

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AO]
) Docket No. 15-0071
)
Milk in California)
)
_____)

VOLUME XXXVII

TRANSCRIPT OF PROCEEDINGS

November 13, 2015

Myra A. Pish, CSR No. 11613
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BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AO]
) Docket No. 15-0071
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BEFORE U.S. ADMINISTRATIVE LAW JUDGE
JILL S. CLIFTON

Friday, November 13, 2015

9:01 a.m.

Piccadilly Inn Airport
5115 East McKinley Avenue
Clovis, California 93727

TRANSCRIPT OF PROCEEDINGS

VOLUME 37

Reported by:
Myra A. Pish CSR
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APPEARANCES:

U.S. DEPARTMENT OF AGRICULTURE: Office of the General Counsel
BY: BRIAN HILL, ESQ.
LAUREN BECKER, ESQ.

U.S. DEPARTMENT OF AGRICULTURE: WILLIAM RICHMOND, Dairy
Product Marketing Specialist
LAUREL MAY, Marketing Specialist

CALIFORNIA DAIRIES, INC., DAIRY FARMERS OF AMERICA, INC., LAND O'LAKES, INC.: Law Offices of Marvin Beshore
BY: MARVIN BESHORE, ESQ.
Hanson Bridgett, San Francisco
BY: MEGAN OLIVER THOMPSON, ESQ.

DAIRY INSTITUTE OF CALIFORNIA: Davis Wright Tremaine
BY: CHIP ENGLISH, ESQ.
ASHLEY VULIN, ESQ.

CALIFORNIA PRODUCER HANDLERS ASSOCIATION: Stoel Rives
BY: NICOLE HANCOCK, ESQ
VICTOR LAI, ESQ.
TIFFANIE de la RIVA, ESQ.

SELECT MILK PRODUCERS: MILTNER LAW FIRM, INC.
BY: RYAN MILTNER, ESQ.

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23
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I N D E X - V O L U M E 37

WITNESSES IN CHRONOLOGICAL ORDER

GINO TOSI:

REDIRECT EXAMINATION BY MS. HANCOCK 7459
RE-CROSS-EXAMINATION BY MR. RICHMOND 7482
RE-CROSS-EXAMINATION BY MR. ENGLISH 7484
DIRECT EXAMINATION BY MS. HANCOCK 7486

MELVIN MEDEIROS:

DIRECT EXAMINATION BY MR. BESHORE 7507

CHRISTINA MEDEIROS:

DIRECT EXAMINATION BY MR. BESHORE 7519
CROSS-EXAMINATION BY MR. HILL 7526

GINO TOSI:

CONTINUED DIRECT EXAMINATION BY MS. HANCOCK 7529
CROSS-EXAMINATION BY MR. BESHORE 7531
CROSS-EXAMINATION BY MR. ENGLISH 7543
CROSS-EXAMINATION BY MR. RICHMOND 7547
CROSS-EXAMINATION BY MR. SCHAEFER 7553
CROSS-EXAMINATION BY MR. BESHORE 7559
REDIRECT EXAMINATION BY MS. HANCOCK 7560

TED DeGROOT:

DIRECT EXAMINATION BY MS. HANCOCK 7563
CROSS-EXAMINATION BY MR. ENGLISH 7581
CROSS-EXAMINATION BY MR. BESHORE 7587
DIRECT EXAMINATION BY MS. HANCOCK 7590
CROSS-EXAMINATION BY MR. BESHORE 7597
CROSS-EXAMINATION BY MR. ENGLISH 7602
CROSS-EXAMINATION BY MR. BESHORE 7604

WALTER E. WHITCOMB:

DIRECT EXAMINATION BY MR. SMITH 7606
CROSS-EXAMINATION BY MR. ENGLISH 7627
CROSS-EXAMINATION BY MR. BESHORE 7627
CROSS-EXAMINATION BY MR. ENGLISH 7632

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2
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10
11
12
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14
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16
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24
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I N D E X - V O L U M E 37

INDEX OF EXHIBITS

| NO. | DESCRIPTION | I.D. | EVD. |
|-----|---|------|------|
| 171 | CALIFORNIA PRODUCER HANDLER ASSOCIATION ALTERNATIVE LANGUAGE PROPOSAL | 7470 | 7482 |
| 172 | TESTIMONY OF GINO TOSI IN SUPPORT OF PROPOSAL 4 | 7486 | 7531 |
| 173 | EXHIBITS OF GINO TOSI IN SUPPORT OF PROPOSAL 4 | 7486 | 7531 |
| 174 | RECENT DAIRY DISPERSALS & HEIFER SALES AT LOCAL SALE YARDS | 7506 | 7517 |
| 175 | TESTIMONY OF TED DeGROOT PROPOSAL 3 | 7562 | 7578 |
| 176 | CLASS 1 PRICE QUOTA DIFFERENCE | 7562 | 7578 |
| 177 | CDFA NEW QUOTA HOLDINGS | 7562 | 7579 |
| 178 | TESTIMONY OF TED DeGROOT PROPOSAL 4 | 7580 | 7597 |
| 179 | TESTIMONY OF WALTER E. WHITCOMB | 7581 | 7622 |

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1 FRIDAY, NOVEMBER 13, 2015 - - MORNING SESSION

2 JUDGE CLIFTON: We are back on record on November 13, 2015.
3 It's a Friday. It's approximately 9:01 in the morning. We are
4 in Fresno, California. This is Day 37 of the milk hearing.

5 My name is Jill Clifton. I'm the United States
6 Administrative Law Judge whose assignment is to take in the
7 evidence at this hearing. There are two kinds of evidence,
8 testimony and exhibits. And yesterday I mentioned that I'm
9 already looking forward to the briefing. I expect to have
10 completed my duties by the time the briefs come in. But while
11 we're still here I want to schedule transcript corrections, and
12 the submissions of brief, and so on, so I'll be asking for
13 counsel's input on those things. One thing I would like you to
14 think about is when you propose transcript corrections, I would
15 think a smart way for us to go, would be to have Mr. English
16 and Mr. Beshore go first and then anyone else. And the reason
17 is, I would like to conserve some of the manpower at AMS and
18 let them see what you all have done before they add-on. It's
19 easier for me, rather than having say for example five
20 different proposals to correct and having to respond to each
21 one, it's easier for me to respond in smaller units. And I
22 will not be repeating the corrections you propose. I'll rather
23 be accepting them. Which means when -- when AMS posts the
24 corrections, they will have to post the proposed corrections,
25 too. So at any rate, I want you to think about that, talk

1 about that. But I would like very much the precision and the
2 diligence with which both Mr. Beshore and Mr. English do this
3 kind of work. And this is going to be a mammoth task, all of
4 it from here on out. It's -- you have done an awful lot of
5 heavy lifting already, but there's so much more to be done.

6 All right. I would like it take the appearances of my
7 fellow USDA employees at this time.

8 MR. CARMAN: Good morning, Clifford Carman, C-A-R-M-A-N,
9 Assistant to the Deputy Administrator, Dairy Programs
10 Agricultural Marketing Service, USDA. Welcome to the last day
11 of the eight week, Friday the 13th.

12 MR. RICHMOND: Thank you for getting off to a nice ominous
13 start this morning, Mr. Carman. William Richmond,
14 R-I-C-H-M-O-N-D, with USDA AMS Dairy Programs in
15 Washington, DC.

16 MS. MAY: Good morning, Laurel May with AMS Dairy Program
17 Order Formulation and Enforcement Division.

18 MR. SCHAEFER: Henry Schaefer, H-E-N-R-Y, S-C-H-A-E-F-E-R,
19 Agricultural Economist for the Upper Midwest Milk Marketing
20 Order, Federal Order 30, on detail to USDA Dairy Programs.

21 MS. BECKER: Good morning, Lauren Becker, USDA Office of
22 the General Counsel.

23 MR. HILL: Good morning, Brian Hill, Attorney with the
24 Office of the General Counsel Marketing Regulatory and Food
25 Safety Programs Division.

1 MR. BESHORE: Marvin Beshore, M-A-R-V-I-N, B-E-S-H-O-R-E,
2 Attorney for the Cooperative Proponents of Proposal Number 1,
3 California Dairies, Dairy Farmers of America, and Land O'Lakes.

4 MS. OLIVER THOMPSON: Good morning, Megan Oliver Thompson,
5 Megan is M-E-G-A-N, I'm with the law firm Hanson, Bridgett,
6 H-A-N-S-O-N, B-R-I-D-G-E-T-T, and also Counsel for the
7 Cooperative Proponents of Proposal Number 1.

8 MR. SCHAD: Good morning, my name is Dennis Schad,
9 S-C-H-A-D, I work for Land O'Lakes.

10 MR. ERBA: Good morning, Eric Erba, E-R-I-C, E-R-B-A, I
11 work for California Dairies, Inc., also called CDI.

12 MR. GARBANI: Good morning, my name is Pete Garbani,
13 spelled G-A-R-B-A-N-I, I'm with Land O'Lakes.

14 MR. ENGLISH: Good morning, your Honor, Chip English,
15 E-N-G-L-I-S-H, I'm an Attorney with the law firm of Davis,
16 Wright, Tremaine, with my principal office in Washington, DC,
17 although I would much prefer to be in Maine today. So -- I am
18 here on behalf of the Dairy Institute of California, Proponents
19 of Proposal Number 2.

20 MS. VULIN: Ashley Vulin, A-S-H-L-E-Y, V -- for Vendetta --
21 U-L-I-N. I'm also an Attorney with Davis, Wright, Tremaine,
22 representing the Dairy Institute of California.

23 JUDGE CLIFTON: So this is rather ominous.

24 MR. SCHIEK: Good morning, William Schiek. S-C-H-I-E-K,
25 Economist with Dairy Institute of California.

1 MS. HANCOCK: Nicole Hancock with Stoel Rives, representing
2 the California Producer Handlers Association and Ponderosa
3 Dairy.

4 MS. de la RIVA: Tiffanie de la Riva with the firm Stoel
5 Rives representing California Producer Handlers Association and
6 Ponderosa Dairy.

7 MR. DeGROOT: Good morning, Ted DeGroot, De, G-R-O-O-T,
8 representing Rockview Farms and Ponderosa Dairy.

9 MR. DeGROOT: Good morning, Curtis DeGroot, De, G-R-O-O-T,
10 representing the Rockview Farms and Ponderosa Dairy.

11 MR. TOSI: Gino Tosi, G-I-N-O, Tosi, T, like Tom -- O-S-I,
12 I'm appearing today on behalf of the California Producer
13 Handlers Association and Ponderosa Dairy.

14 MR. LAI: Good morning, Victor Lai, V-I-C-T-O-R, L-A-I with
15 Producers Dairy Foods.

16 MR. WHITCOMB: Good morning, your Honor, I'm Walt Whitcomb,
17 W-H-I-T-C-O-M-B, I'm Commissioner of Agriculture, Conservation
18 of Forestry for the State of Maine, and I will be testifying
19 sometime today.

20 MR. SMITH: Good morning, Daniel Smith, Attorney in
21 Montpelier, Vermont, representing the Maine Dairy Industry
22 Association, the Kentucky Dairy Development Council, Georgia
23 Milk Producers, and Tennessee Dairy Producers Association.

24 MR. MILTNER: Good morning, Ryan Miltner, M-I-L-T-N-E-R,
25 Counsel for Select Milk Producers.

1 JUDGE CLIFTON: Is there anyone else who has not yet come
2 to the podium who would like to be identified at this time? No
3 one. Let us proceed then with other preliminary items,
4 including any other announcements.

5 MS. MAY: Good morning, Laurel May with USDA. Today is the
6 last day that we will be here in the Piccadilly Inn at the
7 Airport. Starting Monday the hearing moves to the Falls Event
8 Center, which is at 4105 West Figarden Drive. There are a lot
9 of different ways to get there and if you are a native to
10 Fresno you can get there pretty easily, kind of by
11 dead-reckoning, but I would recommend putting it in Google and
12 deciding which way is best for you to get there. Just depends
13 on what you like, challenge, or traffic lights, or traffic.

14 So today, what we need to do is make sure that we pack
15 up everything and take it back with us for the weekend.

16 As always, anybody who would like to is welcome to
17 testify at this hearing, and anybody who would like to question
18 any of the witnesses may do so by approaching the podium. We
19 are broadcasting via live audio feed, as we have been for the
20 duration, and you can access that online at
21 www.ams.usda.gov/live.

22 We are -- the court reporter is taking transcripts, and
23 we are posting those online as we get them back from the court
24 reporting service, and that is at the AMS dairy website you can
25 access those. And we do have copies some of the exhibits in

1 the back that you are we welcome to help yourself to if you
2 would like.

3 Yesterday we ended with a discussion on a couple of
4 exhibits, and I believe this morning we're going to start with
5 Ms. Hancock's witnesses. Mr. Tosi is first, and then I will
6 leave it up to her to kind of explain and everybody else to
7 figure out what the order is for the rest of the day.

8 JUDGE CLIFTON: Thank you, Ms. May. Ms. Hancock, do you
9 want to give us a preview now?

10 MS. HANCOCK: Sure. From what I understand of how we're
11 going to progress today, we'll start off with Mr. Tosi, we'll
12 finish up his testimony for the Producer Handlers Association.
13 We have a couple of modifications, taking into account the
14 comments that were made yesterday. We will then move to his
15 testimony for Ponderosa Dairy, with the hopes that he can make
16 his noon flight, we can adjust it if we need to, but with the
17 hopes that he can make that flight. We will then put on
18 Mr. DeGroot to talk about both Producer Handlers Association
19 and then Ponderosa. And that will be the conclusion of our
20 case. I understand that --

21 JUDGE CLIFTON: Which Mr. DeGroot?

22 MS. HANCOCK: Ted DeGroot.

23 JUDGE CLIFTON: Ted, thank you.

24 MS. HANCOCK: And I understand that there might be some
25 producers that will come on today. We have one more that needs

1 to be out by 7:00, so -- has a 7:00 flight, I guess, so --

2 JUDGE CLIFTON: Okay. When you keep me updated as to when
3 people would like to leave, it will help if you tell me the
4 minute they need to leave this room. In other words, they have
5 to figure out how much time they need to get to the airport.
6 So, for example, if Mr. Tosi needs to leave this room by 12:00,
7 that's one issue.

8 MS. HANCOCK: So probably 11:30 would be the latest so he
9 could make his flight.

10 JUDGE CLIFTON: Okay.

11 MS. HANCOCK: We'll see if we make it. I told you I'm an
12 optimist. We'll get it done.

13 JUDGE CLIFTON: Very good. Let me ask you, have you
14 decided yet, Ms. Hancock, whether you would like us to
15 reconvene so that you can present economic data with regard to
16 valuing exempt quota, valuing, regular quota, or anything like
17 that?

18 MS. HANCOCK: Your Honor, because we have been in the
19 middle of putting our case together for what we knew was at
20 issue in this hearing, we haven't had a chance to evaluate that
21 or even get our team of people together, because we have four
22 different businesses, eight different businesses if you add in
23 all the farms as well, that have to make that decision. We
24 just haven't had time to evaluate it. I don't believe that
25 we'll be prepared before the end of this, or when the hearing

1 is scheduled to conclude to put that evidence on. But I think
2 I have noted my objections for the record, so --

3 JUDGE CLIFTON: Yes, now, I granted your objection. I'm
4 giving you more time. But I'll wait for your motion as to
5 whether, in fact, it will be necessary for us to reconvene. If
6 you make that motion too late, it will be too late. So you do
7 need to think about it. There is space reserved here in Fresno
8 for us to come back in December. We will release that
9 reservation if we're not coming back in December. So we really
10 need to know during next week.

11 MS. HANCOCK: So I have a hard conflict with that date in
12 December.

13 JUDGE CLIFTON: Which of them?

14 MS. HANCOCK: I am gone from the 9th to the 15th, so it
15 actually covers a portion of both of the weeks that is
16 reserved, and so it makes it very tough for me to -- that was
17 going to be a hard scheduling conflict even if we continued on
18 and didn't end next week. So I will get with my team and get
19 as far as we can get on it and see what we can do.

20 JUDGE CLIFTON: All right. Thank you so much. Are there
21 any other preliminary matters to Mr. Tosi resuming the witness
22 stand. Mr. Beshore?

23 MR. BESHORE: Just a reminder that the two producers who
24 are expected today have an 11:00 to 1:00 time window of
25 availability. I would hope that would work with Ms. Hancock's

1 witnesses, but that is part of this schedule today, also.

2 JUDGE CLIFTON: Good. Thank you.

3 MR. SMITH: Dan Smith. I am no longer working for
4 Commissioner Whitcomb, but, for the Department, but he asked me
5 to just assist him with the scheduling process. It is all to
6 the good. He's on a 7:00 flight, so he doesn't need to be to
7 the airport until after, hopefully you are done with your
8 hearing. But say 5:30 if you are back on the pizza schedule.
9 But he can work around the other witnesses' schedules as long
10 as he gets in today.

11 JUDGE CLIFTON: Excellent. That's very helpful. Anything
12 else preliminary to our beginning with the evidence? I see
13 nothing. Mr. Tosi, you may return to the witness stand,
14 please.

15 (Whereupon, a break was taken.)

16 JUDGE CLIFTON: We're back on record at 9:23. Mr. Tosi,
17 you remain sworn. Would you again state and spell your name
18 for us?

19 MR. TOSI: Excuse me, your Honor, I think I've got the
20 wrong piece of paper from the desk.

21 JUDGE CLIFTON: All right.

22 MR. TOSI: Thank you, your Honor.

23 JUDGE CLIFTON: All right. Mr. Tosi, would you again state
24 and spell your name?

25 MR. TOSI: Yes, my name is Gino Tosi. First name, G --

1 like George -- I-N-O, last name Tosi, T -- like Tom -- OSI.

2 JUDGE CLIFTON: Thank you. Ms. Hancock, do we have any
3 other documents that we should have distributed before he
4 resumes?

5 MS. HANCOCK: We can, your Honor, but I think we're going
6 to cover a couple things first. So maybe while we're doing
7 that, Ms. De la Riva can hand those out.

8 JUDGE CLIFTON: Good. All right. That would be great.
9 Well, actually, yes and no, I don't want anything to detract
10 from the witness' testimony, so, so long as, you know, that can
11 be done without detracting. If we need to have him stop and
12 then distribute, that's also fine with me. So I'll leave it to
13 you.

14 MS. HANCOCK: Okay. I'll give it a shot. If it is a
15 distraction, we'll stop.

16 JUDGE CLIFTON: Okay. Good.

17 REDIRECT EXAMINATION

18 BY MS. HANCOCK:

19 Q. Mr. Tosi -- your Honor, I didn't ask you, is it okay to
20 proceed?

21 JUDGE CLIFTON: It is.

22 BY MS. HANCOCK:

23 Q. Okay. Mr. Tosi, good morning, I appreciate you taking
24 the time to come back on and discuss the producer-handler
25 proposal. Were you able to do any additional work on the

1 proposal last night?

2 A. Yes, and come at this thing -- after listening to other
3 people's comments, there is a completely another way that --
4 that we have looked at it. What I would like to talk about is
5 making some changes to the things that we presented yesterday,
6 and then offer another way of looking at it. And in that
7 regard, I would like to more or less tip my hat to Mr. Beshore
8 for saying that we can talk about these things when we're
9 trying to determine value or we can deal with the issue with
10 respect to when we make payments or when the Order makes
11 payments to producers.

12 Q. Well, let's start first with your Exhibit 168, which
13 was the proposal that we put in yesterday, and the, if we can
14 turn to Exhibit A, which is the proposed language. Is that
15 where you would like to start?

16 A. Yes, ma'am.

17 Q. Okay. Tell me what the first change or modification is
18 to 168?

19 A. One thing here I want to emphasize again, what we're
20 doing here to start off with, is taking what we presented
21 yesterday, and I'm proposing changes to that in light of the
22 comments that were made in our discussions about this
23 yesterday.

24 In that regard, the first change would be in
25 Exhibit A, in the section on the line that's bolded that says,

1 Section 1051.17 CDFA, quota premium, quota nonfat solids, and
2 we're proposing now to add into there now, also in bold, after
3 nonfat solids, add the words exempt quota, and non-quota milk.
4 So that would how the new line would read and it would all be
5 in bold.

6 Q. Okay. So you are adding the word exempt quota to the
7 title in Section 1051.57?

8 A. That's correct.

9 JUDGE CLIFTON: Thank you. And I note that Ms. May has
10 made that addition on the record copies.

11 BY MS. HANCOCK:

12 Q. And what is the next change?

13 A. Yes, the next change would be in Exhibit A. There are
14 two paragraphs, in the -- in what we submitted yesterday, which
15 is Paragraphs E and F.

16 For the changes that we're proposing today, or to this
17 exhibit, is eliminate the paragraph that's highlighted and
18 described as Paragraph F. Eliminate that.

19 And for Paragraph E, change the text of Paragraph E to
20 read as follows:

21 JUDGE CLIFTON: Okay. Now, go slowly because I'm copying
22 and so is everyone else.

23 MR. TOSI: Paragraph E would read as follows:

24 Exempt quota means the volume of skim and skim milk and
25 butterfat established by the California or CDFA.

1 I'll say that again. Exempt quota means the volume of
2 skim milk and butterfat established by the CDFA.

3 MS. HANCOCK: Did we get all that?

4 JUDGE CLIFTON: Do all the words that we look at now on
5 Exhibit A be eliminated except for these very few words you
6 just told us?

7 MR. TOSI: That's correct, your Honor.

8 JUDGE CLIFTON: That's so wonderful. All right. I'm going
9 to read it back.

10 MR. TOSI: I could give you a very, very long-winded
11 explanation that I don't think would serve any purpose in the
12 record for why we did that.

13 JUDGE CLIFTON: Okay. So -- so let us look, we're looking
14 at Exhibit A and we're seeing the formatting, and we're seeing
15 that when you have a word you are defining that its in italics,
16 so I'm thinking what you are telling us, Mr. Tosi, is subpart
17 E, and then you are telling me, exempt quota, and those two
18 words are italicized.

19 MR. TOSI: Correct.

20 JUDGE CLIFTON: And then that continues, means the.

21 MR. TOSI: Means the volume of skim milk and butterfat
22 established by the CDFA.

23 JUDGE CLIFTON: And once that is written on Exhibit A, and
24 Ms. May, you may need to turn it over to the back or wherever
25 you are going to put it, you would like to have a her, and we,

1 us, you would like to have us strike everything that was
2 formerly written both in Subsection E and Subsection F?

3 MR. TOSI: That's correct, your Honor.

4 JUDGE CLIFTON: Okay, then.

5 BY MS. HANCOCK:

6 Q. Mr. Tosi, can we turn to Section 1051.60 now.

7 A. Okay. Now, we're proposing two changes here to
8 Section 1051.60 of the handlers value of milk. And if you go
9 down to where it describes subparagraph A, Class I Value. If
10 we look at the language that's currently bolded, or excuse me,
11 it's bolded and highlighted in yellow, I will read the whole
12 new, what the new paragraph A(1) that we're proposing here.
13 I'll read it in its entirety and as I intend it to read, and
14 then we'll take the time to make sure that we, that you all can
15 edit your copies accordingly:

16 1. Multiply the pounds of skim milk in Class I, less
17 that portion of skim milk that is exempt quota as reported by
18 CDFA.

19 Q. Comma, right? And then the rest of the section
20 continues. Instead of a period there's a comma there?

21 A. Thank you. I'm sorry. There is a comma there. I'll
22 read that again.

23 Multiply the pounds of skim milk in Class I, comma,
24 less that portion of skim milk that is exempt quota as reported
25 by CDFA, comma, by the Class I skim milk price; semi-colon, and

1 then the word "and".

2 JUDGE CLIFTON: Okay. So when we're looking at what change
3 Ms. May should make on the record copies, the only change she
4 makes is in the yellow portion she inserts the word "skim"
5 prior to the word "milk".

6 MR. TOSI: Correct.

7 JUDGE CLIFTON: And then she strikes --

8 MS. HANCOCK: Defined.

9 MR. TOSI: May I help you?

10 JUDGE CLIFTON: Yes.

11 MR. TOSI: We would be striking the words "defined in
12 Section 1051.17 (e) and (f)". We're striking those words.

13 JUDGE CLIFTON: Okay.

14 MR. TOSI: And in place of those words we're inserting, we
15 are replacing that with the words "reported by CDFA" and we're
16 leaving the comma at the end of that.

17 JUDGE CLIFTON: By CDFA, comma, and then what do we do with
18 the other words that aren't in -- oh, we don't do anything with
19 them, do we? No. We just leave them there. The other words
20 that are there, because the other words that are there are not
21 referring specifically to exempt quota.

22 MR. TOSI: That's correct.

23 JUDGE CLIFTON: So we leave them.

24 MR. TOSI: That's correct.

25 JUDGE CLIFTON: All right. So let me see if I have got it,

1 and if Ms. May and I have the same thing. So all we're doing,
2 I think, Ms. May, is, we're inserting the word "skim" and then
3 we're substituting by striking as "defined in Section 1051.17
4 (e) and (f)" and instead, inserting "reported by CDFA".

5 All right. Ms. May and I agree. Is that what you
6 wanted, Mr. Tosi?

7 MR. TOSI: Yes, it is, your Honor.

8 JUDGE CLIFTON: Oh, I'm really liking these changes. You
9 may continue.

10 MR. TOSI: The second change here in the same section here,
11 Section 60, Handlers Value of Milk, comes in the second A(2),
12 and I will read how I intended it to read in its totality now,
13 and then we'll pause and then we'll talk about the specific
14 words that we're adding or removing.

15 2 would read, A(2) would read, "add the amount obtained by
16 multiplying" --

17 JUDGE CLIFTON: Is it "the amount"?

18 MR. TOSI: Excuse me. "Add an amount obtained by
19 multiplying the pounds of butterfat in Class I, less that
20 portion of butterfat that is exempt quota as reported by CDFA,
21 by the Class I butterfat price."

22 JUDGE CLIFTON: All right. And now tell us --

23 MR. TOSI: So now --

24 JUDGE CLIFTON: -- specifically what changes we would have
25 to make.

1 MR. TOSI: Okay. If you look at the portion in the exhibit
2 that's highlighted in yellow, okay? After the word Class I
3 there's a comma, and then it, and then we're actually now
4 beginning the portion that's highlighted. We're going to
5 remove everything that is currently said there. Okay?

6 JUDGE CLIFTON: Let's use what we can.

7 MR. TOSI: Okay.

8 JUDGE CLIFTON: Instead of the word "milk" we'll strike
9 "milk" and put butterfat?

10 MR. TOSI: Well, we'll say butterfat in Class I, and we're
11 going to keep the words "less that portion of".

12 JUDGE CLIFTON: So then we strike the word "milk" and put
13 in "butterfat".

14 MR. TOSI: We're going to strike the word "butterfat".

15 JUDGE CLIFTON: How about insert the word "butterfat".

16 MR. TOSI: Okay. Or insert the word "butterfat".

17 JUDGE CLIFTON: Okay.

18 MR. TOSI: And then we're retaining the words "that is
19 exempt quota".

20 JUDGE CLIFTON: Okay.

21 MR. TOSI: And then for the balance of what's highlighted,
22 we're going to replace it with the words "as reported by CDFA",
23 comma.

24 JUDGE CLIFTON: Okay. So we can leave the "as" in there
25 that's already there. And strike "defined in Section 1051.17

1 (e) and (f)" and instead simply write "as reported by CDFA".

2 MR. TOSI: That's correct, your Honor.

3 JUDGE CLIFTON: So --

4 MR. TOSI: And then the sentence would then continue and be
5 "retain by the Class 1 butterfat price".

6 JUDGE CLIFTON: So the changes to both 1 and 2, both insert
7 words "reported by CDFA" and 1 inserts the word "skim" prior to
8 "milk" and the other inserts "butterfat" rather than "milk".

9 MR. TOSI: Correct, your Honor.

10 JUDGE CLIFTON: Boy, I think that -- I think that's genius.
11 Okay. You may continue.

12 MS. HANCOCK: And do you have any further changes,
13 Mr. Tosi?

14 MR. TOSI: Yes, there would be one last change. If you go
15 to the last page, please, of the Exhibit, of Exhibit A. You
16 will notice that midway down through there that we had a
17 paragraph identified in bold and highlighted in yellow as 4.A.
18 and it read, "the pounds of exempt quota nonfat solids as
19 defined in 1051.17(f)." We're proposing that we don't think
20 that in light of these other changes that I'm proposing today,
21 that that is even required now. We can simplify that by
22 eliminating that from.

23 MS. HANCOCK: So we'll strike Section 4.A on the final page
24 of Exhibit A?

25 MR. TOSI: Correct.

1 BY MR. TOSI:

2 Q. So, Mr. Tosi, just in sum, can you tell us now as
3 Exhibit 168 is modified in Exhibit A, what the sum of what you
4 understand would be happening with exempt quota?

5 A. Basically, what we're doing here is, we're, in
6 determining what -- trying to make it clear that it's the CDFA,
7 rather than trying to draw in other tedious California code
8 language where when you actually go in and you look at it, it
9 is pretty tough to sort through all that and determine how was
10 it that California or CDFA actually comes up with the term,
11 this is the exempt quota and this is the number of pounds
12 that's exempt quota, for example. Okay. That's very, very,
13 very tedious. So just kind of following the same lead that the
14 co-ops and DI are taking with respect to how they have talked
15 about things and how they have defined, how they have chosen to
16 address quota premium, and quota nonfat solids, etcetera. So
17 rather than trying to -- trying to make reference to California
18 code that, you know, why have the Federal Order risk
19 calculating something improperly when we're going to have a
20 joint administration here between Federal Government, CDFA, for
21 those things that are CDFA, and one of the premier or some of
22 the premier features are the quota program and exempt quota,
23 thought it was appropriate, we'll, you know, leave that
24 responsibility with CDFA. And that those things that the
25 Market Administrator needs to properly administer the Order

1 would be provided by CDFA so that we can take those volumes and
2 apply the appropriate prices to those things and come up with,
3 in this case here, what Class I milk value is.

4 Q. So the goal is to allow CDFA to calculate the volumes
5 of exempt quota, the actual, the skim and butterfat
6 calculations; is that right?

7 A. That's correct.

8 Q. And then the Market Administrator would then calculate
9 the amount that would be deducted from the pool for the handler
10 based on, based on the volumes that were provided by CDFA and
11 applying the Class I rate to that?

12 A. That's correct.

13 Q. Okay. And so ultimately, it's treated the same way it
14 is treated now under the California state system, that the
15 handler just receives a deduction in the amount of a Class I
16 price?

17 A. Right. And the big difference, like, to reiterate the
18 big difference between what we, how we first envisioned it,
19 rather than just trying to draw in, you know, citing a half a
20 dozen sections of California code, that when you, you know, if
21 you actually take the time and you go in and you read those
22 things, it's really difficult to determine from there, how
23 California comes up with what we know to be exempt quota. And
24 the interesting think is, when you look at some of those
25 sections never even really refers to, never even uses that word

1 exempt quota. But we all are well aware that exempt quota has
2 a very, very specific meaning in the CDFA state program.

3 Q. And the goal is to preserve the same treatment that --

4 A. Exactly.

5 Q. She just wants you to let me finish my question. The
6 goal is that we preserve exempt quota exactly as it's treated
7 today under the California state system?

8 A. That's correct.

9 Q. Okay. And in going through this exercise, you also
10 came up with an alternative proposal; is that right?

11 A. Yes, we did.

12 Q. Before you get there, I want to make sure everybody has
13 a copy of what's been distributed. It's just a one sheet.

14 JUDGE CLIFTON: Please raise your hand if you do not have
15 the document that's entitled California Producer Handler
16 Association Alternative Language Proposal. Everyone does.
17 Let's mark it. Let's see, I think, Ms. May, that this becomes
18 171. Do you agree?

19 MS. MAY: Yep.

20 JUDGE CLIFTON: Exhibit 171. All right, then.
21 Ms. Hancock, you may proceed.

22 (Thereafter, Exhibit 171, was
23 marked for identification.)

24 BY MS. HANCOCK:

25 Q. Mr. Tosi, can you explain Exhibit 171?

1 A. Yes. In light of the comments that were talked about
2 yesterday, there's a couple of ways that we can address or
3 approach preserving exempt quota and the exempt quota value for
4 those four entities that currently have that under the
5 California State Order.

6 The second way was to deal with this was rather than
7 talking about the, how we have looked at it in our first
8 presentation, what we're doing here is to say, well, we can
9 make the proper adjustments in when payments are made to
10 producers. And we think that that, there's a lot of merit to
11 that, depending on, I would leave it to the Department to
12 decide which, either way I think would work. I don't -- I
13 don't think that the four exempt quota holders now would care
14 how or what method by which the value is calculated, but the
15 point is -- is that that value be retained.

16 Q. That the treatment for the exempt quota --

17 A. That the treatment for the exempt quote would be
18 retained.

19 JUDGE CLIFTON: Now, you have done it again, Mr. Tosi. You
20 must let her finish so that it is clear when you answer what
21 question it is that you just answered. So Ms. Hancock, would
22 you ask your question again? So the value?

23 BY MS. HANCOCK:

24 Q. The goal is, again, like the first proposal that we had
25 in Exhibit 168, the one in 171 is an alternative offered just

1 for purposes of consideration by the USDA with the ultimate
2 goal of preserving the treatment of exempt quota the same as
3 it's being treated today?

4 A. Yes, that's correct.

5 Q. Okay. Can you walk through the two sections that you
6 have here on Exhibit 171?

7 A. Okay. In coming at a different way of trying to
8 preserve exempt quota in the event that we do have a Federal
9 Milk Marketing Order, in this alternative approach was to look
10 at it from the standpoint of when payments are made to
11 producers. And we thought that this was a, you know, a
12 reasonable and important way to look at it, because exempt
13 quota is an asset of the farm or the producer. Okay?

14 In that regard, we thought some minor changes needed to
15 be made to in, again, I'm using the co-op proposal sections
16 here, and if you look at the bottom here we talk about, you
17 will see that where I have proposed changes in Section 1051.17
18 on CDFA quota premium, quota nonfat solids, and we're going to
19 be inserting the words "exempt quota, and non-quota milk." In
20 that regard, now, we're going to be adding in this other
21 alternative, we'll have a new paragraph or subparagraph E to
22 Section 17 of 1051.17, and it would read as shown there, exempt
23 quota being in italicized letters, means that, means the volume
24 of skim milk and butterfat as calculated by the California
25 Department of Food and Agriculture and reported to the Market

1 Administrator.

2 JUDGE CLIFTON: Let me figure this out. Could we take just
3 a minute? So we're looking at a section we haven't looked at
4 at all in Exhibit A. We're in a new section. Could we take
5 just a minute to get our Exhibit 1 and see how that's currently
6 proposed by the Cooperatives, this Section 1051.71?

7 MR. TOSI: Okay, your Honor. Would you like me to help you
8 there?

9 JUDGE CLIFTON: I think I have it. Mr. Beshore can help
10 me, should I be looking at Page 47216 of Exhibit 1? And what
11 the A that is currently there says:

12 The total value of milk to the handler for the month as
13 determined pursuant to Section 1051.60. And so what you are
14 suggesting, Mr. Tosi, is that that not be subsection A, but
15 rather what you have here be subsection A?

16 MR. TOSI: When you first beginning reading Section 71
17 there?

18 JUDGE CLIFTON: Yes.

19 MR. TOSI: There's like, I'm not sure that the correct term
20 for it is, there is sort of like a preamble that leads you up
21 to what that first subparagraph A is gonna say.

22 JUDGE CLIFTON: Oh, that's where this A goes.

23 MR. TOSI: Correct.

24 JUDGE CLIFTON: So looking at that -- that sentence, okay.
25 So I was in the wrong A. So -- yeah. You are in the preamble,

1 which isn't that unfortunate that it also uses -- okay. So you
2 are suggesting that -- and are you looking at the -- at what's
3 there now?

4 MR. TOSI: I don't have that in front of me but I'm
5 familiar with what it says.

6 JUDGE CLIFTON: All right. So let me get side by side with
7 you just so we're both looking at it. So -- all right. So
8 we're looking here. All right. So you have what I have.

9 MR. TOSI: Okay.

10 JUDGE CLIFTON: So -- so walk me through this little
11 subsection A in the preamble says -- I don't think that's it.
12 I don't think that's it. You look at it and help me understand
13 where this insert would go.

14 MR. TOSI: Okay. You will see the preamble that begins,
15 "each handler shall make payment to".

16 JUDGE CLIFTON: Yes.

17 MR. TOSI: And then on the bottom line of that preamble, at
18 least in the Federal Register copy there, it says specified in
19 Paragraph B of the section colon.

20 JUDGE CLIFTON: I see this.

21 MR. TOSI: Now, we are proposing all that stays the same.

22 JUDGE CLIFTON: Okay.

23 MR. TOSI: Now, what we're doing here is, in order to
24 account for the value of exempt quota, okay? In order to
25 account for the value of exempt quota, we would need to

1 subtract the amount that's determined in this Paragraph A,
2 okay? The amount that's determined in Paragraph A we need to
3 subtract out, the concept here is we're subtracting out the
4 value of exempt quota that would be paid to all other
5 producers.

6 JUDGE CLIFTON: So rather than your Subsection A replacing
7 all the language that the Cooperatives proposed, you are
8 suggesting an add-on to the language that the Cooperatives have
9 proposed.

10 MR. TOSI: Yes, your Honor, that's correct. And that
11 add-on would be just specified in the current language that you
12 see there under subparagraph A there of Section 71.

13 JUDGE CLIFTON: All right. So looking at what the
14 Cooperatives proposed, and using what you want to add in, read
15 me the whole thing.

16 MR. TOSI: Beginning from the very beginning or just for --

17 JUDGE CLIFTON: From subsection, from -- okay. From
18 Section 1051.71(a).

19 MR. TOSI: Okay. Understood, your Honor.

20 That subparagraph (a) would be changed to read as
21 follows:

22 Payment shall be -- payment shall be the amount, if
23 any.

24 MS. HANCOCK: I'm going to interrupt you, Mr. Tosi. It is
25 not (a), it is still in the introductory Section of 1051.71,

1 right? About halfway down.

2 JUDGE CLIFTON: Okay. We're going to have a ten-minute
3 break so that you all can figure out what you are asking us to
4 do, and then we'll come back. So it's now 9:55, please be back
5 and ready to go at 10:05.

6 (Whereupon, a break was taken.)

7 JUDGE CLIFTON: We're back on record at 10:06.

8 Ms. Hancock?

9 MS. HANCOCK: Thank you, your Honor, for the break. I
10 think we were able to locate the section where we were adding
11 it.

12 BY MS. HANCOCK:

13 Q. Mr. Tosi, in Exhibit 171, that Section 1051.71, we were
14 talking about the addition of the language that you were
15 proposing there. Can you tell us on Exhibit 1, where in
16 Section 1051.71 would this change be made?

17 A. Okay. If you look at the proposed order language of
18 the Cooperatives, and if, there is a section there that begins,
19 that's often referred to as the preamble, where it says, "each
20 handler shall make payment to the Producer Settlement Fund."
21 Our proposed change has to do with language that we're going
22 to, that we would like to see replaced in this preamble.

23 Q. Is that about halfway through that preamble beginning
24 with the word "payment"?

25 A. That's correct.

1 Q. Okay. And can you read that sentence as you would
2 suggest it be revised?

3 A. Okay. That sentence in the preamble that begins with
4 the word "payment", we're proposing that it be changed to read
5 as follows, okay?

6 Payment shall be the amount, if any, by which the
7 amount specified in paragraph (a), less the value of exempt
8 quota as determined by the Market Administrator to the volume
9 of exempt quota as determined by the CDFA, exceeds the amount
10 specified in Paragraph B of this section.

11 Q. Okay. So just conceptually, what's going on here?

12 A. Well, conceptually --

13 JUDGE CLIFTON: Let me stop you before you explain it. Do
14 you want us to alter Exhibit 171, your Exhibit?

15 MS. HANCOCK: By removing that first (a) in parentheses?

16 MR. TOSI: I understand, yes. That first (a) that's in
17 parentheses, that's a typographical error on my part.

18 JUDGE CLIFTON: So you want us to strike the (a)?

19 MR. TOSI: That is correct, your Honor.

20 JUDGE CLIFTON: All right. Then the other thing is your
21 language that's highlighted in yellow which is what you
22 proposed be added, rather than read out the words that you show
23 here, California Department of Food and Agriculture, you would
24 prefer to use CDFA as it is, in fact, used repeatedly
25 throughout?

1 MR. TOSI: That's correct, your Honor.

2 JUDGE CLIFTON: Okay. So we would strike "California
3 Department of Food and Agriculture", no, I guess we would
4 strike "the California Department of Food and Agriculture" and
5 we would insert "CDFA".

6 MR. TOSI: Yes.

7 JUDGE CLIFTON: Okay. Now, let me -- let me see if I
8 understand this. So the part of Exhibit 171 that is in black
9 is already there, and I'm just matching it up. Now, you would
10 also propose to take out the words that are already there that
11 say "of this section"?

12 MR. TOSI: As I have written, as we have presented it here
13 in the exhibit, it does show the absence of those three words.
14 I think those three words could either stay or be eliminated.
15 I think it would still carry the same meaning.

16 JUDGE CLIFTON: Okay. So if USDA found some value to have
17 the words be as written in the Proponents of Number 1's
18 language, you wouldn't have any objection to that?

19 MR. TOSI: I would not, your Honor.

20 JUDGE CLIFTON: Okay. And then what you are adding is what
21 we have got left in yellow. And would you read it one more
22 time, what we have got left in yellow?

23 MR. TOSI: Okay. What I have in yellow, and there is the
24 words "less the value of exempt quota as determined by the
25 Market Administrator to the volume of exempt quota milk

1 determined by CDFA".

2 JUDGE CLIFTON: Okay. Ms. May, any questions about the
3 changes to Exhibit 171?

4 MS. MAY: No.

5 JUDGE CLIFTON: No. Okay. We didn't do much. We just
6 struck the little (a) that began it and we just changed the
7 spelled out reference to just CDFA. That's all we really
8 changed. Okay. Good.

9 Now, Ms. Hancock, you wanted to invite Mr. Tosi to talk
10 about why.

11 BY MS. HANCOCK:

12 Q. I think my question was, your Honor, Mr. Tosi, just
13 conceptually, can you tell us what you were trying to do here?

14 A. Yeah, conceptually what we're doing here is, when we're
15 making, there are certain determinations that we think are best
16 left to CDFA. And in that regard, we're talking about it's
17 CDFA that calculates what the volume of exempt quota is going
18 to be. Okay? And it will be the Market Administrator that
19 will take that volume that's reported by CDFA, and apply the
20 appropriate values. So simplified way of saying it, CDFA
21 determines volume, the Department or the Order here determines
22 value.

23 Q. Okay. Your Honor, with that and the modifications, I
24 would move to admit Exhibit 171.

25 JUDGE CLIFTON: Okay. Now, we didn't talk yet about this

1 alternative way of dealing with Section 1051.17. Do you want
2 him to address that?

3 MS. HANCOCK: He covered that part first. He went in
4 reverse order and covered Section 17 first and then 71.

5 JUDGE CLIFTON: Oh, because what we did on Exhibit A is
6 identical; is that right?

7 MS. HANCOCK: They are similar, but not identical. They
8 are not -- they are not dependent on each other. These are two
9 different ways of accomplishing the same result.

10 JUDGE CLIFTON: Okay. With all due respect, even though
11 he's already covered it, I would like for us just to look at
12 it.

13 Mr. Tosi, I would like you to look at what you have in
14 yellow at the very end of Exhibit 171. Do you see it?

15 MR. TOSI: Yes, your Honor, I do.

16 JUDGE CLIFTON: All right. So this is an alternative that
17 rather than having one section that discusses skim milk and the
18 other section that discusses buttermilk, you put them together.

19 MR. TOSI: That's correct.

20 JUDGE CLIFTON: Okay. And here you have spelled out the
21 words the California Department of Food and Agriculture. Is
22 that how you want to leave it?

23 MR. TOSI: When I look at the balance or what has already
24 been said in the co-op model here of that section, it's CDFA is
25 defined as California Department of Food and Agriculture. I

1 think we could leave it at that. Continue to say it out, to
2 spell it out, or just to use the acronym CDFA.

3 JUDGE CLIFTON: Okay. You know, we have got the acronym
4 just a few paragraphs higher, right? In the definition?

5 MR. TOSI: That's correct.

6 JUDGE CLIFTON: So this is in the definition section. And
7 I just wondered if you wanted to be consistent here with the
8 proposals that you had already made, where you say CDFA.

9 MR. TOSI: I think it would be very acceptable to use the
10 an acronym CDFA, and changing it in that way would not, would
11 not in any way confuse the order language.

12 JUDGE CLIFTON: Okay. So which do you prefer? I know both
13 are acceptable.

14 MS. HANCOCK: How about if we change it to CDFA.

15 MR. TOSI: CDFA would be fine.

16 JUDGE CLIFTON: Okay. So I'm going to strike, on my copy,
17 and invite Ms. May to strike on the record copies, the
18 California Department of Food and Agriculture and insert
19 instead CDFA. And then when you walked us through the changes
20 earlier on page 2 of Exhibit A, you used the phrase, let's
21 see -- I think we're good. So here you are saying, here you
22 are saying "as calculated by the CDFA and reported".
23 Previously, when we were working in Section 1051.60, see if
24 there was any change there. I'm just looking to see if there's
25 any difference in way you have already led us this morning.

1 Okay. So I don't -- I -- this wording is a little different
2 from what you suggested this morning. But it means the same, I
3 think. So -- so this gives us an alternative to look at. All
4 right.

5 Is there anything further, Ms. Hancock, before I
6 determine whether there are any objections to the admission of
7 Exhibit 171?

8 MS. HANCOCK: No, your Honor.

9 JUDGE CLIFTON: Does anyone wish to question Mr. Tosi
10 before determining whether you have any objections? No one.
11 Are there any objections to the admission into evidence of
12 Exhibit 171? There are none. Exhibit 171 is admitted into
13 evidence.

14 (Thereafter, Exhibit 171, was
15 received into evidence.)

16 MS. HANCOCK: I have no further questions at this time,
17 your Honor.

18 JUDGE CLIFTON: All right. Who would like to go first to
19 question Mr. Tosi? I see no one. Does anyone have any
20 questions? Mr. Richmond?

21 RE-CROSS-EXAMINATION

22 BY MR. RICHMOND:

23 Q. Bill Richmond, USDA.

24 We appreciate you getting back up on the stand,
25 Mr. Tosi, to help us better understand this. So just one

1 question about 1051.17 where you are requesting the CDFA to
2 provide the volume of skim milk and butterfat as a way to help
3 us understand the volume of exempt quota so we can then
4 calculate the value. Is this something that they currently do
5 or is this something new that they are going to need to --

6 A. Well, there are some subtle differences here. CDFA
7 talks about quota and exempt quota in terms of solids not fat.
8 In terms of using the co-op proposed, co-op proposal as a
9 model, when we're looking at Class I value, they are describing
10 things in terms of skim and butterfat and there's a subtle
11 difference there in how we make that translation. I'm not
12 exactly sure how you, how we would do that. You know, in this
13 one proposal they are choosing to look at things at least with
14 respect to Class I value, a little bit differently than how
15 California does it. Okay?

16 The DI proposal tends to more mimic the current
17 California way of how they come up with that. We didn't want
18 to belabor, you know, which one is better, which one is
19 superior, but trying to offer alternatives for the Department,
20 recognizing that there are subtle differences here that -- that
21 the point is, is that whatever that volume is of exempt quota,
22 leave that to the Department, excuse me to CDFA to determine
23 what those values, what those volumes are. And then knowing
24 what what those volumes are, let the Market Administrator apply
25 values then to determine that portion of it.

1 Q. Okay.

2 A. And it's -- I don't -- I have some sympathy for the
3 Department here. When I was on your side, you know really well
4 that how we would have to try to sort through these sorts of
5 things.

6 Q. Well, we appreciate it. That helps, thank you.

7 A. Thank you.

8 JUDGE CLIFTON: All right. Any other questions for
9 Mr. Tosi on this topic? Mr. English?

10 RE-CROSS-EXAMINATION

11 BY MR. ENGLISH:

12 Q. Good morning, Mr. Tosi, Chip English.

13 I'm looking at Exhibit 171 and the language in yellow
14 for the revisions to 1051.71. And I'm just still struggling a
15 little bit with how this would work. And so, for instance, you
16 used the phrase "less the value of exempt quota as determined
17 by the Market Administrator." But -- but the value of exempt
18 quota is nowhere else used. And so I'm just wondering what is
19 it, both industry and the Market Administrator would know they
20 are doing, that he is doing for a calculation?

21 A. If I have understood what you have asked me, it would
22 be CDFA providing the volume of quota in however, whatever
23 those volumes how they report it. Okay? And that it would be
24 the Market Administrator through how prices are, or values are
25 assigned to pounds, to come up with value. And the attempt

1 here is that what -- what we're conceptually trying to do here,
2 this was another way of saying, well, let's look at when
3 payments are actually made, and Section 71 deals with how
4 payments, in part, are, how payments are made to producers. If
5 we just -- if there, if we just subtract out that value which
6 is going to be retained by the exempt quota holders, we can
7 take that out of the total value, then, in turn now what we're
8 doing is we're paying it out to the producers what they are
9 owed under the order.

10 Q. And the bottom line is, by putting this in Section 71
11 the total, the dollars to that would otherwise be paid to the
12 pool on exempt quota, won't be paid to the pool, correct?

13 A. I think that's correct.

14 Q. Okay. I have no further questions.

15 JUDGE CLIFTON: Any other questions for Mr. Tosi on this
16 topic? Nothing. All right. I really like the way you, you
17 know, I'm impressed, Mr. Tosi, with your way to use just a few
18 words to describe an enormous undertaking. It is very helpful
19 to keep it simple, right? So you did a really good job here.
20 I really like the difference between yesterday and today.
21 Okay.

22 Any other questions for Mr. Tosi? None. All right.
23 Then, Ms. Hancock, shall he remain here for his next segment of
24 testimony?

25 MS. HANCOCK: That would be great, your Honor.

1 JUDGE CLIFTON: Very good. And I notice some more
2 documents came, so we'll mark those. Help me, I'm a little
3 addled. I didn't admit 171, yet, did I? You moved it. I went
4 on to question him some more, and I never responded to your
5 motion. All right. I think. Did I? Did I admit 171?

6 MS. MAY: Yeah, you admitted it before Bill --

7 MS. HANCOCK: Let's just do it one more time to be sure.

8 JUDGE CLIFTON: No harm in doing it twice. Thank you.
9 Exhibit 171 is admitted into evidence.

10 (Thereafter, Exhibit 171, was
11 received into evidence.)

12 JUDGE CLIFTON: All right. Good.

13 MS. HANCOCK: So we should have the first document is an
14 exhibit or testimony, second document is an exhibit packet.

15 JUDGE CLIFTON: All right. So I am marking as Exhibit 172,
16 testimony of Gino Tosi in Support of Proposal 4. 172.

17 I am marking Exhibit 173, the exhibits in support of
18 that.

19 (Thereafter, Exhibit 172 and Exhibit 173 ,
20 were marked for identification.)

21 JUDGE CLIFTON: Yes. So -- yes, Ms. Hancock, you may
22 proceed.

23 MS. HANCOCK: Thank you, your Honor.

24 DIRECT EXAMINATION

25 BY MS. HANCOCK:

1 Q. Mr. Tosi, Exhibit 172, did you prepare that statement?

2 A. Yes, I have.

3 Q. Would you mind reading that statement into the record?

4 A. Certainly.

5 MR. BESHORE: Your Honor?

6 JUDGE CLIFTON: Yes, Mr. Beshore?

7 MR. BESHORE: Before Mr. Tosi proceeds with his testimony,
8 his prepared testimony which has been marked as Exhibit 172, I
9 had the opportunity to review it. It was pre-passed out by
10 Ms. Hancock, which I appreciate. I would just like to make one
11 efficient standing objection to the testimony, or to a great
12 portion of it. It's replete with legal analysis, legal
13 argument, interpretation of cases, which are -- which are now
14 being made, offered as Exhibit 173. I mean, court decisions.
15 It's analysis of of the Congressional statute, etcetera.

16 Mr. Tosi has expertise in Federal Milk Marketing Orders
17 but not in law. And I just want a standing objection to all of
18 the legal analysis, which it's replete with that. That's, I
19 won't make it anymore, I won't butt in every time we get to a
20 paragraph or a sentence or whatever, but I want that standing
21 objection.

22 JUDGE CLIFTON: Thank you, Mr. Beshore, the objection is
23 noted. Nevertheless, the evidence will come in. I urge the
24 Agricultural Marketing Service to use your objection as a
25 caution. The Secretary can interpret these things. And

1 perhaps these ideas about how they might be interpreted will be
2 useful. All right. You may proceed, Ms. Hancock.

3 BY MS. HANCOCK:

4 Q. Mr. Tosi, would you proceed to read Exhibit 172?

5 A. Yes, thank you.

6 My name is Gino Tosi. I previously testified in
7 support of Proposal 3 on behalf of the California Producer
8 Handlers Association and I now am appearing on, appearing on
9 behalf of Ponderosa Dairy ("Ponderosa") in support of its
10 proposal published in the Hearing Notice as Proposal 4.

11 The intent of Proposal 4 is to provide for, in the
12 event that this proceeding results in the issuance of a Federal
13 Milk Marketing Order ("FMMO"), continuing the exclusion of
14 out-of-state milk from the pooling and pricing provisions of
15 the FMMO as it is currently excluded from the pooling and
16 pricing under the California State Order. Specifically, this
17 would be accomplished through a provision that is a part of all
18 Federal Milk Marketing Orders ("FMMO's") specifying payments to
19 be made by handlers operating a partially-regulated
20 distributing plant.

21 The Cooperative proposal does not provide for such
22 exclusion. I understand the Dairy Institute of California
23 ("DI") proposes two pools in its proposal, one delegated to the
24 State of California for quota, and one for, put in quotes
25 there, a "traditional" FMMO pooling that results in a Federal

1 Order blend price.

2 The need for the Ponderosa proposal arises from the
3 inability of milk produced outside the State of California and
4 delivered to plants in California, from receiving the full
5 benefits of being pooled. Such out-of-state milk would receive
6 differential treatment, and bear pricing burdens that, in my
7 opinion, constitute a trade barrier to the out-of-state
8 producer. The current California State Order, which once
9 pooled and priced out-of-state milk, no longer does so because
10 the Supreme Court found this to be in violation of the Commerce
11 Clause of the Constitution.

12 Q. Mr. Tosi, should we say the U.S. Supreme Court and the
13 District Court?

14 A. Yes. In my characterizations here, I'm, I respect
15 Mr. Beshore saying that I'm not a legal expert, but I will say
16 this in layman's terms. The case, that Supreme Court case said
17 what it said, and that case is not a result of California being
18 in compliance with the Commerce Clause of the United States, of
19 the Constitution of the United States.

20 Q. So after U.S. Supreme Court, if we insert "and as
21 found" or "and on remand to the District Court" would that --

22 A. Correct. Yes. The Supreme Court case, and we have it,
23 we have the full presentation of that, the case, and the
24 decision of the Supreme Court, and the remand is in an exhibit.

25 Q. And is that in Exhibit 173?

1 A. Yes, it is.

2 Q. Did we get the change made on that?

3 JUDGE CLIFTON: No. When you read it, Mr. Tosi, you left
4 out the United States both in referring to the Supreme Court
5 and in referring to the Constitution, so I'm going to have you
6 read your sentence again.

7 MR. TOSI: The last sentence there, your Honor?

8 JUDGE CLIFTON: Yes, please.

9 MR. TOSI: The current California State Order, which once
10 pooled and priced out-of-state milk, no longer does so because
11 the U.S. Supreme Court found this to be in violation of the
12 Commerce Clause of the U.S. Constitution.

13 JUDGE CLIFTON: Thank you. And Ms. May, what we will
14 insert is just after the phrase "U.S. Supreme Court" we will
15 insert "and on remand to the District Court," capital D
16 District, capital C, Court. Done.

17 So, and I want you to read the headings, Mr. Tosi, so
18 you may begin with the next heading.

19 MR. TOSI: Thank you, your Honor.

20 Background

21 I make reference to my earlier testimony in which I
22 describe my background, and I ask that testimony be noticed
23 here for the purposes of my testimony on behalf of the
24 Ponderosa proposal.

25 Proposal 4 Specifics

1 Proposal 4 would add a new paragraph (e) to
2 Section 1051.76, as described in either Proposal 1 of the
3 Cooperatives or Proposal 2 of DI. The proposed order language
4 would be as follows:

5 In bold would be the title of this section, and it
6 reads:

7 Section 1051.76, Payments by a handler operating partially
8 regulated distributing plant.

9 Sub paragraph (e) would read:

10 Any handler may elect partially-regulated distributing
11 plant status for any plant located within the California
12 marketing area with respect to receipts of milk from farms
13 located outside of the California marketing area. Such plant
14 shall, with respect to such receipts, make an election provided
15 for in Section 1051.76 and shall meet the reporting and payment
16 requirements of paragraph (a) or paragraph (b) of this section,
17 with respect to such receipts.

18 While the above is the proposed language for a FMMO --

19 JUDGE CLIFTON: Start again that sentence.

20 MR. TOSI: While the above is the proposed order language
21 for an FMMO for the State of California, there may be concern
22 about how the proposed California FMMO order might view
23 receipts about out-of-state milk at California plants.
24 Specifically, the concern is whether such milk receipts may be
25 treated as -- and I used words in quotes -- "other source milk"

1 which is defined or as currently defined, in Part 1000.14 of
2 all current FMMO's. If that milk is downgraded to a lower
3 classified valued use because it is treated as other source
4 milk, then the objective the Ponderosa proposal is essentially
5 defeated or is defeated, as the milk being shipped is for
6 Class I use.

7 The Ponderosa proposal is structured after and
8 incorporates paragraphs (a) and (b) of Part 1000.76, which is
9 applicable to all FMMO's. Part 1000.76 never makes reference
10 to other source milk. However, other source milk is referenced
11 in Section 1051.60, but only to conditions specified in
12 1000.76(a)(4), as it relates only to plants that would utilize
13 the option in Section 1000.76(d), which has never been used by
14 any entity utilizing the partially regulated distributing plant
15 provision.

16 The regulatory options provided in Part 1000.76 has
17 worked well, and to my knowledge, milk receipts by a partially
18 regulated distributing plant have not been downgraded as other
19 source milk. And if you examine section, and I'm using the,
20 rather than citing a number, I'm using the characterization
21 XXXX.30(b) describing it in that way, is that every order has
22 its own unique section for this Section 30(b), and rather than
23 cite ten different Marketing Order section numbers, to just use
24 the shorthand for that as being XXXX. So I'll begin that
25 sentence anew.

1 If you examine Section XXXX.30(b) of current FMMO's,
2 all provide that handlers operating a partially regulated
3 distributing plant with respect to such milk receipts would be
4 producer milk as if the plant had been fully regulated and is
5 reported in lieu of producer milk.

6 This is rather technical and tedious. And in the event
7 that out-of-state milk may be treated as other source milk,
8 then the regulatory language is proposed to read as follows:

9 And I'll start off by saying here is that what I'm showing here
10 in the written testimony is that everything that's being said
11 as being part of our proposed Section 1051.76 in subparagraph
12 (e), is identical to what I just previously read, but we're
13 going to add a new sentence, and it is presented in this
14 written testimony as in italics and that is underlined. And
15 that addition would read:

16 The reporting and classification requirement in
17 calculating the value of milk pursuant to Section 1051.60
18 pertaining to producer milk, shall apply to the volume of milk
19 subject to an election hereunder, and such milk shall not be
20 treated as other source milk.

21 Throughout my career in dairy --

22 JUDGE CLIFTON: No, no, no, go ahead and read that next
23 paragraph, it has value.

24 MR. TOSI: Okay. (The testimony in italics and underlined
25 is the additional language that may need to be added to the

1 Ponderosa proposal, and should settle any issues with the
2 regulatory treatment of out-of-state milk --) excuse me, I
3 excuse me, I did say that correctly, (with respect to, with the
4 regulatory treatment of out-of-state milk as other source
5 milk.)

6 JUDGE CLIFTON: Okay. I got it, but read that again,
7 please.

8 MR. TOSI: Okay. The testimony in italics and underlined
9 is the additional language that may need to be added to the
10 Ponderosa proposal and should settle any issues with the
11 regulatory treatment of out-of-state milk as other source milk.

12 Throughout my career at the Dairy Programs, I was
13 relied upon to have a working knowledge of various court cases
14 and the legal requirements for imbedding into milk marketing
15 order provisions.

16 My previous participation with the Justice Department
17 in a Commerce Clause violation case before the
18 U.S. Supreme Court and other lawsuits gave me insight into the
19 applicability of certain conclusions and requirements that are
20 applied in promulgating and amending a Federal Milk Marketing
21 Order, (FMMO). During my work in Dairy Programs, orders
22 promulgated or amended by formal rule making needed to be
23 consistent with, for example, Section 608(c)(5) and
24 Section 608(c)(18) of the Agricultural Marketing Agreement Act
25 ("AMAA"). I have in past decisions, drawn direct reference to

1 Section 608(c)(5) and every decision issued by the Department
2 makes specific findings related to Section 608(c)(18). The
3 Hillside Dairy vs. Kawamura case was a very recent and
4 important case that went before the Supreme Court in 2004.

5 JUDGE CLIFTON: Which Supreme Court?

6 MR. TOSI: The U.S. Supreme Court.

7 JUDGE CLIFTON: Thank you.

8 MR. TOSI: It was not a case directly concerning FMMO's,
9 but I find it to be instructive for this proceeding in
10 identifying the shortcomings the Cooperative and DI proposals
11 regarding out-of-state milk, and which gives rise to the need
12 for Proposal 4.

13 The combination of the Supreme Court ruling and the
14 District Court ruling on remand, found that the California's
15 1997 decision to pool and price milk received from
16 out-of-state, discriminated against such milk and was an
17 impermissible trade barrier. And it would be Exhibit 173
18 reflects these decisions, and the -- and the further discussion
19 from the court's ruling.

20 JUDGE CLIFTON: All right. Ms. May, you will insert there
21 in the blank 173 on the record copies. Thank you.

22 MR. TOSI: I'm of the opinion that if the Cooperatives'
23 proposal for California FMMO is promulgated without providing
24 for the exclusion of out-of-state milk from pooling and pricing
25 provisions, it would result in out-of-state milk's differential

1 treatment and present an unfair trade barrier that burdens
2 out-of-state milk producers. This would place an unwarranted
3 burden on out-of-state producers, and would needlessly force
4 out-of-state milk producers, such as Ponderosa, to again seek
5 redress on an issue that's already been decided by the nation's
6 highest court. I do recognize why the Cooperatives take their
7 position, they see themselves as the entities that balance the
8 Class I needs of a marketing area, and if that milk is not
9 pooled, it avoids or does not share in the cost associated with
10 balancing. And that point may be valid if there were no quota
11 pricing system that confers only benefits to milk that's
12 produced within the boundaries of California, and if
13 out-of-state producers could participate in transportation
14 allowances that are funded from pool revenues.

15 JUDGE CLIFTON: Thank you. And I want you to read that
16 sentence one more time, slowly.

17 MR. TOSI: The last sentence, your Honor?

18 JUDGE CLIFTON: Yes, please.

19 MR. TOSI: This point may be valid if there were no quota
20 pricing system that confers benefits only to milk that is
21 produced within the boundaries of California, and if
22 out-of-state producers could participate in transportation
23 allowances that are funded from pool revenues.

24 Out-of-state milk can never opt into the state quota.
25 Specifically, in-state producers can purchase their own quota

1 and enjoy the pricing benefits conferred under the order. I
2 contrast this to FMMO's that provided a degree of seasonal
3 price differences for milk that did not meet certain criteria
4 for a higher price. And base-excess plans are a good example.
5 The last Federal Order to provide a base-excess plan was the
6 pre-Reform Carolinas Order. (And no current Federal Milk
7 Marketing Order provides for such a plan, and in fact, the
8 authority provided in the AMAA for base-excess expired awhile
9 ago.)

10 JUDGE CLIFTON: When, just so it's clear to people
11 listening in, when you refer to base-excess, you have it
12 hyphenated, right? You have base, hyphen, excess.

