

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,

Appellant,

vs.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,

Respondents.

180 LAND CO., LLC, A NEVADA LIMITED-
LIABILITY COMPANY; AND FORE STARS,
LTD., A NEVADA LIMITED-LIABILITY
COMPANY,

Appellants/Cross-Respondents,

vs.

CITY OF LAS VEGAS, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,

Respondent/Cross-Appellant.

No. 84345

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**AMENDED
JOINT APPENDIX
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1 if I'm going to award fees under the facts of this case, why
2 wouldn't I award them as they were actually incurred?

3 MR. LEAVITT: Your Honor, the Constitution does say
4 actually incurred.

5 THE COURT: Yes.

6 MR. LEAVITT: And as does the -- as does the cases.
7 They do say actually incurred. The only authority that we have
8 for enhancement of fee is the *Hsu* case. The *Hsu* case does say
9 that there is a 2-step process in these specific inverse
10 condemnation cases, and it starts at Headnote 8 and it goes
11 through and says that in an inverse condemnation you're
12 entitled to recover attorney's fees. And first there has to be
13 a Lodestar analysis where you multiply -- and it says "multiply
14 the number of hours reasonably spent on the case by a
15 reasonable hourly rate." So you find out what the hourly rate
16 is and you multiply it. And we know what that is here.

17 Then the court goes on to say -- it does say,
18 "Following determination of the lodestar amount, we leave it to
19 the sound discretion of the district court to adjust this fee
20 award based upon" -- and then there's twelve factors.

21 So, frankly, Your Honor, it's within this Court's
22 sound discretion on whether to award a higher fee than those
23 actually incurred. And the authority that we have for that is
24 the *Sisolak* case where \$1,392 per hour was awarded. And, Your
25 Honor, I would submit to the Court that if the Court simply

1 followed the *Sisolak* case and awarded \$1,392 an hour, it would
2 be consistent with that. We took the *Sisolak* award and the
3 \$1,392 amount and we adjusted it amongst the various attorneys
4 in the office. But again, the basis is that Headnote 8, which
5 is page 637 of the *Hsu* decision.

6 THE COURT: All right. And I just want to make sure
7 I understand the distinction between the calculations that are
8 set forth on page 11 of the motion and page 9 of the reply
9 because it appears to me that, for example, since October 31st
10 of 2021 the hourly rate has gone up. Is that correct or no?

11 MR. LEAVITT: Well, the hourly rate went up on
12 June 1st. Your Honor, I have that right here. The hourly rate
13 went up on June 1st in I think the year of 2019. So prior to
14 June 1st, 2019, the rate was \$450, and after June 1st, 2019,
15 the rate was \$675. So the attorney hours since October 31st,
16 2021, are based upon that \$675 rate which had been in place
17 since June 1st, 2019.

18 THE COURT: All right.

19 MR. LEAVITT: And you can see, Your Honor, on page 9
20 on the left-hand column there along the attorneys is the
21 actually incurred, and then on the right-hand side is the rate
22 that has been requested pursuant to *Sisolak*.

23 THE COURT: And so I just want to make sure I get
24 this correctly, that since October 31st of 2021, for example,
25 based upon the \$675,000 (as said) rate the amount of fees

1 incurred have been \$211,350.50?

2 MR. LEAVITT: That's correct, Your Honor.

3 THE COURT: Okay. And the legal assistant rate
4 hasn't changed, has it?

5 MR. LEAVITT: That's correct, Your Honor. It's been
6 \$50 the entire time.

7 THE COURT: Okay. All right. Is there anything else
8 I need to know?

9 MR. LEAVITT: No, Your Honor. I think that -- I
10 think we have done quite a bit today and I think I have nothing
11 more to add, Your Honor.

12 THE COURT: Okay. And as far as fees are concerned,
13 and I do understand the *Hsu* case, but what I am going to do is
14 this. And this is a big case, there's no question about that.
15 I'm going to award the attorney's fees under the three areas
16 that we discussed pursuant to the Uniform Relocation Act, the
17 Nevada Constitution an NRS 18.010. And I'm going to go with
18 the language in the Constitution as far as fees actually
19 incurred. And so I just want to make sure I get this correct.

20 It appears to me, at least based upon what I
21 currently have in front of me based upon the actual incurred
22 fees, I'm looking at the chart set forth on page 11 of the
23 motion. That would be \$2,155,359.50. And everything is
24 itemized there because there has been a change.

25 But then moving on, there's additional fees that have

1 been incurred since October 31st of 2021, and that's, from what
2 I can tell -- and I'm looking here to make sure I get this
3 figure correct, it is the total additional hours based upon the
4 actual incurred post October 31st of 2021. That would be --
5 and tell me if I'm wrong or not, but that appears to me to be
6 \$211,350.50, plus the additional -- and I don't want to
7 overlook this, the legal assistant work. We had one,
8 \$44,912.50 plus additional post October 31st of 2021, of
9 \$7,023.50. Is that correct?

10 MR. LEAVITT: That's correct, Your Honor.

11 THE COURT: All right. Okay. And included would be
12 the time spent arguing today and preparation for today, and you
13 can prepare a memorandum on that. So I'm going to award the
14 attorney's fees as set forth on the record.

15 The only matter I have to look at and just think
16 about, I don't mind saying this, is the prejudgment interest
17 issue. And I just want to think -- just like the other one, I
18 just want to deliberate and think about that. And I think
19 it's -- and I'll make -- if I have some thoughts, I'll point
20 them out in my decision. But I do understand the current
21 status of the evidence. And, as the trial court under these
22 circumstances, I'm the finder of fact and I have to weigh and
23 balance the evidence. I get that. Everyone understand?

24 Do we have a question, Mr. Leavitt?

25 MR. LEAVITT: Yeah, Your Honor, I have one question.

1 We have -- I have a conflict in our hearing next week, which is
2 February 8th. I was wondering if we could have -- I'm out
3 February 8th and February 9th. If we could do that on
4 February 10th or anytime thereafter, I'm available.

5 THE COURT: All right. Time is flying, isn't it?
6 It's February. It's already February. I have no problem. So
7 as far as the City is concerned, and I've always accommodated
8 everyone in this matter, what dates are available again, Mr.
9 Leavitt?

10 MR. LEAVITT: I can do the afternoon of February 9th
11 or I can do February 10th. Frankly, any day thereafter I'm
12 open.

13 THE COURT: Okay. What do we have? And then we can
14 see if the City is also available at the same time.

15 (The Court confers with the clerk)

16 THE COURT: But what dates are we talking about?

17 THE CLERK: Oh. Next week, moving it from next
18 Tuesday; right?

19 THE COURT: Yes, the 8th. Whenever it's currently
20 set. It's set for the 8th at 9:00 o'clock a.m. -- 9:05 a.m.

21 THE CLERK: Correct. I would recommend, Judge, the
22 9th, Wednesday, 9:30.

23 MR. LEAVITT: That -- I can't do the 9th.

24 THE COURT: He can't do the 9th.

25 THE CLERK: Oh, I'm sorry.

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1 MR. LEAVITT: I could do the 9th in the afternoon.

