

IN THE SUPREME COURT OF THE STATE OF NEVADA

Nos. 83598, 84971, and 85358

IN RE PARAMETRIC SOUND CORPORATION
SHAREHOLDERS' LITIGATION.

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Elizabeth A. Brown
Clerk of Supreme Court

PAMTP, LLC,

Appellant,

v.

KENNETH F. POTASHNER; VTB HOLDINGS, INC.;
STRIPE GROUP, LLC; SG VTB HOLDINGS, LLC;
JUERGEN STARK; and KENNETH FOX,

Respondents.

Consolidated Appeals from Final Judgment and Fees and Costs Awards
Eighth Judicial District Court Case No. A-13-686890-B

APPELLANT'S APPENDIX – VOLUME 14 OF 24

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INDEX TO JOINT APPENDIX

(Chronological)

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
3/7/18	Amended Class Action and Derivative Complaint	1	AA 0001- AA 0078
3/27/18	Order Denying Defendants' Motions to Dismiss the Amended Class Action and Derivative Complaint	1	AA 0079- AA 0090
11/15/19	Stipulation of Settlement	1	AA 0091- AA 0174
5/19/20	Final Judgment and Order of Dismissal With Prejudice	1	AA 0175- AA 0203
5/20/20	PAMTP LLC's Complaint	2	AA 0204- AA 0270
8/20/20	Order Denying Defendants' Motions to Dismiss Plaintiff's Complaint	2	AA 0271- AA 0280
9/3/20	Director Defendants' Answer to Complaint	2	AA 0281- AA 0317
9/3/20	Answer to Plaintiff PAMTP LLC's Complaint	2	AA 0318- AA 0360
5/18/21	Order Granting Plaintiff's Motion Against Defendants Kenneth Potashner, Juergen Stark, and VTB Holdings, inc. Setting Evidentiary Hearing Re Spoliation Sanctions	2	AA 0361- AA 0368
6/23/21	Transcript of Evidentiary Hearing re: Spoliation Sanctions (6/18/21)	3-4	AA 0369- AA 0696
7/15/21	Findings of Fact, Conclusions of Law and Order Imposing Spoliation Sanctions	5	AA 0697- AA 0707
8/3/21	Order Denying Motion for Summary Judgment of Specially Appearing Defendants Stripes Group, LLC, SG VTB Holdings. LLC Juergen Stark, Kenneth Fox	5	AA 0708- AA 0725

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
8/3/21	Order Denying Defendants' Motion in Limine to Exclude Plaintiff's Damages	5	AA 0726- AA 0742
8/3/21	Order Denying the Director Defendants' Motion for Summary Judgment	5	AA 0743- AA 0760
8/3/21	Order Denying Defendants' Motion in Limine to Exclude All Reference, Evidence, and Testimony Regarding Post Merger Conduct	5	AA 0761- AA 0778
8/3/21	Order Denying Defendants' Motion in Limine to Exclude the Opinions, Testimony, and Reports of J.T. Atkins	5	AA 0779- AA 0795
8/3/21	Order Denying Defendants' Motion in Limine to Exclude Evidence Related to Alleged Fraud by the Non- Director Defendants	5	AA 0796- AA 0813
8/3/21	Order Denying Motion for Summary Judgment of Defendant VTB Holdings, Inc. and Specially Appearing Defendants Stripes Group, LLC SG VTB Holdings, LLC Juergen Stark, and Kenneth Fox	5	AA 0814- AA 0831
8/3/21	Order Granting in Part Defendants' Motion in Limine to Exclude Evidence and Testimony Related to Irrelevant or Undisclosed Measures of Damages	5	AA 0832- AA 0838
8/23/21	Order Granting Certain Director Defendants' Motion for Determination of Good Faith Settlement	5	AA 0839- AA 0844
8/24/21	Plaintiff PAMTP LLC's Memorandum of Law Regarding NRS 78.200 and NRS 78.211	5	AA 0845- AA 0850
8/24/21	Defendants' Motion for Judgment on Partial Findings Pursuant to NRCP 52(c) Regarding Lack of Control or Expropriation	5	AA 0851- AA 0865
8/24/21	Defendants' Motion for Judgment on Standing Pursuant to NRCP 52(c)	5	AA 0866- AA 0876

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
8/24/21	Defendants' Motion for Judgment for Lack of Evidence on <i>Gentile</i> Damages Pursuant to NRCP 52(c)	5	AA 0877- AA 0886
8/24/21	Specially Appearing Defendants Juergen Stark's and Kenneth Fox's Motion for Judgment Under the Statute of Limitations Pursuant to NRCP 52(c)	5	AA 0887- AA 0896
8/25/21	Non-Director Defendants' Trial Brief Re: Section 14(A)	5	AA 0897- AA 0904
8/25/21	Opposition to Plaintiff PAMTP LLC's Memorandum of Law Regarding NRS 78.200 and NRS 78.211	5	AA 0905- AA 0914
8/26/21	Transcript of Proceedings Bench Trial – Day 1 (8/16/21)	6-7	AA 0915- AA 1231
	Trial Exhibit 244	7-8	AA 1232- AA 1573
	Trial Exhibit 376	9	AA 1574- AA 1575
8/26/21	Transcript of Proceedings (8/17/21) Bench Trial – Day 2, Vol. 1	9	AA 1576- AA 1719
8/26/21	Transcript of Proceedings (8/17/21) Bench Trial – Day 2, Vol. 2	10	AA 1720- AA 1888
8/26/21	Transcript of Proceedings (8/18/21) Bench Trial – Day 3, Vol. 1	11	AA 1889- AA 2018
	Trial Exhibit 5	11	AA 2019- AA 2022
	Trial Exhibit 6	11	AA 2023- AA 2029
	Trial Exhibit 26	11	AA 2030
	Trial Exhibit 38	11	AA 2031
	Trial Exhibit 95	11	AA 2032

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
	Trial Exhibit 106	11	AA 2033
	Trial Exhibit 108	11	AA 2034- AA 2037
	Trial Exhibit 109	11	AA 2038- AA 2041
	Trial Exhibit 111	11	AA 2042- AA 2043
	Trial Exhibit 137	11	AA 2044- AA 2047
	Trial Exhibit 142	11	AA 2048
	Trial Exhibit 152	11	AA 2049- AA 2050
	Trial Exhibit 194	11	AA 2051- AA 2092
	Trial Exhibit 277	11	AA 2093- AA 2095
	Trial Exhibit 296	11	AA 2096- AA 2097
8/26/21	Transcript of Proceedings (8/18/21) Bench Trial – Day 3, Vol. 2	12	AA 2098- AA 2238
	Trial Exhibit 78	12	AA 2239- AA 2240
	Trial Exhibit 82	12	AA 2241- AA 2243
	Trial Exhibit 83	12	AA 2244
	Trial Exhibit 87	12	AA 2245- AA 2246
	Trial Exhibit 88	12	AA 2247- AA 2248
	Trial Exhibit 89	12	AA 2249
	Trial Exhibit 90	12	AA 2250-

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
			AA 2251
	Trial Exhibit 94	12	AA 2252
	Trial Exhibit 98	12	AA 2253- AA 2254
	Trial Exhibit 99	12	AA 2255- AA 2256
	Trial Exhibit 113	12	AA 2257- AA 2260
	Trial Exhibit 132	12	AA 2261
	Trial Exhibit 171	12	AA 2262
	Trial Exhibit 293	12	AA 2263- AA 2264
	Trial Exhibit 346	12	AA 2265- AA 2267
8/26/21	Transcript of Proceedings (8/19/21) Bench Trial – Day 4, Vol. 1	13	AA 2268- AA 2387
	Trial Exhibit 775	13	AA 2388
	Trial Exhibit 776	13	AA 2389- AA 2390
	Trial Exhibit 781	13	AA 2391- AA 2394
	Trial Exhibit 785	13	AA 2395- AA 2411
	Trial Exhibit 789	13	AA 2412- AA 2413
	Trial Exhibit 821	13	AA 2414
	Trial Exhibit 837	13	AA 2415- AA 2416

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
8/26/21	Transcript of Proceedings (8/19/21) Bench Trial – Day 4, Vol. 2	14	AA 2417- AA 2597
	Trial Exhibit 265	14	AA 2598- AA 2599
	Trial Exhibit 345	14	AA 2600- AA 2602
8/26/21	Transcript of Proceedings (8/20/21) Bench Trial – Day 5	15	AA 2603- AA 2800
	Trial Exhibit 17	15	AA 2801- AA 2803
	Trial Exhibit 58	15	AA 2804- AA 2805
	Trial Exhibit 60	15	AA 2806- AA 2807
	Trial Exhibit 116	15	AA 2808
	Trial Exhibit 120	15	AA 2809- AA 2816
	Trial Exhibit 305	15	AA 2817
	Trial Exhibit 1052	16	AA 2818- AA 2862
8/26/21	Transcript of Proceedings (8/23/21) Bench Trial – Day 6, Vol. 1	16	AA 2863- AA 2984
	Trial Exhibit 84	16	AA 2985- AA 3045
	Trial Exhibit 110	17	AA 3046
	Trial Exhibit 143	17	AA 3047- AA 3048
	Trial Exhibit 160	17	AA 3049
	Trial Exhibit 166	17	AA 3050- AA 3058

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
	Trial Exhibit 170	17	AA 3059- AA 3060
	Trial Exhibit 172	17	AA 3061- AA 3064
	Trial Exhibit 267	17	AA 3065- AA 3069
	Trial Exhibit 271	17	AA 3070
	Trial Exhibit 330	17	AA 3071- AA 3073
	Trial Exhibit 338	17	AA 3074- AA 3076
	Trial Exhibit 339	17	AA 3077- AA 3084
	Trial Exhibit 364	17	AA 3085- AA 3087
	Trial Exhibit 425	17	AA 3088- AA 3106
8/26/21	Transcript of Proceedings (8/23/21) Bench Trial – Day 6, Vol. 2	17	AA 3107- AA 3282
8/26/21	Transcript of Proceedings (8/24/21) Bench Trial – Day 7, Vol. 1	18	AA 3283- AA 3410
	Trial Exhibit 428	18	AA 3411- AA 3415
	Trial Exhibit 464	18	AA 3416- AA 3422
	Trial Exhibit 909	18	AA 3423- AA 3433
8/26/21	Transcript of Proceedings (8/24/21) Bench Trial – Day 7, Vol. 2	19	AA 3434- AA 3579
	Trial Exhibit 413	19	AA 3580- AA 3600

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
8/26/21	Transcript of Proceedings (8/25/21) Bench Trial – Day 8	20	AA 3601- AA 3703
9/2/21	Notice of Submission of Proposed Order Granting Defendants' Motion for Judgment Pursuant to NRCP 52(c), Findings of Fact and Conclusions of Law, and Judgment Thereon	20	AA 3704- AA 3735
9/3/21	Notice of Submission of Plaintiff's Objections to Defendants' Proposed Order Granting Defendants' Motion for Judgment Pursuant to NRCP 52(c), Findings of Fact and Conclusions of Law, and Judgment Thereon	20	AA 3736- AA 3771
9/3/21	Order Granting Motion for Judgment Pursuant to NRCP 52(c)	20	AA 3772- AA 3795
9/8/21	Notice of Entry of Order Granting Defendants Motion for Judgment Pursuant to NRCP 52(c), Findings of Fact and Conclusions of Law, and Judgment Thereon	20	AA 3796- AA 3822
9/22/21	Non-Director Defendants' Memorandum of Costs	20	AA 3823- AA 3831
9/22/21	Defendant Kenneth Potashner's Verified Memorandum of Costs	21	AA 3832- AA 3872
9/29/21	Defendants' Motion for Attorneys' Fees	21	AA 3873- AA 3901
9/30/21	Plaintiff PAMTP LLC's Notice of Appeal	21	AA 3902- AA 3929
10/7/21	Motion to Retax Defendant Kenneth Potashner's Verified Memorandum of Costs	21	AA 3930- AA 3945
10/7/21	Motion to Retax Non-Director Defendants' Memorandum of Costs	21	AA 3946- AA 3964
10/13/21	Plaintiff PAMTP LLC's Opposition to Motion for Attorneys' Fees	21	AA 3965- AA 4046

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
10/21/21	Non-Director Defendants' Opposition to Plaintiff's Motion to Retax Costs	21	AA 4047-AA 4069
10/21/21	Opposition to Plaintiff's Motion to Retax Defendant Kenneth Potashner's Verified Memorandum of Costs	22	AA 4070-AA 4131
10/28/21	Reply in Support of Defendants' Motion for Attorneys' Fees	22	AA 4132-AA 4159
11/9/21	PAMTP, LLC's Reply in Support of Motion to Retax Non-Director Defendants' Memorandum of Costs	22	AA 4160-AA 4170
11/9/21	PAMTP, LLC's Reply in Support of Motion to Retax Defendant Kenneth Potashner's Verified Memorandum of Costs	22	AA 4171-AA 4178
12/16/21	Plaintiff PAMTP LLC's Supplemental Brief in Opposition to Motion for Attorneys' Fees	22	AA 4179-AA 4189
12/16/21	Supplemental Brief in Support of Defendants' Motion for Attorneys' Fees	22	AA 4190-AA 4204
12/22/21	Transcript of Hearing re: Defendants' Motion for Attorneys' Fees (12/2/21)	23	AA 4205-AA 4311
1/13/22	Transcript of Hearing re: Plaintiff's Motions to Retax (11/16/21)	23	AA 4312-AA 4369
6/7/22	Order Denying Defendants' Motion for Attorneys' Fees	23	AA 4370-AA 4386
6/15/22	Notice of Entry of Order Denying Defendants' Motion for Attorneys' Fees	23	AA 4387-AA 4407
6/30/22	Notice of Appeal	23	AA 4408-AA 4414
8/29/22	Order re: PAMTP LLC'S Motions to Re-Tax Costs	23	AA 4415-AA 4439
9/2/22	Notice of Entry of Order re: PAMTP, LLC's Motions to Re-Tax Costs	24	AA 4440-AA 4466
9/14/22	Plaintiff PAMTP LLC's Case Appeal Statement	24	AA 4467-AA 4526

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
9/16/22	Amended Judgment	24	AA 4527- AA 4536
10/19/22	Order Granting Plaintiff's Motion to Stay Execution of Amended Judgment on Order Shortening Time	24	AA 4537- AA 4547
12/12/22	Order Granting Defendants' Motion to Amend Judgment	24	AA 4548- AA 4562
12/18/22	Second Amended Judgment	24	AA 4563- AA 4571

INDEX TO JOINT APPENDIX

(Alphabetical)

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
3/7/18	Amended Class Action and Derivative Complaint	1	AA 0001- AA 0078
9/16/22	Amended Judgment	24	AA 4527- AA 4536
9/3/20	Answer to Plaintiff PAMTP LLC's Complaint	2	AA 0318- AA 0360
9/22/21	Defendant Kenneth Potashner's Verified Memorandum of Costs	21	AA 3832- AA 3872
9/29/21	Defendants' Motion for Attorneys' Fees	21	AA 3873- AA 3901
8/24/21	Defendants' Motion for Judgment for Lack of Evidence on <i>Gentile</i> Damages Pursuant to NRCP 52(c)	5	AA 0877- AA 0886
8/24/21	Defendants' Motion for Judgment on Partial Findings Pursuant to NRCP 52(c) Regarding Lack of Control or Expropriation	5	AA 0851- AA 0865
8/24/21	Defendants' Motion for Judgment on Standing Pursuant to NRCP 52(c)	5	AA 0866- AA 0876
9/3/20	Director Defendants' Answer to Complaint	2	AA 0281- AA 0317
5/19/20	Final Judgment and Order of Dismissal With Prejudice	1	AA 0175- AA 0203
7/15/21	Findings of Fact, Conclusions of Law and Order Imposing Spoliation Sanctions	5	AA 0697- AA 0707
10/7/21	Motion to Retax Defendant Kenneth Potashner's Verified Memorandum of Costs	21	AA 3930- AA 3945
10/7/21	Motion to Retax Non-Director Defendants' Memorandum of Costs	21	AA 3946- AA 3964

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
9/22/21	Non-Director Defendants' Memorandum of Costs	20	AA 3823-AA 3831
10/21/21	Non-Director Defendants' Opposition to Plaintiff's Motion to Retax Costs	21	AA 4047-AA 4069
8/25/21	Non-Director Defendants' Trial Brief Re: Section 14(A)	5	AA 0897-AA 0904
6/30/22	Notice of Appeal	23	AA 4408-AA 4414
6/15/22	Notice of Entry of Order Denying Defendants' Motion for Attorneys' Fees	23	AA 4387-AA 4407
9/8/21	Notice of Entry of Order Granting Defendants Motion for Judgment Pursuant to NRCP 52(c), Findings of Fact and Conclusions of Law, and Judgment Thereon	20	AA 3796-AA 3822
9/2/22	Notice of Entry of Order re: PAMTP, LLC's Motions to Re-Tax Costs	24	AA 4440-AA 4466
9/3/21	Notice of Submission of Plaintiff's Objections to Defendants' Proposed Order Granting Defendants' Motion for Judgment Pursuant to NRCP 52(c), Findings of Fact and Conclusions of Law, and Judgment Thereon	20	AA 3736-AA 3771
9/2/21	Notice of Submission of Proposed Order Granting Defendants' Motion for Judgment Pursuant to NRCP 52(c), Findings of Fact and Conclusions of Law, and Judgment Thereon	20	AA 3704-AA 3735
8/25/21	Opposition to Plaintiff PAMTP LLC's Memorandum of Law Regarding NRS 78.200 and NRS 78.211	5	AA 0905-AA 0914
10/21/21	Opposition to Plaintiff's Motion to Retax Defendant Kenneth Potashner's Verified Memorandum of Costs	22	AA 4070-AA 4131
6/7/22	Order Denying Defendants' Motion for Attorneys' Fees	23	AA 4370-AA 4386

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
8/20/20	Order Denying Defendants' Motions to Dismiss Plaintiff's Complaint	2	AA 0271-AA 0280
3/27/18	Order Denying Defendants' Motions to Dismiss the Amended Class Action and Derivative Complaint	1	AA 0079-AA 0090
8/3/21	Order Denying Defendants' Motion in Limine to Exclude All Reference, Evidence, and Testimony Regarding Post Merger Conduct	5	AA 0761-AA 0778
8/3/21	Order Denying Defendants' Motion in Limine to Exclude Evidence Related to Alleged Fraud by the Non- Director Defendants	5	AA 0796-AA 0813
8/3/21	Order Denying Defendants' Motion in Limine to Exclude Plaintiff's Damages	5	AA 0726-AA 0742
8/3/21	Order Denying Defendants' Motion in Limine to Exclude the Opinions, Testimony, and Reports of J.T. Atkins	5	AA 0779-AA 0795
8/3/21	Order Denying Motion for Summary Judgment of Defendant VTB Holdings, Inc. and Specially Appearing Defendants Stripes Group, LLC SG VTB Holdings, LLC Juergen Stark, and Kenneth Fox	5	AA 0814-AA 0831
8/3/21	Order Denying Motion for Summary Judgment of Specially Appearing Defendants Stripes Group, LLC, SG VTB Holdings. LLC Juergen Stark, Kenneth Fox	5	AA 0708-AA 0725
8/3/21	Order Denying the Director Defendants' Motion for Summary Judgment	5	AA 0743-AA 0760
8/23/21	Order Granting Certain Director Defendants' Motion for Determination of Good Faith Settlement	5	AA 0839-AA 0844

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
12/12/22	Order Granting Defendants' Motion to Amend Judgment	24	AA 4548- AA 4562
8/3/21	Order Granting in Part Defendants' Motion in Limine to Exclude Evidence and Testimony Related to Irrelevant or Undisclosed Measures of Damages	5	AA 0832- AA 0838
9/3/21	Order Granting Motion for Judgment Pursuant to NRCP 52(c)	20	AA 3772- AA 3795
5/18/21	Order Granting Plaintiff's Motion Against Defendants Kenneth Potashner, Juergen Stark, and VTB Holdings, inc. Setting Evidentiary Hearing Re Spoilation Sanctions	2	AA 0361- AA 0368
10/19/22	Order Granting Plaintiff's Motion to Stay Execution of Amended Judgment on Order Shortening Time	24	AA 4537- AA 4547
8/29/22	Order re: PAMTP LLC'S Motions to Re-Tax Costs	23	AA 4415- AA 4439
5/20/20	PAMTP LLC's Complaint	2	AA 0204- AA 0270
11/9/21	PAMTP, LLC's Reply in Support of Motion to Retax Defendant Kenneth Potashner's Verified Memorandum of Costs	22	AA 4171- AA 4178
11/9/21	PAMTP, LLC's Reply in Support of Motion to Retax Non-Director Defendants' Memorandum of Costs	22	AA 4160- AA 4170
9/14/22	Plaintiff PAMTP LLC's Case Appeal Statement	24	AA 4467- AA 4526
8/24/21	Plaintiff PAMTP LLC's Memorandum of Law Regarding NRS 78.200 and NRS 78.211	5	AA 0845- AA 0850
9/30/21	Plaintiff PAMTP LLC's Notice of Appeal	21	AA 3902- AA 3929
10/13/21	Plaintiff PAMTP LLC's Opposition to Motion for Attorneys' Fees	21	AA 3965- AA 4046

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
12/16/21	Plaintiff PAMTP LLC's Supplemental Brief in Opposition to Motion for Attorneys' Fees	22	AA 4179- AA 4189
10/28/21	Reply in Support of Defendants' Motion for Attorneys' Fees	22	AA 4132- AA 4159
12/18/22	Second Amended Judgment	24	AA 4563- AA 4571
8/24/21	Specially Appearing Defendants Juergen Stark's and Kenneth Fox's Motion for Judgment Under the Statute of Limitations Pursuant to NRCF 52(c)	5	AA 0887- AA 0896
11/15/19	Stipulation of Settlement	1	AA 0091- AA 0174
12/16/21	Supplemental Brief in Support of Defendants' Motion for Attorneys' Fees	22	AA 4190- AA 4204
6/23/21	Transcript of Evidentiary Hearing re: Spoliation Sanctions (6/18/21)	3-4	AA 0369- AA 0696
12/22/21	Transcript of Hearing re: Defendants' Motion for Attorneys' Fees (12/2/21)	23	AA 4205- AA 4311
1/13/22	Transcript of Hearing re: Plaintiff's Motions to Retax (11/16/21)	23	AA 4312- AA 4369
8/26/21	Transcript of Proceedings Bench Trial – Day 1 (8/16/21)	6-7	AA 0915- AA 1231
8/26/21	Transcript of Proceedings (8/17/21) Bench Trial – Day 2, Vol. 1	9	AA 1576- AA 1719
8/26/21	Transcript of Proceedings (8/17/21) Bench Trial – Day 2, Vol. 2	10	AA 1720- AA 1888
8/26/21	Transcript of Proceedings (8/18/21) Bench Trial – Day 3, Vol. 1	11	AA 1889- AA 2018
8/26/21	Transcript of Proceedings (8/18/21) Bench Trial – Day 3, Vol. 2	12	AA 2098- AA 2238

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
8/26/21	Transcript of Proceedings (8/19/21) Bench Trial – Day 4, Vol. 1	13	AA 2268- AA 2387
8/26/21	Transcript of Proceedings (8/19/21) Bench Trial – Day 4, Vol. 2	14	AA 2417- AA 2597
8/26/21	Transcript of Proceedings (8/20/21) Bench Trial – Day 5	15	AA 2603- AA 2800
8/26/21	Transcript of Proceedings (8/23/21) Bench Trial – Day 6, Vol. 1	16	AA 2863- AA 2984
8/26/21	Transcript of Proceedings (8/23/21) Bench Trial – Day 6, Vol. 2	17	AA 3107- AA 3282
8/26/21	Transcript of Proceedings (8/24/21) Bench Trial – Day 7, Vol. 1	18	AA 3283- AA 3410
8/26/21	Transcript of Proceedings (8/24/21) Bench Trial – Day 7, Vol. 2	19	AA 3434- AA 3579
8/26/21	Transcript of Proceedings (8/25/21) Bench Trial – Day 8	20	AA 3601- AA 3703
	Trial Exhibit 5	11	AA 2019- AA 2022
	Trial Exhibit 6	11	AA 2023- AA 2029
	Trial Exhibit 17	15	AA 2801- AA 2803
	Trial Exhibit 26	11	AA 2030
	Trial Exhibit 38	11	AA 2031
	Trial Exhibit 58	15	AA 2804- AA 2805
	Trial Exhibit 60	15	AA 2806- AA 2807
	Trial Exhibit 78	12	AA 2239- AA 2240

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
	Trial Exhibit 82	12	AA 2241- AA 2243
	Trial Exhibit 83	12	AA 2244
	Trial Exhibit 84	16	AA 2985- AA 3045
	Trial Exhibit 87	12	AA 2245- AA 2246
	Trial Exhibit 88	12	AA 2247- AA 2248
	Trial Exhibit 89	12	AA 2249
	Trial Exhibit 90	12	AA 2250- AA 2251
	Trial Exhibit 94	12	AA 2252
	Trial Exhibit 95	11	AA 2032
	Trial Exhibit 98	12	AA 2253- AA 2254
	Trial Exhibit 99	12	AA 2255- AA 2256
	Trial Exhibit 106	11	AA 2033
	Trial Exhibit 108	11	AA 2034- AA 2037
	Trial Exhibit 109	11	AA 2038- AA 2041
	Trial Exhibit 110	17	AA 3046
	Trial Exhibit 111	11	AA 2042- AA 2043
	Trial Exhibit 113	12	AA 2257- AA 2260
	Trial Exhibit 116	15	AA 2808

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
	Trial Exhibit 120	15	AA 2809- AA 2816
	Trial Exhibit 132	12	AA 2261
	Trial Exhibit 137	11	AA 2044- AA 2047
	Trial Exhibit 142	11	AA 2048
	Trial Exhibit 143	17	AA 3047- AA 3048
	Trial Exhibit 152	11	AA 2049- AA 2050
	Trial Exhibit 160	17	AA 3049
	Trial Exhibit 166	17	AA 3050- AA 3058
	Trial Exhibit 170	17	AA 3059- AA 3060
	Trial Exhibit 171	12	AA 2262
	Trial Exhibit 172	17	AA 3061- AA 3064
	Trial Exhibit 194	11	AA 2051- AA 2092
	Trial Exhibit 244	7-8	AA 1232- AA 1573
	Trial Exhibit 265	14	AA 2598- AA 2599
	Trial Exhibit 267	17	AA 3065- AA 3069
	Trial Exhibit 271	17	AA 3070
	Trial Exhibit 277	11	AA 2093- AA 2095
	Trial Exhibit 293	12	AA 2263- AA 2264

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
	Trial Exhibit 296	11	AA 2096- AA 2097
	Trial Exhibit 305	15	AA 2817
	Trial Exhibit 330	17	AA 3071- AA 3073
	Trial Exhibit 338	17	AA 3074- AA 3076
	Trial Exhibit 339	17	AA 3077- AA 3084
	Trial Exhibit 345	14	AA 2600- AA 2602
	Trial Exhibit 346	12	AA 2265- AA 2267
	Trial Exhibit 364	17	AA 3085- AA 3087
	Trial Exhibit 376	9	AA 1574- AA 1575
	Trial Exhibit 413	19	AA 3580- AA 3600
	Trial Exhibit 425	17	AA 3088- AA 3106
	Trial Exhibit 428	18	AA 3411- AA 3415
	Trial Exhibit 464	18	AA 3416- AA 3422
	Trial Exhibit 775	13	AA 2388
	Trial Exhibit 776	13	AA 2389- AA 2390
	Trial Exhibit 781	13	AA 2391- AA 2394
	Trial Exhibit 785	13	AA 2395- AA 2411

<u>Date</u>	<u>Document Description</u>	<u>Vol.</u>	<u>Pages</u>
	Trial Exhibit 789	13	AA 2412- AA 2413
	Trial Exhibit 821	13	AA 2414
	Trial Exhibit 837	13	AA 2415- AA 2416
	Trial Exhibit 909	18	AA 3423- AA 3433
	Trial Exhibit 1052	16	AA 2818- AA 2862

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Respectfully submitted this 12th day of January, 2023.

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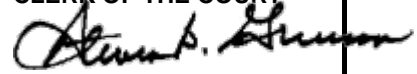
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and on January 12, 2023, a true and correct copy of the foregoing was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system.

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An Employee of McDonald Carano LLP



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IN RE PARAMETRIC SOUND)
CORPORATION SHAREHOLDERS')
LITIGATION)

CASE NO. A-13-686890-B
DEPT NO. XI

This Document Relates to:)

ALL ACTIONS)

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

THURSDAY, AUGUST 19, 2021

BENCH TRIAL - DAY 4 - VOLUME II

APPEARANCES:

FOR PAMPT LLC:

GEORGE F. OGILVIE, III, ESQ.
ADAM M. APTON, ESQ.

FOR KENNETH POTASHNER,
NORRIS, PUTTERMAN,
KAPLAN, & WOLFE:

J. STEPHEN PEEK, ESQ.
ROBERT J. CASSITY, ESQ.
JOHN P. STIGI, III, ESQ.
ALEJANDRO E. MORENO, ESQ.

FOR VTB HOLDINGS, STRIPES
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KENNETH FOX & JUERGEN STARK:

RICHARD C. GORDON, ESQ.
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RECORDED BY: JILL HAWKINS, COURT RECORDER
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I N D E X
W I T N E S S E S

WITNESSES FOR THE PLAINTIFF:

KENNETH POTASHNER

Continued Cross-Examination by Mr. Stigi	3
Cross-Examination by Mr. Hess	67
Redirect Examination by Mr. Apton	105
Recross-Examination by Mr. Stigi	156

E X H I B I T S

EXHIBITS ADMITTED:

30	109
47	44
168	140
237	143
238	123
260	147
265	134
345	116
480-490	40
873	132

1 **LAS VEGAS, CLARK COUNTY, NEVADA, AUGUST 19, 2021, 12:58 P.M.**

2 * * * * *

3 THE COURT: As soon as you are ready.

4 MR. STIGI: Ready to go?

5 THE COURT: Uh-huh.

6 MR. STIGI: Apologies. I didn't hear that.

7 THE COURT: It's okay.

8 **KENNETH POTASHNER**

9 [having been called as a witness and previously duly sworn,
10 resumed testifying as follows:]

11 CONTINUED CROSS-EXAMINATION

12 BY MR. STIGI:

13 Q Good afternoon. Good afternoon, Mr. Potashner. Can
14 I ask you to pull up DX-1070, 1070?

15 A Okay.

16 Q Do you recognize DX-1070?

17 A Yes.

18 Q What is it?

19 A This is a revised term sheet -- revised nonbinding
20 term sheet.

21 Q What page of DX-1070 are you looking at?

22 A I'm looking at 2 of 11.

23 Q Okay. And you'll see on page 5 of 11, 6 of 11 a
24 document entitled Parametric Sound Corporation, slash,
25 [indiscernible], Turtle Beach Merger Nonbinding Term Sheet?

JD Reporting, Inc.

1 A I'm sorry. What page --

2 Q 5 of 11.

3 A 5 of 11. Yes.

4 Q Yeah. Just focusing on 5 of 11, it looks like the
5 same format of a term sheet -- nonbinding term sheet we saw
6 earlier today.

7 Does that look familiar to you?

8 A Correct. Yes.

9 Q Okay. And do you see the percentages now in the term
10 sheet?

11 A Yes. 81/19.

12 Q Could you --

13 A I'm sorry. 80/20.

14 Q 80/20 on 5 of 11. Is there a different percentage
15 elsewhere that you were referring to?

16 A I was reading the last line of Item 1, otherwise the
17 foregoing percentages will be 81/19.

18 Q What page are you on there?

19 THE COURT: He's in the same paragraph, the timeline.

20 MR. STIGI: Got it. Thank you.

21 BY MR. STIGI:

22 Q And were these percentages the product of
23 negotiations continuing through to this date of June 11, 2013?

24 A Yes, they were.

25 Q If you look down at paragraph 5.

1 A Yes.

2 Q You see it says: The parties will discuss mutually
3 acceptable deal protections in light of the applicable
4 fiduciary duties?

5 A Correct.

6 Q Now, what our deal protections in this context?

7 A Yeah. I would think of that in the context of
8 breakup considerations.

9 Q Would it also include the Go-Shop or no-shop type
10 provision?

11 A It would.

12 Q And again, this changed from the prior term sheet?

13 A Correct.

14 Q And to what extent you are -- from your perspective
15 did it change --

16 A Yeah.

17 Q -- positively or negatively toward Parametric?

18 A Yeah. It changed favorably allowing us to
19 participate in shopping the company to others. And it also
20 improved the equity split -- I'm sorry. It improved the --
21 narrowed the licensing ask on the breakup.

22 Q All right. Do you remember what that narrowing was?

23 A I don't recall the specifics of how it happened --
24 how much it was narrowed.

25 Q Okay. But let's go now to PX-101.

1 A So it's in the other book?

2 Q Yeah. I would have given you the DX number --

3 A Okay. It's fine.

4 Q -- but that would've been --

5 A It's fine.

6 Q -- a bad thing.

7 THE COURT: We're trying to de-duplicate.

8 THE WITNESS: You know, I have a 100 going to 102 on
9 the old book.

10 BY MR. STIGI:

11 Q Right.

12 A And in this book, I don't have a 101.

13 Q You could look on the screen.

14 A That's fine.

15 Q Yeah. And if you need a paper copy, we can get that
16 to you.

17 A That's fine.

18 Q But hopefully that works. So if you could just
19 review 101.

20 A Okay. I've read it.

21 Q All right. So what is Exhibit 101?

22 A It's a correspondence from me to the Parametric board
23 of directors, copying our general counsel as well.

24 Q Okay. And what is it communicating to the board of
25 directors?

1 A It's a status update on the progression of the merger
2 with Turtle Beach and some concerns.

3 Q And what were the concerns that you were -- well --
4 withdraw.

5 This is now the end of June 2013; right?

6 A Correct.

7 Q And in hindsight, looking back at the whole
8 progression of the negotiations, where would you put this point
9 in time, the end of June 2013, with everything we've discussed
10 earlier from the beginnings of the discussions to August 2,
11 2013, when the deal -- excuse me -- when the merger had been
12 approved by the board?

13 Where are you in the discussions at this point?

14 A We're -- we're pretty much in alignment that we're
15 going to do this. We're now in the phase of knocking down
16 barriers to move things forward.

17 Q And is this part of your authority and responsibility
18 as executive chairman to be communicating this information to
19 the board of directors?

20 A Yes.

21 Q Now, if you control the board of directors, why would
22 you give them any information at all?

23 A Yeah. As we've said, I did not control the board.
24 Yeah. The board had very frequent updates, very frequent
25 involvement, you know, through the entirety of the process.

1 Q But what were the barriers you mentioned earlier that
2 existed at this point in time?

3 A Yeah. Many of them were logistical. The PNC Bank
4 issue appeared initially as a logistical issue as well. But
5 these were things that needed to get solved to move the deal
6 forward.

7 Q Okay. Any other barriers that you -- they brought up
8 the barriers, so I just wanted to see any other barriers that
9 you would highlight from Exhibit 101?

10 A Yeah. I mean, the big one was one we discussed
11 before lunch, which is, Gee, does this product have defects;
12 right? So overcoming, getting confidence in the product was
13 a -- was a significant need that we successfully executed on.

14 At some point, I don't know if we are there yet or
15 not there, which is the needing to bring some additional
16 capital into the equation was something I would construct as a
17 barrier. That was also was solved.

18 Q And on page 2 of 2, you indicate a probability on
19 getting the deal done at this point in time in June of 2013.

20 Do you see that? It's on page 2.

21 A Yeah. I'm reading it now.

22 Q Oh, okay.

23 A Yes. I've read it now.

24 Q Okay. And what was the probability you were placing
25 on the deal at the time?

1 A 80 percent.

2 Q And why not 100? Why not 50? What led you to 80?

3 A Yeah. There's always -- as I've said before, deals
4 always experience near-death experiences for things you can't
5 contemplate. And in my experience, a deal that looks like it's
6 going to happen is still likely, you know, 70 to 80 percent at
7 best, for the things that you just can't foresee are going to
8 happen.

9 Q And you go on to say that this will go to 90s once
10 the financing is secure.

11 A Correct.

12 Q Why would the likelihood go higher in that
13 circumstance?

14 A Yeah. The -- there was a requirement put on the
15 transaction of bringing additional capital in to enable
16 Parametric to move forward with its plans. So on the
17 Parametric side, it was a \$5 million capital raise, so -- and
18 that was defined as a deal point -- and it became a later deal
19 point, it wasn't the initial deal point. And that was a
20 requirement. And there's always a risk in getting the
21 financing done. So I said once we saw that financing, that
22 that barrier goes away.

23 Q Maybe I wasn't clear. You're referring to the
24 financing that Parametric is -- was going to be getting?

25 A Let me reread.

1 Q Yeah.

2 A Yeah. I read that first line in the second
3 paragraph, so I was mixing that.

4 Yeah. So this was the parallel looking to raise
5 money for Parametric to make us in a stronger position to have
6 more leverage in negotiating the exchange rate.

7 Q Just so I'm clear, you say you'll place 80 percent
8 probability of getting the deal done, and this will go to
9 mid-90s once their financing is secured.

10 Who is the "their"?

11 A "Their" would be Turtle Beach -- that they were
12 looking to finance as well.

13 Q Okay. And what did you understand at the time of
14 whatever financing needs that would get the deal from already a
15 pretty high 80 almost a certain mid-90?

16 A I'm sorry. Please repeat.

17 Q What was your understanding of the financing needs --

18 A Yeah. So --

19 Q -- of Turtle Beach --

20 A Yeah.

21 Q -- that would move it from 80 to the mid-90s?

22 A Yeah. So as I mentioned yesterday I believe, that
23 Stripes took some debt out of Turtle Beach, which created a
24 necessity for Turtle Beach to get additional financing to run
25 their operations forward and the combined operations forward.

1 And they were advancing with different parties on how to
2 achieve that financing.

3 So this refers to when they are successful in
4 achieving their financing, there is clear sailing to being able
5 to execute the merger.

6 Q Okay. Thank you. And just focusing on the word
7 secure, I just want to make sure I understand what that
8 sentence means. You're talking about an intent to secure a
9 specific financing from Turtle Beach -- or excuse me, by Turtle
10 Beach from some source?

11 MR. APTON: Objection. Leading.

12 THE COURT: Overruled.

13 THE WITNESS: Yes. That's accurate.

14 BY MR. STIGI:

15 Q Are you not -- alternatively, I got the answer, but I
16 want to make sure what your answer doesn't include.

17 You're not talking about the general security of the
18 financial situation at the company -- at Turtle Beach?

19 A That's correct.

20 MR. APTON: Objection. Leading.

21 THE COURT: So it's really much better if I hear the
22 words from the witness's mouth instead of yours.

23 I'm not going to sustain the leading objections
24 because I'd really like to get done with this witness today.
25 But it's much more credible, especially given the sanctions

1 that are in place, if the witness is the one telling me stuff.

2 MR. STIGI: Okay. Your Honor, I hear you loud and
3 clear.

4 THE COURT: You know --

5 MR. STIGI: And I'm trying to ask leading --

6 THE COURT: I know you have.

7 MR. STIGI: -- non-leading questions. And I confess,
8 I occasionally will do that --

9 THE COURT: You fell back.

10 MR. STIGI: -- in the interest of trying to proceed.

11 THE WITNESS: Okay. Sorry.

12 MR. STIGI: I will -- we got the answer. The first
13 question was not leading --

14 THE COURT: No.

15 MR. STIGI: -- and he gave the right answer.

16 THE COURT: I don't know if it's the right answer or
17 not. He gave an answer.

18 MR. STIGI: Anyway --

19 THE COURT: Okay.

20 MR. STIGI: -- moving on.

21 THE COURT: But I'm not going to sustain the leading
22 objections, because I'd like to not have to declare a mistrial
23 in this case. That's -- so let's get that.

24 MR. STIGI: All right.

25 / / /

1 BY MR. STIGI:

2 Q Last point -- or to just focus on Exhibit 101, back
3 on the first page, the third paragraph -- well, it's the third
4 full, large paragraph, the one that ends with capital letters,
5 right at the bottom.

6 A Okay.

7 Q This paragraph talks about HHI and HHI options. Do
8 you see that?

9 A I do. Let me read it, so I don't get confused like I
10 just did on the last one.

11 Okay. I've read it.

12 Q Why did you write the last sentence of that
13 paragraph, the one in capital letters?

14 A Yeah. I wanted to be very clear to the board that my
15 aspirations, relative to HHI, will in no way compromise the
16 deal, not prevent the deal from happening. It will not be a
17 friction point.

18 Q Okay. And did you want to have an understanding of
19 the perspective of the other board members with respect to HHI
20 in the deal getting done?

21 A I didn't hear the first part of it.

22 Q Did you have an understanding of the perspective of
23 the other board members?

24 A Yes, I did.

25 Q And what was that understanding?

1 A That they clearly -- you know, clearly and crisply
2 articulated that I'm not to allow my personal desires around
3 HHI to create friction to getting this deal done.

4 Q Now, yesterday we went through, in excruciating
5 detail, all of the e-mails --

6 A Right.

7 Q -- and the communications of the board, instructions.
8 I'm not going to --

9 A Right.

10 Q -- rehash any of that. But there were instances
11 where, at least Mr. Apton was suggesting, you were making, for
12 lack of a better word, asks in that whole process in July of
13 Turtle Beach, with respect to HHI in the HHI options.

14 Do you remember that?

15 A Correct.

16 Q And do you remember reference to a gentlemen's
17 agreement, for example?

18 A Yeah. I referenced -- I requested, but I also
19 relayed that there was no agreement. There was nothing to
20 accept it.

21 Q So what I'm trying to -- there was a suggestion of an
22 ask of some sort of gentlemen's agreement; is that what you
23 said?

24 A Yes.

25 Q And an ask for, I think, a consulting agreement?

1 A Correct.

2 Q An ask to be involved with HHI after that?

3 A Correct.

4 Q There may have been others. In response to any of
5 those asks, did you get anything?

6 A No.

7 Q Did you get anything from Turtle Beach?

8 A No.

9 Q Did you get anything from Parametric?

10 A No.

11 Q Did you get anything from any other source in
12 response to those asks?

13 A No.

14 Q Okay. At one point Parametric retained Craig-Hallum
15 to do a Fairness Opinion.

16 Do you recall that?

17 A Yes, I do.

18 Q Why did Parametric retain Craig-Hallum to do the
19 Fairness Opinion?

20 A Yeah. It was understood it would be better
21 governance on our part that Houlihan Lokey, who was our banker,
22 was -- would have been financially motivated to see the
23 transaction occur, given that the large percentage of their pay
24 would have been the result of a transaction. So we thought it
25 would be better governance to take a non-interested party and

1 have them conduct the Fairness Opinion -- someone that had
2 nothing financially to gain by the outcome of that opinion.

3 Q Do you recall the nature of the fee that was agreed
4 to with respect -- for Craig-Hallum?

5 A I don't.

6 Q All right. Do you recall whether it had any
7 contingencies attached to it?

8 A No. There would not have been contingencies.

9 Q Okay. Was it a flat fee for the Fairness Opinion?

10 A That would be my understanding.

11 Q Okay. Craig-Hallum, if you recall -- well, I'll tell
12 you what, let's go to 757.

13 A Okay.

14 Q Do you recognize 757?

15 A Yes. It appears to be a Fairness Opinion.

16 Q By whom?

17 A By Craig-Hallum.

18 Q Okay. And is that -- then if you would do to --

19 MR. STIGI: It's already admitted; right?

20 [Indiscernible] twice.

21 BY MR. STIGI:

22 Q All right. 754?

23 A Okay.

24 Q And do you recognize 754?

25 A Yeah. 754 would be the presentation by Craig-Hallum

1 to the board of directors of Parametric, relative to the
2 Fairness Opinion.

3 Q And do you recall the presentation being made to the
4 board of directors?

5 A I do.

6 Q Just a couple of questions about the opinion --

7 Oh, first, let me ask you this question: Are you
8 familiar with how a discounted cash flow analysis works?

9 A I am.

10 Q And are you familiar with, I believe, the term WACC,
11 weighted average cost of capital?

12 A I am.

13 Q When you reviewed the Fairness Opinion slides, do you
14 recall whether you looked at the manner in which Craig-Hallum
15 calculated the WACC?

16 A I recall that all the board members went through each
17 slide of the presentation with lots of questions and were
18 satisfied with the analysis.

19 Q From your recollection, did anyone ask a question
20 about whether the WACC that Craig-Hallum calculated was correct
21 or incorrect?

22 A I don't recall.

23 Q Did you ever form an opinion as to whether the WACC
24 was correct in Craig-Hallum's presentation?

25 A I had -- came out of the presentation supporting all

1 of their conclusions.

2 Q Again, in terms of zeroing in on that particular, I
3 just want to be -- the record be clear.

4 Did you have any view of whether they did it right or
5 wrong or otherwise?

6 A I assumed they did it correctly.

7 Q Okay. And did you have any reason to think they
8 didn't do it correctly?

9 A No, I did not.

10 Q And did any of the other board members raise any
11 questions suggesting that Craig-Hallum did not do the WACC
12 correctly?

13 A No one -- no one challenged any of the analysis.

14 Q Okay. I think, for the record, just go to --it's
15 page 32 of 60.

16 MR. PEEK: What page again?

17 MR. STIGI: 32 of 60.

18 MR. PEEK: Thank you.

19 THE WITNESS: Okay.

20 BY MR. STIGI:

21 Q What do you see on page 32 of 60?

22 A The summary -- Summary Relative Contribution
23 Analysis.

24 Q And to your mind, what is that presenting to you, as
25 passing to the members of the board and analyzing the matters

1 of the deal?

2 A It's giving us -- comparing of this transaction for
3 Parametric and Turtle Beach to comparable M&A transactions that
4 have occurred.

5 Q Comparable transactions? I'm sorry.

6 A Comparable companies -- comparable companies.

7 Q And which line are you looking at?

8 A I'm looking at public comparables.

9 Q Okay. What about the line below that, comparable
10 M&A?

11 A Correct. It's showing us a range -- a range of
12 implied equity value -- valuations.

13 Q The third line, discounted cash flow, what does that
14 show?

15 A It's, again, showing for both Turtle Beach, as well
16 as Parametric, what a range valuation might look like based on
17 cash flow.

18 Q And then do you see the portion that's in a box
19 called Transaction Compensation?

20 A Yes.

21 THE COURT: Consideration.

22 MR. STIGI: Consideration. I'm looking at it
23 sideways here. Thank you, Your Honor.

24 BY MR. STIGI:

25 Q And what does that represent?

1 A That's what the implied ownership should be of each
2 company based on its performance on these other parameters.

3 Q So this page of the presentation, is this summarizing
4 the contribution analysis that Craig-Hallum performed?

5 A Correct.

6 Q And what does it, if anything, communicate to you --
7 or communicated to you as a board member back in August of
8 2013?

9 A Yeah. It suggested that the transaction from
10 Parametric's perspective was equitable, maybe even beneficial.

11 Q So after the presentation was made by Craig-Hallum on
12 fairness --

13 A Okay.

14 Q -- did the board have further conversations during
15 the August 2nd board meeting?

16 A Yeah. We spoke constantly, and it was -- what was
17 move this deal forward and what's the status of whatever
18 outstanding items were next and things of that nature. So
19 there was lots of discussion.

20 Q All right.

21 A But the theme was let's go get this done.

22 Q All right. Let's just have you pull up PX-9. And
23 again, you could probably look on the screen, it's just as easy
24 at this point.

25 A Okay.

1 Q Do you recognize PX-9?

2 A I'm reading it.

3 Q Okay.

4 A Okay. And scroll down. Okay. Okay.

5 Q Go to the next page. There you go.

6 A It needs to be made a little bigger, please. Okay.

7 Q All right. You're welcome to read more.

8 A Go ahead.

9 Q For the record, to just ask you to take a look at
10 Item 4.

11 A Okay.

12 Q And in particular, the paragraph below, the big
13 blacked-out area, the redacted area.

14 A All right.

15 Q All right. Do you recall that the board voted
16 unanimously to approve the transaction?

17 A We did.

18 Q And do you recall the views of the other directors
19 regarding the merits of the transaction?

20 A Everybody was very much in favor of closing -- of
21 moving forward with the transaction.

22 Q Do you recall whether any of the directors told you
23 the reason they were voting for the transaction because you,
24 Ken Potashner, told me to?

25 A Absolutely not. No one took that position, period,

1 because it didn't happen.

2 Q Now, because it's unanimous, if you had chosen not to
3 vote on the merger for whatever reason --

4 A Right.

5 Q -- suggested conflict of interest or you didn't want
6 anybody to think --

7 A Right.

8 Q -- that it had something to do with your options or
9 what have you, would the deal have still been approved by the
10 majority of the board?

11 A Yes. The rest of the board was more aggressive that
12 wanted to get this deal done then I was. I was trying -- as we
13 discussed previously, trying to get different considerations,
14 get value -- this was a board that very much was in favor of
15 this deal.

16 Q After the merger agreement was signed, there was a
17 public announcement.

18 Do you recall that?

19 A Yes.

20 Q And we talked earlier about the Go-Shop period.

21 A Yes.

22 Q Did the Go-Shop period start at that point?

23 A I would need to see dates --

24 Q Okay.

25 A -- of when it physically started.

1 Q 768, please.

2 A Okay. Okay. I'm showing August 6th is the -- okay.

3 Q Does 768 refresh your recollection about the start of
4 the Go-Shop period?

5 A It does.

6 Q Okay. And what is your now refreshed recollection as
7 to the start of the Go-Shop period?

8 A August 6th.

9 Q Forgive me if this came out yesterday, I just want to
10 be clear. Who ran that process?

11 A Houlihan Lokey took the lead in running the process,
12 but they did it with extensive involvement from the company.