13 MR. TOSI: Correct, your Honor.

14 JUDGE CLIFTON: Thank you, you may continue.

15 MR. TOSI: Unlike California's quota system, in which
16 out-of-state milk is denied the benefits of the State Order
17 program, milk that was priced at a lower "excess" price could
18 graduate to receiving the higher "base" price when new base
19 forming times were provided. Such milk had nothing to do with
20 where or in what state the milk was produced. I do note that
21 in the 1960's, for example, the State of Oregon --

22 MS. HANCOCK: Start that sentence again.

23 MR. TOSI: I do note that in the late 1960's, the State of
24 Oregon temporarily administered a base-excess plan in
25 conjunction with the Federal Order until the termination of the

1 order. I am of the opinion that this is not the same as the
2 State of California continuing to administer its quota system,
3 which is essentially a feature under the Cooperative proposal
4 that makes it impossible for out-of-state milk to ever own, to
5 own quota. This is also true under the DI proposal, depending
6 on whether current quota holders would opt out of the quota
7 system of milk valuation (in an event that, an event I think
8 unlikely, given the value of quota, given that the value of
9 quota has been capitalized into the valuation of quota holder
10 assets.) The purpose of base-excess plans was to "even out",
11 and I used the term "even out", milk production during the
12 year, rather than face the large milk price swings that usually
13 occur in the spring months when milk production is usually
14 higher and prices are lower, compared to the fall months, when
15 production is usually lower and prices are higher.

16 As discussed in Dr. Schiek's testimony, the DI proposal
17 shows a much higher sensitivity to the pricing requirements of
18 the AMA when compared to the Cooperative proposals.

19 JUDGE CLIFTON: And you are talking about price
20 requirements of the what?

21 MR. TOSI: Of the AMAA.

22 JUDGE CLIFTON: Thank you.

23 MR. TOSI: When compared to the Cooperatives proposal.

24 Ponderosa chooses to avoid the complexities and arguments of
25 whether or not the concept of two separate pools, a

1 "traditional" Federal Order pool, and a California State pool,
2 that would exist to recognize or redistribute revenue and
3 recognize quota is the magic bullet that settles such a complex
4 issue. The entire issue of quota is something that the State
5 of California and its dairy farmers have been debating for a
6 long time, and from things, and the from the little bit that I
7 have observed from other testimony that, that I have gathered
8 from other witnesses that appeared here, it doesn't seem like
9 it is going to be an issue that's going to be settled anytime
10 soon. And it's not clear that offering a choice to "opt out"
11 of quota or non-quota pricing will ensure that the AMAA
12 requirement of uniform pricing (Section 608(c)(5)(B)) simply
13 because producers can choose the basis on which they are paid
14 versus being paid based on whether the order requires, or that
15 it similarly avoids the creation of a trade barrier or
16 Section 608(c)(5)(G)). It's an innovative idea for bringing an
17 end to quota by looking at them as a sort of an annuity payment
18 that pays out an estimated \$1.2 billion of quota value over
19 time. However, the quota issue remains far, far from being
20 settled.

21 As presented, the Cooperative proposal also provides
22 for a transportation credits or allowances on milk, and is
23 restricted only to milk produced within California. DI
24 recently amended its proposal to allow out-of-state producers
25 to qualify for a transportation allowances, which we,

1 Ponderosa, supports in furtherance of equal treatment for
2 producers. If transportation credits were deprived to
3 out-of-state producers, it would be another example of how
4 pooling out-of-state milk may be viewed and found to be
5 discriminatory.

6 JUDGE CLIFTON: Now, I would like you to read it again for
7 one reason.

8 MR. TOSI: Okay.

9 JUDGE CLIFTON: You used the word at the beginning of the
10 sentence, you said if transportation credits. Now --

11 MR. TOSI: I'm sorry, it's transportation benefits.

12 JUDGE CLIFTON: Right. And earlier in your paragraph you
13 talked about transportation credits or allowances, and we got
14 both of them involved. So you are talking about any kind of
15 transportation benefits.

16 MR. TOSI: Yes, your Honor.

17 JUDGE CLIFTON: So would you read that sentence again?

18 MR. TOSI: Okay. If transportation benefits were deprived
19 to out-of-state producers, it would be another example of how
20 pooling out-of-state milk may be viewed as, and found to be
21 discriminatory. Out-of-state milk paying into the pool
22 provides the revenue that funds transportation credits and
23 allowances a benefit that's not available to out-of-state milk.

24 As I said earlier, my work experience in Dairy Programs
25 required an understanding of Section 608(c)(5) of the AMAA.

1 This has often been referred to as the pricing standard of the
2 AMA. It provides --

3 JUDGE CLIFTON: How many A's?

4 MR. TOSI: AMAA.

5 JUDGE CLIFTON: Thank you.

6 MR. TOSI: Okay. This has often been referred to as the
7 pricing standard of the AMAA. It provides mandatory
8 requirements that essentially prohibit using pricing methods as
9 a way to attract -- erect trade barriers. In this regard --

10 JUDGE CLIFTON: All right. I want you to read that
11 sentence one more time. You said it correctly, I just want you
12 to read it again.

13 MR. TOSI: It provides mandatory requirements that
14 essentially prohibit using pricing methods as a way to erect
15 trade barriers. In this regard, Congressional intent in the
16 2014 Farm Bill to -- please strike the word "was" -- and I'll
17 begin that sentence anew. In this regard, Congressional intent
18 in the 2014 Farm Bill to establish a separate FMMO for
19 California and give California the right to reblend and
20 distribute milk pooled under the Order so as to recognize quota
21 value.

22 JUDGE CLIFTON: Now, you need the "was" in there, because
23 you don't have a verb.

24 MR. TOSI: No, you are correct, your Honor, I apologize for
25 that.

1 JUDGE CLIFTON: Okay. So leaving it in, read the sentence
2 again, slowly, because it has a lots in it

3 MR. TOSI: In this regard, Congressional intent in the 2014
4 Farm Bill was to establish a separate FMMO for California and
5 give California the right to reblend and redistribute milk
6 pooled under it, so as to recognize quota value.

7 JUDGE CLIFTON: Okay. So the very end of that, start with
8 "and give California the right" and finish the sentence.

9 MR. TOSI: And give California the right to reblend and
10 distribute milk pooled under it, so as to recognize quota
11 value. Nowhere in the legislation does Congress suspend any of
12 the requirements of what a Milk Marketing Order must contain
13 and adhere to with respect to the treatment of out-of-state
14 milk and trade barriers, and especially Section 608(c)(5). I
15 have read many briefs and many lawsuits that discuss whether
16 the intent of Congress is clear or silent. As I read and
17 understand --

18 JUDGE CLIFTON: Read the whole sentence.

19 MR. TOSI: I have read many briefs and many lawsuits --

20 JUDGE CLIFTON: Start again.

21 MR. TOSI: I have read many briefs of many lawsuits that
22 discuss whether the intent of Congress is clear or silent in
23 legislation. I read and understand the, as I read and
24 understand the Farm Bill, Congress has not suspended any
25 requirement of the AMAA in promulgating a separate FMMO for

1 California with respect to the treatment of out-of-state milk
2 and trade barriers. It's my opinion, and it seems also to be
3 DI's opinion, that Congress would have at least mentioned what
4 part of the AMAA is being suspended or modified in promulgating
5 the California FMMO if it had wanted to change the Supreme
6 Court's ruling or the treatment of out-of-state milk. Well,
7 what's important here? Why is this important here? Well, not
8 excluding out-of-state milk from an FMMO from California can
9 reasonably be concluded to have used Section 608(c)(5) to erect
10 a trade barrier, and we know what the Supreme Court has ruled
11 about that.

12 As the Department is being asked to facilitate the
13 operation of California law, it cannot realistically address
14 discrimination on out-of-state milk by somehow allocating quota
15 to out-of-state milk to, if I can use the term quote, "level
16 the playing field". California law does not allow out-of-state
17 milk producers to own quota or participate in transportation
18 benefits. Accordingly, it is reasonable to conclude that the
19 Department has limited options to avoid a trade barrier outcome
20 in promulgating a California FMMO. These would include, well,
21 you could "federalize" -- I used word federalize in quotes.

22 JUDGE CLIFTON: Start --

23 MR. TOSI: Excuse me, I'm sorry. These include, let's just
24 deny having an FMMO. We could "federalize" quota that's not
25 requested by any hearing participant, or eliminating from the

1 FMMO the pooling of out-of-state milk. Ponderosa proposes
2 eliminating from an FMMO pooling of out-of-state milk. It is
3 simple, it is clean, and it's consistent with California's
4 current exclusion of out-of-state milk from being pooled under
5 the State Order.

6 It's important to note that the Ponderosa proposal is
7 superior to how California excludes out-of-state milk from the
8 pool because Federal Orders have pricing authority across state
9 lines, and Ponderosa's proposal would have California handlers
10 buying out-of-state milk to satisfy one of the two pricing
11 options (and commonly referred to here as "Wichita option"),
12 the unknown minimum price for milk excluded from the pool would
13 be known under a Federal Order. The Wichita option that
14 California handlers receiving out-of-state milk would most
15 likely utilize is the pricing option provided in Paragraph B
16 that the receiving plant demonstrate that the price it pays for
17 out-of-state milk is at least equal to what it would have paid
18 if it had been fully regulated. And I note in parentheses
19 here, is that, (this price is currently "assumed" as being
20 paid; otherwise, it's unlikely that, it's unlikely such milk
21 would have been delivered to the plant. Nevertheless, now, it
22 would be factually known.)

23 This concludes my testimony in support of Proposal 4.

24 JUDGE CLIFTON: Go ahead and read that whole sentence.

25 MR. TOSI: This concludes?

1 JUDGE CLIFTON: Yes.

2 MR. TOSI: This concludes my testimony on behalf of
3 Ponderosa Dairy in support of Proposal 4.

4 JUDGE CLIFTON: Thank you. I would like us to take a break
5 now, it's nearly 11:00. Please be back and ready to go at
6 11:15.

7 (Whereupon, a break was taken.)

8 JUDGE CLIFTON: We're back on record at 11:15. Mr. Tosi,
9 you may come back to the witness stand. Yes? No? Perhaps
10 not. Just a moment.

11 MR. BESHORE: Marvin Beshore. Thank you. Thank you, your
12 Honor. I have conferred with Ms. Hancock during the break, and
13 as we had indicated yesterday and again this morning, there are
14 two dairy farmers who have come to testify at the hearing.
15 They are here now and have a limited time window for
16 availability.

17 Ms. Hancock has has agreed, and Mr. Tosi, which I
18 appreciate very much, required changing some flight plans and
19 what not, but we would like to call at this time
20 Melvin Medeiros first, and then Christina Medeiros will testify
21 after Mr. Medeiros.

22 JUDGE CLIFTON: Good. I'm very glad we're able to go
23 forward with our dairy farmers, dairymen as they are called in
24 California. I'm very grateful to you, Mr. Tosi, for changing
25 your flight. Thank you.

1 Mr. Medeiros, you may be seated in the witness stand.
2 I'll swear you in in a seated position. Would you raise your
3 right hand, please?

4 Do you solemnly swear or affirm under penalty of
5 perjury that the evidence you will present will be the truth?

6 MR. MEDEIROS: I do.

7 JUDGE CLIFTON: Thank you. Please state and spell your
8 name.

9 MR. MEDEIROS: Melvin Medeiros. M-E-L-V-I-N,
10 M-E-D-E-I-R-O-S.

11 JUDGE CLIFTON: M-E-D-E-I-R-O-S.

12 MR. MEDEIROS: Correct.

13 JUDGE CLIFTON: All right. Thank you. Mr. Beshore, you
14 may proceed.

15 MR. BESHORE: Yes, your Honor, I would like to have marked
16 a one-page document which Mr. Medeiros has prepared and brought
17 along, which is titled, Recent Dairy Dispersals and Heifer
18 Sales at Local Sale Yards. And I would ask that that be given
19 the next -- if it could be distributed. It has been already
20 distributed. If it could be given -- this is your Honor's
21 copy.

22 JUDGE CLIFTON: Ms. May, I think this would be Exhibit 174.
23 Exhibit 174.

24 (Thereafter, Exhibit 174, was
25 marked for identification.)

1 JUDGE CLIFTON: Thank you, Mr. Beshore, you may proceed.

2 DIRECT EXAMINATION

3 BY MR. BESHORE:

4 Q. Okay. So at this point I would like to turn it over to
5 Mr. Medeiros and ask him to present the comments that he has,
6 and identifying and discussing Exhibit 174 as it fits with your
7 comments.

8 A. Thank you. Our family farm is located in Laton,
9 California, and it's been business now for 47 years. Its
10 beginnings were back in 1958 when my parents emigrated to
11 California from the Azure Island, and --

12 Q. I'm sorry to interrupt you, Mr. Medeiros, but we need
13 you to slow down just a bit so that -- it's very important that
14 all your, that your testimony verbatim be recorded, and be made
15 a part of the transcript here. And to have that accomplished,
16 we just need you to speak a little bit more slowly and
17 deliberately so that the stenographer in particular, the court
18 reporter, can get every word in so that all of us can
19 appreciate every word of your testimony.

20 JUDGE CLIFTON: Adrenaline is a wonderful thing.

21 MR. MEDEIROS: Yeah, well, isn't it, I feel like I'm in a
22 basketball game.

23 Well, let me start over. Our family farm is located in
24 Laton, California. We have been in business for 47 years. It
25 all began in 1958 when my parents emigrated from the

1 Azure Islands to California. By 1968, my parents had saved
2 enough money, bought a small herd of cows and leased a facility
3 in Hanford, California. At that time, we began into the dairy
4 business, but it was tragedy hit the farm three and a half
5 years later. My dad was killed on the farm by a bull, and I
6 was 9, my sister was 12, and my brother was 19 at that time.

7 My mom pulled us together and decided our dream was
8 going to continue on in this business. So she went to the
9 local bank, borrowed every dime she could, and bought 38 acres
10 and built a dairy facility. And two years later, we were
11 milking cows in Laton, California, which we're currently still
12 there today.

13 At the age of 18, my brother decided to venture off
14 into a different business, and my mom turned to me and said,
15 "You are now the next in line." She handed the reigns of the
16 dairy business to me, and I began the journey.

17 Not long after that I was married. I have, my wife and
18 I now own Medeiros Dairy. And we formed a second dairy,
19 Medeiros Holsteins. We have three boys, three
20 daughter-in-laws, six grand kids, and they are all a huge part
21 of our business.

22 My three boys are currently employed by us. My two
23 oldest sons have ventured out and started their own dairies
24 within a two-mile radius of our home place, so as you can see,
25 we are a family operation.

1 We farm approximately 560 acres. Our Medeiros Dairy
2 ships milk to CDI. Our Medeiros Holstein Dairy ships milk to
3 DFA. I currently sit on the board for DFA's Western Council.
4 I represent 25 to 30 dairymen in District 6, which encompasses
5 Fresno and Kings County.

6 I'm here today to support the proposal that the three
7 co-ops have put forward. Our milk needs to be valued just like
8 it is across the country, so I, as a producer in California,
9 can compete at an equal playing field, and to try to slow down
10 the economic disaster that has occurred to all my neighbors and
11 other fellow dairymen.

12 Just within a two-mile radius of my dairy facility,
13 just like other people that have been here and testified
14 previously, I, too, have lost friends in this business. I have
15 had six dairies go out within that two-mile radius. Four of
16 them, the facilities have been completely dozed out and those
17 dairies will never come back and those cow numbers will never
18 re-enter California again. So those are huge concerns that are
19 part of our family, our future in our business.

20 And just last week I was sitting down with my
21 nutritionist, and we were going over nutrition on the farm, and
22 I brought up the question, "how many of your clients have gone
23 out-of-state?" And he said in the last two years, ten percent
24 of his clients have exited California, and currently he has
25 another ten percent that are actively looking. I also had the

1 opportunity to sit with another nutritionist, and his name is
2 Jon Robison, J-O-N, R-O-B-I-S-O-N, he's the former dairy
3 science professor at Fresno State, he's actually my second
4 son's father-in-law, and very well-known nutritionist in this
5 area. And he also informed me that 15 percent of his clients
6 have exited California and he anticipates in the near future
7 that it can be as large as 50 percent. So those concerns are
8 real. Those are real dairy farmers that are suffering the
9 consequences of our pricing system here in California.

10 I also, as I sat down and thought about doing this
11 testimony, and I like to refer to the exhibit, and I can't
12 remember what number.

13 JUDGE CLIFTON: It's 174.

14 MR. MEDEIROS: I get these sale flyers in the mail, and you
15 throw them aside and you really don't think about them. And
16 when I was thinking about coming to do this testimony, I
17 thought, you know, we have had some dispersals lately. So I
18 went back through and I contacted these sales barns, and some
19 of these sales barns have web sites that have these sales
20 posted. And in the last 60 days, 13 dairy dispersals. That's
21 an astonishing number for me.

22 But these interviews that I did the owners of these
23 sales yards, what I did not realize, that from, and I'm going
24 to refer to the Overlands Stockyards, the January through
25 November 1st heifer sales. When speaking with

1 Mr. Peter Belezzuoli, he informed me that 70 percent of those
2 heifers are being exported out of California. And also with an
3 interview with Nick Martella, he informed me that 90 percent of
4 those heifers are being exported out of California currently.
5 That I did not expect to hear. Our future in our dairy
6 business has been mortgaged. Those cows are not coming back.
7 And what's not taken into consideration in this, was private
8 sales, broker sales that have occurred that have occurred in
9 the last 60 to 90 days also. We have a crisis and it's due, in
10 large, by our pricing mechanism in the state.

11 I also have a friend that's -- that's even turned to
12 breeding his cows to beef animals to try to generate some more
13 cash flow. Those animals are not going to be reproducing
14 offspring to be put back into the system.

15 So anyway, those are some of the stuff that I just, you
16 know, preparing for this testimony, I did a little
17 investigation. So when you look at, you know, and I believe
18 Mr. Netto was here a few days ago and testified, at all three
19 co-ops were at six and a half percent reduction in production
20 at this time. If you look at these numbers, you see the
21 exiting dairymen, those numbers are real. I see the numbers
22 sitting on the board, those numbers are real. The production
23 is starting to go away and dairymen are looking for elsewhere
24 to do business.

25 But, as I close, what I find interesting about the

1 dairymen in this business is, we have had many issues in the
2 past, and dairy, California dairymen have always been
3 independent. Different views, going off in different
4 directions. But when it comes to this proposal, they are
5 unanimous behind this thing. The dairy producers that I speak
6 with know that this is a vital tool to the sustainability of
7 the dairy industry in California. They realize it, they have
8 embraced it. And producers understand that this proposal will
9 help them pass that dairy to the next generation.

10 So, I'd like to, you know, finish my testimony with
11 that. And I thank the USDA. We, as producers, appreciate this
12 process, and to your Honor.

13 JUDGE CLIFTON: Thank you, Mr. Medeiros. I'm very glad you
14 are here to testify. I know you were here earlier and you have
15 come back, and I appreciate your time very much. Mr. English?

16 MR. ENGLISH: Your Honor, I certainly did not want to
17 interrupt this witness. I do, however, want to at least
18 interpose an objection as to hearsay with respect to what
19 nutritionists or others told him about what other people were
20 doing. I think that's -- that's certainly hearsay and may even
21 be double hearsay, so I just want to note an objection.

22 JUDGE CLIFTON: Yes, your objection is noted and the
23 testimony stands. It would be very interesting to have those
24 two nutritionists come and testify at a hearing like this so we
25 could talk to them about it, but since they are not here, I do

1 accept this witness' representation of what they said. All
2 right. Mr. Beshore?

3 BY MR. BESHORE:

4 Q. Yes. Thank you. Marvin Beshore.

5 Just a couple of additional questions, Mr. Medeiros.

6 Can you tell us just a little bit more about Medeiros Dairy and
7 Medeiros Holsteins? How many cows are you milking in each
8 operation?

9 A. We're approximately milking 800 cows at each facility.

10 Q. Okay. And what county is Laton in?

11 A. Fresno County.

12 Q. The Exhibit 174, the information that you collected
13 with respect to dispersal and heifer sales at local sales
14 yards, first of all, can you tell us what a dispersal is?

15 A. Dairymen going out of business.

16 Q. Okay. So that's a complete sale of the of the herd?

17 A. They are gone.

18 Q. Okay. And it's a word that's used in this context, but
19 in dairy farming context, and sale context, it hasn't
20 necessarily been used and defined in this hearing, that's why I
21 asked that.

22 Okay. Where is, in what county, what city is Overland
23 Stockyard?

24 A. They are in Hanford, California, which is Kings County.

25 And I'll go just a step further. From this location here,

1 these sale barns are all within a 50-mile radius.

2 Q. Of this location?

3 A. Of this location.

4 Q. Okay. Can you just, just go down and tell us where the
5 other ones are located, if it is not self-evident?

6 A. Turlock Livestock is going to be north of us.

7 Q. In Turlock?

8 A. Correct.

9 Q. Okay.

10 A. A&M Livestock is also in Hanford, California. And
11 Dos Palos Y is in Dos Palos, California.

12 Q. Which is what county would that be?

13 A. I believe Fresno. I believe Fresno.

14 Q. Okay. So these are all Fresno or Kern?

15 A. Fresno or Kings.

16 Q. Kings, I'm sorry. Thank you. Just maybe one final
17 question. Your, you have both a CDI farm and DFA farm and you
18 are on the area council for DFA. Have your neighbors and
19 members of DFA and CDI always supported a Federal Order for
20 California?

21 A. Yes, they have.

22 Q. Okay. When did they come to that position?

23 A. Well, I think after they've exhausted the options
24 through the state, and realizing that the industry was
25 beginning to fail and something needed to be done.

1 Q. Thank you. I thank you. I would move the admission of
2 Exhibit 174, your Honor, and I have no other questions.

3 JUDGE CLIFTON: All right. Thank you. I think we do need
4 to flesh out exactly what you are showing us here. So,
5 Mr. Medeiros, when we look at the Overland's sales, and we have
6 these different dairies being sold, and you have numbers, I
7 know those numbers represent heads of cow.

8 MR. MEDEIROS: Correct.

9 JUDGE CLIFTON: Okay. We don't particularly, in those
10 numbers by each dairy, we don't necessarily know what, whether
11 those are milking cows or what they are; is that correct?

12 MR. MEDEIROS: Those are milking cows.

13 JUDGE CLIFTON: Okay. So, for example, the GMC Dairy and
14 we see a sale on October 30 of 2015, I presume, correct? The
15 last 60 days.

16 MR. MEDEIROS: GMC Dairy?

17 JUDGE CLIFTON: Yes.

18 MR. MEDEIROS: Of 1850 head of cattle?

19 JUDGE CLIFTON: Yes.

20 MR. MEDEIROS: Correct.

21 JUDGE CLIFTON: On what date?

22 MR. MEDEIROS: 10/30.

23 JUDGE CLIFTON: All right. So every place on this exhibit
24 where we see numbers like 1850, those are those are numbers of
25 cows?

1 MR. MEDEIROS: Milking cows, correct.

2 JUDGE CLIFTON: Milking cows. Okay. And then when we have
3 the bottom figures of January through November 1st, and we have
4 bigger numbers, where did you get that information?

5 MR. MEDEIROS: Actually that, actually that is on Overland
6 Stockyard's website. And it is -- it is the January total, and
7 from January to November that's on their website, and that
8 number of 10,375 cows is actually total number of cows
9 dispersed in that timeframe. The other dairies that are listed
10 by name, that is just last 60 days. And that number, and the
11 reason I put the 10,375 was, it was accessible through the
12 Internet, it was easier to do, and I didn't want to burden
13 these livestocks to go back through all their records and pull
14 all that information.

15 JUDGE CLIFTON: Now, so if I wanted to know how many heads
16 of cows were sold through the Overland Stockyard facility
17 January to November 1, I would add together the cows and the
18 heifers?

19 MR. MEDEIROS: Well, if you go to the website, they will
20 have it listed, the days of the sale, and the number of cows,
21 and if it was a dispersal. So everything will be listed
22 separately. These are just total numbers.

23 JUDGE CLIFTON: Okay. And when I look at the total of more
24 than 10,000 cows and more than 18,000 heifers, do I then know
25 that that's more than 28,000 head? Do I add those two

1 together?

2 MR. MEDEIROS: Well, I kept those two separate because the
3 18,000 were heifers, replacement heifers, and for the purpose
4 of Peter Belezzuoli mentioning that he had exported heifers
5 only at that at 70 percent, that's why that category is
6 separate.

7 JUDGE CLIFTON: Now, are heifers always not yet a year old,
8 or could they be older than that?

9 MR. MEDEIROS: They could be older.

10 JUDGE CLIFTON: Okay. Are they always not more than two
11 years old?

12 MR. MEDEIROS: Correct.

13 JUDGE CLIFTON: Okay. All right. And so we would treat
14 the rest of the exhibit the same way, we would know that these
15 numbers that you have shown us are all numbers in 2015, and if
16 they are the, under the category sales in the last 60 days, we
17 see that. And they are all heads of cows. Head of cows.
18 Heads of cattle.

19 MR. MEDEIROS: Correct.

20 JUDGE CLIFTON: Okay. All right. Does anyone else wish to
21 question Mr. Medeiros about Exhibit 174 before determining
22 whether you have any objection? No one. Is there any
23 objection to the admission into evidence of Exhibit 174? There
24 is none. Exhibit 174, is admitted into evidence.

25 (Thereafter, Exhibit 174, was

1 received into evidence.)

2 JUDGE CLIFTON: Mr. Beshore?

3 BY MR. BESHORE:

4 Q. Just one other clarifying question. Heifers are young
5 females before they have had their first calf, correct?

6 A. Correct.

7 Q. And therefore, not yet in milk production?

8 A. Correct.

9 Q. But the future milk producers for the herd?

10 A. Exactly.

11 Q. Thank you. No further questions.

12 JUDGE CLIFTON: And you see, Mr. Beshore knew all that, but
13 he asked that to make sure I would know all that.

14 MR. BESHORE: And the record.

15 JUDGE CLIFTON: Very good. Who else has questions for
16 Mr. Medeiros? All right. I appreciate the leg work you did to
17 gather this information and this is all local here, within how
18 many miles from where we sit?

19 MR. MEDEIROS: 50 miles.

20 JUDGE CLIFTON: Within 50 miles of where we sit, amazing.
21 All right. Is there anything else, Mr. Medeiros, that you
22 would like to add before I let you step down?

23 MR. MEDEIROS: No, that would be it.

24 JUDGE CLIFTON: All right. Thank you so much. I would now
25 invite the next Medeiros witness.

1 MR. BESHORE: And this is Christina Medeiros, your Honor.

2 JUDGE CLIFTON: Welcome. I'll swear you in in a seated
3 position. Would you raise your right hand, please?

4 Do you solemnly swear or affirm under penalty of
5 perjury that the evidence you will present will be the truth?

6 MS. MEDEIROS: I do.

7 JUDGE CLIFTON: Thank you. Please state and spell your
8 name.

9 MS. MEDEIROS: Christina Medeiros. C-H-R-I-S-T-I-N-A,
10 Medeiros, M-E-D-E-I-R-O-S.

11 JUDGE CLIFTON: Thank you. I think everyone can hear her
12 loud and clear, is that true in the back? All right. Very
13 good. Mr. Beshore?

14 MR. BESHORE: Okay.

15 DIRECT EXAMINATION

16 BY MR. BESHORE:

17 Q. Okay. So Ms. Medeiros, have you prepared some
18 testimony that you would like to present today?

19 A. Yes, I have.

20 Q. Okay. And could you proceed with that and just be
21 deliberate so that we can get all the words, the stenographer
22 can get all the words and we can appreciate what you are
23 presenting?

24 A. Sure. Thank you.

25 Hello, I'm Christina Medeiros and I grew up on a large

1 dairy farm in Burrel, California, with my sister, brother, and
2 mom and dad. I also, with my extended family, my grandparents,
3 uncles and aunts, we were all part of a business between two
4 dairies. There are 13 of us Maddox cousins who all love cows,
5 especially showing them. And while showing cows at the local
6 fair I fell in love with my high school sweetheart and eventual
7 husband. He also grew up on a family dairy with his two
8 brothers and mom and dad. We both attended Fresno State. I
9 majored in Ag Business and we were married after we graduated.

10 My husband went back home to help with his family dairy
11 and I started working at CitiBank as a business and doing
12 business and personal loans as a financial advisor. After
13 three years, we decided to start our family, at which time I
14 chose not to go back to banking.

15 The same month that my oldest daughter was born, May
16 2007, the Water Board had established a general order mandating
17 dairy compliance with the environmental testing, tracking and
18 reporting of all waste water and manure that went offsite, and
19 also that was applied to fields on a per field basis. This was
20 an extremely trying time and frustrating time for many
21 dairymen, not to mention an expensive one.

22 My dad and father-in-law sent me to classes and
23 training put on by the dairy industry, and before I knew it I
24 had my own business. It all started with just family, and then
25 grew to over ten years very quickly that first year.

1 Over the years since, I have had two more children and
2 I grew my business to its current 35 dairies. At times having
3 three kids four years and younger I even had to stop taking on
4 new clients while they were little. When I started my
5 business, I did it to start, to help keep costs down amidst
6 some horribly outrageous fees that were being charged by other
7 consulting firms.

8 While I, what I didn't anticipate was being a therapist
9 for most of these dairies as the catastrophic milk prices hit
10 in 2009. Thy needed a shoulder to cry on and an ear to
11 sympathize with. Over the last eight and a half years, I have
12 never had a dairyman fire me. The only dairies I have lost are
13 the ones that have been put out of business. I have had 17
14 dairies close since 2007. Three of my dairies have been torn
15 down and three more will be torn down this year.

16 These are people that I see several times a month.
17 They are like family. They are hard-working people who love
18 dairying and cows, just like my family. I have had to walk
19 through the difficult decision with them to close on many
20 occasions, and it is simply heartbreaking. These people work
21 hard day and out to keep their cows. What might be even harder
22 is the ones that have chosen to stuck it out, to stick it out
23 only to go further into debt.

24 I have one of my sweet clients who is an 80 year-old
25 lady and her husband passed away five years ago from cancer.

1 She couldn't bring herself to sell the cows that he loved so
2 much, so for the last five years, this petite lady, who
3 couldn't weigh more than 90 pounds, has fed the cows with only
4 one milker to help her. As she's tried to stay afloat, her
5 herd of over 500 has dwindled to a mere 150, which she finally
6 sold this past July.

7 Another one of my dear clients was forced to be a
8 trucker on the side to pay his dairy bills, and had some
9 medical problems that left him blind and unable to work. He
10 eventually suffered a stroke and passed away. His poor wife
11 called me in tears, what was she to do? The family was
12 mounting debt from the dairy, not to mention his medical bills,
13 which when they eventually sold, they still could not pay off.
14 She was forced to clean houses and was able to keep her home
15 which was across the street from their former dairy, a constant
16 reminder of the dreams that they lost.

17 My husband, who grew up on a dairy as well, always
18 dreamed about having a dairy of his own. The opportunity arose
19 two years ago and we started our own dairy. You never fully
20 realize the stress that these men are under, until it is your
21 own husband who is trying to figure out how to try to feed the
22 cows at a cheaper rate, while still trying to maintain milk
23 production, let alone having the milkers actually show up every
24 morning to milk those cows. For the first few months, I was
25 there every afternoon with the three kids helping milk the

1 cows. While with only one milker and my husband working at his
2 dad's dairy, this dairy was supposed to be self-sufficient,
3 which we are still trying to accomplish. We have grown from
4 over 125 cows to 400, but it is constant on our mind. We take
5 no money from the dairy, and he does all the outside work. For
6 two years he hasn't had a day off, even when we have had
7 weddings our kids were a part of and we have to travel out of
8 town, he gets up early to take care of the cows and to feed
9 them, and comes straight back home at night. He's the one that
10 wakes up in the muddle of the night if something goes wrong.
11 The milk price and the costs are always on his mind. I try to
12 stay positive, as I'm the one that pays the bills, but at the
13 same time, begging him for another worker to feed the cows so
14 we can take the kids to Disneyland. But I know the money is
15 just not there.

16 Dairying is a 365-day a year job, and I know many of my
17 dairymen will go out and milk the cows on Christmas so that
18 their workers can have some time with their family. It can't
19 be done alone. And as these dairies are put out of business,
20 it is not only a loss for the family, it is a loss for these
21 workers and everyone else in California that makes revenue off
22 of them.

23 The Water Board and the Air Board that regulates these
24 dairies has a maximum cow number that's listed on the permit of
25 every free dairy facility in the state. As each of these

1 dairies are dozed down, those cow numbers that are on the
2 permit will never be given out again. Those are permanent cow
3 numbers that have left our state.

4 In closing, we are producing a product at a discount
5 related to the rest of the nation, and it simply can't go on.
6 I'm here in support of the Federal Order laid out by the three
7 co-ops. As a dairyman's daughter, a dairy owner, and a dairy
8 consultant, my life is directly affected by the milk price, as
9 is my three children, my entire family, and my family of
10 dairymen that I work for. Thank you.

11 JUDGE CLIFTON: Mr. Beshore, do you have questions?

12 BY MR. BESHORE:

13 Q. Just maybe one quick question. On your own dairy, you
14 are now up to what, 400 cows? Is that what you said?

15 A. Yeah.

16 Q. And how do you market your milk from that dairy?

17 A. It goes through DFA.

18 Q. Okay. Thank you. That's all I have.

19 JUDGE CLIFTON: I didn't get the name of the town where you
20 grew up and it sounded like Burrel?

21 MS. MEDEIROS: Yes, Burrel, B-U-R-R-E-L.

22 JUDGE CLIFTON: And where is that?

23 MS. MEDEIROS: That's in Fresno County.

24 JUDGE CLIFTON: Oh, it's right here. You would think I
25 would have run across it.

1 MS. MEDEIROS: Yeah, it's in the boonies.

2 JUDGE CLIFTON: And did you get a degree in Agriculture?

3 MS. MEDEIROS: Yes, I majored in Ag Business, minored in
4 Accounting?

5 JUDGE CLIFTON: And is your Bachelor's in Agriculture
6 Business?

7 MS. MEDEIROS: Ag Business, correct.

8 JUDGE CLIFTON: Very good.

9 MS. MEDEIROS: Bachelor of Science.

10 JUDGE CLIFTON: Very good. I want to know more about this
11 Water Board and Air Board and these permits.

12 MS. MEDEIROS: Sure.

13 JUDGE CLIFTON: Is it your understanding that right now, in
14 California, there is a maximum cow population permitted?

15 MS. MEDEIROS: There is each for the Water Board and for
16 the Dairy Board. Maybe not as maximum. It's on a per facility
17 basis, each facility has a given cow number that they are
18 allowed. And if they go over those cow numbers, especially for
19 the Water Board, they will be kicked out of the general order
20 and will be forced to be in on an individual plan, so it's the
21 best interest of the dairy to stay under those cow numbers.

22 JUDGE CLIFTON: All right. So if someone built a new
23 dairy, there could be new cows added because they would be
24 inspected and given a number?

25 MS. MEDEIROS: I haven't had a dairy that's been approved

1 to be built in our in our area. The environmental regulations
2 are pretty stringent on that through the Water Board, let alone
3 through the Air Board as well.

4 JUDGE CLIFTON: That's very interesting. All right. The
5 17 dairies that you are aware of that closed since 2007 --

6 MS. MEDEIROS: Those are my dairies that I was a consultant
7 for.

8 JUDGE CLIFTON: And so they are right here in this
9 neighborhood?

10 MS. MEDEIROS: Yes, I work mainly, I'm just in Fresno and
11 Kings County. And there are other consulting firms that have
12 their dairies, but those were my personal dairies that I dealt
13 with on a daily basis.

14 JUDGE CLIFTON: Now, I notice your statement that you
15 referred to to give your testimony looks like you typed it and
16 it's perfect and ready to go.

17 MS. MEDEIROS: Not perfect, perfect but, yeah.

18 JUDGE CLIFTON: Would you like it to be marked as an
19 exhibit and admitted into evidence?

20 MS. MEDEIROS: No, no, that's my own copy.

21 JUDGE CLIFTON: That's your own copy. All right. Who else
22 has questions for Ms. Medeiros? Mr. Hill?

23 CROSS-EXAMINATION

24 BY MR. HILL:

25 Q. Good afternoon.

1 A. Good afternoon.

2 Q. This is Brian Hill. So you said you had up to 35
3 clients?

4 A. Yeah, I have 35 clients that I currently take care of.

5 Q. But along the way you have lost 17 who have gone out of
6 business?

7 A. Yes.

8 Q. So could you tell us a little bit, since you have been
9 consulting with them, could you tell us why they went out of
10 business or under what circumstances, what could have been done
11 possibly, or what you feel could have been done?

12 A. A lot of my dairies, pretty much everyone was related
13 to the milk price. And so with the milk price being so low,
14 and that's certain times that the prices were even higher to
15 which all kind of made a perfect storm of disaster for all the
16 dairies.

17 Q. So you are saying that if the basically if you could
18 have gotten a higher price for the milk, maybe some of these
19 might not have gone out of business along the way?

20 A. Yes, for sure.

21 Q. Okay.

22 JUDGE CLIFTON: Who else has questions for Ms. Medeiros?
23 So you mentioned one milker. Now, I assume that's the only
24 hired hand milker?

25 MS. MEDEIROS: Yes. Now we have two, but in the beginning

1 we had one.

2 JUDGE CLIFTON: All right. And who else milks besides the
3 paid help?

4 MS. MEDEIROS: Yeah, right now it's just the paid help, and
5 then, unless someone decides not to show up, and then it's all
6 hands on deck.

7 JUDGE CLIFTON: And how old is your oldest child now?

8 MS. MEDEIROS: She's 8.

9 JUDGE CLIFTON: Yeah, so I got a kick out of when you
10 talked about when your children were small, because they are
11 still small.

12 MS. MEDEIROS: Well, seeing as when I was, when I work, I
13 have to drive around a lot to dairies, so they were, I started
14 driving with my youngest when she was two weeks old in the car,
15 and the middle one three weeks old. So when they are that
16 little driving, it gets a little crazy.

17 JUDGE CLIFTON: So they have had a good work ethic from the
18 beginning.

19 MS. MEDEIROS: Yeah, they have.

20 JUDGE CLIFTON: Very good. Is there anything you would
21 like to add before I ask you to step down?

22 MS. MEDEIROS: No, thank you.

23 JUDGE CLIFTON: Thank you so much for being here. I
24 appreciate your testimony very much. Oh, if you told me, I
25 didn't write it down. What is the name of your dairy farm?

1 MS. MEDEIROS: Mel-Tina Dairy. MEL dash TINA.

2 JUDGE CLIFTON: Mel-Tina Dairy. So I take it Christina is
3 called Tina?

4 MS. MEDEIROS: Correct.

5 JUDGE CLIFTON: And that Mel is your husband?

6 MS. MEDEIROS: Yep.

7 JUDGE CLIFTON: And that Mel is the son of the witness who
8 testified before you?

9 MS. MEDEIROS: Correct.

10 JUDGE CLIFTON: I have got it. Thank you so much. All
11 right. Will we now go to Mr. Tosi? Mr. Tosi, that's a tough
12 act to follow, you know this?

13 MR. TOSI: I very much appreciate the previous witness'
14 first name, a name I'm very fond of myself.

15 JUDGE CLIFTON: You have a daughter of that name.

16 MR. TOSI: Yes, I do.

17 JUDGE CLIFTON: All right. Let's see. Is there any other
18 direct testimony, Ms. Hancock? Oh, yes, we haven't even looked
19 at the exhibits; is that right? Okay. So we have looked at
20 Exhibit 172, but we have not yet looked at Exhibit 173.
21 Ms. Hancock, you may proceed.

22 CONTINUED DIRECT EXAMINATION

23 BY MS. HANCOCK:

24 Q. Thank you, your Honor.

25 Mr. Tosi, can you tell us what is in Exhibit 173?

1 A. Yes. Exhibit 173 is the, an Exhibit A of that Exhibit
2 173, that, what's Exhibit A is the actual printed decision of
3 what the Supreme Court of the United States, how they ruled in
4 the Hillside Dairy case.

5 Q. And in your testimony, Exhibit 172, you mentioned the
6 Hillside Dairy litigation. So you have Exhibit A is the
7 Supreme Court ruling that occurred in 2003?

8 A. That's correct.

9 Q. And then Exhibit B is?

10 A. Exhibit B is when the Supreme Court remands the case to
11 the lower District Court, and this was the decision of that
12 court.

13 Q. Okay. And that's May of 2004?

14 A. Correct.

15 Q. Okay. Your Honor, at this time I would move the
16 admission of Exhibit 172 and 173 on the basis of his testimony,
17 and then I think as well, that your Honor has authority to take
18 judicial notice or administrative notice of the two cases in
19 Exhibit 173.

20 JUDGE CLIFTON: Yes, but I'm so glad you produced them for
21 us, I think that's very helpful. Is there anyone who would
22 like to question Mr. Tosi about Exhibit 172 or 173 before
23 determining whether you object? No one. Is there any
24 objection, other than already stated by Mr. Beshore, to the
25 admission into evidence of Exhibit 172? No additional

1 objections. I admit into evidence, over objection, Exhibit
2 172.

3 (Thereafter, Exhibit 172, was
4 received into evidence.)

5 JUDGE CLIFTON: With regard to Exhibit 173, are there any
6 objections to the admission? There are none. Exhibit 173 is
7 admitted into evidence.

8 (Thereafter, Exhibit 173, was
9 received into evidence.)

10 MS. HANCOCK: That's all I have, your Honor.

11 JUDGE CLIFTON: Thank you. Who will ask the first
12 questions of Mr. Tosi? Mr. Beshore? Thank you.

13 CROSS-EXAMINATION

14 BY MR. BESHORE:

15 Q. Marvin Beshore.

16 Good morning.

17 A. Good morning.

18 Q. I just have a couple of questions with respect to the
19 Ponderosa proposal here. First of all, this proposed language
20 in Section 76 does not exist in any other Federal Orders,
21 correct?

22 A. That is correct.

23 Q. Okay. And so in any other Federal Order, if you have
24 a, you know, a farm delivering from outside the marketing area
25 to a pool distributing plant, how does that work?

1 A. Well, it sort of depends if it's coming from a plant
2 that may be currently regulated under another Federal Order.

3 Q. I'm talking about farm, a farm, deliveries from a farm.
4 Because your proposal to Section 76 relates to farm deliveries
5 to a plant, correct?

6 A. Correct.

7 Q. Okay. So in all the other Federal Orders, when you
8 have a farm which may be located outside the marketing area,
9 delivering to a pool distributing plant, now it is a pool
10 plant, and let's assume it delivers everyday in a month. Okay?
11 So how is that milk priced and pooled?

12 A. Milk that's delivered from farms to a, for example, a
13 fully-regulated distributing plant is pooled and priced in
14 accordance with the terms of the order.

15 Q. Okay. Which would be the producer is a pooled producer
16 and gets the blend price?

17 A. That's correct.

18 Q. So, and the plant -- okay. So in this case, the
19 Ponderosa proposal proposes to treat milk from that farm coming
20 to an otherwise fully regulated pool distributing plant, as not
21 part of the pool, correct?

22 A. Please say that again. I'm not sure that I understood
23 the last part of your question.

24 Q. Okay. As I understand the proposal, Ponderosa
25 proposal, milk that would be part of the pool under another

1 order, same type of milk movement from a farm outside the area
2 to a pool distributing plant, which we just discussed would be
3 pool milk under any other order, in this case you are proposing
4 that it not be pool milk?

5 A. That's correct.

6 Q. And the -- so -- so the price that it would be
7 entitled, that would be payable then, on that milk, would be a
8 price that's other than the pool price, the blend price,
9 correct?

10 A. Under --

11 Q. Under Proposal 4?

12 A. Yeah, milk that would be received under any other
13 Federal Order that in this Section 76 is something that
14 currently is uniform among all orders.

15 Q. Correct.

16 A. To the extent that, you know, the idea behind this is
17 that there are conditions from time to time that some milk may
18 not otherwise be pooled and priced under the order, Class I
19 milk, and the idea behind partial regulation is the, is to make
20 sure that that's accounted for.

21 Q. Okay. In essence, you're treating, Proposal 4 treats
22 this milk, the milk coming from a farm outside the marketing
23 area to a pool distributing plant, as if it's being paid under
24 an individual handler pool; isn't that correct?

25 A. I don't know that I would agree with that.

1 Q. Well, it's your -- it's, if I understand your proposal
2 and your testimony, it's entitled to be paid the plant blend
3 values, correct?

4 A. Yeah, but I'm not choosing to use that terminology.
5 You are asking me to use your terminology and I'm not agreeing
6 to that.

7 Q. Okay. You don't want to call it an individual handler
8 pool, but if it were an individual handler pool, the price
9 would be exactly the same. Now, isn't that correct?

10 A. Might be. I'm not sure, I haven't thought about it in
11 that way.

12 Q. Well, think about it a little.

13 A. Okay.

14 Q. Okay? The price would be exactly what the price would
15 be if it were an individual handler pool, correct?

16 A. If I understand what you are saying, I think that
17 that's correct.

18 Q. Well, if I understand your proposal, Proposal 4, the
19 price that the out of area farm would be entitled to would be,
20 would be the classified value pro rata at that plant which
21 would be the same as an individual handler pool value?

22 A. Okay.

23 Q. Correct?

24 A. Correct.

25 Q. Okay. Now, you have written a number of decisions in

1 your career, previously, in your career at USDA, you
2 participated in writing and formulating a number of decisions
3 which held in that in the current time individual handler pools
4 are a source of disorderly marketing; isn't that correct?

5 A. Well, there were times that when there were Orders that
6 did have individual handler pool that, over time, the evolution
7 of that was away from individual handler pooling to market-wide
8 pooling, because even though the Act does provide for
9 individual handler pooling, the Department, over time, found
10 that for the reasons that they have, that were articulated in
11 decisions, the superiority to market-wide pooling.

12 Q. Okay. And most recently, the producer-handler
13 decisions specifically discussed that and make that finding;
14 isn't that correct?

15 A. I'm not -- I'm not sure. I haven't -- I haven't
16 specifically looked at that decision to see if -- if mention of
17 that was made.

18 Q. Okay. Well, those decisions have been discussed and
19 have been noticed. So if I understood the, so you have
20 identified two -- two things, if I understand, two factors that
21 support the Ponderosa proposal, transportation credits, and
22 quota; is that correct?

23 A. Correct.

24 Q. Are they the only two factors that support the
25 proposal? Are those the only two conditions that make this

1 order different and suggest that milk from a farm outside of
2 the area to a pool distributing plant should be treated
3 differently under this order than it is under all other orders?

4 A. Yeah, and I think we are pretty clear as to why there
5 is a need for that. Because no other Federal Order has a quota
6 program in the way that California does. It doesn't restrict
7 any of its pool benefits to milk that has to be produced within
8 the confines of state boundary, and it's not going to exclude
9 other people from participating in things that are funded out
10 of the pool and in the way that currently applies in
11 California.

12 Q. Okay. So --

13 A. So how do we deal with it? Ponderosa chooses to deal
14 with it through this provision.

15 Q. So have you compared the individual handler pool price,
16 or the plant blend price under Ponderosa's proposal versus what
17 a blend price without quota or transportation credits would be?

18 A. I have not.

19 Q. Okay. Do you know -- do you know what the Class I
20 utilization is at the plant to which Ponderosa delivers its
21 milk?

22 A. I do not.

23 Q. Okay. Well, since it is a pool distributing plant, or
24 would be a pool distributing plant, would be considerably in
25 excess of the 12 or 13 percent that's projected for the

1 California pool. You would agree to that, would you not?

2 A. Well, let me put it this way, there is nothing new
3 that's being proposed here then how things are currently
4 handled. Okay? Conceptually, how things are being handled.
5 If we're going to have a California Federal Milk Marketing
6 Order and state regulations are being what they are, and how
7 it's been decided, they don't, the State of California doesn't,
8 quote, unquote, use the term "pool" or price that milk coming
9 from out-of-state. There's absolutely no reason, if we're
10 going to maintain the quota system, okay? And the
11 transportation credits are going to be funded out of the pool
12 to require an entity, such as Ponderosa who is, that would have
13 to essentially pay into the pool and not receive the benefit of
14 transportation credits, or the ability to ever own quota for no
15 other reason other than they are not in California. And the
16 Supreme Court's been pretty clear about what's wrong with that.
17 It's that simple. And, you know, if you, to say anything
18 beyond that is trying to obfuscate that basic finding.

19 Q. I think my question was, isn't the Class I utilization
20 that Ponderosa would receive under your proposal, very much
21 higher than the Class I utilization that they would be entitled
22 to under a blend price undiluted by quota or transportation
23 credits in the California Federal Order pool?

24 A. I don't know the answer to that because I haven't done
25 a calculation on that.

1 Q. Well, okay. They are delivering to pool distributing
2 plant, have you looked at what utilization a plant has to be to
3 be a pool distributing plant?

4 A. I -- I have not. And whether I have or I have not,
5 doesn't change the fundamental issue, the fundamental problem
6 that's at issue here.

7 Q. So if Ponderosa were hypothetically entitled to a blend
8 price under the California Federal Order pool undiluted by
9 quota or transportation credits, that would solve its problem,
10 would it not?

11 A. Well, I think that if, if the California law allows,
12 that would allow an entity such as California or milk that's
13 produced from some entity that's located outside of California
14 to own quota and to take full benefit of whatever
15 transportation credits or allowances that are, you know, that
16 are derived from being pooled under the order, there would
17 probably be no issue here.

18 Q. Well, my question was, if Ponderosa were entitled to a
19 blend price, hypothetically, under a California Federal Order
20 that was just like the blend price in any other order around
21 the country that was not affected by quota or transportation
22 credits only available to in-area producers, wouldn't that
23 solve any complaints it has?

24 JUDGE CLIFTON: Mr. Beshore, can you ask it again exactly
25 like you asked it?

1 MR. BESHORE: I will try to.

2 MR. TOSI: I -- may I recharacterize your question to see
3 if I can state the question back to you in a way that I
4 understood it.

5 MR. BESHORE: I would rather you answer it.

6 JUDGE CLIFTON: Let me interrupt. We may have to have the
7 court reporter read it back. I think the audio feed has been
8 lost. This is pretty important not to be captured in the audio
9 feed. I really do think this is important enough so that our
10 audience that aren't in this room with us should be able to
11 hear it, too. Could we -- okay. Good. Chris is here. So we
12 have stopped because we know that the audio feed is important.
13 Don't you think, Mr. Beshore, we should capture this for the
14 audio feed?

15 MR. BESHORE: That's perfectly acceptable to me. I think
16 it's a good idea. And when we return I would propose that my
17 question be read back by stenographer.

18 JUDGE CLIFTON: I agree, I think you asked it perfectly,
19 and I would like it read back, too.

20 All right. It is 12:10. We'll start up again around
21 12:20.

22 (Whereupon, a break was taken.)

23 JUDGE CLIFTON: All right. We are back on record at 12:23.
24 We went off record, in large part, because we had lost the
25 audio feed. We had lost the audio feed because the hotel where

1 we are holding this hearing, had the Internet interrupted. So
2 for those of you listening in on the audio feed, that's why we
3 went dark.

4 What we had been doing was having testimony from
5 Gino Tosi in response to questions from Marvin Beshore. And
6 there was one particular question that I wanted repeated, and
7 I'm now going to ask that the court reporter read that back to
8 us so that Mr. Tosi may respond to it. I would really like the
9 court reporter to have a microphone as she reads that back.

10 (Thereafter, the requested testimony
11 was read by the court reporter.)

12 JUDGE CLIFTON: That really is a perfect question. I would
13 like you to read it one more time.

14 (Thereafter, the requested testimony
15 was read by the court reporter.)

16 JUDGE CLIFTON: Mr. Tosi, you may respond.

17 MR. TOSI: Thank you, your Honor. My answer would be, it
18 may -- it may be okay to the extent that there are no other
19 forms of discrimination that may be imbedded into order
20 language that's being proposed here.

21 BY MR. BESHORE:

22 Q. Have you reviewed the order language that's being
23 proposed?

24 A. Yes, I have.

25 Q. Are there other imbedded discriminations that you have

1 detected?

2 A. No, not that I'm aware of. But at the same time, I'm
3 kind of being, I think what I'm kind of being asked here is
4 kind of on the spot to kind of do a mental calculation here on
5 something that's, you know, that would be pretty important to
6 my clients. And I don't -- I don't have the benefit of right
7 now of knowing what their position would be in light of your
8 question.

9 Q. Okay. Let me ask another question.

10 Ponderosa delivers to a -- to one of the members of the
11 Producer Handler Association, correct?

12 A. Yes, that is correct.

13 Q. Okay. So this is just a question about how the
14 Proposals 3 and 4 interact in that circumstance.

15 Can a producer-handler with exempt quota allocate the
16 exempt quota to an out-of-state dairy under Proposals 3 and 4?

17 A. I don't think so. You know, we're talking about, you
18 know, exempt quota is something that belongs to a producer, and
19 in this respect, we're talking about a producer in California.
20 Ponderosa is an entity that's from Nevada, so Ponderosa could
21 never have exempt quota.

22 Q. Okay. You have added some language to Proposal 4
23 relating to treatment of other source milk. And honestly, I
24 don't think I understand what's going on there.

25 A. Well --

1 JUDGE CLIFTON: Let us turn to it. So I've forgotten where
2 to look, Mr. Beshore. I looked at the new exhibit we got
3 today, yes?

4 MR. TOSI: It would be on page 4 of my written testimony,
5 your Honor.

6 JUDGE CLIFTON: Okay. Thank you.

7 BY MR. BESHORE:

8 Q. So the additional language is in the middle of page 4
9 of your statement 172, the underlined portions; is that
10 correct?

11 A. That is correct.

12 Q. Okay. So can you just tell me again, the need for that
13 or the function of that language in the proposal?

14 A. Decided to modify the proposal that's published in the,
15 as published in the Hearing Notice does not include this
16 language, was just concerned that to the extent that, to the
17 extent that there might be some way that it could be construed
18 that Ponderosa's deliveries of milk to a handler in California
19 would, could be construed to be other source milk, I wanted to
20 make this thing as absolutely bullet proof as possible to say
21 that that other source milk should be treated, should not be
22 considered to be other source milk.

23 Q. So that's an attempt to make sure that if the
24 Proposal 4 was adopted, that the Ponderosa milk would get full
25 Class I allocation at the receiving plant?

1 A. Yes, that's correct.

2 Q. Okay. And that classification, then, would be
3 classification that applied to the calculation of the
4 obligation under the Wichita Option of Section 76?

5 A. Yes, that's correct.

6 Q. Okay. Thank you. That's all I have right now,
7 Mr. Tosi, thank you.

8 CROSS-EXAMINATION

9 BY MR. ENGLISH:

10 Q. Chip English.

11 Good afternoon, Mr. Tosi.

12 A. Thank you, good afternoon.

13 Q. So I want to follow up on some of those questions, but
14 let me start maybe in a slightly different place, which is at
15 the end of your testimony, you are discussing how one
16 difference between how it is now and how it's under the
17 California current situation, is that under the CSO there's an
18 assumption that a price is being paid at the in-plant blend,
19 correct?

20 A. Yes, that's correct.

21 Q. And you are saying that that assumption would be
22 different under a Federal Order, correct?

23 A. That's correct.

24 Q. And I don't think you ever said these words, but one of
25 those differences is that not only would the allocation be

1 known, but the payment would be audited, correct?

2 A. Yes, that minimum price. I mean, you know, whatever
3 that minimum price is going to be, we would know exactly what
4 it is because -- because of what (b) provides for, and the
5 simple fact that it becomes audited, so we know that, in fact,
6 that that was the price.

7 Q. So when Mr. Beshore was then asking you what are the
8 differences, and, you know, you have talked about
9 transportation allowances and credits, and you have talked
10 about, well, the quota. And there's been some discussion here,
11 especially this week, that quota has been presented as a
12 producer issue basically how to divide the pool.

13 A. Correct.

14 Q. Okay. How does Ponderosa get to participate in that
15 discussion of how to divide the pool?

16 A. Well, that's one of the things that's just
17 fundamentally wrong here. The people who get to sit down at
18 the table to decide how you do that, Ponderosa doesn't get to
19 sit down at the table for that.

20 Q. And it is not just Ponderosa, but it is any farm that's
21 located --

22 A. No, anybody that --

23 JUDGE CLIFTON: Whoa, say your question again, Mr. English.

24 BY MR. ENGLISH:

25 Q. It is not just Ponderosa, it's any farm located outside

1 of California?

2 A. That's correct. Anybody that would see, that would
3 receive the same regulatory exclusions that Ponderosa faces.

4 Q. So when you are responding to Mr. Beshore's questions
5 about, well, there's no provision like this in any Federal
6 Order, and you correctly pointed out that, well, we don't have
7 quota in any other Federal Order, your view is that the
8 fundamental problem comes down to the fact that here is this
9 quota program going back to the 1960's, and the out-of-state
10 dairy farmers get no rule in any of that, correct?

11 MR. BESHORE: Objection. I just object to him leading the
12 witness in that manner.

13 MR. ENGLISH: This is cross-examination, your Honor.

14 MR. BESHORE: Well -- it is not cross-examination.

15 MR. ENGLISH: I'm not his lawyer.

16 MR. BESHORE: There's no adverse party --

17 MR. ENGLISH: You know, I think a few moments ago, or about
18 a couple hours ago when Mr. Beshore was asking questions of the
19 same witness, he was leading him with respect to Proposal 3.
20 And so to start drawing distinctions, I just, you know, think
21 the question is perfectly fair, your Honor.

22 JUDGE CLIFTON: Well, yes and no. I tell you, I hate
23 leading questions, I hate having a valuable witness confined to
24 a yes that's expected, or to a no that's expected. So I prefer
25 that you allow the witness to testify. I don't think your

1 question is objectionable, I just think it is not very
2 persuasive that way. So I would like you to be more creative
3 please, Mr. English.

4 MR. ENGLISH: Okay. I will do to. And I hope that will
5 hold true for attorneys in the future.

6 BY MR. ENGLISH:

7 Q. What role does quota play in any existing Federal Milk
8 Marketing Order?

9 A. It plays none.

10 Q. What role does quota play in Proposals 1 and 2?

11 A. Well, I think that they are absolutely critical
12 features of Proposals 1 and 2. With the modifications that
13 DI's presented with, you know, the whole idea behind, you know,
14 two separate pools and all that, you know, it's not exactly
15 directly saying, you know, we're doing away with the quota
16 program. I know that Ponderosa would, you know, is probably or
17 is delighted that, you know, by modification that would allow
18 them to take advantage of transportation credits if they are
19 going to be required to pay into the pool, I'm sure that's
20 something that is certainly on the plus side of their
21 considerations. But, you know, Ponderosa doesn't want to get
22 into which proposal is superior, you know, one or the other.
23 What is important to them is, is that they continue to receive
24 under a Federal Order, the same considerations that are a
25 result of the Supreme Court case which says that if you are

1 going to have these, if the California State Order is still
2 going to apply with respect to quota and restrictions on who
3 can receive any other benefits of things that are funded out of
4 the pool, if they can't take advantage of those things, then
5 there's no business for them to be pooled under the order.
6 And, therefore, why we have Proposal 4 in the first place.

7 Q. Thank you. That's all I have, your Honor.

8 JUDGE CLIFTON: Thank you, Mr. English. Who else has
9 questions for Mr. Tosi? Mr. Richmond?

10 CROSS-EXAMINATION

11 BY MR. RICHMOND:

12 Q. Bill Richmond, USDA.

13 Just a couple questions, Mr. Tosi.

14 A. Sure, thank you.

15 Q. Can you comment a little bit how exactly Ponderosa is
16 paid right now?

17 A. Well, Ponderosa is paid by whatever they are
18 negotiating with whomever they are delivering their milk to,
19 since that milk is not pooled. There is no minimum, we don't
20 know what that minimum payment is.

21 Q. So we don't --

22 A. But now under a Federal Order, now under a Federal
23 Order, we know that that minimum payment is going to be at
24 least what's provided for in that Paragraph (b) of Section 76.
25 And everybody knows, and will know, that that price is audited

1 and we know that Ponderosa received at least that price.

2 Q. So is it your testimony, then, that they do receive a
3 plant blend price or they do not receive a plant blend price?

4 A. Well, I think it's -- I think it is reasonable to
5 conclude that we don't know exactly, but why would it, why
6 would Ponderosa want to deliver for anything less than that
7 there?

8 Q. Okay.

9 A. So we all can make an assumption about that, but we
10 don't know for sure.

11 Q. And so the point then, of this proposal is to ensure
12 that they continue to receive the price that they receive now?

13 A. I don't know that I would say it that way. What I'm
14 saying is, is that if they are not going to receive all of the
15 benefits that accrue to California producers, then you keep
16 them off the pool, just like the State of California does
17 because how they were doing it has been deemed to be trade
18 barrier. Went to the Supreme Court, this thing has been
19 decided a long time now, okay? How a Federal Order would deal
20 with it is slightly different. California just, in essence,
21 pretends that it is not really there, okay? But we know that
22 that milk has been shipped. We don't know what price, we can
23 assume that it's at least that plant blend. But now, but now
24 we know for sure, under their proposal, that it's going to be
25 that that plant paid at least what that blend price would be as

1 if that plant had been fully regulated. We know that. And
2 everybody else will know that for sure now. And that amount
3 would be audited. And in that regard, it is very superior to
4 how the State of California currently does it.

5 Q. So, correct me if I'm wrong --

6 A. Okay.

7 Q. So does that mean, then, and this is to follow up on
8 some of Mr. Beshore's questions, that if Ponderosa or any other
9 out-of-state dairy for that matter, were to receive a uniform
10 price that accounted for not being able to purchase quota or
11 receive transportation allowances, and then that would still
12 not be a high enough price to make them whole?

13 A. Ask me the question again, Mr. Richmond. I'm not sure
14 that I followed through all the caveats there.

15 Q. So basically if out-of-state producers received a price
16 that accounted for in some way the inability to purchase quota,
17 or receive the transportation allowances, in effect, making
18 them whole and equal to all the other producers that are
19 located in the State of California and weren't able to perhaps
20 receive an in-plant blend price or whatever, or some other
21 higher amount, that wouldn't be an acceptable outcome?

22 JUDGE CLIFTON: Mr. Richmond, I don't quite understand when
23 you say equal to what the other California producers receive,
24 because the quota's taken out of their share.

25 MR. RICHMOND: Okay.

1 JUDGE CLIFTON: So could you begin again.

2 MR. RICHMOND: Let's -- we'll just forget that. I don't --

3 JUDGE CLIFTON: No, you shouldn't abandon the idea. You
4 shouldn't abandon the idea.

5 BY MR. RICHMOND:

6 Q. I'm trying to figure out ways that we can, we can help
7 to understand what would be a reasonable outcome without
8 arriving at a value that's, in my words, as high as a plant
9 blend price. So is there any other compromised way to arrive
10 at a price that would make your clients feel that they were on
11 an equal footing as a plant that, or as a farm that was perhaps
12 located in the State of California?

13 A. There -- there might be, but in the way that
14 Ponderosa's choosing to handle it, we're trying to keep this as
15 simple as possible. Let's make the terms of, you know, if the
16 California program's basically Federal Order is going to retain
17 a lot of the same features and characteristics as the State
18 Order, and in that regard there are certain benefits that
19 accrue to producers being pooled, and transportation credits
20 that, to the extent that those benefits don't accrue to them,
21 then that milk should not be pooled under the order, and that's
22 what Section 76 is achieving.

23 Q. Okay. But some, let's turn to the Order language a
24 little bit, looking specifically at page 3 in Section 1051.76
25 in your new paragraph (e), where you say "any handler may, may

1 elect partially regulated distributing plant status." So when
2 you say "any handler may elect" so this is an optional, an
3 optional decision.

4 A. Yes.

5 Q. And when you refer to "any handler" what is your intent
6 there?

7 A. By any handler, we're speaking about any handler that's
8 receiving milk that's coming from producers like Ponderosa that
9 we're talking about milk that's coming from outside, that's
10 been produced outside the confines of the State boundaries of
11 the California.

12 Q. So does it have anything at all to deal with Class I
13 use or use in a specific class?

14 A. Well, it is Class I use is the premier reason why such
15 milk deliveries would be made in the first place.

16 Q. To the extent that we may need a little bit of
17 flexibility in refining this order language to meet your
18 intent, would -- would that be acceptable?

19 A. I think any modifications or conforming changes,
20 however you want to characterize that, to that -- that the
21 Department feels fit or Department deems to be appropriate, is
22 perfectly fine, provided that the intent of the proposal is not
23 deviated from.