2 THE CLERK: Oh, I see. Unfortunately, we have a
3 special setting both the afternoon of Wednesday and Thursday.

4 (Colloquy regarding other matters on calendar)

5 MR. LEAVITT: I could do Monday, the 14th.

6 THE CLERK: That's a jury trial. That's a one-week
7 jury trial.

8 THE COURT: Oh, we're going into jury trials, believe
9 it or not.

10 MR. LEAVITT: Oh, boy.

11 THE COURT: It's only one week. We can't do
12 two weeks. Is that case definitely going? It looks like it,
13 huh?

14 (Colloquy regarding other matters on calendar)

15 THE COURT: Let's set them during that time, that
16 first week. And I think probably what we need to do, I'm glad
17 you brought that up. We need to bring -- do a status check as
18 far as trial readiness is concerned for that 2-week trial.
19 Let's try to get them in soon.

20 THE CLERK: Okay.

21 MR. LEAVITT: And, Your Honor, I could do the morning
22 of the 10th or the afternoon of the 10th or the morning of the
23 11th or afternoon of the 11th if those other times don't work.

24 (The Court confers with the clerk)

25 THE COURT: This is what we're going to do. And I

1 can't promise you this, but we're going to try to make this
2 work. I do have a two-week jury trial currently set that week,
3 but based upon the current Administrative Order we're not
4 conducting two-week jury trials. So it sounds to me that
5 Tuesday of that week might be available.

6 Is that correct, in the afternoon?

7 THE CLERK: Correct, the afternoon.

8 THE COURT: All right. And what we're going to do,
9 if we have -- if it's available for everyone right now, we'll
10 use that date. If something happens, I'll let you know and
11 we'll move it.

12 MR. LEAVITT: Your Honor, are we talking about
13 Tuesday, February 22nd?

14 THE COURT: Correct. Afternoon.

15 MR. SCHWARTZ: Your Honor, this is Andrew Schwartz.
16 I'm going to be arguing that motion and I am on vacation that
17 week.

18 THE COURT: Well, your vacation is very important,
19 sir. We'll have to go to another week. That will make it easy
20 for us. What about the following week?

21 (The Court confers with the clerk)

22 THE COURT: So I'm looking here. Today is currently
23 the 2nd of February; right? And that matter is currently set
24 for the 8th of February. We don't have anything the week of
25 the --

1 And, Mr. Schwartz, you're on vacation which week,
2 sir?

3 MR. SCHWARTZ: The week of February 21st, Your Honor.
4 Returning --

5 THE COURT: Okay. So I'm taking that completely out
6 of the discussion. I always, without reservation -- I can't
7 remember in 16 years ever not giving consideration to holidays,
8 vacations and the like to any lawyer. So that's out, we can't
9 use that. Why can't we use --

10 MR. SCHWARTZ: Thank you.

11 THE COURT: You don't have to worry about that, sir.
12 Isn't there a date we can use on the week of the 7th or the
13 week of the 14th for -- all we need is a couple hours.

14 (The Court confers with the clerk)

15 MR. LEAVITT: And, Your Honor, I think Mr. Ogilvie
16 will probably agree that this one is -- it's the motion to
17 amend. It should not -- I would think maximum an hour.

18 THE COURT: Right.

19 MR. LEAVITT: It's just -- it's one narrow issue on
20 the amendment.

21 MR. OGILVIE: Your Honor, there's plenty of hearings
22 that I thought were going to be a half hour or an hour and
23 turned out to be three or four. So I'm not saying that it will
24 be, I'm just basing it on the history of arguments in this
25 case.

1 THE COURT: All I can say is, Mr. Ogilvie, that's why
2 I always give you an afternoon by yourself if I can.

3 MR. OGILVIE: Appreciate it.

4 (The Court confers with the clerk)

5 THE COURT: And the 11th wasn't good; is that
6 correct? That was a problem?

7 MR. SCHWARTZ: The 11th is good for me, Your Honor.
8 Andrew Schwartz. Sorry. Yeah, the 11th is fine.

9 MR. LEAVITT: The 11th is good for counsel for the
10 plaintiff.

11 (The Court confers with the clerk)

12 THE COURT: You know what I'm going to do? This is
13 what I'm going to do. And the 11th is good for everybody;
14 right?

15 MR. OGILVIE: Yes.

16 MR. SCHWARTZ: Yes.

17 MR. LEAVITT: Yes.

18 THE COURT: All right. This is what I'm going to do.
19 We're going to set this matter for the afternoon of
20 February 11th at 1:15. You will have the entire afternoon,
21 Mr. Ogilvie, if you need it.

22 MR. OGILVIE: Thank you, Your Honor.

23 THE COURT: That's what I'm going to do because I
24 understand the importance of vacation. Everyone deserves one.
25 Lawyers work very hard, a lot of stress, so I always honor

1 those. But it seems to me that's probably the best time we can
2 do it. We don't want to kick the can down the road and kick
3 the can down the road. And what I'm going to do with the bench
4 trial, they've been going on for awhile, I'm just going to tell
5 them they can't come back that day and they'll have to find
6 another day. That's what we're going to do. And they should
7 be finished, anyway. That's how I look at it. They've had
8 enough time.

9 So, for the record, we're going to come back -- I'm
10 sorry. For the record, we're going to vacate the hearing
11 that's currently set for February 8th, 2022, at 9:05 a.m. And
12 that will be moved to February 11th at 1:15 p.m.

13 Is that correct, sir?

14 THE CLERK: Correct.

15 THE COURT: All right. That's what we're going to
16 do.

17 MR. OGILVIE: Your Honor.

18 THE COURT: Sir?

19 MR. OGILVIE: This is George Ogilvie.

20 THE COURT: Is that George Ogilvie? Yeah.

21 MR. OGILVIE: Yes. An issue has arisen -- well, it
22 hasn't arisen. An issue exists relative to the Court's order
23 regarding the stay. And so plaintiff's counsel --

24 THE COURT: And I don't mind telling you, I grappled
25 with that, Mr. Ogilvie, I really did. But go ahead.

1 MR. OGILVIE: I understand, Your Honor. And I'm not
2 arguing or rearguing the motion. I'm not arguing the
3 legitimacy or the merit of the findings of fact and conclusions
4 of law that plaintiff's counsel submitted. They submitted it,
5 I believe, yesterday or maybe the day before. I need
6 clarification for purposes of seeking relief from the supreme
7 court and that's the reason that I'm asking the question that
8 I'm asking. So in the Court's minute order the Court said,
9 "Additionally, based upon a 30-day delay in payment, the City
10 would have time to seek a stay, if appropriate, from the Nevada
11 Supreme Court."

12 And so my question is -- and I understand that the
13 Court hasn't signed an order yet. The Court has its order or
14 the proposed order from the plaintiff. It has the City's
15 objections to that proposed order. But for purposes of the
16 City seeking a stay, I need to have an understanding of what
17 that 30-day delay in payment means because in order for the
18 City to -- the City cannot seek a stay at this point unless it
19 does one of two things. Either it awaits the filing of a
20 notice of appeal, which would open a supreme court case in
21 which we could seek a stay. That's not tenable in the current
22 (video interference).

23 THE COURT: No, no. And I don't want to cut you off.
24 You broke up. You said that's not tenable, and then it got
25 muffled. Go ahead.

1 MR. OGILVIE: I'm sorry. It's not tenable in this
2 case because I don't know if the relief that the plaintiff is
3 being granted would allow the plaintiff to seek execution on
4 sums assessed prior to the filing of a notice of appeal. So
5 the only path that the City has that's viable for seeking
6 relief from the Court's order regarding -- just regarding the
7 stay.