13 Q Who at the company?

14 A Of myself, Jim Barnes, John Todd, so we were
15 providing support documents and helping with packages.

16 Q All right. And again, you spoke yesterday about your
17 incentives, et cetera. We don't need to belabor that, but --

18 A Okay.

19 Q -- just to confirm, did you interfere with the
20 Go-Shop process in any way to the detriment of Parametric and
21 its shareholders?

22 A No. Exactly the opposite. I was motivated to -- and
23 hopeful that other buyers would come out of this process.

24 Q Did Houlihan Lokey provide updates of the Go-Shop
25 process to you or any other members of the board?

1 A They did.

2 Q 792, please.

3 MR. STIGI: Which is also PX-23.

4 THE COURT: Thank you.

5 THE WITNESS: Okay. I've read it.

6 BY MR. STIGI:

7 Q And what is PX-23 or PX-792? What is it?

8 A Yeah. It's an update -- it's an update from Houlihan
9 Lokey indicating that they've reached out to 50 different
10 potential buyers and it gives a status on what those outreaches
11 have looked like.

12 Q Let me ask you to look at page 2 of 2. Do you see
13 it? There you go.

14 And coming back to -- you said you recall the scope
15 of the breakup license.

16 To what extent, if you know, would any of the
17 companies on this list have had their -- have been impaired in
18 any respect by having Turtle Beach in possession of that
19 breakup license?

20 A Yeah. Yeah. Very few of these companies would have
21 seen it limiting them in any form or fashion.

22 Q Which ones, if you can identify?

23 A Yeah. I'm thinking Sony is likely on the list
24 somewhere. Sony. Yeah. Sony perhaps, with some gaming
25 aspirations. But it would be very limiting -- have very

1 limited impact to almost all of these names.

2 Q Okay. And again, just in case it didn't come out
3 yesterday, what was the result, if any that you can recall, of
4 the Go-Shop process?

5 A Yeah. The end of the day, no additional buyers came
6 to the table.

7 Q And is that consistent or inconsistent from the
8 premerger process in which you were undertaking efforts to look
9 for partners, using the broadest term possible?

10 A Yeah. We were still -- we were labeled at that stage
11 and predominantly on this stage as well that they were just
12 early. We've got a research experiment prototype, but we
13 haven't seen enough that were going to go ahead and acquire
14 this company or invest in this company.

15 Q All right. So I'd like to just shift a little now to
16 the post-announcement time period.

17 A Okay.

18 Q And as we get to where the proxy --

19 A Okay.

20 Q -- and we talked a bit about this yesterday, and I
21 just wanted to fill it out a little bit, which is kind of the
22 tension between you and Turtle Beach in getting numbers,
23 projections, and information and what they disclose. That's
24 the topic --

25 A Okay.

1 Q -- I just want to talk about here.

2 A Okay.

3 Q Can I ask you to look at 773?

4 A Okay. I've read it.

5 Q What are -- what is 773?

6 A Yeah. This, again, is me indicating to Juergen that
7 he needs to provide guidance to have people understand the
8 transaction. And it's Juergen saying there's a lot of moving
9 parts here. I'm nervous about providing such guidance.

10 Q Nervous in what sense?

11 A Yeah. So he was very concerned that he could put
12 numbers out there that for reasons not caused by himself,
13 like -- things like a delay in the console shift -- would
14 result in him missing those numbers. And he was extremely
15 concerned about missing numbers.

16 So the way to guardband is he wanted to put out
17 conservative numbers was a solution on how to guardband the
18 risk of uncontrollables.

19 Q All right. Again, we talked about this yesterday, so
20 this is along the same lines of that discussion.

21 A That's correct.

22 Q Okay. Let's go to 775. And actually, just one
23 question back to 773. Sorry.

24 Was the issue in your head related to incorrect
25 information, or lack of information? What was the issue that

1 was bothering you with respect to information disclosure?

2 A Yeah. The -- if -- so I was presented with a pretty
3 robust plan financially for Turtle Beach. You know, I was
4 excited by it, on board with it. And I felt that plan needed
5 to be communicated to the public to have them fully embrace the
6 transaction we're doing, see the vitality behind it, get their
7 support for it.

8 So, you know, that was the basis for it. And that
9 there is a cost, if you're going to hedge your numbers, that
10 you're going to -- people will circle the hedged numbers and
11 they won't see this as promising a transaction as they might if
12 they see the true numbers.

13 Q All right. So back to 775. And again, I would just
14 ask --

15 A Okay.

16 Q -- you to review it, letting you know, again, this is
17 part of that --

18 A Yep.

19 Q -- process.

20 A Yeah. So I've read this. So I'm saying two things
21 there -- that, okay, Juergen, if you're not comfortable putting
22 out guidance, at least, you know, put the adjectives out there
23 that your bullish, that you are confident. You know, what are
24 the non-numerical terms you can use to have, you know, the
25 public understand your excitement about the prospects for your

1 business and, therefore, our business.

2 And then I also shared with him that I had exactly
3 the situation at another company that I am chairman of where
4 the company's doing extremely well, but given the fact that the
5 CEO was always hedging, you know, this can go wrong -- you
6 know, we had great quarter, but I can't tell you what's going
7 to happen next quarter. You know, so he always had a hedge in
8 there. And that company historically would trade a 30 percent
9 discount to the industry because of the need to always tell us
10 what could go wrong.

11 Q And just to be clear, from what you were hearing from
12 Turtle Beach at this point, were they telling you they were
13 bullish about their plans, as you were saying now?

14 A Yes. They were bullish about their plans.

15 Q Okay. So it's a matter of disclosure of -- that
16 you're --

17 A Yeah.

18 Q -- struggling with here?

19 A It was, hey, we have a solid plan. We believe in
20 this plan, but gee, there are things that can go wrong. And in
21 the event that something goes wrong, I don't want to put out
22 there, you know, what I believe is going to happen.

23 Q Got it. Now I understand. Thank you. 776.

24 A Okay.

25 Q Is this another e-mail reflecting this issue that

1 we've been discussing?

2 A Yes. This kind of lays it out, that I am accusing
3 him of hedging -- he's looking to hedge his numbers and he's --
4 you know, this reinforces what I've been saying.

5 Q All right. So --

6 A And I -- as you see in the very first line, I give
7 him a, gee, what if I'm doing this as well, which is, I would
8 like to do this deal with Turtle Beach, but we may do a deal
9 with other interested parties. Right? So I am saying you
10 can't keep all of your options open here and lay that out. You
11 know, you've got to put your plan on the table.

12 Q 781.

13 A Okay.

14 Q This is another e-mail that's part of this
15 [indiscernible]?

16 A Yeah. It's, again, consistent with the line of
17 dialogue that we're having -- me trying to push to get numbers
18 and Juergen resisting.

19 Q All right. And here you're involving Houlihan Lokey
20 in that process?

21 A Correct. Mark Dufilho.

22 Q And why did you do that?

23 A That Houlihan Lokey was our investment advisors on
24 getting this transaction done. And that this is very relevant
25 to everything, from getting shareholder support to facilitating

1 the transaction.

2 Q Okay. 784.

3 A Okay.

4 Q So yet another e-mail in this process?

5 A Correct.

6 Q And you indicate in the first line that you, and I
7 believe it's Mr. Stark already showered -- although you
8 probably mean showed, that bullishness in your slide in the
9 deck that shows strong sector rebound graph.

10 Do you see that?

11 A Yes.

12 Q Okay. What is that mean? I'm assuming that you
13 meant showed, and not showered.

14 A Yeah. That when there was the console transition,
15 the sector slows down. People don't want to buy peripherals
16 for their old console. They're going to wait, get their new
17 console, get their new headphones associated with that. So it
18 was anticipated once the console transition occurred, that
19 there would be a surge in that whole sector.

20 So this is referencing that Turtle Beach was bullish
21 on that transition and their participation in that transition
22 and that the whole sector will be rebounding.

23 Q Do you recall whether the proxy statement reflected
24 that whole console transition matter that you just described?

25 A I would need to see the proxy statement to verify

1 that.

2 Q Right. Let's do that. Let's look at 244.

3 MR. PEEK: It might be in your other binder,
4 Mr. Potashner.

5 THE WITNESS: Okay. Yep. Is there a specific page
6 you want?

7 BY MR. STIGI:

8 Q I will direct your attention to 244-033.

9 A Okay.

10 Q Do you see the line: Risks related to Turtle Beach's
11 business?

12 A Correct.

13 Q And what's the first risk listed?

14 A The current transition and future transitions in
15 console platforms could adversely affect the market for Turtle
16 Beach's products and adversely affect Turtle Beach's business.

17 Q And what is the rest of that paragraph below what you
18 just read state? Without reading it to the record.

19 A Yeah. It references Microsoft's platform transition
20 and the implications it would have on Turtle Beach.

21 Q And if you go another -- go to page 244-035. Do you
22 see in the paragraph that says, "In addition"?

23 A Yes.

24 Q What does that paragraph say?

25 A It references considerations that could impact --

1 adversely impacted Turtle Beach based on the Xbox One launch,
2 relative to software. I know there was a component
3 compatibility issue as well. So it's announcing things that
4 could go wrong with the transition.

5 Q Okay. It's still related to console transition?

6 A Correct.

7 Q Now, these are risk disclosures; right?

8 A Correct.

9 Q So this is telling the reader there is a risk of this
10 happening?

11 A Correct.

12 Q But that's not the end of it. If you turn to
13 244-137, same proxy statement. Do you see -- let me ask you to
14 go one page back. 244-136.

15 A Okay.

16 Q You see the heading at the top?

17 A Yes. Turtle Beach's Management Discussion and
18 Analysis of Financial Condition and Result of Operations.

19 Q Okay. So this is the section of the proxy that's
20 laying out, not risks of what might happen in the future, but
21 Turtle Beach's management's description, what is happening now.

22 A Correct.

23 Q Do you understand that to be the case?

24 A That -- that's correct.

25 Q Okay. So if you go to 244-137.

1 A Okay.

2 Q The whole rest of the page under the heading New Xbox
3 and PlayStation Console Launches.

4 Do you see that?

5 A Correct.

6 Q And what are those five paragraphs describing?

7 A Yeah. They describe considerations and implications
8 on Turtle Beach due to the Xbox launch.

9 Q And PlayStation?

10 A Yes.

11 Q Okay. Would you go to 244-139.

12 A Okay.

13 Q Do you see the -- right at the top that little --
14 there you go. Right at the top, first thing, 2013 outlook.

15 Do you see that?

16 A Yes.

17 Q What does the 2015 Outlook include reference to?

18 A It announces that significantly improved revenues
19 being forecast for the second half of 2013.

20 Q Does it relate in any way to the console transition?

21 A It implies -- it does. And it implies contingencies
22 on hardware and software launches.

23 Q Go to 244-147. In particular, the paragraph under
24 the chart referencing EBITDA.

25 A Okay.

1 Q What is that communicating to investors as a matter
2 of Turtle Beach's then current business?

3 A It's referencing that EBITDA decreased based on --
4 based on the anticipated console transitions of Xbox One and
5 PlayStation 4.

6 Q Okay. So thank you for identifying both the risk
7 factors and the description of then current business.

8 A All right.

9 Q Coming back -- oh, just to be clear. All of that
10 information that we just went through with respect to whether
11 it's the risk factors or the management discussion announcement
12 of Turtle Beach, where did that information come from? Do you
13 know?

14 A Yeah. This was provided -- the information would
15 have been provided with Turtle Beach. And we would have been
16 reviewing it as well.

17 Q All right. So from Turtle Beach to the team to
18 review?

19 A Correct.

20 Q Okay. Were there any other sources of information,
21 to your knowledge, besides Turtle Beach, of Turtle Beach
22 information?

23 A No.

24 Q Does that make sense?

25 A No. The source of Turtle Beach information would

1 have been Turtle Beach.

2 Q Okay. And by the way, with all this discussion of
3 console transition and the impact on existing EBITDA, as well
4 as projections --

5 A Yeah.

6 Q -- did you believe -- my question is, did you believe
7 it?

8 A Yeah. So for me, the transition -- the consoles were
9 going to transition; right? So it's not a hey, is there going
10 to be no transition?

11 So for me, putting the companies together was not
12 trying to pick a correct date, you know, to get, you know, to
13 try to guess that exactly right. But I knew that, hey, there's
14 going to be a transition, revenues -- consumers will hold off
15 on buying until that occurs.

16 But the transition will occur. And Turtle Beach will
17 be a significant benefactor of that; right? So this was a
18 long-term strategic, put these companies together for a bunch
19 of reasons, not trying to time what next quarter's revenue and
20 profit is going to look like.

21 So I would almost say it was a don't care, quite
22 frankly, at the end of the day, in terms of the strategic
23 relevance of the -- of the transaction.

24 But with that said, as I said before, you've got to
25 give guidance; right? You can't, you know, from Turtle Beach's

1 perspective or Parametric's perspective, I can't go with, we're
2 not going to give you our best guess at numbers; right?

3 So I was -- I was pushing for guidance to be provided
4 to have the shareholders all have the same conversation and
5 have an understanding. But the strategic relevance of doing
6 this deal was clear to me regardless of whether the console
7 transaction was this quarter or next quarter.

8 Q In this -- so this is all -- we've been talking about
9 the August time period. As time progressed into the fall of
10 2013 --

11 A Okay.

12 Q -- did it become apparent to folks that numbers in
13 both companies were going down?

14 A Numbers were going down. That's accurate.

15 Q Okay. And did you and Mr. Stark have communications
16 about that?

17 A We did.

18 Q Let me ask you to go to 832.

19 A Okay.

20 Q What does 832 reflect?

21 A Yeah. This is me telling him his numbers are weak
22 and him telling me my numbers are weak, and you suck, I suck,
23 that kind of stuff.

24 Q But is -- is Mr. Stark, other than just --

25 A He is also defending --

1 Q -- challenging your numbers, is he defending his?

2 A He is. He saying that relative to what's happening
3 in the industry, he's actually outperforming the industry. I
4 was looking at it just in terms of absolute numbers, vis-a
5 plan, vis-à-vis plan. So I'm saying, hey, you're off plan.
6 And he's defending outperforming the industry. And by the way,
7 Ken, you're off plan.

8 Q Were you defending being off plan the way he was
9 defending his being off plan?

10 A Let's see what I said. I don't see my defense, but
11 I'm sure there was one.

12 Q I'm not going to bring out every e-mail here. I just
13 want --

14 A Yeah.

15 Q -- to use this --

16 A Yeah. So I was -- I would have also said, hey, you
17 know, deals are happening slower than we would like them to,
18 but everything is still intact and, you know, we're going to
19 get there.

20 Q But in terms of what Mr. Stark was telling you in
21 this e-mail and otherwise as defending his company's situation,
22 what did you, if anything, take away from that?

23 A I believed he's outperforming the industry and he
24 references that he beat his minimum revenue goal. So I
25 would've taken this as credible.

1 And you know, to be clear, the numbers usually were
2 provided in ranges, so there was not here's an absolute number,
3 it was here's a range.

4 Q All right. Let's go to 346.

5 A Okay.

6 Q So in -- what are you -- what's going on and back and
7 forth [indiscernible]?

8 A Yeah. This, again, is -- at the end of the day is
9 guidance. So there's industry analysts that are projecting
10 growth numbers. And it was important that Turtle Beach
11 demonstrate that they're going to participate in that growth.

12 And here too, you know -- and Juergen was referencing
13 that there's several companies that don't provide guidance.
14 And I was again arguing, please -- you know, provide guidance,
15 but if you can't provide guidance, use words like you will show
16 substantial revenue and profit growth. Use adjectives, if you
17 don't feel comfortable providing numbers. But it's the
18 consistent discussion that we've been having on giving the
19 confidence to the investors.

20 Q And to be clear, the adjectives you were suggesting
21 he use, were they consistent or inconsistent with what you
22 understood the reality to be?

23 A Yeah. I fully understood -- he was clear that he had
24 growth, that there was growth. And I wanted him to articulate
25 growth.

1 Q So 881. Or excuse me. That's PX486. Sorry.
2 Number 486.

3 A Uh-huh.

4 MR. STIGI: I would offer PX881.

5 THE COURT: Any objection?

6 MR. HESS: What -- what was --

7 THE COURT: 486.

8 MR. STIGI: 486.

9 THE WITNESS: I don't -- I don't --

10 THE COURT: You don't even have a 486 on your list?
11 What number is it really?

12 MR. PEEK: It was one of those that came in
13 yesterday, even.

14 THE COURT: Did it come in?

15 MR. PEEK: It -- I don't know if --

16 MR. HESS: I thought they all came in.

17 THE COURT: Well, let me check my notes, because I
18 wrote down the number range.

19 MR. PEEK: It's one of those documents that --

20 THE COURT: 476 through 479 is the range I admitted
21 yesterday.

22 MR. PEEK: Right. And then they gave us a new set,
23 Your Honor, of some --

24 THE COURT: Well, did you stipulate with them?

25 MR. PEEK: What were they?

1 MR. HESS: 480 to 490.

2 MR. PEEK: Yeah. They gave us a new set of 480 to
3 490, Your Honor, yesterday.

4 MR. HESS: Well, I'll stipulate.

5 MR. APTON: Well, we would stipulate to 480 to 490.

6 MR. PEEK: Yeah. I don't -- I just don't know if the
7 Court got that. That's really the question.

8 THE COURT: Everybody stipulates to 480 to 490?

9 MR. HESS: Yes.

10 THE COURT: I heard yeses all around.

11 (Exhibit Number(s) 480-490 admitted.)

12 THE CLERK: Can we please send them to the clerk?

13 They were yours.

14 MR. HESS: 480 to 490.

15 MR. STIGI: 480 to 490.

16 MR. HESS: Thank you. Thank you.

17 THE COURT: Can you please send them to the clerk.

18 She has to then send them to IT to be figured out. And in the
19 meantime, could we show them?

20 Oh, we have them. We don't have to send them again.

21 So can you admit them now? Pursuant to stipulation?

22 What a lovely thing when counsel work together.

23 THE WITNESS: Okay. I need it to be made bigger so
24 that I can read it.

25 THE COURT: All right. Let's go to 486. 480 to 490

1 range.

2 THE WITNESS: Okay.

3 BY MR. STIGI:

4 Q Okay. Yeah. Read the whole thing, but I'll call
5 your attention to the paragraph that begins in term of
6 Craig-Hallum Fairness Opinion, second paragraph?

7 A Yes, I read it.

8 Q Do you see that? Yeah. And we had a little bit of
9 this yesterday in terms of Craig-Hallum discussing some concern
10 about the Fairness Opinion.

11 Is what you see here Mr. Stark's response to that
12 issue?

13 A Correct.

14 Q And what does Mr. Stark write to you?

15 A He's signaling that he's modestly lower than
16 forecast, but still within the guidance range that was given.

17 Q Modestly lower than forecast, and from his
18 perspective, it is clear to you that he believed that that
19 would satisfy Craig-Hallum?

20 A That's correct.

21 Q And did it satisfy you?

22 A It did.

23 Q And did it satisfy Craig-Hallum to the extent you
24 know?

25 A It did.

1 Q Okay. So back to the proxy, 244. Calling your
2 attention to page 244-068.

3 A All right.

4 Q And exactly, the section about reasons for the
5 merger. And you see there are a whole bunch of bullet points
6 from page 59 to 60, and then on 60 to 61 a list of risks.

7 Do you see all of that?

8 A Yes.

9 Q I am not going to march through every single one of
10 them. I am, however, going to --

11 THE COURT: There was a smile under the mask.

12 MR. STIGI: I assume so, that's why I looked over
13 [indiscernible].

14 BY MR. STIGI:

15 Q I would, though, ask you -- the question I have for
16 you is, as is first, were the reasons set -- are the reasons
17 set forth at 59 to 60 the reasons that the board considered in
18 connection for the merger?

19 A Yes, they are.

20 Q Yes?

21 A Yes.

22 Q Okay. And were the risks from 60 to 61 risks that
23 the board considered --

24 A Yeah. The risks --

25 Q -- with respect to the merger?

1 A The risks were -- are accurate.

2 Q Okay. And in particular, were there any reasons for
3 the merger listed that related to the benefits of the merger,
4 as compared to any other alternative?

5 A I'm not sure I understand the question.

6 Q Well, as the board's considering whether to do this
7 merger?

8 A Right.

9 Q Was it also considering plausible alternatives?

10 A Yeah. So this point, there were no alternatives.
11 There were no other merger alternatives. And the execution
12 risks were still very real, so the combination of no other
13 candidates to consider merging with, combined with some very
14 substantial challenges that we would need to overcome, made
15 this compelling.

16 Q Was the challenges to overcome as a standalone?

17 A Correct.

18 Q Was it merger or standalone?

19 A Correct.

20 Q Were there any alternatives besides merger and
21 standalone that were considered by the board?

22 A There were none. There were no other alternatives.

23 Q In your view, was the company seeking alternatives?

24 A The company was seeking alternatives.

25 Q Was that through the Go-Shop?

1 A Yeah. Clearly it was through the Go-Shop. Earlier
2 it was through raising financing possibilities, so yes.

3 Q The stuff we talked about earlier today; correct?

4 A Correct.

5 Q Okay. One of the statements yesterday, I just want
6 to clear up. There was some discussion of Motorola.

7 A Right.

8 Q I don't know if you remember that. I think we had
9 Exhibit 55. Do you remember this from yesterday?

10 A Yes.

11 MR. STIGI: Is Exhibit 47 among the --

12 MALE SPEAKER: Yes, it is.

13 MR. STIGI: Is it? Okay. Great.

14 BY MR. STIGI:

15 Q Do you see this -- Exhibit 55 on the --

16 THE COURT: Any objection to 47?

17 MR. APTON: No, Your Honor.

18 THE COURT: Be admitted.

19 (Defense Exhibit Number(s) 47 admitted.)

20 BY MR. STIGI:

21 Q So [indiscernible] you testified to that yesterday,
22 again, we don't have to rehash that, at least the contact with
23 Motorola, do you recall it?

24 A Correct.

25 Q Okay. Let's look at Exhibit 47. Do you recognize

1 Exhibit 47?

2 A I don't, but I'll refresh my memory. Okay. I
3 remember.

4 Q Okay. What is Exhibit 47?

5 A Yeah. So we had discussions with Motorola, relative
6 to licensing the technology. Motorola took the view of they
7 could have an interest in working with us, but they would need
8 to own the IP of anything that came through our two companies
9 working together. And that was a fully unacceptable position.
10 We're not going to -- we would basically be giving the company
11 in exchange for a licensing arrangement, and that was not
12 tenable.

13 Q Okay. But in terms of the list, the items on Exhibit
14 47, what is reflected in the various items?

15 A Yeah. This -- it reflects the sequencing of events
16 where we engaged in discussions with Motorola about
17 codeveloping product or technology. It relays the fact that
18 Motorola said they're going to need to own the IP that would
19 come out of any such co-development exercise. And as I
20 mentioned, the conclusion was this is not a -- not an
21 opportunity for Parametric.

22 Q Okay. So the list shows various meetings, follow
23 ups, more follow ups, finalizing terms, et cetera, over the
24 course from September 2012 through January -- late January. Do
25 you see that?

1 A Correct.

2 Q And what happened in late January?

3 A Yeah. At the end of the day, Motorola, there was no
4 deal to be had.

5 Q Okay. From looking at this list, does it appear to
6 you that the company made reasonable -- at a minimum reasonable
7 efforts to achieve some sort of a positive deal with Motorola?

8 A Yeah. Very much so. This could have been an
9 exciting deal for the company.

10 Q But --

11 A But the terms of doing business with Motorola were
12 prohibitive.

13 Q Another tie up from yesterday -- PX72. You were
14 asked about this yesterday. And I just wanted to ask a
15 question to clear it up at least in my head. You were asked
16 about the three items in the middle.

17 Do you see that?

18 A I'm sorry.

19 Q Do you see the three items there?

20 A I do.

21 Q Okay. And you were asked in particular about Item 2.

22 A Correct.

23 Q All right. I just want to be clear. Is -- is what
24 you're saying in Item 2 what you believe to be the case or what
25 you think the market believes or something else?

1 I honestly was not clear as to what --

2 A Yeah. So what I was saying here is that Turtle
3 Beach, if you don't give guidance that has people excited about
4 your prospects as a company, to then move to say, hey, we're
5 going to get 19 percent of something that we don't really know
6 whether it's a good company or bad company, those compound --
7 those are negatives that are going to compound; right?

8 So what I was pushing for was, hey, get everybody
9 excited about Turtle Beach's prospects, and they'll do the math
10 and say 19 or 20 percent of this new company is a good deal for
11 us. And we'll vote in favor of this good deal.

12 Q Right.

13 A So it's -- yeah, that --

14 Q Did you personally believe, on December 12th, 2013,
15 that the shareholders were getting 19 percent of something not
16 worth much?

17 A No. I had visibility to the numbers and was very
18 comfortable that it was a good deal.

19 Q Okay. What you're writing here is what you think the
20 market may be thinking?

21 A Right. So I had the advantage of seeing the numbers
22 and knowing that -- you know, the potential. The shareholders
23 weren't being given that same visibility.

24 Q Thank you. I just wanted to make sure that's clear.
25 So shifting gears, go to 616.

1 A Okay.

2 Q Do you recognize 616?

3 A One second. Okay. I've read it.

4 Q Okay. What is 616?

5 A 616 is a communication from Joshua Weisbord to
6 myself, relative to a potential interest in financing HHI.

7 Q By whom?

8 A By a group of affiliated investors in his network.

9 Q And do you know their names?

10 A Yes. Specifically Richard Santulli, Robert
11 Masterson, and I believe his father, Barry Weisbord.

12 Q People who are assignors in the case?

13 A The plaintiffs in this case.

14 Q Okay. At the time they were looking for exploring
15 the possibility of an investment in HHI, you said?

16 A That's correct.

17 Q Not Parametrics?

18 A That's correct.

19 Q And why HHI, do you know?

20 A They -- yeah. Through Joshua, who had -- who was
21 close to the company, there was excitement at Josh's was level
22 and he relayed it to the plaintiffs in terms of what the
23 potential of HHI could be downstream, and maybe they should
24 take a stake in it.

25 Q And they were looking for an NDA or you were looking

1 for a -- what -- what is the purpose of the NDA?

2 A Yeah. That I was not in a position to have anyone
3 understand and have -- of public information that's not made
4 public to the rest of the community.

5 Q Okay.

6 A So if they were going to look for specific
7 information, they needed to be under -- under an NDA.

8 Q Did you communicate that back?

9 A I did.

10 Q All right. Let's go to 622.

11 A Okay.

12 Q And what is 622?

13 A It's the confidentiality agreement that was to be
14 sent to the plaintiffs.

15 Q Okay. In what context?

16 A It said that -- in it -- that for me to be able to
17 send you confidential company data, that you need to sign this
18 NDA relative to that information.

19 Q Does 622 relate in any way to 616 you sent four days
20 later?

21 A I'm sorry. I don't understand the question.

22 Q Is there any relationship, at all, between Josh
23 Weisbord --

24 THE COURT: The two documents on your screen right
25 now.

1 THE WITNESS: Okay.

2 / / /

3 BY MR. STIGI:

4 Q Between the two documents on the screen.

5 A Absolutely.

6 Q Okay.

7 A Yeah. This was -- the confidentiality agreement
8 would have been a necessary document signed by the interested
9 parties for me to be able to share any confidential data
10 outlined on 616.

11 Q They asked for an NDA, you gave them an NDA?

12 A Correct.

13 Q Thank you. What did they do with that NDA?

14 A I don't recall it being signed.

15 Q All right. Do you recall anything coming of this
16 back and forth on NDAs for a possible investment into HHI --

17 A No. I think it --

18 Q -- by several of the assignors?

19 A I think it died on the vine.

20 Q Do you recall a conversation -- any conversation with
21 Josh Weisbord in and around this time about why it died on the
22 vine?

23 A I don't recall.

24 Q Go to 678.

25 A Okay.

1 Q Do you recognize 678?

2 A I do.

3 Q What is it?

4 A It's a recommendation from Joshua Weisbord to me, to
5 also pass on to the board of directors, suggesting that I spin
6 off HHI to the shareholders.

7 Q Okay. And --

8 A And me representing to the board that I'm not in
9 support of a spin-off. And I will communicate that message
10 back, but I need -- I would like to share with the board the
11 correspondence.

12 Q Mr. Weisbord, does he represent that he -- does he
13 represent to you that he represents other shareholders?

14 A He does. A significant -- a 20 percent ownership in
15 the company.

16 Q And are those individuals listed on page 2 of 2 of
17 Exhibit 678?

18 A They are.

19 Q Okay. And again, looking at that list, do you see
20 names who are also assignors in this case?

21 A I do.

22 Q Mr. Weisbord is representing to you that he
23 represents them supporting a spin-off of HHI?

24 A That's correct.

25 Q Okay. Do you know why they supported a spin-off of

1 HHI at this time?

2 A Yeah. They also realized the potential value of the
3 entity and thought it would -- that it would provide additional
4 value to them by being spun off to them.

5 But, for me, it was dramatically too early to ever
6 consider doing a spin-off at this time.

7 Q So to be clear, if there had been a spin-off, who
8 would have owned shares in the spun-off entity?

9 A Yeah. So the old Parametric share -- if a spin-off
10 was executed, every Parametric shareholder would have received
11 equity -- pro rata to their ownership in Parametric, they would
12 have had the pro rata share of HHI.

13 Q Okay.

14 A So every discussion we've had over the last couple of
15 days on spin-offs, it would have been a spin-off to all
16 shareholders. It would not have been a spin off to anyone but
17 all shareholders.

18 Q Okay. And the assignors knew that because that's
19 what they were telling to you here; right?

20 A Correct.

21 Q And the assignors would have been, in their capacity
22 as Parametric shareholders, therefore, shareholders of HHI in a
23 spin-off?

24 A Correct.

25 Q Okay. 690.

1 A Okay.

2 Q Do you recognize 690?

3 A I do.

4 Q What is it?

5 A It's an offer by Joshua Weisbord to help the company
6 evolve its HHI position.

7 Q What's the date of this e-mail?

8 A July 8th, 2013.

9 Q And do you remember from the discussion yesterday,
10 this is in the middle of the period where, you know, a lot of
11 e-mails about HHI and options and you communicating with Mr.
12 Stark and the board.

13 And you remember all that; right?

14 A Correct.

15 Q Okay. Is this Joshua Weisbord attempting to
16 intervene on your behalf?

17 A No.

18 Q All right. Is he attempting to do something that
19 would have helped spin-off HHI?

20 A I think the intent was, as declared in the earlier
21 e-mails, to facilitate an early spin-off of HHI. And again, in
22 my estimation, it was extremely premature.

23 Q Do you know if -- well, withdrawn.

24 MR. STIGI: Sorry, Your Honor.

25 THE COURT: Okay.

1 THE WITNESS: No. That's fine.

2 / / /

3 BY MR. STIGI:

4 Q Okay. So there was another loose end from the other
5 day and I just want to clarify.

6 Do you recall having a conversation with Mr. Barry
7 Weisbord about -- well, let me -- withdrawn.

8 Are you aware of Joshua's Weisbord litigation with
9 Turtle Beach?

10 A I am.

11 Q And how are you aware of that?

12 A At the earliest stages of it, Joshua came to me to
13 share the situation and ask for advice on how to resolve it.

14 Q When was this roughly?

15 A Several year -- about three or four years ago.
16 Something like that. I don't know.

17 Q Okay. I'm just trying to put the context -- not on
18 specific dates?

19 A Yeah.

20 Q But several years ago. Do you remember what he said
21 to you and what you said to him?

22 A Yeah. He showed up at my house with binder after
23 binder of e-mails and was going to demonstrate how he had been
24 wronged. And I told him, Why don't you simplify this? What's
25 the number that you would feel you would need to be made whole

1 by?

2 And he gave me a number. And I could be wrong, but
3 I'm going to ballpark it \$160,000, some kind of number of that
4 nature. And I told him, Why don't you do something simple and
5 see if Juergen would end this whole thing with that number?

6 And I believe that Juergen was willing to go to that
7 number, but Joshua felt extremely wronged by the accusations
8 made against him. And I believe he was also looking for some
9 documentation that he was wronged.

10 And I think that requirement kept them from getting a
11 deal done. And then things have progressed over the last
12 several years.

13 Q Do you understand an understanding of why Joshua
14 Weisbord -- and I'm using his first name to distinguish his
15 father, just so we're clear -- why Joshua Weisbord approached
16 you on this matter at all?

17 A Yeah. So -- although the family is a plaintiff here.
18 I've been a friend to the family. I -- you know, Joshua's --
19 I've helped place him in several jobs, including Turtle Beach.
20 I think I made an introduction there, and including Home Bay --
21 including -- I could give you a list of places I've helped
22 Joshua get jobs. I've lent Joshua money when he needs money.

23 So kind of life -- I won't go as far as life coach,
24 but somebody that would try to give advice, and you know, help
25 in that capacity.

1 Q Okay. And did you have a subsequent conversation
2 with Joshua Weisbord about his litigation with Turtle Beach?

3 A Yes.

4 Q And what did you talk about?

5 A Yeah. So it was in the context of this case. So go
6 to bat for me. You've got influence with Juergen. Get him to
7 do the right thing.

8 And then it kind of evolved to -- you know, to Barry
9 Weisbord, which is -- and I think there was a big false
10 assumption of a significant relationship between me and
11 Juergen, you know, which I simply don't have. I don't talk to
12 Juergen.

13 The assumption that I'm able to influence him in some
14 way to settle with his son. And you know, it climaxed relative
15 to this case with a, Hey, Ken, if you're able -- and the
16 number, I guess, went from 160,000 to 11 million, was the
17 request that was given to me -- that, Ken, if you're able to
18 get Juergen to do the right thing and pay my son \$11 million,
19 this whole case goes away, the opt-out case goes away, and I'll
20 also give you a million dollars, you know, for your effort.

21 And I responded, I've got no relationship with
22 Juergen. I have no influence. All kinds of conflicts related
23 to that. I actually identified somebody that's a good
24 negotiator that -- named Jason Copa [phonetic], who could be
25 relevant to that discussion, but I have no awareness of it

1 progressing in any way.

2 Q And just so we're clear, you're referring to a
3 discussion with Barry Weisbord?

4 A That was a Barry Weisbord discussion with ongoing
5 reinforcements from Joshua, who, again, he assumed I've got
6 influence Juergen -- that Joshua didn't understand why I
7 couldn't shake Juergen, you know, upside down and make him do
8 the right thing on his case and perhaps this case as well.

9 Q So in terms of -- and by the way, when was this
10 conversation you just referred to with the 10 million and the
11 one million?

12 A Yeah. So I mean, we've had probably ongoing
13 discussions over the course of a six-month period. I think
14 there's been nothing in the last few months. But as recent as,
15 you know, you know, several months back this was an active
16 discussion, and the number of -- we need \$11 million to close
17 this case down and settle the other case was effectively the
18 last meaningful correspondence.

19 Q So basically, this -- Barry Weisbord was suggesting
20 that if you could talk to the people on the other side, it
21 would be in everyone's best interests?

22 MR. APTON: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: Yeah. Here -- Ken's, here's the
25 recipe. If you want this case to go away, make the other case

1 go away. You know, you've got influence with Juergen. You
2 must have influence with Juergen.

3 BY MR. STIGI:

4 Q Thank you. Shifting again, trying to get done. Back
5 to the proxy, if I could, 244. And in particular, let's go
6 to -- let's go to 38. I'm sorry. Excuse me. 244-047.

7 A Okay. Okay.

8 Q Okay. And I just want to confirm, for the record,
9 that you recognize the chart in the middle of the page there?

10 A I see it.

11 Q Do you see it? Yeah. What does that chart reflect?

12 A This reflects equity ownership of Parametric Sound.

13 Q Okay. Obviously at the time of the proxy thing?

14 A That's correct.

15 Q Or probably the record date but -- and just to be
16 clear, as well, it lists your name.

17 Do you see that?

18 A I do.

19 Q And it lists amount and nature of beneficial
20 ownership, 417,500. Do you see that?

21 A I do.

22 Q And parenthesis six. Do you see that?

23 A Yes.

24 Q What does that parenthesis 6 mean, do you know?

25 A That includes stock option.

1 Q The 6 being a footnote?

2 A Correct.

3 Q Okay. And where is the footnote?

4 A Where is the footnote? Is it -- well, the following
5 page, it says it includes options currently exercisable and
6 those exercisable within 60 days.

7 Q And what's the number of the options listed in No. 6?

8 A 417,500.

9 Q The same number as on the prior page of 47?

10 A Correct.

11 Q In other words --

12 A In other words.

13 Q -- Parametric ownership was options?

14 A All any option -- all my ownership was options;
15 that's correct.

16 Q Okay. And just to be clear, as well, if you go back
17 to 047, we can look at the numbers in the footnotes on 047 and
18 048 to determine which of the individuals have shares, which
19 have options, some combination and tally up those numbers;
20 right?

21 A That's correct.

22 Q Okay. So let's go to 083 -- 244-083. Right at the
23 bottom, actually -- yeah. At the very bottom you see the
24 titled interests of Parametric executive officers and directors
25 in the merger?

1 A Correct.

2 Q Do you see that? Okay. So if you continue on 084,
3 085, 86, 87, can you tell me if that appears to be the -- a
4 complete list of the interests of Parametric executive officers
5 and directors in the merger?

6 A I'm sorry, sir. I'm not sure I understand the
7 question.

8 Q As you read those pages?

9 A Yeah.

10 Q Okay. Is there -- is there anything that you're
11 aware of, in terms of an interest in the merger of an executive
12 officer that's not disclosed?

13 A No. I think it's all incorporated here.

14 Q Including your interests?

15 A Including mine.

16 Q Okay. It's all spelled out?

17 A Correct.

18 Q Okay. Now, is there anything mentioned in this
19 section about HHI that you can recall?

20 A Well, I'm seeing on the 085 of an HHI option section.

21 Q And what does it say?

22 A It says that I agreed to certain amendments to the
23 option, the HHI option.

24 Q And what does --

25 A And the amendment I made was that my option will

1 terminate in full. There will be no vesting that would occur.

2 Q And did you receive any compensation for that
3 termination?

4 A I did not.

5 Q By anybody?

6 A I did not.

7 Q Okay. You -- there was a discussion yesterday about
8 the board of the postmerger company.

9 Do you remember all that discussion?

10 A Yes.

11 Q Okay. First of all, we know this, but let's just say
12 it out loud, what was the surviving corporation of the merger?

13 A Turtle Beach.

14 Q The surviving corporation.

15 A Correct.

16 Q Well, it eventually became Turtle Beach. What --

17 A Well, so the -- it reversed merged. So Turtle
18 Beach merged into Parametric Sound, with the Turtle Beach
19 shareholders owning approximately 80 percent of it, so they
20 were the controlling --

21 Q But so the corporate entity that survived was
22 Parametric Sound; correct?

23 A That's correct.

24 Q And Parametric Sound Corporation before the merger
25 had a board of directors?

1 A That's correct.

2 Q And had the six people we talked about earlier?

3 A Correct.

4 Q And then after the merger, the board --

5 A Yeah. Newly --

6 Q Certain people -- let me finish -- would certain

7 people leave the board and be replaced by others?

8 A Yes.

9 Q Okay. Who left the board?

10 A Jimmy Honore, Seth Putterman, Woody Norris, and Bob
11 Kaplan.

12 Q And do you recall who joined the board at that point?

13 A The board was joined by appointed directors from
14 Turtle Beach's side, including Juergen and including Ken Fox.
15 And I -- I don't recall -- well, obviously Andy Wolfe and
16 myself survived as board members. And there might have been
17 another person added to the board.

18 Q So you and Andy Wolfe stayed on the board?

19 A Correct.

20 Q But was there a change in compensation structure for
21 board members after the merger?

22 A I don't recall there -- we had no board fees, per se,
23 that I recall --

24 Q Are you --

25 A -- at Parametric.

1 Q Okay. So I'm just saying, was there a change from
2 before and after?

3 A I'm not aware of a change.

4 Q Okay. Did you recall, for yourself, whether you
5 received board fees serving on the board of postmerger
6 Parametric?

7 A I don't recall -- I -- I recall at some point saying
8 that I should, but I don't recall ever receiving fees.

9 Q And, of course, as part of the merger, you lost your
10 job --

11 A Correct.

12 Q -- as executive chairman of Parametric?

13 A Correct.

14 Q We saw earlier on -- in the proxy statement that all
15 of the beneficial ownership was an option. You saw that
16 before; right?

17 A Correct.

18 Q Do you recall whether you owned shares of Parametric
19 stock on the record date?

20 A I don't believe I did.

21 Q 925, please.

22 A Okay.

23 Q Was this an e-mail exchange at the top between you
24 and Mr. Barnes?

25 A There was.

1 Q And on December 12th, 2013, you e-mail him asking
2 whether you vote or not?

3 A Correct.

4 Q And why -- and you say your position is all options
5 and not shares?

6 A That's correct.

7 Q And what was his response to you?

8 A Options don't vote.

9 Q No vote by you. You will not receive a proxy. No
10 soup for you.

11 A Correct.

12 Q You --

13 THE COURT: You don't look like the soup Nazi.

14 MR. STIGI: I'm sorry. I couldn't help myself. I
15 worked around the corner from there once. I used to go there.

16 BY MR. STIGI:

17 Q You didn't even vote on the record, did you?

18 A No.

19 Q You couldn't because you didn't own any shares?

20 A That's correct.

21 Q Winding down here, I promise. Control. This goes to
22 control; right?

23 A Okay.

24 Q So the question is, you know, the huge question is
25 whether you're in control.

1 Now, questions yesterday suggested that there were
2 instances where you were threatening litigation against some of
3 your board members.

4 Do you recall those questions?

5 A I do.

6 Q And, again, your answers yesterday, my question to
7 you is in any of what was characterized as a threat of
8 litigation, did you ever write a letter or hire a law firm, I
9 don't know, like, a Kirkland & Ellis --

10 A I never --

11 Q -- to threaten litigation against any of your board
12 members?

13 A No, I did not.

14 Q Did you have a draft complaint drafted by another law
15 firm?

16 A No, I did not.

17 Q Kirkland & Ellis, maybe, to do something like that?

18 A No, I did not.

19 Q No. You, at one point, wanted Bob Kaplan off the
20 board of directors; right?

21 A I did.

22 Q We say some e-mails about that. Did he ever go off
23 the board?

24 A He did not.

25 Q You -- we spent a lot of time yesterday on HHI. You

1 at least were lobbying for keeping your HHI options or at the
2 very least keeping the HHI separate.

3 Do you remember that?

4 A I do remember that.

5 Q Did you get it?

6 A Nope. No, I did not.

7 Q Were you able, on your own, without the support of
8 other directors and a majority of shareholders, able to do any
9 of the following: Elect new directors?

10 A No.

11 Q Cause Parametric to dissolve?

12 A No.

13 Q Merge with another company?

14 A No.

15 Q Cash out public shareholders?

16 A No.

17 Q Administer a Certificate of Incorporation?

18 A No.

19 Q Sell or substantially sell all of the company's
20 assets?

21 A No.

22 Q Offer anyone employment at Turtle Beach postmerger?

23 A No.

24 Q To your knowledge was anyone on the board a direct
25 subordinate of yours?

1 A No.

2 Q Or a close family members?

3 A No.

4 Q Mr. Potashner, if you had control of the company,
5 would you have used it to get anything?

6 A No.

7 Q You didn't have control of the company, did you?

8 A Far from.

9 Q Thank you.

10 THE COURT: Are you done?

11 MR. STIGI: I am done.

12 THE COURT: Does anyone need a break before we
13 transfer and wipe down?

14 THE WITNESS: Can I take maybe a 5-minute break?

15 THE COURT: Yes. We may. That's why I'm asking.

16 THE WITNESS: Thank you.

17 (Proceedings recessed at 2:42 p.m., until 2:53 p.m.)

18 THE COURT: All right. Mr. Hess, are you ready?

19 MR. HESS: Yes, Your Honor.

20 THE COURT: Sir, are you ready?

21 THE WITNESS: I am.

22 THE COURT: Okay. Pipe down, peanut gallery. Okay.

23 CROSS-EXAMINATION

24 BY MR. HESS:

25 Q Good afternoon, Mr. Potashner.

1 A Good afternoon.

2 Q If someone provided testimony in this trial that you
3 had changed Parametric's business model to abandon licensing in
4 March of 2013, would that be false?

5 A That would be false.

6 Q And yesterday Mr. Apton showed you a number of emails
7 where you claim to be slow rolling licenses. Did you?

8 A I did not.

9 Q And is it the case that you -- that was something
10 that you voluntarily offered up to Mr. Stark and Ms. Kenworthy
11 to try to get them interested in the deal?

12 A I represented to them that they had a narrow window
13 to get this deal done.

14 Q Right And they didn't ask you to slow roll licenses;
15 correct?

16 A They did not.

17 Q And you didn't?

18 A And I did not.

19 Q Okay. Mr. Apton also discussed with you the idea of
20 a veto right. Do you remember that?

21 A Correct.

22 Q Now, in July of 2013, it's fair to say you were very
23 deep in merger negotiations with Turtle Beach; correct?

24 A Correct.

25 Q And if Parametric had decided to license away its --

1 the HyperSound field of use in the healthcare industry, what
2 impact do you think that would have on the merger?

3 A I'm sorry. Repeat, please.

4 Q So if in July of 2013 you had decided to license
5 HyperSound for the healthcare field of use, what impact do you
6 believe that would have had on the merger?

7 A Personally, I believe we still would have got the
8 deal done. But Turtle Beach had represented that it was a must
9 do, so it would have been a game of chicken with Turtle Beach.
10 I don't know -- ultimately, I don't know what the outcome would
11 have been.

12 Q It may have reduced the value of the deal to them;
13 correct?

14 A It clearly would have reduced the value of the deal.

15 Q And they may have even walked away; correct?

16 A And there was a risk that they would walk away.

17 Q Okay. If we could look at 631, which I believe we
18 looked at earlier. I'm sorry I picked the email with the
19 smallest print.

20 A We read this earlier --

21 Q Yeah.

22 A -- so I'm more flexible with it.

23 Q Okay. So just to refresh, this is an email
24 correspondence between you and Mr. Todd in late May of 2013;
25 correct?

1 A Correct.

2 Q And this is -- Mr. Todd is sharing with you in the
3 first sentence there, it says, "Assuming we don't get to yes
4 this week, the following is a game plan/leanings."

5 Do you see that?

6 A Correct.

7 Q And what is the "yes" he's referring to?

8 A Yeah. Assuming that the merger falls apart and we're
9 not going to go forward with the merger.

10 Q And in May 2013 I believe you testified the merger
11 was not looking so good; right?

12 A That's correct.

13 Q And why is that?

14 A There were obstacles occurring probably on both
15 sides, but significant challenges, as I mentioned before,
16 getting confidence relative to guidance of numbers, things of
17 that nature.

18 Q And were you waiting on a final decision from
19 Mr. Fox?

20 A And as I mentioned earlier, Juergen's board was not
21 fully on board, so they were clearly -- Juergen was signaling I
22 don't have full support for this.

23 Q So in addition to Mr. Fox, there were other members
24 of Turtle Beach's board who also were not necessarily in favor
25 of the merger?

1 A That's correct.

2 Q Okay. And Mr. Stigi noted that there was a long
3 list. And I don't do this lightly; I do want to go through the
4 list with a little more detail.

5 Mr. Todd says, "It's time for us to go on offense and
6 build this into a real company."

7 Right?

8 A Correct.

9 Q This being Parametric?

10 A Correct.

11 Q And the first thing is that we need to get HHI
12 funding, at least \$5 million; correct?

13 A Correct.

14 Q The next thing is we need to get Parametric funded,
15 at least \$10 million; correct?

16 A Correct.

17 Q The next one is we "need to immediately evaluate
18 glass opportunity, and if Woody potential solution real or
19 not."

20 What is the "glass" opportunity?

21 A Yeah. We had a theory that instead of TV with
22 speakers that you could vibrate the glass in such a way with
23 the ultrasonic waves that the TV screen could become the
24 speaker as well, so you save the speakers, no speakers
25 required.

1 Q And at this time Mr. Norris didn't necessarily have
2 that solved?

3 A He had it theoretically modeled, why it could happen.

4 Q Okay. And then it says, "Three, need to get licenses
5 from Sig/TV ears, Turtle Beach, and if Woody is real with
6 glass, we need development partnership with Corning."

7 Correct?

8 A Correct.

9 Q And then it says, "Current technology, 600,000 gets
10 all this done so that we have a sound core."

11 Do you see that?

12 A Correct.

13 Q And I'm going to skip to number -- the sub-bullets
14 for everyone's benefit, and go to 5, which is Current
15 Technology Quality. Do you see that?

16 A Yes.

17 Q Number 5. Mr. Todd says, "It is too tinny and even
18 with woofer not good enough for consumer application."

19 Was that true as of the HyperSound technology as of
20 May 27th?

21 A That's correct.

22 Q He says, "There is no science to how it was EQ'd
23 where volume is set or compression level. All done based on
24 Woody's ear eight months ago."

25 Is that true?

1 A Correct. Yeah. So this is saying that, hey, these
2 speakers aren't loud enough to be viable in its current state.

3 Q Right. And I'll condense the kind of latter quarter
4 about that is I think you mentioned earlier that the demos
5 needed kind of some precise --

6 A Right.

7 Q -- environmental conditions for them to work;
8 correct?

9 A Correct.

10 Q And it would be the case -- for example, if
11 HyperSound were put into a museum, would it be effective?

12 A Multiple speakers. But the situation you hit is
13 accurate that we would demo it, we'd put somebody in a closed
14 room where the sound is very focused and controlled, which is
15 very different than a kid in a college dorm room. So this
16 generation demonstrated we can send the sound in a focused way,
17 but it clearly didn't have the consumer requirements built in
18 yet.

