | <b>whatever</b>  |
| <b>variety</b>  | <b>version</b>   | <b>wanted</b>       | 13:3 21:25         | 45:24            |
| 40:14           | 30:3 107:23      | 76:15 88:11         | 22:5 58:20         | <b>whatnot</b>   |
| <b>various</b>  | <b>versions</b>  | <b>wants</b>        | 92:3               | 92:2             |
| 14:23 16:4      | 106:20           | 29:20               | <b>website</b>     | <b>whenever</b>  |
| 17:14 22:5      | <b>versus</b>    | <b>warehouse</b>    | 8:7 12:23          | 58:21            |
| 38:21 39:5      | 71:22 105:5      | <b>via</b>          | 13:4,7             | <b>Whereas</b>   |
|                 |                  |                     | 20:19 21:19        | 21:22 40:6       |



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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>whereby</b><br>32:4<br><b>Whereupon</b><br>66:8 71:12<br>76:20 117:8<br>132:9 136:4<br>143:9 149:7<br><b>wherever</b><br>93:3<br><b>whether</b><br>28:4 29:24<br>42:5 46:22<br>55:8 60:2<br>141:21,23<br><b>white</b><br>106:19<br><b>Whiteboard</b><br>6:10<br><b>wholesale</b><br>134:1<br><b>widget</b><br>22:20 23:8<br>23:12,19,24<br>23:24 140:6<br>140:6,13,24<br>140:24<br>141:6,11,18<br>141:22<br><b>window</b><br>48:2<br><b>Windows</b><br>140:17 141:1<br><b>winds</b><br>23:18<br><b>winner</b><br>72:12 73:18<br><b>winter</b><br>147:7<br><b>wireless</b><br>57:1<br><b>within</b><br>5:21 10:10<br>19:8,12,14<br>20:5,16,25<br>42:7 64:16<br>110:2<br>132:19<br>140:3 | <b>witness</b><br>3:2 44:20<br>150:8,19<br><b>wondering</b><br>59:5<br><b>word</b><br>33:11 37:4<br>85:4 92:8<br>92:22<br>105:15,19<br>106:1,3,13<br>114:17<br><b>words</b><br>27:18 90:22<br>105:18,20<br>138:10<br><b>work</b><br>11:1,3 27:21<br>73:8 92:15<br>94:13<br><b>worked</b><br>87:13 110:23<br><b>working</b><br>46:14 55:19<br>111:2<br>116:18<br><b>works</b><br>29:21 108:4<br><b>world</b><br>34:10 74:2,4<br>89:19,22<br>96:4 140:17<br><b>Worldship</b><br>14:15,17,18<br>15:20 17:20<br>17:22,24<br>18:6 21:15<br>21:18,20<br>22:3 41:23<br>56:17 83:4<br>83:6,9<br><b>worldwide</b><br>8:14 13:3<br>133:18<br><b>world's</b><br>6:19,21<br>96:19<br><b>worth</b> | 49:15<br><b>wouldn't</b><br>33:20 46:7<br>54:10<br><b>wrap</b><br>49:18<br><b>wrapping</b><br>49:18<br><br>Y<br><b>yeah</b><br>25:5 30:15<br>33:2 44:20<br>47:8 48:11<br>50:5,24<br>53:21 62:18<br>63:1 64:21<br>65:15 71:25<br>72:10 73:25<br>74:11 80:14<br>80:14,15,24<br>82:12 88:20<br>89:7 92:10<br>92:25 96:5<br>103:14,14<br>134:5 135:7<br>138:15<br>139:11<br><b>year</b><br>47:11 59:2<br>59:16,18<br>84:21,21<br>88:21<br>108:20,21<br>112:15<br>115:8,10<br>142:19<br><b>yearly</b><br>66:1,2<br><b>years</b><br>5:21,23<br>37:14 65:6<br>73:5,13<br>75:19 76:9<br>110:17<br>115:7<br>139:14<br>141:20,23 | 142:4,17,18<br><b>yep</b><br>36:19 74:19<br>100:23<br>110:11,14<br>114:14<br><b>York</b><br>110:21<br><b>Yu-Lung</b><br>131:15 132:6<br><b>Y-u-L-u-n-g</b><br>131:15<br><br>Z<br><b>zipped</b><br>147:8<br><br>\$<br><b>\$11.87</b><br>97:3<br><b>\$49</b><br>93:24<br><br>1<br>1<br>4:3 11:15<br>71:10<br>150:11<br><b>1,277,400</b><br>4:24 36:9<br><b>1,375,109</b><br>4:23 35:16<br><b>1,460,348</b><br>4:20 34:4<br><b>1,783</b><br>63:13<br><b>1,874,248</b><br>4:21 33:11<br><b>1,876,943</b><br>4:18 32:15<br><b>1,878,016</b><br>4:17 31:25<br><b>1,878,918</b><br>4:15 31:7<br><b>1-25</b><br>8:16<br><b>1.8</b> | 61:22<br><b>1:23</b><br>132:9<br><b>1:50</b><br>132:10<br><b>10</b><br>3:3 4:16<br>31:23 99:19<br>147:8<br><b>10:30</b><br>32:6<br><b>10:56</b><br>71:13<br><b>100</b><br>32:23<br><b>107</b><br>7:8,10<br><b>108</b><br>7:12<br><b>108,000</b><br>55:22,23<br><b>109</b><br>7:13<br><b>11</b><br>4:3,18 32:13<br><b>11:00</b><br>28:8<br><b>11:36</b><br>71:13<br><b>112</b><br>7:15<br><b>113</b><br>7:17,19<br><b>114</b><br>7:21<br><b>115</b><br>7:22<br><b>116</b><br>8:3,5<br><b>118</b><br>117:8<br><b>118-127</b><br>3:11<br><b>1180</b><br>2:4<br><b>12</b><br>4:4,19 34:1 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