8 THE COURT: I understand.

9 MR. OGILVIE: That's all I'm limiting my argument to
10 or my --

11 THE COURT: Question.

12 MR. OGILVIE: -- comments to. We can only seek a
13 stay through an emergency petition for a writ, and in order to
14 do that there has to be a pending harm within 14 days. And I
15 can't aver to the supreme court that there is this 14-day event
16 that could occur because I'm not clear on what the Court's
17 minute order says. So I'm just -- I'm trying to get some
18 clarification so I have a path forward relative to a stay --
19 seeking a stay before the supreme court.

20 THE COURT: I mean, I looked at it through this lens,
21 Mr. Ogilvie. I was looking at the time -- pursuant to the
22 statute, it's my recollection payment from the City doesn't
23 have to be tendered until -- I guess there's a 30-day time
24 period before the payment would be required to be tendered to
25 the landowner under the statute.

1 MR. OGILVIE: Right.

2 THE COURT: And so I was looking at it through that
3 lens that hypothetically if the judgment is entered you could
4 take it and say, look -- run to the supreme court within the
5 appropriate stay time period and say, look, we've been denied a
6 stay below and this is a really unique issue regarding a
7 potential statutory conflict with the Rules of Appellate
8 Procedure and specifically as it relates to the fact that
9 normally a municipality government authority has certain rights
10 given pursuant to the rule and so on. And so I was looking at
11 it through that lens.

12 MR. OGILVIE: I understand and I believe the Court is
13 referring to NRS 37.140 when it refers to the 30-day time
14 frame.

15 THE COURT: Right.

16 MR. OGILVIE: But 37.140 says 30 days from final
17 judgment. And as we argued to the Court last week or maybe
18 two weeks ago, I can't remember, final judgment is defined in
19 37.009 as being a judgment from which no appeal can be taken
20 and there is no further relief that can be sought from the
21 Court. So if I -- from the City's perspective, Your Honor,
22 37.140 wouldn't become effective, that 30-day time period under
23 37.140 would not become effective until all appeals in this
24 matter have been exhausted, and that's not where we're at.

25 And I'm not here to argue that point. I want to make

1 clear to the Court I'm just seeking some -- something -- some
2 clarification by which I can go to the supreme court and say if
3 I'm not granted this relief this is what's going to happen in
4 14 days. Or, you know, if I was -- the easiest thing from the
5 City's perspective is if this Court -- and here I am arguing
6 and I apologize to opposing counsel. They're not prepared for
7 this. But the easiest thing for me would be a reconsideration
8 of the Court's order that granted a stay through -- 30 days
9 from the Court's entering a findings of fact and conclusions of
10 law regarding the Rule 59 and 60 motion to alter or amend the
11 judgment, which the Court just set for a hearing now on
12 February 11th. So I apologize for arguing that.

13 And the only reason I am is I'm kind of cornered here
14 and I'm in a position that there isn't any vehicle through
15 which I can -- if the Court signs the proposed order that was
16 submitted by the plaintiff within the last two days, I'm in a
17 bind and I don't have any way to seek relief from the supreme
18 court.

19 MR. LEAVITT: Your Honor, if I may?

20 THE COURT: Yes.

21 MR. LEAVITT: James J. Leavitt again on behalf of
22 plaintiff landowner, 180 Land. The procedure is very clear.
23 Every eminent domain goes through this. So does every inverse
24 condemnation case. Under 37.140, the City is required to pay
25 the sum of money within 30 days of final judgment. Now, if the

1 City takes appeal and just as Mr. Ogilvie argued, that final
2 judgment wouldn't occur until the end of the appeal, it just
3 erased 37.140's mandate that the money be paid within 30 days.
4 That's why the Nevada Legislature adopted 37.170, which says as
5 a precondition to appeal the City must pay the judgment.
6 That's why your order was very clear. It wasn't difficult to
7 understand.

8 It was very clear that the judgment will be entered
9 and the City has 30 days to pay that judgment. And there's a
10 30-day window within which the City can seek a stay, which was
11 the exact procedure in *State v. Second Judicial District Court*.
12 In *State v. Second Judicial District Court* is where the Nevada
13 Supreme Court said that 37.170 requires payment as a
14 precondition to appeal, and here's what the State did. The
15 State of Nevada brought prohibition proceedings against the
16 Second Judicial Court for the County of Washoe to restrain the
17 court from enforcing the order requiring them to pay. So
18 that's the procedure.

19 And the City of Las Vegas can go directly to the
20 Nevada Supreme Court and ask for that -- a prohibition or a
21 mandamus, however they want to do it, for a stay. Again,
22 that's the way it's done in every one of these cases. But
23 there's not just one prong, there's two prongs to the
24 requirement to pay.

25 Number one, under 37.140 within 30 days, and number

1 two, under 37.170 and the Second Judicial District Court case
2 decision as a precondition to appeal. That's what we argued in
3 our briefs. That's what was granted. And that's what's
4 clearly stated in the Court's decision, that there is that
5 30-day window within which it can go to the supreme court.

6 MR. OGILVIE: Okay. Well, I apologize again for
7 arguing this, Your Honor. I can't --

8 THE COURT: Yeah. And, Mr. Ogilvie, there's no need
9 to apologize. I mean, I looked at it from this perspective
10 when I -- and I don't have the statutes right in front of me,
11 Chapter 37. But I came to the conclusion that I can't rewrite,
12 you know, the Nevada Legislature's statutes, and I went with
13 the statutes as to how I interpreted my decision.

14 And I respect the City's right to appeal. And I do
15 understand there was a potential conflict between substantive
16 rights granted pursuant to the statute versus rules of
17 procedure and so on. And so I just felt that let the supreme
18 court decide that issue. And I would hope that they would
19 understand the urgency of your request and make the appropriate
20 decision.

21 And that's what I wanted to truly just point out when
22 I thought about it and I grappled with it because I do
23 understand. I mean, I didn't issue that decision lightly. I
24 didn't, you know. And I understand that and I felt in many
25 respects -- and it's okay to disagree with my decision, but the

1 way I interpreted the statutory scheme, that's the ultimate
2 result I came up with.

3 And I was saying to myself, well, let the Nevada
4 Supreme Court and the Court of Appeals decide that issue as far
5 as a stay is concerned. And of course it wouldn't be the Court
6 of Appeals, this would go straight to the Nevada Supreme Court.
7 We know that. This wouldn't get pushed down. They would
8 decide that. And I would hope their docket is such that they
9 could recognize the urgency of your request and make a decision
10 very quickly on this issue.

11 Now, whether or not -- and I'm not an appellate
12 lawyer. Maybe somebody should call Dan Polsenberg or Joel
13 Henriod, and maybe there's some sort of emergency writ that can
14 be ran up. I don't know. I just don't because my appellate
15 work is limited to probably about five or six decisions over
16 the years, and that's about it. It's something I didn't do
17 routinely.

18 MR. OGILVIE: Okay.

19 THE COURT: But all I can say, Mr. Ogilvie, if
20 there's -- whatever you file, you file. And of course we
21 entertain orders shortening times. I can't think of any time
22 I've rejected one in 16 years, close to 16 years, and I always
23 entertain them. I understand the importance of them to get in
24 front of the Court very quickly. If you have to do what you
25 have to do, that's fine. I have no problem with that. But

1 that was my thought process, and I don't mind sharing that with
2 everyone.