19 Q Right. Six says, "Engineering needs to be enhanced."
20 Is that true?

21 A Yes.

22 Q Seven is -- I'm sorry, we're going to skip seven.
23 So, eight, "Need to add to invention group."

24 What is that?

25 A We needed more engineers.

1 Q Okay. The next one, "Need a film strategy with
2 current providers."

3 So do I understand correctly that the HyperSound
4 technology is dependent upon the use of a Mylar film; correct?

5 A That's correct.

6 Q And what's the problem with that film?

7 A Very expensive. Very limited supply. So we didn't
8 have a high volume of solutions.

9 Q Okay. Number 10, "Organizationally, we need to
10 develop a product line ownership focus. If the world were
11 perfect, each team would have a leader, an engineer, sales and
12 project grunt. Obviously we can't afford."

13 Correct?

14 A Correct.

15 Q Eleven is, "CEO. When? Who? How much?"

16 Is that true?

17 A That's accurate.

18 Q It says, "Presumably, we're going to set down a CEO,
19 either -- of Parametric either way."

20 Correct?

21 A Correct.

22 Q And Number 12 is, "Need to build supply chain
23 confidencies. Sassan not the guy."

24 Is that true?

25 A That's accurate.

1 Q And Sassan is the --

2 A Sassan was running our supply chain, but he was not
3 capable enough to scale the operation.

4 Q Right. And as we go through it, just in the email
5 above that you say to Mr. Todd, "I agree with your sentiments."

6 Is that right?

7 A Correct.

8 Q Did you agree with him at the time?

9 A I did.

10 Q Okay. And just to be clear, all of these issues that
11 we just listed would have potentially been solved through the
12 Turtle Beach merger; correct?

13 A Correct.

14 Q Turtle Beach was the market leader in its industry;
15 correct?

16 A Correct.

17 Q Turtle Beach had personnel and resources needed to
18 refine the HyperSound technology; correct?

19 A That's right.

20 Q And he had engineering capability to design and build
21 products that incorporate HyperSound; correct?

22 A Correct. Yes.

23 Q Yes. Turtle Beach had the ability to sell products
24 around the world; correct?

25 A Correct.

1 Q It had an experience management team; correct?

2 A That's correct.

3 Q And I think Mr. Stigi touched this, but without the
4 Turtle Beach merger, how easy would this have been for
5 Parametric to do?

6 A Yeah, this is a not easy task. You know, we evolved
7 the company, as I mentioned, from a garage with a couple guys
8 to something that was substantially more, but the next layer of
9 evolution was going to be extremely difficult.

10 Q And how long do you think it would have taken?

11 A This would have been a two to three year playbook.

12 Q Okay. Mr. Potashner, if there's testimony in this
13 court that Parametric's stock price was not volatile, would
14 that be false?

15 A That would be false.

16 Q Can I direct you to Exhibit 531. This is an email
17 from you to a buyer at Houlihan Lokey; is that correct?

18 A Okay.

19 Q And you say,

20 "I have put a lot of pressure on
21 ourselves to complete financing in the next
22 couple weeks for several reasons, with the
23 largest one being the volatility of our stock
24 and the current favorable valuation."

25 Correct?

1 A Correct.

2 Q And that's dated March 13th, 2013; correct?

3 A Yes.

4 Q And this is the month that you began negotiations
5 with Turtle Beach; correct?

6 A Correct.

7 Q The next sentence actually also of note, "I also see
8 us in a stronger negotiating position with Stripes if we have
9 cash on our balance sheet."

10 Correct?

11 A Correct.

12 Q Now, why do you believe that is?

13 A Yeah. So there's several things in this document.
14 So one is, hey, if I have to sell some stock in an instrument
15 and the price I get is going to be tied to the stock price, I
16 want to do that while the stock is in a good position. So the
17 timing, the stock was up, let's sell some in a transaction.
18 And I'll still take a discount, but it's going to be a discount
19 off a higher number, so that's good.

20 Second and most importantly, the point you're hitting
21 is, if I'm negotiating with Turtle Beach and they look at my
22 balance sheet and say this company is six months of cash, they
23 don't have any option but to take whatever deal we give them.
24 You know, you've got incredible leverage. So I'm taking
25 leverage away from Turtle Beach's negotiating position by

1 having a strong cash position myself; I'm going to be around.

2 Q So in other words, by doing this you'd be able to
3 extract better terms from Stripes and Turtle Beach in this
4 deal?

5 A That's correct.

6 Q Correct. Now, Mr. Potashner, it's been alleged over
7 the last few days that beginning around the time of this email
8 you were cozying up to Turtle Beach and Stripes. Are you aware
9 of that testimony?

10 A Correct.

11 Q Is that true?

12 A No.

13 Q And is this effort to improve your cash balance sheet
14 to extract better terms out of Stripes consistent with an
15 effort by you to cozy up to Stripes?

16 A No.

17 Q Let's take a look at 557. Now, earlier Mr. Stigi
18 showed you Exhibit 554, which is the first email in the string
19 of this, which is Mr. Stark's March 29th, 2013 email to you,
20 among others, laying out the -- you recall the four options --

21 A Correct.

22 Q -- that Turtle Beach was considering. You recall
23 that. And if you look back -- again, this is Mr. Todd in
24 providing -- I guess both Mr. Barnes and Mr. Todd are providing
25 their reactions to those options. Do you see that?

1 A I do.

2 Q Okay. I'm going to focus on Mr. Todd's email.

3 Mr. Todd says,

4 "As we think about their thoughts, we
5 should evaluate on the basis that we have
6 three options with IP. One is keep doing what
7 we are doing and remain completely
8 independent. Two, partner with Turtle
9 Beach/Stripes and together maximize value of
10 the IP. Or, three, sell to Turtle
11 Beach/Stripes and have them control IP. I
12 think our primary goal has to be to avoid
13 number one."

14 A Correct.

15 Q Do you see that? Did you agree with Mr. Todd's
16 analysis?

17 A Yeah. Number one has huge execution risks, so it
18 clearly would be the most risky path for us to pursue.

19 Q Right. Right. He goes on to say,

20 "Also, if we partner in some way
21 (license), we need to not underestimate what
22 they bring to the party besides economics and
23 engineering. They clearly have created a
24 great brand with a positioning that is
25 consistent with the positioning we desire, the

1 understanding of the audio consumer and
2 ability to leverage their know-how in this
3 space will be huge."

4 Do you read that?

5 A Correct.

6 Q Did you agree with Mr. Todd's assessment as of
7 March 29th, 2013?

8 A I did.

9 Q And then he goes on to say, "This whole thing is an
10 exercise in valuation and finding a formula that meets our
11 goals, our shareholders' goals and Stripes/Turtle Beach's
12 goals."

13 Do you see that?

14 A I do.

15 Q Do you agree with that?

16 A One hundred percent.

17 Q Did Mr. Todd talk about Ken Potashner's goals?

18 A No.

19 Q Did he talk about John Todd's goals?

20 A No.

21 Q Did he talk about Jim Barnes' goals?

22 A No.

23 Q If you can go to the next page, there's an example
24 one that he's running through. And if you see there it says,
25 "Current market cap equals \$128.5 million."

1 Do you see that?

2 A I do.

3 Q Okay. And in parens it says, "\$22 million in value
4 creation from yesterday announcement."

5 Do you see that?

6 A I do.

7 Q Do you remember what announcement that was?

8 A I don't know exactly what announcement that was.

9 Q Do you believe it may have been the press release
10 about Houlihan Lokey?

11 A I assume it was. That we're shopping --

12 Q And I am --

13 A That we're going to hire bankers to shop the company.

14 THE COURT: Only one of you guys can talk at a time.
15 So, Mr. Hess, let the witness finish.

16 MR. HESS: I apologize. That was -- Yes.

17 THE COURT: I know.

18 THE WITNESS: Yeah. It was expanding -- it was the
19 Houlihan Lokey -- I assume it's the Houlihan Lokey -- our
20 announcement saying we're hiring Houlihan Lokey to explore
21 strategic options.

22 BY MR. HESS:

23 Q And I am a litigator who was never a math major.
24 \$22 million on 128.5 is roughly 20 percent; correct?

25 A Correct.

1 Q 20 percent; right?

2 A Yes.

3 Q Oh. So what he's saying is that 20 percent of
4 Parametric's value was created in one single day?

5 A Correct.

6 Q Okay. He then goes on, and so he's going through the
7 options. And at number 4, which is not -- unfortunately, it's
8 cut off in here, but it is at 554. And option number 4, if you
9 recall, was "Purchase Parametric outright, including rights to
10 health."

11 Do you recall that?

12 A I do.

13 Q And Mr. Todd's response to that option is, "I would
14 answer it is of interest and easier than Number 3 but
15 understand valuation hurdles. Internally, value health
16 contribution to valuation would be difficult."

17 Do you see that?

18 A I do.

19 Q And was it true that the valuation of Parametric at
20 this time was challenging for the transaction?

21 A It was.

22 Q And why is that?

23 A We were valued -- companies are more easily valued if
24 you're able to put a multiple on the earning stream, a revenue
25 steam. We were a company being valued on potential. So it's

1 difficult to assign how much of that valuation is tied to what
2 indice.

3 Q Is it fair that both you and Turtle Beach and Stripes
4 understood that Parametric's market valuation was not tethered
5 to present financial metrics?

6 A That's accurate.

7 Q Let's turn to 105. This is an email from you to
8 Mr. Dufilho at Houlihan Lokey on June 5th, 2013; correct?

9 A Correct.

10 Q And you're forwarding an email that you had sent just
11 a minute earlier to Mr. Stark; correct?

12 A Correct. Let me read it real quick.

13 Q Sure. I'm sorry.

14 A Okay.

15 Q Now, as of June 5th, 2013, we're still kind of in a
16 holding pattern with the merger; correct?

17 A That's correct.

18 Q Okay. And you say to Mr. Stark,

19 "Patience is not my strong suit. And as
20 you can suspect, I am frustrated and looking
21 to move on. I do know you have been sincere,
22 and I'll go out of bounds on my DNA relative
23 to being patient and see if you can muster the
24 support on your side."

25 So that's a kind of reference to Mr. Fox and these

1 other directors at Turtle Beach?

2 A That's correct.

3 Q And do you know why -- why were they opposed to the
4 merger? Do you know?

5 A Why were they --

6 Q Why were they reluctant to engage in the merger?

7 A Yeah. I think they were clearly concerned on whether
8 we had the goods or not. They were concerned on spending
9 effectively north of one hundred million dollars on an
10 acquisition. And they also had dialogues, is this the best way
11 to take Turtle Beach public, you know, as opposed to an IPO
12 downstream. So there were several considerations that had them
13 on the fence.

14 Quite frankly, at the end of the day I've heard Ken
15 say the only reason he did this deal was because he wanted to
16 support Juergen.

17 Q Right. And, in fact, right in this very email you
18 refer to that where you say,

19 "Also, you know this, but the schmoozing
20 a boss in the private equity world is hugely
21 different than in the corporate world. The PE
22 world comes down to telling the boss you've
23 hired me, now give me my at bat."

24 Correct?

25 A Correct.

1 Q And you agree with that?

2 A And I do agree with that.

3 Q Okay. And that's basically what you said just
4 happened here; right?

5 A Yes.

6 Q Let's go to 279. Now, this is an email from you to
7 the Parametric Board dated October the 3rd, 2013; correct?

8 A Correct.

9 Q We're now two months after the merger was announced;
10 correct?

11 A Correct.

12 Q And you write, "We had a very difficult meeting with
13 Juergen and the TB CTO," which I believe would refer to the
14 chief technology officer; correct?

15 A That's correct.

16 Q Okay. And it goes on to say, "They were very
17 disappointed in that the technology has not advanced to their
18 satisfaction and also upset on the product strategy as well."
19 Correct?

20 A That's correct.

21 Q And it goes on to say a lot of things, which you're
22 happy to read, but I'm going to just focus on, "Without access
23 to the best resources we are positioned to fail and the deal
24 most likely will unravel or be renegotiated."

25 Do you see that?

1 A I do.

2 Q And do you recall in this time frame Mr. Stark was
3 upset with Parametric's execution to its proposed business
4 plan?

5 A He was.

6 Q And was Mr. Stark threatening to unravel or
7 renegotiate the deal?

8 A He was.

9 Q And this was obviously a concern to you; correct?

10 A Correct.

11 Q And it was a concern to the board; correct?

12 A That's correct.

13 Q And did you believe Mr. Stark?

14 A I did. And I'll also just add, this is where we had
15 to pull Andy Wolfe in up from the board role to rolling his
16 sleeves up, which was one of the earlier discussions we had
17 yesterday on Andy going above and beyond his board capacity.
18 Go ahead. Sorry.

19 Q That's quite all right. Okay. So then his is 826.
20 Are you there? 826. So this is the day before and we -- this
21 is an email from you to Sassan Chakamian. Again, I forget who
22 Sassan Chakamian is. Who is that?

23 A He was overseeing our purchasing and some of our
24 operations.

25 Q Okay. So this begins with at the bottom of this page

1 an email from Mr. Stark to you, again October the 2nd. And it
2 says,

3 "Good discussion today. I would like to
4 help make sure there is real progress on this
5 going forward. I would like to propose a
6 weekly meeting with core group with
7 deliverable actions each week. Okay with
8 you?"

9 Do you see that?

10 A Correct.

11 Q And the subject is Soundbar. What is that referring
12 to?

13 A Yeah. Turtle Beach believed that one of the relevant
14 products going forward would be for us to produce as soundbar
15 based on the technology.

16 Q Right. And Mr. Sassan in the second email down
17 says -- his reaction is, "I guess this is good news, as he is
18 still positive about the deal."

19 Correct?

20 A Correct.

21 Q And he says,

22 "But we really need to manage the
23 progress. Currently neither the engineering
24 nor R&D have a detail schedule with a clear
25 goal, deliverables and due date. I suggest

1 that we create such a schedule and hold
2 everyone accountable."

3 Do you see that?

4 A I do.

5 Q And this confirms that Mr. Stark was becoming a
6 little skittish on this deal; right?

7 A That's correct.

8 Q Did you agree with him, by the way?

9 A Agree with Sassan?

10 Q With his assessment of the progress?

11 A Yeah. We were -- we were stumbling along. Again, a
12 group that invents stuff is different than a group that builds
13 products, so we were stumbling our way forward.

14 Q I'm going to shift gears here. We talked about this
15 a little bit both today and yesterday, that you and Mr. Stark
16 had different approaches to communicating information to the
17 market about the merger; correct?

18 A Correct.

19 Q And that you repeatedly referred to Mr. Stark's
20 approach as conservative; correct?

21 A That's correct.

22 Q Okay. Let's go to 921.

23 A Okay.

24 Q So this is a December 3rd email between you and
25 Mr. Stark, with the subject title, "Hype." Correct?

1 A Yes.

2 Q And this is kind of -- this is kind of like a
3 philosophical discussion you guys are having about
4 communicating to the market. Is that fair?

5 A Let me just finish reading real quick.

6 Q Yeah.

7 A Okay, I've read it.

8 Q Okay. So you write to him that "If something has
9 real potential and you discuss its potential in an actual
10 fashion that is not hyping it, if you overstate its potential,
11 you would be."

12 Right?

13 A Correct.

14 Q Okay. And then Mr. Stark responds to you:

15 "You guys have been talking about the
16 commercial business, pilots, et cetera, for
17 more than a year now. The more time that goes
18 by, the more important it is to start tracking
19 towards the long-term potential. Otherwise,
20 it becomes not credible. Your Q3 revenues
21 show significant drop from Q2 and disrupt the
22 steady climb to the long-term potential."

23 Correct?

24 A Correct.

25 Q And then he goes on to say,

1 "Every quarter that goes by without
2 pilots that were announced six, nine,
3 twelve months ago converting into real dollars
4 becomes a bigger and bigger issue to the
5 long-term story. This is a significant issue
6 that I'm going to have to deal with next year
7 and I'm very concerned about it. Make sense?"
8 Right?

9 A Correct.

10 Q Now, this is kind of what you've been testifying to
11 today is Mr. Stark having concerns about putting out numbers
12 that he's then going to have to be accountable for; correct?

13 A That's correct.

14 Q Okay. And he talks about pilots that were announced
15 six, nine, twelve months ago.

16 A Right.

17 Q Now, is the -- one of those pilots the McDonald's
18 opportunity we talked about yesterday?

19 A Yes.

20 Q And as I think you'll recall, that was a -- a
21 HyperSound emitter was put into a McDonald's franchise?

22 A Into the ceiling of a restaurant, yes.

23 Q And that was done for free; correct?

24 A Correct.

25 Q Um --

1 A We had one in the Rite Aid -- at a Rite Aid in a
2 pharmacy, so -- so we did seed some pilots but they did not
3 convert into revenue opportunity.

4 Q Okay. And so there's -- and all these pilots were
5 installing a HyperSound technology for free somewhere?

6 A Correct.

7 Q Correct. And I think I saw in one of the materials
8 that there was a pilot project at Build-A-Bear.

9 A Correct.

10 Q Correct. And were there any other pilots?

11 A I think they had one in a museum environment.

12 Q Right. And did -- did any of those -- and so all
13 those were free; right?

14 A Correct.

15 Q Did any of those convert into revenue producing
16 opportunities?

17 A I think in some cases we might of charged for the
18 pilots, but none of them manifested in order streams.

19 MR. HESS: Apologies for the pause. It hopefully is
20 getting us more time.

21 THE COURT: It's okay.

22 BY MR. HESS:

23 Q Can we look at -- oh, please.

24 A I'm going to stand up. Thanks.

25 Q Please. By all means. Look at Exhibit 72. It's

1 going to come up on the screen for you, Mr.

2 Potashner. We've talked about this a few times.
3 Everyone's interested in different -- different parts of it.
4 This is a discussion where in December 12th, 2013, you're
5 talking about the reason why Parametric stock's down and you
6 give three reasons. I'd like to focus on the first one --

7 A Okay.

8 Q -- which is,

9 "There's lack of guidance for TB. All
10 anyone is hearing is all the things that will
11 result in weak 2013. There are no numbers for
12 Q1 or '14, so people assume the worst."
13 Correct?

14 A That's correct.

15 Q And did you believe that at the time?

16 A I did.

17 Q So was it your belief that the information that was
18 being disseminated to the market, in a proxy, and anywhere
19 else, was providing a rosy picture of Turtle Beach's financial
20 state?

21 A No.

22 Q Earlier today, Mr. Potashner, you saw the Craig-
23 Hallum fairness opinion; correct?

24 A Correct.

25 Q And yesterday, Mr. Apton asked you a number of

1 questions about the forecasts that were used for that fairness
2 opinion. Do you recall that?

3 A Correct. I recall it.

4 Q And in one of those questions, Mr. Apton suggested
5 the merger ratio was cut on those forecasts; do you remember
6 that?

7 A I do.

8 Q Is that true?

9 A The merger ratio was a consideration of -- of a
10 multitude of things.

11 Q Right.

12 A One of which would have been earnings forecast.

13 Q Yeah. Now, the purpose of the fairness opinion is to
14 validate the deal; correct?

15 A That's correct.

16 Q All right. And so the inputs from that -- from that
17 fairness opinion were not the --

18 A Correct.

19 Q -- economic drivers of the merger issue; is that
20 right?

21 A That's right. Yeah, the equity splits were
22 determined well in advance of the fairness opinion.

23 MR. HESS: Can we bring up 101?

24 BY MR. HESS:

25 Q This is a document we've seen earlier today and

1 yesterday. And I wanted to focus just on the first paragraph
2 of this. This is, again, your June 29th, 2013 e-mail to the
3 board of directors providing an update on the merger
4 discussions. Do you see that?

5 A I do.

6 Q And can you read the first paragraph, or I guess
7 maybe it's the second paragraph, that says, it starts, "The key
8 concern I have has been the financing challenges for VTB."
9 Right?

10 A Correct.

11 Q And that paragraph goes on talk about, in some
12 detail, issues that Turtle Beach had been having at that time
13 with respect to its lender PNC and covenants regarding a debt
14 facility; correct?

15 A That's correct.

16 Q And they're talking about them having to amend that
17 credit facility in order to provide them some relief from their
18 current constraints on it; correct?

19 A That's correct.

20 Q And then it says, at the beginning of that paragraph
21 that, "Juergen and I correspond on a daily basis on this
22 topic."

23 Is that true?

24 A That -- that was true.

25 Q Did you feel that you were provided full and thorough

1 updates as to Turtle Beach's relationship with PNC?

2 A I -- I know that there was significant updates
3 relative -- relative to it, and I assumed that what Juergen
4 tells me is -- was truth.

5 Q And at this time, in connection with the merger,
6 Parametric conducted extensive due diligence on Turtle Beach;
7 correct?

8 A Correct.

9 Q As represented by Houlihan Lokey who conducted due
10 diligence; correct?

11 A That's correct.

12 Q Your CFO, Jim Barnes, conducted due diligence;
13 correct?

14 A That's correct.

15 Q And Craig-Hallum conducted due diligence in
16 connection with its fairness opinion; correct?

17 A That's correct.

18 Q Okay.

19 A And Woody Norris on the technology side, as well. So
20 we -- full-court on diligence.

21 Q And we touched on this a little bit, but you knew
22 during the negotiation of the merger, and after, that there was
23 this dual console transition happening with respect to the Xbox
24 and Playstation consoles; correct?

25 A Yes.

1 Q And you were made aware in October of 2013 that all
2 those -- the revenues and EBITDA associated with Turtle Beach's
3 projected sales connected with the new Xbox in 2013 were going
4 to be eliminated and shifted to 2014; correct?

5 A That's correct.

6 Q Okay. And you knew that was going to have a
7 significant adverse impact on the 2013 financials; correct?

8 A That there'd be a significant -- yeah, a significant
9 shift in revenues, yes.

10 Q Right. Right. Just 2013; right?

11 A Correct.

12 Q And you also knew that just in general, the dual
13 console transition was itself going to have, or create
14 significant headwinds for the 2013 financial revenues?

15 A That's correct.

16 Q Okay. Now, I think you testified earlier you felt
17 that because this was premised on a long-term strategic
18 rationale, those facts were irrelevant to you?

19 A Yeah. Well, irrelevant is too strong. But --

20 Q Okay.

21 A -- but nothing that's going to have me reconsider the
22 deal. That this was long-term strategic for putting companies
23 together. If revenues shift from one quarter to the next
24 quarter that's, you know, that's disappointing, but that's not
25 changing the key parameters of the transaction.

1 Q Okay. It's been mentioned before, but -- but the --
2 the merger was structured as a -- no cash changed hands; right?
3 This was a --

4 A That's correct.

5 Q -- stock issuance? So -- so it was based on a -- on
6 a ratio; right?

7 A That's correct.

8 Q So if both companies were having performance
9 troubles, then the ratio might still stay the same; right?

10 A Correct.

11 Q Okay. And we discussed a little bit earlier that Mr.
12 Stark was having some complaints about Parametric's performance
13 in the fall of 2013; correct?

14 A Correct.

15 MR. HESS: If we can go to 857.

16 BY MR. HESS:

17 Q It's an e-mail from Mr. Barnes to you on
18 October 25th, 2013. And there were Stark -- the first e-mail
19 in the chain however is one from you to Mr. Barnes that same
20 day, with the subject "Juergen". Do you see that?

21 A Yes.

22 Q Okay. And you write, "Just had a tough call with
23 Juergen on the numbers in the proxy from Parametric; 1 million
24 in 2013, 22 million in '14, 35 million in '15, 42 in '16. Will
25 call you in ten minutes to discuss."

1 Do you -- first of all, the -- those -- those numbers
2 reflect revenue numbers for Parametric that were disclosed in
3 the proxy as being used in the fairness opinion?

4 A I'd have to match these up to the proxy numbers. But
5 I -- I assume that that's the case.

6 Q And do you -- do you recall the substance of this
7 tough call you had with Mr. Stark on or around October 25th,
8 2013?

9 A I don't. But whenever numbers are moving, that's by
10 definition going to be a tough call.

11 Q Right. And so to -- so it's -- so is it your
12 testimony that Mr. Stark thought that those numbers were
13 unrealistic?

14 A Yes. He would have -- again, if I bring numbers
15 down, he's not going to see later numbers as credible.

16 Q Right. And then there's a discussion about, you
17 know, the consequence, what to do about all that. And on the
18 top, well, yeah, you say, "Do we have flexibility to modify the
19 numbers?"

20 Do see that?

21 A Yes.

22 Q Presumably, that means the ones in the -- in the
23 proxy?

24 A Correct.

25 Q Okay. And Mr. Barnes says, "I don't think so, but

1 looking into our options. We don't want to redo the fairness
2 evaluation."

3 Do you see that?

4 A Correct.

5 Q Do you know why?

6 A If you begin restating numbers, it warrants a new
7 fairness opinion.

8 Q And is it possible that if -- if the fairness opinion
9 were recut, that Turtle Beach might extract a better merger
10 issue from Parametric given the challenges that Parametric was
11 facing in the fall of 2013?

12 A That's -- it's a possibility it would have, it could
13 have opened up renegotiation.

14 Q Okay. Let's look at 859. And this is a response --
15 this is from you to Mr. Stark on October 25th, 2013. And the
16 subject is, "Parametric Numbers."

17 A Right.

18 Q Right. And -- and you say, "Initial input is that
19 changing the numbers might mess up the fairness opinion. We
20 are discussing implications of simply taking the numbers out of
21 the proxy."

22 Now, that's referring to Parametric numbers?

23 A These are Parametric numbers.

24 Q Right.

25 A Yep.

1 Q And is it fair, Mr. Potashner, that given what you
2 knew about Parametric's business comparative to the challenges
3 that Turtle Beach was facing at this time, that if not in
4 Parametric's best interest to attempt to renegotiate the
5 merger?

6 A Yeah. So on the Turtle Beach side, I mean, they were
7 going to simply be a victim of when does this console
8 transition happen. They're the market leader. They've got,
9 you know, the brand on that stuff. So I think there was less
10 risk, in my mind, in terms of their execution going forward.
11 I'm sitting here with technology that I need to turn into
12 products, turn into sales, so I had substantially more risk on
13 my side of execution. There's -- there's higher execution
14 challenges on my side than Parametric's -- on the Turtle
15 Beach's side.

16 Q Right.

17 A But I also did not believe that Turtle Beach was
18 acquiring us for our revenue. They were acquiring us for our
19 technology. So I would have rationalized that, hey, my numbers
20 are moving, but guess what, that's not why you're buying me.
21 So it's less -- yeah, it could be used against me to negotiate
22 better terms for Turtle Beach, but I don't think the deal is at
23 risk if I take my \$1 million revenue stream down to, you know,
24 half a million, or -- or for \$2 million, bringing it down to \$1
25 million.

1 Q Understood. Great. Thanks. Let's just do a small
2 cleanup item.

3 MR. HESS: If we can look at Exhibit 86.

4 BY MR. HESS:

5 Q Mr. Apton showed you this e-mail yesterday and as --
6 as purported evidence that this -- this press release
7 represented an offer from Turtle Beach to you, to leave the HHI
8 business. Do you remember that?

9 A Correct.

10 Q In connection with this merger, what does "Paris"
11 mean to you?

12 A Yeah. We had -- Paris is the name for one of the
13 companies, and Beam was the name for the other one. So Paris,
14 Turtle Beach.

15 Q So was the -- was the merger sub Paris Acquisition
16 Corporation?

17 A Correct.

18 Q Okay. So Parametric's Paris; correct?

19 A Correct.

20 Q All right. If you look at this cover e-mail from Mr.
21 Stark, and you go down past the list of names, past the paren,
22 paragraph, the next paragraph says, "I've attached an attached
23 draft from Paris."

24 A Right.

25 Q So that means the attached press release was drafted

1 by Parametric; correct?

2 A That's correct.

3 Q Not by Mr. Stark?

4 A That's correct.

5 Q Not by anyone with Turtle Beach?

6 A Correct.

7 Q Okay. At risk of belaboring HHI, can I show you
8 Exhibit 113?

9 THE COURT: The answer to that's, yes.

10 MR. HESS: It will be the --

11 THE COURT: But --

12 MR. HESS: -- only mentioned, well, Exhibit, I should
13 say.

14 BY MR. HESS:

15 Q Well, I'm going to direct you to 113-003. And the
16 formatting is terrible in this e-mail -- in this, but it is
17 what it is.

18 So this is from Mr. Stark to you, Mr. Barnes, Mr.
19 Wolfe, and copying Mr. Doornink on Sunday, July 21st, 2013;
20 correct?

21 A Yes.

22 Q And this -- this e-mail is kind of a ultimatum from
23 Mr. Stark; correct? On the HHI option issue?

24 A Correct.

25 Q And he's basically telling Parametric, drop them, or

1 the deal's over; correct?

2 A That's correct.

3 Q Did Mr. Stark have a different position with respect
4 to HHI at any time?

5 A No.

6 Q I think Mr. Stigi covered this, but just for the sake
7 of my own conscience, did Mr. Stark offer you any gentlemen's
8 agreement with respect to HHI?

9 A He did not.

10 Q Nor did he seek to give you one?

11 A He did not seek to give me anything.

12 Q And again, Mr. Apton spent a lot of time yesterday
13 going over the -- what I think you referred to as pokes at him
14 about the HHI option; correct?

15 A Correct.

16 Q Did any of those pokes change Mr. Stark's position?

17 A No.

18 Q And let me ask you, at the end of the day, did
19 anything involving this HHI issue, in any way, shape or form,
20 alter the merger ratio?

21 A Not at all.

22 MR. HESS: Last exhibit, Your Honor.

23 THE COURT: Really?

24 MR. HESS: 942.

25 BY MR. HESS:

1 Q Again, this is actually smaller than the last small
2 e-mail I showed you, Mr. Potashner, so I'm sorry.

3 The bottom e-mail here is a January 15th, 2014 e-
4 mail from Mr. Todd to you; correct?

5 A Correct.

6 Q And January 15, 2014, is the closing date of the
7 merger that brings us all here; correct?

8 A Correct.

9 Q And he writes to you, "Congrats on deal closing.
10 Despite all the BS, you did an amazing job getting this done.
11 I never thought we would find anyone stupid enough to buy, but
12 I overestimated Juergen."

13 Do you see that?

14 A I do.

15 Q Did you agree with Mr. Todd on January 15th, 2014?

16 A I think he overstated things a bit. So I think
17 there's a lot of humor intended in this.

18 Q Yeah.

19 A But he clearly was saying, we got -- we got a great
20 deal.

21 Q Right. And do you know why Mr. Todd felt that you
22 guys had gotten such a good deal?

23 A Yeah. So Mr. Todd was front line on operations and
24 that long list of things you read off before, were things he
25 would have needed to lead the execution of. So he was staring

1 at, you know, tremendous -- necessity for tremendous
2 accomplishments to move this company forward, all with risk in
3 it. And the fact that someone took all that execution risk off
4 the table and gave us a very good price, as we thought, for the
5 company, was a win.

6 Q Great. Thank you, Mr. Potashner.

7 MR. HESS: I will wipe down in just a minute.

8 THE COURT: Thank you. Mr. Apton, as soon as we wipe
9 down, you're up.

10 Forty-nine minutes. That's about between 30 and 60.

11 MR. HESS: I can forecast. Your Honor, can I hand
12 this to the witness?

13 THE COURT: You may. Sir, we have some additional
14 documents for you.

15 THE WITNESS: Thank you, very much.

16 THE COURT: I know you're excited about that.

17 THE WITNESS: I am.

18 REDIRECT EXAMINATION

19 BY MR. APTON:

20 Q Mr. Potashner, I'd like to go to Exhibit 10 from this
21 morning. This was an investor presentation for Parametric.

22 A Yes. It's on the screen? Okay.

23 Q Yeah. All right. Now, this was used to solicit
24 investments from potential buyers of Parametric stock; yes?

25 A Correct.

1 Q And did you have any role in creating this?

2 A I did.

3 Q Okay. And you would agree that it's important to be
4 honest and accurate in solicitations to investors; yes?

5 A Yes.

6 Q So you weren't lying when you put content in here
7 that appears on pages 4, 5, 7, or 10, for example?

8 A Okay. Let -- let me see the pages.

9 Q Sure. Okay. And then you can determine whether or
10 not it's true?

11 A Correct.

12 Q Okay.

13 MR. APTON: Page 4, please?

14 BY MR. APTON:

15 Q While they load that, I'll just say, earlier today
16 you made it seem like Parametric was this failing entity, no
17 prospects, a lot of expenses. And the statements in this
18 investor presentation --

19 A I didn't say that at all. I'm sorry for the
20 interruption. Go ahead. But I -- I --

21 Q No? Well, the statements in this presentation would
22 suggest otherwise.

23 A Yeah.

24 MR. STIGI: Objection.

25 THE WITNESS: So I never said it's a failing entity.

1 THE COURT: Overruled.

2 THE WITNESS: I said it's an entity that probably is
3 exactly where you would expect it to be in its life cycle with
4 significant challenges ahead of it, but that's by no means
5 failing.

6 BY MR. APTON:

7 Q Well, it had the -- on page 4 --

8 A/V TECH: I know. I'm too slow. Okay. Pull up for
9 me.

10 BY MR. APTON:

11 Q It had a strong idea IP at that time; yes?

12 A Yes. It had strong IP.

13 Q And it had recent wins going forward in terms of
14 digital signage and MOUs; yes?

15 A Correct.

16 Q It had a strong IP portfolio?

17 A Correct.

18 Q And in fact it had a capital like business model, it
19 was going to focus on licensing strategy; right?

20 A That's correct.

21 Q And if you look at page 12 on the paper version, and
22 I think you are, there was rapid --

23 MR. STIGI: Can we see it on the screen by chance?

24 BY MR. APTON:

25 Q Rapidly advancing licensing --

1 THE COURT: We're trying, but we're having some
2 technical problems, so some of us are using paper.

3 A/V TECH: It's so much color, it's not coming up --

4 THE WITNESS: Go ahead. Sorry.

5 BY MR. APTON:

6 Q Rapidly advancing licensing discussions?

7 A Correct.

8 Q For substantial volume for late 2013 and 2014;
9 correct?

10 A Correct.

11 Q Yeah. But those licensing discussions, they never
12 happened; right?

13 A They did happen. They didn't manifested in licenses.

14 Q Well, I thought you said yesterday that the licensing
15 discussions never existed.

16 MR. STIGI: Objection. Mischaracterizes his
17 testimony.

18 THE COURT: Overruled.

19 BY MR. APTON:

20 Q Well, let's please look at Exhibit 30.

21 A Yes.

22 THE COURT: So 30 is not admitted yet. Would you
23 like to offer it?

24 MR. APTON: I would like to offer it. If
25 (indiscernible) stipulates?

1 MR. STIGI: 30? Where did --

2 THE COURT: 30.

3 MR. APTON: I will represent it's an e-mail from --

4 THE COURT: E-mail between Stark and Potashner,
5 apparently.

6 MR. HESS: No objection.

7 MR. STIGI: No objection.

8 MR. APTON: Thank you.

9 THE COURT: It's admitted.

10 (Exhibit Number(s) 30 admitted.)

11 MR. APTON: Thank you.

12 THE COURT: Thank you.

13 BY MR. APTON:

14 Q This is an e-mail in which you tell Stark and Ms.
15 Kenworthy, that Parametric stock was, quote, "taking a beating
16 due to you deferring signing licensing deals," close quote.

17 Did the e-mail say that?

18 A That's what the e-mail says. And if --

19 Q Were you lying in that e-mail?

20 A Yes. Yep.

21 Q Okay.

22 MR. APTON: Exhibit 111, please.

23 BY MR. APTON:

24 Q And one of the first questions from Mr. Hess was
25 whether Mr. Stark ever asked you to slow-roll licensing

1 discussions and you said, no.

2 Exhibit 111 would suggest otherwise; would you agree?

3 A I don't know (indiscernible) where I put it. Blow it
4 up on the screen, please.

5 THE COURT: What that you, Mr. Peek?

6 THE COURT RECORDER: No.

7 MR. PEEK: What happened?

8 BY MR. APTON:

9 Q "Continuing discussions is okay, but I would slow-
10 roll a bit, if it's not disruptive."

11 THE COURT: Mr. Peek, can you just tap the bottom
12 lower?

13 MR. PEEK: What?

14 THE COURT: Tap the bottom lower for me. Thank you.

15 BY MR. APTON:

16 Q Mr. Potashner, do you see that?

17 A Yeah. We -- we discussed this yesterday, that I was
18 representing to Turtle Beach that I am holding back
19 announcements, that I'm slowing down licensing deals, all with
20 the intent of pressuring them to move quickly, when in reality
21 I was doing exactly the opposite of that.

22 Q But you would agree that Mr. Stark, in this e-mail,
23 is asking you to slow-roll; correct?

24 Because earlier, you told Mr. Hess, he wasn't, and he
25 didn't ask you that.

1 A I see that.

2 Q Okay. So you would agree that Mr. Stark is asking
3 you, Mr. Stark wrote those words in that e-mail; correct?

4 A Those are -- an e-mail from Mr. Stark. I would not
5 have executed that.

6 Q Okay.

7 MR. APTON: Exhibit 42, please.

8 BY MR. APTON:

9 Q This one was put into evidence earlier. But this is
10 another example, I'll represent to you, of you saying you're,
11 "stockpiling announcements," quote/unquote.

12 A Okay.

13 Q Do you agree --

14 A I -- I'm --

15 Q -- on stockpiling announcements?

16 A I apologize for being redundant, but I have not --
17 was not stockpiling announcements, I was not slowing licenses
18 down, I wasn't --

19 Q You were lying?

20 A -- delaying revenue.

21 THE COURT: One at a time, please.

22 MR. HESS: Let the witness finish, please.

23 MR. APTON: I'm sorry.

24 THE WITNESS: So, I had a strategy again of -- of
25 trying to motivate Turtle Beach to move forward on the deal

1 expeditiously, and I was creating pressure that I'm not going
2 to be able to hold off these licensing deals, or these
3 announcements, so you better get this in now, otherwise it's
4 going to cost you a lot more to buy my company. So I was --
5 you'll -- you'll find a multitude of examples of me applying
6 that strategy to -- to Turtle Beach.

7 BY MR. APTON:

8 Q So --

9 A And you also will find a multitude of what really was
10 happening in e-mails internally to the board and to internal
11 folks demonstrating I was having meetings, I was doing press
12 releases, I was doing everything in my power to move the
13 company forward.

14 Q And just so I understand, so e-mails from you to
15 people internally are truthful, but people externally are not
16 truthful? I believe that's what you said earlier.

17 A No. I'm saying that my negotiations with Turtle
18 Beach --

19 Q Were untruthful?

20 A -- included a approach of representing that I'm
21 slowing things down for them to get the good deal now.

22 Q But e-mails internally, they do -- you did mean what
23 you said in those --

24 A You'll have to give me an example of internal --

25 Q Okay.

1 A -- e-mails to -- so I can comment on them.

2 Q So some might not have been?

3 A You'll need to --

4 Q All right. Let's -- let's look at --

5 A -- I'll comment on the veracity of any e-mail --

6 MR. STIGI: Objection, Your Honor.

7 THE COURT: One at a time. Overruled.

8 MR. APTON: Exhibit 105, please. Is Exhibit 105 in
9 evidence?

10 THE WITNESS: It should. Yeah, I saw this already,
11 this one.

12 THE COURT: Yes, it is.

13 MR. PEEK: I think -- I think it is.

14 BY MR. APTON:

15 Q Okay. Mr. Potashner, this is just another example of
16 you agreeing to defer press release, telling Mr. Stark; right?

17 A So my strategy was to represent to Mr. Stark that I'm
18 deferring press releases and slowing down licensing deals while
19 in reality I was doing exactly the opposite of that.

20 Q Mr. Potashner, earlier today, you testified about a
21 gentleman named Jesse Bromberg?

22 A Correct.

23 Q You said he was a quote, "Morgan Stanley employee"?

24 A That's correct.

25 Q There's more to it though; isn't there?

1 A He's my window -- he's a wealth manager and my window
2 into Morgan Stanley's broad base business.

3 Q He's your personal broker; is he not?

4 A He's my wealth manager.

5 Q Okay. And as a result of referring Houlihan Lokey to
6 you, he received a referral fee; correct?

7 A I receive a referral fee?

8 Q He did.

9 A I have no idea what -- whether he gets anything for
10 that nature of business.

11 Q Okay.

12 A He's a window to me, to Morgan Stanley, who we use to
13 put a multi-hundred million dollar credit line in place at
14 Newport, so I've got a long history of Morgan Stanley, and
15 JPMorgan relationships. And Jesse is the window on the Morgan
16 Stanley side.

17 Q Okay. I just wanted to make the point, he's not an
18 anonymous Morgan Stanley employee, you know him very well, that
19 he --

20 A I do know him very well.

21 Q -- received a referral fee --

22 A I have no --

23 Q -- for referring --

24 A -- no knowledge of any referral fee.

25 Q Okay. If we can, let's look at Exhibit 5 -- DX-504.

1 This is your Employment Contract, earlier this morning.

2 A Okay.

3 Q And you -- well, do you have it open, Mr. Potashner?

4 It's not necessary that you have it open. I just wanted to
5 refer you to it.

6 A All right.

7 Q Because I wanted to make sure you are -- that your
8 testimony from this morning was still true right now.

9 A Okay.

10 Q You're familiar with the terms, you've always been
11 familiar with the terms, you understand how your options work
12 under the Agreement; correct?

13 A I do.

14 Q Okay. So what are parachute payments?

15 A If you're -- if you have a year where your total
16 aggregate compensation exceeds what is has been running, it
17 could get defined as a parachute payment with different tax
18 implications, I think it's 280G tax implications.

19 Q Relative to a change in control?

20 A I don't know if it's only in a change of control, but
21 a change of control could -- could trigger that for sure.

22 Q Okay. Was there -- did you ever receive an analysis
23 about your 280G, potential liability, from Mr. John Hanson at
24 Turtle Beach?

25 A I did.

1 Q Okay. And was that December of 2013 more or less?

2 A I assume it would be.

3 MR. APTON: I'd like to move to admit Exhibit 345.

4 THE COURT: Any objection to 345?

5 MR. HESS: Probably not, Your Honor. But hold on.

6 No objection from us.

7 THE COURT: It'll be admitted.

8 (Exhibit Number(s) 345 admitted.)

9 BY MR. APTON:

10 Q Okay. Mr. Potashner, I believe, if you can look at
11 the first page.

12 A Okay.

13 Q This is a -- I'll quote, a "280G calculation". It's
14 from McGladrey. Do you know -- are you familiar with the firm,
15 McGladrey?

16 A Vaguely remember them. But -- but I assume that they
17 did the modeling.

18 Q Okay. And if you go up to the next page, is the
19 actual analysis. And it discusses your parachute payments that
20 would go into effect upon the change in control: Number one,
21 on page two, 175,000 performance-vested options granted
22 April 3rd, 2012. And it indicates that the performance vesting
23 conditions were not met, but vesting is accelerated on account
24 of the CIC, which stands for change in control.

25 Did I read that correctly?

1 A I don't --

2 Q Did I read that correctly?

3 A That's what it says, but I don't think you're
4 interpreting it correctly.

5 Q Number two, says, the employment agreements provides
6 --

7 A So I think -- I think -- let me just add a comment.
8 I believe an option becomes income once exercised, not vested,
9 is my understanding. I --

10 Q Number two says, his --

11 A So -- so therefore, any dollar consideration to that
12 line would be zero, because I didn't exercise anything.

13 Q Mr. Potashner, another part of your parachute payment
14 was a severance pay of 12 months equal to \$350,000; is that
15 correct?

16 A That's correct.

17 Q And then you had these time-vested options here, a
18 45,000 one. Now --

19 A And they would be in the same category of no income
20 received from that because I didn't exercise and sell them.

21 Q So given that with respect to your performance
22 vesting options, given that the performance conditions had not
23 been met --

24 A Yeah.

25 Q -- the only way to realize any value from these would

1 be to trigger the change in control; isn't that correct?

2 A No. I could have continued to run the company and
3 let these vest over time, or through performance.

4 Q You could have --

5 A I would have --

6 Q -- but you had the --

7 A I could have.

8 Q -- opportunity to trigger the change in control, and
9 depending on the stock price, they could have been quite
10 valuable. In fact, if you look lower on the page, had the
11 stock price been \$20 per share, which is where it was in March
12 of 2013, your options would have been worth almost three-and-
13 a-half million dollars.

14 A Okay. How --

15 Q You would agree; yes?

16 A How much do you think I got?

17 Q Well, I'm not here to answer questions, Mr.
18 Potashner.

19 A Let me answer it for you.

20 Q And we've had this conversation before.

21 THE COURT: So sir, he doesn't answer your questions.

22 THE WITNESS: Okay.

23 THE COURT: You have to answer his.

24 THE WITNESS: Okay. Go ahead.

25 THE COURT: We're trying to get you done today.

1 THE WITNESS: I appreciate that.

2 THE COURT: I know that's a challenge.

3 THE WITNESS: Yeah. So to answer your question, out
4 of the parachute payment of \$3.468 million, I believe the only
5 line that I received would have the \$350,000 loan. So --

6 BY MR. APTON:

7 Q But --

8 A And that would have been my tax consequence as well.
9 This was actually designed to determine tax exposure, and I
10 didn't have the tax exposure since I didn't realize this
11 income.

12 Q But not for lack of trying. I understand that your
13 options expired, potentially, but you spoke to Mr. Stark to
14 extend the expiration date, several times; did you not?

15 A If I wanted to realize this income, I would not have
16 done that. I wouldn't have -- I would have exercised the
17 options and sold them.

18 Q But the strike price was below the trading price at
19 this point in time; was it not?

20 A That's -- no -- no, the strike price was 4.50 and
21 this deal was done well north of 4.50.

22 Q Are you saying that you never contacted Mr. Stark to
23 extend the expiration date on your options?

24 A I did. But I'm --

25 Q You did.

1 A -- saying that if I -- if my goal -- your point was
2 my goal was to realize this gain, and I'm saying if I wanted to
3 realize this gain, I would have sold the stock. I would have
4 exercised the options, sold the stock. I did not do that.

5 Q When did you --

6 A I -- I --

7 Q -- reach out to Mr. --

8 A -- took \$350,000 of severance pay.

9 Q When was the first time you reached out to Mr. Stark
10 to extend your options?

11 A My desire was to stay affiliated with the company in
12 a board capacity and therefore keep the options -- extend the
13 options as opposed to have them accelerate invest.

14 Q Did there come a point in time when they were about
15 to expire worthless and you contacted him and threatened him,
16 just that you would sell, creating downward pressure on the
17 stock if he didn't the expiration dates?

18 A I don't agree with the word "threaten". So the --
19 the --

20 Q Would you like to look at Exhibit 238?

21 MR. PEEK: Objection, Your Honor. Can the witness
22 answer his question?

23 THE COURT: Hold on. Sir, were you finished
24 answering the question?

25 THE WITNESS: Yeah. I'm sorry, me or him?

1 MR. PEEK: She's looking at you.

2 MR. STIGI: You need to answer your answer, sir.

3 THE COURT: Were you done answer the question?

4 THE WITNESS: Yeah. I was going to -- I was not. I
5 said that as the options did hit the extended expiration date,
6 they were slightly in the money or near -- near the money. And
7 I told Juergen that I don't think it would make sense for me --
8 I -- I'd like not to have to exercise the stock and make
9 pennies. And two, I don't think you want me selling a bunch of
10 options for, you know, a meaningless price, you know, see
11 somebody selling and then having to report that. So it would
12 make sense for both of us for you to further extend the options
13 and he declined.

14 BY MR. APTON:

15 Q Does Exhibit 238 in the skinny binder contain that
16 conversation, that communication that you just described?

17 A Let me read it.

18 THE CLERK: (Indiscernible).

19 THE COURT: Hold on a second. Let's see, if 238's
20 what we believe it is, and then we'll see if there's an offer.

21 MR. PEEK: It wasn't part of the disclosed --

22 THE CLERK: It's --

23 MR. PEEK: -- initially disclosed, so we're trying to
24 find it, Your Honor.

25 THE COURT: Okay.

1 THE WITNESS: Yeah. I --

2 MR. APTON: It was disclosed.

3 MR. HESS: No, this was the --

4 MR. PEEK: I said it wasn't part of the initially
5 disclosed --

6 MR. APTON: Oh. Okay.

7 MR. PEEK: -- Mr. Apton. I didn't not accuse you of
8 anything.

9 THE WITNESS: I -- I've read it. I see no threat
10 whatsoever here. It's me saying, I'm --

11 THE COURT: Don't read it to me yet.

12 MR. APTON: I -- I move to admit, Your Honor, 238.

13 MR. PEEK: Your Honor, we just need to --

14 THE COURT: Have you had a chance to look at it, Team
15 Defense?

16 MR. PEEK: We're just trying to --

17 MR. STIGI: Not yet.

18 MR. PEEK: Yeah. We're just trying to find it.

19 THE COURT: Thank you, Mr. Hess, for helping the old
20 guy.

21 MR. HESS: It's reciprocated. Hard to believe, but
22 it's true.

23 THE COURT: You know I'm not going to be able to
24 tease him anymore after about two-and-a-half or three weeks.

25 MR. PEEK: No. We don't have an objection. It's

1 just a matter of trying to see, Your Honor. It's just --
2 he's --

3 THE COURT: I'm (indiscernible). Have you had a
4 chance to review it now, gentlemen?

5 MR. STIGI: Yes. No objection, Your Honor.

6 MR. PEEK: We're fine. We're fine.

7 THE COURT: It'll be admitted.

8 (Exhibit Number(s) 238 admitted.)

9 THE WITNESS: So I -- in response to your question,
10 did I threaten Juergen, I've read this. I don't see this as
11 any way a threat. I see it's me communicating to him that,
12 gee, you don't want a whole bunch of volume on me selling stock
13 making a few pennies per share. Isn't it better for both of us
14 to further extend these options.