24 Q. Okay. Have you done any kind of analysis to determine
25 perhaps the entire volume of out-of-state milk that might be

1 subject to terms of your proposal?

2 A. I am not aware of the total volume of that milk. It
3 may exist right now in information that, that's been asked for
4 in information requests. If it has, I haven't specifically put
5 my finger on whose request or what that amount of milk might
6 be.

7 Q. Are there any other dairy farmers located outside of
8 the State of California that intend to join in support of
9 Proposal 4?

10 A. If there are, I don't know them and I have not been
11 consulted in that regard.

12 Q. Okay. It's kind of an operational question so forgive
13 me.

14 A. Okay.

15 Q. We think it could be potentially pretty difficult to
16 track volumes of milk coming into a facility and trying to
17 differentiate volumes from out-of-state farm versus an in-state
18 farm, because of commingling at a plant. Do you offer any
19 advice as to ways to perhaps keep track of the actual volumes
20 and component levels of milk coming in from out-of-state farm?

21 A. Well, I think perhaps as an operational matter,
22 perhaps, you know, on the forms that the MA would ask handlers
23 to fill out and provide information so that you can have the
24 proper administration of the Order, I don't think it would be
25 unreasonable to say, you know, what milk are you receiving from

1 out-of-state. I mean, you can then then say, well, is this
2 consistent with, you now, the handler accounting for that milk
3 and saying, well, this is the milk that we want to apply,
4 Section 76(d) to.

5 Q. Okay. And have you had any conversations with any
6 California handlers as to their willingness to put in the
7 effort to differentiate out-of-state milk from in-state milk?

8 A. That I don't know. I have not.

9 Q. Okay.

10 A. And if I offered anything more than that, I would just
11 be speculating right now.

12 Q. Okay. One second.

13 CROSS-EXAMINATION

14 BY MR. SCHAEFER:

15 Q. Mr. Tosi, Henry Schaefer, USDA. In your proposed order
16 language it says "any handler" and it also says "with respect
17 to receipts of milk from farms located outside of the
18 California marketing area", so does that really mean that we
19 have to look at a particular plant that receives this
20 out-of-state milk as two separate handlers, one receiving
21 out-of-state milk, and one receiving in-state milk as far as
22 obligations whether they are a pool handler on the market and
23 so forth? And I guess what I'm really getting at is would this
24 take an entire plant off the market?

25 A. I don't think so. I don't think so. I would imagine

1 that if, I'll just give a hypothetical scenario here. Let's
2 assume that Ponderosa ships milk into a plant, let's say,
3 that's currently meets the -- the full definition of a 7(a)
4 plant, for example, fully regulated distributing plant. I
5 don't think it changes the full regulated distributing plant
6 outcome of that plant. What we're just saying is that with
7 respect to the receipts of this milk, okay? We isolate out
8 from their total receipts of milk for the purposes of
9 determining what that Order's blend price is going to be, that
10 amount of milk that is coming from out-of-state. And so long
11 as that plant then can show on that volume of milk that they
12 paid at least what the blend price would have been on that milk
13 if it had been fully regulated, then we have satisfied both the
14 information requirements for the order and it achieves the
15 intent of what Ponderosa's looking, needs to have here so that
16 we're not, you know, discriminating or erecting a trade barrier
17 to milk coming into the California State Order.

18 Q. And as far as how that milk is used internally in the
19 plant, Federal Orders generally do not have direct allocation,
20 all milk is indistinguishable once it hits the receiving tank.
21 So that would imply that the out-of-state milk would receive
22 basically a pro rata share of all of the classes. Would that
23 be your understanding on how this would work?

24 A. No, I wouldn't envision it working that way, unless
25 I'm, unless I'm missing something here that is, it is

1 fundamental here and how we operate these things under Federal
2 Orders right now.

3 Q. Federal Orders, when we get, when a plant receives milk
4 from a number of different handlers, a 9(c) would be a good
5 example. Handler ships to a distributing plant. Those
6 producer receipts are allocated basically pro rata to the usage
7 at that plant. Those producers are repaid the blend price of
8 that plant. In this case you have got two parts to that,
9 really. You have got the out-of-state milk coming in along
10 with in-state milk, and that out-of-state milk is going to be,
11 receive a different treatment with regards to payment.

12 A. Correct.

13 Q. However, since it all goes into the same plant and is
14 all used in various products in that plant, there would not be
15 a direct allocation for out-of-state milk to receive a hundred
16 percent Class I, or any other class, that milk would be pro
17 rata distributed across all of the receipts at that plant.

18 A. Let me ask this question. May I ask you? Would that
19 be all right, your Honor?

20 JUDGE CLIFTON: Yes, please. You two speak the same
21 language. I like that you continue to discuss this.

22 MR. TOSI: Okay. What I'm wondering is, is that would
23 there be an administrative or operational difficulty if we
24 didn't do it that way, and what we're doing here is we're just
25 isolating, you know, on a handler report, this is milk that was

1 as out-of-state milk, okay? And I'm exempting it from the
2 pooling and pricing provisions of the order. How we do that, I
3 don't know. If we could also accomplish that as a deduct from,
4 you know, that volume of milk that we're, that if it is going
5 to like a regular 7(a) plant, to subtract that from the volume
6 of milk, milk receipts at a 7(a) plant, I think that would
7 accomplish the same thing.

8 BY MR. SCHAEFER:

9 Q. I think what I'm getting at really is the payment part
10 of this, in that when you would then look at what that plant's
11 payment obligations are to the out-of-state milk, it would
12 basically be the same as that entire plant's value, use value,
13 of milk. It would not be allocated to Class I, or Class IV, or
14 whatever other class that plant may have inside that plant. So
15 it would, all the milk that came into that plant would be
16 treated the same way as far as calculating a valuation to the
17 out-of-state milk.

18 A. Mr. Schaefer, I'm not sure that I can answer that
19 question. I'm just not -- I'm just not sure. I'm just not
20 sure. I'm not trying to be difficult or evasive here at all.
21 If there are other things that, if there are other
22 modifications to other order provisions that are required, if
23 it turns out that, that in the event that there's a decision to
24 have a California Order, if there are other, if there are other
25 features of the Order that would need to be amended separate

1 and apart from what we're talking about in Proposal 4, so long
2 as that intent is still achieved, I think that would also be
3 acceptable to Ponderosa. Is that answer --

4 Q. I think so. Just a minute.

5 A. Okay.

6 Q. I think I'll ask one more question here, I think,
7 Mr. Tosi.

8 I think what, where I'm headed here is that the
9 realization is that in the allocation of milk at a plant, milk
10 is not direct allocated, which basically means that when I
11 sell, if I were selling milk to a bottling plant, I can't tell
12 the Market Administrator that I want all my milk to be Class 1,
13 and settle with that handler at that. It's going to go, in the
14 case of producer milk, which in this case it probably would be,
15 it's going to be pro rata across all the classes, and then the
16 settlement is basically at the blend in a normal situation.

17 In this situation, you have what would basically have
18 the same thing, except it is not going to be the blend price of
19 the Order, it would be the blend price at that plant. Because
20 you are looking to settle with that, that producer or that
21 receipt of milk. And so I guess that's really what I'm getting
22 at, is since there is no direct allocation, then the receipts
23 there would be pro rata, and it would be a, basically a plant
24 blend, as I would understand your proposal.

25 A. If I have understood everything you said, yes, that's

1 what we're getting at here, that that's -- that we're paying at
2 least that plant blend back to that out-of-state milk. It
3 would be the equivalent as if we had done that. That would
4 become the paragraph (b), 7(b) price that we would know that
5 that was paid, where now we don't know that under the
6 California State Order, for example.

7 Q. Okay. Thank you, Mr. Tosi.

8 A. Okay.

9 MR. RICHMOND: I think we're okay. Thank you, Mr. Tosi.

10 JUDGE CLIFTON: Okay. So Mr. Tosi, now I'm struggling with
11 the issue of the California producer who has no quota and
12 compares his price with the price paid to someone who is not a
13 California producer.

14 Do you see that there's unequal treatment?

15 MR. TOSI: No, I don't, your Honor.

16 JUDGE CLIFTON: And --

17 MR. TOSI: A California producer is going to have the
18 benefit of receiving any transportation credits or allowances.

19 JUDGE CLIFTON: But what if you are, too. What if the
20 proposal that is accepted extends transportation benefits to
21 out-of-state producers?

22 MR. TOSI: That would be definitely on the plus side, yes.
23 But the other thing, too, is that the, I mean, what you are
24 saying, I think, your Honor, what -- to make another comparison
25 is, is that even within the State of California, aren't we

1 discriminating against producers that have quota and non-quota?

2 And well --

3 JUDGE CLIFTON: The difference is, your proposal doesn't
4 have your producers affected by the payments on quota, whereas
5 the California producer does have the impact of the payments of
6 the benefits of quota. Is that unequal treatment?

7 MR. TOSI: Yes.

8 JUDGE CLIFTON: This is so difficult. I'm beginning to see
9 why Proposal 2 has two pools, but even that's not equal
10 treatment. This is very difficult.

11 Okay. What other questions? Mr. Beshore.

12 CROSS-EXAMINATION

13 BY MR. BESHORE:

14 Q. Just one question follow up to one of Henry Schaefer's
15 questions. If, hypothetically, the out-of-state producer or
16 more than one, delivered a hundred percent of the supplies
17 needed by the distributing plant in California, okay? Assume
18 that's what occurred. Now, that plant has an essentially
19 become de-pooled, disassociated with the California pool, it
20 has no obligation whatsoever to the California pool. Isn't
21 that correct, under Proposal 4?

22 A. Sounds correct, yes.

23 Q. Okay. So it does have its own individual handler pool?

24 A. I don't think it's unreasonable to characterize it that
25 way.

1 Q. I don't think it is either.

2 JUDGE CLIFTON: Who else has questions? Did you,
3 Ms. Hancock? Well, let me see if there's anything further
4 before you come forward. Anything further before Ms. Hancock
5 requests questions on redirect?

6 REDIRECT EXAMINATION

7 BY MS. HANCOCK:

8 Q. Mr. Tosi, I just want to clarify one of the questions
9 that the Judge had asked you. If a producer in California
10 wanted to participate in the quota program, would they have the
11 opportunity to do so?

12 A. Yes, they would.

13 Q. And if an out-of-state producer wanted to participate
14 in the quota program, would they have the opportunity to do so?

15 A. At the way the current law is, no. The answer is no.

16 Q. Okay. So they are treated differently just because of
17 the state line?

18 A. Just right there. Yeah. Just right there.

19 Q. Thank you, that's all I have.

20 JUDGE CLIFTON: All right. Are there any questions for
21 Mr. Tosi before I allow him to step down and to be dismissed?
22 Mr. Tosi, is there anything you would like to add before we let
23 you go?

24 MR. TOSI: Since I retired from Dairy Programs, this is the
25 first time I have had to sit on this side of the -- you know,

1 I'm used to asking questions. This is the first time I have
2 had to answer to people, and it is a real different animal.
3 But -- but, you know, I'll say this, it is just a real joy to
4 come back and see everybody again.

5 JUDGE CLIFTON: Thank you. It was a joy to see you. Thank
6 you so much, Mr. Tosi.

7 MR. TOSI: Thank you, and thank you, everyone.

8 JUDGE CLIFTON: Ms. Hancock, it is 1:06. How would you
9 like to proceed?

10 MS. HANCOCK: So I only have Mr. DeGroot left, and he has
11 two very short statements, one on for Producer Handler and one
12 on Ponderosa. We could have him get going, or I know he would
13 like to get out of here today. And we still have another
14 producer to get on the stand as well. So I'll take as much
15 hearing time as I can possibly get, but recognizing that the
16 court reporter needs to have her breaks, so that's where we are
17 at.

18 JUDGE CLIFTON: Do we get pizza? I'm teasing you. I was
19 so grateful that you made yesterday work for us by treating us
20 all to pizza. I think we should begin with Mr. DeGroot and see
21 how far we can get. So let's take a five-minute stretch break
22 while he comes forward and while the documents are distributed.

23 (Whereupon, a break was taken.)

24 JUDGE CLIFTON: We're back on record at 1:13. Two
25 documents have been distributed. Please raise your hand if you

1 need them. The first is the Testimony of Ted DeGroot and the
2 second is statistics, data.

3 MS. HANCOCK: I'm hoping that there were three that were
4 distributed. There should be one that has California
5 Department of Food and Agriculture at the top as well.

6 JUDGE CLIFTON: You are correct. So in what order,
7 Ms. Hancock, should we number these?

8 MS. HANCOCK: Let's do testimony first, and that will be
9 which exhibit number?

10 JUDGE CLIFTON: Let's see, Ms. May, I show that as being
11 175. 175. Do you agree?

12 MS. MAY: Not right off the bat. So what was 174?

13 JUDGE CLIFTON: That was the statistics that were given to
14 us about the dispersal of cows.

15 MS. MAY: So I don't know where I put that one, but okay.

16 JUDGE CLIFTON: That was 174.

17 MS. HANCOCK: So the testimony will be 175, and then, we
18 could do the Excel spreadsheet, which is the Class 1 prices as
19 Exhibit 176.

20 JUDGE CLIFTON: All right. Good.

21 MS. HANCOCK: Then the last one will be the one that has
22 CDFA at the top for 177.

23 (Thereafter, Exhibit 175, Exhibit 176, and Exhibit 177
24 were marked for identification.)

25 JUDGE CLIFTON: Mr. DeGroot, I'll swear you in in a seated

1 position. Would you raise your right hand, please?

2 Do you solemnly swear or affirm under penalty of
3 perjury that the evidence you will present will be the truth?

4 MR. DeGROOT: I do.

5 JUDGE CLIFTON: Thank you. Please state and spell your
6 name.

7 MR. DeGROOT: Ted DeGroot. T-E-D, D-E-G-R-O-O-T.

8 JUDGE CLIFTON: And is there a space between the DE and the
9 capitol G?

10 MR. DeGROOT: That depends.

11 JUDGE CLIFTON: See? We have had people like that before.
12 Mr. DeJong is like that. Depends on whether it is the
13 California making his driver's license or whether he gets to
14 choose. What do you prefer?

15 MR. DeGROOT: I usually don't put a space.

16 JUDGE CLIFTON: You usually do not put a space?

17 MR. DeGROOT: I do not.

18 JUDGE CLIFTON: Is the D for DeGroot, is the D capitalized?

19 MR. DeGROOT: Yes, it is.

20 JUDGE CLIFTON: Okay. Good. All right. Thank you. Now,
21 I am content. Ms. Hancock, you may proceed.

22 DIRECT EXAMINATION

23 BY MS. HANCOCK:

24 Q. Mr. DeGroot, did you prepare Exhibit 173?

25 A. Yes, I did.

1 Q. Would you proceed to read that into the record, please?

2 A. Sure thing.

3 My name is Ted DeGroot. I am a principal and the
4 General Manager of Rockview Farms. I grew up at Rockview since
5 my grandfather, Pete DeGroot, took over the plant in 1966. I
6 worked full-time with the company for over, I have worked
7 full-time with the company for over 30 years. Our company
8 really started when my grandfather bought his first cow
9 sometime in the 1930's. He emigrated from the Netherlands in
10 the late 1920's and worked very hard to build something for
11 himself. By the 1960's, he had several farms in
12 Southern California and a growing family.

13 In 1965, he was operating three dairy farms and sold
14 all his milk to a third party handler, Rockview. In 1965,
15 Rockview encountered financial trouble and my grandfather was
16 faced with either taking over the plant or losing everything.
17 He acquired Rockview by purchasing it at a bankruptcy on
18 January 2, 1966. The years following were a struggle, but he
19 built up Class 1 sales for Rockview. When pooling came to
20 California, he and my father Amos, fought to avoid losing the
21 value of the Class 1 share of the market they had created
22 through pool dilution.

23 When the Gonsalves Milk Pooling Act --

24 JUDGE CLIFTON: Now, I'm sorry, I got to stop you there.
25 Tell me what you mean through pool dilution. This would be if

1 you had Class 1 and you were going to go into a pool, this
2 dilution would be, you would no longer be paid as if your milk
3 were Class 1; is that right?

4 MR. DeGROOT: Correct.

5 JUDGE CLIFTON: Okay. I understand. Thank you.

6 MR. DeGROOT: When the Gonsalves Milk Pooling Act was
7 enacted, our farms were issued exempt quota that was reflective
8 of our historical Class 1 production. Currently, a hundred
9 percent of the stock of the corporation for both the farm
10 entity and our plant is held by decedents of my grandfather.
11 We have two farms producing the exempt quota milk that is
12 delivered to Rockview everyday -- each day. The first farm is
13 in Ontario, California and "SD Chino". The second farm near
14 Hanford, California is "Lakeshore Dairy". The exempt quota is
15 held through certificates of ownership that show our farms are
16 the lawful owners of the exempt quota. Attached is my Exhibit
17 blank -- which I don't know.

18 BY MS. HANCOCK:

19 Q. 177.

20 A. 177, is a copy of the certificate of ownership for our
21 exempt quota showing that our farm (SD Chino and Lakeshore) own
22 our exempt quota.

23 Q. Lakeshore Dairy?

24 A. Lakeshore Dairy.

25 Q. Let's pause there for just one second. If you can take

1 out 177. Can you explain for us what's reflected here in
2 Exhibit 177?

3 A. It shows three certificate numbers issued by the CDFA,
4 the first is Lakeshore Dairy, and it has in parentheses (PD)
5 which is producer-distributor. The second is Lakeshore Dairy
6 number 2, it does not have PD behind it because that is
7 traditional quota that we hold also at that dairy, and then the
8 third is SD Farms or SD Chino, they are one in the same, and
9 that also is producer-distributor quota.

10 Q. Okay. So when you say traditional quota, is that
11 regular quota?

12 A. Yes.

13 Q. Okay. So your farms own both exempt quota and regular
14 quota under the California State Order?

15 A. Correct.

16 Q. And we have a black square there, can you tell me what
17 is, what that black square is about?

18 A. That is just blocking out the pounds that each dairy
19 holds.

20 Q. And then if we turn the page, what's on page 2 of
21 Exhibit 177?

22 A. I think you are just naming the other owners of the
23 quota, I'm sorry.

24 Q. It looks like it was an amendment, so you made some,
25 there's some quantity calculations that you get that show

1 differences if there's changes in the volumes of the milk, or
2 changes in the volumes of the --

3 A. In the volume of the quota there would be amendments
4 and changes. Each time you change, you get a new certificate
5 from the State.

6 Q. Okay. And that's the same that's reflected throughout,
7 just these are different notices or information that you get
8 from CDFA?

9 A. Correct.

10 Q. Okay. And all reflecting that it's the dairy that owns
11 your exempt quota?

12 A. Correct.

13 Q. And your regular quota as well?

14 A. Correct.

15 Q. Okay. If you want to go back to your exhibit, your
16 written statement, Exhibit 175, and continue with the first
17 full paragraph on Page 3.

18 A. Sure.

19 The two farms produce the entire exempt quota that goes
20 to Rockview. Exempt quota makes up 40 percent of the total
21 production from these two farms and approximately 12 percent of
22 the total milk received at Rockview. Rockview also purchases
23 milk from Ponderosa in Nevada, and third party Cooperative
24 California Dairies, Incorporated. Our California farm and
25 plant are located in Southern California, which is a deficit

1 milk production area. If we were to lose the exempt quota
2 benefit for our farms, it would be more difficult to source
3 milk into Southern California. Over order premiums may
4 increase. California regular quota and exempt quota have
5 always been a part of the same quota system, and each type of
6 quota has unique benefits. While regular quota can participate
7 in the California transportation credit system, exempt quota
8 does not get that benefit.

9 At the inception of the quota system, there were 49
10 companies who held producer-handler exempt quota. For many
11 reasons today, there are only four. That decline would not
12 have happened if the exempt quota provided the producer-handler
13 such a price advantage that they could displace others within,
14 within the market. The price advantage of exempt quota is with
15 our farm and measured as the difference between Class 1 and the
16 price we would receive in Southern California for quota.
17 Attached in Exhibit 176 is a calculation showing the average
18 benefit to our farm over the last 20 years.

19 Q. If we could just pause for one second, take a look at
20 176. Can you describe for me what's contained in that exhibit?

21 A. There are several pages going back 20 years, and it's
22 the difference between Northern, the Northern California
23 Class 1 price, the quota price, and then the difference and
24 then separately, the Southern California Class 1 price, the
25 quota and the difference, and then there's a summary, and

1 there's also an aggregate of the two on page 5 of 10.

2 Q. Okay. If we look at page 5 of 10, when you say there's
3 an aggregate of the two, what do you mean?

4 A. If you merge Southern and Northern California and the
5 prices, the benefit is an average of \$1.27 per hundredweight
6 for 20 years.

7 Q. Okay. And you qualify for the Southern California
8 Class 1 price?

9 A. Correct.

10 Q. And Hollandia, one of the other producer-handlers,
11 would also qualify for the Southern California Class 1 price?

12 A. Yes.

13 Q. And then the other two producer-handlers, Producers
14 Dairy and Foster Dairy, are both paid under the, or qualify for
15 the Northern California Class 1 price?

16 A. Yes.

17 Q. Okay. So your average, tell me what the significance
18 is of the, of what you're averaging here, the \$1.40 for the
19 south, Southern California price difference?

20 A. I'm not sure I understand your question.

21 Q. Well, that's the difference between Class 1 and quota
22 you have measured here, tell me what the significance is of
23 that to you. What does that mean? Is that the value of the
24 exempt quota?

25 A. That's the value of the exempt quota, correct. The

1 exempt quota is -- is valued, I mean, it's \$1.40 over 20 years
2 more so than if it were traditional quota, regular quota.

3 Q. That's the, so if you took that number, multiplied by
4 the volume of exempt quota that you have, that would be
5 reflective of what the difference is for the value of having --

6 A. So we were talking, is this the discussion on the value
7 of exempt quota versus regular quota?

8 Q. You don't have to do the math yet, but I just want to
9 establish that that's what you are establishing with this
10 document?

11 A. Right. Yes.

12 JUDGE CLIFTON: Mr. DeGroot, would you rather that the
13 court reporter type the question or the answer, when both are
14 happening at the same time?

15 MR. DeGROOT: Sorry, I gotcha.

16 JUDGE CLIFTON: Thanks.

17 BY MS. HANCOCK:

18 Q. It's not natural to have to talk in such separated
19 chunks, so it's normal. Okay.

20 Let's resume your testimony on Page 4.

21 A. Okay.

22 A big difference between exempt quota and Federal Order
23 producer-handler exemptions, is that exempt quota may stay
24 within the same family as the exemption was originally issued
25 in the 1960's.

1 Q. Can you try that sentence one more time?

2 A. Okay.

3 A big difference between exempt quota and the Federal
4 Order producer-handler exemptions is that exempt quota may stay
5 within the same family as the exemption was originally issued
6 in the 1960's.

7 JUDGE CLIFTON: Does it say "may stay" or does it say "must
8 stay".

9 MR. DeGROOT: Oh, must stay, sorry. Must stay. You want
10 me to read it over?

11 JUDGE CLIFTON: Yes.

12 MR. DeGROOT: A big difference between exempt quota and the
13 Federal Order producer-handler exemptions, is that exempt quota
14 must stay within the same family as the exemption was
15 originally issued in the 1960's. As a family, we have always
16 made decisions around preserving our exempt quota provisions
17 for our farm. We agonized each time a family member considered
18 leaving our farm, which meant we had to sell the quota to the
19 family in order to preserve the exempt quota. In one instance,
20 we decided not to keep the quota within the family, so the
21 quota was converted to regular quota and sold to a third party.

22 In this corporate world in which we live we, where big
23 business is the norm, we believe our family business and the
24 other three exempt quota holders are very special and serve
25 each of our communities well. The way exempt quota is held by

1 our farm and booked as an asset for our farm means any "price
2 advantage" must also go to our farm, not our plant. Our plant
3 does not have any price advantage because it pays the Class 1
4 price to the farm for all the raw milk for fluid sales. We pay
5 the same price to our own farm that we pay for the milk
6 purchased, milk we purchase from CDI.

7 We account for our raw milk cost at the farm, we pay
8 our farms. Wait -- I'm going to read that again. We account
9 for our raw milk cost at the price we pay our farms, the Class
10 1 price. Because our plant pays the Class 1 price, we must
11 calculate that amount into the manufacturing costs for our
12 finished product. When bidding on contracts for fluid milk
13 sales, we calculate that raw milk price into our manufacturing
14 cost.

15 Furthermore, CDFA has a below-cost law that prohibits
16 us from selling our products below manufactured cost. That
17 means we cannot use the farm benefit to artificially reduce the
18 raw milk cost that we pay for our farms.

19 BY MS. HANCOCK:

20 Q. For our?

21 A. For our milk, excuse me. If we were to sell below
22 cost, our competitors in the industry would report violators to
23 the CDFA, which would investigate the claim. If there were any
24 real concerns that exempt quota holders were using their
25 exemption to sell below cost, that would have been reported to

1 the CDFA and there would have been an investigation.

2 Q. Try that one again.

3 A. If there were any real concerns that the exempt quota
4 holders were using their exemption to sell below cost, they
5 would have been reported to CDFA and there would have been an
6 investigation.

7 It --

8 JUDGE CLIFTON: What is it there would or could?

9 MR. DeGROOT: There would or could have been an
10 investigation. Thank you. It simply has not been an issue in
11 our market.

12 As a close -- I'm sorry, as a close family ownership
13 structure allows, we have a tight-knit management team. We
14 communicate well and we work to build efficiencies into our
15 business. It is my opinion, our family ownership structure
16 gives us a competitive advantage over corporate structures that
17 do not have the same emotional investment in their business.
18 As a family, we take pride in our products to ensure that they
19 represent the quality of our brand.

20 We believe our exempt quota is part of the entire quota
21 system for which Congress instructed USDA in the Farm Bill to
22 recognize the value. Our proposal is to preserve the exempt
23 quota along with the rest of the quota system. We do not seek
24 to obtain the benefit under the "Federal producer-handler"
25 definition or to be considered to fall within the

1 producer-handler definition proposed by the Cooperatives or
2 Dairy Institute. None of the CPHA, California Producer Handler
3 Association, who hold exempt quota would qualify as a
4 producer-handler under the definition proposed by either the
5 Cooperative or the Dairy Institute.

6 The quota system, both regular and exempt quota, is a
7 producer benefit. Our farms own our exempt quota, just as
8 regular quota is owned by other farms that do not own a
9 manufacturing facility. Our farm should be able to continue to
10 preserve their exempt quota as part of any preservation of the
11 quota system. The quota system has always included regular and
12 exempt quota, and if quota is going to be included in an FMMO,
13 it should also preserve exempt quota.

14 Thank you for your time and consideration of my
15 testimony.

16 BY MS. HANCOCK:

17 Q. Mr. DeGroot, I want to turn back to Exhibit 176 for a
18 moment, and we're on page 5 of that exhibit. And the last page
19 6 through 10, that's just looking at, it is the same
20 information, just looking at Southern California alone?

21 A. Yes.

22 Q. Okay. So on page 5 of 10, you have stated that you
23 have valued over the last 20 years, the average benefit of
24 holding your exempt quota was \$1.40, is that a hundredweight?

25 A. Correct.

1 Q. Okay. Is that an amount that can be used to help value
2 how much exempt quota is worth to you and your farms?

3 A. I believe so.

4 Q. How would you figure that out using that number?

5 A. Well, in our discussions earlier, and in the
6 discussions that the panel has talked about purchasing out
7 quota, and I realize that -- and I speak only for Rockview in
8 this. If we were issued more regular quota to compensate us
9 for our PD quota, I think that would be an acceptable outcome.
10 So in our case, based on quota over overbase being worth \$1.70
11 per hundredweight, and we believe we are receiving a benefit of
12 \$1.40 in addition to that, we just came up with a scenario
13 where, for instance, if we had a thousand pounds of regular
14 quota, then we might need to have 1820 pounds of regular quota
15 to compensate us for a thousand pounds of exempt quota.

16 Q. Help me with the math there.

17 JUDGE CLIFTON: So the way you started that sentence, you
18 said "if we had a thousand pounds of regular quota" and what
19 you meant to say was "if we had a thousand pounds of exempt
20 quota."

21 MR. DeGROOT: If we had a thousand pounds of exempt quota,
22 as an example, if we were to receive an additional 820 pounds
23 of regular quota, that would compensate us for the \$1.40.

24 JUDGE CLIFTON: And so what you are talking about, is in
25 the event that exempt quota gets converted to regular quota --

1 MR. DeGROOT: Correct.

2 JUDGE CLIFTON: And in addition to the thousand pounds of
3 exempt quota you already have, which would become regular
4 quota, there would have to be additional regular quota to
5 compensate for the increased, for the larger value that exempt
6 quota has.

7 MR. DeGROOT: Correct. And I believe -- I believe that all
8 of the producer-handlers produce enough overbase milk
9 currently, that if that was to be a solution, it may be
10 acceptable to them, but I don't speak for all of them.

11 BY MS. HANCOCK:

12 Q. So if I'm hearing you right, you are saying one, one
13 pound of exempt quota is equivalent to 1.8 pounds of regular
14 quota?

15 A. In Southern California.

16 Q. In Southern California. Can you help us understand how
17 you did that math? How you came to the 1.82?

18 A. I just divided \$1.70 into \$1.40.

19 Q. So you took \$1.70 the premium for regular quota, and
20 divided it into the --

21 A. The \$1.40 and came up with .82.

22 Q. Okay. And that \$1.40 is the average for exempt quota
23 that's on page 5 of Exhibit 176?

24 A. Correct.

25 Q. Okay. But you haven't had the opportunity to talk with

1 any financial advisors or any kind of specialists in this area
2 to help you value your exempt quota, have you?

3 A. No.

4 Q. This was some kind of quick math that you did in the
5 back of the room when we had some earlier discussions this
6 morning about how you might be able to value that number?

7 A. Yes.

8 Q. Okay. And if you -- if exempt quota were to be
9 purchased out or if there was some conversion ever to be made,
10 would you want the opportunity to verify that this was the
11 actual value, the true and accurate value, for your exempt
12 quota?

13 A. I think that would be an appropriate step, yeah.

14 Q. Okay. Your Honor, at this point I would move for the
15 admission of Exhibit 175, 176, and 177.

16 JUDGE CLIFTON: All right. Let me coordinate with Ms. May
17 on any changes. The first change I noticed, the way you read
18 this, Mr. DeGroot is, Exhibit 175, page 2, you inserted the
19 word "have" to show that you still work for the company, "I
20 have worked full-time"; is that correct?

21 MR. DeGROOT: Yes.

22 JUDGE CLIFTON: So I would ask Ms. May to insert the word
23 "have" after the word "I" so that line will read "I have worked
24 full-time".

25 MS. MAY: Got it.

1 JUDGE CLIFTON: Okay. And then the next things were just
2 fill in the blanks. So on Page 4, third line down, we inserted
3 "176".

4 MS. MAY: Yep on page --

5 JUDGE CLIFTON: On Page 4.

6 MS. MAY: Okay.

7 JUDGE CLIFTON: And, oh, I'm sorry, I skipped over the one
8 on Page 3. Page 3, fourth line down, we inserted 177 in the
9 blank. All right? Those were the only changes I saw,
10 Ms. Hancock. Did you have anything that I missed, Ms. Hancock?

11 MS. HANCOCK: We got both 176, 177 in the exhibit lines,
12 those were the only other changes I had.

13 JUDGE CLIFTON: Okay. Very good. Does anyone wish to
14 question Mr. DeGroot before determining whether you object to
15 the admission into evidence of any of these exhibits, 175, 176,
16 or 177? No one. Is there any objection to the admission into
17 evidence of 175? There are none. Exhibit 175 is admitted into
18 evidence.

19 (Thereafter, Exhibit 175, was
20 received into evidence.)

21 JUDGE CLIFTON: Does anyone object to the admission into
22 evidence of Exhibit 176? No one. Exhibit 176 is admitted into
23 evidence.

24 (Thereafter, Exhibit 176, was
25 received into evidence.)

1 JUDGE CLIFTON: Does anyone object to the admission into
2 evidence of Exhibit 177? No one. Exhibit 177 is admitted into
3 evidence.

4 (Thereafter, Exhibit 177, was
5 received into evidence.)

6 JUDGE CLIFTON: Ms. Hancock?

7 MS. HANCOCK: I have no further questions for him at this
8 time.

9 JUDGE CLIFTON: All right. Let me find out if people want
10 to begin the examination of Mr. DeGroot or whether people need
11 a break for lunch or otherwise. It's 1:38, so you have three
12 choices. First one is keep going, the second is take a
13 ten-minute break and have lunch later, and the third one is
14 break for lunch.

15 First vote, keep going. The two DeGroots.

16 Next one, break for ten minutes? No one.

17 Break for lunch? Everyone else.

18 All right. It's 1:40. I'm going to say please be back
19 and ready to go at 2:55. 5 minutes to 3:00. Thank you.

20 (Whereupon, the lunch recess was taken.)

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1 FRIDAY, NOVEMBER 13, 2015 - - AFTERNOON SESSION

2 JUDGE CLIFTON: We are back on record at 2:55. I'm going
3 to wait just a minute. I do not want my main team to miss any
4 of this testimony, so we'll wait just a minute or two here. In
5 the meantime, though, although we have not yet finished
6 Mr. DeGroot's testimony about the exhibits that are already in
7 evidence, we have two more exhibits. So hopefully you all will
8 find those at your place.

9 Ms. Hancock, do you want to talk about these two
10 additional exhibits are have been distributed?

11 MS. HANCOCK: We were just trying to save sometime, your
12 Honor. These are Mr. DeGroot's testimony on behalf of
13 Ponderosa Dairy and then one exhibit that goes along with that
14 testimony.

15 JUDGE CLIFTON: Very good. So I'll be numbering them, I'll
16 go ahead and say it now and then we'll confirm that later. But
17 I would number the testimony of Ted DeGroot, and this is in
18 support of Proposal 4 of Ponderosa Dairy. I would number that
19 178. Exhibit 178.

20 (Thereafter, Exhibit 178, was
21 marked for identification.)

22 JUDGE CLIFTON: And then the accompanying document, which
23 has a title of Real California Cheese, Processor List, I will
24 number that one as Exhibit 179. Exhibit 179. All right.

25 Let us take just about a three-minute stretch break.

1 You are free to move around. Don't go too far away, I expect
2 we'll proceed in about three minutes, which would be 3:01.

3 (Thereafter, Exhibit 179, was
4 marked for identification.)

5 JUDGE CLIFTON: We are back on record at 3:03. I have
6 withdrawn the document that I had marked as 179, at the request
7 of Ms. Hancock. So the only one that I have given a number
8 since we last numbered a document is the Testimony of
9 Ted DeGroot in Support of Proposal 4 of Ponderosa Dairy. I
10 have marked that as Exhibit 178. Now we're not there yet,
11 because we'll be doing cross-examination on his prior
12 testimony, but just so you know. All right. Who would ask the
13 first cross-examination questions of Mr. DeGroot. Mr. English?

14 CROSS-EXAMINATION

15 BY MR. ENGLISH:

16 Q. Good afternoon, Mr. DeGroot. Chip English for the
17 Dairy Institute of California. So I want to, I'm going to take
18 as little time as possible.

19 On page 2, and Judge Clifton already asked you a
20 question about this as you were reading, when you referenced
21 there that "when pooling came into effect that your father,
22 Amos DeGroot, fought to avoid losing the value of the Class 1
23 share of the market that they created through pool dilution."
24 That's to say that you had Class 1 sales prior to the day that
25 the Gonsalves Pooling Act became effective and the pooling went

1 into effect, correct?

2 A. Yes.

3 Q. And what exempt quota, in essence was, at least at that
4 time, was sort of the conversion of those pounds into the
5 exempt quota so that the Class 1 pounds remained at your farm
6 for their value, correct?

7 A. That's correct.

8 Q. Okay. And you understand, do you understand that in
9 Federal Orders, when a Federal Order goes into a place that's
10 never had a Federal Order, that effectively anybody who had
11 that kind of arrangement with Class 1 pounds would have had to
12 share all of those pounds?

13 A. Yeah, I understand that.

14 Q. Okay. On page 3 you discussed the idea that if you
15 lost the exempt quota benefit, it would be more difficult to
16 source milk into Southern California, and indeed you say over
17 order premiums may increase. So today, do you understand that
18 your competitors likely have to pay over order premiums to get
19 milk into Southern California?

20 A. Yes, as we do.

21 Q. Okay. You do on the milk you buy from outside your
22 operations?

23 A. No, actually, we pay it on all of our milk.

24 Q. You are paying over order premiums on all of your milk?

25 A. Because we do it to keep our farms competitive with

1 other dairymen.

2 Q. Okay. And that was a yes. You nodded your head, but
3 the court reporter can't pick it up, but that was a yes with an
4 explanation, correct?

5 A. Correct.

6 Q. And I have already asked this question of the prior two
7 witnesses, I'm not sure if you were in the room at the time,
8 but when you say that you pay, on the top of page 5, "we
9 account for our real milk cost," I'm sorry, "we account for our
10 raw milk cost at the price we pay our farms, the Class 1
11 price," CDFA does not audit the actual payment. They audit the
12 the pounds, but not the payment, correct?

13 A. I don't know that for sure, but that's my
14 understanding.

15 Q. I'm not trying to get into specifics, but as to, as to
16 the plant, has the plant been profitable over the last five
17 years? Has the plant been profitable?

18 A. Relatively. I wouldn't say, it's hard, you know, we,
19 it's hard with any processing plant, when milk prices get
20 extremely high as they did in 2014, that's maybe good on
21 farmers, but it is tough on milk plants. So but generally,
22 yes.

23 Q. Okay. Are there family members employed at the plant?

24 A. Yes, three.

25 Q. Okay. Does the plant pay out dividends to the family?

1 A. I listened to you question Mr. Shehadey on this so I
2 could save you sometime.

3 Q. Sure. I'm just not allowed to ask leading questions.

4 A. We have many, similar to the Producers Dairy, we have
5 many members, all family members, that own stock in the plant.
6 The PD quota is currently owned one hundred percent by my
7 father. So at both farms -- and he likes to get paid the full
8 price, so my dad gets, and his farms get the full Class 1, plus
9 premium, for their milk at the farms from the plant.

10 Q. Okay. Now, but nonetheless, you maintain, is that the
11 farm maintains the 95 percent common ownership?

12 A. Well, I think it is 95 percent within the consanguinity
13 I don't even know how to say that word, but within the family,
14 so as long as the family --

15 Q. Owns 95 percent.

16 A. -- only owns collectively 95 percent of the farm and/or
17 plant.

18 Q. Okay. So, but going back to my question for a moment,
19 does the plant, when it is profitable, does it make any
20 distributions on the stock?

21 A. No.

22 Q. Okay. Does the --

23 A. No. No.

24 Q. No. Does the farm ever make distributions to your dad?

25 A. Yeah, it may. Yes. I can't -- but if my dad was going

1 to give any money to the plant, he would loan it to us and make
2 us pay interest.

3 Q. Has the plant, has the family made investments in the
4 plant in the last ten years?

5 A. Yes.

6 Q. So money has gone from the family to the plant?

7 A. Oh, no, it is all internal.

8 Q. It is all internal?

9 A. No money has been put at the plant to make investment.

10 Q. And what about money in the farm, has money been
11 invested in the farm in the last ten years, to your knowledge?

12 A. Yes.

13 Q. Okay. That's all the questions I have.

14 A. Thank you.

15 JUDGE CLIFTON: I'm going to ask others to, I'm going to
16 invite questions of others. But Mr. DeGroot, I remembered that
17 there was a question I wanted to ask you. You had talked about
18 how your, the family farms serve the Southern California
19 population. And you said one other of the producer-handlers
20 does, too. And I need the spelling of the name of that and the
21 county it is located in, the other one.

22 MR. DeGROOT: Hollandia Dairy, and I would say
23 H-O-L-L-A-N-D-I-A, Dairy. And it is in San Marcos, California,
24 and I'm 99 percent sure that's San Diego County.

25 JUDGE CLIFTON: Now, is that name, the processor name or

1 the farm name?

2 MR. DeGROOT: That's the processor name, and I'm not sure
3 what they call their farming entity.

4 JUDGE CLIFTON: Okay. Do you think that the processor is
5 located in San Diego?

6 MR. DeGROOT: Yes, their farm that they, I do know that
7 their farm that produces the exempt milk is in San Jacinto,
8 California, which would be Riverside County, but I don't know
9 the name of the farm.

10 JUDGE CLIFTON: Okay. And with regard to Rockview Farms,
11 does it, does that entity itself have cows?

12 MR. DeGROOT: No.

13 JUDGE CLIFTON: All right. And so all the cows are at SD
14 Chino and Lakeshore Dairy?

15 MR. DeGROOT: Yes.

16 JUDGE CLIFTON: Okay. And in what counties are those two
17 farms located? SD Chino is in what county?

18 MR. DeGROOT: Ontario. I believe that's San Bernardino.
19 And Lakeshore would be, it's near Hanford, I guess that's
20 Tulare County, I think. I believe it's Tulare County.

21 JUDGE CLIFTON: Okay. And Rockview Farms itself is located
22 in what county?

23 MR. DeGROOT: LA County.

24 JUDGE CLIFTON: LA County. Okay. All right. Good. Who
25 else has questions for Mr. DeGroot? Mr. Beshore?

1 CROSS-EXAMINATION

2 BY MR. BESHORE:

3 Q. Marvin Beshore.

4 Good afternoon, Mr. DeGroot.

5 A. Good afternoon.

6 Q. Just a few questions. Your, the SD Chino Farm and
7 Lakeshore Dairy, which your father owns, how many cows is he
8 milking at each location?

9 A. There's approximately 1400 cows at SD Chino, and
10 approximately 2500 cows at Lakeshore Dairy. Milking.

11 Q. And what's the production level there? Is it roughly
12 state average, above, below?

13 A. I would say, I would say it's roughly average, maybe
14 slightly above.

15 Q. Okay. Now, if the quota on those farms was -- was
16 regular quota as opposed to exempt quota, would it be subject
17 to RQA's?

18 A. You know, RQA's is something I don't really fully
19 understand. I don't believe so because of where our plant is
20 located, but I don't fully understand RQA's.

21 Q. I think they are based on the farm location.

22 A. I don't understand RQA's well enough to comment.

23 Q. Okay. If the -- if it was not exempt quota but it was
24 regular quota, I think this is reflected in your testimony,
25 it's been reflected by others as well. If it was regular quota

1 you would be entitled to transportation credits or allowances
2 as they are called, under the current CDFA program, right?

3 A. Yes.

4 Q. Do you know the amounts that, of transportation
5 allowance that --

6 A. I believe from Lakeshore Dairy or Tulare County to LA
7 it would be 90 cents per hundredweight. From the Chino Dairy
8 to LA, I'm not sure if there's any or not, if there is, it's
9 very small.

10 Q. What's the -- what's the mileage from the --

11 A. From Chino to --

12 Q. Chino to LA?

13 A. Chino to the plant is, let's say 40 miles.

14 Q. Okay.

15 A. And Lakeshore to the plant is about 230 miles.

16 Q. Can you -- there's been some testimony in this record
17 about, of course, the existence, well, there's been a fair
18 amount of testimony about the fact that there are over order
19 premiums in the California marketplace generally, and pretty
20 much in all, on all classes of milk, but there hasn't been a
21 lot of testimony about the level of those premiums. Without
22 asking you to get precise, can you give us, in the Southern
23 California area, you know, a general idea of what the level of
24 premiums might be on the plant side and the farm side? And you
25 can, if you're comfortable with a range, that's, you know,

1 that's fine.

2 A. I can't speak to the farm side because that depends on
3 the individual co-op that somebody belongs to and whether that
4 co-op is actually paying out a dividend. I can tell you that
5 we pay the highest over order premium for, to CDI, and that's
6 because they balance, they help us balance our plant. And we
7 have been with them about two or three years now, it's gone
8 well. And but I would say generally, over order premiums in
9 Southern California, you know, are plus or minus 50 cents a
10 hundredweight.

11 Q. Okay. Now, you say you are not sure about the farm
12 side, but I thought I heard you indicate that your father
13 requires --

14 A. Right, our farms -- our farms -- I'm sorry.

15 JUDGE CLIFTON: Finish your question.

16 BY MR. BESHORE:

17 Q. Let me finish my question. That, you know, your father
18 requires a premium to be competitive or wants to be paid, you
19 know, competitive premium at the farm level. So I understand
20 it varies from co-op to co-op, and perhaps from area to area,
21 but can you tell us, like what, you know, approximate level is
22 expected at the farm level to be competitive?

23 A. I think I shared that, plus or minus 50 cents.

24 Q. Okay. Same as --

25 A. Yeah.

1 Q. Okay. Very good. Appreciate that. I think that's all
2 I have. Thank you very much.

3 JUDGE CLIFTON: Who else has questions for Mr. DeGroot on
4 this topic? Anymore? All right. I think no one has further
5 questions on this topic. Any redirect, Ms. Hancock, on this
6 topic?

7 MS. HANCOCK: No. No, your Honor.

8 JUDGE CLIFTON: No. All right. Then we'll move on to
9 Exhibit 178, and additional testimony from Mr. DeGroot.
10 Ms. Hancock, you may proceed.

11 DIRECT EXAMINATION

12 BY MS. HANCOCK:

13 Q. Mr. DeGroot, did you draft Exhibit 178?

14 A. Yes.

15 Q. Would you please read that statement into the record?

16 A. Okay.

17 My name is Ted DeGroot. I am the managing owner of
18 Ponderosa Dairy in Amargosa Valley, Nevada, which is just seven
19 miles from the California border. I have been involved in the
20 operations of Ponderosa since its inception on April 1, 1994.
21 The location was chosen for several reasons, including the fact
22 that water was readily available, existing alfalfa farming made
23 dairy farming suitable, and the land was reasonably priced. We
24 opened Ponderosa Dairy for specific purpose of providing milk
25 to our plant in Downey, California, approximately 280 miles

1 from the dairy. In evaluating the economics of developing
2 Ponderosa Dairy we made the decision to invest in the dairy,
3 assuming we would receive our plant blend for milk sold into
4 California, but knowing we sacrificed the ability to
5 participate in the California quota program.

6 When Ponderosa was established, California Producers
7 establishing dairies were eligible to purchase or otherwise
8 obtain quota and obtain transportation subsidies. Out-of-state
9 producers such as Ponderosa Dairy were not. Instead Ponderosa
10 Dairy produced --

11 Q. Wait.

12 A. -- producers, instead, out-of-state producers were
13 permitted to receive the plant blend for their milk (the
14 average class price based on the plant's utilization). The
15 plant blend has been important to Ponderosa Dairy to
16 essentially compensate it for not being able to own quota or
17 obtain the benefit of transportation subsidies. Several years
18 after Ponderosa Dairy was started, CDFA and the dairy farmers
19 supported a California Food and Agricultural Code regulation
20 that required California processors to account to the pool for
21 their out-of-state milk based on the utilization of that milk.

22 JUDGE CLIFTON: All right. And I would like you to read
23 that one again, please.

24 MR. DeGROOT: Okay. The whole sentence?

25 Several years after Ponderosa Dairy was started, CDFA

1 and the dairy farmers supported a California Food and
2 Agricultural Code regulation that required California
3 processors to account to the pool for their out-of-state,
4 purchases of out-of-state milk, I'm sorry, for their purchases
5 of out-of-state milk based on the utilization of that milk.
6 The quota and overbase pool prices are paid to California raw
7 milk producers with revenue generated from the pool. Prior to
8 the introduction of the new regulation, quota and overbase were
9 calculated after the out-of-state milk was subtracted from the
10 pool. The effect of this change was that quota and overbase
11 prices increased, but the price to out-of-state producers was
12 decreased by the pro rata reduction caused by the payments
13 made, first to quota and transportation from the pool.

14 Along with other out-of-state producers, we filed a
15 lawsuit challenging the legality of such disparate treatment of
16 out-of-state producers. Many in this room are intimately
17 familiar with the litigation as the Hillside Dairy case, after
18 the first-named plaintiff in the lawsuit. After years of
19 litigation, Ponderosa Dairy prevailed in the U.S. Supreme
20 Court. We prevailed because the CDFR action treated
21 out-of-state producers differently. Our out-of-state milk was
22 was at a price disadvantage because we were forced to pay into
23 the California quota pool, but we were precluded from receiving
24 any benefits of the pool.

25 We participated in this litigation to ensure equal

1 treatment for producers outside of California, and to protect
2 our out-of-state production.

3 The co-ops proposal attempts to do the same thing that
4 was disallowed by the Supreme Court in Hillside Dairy, pay
5 out-of-state milk producers the non-quota blend price, after
6 the pool deducts quota premium payments and all transportation
7 allowances. But out-of-state milk is not permitted to
8 participate in the quota or transportation benefit. We would
9 contribute our producer milk to a pool that pays out benefits
10 to which we cannot participate, and the only jurisdiction for
11 this treatment --

12 Q. Try that one more time.

13 A. I'm sorry, the only justification for this treatment is
14 that we are seven miles beyond the California state line.

15 As I understand it, most Federal Orders are not drawn
16 on state lines, they are drawn to accommodate the dairy farms
17 and plants that need the milk in a larger geographical region.
18 The proposed order would further facilitate the discrimination
19 of dairies simply because they are located outside of
20 California. If a Federal Order were implemented, it could
21 encompass our farm in Nevada and allow our farm to receive
22 transportation allowances (similar to the Dairy Institute's
23 proposal on this point) and other benefits of, and other
24 benefits of the Federal Order in California. It could also
25 exclude from the pool, the volume coming from outside the state

1 to protect those who cannot participate in the quota program.

2 If a Federal Order is adopted in California without
3 incorporating Proposal 4, Ponderosa Dairies milk would be
4 punished so drastically it could not travel across state lines.
5 This leaves Ponderosa with few choices to market its milk, and
6 there is little downside to preserving the treatment of our
7 out-of-state milk as it is treated now. Allowing us to collect
8 plant blend payments rather than forcing us to take a lower
9 overbase price, the USDA concluded that a measured against
10 base --

11 Q. Start that sentence again.

12 A. The USDA concluded that as measured against base,
13 adopting Proposal 4 would not have much, if any, impact on the
14 parties as measured against a baseline.

15 There would not be a huge influx of out-of-state
16 producers because there are still logistical issues with
17 shipping out-of-state milk to California from Nevada, (i.e.
18 mountains). Another deterrent is that out-of-state milk cannot
19 be used to produce any products branded with the "Real
20 California" seal that is used for consumer products in
21 California. And we didn't attach this exhibit.

22 Q. So we'll strike that next sentence.

23 JUDGE CLIFTON: All right. Ms. May, so that you and I are
24 on the same page, page 5, the last sentence of the partial
25 paragraph that begins the page, beginning with the word

1 "attached" we will strike. You may proceed.

2 MR. DeGROOT: In the next two word, we changed our plant to
3 our farm also.

4 JUDGE CLIFTON: All right. So we're striking the word
5 "plant" inserting the word "farm", and you may begin that
6 sentence again.

7 MR. DeGROOT: Our farm does not have a lot of choices
8 outside of shipping to California. The logical choice in one
9 or, is one or both of the two fluid milk plants in Clark
10 County, Nevada; Dean Foods and Anderson Dairy. However,
11 several years ago, Clark County was allowed to be exempt or
12 excluded from the Federal Order pricing. The Nevada State
13 Dairy Commission sets the minimum prices those two fluid milk
14 plants pay dairy farmers.

15 JUDGE CLIFTON: You know, that, it means the same, but you
16 were more specific the way you wrote it. So please read the
17 sentence again.

18 MR. DeGROOT: The Nevada State Dairy Commission sets the
19 minimum prices those two fluid plants pay Nevada dairy farmers.
20 Currently, they buy all their milk from either Utah or
21 California farmers at a price that is cheaper than a Nevada
22 dairy farmer can sell it to them under the Nevada State Dairy
23 Commission statutes. Even though Ponderosa Dairy is the most
24 local milk to Las Vegas, Ponderosa Dairy has a built-in
25 disadvantage.

1 There has been testimony that out-of-state milk has
2 caused "disruption" in the California market. I do not believe
3 that the California market has been "disrupted" or that
4 out-of-state milk competes with in-state milk, as some have
5 claimed in their testimony.

6 As an example, many products are labeled with the Real
7 California milk and cheese seals, making those products more
8 attractive to California consumers. Milk from out-of-state
9 dairies cannot be used to produce products with those seals.
10 Also, the plant blend that Ponderosa Dairy receives is less
11 than the Class 1 price.

12 If or when Federal, a Federal Order is adopted, it is
13 our sincere hope that consideration will be made for equal
14 treatment of our milk, which has supplied the Southern
15 California market for over 20 years. Ponderosa Dairy would not
16 be opposed to being regulated under a California Federal Order,
17 if payments under the Federal Order, traditional payments --
18 let me start over. If payments under the Federal Order
19 traditional payment pool allows it to receive plant blend
20 payments. In our view, any California Order that requires
21 out-of-state dairies --

22 JUDGE CLIFTON: Let's start again. In our view?

23 MR. DeGROOT: In our view, any California Federal Order
24 that requires out-of-state dairies to pay into the quota pool
25 for which it obtains no benefit, improperly discriminates

1 against out-of-state dairies.

2 Thank you for taking the time to listen to my
3 testimony.

4 BY MS. HANCOCK:

5 Q. Other than your statement, is there anything you would
6 like to add to your testimony today?

7 A. Not at this time.

8 Q. Your Honor, I would move the admission of Exhibit 178.

9 JUDGE CLIFTON: Is there anyone who would like to ask
10 Mr. DeGroot questions to determine whether you object? No one.
11 Is there any objection to the admission into evidence of
12 Exhibit 178? There is none. Exhibit 178 is admitted into
13 evidence.

14 (Thereafter, Exhibit 178, was
15 received into evidence.)

16 MS. HANCOCK: That's all I have right now.

17 JUDGE CLIFTON: Who will begin questions for Mr. DeGroot on
18 this topic? Mr. Beshore.

19 CROSS-EXAMINATION

20 BY MR. BESHORE:

21 Q. Marvin Beshore. Good afternoon. I just have a couple
22 of questions. Let me ask a few questions first about the
23 comments at the top of page 5 of your testimony in terms of the
24 logistics in shipping from Nevada down to California.

25 Is it what, roughly 280 miles you said?

1 A. Yes.

2 Q. Okay. And so what's the trucking cost to get it from,
3 get the milk from Ponderosa down to Rockview?

4 A. Obviously it varies, but it is roughly \$1.70 per
5 hundredweight.

6 Q. Are there any other dairies in your area of Nevada?

7 A. We're the only dairy in Southern Nevada.

8 Q. Okay. So the rest of the dairies in Nevada are in the
9 middle or upper area around whatever county Fallon is in, I
10 guess?

11 A. Yes.

12 Q. Okay. On the same page, Page 5, you indicate there are
13 two dairies in Clark County. Where in California do they
14 acquire their -- do they both acquire milk from California?

15 A. To my knowledge, they both do.

16 Q. Okay. What, you know, roughly, what, do you know what
17 counties or what areas?

18 A. Kern County and the Riverside-San Bernardino County
19 area.

20 Q. So does milk actually go from where you deliver it to
21 from your farm, back up to Nevada to serve a Class 1 plant in
22 Nevada? Do you guys work out any back hauls on those trips?

23 A. That would be left up to the trucking companies.

24 Q. But it might benefit the people whose milk was being
25 hauled also, I guess. You say that they sell it, that the

1 Clark County dairies are buying at less than they would have to
2 pay to a Nevada dairy under Nevada State Dairy Commission
3 statutes. Can you tell me anymore about that? Does, there's
4 been some testimony, I think, that Nevada sets some of their
5 prices at least at equal to the California price.

6 A. They do it different in Northern California. What I
7 have read on the Nevada Dairy State Dairy Commission website,
8 Northern is different than Southern.

9 Q. Okay.

10 A. And the Southern price hasn't really been tested
11 recently, because once Clark County had Congress remove them
12 from the Federal Order, they sourced their milk in Utah and in
13 California. So I guess I would, I did make this statement and
14 my, this is what I believe is true, but it hasn't been tested.
15 As far as, in other words, I haven't went, we, our company
16 hasn't went to these plants and tried to sell them milk.

17 Q. Okay. What is the established minimum price that would
18 be applicable if, at those plants if they were to be buying
19 from Nevada farms?

20 A. I don't know. I don't know, honestly. It's on their
21 on the Dairy Commission website, but I don't know what it
22 actually -- I don't think it would be relevant, because I don't
23 know that they would, those plants would not -- I couldn't
24 enforce -- I couldn't enforce it, they would just buy the milk
25 in California or Utah.

1 Q. Okay.

2 A. That's what I'm making my statement about.

3 Q. Okay. And what is it that leads you to believe that
4 they are paying less for the milk from California and Utah than
5 they would be required to pay if they were buying from a Nevada
6 farm?

7 A. Because it's my understanding that they are paying
8 over, California overbase, plus a little.

9 Q. Just enough to make it worthwhile for the California
10 farmers?

11 A. And they are primarily Class 1 plants and they are not
12 paying anywhere near a Class 1 price.

13 Q. Okay. So does it work the same way going from Nevada
14 into California, that farms in Nevada, plants in California
15 don't have to pay a California price to the farms in Nevada, so
16 they buy for something less?

17 A. My understanding is that CDFA does not regulate what we
18 pay an out-of-state farm for milk.

19 Q. Okay.

20 A. However, we pay our farm the same price that we pay all
21 of our other farms, plus a premium.

22 Q. Right. And I understand that, and I'm not challenging
23 that or questioning that. I'm looking to your testimony here
24 about the transactions going the other direction, and thinking
25 about other transactions in California that don't involve

1 exempt producer-handler volumes, and would it not be your
2 thought, based on your knowledge of how these things work, that
3 a California plant, if it was buying milk from a Nevada dairy
4 farmer, didn't have to pay the California minimum price for the
5 same reasons that the Nevada plant doesn't have to pay a
6 minimum price, that if they were, they would buy it for
7 something less than they would need to pay in California.

8 A. I guess that's true. But to my knowledge, that's not
9 currently, I mean, there was one other Northern Nevada producer
10 that testified earlier in the hearing, and they sell some milk
11 into Northern California, and I don't know what price they
12 receive, but it is not, there's not a lot of milk from Nevada
13 traveling into California, other than that producer that
14 testified and ourselves.

15 Q. But that plant in Northern California wouldn't have any
16 real reason to go to Nevada for milk?

17 A. No, well, I understand it is a long-term relationship
18 they have had.

19 Q. Yeah. But there would really be no reason to even
20 continue it financially unless it was advantageous to the
21 plant?

22 A. I can't speak to that.

23 Q. Okay. What's the utilization, Class 1 utilization down
24 at Rockville that Ponderosa receives in its plant blend?

25 A. Rockview Farms is, I would, I don't know the specifics,

1 but I would say we are more than 85 percent Class 1.

2 Q. Okay. Besides Class 1, what other products are made
3 down there?

4 A. We make some ice cream mixes, and then we have some
5 Class 4a, and creams, and that's mainly it, mainly. Ice cream
6 mixes and some creams, Half-and-Half, eggnog.

7 Q. Okay. Thank you. I think that's all, all the
8 questions I have at the moment.

9 JUDGE CLIFTON: Mr. English?

10 CROSS-EXAMINATION

11 BY MR. ENGLISH:

12 Q. Chip English. Good afternoon again, Mr. DeGroot.

13 A. Good afternoon.

14 Q. I guess I should be liking all the references to
15 Hillside and Ponderosa Dairy, right?

16 So Rockview is located in Los Angeles County?

17 A. Correct.

18 Q. So under the Dairy Institute proposal as amended this
19 week as to location, as to transportation allowances, the
20 highest allowance for shipments to plants to Los Angeles is 54
21 cents per hundredweight, and so that's 119 miles, and from what
22 you told us, that means you would qualify for that 54 cents if
23 Proposal 2 were adopted and if --

24 A. I haven't read any of that. I heard that from Nicole,
25 but, yeah, I assume we would, if that's --

1 Q. Well, don't tell me what you heard from your lawyer.
2 So if Proposal 2 were adopted, in which case we have the two
3 blend price pools, you would have, you would get the
4 traditional blend price, correct?

5 A. Okay.

6 Q. On Proposal 2, and would get that transportation
7 allowance, correct?

8 A. I'll take your word for it.

9 Q. Okay. One of the things you have talked about on
10 Page 4 is the fact, of course, that out-of-state milk is not
11 permitted to participate in the quota benefits. And given the
12 fact that Ponderosa is out-of-state, to the extent there's any
13 political discussion of what to do about quota, what role, if
14 any, would a Nevada shipper have in influencing California on
15 that?

16 A. I'm not sure I understand the question, but --

17 Q. Well, you understand that the California quota system,
18 that the dairy farmers in California have a vote ultimately
19 about how that gets dealt with?

20 A. Yes.

21 Q. Okay. What -- do you have a vote?

22 A. No.

23 Q. Okay. So participation in quota is not just you don't
24 get the money, you also don't get to vote on how it is done,
25 correct?

1 A. That's right.

2 Q. Okay. That's all the questions I have. Thank you.

3 A. Thank you.

4 JUDGE CLIFTON: Who next has questions for Mr. DeGroot?

5 Mr. Richmond.

6 MR. RICHMOND: Bill Richmond, USDA. I don't think we have
7 any questions, we just wanted to thank you for your testimony.

8 MR. DeGROOT: Thank you.

9 MR. RICHMOND: You're welcome.

10 JUDGE CLIFTON: Are there other questions of Mr. DeGroot?

11 Mr. Beshore?

12 CROSS-EXAMINATION

13 BY MR. BESHORE:

14 Q. Marvin Beshore. I apologize if this has been covered,
15 but I can't remember and can't find out quickly. At the farms
16 that are, the family farms that are in California, which I
17 guess are your father's, is there regular quota owned on those
18 farms as well as exempt quota?

19 A. Only on the one near Hanford in Tulare County there is
20 regular quota owned.

21 Q. Okay. Thank you.

22 JUDGE CLIFTON: Before I invite redirect, are there any
23 other further questions for Mr. DeGroot? Is there any
24 redirect? The answer is no -- no, your Honor.

25 Mr. DeGroot, I thank you so much. This is so clear and

1 so straightforward, and you did such a good job preparing it
2 and reading it into the record. I'm just delighted that you
3 went to the extra work to do this. Thank you.

4 MR. DeGROOT: Well, thank you. And thank you for the
5 opportunity to speak at the hearing.

6 JUDGE CLIFTON: I believe we are ready for
7 Commissioner Whitcomb. Oh, I'm sorry, Mr. Hill?

8 MR. HILL: I would like to address one thing.

9 JUDGE CLIFTON: And I -- all right, you may. Did I admit
10 178? I think I did. All right. Good.

11 MR. HILL: Again, this is Brian Hill. I don't know if this
12 has been addressed overtly earlier in the hearing, but Dairy
13 Program Agricultural Marketing Service does have a
14 Proposal Number 5, it is to, again, I quote:

15 "Make such changes as may be necessary to ensure that
16 all provisions of any potential marketing agreement or order
17 that may result from this hearing, conform with each other."

18 We have heard some testimony from other people, I think
19 even today we had Mr. Tosi mention he would be fine with such
20 changes. Often times they are necessary because we can't
21 predict every outcome, so I just want to have that on the
22 record.

23 JUDGE CLIFTON: Thank you. And no, it had not been done,
24 so that's good. All right. Does anyone have any comment in
25 response to Mr. Hill's pointing out that there is a Proposal

1 Number 5? There are no responses.

2 And are we now getting another document? Good.

3 Commissioner Whitcomb, you may be seated and we will wait until
4 the document's been distributed before we proceed. Thank you.

5 I'll mark this document as Exhibit 179.

6 (Thereafter, Exhibit Number 179, was
7 marked for identification.)

8 JUDGE CLIFTON: All right. The documents have been
9 distributed. Let me swear you in, Commissioner. Would you
10 raise your right hand, please?

11 Do you solemnly swear or affirm under penalty of
12 perjury that the evidence you will present will be the truth?

13 MR. WHITCOMB: I do.

14 JUDGE CLIFTON: Thank you. Please state and spell your
15 name.

16 MR. WHITCOMB: I'm Walter E. Whitcomb. W-H-I-T-C-O-M-B.

17 JUDGE CLIFTON: Thank you. Mr. Smith, you may identify
18 yourself and proceed.

19 MR. SMITH: Thank you, your Honor. My name is Dan Smith,
20 Attorney in Montpelier, representing the Maine Dairy Industry
21 Association, the Kentucky Development Council, Georgia Milk
22 Producers, and the Tennessee Dairy Producers Association.