3 MR. OGILVIE: I appreciate that, Your Honor.

4 THE COURT: All right.

5 MR. OGILVIE: I have nothing further.

6 THE COURT: Okay. Thank you, sir. Okay. So we do
7 have a date; right? I'm giving priority to this matter. That
8 will be February 11th at 1:15.

9 THE CLERK: That's what I have, Judge.

10 THE COURT: All right. And that's where we're moving
11 the motion from the 8th. Everyone enjoy your day.

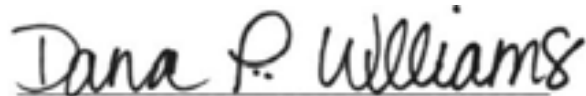
12 MR. OGILVIE: Thank you, Your Honor.

13 MR. LEAVITT: Thank you. Have a great evening.

14 (Proceedings concluded at 4:57 p.m.)

15 -oOo-

16 ATTEST: I do hereby certify that I have truly and correctly
17 transcribed the audio/video proceedings in the above-entitled
18 case to the best of my ability.

19 
20

21 Dana L. Williams
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JD Reporting, Inc.

MR. BYRNES: [1] 3/2 MR. LEAVITT: [45] 2/9 3/6 3/18 3/25 10/23 22/17 22/19 27/9 29/22 30/5 33/1 55/19 61/19 61/21 62/7 62/11 83/25 91/11 91/15 92/6 92/11 92/15 93/3 93/6 94/11 94/19 95/2 95/5 95/9 96/10 96/25 97/10 97/23 98/1 98/5 98/10 98/21 99/12 100/15 100/19 101/9 101/17 106/19 106/21 110/13 MR. MOLINA: [4] 2/23 71/8 83/6 83/23 MR. OGILVIE: [25] 2/19 3/9 3/22 23/2 23/5 23/15 100/21 101/3 101/15 101/22 102/17 102/19 102/21 103/1 104/1 104/9 104/12 105/1 105/12 105/16 108/6 109/18 110/3 110/5 110/12 MR. SCHWARTZ: [28] 2/21 11/1 24/5 38/7 39/15 39/20 43/22 45/14 46/16 46/23 47/13 47/24 48/23 49/1 49/7 49/11 52/1 52/16 53/12 54/2 60/5 60/7 60/14 99/15 100/3 100/10 101/7 101/16 MS. GHANEM HAM: [1] 2/14 MS. WOLFSON: [1] 2/25 THE CLERK: [9] 97/17 97/21 97/25 98/2 98/6 98/20 99/7 102/14 110/9 THE COURT RECORDER: [7] 22/10 22/15 22/22 23/20 23/25 24/2 32/16 THE COURT: [109] 2/3 2/13 2/18 3/4 3/8 3/10 3/20 3/23 10/22 10/24 22/5 22/11 22/14 22/16 22/18 22/21 22/24 23/1 23/3 23/7 23/16 23/18 23/21 24/1 27/7 29/21 29/23 30/6 32/17 38/4 39/14 39/17 43/10 43/23 46/15 46/17 46/24 47/20 48/22 48/25 49/2 49/8 51/23 52/11 53/11 53/14 55/17 59/9 60/6 60/13 60/22 61/20 61/25 62/8 71/6 83/3 83/22 83/24 91/10 91/12 91/22 92/10 92/13 92/21 93/5 94/6 94/18 94/23 95/3 95/7 95/12 96/11 97/5 97/13 97/16 97/19	97/24 98/8 98/11 98/15 98/25 99/8 99/14 99/18 99/22 100/5 100/11 100/18 101/1 101/5 101/12 101/18 101/23 102/15 102/18 102/20 102/24 103/23 104/8 104/11 104/20 105/2 105/15 106/20 108/8 109/19 110/4 110/6 110/10 \$ \$1,300 [2] 70/21 82/15 \$1,392 [11] 69/20 70/3 70/10 84/5 84/9 84/11 85/5 86/17 93/24 94/1 94/3 \$1,500 [2] 70/20 82/14 \$18,000 [1] 11/19 \$2,165,359.50 [2] 92/2 95/23 \$211,000 [1] 92/17 \$211,350.50 [2] 95/1 96/6 \$264 [1] 82/8 \$279 [1] 82/9 \$281 [1] 82/11 \$3 [1] 24/23 \$3 million [1] 24/23 \$34 [9] 4/24 5/23 16/25 18/21 25/21 46/5 47/14 48/17 59/7 \$34 million [9] 4/24 5/23 16/25 18/21 25/21 46/5 47/14 48/17 59/7 \$34,135,000 [4] 5/21 11/22 25/18 33/21 \$4.5 [1] 29/4 \$4.5 million [1] 29/4 \$410 [1] 82/7 \$438 [2] 82/11 82/21 \$44,912.50 [2] 92/4 96/8 \$444 [1] 82/9 \$45 [4] 21/18 25/4 25/14 25/15 \$45 million [4] 21/18 25/4 25/14 25/15 \$450 [3] 67/25 68/5 94/14 \$50 [3] 68/6 92/3 95/6 \$50,000 [2] 58/13 58/16 \$500 [1] 70/25 \$500,000 [1] 70/7 \$500,000,000 [1] 59/17 \$52 [5] 13/15 21/13 24/9 26/10 51/19 \$52 million [5] 13/15 21/13 24/9 26/10 51/19 \$54 [1] 25/21 \$54 million [1] 25/21 \$6 [2] 6/17 6/19 \$6 million [2] 6/17 6/19 \$60 [2] 12/13 12/18 \$60 million [2] 12/13 12/18 \$630,000 [2] 11/20	25/23 \$675 [4] 67/25 68/5 94/15 94/16 \$675,000 [1] 94/25 \$7,023.50 [1] 96/9 \$7.5 [1] 25/7 \$7.5 million [1] 25/7 \$700,000 [1] 58/14 \$800 [3] 70/24 82/15 82/15 \$92 [2] 70/21 85/7 - -oOo [1] 110/15 0 0005 [1] 56/20 0085 [1] 56/11 03 [1] 1/12 1 1,400 [2] 69/21 84/11 1.1 [1] 67/19 1.3 [1] 81/18 10 [7] 23/13 23/16 43/14 59/22 86/15 91/13 91/23 10-minute [1] 23/10 1031 [1] 36/23 1033 [1] 36/22 10th [4] 97/4 97/11 98/22 98/22 11 [2] 94/8 95/22 110 [3] 68/23 68/24 85/15 113 [1] 31/4 11th [11] 98/23 98/23 101/5 101/7 101/8 101/9 101/13 101/20 102/12 106/12 110/8 12 [3] 66/6 66/21 70/5 13 [3] 66/7 66/10 66/21 13,800 percent [3] 13/17 13/18 52/9 133 [1] 67/23 133 acres [1] 12/21 133-acre [5] 12/25 13/6 13/11 26/3 42/19 14 [7] 66/7 66/10 66/22 67/6 69/9 104/14 106/4 14-day [1] 104/15 14th [2] 98/5 100/13 15 [1] 29/3 16 [3] 100/7 109/22 109/22 17 [2] 47/2 58/18 17-acre [5] 12/7 12/9 26/2 42/13 67/23 17-year-old [2] 28/17 28/19 18,000 [2] 25/20 49/25 18,010 [5] 71/21 80/3 80/23 92/25 95/17 180 [9] 1/4 2/10 2/16 27/13 33/2 55/20 70/8 84/1 106/22 1970 [1] 71/17 1985 [3] 47/7 47/8 49/6 1:15 [3] 101/20 102/12	110/8 1:40 [1] 2/1 1st [5] 94/12 94/13 94/14 94/14 94/17 2 2 percent [20] 7/13 7/14 11/5 11/10 12/1 15/2 15/4 15/17 15/17 19/7 20/2 21/9 25/25 27/3 37/19 45/16 55/22 56/2 56/3 60/21 2-step [1] 93/9 2-week [1] 98/18 2.1 [2] 80/24 83/18 2.1 million [1] 92/19 200 acres [2] 12/19 12/19 2005 [9] 28/15 28/25 29/8 29/12 46/12 57/21 58/4 58/12 58/13 2006 [3] 63/9 63/14 63/17 2008 [4] 62/17 63/10 63/17 79/9 2015 [9] 24/14 46/10 46/14 48/18 48/19 49/7 49/9 57/18 79/3 2017 [11] 4/14 5/20 5/23 8/17 9/11 10/15 20/16 29/2 30/11 40/18 82/7 2018 [1] 82/9 2019 [7] 67/25 82/10 82/22 94/13 94/14 94/14 94/17 2020 [3] 20/9 39/7 40/15 2021 [6] 94/10 94/16 94/24 96/1 96/4 96/8 2022 [4] 1/12 2/1 9/11 102/11 2022 calendar [1] 2/5 21st [1] 100/3 22 [6] 62/18 71/18 77/15 78/3 79/23 91/16 22nd [1] 99/13 23 [1] 60/15 23 percent [9] 9/3 10/2 10/10 10/18 21/3 38/1 39/12 56/21 59/5 24,101 [1] 72/4 24,107 [2] 64/8 71/25 25 [3] 9/5 10/7 56/14 250 acres [1] 18/23 250-acre [1] 11/18 25th [1] 92/20 26 million [3] 12/9 12/13 26/2 27 percent [3] 9/5 10/7 56/14 2:16 p.m [1] 23/17 2:32 p.m [1] 23/17 2nd [5] 4/14 5/20 5/23 10/15 99/23 3 3 million [2] 22/3 25/8 3.4 [1] 80/25	3.4 million [1] 86/18 30 [7] 86/15 105/16 106/8 106/25 107/3 107/9 107/25 30 percent [1] 40/17 30-day [7] 103/9 103/17 104/23 105/13 105/22 107/10 108/5 31st [6] 94/9 94/15 94/24 96/1 96/4 96/8 34 [1] 59/11 34 million [6] 12/11 13/16 18/25 30/16 40/19 45/22 342,320 [1] 74/17 35 acre [1] 9/10 35 acres [1] 25/20 35-acre [13] 9/15 11/19 11/20 12/6 25/19 38/21 42/18 46/2 48/18 48/19 57/25 67/21 72/18 37 [1] 108/11 37,009 [1] 105/19 37,140 [6] 105/13 105/16 105/22 105/23 106/24 107/25 37,140's [1] 107/3 37,170 [3] 107/4 107/13 108/1 37,18175 [1] 4/10 3rd [1] 2/5 4 4, ma'am [1] 2/13 400,000 [1] 50/12 42 [1] 64/5 435 [3] 12/6 12/18 42/12 45 million [1] 50/9 4654 [1] 64/5 4655 [2] 76/4 76/6 49 [2] 64/8 71/24 4:57 [1] 110/14 5 50 [2] 47/3 58/19 500 [2] 15/24 40/21 52 million [1] 55/11 54 [15] 11/16 11/24 12/5 14/25 18/8 21/14 25/18 25/21 46/2 46/3 50/5 51/17 53/9 55/7 67/14 59 [1] 106/10 6 60 [1] 106/10 637 [1] 94/5 645 [1] 1/15 65 [1] 67/23 65-acre [3] 13/11 26/3 42/20 7 70 [3] 63/14 63/16 63/17 718 [3] 31/3 31/4 33/6 7th [1] 100/12
---	--	---	---	---