15 That's not a threat.

16 BY MR. APTON:

17 Q Better for him, because you also offered, quote,
18 "continued involvement in supporting the shareholder suit,"
19 even that there have --

20 A Yeah. I saying that --

21 Q -- been requests from your Sheppard Mullin; that's
22 right?

23 A Okay. So what I'm saying is, in exchange for
24 extension, you know, I'll be willing to continue to be
25 available to you, should you need my help on things. General

1 statement.

2 Q That's the continued involvement you were offering?

3 A Correct.

4 Q Now, earlier today you testified about a company
5 named SteelSeries, and it was your testimony that you told
6 Juergen that you would start talking to others, SteelSeries,
7 that the deal didn't move forward; right?

8 A Correct.

9 Q And that's your way of putting pressure on him; is
10 that correct?

11 A That's correct.

12 Q But you did the exact opposite, didn't you? Let's
13 take a look at Exhibit 484.

14 THE COURT: 484. Yeah.

15 MR. APTON: 484 was admitted earlier.

16 MR. PEEK: Okay.

17 BY MR. APTON:

18 Q This one's dated August 3rd, 2013. And it indicates
19 that you were not shopping the company, but rather, you
20 agreed -- well, you agreed that you would not shop the company.
21 And in fact, you were continuing to slow licensing track
22 discussions with both Amazon and (indiscernible) building; is
23 that correct?

24 A I'm trying to see who this is an email to. Who is
25 this email -- this is from me to who?

1 Q I would assume Juergen Stark.

2 THE COURT: Can you back up so we can see the other
3 e-mails around it, so the witness can confirm that?

4 MR. APTON: Um-hum.

5 THE COURT: And it says from Juergen Stark on the top
6 e-mail, so does that assist you in answering the question, sir?

7 THE WITNESS: Yeah, this is consistent. I'm
8 representing to Juergen that I'm not shopping the company when,
9 in reality, I -- as demonstrated earlier, I very much was.

10 BY MR. APTON:

11 Q But you just said that you told him you were going to
12 shop with SteelSeries.

13 THE COURT RECORDER: Mr. Apton, I need you to get
14 back.

15 MR. APTON: Oh, sorry. Sorry.

16 THE COURT RECORDER: Thank you.

17 MR. APTON: I've watched too many performances from
18 Steve.

19 THE COURT: Well, he keeps his voice up.

20 THE WITNESS: So there's a difference between -- I
21 told -- so Juergen wanted a no-shop in the definitive -- in the
22 contract. I didn't accept it.

23 BY MR. APTON:

24 Q You said no-shop?

25 A He wanted a --

1 Q No-shop or go-shop? Sorry.

2 A He wanted a no-shop. He didn't want to give me a
3 go-shop.

4 Q He wanted no-shop?

5 A Yeah. Juergen wanted --

6 Q Right.

7 A -- no shopping of the company. I pushed back and
8 said that's not going to happen. We negotiated the fact that I
9 will be -- will be able to shop the company; okay? And as I
10 said previously, the strategy of -- with Juergen to keep him
11 moving along in the right direction is the tactics I took.

12 Q Uh-huh. And, in fact, with respect to Amazon, at
13 least, that was a very strong deal. Plaintiff's Exhibit 31,
14 the language was "interested in buying the company." That's
15 your language?

16 A That's correct. They, at early stages, represented
17 that as a possibility.

18 Q And in Exhibit 31, I believe that was an internal e-
19 mail, so it was true, Amazon was interested in buying the
20 company; yes?

21 A At early stages, they expressed that as a -- as a
22 possibility. As it evolved, they found competitive technology,
23 I think it was called Holisonic (phonetic), and convinced
24 themselves that our technology wasn't unique enough that they
25 wanted to run with us.

1 Q Yeah.

2 A So we ceased discussions with Amazon.

3 Q Okay. And --

4 A But I believe Amazon was included in the Houlihan
5 Lokey final 50 company reach out, where we were aggressively
6 shopping the company.

7 Q Yeah. Motorola, Exhibit 57 from yesterday --

8 A Okay.

9 Q -- they were also an interested buyer. And in
10 Motorola's own e-mail, they wanted to own your IP, which is
11 really all the company had at this point; correct?

12 A I have no recollection of Motorola ever wanting to
13 buy the company.

14 Q Well, they wanted to own your IP?

15 A Of course.

16 Q Yeah. Which is equivalent to buying the company
17 given that Parametric, all they had, really, was IP.

18 A They were offering us zero dollars for our company.
19 It was kind of, hey, we'll fund a joint development project
20 with you, but we're going to own the IP when we're done; right?
21 So that's a "give us the company for free" discussion.

22 Q You testified just earlier that Turtle Beach was
23 buying you for your IP, too?

24 A For 100 and -- yeah, north of \$100 million, yes.

25 Q Oh. So Motorola's offer was zero dollars?

1 A Motorola's offer was to do a joint development
2 project with us, but they -- yes, we'll get some technological
3 advancement, but they own the IP that comes out of that
4 co-development.

5 Q Well, you never got an offer from Motorola because
6 you sent them to Juergen Stark.

7 A I --

8 Q Isn't that right?

9 A -- never got an offer from Motorola because --
10 actually, I did get an offer from Motorola, which was, do a
11 joint development project with us, and we will own the IP, and
12 I said, no, thank you.

13 Q And when they came back during go-shop, you forwarded
14 them to Juergen Stark; correct?

15 A No. I think the sequence in getting to that
16 co-development project was through Juergen knowing their
17 contact.

18 Q Okay. And as Exhibit 57 shows, you forwarded them to
19 Juergen Stark, who spoke to them first?

20 MR. APTON: If we could zoom in on 57.

21 THE WITNESS: Let me see the whole context.

22 MR. PEEK: We did this yesterday, yeah.

23 MR. STIGI: Your Honor, we --

24 MR. APTON: We did this yesterday.

25 MR. STIGI: -- had testimony on all of this

1 yesterday. Are we doing it all again? Objection.

2 THE COURT: There is some follow-up that can occur.
3 So to the extent there has been differing testimony during the
4 examination by defendants and this witness, I will permit
5 limited inquiry.

6 THE WITNESS: Okay.

7 MR. APTON: So --

8 THE WITNESS: I don't recall the sequence, but
9 Juergen worked at Motorola. This guy reached out to us. I
10 said, Juergen, do you know this guy? Juergen was not involved
11 with any discussions with them relative to what a joint
12 development project could be, whatsoever. And once I
13 understood what it was they were interested in, I expressed
14 zero interest.

15 BY MR. APTON:

16 Q And now, moving on, you testified earlier about the
17 fairness of the deal, Houlihan Lokey, Craig-Hallum. You said
18 they all approved of it, but you know that wasn't true, because
19 you knew that VTB's projections were materially off by the time
20 of the fairness opinion; right?

21 A No.

22 Q Let's go to Exhibit 490, please. This was admitted
23 earlier today. And you indicate that you had concerns -- or
24 that they had concerns -- VTB had concerns about future
25 financial expectations, console shift effect, et cetera, et

1 cetera. This is August of 2013.

2 A Okay.

3 Q And we could -- you would agree that that's reflected
4 in the e-mail? Just whether those words appear in the e-mail.

5 A Let me read it, please. This is me again saying that
6 we should be presenting what we believe the actual numbers will
7 be, which are the higher numbers. This is me again saying,
8 don't take -- you know, Juergen's motivated to hedge. His
9 hedged numbers shouldn't go into the analysis. His most likely
10 numbers should be the basis for the analysis.

11 Q And Exhibit 82, this is your e-mail with Todd, John
12 Todd, where he's recognizing that EBITDA is down 8 to 10
13 million shortly after the fairness opinion. We did that
14 yesterday.

15 A Yeah.

16 Q Do you recall that?

17 A I recall it in the context, again, of Juergen wanting
18 to show hedged numbers. And I think, yesterday, we discussed
19 that 10 minutes later, Juergen brought the numbers back up, and
20 then 10 minutes later than that, he brought them back down
21 again. So he was waffling in terms of, am I presenting worst
22 case numbers, or I'm presenting most likely numbers.

23 Q But it was more serious than that, because Exhibit
24 374 --

25 MR. APTON: Which I don't know if is in evidence yet.

1 I would hope defendants would stipulate.

2 THE COURT: What is 374?

3 MR. APTON: 374 is an e-mail which includes Potashner
4 from Houlihan. It's also DX-873, which I think we stipulated
5 to this morning.

6 THE COURT: Is it the same as DX-873?

7 MR. APTON: I believe it may actually, Your Honor.

8 THE COURT: Then why don't we use DX-873.

9 MR. APTON: But -- yeah, yeah.

10 MR. HESS: 873?

11 MR. APTON: DX-873.

12 MR. HESS: Okay.

13 THE COURT: Can we use DX-873 since it's in evidence?

14 MR. HESS: It's not -- not in evidence.

15 THE COURT: Oh, 873 is not in evidence?

16 MR. APTON: It's not?

17 MR. HESS: No.

18 THE COURT: Did you stipulate to it?

19 MR. APTON: I sure will.

20 THE COURT: Any objection to admitting 873 of your
21 own exhibits?

22 No, Judge, we think it's really good when people want
23 to stipulate to our exhibits. Yeah, Steve's not buying that.

24 MR. HESS: I'm anxious to once I get
25 (indiscernible). 873?

1 MR. APTON: Do you guys need a copy?

2 MR. HESS: No, we've got it.

3 UNIDENTIFIED SPEAKER: They have a copy.

4 MR. STIGI: (Indiscernible).

5 MR. PEEK: Your Honor, we (indiscernible), just
6 trying to look (indiscernible) it.

7 MR. APTON: It's from Juergen. Potashner's a CC.
8 It's dated October 31st, 2013.

9 MR. PEEK: Was this one of those that you argue was
10 pure impeachment? Because I don't recall seeing it disclosed
11 previously.

12 MR. APTON: Are you going to -- Steve, can you
13 stipulate, please?

14 (Pause in the proceedings.)

15 MR. HESS: No objection.

16 MR. PEEK: No objection, Your Honor.

17 THE COURT: 873 will be admitted.

18 (Exhibit Number(s) 873 admitted.)

19 THE COURT: Brian, would you do us a favor and pull
20 it up, or somebody pull it up? Thank you.

21 MR. APTON: Is this defendants' version?

22 THE CLERK: Yes.

23 MR. APTON: Okay.

24 BY MR. APTON:

25 Q So, Mr. Potashner, going back to our point where I

1 was asking whether you knew that problems at VTB were more
2 serious than you were suggesting, and this e-mail reflects
3 Houlihan Lokey saying that Craig-Hallum was concerned about the
4 numbers in the fairness opinion. They wanted to disclaim the
5 numbers for 2013; isn't that true?

6 A Yeah. As we said before, Craig-Hallum expressed
7 questions in terms of whether they -- the numbers are the right
8 numbers, achievable numbers.

9 Q The problem is, if you go to page 2 and look at the
10 second paragraph from the top, this is Juergen's e-mail.

11 A Okay.

12 Q Juergen says, "The Xbox One move is worth about 20 to
13 25 million in revenue and 9 to 10 million EBITDA."

14 But do you know how much they missed in EBITDA in
15 2013?

16 A At this point in time, I assume he was telling me
17 accurately what he thought.

18 Q Well, but this --

19 A You know, what they achieved later is inconsequential
20 to this point in time.

21 Q I mean, this is October 31st.

22 A Right.

23 Q So there's only, let's see, November --

24 A Yeah.

25 Q -- December, two months left.

1 A Right. But he's representing it on this date, that
2 he believes that 9 to 10 million of EBIT is -- could be
3 impacted, and with that, he's still within the range that was
4 provided to the fairness opinion.

5 MR. APTON: Let's look at Exhibit 265, which I hope
6 defendants will consent to or stipulate to.

7 THE COURT: It's not admitted either.

8 MR. PEEK: Bear with us a moment, Your Honor.

9 THE COURT: It's okay. We have a half-hour until the
10 end of the day.

11 THE WITNESS: Go ahead.

12 BY MR. APTON:

13 Q Are you looking at Exhibit 265, Mr. Potashner?

14 A I believe I am.

15 Q While your counsel considers, without reading the
16 document, can I ask you some questions?

17 THE COURT: Hold on a second. Any objection? It
18 appears to be a Potashner/Weisbord e-mail.

19 MR. STIGI: No objection, Your Honor.

20 THE COURT: It'll be admitted.

21 (Exhibit Number(s) 265 admitted.)

22 THE COURT: Okay, let's go.

23 BY MR. APTON:

24 Q So, now, Mr. Potashner, this is November 8th, 2013.
25 I'm looking at the underlying e-mail.

1 A Right.

2 Q And it's from you to Mr. Stark. Do you see that?

3 A I do.

4 Q Uh-huh. And you go on to tell him that "Jim Barnes,
5 John Todd, Ken Potashner all believe you are embarking us on a
6 path harmful to the PAMT shareholder."

7 A Correct.

8 Q This is a week after the e-mail we were just talking
9 about; right?

10 A Correct.

11 Q Okay. The next line. "Our banker HL," Houlihan
12 Lokey, "believes the same." Right?

13 A Correct.

14 Q We've heard testimony Houlihan Lokey is apparently
15 very credible in the industry. Would you agree with that?

16 A Correct.

17 Q Next, "Lake Street will do the deal, but they say it
18 makes no sense."

19 Who is Lake Street?

20 A An investor group.

21 Q Hum. And, "Dave Mossberg my IR firm says it makes no
22 sense. So essentially," quote, "my entire team feels our
23 motivations are not aligned with," it says, "ours." I think
24 you mean yours; is that right?

25 A Yeah, so the core here --

1 Q But -- sorry, if I can just continue.

2 A Go ahead.

3 MR. HESS: He hasn't finished answering.

4 MR. PEEK: He hasn't finished answering.

5 THE WITNESS: Okay.

6 THE COURT: Mr. Potashner, did you have more to say?

7 THE WITNESS: I did. Thank you.

8 THE COURT: Okay.

9 THE WITNESS: Just so we're clear what we're talking
10 about, this was the concept of not providing guidance; right?

11 BY MR. APTON:

12 Q Okay.

13 A So, Juergen, if you want to get my investors on
14 board, if you want to help us raise money with Lake Street or
15 others, you got to give guidance.

16 Go ahead, sir.

17 Q So are you telling the truth in this e-mail, or are
18 you lying? Because it's to Juergen, so it's external.

19 MR. PEEK: Objection, argumentative, Your Honor.

20 THE COURT: Overruled. It's not your witness.

21 THE WITNESS: Lying about what?

22 BY MR. APTON:

23 Q Anything in here. You tell me what's true and what's
24 not.

25 A The truth is that not providing guidance is harmful

1 to our objectives.

2 Q Okay. And what about the paragraph second from the
3 bottom, "I have allowed you to play a major non-traditional
4 role in running the company."

5 Who were you referring to with respect to that?

6 A That was me, again, representing to Juergen that he's
7 in control, everything's good, I'm letting him make -- make
8 decisions, et cetera.

9 Q Like veto rights on licensing deals?

10 A He had no veto rights on --

11 Q No.

12 A -- any licensing deals. And he had no control of the
13 company, whatsoever.

14 Q Like asking you to slow-roll licensing discussions?

15 A As I mentioned, no licensing discussions were
16 slow-rolled, no press releases were delayed.

17 Q So then what are you referring to in this e-mail?

18 A I'm implying to him that he's -- hey, we're listening
19 to you, we're following your directives on where we got to go.
20 I'm massaging his ego.

21 Q Let's continue.

22 MR. APTON: Exhibit 170. I believe this was put into
23 evidence earlier today.

24 THE CLERK: No, it was not.

25 MR. APTON: Was it not?

1 THE CLERK: No, it's not admitted.

2 MR. APTON: Oh, it's not. Excuse me.

3 THE COURT: Any objection?

4 MR. HESS: This is not anywhere. Hold on. Not
5 disclosed.

6 MR. APTON: Will you stipulate to it?

7 MR. HESS: I've got to find it first.

8 THE COURT: They're looking.

9 MR. PEEK: We're looking.

10 THE COURT: You got to give them a minute.

11 MR. HESS: Finding it.

12 MR. APTON: What time is it, Judge?

13 THE COURT: It is now 4:18.

14 MR. PEEK: Your Honor, I don't believe it was one of
15 the disclosed documents. I'm questioning whether this is true
16 impeachment or not.

17 THE COURT: All right.

18 MR. PEEK: So we're trying to -- trying to study it
19 for a moment in order to make that --

20 THE COURT: Well, I'm asking you to tell me if you
21 have an objection, and as soon as --

22 MR. PEEK: I do, Your Honor.

23 THE COURT: -- you tell me, then I will deal with the
24 other parts of the issues.

25 MR. PEEK: Yeah. Not disclosed and not really true

1 impeachment.

2 THE COURT: So, your response? Was it disclosed?

3 MR. APTON: My response is that it was perhaps not
4 disclosed, but it is true impeachment because it relates to --
5 can I say?

6 THE COURT: Yes.

7 MR. APTON: Relates directly to what Mr. Potashner
8 believed about VTB's financial condition in the days right
9 before the proxy statement, December 1st, 2013.

10 THE COURT: Okay.

11 MR. PEEK: No. This is dated 1/10/2014.

12 MR. APTON: Exhibit 170?

13 MR. STIGI: No, you're looking at 168.

14 MR. PEEK: Oh, 168? I'm sorry.

15 MR. STIGI: Yeah. He's just digging it out.

16 MR. APTON: Can I do another document in the
17 meantime?

18 THE COURT: Hold on a second.

19 MR. PEEK: I'm trying to understand, what was his
20 argument?

21 THE COURT: He said it's impeachment because it goes
22 to what Mr. Potashner really thought about the Turtle Beach
23 financials right before the proxy statement.

24 Did I remember correctly and say it correctly?

25 MR. APTON: That was very correct, Your Honor.

1 THE COURT: Very good. Okay. Good.

2 MR. PEEK: I disagree with him, Your Honor, but
3 it's --

4 THE COURT: I will permit it.

5 (Exhibit Number(s) 168 admitted.)

6 MR. APTON: Thank you, thank you.

7 MR. PEEK: Yeah, but --

8 THE COURT: Because it is an important issue given
9 what I have to determine under Footnote 15.

10 BY MR. APTON:

11 Q Exhibit 170, Mr. Potashner.

12 MR. PEEK: Remember, it's a conclusive presumption,
13 Your Honor, on Footnote 15.

14 BY MR. APTON:

15 Q Does the e-mail -- just yes or no. Does the e-mail
16 say, and these are your words, quote, "Numbers keep getting
17 softer, covenant exposures."

18 A That's what it says.

19 Q Uh-huh. And then, underneath, it also says,
20 "Strategic rationale." And by that you mean there's no more
21 financial rationale; would you agree?

22 A No. I'm saying that this deal still makes tremendous
23 sense because there's strong strategic rationale. The covenant
24 exposures were represented to me as, first, logistics, and then
25 potential fees, but nothing that was material to getting the

1 deal done. And the numbers were in the low end of the range,
2 but I believe they still were within the range.

3 Q And did there come a point in time that you learned
4 the issues with PNC were not logistic, or was that until after
5 the merger?

6 A Yeah. They moved from --

7 MR. STIGI: Objection.

8 THE COURT: Overruled.

9 THE WITNESS: They moved from logistic, as I would
10 define as, hey, we can't get -- this guy's out of town, we need
11 his signature, things like that, mechanical, to the consequence
12 of this violation is there could be a fee --

13 BY MR. APTON:

14 Q And when did you learn that?

15 A -- associated with it.

16 Q Sorry.

17 A What?

18 Q When did you learn that?

19 A I don't recall the date that I learned that. But it
20 never became more than, hey, there's a potential fee with this
21 -- with this covenant violation.

22 Q If we could look at Exhibit 168, please.

23 A Okay.

24 THE COURT: That was admitted.

25 MR. PEEK: Yes.

1 THE COURT: Okay.

2 MR. APTON: Just one moment.

3 BY MR. APTON:

4 Q In this e-mail, you're learning that it's actually a
5 lot more than logistical. PNC is forcing the dissolution of
6 HHI; correct?

7 A Turtle Beach had always wanted the dissolution of
8 HHI, so this is nothing new.

9 Q No. They wanted to keep HHI as part of Parametric
10 and get rid of any outside ownership, i.e., you and John Todd,
11 but this is the complete dissolution of HHI.

12 MR. PEEK: Objection, Your Honor. That --

13 BY MR. APTON:

14 Q Correct?

15 THE COURT: Overruled.

16 MR. PEEK: That completely mischaracterizes this.

17 THE COURT: Overruled. The witness has an
18 opportunity to explain.

19 THE WITNESS: I have no knowledge of a bank -- what a
20 bank-forced dissolution means, given that Turtle Beach had
21 already expressed it's going to -- wanted all the equity and
22 the structure to go away for HHI.

23 MR. APTON: And one more e-mail, Exhibit 237, please,
24 which is not in evidence, but I hope defendants will stipulate.

25 MR. PEEK: Perhaps if he'd lay a foundation as we go

1 through this, it'd be a lot easier to stipulate.

2 THE COURT: Well, hold on, Mr. Peek.

3 MR. PEEK: As opposed to just --

4 MR. HESS: 237. Okay.

5 THE COURT: Can we look at it?

6 MR. STIGI: We'll to dig it out.

7 MR. PEEK: Again, it's another one of those not --

8 THE COURT: Mr. Peek, thank you. It appears to be an
9 e-mail from the witness to Mr. Weisbord.

10 THE WITNESS: Do I have this one? What number?

11 MR. APTON: Yes. It's 237 in your binder, the skinny
12 binder.

13 THE WITNESS: Got it.

14 (Pause in the proceedings.)

15 THE WITNESS: Go ahead.

16 THE COURT: Hold on a second, sir.

17 THE WITNESS: Oh, I'm sorry. I'm waiting for --

18 THE COURT: We're waiting.

19 MR. PEEK: I don't see the pure impeachment
20 communications with --

21 THE COURT: It will be admitted.

22 (Exhibit Number(s) 237 admitted.)

23 MR. PEEK: -- Josh Weisbord, but certainly, if he --

24 THE COURT: Keep going.

25 MR. PEEK: I disagree, Your Honor, but it's --

1 THE COURT: It's okay, Mr. Peek.

2 MR. PEEK: -- Josh Weisbord.

3 BY MR. APTON:

4 Q So in this top level e-mail, and you could read below
5 if you want to get some context, but you explicitly admit that
6 Juergen -- I'll paraphrase -- screwed over the analyst to,
7 quote, "Try to get a better exchange rate, he created
8 unrealistic numbers, and the analysts believe him."

9 He was referring to the numbers for 2014, wasn't he?

10 MR. PEEK: Objection, Your Honor.

11 THE COURT: Overruled.

12 MR. STIGI: Yeah, who's the "he"?

13 THE COURT: That would be Mr. Potashner.

14 MR. APTON: Mr. Stark. Excuse me.

15 THE COURT: Mr. Stark, sorry.

16 MR. STIGI: That -- I -- well, we all -- listen --

17 MR. PEEK: That's -- that's why we all missed it.

18 THE COURT: So we don't want him to speculate what
19 somebody else is thinking, but if he has a basis, you can have
20 him tell me.

21 MR. PEEK: After he's read the entire e-mail.

22 THE WITNESS: Yeah. I've read it now. So --

23 BY MR. APTON:

24 Q Let me rephrase my question. Mr. Potashner, who was
25 it that, in your words, created unrealistic numbers?

1 A Yeah. So this is November 2014, so -- so this is
2 likely referencing 2014 performance, probably, you know, given
3 the timing of this, I guess it probably would have been Q2 or
4 Q3 announcements for 2014, and it would imply that the -- that
5 the reported numbers were below the analyst's expectations.
6 And that that's not a good thing to do, for a CEO to deliver
7 numbers below the analyst's expectations.

8 Q And you described the purported numbers as, quote,
9 "unrealistic," correct?

10 A If I could (indiscernible) it. I did.

11 Q Now, earlier, you mentioned that you were quite
12 communicative with your board members. Do you remember that?

13 A That's correct.

14 Q But you didn't control the board. That's what you
15 testified?

16 A That's correct.

17 Q But you did actively seek to remove them if they
18 disagreed with you; yes?

19 A I didn't do anything to actively remove anybody other
20 than threaten that, I think, in a moment of -- or a couple
21 moments of heat.

22 Q I'm sorry, did you say threaten?

23 A I -- you said that I actively moved to remove board
24 members, and I'm saying I did no such thing.

25 Q And then you used the word "threaten," correct?

1 A I said you could -- you can --

2 THE COURT: Threatened in a moment of pique,
3 p-i-q-u-e, not P-e-e-k.

4 MR. PEEK: Thank you for that, Your Honor.

5 THE WITNESS: Yes. Thank you.

6 THE COURT: Just checking.

7 MR. APTON: If we could go to Exhibit 260, please.

8 THE WITNESS: Okay.

9 THE CLERK: It's not admitted.

10 THE COURT: Any objection to 260?

11 THE WITNESS: Okay.

12 MR. PEEK: Well, this is all pre-merger, pre-
13 everything, sometime in 2013 -- 20 -- March of 2013.

14 MR. APTON: Your Honor, it's March of '13.

15 THE COURT: Yeah.

16 MR. PEEK: That's what I said, 2013.

17 THE COURT: I'm just waiting --

18 MR. PEEK: I think I said that.

19 THE COURT: Wait, guys, stop arguing.

20 THE WITNESS: Go ahead.

21 THE COURT: Is there a reason you're objecting, Mr.
22 Peek?

23 MR. PEEK: No, Your Honor.

24 THE COURT: Okay. It'll be admitted.

25 (Exhibit Number(s) 260 admitted.)

1 MR. APTON: Thank you.

2 / / /

3 BY MR. APTON:

4 Q Mr. Potashner, you're asking Mr. Norris for his
5 support in removing Bob Kaplan from the board; correct? Yes or
6 no?

7 A I'm not asking -- I'm sorry, asking who?

8 Q Mr. Norris.

9 A Okay. I'm floating the concept of, gee, should we be
10 upgrading the board and identifying Bob as probably somebody
11 that should be retired.

12 Q And Exhibit 478, which was admitted earlier today, in
13 that e-mail -- if you could turn to it.

14 A Yeah.

15 Q It's in your skinny binder --

16 A Yep.

17 Q -- on page 2. I'm sorry, page 3. This is where you
18 tell Mr. Kaplan that, "John Todd almost quit after that meeting
19 in that you were effectively accusing he and I of cheating the
20 company."

21 A Correct.

22 Q Do you see those words?

23 A Yes.

24 Q And then you ask him to consider moving into an
25 advisory position to the company and stepping down from the

1 board; correct?

2 A Correct.

3 MR. APTON: And if we could go to Exhibit 476, also
4 in evidence from earlier today.

5 BY MR. APTON:

6 Q In the top e-mail, basically -- well, strike that.

7 In the top e-mail, you say that "The independent
8 directors with two sets of lawyers are reneging on the
9 agreements we made at previous board meetings, stripping HHI of
10 key IP."

11 A Correct.

12 Q And then you say, if this continues, you won't,
13 quote, "advance the Turtle Beach discussions."

14 Do you see that?

15 A (Indiscernible).

16 Q I'm sorry, did you say yes, sir?

17 A No. I'm saying that we need to spend the time -- we
18 need to spend the time to resolve this because we can't advance
19 the Turtle Beach discussions with this as an open loop with a
20 variable definition of what -- what the license is. I'm not
21 saying I'm going to stop the negotiations.

22 Q And let's see. Is that can't or won't?

23 A It says that the action of polling lawyers to assess
24 the license is a delay to getting the deal done, that I can't
25 go to Turtle Beach and define what HHI is, that its license is

1 indeterminate.

2 Q And then down below, you actually say, "If the BOD,"
3 board of directors, "costs us this deal, I will look for them
4 all to resign, or I will resign."

5 A Correct.

6 Q So are you basically telling them that if they don't
7 leave the HHI IP alone, you're going to terminate Turtle Beach
8 discussions?

9 A Not at all. I'm saying that if the board behavior
10 blows up the Turtle Beach deal, that they should resign,
11 because they didn't act in the best interest of the
12 shareholders, or I will consider resigning myself.

13 Q And you would agree that acting in the best interests
14 of the shareholders is important; right?

15 A Say it again.

16 Q You would agree that acting in the best interests of
17 the shareholders is important; correct?

18 A That's what the board is paid to do.

19 Q That's what you're paid -- you were paid to do;
20 correct?

21 A Correct.

22 MR. APTON: Your Honor, I would refer to Exhibits
23 480, 483, and 485, which have been put into evidence earlier.

24 THE COURT: I admitted those earlier.

25 BY MR. APTON:

1 Q Mr. Potashner, can you confirm that 480, 483, and 485
2 are communications from you concerning HHI during a period when
3 the board had told you not to communicate about HHI?

4 A I was told not to -- not to negotiate deal points
5 relative to HHI, and I complied with that -- with that order.
6 I continued to have HHI operational discussions, and the board
7 was fully aware that I was doing so.

8 Q But earlier today, you used the words "clearly and
9 crisply" when describing exactly what you were told in terms of
10 HHI, which was no discussions at all.

11 A No negotiations --

12 Q Do you recall that?

13 A No negotiations with Juergen relative to HHI. That's
14 correct.

15 Q No discussions with anyone about HHI?

16 A That's incorrect. That's incorrect.

17 Q And then I'd like to talk to you about the proxy
18 statement, which was Exhibit 244. Mr. Stigi had asked you
19 about console transition and risk warnings in the proxy
20 statement. Do you recall that?

21 A Correct.

22 Q And when did those console transition problems come
23 into effect? Was that in the third quarter of 2016 -- '14?

24 A I don't recall.

25 Q '13, excuse me.

1 A I don't recall the dates.

2 Q Well, Mr. Hess asked you earlier. He said fall of
3 '13, and you said yes, so --

4 A Okay.

5 Q -- does that refresh your recollection?

6 A If I said yes, that would be accurate.

7 Q Okay. But the projections in the proxy on page 244,
8 8-83, those were developed well in advance of the fall of 2013;
9 were they not?

10 A Yeah. I mean, everybody had an awareness that the
11 transition was going to occur. They could have been -- that
12 awareness would have been a year ahead of -- of the
13 transaction.

14 Q So --

15 A We all knew that there was going to be a console
16 transaction -- transition.

17 Q So you would agree that the proxy statement -- the
18 projections in the proxy statement could not possibly have
19 accounted for the console transition issues that had begun just
20 a few months earlier; correct?

21 A No, I'm -- no, the proxy would have been generated
22 with the best understanding at that point in time when the
23 transition was going to occur and what the financial
24 implications would be.

25 Q But that's not true because those projections there

1 were in the fairness opinion, Exhibit 84, page 26.

2 MR. STIGI: Objection.

3 MR. HESS: Objection.

4 MR. STIGI: Argumentative.

5 THE COURT: Overruled. Would you like --

6 BY MR. APTON:

7 Q Would you not --

8 THE COURT: -- to look at the -- wait. Sir, would
9 you like to look at the fairness opinions?

10 MR. HESS: What's the question?

11 THE COURT: Because I think it's in your -- in your
12 book.

13 THE WITNESS: Okay.

14 THE COURT: 84.

15 THE WITNESS: So I'm still -- so you're implying
16 there's a date difference? Or I'm not sure what it is you want
17 me to look at.

18 BY MR. APTON:

19 Q I'm implying that these projections were materially
20 inaccurate and that you knew about it, at the time the proxy
21 statement was published.

22 A Okay.

23 Q And that's based on the fact that the fairness
24 opinion incorporated these projections, and then those
25 projections remained the same all the way through the end of

1 the year.

2 A Okay. So any projections that were incorporated into
3 any documents relative to Turtle Beach numbers were generated
4 by Turtle Beach, and I assumed any numbers given to me by
5 Turtle Beach were accurate.

6 Q So if these numbers were wrong, it's Turtle Beach's
7 fault?

8 A I'm -- I can't comment on whether they're right or
9 wrong. I can comment that we relayed at any point in time
10 numbers that were represented to us by Turtle Beach.

11 Q But as of October 31st, 2013, you knew that these
12 numbers were off because you received e-mails saying that the
13 Craig-Hallum opinion was exposed. For example, Exhibit 171.

14 A Okay.

15 Q We can put that up.

16 A Okay. So they were -- I'm sorry, go ahead.

17 Q Exhibit 171.

18 A Okay.

19 Q Does Exhibit 171 show that you were aware the
20 fairness opinion was at risk?

21 A So the -- my recollection is that there were ranges
22 of numbers given, and there was movement up and down the range,
23 but I don't know of any point in time that numbers fell out of
24 the range that would have prevented the fairness opinion from
25 being registered. I do know there was -- as we looked earlier,

1 there was concerns by Craig-Hallum in terms of, gee, are they
2 still in the range or not, and energy by Turtle Beach
3 represented that they still were in the range, and therefore,
4 no need to put further energy into the fairness opinion, it was
5 still valid.

6 Q And one last point. Mr. Stigi asked you -- or he
7 referred you to an e-mail in which you were asking if you get
8 to vote in the merger. That was DX-925.

9 A Correct.

10 Q The reason you didn't get to vote in the merger was
11 because you had already signed your shares to Ken Fox and
12 Stripes Group; correct?

13 A I had no shares.

14 Q Well, we looked --

15 A I signed a -- there was a request, which I've seen
16 several times before, so I don't think it's non-traditional,
17 that requires participants to commit how they're going to vote
18 on a certain issue. So I don't -- I've seen that several times
19 before. I think, in my case, it didn't matter because I don't
20 believe I had any shares. I had options.

21 Q Now, if we could go to Exhibit 477. This was put
22 into evidence earlier. And I just want to confirm, Mr.
23 Potashner, that based on the content of this e-mail when you
24 see it, it shows that you valued HHI, as of April 10, 2013, as
25 being one billion, with a B, dollars.

1 A What's your question?

2 Q Is that correct?

3 A Do I -- I valued HHI as being \$1 million with an M,
4 as demonstrated by the expert analyst. I did the math, and I
5 had aspirations of it being worth \$1 billion many years
6 downstream if a whole bunch of very good things happened.

7 Q Well, the third party who did that valuation, they
8 did it prior to a license being put in place; correct?

9 A No. There is no HHI without the license.

10 Q Okay.

11 MR. APTON: Your Honor, one minute.

12 THE COURT: Uh-huh.

13 MR. APTON: Your Honor, I have no further questions.

14 THE COURT: Thank you. Do you have any additional
15 questions in redirect or recross?

16 MR. STIGI: Can we have 345 brought up?

17 MR. APTON: Hold on a second, John.

18 THE COURT: There it is.

19 MR. STIGI: Thank you.

20 THE COURT: Thank you.

21 MR. STIGI: Will you scroll to the -- the -- there we
22 go.

23 THE COURT: The parachute payment.

24 MR. STIGI: Yeah.

25 RECROSS-EXAMINATION

1 BY MR. STIGI:

2 Q Do you see, on the top line, it says, "Ken Potashner
3 280G Calculations"?

4 A Yes.

5 Q Could you read just the first sentence after that?

6 A "The following calculations are intended for
7 illustrative purposes only."

8 MR. STIGI: Thank you. No questions.

9 THE COURT: Anybody else have follow-ups?

10 MR. HESS: I have no further questions, Your Honor.

11 THE COURT: Sweet. Any more questions?

12 MR. APTON: No, Your Honor. Thank you.

13 THE COURT: Thank you, sir. If I were you, I would
14 leave before they change their mind.

15 THE WITNESS: I appreciate it. Thank you.

16 THE COURT: Have a very nice day.

17 THE WITNESS: You, too.

18 THE COURT: So the defendants today used 314 minutes,
19 and the plaintiffs used 55. That totals 369 minutes for the
20 day.

21 What is our plan for tomorrow? Thank you, Ramsey.
22 Plan for tomorrow, Mr. Ogilvie?

23 MR. OGILVIE: Oh. Yes. Mr. Kaplan, Putterman, and
24 Norris, to the extent that we can finish them in one day.

25 THE COURT: Okay. So we're starting with the motion

1 at 9:00 o'clock, related to the Motion for Good Faith
2 Settlement, because apparently my approval is a condition of
3 the settlement being finished.

4 And then I have not received any oppositions. If
5 there are any, if someone could make sure you e-mail it to Dan
6 so I can read it before I take the bench. And then we will
7 immediately start with the witnesses who are appearing
8 remotely, and then we will go 'til about 4:45, depending on how
9 things go.

10 MR. PEEK: Now, tomorrow, that's not the day you have
11 that meeting? That's next Friday?

12 THE COURT: That's next Friday.

13 MR. PEEK: Do you have a running total, Your Honor,
14 for all of us, so we -- or we could have it either tonight or
15 tomorrow? If you don't, that's fine. Tomorrow, would be nice.

16 THE COURT: You want me to do math right now?

17 MR. PEEK: Yes, please.

18 THE COURT: You want to know your side or their side?

19 MR. PEEK: I want to know both sides, Your Honor.

20 THE COURT: Okay.

21 MR. OGILVIE: Thirteen-and-a-half to nine.

22 MR. PEEK: They've used thirteen-and-a-half then,
23 Your Honor, and we've used nine?

24 THE COURT: The plaintiffs have used a total of 539
25 minutes at this point.

1 MR. PEEK: That's nine.

2 THE COURT: George must be keeping track.

3 MR. PEEK: George must be keeping track.

4 THE COURT: 826 minutes for the defendants. Was I
5 close, Mr. Ogilvie?

6 MR. PEEK: That's -- I think, yeah. Yeah.

7 THE COURT: Can you tell --

8 MR. PEEK: Thank you, George.

9 THE COURT: -- Mr. Ogilvie's had to keep track
10 before?

11 MR. HESS: Your Honor, just in terms of clarification
12 for the notice. The notice for tomorrow included the
13 assignors, so I just wanted to know if the assignors are --

14 MR. PEEK: Still on.

15 MR. HESS: -- still on or not on for tomorrow.

16 MR. APTON: Your Honor, what we've been doing is,
17 every day that we haven't finished a witness, I've been serving
18 a revised disclosure list, and so we'll do the same thing, and
19 we'll probably push them -- I guess tomorrow's Friday, so we'll
20 push them to Monday.

21 THE COURT: So are you taking the three assignor --
22 or, no, tomorrow, you have board members.

23 MR. APTON: Right. So we'd probably push the --
24 there's four assignors that we need to work with, and then
25 we'll probably push them to Monday, unless, of course,

1 defendants wanted to stipulate to exhibits.

2 THE COURT: Oh, you're so nice.

3 MR. HESS: Not that one.

4 THE COURT: So 9:00 o'clock tomorrow, 9:00 o'clock
5 Monday.

6 MR. STIGI: Thank you, Your Honor.

7 MR. PEEK: Thank you.

8 THE COURT: Be well.

9 MR. HESS: Thank you, (indiscernible).

10 MR. STIGI: You, too.

11 MR. HESS: Thank you.

12 (Proceedings recessed for the evening at 4:43 p.m.)

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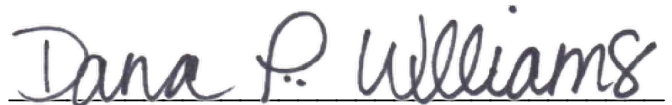
CERTIFICATION

I DO HEREBY CERTIFY THAT I HAVE TRULY AND CORRECTLY TRANSCRIBED
THE AUDIO/VIDEO PROCEEDINGS IN THE ABOVE-ENTITLED CASE TO THE
BEST OF MY ABILITY.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL
SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink, reading "Dana L. Williams", is written over a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

08/25/2021

DATE

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accelerate [1] 120/13 accelerated [1] 116/23 accept [2] 14/20 125/22 acceptable [1] 5/3 access [1] 85/22 accomplishments [1] 105/2 account [1] 116/23 accountable [2] 88/2 90/12 accounted [1] 151/19 accurate [10] 11/13 36/14 43/1 73/13 74/17 74/25 83/6 106/4 151/6 153/5 accurately [1] 133/17 accusations [1] 55/7 accuse [1] 122/7 accusing [2] 29/2 147/19 achievable [1] 133/8 achieve [2] 11/2 46/7 achieved [1] 133/19	action [1] 148/23 actions [2] 1/8 87/7 active [1] 57/15 actively [3] 145/17 145/19 145/23 actual [3] 89/9 116/19 130/6 actually [11] 26/22 37/3 56/23 59/23 77/7 104/1 119/9 128/10 131/7 142/4 149/2 ADAM [1] 1/16 add [3] 73/23 86/14 117/7 added [1] 62/17 addition [2] 31/22 70/23 additional [7] 8/15 9/15 10/24 25/5 52/3 105/13 155/14 adjectives [3] 27/22 38/16 38/20 Administer [1] 66/17 admit [4] 40/21 116/3 122/12 144/5 admitted [30] 2/11 16/19 39/20 40/11 44/18 44/19 108/22 109/9 109/10 116/7 116/8 123/7 123/8 124/15 129/22 132/17 132/18 134/7 134/20 134/21 138/1 140/5 141/24 143/21 143/22 146/9 146/24 146/25 147/12 149/24 admitting [1] 131/20 advance [4] 93/22 148/13 148/18 151/8 advanced [1] 85/17 advancement [1] 128/3 advancing [3] 11/1 107/25 108/6 advantage [1] 47/21 adverse [1] 96/7 adversely [3] 31/15 31/16 32/1 advice [2] 54/13 55/24 advisors [1] 29/23 advisory [1] 147/25 affect [2] 31/15 31/16 affiliated [2] 48/8 120/11 AFFIRM [1] 160/9 AFFIRMATION [1] 160/7 afford [1] 74/12 after [16] 15/2 20/11 22/16 54/22 62/4 62/21	63/2 85/9 95/22 122/24 130/13 135/8 141/4 144/21 147/18 156/5 afternoon [4] 3/13 3/13 67/25 68/1 again [38] 5/12 18/2 18/16 19/15 20/23 23/16 25/2 26/6 26/19 27/13 27/16 29/16 38/8 38/14 40/20 44/22 51/19 53/21 57/5 58/4 65/6 78/23 86/21 87/1 88/11 94/2 98/14 103/12 104/1 111/24 129/1 130/5 130/7 130/17 130/21 137/6 143/7 149/15 against [4] 55/8 65/2 65/11 100/21 aggregate [1] 115/16 aggressive [1] 22/11 aggressively [1] 127/5 ago [5] 54/15 54/20 72/24 90/3 90/15 agree [23] 75/5 75/8 79/15 80/6 80/15 85/1 85/2 88/8 88/9 104/15 106/3 110/2 110/22 111/2 111/13 118/15 120/18 130/3 135/15 140/21 149/13 149/16 151/17 agreed [4] 16/3 60/22 124/20 124/20 agreeing [1] 113/16 agreement [9] 14/17 14/19 14/22 14/25 22/16 49/13 50/7 103/8 115/12 agreements [2] 117/5 148/9 ahead [14] 21/8 25/13 86/18 106/20 107/4 108/4 118/24 134/11 136/2 136/16 143/15 146/20 151/12 153/16 Aid [2] 91/1 91/1 ALEJANDRO [1] 1/19 aligned [1] 135/23 alignment [1] 7/14 all [96] 1/8 5/22 6/21 7/22 12/24 14/5 16/6 16/22 17/16 17/25 20/20 20/22 21/7 21/14 21/15 23/16 25/1 25/15 26/19 27/13 29/5 29/10 29/19 34/8 34/9 34/17 35/2 36/4 36/8 38/4 39/16 40/10 40/25 42/3 42/7 46/23 49/10 49/22 50/15 52/15 52/17 53/13 53/18 55/16 56/22 59/14 59/14 60/13 60/16 61/9 61/11 63/14 64/4 66/19 67/18 72/10 72/23 75/10 86/19 91/4 91/12 91/25 92/9 92/10 93/16 96/1 98/1 98/17 101/20	103/21 104/7 104/10 105/2 105/3 105/23 106/19 110/19 113/4 115/6 127/11 127/17 128/25 129/1 129/18 135/5 138/17 142/21 144/16 144/17 146/12 149/4 149/9 150/10 151/15 152/25 157/14 alleged [1] 78/6 allow [1] 14/2 allowed [1] 137/3 allowing [1] 5/18 almost [5] 10/15 25/1 35/21 118/12 147/18 alone [1] 149/7 along [3] 26/20 88/11 126/11 already [6] 10/14 16/19 30/7 113/10 142/21 154/11 also [31] 5/9 5/19 8/17 14/18 24/3 28/2 36/25 37/16 43/9 51/5 51/20 52/2 55/8 56/20 68/19 70/24 77/7 77/7 79/20 84/10 84/19 85/18 86/14 96/12 100/17 112/9 123/17 127/9 131/4 140/19 148/3 alter [1] 103/20 alternative [1] 43/4 alternatively [1] 11/15 alternatives [7] 43/9 43/10 43/11 43/20 43/22 43/23 43/24 although [2] 30/7 55/17 always [8] 9/3 9/4 9/20 28/5 28/7 28/9 115/10 142/7 am [17] 17/9 17/12 28/3 29/2 29/9 42/9 42/10 54/10 67/11 67/21 81/12 81/23 83/20 105/17 110/18 130/21 134/14 amazing [1] 104/10 Amazon [5] 124/22 126/12 126/19 127/2 127/4 amend [1] 94/16 amendment [1] 60/25 amendments [1] 60/22 among [2] 44/11 78/20 amount [1] 58/19 analysis [11] 17/8 17/18 18/13 18/23 20/4 32/18 79/16 115/22 116/19 130/9 130/10 analyst [2] 144/6 155/4 analyst's [2] 145/5 145/7 analysts [2] 38/9 144/8 analyzing [1] 18/25 Andy [4] 62/15 62/18 86/15 86/17 announced [3] 85/9 90/2 90/14 AA 2578
9 90 [1] 10/15 90s [3] 9/9 10/9 10/21 921 [1] 88/22	90 [1] 10/15 90s [3] 9/9 10/9 10/21 921 [1] 88/22	90 [1] 10/15 90s [3] 9/9 10/9 10/21 921 [1] 88/22	90 [1] 10/15 90s [3] 9/9 10/9 10/21 921 [1] 88/22	90 [1] 10/15 90s [3] 9/9 10/9 10/21 921 [1] 88/22