23 DIRECT EXAMINATION

24 BY MR. SMITH:

25 Q. Good afternoon, Commissioner Whitcomb. Did you prepare

1 the statement that you are about to read into the record?

2 A. I did.

3 Q. Can you please, your Honor, I need to add one further
4 comment. For a number of years I represented the Department,
5 and particularly worked with Walt all over the country. That
6 association ended last year. Commissioner Whitcomb asked me to
7 go through the formality of presenting his testimony, but I'm
8 not doing that in any way on his behalf, it is only as a
9 formality. So with that qualification, Commissioner Whitcomb,
10 please read your statement into the record.

11 A. Thank you. Thank you, your Honor.

12 My name is Walter E. Whitcomb. I'm testifying in my
13 official capacity as the Commissioner of the Department of
14 Agriculture, Conservation and Forestry for the State of Maine.
15 I also serve as the Chair of the Northeast Association of the
16 State Departments of Agriculture, which includes Pennsylvania,
17 New York, New Jersey, Delaware, and the six New England states.
18 The State of Maine and the state agency that I have as a
19 responsibility, are very involved with the dairy policy,
20 particularly as it impacts the producers in the predominantly
21 Class 1 markets in Maine and New England.

22 I'm also testifying as a farmer. My daughters, having
23 returned to the family farm following their studies at Cornell
24 are, at least, the fifth generation to farm the land and milk
25 cows in our town of Waldo, Maine. I'm also testifying as a

1 farmer greatly concerned about my daughters' capability to keep
2 the farm they are now operating. My family's
3 multi-generational experience is representative of families
4 that continue to make investments in dairy farming across
5 New England and the Northeast.

6 My testimony also reflects my ten-year experience both
7 as a farmer and as Commissioner, working to promote an
8 amendment to the Federal Order system's Class III pricing
9 series. This effort was started in 2006 by our state's
10 producer group, the Maine Dairy Industry Association, which is
11 similar to both the Kentucky Dairy Development Council, and
12 Georgia Milk, which you heard about yesterday. At that time, I
13 was a Board Member and the designated point person for the
14 effort. As part of this effort, we formerly proposed an
15 alternative Class III pricing series. I testified in favor of
16 this proposal during the Department's Make Allowance Hearing in
17 2007, and continued to aggressively pursue our proposed change
18 right up through the 2014 Farm Bill.

19 JUDGE CLIFTON: Commissioner, I'm not sure the beginning of
20 that sentence was clear. When you said "I testified", so would
21 you read that sentence again, please.

22 MR. WHITCOMB: Certainly. I thank you.

23 I testified in favor of this proposal during the
24 Department's Make Allowance Hearing in 2007 and continued to
25 aggressively pursue our proposed change right up through the

1 2014 Farm Bill. This experience taught me a number of lessons,
2 including just how hard it is to make needed changes to Federal
3 Orders.

4 I support the inclusion of California in the Federal
5 Order system, but only if such an inclusion can be achieved
6 without any detrimental impact on the Northeast dairy industry.
7 As a policy maker, I support this effort by the three
8 Cooperatives to join the Federal Order system. Federal dairy
9 policy should be greatly strengthened by having California
10 dairy an integral part of the Federal system, subject to the
11 uniform regulatory provisions, rather than operating on its own
12 regulatory island. In particular, the inclusion of California
13 would make it easier for the U.S. Department of Agriculture,
14 ("the Department") to proceed without further delay and hold a
15 hearing to rationalize the Class III pricing series. Further,
16 as a dairy farmer, I certainly understand the need for producers to
17 obtain more orderly market conditions and improved producer
18 prices.

19 However, I am here testifying because of the potential
20 negative impact of the Department's preliminary analysis --
21 excuse me, I'll start over again. However, I'm here testifying
22 because of the potential negative impact the Department's
23 preliminary analysis indicates the Cooperative proposal, as
24 well as the Institute's, will have on the Northeast dairy
25 industry. The Department's analysis indicates both proposals

1 will lower producer prices in the Northeast. The amount of
2 this reduction is predicted to be relatively small, but so are
3 dairy profit margins most years. California producers should
4 understand that no dairy farmer should be asked, nor can they
5 afford, to absorb even a minimal reduction if a reduction may
6 be avoided.

7 I appreciate that the Department has included analysis
8 of the proposal's impact on regions outside of California as
9 part of the hearing record. As it weighs the many nationwide
10 impacts, the Department must account for this evidence as an
11 essential consideration in deciding whether to promulgate the
12 California order as proposed. The Department should only
13 establish the Order if it concludes the preliminary evidence
14 has been overcome, and determines that the Order will not
15 reduce producer pay prices in other regions. If it cannot be
16 so determined, then the Department should not promulgate the
17 Order.

18 As indicated at the onset, the first basis for my
19 testimony is to officially represent the interests of the State
20 of Maine. My testimony in this section is primarily intended
21 to express concern for the potentially adverse impact of the
22 proposed order would have on dairy farm interests in my state,
23 and the state's support programs that serve to maintain Maine
24 dairy farm pay prices at a marginally sustainable level. The
25 public policy importance of the presence of local milk

1 production in all regions of the country, should, I hope, be a
2 given in all of this discussion.

3 There are other states in the -- in the East and the
4 South because of the federal price volatility --

5 JUDGE CLIFTON: Start again.

6 MR. WHITCOMB: Yes, I will. Beginning of the sentence:

7 There are other states in the East and South that,
8 because of Federal price volatility, also try to stabilize
9 local producer prices. In our state, these programs are a
10 lifeline for modern Maine dairy farms that now operate subject
11 to an increasingly unresponsive federal price policy, federal
12 pricing policy, that in almost, that in an almost completely
13 consolidated marketing environment, neither of which provides
14 the consistent cash flows required for sustainable operation.
15 These are farmers who have traditionally lived with
16 self-discipline, adjusting to meet local market demands.

17 JUDGE CLIFTON: Let me go with you to the beginning of this
18 paragraph.

19 MR. WHITCOMB: Yes.

20 JUDGE CLIFTON: And you mentioned, I would like you to read
21 again the second sentence of the paragraph, beginning in our
22 state.

23 MR. WHITCOMB: In our state, these programs are a lifeline
24 for modern Maine family farms that now operate subject to an
25 increasingly unresponsive federal pricing policy and in an

1 almost completely consolidated marketing environment, neither
2 of which provides the consistent cash flows required for
3 sustainable operation.

4 JUDGE CLIFTON: Thank you. And you may go ahead and read
5 the next sentence, because that's almost where we left off.

6 MR. WHITCOMB: Correct, thank you.

7 These are farmers who have traditionally lived with
8 self-discipline, adjusting to meet local market demands.
9 Despite my concerns, I hope the Department will find that the
10 evidence will, in the end, support adoption of a California
11 Order. My testimony as Commissioner further -- excuse me, I'll
12 start that again. My testimony as Commissioner, serves further
13 to propose some provisions the Department can take to allow the
14 Order to be more easily amended than has recently proven
15 possible for existing Federal Orders. This testimony draws
16 from the recent concerted efforts of my fellow Northeastern
17 Commissioners, in a region that includes Pennsylvania and
18 New York, as well as smaller milk production states, to make
19 the Federal Order amendment process more dynamic in response to
20 the now more dynamic dairy marketplace. The Department has
21 held only two hearings since the comprehensive Federal Order
22 Reform occurred more than 15 years ago, even though
23 Secretary Vilsack's review committee strongly highlighted the
24 need for corrective change to the basic Class III cheese price.
25 It is cause for concern that the Department might prove equally

1 unable to amend the California Order over time, given that this
2 new Order will induce more than 20 percent of the nation's milk
3 supply into the federal system.

4 JUDGE CLIFTON: Okay. Would you re-read again just from
5 the comma on that last sentence.

6 MR. WHITCOMB: Given that this -- given that this new Order
7 will introduce more than 20 percent of the nation's milk supply
8 into the federal system.

9 As noted at the beginning, my testimony is further
10 derived from my family's multi-generational -- I'll start that
11 again. As noted at the beginning, my family -- my testimony is
12 further derived from my family's multi-generational experience
13 in farming.

14 JUDGE CLIFTON: In? Just the end of the sentence.

15 MR. WHITCOMB: In dairy farming.

16 JUDGE CLIFTON: Thank you.

17 MR. WHITCOMB: Thank you.

18 The family's dairy farm is the basis of both my
19 personal testimony and the background for the broader public
20 interest-based discussion.

21 Like most New England farms up to the World War II era,
22 my grandparents operated a diversified, multi-purpose farm.
23 The farm had other animals besides cows and my grandfather
24 worked his team in the woods, sold butter and produce that went
25 on the boat to Boston's Faneuil Hall, and sold small amounts of

1 gravel during the Depression for local road building. This
2 form of farming provided a way of life that was not nearly as
3 dependent on money or cash flow to be sustainable. Family
4 members and neighbors provided a labor force not requiring much
5 cash for wages and benefits. Family and neighbors worked
6 together to enable the farm to operate without reliance on the
7 most modern machinery, and all the accompanying operating
8 expenses.

9 As occurred everywhere else, accumulated technology and
10 productivity changes accelerating in the 1950's significantly
11 altered the long-standing working equation on our farm and all
12 around us. The tale of cement floors, bulk tanks, manure pits,
13 and milking parlors has often been told. With the associated
14 increase and demand for capital prompted by these changes,
15 decision making on the farm was more and more dependent on the
16 price of milk. Farmers who chose to remain in production had
17 to find a return from the milk price, sufficient to cover their
18 increased capital costs for the improvements in their dairying
19 operations, and improvements in the quality of the resulting
20 consumer products. This greater reliance on the milk price as
21 a source of stable income for the farm, has accompanied the
22 dairy specialization trend as most of us have grown from
23 smaller, multi-purpose farming.

24 In our particular case, my mother -- excuse me, in our
25 particular case, my father and mother responded to this greater

1 cash flow needed by, needed, by developing our dairy farm to
2 include the sale of breeding stock as well as a milking
3 operation. This combination allowed the farm to operate
4 profitably, and over time, reduced the need to borrow capital
5 for land and buildings. As I took over managing the farm, my
6 parent's equity investment had been paid down to the point
7 where some business owners could have realized retirement. As
8 a note of caution, please don't suggest to my mother, now well
9 over 90 years old, that she is really retired.

10 Until my current re-entry into this public policy work,
11 I have been able to operate the farm, I had been able to
12 operate the farm and make necessary improvements, but could see
13 the constant uptick of annual operating expenses. The farm's
14 stability and profitability has largely been the result of
15 continuing to combine dairy and breeding cattle sales
16 operation. Our particular form of specialization was a
17 workable response to the changes in the dairy marketplace over
18 the life of our farm.

19 As Commissioner, I can confidently represent across the
20 industry -- I'll start again there. As Commissioner, I can
21 confidently represent that across the industry, Maine dairy
22 farmers have similarly adopted and improvised. Structure --

23 JUDGE CLIFTON: Have similarly what?

24 MR. WHITCOMB: Adapted and improvised.

25 JUDGE CLIFTON: Thank you.

1 MR. WHITCOMB: Structured around the in-state high valued
2 fluid demands, ours has been a long-time stable and
3 self-supporting industry. Although many know Maine for our
4 unique blueberries, potatoes, and maybe lobsters, dairying was
5 the first, dairying has the first or second largest farm gate
6 value in Maine's diverse agricultural economy.

7 While I am proud of our ability to evolve and adapt,
8 I'm increasingly concerned for my farm's future, and for all
9 our dairy farms across the state and the region. Well known to
10 everyone here, there is a persistent, chronic discrepancy
11 between the cost of production and the combined federally
12 regulated and market-based over order pay prices.

13 JUDGE CLIFTON: That's federally regulated.

14 MR. WHITCOMB: Minimum.

15 JUDGE CLIFTON: Okay. Start from federally regulated.

16 MR. WHITCOMB: Combined federally regulated minimum and
17 market-based over order pay prices. With dairy farming now so
18 cash flow dependent, this recurring discrepancy has for too
19 long now, required my family and my neighbors to perpetually
20 confront incurring more operating debt or dissipating our
21 property's equity to cash flow our operations.

22 Following expiration of the Northeast Dairy Compact,
23 largely at the initiative of Maine Dairy Industry Association,
24 the State of Maine adopted two programs to respond to the
25 increasingly -- to the increasing threat this distress poses

1 for our local milk supply. These two programs operate to boost
2 Maine dairy farm pay prices and cash flows to a short-run,
3 break even, sustainable, albeit minimum, minimal level. Maine
4 farms receive a pooled -- I'll start again. Maine farms
5 receive a pooled over order price payment through the operation
6 of the Maine Milk Commission, and a variable market-driven
7 subsidy payment from the state general fund through the state's
8 "Tier Program". In combination, these payments have, for a
9 decade, enabled Maine dairy farm pay prices to approach
10 break-even levels.

11 For purposes of brevity, I will note that information
12 on these state programs can be easily assessed on this state of
13 Maine Public Record to provide greater description. Given its
14 significance with this hearing, I will summarize and highlight
15 the operation of the, and the outcome of the Tier Program.

16 Since 2012, the State's Tier Program has paid out
17 \$15.5 million in direct support payments to the Maine's 300
18 dairy farmers, covering about 600 million pounds of milk
19 production annually. Last year alone, the state paid
20 \$10.6 million. These payment levels may seem -- I'll start
21 again. These payment levels may not seem like much here in
22 California, given our production is so miniscule compared to
23 the volume of production in California. For comparison,
24 California would have had to pay its producers, since 2012,
25 over \$1 billion to approach the level of support provided by

1 the Maine state government for its dairy industry. From this
2 perspective, the fiscal and political challenges may be better
3 understood. The total size of Northeast milk production could
4 not be viewed as a marketing threat to California. However,
5 the positive benefits of local dairy in my region and every
6 other are immeasurable.

7 Most significantly, the two Maine support programs have
8 had their impact. I certainly don't wish to dwell on the
9 misery of my neighbors, but if one compares the attrition of
10 dairy farms and milk production across New England and the
11 Northeast, one will see that the attrition rate is
12 substantially less in Maine than the region's other states.

13 Maine's dairy industry has no capability to absorb any
14 long-term reduction from a new source in market derived
15 producer pay prices. The state's dairy aid programs are under
16 severe budget stress just to respond to the negative conditions
17 created by the combined circumstance of inadequate Federal
18 Order minimum and market-based over order pricing. The level
19 of supplemental support currently provided is only break-even.
20 Any reduction in pay prices from another source will threaten
21 the viability of our programs and hence the sustainability of
22 our industry. And we are not unique as a state.

23 As indicated on the onset -- I'll start again. As
24 indicated at the onset, I do hope that the evidence presented
25 at the hearing will demonstrate that a California Order may be

1 crafted that does not adversely harm other regions of the
2 country in this manner. If so, I support its promulgation.
3 If, however, the evidence is not convincing on this key point,
4 the Department should conclude that a California Order is
5 contrary to the greater interest of the rest of the industry's
6 producers and reject it.

7 With the hope that a California Order may be adopted, I
8 provide some brief additional thoughts to encourage the new
9 Order to be crafted to enable its amendment in a more timely
10 manner. The amendment process for the California Order must be
11 more responsive than the present Federal Order amendment
12 process to ensure that it may account for the substantial
13 regional and national market changes that inevitably occur with
14 the inclusion in the Federal Order system of over 20 percent of
15 the nation's milk supply.

16 JUDGE CLIFTON: And, Commissioner, you left out the word
17 "new" in for new inclusion, and that is significant. So I
18 would like you to read that sentence again, please.

19 MR. WHITCOMB: Thank you. I will.

20 The amendment process for the California Order must be
21 more responsive than the present Federal Order amendment
22 process, to ensure that, to ensure it may account for the
23 substantial regional and national market changes that will
24 inevitably occur with the new inclusion in the Federal Order
25 system of over 20 percent of the nation's milk supply.

1 Based on my combined experience with the formal Federal
2 hearing process, process, and the Maine Milk Commission's more
3 informal, but flexible hearing process, I believe the
4 Department should establish conditions allowing for the Order's
5 adjustment by informal rule making. Clearly, the Department is
6 bound by the law's requirement of a producer referendum. The
7 referendum approval process, however, may itself be used to
8 improve the conditions, and therefore, and therefore -- and
9 thereby, allow a more flexible rule making. I'll start over.
10 The referendum approval process, however, may itself be used to
11 approve the conditions, and thereby allow for more flexible
12 rule making.

13 Once the California order is adopted, the Department
14 should aggressively employ informal notice and comment rule
15 making to respond to its impacts on the other Federal Orders.
16 Notice and comment rule making could provide a regulatory
17 dialogue that is more, that is more formal than a simple
18 discussion between industry and Department representatives, but
19 far less rigid than the formal contested case rule making
20 process. This revised form of rule making will enable
21 producers to more immediately and effectively -- I'll start
22 over again. This revised form of rule making would enable
23 producers to more immediately and effectively -- I'm putting a
24 word in the wrong place. I'll start again. This revised form
25 of rule making would enable producers more immediately and

1 effectively to raise issues of concern and to begin to develop,
2 with the Department, a formal record that could be used to
3 initiate the more formal rule making procedure, if the process
4 reveals that such a hearing is needed.

5 It does not serve the public or dairy interests for the
6 USDA hearing process to take years to advance. The Department
7 needs to respond to situations like the volatility in Class III
8 pricing that has caused so much damage to our industry. The
9 Department should take care to craft a California Order to
10 enable it to be amended in a more dynamic fashion in response
11 to profound changes that will inevitably result from the
12 position of the California Order.

13 This concludes my testimony. I thank you for your
14 consideration.

15 JUDGE CLIFTON: Commissioner Whitcomb, this is very, very,
16 interesting. Of course I want to know specifically what you
17 recommend. I know this is general and encouraging, but we'll
18 get to that in a moment. Mr. Smith?

19 MR. SMITH: Your Honor, I would like to move the admission
20 of Exhibit 179.

21 JUDGE CLIFTON: Would anyone like to question
22 Commissioner Whitcomb before determining whether you object?
23 No one. Are there any objections to the admission into
24 evidence of Exhibit 179? There are none. Exhibit 179 is
25 admitted into evidence.

1 (Thereafter, Exhibit 179, was
2 received into evidence.)

3 BY MR. SMITH:

4 Q. Mr. Whitcomb, I have one comment and a couple of follow
5 up questions. First, just byway of prolonging the terminated
6 relationship, I can't help because of my father, to notice in
7 your first paragraph that the verb transitive impacts is used,
8 and had I still been working for you, I would have won that
9 battle.

10 And then in the interest of, just I can't help myself,
11 but can you answer, where is Waldo?

12 A. I think they wrote a book about that once.

13 Q. Just a few follow up questions. Your testimony speaks
14 to the two programs, the Milk Commissions Over Order Price and
15 the Tier Program, and indicates that the further information is
16 available in the record. But if you could just briefly explain
17 the front, the two different processes for impact -- impacting
18 listen to me -- for affecting the milk price, where the money
19 comes from, I think that would be helpful to put on the record.

20 A. Well, the Maine Milk Commission derives from the same
21 era that the Federal Order system was created as a reaction to
22 the chaos in the industry in the Depression era, so that is a
23 long-standing entity that in our state has continued to be
24 effective in using the Federal Order price in creating over
25 order premiums that the market can stand, in a recognizably

1 remote part of the country. That has continued to, with its,
2 and this is the origin of the thoughts about rule making,
3 because they meet on a monthly basis and have both formal and
4 informal rule making, with -- with participation from all
5 parties, producer, processor, retailer interests, as well as
6 consumer interests. The commission is entirely made of
7 consumers so that has been a long-standing entity.

8 JUDGE CLIFTON: Let me interrupt, I'm sorry, producer,
9 processor, and retail interests.

10 MR. WHITCOMB: Everyone but the producer has a guaranteed
11 margin in the state, yes. Retailers have an interest in this,
12 yes.

13 JUDGE CLIFTON: And how do you determine which ones to
14 include in the discussion?

15 MR. WHITCOMB: The statutory responsibility of the
16 commission is for all of those entities. So they are all at
17 the table for, during, during the formal rule making process,
18 as well as gathering cost of production data for retail,
19 processor, and producer interest.

20 JUDGE CLIFTON: Thank you. I didn't mean to interrupt you,
21 but I, I don't think we have thought about the retailer, until
22 now.

23 MR. WHITCOMB: We think about them everyday on the producer
24 side, yes.

25 BY MR. SMITH:

1 Q. So the over order price comes out of the marketplace
2 and allows the market pricing mechanism to adjust some to
3 changes in milk prices; is that correct?

4 A. That is correct. It's -- it obviously can't operate as
5 an island as was discussed previously. It is based on the
6 Federal Order 1 pricing schedule with an in-state, you know,
7 adaptation.

8 Q. And the Tier Program, by contrast, how is that --

9 A. The Tier Program began in the early 2000's as a
10 response to whatever, whatever year that crisis occurred, where
11 producer prices at the Federal level, at the Federal Order
12 level, had dropped to the lower than cost of production. It
13 was felt in our state and several states have reacted
14 similarly, that there simply would not be an industry if the
15 state did not make some effort to establish a price, at
16 least -- at least close to the cost of production, to get
17 through the times when the federal price in the volatile
18 periods simply dropped below that price.

19 And so they, in separate actions, created what is, you
20 know, referred to in the state statute as the tier, which, tier
21 represents the, literally have different levels of state
22 support with more occurring for smaller sized dairies, and then
23 there are three tiers, the larger producers receiving less
24 support.

25 Simultaneously, but not connected, since it wouldn't be

1 possible, there was a tax on milk created for the general fund
2 that rises when the price lowers at the, it goes down
3 nationally. So there's a trigger mechanism for the tax and
4 also a trigger mechanism for the producer support.

5 There are a number of other state programs. I'm not
6 sure that there are any of the others that have quite that
7 level of adjustment that occurs. Perhaps the one in
8 South Carolina does, I'm not obviously quite as familiar with
9 that.

10 Q. So if putting the two together, if the over order price
11 by the milk commission and the federal minimum price and
12 whatever premiums are available in the market are reduced to a
13 certain point, then the Tier Program kicks in to make up the
14 difference up to the mandated level, tier levels?

15 A. That is correct. The other obvious fallacy in that
16 kind of thought process is that you can't go home happily ever
17 after because you have a state budget that has to obviously be
18 a part of that equation. So, you know, the many needs of any
19 state government are also there, beckoning in terms of
20 education, corrections, highways, certainly social services.
21 So even though the program is in place and the levels are
22 established through cost of production studies based on NASS
23 numbers and university studies, contracted university studies,
24 it doesn't guarantee that the funding will be there for the
25 program. So it, currently it is paying. And but it -- one of

1 the difficulties the states have in this kind of program is
2 that they are not comfortable with not being able to project
3 out four years of milk pricing. That's exactly how we react,
4 too. So, we -- they challenge the Department to offer
5 projections. And, frankly, the scribe in that discussion is
6 Bob Wellington from Agrimark, and it's not by choice, he just
7 happens to put out the projections for the region. He
8 generally goes out about six months and then establishes a
9 common number, which is, of course, bold in the milk price
10 projection world. But for state government they would rather
11 be able to plan a little bit. You know, welcome to the world
12 of dairy.

13 Q. Last question. Is it correct that some of the other
14 New England states have adopted programs with the same
15 objective in mind that you described for the Maine program?

16 A. Yes. The objective is to maintain a critical mass of
17 dairy production in their states, and so the states of
18 Massachusetts and Connecticut have a program that is of state
19 funding sources that augments producer pay prices during times
20 when the national federal minimum prices fall below the cost of
21 production. I don't think they are quite as sensitive to price
22 fluctuation changes, but the intent is still there, as are the
23 case in perhaps half a dozen other states around the Union.

24 Q. Thank you, Commissioner Whitcomb. I don't have any
25 further questions, your Honor, and Mr. Whitcomb's available for

1 cross-examination.

2 JUDGE CLIFTON: Who would like to begin with questions for
3 Commissioner Whitcomb? Well, we have somebody here from Maine,
4 perhaps he should begin.

5 CROSS-EXAMINATION

6 BY MR. ENGLISH:

7 Q. Chip English. Thank you, Commissioner, for appearing.

8 Your Honor, I actually don't have any questions. So I
9 well, actually I do, which is I hope you have a safe travels
10 and I'm jealous as heck, but, you know, wish Maine well for me.
11 That's not a question either.

12 JUDGE CLIFTON: Just say; is that correct?

13 MR. ENGLISH: Is that correct. Thank you, your Honor, for
14 helping me out, as I think you did Mr. Ligtenburg several weeks
15 ago. I just don't have any questions. I think his testimony
16 is very clear and we appreciate his appearance.

17 JUDGE CLIFTON: Thank you. The next person to question
18 Commissioner Whitcomb, please. Mr. Beshore?

19 CROSS-EXAMINATION

20 BY MR. BESHORE:

21 Q. Good afternoon, Commissioner Whitcomb. Marvin Beshore.
22 And I represent the three Cooperatives that brought the
23 Proposal 1 requesting this hearing, and that's DFA, which also
24 has some farmers in Maine, I believe.

25 A. And own a milk plant, by the way.

1 Q. And own a plant in Maine. Land O'Lakes and California
2 Dairies are the three proponents of Proposal 1 here. So just a
3 couple of questions and thoughts about the economic projections
4 and the concerns that I think, that I gather are why you are
5 here.

6 So you have not been able to be part of this whole
7 hearing, maybe you have had a chance to listen in or get some
8 reports from it, but when the economic analysis, when a witness
9 from USDA presented the economic analysis, we were able to ask
10 some questions about what went into it, and how it worked out.
11 By the way, I'm not sure people in Washington have any less
12 challenge in projecting dairy future prices than folks in
13 New England and Maine, as you have, it's a tough job, no doubt,
14 as you have indicated. So -- so one of the questions that we
15 were able to ask was, in making the economic projections, were
16 you, and I'm talking to the USDA folks, did you take into
17 account the fact that the cooperatives in California have
18 Cooperative base plants among their producer members, that is,
19 production control agreements among their producers, as does
20 Hilmar Cheese Company, the largest private company or
21 non-Cooperative buyer. Were you able to take that into account
22 and model it into the projected results from the hearing? And
23 they indicated they were not, that there was really, there's
24 really no way to take those kinds of, to model those sorts of
25 things into the, you know, into that kind of economic model.

1 Okay. So my question is, since they couldn't, since
2 they weren't able to take into account that there are built-in
3 production controls in the California system, therefore, the
4 results didn't reflect that, would that, with me bringing that
5 to your attention, would that have any impact, or how would you
6 react to that in terms of your concerns from Maine that over
7 stimulation of production out in California could affect your
8 prices there?

9 A. I don't know that we were, we were necessarily offering
10 these comments assuming that the, you know, introduction and
11 acceptance of the Order was going to over stimulate production,
12 I certainly recognize that the limitations that I have heard
13 even in the brief two days I have been here, and somewhat aware
14 of California production, it's, on the other hand, you know,
15 you're -- we look at the difference in the marketing that you
16 have here, where you have a, what is it 15 percent Class 1
17 market, versus in our state, you know, it is nearly all. And
18 worry that that downward pressure of the other classes, even
19 though it is not supposed to be part of the Federal Order
20 discussion, it's still going to impact our prices.

21 We, you know, I don't profess to have any, nearly as
22 much knowledge probably as anybody in this room as far as price
23 expectations. But we certainly wanted to register our worry,
24 as you heard from producers and representatives from producer
25 groups yesterday in those regions that still need additional

1 milk production, the pressure would be negative. I just think
2 that with the discussion that goes on in so many places about
3 the regional need and the obvious political importance of
4 having production in every part of the country, that want to be
5 very, very cautious, that, you know, we don't end up with even
6 a small amount of pressure in areas that are very, very
7 sensitive to price fluctuations.

8 You know, one the things that we find even where I'm
9 located, that we have a \$20 per ton upcharge on freight for
10 grain, all of which has to be imported from out-of-state from
11 Vermont, that there's that much increase production cost that
12 this simply isn't reflected in anybody's numbers.

13 So we register our concern with this testimony. You
14 know, I certainly appreciate USDA's challenge to try to
15 understand crystal balls that are very clouded, as well as so
16 many, so many factors.

17 The California growth has been phenomenal to watch, and
18 as a cattle marketer I participated in augmenting that by
19 selling quite a few cattle to folks who started Hilmar Cheese,
20 so we are an interrelated industry in many ways, and we hope
21 that they, they feel that, you know, their gain shouldn't be at
22 somebody else's loss. So I don't think it is close to the
23 answer that you were seeking, but it's just more thoughts.

24 Q. I'm just seeking your thoughts or your, you know, your
25 reactions.

1 Let me ask, you know, your thoughts on another possible
2 relationship of the action, of this hearing, to dairy
3 activities in Maine and New England. I'm sure you have got
4 some Agrimark members in Maine, probably some that deliver milk
5 over to the cheese plants in Vermont and make that --

6 A. I don't -- I mean, they are in Agrimark certainly. I
7 think almost all of our milk goes to either the fluid markets
8 in-state or the fluid markets in what's called the Boston milk
9 shed, so we try not to, they try not to send it over two
10 mountain chains to a cheese plant for a lesser price, yes.

11 Q. Okay. So there's not -- probably not much going over
12 to the Cabot plants?

13 A. No, not from our state.

14 Q. Well, there's been some testimony that there's Cabot
15 cheese in the area here, available in stores here. And --

16 A. Good.

17 Q. -- and if the, presumably the ability to move that
18 cheese from the East would -- would be only affected
19 positively, if any other way, if the price that the cheese
20 makers in the western part of the country had to pay went up as
21 in our proposal. Do you follow that?

22 A. No, I don't. I guess I would ask that again.

23 Q. Okay. So if the competitors for the cheese
24 manufacturer competitors of cheese makers in the Eastern part
25 of the country had to pay, look at in California, had to pay

1 the same price for milk going into cheese that has to be paid
2 by the cheese makers in the East, that could only be a
3 positive, if anything, for the cheese makers back East,
4 wouldn't you think?

5 A. I -- you know, I -- perhaps -- I mean, you know, there
6 is this state of Wisconsin in between that, you know, would be
7 a significant influence on the cheese market. When you look at
8 a Hilmar, which is, when the bulk certainly is a non-branded
9 enterprise, you know, they are a very bulk product. I don't
10 think Cabot would make it in the long run if they didn't have a
11 little bit of a higher-end approach to their marketing which
12 make it desirable anywhere in the country, so I'm not sure that
13 we would, the question really compares apples to apples, to be
14 honest.

15 Q. Okay. Do you -- you sold Jerseys to the Hilmar --
16 Hilmar Farms?

17 A. Yeah. Comment yesterday, we enjoyed those families
18 walking through the hills of New England picking out cattle,
19 and that was, as well as people in this area. Yes, it is a
20 traditional part of the business structure of New England farms
21 who don't have land base but have the genetics, and then it
22 progressed to the Central Plains where the expansion is now.

23 Q. Okay. Thanks very much.

24 JUDGE CLIFTON: Mr. English?

25 CROSS-EXAMINATION

1 BY MR. ENGLISH:

2 Q. Chip English. See, if I had gone second, I would have
3 had questions.

4 You said something in the discussion with Mr. Beshore I
5 just want to carefully on the record for those who may not
6 visit New England as those of us who live there, or at least
7 try to live there. You talked about how the milk that comes
8 out of Maine, to the extent there is milk coming out of Maine,
9 tends to move down to Boston, presumably on Interstate 95,
10 correct?

11 A. Uh-huh.

12 Q. Yes?

13 A. Yes, essentially the road in, not that make us too
14 isolated, but yes.

15 Q. Well, but the reality is --

16 A. Yes.

17 Q. -- sir, is it not the case that there really is no
18 four-lane road that consistently moves East/West from Maine,
19 through New Hampshire, to Vermont for Cabot, right?

20 A. I think that comment actually probably is worth, I'm
21 glad you brought it up, it would be easier to get Maine milk to
22 New York City than it would be to Cabot Cheese, just because of
23 the road systems. It may seem, if you look at a map and don't
24 look at the topography, there are no, there's barely a two-lane
25 road that goes in between. You go to Western Massachusetts

1 then you go up to Cabot essentially, so there are some, in that
2 part of the country, some very significant geographical. And
3 it is not really a joke, there is one interstate into the
4 state. And it's fine, because the rest of the, the rest of it
5 is to Canada anyway, and they are not real accepting of Maine
6 milk, or anybody else's for that matter from America, which is
7 unfortunate because it would be good trade.

8 Q. And it is not just the mountains, there's lakes. There
9 are two-lane roads that go North, and then they go West, and
10 then they go South, and then they go East, and then they go
11 West, and so there's no straight route from Maine to Vermont
12 that you can really use, correct?

13 A. There's no straight route anywhere in New England, it's
14 just not made that way.

15 Q. Thank you, sir.

16 See, I finally had my questions, your Honor.

17 JUDGE CLIFTON: Commissioner Whitcomb, your statement does
18 not adequately express your agricultural background. You have
19 done a lot in farming. Could you expand a little bit, during
20 your career, your professional life and so forth?

21 MR. WHITCOMB: I could if you really want that, yes. Well,
22 I graduated from the University of Maine. My mother was a
23 Cooperative extension County Agent, 4H agent. The dirt roads
24 around the countryside teaching people home economics, married
25 the farmer in Waldo, Maine. There is a place. There is also a

1 county by that name. Samuel Waldo is a Revolutionary War
2 General who got a lot of land because he was on the right side
3 and they took it away from the wrong side up there. The
4 soldiers went to Canada and the Generals got the land.

5 I went to University of Maine, studied Animal Science.
6 Spent actually three years working for the National
7 Agricultural Fraternity out of Chicago, so I visited every
8 state in the Union, except Rhode Island. I haven't been there
9 yet, just as kind of a little thing about not going there yet.
10 But mostly dealing with agricultural issues. Went back to the
11 farm, and then was elected to the State Legislature to be on
12 the Agriculture Committee and then some other roles.

13 Once term limits kicked in in Maine, the same time they
14 did here in California, so I went back to the farm. My
15 father's health was beginning to fail. I farmed until I got
16 involved with this Federal effort to look at milk prices. Was
17 there at all the Vilsack Committee hearings, and was part, at
18 the time, worked with Dan Smith and the dairy group to come up
19 with an alternative a little bit interesting proposal to
20 Class III milk pricing to at least get some discussion going
21 about getting away from the CME as a, as perhaps not having a,
22 being a little bit of a low ball price.

23 Our perspective is, admittedly, is a very small Class I
24 market, but we think the discussion being tilted that way is
25 perhaps a little bit of a balance to the price that's being

1 derived with the commodity driven price points that you see
2 here in California now with the very low Class 1 utilization.
3 So that's been a little bit of the journey we haven't had in
4 this discussion.

5 Again, the Commissioner of Agriculture in 2010 with the
6 change of administration in our state. The daughters said they
7 would come back from their wanderings around the country to run
8 the farm, so I get invited back to the farm to fix things
9 occasionally.

10 JUDGE CLIFTON: What did they study at Cornell?

11 MR. WHITCOMB: They both were dairy science. One worked in
12 farmers markets out of New York City, and the other one was in
13 New Zealand when I got call to see if I wanted to be
14 Commissioner. And they said, sure, we'll run the farm, dad.
15 It's not easy. You know, and they still have, as I mentioned,
16 a grandmother that's still, my mother, their grandmother, is
17 perhaps not as easy for all of them to agree as it is.

18 So it's a family, particularly family operation. It's
19 only milking about 150. They have expanded to other marketing
20 things, meat, veal, cheese production on their own, so forth.
21 But somewhat representative. The farms in Maine range from
22 1800 milking cows to very small. A lot of artisan cheese
23 makers.

24 JUDGE CLIFTON: With regard to the pricing of Class III,
25 what are your recommendations?

1 MR. WHITCOMB: Well, we were advancing a proposal that
2 looked at a different survey price to look at where there was,
3 and it is very limited, you know, true competition in this
4 country, and value what the additional value that producers
5 could receive, where there was actual bidding or competition
6 for milk. And it's so rare in this country, that there weren't
7 very many places. And that's the challenge with the proposal
8 we had, was just to look at a basis other than, other than the
9 CME. So little dairy is traded there that we were part of a
10 course that felt that that was not perhaps reflective of the
11 true market, but, of course, you know, those who built that
12 pricing model, Novakovic and others from Cornell, said there's
13 got to be something for a basis for understanding. And so we
14 understand how it got there.

15 We were providing, at least inspiring a discussion for
16 other sources of -- for the price point. But we were trying
17 more than anything to have, to initiate the hearing process.
18 We were able to get, you know, our petition was granted for, to
19 be a part of the make allowance in '07, 17 out of 60 some
20 proposals. So the dairy group, you know, did get a chance to
21 air its discussion and was essentially sent back to come back
22 with additional work done on their proposal, and then it got
23 caught up in very, very extensive Farm Bill discussion.

24 And, frankly, the discussion we had with Congress over
25 the last three years was put on hold until this discussion was

1 settled. So they essentially said come back if you choose
2 after the California question has been settled. So we keep it
3 in front of those who want to look at other opportunities, even
4 while the, certainly the industry becomes more consolidated as
5 it goes along.

6 JUDGE CLIFTON: So if you don't think there should be so
7 much reliance on the Chicago Mercantile pricing, what would be
8 a good alternative?

9 MR. WHITCOMB: Well, the alternative that we put together
10 and actually with some people with an extensive amount of
11 background worked on, including Dairy Programs, who worked with
12 us for many years actually, looking at identifying, using the
13 Herfindahl Index, of where true competition is, we actually
14 used an index, and surveying those data spots, and about five
15 of them around the country, there's Lancaster County up in
16 Minnesota or some of those places, where there really is
17 competition for milk. That's what we were using as an
18 alternative starting point for the discussion.

19 And then, of course, understanding who owns who in the
20 dairy business in terms of where it's competitive and where you
21 have to question where it's competitive is part of the
22 challenge. So there was a serious discussion done and
23 analysis, and curiously, Maine milk producers and New Mexico
24 milk producers were part of that process of analyzing data and
25 trying to get a, have a, you know, discussion, a hearing, rule

1 making discussion about, you know, weighing. We participated
2 in presenting some of the data to the Vilsack study group that
3 occurred as a response to the '09 discussion, and were
4 mentioned in his final report. You know, we and National Milk
5 were noted in two separate items that where the Secretary's
6 report said, yes, we should have further examination of milk
7 price discovery. So it's -- it's on the, it's on the
8 Secretary's list, but everything was put on hold while this
9 process reaches whatever point it is going to reach.

10 JUDGE CLIFTON: What geographic area does Federal Order 1
11 encompass?

12 MR. WHITCOMB: Well, it, like all the other orders, is
13 expanded its region. I call it the Boston market, because
14 that's what I group up with. It now includes New York City, I
15 think maybe Philadelphia, a lot of people. Midway up through
16 New York, the Western New York area is not in the Federal Order
17 1, and I know it stops somewhere in Pennsylvania and stops shy
18 of the Mid-Atlantic group down in Washington, DC. So a whole
19 lot of people draw milk obviously from New York State, all of
20 New England, parts of Pennsylvania.

21 The question about Agrimark. Agrimark started as a
22 New England cooperative, obviously, consolidation of many other
23 cooperatives. The majority of the members of Agrimark are now
24 West of the Hudson River. The majority the members are
25 actually from New York State, sort that of reflects the

1 expansion of the order. But even in that order it is not
2 strictly fluid by any means. In fact, it is --

3 JUDGE CLIFTON: Does anyone else have questions for
4 Commissioner Whitcomb? Ms. Becker?

5 MS. BECKER: Lauren Becker, USDA. We don't actually have
6 any questions, we just wanted to thank you for coming to
7 testify, Mr. Whitcomb, and to express that we are available to
8 discuss any suggestions that you and your staff have to make
9 the Federal Order process as timely and as inclusive as
10 possible.

11 MR. WHITCOMB: Well, certainly my comments weren't to
12 reflect in any way the lack of effort on the part of the staff.
13 Over the years you have been very, very helpful, supportive,
14 and enjoyed working with a number of you. And we certainly
15 understand the political process, we run into it quite a few
16 times.

17 I would like on the record to thank the tremendous
18 amount of support over the years your staff, Dana Coale, and
19 Will Francis, and many of the others who aren't here, to
20 frankly a small group of producers in the far flung part of the
21 state who have been willing to entertain some challenging ideas
22 and been willing to help us work through those. So, thank you,
23 and look forward to working with you again.

24 JUDGE CLIFTON: Thank you. Mr. Smith?

25 MR. SMITH: Thank you, your Honor. I would like to echo

1 Mr. Whitcomb slightly and thank you, the Department, and the
2 proponents for their courtesy in assisting my clients, along
3 with Mr. Whitcomb in presenting the testimony in this parachute
4 form of presentation. So thanks to all. And I have nothing
5 further.

6 JUDGE CLIFTON: All right. Thank you. We are so happy
7 that you came here. And this is a very important statement. I
8 do think everyone anticipates that if there becomes a Federal
9 Milk Marketing Order for California, the impacts will be huge
10 and cannot be entirely foreseen, so I appreciate your request
11 that there be some follow up.

12 MR. WHITCOMB: Well, thank you very much. Appreciate your
13 courtesy and the chance to be here and the forum for continuing
14 discussion, and I wish everyone safe journey home as well, some
15 day.

16 JUDGE CLIFTON: Thank you, Commissioner. All right. I
17 think we completed today's agenda of witnesses, except for
18 Mr. Beshore beginning his rebuttal. So Mr. Beshore, would you
19 come forward and tell us what you suggest? It is 4:42, so we
20 don't have much time left.

21 MR. BESHORE: Well, I would suggest Mr. Hollon presenting
22 his first statement, although I'm not getting much support
23 around me for that thought process.

24 JUDGE CLIFTON: Remind us how limited Mr. Hollon's
25 participation will be at the beginning of next week and they

1 may reconsider.

2 MR. BESHORE: Well, he's only available until about
3 11:00 a.m. on Monday and then not available until Wednesday.
4 So with the rebuttal that we have through Mr. Hollon, which
5 involves, if I get my numbers right, I don't know, four of our
6 nine pieces or so, that's not going to get done before
7 11:00 a.m. Monday.

8 JUDGE CLIFTON: Yeah, so, I don't want to -- we have done
9 so well having every day be a full day. I don't want us to get
10 halfway through Monday and have to come to a screeching halt
11 until Wednesday.

12 MR. BESHORE: Well, there's other work, you know, we're
13 prepared to fill in the time with other parts of our rebuttal
14 case. Certainly, you know, certainly Monday, and, you know,
15 probably, probably take most of the day on Tuesday. We'll
16 certainly use all of Monday and most of the day on Tuesday, but
17 we will need to finish Mr. Hollon on Wednesday when he's back.

18 JUDGE CLIFTON: All right.

19 MR. BESHORE: There's no, at this point there's no
20 possibility of not having it work that way.

21 JUDGE CLIFTON: Okay. So from your prognosis, Mr. Beshore,
22 we can all expect that we will still be at this hearing at
23 least through Wednesday. Do you agree?

24 MR. BESHORE: Yes.

25 JUDGE CLIFTON: All right. Mr. English, let me hear from

1 you right now.

2 MR. ENGLISH: Chip English, it's certainly up to
3 Mr. Beshore whether he wants to use these 15 minutes to get
4 started, I'm not going to push him to do it, but I'm not going
5 to say no.

6 You requested Dr. Schiek to return to the stand, and we
7 heard very loud and clear. We saw how today was likely to go,
8 and obviously we're not going to interfere with Monday. If
9 there's a gap on Tuesday, Dr. Schiek will be ready to go
10 Tuesday, so we can fill a gap on Tuesday with that.

11 JUDGE CLIFTON: Good to know.

12 MR. ENGLISH: So that would be good. But as to whether or
13 not, you know, Mr. Hollon starts now for 14 minutes, I leave
14 that up to him and his lawyer and to you.

15 JUDGE CLIFTON: All right. The other thing that I need to
16 know for next week, and Mr. Lai is still here, is whether there
17 will be any additional testimony for the, from the Proponents
18 of Proposals 3 and 4 with regard to economic data and the like.
19 Earlier today Ms. Hancock mentioned times that are bad for her
20 in December. So I'd just like to say that the two weeks that
21 we were thinking about for December, if we have to come back,
22 and I'm hopeful we will not, were December 7 and December 14.
23 Now, Ms. Hancock said December 9 through 15 were out for her.
24 So that would leave December 7 and 8. So if we were to have to
25 reconvene in December, and everyone could make it December 7

1 and 8, that's probably when we would do it. Again, I'm very
2 hopeful we will not have to do that. All right.

3 Mr. Beshore, it's up to you whether you want to put on
4 evidence now or whether you want to give us an early stopping
5 point.

6 MR. BESHORE: We're not going to get done with the first
7 statement. I don't think we'll get it, we can push and come
8 close to getting it presented directly, but I think we should
9 call it a day probably. You know, just thinking about the
10 schedule next week. I -- and let me just, I'll take the time
11 and outline, outline our presentation here.

12 I already earlier this morning or during the morning,
13 gave Mr. English a preview. So just for everybody.
14 Mr. Hollon's first piece is related to some additional data and
15 analysis on the price impact of pricing the interstate
16 transactions in California. There's some evidence, some data
17 wasn't available when he testified first, and he is just
18 quantified the impacts of, from the data we have now.

19 The second piece is a proposed modification relating to
20 the exempt plant provisions and producer-handler provisions
21 relating to some issues about that have been raised by
22 Mr. Metzger and others concerning the relationship those
23 provisions, in what respect they should reflect small
24 processors, Class 2, 3, or 4 operations or producer farmstead
25 class 2, 3, or 4 operations.

1 Third piece is a proposed modification relating to
2 providing an optional call provision in Proposal 1. Call
3 provision for relating to shipments to distributing plants in
4 Proposal 1.

5 Those are, Mr. Hollon has those. There's another
6 possible piece relating to tweaks to transportation credits.
7 We'll then have some testimony by Mr. Schad, which is rebuttal
8 testimony on a number of issues, no other modifications. Those
9 are our modification subjects. Some testimony by another
10 Land O'Lakes employee relating to rebuttal testimony. Dr. Erba
11 will also testify further in rebuttal; Mr. Hollon will also
12 testify further in rebuttal; and there's one other possible
13 rebuttal witness, which would, who would come in there. So I
14 think that's, if that's nine pieces that's -- so that's --
15 that's our -- that's our case.

16 I'm thinking about how, with Mr. Hollon's
17 unavailability Monday, I don't know that we would fill up all
18 day Tuesday. So I think if there are other, you know, if
19 there's other witnesses, we might, who knows. But I think we
20 ought to look at the possibility if Dr. Schiek is going to be
21 recalled or other possible witnesses that might be a fill in
22 and we would finish up on Wednesday.

23 JUDGE CLIFTON: Very good. Thank you. I know it's very
24 hard even to predict here how long things will take, but it
25 would be lovely if we could conclude by the end of Wednesday.

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|--|--|--|---|---|
| | 7575:9;7576:10 | 7594:4;7608:4; | 7644:14 | 7616:24;7619:7; |
| \$ | acceptance (1) 7629:11 | 7615:19,21;7616:9; | addled (1) 7486:3 | 7620:13;7626:14 |
| \$1 (1) 7617:25 | accepted (1) 7558:20 | 7618:10 | add-on (3) 7450:18;7475:8, | adopting (1) 7594:13 |
| \$1.2 (1) 7499:18 | accepting (2) 7450:23;7634:5 | Act (6) 7494:24;7529:12; | 11 | adoption (1) 7612:10 |
| \$1.27 (1) 7569:5 | access (2) 7454:20,25 | 7535:8;7564:23; | address (5) 7468:16;7471:2; | Adrenaline (1) 7507:20 |
| \$1.40 (8) 7569:18;7570:1; | accessible (1) 7516:11 | 7565:6;7581:25 | 7480:2;7503:13; | advance (1) 7621:6 |
| 7574:24;7575:12,23; | accommodate (1) 7593:16 | action (2) 7592:20;7631:2 | 7605:8 | advancing (1) 7637:1 |
| 7576:18,21,22 | accompanied (1) 7614:21 | actions (1) 7624:19 | addressed (1) 7605:12 | advantage (7) 7546:18;7547:4; |
| \$1.70 (4) 7575:10;7576:18, | accompanying (2) 7580:22;7614:7 | actively (1) 7509:25 | adequately (1) 7634:18 | 7568:13,14;7572:2, |
| 19;7598:4 | accomplish (3) 7523:3;7556:3,7 | activities (1) 7631:3 | adhere (1) 7502:13 | 3;7573:16 |
| \$10.6 (1) 7617:20 | accomplished (2) 7488:17;7507:15 | actual (6) 7469:5;7530:2; | adjust (2) 7455:16;7624:2 | advantageous (1) 7601:20 |
| \$15.5 (1) 7617:17 | accomplishing (1) 7480:9 | 7552:19;7577:11; | adjusting (2) 7611:16;7612:8 | adverse (2) 7545:16;7610:21 |
| \$20 (1) 7630:9 | accordance (1) 7532:14 | 7583:11;7637:5 | adjustment (2) 7620:5;7625:7 | adversely (1) 7619:1 |
| A | accordingly (2) 7463:15;7503:18 | actually (25) 7457:15;7459:9; | adjustments (1) 7471:9 | advice (1) 7552:19 |
| A&M (1) 7514:10 | account (15) 7455:13;7474:24, | 7466:3;7468:8,10; | administer (2) 7468:25;7498:2 | advisor (1) 7520:12 |
| A1 (1) 7463:12 | 25;7572:7,8;7583:9, | 7469:21;7485:3; | administered (1) 7497:24 | advisors (1) 7577:1 |
| A2 (2) 7465:11,15 | 9;7591:20;7592:3; | 7510:3;7516:5,5,8; | administration (3) 7468:20;7552:24; | affect (1) 7629:7 |
| abandon (2) 7550:3,4 | 7610:10;7619:12,22; | 7522:23;7582:23; | 7636:6 | affected (4) 7524:8;7538:21; |
| ability (4) 7537:14;7591:4; | 7628:17,21;7629:2 | 7589:4;7598:20; | Administrative (3) 7450:6;7530:18; | 7559:4;7631:18 |
| 7616:7;7631:17 | accounted (3) 7533:20;7549:10, | 7599:22;7627:8,9; | 7555:23 | affecting (1) 7622:18 |
| able (20) 7459:25;7476:10; | 16 | 7633:20;7635:6; | Administrator (12) 7451:9;7468:25; | affirm (4) 7506:4;7519:4; |
| 7505:22;7522:14; | Accounting (2) 7525:4;7553:2 | 7638:10,12,13; | 7469:8;7473:1; | 7563:2;7606:11 |
| 7539:10;7549:10,19; | accrue (3) 7548:15;7550:19, | 7639:25;7640:5 | 7477:8;7478:25; | afford (1) 7610:5 |
| 7574:9;7577:6; | 20 | adapt (1) 7616:7 | 7479:18;7483:24; | afloat (1) 7522:4 |
| 7591:16;7615:11,11; | accumulated (1) 7614:9 | adaptation (1) 7624:7 | 7484:17,19,24; | afternoon (14) 7522:25;7526:25; |
| 7626:2,11;7628:6,9, | accurate (1) 7577:11 | Adapted (1) 7615:24 | 7557:12 | 7527:1;7543:11,12; |
| 15,21;7629:2; | achieved (2) 7557:2;7609:5 | add (15) 7456:22;7461:2,3; | admission (16) 7482:6,11;7515:1; | 7580:1;7581:16; |
| 7637:18 | achieves (1) 7554:14 | 7465:15,18;7475:14; | 7517:23;7530:16,25; | 7587:4,5;7597:21; |
| above (4) 7491:18,20; | achieving (1) 7550:22 | 7491:1;7493:13; | 7531:6;7577:15; | 7602:12,13;7606:25; |
| 7587:12,14 | acquire (2) 7598:14,14 | 7516:17,25;7518:22; | 7578:15,16,21; | 7627:21 |
| absence (1) 7478:13 | acquired (1) 7564:17 | 7528:21;7560:22; | 7579:1;7597:8,11; | Ag (3) 7520:9;7525:3,7 |
| absolutely (3) 7537:9;7542:20; | acres (2) 7508:9;7509:1 | 7597:6;7607:3 | 7621:19,23 | again (58) 7458:17,23; |
| 7546:11 | acronym (3) 7481:2,3,10 | added (5) 7477:22;7493:25; | admit (5) 7479:24;7486:3,5; | 7460:19;7462:1; |
| absorb (2) 7610:5;7618:13 | across (12) 7504:8;7509:8; | 7494:9;7525:23; | 7531:1;7605:9 | 7463:22;7471:19,22, |
| accelerating (1) 7614:10 | 7522:15;7524:25; | 7541:22 | admitted (11) 7482:12;7486:6,9; | 24;7472:15;7490:6; |
| accept (1) 7513:1 | 7555:17;7557:15; | adding (5) 7461:6;7465:14; | 7517:24;7526:19; | 7491:19;7494:6; |
| acceptable (8) 7481:9,13; | | 7472:20;7476:10; | 7531:7;7578:17,22; | 7496:4;7497:22; |
| 7539:15;7549:21; | | 7478:20 | 7579:2;7597:12; | 7500:6,17;7501:12; |
| 7551:18;7557:3; | | additional (16) 7459:25;7493:25; | 7621:25 | 7502:2,20;7505:13; |
| | | 7494:9;7513:5; | admittedly (1) 7635:23 | 7509:18;7524:2; |
| | | 7530:25;7542:8; | adopted (10) 7542:24;7594:2; | 7532:22;7538:24; |
| | | 7575:22;7576:4; | 7596:12;7602:23; | 7539:20;7542:12; |
| | | 7580:10;7590:9; | 7603:2;7615:22; | |
| | | 7619:8;7629:25; | | |
| | | 7637:4,22;7643:17; | | |

| | | | | |
|---|--|---|---|--|
| 7544:23;7549:13; 7550:1;7561:4; 7572:8;7573:2; 7591:23;7594:11; 7595:6,17;7596:22; 7602:12;7605:11,14; 7608:21;7609:21; 7611:5,21;7612:12; 7613:4,11;7615:20; 7617:4,21;7618:23; 7619:18;7620:22,24; 7631:22;7636:5; 7640:23;7644:1 | 7626:6;7631:4,6; 7639:21,21,23 ahead (4) 7493:22;7504:24; 7580:16;7612:4 aid (1) 7618:15 Air (4) 7523:23;7525:11; 7526:3;7637:21 Airport (3) 7454:7;7456:5; 7458:7 albeit (1) 7617:3 alfalfa (1) 7590:22 allocate (1) 7541:15 allocated (3) 7555:6;7556:13; 7557:10 allocating (1) 7503:14 allocation (6) 7542:25;7543:25; 7554:19;7555:15; 7557:9,22 allow (11) 7469:4;7499:24; 7503:16;7538:12; 7545:25;7546:17; 7560:21;7593:21; 7612:13;7620:9,11 allowance (6) 7588:5;7602:20; 7603:7;7608:16,24; 7637:19 allowances (15) 7496:14,23; 7499:22,25;7500:13, 23;7538:15;7544:9; 7549:11,17;7558:18; 7588:1;7593:7,22; 7602:19 allowed (4) 7525:18;7584:3; 7595:11;7615:3 Allowing (2) 7594:7;7620:4 allows (4) 7538:11;7573:13; 7596:19;7624:2 almost (5) 7611:12,12; 7612:1,5;7631:7 alone (5) 7522:23;7523:19; 7526:2;7574:20; 7617:19 along (9) 7506:17;7527:5, 19;7555:9;7573:23; | 7580:13;7592:14; 7638:5;7641:2 alter (1) 7477:14 altered (1) 7614:11 alternative (13) 7470:10,16; 7471:25;7472:9,21; 7480:1,16;7482:3; 7608:15;7635:19; 7638:8,9,18 alternatives (1) 7483:19 although (4) 7452:17;7580:5; 7616:3;7641:22 always (10) 7454:16;7512:2; 7514:19;7517:7,10; 7522:17;7523:11; 7568:5;7571:15; 7574:11 AMA (2) 7498:18;7501:2 AMAA (9) 7494:25;7497:8; 7498:21;7499:11; 7500:25;7501:4,7; 7502:25;7503:4 Amargosa (1) 7590:18 amazing (1) 7518:20 amend (1) 7613:1 amended (6) 7494:22;7499:24; 7556:25;7602:18; 7612:14;7621:10 amending (1) 7494:20 amendment (8) 7566:24;7608:8; 7612:19;7619:9,10, 11,20,21 amendments (1) 7567:3 America (2) 7452:3;7634:6 amidst (1) 7521:5 among (3) 7533:14;7628:18, 19 Amos (2) 7564:20;7581:22 amount (22) 7465:15,17,18; 7469:9,15;7475:1,2, 22;7477:6,7,9; 7549:2,21;7552:5; 7554:10;7572:11; | 7575:1;7588:18; 7610:1;7630:6; 7638:10;7640:18 amounts (2) 7588:4;7613:25 AMS (5) 7450:17,23; 7451:14,16;7454:24 analysis (12) 7487:12,15,18; 7551:24;7609:20,23, 25;7610:7;7628:8,9; 7638:23;7644:15 analyzing (1) 7638:24 and/or (1) 7584:16 Anderson (1) 7595:10 anew (2) 7492:25;7501:17 Angeles (2) 7602:16,20 animal (2) 7561:2;7635:5 animals (3) 7511:12,13; 7613:23 announcements (1) 7454:4 annual (1) 7615:13 annually (1) 7617:19 annuity (1) 7499:17 answered (1) 7471:21 anticipate (1) 7521:8 anticipates (2) 7510:6;7641:8 anymore (3) 7487:19;7590:4; 7599:3 apart (1) 7557:1 apologize (2) 7501:24;7604:14 appearance (1) 7627:16 appearances (1) 7451:6 appeared (1) 7499:8 appearing (4) 7453:12;7488:8,8; 7627:7 apples (2) 7632:13,13 applicability (1) 7494:19 applicable (2) | 7492:9;7599:18 applied (3) 7494:20;7520:19; 7543:3 applies (1) 7536:10 apply (6) 7469:2;7479:19; 7483:24;7493:18; 7547:2;7553:3 applying (1) 7469:11 appreciate (18) 7459:23;7482:24; 7484:6;7487:10; 7505:18;7507:19; 7512:11,15;7518:16; 7519:22;7528:24; 7529:13;7590:1; 7610:7;7627:16; 7630:14;7641:10,12 approach (5) 7471:3;7472:9; 7617:9,25;7632:11 approaching (1) 7454:18 appropriate (5) 7468:23;7469:2; 7479:20;7551:21; 7577:13 approval (2) 7620:7,10 approve (1) 7620:11 approved (1) 7525:25 approximate (1) 7589:21 approximately (7) 7450:3;7509:1; 7513:9;7567:21; 7587:9,10;7590:25 April (1) 7590:20 area (25) 7491:12,13; 7496:8;7510:5; 7514:18;7526:1; 7531:24;7532:8; 7533:1,23;7534:19; 7536:2;7553:18; 7568:1;7577:1; 7588:23;7589:20,20; 7598:6,9,19; 7631:15;7632:19; 7639:10,16 areas (2) 7598:17;7630:6 argument (1) 7487:13 arguments (1) 7498:24 arises (1) |
|---|--|---|---|--|

| | | | | | | |
|--|--|---|----------|---|---|--|
| 7489:2 arose (1) 7522:18 around (14) 7458:9;7528:13; 7538:20;7539:20; 7571:16;7581:1; 7598:9;7614:12; 7616:1;7626:23; 7634:24;7636:7; 7638:15;7641:23 arrangement (1) 7582:11 arrive (1) 7550:9 arriving (1) 7550:8 articulated (1) 7535:10 artificially (1) 7572:17 artisan (1) 7636:22 A's (1) 7501:3 Ashley (1) 7452:20 A-S-H-L-E-Y (1) 7452:20 aside (1) 7510:15 assessed (1) 7617:12 asset (2) 7472:13;7572:1 assets (1) 7498:10 assigned (1) 7484:25 assignment (1) 7450:6 assist (1) 7458:5 Assistant (1) 7451:9 assisting (1) 7641:2 associated (2) 7496:9;7614:13 Association (17) 7453:2,5,13,22,23; 7455:12,18;7470:16; 7488:8;7541:11; 7574:3;7606:21,22; 7607:6,15;7608:10; 7616:23 assume (6) 7527:23;7532:10; 7548:23;7554:2; 7559:17;7602:25 assumed (1) 7504:19 assuming (2) | 7591:3;7629:10 assumption (3) 7543:18,21; 7548:9 astounding (1) 7510:21 attach (1) 7594:21 Attached (3) 7565:16;7568:17; 7595:1 attempt (2) 7484:25;7542:23 attempts (1) 7593:3 attended (1) 7520:8 attention (1) 7629:5 Attorney (6) 7451:23;7452:2, 15,21;7453:20; 7606:20 attorneys (1) 7546:5 attract (1) 7501:9 attractive (1) 7596:8 attrition (2) 7618:9,11 audience (1) 7539:10 audio (8) 7454:19;7539:7,8, 12,14,25,25;7540:2 audit (2) 7583:11,11 audited (4) 7544:1,5;7547:25; 7549:3 augmenting (1) 7630:18 augments (1) 7626:19 aunts (1) 7520:3 authority (3) 7497:8;7504:8; 7530:17 availability (2) 7457:25;7505:16 available (11) 7500:23;7538:22; 7590:22;7622:16; 7625:12;7626:25; 7631:15;7640:7; 7642:2,3;7644:17 average (8) 7568:17;7569:5, 17;7574:23; 7576:22;7587:12,13; 7591:14 | averaging (1) 7569:18 avoid (4) 7498:24;7503:19; 7564:20;7581:22 avoided (1) 7610:6 avoids (2) 7496:9;7499:15 aware (5) 7470:1;7526:5; 7541:2;7552:2; 7629:13 away (8) 7511:23;7521:25; 7522:10;7535:7; 7546:15;7581:1; 7635:3,21 awful (1) 7451:4 awhile (1) 7497:8 Azure (2) 7507:11;7508:1 | B | Bachelor (1) 7525:9 Bachelor's (1) 7525:5 back (61) 7450:2;7454:15, 23;7455:1;7457:8,9; 7458:8,16;7459:24; 7462:9,24;7476:4,4, 7;7482:24;7505:5,8, 9;7507:10;7509:17; 7510:18;7511:6,14; 7512:15;7516:13; 7519:12;7520:10,14; 7523:9;7539:3,7,17, 19,23;7540:7,9; 7545:9;7558:2; 7561:4,24;7567:15; 7568:21;7574:17; 7577:5;7579:18; 7580:2;7581:5; 7584:18;7598:21,22; 7632:3;7635:10,14; 7636:7,8;7637:21, 21;7638:1;7642:17; 7643:21;7646:4 Background (5) 7490:20,22; 7613:19;7634:18; 7638:11 bad (1) 7643:19 balance (6) 7466:21;7480:23; 7496:7;7589:6,6; 7635:25 | balancing (1) 7496:10 ball (1) 7635:22 balls (1) 7630:15 bank (1) 7508:9 banking (1) 7520:14 bankruptcy (1) 7564:17 barely (1) 7633:24 barns (3) 7510:18,19; 7514:1 barrier (8) 7489:7;7495:17; 7496:1;7499:15; 7503:10,19;7548:18; 7554:16 barriers (4) 7501:9,15; 7502:14;7503:2 base (7) 7497:12,18,18; 7594:10,12;7628:18; 7632:21 based (12) 7469:10,10; 7499:14;7575:10; 7587:21;7591:14,21; 7592:5;7601:2; 7620:1;7624:5; 7625:22 base-excess (6) 7497:4,5,8,11,24; 7498:10 baseline (1) 7594:14 basic (2) 7537:18;7612:24 Basically (12) 7468:5;7527:17; 7544:12;7549:15; 7550:16;7554:22; 7555:6;7556:12; 7557:10,16,17,23 basis (10) 7499:13;7520:19; 7525:17;7526:13; 7530:16;7610:18; 7613:18;7623:3; 7637:8,13 basketball (1) 7507:22 bat (1) 7562:12 battle (1) 7622:9 bear (1) 7489:6 | became (1) 7581:25 Becker (5) 7451:21,21; 7640:4,5,5 beckoning (1) 7625:19 become (3) 7558:4;7559:19; 7576:3 becomes (4) 7470:17;7544:5; 7638:4;7641:8 beef (1) 7511:12 began (5) 7479:6;7507:25; 7508:3,16;7624:9 begging (1) 7523:13 begin (11) 7490:18;7492:24; 7501:17;7550:1; 7561:20;7579:10; 7595:5;7597:17; 7621:1;7627:2,4 beginning (21) 7458:12;7466:4; 7473:16;7475:16,16; 7476:23;7500:9; 7514:25;7527:25; 7528:18;7559:8; 7594:25;7608:19; 7611:6,17,21; 7613:9,11;7635:15; 7641:18,25 beginnings (1) 7507:10 begins (4) 7474:14;7476:18; 7477:3;7594:25 behalf (8) 7452:18;7453:12; 7488:7,9;7490:23; 7505:2;7580:12; 7607:8 behind (5) 7512:5;7533:16, 19;7546:13;7566:6 belabor (1) 7483:18 Belezzuoli (2) 7511:1;7517:4 belongs (2) 7541:18;7589:3 below (7) 7572:16,21,25; 7573:4;7587:12; 7624:18;7626:20 below-cost (1) 7572:15 benefit (19) 7500:23;7537:13; |
|--|--|---|----------|---|---|--|