9	74/20 74/21 75/7 75/9 76/21 77/9 77/12 79/14 80/17 88/12 89/6 89/23 90/3 92/23 95/16 Act's [1] 76/24 acted [1] 88/25 action [15] 13/24 13/25 14/9 41/16 41/18 54/5 62/22 63/1 65/2 77/22 78/6 78/11 78/12 78/13 79/24 actions [5] 72/2 78/1 78/2 78/22 79/9 acts [2] 88/8 88/9 actual [12] 20/20 68/7 68/8 68/10 69/7 70/12 91/23 92/4 92/6 92/19 95/21 96/4 actually [19] 16/9 21/17 25/4 62/21 75/3 77/22 81/5 82/10 83/8 83/17 86/10 88/21 91/7 93/2 93/4 93/7 93/23 94/21 95/18 ad [1] 58/9 add [5] 13/16 20/2 61/17 86/13 95/11 added [2] 62/17 67/20 adding [2] 92/17 92/17 addition [5] 26/11 28/23 45/21 55/10 70/12 additional [9] 75/8 92/8 92/8 92/16 95/25 96/3 96/6 96/8 110/23 Additionally [1] 103/9 address [14] 4/16 4/22 6/7 13/21 27/20 29/19 36/4 38/6 62/14 68/17 69/4 79/25 89/5 90/18 addressed [2] 6/13 21/9 addressing [1] 24/6 adjudicated [1] 87/16 adjust [4] 81/8 81/16 85/6 93/19 adjusted [1] 94/3 adjusting [1] 14/20 adjustment [3] 81/4 81/12 81/13 Administrative [1] 99/3 admissibility [1] 30/3 admissible [2] 20/18 48/8 admitted [1] 30/19 admitting [1] 48/24 adopted [4] 5/25 7/10 79/8 107/4 aerial [1] 73/8 affected [1] 16/24 affidavit [1] 67/24 affidavits [2] 67/13 67/15 affirm [1] 84/9 affirmed [2] 7/25 33/9 afraid [1] 39/22 after [19] 21/14 28/1 32/10 34/7 38/20 38/21 38/23 45/12 47/25	47/25 47/25 48/1 67/25 68/13 75/4 75/16 85/25 86/1 94/14 afternoon [22] 2/4 2/4 2/9 2/15 2/15 2/19 2/21 2/23 2/25 3/2 3/11 97/13 98/1 98/3 98/22 98/23 99/6 99/7 99/14 101/2 101/19 101/20 afternoon February [1] 2/4 again [32] 3/10 3/25 24/3 27/18 33/1 33/10 34/13 34/21 35/2 35/19 36/3 37/8 49/3 51/12 52/2 54/6 55/20 56/21 61/23 63/17 63/23 69/23 75/14 76/15 82/25 83/25 85/3 94/4 97/8 105/21 107/21 108/5 against [4] 74/5 77/24 78/21 107/15 agency [9] 15/11 15/14 17/15 41/17 54/5 55/3 74/22 76/23 77/1 agency's [1] 16/7 agencies [1] 70/23 85/8 90/17 105/18 agree [5] 44/25 46/22 71/13 92/22 100/16 ahead [12] 2/6 26/4 31/24 45/8 49/9 49/10 52/14 58/3 60/6 74/11 102/25 103/25 airport [6] 73/3 73/9 89/13 89/18 89/18 89/22 airspace [3] 6/18 73/8 73/13 all [77] 2/3 3/4 3/8 3/10 3/20 3/23 3/24 7/4 8/6 9/2 13/22 16/11 17/12 17/13 19/21 21/11 23/13 23/21 27/7 29/10 29/11 30/4 36/1 38/4 38/17 40/11 43/15 44/6 44/25 46/22 48/6 52/13 53/6 55/17 58/15 59/9 60/13 60/22 62/1 62/8 62/21 62/25 64/23 64/23 65/16 65/19 65/25 66/6 66/9 67/13 67/23 68/12 74/22 77/13 80/8 81/15 81/21 82/13 83/12 83/14 83/22 85/20 94/6 94/18 95/7 96/11 97/5 99/8 100/13 101/1 101/18 102/15 104/9 105/23 109/19 110/4 110/10 allegation [1] 50/8 allege [1] 25/17 alleged [5] 17/2 48/1 48/1 49/23 51/5 allegedly [1] 38/21 allocate [1] 65/13 allies [4] 11/7 12/18 20/18 104/3	allowed [4] 16/15 31/9 31/10 64/18 allows [3] 63/21 63/22 78/24 almost [7] 49/25 50/3 50/12 63/14 70/7 82/20 82/20 alone [1] 18/8 along [1] 94/20 Alper [23] 6/20 15/1 15/5 15/16 15/18 16/5 16/5 16/9 17/4 17/9 31/7 34/20 34/20 34/22 34/25 35/3 35/8 38/8 39/2 74/10 74/10 74/10 87/3 Alpers [1] 74/13 already [21] 11/15 12/5 18/7 18/10 21/14 23/6 26/1 45/21 47/13 51/17 51/21 52/8 54/6 54/6 54/9 57/17 62/24 74/23 83/19 87/16 97/6 also [18] 3/1 5/3 5/5 9/12 9/19 50/20 51/16 70/19 71/19 71/20 73/11 75/25 79/1 80/2 85/17 91/2 92/24 97/14 alter [1] 106/10 alternative [2] 53/23 59/12 always [7] 19/13 19/13 97/7 100/6 101/2 101/25 109/22 am [8] 43/21 43/23 51/3 60/23 95/13 99/16 106/5 106/13 ambit [1] 76/24 amend [2] 100/17 106/10 amended [1] 62/17 amendment [1] 100/20 amendments [2] 31/10 80/18 America [1] 69/1 amongst [1] 94/3 amount [20] 4/4 6/11 14/15 17/22 17/22 43/5 48/11 55/7 68/11 70/8 81/7 82/17 82/21 83/10 83/14 84/10 91/24 93/18 94/3 94/25 amounted [1] 29/12 amounts [1] 59/15 ample [1] 80/11 analysis [9] 58/15 68/12 71/11 80/15 83/1 83/9 85/21 85/22 93/13 ANDREW [5] 1/22 2/22 11/1 99/15 101/8 annual [1] 21/3 annually [3] 4/15 10/3 10/17 another [14] 20/25 21/13 35/20 42/17 44/10 51/18 53/21 54/17 61/8 61/16 75/4 85/12 99/19 102/6 anticipate [1] 47/7	any [33] 10/13 10/21 17/8 19/10 19/12 20/14 25/11 34/10 35/15 36/18 37/18 42/24 43/19 47/11 47/22 51/1 57/13 72/14 72/15 74/2 74/3 74/4 74/13 75/1 75/8 77/12 80/12 85/1 97/11 100/8 106/14 106/17 109/21 anybody [1] 57/15 anything [9] 18/20 18/20 43/11 52/3 52/12 55/9 61/17 95/7 99/24 anytime [1] 97/4 anyway [5] 23/3 23/10 31/21 39/13 102/7 apartment [1] 35/17 apologize [4] 106/6 106/12 108/6 108/9 apparently [2] 26/21 90/19 appeal [9] 103/20 104/4 105/19 107/1 107/2 107/5 107/14 108/2 108/14 appeals [3] 105/23 109/4 109/6 appear [1] 4/11 appearances [3] 1/16 2/6 3/4 appears [5] 32/10 34/4 94/9 95/20 96/5 appellate [3] 105/7 109/11 109/14 applicability [1] 72/3 applicable [2] 17/16 76/6 application [10] 12/23 12/24 13/3 13/7 13/12 26/6 38/21 42/17 90/24 92/25 applications [4] 13/1 13/6 13/8 38/23 applied [8] 5/14 7/15 7/16 12/21 26/5 38/1 59/6 72/23 applies [8] 17/25 27/1 72/5 73/23 74/21 77/13 80/4 90/12 apply [26] 10/1 11/6 13/22 16/6 26/4 27/12 38/13 38/13 57/14 59/4 72/14 72/21 72/22 73/18 74/18 74/24 75/4 77/9 78/13 79/9 79/23 79/24 80/17 80/18 90/4 90/15 applying [1] 80/20 appraisal [6] 20/14 46/8 49/13 49/14 70/7 70/9 appraise [1] 20/19 appraiser [9] 8/21 46/3 46/4 46/8 48/16 48/23 49/11 49/19 49/21 appreciate [3] 39/9 101/3 110/3 appreciated [6] 20/24
----------	---	--	--	--