<p>A</p> <p>announcement [7] 22/17 25/16 34/11 81/4 81/7 81/8 81/20</p> <p>announcements [6] 110/19 111/11 111/15 111/17 112/3 145/4</p> <p>announces [1] 33/18</p> <p>announcing [1] 32/3</p> <p>anonymous [1] 114/18</p> <p>another [15] 28/3 28/25 29/14 30/4 31/21 46/13 54/4 62/17 65/14 66/13 111/10 113/15 117/13 139/16 143/7</p> <p>answer [17] 11/15 11/16 12/12 12/15 12/16 12/17 82/14 102/9 118/17 118/19 118/21 118/23 119/3 120/22 121/2 121/2 121/3</p> <p>answering [4] 120/24 125/6 136/3 136/4</p> <p>answers [1] 65/6</p> <p>anticipated [2] 30/18 34/4</p> <p>anxious [1] 131/24</p> <p>any [71] 7/22 8/7 8/8 14/10 15/4 15/11 16/6 18/4 18/7 18/10 18/10 18/13 21/22 23/20 23/25 24/16 24/18 24/21 25/3 33/20 34/20 39/5 43/2 43/4 43/20 44/16 45/19 49/19 49/22 50/9 50/20 57/1 59/14 61/2 64/19 65/7 65/11 66/8 77/23 91/10 91/12 91/15 103/4 103/7 103/16 103/19 106/1 113/5 114/24 116/4 117/11 117/25 123/11 129/11 131/20 134/17 137/12 138/3 142/10 146/10 153/2 153/3 153/4 153/9 153/23 154/20 155/14 156/11 157/4 157/5 160/10</p> <p>anybody [4] 22/6 61/5 145/19 156/9</p> <p>anymore [1] 122/24</p> <p>anyone [10] 17/19 49/2 52/16 66/22 66/24 67/12 92/10 102/5 104/11 150/15</p> <p>anything [18] 15/5 15/7 15/9 15/11 20/6 37/22 45/8 50/15 60/10 60/18 67/5 103/11 103/19 114/9 117/12 122/8 136/23 145/19</p> <p>Anyway [1] 12/18</p> <p>anywhere [2] 92/18 138/4</p> <p>apart [1] 70/8</p> <p>Apologies [2] 3/6</p>	<p>91/19</p> <p>apologize [2] 81/16 111/16</p> <p>apparent [1] 36/12</p> <p>apparently [3] 109/5 135/14 157/2</p> <p>appear [2] 46/5 130/4</p> <p>APPEARANCES [1] 1/14</p> <p>appeared [1] 8/4</p> <p>appearing [1] 157/7</p> <p>appears [5] 16/15 60/3 106/7 134/18 143/8</p> <p>applicable [1] 5/3</p> <p>application [1] 72/18</p> <p>applying [1] 112/5</p> <p>appointed [1] 62/13</p> <p>appreciate [2] 119/1 156/15</p> <p>approach [2] 88/20 112/20</p> <p>approached [1] 55/15</p> <p>approaches [1] 88/16</p> <p>approval [1] 157/2</p> <p>approve [1] 21/16</p> <p>approved [3] 7/12 22/9 129/18</p> <p>approximately [1] 61/19</p> <p>April [2] 116/22 154/24</p> <p>April 3rd [1] 116/22</p> <p>APTON [12] 1/16 2/7 14/11 68/6 68/19 92/25 93/4 101/5 103/12 105/8 122/7 125/13</p> <p>are [81] 3/3 3/21 4/18 5/14 7/13 8/14 9/7 11/3 11/15 12/1 17/7 17/10 19/7 26/5 27/23 27/23 28/20 32/7 33/6 36/21 36/22 37/17 38/6 38/9 42/5 42/16 42/19 43/1 47/7 47/7 48/12 51/16 51/18 51/20 54/8 54/11 62/24 67/10 67/18 67/20 78/8 78/24 79/7 82/23 85/23 86/20 89/3 92/11 98/9 99/20 99/23 100/20 107/22 108/2 111/4 112/15 112/15 115/7 115/14 116/14 119/22 129/1 130/7 132/12 133/7 134/13 135/5 135/23 136/17 136/17 137/17 140/16 148/8 149/6 150/2 154/1 156/6 157/5 157/7 158/13 158/21</p> <p>area [2] 21/13 21/13</p> <p>aren't [1] 73/2</p> <p>argue [1] 132/9</p> <p>arguing [2] 38/14 146/19</p> <p>argument [1] 139/20</p> <p>argumentative [2] 136/19 152/4</p> <p>around [9] 14/2 40/10 50/21 64/15 75/24 78/1 78/7 98/7 125/3</p>	<p>arrangement [1] 45/11</p> <p>articulate [1] 38/24</p> <p>articulated [1] 14/2</p> <p>as [122] 3/3 3/3 3/9 3/10 6/23 7/18 7/23 8/4 8/4 8/16 9/3 9/18 10/12 10/22 17/23 18/24 19/15 19/16 20/7 20/23 22/12 23/6 25/11 25/18 27/11 27/11 28/13 29/6 29/7 32/3 34/1 34/16 35/3 35/4 35/24 36/9 37/21 37/25 42/16 43/4 43/6 43/16 45/19 47/1 47/4 52/22 53/20 55/23 55/23 57/8 57/14 57/14 58/16 59/9 59/16 60/8 62/16 63/9 63/12 65/7 70/15 70/20 71/24 72/19 72/19 75/4 76/7 79/4 80/6 83/15 83/19 84/11 85/18 87/14 87/17 88/20 90/20 95/1 95/9 95/19 97/2 98/3 98/15 101/5 101/6 103/13 105/4 105/8 105/8 114/5 115/17 119/8 120/13 121/5 123/10 125/9 126/9 126/17 126/21 126/21 126/22 128/18 131/6 133/6 137/15 138/21 138/21 140/24 141/9 141/10 142/9 142/25 143/3 145/8 147/10 148/19 153/11 153/25 154/24 154/24 155/3 155/4</p> <p>ask [22] 3/14 5/21 12/5 14/22 14/25 15/2 17/7 17/19 21/9 24/12 26/3 27/14 32/13 36/18 42/15 46/14 54/13 68/14 103/18 110/25 134/16 147/24</p> <p>asked [9] 46/14 46/15 46/21 50/11 92/25 109/25 150/18 151/2 154/6</p> <p>asking [11] 64/1 67/15 110/23 111/2 133/1 137/14 138/20 147/4 147/7 147/7 154/7</p> <p>asks [3] 14/12 15/5 15/12</p> <p>aspirations [3] 13/15 24/25 155/5</p> <p>assess [1] 148/23</p> <p>assessment [2] 80/6 88/10</p> <p>assets [1] 66/20</p> <p>assign [1] 83/1</p> <p>assignor [1] 158/21</p> <p>assignors [8] 48/12 50/18 51/20 52/18 52/21 158/13 158/13 158/24</p> <p>assist [1] 125/6</p> <p>associated [3] 30/17</p>	<p>96/2 141/15</p> <p>assume [9] 42/12 81/11 81/19 92/12 98/5 116/2 116/16 125/1 133/16</p> <p>assumed [4] 18/6 57/5 95/3 153/4</p> <p>assuming [3] 30/12 70/3 70/8</p> <p>assumption [2] 56/10 56/13</p> <p>at [148] 3/21 3/22 4/25 7/7 7/13 7/22 8/2 8/14 8/19 8/25 9/6 10/13 11/18 11/18 13/5 14/11 15/14 17/14 19/7 19/8 19/22 20/24 21/9 22/22 23/13 24/12 25/10 26/3 27/22 28/3 28/12 31/2 32/16 33/13 33/14 35/22 36/2 37/4 38/8 42/17 44/22 44/25 46/3 46/5 46/6 46/15 48/14 48/21 49/22 51/19 52/1 52/6 54/12 54/22 55/16 58/13 59/17 59/22 59/23 62/12 62/25 63/7 63/23 65/19 66/1 66/1 66/22 67/17 69/17 69/18 71/12 71/15 72/1 75/8 76/17 77/21 78/17 81/14 82/7 82/8 82/19 83/8 84/1 84/14 84/23 86/25 91/1 91/8 91/23 91/25 92/15 94/12 94/20 95/5 99/14 100/3 100/22 101/3 101/20 102/7 103/4 103/13 103/18 103/21 105/1 106/19 107/11 107/21 108/20 111/21 113/4 113/7 114/13 114/25 115/23 116/10 119/18 120/20 121/1 122/14 124/13 126/12 126/16 126/21 127/11 129/9 133/1 133/9 133/16 134/5 134/13 134/25 139/13 141/22 143/5 148/9 149/9 150/10 151/22 152/8 152/9 152/17 152/20 153/9 153/20 157/1 157/25 159/12</p> <p>attached [4] 16/7 101/22 101/22 101/25</p> <p>attempt [1] 100/4</p> <p>attempting [2] 53/15 53/18</p> <p>attention [3] 31/8 41/5 42/2</p> <p>audio [2] 80/1 160/4</p> <p>AUDIO/VIDEO [1] 160/4</p> <p>AUGUST [10] 1/12 3/1 7/10 20/7 20/15 23/2 23/8 36/9 124/18 130/1</p> <p>authority [1] 7/17</p> <p>available [1] 123/25</p>	<p>average [1] 17/11</p> <p>avoid [1] 79/12</p> <p>aware [8] 54/8 54/11 60/11 63/3 78/8 96/1 150/7 153/19</p> <p>awareness [3] 56/25 151/10 151/12</p> <p>away [11] 9/22 37/22 56/19 56/19 57/25 58/1 68/25 69/15 69/16 77/25 142/22</p> <hr/> <p>B</p> <p>back [26] 7/7 12/9 13/2 20/7 24/14 26/23 27/13 32/14 34/9 38/6 42/1 49/8 50/16 51/10 57/15 58/4 59/16 78/23 110/18 125/2 125/14 126/7 128/13 130/19 130/20 132/25</p> <p>bad [2] 6/6 47/6</p> <p>balance [3] 77/9 77/22 78/13</p> <p>ballpark [1] 55/3</p> <p>bank [3] 8/3 142/19 142/20</p> <p>bank-forced [1] 142/20</p> <p>banker [2] 15/21 135/11</p> <p>bankers [1] 81/13</p> <p>Barnes [9] 23/14 63/24 78/24 95/12 97/17 97/19 98/25 102/18 135/4</p> <p>Barnes' [1] 80/21</p> <p>barrier [2] 8/17 9/22</p> <p>barriers [5] 7/16 8/1 8/7 8/8 8/8</p> <p>Barry [6] 48/11 54/6 56/8 57/3 57/4 57/19</p> <p>base [1] 114/2</p> <p>based [10] 19/16 20/2 32/1 34/3 34/4 72/23 87/15 97/5 152/23 154/23</p> <p>basically [6] 45/10 57/19 85/3 102/25 148/6 149/6</p> <p>basis [5] 27/8 79/5 94/21 130/10 144/19</p> <p>bat [2] 56/6 84/23</p> <p>Bay [1] 55/20</p> <p>be [121] 4/17 7/18 9/24 10/11 13/14 13/16 15/2 15/20 15/25 16/10 16/15 16/25 18/3 18/3 20/1 21/6 23/10 24/25 27/5 28/11 30/19 30/22 31/3 32/23 34/9 35/10 35/14 35/17 36/3 38/1 38/20 38/22 40/18 40/23 44/18 45/10 46/4 46/23 46/24 47/20 48/23 49/7 49/13 49/16 50/9 52/7 54/25 55/2 56/24 57/21 58/15 59/16 60/3 61/1 62/7 68/4 68/5 68/7 73/2</p> <p>AA 2579</p>
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<p>B</p> <p>be... [62] 73/10 73/11 73/19 75/10 76/9 76/14 76/15 77/15 77/18 78/1 78/2 79/12 79/18 80/3 82/16 85/24 87/14 89/11 90/12 96/4 96/8 98/10 100/7 100/21 102/10 106/3 107/3 112/2 116/2 116/7 117/12 117/19 118/1 122/23 123/7 123/24 123/24 126/9 126/9 129/12 130/6 130/7 130/10 132/17 134/2 134/18 134/20 141/12 143/1 143/8 143/21 144/13 146/24 147/9 147/11 151/6 151/15 151/24 157/15 158/2 158/3 159/8</p> <p>Beach [89] 3/25 7/2 10/11 10/19 10/23 10/24 11/9 11/10 11/18 14/13 15/7 19/3 19/15 24/18 25/22 27/3 28/12 29/8 30/20 31/20 32/1 33/8 34/12 34/15 34/17 34/21 34/21 34/25 35/1 35/16 38/10 47/3 54/9 55/19 56/2 61/13 61/16 61/18 61/18 66/22 68/23 69/8 69/9 72/5 75/12 75/14 75/17 75/23 76/4 77/5 77/21 78/3 78/8 78/22 79/9 79/11 83/3 84/1 84/11 87/13 94/12 95/6 99/9 100/3 100/6 100/17 100/22 101/7 101/14 102/5 110/18 111/25 112/6 112/18 115/24 127/22 139/22 142/7 142/20 148/13 148/19 148/25 149/7 149/10 153/3 153/4 153/5 153/10 154/2</p> <p>Beach's [17] 31/10 31/16 31/16 32/17 32/21 34/2 35/25 47/9 62/14 70/24 77/25 80/11 92/19 95/1 96/2 100/15 153/6</p> <p>Beach/Stripes [2] 79/9 79/11</p> <p>Beam [1] 101/13</p> <p>Bear [2] 91/8 134/8</p> <p>beat [1] 37/24</p> <p>beating [1] 109/15</p> <p>became [3] 9/18 61/16 141/20</p> <p>because [34] 11/24 12/22 21/23 22/1 22/2 28/9 39/17 52/18 64/19 84/15 96/17 110/24 115/7 117/12 117/20 123/17 128/5 128/9 129/18 130/23 132/10</p>	<p>136/18 139/4 139/21 140/8 140/23 148/18 149/11 151/25 152/11 153/12 154/11 154/19 157/2</p> <p>become [2] 36/12 71/23</p> <p>becomes [3] 89/20 90/4 117/8</p> <p>becoming [1] 88/5</p> <p>been [57] 3/9 6/4 7/11 15/4 15/22 15/24 16/8 22/9 24/17 29/1 29/4 34/15 34/15 35/1 36/8 38/18 46/8 50/8 52/7 52/15 52/16 52/21 54/23 55/18 57/14 62/16 69/9 69/11 75/11 76/4 76/11 78/6 81/9 83/21 89/15 90/10 93/12 94/8 94/12 97/1 113/2 115/10 115/16 117/23 118/9 118/11 118/12 119/8 123/21 129/3 145/3 149/23 151/11 151/12 151/21 158/16 158/17</p> <p>before [21] 1/11 8/11 9/3 35/24 61/24 63/2 63/16 67/12 70/15 86/20 97/1 104/24 118/20 133/6 139/9 139/23 154/16 154/19 156/14 157/6 158/10</p> <p>began [1] 77/4</p> <p>begin [1] 99/6</p> <p>beginning [2] 78/7 94/20</p> <p>beginnings [1] 7/10</p> <p>begins [2] 41/5 86/25</p> <p>begun [1] 151/19</p> <p>behalf [1] 53/16</p> <p>behavior [1] 149/9</p> <p>behind [1] 27/6</p> <p>being [22] 11/4 17/3 33/19 37/8 37/9 47/23 50/14 52/4 59/1 71/9 76/23 82/25 83/23 92/18 98/3 111/16 153/25 154/25 155/3 155/5 155/8 157/3</p> <p>belabor [1] 23/17</p> <p>belaboring [1] 102/7</p> <p>belief [1] 92/17</p> <p>believe [40] 10/22 17/10 28/19 28/22 30/7 35/6 35/6 46/24 47/14 48/11 55/6 55/8 63/20 69/6 69/7 69/17 70/10 77/12 81/9 85/13 86/13 92/15 100/17 112/16 116/10 117/8 119/4 121/20 122/21 126/18 127/4 130/6 131/7 134/14 135/5 137/22 138/14 141/2 144/8 154/20</p> <p>believed [4] 37/23 41/18 87/13 139/8</p>	<p>believes [3] 46/25 134/2 135/12</p> <p>below [8] 19/9 21/12 31/17 119/18 144/4 145/5 145/7 149/2</p> <p>bench [2] 1/13 157/6</p> <p>benefactor [1] 35/17</p> <p>beneficial [3] 20/10 58/19 63/15</p> <p>benefit [1] 72/14</p> <p>benefits [1] 43/3</p> <p>besides [3] 34/21 43/20 79/22</p> <p>best [11] 9/7 36/2 57/21 84/10 85/23 100/4 149/11 149/13 149/16 151/22 160/5</p> <p>better [12] 11/21 14/12 15/20 15/25 78/3 78/14 99/9 100/22 112/3 123/13 123/17 144/7</p> <p>between [10] 25/22 49/22 50/4 56/10 63/23 69/24 88/24 105/10 109/4 125/20</p> <p>beyond [1] 86/17</p> <p>big [3] 8/10 21/12 56/9</p> <p>bigger [4] 21/6 40/23 90/4 90/4</p> <p>billion [2] 154/25 155/5</p> <p>binder [7] 31/3 54/22 54/23 121/15 143/11 143/12 147/15</p> <p>bit [8] 25/20 25/21 41/8 88/15 95/21 97/11 104/16 110/10</p> <p>blacked [1] 21/13</p> <p>blacked-out [1] 21/13</p> <p>Blow [1] 110/3</p> <p>blows [1] 149/10</p> <p>board [75] 6/22 6/24 7/12 7/19 7/21 7/23 7/24 13/14 13/19 13/23 14/7 17/1 17/4 17/16 18/10 18/25 20/7 20/14 20/15 21/15 22/10 22/11 22/14 23/25 27/4 42/17 42/23 43/21 51/5 51/8 51/10 53/12 61/8 61/25 62/4 62/7 62/9 62/12 62/13 62/16 62/17 62/18 62/21 62/22 63/5 63/5 65/3 65/11 65/20 65/23 66/24 70/20 70/21 70/24 85/7 86/11 86/15 86/17 94/3 112/10 120/12 136/14 145/12 145/14 145/23 147/5 147/10 148/1 148/9 149/3 149/9 149/18 150/3 150/6 158/22</p> <p>board's [1] 43/6</p> <p>Bob [4] 62/10 65/19 147/5 147/10</p> <p>BOD [1] 149/2</p> <p>book [4] 6/1 6/9 6/12 152/12</p> <p>boss [2] 84/20 84/22</p>	<p>both [12] 19/15 34/6 36/13 70/14 78/24 83/3 88/15 97/8 121/12 123/13 124/22 157/19</p> <p>bothering [1] 27/1</p> <p>bottom [8] 13/5 59/23 59/23 86/25 104/3 110/11 110/14 137/3</p> <p>bounds [1] 83/22</p> <p>box [1] 19/18</p> <p>brand [2] 79/24 100/9</p> <p>break [2] 67/12 67/14</p> <p>breakup [4] 5/8 5/21 24/15 24/19</p> <p>Brian [1] 132/19</p> <p>bring [5] 8/15 37/12 79/22 93/23 98/14</p> <p>bringing [2] 9/15 100/24</p> <p>brings [1] 104/7</p> <p>broad [1] 114/2</p> <p>broadest [1] 25/9</p> <p>broker [1] 114/3</p> <p>Bromberg [1] 113/21</p> <p>brought [4] 8/7 130/19 130/20 155/16</p> <p>BS [1] 104/10</p> <p>build [4] 71/6 74/22 75/20 91/8</p> <p>building [1] 124/22</p> <p>builds [1] 88/12</p> <p>built [1] 73/17</p> <p>bullet [1] 42/5</p> <p>bullets [1] 72/13</p> <p>bullish [4] 27/23 28/13 28/14 30/20</p> <p>bullishness [1] 30/8</p> <p>bunch [5] 35/18 42/5 121/9 123/12 155/6</p> <p>business [15] 28/1 28/1 31/11 31/16 34/2 34/7 46/11 68/3 86/3 89/16 100/2 101/8 107/18 114/2 114/10</p> <p>but [143] 5/25 6/4 6/18 8/1 8/4 11/15 11/25 12/21 14/10 14/18 20/21 23/12 23/17 24/25 25/12 28/4 28/6 28/20 29/8 32/12 32/20 35/13 35/16 35/24 36/5 36/24 37/10 37/18 37/20 38/15 38/17 41/4 41/16 45/2 45/7 45/13 46/10 46/11 51/10 52/5 52/16 54/20 55/2 55/7 55/24 56/25 57/14 58/15 61/11 61/21 62/20 63/8 69/8 70/15 73/12 73/17 75/2 76/3 76/8 77/18 77/23 82/8 82/14 84/19 85/22 87/22 91/2 91/18 95/21 96/19 96/21 96/24 97/1 97/1 98/4 98/9 98/25 100/17 100/20 100/22 102/11 102/16 103/6 104/11 104/19 106/20 107/4 108/1 108/11</p>	<p>110/9 110/22 111/9 111/16 112/15 112/22 115/20 116/5 116/16 116/16 116/23 117/3 118/6 119/7 119/12 119/13 119/18 119/24 122/21 124/12 124/19 125/11 127/4 127/20 128/2 128/3 129/8 129/18 130/23 131/9 133/14 133/18 134/1 135/17 136/1 139/4 140/2 140/7 140/25 141/2 141/19 142/11 142/24 143/23 143/25 144/5 144/19 145/14 145/17 150/8 151/7 151/25 153/11 153/23</p> <p>buy [4] 30/15 104/11 112/4 127/13</p> <p>buyer [2] 76/17 127/9</p> <p>buyers [4] 23/23 24/10 25/5 105/24</p> <p>buying [7] 35/15 100/20 126/14 126/19 127/16 127/23 131/23</p> <hr/> <p>C</p> <p>calculated [2] 17/15 17/20</p> <p>calculation [1] 116/13</p> <p>calculations [2] 156/3 156/6</p> <p>call [5] 41/4 97/22 97/25 98/7 98/10</p> <p>called [3] 3/9 19/19 126/23</p> <p>Calling [1] 42/1</p> <p>came [8] 17/25 23/9 25/5 39/12 39/16 45/8 54/12 128/13</p> <p>can [57] 3/13 6/15 24/22 25/3 26/3 27/24 28/5 28/20 40/12 40/17 40/21 40/24 59/17 60/3 60/19 67/14 73/16 76/16 80/23 81/14 83/20 83/23 91/23 93/23 94/6 97/15 101/3 102/7 105/11 105/11 106/9 107/23 110/11 113/1 114/25 116/10 120/21 125/2 125/2 125/3 129/2 131/13 132/12 134/16 136/1 139/5 139/16 143/5 144/19 146/1 150/1 153/9 153/15 155/16 156/24 157/6 158/7</p> <p>can't [13] 9/4 9/7 28/6 29/10 35/25 36/1 38/15 74/12 141/10 148/18 148/22 148/24 153/8</p> <p>candidates [1] 43/13</p> <p>cap [1] 80/25</p> <p>capability [1] 75/20</p> <p>capable [1] 75/3</p> <p>capacity [4] 52/21 55/25 86/17 120/12</p> <p>AA 2580</p>
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<p>C</p> <p>capital [7] 8/16 9/15 9/17 13/4 13/13 17/11 107/18</p> <p>care [1] 35/21</p> <p>case [24] 1/5 12/23 25/2 32/23 46/24 48/12 48/13 51/20 56/5 56/15 56/19 56/19 57/8 57/8 57/17 57/17 57/25 57/25 68/9 73/10 98/5 130/22 154/19 160/4</p> <p>cases [1] 91/17</p> <p>cash [9] 17/8 19/13 19/17 66/15 77/9 77/22 78/1 78/13 97/2</p> <p>CASSITY [1] 1/18</p> <p>category [1] 117/19</p> <p>Cause [1] 66/11</p> <p>caused [1] 26/12</p> <p>CC [1] 132/7</p> <p>ceased [1] 127/2</p> <p>ceiling [1] 90/22</p> <p>CEO [4] 28/5 74/15 74/18 145/6</p> <p>certain [5] 10/15 60/22 62/6 62/6 154/18</p> <p>certainly [1] 143/23</p> <p>Certificate [1] 66/17</p> <p>CERTIFICATION [1] 159/16</p> <p>CERTIFY [1] 160/3</p> <p>cetera [6] 23/17 45/23 89/16 129/25 130/1 137/8</p> <p>CFO [1] 95/12</p> <p>chain [3] 74/22 75/2 97/19</p> <p>chairman [3] 7/18 28/3 63/12</p> <p>Chakamian [2] 86/21 86/22</p> <p>challenge [1] 119/2</p> <p>challenged [1] 18/13</p> <p>challenges [8] 43/14 43/16 70/15 94/8 99/10 100/2 100/14 107/4</p> <p>challenging [2] 37/1 82/20</p> <p>chance [6] 107/23 115/19 115/20 115/21 122/14 123/4</p> <p>change [10] 5/15 62/20 63/1 63/3 103/16 116/20 116/24 118/1 118/8 156/14</p> <p>changed [4] 5/12 5/18 68/3 97/2</p> <p>changing [2] 96/25 99/19</p> <p>characterized [1] 65/7</p> <p>charged [1] 91/17</p> <p>chart [3] 33/24 58/9 58/11</p> <p>cheating [1] 147/19</p> <p>check [1] 39/17</p> <p>checking [1] 146/6</p> <p>chicken [1] 69/9</p>	<p>chief [1] 85/14</p> <p>chosen [1] 22/2</p> <p>CIC [1] 116/24</p> <p>circle [1] 27/10</p> <p>circumstance [1] 9/13</p> <p>claim [1] 68/7</p> <p>clarification [1] 158/11</p> <p>clarify [1] 54/5</p> <p>CLARK [2] 1/2 3/1</p> <p>cleanup [1] 101/2</p> <p>clear [27] 9/23 10/7 11/4 12/3 13/14 18/3 23/10 28/11 34/9 36/6 38/1 38/20 38/23 41/18 44/6 46/15 46/23 47/1 47/24 52/7 55/15 57/2 58/16 59/16 75/10 87/24 136/9</p> <p>clearly [11] 14/1 14/1 44/1 69/14 70/21 73/17 79/18 79/23 84/7 104/19 150/8</p> <p>clerk [2] 40/12 40/17</p> <p>climaxed [1] 56/14</p> <p>climb [1] 89/22</p> <p>close [5] 48/21 57/16 67/2 109/16 158/5</p> <p>closed [1] 73/13</p> <p>closing [3] 21/20 104/6 104/9</p> <p>co [3] 45/19 128/4 128/16</p> <p>co-development [3] 45/19 128/4 128/16</p> <p>coach [1] 55/23</p> <p>codeveloping [1] 45/17</p> <p>college [1] 73/15</p> <p>color [1] 108/3</p> <p>combination [2] 43/12 59/19</p> <p>combined [2] 10/25 43/13</p> <p>come [9] 23/23 25/2 34/12 39/14 45/19 92/1 120/14 141/3 150/22</p> <p>comes [2] 84/22 128/3</p> <p>comfortable [3] 27/21 38/17 47/18</p> <p>coming [4] 24/14 34/9 50/15 108/3</p> <p>comment [5] 113/1 113/5 117/7 153/8 153/9</p> <p>commercial [1] 89/16</p> <p>commit [1] 154/17</p> <p>communicate [4] 20/6 49/8 51/9 150/3</p> <p>communicated [2] 20/7 27/5</p> <p>communicating [7] 6/24 7/18 34/1 53/11 88/16 89/4 123/11</p> <p>communication [2] 48/5 121/16</p> <p>communications [4] 14/7 36/15 143/20 150/2</p> <p>communicative [1]</p>	<p>145/12</p> <p>community [1] 49/4</p> <p>companies [13] 19/6 19/6 24/17 24/20 35/11 35/18 36/13 38/13 45/8 82/23 96/22 97/8 101/13</p> <p>company [56] 5/19 11/18 20/2 23/12 23/13 25/14 25/14 28/3 28/8 43/23 43/24 45/10 46/6 46/9 47/4 47/6 47/6 47/10 48/21 49/17 51/15 53/5 61/8 66/13 67/4 67/7 71/6 76/7 77/22 81/13 82/25 105/2 105/5 112/4 112/13 118/2 120/11 124/4 124/19 124/20 125/8 126/7 126/9 126/14 126/20 127/5 127/6 127/11 127/13 127/16 127/18 127/21 137/4 137/13 147/20 147/25</p> <p>company's [3] 28/4 37/21 66/19</p> <p>comparable [5] 19/3 19/5 19/6 19/6 19/9</p> <p>comparables [1] 19/8</p> <p>comparative [1] 100/2</p> <p>compared [1] 43/4</p> <p>comparing [1] 19/2</p> <p>compatibility [1] 32/3</p> <p>compelling [1] 43/15</p> <p>compensation [4] 19/19 61/2 62/20 115/16</p> <p>competitive [1] 126/22</p> <p>complaint [1] 65/14</p> <p>complaints [1] 97/12</p> <p>complete [3] 60/4 76/21 142/11</p> <p>completely [2] 79/7 142/16</p> <p>complied [1] 150/5</p> <p>component [1] 32/2</p> <p>compound [2] 47/6 47/7</p> <p>compression [1] 72/23</p> <p>compromise [1] 13/15</p> <p>concept [2] 136/10 147/9</p> <p>concern [4] 41/9 86/9 86/11 94/8</p> <p>concerned [6] 26/11 26/15 84/7 84/8 90/7 133/3</p> <p>concerning [1] 150/2</p> <p>concerns [7] 7/2 7/3 90/11 129/23 129/24 129/24 154/1</p> <p>conclusion [1] 45/20</p> <p>conclusions [1] 18/1</p> <p>conclusive [1] 140/12</p> <p>condense [1] 73/3</p> <p>condition [3] 32/18 139/8 157/2</p> <p>conditions [3] 73/7</p>	<p>116/23 117/22</p> <p>conduct [1] 16/1</p> <p>conducted [4] 95/6 95/9 95/12 95/15</p> <p>confess [1] 12/7</p> <p>confidence [3] 8/12 38/19 70/16</p> <p>confidencies [1] 74/23</p> <p>confident [1] 27/23</p> <p>confidential [2] 49/17 50/9</p> <p>confidentiality [2] 49/13 50/7</p> <p>confirm [5] 23/19 58/8 125/3 150/1 154/22</p> <p>confirms [1] 88/5</p> <p>conflict [1] 22/5</p> <p>conflicts [1] 56/22</p> <p>confused [1] 13/9</p> <p>Congrats [1] 104/9</p> <p>connected [1] 96/3</p> <p>connection [4] 42/18 95/5 95/16 101/10</p> <p>conscience [1] 103/7</p> <p>consent [1] 134/6</p> <p>consequence [3] 98/17 119/8 141/11</p> <p>conservative [2] 26/17 88/20</p> <p>consider [4] 43/13 52/6 147/24 149/12</p> <p>consideration [4] 19/21 19/22 93/9 117/11</p> <p>considerations [5] 5/8 22/13 31/25 33/7 84/12</p> <p>considered [3] 42/17 42/23 43/21</p> <p>considering [3] 43/6 43/9 78/22</p> <p>considers [1] 134/15</p> <p>consistent [7] 25/7 29/16 38/18 38/21 78/14 79/25 125/7</p> <p>console [21] 26/13 30/14 30/16 30/17 30/18 30/24 31/15 32/5 33/3 33/20 34/4 35/3 36/6 95/23 96/13 100/7 129/25 150/19 150/22 151/15 151/19</p> <p>consoles [2] 35/8 95/24</p> <p>constantly [1] 20/16</p> <p>constraints [1] 94/18</p> <p>construct [1] 8/16</p> <p>consulting [1] 14/25</p> <p>consumer [3] 72/18 73/17 80/1</p> <p>consumers [1] 35/14</p> <p>contact [2] 44/22 128/17</p> <p>contacted [2] 119/22 120/15</p> <p>contain [2] 121/15 160/9</p> <p>contemplate [1] 9/5</p> <p>content [2] 106/6 154/23</p>	<p>context [8] 5/6 5/7 49/15 54/17 56/5 128/21 130/17 144/5</p> <p>contingencies [3] 16/7 16/8 33/21</p> <p>continue [4] 60/2 123/24 136/1 137/21</p> <p>continued [6] 2/5 3/11 118/2 123/18 124/2 150/6</p> <p>continues [1] 148/12</p> <p>continuing [3] 4/23 110/9 124/21</p> <p>contract [2] 115/1 125/22</p> <p>contribution [3] 18/22 20/4 82/16</p> <p>control [18] 7/21 7/23 64/21 64/22 64/25 67/4 67/7 79/11 115/19 115/20 115/21 116/20 116/24 118/1 118/8 137/7 137/12 145/14</p> <p>controlled [1] 73/14</p> <p>controlling [1] 61/20</p> <p>conversation [8] 36/4 50/20 50/20 54/6 56/1 57/10 118/20 121/16</p> <p>conversations [1] 20/14</p> <p>convert [2] 91/3 91/15</p> <p>converting [1] 90/3</p> <p>convinced [1] 126/23</p> <p>Copa [1] 56/24</p> <p>copy [3] 6/15 132/1 132/3</p> <p>copying [2] 6/23 102/19</p> <p>core [3] 72/10 87/6 135/25</p> <p>corner [1] 64/15</p> <p>Corning [1] 72/6</p> <p>corporate [2] 61/21 84/21</p> <p>corporation [6] 1/5 3/24 61/12 61/14 61/24 101/16</p> <p>correct [268]</p> <p>correctly [10] 18/6 18/8 18/12 74/3 116/25 117/2 117/4 139/24 139/24 160/3</p> <p>correspond [1] 94/21</p> <p>correspondence [4] 6/22 51/11 57/18 69/24</p> <p>cost [3] 17/11 27/9 112/4</p> <p>costs [1] 149/3</p> <p>could [49] 4/12 6/13 6/18 20/23 26/11 28/10 31/15 31/25 32/4 40/19 45/7 46/8 48/23 55/2 55/21 56/24 57/20 58/5 69/17 71/22 71/23 72/3 99/12 100/21 115/17 115/21 115/21 118/2 118/4 118/7 118/9 128/20 129/12 130/3 134/2 141/12 141/22</p> <p>AA 2581</p>
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<p>C</p> <p>could... [12] 144/4 145/10 146/1 146/7 147/13 148/3 151/11 151/18 154/21 156/5 157/5 157/14</p> <p>couldn't [3] 57/7 64/14 64/19</p> <p>counsel [3] 6/23 40/22 134/15</p> <p>COUNTY [2] 1/2 3/1</p> <p>couple [5] 17/6 52/14 76/7 76/22 145/20</p> <p>course [5] 45/24 57/13 63/9 127/15 158/25</p> <p>court [6] 1/2 1/11 1/24 40/7 76/13 95/20</p> <p>covenant [3] 140/17 140/23 141/21</p> <p>covenants [1] 94/13</p> <p>cover [1] 101/20</p> <p>covered [1] 103/6</p> <p>cozy [1] 78/15</p> <p>cozying [1] 78/8</p> <p>Craig [23] 15/14 15/18 16/4 16/11 16/17 16/25 17/14 17/20 17/24 18/11 20/4 20/11 41/6 41/9 41/19 41/23 92/22 95/15 129/17 133/3 133/6 153/13 154/1</p> <p>Craig-Hallum [21] 15/14 15/18 16/4 16/11 16/17 16/25 17/14 17/20 18/11 20/4 20/11 41/6 41/9 41/19 41/23 95/15 129/17 133/3 133/6 153/13 154/1</p> <p>Craig-Hallum's [1] 17/24</p> <p>create [3] 14/3 88/1 96/13</p> <p>created [5] 10/23 79/23 82/4 144/7 144/25</p> <p>creating [3] 106/1 112/1 120/16</p> <p>creation [1] 81/4</p> <p>credible [5] 11/25 37/25 89/20 98/15 135/15</p> <p>credit [2] 94/17 114/13</p> <p>crisply [2] 14/1 150/9</p> <p>Cross [4] 2/5 2/6 3/11 67/23</p> <p>Cross-Examination [4] 2/5 2/6 3/11 67/23</p> <p>CTO [1] 85/13</p> <p>current [10] 31/14 34/2 34/7 72/9 72/14 73/2 74/2 76/24 80/25 94/18</p> <p>currently [2] 59/5 87/23</p> <p>cut [2] 82/8 93/5</p> <p>cycle [1] 107/3</p> <p>D</p> <p>daily [1] 94/21</p> <p>Dan [1] 157/5</p>	<p>DANA [2] 160/12 160/16</p> <p>data [2] 49/17 50/9</p> <p>date [14] 4/23 35/12 53/7 58/15 63/19 87/25 104/6 119/14 119/23 121/5 134/1 141/19 152/16 160/19</p> <p>dated [5] 77/2 85/7 124/18 132/8 139/11</p> <p>dates [4] 22/23 54/18 120/17 151/1</p> <p>Dave [1] 135/21</p> <p>DAVID [1] 1/21</p> <p>day [17] 1/13 25/5 35/22 38/8 46/3 54/5 82/4 84/14 86/20 97/20 103/18 134/10 156/16 156/20 156/24 157/10 158/17</p> <p>days [5] 49/19 52/15 59/6 78/7 139/8</p> <p>de [1] 6/7</p> <p>de-duplicate [1] 6/7</p> <p>deal [64] 5/3 5/6 7/11 8/5 8/19 8/25 9/5 9/18 9/18 9/19 10/8 10/14 13/16 13/16 13/20 14/3 19/1 20/17 22/9 22/12 22/15 29/8 29/8 36/6 46/4 46/7 46/9 47/10 47/11 47/18 55/11 68/11 68/13 69/8 69/12 69/14 77/23 78/4 84/15 85/23 86/7 87/18 88/6 90/6 93/14 96/22 100/22 104/9 104/20 104/22 111/25 112/21 119/21 124/7 126/13 129/17 135/17 138/23 140/22 141/1 148/24 149/3 149/10 150/4</p> <p>deal's [1] 103/1</p> <p>deals [8] 9/3 37/17 109/16 110/19 112/2 113/18 137/9 137/12</p> <p>death [1] 9/4</p> <p>debt [2] 10/23 94/13</p> <p>December [7] 47/14 64/1 88/24 92/4 116/1 133/25 139/9</p> <p>decided [2] 68/25 69/4</p> <p>decision [1] 70/18</p> <p>decisions [1] 137/8</p> <p>deck [1] 30/9</p> <p>declare [1] 12/22</p> <p>declared [1] 53/20</p> <p>declined [1] 121/13</p> <p>decreased [1] 34/3</p> <p>deep [1] 68/23</p> <p>defects [1] 8/11</p> <p>defendants [7] 129/4 131/1 134/6 142/24 156/18 158/4 159/1</p> <p>defendants' [1] 132/21</p> <p>defending [6] 36/25 37/1 37/6 37/8 37/9 37/21</p> <p>defense [3] 37/10</p>	<p>44/19 122/15</p> <p>defer [1] 113/16</p> <p>deferring [2] 109/16 113/18</p> <p>define [2] 141/10 148/25</p> <p>defined [2] 9/18 115/17</p> <p>definition [2] 98/10 148/20</p> <p>definitive [1] 125/21</p> <p>delay [2] 26/13 148/24</p> <p>delayed [1] 137/16</p> <p>delaying [1] 111/20</p> <p>deliver [1] 145/6</p> <p>deliverable [1] 87/7</p> <p>deliverables [1] 87/25</p> <p>demo [1] 73/13</p> <p>demonstrate [2] 38/11 54/23</p> <p>demonstrated [3] 73/16 125/9 155/4</p> <p>demonstrating [1] 112/11</p> <p>demos [1] 73/4</p> <p>dependent [1] 74/4</p> <p>depending [2] 118/9 157/8</p> <p>DEPT [1] 1/6</p> <p>describe [1] 33/7</p> <p>described [3] 30/24 121/16 145/8</p> <p>describing [2] 33/6 150/9</p> <p>description [2] 32/21 34/7</p> <p>design [1] 75/20</p> <p>designed [1] 119/9</p> <p>desire [2] 79/25 120/11</p> <p>desires [1] 14/2</p> <p>Despite [1] 104/10</p> <p>detail [4] 14/5 71/4 87/24 94/12</p> <p>determine [4] 59/18 106/9 119/9 140/9</p> <p>determined [1] 93/22</p> <p>detriment [1] 23/20</p> <p>develop [1] 74/10</p> <p>developed [1] 151/8</p> <p>development [8] 45/19 72/6 127/19 128/1 128/4 128/11 128/16 129/12</p> <p>dialogue [1] 29/17</p> <p>dialogues [1] 84/10</p> <p>did [141] 5/15 7/23 10/13 13/10 13/12 13/18 13/22 13/24 15/5 15/7 15/9 15/11 15/18 17/19 17/23 18/4 18/4 18/6 18/7 18/9 18/10 18/11 20/14 21/17 22/22 23/12 23/19 23/24 24/1 29/22 34/12 35/6 35/6 36/12 36/15 36/17 37/22 39/14 39/24 41/21 41/22 41/23 41/25 47/14 49/8 49/9 50/13 56/1 56/4 61/2 61/4 61/6 63/4</p>	<p>63/20 64/17 65/8 65/13 65/14 65/16 65/18 65/21 65/22 65/24 66/5 66/6 67/7 68/7 68/8 68/16 68/18 75/8 75/9 79/15 80/6 80/8 80/17 80/19 80/21 84/15 86/13 86/14 88/8 91/2 91/2 91/12 91/12 91/15 92/15 92/16 94/25 100/17 103/3 103/7 103/9 103/10 103/11 103/16 103/18 104/10 104/15 106/1 106/2 108/13 109/1 109/17 112/22 114/8 115/22 115/25 116/17 116/25 117/2 119/14 119/24 119/25 120/4 120/5 120/14 121/5 123/10 124/12 128/10 128/22 128/24 130/13 131/18 136/6 136/7 139/24 141/3 141/14 141/18 145/10 145/17 145/22 145/24 148/16 150/22 155/4 155/7 155/8</p> <p>didn't [33] 3/6 13/21 18/8 22/1 22/5 25/2 57/6 64/17 64/19 67/7 68/14 68/17 72/1 73/17 74/7 106/19 108/13 110/25 117/12 117/20 119/10 119/10 120/17 122/7 124/7 124/12 125/22 126/2 145/14 145/19 149/11 154/10 154/19</p> <p>died [2] 50/19 50/21</p> <p>difference [2] 125/20 152/16</p> <p>different [12] 4/14 11/1 22/13 24/9 73/15 84/21 88/12 88/16 92/3 92/3 103/3 115/17</p> <p>differing [1] 129/3</p> <p>difficult [4] 76/9 82/16 83/1 85/12</p> <p>dig [1] 143/6</p> <p>digging [1] 139/15</p> <p>digital [1] 107/14</p> <p>diligence [5] 95/6 95/10 95/12 95/15 95/20</p> <p>direct [4] 31/8 66/24 76/16 102/15</p> <p>direction [1] 126/11</p> <p>directives [1] 137/19</p> <p>directly [1] 139/7</p> <p>directors [20] 6/23 6/25 7/19 7/21 17/1 17/4 21/18 21/22 51/5 59/24 60/5 61/25 62/13 65/20 66/8 66/9 84/1 94/3 148/8 149/3</p> <p>disagree [2] 140/2 143/25</p> <p>disagreed [1] 145/18</p> <p>disappointed [1] 85/17</p>	<p>disappointing [1] 96/24</p> <p>disclaim [1] 133/4</p> <p>disclose [1] 25/23</p> <p>disclosed [12] 60/12 98/2 121/21 121/23 122/2 122/5 132/10 138/5 138/15 138/25 139/2 139/4</p> <p>disclosure [3] 27/1 28/15 158/18</p> <p>disclosures [1] 32/7</p> <p>discount [3] 28/9 77/18 77/18</p> <p>discounted [2] 17/8 19/13</p> <p>discuss [3] 5/2 89/9 97/25</p> <p>discussed [7] 7/9 8/10 22/13 68/19 97/11 110/17 130/18</p> <p>discusses [1] 116/19</p> <p>discussing [3] 29/1 41/9 99/20</p> <p>discussion [20] 20/19 26/20 32/17 34/11 35/2 38/18 44/6 52/14 53/9 56/25 57/3 57/4 57/16 61/7 61/9 87/3 89/3 92/4 98/16 127/21</p> <p>discussions [23] 7/10 7/13 45/5 45/16 57/13 86/16 94/4 108/6 108/11 108/15 110/1 110/9 124/22 127/2 129/11 137/14 137/15 148/13 148/19 149/8 150/6 150/10 150/15</p> <p>disrupt [1] 89/21</p> <p>disruptive [1] 110/10</p> <p>disseminated [1] 92/18</p> <p>dissolution [4] 142/5 142/7 142/11 142/20</p> <p>dissolve [1] 66/11</p> <p>distinguish [1] 55/14</p> <p>DISTRICT [2] 1/2 1/11</p> <p>DNA [1] 83/22</p> <p>do [198]</p> <p>document [7] 1/7 3/24 50/8 77/13 93/25 134/16 139/16</p> <p>documentation [1] 55/9</p> <p>documents [7] 23/15 39/19 49/24 50/4 105/14 138/15 153/3</p> <p>does [33] 4/7 8/11 19/13 19/25 20/6 23/3 23/5 31/24 33/17 33/20 33/21 34/24 36/20 41/14 46/5 49/19 51/12 51/12 51/14 58/11 58/24 60/21 60/24 67/12 100/7 101/10 121/15 125/6 140/15 140/15 151/5 153/19 160/9</p> <p>doesn't [2] 11/16</p>
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---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>D</p> <p>doesn't... [1] 118/21</p> <p>doing [16] 27/6 28/4 29/7 36/5 46/11 52/6 78/2 79/6 79/7 110/21 112/11 112/12 113/19 129/1 150/7 158/16</p> <p>dollar [2] 114/13 117/11</p> <p>dollars [7] 56/20 84/9 90/3 118/13 127/18 127/25 154/25</p> <p>don't [81] 5/23 6/12 8/14 12/16 13/9 16/5 17/22 23/17 28/21 30/15 35/21 37/10 38/13 38/17 39/9 39/9 39/10 39/15 40/6 40/6 40/20 44/8 44/22 45/2 47/3 47/5 49/21 50/14 50/23 54/16 54/24 55/4 56/11 56/11 62/15 62/22 63/7 63/8 63/20 64/8 64/13 65/9 69/10 69/10 70/3 70/22 71/3 77/23 81/8 98/9 98/25 99/1 100/22 110/3 115/20 117/1 117/3 120/18 121/7 121/9 122/11 122/25 123/10 123/12 129/8 130/8 130/25 131/8 132/10 138/14 141/19 143/19 144/18 149/6 150/24 151/1 153/23 154/16 154/18 154/19 157/15</p> <p>done [26] 8/19 9/21 10/8 11/24 13/20 14/3 20/21 22/12 29/24 55/11 58/4 67/10 67/11 68/13 69/8 72/10 72/23 90/23 104/10 118/25 119/16 119/21 121/3 127/20 141/1 148/24</p> <p>Doornink [1] 102/19</p> <p>dorm [1] 73/15</p> <p>down [31] 4/25 7/15 21/4 30/15 36/13 36/14 39/18 57/7 57/17 64/21 67/13 67/22 74/18 84/22 87/16 92/5 98/15 100/23 100/24 101/21 105/7 105/9 110/19 111/18 112/21 113/18 130/12 130/20 147/25 149/2 153/22</p> <p>downstream [3] 48/23 84/12 155/6</p> <p>downward [1] 120/16</p> <p>draft [2] 65/14 101/23</p> <p>drafted [2] 65/14 101/25</p> <p>dramatically [1] 52/5</p> <p>drivers [1] 93/19</p> <p>drop [2] 89/21 102/25</p> <p>dual [2] 95/23 96/12</p> <p>due [7] 33/8 87/25 95/6 95/9 95/12 95/15</p>	<p>109/16</p> <p>Dufilho [2] 29/21 83/8</p> <p>duly [1] 3/9</p> <p>duplicate [1] 6/7</p> <p>during [5] 20/14 95/22 128/13 129/3 150/2</p> <p>duties [1] 5/4</p> <p>DX [11] 3/14 3/16 3/21 6/2 114/25 131/4 131/6 131/8 131/11 131/13 154/8</p> <p>DX-1070 [3] 3/14 3/16 3/21</p> <p>DX-504 [1] 114/25</p> <p>DX-873 [5] 131/4 131/6 131/8 131/11 131/13</p> <p>DX-925 [1] 154/8</p> <p>E</p> <p>e-mail [53] 28/25 29/14 30/4 37/12 37/21 53/7 63/23 64/1 94/2 97/17 97/18 101/5 101/20 102/16 102/22 104/2 104/3 109/3 109/4 109/14 109/17 109/18 109/19 110/22 111/3 111/4 113/5 125/6 127/10 130/4 130/4 130/11 131/3 133/2 133/10 134/18 134/25 135/8 136/17 137/17 140/15 140/15 142/4 142/23 143/9 144/4 144/21 147/13 148/6 148/7 154/7 154/23 157/5</p> <p>e-mails [11] 14/5 53/11 53/21 54/23 65/22 112/10 112/14 112/22 113/1 125/3 153/12</p> <p>each [4] 17/16 20/1 74/11 87/7</p> <p>ear [1] 72/24</p> <p>earlier [43] 4/6 7/10 8/1 22/20 44/1 44/3 53/20 62/2 63/14 69/18 69/20 70/20 73/4 78/17 83/11 86/16 92/22 93/25 96/16 97/11 106/15 110/24 111/9 112/16 113/20 115/1 124/4 124/15 125/9 127/22 129/16 129/23 137/23 145/11 147/12 148/4 149/23 149/24 150/8 151/2 151/20 153/25 154/22</p> <p>earliest [1] 54/12</p> <p>early [5] 25/12 52/5 53/21 126/16 126/21</p> <p>earning [1] 82/24</p> <p>earnings [1] 93/12</p> <p>ears [1] 72/5</p> <p>easier [2] 82/14 143/1</p> <p>easily [1] 82/23</p> <p>easy [3] 20/23 76/4 76/6</p> <p>EBIT [1] 134/2</p>	<p>EBITDA [7] 33/24 34/3 35/3 96/2 130/12 133/13 133/14</p> <p>economic [1] 93/19</p> <p>economics [1] 79/22</p> <p>effect [3] 116/20 129/25 150/23</p> <p>effective [1] 73/11</p> <p>effectively [3] 57/17 84/9 147/19</p> <p>effort [3] 56/20 78/13 78/15</p> <p>efforts [2] 25/8 46/7</p> <p>ego [1] 137/20</p> <p>eight [2] 72/24 73/23</p> <p>either [4] 74/19 74/19 134/7 157/14</p> <p>Elect [1] 66/9</p> <p>Eleven [1] 74/15</p> <p>eliminated [1] 96/4</p> <p>ELIZABETH [1] 1/11</p> <p>Ellis [2] 65/9 65/17</p> <p>else [4] 46/25 92/19 144/19 156/9</p> <p>elsewhere [1] 4/15</p> <p>email [18] 69/18 69/23 75/4 76/16 78/7 78/18 78/19 79/2 83/7 83/10 84/17 85/6 86/21 87/1 87/16 88/24 124/24 124/25</p> <p>emails [1] 68/6</p> <p>embarking [1] 135/5</p> <p>embrace [1] 27/5</p> <p>emitter [1] 90/21</p> <p>employee [2] 113/23 114/18</p> <p>employment [3] 66/22 115/1 117/5</p> <p>enable [1] 9/15</p> <p>end [14] 7/5 7/9 25/5 32/12 35/22 38/8 46/3 54/4 55/5 84/14 103/18 134/10 141/1 152/25</p> <p>ends [1] 13/4</p> <p>energy [2] 154/2 154/4</p> <p>engage [1] 84/6</p> <p>engaged [1] 45/16</p> <p>engineer [1] 74/11</p> <p>engineering [4] 73/19 75/20 79/23 87/23</p> <p>engineers [1] 73/25</p> <p>enhanced [1] 73/19</p> <p>enough [6] 25/13 72/18 73/2 75/3 104/11 126/24</p> <p>entire [2] 135/22 144/21</p> <p>entirety [1] 7/25</p> <p>entitled [2] 3/24 160/4</p> <p>entity [7] 52/3 52/8 61/21 106/16 106/25 107/2 160/10</p> <p>environment [1] 91/11</p> <p>environmental [1] 73/7</p> <p>EQ'd [1] 72/22</p> <p>equal [1] 117/14</p> <p>equals [1] 80/25</p> <p>equation [1] 8/16</p>	<p>equitable [1] 20/10</p> <p>equity [7] 5/20 19/12 52/11 58/12 84/20 93/21 142/21</p> <p>equivalent [1] 127/16</p> <p>especially [1] 11/25</p> <p>ESQ [9] 1/15 1/16 1/17 1/18 1/18 1/19 1/20 1/21 1/21</p> <p>essentially [1] 135/22</p> <p>estimation [1] 53/22</p> <p>et [6] 23/17 45/23 89/16 129/25 129/25 137/8</p> <p>evaluate [2] 71/17 79/5</p> <p>evaluation [1] 99/2</p> <p>even [7] 20/10 39/10 39/13 64/17 69/15 72/17 123/19</p> <p>evening [1] 159/12</p> <p>event [1] 28/21</p> <p>events [1] 45/15</p> <p>eventually [1] 61/16</p> <p>ever [8] 17/23 52/5 63/8 65/8 65/22 109/25 115/22 127/12</p> <p>every [6] 37/12 42/9 52/10 52/14 90/1 158/17</p> <p>everybody [4] 21/20 40/8 47/8 151/10</p> <p>everyone [1] 88/2</p> <p>everyone's [3] 57/21 72/14 92/3</p> <p>everything [5] 7/9 29/25 37/18 112/12 146/13</p> <p>everything's [1] 137/7</p> <p>evidence [12] 101/6 111/9 113/9 130/25 131/13 131/14 131/15 137/23 142/24 148/4 149/23 154/22</p> <p>evolution [1] 76/9</p> <p>evolve [1] 53/6</p> <p>evolved [3] 56/8 76/6 126/22</p> <p>exact [1] 124/12</p> <p>exactly [9] 23/22 28/2 35/13 42/4 81/8 107/3 110/21 113/19 150/9</p> <p>examination [9] 2/5 2/6 2/7 2/8 3/11 67/23 105/18 129/4 155/25</p> <p>example [8] 14/17 73/10 80/23 106/7 111/10 112/24 113/15 153/13</p> <p>examples [1] 112/5</p> <p>exceeds [1] 115/16</p> <p>exchange [5] 10/6 45/11 63/23 123/23 144/7</p> <p>excited [4] 27/4 47/3 47/9 105/16</p> <p>excitement [2] 27/25 48/21</p> <p>exciting [1] 46/9</p> <p>excruciating [1] 14/4</p>	<p>excuse [7] 7/11 11/9 39/1 58/6 138/2 144/14 150/25</p> <p>execute [1] 11/5</p> <p>executed [3] 8/13 52/10 111/5</p> <p>execution [8] 43/11 79/17 86/3 100/10 100/13 100/13 104/25 105/3</p> <p>executive [5] 7/18 59/24 60/4 60/11 63/12</p> <p>exercisable [2] 59/5 59/6</p> <p>exercise [5] 45/19 80/10 117/12 117/20 121/8</p> <p>exercised [3] 117/8 119/16 120/4</p> <p>exhibit [63] 6/21 8/9 13/2 40/11 44/9 44/11 44/15 44/19 44/25 45/1 45/4 45/13 51/17 76/16 78/18 91/25 101/3 102/8 102/12 103/22 105/20 108/20 109/10 109/22 110/2 111/7 113/8 113/8 114/25 116/3 116/8 120/20 121/15 123/8 124/13 126/13 126/18 127/7 128/18 129/22 130/11 130/23 132/18 134/5 134/13 134/21 137/22 139/12 140/5 140/11 141/22 142/23 143/22 146/7 146/25 147/12 148/3 150/18 152/1 153/13 153/17 153/19 154/21</p> <p>exhibits [5] 2/11 131/21 131/23 149/22 159/1</p> <p>existed [2] 8/2 108/15</p> <p>existing [1] 35/3</p> <p>expanding [1] 81/18</p> <p>expect [1] 107/3</p> <p>expectations [3] 129/25 145/5 145/7</p> <p>expeditiously [1] 112/1</p> <p>expenses [1] 106/17</p> <p>expensive [1] 74/7</p> <p>experience [3] 9/4 9/5 76/1</p> <p>experiences [1] 9/4</p> <p>experiment [1] 25/12</p> <p>expert [1] 155/4</p> <p>expiration [4] 119/14 119/23 120/17 121/5</p> <p>expire [1] 120/15</p> <p>expired [1] 119/13</p> <p>explain [1] 142/18</p> <p>explicitly [1] 144/5</p> <p>explore [1] 81/20</p> <p>exploring [1] 48/14</p> <p>exposed [1] 153/13</p> <p>exposure [2] 119/9 119/10</p> <p>AA 2583</p>
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---------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