| | | | | |
|--|---|--|---|--|
| 7538:14;7541:6; 7558:18;7568:2,8, 18;7569:5;7572:17; 7573:24;7574:7,23; 7575:11;7582:15; 7591:17;7593:8; 7596:25;7598:24 benefits (24) 7489:5;7496:11, 20;7497:1,16; 7500:11,15,18; 7503:18;7536:7; 7547:3;7548:15; 7550:18,20;7558:20; 7559:6;7568:6; 7592:24;7593:9,23, 24;7603:11;7614:5; 7618:5 Bernardino (2) 7586:18;7598:18 Beshore (77) 7450:16;7451:2; 7452:1,1;7457:22, 23;7460:7;7473:9; 7487:5,6,7,22; 7489:15;7505:11,11; 7506:13,15;7507:1, 3;7513:2,3,4;7518:2, 3,12,14;7519:1,13, 14,16;7524:11,12; 7530:24;7531:12,14, 15;7538:24;7539:1, 5,13,15;7540:5,21; 7542:2,7;7544:7; 7545:11,14,16,18; 7559:11,13;7586:25; 7587:2,3;7589:16; 7597:18,20,21; 7604:11,13,14; 7627:18,20,21; 7633:4;7641:18,18, 21;7642:2,12,19,21, 24;7643:3;7644:3,6 B-E-S-H-O-R-E (1) 7452:1 Beshore's (2) 7545:4;7549:8 besides (3) 7528:2;7602:2; 7613:23 best (3) 7454:12;7479:15; 7525:21 better (3) 7482:25;7483:18; 7618:2 beyond (2) 7537:18;7593:14 bidding (2) 7572:12;7637:5 big (6) 7469:17,18; 7570:22;7571:3,12, | 22 bigger (1) 7516:4 Bill (12) 7482:23;7486:6; 7501:16,18;7502:4, 24;7547:12; 7573:21;7604:6; 7608:18;7609:1; 7637:23 billion (2) 7499:18;7617:25 bills (3) 7522:8,12; 7523:12 bit (17) 7483:14;7484:15; 7499:6;7507:13,16; 7513:6;7527:8; 7547:15;7550:24; 7551:16;7626:11; 7632:11;7634:19; 7635:19,22,25; 7636:3 black (3) 7478:8;7566:16, 17 blank (3) 7495:21;7565:17; 7578:9 blanks (1) 7578:2 blend (35) 7489:1;7532:16; 7533:8;7534:2; 7536:16,17;7537:22; 7538:7,19,20; 7543:18;7548:3,3, 23,25;7549:20; 7550:9;7554:9,12; 7555:7;7557:16,18, 19,24;7558:2; 7591:3,13,15; 7593:5;7594:8; 7596:10,19;7601:24; 7603:3,4 blind (1) 7522:9 blocking (1) 7566:18 blueberries (1) 7616:4 board (13) 7509:3;7511:22; 7520:16;7523:23,23; 7525:11,11,15,16, 19;7526:2,3;7608:13 boat (1) 7613:25 Bob (1) 7626:6 bold (5) 7461:2,5;7467:17; | 7491:5;7626:9 bolded (3) 7460:25;7463:10, 11 book (1) 7622:12 booked (1) 7572:1 boonies (1) 7525:1 boost (1) 7617:1 border (1) 7590:19 born (1) 7520:15 borrow (1) 7615:4 borrowed (1) 7508:9 Boston (3) 7631:8;7633:9; 7639:13 Boston's (1) 7613:25 both (30) 7451:2;7455:18; 7457:15;7463:2; 7467:6,6;7474:7; 7481:12;7484:19; 7490:4;7500:14; 7514:17;7520:8; 7554:13;7565:9; 7566:13;7569:14; 7570:13;7574:6; 7578:11;7584:7; 7595:9;7598:14,15; 7608:6,11;7609:25; 7613:18;7623:3; 7636:11 bottling (1) 7557:11 bottom (4) 7472:16;7474:17; 7485:10;7516:3 bought (3) 7508:2,9;7564:8 bound (1) 7620:6 boundaries (3) 7496:12,21; 7551:10 boundary (1) 7536:8 Boy (1) 7467:10 boys (2) 7508:19,22 brand (1) 7573:19 branded (1) 7594:19 break (17) | 7458:15;7476:3,6, 9;7505:4,7,12; 7539:22;7561:21,23; 7579:11,13,14,16, 17;7580:25;7617:3 break-even (2) 7617:10;7618:19 breaks (1) 7561:16 breeding (3) 7511:12;7615:2, 15 brevice (1) 7617:11 Brian (3) 7451:23;7527:2; 7605:11 Bridgett (1) 7452:5 B-R-I-D-G-E-T-T (1) 7452:6 brief (3) 7450:12;7619:8; 7629:13 briefing (1) 7450:9 briefly (1) 7622:16 briefs (4) 7450:10;7502:15, 19,21 bring (1) 7522:1 bringing (2) 7499:16;7629:4 broadcasting (1) 7454:19 broader (1) 7613:19 broker (1) 7511:8 brother (3) 7508:6,13;7520:1 brothers (1) 7520:8 brought (4) 7506:16;7509:22; 7627:22;7633:21 budget (2) 7618:16;7625:17 build (2) 7564:10;7573:14 building (1) 7614:1 buildings (1) 7615:5 built (5) 7508:10;7525:22; 7526:1;7564:19; 7637:11 built-in (2) 7595:24;7629:2 bulk (3) | 7614:12;7632:8,9 bull (1) 7508:5 bullet (2) 7499:3;7542:20 burden (2) 7496:3;7516:12 burdens (2) 7489:6;7496:1 Burrel (3) 7520:1;7524:20, 21 B-U-R-R-E-L (1) 7524:21 business (36) 7507:9,24;7508:4, 8,14,16,21;7509:14, 19;7511:6,24; 7512:1;7513:15; 7520:3,9,11,12,24; 7521:2,5,13; 7523:19;7525:3,6,7; 7527:6,10,19; 7547:5;7571:23,23; 7573:15,17;7615:7; 7632:20;7638:20 businesses (2) 7456:22,22 butt (1) 7487:19 butter (1) 7613:24 butterfat (18) 7461:25;7462:2, 21;7465:19,20,21; 7466:9,10,13,14,15, 16;7467:5,8;7469:5; 7472:24;7483:2,10 buttermilk (1) 7480:18 buy (5) 7582:21;7595:20; 7599:24;7600:16; 7601:6 buyer (1) 7628:21 buying (5) 7504:10;7599:1, 18;7600:5;7601:3 byway (1) 7622:5 |
| C | | | | |
| Cabot (6) 7631:12,14; 7632:10;7633:19,22; 7634:1 calculate (5) 7469:4,8;7483:4; 7572:11,13 calculated (4) 7471:14;7472:24; | | | | |

| | | | | |
|--|---|--|--|---|
| <p>7481:22;7592:9 calculates (1) 7479:17 calculating (3) 7468:19;7493:17; 7556:16 calculation (5) 7484:20;7537:25; 7541:4;7543:3; 7568:17 calculations (2) 7469:6;7566:25 calf (1) 7518:5 California (249) 7450:4;7452:3,11, 18,22,25;7453:2,5, 12;7461:25;7468:7, 10,17;7469:14,20, 23;7470:7,15; 7471:5;7472:24; 7477:23;7478:2,4; 7480:21,25;7481:18; 7483:15,17;7488:7, 16,22,24;7489:3,4,8, 17;7490:9;7491:11, 13,21,22,23; 7495:23;7496:12,21; 7498:2;7499:1,5,23; 7501:19,19;7502:4, 5,8,9;7503:1,5,8,13, 16,20;7504:7,9,14; 7505:24;7507:9,11, 24;7508:1,3,11; 7509:8,18,24; 7510:6,9;7511:2,4; 7512:2,7;7513:24; 7514:10,11,20; 7520:1;7523:21; 7525:14;7536:6,11; 7537:1,5,7,15,23; 7538:8,11,12,13,19; 7541:19;7542:18; 7543:17;7545:1; 7547:1;7548:15,16, 20;7549:4,19,23; 7550:12,16;7551:11; 7552:8;7553:6,18; 7554:17;7556:24; 7558:6,11,13,17,25; 7559:5,17,19,20; 7560:9;7562:4; 7563:13;7564:12,20; 7565:13,14;7566:14; 7567:24,24,25; 7568:3,4,7,16,22,24; 7569:4,7,11,15,19; 7574:2,20;7576:15, 16;7580:23; 7581:17;7582:16,19; 7585:18,23;7586:8; 7588:19,23;7589:9; 7590:19,25;7591:4,</p> | <p>5,6,19,20;7592:1,2,6, 23;7593:1,14,20,24; 7594:2,17,20,21; 7595:8,21;7596:2,3, 7,8,15,16,20,23; 7597:24;7598:13,14; 7599:5,6,13,25; 7600:4,8,9,14,14,15, 25;7601:3,4,7,11,13, 15;7603:14,17,18; 7604:16;7609:4,9, 12;7610:3,8,12; 7612:10;7613:1; 7617:22,23,24; 7618:4,25;7619:4,7, 10,20;7620:13; 7621:9,12;7628:1, 17;7629:3,7,14; 7630:17;7631:25; 7635:14;7636:2; 7638:2;7641:9; 7644:16;7646:5 California's (3) 7495:14;7497:15; 7504:3 call (8) 7505:19;7534:7; 7586:3;7636:13; 7639:13;7644:9; 7645:2,2 called (6) 7452:11;7505:23; 7522:11;7529:3; 7588:2;7631:8 came (9) 7470:10;7486:2; 7556:15;7564:19; 7575:12;7576:17,21; 7581:21;7641:7 can (99) 7454:10,20,24; 7455:15,16,17; 7456:15;7457:19,19; 7458:9;7459:5,7,10; 7460:8,9,13;7463:6, 14;7466:6,24; 7467:21;7468:2; 7469:1;7470:25; 7471:2,8;7472:5; 7473:9;7476:3,15; 7477:1;7479:13; 7483:3;7485:6; 7487:25;7496:24,25; 7499:13;7503:8,15; 7507:18,18;7508:24; 7509:9;7510:7; 7513:6,14;7514:4; 7519:11,21,22,22; 7523:14,18;7529:25; 7538:24;7539:3; 7541:15;7542:12; 7547:3,15;7548:9, 22;7550:6,6;</p> | <p>7552:23;7553:1; 7554:11;7556:18; 7561:15,21;7565:25; 7566:1,16;7568:6, 20;7571:1;7575:1; 7576:16;7588:16,22, 25;7589:4,21; 7595:22;7599:3; 7607:3;7609:5; 7610:4;7612:13; 7615:19,20;7617:12; 7622:11,25;7634:12; 7642:22;7643:10; 7644:7 Canada (2) 7634:5;7635:4 cancer (1) 7521:25 capability (2) 7608:1;7618:13 capacity (1) 7607:13 capital (5) 7490:15,16; 7614:14,18;7615:4 capitalized (2) 7498:9;7563:18 capitol (1) 7563:9 capture (1) 7539:13 captured (1) 7539:8 car (1) 7528:14 care (4) 7471:13;7523:8; 7527:4;7621:9 career (5) 7493:21;7494:12; 7535:1,1;7634:20 carefully (1) 7633:5 Carman (3) 7451:8,8,13 C-A-R-M-A-N (1) 7451:8 Carolina (1) 7625:8 Carolinas (1) 7497:6 carry (1) 7478:15 case (30) 7455:20;7456:19; 7469:3;7489:16,16, 17,22,23;7494:17; 7495:3,4,8;7530:4, 10;7532:18;7533:3; 7546:25;7555:8; 7557:14,14;7575:10; 7592:17;7603:2; 7614:24,25;7620:19;</p> | <p>7626:23;7633:17; 7642:14;7645:15 cases (3) 7487:13;7494:13; 7530:18 cash (9) 7511:13;7611:14; 7612:2;7614:3,5; 7615:1;7616:18,21; 7617:2 catastrophic (1) 7521:9 category (2) 7517:5,16 cattle (6) 7515:18;7517:18; 7615:15;7630:18,19; 7632:18 caught (1) 7637:23 cause (1) 7612:25 caused (3) 7592:12;7596:2; 7621:8 caution (2) 7487:25;7615:8 cautious (1) 7630:5 caveats (1) 7549:14 CDFA (57) 7461:1,25;7462:2, 22;7463:18,25; 7464:15,17;7465:4, 20;7466:22;7467:1, 7;7468:6,10,20,21, 24;7469:1,4,10; 7470:2;7472:18; 7477:9,24;7478:5; 7479:1,7,16,17,19, 20;7480:24;7481:2, 8,10,14,15,19,22; 7483:1,6,22; 7484:22;7562:22; 7566:3;7567:8; 7572:15,23;7573:1, 5;7583:11;7588:2; 7591:18,25;7592:20; 7600:17 CDI (6) 7452:11;7509:2; 7514:17,19;7572:6; 7589:5 cement (1) 7614:12 Center (2) 7454:8;7646:5 Central (1) 7632:22 cents (5) 7588:7;7589:9,23; 7602:21,22</p> | <p>certain (6) 7479:15;7494:19; 7497:3;7527:14; 7550:18;7625:13 Certainly (20) 7487:4;7512:16, 20;7546:20; 7608:22;7609:16; 7618:8;7625:20; 7629:12,23;7630:14; 7631:6;7632:8; 7638:4;7640:11,14; 7642:14,14,16; 7643:2 certificate (3) 7565:20;7566:3; 7567:4 certificates (1) 7565:15 chains (1) 7631:10 Chair (1) 7607:15 challenge (6) 7454:13;7626:4; 7628:12;7630:14; 7637:7;7638:22 challenges (1) 7618:2 challenging (3) 7592:15;7600:22; 7640:21 chance (4) 7456:20;7628:7; 7637:20;7641:13 change (23) 7460:17,24; 7461:12,13,19; 7464:2,3;7465:10; 7467:14;7476:16,21; 7481:14,24;7490:2; 7503:5;7538:5; 7567:4;7577:17; 7592:10;7608:17,25; 7612:24;7636:6 changed (5) 7475:20;7477:4; 7479:6,8;7595:2 changes (32) 7460:5,21; 7461:16;7463:7; 7465:8,24;7467:6, 12,20;7472:14,17; 7479:3;7481:19; 7551:19;7554:5; 7567:1,2,4;7577:17; 7578:9,12;7605:15, 20;7609:2;7614:10, 14;7615:17;7619:13, 23;7621:11;7624:3; 7626:22 changing (3) 7481:10;7505:18,</p> |
|--|---|--|--|---|

| | | | | |
|---|--|---|---|--|
| 24 chaos (1) 7622:22 characteristics (1) 7550:17 characterization (1) 7492:20 characterizations (1) 7489:14 characterize (2) 7551:20;7559:24 charged (1) 7521:6 cheaper (2) 7522:22;7595:21 Cheese (19) 7580:23;7596:7; 7612:24;7628:20; 7630:19;7631:5,10, 15,18,19,23,24; 7632:1,2,3,7; 7633:22;7636:20,22 Chicago (2) 7635:7;7638:7 child (1) 7528:7 children (3) 7521:1;7524:9; 7528:10 Chino (11) 7565:13,21; 7566:8;7586:14,17; 7587:6,9;7588:7,11, 12,13 Chip (8) 7452:14;7484:12; 7543:10;7581:16; 7602:12;7627:7; 7633:2;7643:2 choice (3) 7499:10;7595:8; 7626:6 choices (3) 7579:12;7594:5; 7595:7 choose (3) 7499:13;7563:14; 7638:1 chooses (2) 7498:24;7536:13 choosing (3) 7483:13;7534:4; 7550:14 chose (2) 7520:14;7614:16 chosen (3) 7468:15;7521:22; 7590:21 Chris (1) 7539:11 Christina (5) 7505:20;7519:1,9, 25;7529:2 | C-H-R-I-S-T-I-N-A (1) 7519:9 Christmas (1) 7523:17 chronic (1) 7616:10 chunks (1) 7570:19 circumstance (2) 7541:14;7618:17 circumstances (1) 7527:10 cite (1) 7492:23 CitiBank (1) 7520:11 citing (2) 7469:19;7492:20 city (4) 7513:22;7633:22; 7636:12;7639:14 claim (1) 7572:23 claimed (1) 7596:5 clarify (1) 7560:8 clarifying (1) 7518:4 Clark (5) 7595:9,11; 7598:13;7599:1,11 Class (74) 7463:9,16,23,25; 7465:19,21;7466:2, 10;7467:5;7469:3, 11,15;7483:9,14; 7492:6;7496:8; 7533:18;7536:19; 7537:19,21;7542:25; 7551:12,13,14; 7555:16,16;7556:13, 13,14;7557:12; 7562:18;7564:19,21; 7565:1,3,8;7568:15, 23,24;7569:8,11,15, 21;7572:3,9,10; 7581:22,24;7582:5, 11;7583:10;7584:8; 7591:14;7596:11; 7598:21;7600:11,12; 7601:23;7602:1,2,5; 7607:21;7608:8,15; 7609:15;7612:24; 7621:7;7629:16; 7635:20,23;7636:2, 24;7644:24,25 classes (5) 7520:22;7554:22; 7557:15;7588:20; 7629:18 classification (3) 7493:16;7543:2,3 | classified (2) 7492:3;7534:20 Clause (4) 7489:11,18; 7490:12;7494:17 clean (2) 7504:3;7522:14 clear (13) 7468:6;7471:20; 7497:10;7499:10; 7502:16,22;7519:12; 7536:4;7537:16; 7604:25;7608:20; 7627:16;7643:7 Clearly (1) 7620:5 clients (11) 7509:22,24; 7510:5;7521:4,24; 7522:7;7527:3,4; 7541:6;7550:10; 7641:2 Clifford (1) 7451:8 CLIFTON (323) 7450:2,5;7452:23; 7454:1;7455:8,21, 23;7456:2,10,13; 7457:3,13,20; 7458:2,11,16,21,23; 7459:2,8,16,21; 7461:9,21;7462:4,8, 13,20,23;7463:4; 7464:2,7,10,13,17, 23,25;7465:8,17,22, 24;7466:6,8,12,15, 17,20,24;7467:3,6, 10;7470:14,20; 7471:19;7473:2,9, 18,22,24;7474:6,10, 16,20,22;7475:6,13, 17;7476:2,7; 7477:13,18,20; 7478:2,7,16,20; 7479:2,5,25;7480:5, 10,16,20;7481:3,6, 12,16;7482:9,18; 7484:8;7485:15; 7486:1,8,12,15,21; 7487:6,22;7490:3,8, 13;7491:19; 7493:22;7494:6; 7495:5,7,20; 7496:15,18;7497:10, 14;7498:19,22; 7500:6,9,12,17; 7501:3,5,10,22; 7502:1,7,18,20; 7503:22;7504:24; 7505:1,4,8,22; 7506:7,11,13,22; 7507:1,20;7510:13; 7512:13,22;7515:3, | 9,13,17,19,21,23; 7516:2,15,23; 7517:7,10,13,20; 7518:2,12,15,20,24; 7519:2,7,11; 7524:11,19,22,24; 7525:2,5,8,10,13,22; 7526:4,8,14,18,21; 7527:22;7528:2,7,9, 17,20,23;7529:2,5,7, 10,15,17;7530:20; 7531:5,11;7538:24; 7539:6,18,23; 7540:12,16;7542:1, 6;7544:23;7545:22; 7547:8;7549:22; 7550:1,3;7555:20; 7558:10,16,19; 7559:3,8;7560:2,20; 7561:5,8,18,24; 7562:6,10,13,16,20, 25;7563:5,8,11,16, 18,20;7564:24; 7565:5;7570:12,16; 7571:7,11;7573:8; 7575:17,24;7576:2; 7577:16,22;7578:1, 5,7,13,21;7579:1,6, 9;7580:2,15,22; 7581:5,19;7585:15, 25;7586:4,10,13,16, 21,24;7589:15; 7590:3,8;7591:22; 7594:23;7595:4,15; 7596:22;7597:9,17; 7602:9;7604:4,10, 22;7605:6,9,23; 7606:8,14,17; 7608:19;7611:5,17, 20;7612:4;7613:4, 14,16;7615:23,25; 7616:13,15;7619:16; 7621:15,21;7623:8, 13,20;7627:2,12,17; 7632:24;7634:17; 7636:10,24;7638:6; 7639:10;7640:3,24; 7641:6,16,24; 7642:8,18,21,25; 7643:11,15;7645:23 close (8) 7511:25;7521:14, 19;7573:12,12; 7624:16;7630:22; 7644:8 closed (1) 7526:5 closing (1) 7524:4 clouded (1) 7630:15 CME (2) 7635:21;7637:9 | Coale (1) 7640:18 code (5) 7468:7,18; 7469:20;7591:19; 7592:2 collect (1) 7594:7 collected (1) 7513:12 collectively (1) 7584:16 colon (1) 7474:19 combination (3) 7495:13;7615:3; 7617:8 combine (1) 7615:15 combined (4) 7616:11,16; 7618:17;7620:1 comfortable (2) 7588:25;7626:2 coming (18) 7457:9;7472:7; 7510:16;7511:6; 7532:1,19;7533:22; 7537:8;7551:8,9; 7552:16,20;7554:10, 17;7555:9;7593:25; 7633:8;7640:6 Comma (10) 7463:19,20,21,23, 25;7464:16,17; 7466:3,23;7613:5 comment (9) 7547:15;7587:22; 7605:24;7607:4; 7620:14,16;7622:4; 7632:17;7633:20 comments (9) 7455:14;7460:3, 22;7471:1;7507:5,7; 7597:23;7629:10; 7640:11 Commerce (4) 7489:10,18; 7490:12;7494:17 commingling (1) 7552:18 Commission (11) 7595:13,18,23; 7599:2,7,21;7617:6; 7622:20;7623:6,16; 7625:11 Commissioner (28) 7453:17;7458:4; 7605:7;7606:3,9,25; 7607:6,9,13;7608:7, 19;7612:11,12; 7615:19,20;7619:16; 7621:15,22;7626:24; |
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| | | | | |
|--|---|--|---|---|
| 7627:3,7,18,21; 7634:17;7636:5,14; 7640:4;7641:16 Commissioners (1) 7612:17 Commissions (1) 7622:14 Commission's (1) 7620:2 committee (3) 7612:23;7635:12, 17 commodity (1) 7636:1 common (2) 7584:11;7626:9 commonly (1) 7504:11 communicate (1) 7573:14 communities (1) 7571:25 Compact (1) 7616:22 companies (2) 7568:10;7598:23 company (7) 7564:6,7,7; 7577:19;7599:15; 7628:20,20 compared (5) 7498:14,18,23; 7536:15;7617:22 compares (3) 7558:12;7618:9; 7632:13 comparison (2) 7558:24;7617:23 compensate (5) 7575:8,15,23; 7576:5;7591:16 compete (1) 7509:9 competes (1) 7596:4 competition (4) 7637:3,5;7638:13, 17 competitive (7) 7573:16;7582:25; 7589:18,19,22; 7638:20,21 competitors (4) 7572:22;7582:18; 7631:23,24 complaints (1) 7538:23 complete (1) 7513:16 completed (2) 7450:10;7641:17 completely (4) 7460:3;7509:16; | 7611:12;7612:1 complex (1) 7499:3 complexities (1) 7498:24 compliance (2) 7489:18;7520:17 component (1) 7552:20 comprehensive (1) 7612:21 compromised (1) 7550:9 concept (2) 7475:3;7498:25 conceptually (6) 7477:11,12; 7479:13,14;7485:1; 7537:4 concern (6) 7491:21,24; 7610:21;7612:25; 7621:1;7630:13 concerned (3) 7542:16;7608:1; 7616:8 concerning (2) 7495:8;7644:22 concerns (7) 7509:18;7510:7; 7572:24;7573:3; 7612:9;7628:4; 7629:6 concerted (1) 7612:16 conclude (5) 7457:1;7503:18; 7548:5;7619:4; 7645:25 concluded (3) 7503:9;7594:9,12 concludes (5) 7504:23,25; 7505:2;7610:13; 7621:13 conclusion (1) 7455:19 conclusions (1) 7494:19 conditions (8) 7492:11;7533:17; 7535:25;7609:17; 7618:16;7620:4,8,11 conferred (2) 7497:1;7505:12 confers (2) 7496:11,20 confidently (2) 7615:19,21 confined (1) 7545:23 confines (2) 7536:8;7551:10 | confirm (1) 7580:16 conflict (2) 7457:11,17 conform (1) 7605:17 conforming (1) 7551:19 confront (1) 7616:20 confuse (1) 7481:11 Congress (8) 7502:11,16,22,24; 7503:3;7573:21; 7599:11;7637:24 Congressional (4) 7487:15;7501:15, 17;7502:3 conjunction (1) 7497:25 connected (1) 7624:25 Connecticut (1) 7626:18 consanguinity (1) 7584:12 consequences (1) 7510:9 Conservation (2) 7453:17;7607:14 conserve (1) 7450:17 considerably (1) 7536:24 consideration (6) 7472:1;7511:7; 7574:14;7596:13; 7610:11;7621:14 considerations (2) 7546:21,24 considered (3) 7542:22;7571:17; 7573:25 consistent (6) 7481:7;7494:23; 7504:3;7553:2; 7611:14;7612:2 consistently (1) 7633:18 consolidated (3) 7611:13;7612:1; 7638:4 consolidation (1) 7639:22 constant (3) 7522:15;7523:4; 7615:13 constitute (1) 7489:7 Constitution (4) 7489:11,19; 7490:5,12 | construed (2) 7542:17,19 consultant (2) 7524:8;7526:6 consulted (1) 7552:11 consulting (3) 7521:7;7526:11; 7527:9 consumer (3) 7594:20;7614:20; 7623:6 consumers (2) 7596:8;7623:7 contacted (1) 7510:18 contain (1) 7502:12 contained (1) 7568:20 content (1) 7563:21 contested (1) 7620:19 context (3) 7513:18,19,19 continue (13) 7465:9;7467:4,11; 7481:1;7497:14; 7508:8;7546:23; 7548:12;7555:21; 7567:16;7574:9; 7601:20;7608:4 continued (6) 7457:17;7529:22; 7608:17,24;7622:23; 7623:1 continues (2) 7462:20;7463:20 continuing (4) 7488:13;7498:2; 7615:15;7641:13 contracted (1) 7625:23 contracts (1) 7572:12 contrary (1) 7619:5 contrast (2) 7497:2;7624:8 contribute (1) 7593:9 control (1) 7628:19 controls (1) 7629:3 conversations (1) 7553:5 conversion (2) 7577:9;7582:4 converted (2) 7571:21;7575:25 convincing (1) | 7619:3 co-op (8) 7472:15;7480:24; 7483:8,8;7589:3,4, 20,20 Cooperative (13) 7452:2,7;7488:21; 7495:10;7498:3,18; 7499:21;7567:23; 7574:5;7609:23; 7628:18;7634:23; 7639:22 Cooperatives (13) 7473:6;7475:7,8, 14;7476:18;7491:3; 7496:6;7498:23; 7574:1;7609:8; 7627:22;7628:17; 7639:23 Cooperatives' (1) 7495:22 co-ops (5) 7468:14;7509:7; 7511:19;7524:7; 7593:3 coordinate (1) 7577:16 copies (6) 7454:25;7461:10; 7463:15;7464:3; 7481:17;7495:21 copy (7) 7470:13;7474:18; 7481:16;7506:21; 7526:20,21;7565:20 copying (1) 7461:21 Cornell (3) 7607:23;7636:10; 7637:12 corporate (2) 7571:22;7573:16 corporation (1) 7565:9 corrections (6) 7450:11,14,22,24, 24;7625:20 corrective (1) 7612:24 correctly (3) 7494:3;7501:11; 7545:6 cost (19) 7496:9;7572:7,9, 14,16,18,22,25; 7573:4;7583:9,10; 7598:2;7616:11; 7623:18;7624:12,16; 7625:22;7626:20; 7630:11 costs (4) 7521:5;7523:11; 7572:11;7614:18 |
|--|---|--|---|---|

| | | | | |
|--|--|---|--|--|
| <p>Council (5) 7453:22;7509:3; 7514:18;7606:21; 7608:11 Counsel (4) 7451:22,24; 7452:6;7453:25 counsel's (1) 7450:13 counties (2) 7586:16;7598:17 country (15) 7509:8;7538:21; 7607:5;7611:1; 7619:2;7623:1; 7630:4;7631:20,25; 7632:12;7634:2; 7636:7;7637:4,6; 7638:15 countryside (1) 7634:24 County (31) 7509:5;7513:10, 11,22,24;7514:12; 7524:23;7526:11; 7585:21,24;7586:8, 17,20,20,22,23,24; 7588:6;7595:10,11; 7598:9,13,18,18; 7599:1,11;7602:16; 7604:19;7634:23; 7635:1;7638:15 couple (11) 7455:3,13;7459:6; 7471:2;7513:5; 7531:18;7545:18; 7547:13;7597:21; 7622:4;7628:3 course (7) 7588:17;7603:10; 7621:16;7626:9; 7637:10,11;7638:19 court (43) 7454:22,23; 7487:14;7489:10,12, 13,16,20,21,22,24; 7490:4,11,14,15,16; 7494:13,18;7495:4, 5,6,13,14;7496:6; 7503:10;7507:17; 7530:3,7,10,11,12; 7539:7;7540:7,9,11, 15;7546:25; 7548:18;7561:16; 7570:13;7583:3; 7592:20;7593:4 courtesy (2) 7641:2,13 court's (3) 7495:19;7503:6; 7537:16 cousins (1) 7520:4</p> | <p>cover (2) 7459:6;7614:17 covered (4) 7480:3,4,11; 7604:14 covering (1) 7617:18 covers (1) 7457:15 cow (10) 7509:17;7515:7; 7523:24;7524:1,2; 7525:14,17,18,21; 7564:8 cows (43) 7508:2,11;7511:6, 12;7513:7,9; 7515:11,12,25; 7516:1,2,8,8,16,17, 20,24;7517:17,17; 7520:4,5;7521:18, 21;7522:1,3,22,24; 7523:1,4,8,13,17; 7524:14;7525:23; 7562:14;7586:11,13; 7587:7,9,10; 7607:25;7613:23; 7636:22 CPHA (1) 7574:2 craft (1) 7621:9 crafted (2) 7619:1,9 crazy (1) 7528:16 cream (2) 7602:4,5 creams (2) 7602:5,6 created (6) 7564:21;7581:23; 7618:17;7622:21; 7624:19;7625:1 creating (1) 7622:24 creation (1) 7499:15 creative (1) 7546:2 credit (1) 7568:7 credits (19) 7499:22;7500:2, 10,13,22;7535:21; 7536:17;7537:11,14, 23;7538:9,15,22; 7544:9;7546:18; 7550:19;7558:18; 7588:1;7645:6 crisis (2) 7511:9;7624:10 criteria (1)</p> | <p>7497:3 critical (2) 7546:11;7626:16 CROSS-EXAMINATION (19) 7526:23;7531:13; 7543:8;7545:13,14; 7547:10;7553:13; 7559:12;7581:11,13, 14;7587:1;7597:19; 7602:10;7604:12; 7627:1,5,19;7632:25 cry (1) 7521:10 crystal (1) 7630:15 CSO (1) 7543:17 curiously (1) 7638:23 current (15) 7475:11;7483:16; 7489:8;7490:9; 7492:2;7493:1; 7497:6;7498:6; 7504:4;7521:2; 7535:3;7543:17; 7560:15;7588:2; 7615:10 currently (28) 7463:10;7466:5; 7471:4;7473:5,11; 7483:4;7488:15; 7492:1;7504:19; 7508:11,22;7509:3, 24;7511:4;7527:4; 7532:2;7533:14; 7536:10;7537:3; 7549:4;7554:3; 7565:8;7576:9; 7584:6;7595:20; 7601:9;7618:19; 7625:25 Curtis (1) 7453:9</p> | <p>7528:13;7567:24; 7591:7;7593:19; 7594:3;7596:9,21, 24;7597:1;7598:6,8, 13;7599:1;7624:22; 7628:2 Dairy (197) 7451:9,14,16,20; 7452:3,18,22,25; 7453:3,6,8,10,13,15, 21,22,23;7454:24; 7455:15;7488:9,22; 7493:21;7494:12,21; 7495:3;7499:5; 7500:24;7505:3,14, 23;7506:17;7508:3, 10,16,18,18;7509:1, 2,12;7510:2,8,20; 7511:5;7512:2,5,7,9; 7513:6,19;7515:10, 13,16;7520:1,7,10, 17,23;7522:8,12,15, 17,18,19;7523:2,2,5, 25;7524:7,7,13,16; 7525:16,21,23,25; 7528:25;7529:1,2; 7530:4,6;7541:16; 7545:10;7549:9; 7552:7;7560:24; 7564:13;7565:14,23, 24;7566:4,5,7,18; 7567:10;7569:14,14; 7574:2,5;7580:13, 18;7581:9,17; 7584:4;7585:22,23; 7586:14;7587:7,10; 7588:6,7;7590:18, 23,24;7591:1,2,2,9, 10,15,18,18,25; 7592:1,17,19; 7593:4,16,22; 7595:10,13,14,18,19, 22,22,23,24; 7596:10,15;7598:7; 7599:2,2,7,7,21; 7601:3;7602:15,18; 7603:18;7605:12; 7606:20,22;7607:19; 7608:4,10,11; 7609:6,8,10,16,24; 7610:3,4,22,24; 7611:10;7612:20; 7613:15,18;7614:22; 7615:1,15,17,21; 7616:9,17,22,23; 7617:2,9,18;7618:1, 5,10,13,15;7621:5; 7626:12,17;7628:12; 7631:2;7635:18; 7636:11;7637:9,20; 7638:11,20 dairying (5) 7521:18;7523:16;</p> | <p>7614:18;7616:4,5 dairyman (1) 7521:12 dairyman's (1) 7524:7 dairymen (12) 7505:23;7509:4, 11;7511:21,23; 7512:1,2;7513:15; 7520:21;7523:17; 7524:10;7583:1 damage (1) 7621:8 Dan (3) 7458:3;7606:19; 7635:18 Dana (1) 7640:18 Daniel (1) 7453:20 dark (1) 7540:3 dash (1) 7529:1 data (10) 7456:15;7562:2; 7623:18;7638:14,24; 7639:2;7643:18; 7644:14,16,18 date (2) 7457:11;7515:21 daughter (3) 7520:15;7524:7; 7529:15 daughter-in-laws (1) 7508:20 daughters (2) 7607:22;7636:6 daughters' (1) 7608:1 Davis (2) 7452:15,21 Day (15) 7450:4;7451:10; 7454:6;7455:7; 7521:21;7523:6; 7565:12;7581:24; 7641:15;7642:9,9, 15,16;7644:9; 7645:18 days (8) 7510:20;7511:9, 18;7515:15;7516:10, 20;7517:16;7629:13 DC (3) 7451:15;7452:16; 7639:18 de (6) 7453:4,4,7,9; 7459:7;7563:8 dead-reckoning (1) 7454:11 deal (6)</p> |
| | | D | | |
| | | <p>dad (8) 7508:5;7520:2,8, 22;7584:8,24,25; 7636:14 dad's (1) 7523:2 daily (1) 7526:13 Dairies (37) 7452:3,11; 7508:23;7509:15,17; 7515:6;7516:9; 7520:4;7521:2,9,12, 14,14;7523:19,24; 7524:1;7526:5,6,12, 12;7527:12,16;</p> | | |

| | | | | |
|---|--|---|---|--|
| 7460:9;7471:6; 7536:13,13;7548:19; 7551:12 dealing (2) 7480:1;7635:10 deals (1) 7485:3 dealt (2) 7526:12;7603:19 Dean (1) 7595:10 dear (1) 7522:7 debating (1) 7499:5 debt (3) 7521:23;7522:12; 7616:20 decade (1) 7617:9 December (11) 7457:8,9,12; 7643:20,21,22,22,23, 24,25,25 decendents (1) 7565:10 decide (2) 7471:12;7544:18 decided (9) 7456:14;7496:5; 7508:7,13;7520:13; 7537:7;7542:14; 7548:19;7571:20 decides (1) 7528:5 deciding (2) 7454:12;7610:11 decision (12) 7456:23;7489:24; 7495:1,15;7521:19; 7530:2,11;7535:16; 7551:3;7556:23; 7591:2;7614:15 decisions (9) 7487:14;7494:25; 7495:18;7534:25; 7535:2,11,13,18; 7571:16 deck (1) 7528:6 decline (1) 7568:11 deceased (1) 7592:12 deduct (1) 7556:3 deducted (1) 7469:9 deduction (1) 7469:15 deducts (1) 7593:6 deemed (1) | 7548:17 deems (1) 7551:21 defeated (2) 7492:5,5 deficit (1) 7567:25 Defined (10) 7464:8,11;7465:3; 7466:25;7467:19; 7468:15;7480:25; 7492:1,1;7513:20 defining (1) 7462:15 definitely (1) 7558:22 definition (6) 7481:4,6;7554:3; 7573:25;7574:1,4 degree (2) 7497:2;7525:2 DeGROOT (70) 7453:7,7,9,9; 7455:18,21,22; 7561:10,20;7562:1, 25;7563:4,7,7,10,15, 17,18,19,24;7564:3, 5;7565:4,6;7570:12, 15;7571:9,12; 7573:9;7574:17; 7575:21;7576:1,7; 7577:18,21;7578:14; 7579:10;7580:17; 7581:9,13,16,22; 7585:16,22;7586:2, 6,12,15,18,23,25; 7587:4;7590:3,9,13, 17;7591:24;7595:2, 7,18;7596:23; 7597:10,17;7602:12; 7604:4,8,10,23,25; 7605:4 D-E-G-R-O-O-T (1) 7563:7 DeGroots (1) 7579:15 DeGroot's (2) 7580:6,12 DeJong (1) 7563:12 Delaware (1) 7607:17 delay (1) 7609:14 delegated (1) 7488:23 deliberate (1) 7519:21 deliberately (1) 7507:17 delighted (2) 7546:17;7605:2 deliver (3) | 7548:6;7598:20; 7631:4 delivered (5) 7489:4;7504:21; 7532:12;7559:16; 7565:12 deliveries (4) 7532:3,4;7542:18; 7551:15 delivering (4) 7531:24;7532:9; 7538:1;7547:18 delivers (3) 7532:10;7536:20; 7541:10 demand (1) 7614:14 demands (3) 7611:16;7612:8; 7616:2 demonstrate (2) 7504:16;7618:25 denied (1) 7497:16 Dennis (1) 7452:8 deny (1) 7503:24 Department (43) 7458:4;7471:11; 7472:25;7477:23; 7478:3,4;7479:21; 7480:21,25;7481:18; 7483:19,22;7484:3; 7494:16;7495:1; 7503:12,19;7535:9; 7551:21,21;7562:5; 7607:4,13;7609:13, 14;7610:7,10,12,16; 7612:9,13,20,25; 7619:4;7620:4,5,13, 18;7621:2,6,9; 7626:4;7641:1 Departments (1) 7607:16 Department's (5) 7608:16,24; 7609:20,22,25 dependent (4) 7480:8;7614:3,15; 7616:18 depending (2) 7471:11;7498:5 depends (5) 7454:12;7532:1; 7563:10,12;7589:2 de-pooled (1) 7559:19 Depression (2) 7614:1;7622:22 deprived (2) 7500:2,18 Deputy (1) | 7451:9 derived (5) 7538:16;7613:10, 12;7618:14;7636:1 derives (1) 7622:20 describe (3) 7485:18;7490:22; 7568:20 described (3) 7461:18;7491:2; 7626:15 describes (1) 7463:9 describing (2) 7483:9;7492:21 description (1) 7617:13 designated (1) 7608:13 desirable (1) 7632:12 desk (1) 7458:20 Despite (1) 7612:9 detail (1) 7451:20 detected (1) 7541:1 determinations (1) 7479:15 determine (9) 7460:9;7468:9; 7469:22;7482:6; 7483:22,25;7551:24; 7597:10;7623:13 determined (9) 7473:13;7475:1,2; 7477:8,9;7478:24; 7479:1;7484:16; 7610:16 determines (3) 7479:21,21; 7610:14 determining (7) 7468:6;7482:10; 7517:21;7530:23; 7554:9;7578:14; 7621:22 deterrent (1) 7594:18 detract (1) 7459:9 detracting (1) 7459:11 detrimental (1) 7609:6 develop (1) 7621:1 developing (2) 7591:1;7615:1 Development (3) | 7453:22;7606:21; 7608:11 deviated (1) 7551:23 DFA (6) 7509:3;7514:17, 18,19;7524:17; 7627:23 DFA's (1) 7509:3 DI (8) 7468:14;7483:16; 7488:23;7491:3; 7495:10;7498:5,16; 7499:23 dialogue (1) 7620:17 Diego (2) 7585:24;7586:5 difference (19) 7469:17,18; 7481:25;7483:11; 7485:20;7543:16; 7559:3;7568:15,22, 23,25;7569:19,21; 7570:5,22;7571:3, 12;7625:14;7629:15 differences (6) 7483:6,20;7497:3; 7543:25;7544:8; 7567:1 different (25) 7450:20;7454:9; 7456:22,22;7472:7; 7480:9;7482:1; 7492:23;7508:14; 7512:3,3;7515:6; 7536:1;7543:14,22; 7548:20;7555:4,11; 7561:2;7567:7; 7599:6,8;7622:17; 7624:21;7637:2 differential (2) 7489:6;7495:25 differentiate (2) 7552:17;7553:7 differently (4) 7483:14;7536:3; 7560:16;7592:21 difficult (8) 7469:22;7521:19; 7552:15;7556:20; 7559:8,10;7568:2; 7582:15 difficulties (1) 7626:1 difficulty (1) 7555:23 diligence (1) 7451:2 dilution (4) 7564:22,25; 7565:2;7581:23 |
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| | | | | |
|---|---|---|---|---|
| <p>dime (1) 7508:9 DIRECT (14) 7486:24;7494:25; 7507:2;7519:15; 7529:18,22;7554:19; 7555:15;7557:10,22; 7563:22;7590:11; 7606:23;7617:17 direction (1) 7600:24 directions (1) 7512:4 directly (4) 7495:8;7524:8; 7546:15;7644:8 dirt (1) 7634:23 DI's (2) 7503:3;7546:13 disadvantage (2) 7592:22;7595:25 disallowed (1) 7593:4 disassociated (1) 7559:19 disaster (2) 7509:10;7527:15 discount (1) 7524:4 discovery (1) 7639:7 discrepancy (2) 7616:10,18 discriminated (1) 7495:16 discriminates (1) 7596:25 discriminating (2) 7554:16;7559:1 discrimination (3) 7503:14;7540:19; 7593:18 discriminations (1) 7540:25 discriminatory (2) 7500:5,21 discuss (5) 7459:24;7502:15, 22;7555:21;7640:8 discussed (6) 7498:16;7533:2; 7535:13,18;7582:14; 7624:5 discusses (2) 7480:17,18 discussing (2) 7507:6;7543:15 discussion (28) 7455:3;7495:18; 7544:10,15;7570:6; 7603:13;7611:2; 7613:20;7620:18;</p> | <p>7623:14;7626:5; 7629:20;7630:2; 7633:4;7635:20,24; 7636:4;7637:15,21, 23,24,25;7638:18, 22,25;7639:1,3; 7641:14 discussions (4) 7460:22;7575:5,6; 7577:5 dismissed (1) 7560:21 Disneyland (1) 7523:14 disorderly (1) 7535:4 disparate (1) 7592:15 dispersal (4) 7513:13,14; 7516:21;7562:14 Dispersals (3) 7506:17;7510:17, 20 dispersed (1) 7516:9 displace (1) 7568:13 disrupted (1) 7596:3 disruption (1) 7596:2 dissipating (1) 7616:20 distinctions (1) 7545:20 distracton (1) 7459:15 distress (1) 7616:25 distribute (3) 7459:12;7501:20; 7502:10 distributed (11) 7459:3;7470:13; 7506:19,20;7555:17; 7561:22,25;7562:4; 7580:10;7606:4,9 distributing (23) 7488:20;7491:8, 10;7492:14,18; 7493:3;7531:25; 7532:9,13,20; 7533:2,23;7536:2, 23,24;7538:1,3; 7551:1;7554:4,5; 7555:5;7559:17; 7645:3 distributions (2) 7584:20,24 District (7) 7489:13,21; 7490:15,16;7495:14;</p> | <p>7509:4;7530:11 diverse (1) 7616:6 diversified (1) 7613:22 divide (2) 7544:12,15 divided (2) 7576:18,20 dividend (1) 7589:4 dividends (1) 7583:25 Division (2) 7451:17,25 document (10) 7470:15;7486:13, 14;7506:16; 7570:10;7580:22; 7581:6,8;7606:2,5 documents (5) 7459:3;7486:2; 7561:22,25;7606:8 document's (1) 7606:4 dollars (1) 7485:11 done (23) 7450:18;7451:4,5; 7456:12;7458:7; 7459:11;7471:19; 7490:16;7514:25; 7523:19;7527:10,11; 7537:24;7551:24; 7558:3;7603:24; 7605:23;7634:19; 7637:22;7638:22; 7642:6,8;7644:6 Dos (2) 7514:11,11 double (1) 7512:21 doubt (1) 7628:13 down (29) 7463:9;7467:16; 7476:1;7507:13; 7509:9,20;7510:10; 7514:4;7518:22; 7521:5,15,15; 7524:1;7528:21,25; 7544:17,19;7545:8; 7560:21;7578:2,8; 7597:24;7598:3; 7601:23;7602:3; 7615:6;7625:2; 7633:9;7639:18 Downey (1) 7590:25 downgraded (2) 7492:2,18 downside (1) 7594:6</p> | <p>downward (1) 7629:18 dozed (2) 7509:16;7524:1 dozen (2) 7469:20;7626:23 Dr (5) 7498:16;7643:6,9; 7645:10,20 draft (1) 7590:13 drastically (1) 7594:4 draw (3) 7468:7;7469:19; 7639:19 drawing (1) 7545:20 drawn (3) 7494:25;7593:15, 16 draws (1) 7612:15 dream (1) 7508:7 dreamed (1) 7522:18 dreams (1) 7522:16 Drive (3) 7454:8;7528:13; 7646:6 driven (1) 7636:1 driver's (1) 7563:13 driving (2) 7528:14,16 dropped (2) 7624:12,18 due (2) 7480:10;7511:9 duration (1) 7454:20 during (12) 7457:10;7494:21; 7498:11;7505:12; 7608:16,23;7614:1; 7623:17,17;7626:19; 7634:19;7644:12 duties (1) 7450:10 dwll (1) 7618:8 dwindled (1) 7522:5 dynamic (3) 7612:19,20; 7621:10</p> | <p>7521:10 earlier (11) 7481:20;7490:21; 7500:12,24;7512:14; 7575:5;7577:5; 7601:10;7605:12; 7643:19;7644:12 early (3) 7523:8;7624:9; 7644:4 easier (5) 7450:19,21; 7516:12;7609:13; 7633:21 easily (3) 7454:10;7612:14; 7617:12 East (6) 7611:3,7;7631:18; 7632:2,3;7634:10 East/West (1) 7633:18 Eastern (1) 7631:24 easy (2) 7636:15,17 echo (1) 7640:25 economic (8) 7456:15;7509:10; 7628:3,8,9,15,25; 7643:18 economics (2) 7591:1;7634:24 Economist (2) 7451:19;7452:25 economy (1) 7616:6 edit (1) 7463:15 education (1) 7625:20 effect (4) 7549:17;7581:21; 7582:1;7592:10 effective (2) 7581:25;7622:24 effectively (4) 7582:10;7620:21, 23;7621:1 efficiencies (1) 7573:14 efficient (1) 7487:11 effort (8) 7553:7;7608:9,14, 14;7609:7;7624:15; 7635:16;7640:12 efforts (1) 7612:16 eggnog (1) 7602:6 eight (3)</p> |
| E | | | | |
| <p>ear (1)</p> | | | | |

| | | | | |
|---|---|--|--|---|
| 7451:11;7456:22; 7521:11 either (9) 7471:12;7478:14; 7491:2;7560:1; 7564:16;7574:4; 7595:20;7627:11; 7631:7 elect (3) 7491:10;7551:1,2 elected (1) 7635:11 election (2) 7491:14;7493:19 eligible (1) 7591:7 eliminate (2) 7461:17,18 eliminated (2) 7462:5;7478:14 eliminating (3) 7467:22;7503:25; 7504:2 else (21) 7450:16;7454:1; 7455:6;7458:12; 7461:22;7484:18; 7517:20;7518:15,21; 7523:21;7526:21; 7527:22;7528:2; 7547:8;7549:2; 7560:2;7579:17; 7586:25;7590:3; 7614:9;7640:3 else's (2) 7630:22;7634:6 elsewhere (1) 7511:23 embraced (1) 7512:8 emigrated (3) 7507:10,25; 7564:9 emotional (1) 7573:17 emphasize (1) 7460:19 employ (1) 7620:14 employed (2) 7508:22;7583:23 employee (1) 7645:10 employees (1) 7451:7 enable (6) 7614:6;7619:9; 7620:20,22,25; 7621:10 enabled (1) 7617:9 enacted (1) 7565:7 | encompass (2) 7593:21;7639:11 encompasses (1) 7509:4 encountered (1) 7564:15 encourage (1) 7619:8 encouraging (1) 7621:17 end (11) 7456:25;7457:18; 7464:16;7480:14; 7499:17;7502:7; 7543:15;7612:10; 7613:14;7630:5; 7645:25 ended (2) 7455:3;7607:6 enforce (2) 7599:24,24 Enforcement (1) 7451:17 England (14) 7607:17,21; 7608:5;7613:21; 7618:10;7626:14; 7628:13;7631:3; 7632:18,20;7633:6; 7634:13;7639:20,22 English (37) 7450:15;7451:2; 7452:14,14;7484:9, 11,12;7512:15,16; 7543:9,10;7544:23, 24;7545:13,15,17; 7546:3,4,6;7547:8; 7581:13,15,16; 7602:9,11,12; 7627:6,7,13; 7632:24;7633:1,2; 7642:25;7643:2,2, 12;7644:13 E-N-G-L-I-S-H (1) 7452:15 enjoy (1) 7497:1 enjoyed (2) 7632:17;7640:14 enormous (1) 7485:18 enough (6) 7508:2;7539:9; 7549:12;7576:8; 7587:22;7600:9 ensure (8) 7499:11;7548:11; 7573:18;7592:25; 7605:15;7619:12,22, 22 enterprise (1) 7632:9 entertain (1) | 7640:21 entire (7) 7499:4;7524:9; 7551:25;7553:24; 7556:12;7567:19; 7573:20 entirely (2) 7623:6;7641:10 entirety (1) 7463:13 entities (3) 7471:4;7496:7; 7623:16 entitled (8) 7470:15;7533:7; 7534:2,19;7537:21; 7538:7,18;7588:1 entity (10) 7492:14;7537:12; 7538:12,13;7541:20; 7565:10;7586:3,11; 7622:23;7623:7 environment (2) 7611:13;7612:1 environmental (2) 7520:17;7526:1 envision (1) 7554:24 envisioned (1) 7469:18 equal (10) 7500:1;7504:17; 7509:9;7549:18,23; 7550:11;7559:9; 7592:25;7596:13; 7599:5 equally (1) 7612:25 equation (2) 7614:11;7625:18 equity (2) 7615:6;7616:21 equivalent (2) 7558:3;7576:13 era (3) 7613:21;7622:21, 22 Erba (3) 7452:10,10; 7645:10 E-R-B-A (1) 7452:10 erect (3) 7501:9,14;7503:9 erecting (1) 7554:16 Eric (1) 7452:10 E-R-I-C (1) 7452:10 error (1) 7477:17 especially (4) | 7502:14;7520:5; 7525:18;7544:11 essence (3) 7533:21;7548:20; 7582:3 essential (1) 7610:11 essentially (11) 7492:4;7498:3; 7501:8,14;7537:13; 7559:18;7591:16; 7633:13;7634:1; 7637:21;7638:1 establish (6) 7501:18;7502:4; 7570:9;7610:13; 7620:4;7624:15 established (7) 7461:25;7462:2, 22;7520:16;7591:6; 7599:17;7625:22 establishes (1) 7626:8 establishing (2) 7570:9;7591:7 estimated (1) 7499:18 etcetera (2) 7468:16;7487:15 ethic (1) 7528:17 evaluate (2) 7456:20,24 evaluating (1) 7591:1 evasive (1) 7556:20 even (33) 7456:21;7457:17; 7467:21;7469:25,25; 7480:10;7498:10,11; 7511:11;7512:20; 7521:3,21;7523:6; 7527:14;7529:18; 7535:8;7558:25; 7559:9;7584:13; 7595:23;7601:19; 7605:19;7610:5; 7612:22;7617:3; 7625:21;7629:13,18; 7630:5,8;7638:3; 7640:1;7645:24 evening (1) 7646:9 Event (9) 7454:7;7472:8; 7488:12;7493:6; 7498:7,7;7556:23; 7575:25;7646:5 eventual (1) 7520:6 eventually (2) 7522:10,13 | everybody (7) 7455:6;7470:12; 7547:25;7549:2; 7561:4;7644:13; 7646:3 everyday (3) 7532:10;7565:12; 7623:23 everyone (12) 7461:22;7470:16; 7519:11;7523:21; 7527:12;7561:7; 7579:17;7616:10; 7623:10;7641:8,14; 7643:25 everywhere (1) 7614:9 evidence (47) 7450:7,7;7457:1; 7458:12;7482:11,13, 15;7486:9,11; 7487:23;7506:5; 7517:23,24;7518:1; 7519:5;7526:19; 7530:25;7531:1,4,7, 9;7563:3;7578:15, 17,18,20,22,23,25; 7579:2,3,5;7580:7; 7597:11,13,15; 7606:12;7610:10,13; 7612:10;7618:24; 7619:3;7621:24,25; 7622:2;7644:4,16 evolution (1) 7535:6 evolve (1) 7616:7 Exactly (13) 7470:4,6;7483:12; 7515:4;7518:10; 7534:9,14;7538:24; 7544:3;7546:14; 7547:15;7548:5; 7626:3 EXAMINATION (11) 7459:17;7486:24; 7507:2;7519:15; 7529:22;7560:6; 7563:22;7579:10; 7590:11;7606:23; 7639:6 examine (2) 7492:19;7493:1 example (15) 7450:19;7456:6; 7468:12;7494:23; 7497:4,21;7500:3, 19;7515:13; 7532:12;7554:4; 7555:5;7558:6; 7575:22;7596:6 exceeds (1) 7477:9 |
|---|---|--|--|---|

| | | | | |
|---|---|--|--|---|
| <p>Excel (1) 7562:18 Excellent (1) 7458:11 except (4) 7462:5;7557:18; 7635:8;7641:17 excess (3) 7497:12,17; 7536:25 exclude (2) 7536:8;7593:25 excluded (3) 7488:15;7504:12; 7595:12 excludes (1) 7504:7 excluding (1) 7503:8 exclusion (4) 7488:13,22; 7495:24;7504:4 exclusions (1) 7545:3 Excuse (11) 7458:19;7463:10; 7465:18;7483:22; 7494:2,3;7503:23; 7572:21;7609:21; 7612:11;7614:24 exempt (114) 7456:16;7461:3,6, 24;7462:1,17; 7463:17,24;7464:21; 7465:20;7466:19; 7467:18;7468:4,11, 12,22;7469:5,23; 7470:1,1,6;7471:3,3, 13,16,17;7472:2,8, 12,19,22;7474:24, 25;7475:4;7477:7,9; 7478:24,25;7479:17; 7483:3,7,21; 7484:16,17;7485:6, 12;7541:15,16,18, 21;7565:7,11,14,16, 21,22;7566:13; 7567:11,19,20; 7568:1,4,7,10,12,14; 7569:24,25;7570:1, 4,7,22,23;7571:3,4, 12,13,16,19,24,25; 7572:24;7573:3,20, 22;7574:3,6,7,10,12, 13,24;7575:2,15,19, 21,25;7576:3,5,13, 22;7577:2,8,11; 7582:3,5,15;7586:7; 7587:16,23;7595:11; 7601:1;7604:18; 7644:20 exempting (1) 7556:1</p> | <p>exemption (5) 7570:24;7571:5, 14;7572:25;7573:4 exemptions (3) 7570:23;7571:4, 13 exercise (1) 7470:9 exhausted (1) 7514:23 Exhibit (135) 7460:12,14,25; 7461:13,17;7462:5, 14,23;7466:1; 7467:15,15,24; 7468:3,3;7470:20, 22,25;7471:25; 7472:6;7473:4,5,10; 7476:13,15;7477:14, 14;7478:8,13; 7479:3,24;7480:5, 14;7481:20;7482:7, 12,12,14;7484:13; 7486:9,10,14,14,15, 17,19,19;7487:1,8, 14;7488:4;7489:24, 25;7495:17;7506:22, 23,24;7507:6; 7510:11;7513:12; 7515:2,23;7517:14, 21,23,24,25; 7526:19;7529:20,20, 25;7530:1,1,1,2,5,6, 9,10,16,19,22,25; 7531:1,3,5,6,8; 7542:2;7562:9,19, 23,23,23;7563:24; 7565:16;7566:2,21; 7567:15,16;7568:17, 20;7574:17,18; 7576:23;7577:15,18; 7578:11,17,19,22,22, 24;7579:2,2,4; 7580:13,19,20,24, 24;7581:3,10; 7590:9,13;7594:21; 7597:8,12,12,14; 7606:5,6;7621:20, 24,24;7622:1 exhibits (9) 7450:8;7454:25; 7455:4;7486:17; 7529:19;7578:15; 7580:6,7,10 exist (3) 7499:2;7531:20; 7552:3 existence (1) 7588:17 existing (3) 7546:7;7590:22; 7612:15 exited (2)</p> | <p>7509:24;7510:6 exiting (1) 7511:21 expand (1) 7634:19 expanded (2) 7636:19;7639:13 expansion (2) 7632:22;7640:1 expect (4) 7450:9;7511:5; 7581:1;7642:22 expectations (1) 7629:23 expected (4) 7457:24;7545:24, 24;7589:22 expenses (2) 7614:8;7615:13 expensive (1) 7520:21 experience (6) 7500:24;7608:3,6; 7609:1;7613:12; 7620:1 expert (1) 7489:15 expertise (1) 7487:16 expiration (1) 7616:22 expired (1) 7497:8 explain (5) 7455:6;7470:25; 7477:13;7566:1; 7622:16 explanation (2) 7462:11;7583:4 exported (3) 7511:2,4;7517:4 express (3) 7610:21;7634:18; 7640:7 extended (1) 7520:2 extends (1) 7558:20 extension (1) 7634:23 extensive (2) 7637:23;7638:10 extent (8) 7533:16;7540:18; 7542:16,17;7550:20; 7551:16;7603:12; 7633:8 extra (1) 7605:3 extremely (2) 7520:20;7583:20</p> | <p style="text-align: center;">F</p> <p>face (1) 7498:12 faced (1) 7564:16 faces (1) 7545:3 facilitate (2) 7503:12;7593:18 facilities (1) 7509:16 facility (10) 7508:2,10; 7509:12;7513:9; 7516:16;7523:25; 7525:16,17;7552:16; 7574:9 fact (12) 7457:5;7477:24; 7497:7;7544:5,5; 7545:8;7588:18; 7590:21;7603:10,12; 7628:17;7640:2 factors (3) 7535:20,24; 7630:16 factually (1) 7504:22 fail (2) 7514:25;7635:15 fair (3) 7520:6;7545:21; 7588:17 fall (3) 7498:14;7573:25; 7626:20 fallacy (1) 7625:15 Fallon (1) 7598:9 Falls (2) 7454:7;7646:5 familiar (3) 7474:5;7592:17; 7625:8 families (2) 7608:3;7632:17 family (45) 7507:8,23; 7508:25;7509:19; 7520:2,7,10,13,24; 7521:17,18;7522:11; 7523:18,20;7524:9, 9;7564:12;7570:24; 7571:5,14,15,17,19, 20,23;7573:12,15, 18;7583:23,25; 7584:5,13,14; 7585:3,6,18; 7604:16;7607:23; 7611:24;7613:11;</p> | <p>7614:3,5;7616:19; 7636:18,18 family's (4) 7608:2;7613:10, 12,18 Faneuil (1) 7613:25 far (12) 7457:19;7499:19, 19;7553:21; 7554:18;7556:16; 7561:21;7581:1; 7599:15;7620:19; 7629:22;7640:20 farm (105) 7472:13;7501:16, 18;7502:4,24; 7507:8,23;7508:4,5; 7509:1,21;7514:17, 17;7520:1;7528:25; 7531:24;7532:3,3,3, 4,8,19;7533:1,22; 7534:19;7536:1; 7544:20,25;7550:11; 7552:17,18,20; 7565:9,12,13,21; 7567:24;7568:15,18; 7571:17,18;7572:1, 1,2,4,5,7,17; 7573:21;7574:9; 7582:5;7584:11,16, 24;7585:10,11; 7586:1,6,7,9;7587:6, 21;7588:24;7589:2, 11,19,22;7593:21, 21;7595:3,5,7; 7598:21;7600:6,18, 20;7607:23,24; 7608:2,18;7609:1; 7610:22,24;7613:18, 22,23;7614:6,11,15, 21;7615:1,3,5,11,12, 18;7616:5;7617:2,9; 7635:11,14;7636:8, 8,14;7637:23 farmed (1) 7635:15 farmer (8) 7595:22;7601:4; 7607:22;7608:1,7; 7609:16;7610:4; 7634:25 Farmers (22) 7452:3;7499:5; 7505:14,23;7510:8; 7545:10;7552:7; 7583:21;7591:18; 7592:1;7595:14,19, 21;7600:10; 7603:18;7611:15; 7612:7;7614:16; 7615:22;7617:18; 7627:24;7636:12</p> |
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| | | | | |
|--|---|--|--|---|
| <p>farming (11) 7513:19;7586:3; 7590:22,23;7608:4; 7613:13,15;7614:2, 23;7616:17;7634:19</p> <p>Farms (54) 7453:8,10; 7456:23;7491:12; 7532:12;7553:17; 7564:4,11,13; 7565:7,11,15; 7566:8,13;7567:19, 21;7568:2;7572:8,9, 18;7574:7,8;7575:2; 7582:25;7583:10; 7584:7,8,9;7585:18; 7586:10,17,21; 7587:15;7589:14,14; 7593:16;7599:19; 7600:14,15,21; 7601:25;7604:15,16, 18;7611:10,24; 7613:21;7616:9; 7617:4,4;7618:10; 7632:16,20;7636:21</p> <p>farm's (2) 7615:13;7616:8</p> <p>farmstead (1) 7644:24</p> <p>fashion (1) 7621:10</p> <p>fat (1) 7483:7</p> <p>father (8) 7564:20;7581:21; 7584:7;7587:7; 7589:12,17;7614:25; 7622:6</p> <p>father-in-law (2) 7510:4;7520:22</p> <p>father's (2) 7604:17;7635:15</p> <p>favor (2) 7608:15,23</p> <p>feature (1) 7498:3</p> <p>features (4) 7468:22;7546:12; 7550:17;7556:25</p> <p>fed (1) 7522:3</p> <p>Federal (96) 7451:20;7468:18, 20;7472:8;7474:18; 7487:16;7488:12,18, 25;7494:20;7497:5, 6,25;7499:1;7504:8, 13;7514:19;7524:6; 7531:20,23;7532:2, 7;7533:13;7536:5; 7537:5,23;7538:8, 19;7543:22;7545:5, 7;7546:7,24;</p> | <p>7547:22,22;7548:19; 7550:16;7554:19; 7555:1,3;7570:22; 7571:3,13;7573:24; 7582:9,9,10; 7593:15,20,24; 7594:2;7595:12; 7596:12,12,16,17,18, 23;7599:12;7608:8; 7609:2,4,8,8,10; 7611:4,8,11,11,25; 7612:15,19,21; 7613:3,8;7618:17; 7619:11,14,21,24; 7620:1,15;7622:21, 24;7624:6,11,11,17; 7625:11;7626:20; 7629:19;7635:16; 7639:10,16;7640:9; 7641:8</p> <p>federalize (3) 7503:21,21,24</p> <p>federally (4) 7616:11,13,15,16</p> <p>feed (11) 7454:19;7522:21; 7523:8,13;7539:7,9, 12,14,25,25;7540:2</p> <p>feel (4) 7507:21;7527:11; 7550:10;7630:21</p> <p>feels (1) 7551:21</p> <p>fees (1) 7521:6</p> <p>fell (1) 7520:6</p> <p>fellow (3) 7451:7;7509:11; 7612:16</p> <p>felt (2) 7624:13;7637:10</p> <p>females (1) 7518:5</p> <p>few (12) 7462:5;7481:4; 7485:17;7511:18; 7522:24;7545:17; 7587:6;7594:5; 7597:22;7622:13; 7630:19;7640:15</p> <p>field (3) 7503:16;7509:9; 7520:19</p> <p>fields (1) 7520:19</p> <p>fifth (1) 7607:24</p> <p>Figarden (2) 7454:8;7646:6</p> <p>F-I-G-A-R-D-E-N (1) 7646:6</p> <p>figure (7)</p> | <p>7455:7;7456:5; 7473:2;7476:3; 7522:21;7550:6; 7575:4</p> <p>figures (1) 7516:3</p> <p>filed (1) 7592:14</p> <p>fill (6) 7552:23;7578:2; 7642:13;7643:10; 7645:17,21</p> <p>final (3) 7467:23;7514:16; 7639:4</p> <p>finally (2) 7522:5;7634:16</p> <p>financial (3) 7520:12;7564:15; 7577:1</p> <p>financially (1) 7601:20</p> <p>find (8) 7495:9;7511:25; 7579:9;7580:8; 7604:15;7612:9; 7614:17;7630:8</p> <p>finding (2) 7535:13;7537:18</p> <p>findings (1) 7495:2</p> <p>fine (6) 7459:12;7481:15; 7551:22;7589:1; 7605:19;7634:4</p> <p>finger (1) 7552:5</p> <p>finish (9) 7455:12;7470:5; 7471:20;7502:8; 7512:10;7589:15,17; 7642:17;7645:22</p> <p>finished (2) 7572:12;7580:5</p> <p>fire (1) 7521:12</p> <p>firm (3) 7452:5,15;7453:4</p> <p>firms (2) 7521:7;7526:11</p> <p>first (51) 7450:16;7455:5; 7458:25;7459:6; 7460:12,17,24; 7469:18;7471:7,24; 7473:16,21;7477:15, 16;7480:3,4; 7482:18;7486:13; 7505:20;7513:14; 7518:5;7520:25; 7522:24;7529:14; 7531:11,19;7547:6; 7551:15;7560:25;</p> | <p>7561:1;7562:1,8; 7564:8;7565:12; 7566:4;7567:16; 7577:17;7579:12,15; 7581:13;7592:13; 7597:22;7610:18; 7616:5,5;7622:5,7; 7641:22;7644:6,14, 17</p> <p>first-named (1) 7592:18</p> <p>fiscal (1) 7618:2</p> <p>fit (1) 7551:21</p> <p>fits (1) 7507:6</p> <p>five (5) 7450:19;7521:25; 7522:2;7583:16; 7638:14</p> <p>five-minute (1) 7561:21</p> <p>fix (1) 7636:8</p> <p>flesh (1) 7515:4</p> <p>flexibility (1) 7551:17</p> <p>flexible (3) 7620:3,9,11</p> <p>flight (7) 7455:16,17; 7456:1,9;7458:6; 7505:18,25</p> <p>floors (1) 7614:12</p> <p>flow (5) 7511:13;7614:3; 7615:1;7616:18,21</p> <p>flows (3) 7611:14;7612:2; 7617:2</p> <p>fluctuation (1) 7626:22</p> <p>fluctuations (1) 7630:7</p> <p>fluid (9) 7572:4,12;7595:9, 13,19;7616:2; 7631:7,8;7640:2</p> <p>flung (1) 7640:20</p> <p>flyers (1) 7510:14</p> <p>FMMO (18) 7488:13,15,25; 7491:18,21,22; 7494:21;7495:23; 7501:18;7502:4,25; 7503:5,8,20,24; 7504:1,2;7574:12</p> <p>FMMO's (6)</p> | <p>7488:18;7492:2,9; 7493:1;7495:8; 7497:2</p> <p>folks (3) 7628:12,16; 7630:19</p> <p>follow (8) 7529:12;7543:13; 7549:7;7559:14; 7622:4,13;7631:21; 7641:11</p> <p>followed (1) 7549:14</p> <p>following (4) 7468:13;7564:18; 7607:23;7616:22</p> <p>follows (6) 7461:20,23; 7475:21;7477:5; 7491:4;7493:8</p> <p>fond (1) 7529:14</p> <p>Food (11) 7451:24;7472:25; 7477:23;7478:3,4; 7480:21,25;7481:18; 7562:5;7591:19; 7592:1</p> <p>Foods (2) 7453:15;7595:10</p> <p>footing (1) 7550:11</p> <p>force (2) 7496:3;7614:4</p> <p>forced (4) 7522:7,14; 7525:20;7592:22</p> <p>forcing (1) 7594:8</p> <p>foreseen (1) 7641:10</p> <p>Forestry (2) 7453:18;7607:14</p> <p>forget (1) 7550:2</p> <p>forgive (1) 7552:12</p> <p>forgotten (1) 7542:1</p> <p>form (6) 7614:2;7615:16; 7620:20,22,24; 7641:4</p> <p>formal (8) 7494:22;7620:1, 17,19;7621:2,3; 7623:3,17</p> <p>formality (2) 7607:7,9</p> <p>formatting (1) 7462:14</p> <p>formed (1) 7508:18</p> |
|--|---|--|--|---|