|              |              |              |              |              |
|--------------|--------------|--------------|--------------|--------------|
| 12:03        | 18           | 2:12         | 108:21       | 3            |
| 28:9         | 1:4 4:9 5:6  | 149:8        | 109:16       | 3            |
| 123          | 29:5,9       | 20           | 147:7        | 4:6 14:12    |
| 57:15        | 18.5         | 5:9 44:25    | 150:21       | 131:1        |
| 127          | 58:25        | 45:2 46:19   | 151:21       | 3,160,062    |
| 117:9        | 19           | 153:15       | 154:8        | 4:6 14:14    |
| 128          | 5:7 43:20,25 | 20,000       | 2012         | 30           |
| 8:6          | 46:18        | 45:20        | 5:25 75:14   | 4:15 6:4     |
| 13           | 1900s        | 20-foot      | 21           | 79:25 80:11  |
| 4:21 33:7    | 37:15        | 51:19        | 5:11 48:15   | 30s          |
| 130          | 1907         | 200          | 48:16        | 86:14 110:20 |
| 8:8          | 38:7,8,9,11  | 52:6         | 21,000-plus  | 30th         |
| 133          | 38:13 39:19  | 200-plus     | 64:5         | 47:8 48:21   |
| 8:14         | 1919         | 50:3         | 22           | 300          |
| 137          | 14:4 38:14   | 2000         | 5:13 52:16   | 45:8 49:8    |
| 3:12 136:4,5 | 1930         | 108:20,21    | 22nd         | 115:24       |
| 14           | 88:22        | 111:6        | 150:21       | 30303        |
| 4:6,22 35:14 | 1933         | 2002         | 151:20       | 2:5          |
| 14.8         | 37:10        | 6:12 86:21   | 22,100       | 31           |
| 97:9         | 1999         | 88:9 89:5,8  | 51:12        | 4:16 6:5     |
| 142          | 65:6         | 90:11,16     | 23           | 80:22        |
| 8:15         |              | 2003         | 5:15 54:24   | 146:17       |
| 144          | 2            | 14:1         | 59:17 60:16  | 32           |
| 116:3 143:9  | 2            | 2004         | 24           | 4:18 6:6     |
| 144-145      | 4:4 12:18    | 6:14 91:5    | 5:17 60:20   | 81:19 97:1   |
| 3:12         | 142:18       | 2005         | 139:15       | 146:20       |
| 145          | 2AA          | 91:8         | 25           | 33           |
| 143:10       | 134:18       | 2007         | 4:10,12 5:19 | 4:19,21 6:7  |
| 146          | 2nd          | 6:16,19      | 65:1 95:18   | 82:25        |
| 8:12         | 31:8,10,11   | 91:14 92:6   | 26           | 34           |
| 147          | 36:7,12,13   | 93:7,19,23   | 4:13 5:20    | 6:8 84:6     |
| 8:10         | 2,098,168    | 95:15,24     | 8:18 71:3    | 345,000      |
| 149          | 4:14 27:1    | 2008         | 71:10        | 61:7         |
| 150:12       | 2,128,739    | 1:4 58:14,21 | 26.2         | 35           |
| 15           | 4:12 25:23   | 91:19 92:7   | 58:17 59:1   | 4:22 6:9     |
| 4:24 36:5    | 2,278,090    | 97:1,7,8,24  | 263          | 85:13        |
| 110:20       | 4:11 25:13   | 115:3,8      | 45:9,15      | 36           |
| 15-1/2       | 2,483,193    | 146:9        | 27           | 4:24 5:3     |
| 61:10        | 4:5 12:20    | 2008/0238205 | 5:22 73:1    | 6:11 59:19   |
| 150          | 2,830,249    | 8:9 130:16   | 95:21        | 88:18        |
| 39:14        | 4:9 18:24    | 2009         | 27-55        | 37           |
| 16           | 2,973,108    | 1:16 6:22    | 8:16         | 5:4 6:12     |
| 5:3 37:2     | 4:8 17:10    | 7:12 8:11    | 28           | 89:6         |
| 132:3        | 2.0          | 8:14 9:2     | 5:24 75:3    | 38           |