E	141/12 141/20 feel [3] 38/17 54/25 94/25 feels [1] 135/22 fees [4] 62/22 63/5 63/8 140/25 fell [2] 12/9 153/23 felt [4] 27/4 55/7 96/16 104/21 fence [1] 84/13 few [6] 24/20 57/14 78/7 92/2 123/13 151/20 fiduciary [1] 5/4 field [2] 69/1 69/5 figured [1] 40/18 fill [1] 25/21 film [3] 74/1 74/4 74/6 final [2] 70/18 127/5 finalizing [1] 45/23 finance [1] 10/12 financial [9] 11/18 32/18 83/5 92/19 96/14 129/25 139/8 140/21 151/23 financially [3] 15/22 16/2 27/3 financials [2] 96/7 139/23 financing [15] 9/10 9/21 9/21 9/24 10/9 10/14 10/17 10/24 11/2 11/4 11/9 44/2 48/6 76/21 94/8 find [6] 104/11 112/5 112/9 121/24 122/18 138/7 finding [2] 80/10 138/11 fine [8] 6/3 6/5 6/14 6/17 54/1 123/6 123/6 157/15 finish [5] 62/6 81/15 89/5 111/22 156/24 finished [5] 120/23 136/3 136/4 157/3 158/17 firm [4] 65/8 65/15 116/14 135/21 first [27] 10/2 12/12 13/3 13/21 17/7 29/6 30/6 31/13 33/14 42/16 55/14 61/11 70/3 71/11 78/18 92/6 94/1 94/6 97/18 98/1 109/24 116/11 120/9 128/19 138/7 140/24 156/5 five [1] 33/6 flat [1] 16/9 flexibility [1] 98/18 flexible [1] 69/22 floating [1] 147/9 flow [3] 17/8 19/13 19/17 focus [7] 13/2 74/10 79/2 85/22 92/6 94/1 107/19 focused [2] 73/14 73/16	focusing [2] 4/4 11/6 folks [2] 36/12 112/11 follow [4] 45/22 45/23 129/2 156/9 follow-up [1] 129/2 follow-ups [1] 156/9 following [5] 59/4 66/9 70/4 137/19 156/6 follows [1] 3/10 footnote [5] 59/1 59/3 59/4 140/9 140/13 footnotes [1] 59/17 forced [1] 142/20 forcing [1] 142/5 forecast [5] 33/19 41/16 41/17 93/12 105/11 forecasts [2] 93/1 93/5 foregoing [1] 4/17 foresee [1] 9/7 forget [1] 86/21 Forgive [1] 23/9 form [3] 17/23 24/21 103/19 format [1] 4/5 formatting [1] 102/16 formula [1] 80/10 forth [3] 38/7 42/17 50/16 Forty [1] 105/10 Forty-nine [1] 105/10 forward [17] 7/16 8/6 9/16 10/25 10/25 20/17 21/21 70/9 87/5 87/14 88/13 100/10 105/2 107/13 111/25 112/13 124/7 forwarded [2] 128/13 128/18 forwarding [1] 83/10 found [1] 126/22 foundation [1] 142/25 four [4] 49/19 54/15 78/20 158/24 FOX [6] 1/21 62/14 70/19 70/23 83/25 154/11 frame [1] 86/2 franchise [1] 90/21 frankly [2] 35/22 84/14 free [4] 90/23 91/5 91/13 127/21 frequent [2] 7/24 7/24 friction [2] 13/17 14/3 Friday [3] 157/11 157/12 158/19 friend [1] 55/18 front [1] 104/23 frustrated [1] 83/20 full [5] 13/4 61/1 70/22 94/25 95/20 full-court [1] 95/20 fully [5] 27/5 38/23 45/9 70/21 150/7 fund [1] 127/19 funded [1] 71/14 funding [1] 71/12 further [6] 20/14 121/12 123/14 154/4	155/13 156/10 future [3] 31/14 32/20 129/24 G gain [3] 16/2 120/2 120/3 gallery [1] 67/22 game [2] 69/9 70/4 gaming [1] 24/24 garage [1] 76/7 gave [7] 12/15 12/17 39/22 40/2 50/11 55/2 105/4 gears [2] 47/25 88/14 gee [6] 8/11 28/20 29/7 123/12 147/9 154/1 general [4] 6/23 11/17 96/12 123/25 generated [2] 151/21 153/3 generation [1] 73/16 gentleman [1] 113/21 gentlemen [1] 123/4 gentlemen's [3] 14/16 14/22 103/7 GEORGE [4] 1/15 158/2 158/3 158/8 get [52] 6/15 8/5 10/14 10/24 11/24 12/23 13/9 15/5 15/7 15/9 15/11 20/21 22/12 22/13 22/14 25/18 27/6 29/17 30/16 30/17 35/12 37/19 47/5 47/8 55/22 56/6 56/18 58/4 66/5 67/5 68/11 68/13 70/3 71/11 71/14 72/4 77/15 112/3 112/21 115/17 118/25 125/13 128/2 128/10 131/24 136/13 141/10 142/10 144/5 144/7 154/7 154/10 gets [2] 72/9 114/9 getting [19] 8/12 8/19 9/20 9/24 10/8 13/20 14/3 25/22 29/24 29/25 47/15 55/10 70/16 91/20 104/10 128/15 140/16 140/25 148/24 give [18] 7/22 29/6 35/25 36/2 47/3 55/21 55/24 56/20 77/23 84/23 92/6 103/10 103/11 112/24 126/2 127/21 136/15 138/10 given [17] 6/2 11/25 15/23 28/4 41/16 47/23 56/17 99/10 100/1 117/21 117/22 127/17 140/8 142/20 145/2 153/4 153/22 gives [1] 24/10 giving [3] 19/2 38/18 45/10 glass [4] 71/18 71/20 71/22 72/6 go [96] 3/4 5/9 5/25 9/9 9/9 9/12 10/8 16/12	18/14 20/21 21/5 21/5 21/8 22/20 22/22 23/4 23/7 23/20 23/24 24/13 25/4 25/13 26/22 28/5 28/10 28/20 31/21 31/21 32/4 32/14 32/25 33/11 33/14 33/23 36/1 36/18 38/4 40/25 43/25 44/1 47/25 49/10 50/24 55/6 55/23 56/5 57/25 58/1 58/5 58/6 59/16 59/22 64/15 65/22 70/9 71/3 71/5 72/14 75/4 80/23 83/22 85/6 86/18 88/22 97/15 101/21 105/20 106/20 108/4 116/18 116/20 118/24 126/1 126/3 128/13 129/22 130/9 133/9 134/11 134/22 135/4 136/2 136/16 137/19 142/22 142/25 143/15 146/7 146/20 148/3 148/25 153/16 154/21 155/22 157/8 157/9 go-shop [13] 5/9 22/20 22/22 23/4 23/7 23/20 23/24 25/4 43/25 44/1 126/1 126/3 128/13 goal [5] 37/24 79/12 87/25 120/1 120/2 goals [6] 80/11 80/11 80/12 80/17 80/19 80/21 goes [15] 9/22 28/21 56/19 56/19 64/21 79/19 80/9 82/6 85/16 85/21 89/17 89/25 90/1 94/11 139/21 going [83] 6/8 7/15 9/6 9/7 9/24 11/23 12/21 14/8 25/13 27/9 27/10 28/6 28/22 30/16 35/9 35/9 35/14 35/20 36/2 36/13 36/14 37/12 37/18 38/6 38/11 42/9 42/10 45/10 45/18 47/5 47/7 49/6 54/23 55/3 70/9 72/13 73/22 74/18 76/9 77/15 77/18 78/1 79/2 81/13 82/6 85/22 86/17 87/5 87/14 88/14 90/6 90/12 91/24 92/1 96/3 96/6 96/13 96/21 98/10 98/15 100/7 100/10 102/15 103/13 107/13 107/19 112/1 112/4 121/4 122/23 125/11 126/8 127/20 132/12 132/25 142/21 143/24 148/21 149/7 151/11 151/15 151/23 154/17 GONZALEZ [1] 1/11 good [25] 3/13 3/13 47/6 47/10 47/11 47/18 56/23 67/25 68/1 70/11 72/18 77/16 77/19 87/3 87/17 104/22 105/4 AA 2584
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<p>G</p> <p>good... [8] 112/21 131/22 137/7 140/1 140/1 145/6 155/6 157/1</p> <p>goods [1] 84/8</p> <p>GORDON [1] 1/20</p> <p>got [27] 4/20 11/15 12/12 25/12 28/23 29/11 35/24 40/7 56/6 56/21 57/5 58/1 69/7 77/24 100/8 104/19 104/19 114/14 118/16 128/5 128/9 132/2 136/15 137/19 138/7 138/10 143/13</p> <p>gotten [1] 104/22</p> <p>governance [2] 15/21 15/25</p> <p>granted [1] 116/21</p> <p>graph [1] 30/9</p> <p>great [6] 28/6 44/13 79/24 101/1 104/19 105/6</p> <p>group [8] 1/21 48/8 73/23 87/6 88/12 88/12 135/20 154/12</p> <p>growth [6] 38/10 38/11 38/16 38/24 38/24 38/25</p> <p>grunt [1] 74/12</p> <p>guardband [2] 26/16 26/17</p> <p>guess [9] 35/13 36/2 56/16 78/24 87/17 94/6 100/20 145/3 158/19</p> <p>guidance [16] 26/7 26/9 27/22 35/25 36/3 38/9 38/13 38/14 38/15 41/16 47/3 70/16 92/9 136/10 136/15 136/25</p> <p>guy [4] 74/23 122/20 129/9 129/10</p> <p>guy's [1] 141/10</p> <p>guys [7] 76/7 81/14 89/3 89/15 104/22 132/1 146/19</p>	<p>122/14 123/3 127/11 127/17 128/25 129/23 129/24 129/24 137/10 137/12 142/7 142/20 150/3 150/18 151/10 151/19 154/11 154/13 154/20 154/20 155/5 158/9</p> <p>half [7] 33/19 100/24 118/13 122/24 134/9 157/21 157/22</p> <p>half-hour [1] 134/9</p> <p>Hallum [22] 15/14 15/18 16/4 16/11 16/17 16/25 17/14 17/20 18/11 20/4 20/11 41/6 41/9 41/19 41/23 92/23 95/15 129/17 133/3 133/6 153/13 154/1</p> <p>Hallum's [1] 17/24</p> <p>hand [1] 105/11</p> <p>hands [1] 97/2</p> <p>Hanson [1] 115/23</p> <p>happen [10] 9/6 9/8 22/1 28/7 28/22 32/20 72/3 100/8 108/13 126/8</p> <p>happened [6] 5/23 46/2 85/4 108/12 110/7 155/6</p> <p>happening [7] 13/16 32/10 32/21 37/2 37/17 95/23 112/10</p> <p>happy [1] 85/22</p> <p>Hard [1] 122/21</p> <p>hardware [1] 33/22</p> <p>harmful [2] 135/6 136/25</p> <p>has [11] 40/18 47/3 79/12 79/17 85/17 89/8 94/8 115/16 129/3 142/17 144/19</p> <p>hasn't [2] 136/3 136/4</p> <p>have [175]</p> <p>haven't [2] 25/13 158/17</p> <p>having [15] 3/9 24/18 29/17 38/18 54/6 78/1 89/3 90/11 94/12 94/16 97/8 97/12 108/1 112/11 121/11</p> <p>HAWKINS [1] 1/24</p> <p>he [99] 12/15 12/17 26/7 26/11 26/11 26/14 26/16 28/7 36/25 37/1 37/2 37/2 37/8 37/23 37/24 38/21 38/23 38/23 41/18 48/22 51/12 51/12 51/12 51/13 51/14 51/22 53/18 54/20 54/22 54/23 55/2 55/8 55/9 55/22 57/5 65/22 65/24 72/3 72/22 75/2 75/20 79/19 80/9 80/19 80/21 82/6 84/15 84/15 86/5 86/8 86/23 87/17 87/21 89/25 90/14 98/14 103/9 103/10 103/11</p>	<p>104/9 104/16 104/19 104/24 104/25 110/24 110/24 113/23 114/3 114/6 114/8 114/9 114/19 118/21 120/17 121/13 125/19 125/25 126/2 126/2 126/4 130/20 130/21 133/16 133/17 134/2 136/3 136/4 137/10 137/12 139/21 143/23 144/7 144/9 144/9 144/12 144/19 147/19 151/2 154/6</p> <p>he'd [1] 142/25</p> <p>he's [29] 4/19 29/3 29/3 37/3 37/6 37/23 41/15 41/15 70/7 80/24 82/3 82/6 90/12 98/15 102/25 114/1 114/1 114/3 114/4 114/12 114/17 123/2 130/12 134/1 134/3 137/6 137/18 139/15 144/21</p> <p>head [2] 26/24 46/15</p> <p>heading [2] 32/16 33/2</p> <p>headphones [1] 30/17</p> <p>headwinds [1] 96/14</p> <p>health [2] 82/10 82/15</p> <p>healthcare [2] 69/1 69/5</p> <p>hear [4] 3/6 11/21 12/2 13/21</p> <p>heard [3] 40/10 84/14 135/14</p> <p>hearing [2] 28/11 92/10</p> <p>heat [1] 145/21</p> <p>hedge [4] 27/9 28/7 29/3 130/8</p> <p>hedged [3] 27/10 130/9 130/18</p> <p>hedging [2] 28/5 29/3</p> <p>help [6] 53/5 55/24 64/14 87/4 123/25 136/14</p> <p>helped [3] 53/19 55/19 55/21</p> <p>helping [2] 23/15 122/19</p> <p>here [28] 19/23 26/1 26/9 28/18 29/10 29/19 37/12 38/12 41/11 47/2 47/19 52/19 55/17 57/24 60/13 64/21 82/8 85/4 88/14 100/11 104/3 104/7 106/6 117/17 118/17 122/10 135/25 136/23</p> <p>here's [3] 38/2 38/3 57/24</p> <p>HEREBY [1] 160/3</p> <p>HESS [8] 1/21 2/6 67/18 81/15 109/24 110/24 122/19 151/2</p> <p>hey [15] 28/19 35/9 35/13 37/5 37/16 47/4 47/8 56/15 73/1 77/14 100/19 127/19 137/18</p>	<p>141/10 141/20</p> <p>HHI [54] 13/7 13/7 13/15 13/19 14/3 14/13 14/13 15/2 48/6 48/15 48/19 48/23 50/16 51/6 51/23 52/1 52/12 52/22 53/6 53/11 53/19 53/21 60/19 60/20 60/23 65/25 66/1 66/2 71/11 101/7 102/7 102/23 103/4 103/8 103/14 103/19 142/6 142/8 142/9 142/11 142/22 148/9 148/25 149/7 150/2 150/3 150/5 150/6 150/10 150/13 150/15 154/24 155/3 155/9</p> <p>high [2] 10/15 74/8</p> <p>higher [4] 9/12 77/19 100/13 130/7</p> <p>highlight [1] 8/9</p> <p>him [39] 26/14 28/2 29/3 29/7 36/21 36/22 38/24 54/21 54/24 55/4 55/8 55/19 56/6 56/13 57/7 64/1 75/8 88/8 89/8 103/13 114/18 114/20 120/15 120/15 120/25 122/24 123/11 123/17 124/9 125/11 126/10 135/4 137/7 137/18 140/2 144/8 144/18 144/20 147/24</p> <p>himself [1] 26/12</p> <p>hindsight [1] 7/7</p> <p>hire [2] 65/8 81/13</p> <p>hired [1] 84/23</p> <p>hiring [1] 81/20</p> <p>his [31] 29/3 36/21 37/1 37/9 37/21 37/24 41/17 48/8 48/11 55/14 55/14 56/2 56/14 57/8 64/7 86/15 86/17 86/19 87/17 88/10 108/16 117/10 118/23 120/22 125/19 130/8 130/9 137/20 139/19 141/11 147/4</p> <p>historically [1] 28/8</p> <p>history [1] 114/14</p> <p>hit [2] 73/12 121/5</p> <p>hitting [1] 77/20</p> <p>HL [1] 135/11</p> <p>hold [12] 35/14 88/1 112/2 116/5 120/23 121/19 134/17 138/4 139/18 143/2 143/16 155/17</p> <p>holding [2] 83/16 110/18</p> <p>HOLDINGS [2] 1/20 1/21</p> <p>Holisonic [1] 126/23</p> <p>Home [1] 55/20</p> <p>honest [1] 106/4</p> <p>honestly [1] 47/1</p> <p>Honor [46] 12/2 19/23 39/23 40/3 44/17 53/24</p>	<p>67/19 103/22 105/11 113/6 116/5 120/21 121/24 122/12 122/13 123/1 123/5 128/23 131/7 132/5 132/16 134/8 134/19 136/19 138/14 138/22 139/25 140/2 140/13 142/12 143/25 144/10 146/4 146/14 146/23 149/22 155/11 155/13 156/10 156/12 157/13 157/19 157/23 158/11 158/16 159/6</p> <p>HONORABLE [1] 1/11</p> <p>Honore [1] 62/10</p> <p>hope [3] 131/1 134/5 142/24</p> <p>hopeful [1] 23/23</p> <p>hopefully [2] 6/18 91/19</p> <p>Houlihan [20] 15/21 23/11 23/24 24/8 29/19 29/23 76/17 81/10 81/19 81/19 81/20 83/8 95/9 114/5 127/4 129/17 131/4 133/3 135/11 135/14</p> <p>hour [1] 134/9</p> <p>house [1] 54/22</p> <p>how [20] 5/23 5/24 11/1 17/8 26/17 54/11 54/13 54/23 72/22 74/15 76/4 76/10 80/2 83/1 115/11 118/14 118/16 133/14 154/17 157/8</p> <p>however [2] 42/10 97/19</p> <p>huge [3] 64/24 79/17 80/3</p> <p>hugely [1] 84/20</p> <p>huh [6] 3/5 39/3 126/12 135/4 140/19 155/12</p> <p>hum [2] 125/4 135/21</p> <p>humor [1] 104/17</p> <p>hundred [3] 80/16 84/9 114/13</p> <p>hurdles [1] 82/15</p> <p>Hype [1] 88/25</p> <p>HyperSound [9] 69/1 69/5 72/19 73/11 74/3 75/18 75/21 90/21 91/5</p> <p>hyping [1] 89/10</p>
<p>H</p> <p>had [90] 7/11 7/24 16/1 16/6 17/25 22/2 22/8 24/17 28/2 28/6 28/7 38/23 41/8 44/8 45/5 46/4 47/17 47/21 48/20 52/7 52/12 52/14 54/23 57/12 61/25 62/2 62/22 67/4 68/3 68/12 68/25 69/4 69/6 69/8 71/21 72/3 75/17 75/20 75/23 76/1 83/10 84/8 84/10 84/12 85/12 86/14 86/16 88/16 91/1 91/11 94/12 97/22 98/7 100/12 101/12 104/22 107/7 107/11 107/12 107/13 107/16 107/18 111/24 117/17 117/22 118/6 118/10 118/20</p>				<p>I</p> <p>I'd [9] 11/24 12/22 25/15 92/6 98/4 105/20 116/3 121/8 150/17</p> <p>I'll [15] 16/11 40/4 41/4 45/2 56/19 73/3 77/18 83/22 86/14 106/15 111/10 113/5 116/13 123/24 144/6</p> <p>I'm [111] 3/22 4/1 4/13 5/20 8/21 10/7 10/16 11/23 12/5 12/21 14/2 14/8 14/21 19/5 19/8 19/22 21/2 23/2 24/23</p> <p>AA 2585</p>

<p>I</p> <p>I'm... [92] 26/9 27/20 29/7 30/12 37/5 37/11 37/12 43/5 46/18 49/21 51/8 54/17 55/3 55/14 56/13 58/6 60/6 60/6 60/20 63/1 63/3 64/14 67/15 69/3 69/18 69/22 72/13 73/22 77/21 77/24 78/1 79/2 83/13 85/22 88/14 90/6 90/7 91/24 100/11 102/15 104/2 106/19 107/8 110/19 111/14 111/23 112/1 112/17 112/20 113/17 118/17 119/24 120/2 120/25 122/10 122/23 123/3 123/23 124/24 125/7 125/8 130/22 131/24 134/25 137/7 137/18 137/20 138/15 138/20 139/14 139/19 140/22 143/17 143/17 145/22 145/24 146/17 147/7 147/7 147/9 147/17 148/16 148/17 148/20 148/21 149/9 151/21 152/15 152/16 152/19 153/8 153/16</p> <p>I've [27] 6/20 8/23 9/3 13/11 24/5 26/4 27/20 29/4 48/3 55/18 55/19 55/21 55/22 56/21 57/5 84/14 89/7 101/22 114/14 122/9 123/10 125/17 138/7 144/22 154/15 154/18 158/17</p> <p>i.e [1] 142/10</p> <p>idea [3] 68/19 107/11 114/9</p> <p>IDENTIFICATION [1] 160/10</p> <p>identified [1] 56/23</p> <p>identify [1] 24/22</p> <p>identifying [2] 34/6 147/10</p> <p>if [126] 4/25 6/15 6/18 7/21 8/14 11/21 12/1 12/16 16/11 16/18 20/6 22/2 23/9 24/16 24/22 25/3 27/2 27/9 27/11 27/21 29/7 31/21 32/12 32/25 37/22 38/15 38/16 39/15 40/6 44/8 47/3 49/6 52/7 52/9 53/23 55/5 56/15 56/17 57/20 57/25 58/5 59/16 60/2 60/3 67/4 68/2 68/25 69/4 69/17 71/18 72/5 73/10 74/10 76/12 77/8 77/14 77/21 78/23 79/20 80/23 80/24 82/8 82/23 83/23 89/8 89/10 96/23 97/8 97/15 98/14 99/6 99/8 99/8 100/3 100/23 101/3 101/20 107/21 108/24 109/18</p>	<p>110/10 114/25 115/15 115/15 115/20 116/10 116/18 118/10 119/15 120/1 120/1 120/2 120/17 121/19 121/20 128/20 130/25 133/9 136/1 136/13 136/14 138/20 141/22 142/25 143/23 144/5 144/19 145/10 145/17 146/7 147/13 148/3 148/12 149/2 149/6 149/9 151/6 153/6 154/7 154/21 155/6 156/13 157/4 157/5 157/15 158/13</p> <p>II [1] 1/13</p> <p>III [2] 1/15 1/18</p> <p>illustrative [1] 156/7</p> <p>immediately [2] 71/17 157/7</p> <p>impact [6] 25/1 31/25 35/3 69/2 69/5 96/7</p> <p>impacted [2] 32/1 134/3</p> <p>impaired [1] 24/17</p> <p>impeachment [6] 132/10 138/16 139/1 139/4 139/21 143/19</p> <p>implications [6] 31/20 33/7 99/20 115/18 115/18 151/24</p> <p>implied [2] 19/12 20/1</p> <p>implies [2] 33/21 33/21</p> <p>imply [1] 145/4</p> <p>implying [3] 137/18 152/15 152/19</p> <p>important [6] 38/10 89/18 106/3 140/8 149/14 149/17</p> <p>importantly [1] 77/20</p> <p>improve [1] 78/13</p> <p>improved [3] 5/20 5/20 33/18</p> <p>in [369]</p> <p>inaccurate [1] 152/20</p> <p>INC [1] 1/25</p> <p>incentives [1] 23/17</p> <p>include [3] 5/9 11/16 33/17</p> <p>included [3] 112/20 127/4 158/12</p> <p>includes [3] 58/25 59/5 131/3</p> <p>including [8] 55/19 55/20 55/21 60/14 60/15 62/14 62/14 82/9</p> <p>income [4] 117/8 117/19 119/11 119/15</p> <p>inconsequential [1] 133/19</p> <p>inconsistent [2] 25/7 38/21</p> <p>incorporate [1] 75/21</p> <p>incorporated [3] 60/13 152/24 153/2</p> <p>Incorporation [1] 66/17</p> <p>incorrect [4] 17/21</p>	<p>26/24 150/16 150/16</p> <p>incredible [1] 77/24</p> <p>independent [2] 79/8 148/7</p> <p>indeterminate [1] 149/1</p> <p>indicate [3] 8/18 30/6 129/23</p> <p>indicates [2] 116/22 124/18</p> <p>indicating [2] 24/9 26/6</p> <p>indice [1] 83/2</p> <p>indiscernible [18] 3/25 16/20 29/15 38/7 42/13 44/21 108/25 110/3 121/18 123/3 124/22 131/25 132/4 132/5 132/6 145/10 148/15 159/9</p> <p>individuals [2] 51/16 59/18</p> <p>industry [9] 28/9 37/3 37/3 37/6 37/23 38/9 69/1 75/14 135/15</p> <p>influence [6] 56/6 56/13 56/22 57/6 58/1 58/2</p> <p>information [17] 7/18 7/22 25/23 26/25 26/25 27/1 34/10 34/12 34/14 34/20 34/22 34/25 49/3 49/7 49/18 88/16 92/17</p> <p>initial [2] 9/19 99/18</p> <p>initially [3] 8/4 121/23 122/4</p> <p>input [1] 99/18</p> <p>inputs [1] 93/16</p> <p>inquiry [1] 129/5</p> <p>installing [1] 91/5</p> <p>instances [2] 14/10 65/2</p> <p>instead [2] 11/22 71/21</p> <p>instructions [1] 14/7</p> <p>instrument [1] 77/14</p> <p>intact [1] 37/18</p> <p>intended [2] 104/17 156/6</p> <p>intent [3] 11/8 53/20 110/20</p> <p>interest [9] 12/10 22/5 45/7 48/6 60/11 82/14 100/4 129/14 149/11</p> <p>interested [9] 15/25 29/9 50/8 68/11 92/3 126/14 126/19 127/9 129/13</p> <p>interests [6] 57/21 59/24 60/4 60/14 149/13 149/16</p> <p>interfere [1] 23/19</p> <p>internal [3] 112/10 112/24 126/18</p> <p>internally [4] 82/15 112/10 112/15 112/22</p> <p>interpreting [1] 117/4</p> <p>interruption [1] 106/20</p> <p>intervene [1] 53/16</p> <p>into [25] 8/16 36/9</p>	<p>50/16 61/18 71/6 73/11 90/3 90/21 90/22 91/3 91/15 99/1 100/11 100/12 111/9 114/2 116/20 130/9 137/22 147/24 149/23 150/23 153/2 154/4 154/22</p> <p>introduction [1] 55/20</p> <p>invention [1] 73/23</p> <p>invents [1] 88/12</p> <p>invest [2] 25/14 120/13</p> <p>investment [3] 29/23 48/15 50/16</p> <p>investments [1] 105/24</p> <p>investor [3] 105/21 106/18 135/20</p> <p>investors [5] 34/1 38/19 48/8 106/4 136/13</p> <p>involved [2] 15/2 129/10</p> <p>involvement [4] 7/25 23/12 123/18 124/2</p> <p>involving [2] 29/19 103/19</p> <p>IP [17] 45/8 45/18 79/6 79/10 79/11 107/11 107/12 107/16 127/10 127/14 127/17 127/20 127/23 128/3 128/11 148/10 149/7</p> <p>IPO [1] 84/11</p> <p>IR [1] 135/21</p> <p>irrelevant [2] 96/18 96/19</p> <p>is [310]</p> <p>isn't [5] 113/25 118/1 123/13 128/8 133/5</p> <p>issuance [1] 97/5</p> <p>issue [15] 8/4 8/4 26/24 26/25 28/25 32/3 41/12 90/4 90/5 93/19 99/10 102/23 103/19 140/8 154/18</p> <p>issues [5] 75/10 94/12 138/24 141/4 151/19</p> <p>it [335]</p> <p>it'd [1] 143/1</p> <p>It'll [4] 116/7 123/7 134/20 146/24</p> <p>it's [106] 3/7 6/1 6/3 6/5 6/22 7/1 8/20 9/5 11/21 11/25 12/16 13/3 16/19 18/14 19/2 19/11 19/15 20/23 22/2 24/8 24/8 26/8 28/15 29/16 30/7 32/3 32/5 34/3 34/11 35/9 38/17 39/19 47/6 47/13 49/13 51/4 53/5 60/13 60/16 68/22 71/5 77/18 78/6 81/19 82/7 82/25 91/21 91/25 94/7 97/1 97/17 98/11 99/12 100/21 105/22 106/3 106/10 106/25 107/2 108/3 108/3 109/3 109/9 110/10 112/3 115/4 115/18</p>	<p>115/20 116/13 121/22 122/10 122/21 122/22 122/25 123/1 123/11 131/4 131/13 131/14 131/16 131/22 132/7 132/8 134/7 134/9 135/2 136/18 136/18 136/20 138/1 138/2 139/21 140/3 140/12 142/4 142/21 143/7 143/11 143/25 144/1 146/9 146/14 147/15 152/11 153/6 154/16</p> <p>item [5] 4/16 21/10 46/21 46/24 101/2</p> <p>items [5] 20/18 45/13 45/14 46/16 46/19</p> <p>its [14] 9/16 20/2 23/21 53/6 68/25 73/2 75/14 86/3 89/9 89/10 94/13 95/16 107/3 148/25</p> <p>itself [1] 96/13</p> <p>J</p> <p>January [6] 45/24 45/24 46/2 104/3 104/6 104/15</p> <p>Jason [1] 56/24</p> <p>JD [1] 1/25</p> <p>Jesse [2] 113/21 114/15</p> <p>JILL [1] 1/24</p> <p>Jim [4] 23/14 80/21 95/12 135/4</p> <p>Jimmy [1] 62/10</p> <p>job [2] 63/10 104/10</p> <p>jobs [2] 55/19 55/22</p> <p>JOHN [9] 1/18 23/14 80/19 115/23 130/11 135/5 142/10 147/18 155/17</p> <p>joined [2] 62/12 62/13</p> <p>joint [4] 127/19 128/1 128/11 129/11</p> <p>Josh [4] 49/22 50/21 143/23 144/2</p> <p>Josh's [1] 48/21</p> <p>JOSHUA [15] 1/21 48/5 48/20 51/4 53/5 53/15 54/12 55/7 55/13 55/15 55/22 55/22 56/2 57/5 57/6</p> <p>Joshua's [2] 54/8 55/18</p> <p>JPMorgan [1] 114/15</p> <p>JUDGE [3] 1/11 131/22 138/12</p> <p>JUERGEN [51] 1/21 26/6 26/8 27/21 29/18 38/12 55/5 55/6 56/6 56/11 56/12 56/18 56/22 57/6 57/7 58/1 58/2 62/14 70/21 84/16 85/13 94/21 95/3 97/20 97/23 104/12 121/7 123/10 124/6 125/1 125/5 125/8 125/21 126/5 126/10 128/6 128/14 128/16 128/19</p> <p>AA 2586</p>
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J JUERGEN... [12] 129/9 129/10 129/10 130/17 130/19 132/7 133/12 136/13 136/18 137/6 144/6 150/13 Juergen's [3] 70/20 130/8 133/10 July [5] 14/12 53/8 68/22 69/4 102/19 June [7] 4/23 7/5 7/9 8/19 83/8 83/15 94/2 just [95] 4/4 6/18 8/8 9/7 10/7 11/6 11/7 13/2 13/10 17/6 18/3 18/14 20/22 20/23 21/9 23/9 23/19 25/2 25/11 25/15 25/21 26/1 26/22 27/13 28/11 30/24 31/18 34/9 34/10 36/24 37/4 37/12 40/6 44/5 46/14 46/23 47/24 54/5 54/17 55/15 57/2 57/10 58/8 58/15 59/16 61/11 63/1 69/23 75/4 75/10 75/11 83/10 85/3 85/22 86/14 89/5 94/1 96/10 96/12 97/22 101/1 103/6 105/7 106/15 110/11 112/14 113/15 114/17 115/4 117/7 120/16 121/16 122/13 122/16 122/18 123/1 123/1 125/11 127/22 130/4 132/5 135/8 136/1 136/9 139/15 140/15 142/2 143/3 146/6 146/17 151/19 154/22 156/5 158/11 158/13	kinds [1] 56/22 Kirkland [2] 65/9 65/17 knew [11] 35/13 52/18 95/21 96/6 96/12 100/2 129/19 133/1 151/15 152/20 153/11 knocking [1] 7/15 know [101] 6/8 7/25 8/14 9/6 12/4 12/6 12/16 14/1 24/16 27/3 27/8 27/16 27/22 27/23 27/24 28/5 28/6 28/7 28/22 29/4 29/11 32/2 34/13 35/12 35/12 35/25 37/17 37/18 38/1 38/12 38/14 39/15 40/6 41/24 44/8 47/5 47/22 48/9 48/19 51/25 53/10 53/23 54/16 55/18 55/24 56/8 56/11 56/14 56/20 57/7 57/15 57/15 58/1 58/24 61/11 64/24 65/9 69/10 69/10 76/6 77/24 80/2 81/8 81/17 83/21 84/3 84/4 84/11 84/19 95/2 96/24 98/17 99/5 100/9 100/23 104/21 105/1 105/16 107/8 110/3 114/18 114/20 115/20 116/14 119/2 121/10 121/10 122/23 123/24 129/10 129/18 130/8 130/25 133/14 133/19 145/2 153/23 153/25 157/18 157/19 158/13 know-how [1] 80/2 knowing [2] 47/22 128/16 knowledge [4] 34/21 66/24 114/24 142/19 KOTLER [1] 1/21	148/23 lay [2] 29/10 142/25 layer [1] 76/8 laying [2] 32/20 78/20 lays [1] 29/2 lead [2] 23/11 104/25 leader [3] 74/11 75/14 100/8 leading [7] 11/11 11/20 11/23 12/5 12/7 12/13 12/21 leanings [1] 70/4 learn [2] 141/14 141/18 learned [2] 141/3 141/19 learning [1] 142/4 least [9] 14/11 27/22 44/22 46/15 66/1 66/2 71/12 71/15 126/13 leave [4] 62/7 101/7 149/7 156/14 led [1] 9/2 left [2] 62/9 133/25 lender [1] 94/13 lent [1] 55/22 less [3] 100/9 100/21 116/1 let [23] 9/25 13/9 17/7 24/12 32/13 36/18 39/17 54/7 62/6 81/15 83/12 89/5 103/18 106/8 106/8 111/22 117/7 118/3 118/19 121/17 128/21 130/5 144/24 let's [36] 5/25 12/23 16/12 20/21 20/22 26/22 31/2 31/2 37/10 38/4 40/25 44/25 49/10 58/5 58/6 59/22 61/11 77/17 78/17 83/7 85/6 88/22 99/14 101/1 108/20 113/4 113/4 114/25 121/19 124/12 129/22 133/23 134/5 134/22 137/21 148/22 letter [1] 65/8 letters [2] 13/4 13/13 letting [2] 27/16 137/7 level [3] 48/21 72/23 144/4 leverage [4] 10/6 77/24 77/25 80/2 liability [1] 115/23 license [10] 24/15 24/19 68/25 69/4 79/21 148/20 148/24 148/25 155/8 155/9 licenses [5] 68/7 68/14 72/4 108/13 111/17 licensing [19] 5/21 45/6 45/11 68/3 107/19 107/25 108/6 108/11 108/14 109/16 109/25 110/19 112/2 113/18 124/21 137/9 137/12 137/14 137/15 life [3] 55/23 55/23 107/3	light [1] 5/3 lightly [1] 71/3 like [36] 4/4 9/5 11/24 12/22 13/9 19/16 24/11 25/15 26/13 26/13 29/8 35/20 37/17 38/15 54/16 64/13 65/9 65/17 87/3 87/5 89/2 92/6 105/20 106/16 107/18 108/23 108/24 116/3 120/20 121/8 137/9 137/14 141/11 150/17 152/5 152/9 likelihood [1] 9/12 likely [6] 9/6 24/23 85/24 130/9 130/22 145/2 limited [3] 25/1 74/7 129/5 limiting [2] 24/21 24/25 line [16] 4/16 10/2 19/7 19/9 19/13 29/6 29/16 30/6 31/10 74/10 104/23 114/13 117/12 119/5 135/11 156/2 lines [1] 26/20 list [15] 24/17 24/23 39/10 42/6 45/13 45/22 46/5 51/19 55/21 60/4 71/3 71/4 101/21 104/24 158/18 listed [5] 31/13 43/3 51/16 59/7 75/11 listen [1] 144/16 listening [1] 137/18 lists [2] 58/16 58/19 litigation [6] 1/5 54/8 56/2 65/2 65/8 65/11 litigator [1] 81/23 little [10] 21/6 25/15 25/21 33/13 41/8 71/4 88/6 88/15 95/21 97/11 LLC [1] 1/15 load [1] 106/15 loan [1] 119/5 lobbying [1] 66/1 logistic [2] 141/4 141/9 logistical [3] 8/3 8/4 142/5 logistics [1] 140/24 Lokey [19] 15/21 23/11 23/24 24/9 29/19 29/23 76/17 81/10 81/19 81/19 81/20 83/8 95/9 114/5 127/5 129/17 133/3 135/12 135/14 long [10] 35/18 71/2 76/10 89/19 89/22 90/5 96/17 96/22 104/24 114/14 long-term [6] 35/18 89/19 89/22 90/5 96/17 96/22 look [42] 4/7 4/25 6/13 19/16 20/23 21/9 24/12 25/8 26/3 31/2 35/20 44/25 49/6 59/17 64/13 69/17 77/21 78/17	78/23 91/23 91/25 99/14 101/3 101/20 107/21 108/20 113/4 114/25 116/10 118/10 120/20 122/14 124/13 132/6 133/9 134/5 141/22 143/5 149/3 152/8 152/9 152/17 looked [6] 17/14 24/11 42/12 69/18 153/25 154/14 looking [25] 3/21 3/22 7/7 10/4 10/12 19/7 19/8 19/22 29/3 37/4 46/5 48/14 48/25 48/25 51/19 55/8 70/11 83/20 99/1 121/1 134/13 134/25 138/8 138/9 139/13 looks [2] 4/4 9/5 loop [1] 148/19 loose [1] 54/4 lost [1] 63/9 lot [11] 26/8 53/10 65/25 76/20 85/21 103/12 104/17 106/17 112/4 142/5 143/1 lots [2] 17/17 20/19 loud [3] 12/2 61/12 73/2 lovely [1] 40/22 low [1] 141/1 lower [5] 41/15 41/17 110/12 110/14 118/10 lunch [1] 8/11 lying [5] 106/6 109/19 111/19 136/18 136/21
K KAPLAN [6] 1/18 62/11 65/19 147/5 147/18 156/23 keep [8] 29/10 79/6 120/12 126/10 140/16 142/9 143/24 158/9 keeping [4] 66/1 66/2 158/2 158/3 keeps [1] 125/19 Ken [10] 21/24 37/7 56/15 56/17 62/14 80/17 84/14 135/5 154/11 156/2 Ken's [1] 57/24 KENNETH [3] 1/17 1/21 3/8 Kenworthy [2] 68/10 109/15 kept [1] 55/10 key [3] 94/7 96/25 148/10 kid [1] 73/15 kind [15] 25/21 29/2 36/23 55/3 55/23 56/8 73/3 73/5 83/15 83/25 89/2 89/2 90/10 102/22 127/19	L labeled [1] 25/10 lack [4] 14/12 26/25 92/9 119/12 lake [4] 51/10 135/17 135/19 136/14 language [2] 126/14 126/15 large [2] 13/4 15/23 largest [1] 76/23 LAS [2] 2/22 160/12 last [12] 4/16 13/2 13/10 13/12 52/14 55/11 57/14 57/18 78/7 103/22 104/1 154/6 late [4] 45/24 46/2 69/24 108/8 later [6] 9/18 49/20 98/15 130/19 130/20 133/19 latter [1] 73/3 launch [2] 32/1 33/8 launches [2] 33/3 33/22 law [2] 65/8 65/14 lawyers [2] 148/8			M made [14] 17/3 20/11 21/6 40/23 43/14 46/6 49/3 54/25 55/8 55/20 60/25 96/1 106/16 148/9 mail [55] 28/25 29/14 30/4 37/12 37/21 53/7 63/23 64/1 94/2 97/17 97/18 101/5 101/20 102/16 102/22 104/2 104/3 104/4 109/3 109/4 109/14 109/17 109/18 109/19 110/22 111/3 111/4 113/5 125/6 126/19 127/10 130/4 130/4 130/11 131/3 133/2 133/10 134/18 134/25 135/8 136/17 137/17 140/15 140/15 142/4 142/23 143/9 144/4 144/21 147/13 148/6 148/7 154/7 154/23 157/5 mails [11] 14/5 53/11 53/21 54/23 65/22 112/10 112/14 112/22 113/1 125/3 153/12 major [2] 81/23 137/3 majority [2] 22/10 66/8 make [18] 10/5 11/7 AA 2587