| | | | | |
|---|--|-----------------|--|---|
| <p>former (2) 7510:2;7522:15</p> <p>formerly (2) 7463:2;7608:14</p> <p>forming (1) 7497:19</p> <p>forms (2) 7540:19;7552:22</p> <p>formulating (1) 7535:2</p> <p>Formulation (1) 7451:17</p> <p>forth (3) 7553:23;7634:20; 7636:20</p> <p>forum (1) 7641:13</p> <p>forward (7) 7450:9;7505:23; 7509:7;7560:4; 7561:22;7640:23; 7641:19</p> <p>Foster (1) 7569:14</p> <p>fought (2) 7564:20;7581:22</p> <p>found (8) 7478:16;7489:10, 21;7490:11; 7495:14;7500:4,20; 7535:9</p> <p>four (8) 7456:21;7471:4, 13;7509:15;7521:3; 7568:11;7626:3; 7642:5</p> <p>four-lane (1) 7633:18</p> <p>fourth (1) 7578:8</p> <p>Francis (1) 7640:19</p> <p>frankly (3) 7626:5;7637:24; 7640:20</p> <p>Fraternity (1) 7635:7</p> <p>free (2) 7523:25;7581:1</p> <p>freight (1) 7630:9</p> <p>Fresno (14) 7450:4;7454:10; 7457:7;7509:5; 7510:3;7513:11; 7514:13,13,14,15; 7520:8;7524:23; 7526:10;7646:4</p> <p>FRIDAY (4) 7450:1,3;7451:11; 7580:1</p> <p>friend (1) 7511:11</p> | <p>friends (1) 7509:14</p> <p>front (3) 7474:4;7622:17; 7638:3</p> <p>frustrating (1) 7520:20</p> <p>full (10) 7489:4,23; 7538:14;7542:24; 7554:3,5;7567:17; 7584:7,8;7642:9</p> <p>full-time (4) 7564:6,7;7577:20, 24</p> <p>fully (9) 7493:4;7504:18; 7522:19;7532:20; 7549:1;7554:4,13; 7587:18,20</p> <p>fully-regulated (1) 7532:13</p> <p>function (1) 7542:13</p> <p>Fund (3) 7476:20;7617:7; 7625:1</p> <p>fundamental (4) 7538:5,5;7545:8; 7555:1</p> <p>fundamentally (1) 7544:17</p> <p>funded (5) 7496:14,23; 7536:9;7537:11; 7547:3</p> <p>funding (2) 7625:24;7626:19</p> <p>funds (1) 7500:22</p> <p>further (28) 7467:12;7482:5, 16;7485:14; 7495:18;7513:25; 7518:11;7521:23; 7560:3,4;7579:7; 7590:4;7593:18; 7604:23;7607:3; 7609:14,15;7612:11, 12;7613:9,12; 7622:15;7626:25; 7639:6;7641:5; 7645:11,12;7646:2</p> <p>furtherance (1) 7500:1</p> <p>Furthermore (1) 7572:15</p> <p>future (7) 7509:19;7510:6; 7511:5;7518:9; 7546:5;7616:8; 7628:12</p> | <p>G</p> | <p>G-I-N-O (1) 7453:11</p> <p>given (16) 7498:8,8;7506:18, 20;7524:2;7525:17, 24;7562:13;7581:7; 7603:11;7611:2; 7613:1,6,6;7617:13, 22</p> <p>gives (3) 7482:3;7495:11; 7573:16</p> <p>giving (1) 7457:4</p> <p>glad (4) 7505:22;7512:13; 7530:20;7633:21</p> <p>GMC (2) 7515:13,16</p> <p>goal (5) 7469:4;7470:3,6; 7471:24;7472:2</p> <p>goes (13) 7473:22;7523:10; 7524:17;7555:13; 7567:19;7580:13; 7582:9;7625:2; 7626:8;7630:2; 7631:7;7633:25; 7638:5</p> <p>gonna (1) 7473:21</p> <p>Gonsalves (3) 7564:23;7565:6; 7581:25</p> <p>Good (71) 7451:8,16,21,23; 7452:4,8,10,12,14, 24;7453:7,9,14,16, 20,24;7454:5; 7456:13;7458:2,6; 7459:8,16,23; 7479:8;7481:21; 7484:12;7485:19; 7486:1,12;7497:4; 7505:22;7518:15; 7519:13;7525:8,10; 7526:25;7527:1; 7528:17,20;7531:16, 17;7539:11,16; 7543:11,12;7555:4; 7562:20;7563:20; 7578:13;7580:15; 7581:16;7583:20; 7586:24;7587:4,5; 7590:1;7597:21; 7602:12,13;7605:1, 10,24;7606:2,25; 7627:21;7631:16; 7634:7;7638:8; 7643:11,12;7645:23</p> <p>Google (1) 7454:11</p> | <p>gotcha (1) 7570:15</p> <p>Government (4) 7468:20;7618:1; 7625:19;7626:10</p> <p>graduate (1) 7497:18</p> <p>graduated (2) 7520:9;7634:22</p> <p>grain (1) 7630:10</p> <p>grand (1) 7508:20</p> <p>grandfather (5) 7564:5,8,15; 7565:10;7613:23</p> <p>grandmother (2) 7636:16,16</p> <p>grandparents (2) 7520:2;7613:22</p> <p>granted (2) 7457:3;7637:18</p> <p>grateful (2) 7505:24;7561:19</p> <p>gravel (1) 7614:1</p> <p>great (3) 7459:8;7485:25; 7487:11</p> <p>greater (4) 7614:20,25; 7617:13;7619:5</p> <p>greatly (2) 7608:1;7609:9</p> <p>grew (7) 7519:25;7520:7, 25;7521:2;7522:17; 7524:20;7564:4</p> <p>G-R-O-O-T (2) 7453:7,9</p> <p>group (7) 7608:10;7635:18; 7637:20;7639:2,14, 18;7640:20</p> <p>groups (1) 7629:25</p> <p>growing (1) 7564:12</p> <p>grown (2) 7523:3;7614:22</p> <p>growth (1) 7630:17</p> <p>guarantee (1) 7625:24</p> <p>guaranteed (1) 7623:10</p> <p>guess (12) 7456:1;7478:3; 7553:23;7557:21; 7586:19;7598:10,25; 7599:13;7601:8; 7602:14;7604:17; 7631:22</p> |
|---|--|-----------------|--|---|

| | | | | |
|---------------------|--|--|--|---|
| guys (1) 7598:22 | 7469:9,15; 7470:15;7473:12; 7474:15;7476:20; 7491:7,10;7533:24; 7534:7,8,15,21; 7535:3,6,7,9; 7536:15;7541:11; 7542:18;7550:25; 7551:2,5,7,7;7553:2, 16,22;7555:5,25; 7557:13;7559:23; 7561:11;7564:14; 7574:2 | 7557:8 heading (1) 7490:18 headings (1) 7490:17 heads (4) 7515:7;7516:15; 7517:17,18 health (1) 7635:15 hear (4) 7511:5;7519:11; 7539:11;7642:25 heard (8) 7589:12;7602:24; 7603:1;7605:18; 7608:12;7629:12,24; 7643:7 hearing (37) 7450:4,7;7454:7, 17;7456:20,25; 7458:8;7488:10; 7503:25;7505:14; 7512:24;7513:20; 7540:1;7542:15; 7561:15;7576:12; 7601:10;7605:5,12, 17;7608:16,24; 7609:15;7610:9; 7617:14;7618:25; 7620:2,3;7621:4,6; 7627:23;7628:7,22; 7631:2;7637:17; 7638:25;7642:22 hearings (2) 7612:21;7635:17 hearsay (3) 7512:18,20,21 heartbreaking (1) 7521:20 heavy (1) 7451:5 heck (1) 7627:10 Heifer (3) 7506:17;7510:25; 7513:13 heifers (9) 7511:2,4;7516:18, 24;7517:3,3,4,7; 7518:4 held (6) 7535:3;7565:10, 15;7568:10; 7571:25;7612:21 Hello (1) 7519:25 help (24) 7455:1;7456:3; 7464:9;7473:7,9; 7474:12;7482:25; 7483:2;7486:2; 7512:9;7520:10; | 7521:5;7522:4; 7528:3,4;7550:6; 7575:1,16;7576:16; 7577:2;7589:6; 7622:6,10;7640:22 helpful (5) 7458:11;7485:18; 7530:21;7622:19; 7640:13 helping (2) 7522:25;7627:14 helps (1) 7484:6 hence (1) 7618:21 Henry (3) 7451:18;7553:15; 7559:14 H-E-N-R-Y (1) 7451:18 herd (4) 7508:2;7513:16; 7518:9;7522:5 hereunder (1) 7493:19 Herfindahl (1) 7638:13 herself (1) 7522:1 high (5) 7520:6;7549:12; 7550:8;7583:20; 7616:1 higher (10) 7481:4;7497:4,18; 7498:14,15,17; 7527:14,18;7537:21; 7549:21 higher-end (1) 7632:11 highest (3) 7496:6;7589:5; 7602:20 highlight (1) 7617:14 highlighted (8) 7461:17;7463:11; 7466:2,4,21; 7467:17;7477:21; 7612:23 highways (1) 7625:20 HILL (9) 7451:23,23; 7526:22,24;7527:2; 7605:7,8,11,11 hills (1) 7632:18 Hill's (1) 7605:25 Hillside (6) 7495:3;7530:4,6; 7592:17;7593:4; | 7602:15 Hilmar (5) 7628:20;7630:19; 7632:8,15,16 himself (1) 7564:11 hired (1) 7527:24 historical (1) 7565:8 hit (2) 7508:4;7521:9 hits (1) 7554:20 hold (6) 7546:5;7566:7; 7574:3;7609:14; 7637:25;7639:8 holder (1) 7498:9 holders (6) 7471:13;7485:6; 7498:6;7571:24; 7572:24;7573:4 holding (2) 7540:1;7574:24 holds (1) 7566:19 Hollandia (2) 7569:10;7585:22 H-O-L-L-A-N-D-I-A (1) 7585:23 Hollon (6) 7641:21;7642:4, 17;7643:13;7645:5, 11 Hollon's (3) 7641:24;7644:14; 7645:16 Holstein (1) 7509:2 Holsteins (2) 7508:19;7513:7 home (7) 7508:24;7520:10; 7522:14;7523:9; 7625:16;7634:24; 7641:14 honest (1) 7632:14 honestly (2) 7541:23;7599:20 Honor (65) 7452:14;7453:16; 7456:18;7458:19,22; 7459:5,19;7462:7; 7463:3;7465:7; 7467:2,9;7473:7; 7475:10,19;7476:9; 7477:19;7478:1,19; 7479:12,23;7480:15; 7482:8,17;7485:25; 7486:23;7487:5; |
| H | Handlers (16) 7453:2,5,13; 7455:12,18;7463:8; 7465:11;7488:8,19; 7493:2;7504:9,14; 7552:22;7553:6,20; 7555:4 hands (1) 7528:6 Hanford (6) 7508:3;7513:24; 7514:10;7565:14; 7586:19;7604:19 Hanson (1) 7452:5 H-A-N-S-O-N (1) 7452:6 happened (1) 7568:12 happening (2) 7468:4;7570:14 happens (1) 7626:7 happily (1) 7625:16 happy (1) 7641:6 hard (8) 7457:11,17; 7521:21;7564:10; 7583:18,19;7609:2; 7645:24 harder (1) 7521:21 hard-working (1) 7521:17 harm (2) 7486:8;7619:1 hat (1) 7460:7 hate (2) 7545:22,23 hauled (1) 7598:25 hauls (1) 7598:22 head (4) 7515:18;7516:25; 7517:17;7583:2 headed (1) | | | |

| | | | | |
|---|--|---|--|---|
| 7490:7,19;7496:17; 7497:13;7500:16; 7501:24;7505:12; 7506:15;7512:12,16; 7515:2;7519:1; 7529:24;7530:15,17; 7531:10;7540:17; 7542:5;7545:13,21; 7547:7;7555:19; 7558:15,24;7577:14; 7580:12;7590:7; 7597:8;7604:24; 7606:19;7607:3,11; 7621:19;7626:25; 7627:8,13;7634:16; 7640:25 | hypothetically (3) 7538:7,19; 7559:15 | implemented (1) 7593:20 | incorporating (1) 7594:3 | 7620:3,5,14; 7623:4 |
| | I | imply (1) 7554:21 | increase (4) 7568:4;7582:17; 7614:14;7630:11 | information (12) 7513:12;7516:4, 14;7518:17;7552:3, 4,23;7554:14; 7567:7;7574:20; 7617:11;7622:15 |
| Honor's (1) 7506:20 | ice (2) 7602:4,5 | importance (2) 7610:25;7630:3 | increased (3) 7576:5;7592:11; 7614:18 | informed (3) 7510:5;7511:1,3 |
| hope (9) 7457:25;7546:4; 7596:13;7611:1; 7612:9;7618:24; 7619:7;7627:9; 7630:20 | idea (9) 7499:16;7533:16, 19;7539:16; 7546:13;7550:3,4; 7582:14;7588:23 | important (13) 7472:12;7495:4; 7503:7,7;7504:6; 7507:13;7539:8,9, 12;7541:5;7546:23; 7591:15;7641:7 | increasing (1) 7616:25 | initiate (2) 7621:3;7637:17 |
| hopeful (2) 7643:22;7644:2 | ideas (2) 7488:1;7640:21 | imported (1) 7630:10 | increasingly (4) 7611:11,25; 7616:8,25 | initiative (1) 7616:23 |
| hopefully (2) 7458:7;7580:7 | identical (3) 7480:6,7;7493:12 | impossible (1) 7498:4 | incurring (1) 7616:20 | Inn (1) 7454:6 |
| hopes (2) 7455:15,17 | identification (7) 7470:23;7486:20; 7506:25;7562:24; 7580:21;7581:4; 7606:7 | impressed (1) 7485:17 | indeed (1) 7582:16 | innovative (1) 7499:16 |
| hoping (1) 7562:3 | identify (1) 7606:17 | improperly (2) 7468:19;7596:25 | independent (1) 7512:3 | I-N-O (1) 7459:1 |
| horribly (1) 7521:6 | identified (3) 7454:2;7467:17; 7535:20 | improve (1) 7620:8 | Index (2) 7638:13,14 | in-plant (2) 7543:18;7549:20 |
| hotel (1) 7539:25 | identifying (3) 7495:10;7507:6; 7638:12 | improved (1) 7609:17 | indicate (2) 7589:12;7598:12 | input (1) 7450:13 |
| hours (1) 7545:18 | identify (1) 7606:17 | improvements (3) 7614:18,19; 7615:12 | indicated (6) 7505:13;7610:18; 7618:23,24;7628:14, 23 | insert (11) 7466:15,16; 7467:6;7474:13; 7478:5;7481:18; 7489:20;7490:14,15; 7495:20;7577:22 |
| houses (1) 7522:14 | identifying (3) 7495:10;7507:6; 7638:12 | improvised (2) 7615:22,24 | indicates (3) 7609:23,25; 7622:15 | inserted (3) 7577:18;7578:2,8 |
| Hudson (1) 7639:24 | ie (1) 7594:17 | inability (2) 7489:3;7549:16 | indistinguishable (1) 7554:20 | inserting (5) 7464:14;7465:2,4; 7472:19;7595:5 |
| huge (4) 7508:20;7509:18; 7594:15;7641:9 | II (1) 7613:21 | inadequate (1) 7618:17 | individual (13) 7525:20;7533:24; 7534:7,8,15,21; 7535:3,6,7,9; 7536:15;7559:23; 7589:3 | inserts (3) 7464:4;7467:7,8 |
| hundred (4) 7555:15;7559:16; 7565:8;7584:6 | III (7) 7608:8,15; 7609:15;7612:24; 7621:7;7635:20; 7636:24 | in-area (1) 7538:22 | induce (1) 7613:2 | inside (1) 7556:14 |
| hundredweight (7) 7569:5;7574:24; 7575:11;7588:7; 7589:10;7598:5; 7602:21 | imagine (1) 7553:25 | Inc (1) 7452:11 | Industry (23) 7453:21;7484:19; 7512:7;7514:24; 7520:23;7572:22; 7606:20;7608:10; 7609:6,25;7615:20, 21;7616:3,23; 7618:1,13,22; 7620:18;7621:8; 7622:22;7624:14; 7630:20;7638:4 | insight (1) 7494:18 |
| husband (7) 7520:7,10; 7521:25;7522:17,21; 7523:1;7529:5 | imbedded (2) 7540:19,25 | inception (2) 7568:9;7590:20 | induce (1) 7613:2 | inspected (1) 7525:24 |
| hyphen (1) 7497:12 | imbedding (1) 7494:14 | include (5) 7503:20,23; 7542:15;7615:2; 7623:14 | industry's (1) 7619:5 | inspiring (1) 7637:15 |
| hyphenated (1) 7497:12 | immeasurable (1) 7618:6 | included (3) 7574:11,12; 7610:7 | inevitably (3) 7619:13,24; 7621:11 | instance (3) 7484:15;7571:19; 7575:13 |
| hypothetical (1) 7554:1 | immediately (3) 7620:21,23,25 | includes (3) 7607:16;7612:17; 7639:14 | influence (1) 7632:7 | in-state (9) 7496:25;7552:17; 7553:7,21;7555:10; 7596:4;7616:1; 7624:6;7631:8 |
| | impact (12) 7559:5;7594:13; 7609:6,20,22; 7610:8,21;7618:8; 7622:17;7629:5,20; 7644:15 | including (4) 7454:4;7590:21; 7609:2;7638:11 | influencing (1) 7603:14 | Instead (7) 7463:20;7465:4; 7466:8;7467:1; 7481:19;7591:9,12 |
| | impacting (1) 7622:17 | inclusion (6) 7609:4,5,12; 7619:14,17,24 | influx (1) 7594:15 | Institute (8) 7452:18,22,25; 7488:22;7574:2,5; 7581:17;7602:18 |
| | impacts (6) 7607:20;7610:10; 7620:15;7622:7; 7641:9;7644:18 | inclusive (1) 7640:9 | informal (4) | Institute's (2) 7593:22;7609:24 |
| | impermissible (1) 7495:17 | income (1) 7614:21 | | |
| | | Incorporated (1) 7567:24 | | |
| | | incorporates (1) 7492:8 | | |

| | | | | | | | | |
|--|---|---|--|--|--|---|---|---|
| instructed (1) 7573:21 | 7592:16 | 7607:19;7635:16 | joke (1) 7634:3 | 7540:12,16;7542:1, 6;7544:23;7545:22; 7547:8;7549:22; 7550:1,3;7555:20; 7558:10,16,19; 7559:3,8;7560:2,9, 20;7561:5,8,18,24; 7562:6,10,13,16,20, 25;7563:5,8,11,16, 18,20;7564:24; 7565:5;7570:12,16; 7571:7,11;7573:8; 7575:17,24;7576:2; 7577:16,22;7578:1, 5,7,13,21;7579:1,6, 9;7580:2,15,22; 7581:5,19;7585:15, 25;7586:4,10,13,16, 21,24;7589:15; 7590:3,8;7591:22; 7594:23;7595:4,15; 7596:22;7597:9,17; 7602:9;7604:4,10, 22;7605:6,9,23; 7606:8,14,17; 7608:19;7611:5,17, 20;7612:4;7613:4, 14,16;7615:23,25; 7616:13,15;7619:16; 7621:15,21;7623:8, 13,20;7627:2,12,17; 7632:24;7634:17; 7636:10,24;7638:6; 7639:10;7640:3,24; 7641:6,16,24; 7642:8,18,21,25; 7643:11,15;7645:23 | into (90) 7455:13;7461:2; 7482:11,12,15; 7486:9,11;7487:3; 7494:14,18;7496:24; 7498:9;7500:21; 7508:3,14;7511:7, 14;7517:23,24; 7518:1;7521:23; 7526:19;7530:25; 7531:1,4,7,9; 7537:13;7540:19; 7546:19,22;7552:16; 7554:2,17;7555:13; 7556:15;7564:1; 7565:1;7568:3; 7572:11,13;7573:14; 7576:18,20;7578:15, 16,17,20,21,22,25; 7579:1,2,5;7581:21; 7582:1,4,9,16,19; 7583:15;7590:15; 7591:3;7592:22; 7596:24;7597:11,12, 15;7600:14;7601:11, 13;7605:2;7607:1, 10;7613:3,8; 7615:10;7621:23,25; 7622:2;7628:10,16, 21,22,25,25;7629:2; 7632:1;7634:3; 7640:15 | involves (1) 7642:5 Island (4) 7507:11;7609:12; 7624:5;7635:8 Islands (1) 7508:1 isolate (1) 7554:7 isolated (1) 7633:14 isolating (1) 7555:25 issuance (1) 7488:12 issue (14) 7456:7,20;7460:9; 7496:5;7499:4,4,9, 19;7538:5,6,17; 7544:12;7558:11; 7573:10 issued (7) 7495:1;7565:7; 7566:3;7570:24; 7571:5,15;7575:8 issues (8) 7494:1,10;7512:1; 7594:16;7621:1; 7635:10;7644:21; 7645:8 italicized (2) 7462:18;7472:23 italics (4) 7462:15;7493:14, 24;7494:8 items (2) 7454:3;7639:5 IV (1) 7556:13 | Jon (1) 7510:2 J-O-N (1) 7510:2 journey (3) 7508:16;7636:3; 7641:14 joy (2) 7561:3,5 JUDGE (324) 7450:2,6;7452:23; 7454:1;7455:8,21, 23;7456:2,10,13; 7457:3,13,20; 7458:2,11,16,21,23; 7459:2,8,16,21; 7461:9,21;7462:4,8, 13,20,23;7463:4; 7464:2,7,10,13,17, 23,25;7465:8,17,22, 24;7466:6,8,12,15, 17,20,24;7467:3,6, 10;7470:14,20; 7471:19;7473:2,9, 18,22,24;7474:6,10, 16,20,22;7475:6,13, 17;7476:2,7; 7477:13,18,20; 7478:2,7,16,20; 7479:2,5,25;7480:5, 10,16,20;7481:3,6, 12,16;7482:9,18; 7484:8;7485:15; 7486:1,8,12,15,21; 7487:6,22;7490:3,8, 13;7491:19; 7493:22;7494:6; 7495:5,7,20; 7496:15,18;7497:10, 14;7498:19,22; 7500:6,9,12,17; 7501:3,5,10,22; 7502:1,7,18,20; 7503:22;7504:24; 7505:1,4,8,22; 7506:7,11,13,22; 7507:1,20;7510:13; 7512:13,22;7515:3, 9,13,17,19,21,23; 7516:2,15,23; 7517:7,10,13,20; 7518:2,12,15,20,24; 7519:2,7,11; 7524:11,19,22,24; 7525:2,5,8,10,13,22; 7526:4,8,14,18,21; 7527:22;7528:2,7,9, 17,20,23;7529:2,5,7, 10,15,17;7530:20; 7531:5,11;7538:24; 7539:6,18,23; | judicial (1) 7530:18 July (1) 7522:6 jurisdiction (1) 7593:10 Justice (1) 7494:16 justification (1) 7593:13 |
| integrated (1) 7463:13;7552:8 intended (2) 7465:12;7610:20 intent (12) 7488:11;7501:15, 17;7502:3,16,22; 7551:5,18,22; 7554:15;7557:2; 7626:22 interact (1) 7541:14 interest (6) 7525:21;7585:2; 7619:5;7622:10; 7623:11,19 interest-based (1) 7613:20 interesting (6) 7469:24;7511:25; 7512:23;7526:4; 7621:16;7635:19 interests (6) 7610:19,22; 7621:5;7623:5,6,9 interfere (1) 7643:8 internal (2) 7585:7,8 internally (1) 7554:18 Internet (2) 7516:12;7540:1 interpose (1) 7512:18 interpret (1) 7487:25 interpretation (1) 7487:13 interpreted (1) 7488:1 interrelated (1) 7630:20 interrupt (6) 7475:24;7507:12; 7512:17;7539:6; 7623:8,20 interrupted (1) 7540:1 Interstate (3) 7633:9;7634:3; 7644:15 interview (1) 7511:3 interviews (1) 7510:22 intimately (1) | invest (1) 7591:2 invested (1) 7585:11 investigate (1) 7572:23 investigation (4) 7511:17;7573:1,6, 10 investment (3) 7573:17;7585:9; 7615:6 investments (2) 7585:3;7608:4 invite (5) 7479:9;7481:17; 7518:25;7585:16; 7604:22 invited (1) 7636:8 involve (1) 7600:25 involved (4) 7500:14;7590:19; | J Jacinto (1) 7586:7 January (6) 7510:24;7516:3,6, 7,17;7564:18 jealous (1) 7627:10 Jersey (1) 7607:17 Jerseys (1) 7632:15 Jill (1) 7450:5 job (4) 7485:19;7523:16; 7605:1;7628:13 join (2) 7552:8;7609:8 joint (1) 7468:20 | K Kawamura (1) 7495:3 keep (15) 7456:2;7466:11; 7485:19;7521:5,21; 7522:14;7548:15; 7550:14;7552:19; 7571:20;7579:12,15; 7582:25;7608:1; 7638:2 Kentucky (3) 7453:22;7606:21; 7608:11 | | | | | |

| | | | | |
|---|--|---|---|---|
| kept (1) 7517:2 | 7643:16 | late (4) 7457:6,6;7497:23; 7564:10 | 7594:5 | 7460:21;7467:20; 7471:1;7541:7 |
| Kern (2) 7514:14;7598:18 | L-A-I (1) 7453:14 | lately (1) 7510:17 | leaving (3) 7464:16;7502:1; 7571:18 | lights (1) 7454:13 |
| key (1) 7619:3 | laid (1) 7524:6 | later (4) 7508:5,10; 7579:13;7580:16 | led (1) 7481:25 | Ligtenburg (1) 7627:14 |
| kick (1) 7528:9 | lakes (1) 7634:8 | latest (1) 7456:8 | left (11) 7478:21,22; 7479:16;7490:3; 7522:9;7524:3; | likely (3) 7504:15;7582:18; 7643:7 |
| kicked (2) 7525:19;7635:13 | Lakeshore (12) 7565:14,21,23,24; 7566:4,5;7586:14, 19;7587:7,10; 7588:6,15 | Laton (4) 7507:8,24; 7508:11;7513:10 | 7561:10;7598:23; 7612:5;7619:16; 7641:20 | likes (1) 7584:7 |
| kicks (1) 7625:13 | Lancaster (1) 7638:15 | Laurel (2) 7451:16;7454:5 | leg (1) 7518:16 | liking (2) 7465:8;7602:14 |
| kids (5) 7508:20;7521:3; 7522:25;7523:7,14 | Land (11) 7452:3,9,13; 7590:23;7607:24; 7615:5;7628:1; 7632:21;7635:2,4; 7645:10 | Lauren (2) 7451:21;7640:5 | legal (5) 7487:12,12,18; 7489:15;7494:14 | limitations (1) 7629:12 |
| killed (1) 7508:5 | language (31) 7460:14;7463:10; 7468:8;7470:16; 7475:7,8,11; 7476:14,17,21; 7477:21;7478:18; 7481:11;7484:13; 7491:3,18,20; 7493:8,25;7494:9; 7531:19;7540:20,22; 7541:22;7542:8,13, 16;7550:23; 7551:17;7553:16; 7555:21 | Law (9) 7450:6;7452:5,15; 7487:17;7503:13,16; 7538:11;7560:15; 7572:15 | legality (1) 7592:15 | limited (4) 7503:19;7505:15; 7637:3;7641:24 |
| kind (19) 7451:3;7454:10; 7455:6;7468:13; 7500:14;7527:15; 7541:3,3,4,4; 7551:24;7552:12; 7577:1,4;7582:11; 7625:16;7626:1; 7628:25;7635:9 | | lawful (1) 7565:16 | legislation (2) 7502:11,23 | limits (1) 7635:13 |
| kinds (2) 7450:7;7628:24 | | law's (1) 7620:6 | Legislature (1) 7635:11 | line (10) 7460:25;7461:4; 7474:17;7485:10; 7508:15;7560:17; 7577:23;7578:2,8; 7593:14 |
| Kings (5) 7509:5;7513:24; 7514:15,16;7526:11 | | lawsuit (2) 7592:15,18 | less (18) 7460:7;7463:16, 24;7465:19; 7466:11;7477:7; 7478:24;7484:16; 7548:6;7596:10; 7599:1;7600:4,16; 7601:7;7618:12; 7620:19;7624:23; 7628:11 | lines (4) 7504:9;7578:11; 7593:16;7594:4 |
| knew (3) 7456:19;7518:12; 7520:23 | | lawsuits (4) 7494:18;7502:15, 19,21 | 7628:11 | List (2) 7580:23;7639:8 |
| knowing (3) 7483:23;7541:7; 7591:4 | large (5) 7498:12;7510:7; 7511:10;7519:25; 7539:24 | lawyer (3) 7545:15;7603:1; 7643:14 | lesser (1) 7631:10 | listed (4) 7516:9,20,21; 7523:24 |
| knowledge (7) 7492:17;7494:13; 7585:11;7598:15; 7601:2,8;7629:22 | largely (2) 7615:14;7616:23 | layman's (1) 7489:16 | lessons (1) 7609:1 | listen (3) 7597:2;7622:18; 7628:7 |
| known (4) 7504:13,22; 7544:1;7616:9 | larger (3) 7576:5;7593:17; 7624:23 | lead (1) 7468:13 | letters (1) 7472:23 | listened (1) 7584:1 |
| knows (2) 7547:25;7645:19 | largest (2) 7616:5;7628:20 | leading (4) 7545:11,19,23; 7584:3 | level (15) 7503:15;7587:11; 7588:21,23;7589:19, 21,22;7610:24; 7617:3,25;7618:18; 7624:11,12;7625:7, 14 | listening (3) 7460:2;7497:11; 7540:2 |
| L | Las (1) 7595:24 | leads (2) 7473:20;7600:3 | 7628:11 | literally (1) 7624:21 |
| la (8) 7453:4,4;7459:7; 7586:23,24;7588:6, 8,12 | last (33) 7451:10;7454:6; 7459:1;7460:1; 7467:14,15;7490:7; 7496:17;7497:5; 7509:20,23;7510:20; 7511:9;7515:15; 7516:10;7517:16; 7521:11;7522:2; 7532:23;7562:21; 7568:18;7574:18,23; 7581:8;7583:16; 7585:4,11;7594:24; 7607:6;7613:5; 7617:19;7626:13; 7637:25 | leased (1) 7508:2 | 7628:11 | litigation (4) 7530:6;7592:17, 19,25 |
| labeled (1) 7596:6 | | least (20) 7474:18;7483:13; 7503:3;7504:17; 7512:17;7547:24; 7548:1,23,25; 7554:12;7558:2; 7582:3;7599:5; 7607:24;7624:16,16; 7633:6;7635:20; 7637:15;7642:23 | 7628:11 | little (30) 7474:10;7479:6; 7482:1;7483:14; 7484:15;7486:2; 7499:6;7507:16; 7511:16;7513:6; 7521:4;7527:8; 7528:16,16;7534:12; 7547:15;7550:24; 7551:16;7581:18; 7594:6;7600:8; 7626:11;7632:11; 7634:19;7635:9,19, 22,25;7636:3;7637:9 |
| labor (1) 7614:4 | | leave (15) 7455:6;7456:3,4, 6;7459:12;7464:19, 23;7466:24; 7468:23;7471:11; 7480:22;7481:1; 7483:22;7643:13,24 | 7628:11 | live (4) 7454:19;7571:22; |
| lack (1) 7640:12 | | leaves (1) | | |
| lady (2) 7521:25;7522:2 | | | | |
| LAI (3) 7453:14,14; | | | | |

| | | | | |
|--|--|---|---|--|
| 7633:6,7 lived (2) 7611:15;7612:7 Livestock (2) 7514:6,10 livestocks (1) 7516:13 loan (1) 7585:1 loans (1) 7520:12 lobsters (1) 7616:4 Local (13) 7506:18;7508:9; 7513:13;7518:17; 7520:5;7595:24; 7610:25;7611:9,16; 7612:8;7614:1; 7617:1;7618:5 locate (1) 7476:10 located (22) 7491:11,13; 7507:8,23;7514:5; 7532:8;7538:13; 7544:21,25;7549:19; 7550:12;7552:7; 7553:17;7567:25; 7585:21;7586:5,17, 21;7587:20; 7593:19;7602:16; 7630:9 location (7) 7513:25;7514:2,3; 7587:8,21;7590:21; 7602:19 logical (1) 7595:8 logistical (1) 7594:16 logistics (1) 7597:24 long (11) 7458:9;7459:10; 7499:6;7508:17; 7548:19;7554:10; 7557:1;7584:14; 7616:19;7632:10; 7645:24 longer (4) 7458:3;7489:9; 7490:10;7565:2 long-standing (3) 7614:11;7622:23; 7623:7 long-term (2) 7601:17;7618:14 long-time (1) 7616:2 long-winded (1) 7462:10 look (37) | 7462:4,13; 7463:10;7466:1; 7468:8;7469:24; 7472:9,12,16; 7474:12;7476:17; 7480:11,13,23; 7482:3;7483:13; 7485:2;7511:17,20; 7515:5;7516:23; 7542:2;7553:19; 7556:10;7568:19; 7569:2;7629:15; 7631:25;7632:7; 7633:23,24;7635:16; 7637:2,8;7638:3; 7640:23;7645:20 looked (10) 7460:4;7471:7; 7473:3;7529:18,19, 20;7535:16;7538:2; 7542:2;7637:2 looking (24) 7450:9;7460:6; 7462:13;7464:2; 7473:3,10,24; 7474:2,7,8;7475:13; 7481:24;7483:9; 7484:13;7499:17; 7509:25;7511:23; 7550:24;7554:15; 7557:20;7574:19,20; 7600:23;7638:12 looks (2) 7526:15;7566:24 Los (2) 7602:16,20 lose (1) 7568:1 losing (3) 7564:16,20; 7581:22 loss (3) 7523:20,20; 7630:22 lost (8) 7509:14;7521:12; 7522:16;7527:5; 7539:8,24,25; 7582:15 lot (14) 7451:4;7454:8; 7471:10;7527:12; 7528:13;7550:17; 7588:21;7595:7; 7601:12;7634:19; 7635:2;7636:22; 7639:15,19 lots (1) 7502:2 loud (2) 7519:12;7643:7 love (3) 7520:4,6;7521:17 | loved (1) 7522:1 lovely (1) 7645:25 low (3) 7527:13;7635:22; 7636:2 lower (8) 7492:2;7497:17; 7498:14,15;7530:11; 7594:8;7610:1; 7624:12 lowers (1) 7625:2 lunch (5) 7579:11,13,14,17, 20 M MA (1) 7552:22 ma'am (1) 7460:16 machinery (1) 7614:7 Maddox (1) 7520:4 magic (1) 7499:3 mail (1) 7510:14 main (1) 7580:3 Maine (49) 7452:17;7453:18, 21;7606:20;7607:14, 18,21,25;7608:10; 7610:20,23;7611:10, 24;7615:21;7616:3, 23,24;7617:2,3,4,6,9, 13;7618:1,7,12; 7620:2;7622:20; 7626:15;7627:3,10, 24;7628:1,13; 7629:6;7631:3,4; 7633:8,8,18,21; 7634:5,11,22,25; 7635:5,13;7636:21; 7638:23 Maine's (3) 7616:6;7617:17; 7618:13 mainly (3) 7526:10;7602:5,5 maintain (5) 7522:22;7537:10; 7584:10;7610:23; 7626:16 maintains (1) 7584:11 majored (2) 7520:9;7525:3 | majority (2) 7639:23,24 maker (1) 7609:7 makers (5) 7631:20,24; 7632:2,3;7636:23 makes (8) 7457:16;7460:10; 7464:4;7492:9; 7495:2;7498:4; 7523:21;7567:20 making (23) 7460:5;7479:15; 7494:22;7549:17; 7563:13;7596:7; 7600:2;7614:15; 7620:5,9,12,15,16, 19,20,22,25;7621:3; 7623:2,4,17; 7628:15;7639:1 mammoth (1) 7451:3 management (1) 7573:13 Manager (1) 7564:4 managing (2) 7590:17;7615:5 mandated (1) 7625:14 mandating (1) 7520:16 mandatory (2) 7501:7,13 manner (3) 7545:12;7619:2, 10 manpower (1) 7450:17 manufactured (1) 7572:16 manufacturer (1) 7631:24 manufacturing (3) 7572:11,13; 7574:9 manure (2) 7520:18;7614:12 many (32) 7501:3;7502:15, 15,19,19,21,21; 7509:22;7512:1; 7513:7;7516:15; 7518:18;7520:20; 7521:19;7523:16; 7568:10;7584:4,5; 7587:7;7592:16; 7596:6;7610:9; 7616:3;7625:18; 7630:2,16,16,20; 7637:7;7638:12; 7639:22;7640:19 | map (1) 7633:23 Marcos (1) 7585:23 margin (1) 7623:11 marginally (1) 7610:24 margins (1) 7610:3 mark (3) 7470:17;7486:2; 7606:5 marked (12) 7470:23;7486:20; 7487:8;7506:15,25; 7526:18;7562:24; 7580:21;7581:4,6, 10;7606:7 Market (36) 7468:25;7469:8; 7472:25;7477:8; 7478:25;7479:18; 7483:24;7484:17,19, 24;7524:16;7553:22, 24;7557:12; 7564:21;7568:14; 7573:11;7581:23; 7594:5;7596:2,3,15; 7609:17;7611:16; 7612:8;7618:14; 7619:13,23;7622:25; 7624:2;7625:12; 7629:17;7632:7; 7635:24;7637:11; 7639:13 market-based (3) 7616:12,17; 7618:18 market-driven (1) 7617:6 marketer (1) 7630:18 Marketing (33) 7451:10,19,24; 7472:9;7487:16,24; 7488:13,18;7491:12, 13;7492:23;7494:14, 20,24;7496:8; 7497:7;7502:12; 7531:24;7532:8; 7533:22;7535:4; 7537:5;7546:8; 7553:18;7605:13,16; 7611:13;7612:1; 7618:4;7629:15; 7632:11;7636:19; 7641:9 marketplace (4) 7588:19;7612:20; 7615:17;7624:1 markets (4) 7607:21;7631:7,8; |
|--|--|---|---|--|

| | | | | |
|---|---|---|---|--|
| 7636:12 market-wide (2) 7535:7,11 marking (2) 7486:15,17 married (3) 7508:17;7520:9; 7634:24 Martella (1) 7511:3 Marvin (9) 7452:1;7505:11; 7513:4;7531:15; 7540:5;7587:3; 7597:21;7604:14; 7627:21 M-A-R-V-I-N (1) 7452:1 mass (1) 7626:16 Massachusetts (2) 7626:18;7633:25 matching (1) 7478:9 math (4) 7570:8;7575:16; 7576:17;7577:4 matter (3) 7549:9;7552:21; 7634:6 matters (1) 7457:21 maximum (3) 7523:24;7525:14, 16 MAY (105) 7451:16,16; 7454:5,5,18;7455:8; 7458:13;7461:9; 7462:24,24;7464:3, 9;7465:1,2,5,9; 7467:11;7470:17,19, 21;7479:2,4; 7481:17;7486:6,21; 7488:2;7490:13,18; 7491:10,21,24; 7493:7,25;7494:9; 7495:20;7496:10,19; 7497:14;7500:4,20; 7505:9;7506:1,14, 22;7507:1;7512:20; 7520:15;7529:21; 7530:13;7532:2,8; 7533:17;7539:2,6; 7540:8,16,18,18,19; 7550:25,25;7551:2, 16;7552:3;7555:18; 7556:14;7562:10,12, 15;7563:21;7568:3; 7570:23;7571:4,7; 7576:9;7577:16,22, 25;7578:4,6; 7582:17;7584:25; | 7590:10;7594:23; 7595:1,5;7605:9,15, 17;7606:3,17; 7610:5;7612:4; 7617:20,21;7618:2, 25;7619:7,12,22; 7620:7,10;7633:5, 23;7642:1 maybe (11) 7459:6;7514:16; 7524:13;7525:16; 7527:18;7543:14; 7583:20;7587:13; 7616:4;7628:7; 7639:15 mean (14) 7487:14;7544:2; 7549:7;7553:1,18; 7558:23;7564:25; 7569:3,23;7570:1; 7601:9;7623:20; 7631:6;7632:5 meaning (2) 7470:2;7478:15 means (14) 7450:23;7461:24; 7462:1,20,21; 7472:23,23;7482:2; 7557:10;7572:1,17; 7595:15;7602:22; 7640:2 meant (2) 7571:18;7575:19 meantime (1) 7580:5 measured (5) 7568:15;7569:22; 7594:9,12,14 meat (1) 7636:20 mechanism (4) 7511:10;7624:2; 7625:3,4 Medeiros (73) 7505:20,20,21; 7506:1,6,9,9,12,16; 7507:5,12,21; 7508:18,19;7509:1, 2;7510:14;7512:13; 7513:5,6,7;7515:5,8, 12,16,18,20,22; 7516:1,5,19;7517:2, 9,12,19,21;7518:16, 19,21,23,25;7519:1, 6,9,9,10,17,25; 7524:21,23;7525:1, 3,7,9,12,15,25; 7526:6,10,17,20,22; 7527:22,25;7528:4, 8,12,19,22;7529:1,4, 6,9 M-E-D-E-I-R-O-S (3) 7506:10,11; | 7519:10 medical (2) 7522:9,12 meet (6) 7491:15;7497:3; 7551:17;7611:16; 7612:8;7623:3 meets (1) 7554:3 Megan (2) 7452:4,5 M-E-G-A-N (1) 7452:5 MEL (3) 7529:1,5,7 Mel-Tina (2) 7529:1,2 Melvin (2) 7505:20;7506:9 M-E-L-V-I-N (1) 7506:9 member (2) 7571:17;7608:13 members (10) 7514:19;7541:10; 7583:23;7584:5,5; 7614:4;7628:18; 7631:4;7639:23,24 men (1) 7522:20 mental (1) 7541:4 mention (4) 7520:21;7522:12; 7535:16;7605:19 mentioned (8) 7450:8;7503:3; 7527:23;7530:5; 7611:20;7636:15; 7639:4;7643:19 mentioning (1) 7517:4 Mercantile (1) 7638:7 mere (1) 7522:5 merge (1) 7569:4 merit (1) 7471:10 method (1) 7471:14 methods (2) 7501:8,14 Metzger (1) 7644:22 Mexico (1) 7638:23 microphone (1) 7540:9 Mid-Atlantic (1) 7639:18 middle (4) | 7456:19;7528:15; 7542:8;7598:9 midway (2) 7467:16;7639:15 Midwest (1) 7451:19 might (17) 7455:24;7488:1; 7491:22;7521:21; 7527:19;7534:10; 7542:17;7550:13; 7551:25;7552:5; 7575:14;7577:6; 7588:24;7598:24; 7612:25;7645:19,21 mileage (1) 7588:10 miles (10) 7518:18,19,20; 7588:13,15;7590:19, 25;7593:14; 7597:25;7602:21 milk (329) 7450:4;7451:19; 7453:23,25;7461:3, 24;7462:2,21; 7463:8,16,17,23,24, 25;7464:5;7465:11; 7466:8,9,12;7467:8, 8;7469:3;7472:9,19, 24;7473:12; 7478:25;7480:17; 7483:2;7487:16; 7488:13,14,18; 7489:3,5,9;7490:10; 7491:12,23,24,25; 7492:2,4,5,10,10,17, 19;7493:3,4,5,7,7,17, 18,18,19,20;7494:2, 4,5,11,11,14,20; 7495:11,15,16,24; 7496:2,4,8,11,20,24; 7497:3,6,16,17,19, 20;7498:4,7,11,12, 13;7499:22,23; 7500:4,20,21,23; 7501:20;7502:5,10, 12,14;7503:1,6,8,14, 15,17;7504:1,2,4,7, 10,12,14,17,20; 7509:2,2,7;7518:7,9; 7521:9;7522:22,24, 25;7523:11,17; 7524:8,16;7527:13, 13,18;7532:11,12, 19,25;7533:1,3,4,7, 12,17,19,22,22; 7536:1,7,21;7537:5, 8;7538:12;7541:23; 7542:18,19,21,22, 24;7546:7;7547:18, 19;7548:22; 7550:21;7551:8,9, | 15,25;7552:2,5,16, 20,25;7553:2,3,7,7, 17,20,21,21;7554:2, 7,8,10,11,12,17,18, 20,21;7555:3,9,10, 10,15,16,25;7556:1, 4,6,6,11,13,15,17; 7557:9,9,11,12,14, 21;7558:2;7564:14, 23;7565:2,6,11; 7567:1,22,23; 7568:1,3;7572:4,5,6, 7,9,12,13,18,21; 7576:8;7582:16,19, 21,23,24;7583:9,10, 19,21;7584:9; 7586:7;7588:20; 7590:24;7591:3,13, 21,21;7592:4,5,5,7,9, 21;7593:5,7,9,17; 7594:3,5,7,17,18; 7595:9,13,20,24; 7596:1,4,4,7,8,14; 7598:3,14,20,24; 7599:12,16,24; 7600:4,18;7601:3, 10,12,16;7603:10; 7606:21;7607:24; 7608:12;7610:25; 7612:18;7613:2,7; 7614:16,17,20; 7617:1,6,18;7618:3, 10;7619:15,25; 7620:2;7622:14,18, 20;7624:3;7625:1, 11;7626:3,9; 7627:25;7630:1; 7631:4,7,8;7632:1; 7633:7,8,21;7634:6; 7635:16,20;7637:6; 7638:17,23,24; 7639:4,6,19;7641:9 milk (4) 7522:4;7523:1; 7527:23,24 milkers (1) 7522:23 milking (13) 7508:11;7513:7,9; 7515:11,12;7516:1, 2;7587:8,10; 7614:13;7615:2; 7636:19,22 milks (1) 7528:2 milk's (1) 7495:25 million (3) 7617:17,18,20 MILTNER (2) 7453:24,24 M-I-L-T-N-E-R (1) 7453:24 |
|---|---|---|---|--|

| | | | | |
|---|--|--|---|---|
| mimic (1) 7483:16 | 7584:18;7602:8; 7621:18 | 7504:14;7521:9; 7535:12;7593:15; 7595:23;7610:3; 7613:21;7614:7,22; 7618:7;7642:15,16 | 7571:7,9,9,14; 7572:2,10;7610:10; 7619:10,20 | 7489:2;7493:25; 7494:9;7495:11; 7501:22;7507:12,16; 7515:3;7536:5; 7542:12;7551:16; 7556:25;7562:1; 7575:14;7579:10; 7585:20;7593:17; 7601:7;7607:3; 7609:16;7612:24; 7615:4;7629:25; 7630:3;7642:17; 7643:15 |
| mind (4) 7487:3;7523:4,11; 7626:15 | moments (1) 7545:17 | mostly (1) 7635:10 | myself (2) 7529:14;7622:10 | 7542:12;7551:16; 7556:25;7562:1; 7575:14;7579:10; 7585:20;7593:17; 7601:7;7607:3; 7609:16;7612:24; 7615:4;7629:25; 7630:3;7642:17; 7643:15 |
| minimal (2) 7610:5;7617:3 | Monday (10) 7454:7;7642:3,7, 10,14,16;7643:8; 7645:17;7646:4,7 | mother (5) 7614:24,25; 7615:8;7634:22; 7636:16 | N | needed (9) 7472:14;7494:22; 7514:25;7521:10; 7559:17;7609:2; 7615:1,1;7621:4 |
| minimum (17) 7504:12;7544:2,3; 7547:19,20,23; 7595:13,19;7599:17; 7601:4,6;7616:14, 16;7617:3;7618:18; 7625:11;7626:20 | money (11) 7508:2;7523:5,14; 7585:1,6,9,10,10; 7603:24;7614:3; 7622:18 | motion (3) 7457:4,6;7486:5 | name (31) 7450:5;7452:8,12; 7458:17,24,25,25; 7459:1;7488:6; 7506:8;7510:1; 7516:10;7519:8; 7524:19;7528:25; 7529:14,14,15; 7563:6;7564:3; 7585:20,25,25; 7586:1,2,9;7590:17; 7606:15,19;7607:12; 7635:1 | needs (9) 7455:25;7456:6; 7468:25;7496:8; 7509:7;7554:15; 7561:16;7621:7; 7625:18 |
| miniscale (1) 7617:22 | month (4) 7473:12;7520:15; 7521:16;7532:10 | mountain (1) 7631:10 | NASS (1) 7625:22 | negative (4) 7609:20,22; 7618:16;7630:1 |
| Minnesota (1) 7638:16 | monthly (1) 7623:3 | mountains (2) 7594:18;7634:8 | nation (1) 7524:5 | negotiating (1) 7547:18 |
| minor (1) 7472:14 | months (4) 7498:13,14; 7522:24;7626:8 | mounting (1) 7522:12 | national (5) 7619:13,23; 7626:20;7635:6; 7639:4 | neighborhood (1) 7526:9 |
| minored (1) 7525:3 | Montpelier (2) 7453:21;7606:20 | move (11) 7455:14;7479:24; 7515:1;7530:15; 7577:14;7581:1; 7590:8;7597:8; 7621:19;7631:17; 7633:9 | naming (1) 7566:22 | neighbors (6) 7509:10;7514:18; 7614:4,5;7616:19; 7618:9 |
| minus (2) 7589:9,23 | more (64) 7451:5;7455:25; 7457:4;7460:7; 7478:21;7483:16; 7486:1,4,7;7496:16; 7501:11;7507:16; 7511:12;7513:6; 7516:23,24,25; 7517:10;7521:1,15; 7522:3;7525:10; 7540:13;7546:2; 7553:10;7557:6; 7559:16;7568:2; 7570:2;7571:1; 7575:8;7580:7; 7582:15;7593:12; 7595:16;7596:7; 7602:1;7609:17; 7612:14,19,20,22; 7613:2,7;7614:15, 15;7616:20;7619:9, 11,21;7620:2,9,11, 17,17,21,23,25; 7621:3,10;7624:22; 7630:23;7637:17; 7638:4 | moved (1) 7486:3 | nationally (1) 7625:3 | neither (2) 7611:13;7612:1 |
| minute (6) 7456:4;7473:3,5; 7557:4;7580:3,4 | MORNING (32) 7450:1,3;7451:8, 13,16,21,23;7452:4, 8,10,12,14,24; 7453:7,9,14,16,20, 24;7454:5;7455:4; 7459:23;7481:25; 7482:2;7484:12; 7505:13;7522:24; 7531:16,17;7577:6; 7644:12,12 | movement (1) 7533:1 | nation's (5) 7496:5;7613:2,7; 7619:15,25 | Netherlands (1) 7564:9 |
| minutes (5) 7579:16,19; 7581:2;7643:3,13 | more (64) 7451:5;7455:25; 7457:4;7460:7; 7478:21;7483:16; 7486:1,4,7;7496:16; 7501:11;7507:16; 7511:12;7513:6; 7516:23,24,25; 7517:10;7521:1,15; 7522:3;7525:10; 7540:13;7546:2; 7553:10;7557:6; 7559:16;7568:2; 7570:2;7571:1; 7575:8;7580:7; 7582:15;7593:12; 7595:16;7596:7; 7602:1;7609:17; 7612:14,19,20,22; 7613:2,7;7614:15, 15;7616:20;7619:9, 11,21;7620:2,9,11, 17,17,21,23,25; 7621:3,10;7624:22; 7630:23;7637:17; 7638:4 | moves (2) 7454:7;7633:18 | nationwide (1) 7610:9 | Netto (1) 7511:18 |
| misery (1) 7618:9 | MORNING (32) 7450:1,3;7451:8, 13,16,21,23;7452:4, 8,10,12,14,24; 7453:7,9,14,16,20, 24;7454:5;7455:4; 7459:23;7481:25; 7482:2;7484:12; 7505:13;7522:24; 7531:16,17;7577:6; 7644:12,12 | much (35) 7451:1,5;7452:17; 7456:5;7457:20; 7479:5;7498:17; 7505:18;7512:15; 7518:24;7522:2; 7527:12;7528:23,24; 7529:10,13;7537:20; 7561:6,14;7575:2; 7588:20;7590:2; 7594:13;7604:25; 7614:4;7617:21; 7621:8;7629:22; 7630:11;7631:11; 7632:23;7638:7; 7641:12,20,22 | nay (1) 7609:6 | Nevada (32) 7541:20;7567:23; 7590:18;7593:21; 7594:17;7595:10,12, 18,19,21,22; 7597:24;7598:6,7,8, 21,22;7599:2,2,4,7, 19;7600:5,13,14,15; 7601:3,5,9,12,16; 7603:14 |
| miss (1) 7580:3 | MORNING (32) 7450:1,3;7451:8, 13,16,21,23;7452:4, 8,10,12,14,24; 7453:7,9,14,16,20, 24;7454:5;7455:4; 7459:23;7481:25; 7482:2;7484:12; 7505:13;7522:24; 7531:16,17;7577:6; 7644:12,12 | muddle (1) 7523:10 | nearly (4) 7505:5;7614:2; 7629:17,21 | Nevertheless (2) 7487:23;7504:21 |
| missed (1) 7578:10 | MORNING (32) 7450:1,3;7451:8, 13,16,21,23;7452:4, 8,10,12,14,24; 7453:7,9,14,16,20, 24;7454:5;7455:4; 7459:23;7481:25; 7482:2;7484:12; 7505:13;7522:24; 7531:16,17;7577:6; 7644:12,12 | multi-generational (3) 7608:3;7613:10, 12 | necessary (3) 7513:20;7515:10; 7629:9 | new (51) 7461:4;7463:12, 12;7472:21;7473:4; 7483:5;7491:1; 7493:13;7497:18; 7521:4;7525:22,23; 7537:2;7542:2; 7550:25;7567:4; |
| missing (1) 7554:25 | MORNING (32) 7450:1,3;7451:8, 13,16,21,23;7452:4, 8,10,12,14,24; 7453:7,9,14,16,20, 24;7454:5;7455:4; 7459:23;7481:25; 7482:2;7484:12; 7505:13;7522:24; 7531:16,17;7577:6; 7644:12,12 | multiplied (1) 7570:3 | necessary (4) 7457:5;7605:15, 20;7615:12 | |
| mixes (2) 7602:4,6 | MORNING (32) 7450:1,3;7451:8, 13,16,21,23;7452:4, 8,10,12,14,24; 7453:7,9,14,16,20, 24;7454:5;7455:4; 7459:23;7481:25; 7482:2;7484:12; 7505:13;7522:24; 7531:16,17;7577:6; 7644:12,12 | Multiply (2) 7463:16,23 | need (38) 7454:14;7455:16; 7456:4,5;7457:7,10; 7458:6;7459:11; 7462:24;7474:25; 7475:2;7483:5; | |
| model (6) 7480:24;7483:9; 7628:22,24,25; 7637:12 | MORNING (32) 7450:1,3;7451:8, 13,16,21,23;7452:4, 8,10,12,14,24; 7453:7,9,14,16,20, 24;7454:5;7455:4; 7459:23;7481:25; 7482:2;7484:12; 7505:13;7522:24; 7531:16,17;7577:6; 7644:12,12 | multiplier (2) 7465:16,19 | | |
| modern (3) 7611:10,24; 7614:7 | MORNING (32) 7450:1,3;7451:8, 13,16,21,23;7452:4, 8,10,12,14,24; 7453:7,9,14,16,20, 24;7454:5;7455:4; 7459:23;7481:25; 7482:2;7484:12; 7505:13;7522:24; 7531:16,17;7577:6; 7644:12,12 | multi-purpose (2) 7613:22;7614:23 | | |
| modification (5) 7460:17;7546:17; 7644:19;7645:1,9 | MORNING (32) 7450:1,3;7451:8, 13,16,21,23;7452:4, 8,10,12,14,24; 7453:7,9,14,16,20, 24;7454:5;7455:4; 7459:23;7481:25; 7482:2;7484:12; 7505:13;7522:24; 7531:16,17;7577:6; 7644:12,12 | must (11) 7471:20;7502:12; | | |
| modifications (6) 7455:13;7479:23; 7546:12;7551:19; 7556:22;7645:8 | MORNING (32) 7450:1,3;7451:8, 13,16,21,23;7452:4, 8,10,12,14,24; 7453:7,9,14,16,20, 24;7454:5;7455:4; 7459:23;7481:25; 7482:2;7484:12; 7505:13;7522:24; 7531:16,17;7577:6; 7644:12,12 | | | |
| modified (2) 7468:3;7503:4 | MORNING (32) 7450:1,3;7451:8, 13,16,21,23;7452:4, 8,10,12,14,24; 7453:7,9,14,16,20, 24;7454:5;7455:4; 7459:23;7481:25; 7482:2;7484:12; 7505:13;7522:24; 7531:16,17;7577:6; 7644:12,12 | | | |
| modify (1) 7542:14 | MORNING (32) 7450:1,3;7451:8, 13,16,21,23;7452:4, 8,10,12,14,24; 7453:7,9,14,16,20, 24;7454:5;7455:4; 7459:23;7481:25; 7482:2;7484:12; 7505:13;7522:24; 7531:16,17;7577:6; 7644:12,12 | | | |
| mom (4) 7508:7,14;7520:2, 8 | MORNING (32) 7450:1,3;7451:8, 13,16,21,23;7452:4, 8,10,12,14,24; 7453:7,9,14,16,20, 24;7454:5;7455:4; 7459:23;7481:25; 7482:2;7484:12; 7505:13;7522:24; 7531:16,17;7577:6; 7644:12,12 | | | |
| moment (5) 7505:10;7574:18; | MORNING (32) 7450:1,3;7451:8, 13,16,21,23;7452:4, 8,10,12,14,24; 7453:7,9,14,16,20, 24;7454:5;7455:4; 7459:23;7481:25; 7482:2;7484:12; 7505:13;7522:24; 7531:16,17;7577:6; 7644:12,12 | | | |