A	arrive [1] 36/9	41/1 42/18 43/12 43/20	82/17 82/21	39/2 41/12 41/13 41/14
appreciated... [5] 39/9	arrived [3] 56/20 56/21	43/24 44/1 44/17 45/3	averages [1] 39/10	41/25 44/8 53/16 54/14
40/10 41/9 50/23 60/18	83/10	45/4 46/21 47/3 49/15	awaits [1] 103/19	56/5 56/16 56/22 57/4
appreciates [1] 18/17	arrives [2] 9/3 9/5	54/1 56/20 56/21 58/18	award [54] 4/6 5/3 5/5	57/4 57/10 59/1
appreciation [3] 39/21	Article [7] 62/18 69/6	59/11 60/18 60/20	6/17 6/21 11/7 11/9	Barsy's [1] 33/13
39/23 60/9	71/18 77/15 78/3 79/22	60/25 61/3 61/22 62/4	11/14 14/15 15/19	based [42] 7/22 8/4
approaches [1] 73/9	91/16	67/6 67/11 68/19 69/16	17/22 17/22 18/2 19/12	9/25 27/16 27/19 32/13
appropriate [14] 32/13	as [104] 4/5 4/17 5/10	69/17 73/3 77/8 77/18	24/9 27/6 28/2 39/16	33/5 34/17 35/9 35/10
44/1 44/11 53/22 55/22	6/21 7/1 7/14 7/18 7/20	78/14 81/23 82/17	41/18 45/21 45/22 46/2	36/9 39/1 52/2 52/4
56/3 61/9 81/4 83/15	8/17 10/11 10/18 14/12	83/13 83/11 83/14 86/9	51/2 51/4 51/18 52/17	56/17 57/1 57/16 58/23
83/20 83/21 103/10	14/12 20/25 21/7 27/5	87/15 89/18 91/10	53/8 54/7 54/9 54/10	58/24 61/23 61/23
105/5 108/19	29/2 29/19 30/13 30/13	91/12 91/22 91/25 92/3	55/10 55/25 64/19	67/13 71/4 71/5 75/22
approval [2] 12/12	31/5 31/6 31/9 31/22	93/13 95/20 95/22	64/21 70/10 70/11	78/12 80/9 81/1 81/8
12/16	31/24 32/5 32/6 32/14	96/15 97/14 97/20	70/11 71/3 72/1 73/1	81/13 81/17 84/5 86/17
approved [1] 12/6	33/4 33/6 34/3 36/11	101/20 102/7 102/11	74/4 77/24 81/3 84/9	86/17 93/20 94/16
approximately [2] 6/17	37/11 37/12 37/19	102/12 103/18 104/20	86/23 86/24 92/23 93/1	94/25 95/20 95/21 96/3
30/16	38/24 39/11 39/20	104/21 105/2 105/10	93/2 93/20 93/22 94/2	99/3 103/9
are [68] 4/15 6/12 9/15	41/19 42/3 44/10 44/19	105/24 108/9 110/8	95/15 96/13	bases [1] 71/14
9/20 16/22 16/22 17/4	44/19 44/24 45/2 45/4	110/14	award meaning [1] 5/5	basically [3] 75/20
17/5 17/10 17/10 20/1	46/20 52/9 56/5 59/11	attach [1] 84/15	awarded [33] 6/16	79/3 81/13
22/7 23/25 25/18 27/25	59/12 59/12 60/4 61/9	attached [2] 36/11 83/8	11/22 14/2 16/25 17/21	basing [1] 100/24
29/14 31/21 37/8 38/8	61/14 65/23 65/23	attempted [1] 23/6	26/15 26/17 34/9 34/11	basis [13] 29/4 71/12
38/13 39/2 42/4 49/1	66/12 66/17 70/10	attempting [1] 71/14	34/15 34/21 47/13	71/13 71/18 77/12
56/8 59/15 60/9 60/10	71/13 71/17 73/22	attempts [1] 27/21	50/12 52/4 52/20 55/7	77/14 80/1 80/16 82/5
64/10 64/11 65/12	73/22 74/23 75/10	ATTEST [1] 110/16	60/20 69/20 70/2 70/2	83/1 84/4 84/25 94/4
66/23 67/13 67/21 68/4	77/16 80/4 82/5 83/11	attorney [15] 1/15	70/4 70/9 70/12 71/1	Bates [1] 56/11
68/13 69/12 71/11	83/20 85/10 85/11	38/22 67/15 69/19	74/5 83/5 83/20 84/10	be [170]
71/14 72/19 74/5 76/11	86/11 86/20 88/8 88/19	69/25 70/1 70/3 84/5	85/5 87/22 91/9 93/24	because [77] 7/1 10/8
76/13 78/2 79/19 80/21	89/18 90/19 92/25 93/2	84/13 84/21 85/8 85/11	94/1	11/15 12/23 14/4 15/9
82/17 82/18 82/20	93/6 93/6 94/25 95/12	85/12 86/6 94/15	awarding [9] 26/10	16/6 16/16 17/14 17/14
82/23 84/16 84/19	95/12 95/18 95/18	attorney's [63] 62/9	32/8 41/15 41/15 71/12	18/14 18/21 20/10
84/24 86/4 86/22 87/5	96/14 96/21 97/7 97/7	62/13 63/2 63/4 63/6	78/21 80/16 83/2 84/5	20/23 22/11 24/8 29/1
87/6 87/12 90/10 91/1	98/17 98/18 105/8	63/12 63/20 63/21	awards [3] 41/15 54/24	29/24 31/24 32/22
92/6 92/9 92/16 94/7	105/17 105/19 107/1	63/22 64/3 64/7 64/9	70/6	32/23 34/15 37/2 39/2
94/16 95/12 97/8 97/16	107/4 107/13 108/2	64/14 64/19 64/21	aware [3] 7/21 33/10	39/9 41/22 42/8 42/14
99/12	108/13 109/4 109/5	64/24 65/2 65/7 65/25	80/4	43/19 43/24 44/5 44/18
area [7] 9/20 47/1	ascertaining [1] 79/20	66/2 66/24 67/1 67/3	away [1] 89/17	44/22 45/21 46/1 46/13
68/20 84/18 84/19	ask [7] 23/5 37/7 38/4	67/8 67/22 69/8 71/3	awhile [1] 102/4	46/22 46/23 47/6 47/13
85/13 85/16	69/25 86/9 90/14	71/4 71/12 71/15 71/21	B	51/12 52/18 53/3 54/16
areas [1] 95/15	107/20	72/1 73/1 77/15 79/15	back [23] 5/10 5/20	54/18 54/20 55/3 58/10
Argier [1] 87/4	asked [5] 13/7 45/19	79/17 80/2 80/16 80/24	7/17 16/21 20/15 21/3	58/16 59/6 60/24 63/8
argue [5] 13/13 19/13	53/15 56/16 56/16	81/1 83/2 86/22 86/25	22/2 23/18 30/11 34/23	64/16 65/7 66/3 69/17
79/22 87/13 105/25	asking [7] 6/12 35/15	87/8 87/19 87/22 88/6	35/3 35/8 46/19 47/8	71/22 73/1 73/6 76/1
argued [9] 7/15 58/8	35/15 85/7 86/16 103/7	88/11 88/15 89/4 89/20	51/3 51/5 58/18 60/24	78/13 79/13 80/16 83/1
71/20 73/14 77/24	103/8	90/13 90/13 90/20 91/1	77/20 83/13 90/8 102/5	84/7 88/24 89/2 89/8
80/10 105/17 107/1	assessed [2] 52/18	91/13 91/20 91/25 92/8	102/9	89/21 94/9 95/24
108/2	104/4	92/9 93/12 95/15 96/14	backwards [1] 88/7	101/23 103/17 104/2
argues [1] 16/20	assessor [1] 38/19	attorneys [10] 68/5	Badlands [14] 11/18	104/16 108/22 109/14
arguing [9] 10/25 77/7	assets [1] 46/24	68/19 68/24 69/12	11/21 12/8 12/20 21/18	become [2] 105/22
96/12 99/16 103/2	assistance [5] 68/6	69/13 84/17 84/18	21/22 22/1 24/13 25/2	105/23
103/2 106/5 106/12	71/16 72/12 72/15 76/7	84/19 94/3 94/20	42/12 46/11 49/20	been [67] 5/11 5/11
108/7	assistant [3] 92/16	attorneys' [1] 3/16	49/22 50/16	5/18 5/23 6/2 6/3 7/18
argument [29] 6/8 6/10	95/3 96/7	audio [1] 110/17	balance [1] 96/23	7/19 8/11 8/16 11/15
23/23 27/19 28/14	assistants [1] 92/3	audio/video [1] 110/17	ball [1] 19/8	13/5 14/24 17/23 18/8
28/21 29/14 35/14 36/2	associates [3] 82/8	August [4] 4/14 5/20	ballot [6] 63/9 63/11	18/10 19/5 20/15 21/8
36/4 36/7 38/19 39/4	82/10 82/12	5/23 10/15	63/15 79/12 79/19	21/9 26/1 27/14 27/24
39/5 52/24 57/15 57/16	assume [2] 5/20 15/22	authenticated [1]	79/21	28/7 28/9 32/6 32/6
60/1 61/14 61/24 62/15	20/13	46/13	banc [1] 76/19	32/10 35/24 36/20 37/1
65/4 73/20 75/24 79/12	assumption [1] 54/18	authority [6] 27/1 27/2	Barsy [52] 8/1 8/10	37/5 40/11 43/14 45/19
81/1 89/7 92/22 104/9	assurances [1] 73/6	77/5 93/7 93/23 105/9	8/15 8/18 8/24 10/2	46/16 47/6 51/13 55/12
arguments [5] 35/1	at [93] 3/13 4/7 5/18	Autumn [1] 82/16	13/21 13/21 13/22 14/1	58/8 58/9 58/19 61/14
80/7 80/8 80/13 100/24	9/3 9/5 10/22 14/24	available [5] 97/4 97/8	14/2 14/4 14/6 14/10	61/16 66/16 68/5 68/11
arisen [2] 102/21	18/2 18/24 19/4 20/24	97/14 99/5 99/9	14/18 14/21 15/2 15/13	69/5 74/14 80/9 80/10
102/22	21/3 23/17 25/4 30/3	avenues [1] 64/20	16/5 16/8 17/4 17/8	80/11 83/14 85/10
arises [1] 63/23	30/8 30/9 30/16 30/19	aver [1] 104/15	17/25 29/19 29/22	87/16 88/1 88/22 92/1
arm's [1] 24/17	31/17 31/20 32/11	average [14] 20/16	30/22 33/24 34/1 34/2	94/16 94/22 95/1 95/5
arm's-length [1] 24/17	32/12 32/12 32/17	20/17 20/21 20/21	34/15 34/15 35/21 37/4	95/24 96/1 102/4 105/5
around [1] 82/21	33/13 33/16 36/9 40/10	39/24 39/24 40/5 40/10	37/22 37/23 37/25 38/8	105/24
		40/15 40/20 60/17 82/7		before [28] 1/11 4/19