<p>M</p> <p>make... [16] 11/16 34/24 47/24 57/7 57/25 87/4 90/7 114/17 115/7 121/7 121/8 121/12 137/7 137/7 138/19 157/5</p> <p>makes [3] 135/18 135/21 140/22</p> <p>making [2] 14/11 123/13</p> <p>manage [1] 87/22</p> <p>management [3] 32/17 34/11 76/1</p> <p>management's [1] 32/21</p> <p>manager [2] 114/1 114/4</p> <p>manifested [2] 91/18 108/13</p> <p>manner [1] 17/14</p> <p>many [3] 8/3 125/17 155/5</p> <p>march [8] 42/9 68/4 77/2 78/19 80/7 118/11 146/13 146/14</p> <p>March 29th [1] 80/7</p> <p>Mark [1] 29/21</p> <p>market [10] 31/15 46/25 47/20 75/14 80/25 83/4 88/17 89/4 92/18 100/8</p> <p>mask [1] 42/11</p> <p>massaging [1] 137/20</p> <p>Masterson [1] 48/11</p> <p>match [1] 98/4</p> <p>material [1] 140/25</p> <p>materially [2] 129/19 152/19</p> <p>materials [1] 91/7</p> <p>math [4] 47/9 81/23 155/4 157/16</p> <p>matter [6] 28/15 30/24 34/1 55/16 123/1 154/19</p> <p>matters [1] 18/25</p> <p>maximize [1] 79/9</p> <p>may [12] 15/4 29/8 47/20 67/15 69/12 69/15 69/24 70/10 72/20 81/9 105/13 131/7</p> <p>maybe [6] 9/23 20/10 48/23 65/17 67/14 94/7</p> <p>McDonald's [2] 90/17 90/21</p> <p>McGladrey [2] 116/14 116/15</p> <p>me [81] 6/22 7/11 9/25 11/9 12/1 13/9 17/7 21/24 23/9 24/12 26/6 29/17 32/13 35/8 35/11 36/6 36/18 36/21 36/22 39/1 39/17 49/16 50/9 51/4 51/8 52/5 54/7 54/12 55/2 56/6 56/10 56/17 58/6 60/3 62/6 83/12 84/23 84/23 89/5</p>	<p>95/4 96/21 100/20 100/21 103/11 103/18 106/8 107/9 110/14 112/5 112/24 114/12 117/7 118/19 120/25 121/7 121/9 121/17 122/10 122/11 123/11 123/12 124/25 126/2 128/21 130/5 130/5 130/7 133/16 136/23 137/6 138/2 138/20 138/23 140/24 144/14 144/20 144/24 150/25 152/17 153/4 157/16</p> <p>mean [12] 8/10 30/8 30/12 57/12 58/24 100/6 101/11 112/22 133/21 135/24 140/20 151/10</p> <p>meaningful [1] 57/18</p> <p>meaningless [1] 121/10</p> <p>means [6] 11/8 91/25 98/22 101/25 107/4 142/20</p> <p>meant [1] 30/13</p> <p>meantime [2] 40/19 139/17</p> <p>mechanical [1] 141/11</p> <p>meeting [5] 20/15 85/12 87/6 147/18 157/11</p> <p>meetings [3] 45/22 112/11 148/9</p> <p>meets [1] 80/10</p> <p>member [1] 20/7</p> <p>members [15] 13/19 13/23 17/16 18/10 18/25 23/25 62/16 62/21 65/3 65/12 67/2 70/23 145/12 145/24 158/22</p> <p>memory [1] 45/2</p> <p>mentioned [12] 8/1 10/22 45/20 60/18 70/15 70/20 73/4 76/7 97/1 102/12 137/15 145/11</p> <p>Merge [1] 66/13</p> <p>merged [1] 61/18</p> <p>merger [54] 3/25 7/1 7/11 11/5 22/3 22/16 42/5 42/18 42/25 43/3 43/3 43/7 43/11 43/18 43/20 59/25 60/5 60/11 61/12 61/24 62/4 62/21 63/9 68/23 69/2 69/6 70/8 70/9 70/10 70/25 75/12 76/4 83/16 84/4 84/6 85/9 88/17 93/5 93/9 93/19 94/3 95/5 95/22 97/2 99/9 100/5 101/10 101/15 103/20 104/7 141/5 146/12 154/8 154/10</p> <p>merged [1] 61/17</p> <p>merging [1] 43/13</p> <p>merits [1] 21/19</p> <p>mess [1] 99/19</p>	<p>message [1] 51/9</p> <p>met [2] 116/23 117/23</p> <p>metrics [1] 83/5</p> <p>Microsoft's [1] 31/19</p> <p>mid [3] 10/9 10/15 10/21</p> <p>mid-90 [1] 10/15</p> <p>mid-90s [2] 10/9 10/21</p> <p>middle [3] 46/16 53/10 58/9</p> <p>might [10] 19/16 27/11 31/3 32/20 62/16 91/17 97/9 99/9 99/19 113/2</p> <p>million [29] 9/17 56/16 56/18 56/20 57/10 57/11 57/16 71/12 71/15 80/25 81/3 81/24 84/9 97/23 97/24 97/24 100/23 100/24 100/24 100/25 114/13 118/13 119/4 127/24 130/13 133/13 133/13 134/2 155/3</p> <p>mind [3] 18/24 100/10 156/14</p> <p>mine [1] 60/15</p> <p>minimum [2] 37/24 46/6</p> <p>minute [5] 67/14 83/11 105/7 138/10 155/11</p> <p>minutes [8] 97/25 105/10 130/19 130/20 156/18 156/19 157/25 158/4</p> <p>mischaracterizes [2] 108/16 142/16</p> <p>missed [2] 133/14 144/17</p> <p>missing [2] 26/14 26/15</p> <p>mistrial [1] 12/22</p> <p>mixing [1] 10/3</p> <p>model [2] 68/3 107/18</p> <p>modeled [1] 72/3</p> <p>modeling [1] 116/17</p> <p>modestly [2] 41/15 41/17</p> <p>modify [1] 98/18</p> <p>moment [5] 134/8 138/19 142/2 145/20 146/2</p> <p>moments [1] 145/21</p> <p>Monday [3] 158/20 158/25 159/5</p> <p>money [6] 10/5 55/22 55/22 121/6 121/6 136/14</p> <p>month [2] 57/13 77/4</p> <p>months [10] 57/14 57/15 72/24 77/22 85/9 90/3 90/15 117/14 133/25 151/20</p> <p>more [26] 10/6 11/25 21/7 22/11 45/23 69/22 71/4 73/25 76/8 82/23 89/17 89/17 89/18 91/20 100/12 112/4 113/25 116/1 130/23 133/1 136/6 140/20</p>	<p>141/20 142/5 142/23 156/11</p> <p>MORENO [1] 1/19</p> <p>Morgan [6] 113/23 114/2 114/12 114/14 114/15 114/18</p> <p>morning [4] 105/21 115/1 115/8 131/5</p> <p>Mossberg [1] 135/21</p> <p>most [5] 77/20 79/18 85/24 130/9 130/22</p> <p>motion [2] 156/25 157/1</p> <p>motivate [1] 111/25</p> <p>motivated [3] 15/22 23/22 130/8</p> <p>motivations [1] 135/23</p> <p>Motorola [15] 44/6 44/23 45/5 45/6 45/16 45/18 46/3 46/7 46/11 127/7 127/12 128/5 128/9 128/10 129/9</p> <p>Motorola's [3] 127/10 127/25 128/1</p> <p>MOUs [1] 107/14</p> <p>mouth [1] 11/22</p> <p>move [15] 7/16 8/5 9/16 10/21 20/17 47/4 83/21 105/2 110/20 111/25 112/12 116/3 122/12 124/7 133/12</p> <p>moved [3] 141/6 141/9 145/23</p> <p>movement [1] 153/22</p> <p>moving [8] 12/20 21/21 26/8 98/9 100/20 126/11 129/16 147/24</p> <p>Mr [141] 2/5 2/6 2/7 2/8 3/13 14/11 30/7 36/15 36/24 37/20 41/11 41/14 51/12 51/22 53/11 54/6 63/24 67/18 67/25 68/6 68/10 68/19 69/24 70/2 71/2 71/5 72/1 72/17 75/5 76/3 76/12 78/6 78/17 78/19 78/23 78/24 78/24 79/2 79/15 80/6 81/15 82/13 83/11 83/18 86/2 86/6 86/13 87/1 87/16 88/5 88/15 88/19 92/1 92/22 92/25 93/4 97/11 97/17 97/19 98/7 98/12 98/25 99/15 100/1 101/5 101/20 102/3 102/18 102/18 102/18 102/19 102/23 103/3 103/6 103/7 103/12 103/16 104/2 104/4 104/15 104/21 104/23 105/6 105/8 105/20 109/24 109/25 110/5 110/11 110/16 110/22 110/24 111/2 111/3 111/4 113/15 113/16 113/17 113/20 115/3 115/23 116/10 117/13 118/17 119/13 119/22 120/7 120/9 122/7 122/19</p>	<p>125/13 132/25 134/13 134/24 135/2 136/6 139/7 139/22 140/11 143/2 143/8 143/9 144/1 144/13 144/14 144/15 144/24 146/21 147/4 147/4 147/8 147/18 150/1 150/18 151/2 154/6 154/22 156/22 156/23 158/5 158/9</p> <p>Mr. [11] 31/4 67/4 70/19 70/23 79/3 80/17 83/8 83/25 88/25 89/14 90/11</p> <p>Mr. Dufilho [1] 83/8</p> <p>Mr. Fox [3] 70/19 70/23 83/25</p> <p>Mr. Potashner [2] 31/4 67/4</p> <p>Mr. Stark [3] 88/25 89/14 90/11</p> <p>Mr. Todd [2] 79/3 80/17</p> <p>Ms [2] 68/10 109/14</p> <p>much [15] 5/24 7/14 11/21 11/25 21/20 22/14 46/8 47/16 74/15 83/1 105/15 108/3 118/16 125/9 133/14</p> <p>Mullin [1] 123/21</p> <p>multi [1] 114/13</p> <p>multi-hundred [1] 114/13</p> <p>multiple [2] 73/12 82/24</p> <p>multitude [3] 93/10 112/5 112/9</p> <p>museum [2] 73/11 91/11</p> <p>must [4] 58/2 69/8 158/2 158/3</p> <p>muster [1] 83/23</p> <p>mutually [1] 5/2</p> <p>my [48] 9/5 13/14 14/2 16/10 35/6 36/22 37/10 39/17 45/2 46/15 53/22 54/22 56/18 59/14 60/25 65/6 77/21 83/19 83/22 84/23 100/10 100/13 100/14 100/19 100/23 103/7 112/4 112/12 112/17 113/17 114/1 114/1 114/4 117/9 119/8 120/1 120/2 120/11 123/25 135/21 135/22 136/13 139/3 144/24 153/21 154/19 157/2 160/5</p> <p>Mylar [1] 74/4</p> <p>myself [6] 23/14 48/6 62/16 64/14 78/1 149/12</p> <p>N</p> <p>name [4] 55/14 58/16 101/12 101/13</p> <p>named [3] 56/24 113/21 124/5</p> <p>AA 2588</p>
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N	next [20] 20/18 21/5 28/7 35/19 36/7 71/14 71/17 74/1 76/8 76/21 77/7 80/23 90/6 96/23 101/22 116/18 135/11 135/17 157/11 157/12 nice [3] 156/16 157/15 159/2 nine [6] 90/2 90/15 105/10 157/21 157/23 158/1 no [138] 1/5 1/6 5/9 12/14 13/15 14/19 15/6 15/8 15/10 15/13 16/8 18/9 18/13 18/13 21/25 23/22 25/5 34/23 34/25 35/10 43/10 43/11 43/12 43/22 44/17 46/3 47/17 50/17 53/17 54/1 56/21 56/22 56/25 59/7 60/13 61/1 62/22 64/9 64/9 64/18 65/13 65/16 65/18 65/19 66/6 66/10 66/12 66/14 66/16 66/18 66/21 66/23 67/1 67/3 67/6 71/24 72/22 78/12 78/16 80/18 80/20 80/22 92/11 92/21 97/2 103/5 103/17 106/16 106/21 107/4 109/6 109/7 110/1 110/6 112/17 114/9 114/22 114/24 116/6 117/19 118/2 119/20 119/20 122/3 122/9 122/25 123/5 125/21 125/24 126/1 126/2 126/4 126/7 127/12 128/12 128/15 129/21 131/17 131/22 132/2 132/15 132/16 134/19 135/18 135/21 137/10 137/11 137/12 137/15 137/16 137/24 138/1 139/11 139/13 140/15 140/20 140/22 142/9 142/19 145/24 146/23 147/6 148/17 150/10 150/11 150/13 150/15 151/21 151/21 154/4 154/13 155/9 155/9 155/13 156/8 156/10 156/12 158/22 no-shop [6] 5/9 125/21 125/24 126/1 126/2 126/4 non [5] 12/7 15/25 27/24 137/3 154/16 non-interested [1] 15/25 non-leading [1] 12/7 non-numerical [1] 27/24 non-traditional [2] 137/3 154/16 nonbinding [3] 3/19 3/25 4/5 none [2] 43/22 91/18 Nope [1] 66/6	nor [2] 87/24 103/10 NORRIS [7] 1/18 62/10 72/1 95/19 147/4 147/8 156/24 north [3] 84/9 119/21 127/24 not [170] note [1] 77/7 noted [1] 71/2 notes [1] 39/17 nothing [6] 14/19 16/2 57/14 96/21 140/25 142/8 notice [2] 158/12 158/12 November [3] 133/23 134/24 145/1 now [49] 4/9 5/6 5/25 7/5 7/15 7/21 8/21 8/23 14/4 22/2 23/6 25/15 28/13 28/23 32/7 32/21 40/21 49/25 60/18 65/1 68/22 77/12 78/6 78/17 83/15 84/23 85/6 85/9 89/17 90/10 90/17 93/13 96/16 99/22 105/23 112/3 112/21 115/8 117/18 123/4 124/4 129/16 134/24 138/13 144/22 145/11 154/21 157/10 157/16 number [41] 6/2 38/2 39/2 39/11 39/18 40/11 44/19 54/25 55/2 55/3 55/5 55/7 56/16 57/16 59/7 59/9 68/6 72/13 72/17 74/9 74/22 77/19 79/13 79/17 82/7 82/8 82/14 92/25 109/10 116/8 116/20 117/5 117/10 123/8 132/18 134/21 140/5 143/10 143/22 146/25 160/10 Number 486 [1] 39/2 numbers [71] 25/22 26/12 26/14 26/15 26/17 27/9 27/10 27/12 29/3 29/17 36/2 36/12 36/14 36/21 36/22 37/1 37/4 38/1 38/10 38/17 47/17 47/21 59/17 59/19 70/16 90/11 92/11 97/23 98/1 98/2 98/4 98/9 98/12 98/14 98/15 98/19 99/6 99/16 99/19 99/20 99/22 99/23 100/19 130/6 130/7 130/9 130/10 130/18 130/19 130/22 130/22 133/4 133/5 133/7 133/8 133/8 140/16 141/1 144/8 144/9 144/25 145/5 145/7 145/8 153/3 153/4 153/6 153/10 153/12 153/22 153/23 numerical [1] 27/24	O o'clock [3] 157/1 159/4 159/4 objecting [1] 146/21 objection [30] 11/11 11/20 39/5 44/16 57/22 106/24 108/16 109/6 109/7 113/6 116/4 116/6 120/21 122/25 123/5 129/1 131/20 132/15 132/16 134/17 134/19 136/19 138/3 138/21 141/7 142/12 144/10 146/10 152/2 152/3 objections [2] 11/23 12/22 objectives [1] 137/1 obstacles [1] 70/14 obviously [4] 58/13 62/15 74/12 86/9 occasionally [1] 12/8 occur [6] 15/23 35/16 61/1 129/2 151/11 151/23 occurred [2] 19/4 30/18 occurring [1] 70/14 occurs [1] 35/15 October [9] 85/7 87/1 96/1 97/18 98/7 99/15 132/8 133/21 153/11 October 25th [1] 97/18 off [28] 35/14 37/5 37/7 37/8 37/9 51/6 51/9 51/23 51/25 52/4 52/6 52/7 52/8 52/9 52/15 52/16 52/23 53/19 53/21 65/19 65/22 77/19 82/8 104/24 105/3 112/2 129/19 153/12 offense [1] 71/5 offer [13] 39/4 53/5 66/22 101/7 103/7 108/23 108/24 121/20 127/25 128/1 128/5 128/9 128/10 offered [2] 68/10 123/17 offering [2] 124/2 127/18 officer [2] 60/12 85/14 officers [2] 59/24 60/4 offs [1] 52/15 OGILVIE [3] 1/15 156/22 158/5 Ogilvie's [1] 158/9 oh [15] 8/22 17/7 34/9 40/20 82/3 91/23 122/6 125/15 127/25 131/15 138/2 139/14 143/17 156/23 159/2 okay [243] old [4] 6/9 30/16 52/9 122/19 on [203] once [8] 9/9 9/21 10/9 30/18 64/15 117/8 129/12 131/24 one [67] 8/10 8/10 12/1 13/4 13/10 13/13 15/14 18/13 18/13 21/25 26/22 32/1 32/14 34/4 37/11 39/12 39/19 42/9 44/5 48/3 57/11 65/19 71/17 74/1 76/23 77/14 79/6 79/13 79/17 80/16 80/24 81/14 82/4 84/9 86/16 87/13 90/17 91/1 91/7 91/11 92/6 93/4 93/12 96/23 97/19 101/12 101/13 103/10 109/24 111/9 111/21 113/7 113/11 116/20 117/18 132/9 133/12 138/14 142/2 142/23 143/7 143/10 154/6 154/25 155/11 156/24 159/3 one's [1] 124/18 ones [2] 24/22 98/22 ongoing [2] 57/4 57/12 only [8] 81/14 84/15 102/12 115/20 117/25 119/4 133/23 156/7 open [4] 29/10 115/3 115/4 148/19 opened [1] 99/13 operation [1] 75/3 operational [1] 150/6 operations [5] 10/25 10/25 32/18 86/24 104/23 opinion [32] 15/15 15/19 16/1 16/2 16/9 16/15 17/2 17/6 17/13 17/23 41/6 41/10 92/23 93/2 93/13 93/17 93/22 95/16 98/3 99/7 99/8 99/19 129/20 130/13 133/4 134/4 152/1 152/24 153/13 153/20 153/24 154/4 opinions [1] 152/9 opportunities [1] 91/16 opportunity [7] 45/21 71/18 71/20 90/18 91/3 118/8 142/18 opposed [4] 84/3 84/11 120/13 143/3 opposite [4] 23/22 110/21 113/19 124/12 oppositions [1] 157/4 opt [1] 56/19 opt-out [1] 56/19 option [13] 58/25 59/14 60/20 60/23 60/23 60/25 63/15 77/23 82/8 82/13 102/23 103/14 117/8 options [36] 13/7 14/13 22/8 29/10 53/11 59/5 59/7 59/13 59/14 59/19 64/4 64/8 66/1 78/20 78/25 79/6 81/21 AA 2589
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O	27/22 27/22 28/21 29/2 29/10 32/20 37/12 40/18 45/19 56/19 60/16 61/12 66/15 78/14 78/20 83/22 90/11 99/20 119/3 120/7 120/9 127/5 128/3 129/9 139/15 141/10 143/6 153/23 outcome [2] 16/2 69/10 outlined [1] 50/10 outlook [2] 33/14 33/17 outperforming [3] 37/3 37/6 37/23 outreaches [1] 24/10 outright [1] 82/9 outside [1] 142/10 outstanding [1] 20/18 over [10] 42/12 45/23 52/14 55/11 57/13 78/6 103/1 103/13 118/3 144/6 overcome [2] 43/14 43/16 overcoming [1] 8/12 overestimated [1] 104/12 Overruled [11] 11/12 57/23 107/1 108/18 113/7 136/20 141/8 142/15 142/17 144/11 152/5 overseeing [1] 86/23 overstate [1] 89/10 overstated [1] 104/16 own [12] 45/8 45/18 64/19 66/7 103/7 127/10 127/10 127/14 127/20 128/3 128/11 131/21 owned [2] 52/8 63/18 ownership [10] 20/1 51/14 52/11 58/12 58/20 59/13 59/14 63/15 74/10 142/10 owning [1] 61/19	149/19 PAMPT [1] 1/15 PAMT [1] 135/6 paper [3] 6/15 107/21 108/2 parachute [6] 115/14 115/17 116/19 117/13 119/4 155/23 paragraph [23] 4/19 4/25 10/3 13/3 13/4 13/7 13/13 21/12 31/17 31/22 31/24 33/23 41/5 41/6 94/1 94/6 94/7 94/11 94/20 101/22 101/22 133/10 137/2 paragraphs [1] 33/6 parallel [1] 10/4 parameters [2] 20/2 96/25 PARAMETRIC [57] 1/4 3/24 5/17 6/22 9/16 9/17 9/24 10/5 15/9 15/14 15/18 17/1 19/3 19/16 23/20 45/21 52/9 52/10 52/11 52/22 58/12 59/13 59/24 60/4 61/18 61/22 61/24 62/25 63/6 63/12 63/18 66/11 68/25 71/9 71/14 74/19 76/5 82/9 82/19 85/7 92/5 95/6 97/23 98/2 99/10 99/10 99/16 99/22 99/23 102/1 102/25 105/21 105/24 106/16 109/15 127/17 142/9 Parametric's [12] 20/10 36/1 68/3 76/13 82/4 83/4 86/3 97/12 100/2 100/4 100/14 101/18 Parametrics [1] 48/17 paraphrase [1] 144/6 paren [1] 101/21 parens [1] 81/3 parenthesis [2] 58/22 58/24 Paris [6] 101/10 101/12 101/13 101/15 101/18 101/23 part [10] 7/17 13/21 15/21 27/17 29/14 63/9 117/13 121/21 122/4 142/9 participants [1] 154/17 participate [2] 5/19 38/11 participation [1] 30/21 particular [6] 18/2 21/12 33/23 43/2 46/21 58/5 parties [4] 5/2 11/1 29/9 50/9 partner [2] 79/8 79/20 partners [1] 25/9 partnership [1] 72/6 parts [3] 26/9 92/3 138/24 party [3] 15/25 79/22	155/7 pass [1] 51/5 passing [1] 18/25 past [2] 101/21 101/21 path [2] 79/18 135/6 Patience [1] 83/19 patient [1] 83/23 pattern [1] 83/16 pause [3] 91/19 132/14 143/14 pay [4] 15/23 56/18 117/14 120/8 payment [4] 115/17 117/13 119/4 155/23 payments [2] 115/14 116/19 PE [1] 84/21 peanut [1] 67/22 PEEK [7] 1/17 110/5 110/11 143/2 143/8 144/1 146/22 pennies [2] 121/9 123/13 people [13] 26/7 27/10 30/15 47/3 48/12 57/20 62/2 62/6 62/7 92/12 112/15 112/15 131/22 per [3] 62/22 118/11 123/13 percent [13] 9/1 9/6 10/7 28/8 47/5 47/10 47/15 51/14 61/19 80/16 81/24 82/1 82/3 percentage [2] 4/14 15/23 percentages [3] 4/9 4/17 4/22 perfect [1] 74/11 performance [9] 20/2 97/8 97/12 116/21 116/22 117/21 117/22 118/3 145/2 performance-vested [1] 116/21 performances [1] 125/17 performed [1] 20/4 perhaps [4] 24/24 57/8 139/3 142/25 period [10] 21/25 22/20 22/22 23/4 23/7 25/16 36/9 53/10 57/13 150/2 peripherals [1] 30/15 permit [2] 129/4 140/4 person [2] 62/17 160/10 personal [2] 14/2 114/3 personally [2] 47/14 69/7 personnel [1] 75/17 perspective [7] 5/14 13/19 13/22 20/10 36/1 36/1 41/18 pharmacy [1] 91/2 phase [1] 7/15 philosophical [1] 89/3 phonetic [2] 56/24	126/23 physically [1] 22/25 pick [1] 35/12 picked [1] 69/18 picture [1] 92/19 pilot [1] 91/8 pilots [8] 89/16 90/2 90/14 90/17 91/2 91/4 91/10 91/18 Pipe [1] 67/22 pique [1] 146/2 place [5] 10/7 12/1 55/19 114/13 155/8 places [1] 55/21 placing [1] 8/24 plaintiff [2] 2/3 55/17 Plaintiff's [1] 126/13 plaintiffs [5] 48/13 48/22 49/14 156/19 157/24 plan [15] 27/3 27/4 28/19 28/20 29/11 37/5 37/5 37/5 37/7 37/8 37/9 70/4 86/4 156/21 156/22 plan/leanings [1] 70/4 plans [3] 9/16 28/13 28/14 platform [1] 31/19 platforms [1] 31/15 plausible [1] 43/9 play [1] 137/3 playbook [1] 76/11 PlayStation [4] 33/3 33/9 34/5 95/24 please [26] 10/16 21/6 23/1 24/2 38/14 40/12 40/17 63/21 69/3 91/23 91/25 106/13 108/20 109/22 110/4 111/7 111/21 111/22 113/8 129/22 130/5 132/13 141/22 142/23 146/7 157/17 PNC [5] 8/3 94/13 95/1 141/4 142/5 point [33] 7/8 7/13 8/2 8/14 8/19 9/18 9/19 9/19 13/2 13/17 15/14 20/24 22/22 28/12 43/10 62/12 63/7 65/19 77/20 114/17 119/19 120/1 120/14 127/11 132/25 133/16 133/20 141/3 151/22 153/9 153/23 154/6 157/25 points [2] 42/5 150/4 pokes [2] 103/13 103/16 polling [1] 148/23 portfolio [1] 107/16 portion [1] 19/18 position [13] 10/5 21/25 45/9 49/2 53/6 64/4 77/8 77/16 77/25 78/1 103/3 103/16 147/25 positioned [1] 85/23 positioning [2] 79/24 AA 2590
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------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>P</p> <p>positioning... [1] 79/25</p> <p>positive [2] 46/7 87/18</p> <p>positively [1] 5/17</p> <p>possession [1] 24/18</p> <p>possibilities [1] 44/2</p> <p>possibility [4] 48/15 99/12 126/17 126/22</p> <p>possible [3] 25/9 50/16 99/8</p> <p>possibly [1] 151/18</p> <p>post [1] 25/16</p> <p>post-announcement [1] 25/16</p> <p>postmerger [3] 61/8 63/5 66/22</p> <p>POTASHNER [39] 1/17 3/8 3/13 21/24 31/4 67/4 67/25 76/12 78/6 92/2 92/22 100/1 104/2 105/6 105/20 109/4 110/16 113/15 113/20 115/3 116/10 117/13 118/18 131/3 132/25 134/13 134/18 134/24 135/5 136/6 139/7 139/22 140/11 144/13 144/24 147/4 150/1 154/23 156/2</p> <p>Potashner's [2] 80/17 132/7</p> <p>Potashner/Weisbord [1] 134/18</p> <p>potential [16] 24/10 47/22 48/6 48/23 52/2 71/18 82/25 89/9 89/9 89/10 89/19 89/22 105/24 115/23 140/25 141/20</p> <p>potentially [2] 75/11 119/13</p> <p>power [1] 112/12</p> <p>pre [2] 146/12 146/12</p> <p>pre-merger [1] 146/12</p> <p>precise [1] 73/5</p> <p>predominantly [1] 25/11</p> <p>premature [1] 53/22</p> <p>premerger [1] 25/8</p> <p>premised [1] 96/17</p> <p>present [1] 83/5</p> <p>presentation [10] 16/25 17/3 17/17 17/24 17/25 20/3 20/11 105/21 106/18 106/21</p> <p>presented [1] 27/2</p> <p>presenting [4] 18/24 130/6 130/21 130/22</p> <p>press [7] 81/9 101/6 101/25 112/11 113/16 113/18 137/16</p> <p>pressure [4] 76/20 112/1 120/16 124/9</p> <p>pressuring [1] 110/20</p> <p>Presumably [2] 74/18 98/22</p> <p>presumption [1] 140/12</p>	<p>pretty [3] 7/14 10/15 27/2</p> <p>prevent [1] 13/16</p> <p>prevented [1] 153/24</p> <p>previous [1] 148/9</p> <p>previously [4] 3/9 22/13 126/10 132/11</p> <p>price [10] 76/13 77/15 77/15 105/4 118/9 118/11 119/18 119/18 119/20 121/10</p> <p>primary [1] 79/12</p> <p>print [1] 69/19</p> <p>prior [3] 5/12 59/9 155/8</p> <p>private [1] 84/20</p> <p>pro [2] 52/11 52/12</p> <p>probability [3] 8/18 8/24 10/8</p> <p>probably [13] 20/23 30/8 57/12 58/15 70/14 107/2 116/5 145/2 145/3 147/10 158/19 158/23 158/25</p> <p>problem [2] 74/6 133/9</p> <p>problems [3] 108/2 133/1 150/22</p> <p>proceed [1] 12/10</p> <p>proceedings [6] 1/8 67/17 132/14 143/14 159/12 160/4</p> <p>process [12] 7/25 14/12 23/10 23/11 23/20 23/23 23/25 25/4 25/8 27/19 29/20 30/4</p> <p>produce [1] 87/14</p> <p>producing [1] 91/15</p> <p>product [6] 4/22 8/11 8/12 45/17 74/10 85/18</p> <p>products [6] 31/16 75/21 75/23 87/14 88/13 100/12</p> <p>profit [2] 35/20 38/16</p> <p>progress [3] 87/4 87/23 88/10</p> <p>progressed [2] 36/9 55/11</p> <p>progressing [1] 57/1</p> <p>progression [2] 7/1 7/8</p> <p>prohibitive [1] 46/12</p> <p>project [7] 74/12 91/8 127/19 128/2 128/11 128/16 129/12</p> <p>projected [1] 96/3</p> <p>projecting [1] 38/9</p> <p>projections [10] 25/23 35/4 129/19 151/7 151/18 151/25 152/19 152/24 152/25 153/2</p> <p>promise [1] 64/21</p> <p>promising [1] 27/11</p> <p>propose [1] 87/5</p> <p>proposed [1] 86/3</p> <p>prospects [4] 27/25 47/4 47/9 106/17</p> <p>protections [2] 5/3 5/6</p> <p>prototype [1] 25/12</p> <p>provide [7] 23/24 26/7</p>	<p>38/13 38/14 38/15 52/3 94/17</p> <p>provided [7] 34/14 34/15 36/3 38/2 68/2 94/25 134/4</p> <p>providers [1] 74/2</p> <p>provides [1] 117/5</p> <p>providing [9] 23/15 26/9 38/17 78/24 78/24 92/19 94/3 136/10 136/25</p> <p>provision [1] 5/10</p> <p>proxy [25] 25/18 30/23 30/25 32/13 32/19 42/1 58/5 58/13 63/14 64/9 92/18 97/23 98/3 98/4 98/23 99/21 139/9 139/23 150/17 150/19 151/7 151/17 151/18 151/21 152/20</p> <p>public [8] 19/8 22/17 27/5 27/25 49/3 49/4 66/15 84/11</p> <p>published [1] 152/21</p> <p>pull [6] 3/14 20/22 86/15 107/8 132/19 132/20</p> <p>Purchase [1] 82/9</p> <p>purchasing [1] 86/23</p> <p>pure [2] 132/10 143/19</p> <p>purported [2] 101/6 145/8</p> <p>purpose [2] 49/1 93/13</p> <p>purposes [1] 156/7</p> <p>Pursuant [1] 40/21</p> <p>pursue [1] 79/18</p> <p>push [5] 29/17 158/19 158/20 158/23 158/25</p> <p>pushed [1] 126/7</p> <p>pushing [2] 36/3 47/8</p> <p>put [24] 7/8 9/14 26/11 26/16 27/22 28/21 29/11 35/18 54/17 73/11 73/13 76/20 82/24 90/21 106/6 110/3 111/9 114/13 137/22 149/23 153/15 154/4 154/21 155/8</p> <p>PUTTERMAN [3] 1/18 62/10 156/23</p> <p>putting [5] 27/21 35/11 90/11 96/22 124/9</p> <p>PX [6] 5/25 20/22 21/1 24/3 24/7 24/7</p> <p>PX-101 [1] 5/25</p> <p>PX-23 [2] 24/3 24/7</p> <p>PX-792 [1] 24/7</p> <p>PX-9 [2] 20/22 21/1</p> <p>PX486 [1] 39/1</p> <p>PX72 [1] 46/13</p> <p>PX881 [1] 39/4</p>	<p>96/23 96/24 150/23</p> <p>quarter's [1] 35/19</p> <p>question [23] 12/13 17/7 17/19 26/23 35/6 40/7 42/15 43/5 46/15 49/21 60/7 64/24 64/24 65/6 119/3 120/22 120/24 121/3 123/9 125/6 144/24 152/10 155/1</p> <p>questioning [1] 138/15</p> <p>questions [18] 12/7 17/6 17/17 18/11 65/1 65/4 93/1 93/4 109/24 118/17 118/21 133/7 134/16 155/13 155/15 156/8 156/10 156/11</p> <p>quick [2] 83/12 89/5</p> <p>quickly [1] 110/20</p> <p>quit [1] 147/18</p> <p>quite [5] 35/21 84/14 86/19 118/9 145/11</p> <p>quote [11] 109/15 109/16 111/11 113/23 116/13 123/17 135/22 140/16 144/7 145/8 148/13</p> <p>quote/unquote [1] 111/11</p>	<p>reader [1] 32/9</p> <p>reading [6] 4/16 8/21 21/2 31/18 89/5 134/15</p> <p>ready [4] 3/3 3/4 67/18 67/20</p> <p>real [9] 43/12 71/6 71/18 72/5 83/12 87/4 89/5 89/9 90/3</p> <p>reality [4] 38/22 110/20 113/19 125/9</p> <p>realize [5] 117/25 119/10 119/15 120/2 120/3</p> <p>realized [1] 52/2</p> <p>really [13] 11/21 11/24 39/11 40/7 47/5 87/22 103/23 112/9 127/11 127/17 131/22 138/25 139/22</p> <p>reason [7] 18/7 21/23 22/3 84/15 92/5 146/21 154/10</p> <p>reasonable [2] 46/6 46/6</p> <p>reasons [9] 26/12 35/19 42/4 42/16 42/16 42/17 43/2 76/22 92/6</p> <p>rebound [1] 30/9</p> <p>rebounding [1] 30/22</p> <p>recall [51] 5/23 15/16 16/3 16/6 16/11 17/3 17/14 17/16 17/22 21/15 21/18 21/22 22/18 24/14 25/3 30/23 44/23 50/14 50/15 50/20 50/23 54/6 60/19 62/12 62/15 62/22 62/23 63/4 63/7 63/7 63/8 63/18 65/4 78/20 78/22 82/9 82/11 86/2 90/20 93/2 93/3 98/6 129/8 130/16 130/17 132/10 141/19 150/12 150/20 150/24 151/1</p> <p>receive [4] 61/2 64/9 114/7 115/22</p> <p>received [8] 52/10 63/5 114/6 114/21 117/20 119/5 153/12 157/4</p> <p>receiving [1] 63/8</p> <p>recent [2] 57/14 107/13</p> <p>recessed [2] 67/17 159/12</p> <p>recipe [1] 57/25</p> <p>reciprocated [1] 122/21</p> <p>recognize [9] 3/16 16/14 16/24 21/1 44/25 48/2 51/1 53/2 58/9</p> <p>recognizing [1] 130/12</p> <p>recollection [6] 17/19 23/3 23/6 127/12 151/5 153/21</p> <p>recommendation [1] 51/4</p> <p>reconsider [1] 96/21</p> <p>record [8] 18/3 18/14 21/9 31/18 58/8 58/15 63/19 64/17</p> <p>AA 2591</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

R	153/9	34/10 42/25 94/13	113/4 113/16 115/6	88/9
RECORDED [1] 1/24	relays [1] 45/17	95/23 103/3 103/8	115/8 123/22 124/7	satisfaction [1] 85/18
RECORDER [1] 1/24	release [4] 81/9 101/6	117/21 126/12 137/5	126/6 126/11 127/20	satisfied [1] 17/18
recross [3] 2/8 155/15	101/25 113/16	responded [1] 56/21	128/8 129/20 133/7	satisfy [3] 41/19 41/21
155/25	releases [3] 112/12	responds [1] 89/14	133/22 134/1 135/1	41/23
Recross-Examination	113/18 137/16	response [9] 15/4	135/9 135/12 135/24	save [1] 71/24
[2] 2/8 155/25	relevance [2] 35/23	15/12 41/11 64/7 82/13	136/10 138/17 139/8	saw [7] 4/5 9/21 63/14
recut [1] 99/9	36/5	99/14 123/9 139/2	139/23 149/14 153/8	63/15 91/7 92/22
redacted [1] 21/13	relevant [3] 29/24	139/3	157/16 158/23	113/10
redirect [3] 2/7 105/18	56/25 87/13	responsibility [1] 7/17	rights [3] 82/9 137/9	say [39] 9/9 10/7 31/24
155/15	relief [1] 94/17	rest [4] 22/11 31/17	137/10	35/21 47/4 47/10 60/21
redo [1] 99/1	reluctant [1] 84/6	33/2 49/4	risk [16] 9/20 26/18	61/11 64/4 65/22 68/22
reduced [2] 69/12	remain [1] 79/7	restating [1] 99/6	31/13 32/7 32/9 34/6	75/5 76/19 77/22 79/19
69/14	remained [1] 152/25	restaurant [1] 90/22	34/11 69/16 100/10	80/9 83/18 84/15 84/18
redundant [1] 111/16	remember [20] 5/22	result [6] 15/24 25/3	100/12 100/23 102/7	85/16 85/21 89/25
refer [4] 84/18 85/13	14/14 14/16 44/8 44/9	26/14 32/18 92/11	105/2 105/3 150/19	98/18 99/18 102/13
115/5 149/22	45/3 53/9 53/13 54/20	114/5	153/20	106/15 106/19 109/17
reference [3] 14/16	61/9 66/3 66/4 68/20	resumed [1] 3/10	risks [9] 31/10 32/20	135/17 136/6 139/5
33/17 83/25	81/7 93/5 101/8 116/16	retain [1] 15/18	42/6 42/22 42/22 42/24	139/24 140/16 145/22
referenced [1] 14/18	139/24 140/12 145/12	retained [1] 15/14	43/1 43/12 79/17	148/7 148/12 148/16
references [3] 31/19	remotely [1] 157/8	retired [1] 147/11	risky [1] 79/18	149/2 149/15
31/25 37/24	remove [3] 145/17	revenue [11] 35/19	Rite [2] 91/1 91/1	saying [32] 26/8 27/20
referencing [5] 30/20	145/19 145/23	37/24 38/16 82/24 91/3	ROBERT [2] 1/18	28/13 29/4 29/9 37/2
33/24 34/3 38/12 145/2	removing [1] 147/5	91/15 98/2 100/18	48/10	37/5 46/24 47/2 63/1
referral [4] 114/6 114/7	reneging [1] 148/8	100/23 111/20 133/13	robust [1] 27/3	63/7 73/1 81/20 82/3
114/21 114/24	renegotiate [2] 86/7	revenues [7] 33/18	role [3] 86/15 106/1	104/19 111/10 112/17
referred [4] 57/10	100/4	35/14 89/20 96/2 96/9	137/4	119/22 120/1 120/2
88/19 103/13 154/7	renegotiated [1] 85/24	96/14 96/23	roll [5] 68/14 109/25	122/10 123/20 123/23
referring [11] 4/15 9/23	renegotiation [1]	reversed [1] 61/17	110/10 110/23 137/14	130/5 130/7 133/3
57/2 70/7 87/11 99/22	99/13	review [4] 6/19 27/16	rolled [1] 137/16	140/22 145/24 148/17
114/5 114/23 137/5	repeat [2] 10/16 69/3	34/18 123/4	rolling [2] 68/7 86/15	148/21 149/9 153/12
137/17 144/9	repeatedly [1] 88/19	reviewed [1] 17/13	room [2] 73/14 73/15	says [34] 5/2 31/22
refers [1] 11/3	rephrase [1] 144/24	reviewing [1] 34/16	rosy [1] 92/19	59/5 60/22 70/3 71/5
refine [1] 75/18	replaced [1] 62/7	revised [3] 3/19 3/19	roughly [2] 54/14	72/4 72/9 72/17 72/22
reflect [3] 36/20 58/11	report [1] 121/11	158/18	81/24	73/19 74/18 79/3 80/24
98/2	reported [1] 145/5	RICHARD [2] 1/20	run [3] 10/24 118/2	81/3 87/2 87/17 87/21
reflected [3] 30/23	REPORTING [1] 1/25	48/10	126/25	94/7 94/20 98/25
45/14 130/3	represent [6] 19/25	rid [1] 142/10	running [6] 23/11 75/2	101/22 109/18 117/3
reflecting [1] 28/25	51/12 51/13 109/3	right [138] 5/22 6/11	80/24 115/16 137/4	117/5 117/10 125/5
reflects [3] 45/15 58/12	111/10 113/17	6/21 7/5 8/12 12/15	157/13	133/12 135/21 135/23
133/2	represented [8] 68/12	12/16 12/24 13/5 14/6	S	140/18 140/19 148/23
refresh [4] 23/3 45/2	69/8 95/9 101/7 126/16	14/9 16/6 16/19 16/22	said [40] 7/23 9/3 9/21	156/2
69/23 151/5	140/24 153/10 154/3	18/4 20/20 20/22 21/7	14/23 24/14 35/24	scale [1] 75/3
refreshed [1] 23/6	representing [7] 51/8	21/14 21/15 22/4 22/7	35/24 37/10 37/16	schedule [2] 87/24
regarding [2] 21/19	51/22 110/18 112/20	23/16 25/15 26/19	45/18 48/15 49/16	88/1
94/13	125/8 134/1 137/6	27/13 29/5 29/9 29/19	54/20 54/21 85/3	schmoozing [1] 84/19
regardless [1] 36/6	represents [2] 51/13	31/2 32/7 33/13 33/14	106/25 107/2 108/14	science [1] 72/22
registered [1] 153/25	51/23	34/8 34/17 35/9 35/13	110/1 112/16 112/23	scope [1] 24/14
rehash [2] 14/10 44/22	request [2] 56/17	35/17 35/25 36/2 38/4	113/23 121/5 122/4	screen [9] 6/13 20/23
reinforcements [1]	154/15	39/22 40/25 42/3 43/8	125/11 125/24 126/8	49/24 50/4 71/23 92/1
57/5	requested [1] 14/18	44/7 46/23 47/7 47/12	126/10 128/12 129/10	105/22 107/23 110/4
reinforces [1] 29/4	requests [1] 123/21	47/21 49/10 49/24	129/17 133/6 139/21	screwed [1] 144/6
relate [2] 33/20 49/19	required [1] 71/25	50/15 52/19 53/13	145/23 146/1 146/16	scroll [2] 21/4 155/21
related [6] 26/24 31/10	requirement [3] 9/14	53/18 56/7 56/18 57/8	146/18 151/2 151/3	se [1] 62/22
32/5 43/3 56/22 157/1	9/20 55/10	59/20 59/22 63/16	151/6	second [14] 10/2 33/19
relates [3] 1/7 139/4	requirements [1] 73/17	64/22 65/20 67/18	sailing [1] 11/4	41/6 48/3 77/20 87/16
139/7	requires [1] 154/17	68/14 68/20 70/11 71/7	sake [1] 103/6	94/7 121/19 133/10
relationship [4] 49/22	reread [1] 9/25	73/3 73/6 73/19 75/4	sales [3] 74/11 96/3	134/17 137/2 139/18
56/10 56/21 95/1	research [1] 25/12	75/6 75/19 79/19 79/19	100/12	143/16 155/17
relationships [1]	resign [3] 149/4 149/4	82/1 84/17 84/17 85/4	same [14] 4/5 4/19	section [4] 32/19 42/4
114/15	149/10	86/19 87/16 88/6 89/12	26/20 32/13 36/4 47/23	60/19 60/20
relative [18] 13/15 17/1	resigning [1] 149/12	90/8 90/16 91/12 91/13	59/9 97/9 97/19 117/19	sector [4] 30/9 30/15
18/22 32/2 37/2 45/5	resisting [1] 29/18	93/11 93/16 93/20	131/6 135/12 152/25	30/19 30/22
48/6 49/18 56/14 70/16	resolve [2] 54/13	93/21 94/9 96/10 96/10	158/18	secure [3] 9/10 11/7
83/22 95/3 95/3 115/19	148/18	96/10 97/2 97/6 97/9	sanctions [1] 11/25	11/8
129/11 150/5 150/13	resources [2] 75/17	98/11 98/16 99/17	Santulli [1] 48/10	secured [1] 10/9
153/3	85/23	99/18 99/24 100/16	Sassan [7] 74/23 75/1	security [2] 11/17
relayed [3] 14/19 48/22	respect [14] 13/19	101/20 101/24 104/21	75/2 86/21 86/22 87/16	160/10
	14/13 16/4 24/18 27/1	105/23 107/19 108/12		see [86] 3/23 4/9 5/2
				AA 2592

<p>S</p> <p>see... [83] 8/8 8/20 13/8 15/22 18/21 19/18 22/23 24/12 27/6 27/11 27/12 29/6 30/10 30/25 31/10 31/22 32/13 32/16 33/4 33/13 33/15 37/10 37/10 41/8 41/11 42/5 42/7 44/15 45/25 46/17 46/19 51/19 55/5 58/10 58/11 58/17 58/20 58/22 59/23 60/2 70/5 72/11 72/15 77/7 78/25 79/15 80/13 80/24 81/1 81/5 82/17 83/23 85/25 87/9 88/3 94/4 97/20 98/15 98/20 99/3 104/13 106/8 107/23 110/16 111/1 121/10 121/19 121/20 122/9 123/1 123/10 123/11 124/24 125/2 128/21 133/23 135/2 143/19 147/22 148/14 148/22 154/24 156/2</p> <p>seed [1] 91/2</p> <p>seeing [3] 47/21 60/20 132/10</p> <p>seek [3] 103/10 103/11 145/17</p> <p>seeking [2] 43/23 43/24</p> <p>seem [1] 106/16</p> <p>seen [5] 24/21 25/13 93/25 154/15 154/18</p> <p>sell [8] 66/19 66/19 75/23 77/14 77/17 79/10 117/20 120/16</p> <p>selling [3] 121/9 121/11 123/12</p> <p>send [6] 40/12 40/17 40/18 40/20 49/17 73/16</p> <p>sense [8] 26/10 34/24 90/7 121/7 121/12 135/18 135/22 140/23</p> <p>sent [4] 49/14 49/19 83/10 128/6</p> <p>sentence [5] 11/8 13/12 70/3 77/7 156/5</p> <p>sentiments [1] 75/5</p> <p>separate [1] 66/2</p> <p>September [1] 45/24</p> <p>sequence [2] 128/15 129/8</p> <p>sequencing [1] 45/15</p> <p>serious [2] 130/23 133/2</p> <p>serving [2] 63/5 158/17</p> <p>set [6] 39/22 40/2 42/16 42/17 72/23 74/18</p> <p>Seth [1] 62/10</p> <p>sets [1] 148/8</p> <p>settle [2] 56/14 57/17</p> <p>settlement [2] 157/2 157/3</p> <p>seven [2] 73/22 73/22</p>	<p>several [13] 38/13 50/18 54/15 54/20 55/12 55/19 57/15 76/22 77/13 84/12 119/14 154/16 154/18</p> <p>severance [2] 117/14 120/8</p> <p>SG [1] 1/21</p> <p>shake [1] 57/7</p> <p>shape [1] 103/19</p> <p>share [7] 50/9 51/10 52/9 52/12 54/13 118/11 123/13</p> <p>shared [1] 28/2</p> <p>shareholder [4] 29/25 52/10 123/18 135/6</p> <p>shareholders [16] 23/21 36/4 47/15 47/22 51/6 51/13 52/16 52/17 52/22 52/22 61/19 66/8 66/15 149/12 149/14 149/17</p> <p>shareholders' [2] 1/5 80/11</p> <p>shares [8] 52/8 59/18 63/18 64/5 64/19 154/11 154/13 154/20</p> <p>sharing [1] 70/2</p> <p>She [1] 40/18</p> <p>She's [1] 121/1</p> <p>sheet [10] 3/19 3/20 3/25 4/5 4/5 4/10 5/12 77/9 77/22 78/13</p> <p>Sheppard [1] 123/21</p> <p>shift [6] 25/15 26/13 88/14 96/9 96/23 129/25</p> <p>shifted [1] 96/4</p> <p>shifting [2] 47/25 58/4</p> <p>shop [23] 5/9 5/9 22/20 22/22 23/4 23/7 23/20 23/24 25/4 43/25 44/1 81/13 124/20 125/12 125/21 125/24 126/1 126/1 126/2 126/3 126/4 126/9 128/13</p> <p>shopping [6] 5/19 81/11 124/19 125/8 126/7 127/6</p> <p>shortly [1] 130/13</p> <p>should [12] 20/1 48/23 63/8 79/5 102/12 113/10 123/25 130/6 130/10 147/9 147/11 149/10</p> <p>shouldn't [1] 130/9</p> <p>show [7] 19/14 38/15 40/19 89/21 102/7 130/18 153/19</p> <p>showed [7] 30/8 30/13 54/22 68/6 78/18 101/5 104/2</p> <p>showered [2] 30/7 30/13</p> <p>showing [3] 19/11 19/15 23/2</p> <p>shows [4] 30/9 45/22 128/18 154/24</p> <p>side [12] 9/17 57/20</p>	<p>62/14 83/24 95/19 100/6 100/13 100/14 100/15 114/16 157/18 157/18</p> <p>sides [2] 70/15 157/19</p> <p>sideways [1] 19/23</p> <p>Sig [1] 72/5</p> <p>Sig/TV [1] 72/5</p> <p>sign [1] 49/17</p> <p>signage [1] 107/14</p> <p>signaling [2] 41/15 70/21</p> <p>signature [1] 141/11</p> <p>signed [5] 22/16 50/8 50/14 154/11 154/15</p> <p>significant [13] 8/13 35/17 51/14 56/10 70/15 89/21 90/5 95/2 96/7 96/8 96/8 96/14 107/4</p> <p>significantly [1] 33/18</p> <p>signing [1] 109/16</p> <p>simple [1] 55/4</p> <p>simplify [1] 54/24</p> <p>simply [3] 56/11 99/20 100/7</p> <p>since [2] 119/10 131/13</p> <p>sincere [1] 83/21</p> <p>single [2] 42/9 82/4</p> <p>sir [12] 60/6 67/20 105/13 118/21 120/23 121/2 125/6 136/16 143/16 148/16 152/8 156/13</p> <p>sitting [1] 100/11</p> <p>situation [5] 11/18 28/3 37/21 54/13 73/12</p> <p>six [7] 57/13 58/22 62/2 73/19 77/22 90/2 90/15</p> <p>six-month [1] 57/13</p> <p>skinny [3] 121/15 143/11 147/15</p> <p>skip [2] 72/13 73/22</p> <p>skittish [1] 88/6</p> <p>slash [1] 3/24</p> <p>sleeves [1] 86/16</p> <p>slide [2] 17/17 30/8</p> <p>slides [1] 17/13</p> <p>slightly [1] 121/6</p> <p>slow [9] 68/7 68/14 107/8 109/25 110/9 110/23 124/21 137/14 137/16</p> <p>slow-roll [3] 109/25 110/23 137/14</p> <p>slow-rolled [1] 137/16</p> <p>slower [1] 37/17</p> <p>slowing [4] 110/19 111/17 112/21 113/18</p> <p>slows [1] 30/15</p> <p>small [2] 101/1 104/1</p> <p>smaller [1] 104/1</p> <p>smallest [1] 69/19</p> <p>smile [1] 42/11</p> <p>so [244]</p> <p>SOCIAL [1] 160/9</p> <p>softer [1] 140/17</p>	<p>software [2] 32/2 33/22</p> <p>sold [3] 119/17 120/3 120/4</p> <p>solicit [1] 105/23</p> <p>solicitations [1] 106/4</p> <p>solid [1] 28/19</p> <p>solution [2] 26/17 71/18</p> <p>solutions [1] 74/8</p> <p>solved [4] 8/5 8/17 72/2 75/11</p> <p>some [37] 7/2 8/14 8/15 10/23 11/10 14/22 24/24 39/23 41/9 43/13 44/6 46/7 55/3 55/8 56/13 59/19 63/7 65/2 65/22 73/5 77/14 77/17 79/20 86/23 91/2 91/17 94/11 94/17 97/12 105/13 108/1 108/2 113/2 128/2 129/2 134/16 144/5</p> <p>somebody [7] 55/24 56/23 73/13 121/11 132/20 144/19 147/10</p> <p>someone [4] 16/1 68/2 105/3 157/5</p> <p>something [13] 8/16 22/8 28/21 46/25 47/5 47/15 53/18 54/16 55/4 65/17 68/9 76/8 89/8</p> <p>sometime [1] 146/13</p> <p>somewhere [2] 24/24 91/5</p> <p>son [2] 56/14 56/18</p> <p>Sony [3] 24/23 24/24 24/24</p> <p>soon [3] 3/3 105/8 138/21</p> <p>sorry [37] 4/1 4/13 5/20 10/16 12/11 19/5 26/23 39/1 46/18 49/21 53/24 58/6 60/6 64/14 69/3 69/18 73/22 83/13 86/18 104/2 106/19 108/4 111/23 120/25 125/15 125/15 126/1 136/1 139/14 141/16 143/17 144/15 145/22 147/7 147/17 148/16 153/16</p> <p>sort [2] 14/22 46/7</p> <p>sound [9] 1/4 3/24 58/12 61/18 61/22 61/24 72/10 73/14 73/16</p> <p>soundbar [2] 87/11 87/14</p> <p>soup [2] 64/10 64/13</p> <p>source [3] 11/10 15/11 34/25</p> <p>sources [1] 34/20</p> <p>space [1] 80/3</p> <p>speaker [1] 71/24</p> <p>speakers [5] 71/22 71/24 71/24 73/2 73/12</p> <p>specific [4] 11/9 31/5 49/6 54/18</p>	<p>Specifically [1] 48/10</p> <p>specifics [1] 5/23</p> <p>speculate [1] 144/18</p> <p>spelled [1] 60/16</p> <p>spend [2] 148/17 148/18</p> <p>spending [1] 84/8</p> <p>spent [2] 65/25 103/12</p> <p>spin [13] 51/5 51/9 51/23 51/25 52/6 52/7 52/9 52/15 52/15 52/16 52/23 53/19 53/21</p> <p>spin-off [10] 51/9 51/23 51/25 52/6 52/7 52/9 52/15 52/23 53/19 53/21</p> <p>spin-offs [1] 52/15</p> <p>split [1] 5/20</p> <p>splits [1] 93/21</p> <p>spoke [4] 20/16 23/16 119/13 128/19</p> <p>spun [2] 52/4 52/8</p> <p>spun-off [1] 52/8</p> <p>stage [2] 25/10 25/11</p> <p>stages [3] 54/12 126/16 126/21</p> <p>stake [1] 48/24</p> <p>stand [1] 91/24</p> <p>standalone [3] 43/16 43/18 43/21</p> <p>stands [1] 116/24</p> <p>Stanley [5] 113/23 114/12 114/14 114/16 114/18</p> <p>Stanley's [1] 114/2</p> <p>staring [1] 104/25</p> <p>STARK [50] 1/21 30/7 36/15 36/24 37/20 41/14 53/12 68/10 83/11 83/18 86/2 86/6 86/13 87/1 88/5 88/15 88/25 89/14 90/11 97/12 97/18 98/7 98/12 99/15 101/21 102/3 102/18 102/23 103/3 103/7 109/4 109/14 109/25 110/22 111/2 111/3 111/4 113/16 113/17 119/13 119/22 120/9 125/1 125/5 128/6 128/14 128/19 135/2 144/14 144/15</p> <p>Stark's [4] 41/11 78/19 88/19 103/16</p> <p>start [6] 22/22 23/3 23/7 89/18 124/6 157/7</p> <p>started [1] 22/25</p> <p>starting [1] 156/25</p> <p>starts [1] 94/7</p> <p>state [3] 31/18 73/2 92/20</p> <p>statement [12] 30/23 30/25 32/13 63/14 124/1 139/9 139/23 150/18 150/20 151/17 151/18 152/21</p> <p>statements [3] 44/5 106/17 106/21</p> <p>status [3] 7/1 20/17</p> <p>AA 2593</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