| | | | | |
|---|---|---|---|--|
| 7592:8;7607:17,17, 17,21;7608:5; 7612:18;7613:2,6, 21;7618:10,14; 7619:8,17,17,24; 7626:14;7628:13; 7631:3;7632:18,20; 7633:6,19,22; 7634:13;7636:12,13; 7638:23;7639:14,16, 16,19,20,22,25 | Northeast (8) 7607:15;7608:5; 7609:6,24;7610:1; 7616:22;7618:3,11 Northeastern (1) 7612:16 Northern (9) 7568:22,22; 7569:4,15;7599:6,8; 7601:9,11,15 | 7625:23;7630:12; 7642:5 nutrition (1) 7509:21 nutritionist (3) 7509:21;7510:1,4 nutritionists (2) 7512:19,24 | 7612:22;7614:9; 7624:10;7639:3 occurring (1) 7624:22 occurs (1) 7625:7 October (1) 7515:14 off (16) 7451:12;7455:11; 7460:20;7493:9; 7508:13;7512:3; 7522:13;7523:6,21; 7539:24;7548:16; 7553:24;7562:12; 7612:5;7646:2,7 | 7470:13;7471:25; 7478:21;7480:17; 7482:10,19,25; 7483:13,18,18; 7486:7;7487:10; 7488:23,24;7496:16; 7500:7;7501:11; 7504:10;7514:16; 7517:22;7518:4; 7520:21;7521:24; 7522:4,7;7523:1,9, 12;7524:13; 7527:23;7528:1,15; 7530:23;7540:6,13; 7541:10;7543:15,24; 7544:16;7546:22; 7553:12,20,21; 7557:6;7559:14,14, 16;7560:8;7561:11, 11;7562:4,15,21,21; 7565:25;7566:8; 7568:19;7569:10; 7571:1,19;7573:2; 7576:12,12;7578:7, 16,22;7579:2,12,13, 16,16;7580:13,24; 7581:7;7584:6; 7585:19,21;7590:4; 7591:23;7593:12; 7595:8,9;7597:10; 7601:9;7603:9; 7604:19;7605:8; 7607:3;7618:9,11; 7621:23;7622:4; 7625:7,25;7628:14; 7630:8;7634:3; 7636:11,12;7645:12; 7646:6 |
| next (21) 7457:10,18; 7461:12,13;7485:23; 7490:18;7493:22; 7506:19;7508:15; 7512:9;7518:25; 7578:1;7579:16; 7594:22;7595:2; 7604:4;7612:5; 7627:17;7641:25; 7643:16;7644:10 | note (8) 7461:9;7497:20, 23;7504:6,18; 7512:21;7615:8; 7617:11 noted (6) 7457:2;7487:23; 7512:22;7613:9,11; 7639:5 notice (10) 7467:16;7486:1; 7488:10;7526:14; 7530:18,18;7542:15; 7620:14,16;7622:6 noticed (3) 7490:22;7535:19; 7577:17 notices (1) 7567:7 Novakovic (1) 7637:12 NOVEMBER (7) 7450:1,2;7510:25; 7516:3,7,17;7580:1 | O | offer (4) 7460:6;7483:19; 7552:18;7626:4 offered (3) 7471:25;7487:14; 7553:10 offering (2) 7499:10;7629:9 Office (3) 7451:21,24; 7452:16 official (1) 7607:13 officially (1) 7610:19 offsite (1) 7520:18 offspring (1) 7511:14 often (5) 7476:19;7501:1,6; 7605:20;7614:13 O'Lakes (5) 7452:3,9,13; 7628:1;7645:10 old (6) 7517:7,11;7528:7, 14,15;7615:9 older (2) 7517:8,9 oldest (3) 7508:23;7520:15; 7528:7 OLIVER (2) 7452:4,4 ominous (2) 7451:12;7452:23 once (8) 7462:23;7489:8; 7490:9;7554:20; 7599:11;7620:13; 7622:12;7635:13 One (109) 7450:13,21; 7454:3;7455:25; 7456:7;7460:19; 7467:14;7468:21; | one-page (1) 7506:16 ones (4) 7514:5;7521:13, 22;7623:13 online (2) 7454:20,23 only (37) 7464:3;7492:11, 12;7496:11,20; 7499:23;7517:5; 7521:12,23;7522:3; 7523:1,20;7527:23; 7535:24,25;7538:22; 7543:25;7561:10; 7568:11;7575:7; 7578:9,12;7581:7; 7584:16;7593:10,13; 7598:7;7604:19; 7607:8;7609:5; 7610:12;7612:21; 7618:19;7631:18; 7632:2;7636:19; 7642:2 onset (3) |
| nice (1) 7451:12 Nick (1) 7511:3 Nicole (2) 7453:1;7602:24 night (3) 7460:1;7523:9,10 nine (2) 7642:6;7645:14 nodded (1) 7583:2 non-branded (1) 7632:8 non-Cooperative (1) 7628:21 none (9) 7482:12;7485:22; 7517:24;7531:6; 7546:9;7574:2; 7578:17;7597:12; 7621:24 nonetheless (1) 7584:10 nonfat (5) 7461:1,3;7467:18; 7468:16;7472:18 non-quota (5) 7461:3;7472:19; 7499:11;7559:1; 7593:5 noon (1) 7455:16 nor (1) 7610:4 norm (1) 7571:23 normal (2) 7557:16;7570:19 north (2) 7514:6;7634:9 | noted (6) 7457:2;7487:23; 7512:22;7613:9,11; 7639:5 notice (10) 7467:16;7486:1; 7488:10;7526:14; 7530:18,18;7542:15; 7620:14,16;7622:6 noticed (3) 7490:22;7535:19; 7577:17 notices (1) 7567:7 Novakovic (1) 7637:12 NOVEMBER (7) 7450:1,2;7510:25; 7516:3,7,17;7580:1 nowhere (2) 7484:18;7502:11 Number (37) 7452:2,7,19; 7468:11;7478:17; 7492:20;7510:12,21; 7516:8,8,10,20; 7523:24;7525:17,24; 7534:25;7535:2; 7555:4;7562:7,9; 7566:6;7570:3; 7575:4;7577:6; 7580:17,18,24; 7581:7;7605:14; 7606:1,6;7607:4; 7609:1;7625:5; 7626:9;7640:14; 7645:8 numbered (1) 7581:8 numbering (1) 7580:15 numbers (23) 7492:23;7509:17; 7511:20,21,21,22; 7515:6,7,10,24,24; 7516:4,22;7517:15, 15;7524:1,3; 7525:18,21;7566:3; | o0o- (2) 7579:21;7646:10 obfuscate (1) 7537:18 object (7) 7530:23;7545:11; 7578:14,21;7579:1; 7597:10;7621:22 objection (17) 7457:3;7478:18; 7487:11,17,21,22, 24;7512:18,21,22; 7517:22,23;7530:24; 7531:1;7545:11; 7578:16;7597:11 objectionable (1) 7546:1 objections (7) 7457:2;7482:6,10, 11;7531:1,6;7621:23 objective (3) 7492:4;7626:15, 16 obligation (2) 7543:4;7559:20 obligations (2) 7553:22;7556:11 observed (1) 7499:7 obtain (5) 7573:24;7591:8,8, 17;7609:17 obtained (2) 7465:15,18 obtains (1) 7596:25 obvious (2) 7625:15;7630:3 Obviously (7) 7598:4;7624:4; 7625:8,17;7639:19, 22;7643:8 occasionally (1) 7636:9 occasions (1) 7521:20 occur (3) 7498:13;7619:13, 24 occurred (9) 7509:10;7511:8,8; 7530:7;7559:18; | offer (4) 7460:6;7483:19; 7552:18;7626:4 offered (3) 7471:25;7487:14; 7553:10 offering (2) 7499:10;7629:9 Office (3) 7451:21,24; 7452:16 official (1) 7607:13 officially (1) 7610:19 offsite (1) 7520:18 offspring (1) 7511:14 often (5) 7476:19;7501:1,6; 7605:20;7614:13 O'Lakes (5) 7452:3,9,13; 7628:1;7645:10 old (6) 7517:7,11;7528:7, 14,15;7615:9 older (2) 7517:8,9 oldest (3) 7508:23;7520:15; 7528:7 OLIVER (2) 7452:4,4 ominous (2) 7451:12;7452:23 once (8) 7462:23;7489:8; 7490:9;7554:20; 7599:11;7620:13; 7622:12;7635:13 One (109) 7450:13,21; 7454:3;7455:25; 7456:7;7460:19; 7467:14;7468:21; | one-page (1) 7506:16 ones (4) 7514:5;7521:13, 22;7623:13 online (2) 7454:20,23 only (37) 7464:3;7492:11, 12;7496:11,20; 7499:23;7517:5; 7521:12,23;7522:3; 7523:1,20;7527:23; 7535:24,25;7538:22; 7543:25;7561:10; 7568:11;7575:7; 7578:9,12;7581:7; 7584:16;7593:10,13; 7598:7;7604:19; 7607:8;7609:5; 7610:12;7612:21; 7618:19;7631:18; 7632:2;7636:19; 7642:2 onset (3) |

| | | | | |
|---|---|---|---|---|
| <p>7610:18;7618:23, 24 Ontario (2) 7565:13;7586:18 opened (1) 7590:24 operate (9) 7555:1;7611:10, 24;7614:6;7615:3, 11,12;7617:1;7624:4 operated (1) 7613:22 operating (9) 7488:19;7491:7; 7493:2;7564:13; 7608:2;7609:11; 7614:7;7615:13; 7616:20 operation (10) 7503:13;7508:25; 7513:8;7611:14; 7612:3;7615:3,16; 7617:5,15;7636:18 operational (3) 7552:12,21; 7555:23 operations (6) 7582:22;7590:20; 7614:19;7616:21; 7644:24,25 opinion (6) 7489:7;7495:22; 7498:1;7503:2,3; 7573:15 opportunities (1) 7638:3 opportunity (8) 7487:9;7510:1; 7522:18;7560:11,14; 7576:25;7577:10; 7605:5 opposed (2) 7587:16;7596:16 opt (3) 7496:24;7498:6; 7499:10 optimist (1) 7456:12 option (5) 7492:13;7504:11, 13,15;7543:4 optional (3) 7551:2,3;7645:2 options (4) 7492:16;7503:19; 7504:11;7514:23 Order (165) 7451:17,20,20; 7455:7;7460:10; 7468:18,25;7471:5; 7472:9;7474:23,24; 7476:17;7479:21; 7480:4;7481:11;</p> | <p>7485:9;7488:13,16; 7489:1,8;7490:9; 7491:3,20,22; 7492:21,23;7494:15, 21;7497:1,5,6,7,16, 25;7498:1;7499:1, 14;7501:20; 7502:12;7504:5,13; 7514:19;7520:16; 7524:6;7525:19; 7531:23;7532:2,14; 7533:1,3,13,18; 7536:1,3,5;7537:6, 23;7538:8,16,19,20; 7540:19,22;7543:22; 7545:6,7;7546:8,24; 7547:1,5,22,23; 7548:19;7550:16,18, 21,23;7551:17; 7552:24;7553:15; 7554:14,17;7556:2, 22,24,25;7557:19; 7558:6;7562:6; 7566:14;7568:3; 7570:22;7571:4,13, 19;7582:9,10,17,18, 24;7588:18;7589:5, 8;7593:18,20,24; 7594:2;7595:12; 7596:12,16,17,18,20, 23;7599:12; 7605:16;7608:8; 7609:5,8;7610:12, 13,14,17,22; 7612:11,14,19,21; 7613:1,2,6;7616:12, 17;7617:5;7618:18, 18,25;7619:4,7,9,10, 11,14,20,21,24; 7620:13;7621:9,12; 7622:14,21,24,25; 7624:1,6,11; 7625:10;7629:11,19; 7639:10,16;7640:1, 1,9;7641:9 orderly (1) 7609:17 Orders (18) 7487:16;7488:18; 7494:21;7504:8; 7531:20;7532:7; 7533:14;7535:5; 7536:3;7554:19; 7555:2,3;7582:9; 7593:15;7609:3; 7612:15;7620:15; 7639:12 Order's (2) 7554:9;7620:4 Oregon (2) 7497:21,24 origin (1) 7623:2</p> | <p>originally (3) 7570:24;7571:5, 15 OSI (1) 7459:1 O-S-I (1) 7453:11 others (9) 7512:19;7568:13; 7585:15,16;7587:25; 7625:6;7637:12; 7640:19;7644:22 otherwise (6) 7485:11;7504:20; 7532:20;7533:18; 7579:11;7591:7 ought (1) 7645:20 ours (1) 7616:2 ourselves (1) 7601:14 out (86) 7451:4;7455:7; 7456:1,5;7459:7; 7473:2;7475:3,3; 7476:3;7477:22; 7478:10;7479:7; 7480:20;7481:1,2; 7485:5,7,8;7487:9; 7490:4;7498:6,10, 11;7499:10,18; 7508:23;7509:15,16; 7511:2,4;7513:15; 7515:4;7521:13,21, 22,22;7522:21; 7523:7,17,19; 7524:2,6;7525:19; 7527:5,9,19;7528:9; 7534:19;7536:9; 7537:11;7545:6; 7547:3;7549:24; 7550:6;7552:23; 7554:7;7556:23; 7561:13;7566:1,18; 7575:4,6;7577:9; 7579:9;7583:25; 7589:4;7593:9; 7598:22;7604:15; 7605:25;7617:16; 7619:16;7624:1; 7626:3,7,8;7627:14; 7628:10;7629:7; 7632:18;7633:8,8; 7635:7;7636:12; 7637:19;7643:23 outcome (7) 7503:19;7549:21; 7550:7;7554:6; 7575:9;7605:21; 7617:15 outline (2) 7644:11,11</p> | <p>out-of-state (97) 7488:14;7489:5,7, 9;7490:10;7491:23; 7493:7;7494:2,4,11; 7495:11,16,24,25; 7496:2,3,4,13,22,24; 7497:16;7498:4; 7499:24;7500:3,4, 19,20,21,23; 7502:13;7503:1,6,8, 14,15,16;7504:1,2,4, 7,10,14,17;7509:23; 7537:9;7541:16; 7545:9;7549:9,15; 7551:25;7552:17,20; 7553:1,7,20,21; 7554:10,21;7555:9, 10,15;7556:1,11,17; 7558:2,21;7559:15; 7560:13;7591:8,12, 21;7592:3,4,5,9,11, 14,16,21,21;7593:2, 5,7;7594:7,15,17,18; 7596:1,4,8,21,24; 7597:1;7600:18; 7603:10,12;7630:10 outrageous (1) 7521:6 outside (20) 7489:3;7491:13; 7523:5;7531:24; 7532:8;7533:1,22; 7536:1;7538:13; 7544:25;7551:9,10; 7552:7;7553:17; 7582:21;7593:1,19, 25;7595:8;7610:8 over (64) 7462:24;7499:18; 7507:4,23;7509:21; 7520:25;7521:1,11; 7522:5;7523:4; 7525:18;7531:1; 7535:6,9;7564:5,6,7, 16;7568:3,18; 7570:1;7571:10; 7573:16;7574:23; 7575:10;7578:7; 7582:16,18,24; 7583:16;7588:18; 7589:5,8;7596:15, 18;7600:8;7607:5; 7609:21;7613:1; 7615:4,5,9,17; 7616:12,17;7617:5, 25;7618:18;7619:14, 25;7620:9,22; 7622:14,24;7624:1; 7625:10;7629:6,11; 7631:5,9,11; 7637:24;7640:13,18 overbase (7) 7575:10;7576:8;</p> | <p>7592:6,8,10;7594:9; 7600:8 overcome (1) 7610:14 Overland (3) 7513:22;7516:5, 16 Overlands (1) 7510:24 Overland's (1) 7515:5 overtly (1) 7605:12 owed (1) 7485:9 own (28) 7492:22;7496:25; 7498:4,5;7503:17; 7508:18,23;7520:24; 7522:18,19,21; 7524:13;7526:20,21; 7537:14;7538:14; 7559:23;7565:21; 7566:13;7572:5; 7574:7,8;7584:5; 7591:16;7609:11; 7627:25;7628:1; 7636:20 owned (4) 7574:8;7584:6; 7604:17,20 owner (2) 7524:7;7590:17 owners (4) 7510:22;7565:16; 7566:22;7615:7 ownership (5) 7565:15,20; 7573:12,15;7584:11 owns (5) 7567:10;7584:15, 16;7587:7;7638:19</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>pack (1) 7454:14 packet (1) 7486:14 page (33) 7467:15,23; 7473:10;7481:20; 7542:4,8;7550:24; 7566:20,20;7567:17; 7569:1,2;7570:20; 7574:18,18,22; 7576:23;7577:18; 7578:2,4,5,8,8; 7581:19;7582:14; 7583:8;7594:24,24, 25;7597:23;7598:12, 12;7603:10 pages (1)</p> |
|---|---|---|---|---|

| | | | | |
|---|--|--|---|---|
| 7568:21 paid (27) 7475:4;7485:11, 12;7499:13,14; 7504:17,20;7528:3, 4;7533:23;7534:2; 7543:18;7547:16,17; 7548:25;7554:12; 7558:5,12;7565:2; 7569:14;7584:7; 7589:18;7592:6; 7615:6;7617:16,19; 7632:1 Palos (2) 7514:11,11 panel (1) 7575:6 paper (1) 7458:20 parachute (1) 7641:3 paragraph (29) 7461:17,18,19,19, 23;7463:12; 7467:17;7472:21; 7474:19;7475:1,2; 7477:7,10;7487:20; 7491:1,9,16,16; 7493:23;7500:12; 7504:15;7547:24; 7550:25;7558:4; 7567:17;7594:25; 7611:18,21;7622:7 paragraphs (4) 7461:14,15; 7481:4;7492:8 parentheses (4) 7477:15,17; 7504:18;7566:4 parents (3) 7507:10,25; 7508:1 parent's (1) 7615:6 parlors (1) 7614:13 part (44) 7458:1;7477:17; 7478:8;7480:3; 7485:4;7488:17; 7492:1,8,9,16; 7493:11;7503:4; 7507:15;7508:20; 7509:19;7520:3; 7523:7;7532:21,23, 25;7539:24;7556:9; 7568:5;7573:20; 7574:10;7608:14; 7609:10;7610:9; 7623:1;7625:18; 7628:6;7629:19; 7630:4;7631:20,24; 7632:20;7634:2; | 7635:17;7637:9,19; 7638:21,24;7640:12, 20 partial (2) 7533:19;7594:24 partially (5) 7491:7;7492:14, 17;7493:2;7551:1 partially-regulated (2) 7488:19;7491:10 participant (1) 7503:25 participate (12) 7496:13,22; 7503:17;7544:14; 7560:10,13;7568:6; 7591:5;7593:8,10; 7594:1;7603:11 participated (4) 7535:2;7592:25; 7630:18;7639:1 participating (1) 7536:9 participation (4) 7494:16;7603:23; 7623:4;7641:25 particular (7) 7507:17;7540:6; 7553:19;7609:12; 7614:24,25;7615:16 particularly (4) 7515:9;7607:5,20; 7636:18 parties (2) 7594:14;7623:5 parts (3) 7555:8;7639:20; 7642:13 party (4) 7545:16;7564:14; 7567:23;7571:21 pass (1) 7512:9 passed (2) 7521:25;7522:10 past (3) 7494:25;7512:2; 7522:6 pause (3) 7465:13;7565:25; 7568:19 pay (43) 7522:8,13; 7537:13;7546:19; 7572:4,5,7,9,18; 7582:18,23;7583:8, 10,25;7585:2; 7589:5;7592:22; 7593:4;7595:14,19; 7596:24;7599:2; 7600:5,15,18,20,20; 7601:4,5,7;7610:15, 24;7616:12,17; | 7617:2,9,24; 7618:15,20;7626:19; 7631:20,25,25 payable (1) 7533:7 paying (9) 7485:8;7500:21; 7558:1;7582:24; 7589:4;7600:4,7,12; 7625:25 payment (22) 7474:15;7475:22, 22;7476:20,24; 7477:4,6;7491:15; 7499:17;7544:1; 7547:20,23;7555:11; 7556:9,11;7583:11, 12;7596:19;7617:5, 7,20,21 payments (20) 7460:10,11; 7471:9;7472:10; 7485:3,4,4;7488:18; 7491:7;7559:4,5; 7592:12;7593:6; 7594:8;7596:17,17, 18,20;7617:8,17 pays (6) 7499:18;7504:16; 7523:12;7572:3,10; 7593:9 PD (4) 7566:4,6;7575:9; 7584:6 penalty (4) 7506:4;7519:4; 7563:2;7606:11 Pennsylvania (4) 7607:16;7612:17; 7639:17,20 people (22) 7456:3,21; 7497:10;7509:13; 7512:19;7521:16,17, 20;7536:9;7544:17; 7561:2;7563:11; 7579:9,10;7598:24; 7605:18;7628:11; 7632:19;7634:24; 7638:10;7639:15,19 people's (1) 7460:3 per (8) 7520:19;7525:16; 7569:5;7575:11; 7588:7;7598:4; 7602:21;7630:9 percent (26) 7509:23,25; 7510:5,7;7511:1,3, 19;7517:5;7536:25; 7555:16;7559:16; 7565:9;7567:20,21; | 7584:6,11,12,15,16; 7585:24;7602:1; 7613:2,7;7619:14, 25;7629:16 perfect (5) 7526:16,17,17; 7527:15;7540:12 perfectly (4) 7539:15,18; 7545:21;7551:22 perhaps (17) 7488:1;7505:9; 7549:19;7550:11; 7551:25;7552:19,21, 22;7589:20;7625:7; 7626:23;7627:4; 7632:5;7635:21,25; 7636:17;7637:10 period (1) 7463:20 periods (1) 7624:18 perjury (4) 7506:5;7519:5; 7563:3;7606:12 permanent (1) 7524:2 permit (2) 7523:24;7524:2 permits (1) 7525:11 permitted (4) 7525:14;7591:13; 7593:7;7603:11 perpetually (1) 7616:19 persistent (1) 7616:10 person (2) 7608:13;7627:17 personal (3) 7520:12;7526:12; 7613:19 perspective (2) 7618:2;7635:23 persuasive (1) 7546:2 pertaining (1) 7493:18 Pete (2) 7452:12;7564:5 Peter (2) 7511:1;7517:4 petite (1) 7522:2 petition (1) 7637:18 phenomenal (1) 7630:17 Philadelphia (1) 7639:15 phrase (3) 7481:20;7484:16; | 7490:14 Piccadilly (1) 7454:6 pick (1) 7583:3 picking (1) 7632:18 piece (5) 7458:20;7644:14, 19;7645:1,6 pieces (2) 7642:6;7645:14 pits (1) 7614:12 pizza (3) 7458:8;7561:18, 20 place (12) 7464:14;7496:2; 7508:24;7515:23; 7543:14;7547:6; 7551:15;7580:8; 7582:9;7620:24; 7625:21;7634:25 places (3) 7630:2;7637:7; 7638:16 Plains (1) 7632:22 plaintiff (1) 7592:18 plan (5) 7497:5,7,24; 7525:20;7626:11 plans (3) 7497:4;7498:10; 7505:18 plant (115) 7488:20;7491:8, 11,11,13;7492:14, 18;7493:3,4; 7504:16,21;7531:25; 7532:1,5,9,10,13,18, 20;7533:2,23; 7534:2,20;7536:2, 16,20,23,24;7538:2, 2,3;7542:25;7548:3, 3,23,25;7549:1; 7550:8,11;7551:1; 7552:18;7553:19,24; 7554:2,4,4,5,6,11,19; 7555:3,5,7,8,13,14, 17;7556:5,6,14,14, 15;7557:9,11,19,23; 7558:2;7559:17,18; 7564:5,16;7565:10; 7567:25;7572:2,2, 10;7583:16,16,17, 19,23,25;7584:5,9, 17,19;7585:1,3,4,6, 9;7587:19;7588:13, 15,24;7589:6; 7590:25;7591:3,13, |
|---|--|--|---|---|

| | | | | |
|---|---|--|--|---|
| <p>15;7594:8;7595:2,5; 7596:10,19;7598:21; 7601:3,5,15,21,24; 7627:25;7628:1; 7631:10;7644:20</p> <p>plants (18) 7489:4;7491:23; 7492:12;7583:21; 7593:17;7595:9,14, 19;7599:16,18,23; 7600:11,14;7602:20; 7628:18;7631:5,12; 7645:3</p> <p>plant's (3) 7556:10,12; 7591:14</p> <p>play (2) 7546:7,10</p> <p>playing (2) 7503:16;7509:9</p> <p>plays (1) 7546:9</p> <p>please (32) 7458:14;7467:15; 7470:14;7476:4; 7490:8;7494:7; 7496:18;7501:16; 7505:5;7506:3,7; 7519:3,7;7532:22; 7546:3;7555:20; 7561:25;7563:1,5; 7564:1;7579:18; 7590:15;7591:23; 7595:16;7606:10,14; 7607:3,10;7608:21; 7615:8;7619:18; 7627:18</p> <p>plus (7) 7546:20;7558:22; 7584:8;7589:9,23; 7600:8,21</p> <p>podium (2) 7454:2,18</p> <p>point (17) 7471:15;7483:21; 7496:10,19;7507:4; 7548:11;7577:14; 7593:23;7608:13; 7615:6;7619:3; 7625:13;7637:16; 7638:18;7639:9; 7642:19;7644:5</p> <p>pointed (1) 7545:6</p> <p>pointing (1) 7605:25</p> <p>points (1) 7636:1</p> <p>policy (8) 7607:19;7609:7,9; 7610:25;7611:11,12, 25;7615:10</p> <p>political (4)</p> | <p>7603:13;7618:2; 7630:3;7640:15</p> <p>Ponderosa (76) 7453:2,6,8,10,13; 7455:15,19;7488:9, 9;7489:2;7490:24; 7492:4,7;7494:1,10; 7496:4;7498:24; 7500:1;7504:1,6; 7505:3;7531:19; 7532:19,24;7535:21; 7536:13,20;7537:12, 20;7538:7,18; 7541:10,20,20; 7542:24;7544:14,18, 20,25;7545:3; 7546:16,21;7547:15, 17;7548:1,6;7549:8; 7551:8;7554:2; 7557:3;7561:12; 7567:23;7580:13,18; 7581:9;7590:18,20, 24;7591:2,6,9,9,15, 18,25;7592:19; 7594:3,5;7595:23, 24;7596:10,15; 7598:3;7601:24; 7602:15;7603:12</p> <p>Ponderosa's (5) 7504:9;7536:16; 7542:18;7550:14; 7554:15</p> <p>pool (68) 7469:9;7485:12, 12;7495:15;7496:14, 23;7499:1,1; 7500:21;7504:8,12; 7531:25;7532:9,9, 20,21,25;7533:2,3,4, 8,23,24;7534:8,8,15, 21;7535:6;7536:2,7, 10,15,23,24;7537:1, 8,11,13,23;7538:1,3, 8;7544:12,15; 7546:19;7547:4; 7548:16;7553:22; 7559:19,20,23; 7564:22,25;7565:1; 7581:23;7591:20; 7592:3,6,7,10,13,23, 24;7593:6,9,25; 7596:19,24</p> <p>pooled (19) 7489:5,9;7490:10; 7496:9;7501:20; 7502:6,10;7504:4; 7532:11,13,15; 7533:18;7538:16; 7547:5,19;7550:19, 21;7617:4,5</p> <p>pooling (19) 7488:14,15,25; 7495:24;7500:4,20;</p> | <p>7504:1,2;7535:7,8,9, 11;7556:2;7564:19, 23;7565:6;7581:21, 25,25</p> <p>pools (6) 7488:23;7498:25; 7535:3;7546:14; 7559:9;7603:3</p> <p>poor (1) 7522:10</p> <p>population (2) 7525:14;7585:19</p> <p>portion (10) 7457:15;7463:17, 24;7464:4;7465:20; 7466:1,4,11; 7483:25;7487:12</p> <p>portions (1) 7542:9</p> <p>poses (1) 7616:25</p> <p>position (7) 7496:7;7506:2; 7514:22;7519:3; 7541:7;7563:1; 7621:12</p> <p>positive (3) 7523:12;7618:5; 7632:3</p> <p>positively (1) 7631:19</p> <p>possibility (2) 7642:20;7645:20</p> <p>possible (10) 7542:20;7550:15; 7581:18;7612:15; 7625:1;7631:1; 7640:10;7645:6,12, 21</p> <p>possibly (2) 7527:11;7561:15</p> <p>post (1) 7450:24</p> <p>posted (1) 7510:20</p> <p>posting (1) 7454:23</p> <p>posts (1) 7450:23</p> <p>potatoes (1) 7616:4</p> <p>potential (3) 7605:16;7609:19, 22</p> <p>potentially (2) 7552:15;7610:21</p> <p>pound (1) 7576:13</p> <p>pounds (23) 7463:16,23; 7465:19;7467:18; 7468:11;7484:25; 7522:3;7566:18;</p> | <p>7575:13,14,15,18,19, 21,22;7576:2,13; 7582:4,5,11,12; 7583:12;7617:18</p> <p>preamble (9) 7473:20,25; 7474:11,14,17; 7476:19,22,23; 7477:3</p> <p>precise (1) 7588:22</p> <p>precision (1) 7451:1</p> <p>precluded (1) 7592:23</p> <p>predict (2) 7605:21;7645:24</p> <p>predicted (1) 7610:2</p> <p>predominantly (1) 7607:20</p> <p>prefer (5) 7452:17;7477:24; 7481:12;7545:24; 7563:14</p> <p>preliminary (6) 7454:3;7457:21; 7458:12;7609:20,23; 7610:13</p> <p>premier (3) 7468:21,22; 7551:14</p> <p>premium (10) 7461:1;7468:16; 7472:18;7576:19; 7584:9;7589:5,18, 19;7593:6;7600:21</p> <p>premiums (10) 7568:3;7582:17, 18,24;7588:19,21, 24;7589:8;7622:25; 7625:12</p> <p>prepare (3) 7487:1;7563:24; 7606:25</p> <p>prepared (5) 7456:25;7487:8; 7506:16;7519:17; 7642:13</p> <p>preparing (2) 7511:16;7605:1</p> <p>pre-passed (1) 7487:9</p> <p>pre-Reform (1) 7497:6</p> <p>presence (1) 7610:25</p> <p>present (10) 7456:15;7496:1; 7506:5;7507:5; 7519:5,18;7563:3; 7606:12;7619:11,21</p> <p>presentation (4)</p> | <p>7471:8;7489:23; 7641:4;7644:11</p> <p>presented (10) 7460:5,20; 7478:12;7493:13; 7499:21;7544:11; 7546:13;7618:24; 7628:9;7644:8</p> <p>presenting (5) 7519:23;7607:7; 7639:2;7641:3,21</p> <p>presentation (1) 7574:10</p> <p>preserve (7) 7470:3,6;7472:8; 7571:19;7573:22; 7574:10,13</p> <p>preserving (4) 7471:3;7472:2; 7571:16;7594:6</p> <p>pressure (3) 7629:18;7630:1,6</p> <p>presumably (2) 7631:17;7633:9</p> <p>presume (1) 7515:14</p> <p>pretends (1) 7548:21</p> <p>pretty (10) 7454:10;7468:9; 7526:2;7527:12; 7536:4;7537:16; 7539:8;7541:5; 7552:15;7588:19</p> <p>prevailed (2) 7592:19,20</p> <p>preview (2) 7455:9;7644:13</p> <p>previous (2) 7494:16;7529:13</p> <p>Previously (6) 7481:23;7488:6; 7493:12;7509:14; 7535:1;7624:5</p> <p>price (133) 7463:25;7465:21; 7467:5;7469:16; 7489:1;7495:15; 7497:3,4,17,18; 7498:12,19;7504:12, 16,19;7523:11; 7524:8;7527:13,13, 18;7532:16;7533:6, 8,8,8;7534:8,14,14, 19;7536:15,16,17; 7537:8,22;7538:8, 19,20;7543:18; 7544:2,3,6;7547:25; 7548:1,3,3,12,22,25; 7549:10,12,15,20; 7550:9,10;7554:9, 12;7555:7;7557:18, 19;7558:4,12,12;</p> |
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| | | | | |
|--|--|---|---|--|
| <p>7568:13,14,16,23,23, 24;7569:8,11,15,19; 7572:1,3,4,5,9,10,10, 13;7583:10,11; 7584:8;7591:14; 7592:11,22;7593:5; 7594:9;7595:21; 7596:11;7599:5,10, 17;7600:12,15,20; 7601:4,6,11;7603:3, 4;7611:4,8,11; 7612:24;7614:16,17, 20;7617:5;7622:14, 18,24;7624:1,15,17, 18;7625:2,10,11; 7626:9,21;7629:22; 7630:7;7631:10,19; 7632:1;7635:22,25; 7636:1;7637:2,16; 7639:7;7644:15</p> <p>priced (7) 7489:9;7490:10; 7497:17;7532:11,13; 7533:18;7590:23</p> <p>prices (33) 7469:2;7484:24; 7498:14,15;7521:9; 7527:14;7562:18; 7569:5;7583:19; 7592:6,11;7595:13, 19;7599:5;7609:18; 7610:1,15,24; 7611:9;7616:12,17; 7617:2,9;7618:15, 20;7624:3,11; 7626:19,20;7628:12; 7629:8,20;7635:16</p> <p>pricing (36) 7488:14,16; 7489:6;7495:24; 7496:11,20;7497:1; 7498:17;7499:11,12; 7501:1,7,8,14; 7504:8,10,15; 7510:9;7511:10; 7556:2;7595:12; 7608:8,15;7609:15; 7611:12,25;7618:18; 7621:8;7624:2,6; 7626:3;7635:20; 7636:24;7637:12; 7638:7;7644:15</p> <p>pride (1) 7573:18</p> <p>primarily (2) 7600:11;7610:20</p> <p>principal (2) 7452:16;7564:3</p> <p>printed (1) 7530:2</p> <p>prior (6) 7464:5;7467:7; 7581:11,24;7583:6;</p> | <p>7592:7</p> <p>private (2) 7511:7;7628:20</p> <p>pro (7) 7534:20;7554:22; 7555:6,16;7557:15, 23;7592:12</p> <p>probably (12) 7456:8;7538:17; 7546:16;7557:14; 7629:22;7631:4,11; 7633:20;7642:15,15; 7644:1,9</p> <p>problem (3) 7538:5,9;7545:8</p> <p>problems (1) 7522:9</p> <p>procedure (1) 7621:3</p> <p>proceed (19) 7454:3;7459:20; 7470:21;7486:22; 7488:2,4;7506:14; 7507:1;7519:20; 7529:21;7561:9; 7563:21;7564:1; 7581:2;7590:10; 7595:1;7606:4,18; 7609:14</p> <p>proceeding (2) 7488:12;7495:9</p> <p>proceeds (1) 7487:7</p> <p>process (23) 7458:5;7512:12; 7612:19;7619:10,12, 20,22;7620:2,2,3,7, 10,20;7621:3,6; 7623:17;7625:16; 7637:17;7638:24; 7639:9;7640:9,15; 7641:23</p> <p>processes (1) 7622:17</p> <p>processing (1) 7583:19</p> <p>Processor (7) 7580:23;7585:25; 7586:2,4;7623:5,9, 19</p> <p>processors (3) 7591:20;7592:3; 7644:24</p> <p>produce (5) 7567:19;7576:8; 7594:19;7596:9; 7613:24</p> <p>produced (10) 7489:3;7496:12, 21;7497:20; 7499:23;7530:20; 7536:7;7538:13; 7551:10;7591:10</p> | <p>Producer (55) 7453:2,5,12; 7455:12,18;7470:15; 7472:13;7476:20; 7488:7;7489:8; 7493:4,5,18;7509:8; 7532:15,15;7541:11, 18,19;7544:12; 7555:6;7557:14,20; 7558:11,13,17; 7559:5,15;7560:9, 13;7561:11,14; 7574:2,7;7593:9; 7601:9,13;7608:10; 7609:17;7610:1,15; 7611:9;7618:15; 7620:6;7623:5,8,10, 19,23;7624:11; 7625:4;7626:19; 7628:18;7629:24; 7644:24</p> <p>producer-distributor (2) 7566:5,9</p> <p>producer-handler (13) 7459:24;7535:12; 7541:15;7568:10,12; 7570:23;7571:4,13; 7573:24;7574:1,4; 7601:1;7644:20</p> <p>producer-handlers (4) 7569:10,13; 7576:8;7585:19</p> <p>Producers (70) 7453:15,23,23,25; 7455:25;7457:23; 7460:11;7471:10; 7472:11;7475:5; 7485:4,8;7496:2,3,4, 13,22,25;7499:13, 24;7500:2,3,19; 7503:17;7512:5,8, 11;7518:9;7538:22; 7548:15;7549:15,18, 23;7550:19;7551:8; 7555:7;7558:21; 7559:1,4;7569:13; 7584:4;7591:6,9,12, 12;7592:7,11,14,16, 21;7593:1,5; 7594:16;7606:22,22; 7607:20;7609:16; 7610:3;7617:24; 7619:6;7620:21,23, 25;7624:23; 7628:19;7629:24; 7637:4;7638:23,24; 7640:20</p> <p>produces (1) 7586:7</p> <p>producing (2) 7524:4;7565:11</p> <p>product (3) 7524:4;7572:12;</p> | <p>7632:9</p> <p>production (36) 7498:11,13,15; 7511:19,22;7518:7; 7522:23;7565:8; 7567:21;7568:1; 7587:11;7593:2; 7611:1;7612:18; 7614:16;7616:11; 7617:19,22,23; 7618:3,10;7623:18; 7624:12,16;7625:22; 7626:17,21;7628:19; 7629:3,7,11,14; 7630:1,4,11;7636:20</p> <p>productivity (1) 7614:10</p> <p>products (10) 7555:14;7572:16; 7573:18;7594:19,20; 7596:6,7,9;7602:2; 7614:20</p> <p>profess (1) 7629:21</p> <p>professional (1) 7634:20</p> <p>professor (1) 7510:3</p> <p>profit (1) 7610:3</p> <p>profitability (1) 7615:14</p> <p>profitable (3) 7583:16,17; 7584:19</p> <p>profitably (1) 7615:4</p> <p>profound (1) 7621:11</p> <p>prognosis (1) 7642:21</p> <p>Program (25) 7451:16;7468:22; 7470:2;7497:17; 7536:6;7545:9; 7546:16;7560:10,14; 7588:2;7591:5; 7594:1;7605:13; 7617:8,15,16; 7622:15;7624:8,9; 7625:13,21,25; 7626:1,15,18</p> <p>Programs (21) 7451:9,14,20,25; 7494:12,21;7500:24; 7560:24;7610:23; 7611:9,23;7616:24; 7617:1,12;7618:7, 15,21;7622:14; 7625:5;7626:14; 7638:11</p> <p>program's (1) 7550:16</p> | <p>progress (1) 7455:11</p> <p>progressed (1) 7632:22</p> <p>prohibit (2) 7501:8,14</p> <p>prohibits (1) 7572:15</p> <p>project (1) 7626:2</p> <p>projected (2) 7536:25;7628:22</p> <p>projecting (1) 7628:12</p> <p>projection (1) 7626:10</p> <p>projections (4) 7626:5,7;7628:3, 15</p> <p>prolonging (1) 7622:5</p> <p>promote (1) 7608:7</p> <p>prompted (1) 7614:14</p> <p>promulgate (2) 7610:11,16</p> <p>promulgated (2) 7494:22;7495:23</p> <p>promulgating (4) 7494:20;7502:25; 7503:4,20</p> <p>promulgation (1) 7619:2</p> <p>proof (1) 7542:20</p> <p>proper (2) 7471:9;7552:24</p> <p>properly (1) 7468:25</p> <p>property's (1) 7616:21</p> <p>Proponents (7) 7452:2,7,18; 7478:17;7628:2; 7641:2;7643:17</p> <p>Proposal (102) 7452:2,7,19; 7459:25;7460:1,13; 7470:10,16;7471:24; 7472:15;7483:8,13, 16;7486:16;7488:7, 10,10,11,21,23; 7489:2;7490:24,25; 7491:1,2,3;7492:4,7; 7494:1,10;7495:12, 23;7498:3,5,16,23; 7499:21,24;7504:6, 9,23;7505:3;7509:6; 7512:4,8;7531:19; 7532:4,19,24,25; 7533:11,21;7534:1, 18,18;7535:21,25;</p> |
|--|--|---|---|--|

| | | | | |
|---|--|---|--|--|
| 7536:16;7537:20; 7541:22;7542:13,14, 24;7545:19; 7546:22;7547:6; 7548:11,24;7551:22; 7552:1,9;7557:1,24; 7558:20;7559:3,9, 21;7573:22; 7580:18;7581:9; 7593:3,23;7594:3, 13;7602:18,23; 7603:2,6;7605:14, 25;7608:16,23; 7609:23;7627:23; 7628:2;7631:21; 7635:19;7637:1,7, 22;7645:2,4 | 7617:13;7619:8; 7620:16 provided (15) 7469:1,10; 7491:14;7492:16; 7497:2,8,19; 7504:15;7547:24; 7551:22;7568:12; 7614:2,4;7617:25; 7618:19 provides (9) 7497:7;7499:21; 7500:22;7501:2,7, 13;7544:4;7611:13; 7612:2 providing (5) 7484:22;7495:23; 7590:24;7637:15; 7645:2 provision (6) 7488:17;7492:15; 7536:14;7545:5; 7645:2,3 provisions (12) 7488:14;7494:15; 7495:25;7556:2,22; 7571:16;7605:16; 7609:11;7612:13; 7644:20,20,23 public (5) 7610:25;7613:19; 7615:10;7617:13; 7621:5 published (3) 7488:10;7542:14, 15 pull (1) 7516:13 pulled (1) 7508:7 punished (1) 7594:4 purchase (5) 7496:25;7549:10, 16;7572:6;7591:7 purchased (2) 7572:6;7577:9 purchases (3) 7567:22;7592:4,4 purchasing (2) 7564:17;7575:6 purpose (4) 7462:11;7498:10; 7517:3;7590:24 purposes (4) 7472:1;7490:23; 7554:8;7617:11 pursuant (2) 7473:13;7493:17 pursue (2) 7608:17,25 push (2) 7643:4;7644:7 | put (27) 7455:17;7457:1; 7460:13;7462:25; 7466:9,12;7480:18; 7488:24;7509:7; 7511:14;7516:11; 7520:23;7521:13; 7523:19;7537:2; 7552:4;7553:6; 7562:15;7563:15,16; 7585:9;7622:19; 7626:7;7637:25; 7638:9;7639:8; 7644:3 putting (5) 7454:11;7456:19; 7485:10;7620:23; 7625:10 | 17,24;7535:22; 7536:5,17;7537:10, 14,22;7538:9,14,21; 7541:15,16,18,21; 7544:10,11;7545:7, 9;7546:7,10,15; 7547:2;7549:10,16; 7558:11;7559:1,4,6; 7560:10,14;7565:7, 11,14,16,21,22; 7566:7,9,10,11,13, 14,23;7567:3,11,13, 19,20;7568:1,4,4,5,6, 6,7,9,10,12,14,16,23, 25;7569:21,24,25; 7570:1,2,2,4,7,7,22, 23;7571:3,4,12,13, 16,18,19,20,21,21, 24,25;7572:24; 7573:3,20,20,23,23; 7574:3,6,6,7,8,10,11, 11,12,12,13,24; 7575:2,7,8,9,10,14, 14,15,18,20,21,23, 25,25;7576:3,4,4,6, 13,14,19,22;7577:2, 8,12;7582:3,5,15; 7584:6;7587:15,16, 16,23,24,25;7591:5, 8,16;7592:6,8,10,13, 23;7593:6,8;7594:1; 7596:24;7603:11,13, 17,23;7604:17,18,20 | 7450:25;7469:11; 7522:22;7618:11 rather (21) 7450:19,22; 7452:23;7467:8; 7468:7,17;7469:19; 7471:6;7473:15; 7475:6;7477:22; 7480:17;7492:20,22; 7493:6;7498:12; 7539:5;7570:12; 7594:8;7609:11; 7626:10 rationalize (1) 7609:15 raw (7) 7572:4,7,9,13,18; 7583:10;7592:6 reach (1) 7639:9 reaches (1) 7639:9 react (2) 7626:3;7629:6 reacted (1) 7624:13 reaction (1) 7622:21 reactions (1) 7630:25 read (68) 7461:4,20,23; 7462:9;7463:11,13, 13,22;7465:12,12, 15,15;7467:18; 7469:21;7472:22; 7475:14,20;7477:1, 4,22;7478:21; 7488:4;7490:3,6,17; 7491:9;7493:8,12, 15,22;7494:6; 7496:15;7500:6,17; 7501:10,12;7502:1, 15,16,18,19,21,23, 23;7504:24;7539:7, 17,19;7540:7,11,13, 15;7564:1;7571:10; 7572:8;7577:17,23; 7590:15;7591:22; 7595:16;7599:7; 7602:24;7607:1,10; 7608:21;7611:20; 7612:4;7619:18 readily (1) 7590:22 reading (4) 7473:16;7487:3; 7581:20;7605:2 reads (2) 7491:6;7540:9 ready (6) 7476:5;7505:5; 7526:16;7579:19; |
| | | Q | | |
| | | qualification (1) 7607:9 qualify (6) 7499:25;7569:7, 11,14;7574:3; 7602:22 quality (2) 7573:19;7614:19 quantified (1) 7644:18 quantity (1) 7566:25 quick (2) 7524:13;7577:4 quickly (2) 7520:25;7604:15 quite (6) 7549:22;7625:6,8; 7626:21;7630:19; 7640:15 quota (236) 7456:16,16; 7461:1,1,3,6,24; 7462:1,17;7463:17, 24;7464:21; 7465:20;7466:19; 7467:18;7468:4,11, 12,16,16,22,22; 7469:5,23;7470:1,1, 6;7471:3,3,13,16, 19,23;7474:24,25; 7475:4;7477:8,9; 7478:24,25;7479:17; 7483:3,7,7,21; 7484:16,18,22; 7485:6,12;7488:24; 7496:10,19,24,25; 7497:15;7498:2,5,6, 6,8,9,9;7499:3,4,11, 17,18,19;7501:20; 7502:6,10;7503:14, | | |
| | | R | | |
| | | radius (4) 7508:24;7509:12, 15;7514:1 raise (7) 7470:14;7506:2; 7519:3;7561:25; 7563:1;7606:10; 7621:1 raised (1) 7644:21 range (2) 7588:25;7636:21 rare (1) 7637:6 rata (7) 7534:20;7554:22; 7555:6,17;7557:15, 23;7592:12 rate (4) | | |

| | | | | |
|---|---|--|---|---|
| 7605:6;7643:9 real (14) 7510:8,8;7511:21, 22;7561:2,3; 7572:24;7573:3; 7580:23;7583:9; 7594:19;7596:6; 7601:16;7634:5 realistically (1) 7503:13 reality (1) 7633:15 realization (1) 7557:9 realize (4) 7510:23;7512:7; 7522:20;7575:7 realized (1) 7615:7 realizing (1) 7514:24 really (32) 7457:9;7465:8; 7469:22,25;7479:7; 7484:3;7485:16,19, 20;7510:15;7539:9; 7540:8,12;7548:21; 7553:18,23;7555:9; 7556:9;7557:21; 7564:8;7587:18; 7599:10;7601:19; 7615:9;7628:23,24; 7632:13;7633:17; 7634:3,12,21; 7638:16 reason (8) 7450:16;7500:7; 7516:11;7537:9,15; 7551:14;7601:16,19 reasonable (4) 7472:12;7503:18; 7548:4;7550:7 reasonably (2) 7503:9;7590:23 reasons (4) 7535:10;7568:11; 7590:21;7601:5 reblend (3) 7501:19;7502:5,9 rebuttal (8) 7641:18;7642:4, 13;7645:7,10,11,12, 13 recalled (1) 7645:21 receipt (1) 7557:21 receipts (14) 7491:12,14,17,23, 24;7492:17;7493:3; 7553:17;7554:7,8; 7555:6,17;7556:6; 7557:22 | receive (29) 7489:5;7537:13, 20;7545:3;7546:23; 7547:3;7548:2,3,12, 12,14;7549:9,11,17, 20,23;7554:21; 7555:11,15;7568:16; 7575:22;7591:3,13; 7593:21;7596:19; 7601:12;7617:4,5; 7637:5 received (15) 7482:15;7486:11; 7495:15;7518:1; 7531:4,9;7533:12; 7548:1;7549:15; 7567:22;7578:20,25; 7579:5;7597:15; 7622:2 receives (5) 7469:15;7553:19; 7555:3;7596:10; 7601:24 receiving (14) 7489:4;7497:18; 7504:14,16;7542:25; 7551:8;7552:25; 7553:20,21;7554:20; 7558:18;7575:11; 7592:23;7624:23 recent (3) 7495:3;7506:17; 7612:16 recently (4) 7499:24;7535:12; 7599:11;7612:14 recess (2) 7579:20;7646:9 recharacterize (1) 7539:2 recognizably (1) 7622:25 recognize (8) 7496:6;7499:2,3; 7501:20;7502:6,10; 7573:22;7629:12 recognizing (2) 7483:20;7561:15 recommend (2) 7454:11;7621:17 recommendations (1) 7636:25 reconsider (1) 7642:1 reconvene (3) 7456:15;7457:5; 7643:25 record (35) 7450:2;7457:2; 7458:16;7461:10; 7462:12;7464:3; 7476:7;7481:17; 7487:3;7495:21; | 7505:8;7518:14; 7539:23,24;7561:24; 7564:1;7580:2; 7581:5;7588:16; 7590:15;7605:2,22; 7607:1,10;7610:9; 7617:13;7621:2; 7622:16,19;7633:5; 7640:17;7646:3,4,7, 8 recorded (1) 7507:14 records (1) 7516:13 RECROSS-EXAMINATION (2) 7482:21;7484:10 recurring (1) 7616:18 REDIRECT (6) 7459:17;7560:5,6; 7590:5;7604:22,24 redistribute (2) 7499:2;7502:5 redress (1) 7496:5 reduce (2) 7572:17;7610:15 reduced (2) 7615:4;7625:12 reduction (7) 7511:19;7592:12; 7610:2,5,5;7618:14, 20 re-enter (1) 7509:18 re-entry (1) 7615:10 refer (4) 7497:11;7510:11, 24;7551:5 reference (5) 7468:17;7479:7; 7490:21;7492:9; 7494:25 referenced (2) 7492:10;7581:20 references (1) 7602:14 referendum (3) 7620:6,7,10 referred (6) 7476:19;7501:1,6; 7504:11;7526:15; 7624:20 referring (3) 7464:21;7490:4,5 refers (1) 7469:25 refining (1) 7551:17 reflect (3) 7629:4;7640:12; 7644:23 | reflected (5) 7566:1;7567:6; 7587:24,25;7630:12 reflecting (1) 7567:10 reflective (3) 7565:7;7570:5; 7637:10 reflects (3) 7495:18;7608:6; 7639:25 Reform (1) 7612:22 regard (17) 7456:15;7460:7, 24;7472:14,20; 7479:16;7501:9,15, 17;7502:3;7531:5; 7549:3;7550:18; 7552:11;7586:10; 7636:24;7643:18 regarding (1) 7495:11 regards (1) 7555:11 region (6) 7593:17;7612:17; 7616:9;7618:5; 7626:7;7639:13 regional (3) 7619:13,23; 7630:3 regions (5) 7610:8,15;7611:1; 7619:1;7629:25 region's (1) 7618:12 Register (3) 7474:18;7629:23; 7630:13 regular (28) 7456:16;7556:5; 7566:11,13;7567:13; 7568:4,6;7570:2,7; 7571:21;7574:6,8, 11;7575:8,13,14,18, 23,25;7576:3,4,13, 19;7587:16,24,25; 7604:17,20 regulate (1) 7600:17 regulated (18) 7491:8;7492:14, 18;7493:2,4; 7504:18;7532:2,20; 7549:1;7551:1; 7554:4,5,13; 7596:16;7616:12,13, 15,16 regulates (1) 7523:23 regulation (4) 7533:19;7591:19; | 7592:2,8 regulations (2) 7526:1;7537:6 Regulatory (10) 7451:24;7492:16; 7493:8;7494:2,4,11; 7545:3;7609:11,12; 7620:16 reigns (1) 7508:15 reiterate (1) 7469:17 reject (1) 7619:6 related (4) 7495:2;7524:5; 7527:12;7644:14 relates (2) 7492:12;7532:4 relating (7) 7541:23;7644:19, 21;7645:1,3,6,10 relationship (4) 7601:17;7622:6; 7631:2;7644:22 Relatively (2) 7583:18;7610:2 release (1) 7457:8 relevant (1) 7599:22 reliance (3) 7614:6,20;7638:7 relied (1) 7494:13 remain (3) 7458:17;7485:23; 7614:16 remained (1) 7582:5 remains (1) 7499:19 remand (4) 7489:21,24; 7490:15;7495:14 remands (1) 7530:10 remember (2) 7510:12;7604:15 remembered (1) 7585:16 Remind (2) 7641:24;7646:3 reminder (2) 7457:23;7522:16 remote (1) 7623:1 remove (2) 7466:5;7599:11 removing (2) 7465:14;7477:15 repaid (1) 7555:7 |
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| | | | | |
|--|---|---|---|--|
| <p>repeated (1) 7540:6</p> <p>repeatedly (1) 7477:24</p> <p>repeating (1) 7450:22</p> <p>replace (1) 7466:22</p> <p>replaced (1) 7476:22</p> <p>replacement (1) 7517:3</p> <p>replacing (2) 7464:15;7475:6</p> <p>replete (2) 7487:12,18</p> <p>report (5) 7484:23;7555:25; 7572:22;7639:4,6</p> <p>reported (14) 7463:17,24; 7464:15;7465:4,20; 7466:22;7467:1,7; 7472:25;7479:19; 7481:22;7493:5; 7572:25;7573:5</p> <p>reporter (10) 7454:22;7507:18; 7539:7;7540:7,9,11, 15;7561:16; 7570:13;7583:3</p> <p>reporting (4) 7454:24;7491:15; 7493:16;7520:18</p> <p>reports (1) 7628:8</p> <p>represent (7) 7509:4;7515:7; 7573:19;7610:19; 7615:19,21;7627:22</p> <p>representation (1) 7513:1</p> <p>representative (2) 7608:3;7636:21</p> <p>representatives (2) 7620:18;7629:24</p> <p>represented (1) 7607:4</p> <p>representing (7) 7452:22;7453:1,5, 8,10,21;7606:20</p> <p>represents (1) 7624:21</p> <p>reproducing (1) 7511:13</p> <p>request (3) 7552:5;7581:6; 7641:10</p> <p>requested (4) 7503:25;7540:10, 14;7643:6</p> <p>requesting (2) 7483:1;7627:23</p> | <p>requests (2) 7552:4;7560:5</p> <p>require (1) 7537:12</p> <p>required (11) 7467:21;7500:25; 7505:18;7546:19; 7556:22;7591:20; 7592:2;7600:5; 7611:14;7612:2; 7616:19</p> <p>requirement (4) 7493:16;7499:12; 7502:25;7620:6</p> <p>requirements (9) 7491:16;7494:14, 19;7498:17,20; 7501:8,13;7502:12; 7554:14</p> <p>requires (5) 7499:14;7589:13, 18;7596:20,24</p> <p>requiring (1) 7614:4</p> <p>re-read (1) 7613:4</p> <p>reservation (1) 7457:9</p> <p>reserved (2) 7457:7,16</p> <p>respect (21) 7460:10;7468:14; 7480:10;7483:14; 7489:14;7491:12,14, 17;7493:3;7494:3; 7502:13;7503:1; 7512:18;7513:13; 7531:18;7541:19; 7545:19;7547:2; 7553:16;7554:7; 7644:23</p> <p>respond (8) 7450:20,21; 7540:8,16;7616:24; 7618:16;7620:15; 7621:7</p> <p>responded (2) 7486:4;7614:25</p> <p>responding (1) 7545:4</p> <p>response (7) 7540:5;7605:25; 7612:19;7615:17; 7621:10;7624:10; 7639:3</p> <p>responses (1) 7606:1</p> <p>responsibility (3) 7468:24;7607:19; 7623:15</p> <p>responsive (2) 7619:11,21</p> <p>rest (9)</p> | <p>7455:7;7463:19; 7517:14;7524:5; 7573:23;7598:8; 7619:5;7634:4,4</p> <p>restrict (1) 7536:6</p> <p>restricted (1) 7499:23</p> <p>restrictions (1) 7547:2</p> <p>result (7) 7480:9;7489:17; 7495:25;7546:25; 7605:17;7615:14; 7621:11</p> <p>resulting (1) 7614:19</p> <p>results (4) 7488:12,25; 7628:22;7629:4</p> <p>resume (1) 7570:20</p> <p>resumes (1) 7459:4</p> <p>resuming (1) 7457:21</p> <p>retail (2) 7623:9,18</p> <p>retailer (2) 7623:5,21</p> <p>Retailers (1) 7623:11</p> <p>retain (2) 7467:5;7550:16</p> <p>retained (3) 7471:15,18; 7485:6</p> <p>retaining (1) 7466:18</p> <p>retired (2) 7560:24;7615:9</p> <p>retirement (1) 7615:7</p> <p>return (4) 7458:13;7539:16; 7614:17;7643:6</p> <p>returned (1) 7607:23</p> <p>reveals (1) 7621:4</p> <p>revenue (4) 7499:2;7500:22; 7523:21;7592:7</p> <p>revenues (2) 7496:14,23</p> <p>reverse (1) 7480:4</p> <p>review (2) 7487:9;7612:23</p> <p>reviewed (1) 7540:22</p> <p>revised (4) 7477:2;7620:20,</p> | <p>22,24</p> <p>revisions (1) 7484:14</p> <p>Revolutionary (1) 7635:1</p> <p>Rhode (1) 7635:8</p> <p>RICHMOND (18) 7451:12,13; 7482:20,22,23; 7547:9,11,12; 7549:13,22,25; 7550:2,5;7558:9; 7604:5,6,6,9</p> <p>R-I-C-H-M-O-N-D (1) 7451:14</p> <p>right (120) 7451:6;7457:20; 7458:21,23;7459:8; 7462:8;7463:19; 7464:25;7465:5,22; 7469:6,17;7470:10, 20;7474:6,7,8; 7475:13;7476:1; 7477:20;7480:6,16; 7481:4;7482:4,18; 7484:8;7485:16,19, 22;7486:5,12,15; 7488:2;7495:20; 7497:12;7500:12; 7501:10,19;7502:5, 8,9;7506:3,13; 7513:2;7515:3,23; 7517:13,20;7518:16, 21,24;7519:3,12; 7524:24;7525:13,22; 7526:4,8,21;7528:2, 4;7529:11,17,19; 7539:20,23;7541:6; 7543:6;7547:16; 7552:3;7553:11; 7555:2,19;7560:18, 18,20;7562:12,20; 7563:1,20;7565:3; 7570:11;7576:12; 7577:16;7578:9; 7579:9,18;7580:24; 7581:12;7586:13,24; 7588:2;7589:14; 7590:4,8;7591:22; 7594:23;7595:4; 7597:16;7600:22; 7602:15;7604:1; 7605:9,10,24; 7606:8,10;7608:18, 25;7633:19;7635:2; 7641:6,16;7642:5, 18,25;7643:1,15; 7644:2;7646:1</p> <p>rigid (1) 7620:19</p> <p>rise (1) 7495:11</p> | <p>rises (1) 7625:2</p> <p>risk (1) 7468:18</p> <p>RIVA (3) 7453:4,4;7459:7</p> <p>River (1) 7639:24</p> <p>Riverside (1) 7586:8</p> <p>Riverside-San (1) 7598:18</p> <p>Rives (2) 7453:1,5</p> <p>road (5) 7614:1;7633:13, 18,23,25</p> <p>roads (2) 7634:9,23</p> <p>Robison (1) 7510:2</p> <p>R-O-B-I-S-O-N (1) 7510:2</p> <p>Rockview (18) 7453:8,10;7564:4, 4,14,15,17,19; 7565:12;7567:20,22, 22;7575:7;7586:10, 21;7598:3;7601:25; 7602:16</p> <p>Rockville (1) 7601:24</p> <p>role (3) 7546:7,10; 7603:13</p> <p>roles (1) 7635:12</p> <p>room (7) 7456:4,6;7539:10; 7577:5;7583:7; 7592:16;7629:22</p> <p>roughly (5) 7587:11,13; 7597:25;7598:4,16</p> <p>route (2) 7634:11,13</p> <p>RQA's (4) 7587:17,18,20,22</p> <p>rule (16) 7494:22;7545:10; 7620:5,9,12,14,16, 19,20,22,25;7621:3; 7623:2,4,17;7638:25</p> <p>ruled (2) 7503:10;7530:3</p> <p>ruling (5) 7495:13,14,19; 7503:6;7530:7</p> <p>run (5) 7524:25;7632:10; 7636:7,14;7640:15</p> <p>Ryan (1) 7453:24</p> |
|--|---|---|---|--|