| 17           | 6:23         | 47:8 55:25   | 135:14       | 6:14 91:4    |
| 4:7 5:4      | 2.1          | 65:6 83:6    | 29           | 97:1         |
| 37:23        | 61:16        | 96:16,25     | 5:6 6:3 79:4 | 39           |
|              |              | 97:7 99:22   | 80:6         |              |



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|              |             |              |            |          |
|--------------|-------------|--------------|------------|----------|
| 6:16 91:13   | 5           | 61:24        | 77-78      | 6:14     |
| 4            | 4:9 5:21    | 60           | 3:11       | 90s      |
| 4            | 18:22 93:7  | 5:17 8:12,17 | 77/176,134 | 88:7     |
| 4:7 17:7     | 131:2       | 146:6        | 1:3        | 91       |
| 4,693        | 50          | 60,000       | 78         | 6:16     |
| 62:9         | 7:15 112:24 | 16:21        | 76:21      | 91184197 |
| 4.1          | 148:3,10,11 | 61           | 79         | 1:8 9:16 |
| 30:2         | 500         | 8:14,17      | 6:3,4      | 95       |
| 40           | 6:20 96:15  | 133:14       | 8          | 6:18     |
| 6:18 95:11   | 51          | 135:13       | 8          | 96       |
| 40s          | 7:17 113:9  | 62           | 4:13 26:24 | 6:20     |
| 110:21       | 514,285     | 8:15,18      | 96:23      | 966,774  |
| 40,000       | 5:5 38:1    | 143:1,8      | 8.B        | 5:3 37:4 |
| 112:14       | 52          | 64           | 9:4        | 97       |
| 400          | 5:13 7:19   | 5:19         | 80         | 6:23     |
| 48:11        | 114:2       | 666143       | 6:5        | 98       |
| 404.572.2531 | 53          | 82:15        | 80s        | 6:24     |
| 2:5          | 7:21 51:19  | 67           | 110:24     | 99       |
| 404.572.5135 | 115:1       | 5:20 66:8    | 81         | 7:3,5    |
| 2:6          | 54          | 67-70        | 6:6 97:10  |          |
| 41           | 5:15 7:22   | 3:10         | 81-1/2     |          |
| 6:20 96:13   | 115:14      | 6700         | 97:10      |          |
| 42           | 55          | 51:20        | 82         |          |
| 6:23 95:25   | 1:17 8:3    | 68283        | 6:7        |          |
| 97:22        | 116:12      | 154:4        | 84         |          |
| 42nd         | 56          | 7            | 6:8        |          |
| 96:3         | 8:5,18 97:4 | 4:12 25:21   | 85         |          |
| 43           | 117:2       | 7.0          | 6:9        |          |
| 5:7 6:24     | 57          | 7:21         | 86         |          |
| 98:5         | 8:6 128:11  | 7.9          | 6:11       |          |
| 44           | 130:2       | 61:21        | 89         |          |
| 5:9 7:3 99:7 | 57-58       | 70           | 6:12       |          |
| 45           | 8:16        | 66:9         | 9          |          |
| 46           | 58          | 70s          | 1:16 4:15  |          |
| 7:5 100:4    | 59          | 110:23       | 7:12 9:2   |          |
| 47           | 8:10,17     | 72           | 31:5 154:8 |          |
| 7:8 107:5    | 147:5       | 5:22         | 9th        |          |
| 47           | 6           | 74           | 108:20,20  |          |
| 7:10 107:19  | 6           | 5:24         | 109:16     |          |
| 48           | 4:10 25:10  | 747          | 9-11-28(c) |          |
| 5:11 7:12    | 6,300       | 34:14        | 151:8      |          |
| 108:14       | 64:4        | 757s         | 9:38       |          |
| 109:10       | 6.0         | 34:14        | 1:16       |          |
| 49           | 83:4        | 77           | 90         |          |
| 7:13 109:19  | 6.1         | 76:20        |            |          |
| 5            |             |              |            |          |