S	stronger [2] 10/5 77/8	37/22 48/24 67/14	70/10 96/16 113/20	157/12 157/15 158/1
status... [1] 24/10	structure [2] 62/20	77/18 77/23 78/17	124/4 127/22 129/16	158/6
stay [2] 97/9 120/11	142/22	84/11 100/23 124/13	145/15	their [27] 10/9 10/10
stayed [1] 62/18	structured [1] 97/2	130/8 157/6	testifying [2] 3/10	10/11 10/25 11/4 15/23
steady [1] 89/22	struggling [1] 28/18	taken [2] 37/25 76/10	90/10	18/1 24/17 27/6 28/13
steam [1] 82/25	study [1] 138/18	taking [4] 77/24 99/20	testimony [10] 68/2	28/14 30/16 30/16
SteelSeries [3] 124/5	stuff [5] 12/1 36/23	109/15 158/21	76/12 78/9 98/12	30/17 30/21 48/9 52/11
124/6 125/12	44/3 88/12 100/9	talk [10] 26/1 56/4	108/17 115/8 124/5	52/21 78/25 79/4 80/2
STEPHEN [1] 1/17	stumbling [2] 88/11	56/11 57/20 80/17	128/25 129/3 135/14	85/17 94/17 100/10
stepping [1] 147/25	88/13	80/19 80/21 81/14	tethered [1] 83/4	128/16 156/14 157/18
Steve [2] 125/18	stupid [1] 104/11	94/11 150/17	than [17] 36/24 37/17	them [52] 7/22 8/3 16/1
132/12	sub [2] 72/13 101/15	talked [8] 22/20 25/20	41/15 41/17 73/15	24/21 27/5 37/17 39/24
Steve's [1] 131/23	sub-bullets [1] 72/13	26/19 44/3 62/2 88/14	82/14 84/21 88/12	40/12 40/17 40/18
STIGI [9] 1/18 2/5 2/8	subject [4] 87/11 88/25	90/18 92/2	89/17 100/14 104/1	40/19 40/20 40/20
71/2 76/3 78/17 103/6	97/20 99/16	talking [9] 11/8 11/17	130/20 130/23 133/2	40/21 42/10 50/11
150/18 154/6	subordinate [1] 66/25	36/8 89/15 92/5 94/16	141/20 142/5 145/20	51/23 52/4 52/4 55/10
still [22] 9/6 22/9 25/10	subsequent [1] 56/1	124/6 135/8 136/9	thank [45] 4/20 11/6	68/11 68/12 69/12 73/7
32/5 37/18 41/16 43/12	substance [1] 98/6	talks [2] 13/7 90/14	18/18 19/23 24/4 28/23	77/23 79/11 84/12
69/7 77/18 83/15 87/18	substantial [3] 38/16	tally [1] 59/19	34/6 40/16 40/16 47/24	91/18 94/16 94/17
97/9 115/8 134/3	43/14 108/8	tap [2] 110/11 110/14	50/13 58/4 67/9 67/16	102/25 110/20 112/21
140/22 141/2 152/15	substantially [3] 66/19	task [1] 76/6	105/6 105/8 105/15	113/1 116/16 117/20
154/2 154/3 154/5	76/8 100/12	tax [6] 115/17 115/18	109/8 109/11 109/12	119/17 120/13 128/6
158/14 158/15	successful [1] 11/3	119/8 119/9 119/10	110/14 122/19 125/16	128/14 128/18 128/19
stipulate [12] 39/24	successfully [1] 8/13	160/10	128/12 132/20 136/7	129/11 130/20 138/10
40/4 40/5 131/1 131/18	such [6] 26/9 45/19	TB [2] 85/13 92/9	140/6 140/6 143/8	145/17 149/3 149/6
131/23 132/13 134/6	71/22 88/1 104/22	team [5] 34/17 74/11	146/4 146/5 147/1	156/24 158/19 158/20
138/6 142/24 143/1	145/24	76/1 122/14 135/22	155/14 155/19 155/20	158/25
159/1	suck [2] 36/22 36/22	tease [1] 122/24	156/8 156/12 156/13	theme [1] 20/21
stipulated [1] 131/4	suggest [3] 87/25	TECH [2] 107/8 108/3	156/15 156/21 158/8	themselves [1] 126/24
stipulates [2] 40/8	106/22 110/2	technical [1] 108/2	159/6 159/7 159/9	then [45] 16/18 19/18
108/25	suggested [4] 20/9	technological [1]	159/11	22/12 28/2 34/2 34/7
stipulation [1] 40/21	22/5 65/1 93/4	128/2	Thanks [2] 91/24 101/1	39/22 40/18 42/6 47/4
stock [18] 58/25 63/19	suggesting [6] 14/11	technology [16] 45/6	that [662]	55/11 56/8 62/4 72/4
76/13 76/23 77/14	18/11 38/20 51/5 57/19	45/17 72/9 72/15 72/19	that's [124] 6/14 6/17	72/9 80/9 82/6 86/19
77/15 77/16 77/17 97/5	133/2	74/4 75/18 85/14 85/17	11/13 11/19 12/23	89/14 89/25 90/12
105/24 109/15 118/9	suggestion [1] 14/21	87/15 91/5 95/19	19/18 20/1 25/23 26/21	94/20 97/9 98/16 106/9
118/11 120/3 120/4	suit [2] 83/19 123/18	100/11 100/19 126/22	29/14 32/12 32/19	117/17 121/11 121/20
120/17 121/8 123/12	summarizing [1] 20/3	126/24	32/24 36/14 39/1 40/7	130/20 131/8 137/17
stock's [1] 92/5	summary [2] 18/22	tell [12] 16/11 28/6	41/20 42/12 47/24	138/23 140/19 140/24
stockpiling [3] 111/11	18/22	28/9 60/3 109/14 135/4	48/16 48/18 49/3 51/24	145/25 147/24 148/12
111/15 111/17	Sunday [1] 102/19	136/23 138/20 138/23	52/18 54/1 56/23 58/14	149/2 150/17 152/24
stop [2] 146/19 148/21	supply [3] 74/7 74/22	144/20 147/18 158/7	59/15 59/21 60/12	157/4 157/6 157/8
story [1] 90/5	75/2	telling [13] 12/1 28/12	61/23 62/1 64/6 64/20	157/22 158/24
strategic [8] 35/18	support [9] 23/15 27/7	32/9 36/21 36/22 37/20	67/15 70/12 71/1 72/21	theoretically [1] 72/3
35/22 36/5 81/21 96/17	29/25 51/9 66/7 70/22	52/19 84/22 102/25	74/5 74/17 74/25 75/19	theory [1] 71/21
96/22 140/20 140/23	83/24 84/16 147/5	113/16 133/16 136/17	76/2 77/2 77/19 78/5	there [104] 4/14 4/18
strategy [7] 74/1 85/18	supported [1] 51/25	149/6	83/6 83/17 83/25 84/2	8/14 8/15 9/14 11/4
107/19 111/24 112/6	supporting [3] 17/25	tells [1] 95/4	85/3 85/15 85/20 86/12	14/10 14/19 14/19
113/17 126/10	51/23 123/18	ten [1] 97/25	86/19 88/7 88/21 90/13	14/21 15/4 16/8 20/19
stream [2] 82/24	sure [14] 11/7 11/16	tenable [1] 45/12	92/14 93/15 93/21	21/5 22/16 24/13 26/12
100/23	37/11 43/5 47/24 60/6	tension [1] 25/22	94/15 94/19 95/11	27/9 27/21 27/22 28/8
streams [1] 91/18	83/13 87/4 106/9 115/7	term [16] 3/19 3/20	95/14 95/17 96/5 96/15	28/20 28/22 30/14
Street [3] 135/17	115/21 131/19 152/16	3/25 4/5 4/5 4/9 5/12	96/21 96/24 96/24	30/19 31/5 32/2 32/9
135/19 136/14	157/5	17/10 25/9 35/18 41/5	96/24 97/4 97/7 98/5	33/14 34/20 35/9 37/11
strike [3] 119/18	surge [1] 30/19	89/19 89/22 90/5 96/17	98/9 99/12 99/22	37/19 38/2 38/24 42/5
119/20 148/6	survived [2] 61/21	96/22	100/20 102/2 102/4	42/11 43/2 43/10 43/11
string [1] 78/18	62/16	terminate [2] 61/1	102/9 103/2 105/10	43/20 43/22 43/22 44/6
STRIPES [12] 1/20	surviving [2] 61/12	149/7	107/4 107/20 109/18	46/3 46/19 48/21 49/22
10/23 77/8 78/3 78/8	61/14	termination [1] 61/3	112/16 113/24 117/3	52/7 54/4 55/20 56/9
78/14 78/15 79/9 79/11	suspect [1] 83/20	terms [24] 18/2 27/24	117/16 119/2 119/20	58/9 60/10 60/10 60/18
80/11 83/3 154/12	sustain [2] 11/23 12/21	35/22 37/4 37/20 41/9	123/15 123/21 124/2	61/1 61/7 62/16 62/20
Stripes/Turtle [1]	Sweet [1] 156/11	45/13 45/23 46/11	124/9 124/11 126/8	62/22 63/1 63/25 64/15
80/11	sworn [1] 3/9	48/22 57/9 60/11 78/3	126/14 126/16 127/21	64/15 65/1 69/16 70/3
stripping [1] 148/9	T	78/14 100/10 100/22	130/3 140/18 144/17	70/14 70/23 71/2 72/22
strong [9] 30/9 78/1	table [3] 25/6 29/11	107/13 115/10 115/11	144/17 145/6 145/13	80/24 84/12 86/20 87/4
83/19 96/19 107/11	105/4	130/21 133/7 150/9	145/14 145/16 146/16	91/8 91/10 92/11 95/2
107/12 107/16 126/13	tactics [1] 126/11	154/1 158/11	149/18 149/19 150/13	95/22 97/18 100/9
140/23	take [13] 15/25 21/9	terrible [1] 102/16	150/16 150/16 151/25	107/22 113/25 115/22
		testified [8] 44/21	152/23 157/10 157/11	120/14 123/19 129/2

<p>T</p> <p>there... [15] 129/3 141/3 141/12 146/21 151/15 151/25 153/21 153/22 153/25 154/1 154/15 155/9 155/18 155/21 157/5</p> <p>there'd [1] 96/8</p> <p>there's [25] 9/3 9/20 26/8 35/13 38/9 38/13 57/14 76/12 77/13 80/23 91/4 92/9 98/16 100/13 100/13 104/17 113/25 121/20 125/20 133/23 140/20 140/23 141/20 152/16 158/24</p> <p>therefore [5] 28/1 52/22 117/11 120/12 154/3</p> <p>these [24] 4/22 8/5 20/2 24/20 25/1 32/7 35/18 73/1 75/10 83/25 91/4 98/4 99/23 112/2 112/2 117/17 117/25 118/3 123/14 140/16 152/19 152/24 153/6 153/11</p> <p>they [111] 4/24 8/7 10/11 11/1 11/3 14/1 18/4 18/6 18/7 21/23 23/12 24/1 25/11 25/23 27/11 27/11 27/12 28/12 28/12 28/14 33/7 38/21 39/16 39/22 39/25 40/2 40/13 42/19 45/6 45/7 48/14 48/20 48/23 48/25 49/6 49/7 50/11 50/13 51/18 51/25 52/2 52/11 52/19 61/19 68/12 68/14 68/16 69/15 69/16 70/21 77/21 77/22 79/22 79/23 84/3 84/5 84/6 84/7 84/8 84/10 85/16 91/2 91/11 100/6 100/18 106/15 108/11 108/13 108/13 112/22 116/16 117/19 118/9 120/14 121/6 126/16 126/21 126/22 126/24 127/9 127/10 127/14 127/17 127/18 128/2 128/3 128/13 129/13 129/18 129/24 132/3 133/4 133/7 133/14 133/19 135/17 141/2 141/6 141/9 142/9 145/17 149/6 149/10 149/11 151/9 151/11 153/16 154/1 154/3 155/7 156/14</p> <p>they'll [1] 47/9</p> <p>they're [8] 30/16 38/11 45/18 94/16 100/8 138/8 153/8 154/17</p> <p>they've [3] 24/9 100/8 157/22</p> <p>thing [15] 6/6 33/14</p>	<p>40/22 41/4 55/5 56/7 56/18 57/8 58/13 71/11 71/14 80/9 145/6 145/24 158/18</p> <p>things [23] 7/16 8/5 9/4 9/7 20/18 26/13 27/20 28/20 32/3 55/11 70/16 77/13 85/21 92/10 93/10 104/16 104/24 104/24 112/21 123/25 141/11 155/6 157/9</p> <p>think [57] 5/7 14/25 18/7 18/14 22/6 44/8 46/25 47/19 50/17 50/19 53/20 55/10 55/20 56/9 57/13 60/13 69/2 73/4 76/3 76/10 79/4 79/12 84/7 90/20 91/7 91/11 91/17 96/16 98/25 100/9 100/22 103/6 103/13 104/16 104/16 107/22 113/13 113/13 115/18 117/3 117/7 117/7 118/16 121/7 121/9 126/23 128/15 130/18 131/4 131/22 135/23 145/20 146/18 152/11 154/16 154/19 158/6</p> <p>thinking [3] 24/23 47/20 144/19</p> <p>third [5] 13/3 13/3 19/13 150/23 155/7</p> <p>thirteen [2] 157/21 157/22</p> <p>this [299]</p> <p>thorough [1] 94/25</p> <p>those [40] 15/5 15/12 24/10 26/14 33/6 39/12 39/19 47/6 47/7 51/16 59/6 59/19 60/8 65/4 78/25 90/17 91/12 91/13 91/15 93/4 93/5 96/2 96/18 98/1 98/1 98/12 103/16 108/11 111/3 111/4 112/23 130/4 132/9 143/7 147/22 149/24 150/22 151/8 151/25 152/24</p> <p>though [2] 42/15 113/25</p> <p>thought [9] 15/24 39/16 52/3 98/12 104/11 105/4 108/14 133/17 139/22</p> <p>thoughts [1] 79/4</p> <p>threat [4] 65/7 122/9 123/11 123/15</p> <p>threaten [6] 65/11 120/18 123/10 145/20 145/22 145/25</p> <p>threatened [2] 120/15 146/2</p> <p>threatening [2] 65/2 86/6</p> <p>three [11] 46/16 46/19 54/15 72/4 76/11 79/6 79/10 92/6 118/12</p>	<p>122/24 158/21</p> <p>three-and [1] 118/12</p> <p>through [22] 4/23 7/25 14/4 17/16 34/10 39/20 42/9 43/25 44/1 44/2 45/8 45/24 48/20 71/3 75/4 75/11 80/24 82/6 118/3 128/16 143/1 152/25</p> <p>THURSDAY [1] 1/12</p> <p>tie [1] 46/13</p> <p>tied [2] 77/15 83/1</p> <p>time [49] 7/9 8/2 8/19 8/25 10/13 25/16 35/19 36/9 36/9 48/14 50/21 52/1 52/6 58/13 65/25 71/5 72/1 75/8 78/7 81/14 82/20 86/2 89/17 91/20 92/15 94/12 95/5 100/3 103/4 103/12 107/11 111/21 113/7 117/17 118/3 119/19 120/9 120/14 129/19 133/16 133/20 138/12 141/3 148/17 148/18 151/22 152/20 153/9 153/23</p> <p>time-vested [1] 117/17</p> <p>timeline [1] 4/19</p> <p>times [4] 92/2 119/14 154/16 154/18</p> <p>timing [2] 77/17 145/3</p> <p>tinny [1] 72/17</p> <p>title [1] 88/25</p> <p>titled [1] 59/24</p> <p>today [18] 4/6 11/24 44/3 87/3 88/15 90/11 92/22 93/25 106/15 113/20 118/25 124/4 129/23 137/23 147/12 148/4 150/8 156/18</p> <p>Todd [19] 23/14 69/24 70/2 71/5 72/17 75/5 78/23 78/24 79/3 80/17 104/4 104/15 104/21 104/23 130/11 130/12 135/5 142/10 147/18</p> <p>Todd's [5] 79/2 79/15 80/6 80/19 82/13</p> <p>together [6] 35/11 35/18 40/22 45/9 79/9 96/23</p> <p>told [12] 21/22 21/24 54/24 55/4 110/24 121/7 124/5 125/11 125/21 150/3 150/4 150/9</p> <p>tomorrow [9] 156/21 156/22 157/10 157/15 157/15 158/12 158/15 158/22 159/4</p> <p>tomorrow's [1] 158/19</p> <p>tonight [1] 157/14</p> <p>too [9] 38/12 52/5 72/17 96/19 107/8 125/17 127/23 156/17 159/10</p> <p>took [7] 10/23 21/25 23/11 45/6 105/3 120/8</p>	<p>126/11</p> <p>top [11] 32/16 33/13 33/14 63/23 98/18 125/5 133/10 144/4 148/6 148/7 156/2</p> <p>topic [2] 25/24 94/22</p> <p>total [3] 115/15 157/13 157/24</p> <p>totals [1] 156/19</p> <p>touched [2] 76/3 95/21</p> <p>tough [3] 97/22 98/7 98/10</p> <p>toward [1] 5/17</p> <p>towards [1] 89/19</p> <p>town [1] 141/10</p> <p>track [4] 124/21 158/2 158/3 158/9</p> <p>tracking [1] 89/18</p> <p>trade [1] 28/8</p> <p>trading [1] 119/18</p> <p>traditional [2] 137/3 154/16</p> <p>TRAN [1] 1/1</p> <p>transaction [22] 9/15 15/23 15/24 19/2 19/19 20/9 21/16 21/19 21/21 21/23 26/8 27/6 27/11 29/24 30/1 35/23 36/7 77/17 82/20 96/25 151/13 151/16</p> <p>transactions [2] 19/3 19/5</p> <p>TRANSCRIBED [2] 1/25 160/3</p> <p>TRANSCRIBER [1] 160/16</p> <p>TRANSCRIPT [2] 1/8 160/9</p> <p>transfer [1] 67/13</p> <p>transition [25] 30/14 30/18 30/21 30/21 30/24 31/14 31/19 32/4 32/5 33/20 35/3 35/8 35/9 35/10 35/14 35/16 95/23 96/13 100/8 150/19 150/22 151/11 151/16 151/19 151/23</p> <p>transitions [2] 31/14 34/4</p> <p>tremendous [3] 105/1 105/1 140/22</p> <p>trial [2] 1/13 68/2</p> <p>trigger [3] 115/21 118/1 118/8</p> <p>troubles [1] 97/9</p> <p>true [22] 27/12 72/19 72/25 73/20 74/16 74/24 78/11 82/19 93/8 94/23 94/24 106/10 115/8 122/22 126/19 129/18 133/5 136/23 138/15 138/25 139/4 151/25</p> <p>TRULY [1] 160/3</p> <p>truth [3] 95/4 136/17 136/25</p> <p>truthful [2] 112/15 112/16</p> <p>try [4] 35/13 55/24</p>	<p>68/11 144/7</p> <p>trying [24] 6/7 12/5 12/10 14/21 22/12 22/13 29/17 35/12 35/19 54/17 58/4 108/1 111/25 118/25 119/12 121/23 122/16 122/18 123/1 124/24 132/6 138/18 138/18 139/19</p> <p>turn [5] 32/12 83/7 100/11 100/12 147/13</p> <p>Turtle [106] 3/25 7/2 10/11 10/19 10/23 10/24 11/9 11/9 11/18 14/13 15/7 19/3 19/15 24/18 25/22 27/3 28/12 29/8 30/20 31/10 31/15 31/16 31/20 32/1 32/17 32/21 33/8 34/2 34/12 34/15 34/17 34/21 34/21 34/25 35/1 35/16 35/25 38/10 47/2 47/9 54/9 55/19 56/2 61/13 61/16 61/17 61/18 62/14 66/22 68/23 69/8 69/9 70/24 72/5 75/12 75/14 75/17 75/23 76/4 77/5 77/21 77/25 78/3 78/8 78/22 79/8 79/10 80/11 83/3 84/1 84/11 87/13 92/19 94/12 95/1 95/6 96/2 99/9 100/3 100/6 100/14 100/17 100/22 101/7 101/14 102/5 110/18 111/25 112/6 112/17 115/24 127/22 139/22 142/7 142/20 148/13 148/19 148/25 149/7 149/10 153/3 153/4 153/5 153/6 153/10 154/2</p> <p>TV [3] 71/21 71/23 72/5</p> <p>twelve [2] 90/3 90/15</p> <p>twelve months [1] 90/3</p> <p>twice [1] 16/20</p> <p>two [14] 27/20 45/8 49/24 50/4 76/11 79/8 85/9 116/21 117/5 117/10 121/9 122/24 133/25 148/8</p> <p>type [1] 5/9</p> <hr/> <p>U</p> <p>Uh [6] 3/5 39/3 126/12 135/4 140/19 155/12</p> <p>Uh-huh [6] 3/5 39/3 126/12 135/4 140/19 155/12</p> <p>ultimately [1] 69/10</p> <p>ultimatum [1] 102/22</p> <p>ultrasonic [1] 71/23</p> <p>Um [2] 90/25 125/4</p> <p>Um-hum [1] 125/4</p> <p>unacceptable [1] 45/9</p> <p>unanimous [1] 22/2</p> <p>unanimously [1] 21/16</p> <p>uncontrollables [1] 26/18</p> <p>AA 2595</p>
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<p>U</p> <p>under [7] 33/2 33/23 42/11 49/7 49/7 115/12 140/9</p> <p>underestimate [1] 79/21</p> <p>underlying [1] 134/25</p> <p>underneath [1] 140/19</p> <p>understand [18] 10/13 11/7 26/7 27/25 28/23 32/23 43/5 49/3 49/21 55/13 57/6 60/6 74/3 82/15 112/14 115/11 119/12 139/19</p> <p>understanding [10] 10/17 13/18 13/22 13/25 16/10 36/5 55/13 80/1 117/9 151/22</p> <p>understood [6] 15/20 38/22 38/23 83/4 101/1 129/13</p> <p>undertaking [1] 25/8</p> <p>unfortunately [1] 82/7</p> <p>unique [1] 126/24</p> <p>unless [1] 158/25</p> <p>unquote [1] 111/11</p> <p>unravel [2] 85/24 86/6</p> <p>unrealistic [4] 98/13 144/8 144/25 145/9</p> <p>until [4] 35/15 67/17 134/9 141/4</p> <p>untruthful [1] 112/19</p> <p>up [35] 3/14 8/7 20/22 44/6 46/13 46/15 54/22 59/19 68/10 77/17 78/8 78/15 86/15 86/16 91/24 92/1 93/23 98/4 99/13 99/19 105/9 107/8 108/3 110/4 116/18 125/2 125/19 129/2 130/19 132/20 132/20 149/10 153/15 153/22 155/16</p> <p>update [4] 7/1 24/8 24/8 94/3</p> <p>updates [4] 7/24 23/24 95/1 95/2</p> <p>upgrading [1] 147/10</p> <p>upon [2] 74/4 116/20</p> <p>ups [3] 45/23 45/23 156/9</p> <p>upset [2] 85/18 86/3</p> <p>upside [1] 57/7</p> <p>us [35] 5/18 10/5 19/2 19/11 28/9 39/22 40/2 45/7 47/11 71/5 77/8 79/18 87/14 91/20 100/18 100/18 104/7 105/4 108/2 116/6 121/12 123/13 126/25 127/18 127/21 128/2 128/11 129/9 132/19 134/8 135/5 136/14 149/3 153/10 157/14</p> <p>use [11] 27/24 37/15 38/15 38/16 38/21 69/1 69/5 74/4 114/12 131/8 131/13</p>	<p>used [13] 64/15 67/5 93/1 98/3 100/21 105/23 145/25 150/8 156/18 156/19 157/22 157/23 157/24</p> <p>using [3] 25/9 55/14 108/2</p> <p>usually [1] 38/1</p> <p>V</p> <p>Vaguely [1] 116/16</p> <p>valid [1] 154/5</p> <p>validate [1] 93/14</p> <p>valuable [1] 118/10</p> <p>valuation [9] 19/16 76/24 80/10 82/15 82/16 82/19 83/1 83/4 155/7</p> <p>valuations [1] 19/12</p> <p>value [11] 19/12 22/14 52/2 52/4 69/12 69/14 79/9 81/3 82/4 82/15 117/25</p> <p>valued [5] 82/23 82/23 82/25 154/24 155/3</p> <p>variable [1] 148/20</p> <p>various [2] 45/14 45/22</p> <p>VEGAS [2] 3/1 160/12</p> <p>veracity [1] 113/5</p> <p>verify [1] 30/25</p> <p>version [2] 107/21 132/21</p> <p>very [37] 7/24 7/24 13/14 21/20 22/14 24/20 24/25 24/25 26/11 29/6 29/24 43/12 43/13 46/8 47/17 59/23 66/2 68/22 73/14 73/15 74/7 74/7 84/17 85/12 85/16 90/7 105/4 105/15 114/18 114/20 125/9 126/13 135/15 139/25 140/1 155/6 156/16</p> <p>vest [1] 118/3</p> <p>vested [3] 116/21 117/8 117/17</p> <p>vesting [4] 61/1 116/22 116/23 117/22</p> <p>veto [3] 68/20 137/9 137/10</p> <p>viable [1] 73/2</p> <p>vibrate [1] 71/22</p> <p>victim [1] 100/7</p> <p>VIDEO [1] 160/4</p> <p>view [3] 18/4 43/23 45/6</p> <p>views [1] 21/18</p> <p>vine [2] 50/19 50/22</p> <p>violation [2] 141/12 141/21</p> <p>vis [3] 37/4 37/5 37/5</p> <p>vis-a [1] 37/4</p> <p>vis-à-vis [1] 37/5</p> <p>visibility [2] 47/17 47/23</p> <p>vitality [1] 27/6</p> <p>voice [1] 125/19</p> <p>volatile [1] 76/13</p>	<p>volatility [1] 76/23</p> <p>volume [5] 1/13 72/23 74/8 108/8 123/12</p> <p>voluntarily [1] 68/10</p> <p>vote [9] 22/3 47/11 64/2 64/8 64/9 64/17 154/8 154/10 154/17</p> <p>voted [1] 21/15</p> <p>voting [1] 21/23</p> <p>VTB [5] 1/20 1/21 94/8 129/24 133/1</p> <p>VTB's [2] 129/19 139/8</p> <p>W</p> <p>WACC [5] 17/10 17/15 17/20 17/23 18/11</p> <p>waffling [1] 130/21</p> <p>wait [3] 30/16 146/19 152/8</p> <p>waiting [4] 70/18 143/17 143/18 146/17</p> <p>walk [1] 69/16</p> <p>walked [1] 69/15</p> <p>want [32] 11/7 11/16 13/18 18/3 22/5 23/9 26/1 28/21 30/15 31/6 37/13 44/5 46/23 54/5 57/25 58/8 71/3 77/16 99/1 121/9 123/12 126/2 131/22 136/13 136/14 144/5 144/18 152/16 154/22 157/16 157/18 157/19</p> <p>wanted [30] 8/8 13/14 22/12 25/21 26/16 38/24 46/14 47/24 65/19 84/15 94/1 114/17 115/4 115/7 119/15 120/2 125/21 125/25 126/2 126/4 126/5 126/25 127/10 127/14 133/4 142/7 142/9 142/21 158/13 159/1</p> <p>wanting [2] 127/12 130/17</p> <p>warnings [1] 150/19</p> <p>warrants [1] 99/6</p> <p>was [324]</p> <p>wasn't [9] 9/19 9/23 110/24 111/18 121/21 122/4 126/24 129/18 144/9</p> <p>watched [1] 125/17</p> <p>waves [1] 71/23</p> <p>way [23] 13/15 23/20 26/16 33/20 35/2 37/6 37/8 49/19 56/14 57/1 57/9 71/22 73/16 74/19 79/20 84/10 88/8 88/13 103/19 117/25 123/11 124/9 152/25</p> <p>we [179]</p> <p>we'd [2] 73/13 158/23</p> <p>we'll [9] 47/11 121/20 127/19 128/2 143/6 158/18 158/19 158/19 158/25</p> <p>we're [39] 6/7 7/14</p>	<p>7/14 7/14 7/15 27/6 29/17 36/1 37/18 45/10 47/4 55/15 57/2 70/8 73/22 74/18 81/11 81/13 81/20 83/15 85/9 108/1 108/1 118/25 121/23 122/16 122/18 123/6 123/6 127/20 127/20 136/9 136/9 137/18 137/19 138/9 138/18 143/18 156/25</p> <p>we've [15] 7/9 7/23 25/12 29/1 36/8 38/18 52/14 57/12 92/2 93/25 118/20 132/2 135/14 157/23 158/16</p> <p>weak [3] 36/21 36/22 92/11</p> <p>wealth [2] 114/1 114/4</p> <p>week [3] 70/4 87/7 135/8</p> <p>weekly [1] 87/6</p> <p>weeks [2] 76/22 122/24</p> <p>weighted [1] 17/11</p> <p>Weisbord [22] 48/5 48/11 49/23 50/21 51/4 51/12 51/22 53/5 53/15 54/7 54/8 55/14 55/15 56/2 56/9 57/3 57/4 57/19 134/18 143/9 143/23 144/2</p> <p>welcome [1] 21/7</p> <p>well [61] 6/23 7/3 8/4 10/12 13/3 16/11 19/15 25/11 28/4 29/7 32/3 34/16 35/3 39/17 39/24 40/4 40/5 43/6 53/23 54/7 57/8 58/16 59/4 59/16 60/20 61/16 61/17 62/15 71/24 85/18 93/22 95/19 96/19 98/18 102/12 102/15 106/21 107/7 108/14 108/20 114/18 114/20 115/3 118/17 119/8 119/21 124/20 125/19 127/14 128/5 133/18 138/20 143/2 144/16 146/12 148/6 151/2 151/8 154/14 155/7 159/8</p> <p>went [4] 14/4 17/16 34/10 56/16</p> <p>were [152] 4/15 4/22 4/24 7/3 7/3 8/1 8/3 8/5 8/24 10/11 11/1 14/10 14/11 17/17 20/18 21/23 23/14 25/8 25/10 25/10 25/11 25/13 28/11 28/12 28/12 28/13 28/14 34/20 35/8 36/13 36/14 37/8 38/1 38/20 38/21 39/25 40/13 42/16 42/22 43/1 43/2 43/10 43/11 43/12 43/20 43/21 43/22 43/22 46/11 46/13 46/15 46/21 47/15</p>	<p>48/14 48/25 48/25 49/6 52/19 61/20 65/1 65/2 66/1 66/7 68/22 70/14 70/18 70/21 70/23 70/24 73/11 74/10 78/8 82/23 82/25 84/3 84/5 84/6 84/7 84/8 84/12 85/16 88/11 88/11 88/13 90/2 90/14 91/4 91/10 91/13 93/1 93/17 93/21 94/25 96/1 96/3 96/18 97/8 97/18 98/2 98/12 99/9 100/6 100/18 104/24 109/19 111/19 112/19 116/23 120/14 120/23 121/3 121/6 124/2 124/19 124/21 125/11 127/5 127/9 127/18 129/13 129/19 133/1 133/2 135/8 137/5 137/15 137/16 140/24 141/1 141/2 141/4 145/5 145/11 147/19 149/19 150/9 151/8 151/9 152/1 152/19 153/2 153/3 153/5 153/6 153/10 153/12 153/16 153/19 153/21 154/3 154/7 156/13</p> <p>weren't [2] 47/23 106/6</p> <p>what [171]</p> <p>what's [13] 20/17 28/6 31/13 37/2 38/6 53/7 54/24 59/7 74/6 136/23 136/23 152/10 155/1</p> <p>whatever [4] 10/14 20/17 22/3 77/23</p> <p>whatsoever [3] 122/10 129/12 137/13</p> <p>when [28] 7/11 7/11 11/3 17/13 22/25 30/14 40/22 54/14 55/22 57/9 74/15 100/7 106/6 110/20 120/5 120/9 120/14 125/8 127/20 128/13 131/22 141/14 141/18 150/2 150/9 150/22 151/22 154/23</p> <p>whenever [1] 98/9</p> <p>where [27] 7/8 7/13 14/11 25/18 28/3 34/12 45/16 53/10 59/3 59/4 65/2 68/7 72/23 73/14 84/18 86/14 92/4 107/3 109/1 110/3 115/15 118/11 127/5 130/12 132/25 137/19 147/17</p> <p>whether [24] 16/6 17/14 17/20 17/23 18/4 21/22 30/23 34/10 36/6 43/6 47/6 63/4 63/18 64/2 64/25 84/7 106/9 109/25 114/9 130/4 133/1 133/7 138/15 153/8</p> <p>which [43] 8/11 8/15 10/23 17/14 19/7 24/3 24/22 25/8 25/21 29/7</p> <p>AA 2596</p>
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W	54/7	110/9 110/22 111/2	131/9 131/23 133/6	139/13 142/4 146/21
which... [33] 56/9	within [4] 41/16 59/6	111/4 116/2 116/20	133/24 135/25 138/25	147/4 149/7 149/19
56/11 59/18 59/18	134/3 141/2	117/12 117/19 117/25	139/15 140/7 141/6	152/15 159/2
69/17 72/14 73/14	without [7] 31/18 66/7	118/5 118/12 118/15	144/12 144/22 145/1	you've [8] 29/11 35/24
78/18 78/19 82/7 85/13	76/3 85/22 90/1 134/15	119/5 119/8 119/15	146/15 147/14 151/10	56/6 58/1 77/24 84/22
85/21 86/16 92/8 93/12	155/9	119/16 120/3 120/3	155/24 158/6 158/6	90/10 115/10
109/14 116/24 118/11	witness [13] 3/9 11/24	120/16 120/20 121/7	year [7] 54/15 76/11	your [136] 5/14 7/17
127/10 127/16 128/10	12/1 81/15 105/12	121/11 124/6 124/20	89/17 90/6 115/15	10/17 11/16 12/2 17/19
130/7 130/25 131/3	111/22 120/21 125/3	125/1 130/3 131/1	151/12 153/1	18/24 19/23 22/8 23/3
131/4 134/5 142/24	129/4 136/20 142/17	131/1 132/19 135/15	years [4] 54/15 54/20	23/6 23/16 26/24 27/9
147/12 149/23 150/10	143/9 158/17	140/21 141/9 144/13	55/12 155/5	27/23 27/25 27/25
150/18 154/7 154/15	witness's [1] 11/22	145/3 145/4 149/13	Yep [5] 27/18 31/5	29/10 29/11 30/8 31/3
while [4] 77/16 106/15	witnesses [2] 2/3	149/16 149/22 151/6	99/25 109/20 147/16	31/8 34/21 37/1 39/10
113/18 134/15	157/7	151/12 151/17 151/21	yes [90] 3/17 4/3 4/8	39/23 40/3 41/5 42/1
who [30] 10/10 15/21	WOLFE [5] 1/18 62/15	151/24 152/5 152/7	4/11 4/24 5/1 7/20 8/23	43/23 44/17 47/4 49/24
23/10 23/13 48/12	62/18 86/15 102/19	152/8 153/24 156/13	11/13 13/24 14/24	53/16 53/24 56/20
48/20 48/20 51/20 52/7	won't [4] 27/11 55/23	157/15	15/17 16/15 19/20	58/16 60/14 63/9 64/4
56/24 57/5 62/9 62/12	148/12 148/22	would've [2] 6/4 37/25	22/11 22/19 22/21	65/3 65/6 65/11 66/1
70/24 74/15 81/23	Woody [4] 62/10 71/18	wouldn't [1] 119/16	28/14 29/2 30/11 31/23	66/7 66/24 67/19 75/5
86/21 86/22 95/9	72/5 95/19	write [6] 13/12 41/14	32/17 33/10 33/16 40/9	78/13 83/24 89/20
114/12 124/24 124/24	Woody's [1] 72/24	65/8 85/12 89/8 97/22	41/7 42/8 42/19 42/20	92/17 94/2 95/12 98/11
124/25 128/19 135/19	woofers [1] 72/18	writes [1] 104/9	42/21 44/2 44/10 44/12	103/22 105/11 113/6
137/5 144/24 147/7	word [4] 11/6 14/12	writing [1] 47/19	48/10 56/3 58/23 61/10	114/3 115/1 115/7
155/7 157/7	120/18 145/25	wrong [9] 18/5 28/5	62/8 67/15 67/19 70/3	115/11 115/15 115/23
who's [1] 144/12	words [11] 11/22 38/15	28/10 28/20 28/21 32/4	70/7 72/16 73/21 75/22	116/5 116/19 117/13
whole [15] 7/7 14/12	59/11 59/12 78/2 111/3	55/2 153/6 153/9	75/23 77/3 81/16 82/2	117/21 118/12 118/21
30/19 30/22 30/24 33/2	130/4 140/16 144/25	wronged [3] 54/24	85/5 89/1 90/19 90/22	119/3 119/12 119/23
41/4 42/5 54/25 55/5	147/22 150/8	55/7 55/9	95/25 96/9 97/21 98/14	120/1 120/10 120/21
56/19 80/9 123/12	work [4] 40/22 73/7	wrote [2] 39/18 111/3	98/21 102/9 102/21	121/2 121/24 122/12
128/21 155/6	115/11 158/24	X	105/22 105/24 106/4	122/13 123/1 123/5
whom [2] 16/16 48/7	worked [2] 64/15 129/9	Xbox [7] 32/1 33/2 33/8	106/5 107/11 107/12	123/9 123/21 124/5
why [32] 7/21 9/2 9/2	working [2] 45/7 45/9	34/4 95/23 96/3 133/12	107/14 108/21 109/20	124/9 126/15 127/10
9/12 13/12 15/18 29/22	works [2] 6/18 17/8	XI [1] 1/6	113/12 118/15 123/5	127/14 127/23 128/23
42/12 48/19 50/21	world [5] 74/10 75/24	Y	126/20 127/24 128/2	130/11 131/7 131/20
51/25 54/24 55/4 55/13	84/20 84/21 84/22	yeah [139] 4/4 5/7 5/16	132/22 139/6 140/15	132/5 132/16 134/8
55/15 57/6 64/4 67/15	worst [2] 92/12 130/21	5/18 6/2 6/15 7/23 7/24	141/25 143/11 145/18	134/15 134/19 136/19
70/13 72/3 77/12 82/22	worth [4] 47/16 118/12	8/3 8/10 8/21 9/3 9/14	146/5 147/5 147/23	136/20 137/19 138/14
84/3 84/3 84/5 84/6	133/12 155/5	10/1 10/2 10/4 10/18	148/16 151/3 151/6	138/22 139/2 139/25
92/5 99/5 100/20	worthless [1] 120/15	10/20 10/22 13/14	156/4 156/23 157/17	140/2 140/13 140/16
104/21 131/8 144/17	would [156] 5/7 5/9	14/18 15/20 16/25 20/9	yeses [1] 40/10	142/12 143/11 143/25
will [47] 4/17 5/2 9/9	5/11 6/2 7/8 7/21 8/9	20/16 24/8 24/20 24/20	yesterday [38] 10/22	144/10 144/25 145/12
10/8 12/8 12/12 13/15	8/16 9/12 10/11 10/14	24/23 24/24 25/5 25/10	14/4 23/9 23/16 25/3	146/4 146/14 146/23
13/16 27/10 30/22 31/8	10/21 15/20 15/22	26/6 26/11 27/2 27/20	25/20 26/19 39/13	147/15 149/22 151/5
35/14 35/16 35/16	15/24 15/25 16/8 16/10	28/17 29/16 30/14	39/21 40/3 41/9 44/5	152/11 152/11 154/11
38/15 51/9 60/25 61/1	16/18 16/25 22/9 22/23	31/19 33/7 34/14 35/5	44/9 44/21 46/13 46/14	155/1 155/11 155/13
64/9 80/3 85/24 92/10	23/23 24/16 24/20	35/8 36/21 37/14 37/16	53/9 61/7 65/1 65/6	156/10 156/12 157/13
97/24 102/10 105/7	24/25 26/13 27/13 28/8	38/8 38/23 40/2 40/6	65/25 68/6 81/4 86/17	157/18 157/19 157/23
109/3 112/9 126/9	29/7 30/19 30/25 31/20	41/4 41/8 42/24 43/10	88/15 90/18 92/25 94/1	158/11 158/16 159/6
126/9 128/11 129/4	33/11 34/14 34/15	44/1 45/5 45/15 46/3	101/5 103/12 108/14	yours [4] 11/22 40/13
130/6 131/19 132/17	34/25 35/21 37/16	46/8 47/2 47/13 48/20	110/17 127/7 128/22	66/25 135/24
134/6 135/17 138/6	37/17 39/4 40/5 41/19	49/2 50/7 52/2 52/9	128/24 129/1 130/14	yourself [1] 63/4
138/23 140/4 142/24	42/15 43/14 45/7 45/10	54/19 54/22 55/17 56/5	130/18	Z
143/21 149/3 149/4	45/18 50/8 51/10 52/3	57/12 57/24 58/11	yet [7] 8/14 30/4 73/18	zero [4] 117/12 127/18
149/12 155/21 157/6	52/3 52/8 52/10 52/11	59/23 60/9 62/5 69/21	108/22 122/11 122/17	127/25 129/14
157/8	52/15 52/16 52/21	70/8 71/21 73/1 76/6	130/25	zeroing [1] 18/2
WILLIAMS [2] 160/12	53/19 54/25 54/25 55/5	77/13 79/17 81/18 84/7	you [775]	zoom [1] 128/20
160/16	55/24 57/21 61/1 62/6	87/13 88/11 89/6 93/13	you'd [1] 78/2	
willing [2] 55/6 123/24	67/5 68/4 68/5 69/2	93/21 96/8 96/19 98/18	you'll [7] 3/23 10/7	
win [1] 105/5	69/6 69/7 69/9 69/10	100/6 100/21 101/12	90/20 112/5 112/5	
Winding [1] 64/21	69/14 69/16 73/10	104/18 104/23 105/23	112/24 113/3	
window [5] 68/12	73/11 73/13 74/11	106/23 108/11 110/17	you're [38] 9/23 11/8	
114/1 114/1 114/12	75/11 76/4 76/10 76/11	113/10 117/24 119/3	11/17 21/7 27/9 27/10	
114/15	76/13 76/15 79/18	120/25 121/4 122/1	27/21 28/16 29/19 37/5	
wins [1] 107/13	82/13 82/16 85/13 87/3	122/18 123/20 124/14	37/7 46/24 47/19 56/15	
wipe [3] 67/13 105/7	87/5 87/14 89/11 93/12	125/7 126/5 127/1	56/17 57/2 60/10 64/25	
105/8	98/14 99/12 100/19	127/7 127/16 127/24	77/20 82/24 83/10	
withdraw [1] 7/4	104/11 104/25 106/3	128/22 130/15 131/9	85/21 92/4 100/20	
withdrawn [2] 53/23	106/21 107/3 108/22		105/9 105/16 111/10	
	108/24 110/2 110/2		115/10 115/15 117/3	

From: Ken <ken.potashner@gmail.com>
Sent: Friday, November 8, 2013 4:15 AM
To: Joshua Weisbord <jnweisbord@gmail.com>
Subject: Fwd: With all due respect

100% confidential. I will call u

Sent from my iPad

Begin forwarded message:

From: Ken <ken.potashner@gmail.com>
Date: November 8, 2013, 6:24:38 AM EST
To: Juergen Stark <juergen.stark@turtlebeach.com>
Subject: With all due respect

The trigger point for my email outburst yesterday was receiving word from my biggest investor that he may no longer vote for the deal. the irony of course is that this trip was designed to get the vote and we managed to lose our strongest advocate.

Jim Barnes, John Todd, and Ken Potashner all believe you are embarking us on a path harmful to the PAMT shareholder

Our banker HL believes the same

Lake street will do the deal but they say it makes no sense ,

Dave Mossberg my IR firm says it makes no sense

So essentially my entire team feels our motivations are not aligned with ours.

I know you don't care for emails of this nature but it represents the reality of where we are currently it.

I have allowed you to play a major non traditional role in running the company and this only makes sense if we are aligned. I can give you many examples of this if you like .

We don't need to discuss this in that we already have endlessly. I anticipate that josh might compromise the stability of some of our other investors ,specifically Bob Turner. I am much less confident about the vote now and I can longer present it as a fait accomplis.

Sent from my iPad

AA 2599

From: John Hanson <john.hanson@turtlebeach.com>
Sent: Monday, December 30, 2013 9:38 AM
To: Ken Potashner <kpotashner@parametricsound.com>; Juergen Stark
<juergen.stark@turtlebeach.com>
Subject: 280G Update from McGladrey
Attach: KenP280Gvupdated123013.docx

Ken:

Here are the updated 280G calculations. This information is being provided for your reference and use and should not be construed as legal or tax advice. As we have discussed, 280G legal and tax advice is dependent upon your individual situation and you should consult advisors accordingly.

Thanks, John

--

John Hanson
Chief Financial Officer



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Ken Potashner 280G calculations @ various stock values

The following calculations are intended for illustrative purposes only. Any U.S. tax advice contained herein was not intended or written to be used, and cannot be used for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions.

Parachute payments

1. 175,000 performance-vested options granted 4/3/12 @ \$4.50 exercise price (performance vesting conditions were not met but vesting is accelerated on account of the CIC)
2. His employment agreement provides for severance pay of 12 months of base compensation. We understood that his base compensation was \$350,000 (note: this may not be current).
3. 45,000 time-vested options were granted on 2/21/13 @ \$11.22 exercise price (note: the exercise price is a close estimate but may not be exact). Grants within 12 months of the CIC are presumed to be parachute payments but the presumption can be overcome by clear and convincing evidence. The historic pattern of granting options in the first quarter of the year to executives may be sufficient evidence to overcome the presumption. In that case, a much lesser amount would be treated as a parachute payment.

Base Period Compensation

2012 W-2 box 1: \$418,666

2013 (estimated) \$600,000

Total \$1,018,666/ 2 = \$509,333 "Average base period compensation"

"3 X Threshold"

\$509,333 X 3 = \$1,527,999

If total parachute payments are less than the "3 X Threshold" then there are no "excess parachute payments" that would be subject to the personal 20% excise tax (on Potashner) or that would be non-deductible for corporate income tax purposes. However, if the parachute payments equal or exceed the "3 x Threshold" then the excess of the parachute payments over the "Average base period compensation" (NOT the 3 X threshold amount) are considered "excess parachute payments subject to the personal 20% excise tax (on Potashner) and would be non-deductible for corporate income tax purposes.

Calculation of Excess Parachute Payments

1. As originally estimated based on a \$20.05 per share value.

A. 175,000 performance options X [\$20.05 – 4.50 exercise price]	= \$2,721,250
B. 12 months severance pay	= \$350,000
C. 45,000 options granted w/in 12 months X [\$20.05 – 11.22]	= \$397,350
Total parachute payments at \$20.05/share value	\$3,468,600

3 X threshold = \$1,527,999

Since the parachute payments exceed the 3 X threshold the excess is:	\$3,468,600
Less: Average base period compensation	- 509,333
Excess Parachute Payments	\$2,959,267
20% excise tax	\$591,853

2. Based on a \$15.00 per share value.

A. 175,000 performance options X [\$15.00 – 4.50 exercise price]	= \$1,837,500
B. 12 months severance pay	= \$350,000
C. 45,000 options granted w/in 12 months X [\$15.00 – 11.22]	= \$170,100
Total parachute payments at \$15.00/share value	\$2,357,600

3 X threshold = \$1,527,999

Since the parachute payments exceed the 3 X threshold the excess is:	\$2,357,600
Less: Average base period compensation	- 509,333
Excess Parachute Payments	\$1,848,267
20% excise tax	\$369,653

3. Based on a \$13.00 per share value.

A. 175,000 performance options X [\$13.00 – 4.50 exercise price]	= \$1,487,500
B. 12 months severance pay	= \$350,000
C. 45,000 options granted w/in 12 months X [\$13.00 – 11.22]	= \$ 80,100
Total parachute payments at \$13.00/share	\$1,917,600

3 X threshold = \$1,527,999

Since the parachute payments exceed the 3 X threshold the excess is:	\$1,917,600
Less: Average base period compensation	- 509,333
Excess Parachute Payments	\$1,408,267
20% excise tax	\$281,653

4. Based on a \$11.00 per share value.

A. 175,000 performance options X [\$11.00 – 4.50 exercise price]	= \$1,137,500
B. 12 months severance pay	= \$350,000
C. 45,000 options granted w/in 12 months X [\$11.00 – 11.22]	= \$ 0
Total parachute payments at \$13.00/share	\$1,487,500

3 X threshold = \$1,527,999

Since the parachute payments are less than the 3 X threshold there are no excess parachute payments