| | | | | |
|---|--|--|--|--|
| S | 7481:21,22;7485:2; 7489:15;7493:9; 7527:17;7534:16; 7543:21;7546:15; 7548:14;7553:3; 7554:6;7558:24; 7576:12 | 7553:12;7562:2; 7565:13,25;7566:5; 7568:19;7579:12; 7611:21;7616:5; 7633:2;7644:19 | 7598:25;7599:16; 7601:10 selling (3) 7557:11;7572:16; 7630:19 semi-colon (1) 7463:25 send (1) 7631:9 sensitive (2) 7626:21;7630:7 sensitivity (1) 7498:17 sent (2) 7520:22;7637:21 sentence (37) 7467:4;7473:24; 7477:1,3;7487:20; 7490:6,7;7491:19; 7492:25;7493:13; 7496:16,17;7497:22; 7500:10,17;7501:11, 17;7502:1,8,18; 7504:24;7571:1; 7575:17;7591:24; 7594:11,22,24; 7595:6,17;7608:20, 21;7611:6,21; 7612:5;7613:5,14; 7619:18 separate (11) 7498:25;7501:18; 7502:4,25;7517:2,6; 7546:14;7553:20; 7556:25;7624:19; 7639:5 separated (1) 7570:18 separately (2) 7516:22;7568:24 series (3) 7608:9,15; 7609:15 serious (1) 7638:22 serve (7) 7462:11;7571:24; 7585:18;7598:21; 7607:15;7610:23; 7621:5 serves (1) 7612:12 Service (4) 7451:10;7454:24; 7487:24;7605:13 services (1) 7625:20 SESSION (2) 7450:1;7580:1 sets (3) 7595:13,18; 7599:4 settle (4) | 7494:1,10; 7557:13,20 settled (4) 7499:9,20;7638:1, 2 Settlement (2) 7476:20;7557:16 settles (1) 7499:3 seven (2) 7590:18;7593:14 several (9) 7521:16;7564:11; 7568:21;7590:21; 7591:17,25;7595:11; 7624:13;7627:14 severe (1) 7618:16 shall (10) 7474:15;7475:22, 22;7476:20;7477:6; 7485:23;7491:14,15; 7493:18,19 share (6) 7496:9;7549:24; 7554:22;7564:21; 7581:23;7582:12 shared (1) 7589:23 shed (1) 7631:9 sheet (1) 7470:13 Shehadey (1) 7584:1 shipments (2) 7602:20;7645:3 shipped (2) 7492:5;7548:22 shipper (1) 7603:14 shipping (3) 7594:17;7595:8; 7597:24 ships (4) 7509:2,2;7554:2; 7555:5 short (1) 7561:11 shortcomings (1) 7495:10 shorthand (1) 7492:24 short-run (1) 7617:2 shot (1) 7459:14 shoulder (1) 7521:10 show (9) 7477:22;7478:13; 7522:23;7528:5; 7554:11;7562:10; |
| sacrificed (1) 7591:4 | 7481:21,22;7485:2; 7489:15;7493:9; 7527:17;7534:16; 7543:21;7546:15; 7548:14;7553:3; 7554:6;7558:24; 7576:12 | 7553:12;7562:2; 7565:13,25;7566:5; 7568:19;7579:12; 7611:21;7616:5; 7633:2;7644:19 | 7598:25;7599:16; 7601:10 selling (3) 7557:11;7572:16; 7630:19 semi-colon (1) 7463:25 send (1) 7631:9 sensitive (2) 7626:21;7630:7 sensitivity (1) 7498:17 sent (2) 7520:22;7637:21 sentence (37) 7467:4;7473:24; 7477:1,3;7487:20; 7490:6,7;7491:19; 7492:25;7493:13; 7496:16,17;7497:22; 7500:10,17;7501:11, 17;7502:1,8,18; 7504:24;7571:1; 7575:17;7591:24; 7594:11,22,24; 7595:6,17;7608:20, 21;7611:6,21; 7612:5;7613:5,14; 7619:18 separate (11) 7498:25;7501:18; 7502:4,25;7517:2,6; 7546:14;7553:20; 7556:25;7624:19; 7639:5 separated (1) 7570:18 separately (2) 7516:22;7568:24 series (3) 7608:9,15; 7609:15 serious (1) 7638:22 serve (7) 7462:11;7571:24; 7585:18;7598:21; 7607:15;7610:23; 7621:5 serves (1) 7612:12 Service (4) 7451:10;7454:24; 7487:24;7605:13 services (1) 7625:20 SESSION (2) 7450:1;7580:1 sets (3) 7595:13,18; 7599:4 settle (4) | 7494:1,10; 7557:13,20 settled (4) 7499:9,20;7638:1, 2 Settlement (2) 7476:20;7557:16 settles (1) 7499:3 seven (2) 7590:18;7593:14 several (9) 7521:16;7564:11; 7568:21;7590:21; 7591:17,25;7595:11; 7624:13;7627:14 severe (1) 7618:16 shall (10) 7474:15;7475:22, 22;7476:20;7477:6; 7485:23;7491:14,15; 7493:18,19 share (6) 7496:9;7549:24; 7554:22;7564:21; 7581:23;7582:12 shared (1) 7589:23 shed (1) 7631:9 sheet (1) 7470:13 Shehadey (1) 7584:1 shipments (2) 7602:20;7645:3 shipped (2) 7492:5;7548:22 shipper (1) 7603:14 shipping (3) 7594:17;7595:8; 7597:24 ships (4) 7509:2,2;7554:2; 7555:5 short (1) 7561:11 shortcomings (1) 7495:10 shorthand (1) 7492:24 short-run (1) 7617:2 shot (1) 7459:14 shoulder (1) 7521:10 show (9) 7477:22;7478:13; 7522:23;7528:5; 7554:11;7562:10; |
| safe (2) 7627:9;7641:14 | 7481:21,22;7485:2; 7489:15;7493:9; 7527:17;7534:16; 7543:21;7546:15; 7548:14;7553:3; 7554:6;7558:24; 7576:12 | 7553:12;7562:2; 7565:13,25;7566:5; 7568:19;7579:12; 7611:21;7616:5; 7633:2;7644:19 | 7598:25;7599:16; 7601:10 selling (3) 7557:11;7572:16; 7630:19 semi-colon (1) 7463:25 send (1) 7631:9 sensitive (2) 7626:21;7630:7 sensitivity (1) 7498:17 sent (2) 7520:22;7637:21 sentence (37) 7467:4;7473:24; 7477:1,3;7487:20; 7490:6,7;7491:19; 7492:25;7493:13; 7496:16,17;7497:22; 7500:10,17;7501:11, 17;7502:1,8,18; 7504:24;7571:1; 7575:17;7591:24; 7594:11,22,24; 7595:6,17;7608:20, 21;7611:6,21; 7612:5;7613:5,14; 7619:18 separate (11) 7498:25;7501:18; 7502:4,25;7517:2,6; 7546:14;7553:20; 7556:25;7624:19; 7639:5 separated (1) 7570:18 separately (2) 7516:22;7568:24 series (3) 7608:9,15; 7609:15 serious (1) 7638:22 serve (7) 7462:11;7571:24; 7585:18;7598:21; 7607:15;7610:23; 7621:5 serves (1) 7612:12 Service (4) 7451:10;7454:24; 7487:24;7605:13 services (1) 7625:20 SESSION (2) 7450:1;7580:1 sets (3) 7595:13,18; 7599:4 settle (4) | 7494:1,10; 7557:13,20 settled (4) 7499:9,20;7638:1, 2 Settlement (2) 7476:20;7557:16 settles (1) 7499:3 seven (2) 7590:18;7593:14 several (9) 7521:16;7564:11; 7568:21;7590:21; 7591:17,25;7595:11; 7624:13;7627:14 severe (1) 7618:16 shall (10) 7474:15;7475:22, 22;7476:20;7477:6; 7485:23;7491:14,15; 7493:18,19 share (6) 7496:9;7549:24; 7554:22;7564:21; 7581:23;7582:12 shared (1) 7589:23 shed (1) 7631:9 sheet (1) 7470:13 Shehadey (1) 7584:1 shipments (2) 7602:20;7645:3 shipped (2) 7492:5;7548:22 shipper (1) 7603:14 shipping (3) 7594:17;7595:8; 7597:24 ships (4) 7509:2,2;7554:2; 7555:5 short (1) 7561:11 shortcomings (1) 7495:10 shorthand (1) 7492:24 short-run (1) 7617:2 shot (1) 7459:14 shoulder (1) 7521:10 show (9) 7477:22;7478:13; 7522:23;7528:5; 7554:11;7562:10; |
| Safety (1) 7451:25 | 7481:21,22;7485:2; 7489:15;7493:9; 7527:17;7534:16; 7543:21;7546:15; 7548:14;7553:3; 7554:6;7558:24; 7576:12 | 7553:12;7562:2; 7565:13,25;7566:5; 7568:19;7579:12; 7611:21;7616:5; 7633:2;7644:19 | 7598:25;7599:16; 7601:10 selling (3) 7557:11;7572:16; 7630:19 semi-colon (1) 7463:25 send (1) 7631:9 sensitive (2) 7626:21;7630:7 sensitivity (1) 7498:17 sent (2) 7520:22;7637:21 sentence (37) 7467:4;7473:24; 7477:1,3;7487:20; 7490:6,7;7491:19; 7492:25;7493:13; 7496:16,17;7497:22; 7500:10,17;7501:11, 17;7502:1,8,18; 7504:24;7571:1; 7575:17;7591:24; 7594:11,22,24; 7595:6,17;7608:20, 21;7611:6,21; 7612:5;7613:5,14; 7619:18 separate (11) 7498:25;7501:18; 7502:4,25;7517:2,6; 7546:14;7553:20; 7556:25;7624:19; 7639:5 separated (1) 7570:18 separately (2) 7516:22;7568:24 series (3) 7608:9,15; 7609:15 serious (1) 7638:22 serve (7) 7462:11;7571:24; 7585:18;7598:21; 7607:15;7610:23; 7621:5 serves (1) 7612:12 Service (4) 7451:10;7454:24; 7487:24;7605:13 services (1) 7625:20 SESSION (2) 7450:1;7580:1 sets (3) 7595:13,18; 7599:4 settle (4) | 7494:1,10; 7557:13,20 settled (4) 7499:9,20;7638:1, 2 Settlement (2) 7476:20;7557:16 settles (1) 7499:3 seven (2) 7590:18;7593:14 several (9) 7521:16;7564:11; 7568:21;7590:21; 7591:17,25;7595:11; 7624:13;7627:14 severe (1) 7618:16 shall (10) 7474:15;7475:22, 22;7476:20;7477:6; 7485:23;7491:14,15; 7493:18,19 share (6) 7496:9;7549:24; 7554:22;7564:21; 7581:23;7582:12 shared (1) 7589:23 shed (1) 7631:9 sheet (1) 7470:13 Shehadey (1) 7584:1 shipments (2) 7602:20;7645:3 shipped (2) 7492:5;7548:22 shipper (1) 7603:14 shipping (3) 7594:17;7595:8; 7597:24 ships (4) 7509:2,2;7554:2; 7555:5 short (1) 7561:11 shortcomings (1) 7495:10 shorthand (1) 7492:24 short-run (1) 7617:2 shot (1) 7459:14 shoulder (1) 7521:10 show (9) 7477:22;7478:13; 7522:23;7528:5; 7554:11;7562:10; |
| Sales (17) 7506:18;7510:18, 19,19,23,25;7511:8, 8;7513:13,13; 7515:5;7517:16; 7564:19;7572:4,13; 7581:24;7615:15 | 7481:21,22;7485:2; 7489:15;7493:9; 7527:17;7534:16; 7543:21;7546:15; 7548:14;7553:3; 7554:6;7558:24; 7576:12 | 7553:12;7562:2; 7565:13,25;7566:5; 7568:19;7579:12; 7611:21;7616:5; 7633:2;7644:19 | 7598:25;7599:16; 7601:10 selling (3) 7557:11;7572:16; 7630:19 semi-colon (1) 7463:25 send (1) 7631:9 sensitive (2) 7626:21;7630:7 sensitivity (1) 7498:17 sent (2) 7520:22;7637:21 sentence (37) 7467:4;7473:24; 7477:1,3;7487:20; 7490:6,7;7491:19; 7492:25;7493:13; 7496:16,17;7497:22; 7500:10,17;7501:11, 17;7502:1,8,18; 7504:24;7571:1; 7575:17;7591:24; 7594:11,22,24; 7595:6,17;7608:20, 21;7611:6,21; 7612:5;7613:5,14; 7619:18 separate (11) 7498:25;7501:18; 7502:4,25;7517:2,6; 7546:14;7553:20; 7556:25;7624:19; 7639:5 separated (1) 7570:18 separately (2) 7516:22;7568:24 series (3) 7608:9,15; 7609:15 serious (1) 7638:22 serve (7) 7462:11;7571:24; 7585:18;7598:21; 7607:15;7610:23; 7621:5 serves (1) 7612:12 Service (4) 7451:10;7454:24; 7487:24;7605:13 services (1) 7625:20 SESSION (2) 7450:1;7580:1 sets (3) 7595:13,18; 7599:4 settle (4) | 7494:1,10; 7557:13,20 settled (4) 7499:9,20;7638:1, 2 Settlement (2) 7476:20;7557:16 settles (1) 7499:3 seven (2) 7590:18;7593:14 several (9) 7521:16;7564:11; 7568:21;7590:21; 7591:17,25;7595:11; 7624:13;7627:14 severe (1) 7618:16 shall (10) 7474:15;7475:22, 22;7476:20;7477:6; 7485:23;7491:14,15; 7493:18,19 share (6) 7496:9;7549:24; 7554:22;7564:21; 7581:23;7582:12 shared (1) 7589:23 shed (1) 7631:9 sheet (1) 7470:13 Shehadey (1) 7584:1 shipments (2) 7602:20;7645:3 shipped (2) 7492:5;7548:22 shipper (1) 7603:14 shipping (3) 7594:17;7595:8; 7597:24 ships (4) 7509:2,2;7554:2; 7555:5 short (1) 7561:11 shortcomings (1) 7495:10 shorthand (1) 7492:24 short-run (1) 7617:2 shot (1) 7459:14 shoulder (1) 7521:10 show (9) 7477:22;7478:13; 7522:23;7528:5; 7554:11;7562:10; |
| same (50) 7465:1,10; 7468:13;7469:13; 7470:3;7472:2; 7474:21;7478:15; 7480:9;7482:2; 7498:1;7517:14; 7520:15;7523:13; 7533:1;7534:9,21; 7541:2;7545:3,19; 7546:24;7550:17; 7555:13,20;7556:7, 12,16;7557:18; 7566:8;7567:6; 7568:5;7570:14,24; 7571:5,14;7572:5; 7573:17;7574:19; 7589:24;7593:3; 7594:24;7595:15; 7598:12;7600:13,20; 7601:5;7622:20; 7626:14;7632:1; 7635:13 | 7481:21,22;7485:2; 7489:15;7493:9; 7527:17;7534:16; 7543:21;7546:15; 7548:14;7553:3; 7554:6;7558:24; 7576:12 | 7553:12;7562:2; 7565:13,25;7566:5; 7568:19;7579:12; 7611:21;7616:5; 7633:2;7644:19 | 7598:25;7599:16; 7601:10 selling (3) 7557:11;7572:16; 7630:19 semi-colon (1) 7463:25 send (1) 7631:9 sensitive (2) 7626:21;7630:7 sensitivity (1) 7498:17 sent (2) 7520:22;7637:21 sentence (37) 7467:4;7473:24; 7477:1,3;7487:20; 7490:6,7;7491:19; 7492:25;7493:13; 7496:16,17;7497:22; 7500:10,17;7501:11, 17;7502:1,8,18; 7504:24;7571:1; 7575:17;7591:24; 7594:11,22,24; 7595:6,17;7608:20, 21;7611:6,21; 7612:5;7613:5,14; 7619:18 separate (11) 7498:25;7501:18; 7502:4,25;7517:2,6; 7546:14;7553:20; 7556:25;7624:19; 7639:5 separated (1) 7570:18 separately (2) 7516:22;7568:24 series (3) 7608:9,15; 7609:15 serious (1) 7638:22 serve (7) 7462:11;7571:24; 7585:18;7598:21; 7607:15;7610:23; 7621:5 serves (1) 7612:12 Service (4) 7451:10;7454:24; 7487:24;7605:13 services (1) 7625:20 SESSION (2) 7450:1;7580:1 sets (3) 7595:13,18; 7599:4 settle (4) | 7494:1,10; 7557:13,20 settled (4) 7499:9,20;7638:1, 2 Settlement (2) 7476:20;7557:16 settles (1) 7499:3 seven (2) 7590:18;7593:14 several (9) 7521:16;7564:11; 7568:21;7590:21; 7591:17,25;7595:11; 7624:13;7627:14 severe (1) 7618:16 shall (10) 7474:15;7475:22, 22;7476:20;7477:6; 7485:23;7491:14,15; 7493:18,19 share (6) 7496:9;7549:24; 7554:22;7564:21; 7581:23;7582:12 shared (1) 7589:23 shed (1) 7631:9 sheet (1) 7470:13 Shehadey (1) 7584:1 shipments (2) 7602:20;7645:3 shipped (2) 7492:5;7548:22 shipper (1) 7603:14 shipping (3) 7594:17;7595:8; 7597:24 ships (4) 7509:2,2;7554:2; 7555:5 short (1) 7561:11 shortcomings (1) 7495:10 shorthand (1) 7492:24 short-run (1) 7617:2 shot (1) 7459:14 shoulder (1) 7521:10 show (9) 7477:22;7478:13; 7522:23;7528:5; 7554:11;7562:10; |
| Samuel (1) 7635:1 | 7481:21,22;7485:2; 7489:15;7493:9; 7527:17;7534:16; 7543:21;7546:15; 7548:14;7553:3; 7554:6;7558:24; 7576:12 | 7553:12;7562:2; 7565:13,25;7566:5; 7568:19;7579:12; 7611:21;7616:5; 7633:2;7644:19 | 7598:25;7599:16; 7601:10 selling (3) 7557:11;7572:16; 7630:19 semi-colon (1) 7463:25 send (1) 7631:9 sensitive (2) 7626:21;7630:7 sensitivity (1) 7498:17 sent (2) 7520:22;7637:21 sentence (37) 7467:4;7473:24; 7477:1,3;7487:20; 7490:6,7;7491:19; 7492:25;749 | |

| | | | | |
|--|--|--|--|--|
| 7565:15;7566:25; 7577:19 showing (6) 7493:9;7515:4; 7520:5,5;7565:21; 7568:17 shown (2) 7472:22;7517:15 shows (2) 7498:17;7566:3 shy (1) 7639:17 side (14) 7474:6,6;7484:3; 7522:8;7546:20; 7558:22;7560:25; 7588:24,24;7589:2, 12;7623:24;7635:2,3 significance (3) 7569:17,22; 7617:14 significant (3) 7619:17;7632:7; 7634:2 significantly (2) 7614:10;7618:7 silent (2) 7502:16,22 similar (4) 7480:7;7584:4; 7593:22;7608:11 similarly (4) 7499:15;7615:22, 23;7624:14 simple (6) 7485:19;7504:3; 7537:17;7544:5; 7550:15;7620:17 simplified (1) 7479:20 simplify (1) 7467:21 simply (9) 7467:1;7499:12; 7521:20;7524:5; 7573:10;7593:19; 7624:14,18;7630:12 Simultaneously (1) 7624:25 sincere (1) 7596:13 sister (2) 7508:6;7520:1 sit (7) 7509:3;7510:1; 7518:18,20;7544:17, 19;7560:25 sites (1) 7510:19 sitting (2) 7509:20;7511:22 situation (3) 7543:17;7557:16, | 17 situations (1) 7621:7 six (5) 7508:20;7509:15; 7511:19;7607:17; 7626:8 size (1) 7618:3 sized (1) 7624:22 skim (17) 7461:24,24; 7462:2,21;7463:16, 17,23,24,25;7464:4; 7465:2;7467:7; 7469:5;7472:24; 7480:17;7483:2,10 skipped (1) 7578:7 slightly (4) 7543:14;7548:20; 7587:14;7641:1 slow (2) 7507:13;7509:9 slowly (4) 7461:21;7496:16; 7502:2;7507:16 small (11) 7508:2;7528:10, 11;7588:9;7610:2; 7613:25;7630:6; 7635:23;7636:22; 7640:20;7644:23 smaller (4) 7450:21;7612:18; 7614:23;7624:22 smart (1) 7450:15 SMITH (15) 7453:20,20; 7458:3,3;7606:17, 19,19,24;7621:18, 19;7622:3;7623:25; 7635:18;7640:24,25 social (1) 7625:20 sold (10) 7515:6;7516:16; 7522:6,13;7564:13; 7571:21;7591:3; 7613:24,25;7632:15 soldiers (1) 7635:4 solemnly (4) 7506:4;7519:4; 7563:2;7606:11 solids (6) 7461:1,3;7467:18; 7468:16;7472:18; 7483:7 solution (1) 7576:9 | solve (2) 7538:9,23 somebody (3) 7589:3;7627:3; 7630:22 somehow (1) 7503:14 someone (3) 7525:22;7528:5; 7558:12 sometime (4) 7453:19;7564:9; 7580:11;7584:2 somewhat (2) 7629:13;7636:21 somewhere (1) 7639:17 son (1) 7529:7 sons (1) 7508:23 son's (1) 7510:4 soon (1) 7499:10 sorry (17) 7463:21;7500:11; 7503:23;7507:12; 7514:16;7564:24; 7566:23;7570:15; 7571:9;7573:12; 7578:7;7583:9; 7589:14;7592:4; 7593:13;7605:7; 7623:8 sort (7) 7468:9;7473:20; 7484:4;7499:17; 7532:1;7582:4; 7639:25 sorts (2) 7484:4;7628:24 sounded (1) 7524:20 Sounds (1) 7559:22 source (19) 7491:25;7492:3, 10,10,19;7493:7,20; 7494:4,11;7535:4; 7541:23;7542:19,21, 22;7568:2;7582:16; 7614:21;7618:14,20 sourced (1) 7599:12 sources (2) 7626:19;7637:16 south (5) 7569:19;7611:4,7; 7625:8;7634:10 Southern (21) 7564:12;7567:25; 7568:3,16,24; | 7569:4,7,11,19; 7574:20;7576:15,16; 7582:16,19;7585:18; 7588:22;7589:9; 7596:14;7598:7; 7599:8,10 space (4) 7457:7;7563:8,15, 16 speak (8) 7507:16;7512:5; 7555:20;7575:7; 7576:10;7589:2; 7601:22;7605:5 speaking (2) 7510:25;7551:7 speaks (1) 7622:13 special (1) 7571:24 specialists (1) 7577:1 specialization (2) 7614:22;7615:16 specific (6) 7465:13;7470:2; 7495:2;7551:13; 7590:24;7595:16 specifically (10) 7464:21;7465:24; 7488:16;7491:24; 7496:25;7535:13,16; 7550:24;7552:4; 7621:16 Specifics (3) 7490:25;7583:15; 7601:25 specified (5) 7474:18;7475:11; 7477:7,10;7492:11 specifying (1) 7488:18 speculating (1) 7553:11 spell (7) 7458:17,24; 7481:2;7506:7; 7519:7;7563:5; 7606:14 spelled (3) 7452:13;7479:7; 7480:20 spelling (1) 7585:20 Spent (1) 7635:6 spot (1) 7541:4 spots (1) 7638:14 spreadsheet (1) 7562:18 spring (1) | 7498:13 square (2) 7566:16,17 stability (1) 7615:14 stabilize (1) 7611:8 stable (2) 7614:21;7616:2 staff (3) 7640:8,12,18 stand (8) 7457:22;7458:13; 7482:24;7505:9; 7506:1;7561:14; 7622:25;7643:6 standard (2) 7501:1,7 standing (3) 7487:11,17,20 standpoint (1) 7472:10 stands (1) 7512:23 start (33) 7451:13;7455:4, 11;7460:12,15,20; 7491:19;7493:9; 7497:22;7502:7,20; 7503:22;7507:23; 7520:13;7521:5; 7539:20;7543:14; 7545:20;7594:11; 7596:18,22;7609:21; 7611:5;7612:12; 7613:10;7615:20; 7616:15;7617:4,20; 7618:23;7620:9,21, 24 started (14) 7508:23;7520:11, 24;7521:4;7522:19; 7528:13;7564:8; 7575:17;7591:18,25; 7608:9;7630:19; 7639:21;7643:4 Starting (3) 7454:7;7511:23; 7638:18 starts (1) 7643:13 State (99) 7453:18;7458:17, 23;7469:14;7470:2, 7;7471:5;7488:16, 24;7489:3,8;7490:9; 7491:21;7496:24; 7497:16,20,21,23; 7498:2;7499:1,4; 7504:5,8;7506:7; 7510:3;7511:10; 7514:24;7519:7; 7520:8;7523:25; |
|--|--|--|--|--|

| | | | | |
|--|--|---|---|---|
| 7524:3;7536:8; 7537:6,7;7539:3; 7547:1;7548:16; 7549:4,19;7550:12, 17;7551:10;7552:8; 7554:17;7558:6,25; 7560:17;7563:5; 7566:14;7567:5; 7587:12;7593:14,16, 25;7594:4;7595:12, 18,22;7599:2,7; 7606:14;7607:14,16, 18,18;7610:19,22; 7611:9,22,23; 7616:9,24;7617:7, 12,12,19;7618:1,22; 7622:23;7623:11; 7624:13,15,20,21; 7625:5,17,19; 7626:10,18;7629:17; 7631:13;7632:6; 7634:4;7635:8,11; 7636:6;7639:19,25; 7640:21 stated (2) 7530:24;7574:22 statement (15) 7487:1,3;7526:14; 7542:9;7567:16; 7590:15;7597:5; 7599:13;7600:2; 7607:1,10;7634:17; 7641:7,22;7644:7 statements (1) 7561:11 States (16) 7450:5;7489:18, 19;7490:4;7530:3; 7607:17;7611:3,7; 7612:18;7618:12; 7624:13;7626:1,14, 17,17,23 state's (5) 7608:9;7610:23; 7617:7,16;7618:15 statistics (2) 7562:2,13 status (2) 7491:11;7551:1 statute (2) 7487:15;7624:20 statutes (2) 7595:23;7599:3 statutory (1) 7623:15 stay (11) 7478:14;7522:4; 7523:12;7525:21; 7570:23;7571:4,7,8, 9,9,14 stays (1) 7474:21 stenographer (3) | 7507:17;7519:21; 7539:17 step (5) 7513:25;7518:22; 7528:21;7560:21; 7577:13 stick (1) 7521:22 still (23) 7450:11;7475:25; 7478:15;7484:14; 7508:11;7522:13,22; 7523:3;7528:11; 7547:1;7549:11; 7557:2;7561:13; 7577:19;7594:16; 7622:8;7626:22; 7629:20,25;7636:15, 16;7642:22;7643:16 stimulate (1) 7629:11 stimulation (1) 7629:7 stock (4) 7565:9;7584:5,20; 7615:2 Stockyard (2) 7513:23;7516:16 Stockyards (1) 7510:24 Stockyard's (1) 7516:6 Stoel (2) 7453:1,4 stop (5) 7459:11,15; 7477:13;7521:3; 7564:24 stopped (1) 7539:12 stopping (1) 7644:4 stops (2) 7639:17,17 stores (1) 7631:15 storm (1) 7527:15 straight (3) 7523:9;7634:11, 13 straightforward (1) 7605:1 street (1) 7522:15 strengthened (1) 7609:9 stress (2) 7522:20;7618:16 stretch (2) 7561:21;7580:25 strictly (1) 7640:2 | strike (14) 7463:1;7466:8,12, 14,25;7467:23; 7477:18;7478:2,4; 7481:16,17;7501:16; 7594:22;7595:1 strikes (1) 7464:7 striking (4) 7464:11,12; 7465:3;7595:4 stringent (1) 7526:2 stroke (1) 7522:10 strongly (1) 7612:23 struck (1) 7479:6 structure (4) 7573:13,15; 7615:22;7632:20 structured (2) 7492:7;7616:1 structures (1) 7573:16 struggle (1) 7564:18 struggling (2) 7484:14;7558:10 stuck (1) 7521:22 studied (1) 7635:5 studies (4) 7607:23;7625:22, 23,23 study (2) 7636:10;7639:2 stuff (1) 7511:15 Sub (1) 7491:9 subject (6) 7493:19;7552:1; 7587:16;7609:10; 7611:10,24 subjects (1) 7645:9 submissions (1) 7450:12 submitted (1) 7461:14 subparagraph (6) 7463:9;7472:21; 7473:21;7475:12,20; 7493:11 subpart (1) 7462:16 Subsection (7) 7463:2,2;7473:14, 15;7474:11;7475:6, 17 | subsidies (2) 7591:8,17 subsidy (1) 7617:7 substantial (2) 7619:12,23 substantially (1) 7618:12 substituting (1) 7465:3 subtle (3) 7483:6,10,20 subtract (4) 7475:1,3;7485:5; 7556:5 subtracted (1) 7592:9 subtracting (1) 7475:3 suffered (1) 7522:10 suffering (1) 7510:8 sufficient (1) 7614:17 suggest (5) 7477:2;7536:1; 7615:8;7641:19,21 suggested (1) 7482:2 suggesting (3) 7473:14;7474:2; 7475:8 suggestions (1) 7640:8 suitable (1) 7590:23 sum (2) 7468:2,3 summarize (1) 7617:14 summary (1) 7568:25 superior (4) 7483:19;7504:7; 7546:22;7549:3 superiority (1) 7535:11 supplemental (1) 7618:19 supplied (1) 7596:14 supplies (1) 7559:16 supply (5) 7613:3,7;7617:1; 7619:15,25 Support (27) 7486:16,17; 7488:7,9;7504:23; 7505:3;7509:6; 7524:6;7535:21,24; 7552:8;7580:18; | 7581:9;7609:4,7; 7610:23;7612:10; 7617:17,25;7618:7, 19;7619:2;7624:22, 24;7625:4;7640:18; 7641:22 supported (3) 7514:19;7591:19; 7592:1 supportive (1) 7640:13 supports (1) 7500:1 supposed (2) 7523:2;7629:19 Supreme (24) 7489:10,12,16,20, 22,24;7490:4,11,14; 7494:18;7495:4,5,6, 13;7503:5,10; 7530:3,7,10; 7537:16;7546:25; 7548:18;7592:19; 7593:4 sure (42) 7454:14;7455:10; 7463:14;7470:12; 7473:19;7483:12; 7486:7;7518:13; 7519:24;7525:12; 7527:20;7532:22; 7533:20;7534:10; 7535:15;7542:23; 7546:19;7547:14; 7548:10,24;7549:2, 13;7556:18,19,20; 7564:2;7567:18; 7569:20;7583:7,13; 7584:3;7585:24; 7586:2;7588:8; 7589:11;7603:16; 7608:19;7625:6; 7628:11;7631:3; 7632:12;7636:14 survey (1) 7637:2 surveying (1) 7638:14 suspend (1) 7502:11 suspended (2) 7502:24;7503:4 sustainability (2) 7512:6;7618:21 sustainable (5) 7610:24;7611:14; 7612:3;7614:3; 7617:3 swear (8) 7506:2,4;7519:2, 4;7562:25;7563:2; 7606:9,11 sweet (1) |
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| | | | | |
|--|---|---|--|---|
| 7521:24 sweetheart (1) 7520:6 swings (1) 7498:12 sworn (1) 7458:17 sympathize (1) 7521:11 sympathy (1) 7484:2 system (28) 7469:14;7470:7; 7496:11,20;7497:15; 7498:2,7;7510:9; 7511:14;7537:10; 7568:5,7,9;7573:21, 23;7574:6,11,11; 7603:17;7609:5,8, 10;7613:3,8; 7619:14,25;7622:21; 7629:3 systems (1) 7633:23 system's (1) 7608:8 | tax (2) 7625:1,3 teaching (1) 7634:24 team (5) 7456:21;7457:18; 7573:13;7580:3; 7613:24 tears (1) 7522:11 teasing (1) 7561:18 technical (1) 7493:6 technology (1) 7614:9 Ted (9) 7453:7;7455:22, 23;7562:1;7563:7; 7564:3;7580:17; 7581:9;7590:17 T-E-D (1) 7563:7 tedious (3) 7468:7,13;7493:6 telling (2) 7462:16,17 temporarily (1) 7497:24 ten (7) 7492:23;7509:23, 25;7520:25; 7579:16;7585:4,11 tends (2) 7483:16;7633:9 ten-minute (2) 7476:2;7579:13 Tennessee (2) 7453:23;7606:22 ten-year (1) 7608:6 term (6) 7468:10;7473:19; 7498:11;7503:15; 7537:8;7635:13 terminated (1) 7622:5 termination (1) 7497:25 terminology (2) 7534:4,5 terms (11) 7483:7,8,10; 7489:16;7532:14; 7550:15;7552:1; 7597:23;7625:19; 7629:6;7638:20 tested (3) 7599:10,14; 7608:15 testified (9) 7488:6;7509:13; 7511:18;7529:8; | 7601:10,14;7608:20, 23;7644:17 testify (9) 7454:17;7505:14, 20;7512:14,24; 7545:25;7640:7; 7645:11,12 testifying (6) 7453:18;7607:12, 22,25;7609:19,21 testimony (88) 7450:8;7455:12, 15;7459:10; 7485:24;7486:14,16; 7487:7,8,11; 7490:21,22,23; 7493:10,14,24; 7494:8;7498:16; 7499:7;7504:23; 7505:2;7507:14,19; 7510:11,16;7511:16; 7512:10,23;7519:18; 7526:15;7528:24; 7529:18;7530:5,16; 7534:2;7540:4,10, 14;7542:4;7543:15; 7548:2;7562:1,8,17; 7570:20;7574:15; 7580:4,6,12,14,17; 7581:8,12;7587:24; 7588:16,18,21; 7590:9;7596:1,5; 7597:3,6,23;7599:4; 7600:23;7604:7; 7605:18;7607:7; 7608:6;7610:19,20; 7612:11,12,15; 7613:9,11,19; 7621:13;7622:13; 7627:15;7630:13; 7631:14;7641:3; 7643:17;7645:7,8,9, 10 testing (1) 7520:17 Thanks (3) 7570:16;7632:23; 7641:4 therapist (1) 7521:8 Thereafter (19) 7470:22;7482:14; 7486:10,19;7506:24; 7517:25;7531:3,8; 7540:10,14;7562:23; 7578:19,24;7579:4; 7580:20;7581:3; 7597:14;7606:6; 7622:1 thereby (2) 7620:9,11 therefore (5) 7518:7;7547:6; | 7620:8,8;7629:3 thinking (6) 7462:16;7510:16; 7600:24;7643:21; 7644:9;7645:16 third (7) 7564:14;7566:8; 7567:23;7571:21; 7578:2;7579:13; 7645:1 THOMPSON (2) 7452:4,4 though (7) 7480:10;7535:8; 7580:5;7595:23; 7612:22;7625:21; 7629:19 thought (11) 7468:23;7472:11, 14;7510:10,17; 7534:10;7589:12; 7601:2;7623:21; 7625:16;7641:23 thoughts (6) 7619:8;7623:2; 7628:3;7630:23,24; 7631:1 thousand (6) 7575:13,15,18,19, 21;7576:2 threat (2) 7616:25;7618:4 threaten (1) 7618:20 three (30) 7478:13,14; 7508:4,19,19,22; 7509:6;7511:18; 7520:13;7521:3,14, 15;7522:25;7524:6, 9;7528:15;7562:3; 7564:13;7566:3; 7571:24;7579:11; 7581:2;7583:24; 7589:7;7609:7; 7624:23;7627:22; 7628:2;7635:6; 7637:25 three-minute (1) 7580:25 throughout (4) 7477:25;7493:21; 7494:12;7567:6 throw (1) 7510:15 Thy (1) 7521:10 Tier (10) 7617:8,15,16; 7622:15;7624:8,9, 20,20;7625:13,14 tiers (1) 7624:23 | Tiffanie (1) 7453:4 tight-knit (1) 7573:13 tilted (1) 7635:24 timeframe (1) 7516:9 timely (2) 7619:9;7640:9 times (10) 7497:19;7521:2, 16;7527:14;7535:5; 7605:20;7624:17; 7626:19;7640:16; 7643:19 TINA (2) 7529:1,3 tip (1) 7460:7 title (3) 7461:7;7491:5; 7580:23 titled (1) 7506:17 today (26) 7452:17;7453:12, 19;7454:5,14; 7455:11,25;7457:24; 7458:1,10;7461:16; 7467:20;7470:7; 7472:3;7485:20; 7508:12;7509:6; 7519:18;7542:3; 7561:13;7568:11; 7582:17;7597:6; 7605:19;7643:7,19 today's (1) 7641:17 together (9) 7456:19,21; 7480:18;7508:7; 7516:17;7517:1; 7614:6;7625:10; 7638:9 told (6) 7456:11;7462:6; 7512:19;7528:24; 7602:22;7614:13 Tom (2) 7453:11;7459:1 ton (1) 7630:9 took (5) 7564:5;7570:3; 7576:19;7615:5; 7635:3 tool (1) 7512:6 top (4) 7562:5,22;7583:8; 7597:23 topic (6) |
| T | | | | |
| table (3) 7544:18,19; 7623:17 tale (1) 7614:12 talk (12) 7450:25;7455:18; 7460:4,8;7465:13; 7472:16;7479:9,25; 7512:25;7570:18; 7576:25;7580:9 talked (10) 7468:14;7471:1; 7500:13;7528:10; 7544:8,9;7575:6; 7585:17;7603:9; 7633:7 talking (13) 7471:7;7476:14; 7479:16;7498:19; 7500:14;7532:3; 7541:17,19;7551:9; 7557:1;7570:6; 7575:24;7628:16 talks (1) 7483:7 tank (1) 7554:20 tanks (1) 7614:12 task (1) 7451:3 taught (1) 7609:1 | | | | |

| | | | | |
|---|--|---|--|--|
| 7484:9;7485:16; 7590:4,5,6;7597:18 topography (1) 7633:24 torn (2) 7521:14,15 TOSI (170) 7453:11,11,11; 7455:5,11;7456:6; 7457:21;7458:13,16, 19,22,23,25,25; 7459:1,19,23; 7461:23;7462:7,10, 16,19,21;7463:3,6; 7464:6,9,11,14,22, 24;7465:6,7,10,18, 23;7466:1,7,10,14, 16,18,21;7467:2,4,9, 13,14,25;7468:1,2; 7470:25;7471:19; 7473:7,14,16,19,23; 7474:4,9,14,17,21, 23;7475:10,16,19, 24;7476:13;7477:16, 19;7478:1,6,12,19, 23;7479:9,12; 7480:13,15,19,23; 7481:5,9,15;7482:9, 19,25;7484:9,12; 7485:15,17,22; 7486:16;7487:1,7, 16;7488:4,6; 7489:12;7490:3,7,9, 17,19;7491:20; 7493:24;7494:8; 7495:6,8,22; 7496:17,19;7497:13, 15,23;7498:21,23; 7500:8,11,16,18; 7501:4,6,13,24; 7502:3,9,19,21; 7503:23;7504:25; 7505:2,8,17,24; 7529:11,11,13,16, 25;7530:22; 7531:12;7539:2; 7540:5,8,16,17; 7542:4;7543:7,11; 7547:9,13;7553:15; 7555:22;7557:7; 7558:7,9,10,15,17, 22;7559:7;7560:8, 21,22,24;7561:6,7, 7605:19 total (12) 7473:12;7485:7, 11;7516:6,8,22,23; 7552:2;7554:8; 7567:20,22;7618:3 totality (1) 7465:12 tough (5) 7457:16;7468:9; | 7529:11;7583:21; 7628:13 town (3) 7523:8;7524:19; 7607:25 track (2) 7552:16,19 tracking (1) 7520:17 trade (13) 7489:7;7495:17; 7496:1;7499:15; 7501:9,15;7502:14; 7503:2,10,19; 7548:17;7554:16; 7634:7 traded (1) 7637:9 traditional (9) 7488:25;7499:1; 7566:7,10;7570:2; 7596:17,19;7603:4; 7632:20 traditionally (2) 7611:15;7612:7 traffic (2) 7454:13,13 tragedy (1) 7508:4 training (1) 7520:23 transactions (3) 7600:24,25; 7644:16 transcript (3) 7450:11,14; 7507:15 transcripts (1) 7454:22 transitive (1) 7622:7 translation (1) 7483:11 transportation (39) 7496:13,22; 7499:22,25;7500:2, 10,11,13,15,18,22; 7503:17;7535:21; 7536:17;7537:11,14, 22;7538:9,15,21; 7544:9;7546:18; 7549:11,17;7550:19; 7558:18,20;7568:7; 7588:1,4;7591:8,17; 7592:13;7593:6,8, 22;7602:19;7603:6; 7645:6 travel (2) 7523:7;7594:4 traveling (1) 7601:13 travels (1) 7627:9 | treat (2) 7517:13;7532:19 treated (14) 7469:13,14; 7470:6;7472:3; 7491:25;7492:3; 7493:7,20;7536:2; 7542:21;7556:16; 7560:16;7592:20; 7594:7 treating (2) 7533:21;7561:19 treatment (24) 7470:3;7471:16, 17;7472:2;7489:6; 7494:2,4,11;7496:1; 7500:1;7502:13; 7503:1,6;7541:23; 7555:11;7558:14; 7559:6,10;7592:15; 7593:1,11,13; 7594:6;7596:14 treats (1) 7533:21 Tremaine (2) 7452:16,21 tremendous (1) 7640:17 trend (1) 7614:22 tried (2) 7522:4;7599:16 trigger (2) 7625:3,4 trips (1) 7598:22 trouble (1) 7564:15 trucker (1) 7522:8 trucking (2) 7598:2,23 true (9) 7498:5;7519:12; 7546:5;7577:11; 7599:14;7601:8; 7637:3,11;7638:13 truth (4) 7506:5;7519:5; 7563:3;7606:12 try (14) 7484:4;7509:9; 7511:12;7522:21; 7523:11;7539:1; 7571:1;7573:2; 7593:12;7611:8; 7630:14;7631:9,9; 7633:7 trying (23) 7460:9;7468:6,7, 17,17;7469:19; 7472:7;7479:13; 7483:19;7485:1; | 7520:20;7522:21,22; 7523:3;7537:18; 7550:6,14;7552:16; 7556:20;7580:11; 7583:15;7637:16; 7638:25 Tuesday (6) 7642:15,16; 7643:9,10,10; 7645:18 Tulare (4) 7586:20,20; 7588:6;7604:19 Turlock (2) 7514:6,7 turn (9) 7460:14;7462:24; 7463:6;7485:7; 7507:4;7542:1; 7550:23;7566:20; 7574:17 turned (2) 7508:14;7511:11 turns (1) 7556:23 tweaks (1) 7645:6 twice (1) 7486:8 two (68) 7450:7;7457:23; 7461:14;7462:17; 7463:7;7472:5; 7480:8;7488:23; 7498:25;7504:10; 7505:14;7508:10,22; 7509:23;7512:24; 7516:25;7517:2,10; 7520:3,7;7521:1; 7522:19;7523:6; 7527:25;7528:14; 7530:18;7535:20,20, 20,24,25;7546:14; 7553:20;7555:8,20; 7559:9;7561:11,24; 7565:11;7567:19,21; 7569:1,3,13; 7579:15;7580:4,7,9; 7583:6;7586:16; 7589:7;7595:2,9,13, 19;7598:13;7603:2; 7612:21;7616:24; 7617:1;7618:7; 7622:14,17;7625:10; 7629:13;7631:9; 7639:5;7643:20 two-lane (2) 7633:24;7634:9 two-mile (3) 7508:24;7509:12, 15 type (3) 7533:1;7568:5; | 7570:13 typed (1) 7526:15 typographical (1) 7477:17 <hr/> U <hr/> U-L-I-N (1) 7452:21 ultimate (1) 7472:1 ultimately (2) 7469:13;7603:18 unable (2) 7522:9;7613:1 unanimous (1) 7512:5 unavailability (1) 7645:17 uncles (1) 7520:3 under (65) 7469:14;7470:7; 7471:4;7475:12; 7485:9;7488:16; 7497:1;7498:3,5; 7501:20;7502:6,10; 7504:4,13;7506:4; 7517:16;7519:4; 7522:20;7525:21; 7527:10;7532:2,25; 7533:3,10,11,12,18, 23;7536:3,3,16; 7537:20,22;7538:8, 16,19;7541:16; 7543:4,16,17,22; 7546:24;7547:5,22, 22;7548:24; 7550:21;7555:1; 7558:5;7559:21; 7563:2;7566:14; 7569:14;7573:24; 7574:4;7588:2; 7595:22;7596:16,17, 18;7599:2;7602:18; 7606:11;7609:16; 7618:15 underlined (4) 7493:14,24; 7494:8;7542:9 Understood (7) 7475:19;7484:21; 7532:22;7535:19; 7539:4;7557:25; 7618:3 undertaking (1) 7485:18 undiluted (2) 7537:22;7538:8 unequal (2) 7558:14;7559:6 unfair (1) |
|---|--|---|--|--|

| | | | | |
|--|---|--|---|--|
| 7496:1 unfortunate (2) 7474:1;7634:7 uniform (4) 7499:12;7533:14; 7549:9;7609:11 Union (2) 7626:23;7635:8 unique (4) 7492:22;7568:6; 7616:4;7618:22 United (5) 7450:5;7489:18, 19;7490:4;7530:3 units (1) 7450:21 university (4) 7625:23,23; 7634:22;7635:5 unknown (1) 7504:12 unless (4) 7528:5;7554:24, 25;7601:20 Unlike (1) 7497:15 unlikely (3) 7498:8;7504:20, 20 unquote (1) 7537:8 unreasonable (2) 7552:25;7559:24 unresponsive (2) 7611:11,25 unwarranted (1) 7496:2 up (58) 7454:15;7455:6, 12;7468:10;7469:2, 23;7470:10; 7473:20;7478:9; 7482:24;7483:17; 7484:25;7509:22; 7519:25;7520:7; 7522:17,23;7523:8, 10;7524:14,20; 7527:2;7528:5; 7539:20;7543:13; 7549:7;7559:14; 7564:4,19;7567:20; 7575:12;7576:21; 7583:3;7598:21,23; 7608:18,25;7613:21; 7622:5,13;7625:13, 14;7630:5;7631:20; 7633:21;7634:1; 7635:3,18;7637:23; 7638:15;7639:14,15; 7641:11;7643:2,14; 7644:3;7645:17,22 upcharge (1) 7630:9 | updated (1) 7456:2 upon (1) 7494:13 Upper (2) 7451:19;7598:9 uptick (1) 7615:13 urge (1) 7487:23 usage (1) 7555:6 USDA (21) 7451:7,10,14,20, 21;7454:5;7472:1; 7478:16;7482:23; 7512:11;7535:1; 7547:12;7553:15; 7573:21;7594:9,12; 7604:6;7621:6; 7628:9,16;7640:5 USDA's (1) 7630:14 use (21) 7466:6;7477:24; 7481:2,9;7485:17; 7487:24;7492:3,6, 23;7503:15;7534:4, 5;7537:8;7551:13, 13,14;7556:12; 7572:17;7634:12; 7642:16;7643:3 used (24) 7477:24;7481:20; 7484:16,18;7491:25; 7492:13;7498:11; 7500:9;7503:9,21; 7513:18,20;7554:18; 7555:14;7561:1; 7575:1;7594:19,20; 7596:9;7620:7,10; 7621:2;7622:7; 7638:14 useful (1) 7488:2 uses (2) 7469:25;7474:1 using (13) 7472:15;7475:14; 7483:8;7492:19,20; 7501:8,14;7572:24; 7573:4;7575:4; 7622:24;7638:12,17 usually (5) 7498:12,13,15; 7563:15,16 Utah (4) 7595:20;7599:12, 25;7600:4 utilization (10) 7536:20;7537:19, 21;7538:2;7591:14, 21;7592:5;7601:23, | 23;7636:2 utilize (2) 7492:12;7504:15 utilizing (1) 7492:14 V valid (2) 7496:10,19 Valley (1) 7590:18 valuable (1) 7545:23 valuation (3) 7498:7,9;7556:16 value (55) 7460:9;7463:8,9; 7465:11;7469:3; 7471:3,14,15,22; 7473:12;7474:24,25; 7475:4;7477:7; 7478:16,24;7479:22; 7483:4,9,14; 7484:16,17,25; 7485:5,7;7493:17, 23;7498:8,8; 7499:18;7501:21; 7502:6,11;7534:20, 21;7550:8;7556:12, 12;7564:21;7569:23, 25;7570:5,6; 7573:22;7575:1; 7576:5;7577:2,6,11, 11;7581:22;7582:6; 7616:6;7637:4,4 valued (5) 7492:3;7509:7; 7570:1;7574:23; 7616:1 values (5) 7479:20;7483:23, 25;7484:24;7534:3 valuing (2) 7456:16,16 variable (1) 7617:6 varies (2) 7589:20;7598:4 various (2) 7494:13;7555:14 veal (1) 7636:20 Vegas (1) 7595:24 Vendetta (1) 7452:20 venture (1) 7508:13 ventured (1) 7508:23 verb (2) 7501:23;7622:7 | verbatim (1) 7507:14 verify (1) 7577:10 Vermont (5) 7453:21;7630:11; 7631:5;7633:19; 7634:11 versus (5) 7499:14;7536:16; 7552:17;7570:7; 7629:17 via (1) 7454:19 viability (1) 7618:21 Victor (1) 7453:14 V-I-C-T-O-R (1) 7453:14 view (5) 7491:22;7545:7; 7596:20,22,23 viewed (3) 7500:4,20;7618:4 views (1) 7512:3 Vilsack (2) 7635:17;7639:2 Vilsack's (1) 7612:23 violation (3) 7489:10;7490:11; 7494:17 violators (1) 7572:22 visit (1) 7633:6 visited (1) 7635:7 vital (1) 7512:6 volatile (1) 7624:17 volatility (3) 7611:4,8;7621:7 volume (23) 7461:24;7462:1, 21;7472:23;7477:8; 7478:25;7479:17,19, 21;7483:2,3,21; 7484:22;7493:18; 7551:25;7552:2; 7554:11;7556:4,5; 7567:3;7570:4; 7593:25;7617:23 volumes (12) 7469:1,4,10; 7483:23,24;7484:23; 7552:16,17,19; 7567:1,2;7601:1 vote (4) 7579:15;7603:18, | 21,24 vs (1) 7495:3 VULIN (2) 7452:20,20 W wages (1) 7614:5 wait (6) 7457:4;7572:8; 7580:3,4;7591:11; 7606:3 wakes (1) 7523:10 Waldo (4) 7607:25;7622:11; 7634:25;7635:1 walk (3) 7472:5;7474:10; 7521:18 walked (1) 7481:19 walking (1) 7632:18 Walt (2) 7453:16;7607:5 Walter (2) 7606:16;7607:12 wanderings (1) 7636:7 wants (3) 7470:5;7589:18; 7643:3 War (2) 7613:21;7635:1 Washington (4) 7451:15;7452:16; 7628:11;7639:18 waste (1) 7520:18 watch (1) 7630:17 Water (8) 7520:16,18; 7523:23;7525:11,15, 19;7526:2;7590:22 way (56) 7450:15;7454:12; 7460:3,6;7469:13; 7471:6,12;7472:7, 12;7479:20;7480:1; 7481:10,11,25; 7483:2,17;7485:2, 16,17;7492:21; 7501:9,14;7517:14; 7527:5,19;7534:11; 7536:6,10;7537:2; 7539:3;7542:17; 7546:2;7548:13; 7549:16;7550:9,13; 7554:24;7555:24; |
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| | | | | |
|--|---|---|--|---|
| 7556:16;7559:25; 7560:15;7571:25; 7575:17;7577:17; 7595:16;7600:13; 7607:8;7614:2; 7627:25;7628:11,24; 7631:19;7634:14; 7635:24;7640:12; 7642:20 ways (6) 7454:9;7471:2; 7480:9;7550:6; 7552:19;7630:20 web (1) 7510:19 website (6) 7454:24;7516:6,7, 19;7599:7,21 weddings (1) 7523:7 Wednesday (6) 7642:3,11,17,23; 7645:22,25 week (9) 7451:11;7457:10, 18;7509:20; 7544:11;7602:19; 7641:25;7643:16; 7644:10 weekend (1) 7454:15 weeks (5) 7457:15;7528:14, 15;7627:14;7643:20 weigh (1) 7522:3 weighing (1) 7639:1 weighs (1) 7610:9 Welcome (6) 7451:10;7454:16; 7455:1;7519:2; 7604:9;7626:11 Wellington (1) 7626:6 well-known (1) 7510:4 weren't (4) 7549:19;7629:2; 7637:6;7640:11 West (5) 7454:8;7634:9,11; 7639:24;7646:5 Western (4) 7509:3;7631:20; 7633:25;7639:16 what's (19) 7466:21;7470:13; 7474:2;7477:11; 7503:7;7511:7; 7530:2;7537:16; 7541:24;7547:24; | 7566:1,20;7568:20; 7587:11;7588:10,10; 7598:2;7601:23; 7631:8 whatsoever (1) 7559:20 whereas (1) 7559:4 Whereupon (7) 7458:15;7476:6; 7505:7;7539:22; 7561:23;7579:20; 7646:9 wherever (1) 7462:24 WHITCOMB (47) 7453:16,16; 7458:4;7605:7; 7606:3,13,16,16,25; 7607:6,9,12; 7608:22;7611:6,19, 23;7612:6;7613:6, 15,17;7615:24; 7616:1,14,16; 7619:19;7621:15,22; 7622:4;7623:10,15, 23;7626:24;7627:3, 18,21;7634:17,21; 7636:11;7637:1; 7638:9;7639:12; 7640:4,7,11;7641:1, 3,12 W-H-I-T-C-O-M-B (2) 7453:17;7606:16 Whitcomb's (1) 7626:25 Whoa (1) 7544:23 whole (10) 7463:11;7475:15; 7502:18;7504:24; 7546:13;7549:12,18; 7591:24;7628:6; 7639:18 whomever (1) 7547:18 whose (3) 7450:6;7552:5; 7598:24 Wichita (3) 7504:11,13; 7543:4 wife (2) 7508:17;7522:10 William (2) 7451:13;7452:24 willing (2) 7640:21,22 willingness (1) 7553:6 window (2) 7457:24;7505:15 Wisconsin (1) | 7632:6 wish (6) 7482:9;7517:20; 7578:13;7618:8; 7627:10;7641:14 withdrawn (1) 7581:6 within (21) 7491:11;7496:12, 21;7499:23; 7508:24;7509:12,15; 7514:1;7518:17,20; 7536:7;7558:25; 7568:13,14;7570:24; 7571:5,14,20; 7573:25;7584:12,13 without (9) 7459:11;7495:23; 7536:17;7550:7; 7588:21;7594:2; 7609:6,14;7614:6 witness (13) 7457:21;7458:13; 7505:9;7506:1; 7512:17;7518:25; 7529:7;7545:12,19, 23,25;7628:8; 7645:13 witness' (3) 7459:10;7513:1; 7529:13 witnesses (8) 7454:18;7455:5; 7458:1;7499:8; 7583:7;7641:17; 7645:19,21 witnesses' (1) 7458:9 won (1) 7622:8 wondered (1) 7481:7 wonderful (2) 7462:8;7507:20 wondering (2) 7484:18;7555:22 woods (1) 7613:24 word (34) 7461:6;7462:15; 7464:1,4,5;7465:2; 7466:2,8,12,14,15, 16;7467:7;7469:25; 7476:24;7477:4; 7500:9;7501:16; 7503:21;7507:18,19; 7513:18;7577:19,22, 23;7584:13; 7594:25;7595:2,4,5; 7603:8;7619:16; 7620:24;7646:6 wording (1) 7482:1 | words (32) 7456:4;7461:3; 7462:4,5,18; 7464:11,12,14,15,18, 19,20;7465:14; 7466:11,18,22; 7467:7;7472:19; 7477:22;7478:10,13, 14,17,24;7480:21; 7485:18;7491:25; 7519:21,22;7543:24; 7550:8;7599:15 work (32) 7451:3;7452:9,11; 7457:25;7458:9; 7459:25;7471:12; 7484:15;7494:21; 7500:24;7518:16; 7521:20;7522:9; 7523:5;7524:10; 7526:10;7528:12,17; 7531:25;7554:23; 7561:19;7573:14; 7577:19;7598:22; 7600:13;7601:2; 7605:3;7615:10; 7637:22;7640:22; 7642:12,20 workable (1) 7615:17 worked (14) 7492:17;7564:6,6, 10;7577:20,23; 7607:5;7613:24; 7614:5;7628:10; 7635:18;7636:11; 7638:11,11 worker (1) 7523:13 workers (2) 7523:18,21 working (12) 7458:3;7481:23; 7494:13;7520:11; 7523:1;7554:24; 7608:7;7614:11; 7622:8;7635:6; 7640:14,23 world (4) 7571:22;7613:21; 7626:10,11 worry (2) 7629:18,23 worth (3) 7575:2,10; 7633:20 worthwhile (1) 7600:9 Wright (2) 7452:16,21 write (2) 7467:1;7528:25 writing (1) | 7535:2 written (9) 7462:23;7463:2; 7478:12,17;7493:10, 14;7534:25;7542:4; 7567:16 wrong (8) 7458:20;7473:25; 7523:10;7537:16; 7544:17;7549:5; 7620:24;7635:3 wrote (2) 7595:16;7622:12 wwwamsusdagov/live (1) 7454:21 |
| X | | | | |
| XXXX (1) 7492:24 | | | | |
| XXXX30b (2) 7492:21;7493:1 | | | | |
| Y | | | | |
| Yards (3) 7506:18;7510:23; 7513:14 | | | | |
| year (8) 7498:12;7517:7; 7520:25;7521:15; 7523:16;7607:6; 7617:19;7624:10 | | | | |
| year-old (1) 7521:24 | | | | |
| years (42) 7507:9,24;7508:5, 10;7509:23; 7517:11;7520:13,25; 7521:1,3,11,25; 7522:2,19;7523:6; 7564:7,18;7568:18, 21;7569:6;7570:1; 7574:23;7583:17; 7585:4,11;7589:7; 7591:17,25;7592:18; 7595:11;7596:15; 7607:4;7610:3; 7612:22;7615:9; 7621:6;7626:3; 7635:6;7637:25; 7638:12;7640:13,18 | | | | |
| yellow (10) 7463:11;7464:4; 7466:2;7467:17; 7477:21;7478:21,22, 23;7480:14;7484:13 | | | | |
| Yep (3) 7470:19;7529:6; 7578:4 | | | | |
| yesterday (15) 7450:8;7455:3,14; 7460:5,13,21,23; | | | | |

| | | | | |
|---|--|--|--|---|
| 7461:14;7471:2; 7485:20;7505:13; 7561:19;7608:12; 7629:25;7632:17 York (9) 7607:17;7612:18; 7633:22;7636:12; 7639:14,16,16,19,25 young (1) 7518:4 younger (1) 7521:3 youngest (1) 7528:14 | 7569:1,2;7574:19, 22 10,000 (1) 7516:24 10,375 (2) 7516:8,11 10/30 (1) 7515:22 10:05 (1) 7476:5 10:06 (1) 7476:7 1000.14 (1) 7492:1 1000.76 (3) 7492:8,9,16 1000.76a4 (1) 7492:12 1000.76d (1) 7492:13 1051.17 (8) 7461:1;7464:12; 7465:3;7466:25; 7472:17,22;7480:1; 7483:1 1051.17f (1) 7467:19 1051.57 (1) 7461:7 1051.60 (6) 7463:6,8;7473:13; 7481:23;7492:11; 7493:17 1051.71 (5) 7473:6;7475:25; 7476:13,16;7484:14 1051.71a (1) 7475:18 1051.76 (5) 7491:2,7,15; 7493:11;7550:24 11:00 (4) 7457:24;7505:5; 7642:3,7 11:15 (2) 7505:6,8 11:30 (1) 7456:8 119 (1) 7602:21 12 (3) 7508:6;7536:25; 7567:21 12:00 (1) 7456:6 12:10 (1) 7539:20 12:20 (1) 7539:21 12:23 (1) 7539:23 125 (1) 7523:4 | 13 (6) 7450:1,2;7510:20; 7520:4;7536:25; 7580:1 13th (1) 7451:11 14 (2) 7643:13,22 1400 (1) 7587:9 15 (5) 7510:5;7612:22; 7629:16;7643:3,23 150 (2) 7522:5;7636:19 15th (1) 7457:14 168 (4) 7460:12,18; 7468:3;7471:25 17 (6) 7472:22;7480:4; 7521:13;7526:5; 7527:5;7637:19 171 (21) 7470:18,20,22,25; 7471:25;7472:6; 7476:13;7477:14; 7478:8;7479:3,24; 7480:14;7482:7,12, 12,14;7484:13; 7486:3,5,9,10 172 (14) 7486:15,16,19; 7487:1,8;7488:4; 7529:20;7530:5,16, 22,25;7531:2,3; 7542:9 173 (17) 7486:17,19; 7487:14;7489:25; 7495:17,21;7529:20, 25;7530:1,2,16,19, 22;7531:5,6,8; 7563:24 174 (13) 7506:22,23,24; 7507:6;7510:13; 7513:12;7515:2; 7517:21,23,24,25; 7562:12,16 175 (11) 7562:11,11,17,23; 7567:16;7577:15,18; 7578:15,17,17,19 176 (13) 7562:19,23; 7568:17,20;7574:17; 7576:23;7577:15; 7578:3,11,15,22,22, 24 177 (14) 7562:22,23; | 7565:19,20;7566:1, 2,21;7577:15; 7578:8,11,16; 7579:2,2,4 178 (11) 7580:19,19,20; 7581:10;7590:9,13; 7597:8,12,12,14; 7605:10 179 (10) 7580:24,24; 7581:3,6;7606:5,6; 7621:20,24,24; 7622:1 18 (1) 7508:13 18,000 (2) 7516:24;7517:3 1800 (1) 7636:22 1820 (1) 7575:14 1850 (2) 7515:18,24 19 (1) 7508:6 1920's (1) 7564:10 1930's (1) 7564:9 1950's (1) 7614:10 1958 (2) 7507:10,25 1960's (7) 7497:21,23; 7545:9;7564:11; 7570:25;7571:6,15 1965 (2) 7564:13,14 1966 (2) 7564:5,18 1968 (1) 7508:1 1994 (1) 7590:20 1997 (1) 7495:15 1's (1) 7478:17 1st (2) 7510:25;7516:3 | 2:55 (2) 7579:19;7580:2 20 (10) 7568:18,21; 7569:6;7570:1; 7574:23;7596:15; 7613:2,7;7619:14,25 2000's (1) 7624:9 2003 (1) 7530:7 2004 (2) 7495:4;7530:13 2006 (1) 7608:9 2007 (5) 7520:16;7521:14; 7526:5;7608:17,24 2009 (1) 7521:10 2010 (1) 7636:5 2012 (2) 7617:16,24 2014 (6) 7501:16,18; 7502:3;7583:20; 7608:18;7609:1 2015 (5) 7450:1,2;7515:14; 7517:15;7580:1 230 (1) 7588:15 25 (1) 7509:4 2500 (1) 7587:10 28,000 (1) 7516:25 280 (2) 7590:25;7597:25 |
| Z | | | | |
| Zealand (1) 7636:13 | | | | |
| 0 | | | | |
| 07 (1) 7637:19 09 (1) 7639:3 | | | | |
| 1 | | | | |
| 1 (54) 7452:2,7;7463:16; 7467:5,6,7;7473:5, 10;7476:15;7491:2; 7516:17;7546:10,12; 7557:12;7562:18; 7564:19,21;7565:1, 3,8;7568:15,23,24; 7569:8,11,15,21; 7572:3,10,10; 7581:22,24;7582:5, 11;7583:10;7584:8; 7590:20;7596:11; 7598:21;7600:11,12; 7601:23;7602:1,2; 7607:21;7624:6; 7627:23;7628:2; 7629:16;7636:2; 7639:10,17;7645:2,4 1.8 (1) 7576:13 1.82 (1) 7576:17 1:00 (1) 7457:24 1:06 (1) 7561:8 1:13 (1) 7561:24 1:38 (1) 7579:11 1:40 (1) 7579:18 10 (4) | | | | |
| | | | | 3 |
| | | | | 3 (12) 7488:7;7541:14, 16;7545:19; 7550:24;7567:17; 7578:8,8;7582:14; 7643:18;7644:24,25 3:00 (1) 7579:19 3:01 (1) 7581:2 3:03 (1) 7581:5 30 (4) 7451:20;7509:4; 7515:14;7564:7 300 (1) 7617:17 30b (1) 7492:22 |
| | | | 2 | |
| | | | 2 (18) 7452:19;7465:15; 7467:6;7481:20; 7491:3;7546:10,12; 7559:9;7564:18; 7566:6,20;7577:18; 7581:19;7602:23; 7603:2,6;7644:24,25 | |

| | | | | |
|---|--|---|--|--|
| <p>35 (3) 7521:2;7527:2,4 365-day (1) 7523:16 37 (1) 7450:4 38 (1) 7508:9</p> | <p>7514:1 54 (2) 7602:20,22 560 (1) 7509:1</p> | <p>85 (1) 7602:1</p> | | |
| <p>4</p> | <p>6</p> | <p>9</p> | | |
| <p>4 (32) 7486:16;7488:10, 11;7490:25;7491:1; 7495:12;7504:23; 7505:3;7533:11,21; 7534:18;7541:14,16, 22;7542:4,8,24; 7547:6;7552:9; 7557:1;7559:21; 7570:20;7578:2,5; 7580:18;7581:9; 7594:3,13;7603:10; 7643:18;7644:24,25 4:42 (1) 7641:19 4:51 (1) 7646:8 40 (2) 7567:20;7588:13 400 (2) 7523:4;7524:14 4105 (2) 7454:8;7646:5 47 (2) 7507:9,24 47216 (1) 7473:10 49 (1) 7568:9 4A (3) 7467:17,23; 7602:5 4H (1) 7634:23</p> | <p>6 (2) 7509:4;7574:19 60 (7) 7465:11;7510:20; 7511:9;7515:15; 7516:10;7517:16; 7637:19 600 (1) 7617:18 608c18 (2) 7494:24;7495:2 608c5 (5) 7494:23;7495:1; 7500:25;7502:14; 7503:9 608c5B (1) 7499:12 608c5G (1) 7499:16</p> | <p>9 (2) 7508:6;7643:23 9:00 (2) 7646:4,7 9:01 (1) 7450:3 9:23 (1) 7458:16 9:55 (1) 7476:4 90 (5) 7511:3,9;7522:3; 7588:7;7615:9 95 (5) 7584:11,12,15,16; 7633:9 99 (1) 7585:24 9c (1) 7555:4 9th (1) 7457:14</p> | | |
| <p>5</p> | <p>7</p> | | | |
| <p>5 (12) 7569:1,2;7574:18, 22;7576:23; 7579:19;7583:8; 7594:24;7597:23; 7598:12;7605:14; 7606:1 5:30 (1) 7458:8 50 (5) 7510:7;7518:19, 20;7589:9,23 500 (1) 7522:5 50-mile (1)</p> | <p>7 (3) 7643:22,24,25 7:00 (3) 7456:1,1;7458:6 70 (2) 7511:1;7517:5 71 (5) 7473:16;7475:12; 7480:4;7485:3,10 76 (6) 7531:20;7532:4; 7533:13;7543:4; 7547:24;7550:22 76d (1) 7553:4 7a (3) 7554:3;7556:5,6 7b (1) 7558:4</p> | | | |
| | <p>8</p> | <p>8 (3) 7528:8;7643:24; 7644:1 80 (1) 7521:24 800 (1) 7513:9 82 (1) 7576:21 820 (1) 7575:22</p> | | |