B	35/17 42/8 42/9 42/9 42/12 42/13 66/15 building [4] 14/7 36/2 36/2 42/11 built [1] 18/19 business [4] 18/15 37/17 51/8 51/9 but [82] 5/12 9/2 12/6 17/22 20/2 20/2 20/13 23/10 23/13 23/23 24/21 29/15 36/8 37/21 38/24 39/13 39/23 40/4 40/14 41/9 43/17 44/3 45/8 46/18 47/24 48/9 50/11 50/25 52/4 52/19 53/11 53/14 53/18 54/2 58/17 59/24 59/25 60/2 60/25 61/5 61/14 62/4 62/20 63/8 63/17 68/3 68/13 75/18 77/21 80/2 80/20 82/25 85/14 85/24 86/23 87/13 87/20 88/9 88/12 89/17 90/1 91/2 92/12 92/25 94/4 95/13 95/25 96/5 96/20 97/16 99/1 99/3 102/1 102/25 103/15 105/16 106/7 107/22 108/11 108/25 109/19 109/25 buy [5] 18/16 21/18 46/24 46/25 58/11 buyer [3] 29/7 29/10 29/10 Buzz [14] 75/5 75/5 75/10 75/24 75/25 76/17 77/5 77/21 78/1 78/23 90/18 90/19 90/20 90/23 BYRNES [2] 1/21 3/3	92/12 94/19 96/2 96/13 97/13 97/11 97/13 100/12 101/1 101/2 102/1 102/2 102/3 104/12 105/19 105/20 106/2 106/15 107/10 107/19 108/5 109/13 109/19 can't [25] 2/12 13/13 20/11 20/21 25/23 41/5 46/7 48/20 49/21 49/23 65/14 75/19 97/23 97/24 98/11 99/1 100/6 100/9 100/9 102/5 104/15 105/18 108/7 108/11 109/21 cannot [6] 11/25 11/25 14/11 56/4 78/8 103/18 careful [1] 81/5 carved [1] 11/21 case [256] cases [44] 7/8 8/6 16/22 17/4 17/5 17/10 17/12 17/14 17/17 19/12 19/21 21/5 38/9 38/13 38/13 38/14 39/2 48/5 59/24 63/19 63/23 63/25 67/4 67/4 69/14 69/15 70/6 74/8 76/1 77/6 79/18 80/19 87/4 87/5 87/6 87/12 88/19 88/23 88/22 88/24 90/12 93/6 93/10 107/22 categorical [1] 17/1 caused [1] 55/3 caveat [1] 84/11 Central [1] 17/1 certain [8] 7/23 20/17 40/5 55/6 60/18 65/21 92/2 105/9 certainly [5] 18/19 52/23 74/3 75/23 80/11 certify [1] 110/16 CFR [1] 64/8 challenge [1] 60/4 challenged [2] 61/16 63/3 chance [1] 38/5 change [7] 17/16 20/21 21/19 46/5 50/20 92/19 95/24 changed [1] 95/4 changes [1] 58/5 charneled [1] 76/11 Chapter [1] 108/11 charge [2] 69/16 84/18 charged [6] 68/7 82/7 82/15 86/10 86/10 86/19 charging [2] 82/4 84/22 chart [1] 95/22 chat [1] 22/23 check [1] 98/17 Chicago [3] 76/3 76/11 76/14 chocses [1] 69/1 chose [2] 10/10 69/2	Chris [1] 2/24 CHRISTOPHER [1] 1/22 Circuit [4] 76/2 76/2 76/4 76/9 circumstances [2] 28/11 96/22 citation [1] 34/10 cite [2] 31/8 63/25 cited [9] 64/5 64/11 71/24 74/19 76/1 76/17 78/2 78/18 85/1 cites [2] 64/5 90/19 citing [2] 77/5 79/2 city [92] 1/7 2/20 2/22 2/24 3/1 3/3 4/12 6/7 6/8 6/9 7/14 11/2 12/6 12/17 12/22 12/25 13/3 13/4 13/7 13/8 13/8 14/8 15/5 15/9 16/11 16/13 17/11 22/1 25/6 26/4 26/5 37/12 37/13 38/10 38/11 38/14 38/20 38/21 38/23 38/24 40/6 41/24 42/10 42/16 57/13 58/1 58/15 63/3 65/4 65/23 66/1 66/2 66/7 66/8 66/10 66/13 66/20 69/23 71/9 72/17 72/18 73/14 74/2 74/5 75/5 75/19 76/3 77/6 77/21 78/7 78/19 79/2 86/21 86/23 88/1 89/25 90/1 90/3 97/7 97/14 103/9 103/16 103/18 103/18 104/5 104/22 106/24 107/1 107/5 107/9 107/10 107/19 City's [10] 6/11 12/11 12/16 17/2 42/18 80/12 103/14 105/21 106/5 108/14 claim [12] 16/23 16/23 17/19 21/13 25/3 25/13 50/15 57/18 77/12 77/15 78/20 80/5 claimed [2] 21/17 80/2 claims [2] 17/1 26/19 clarification [3] 103/6 104/18 106/2 CLARK [6] 1/2 2/1 31/7 67/5 69/8 89/7 class [2] 20/22 60/17 clear [28] 18/10 27/14 29/24 31/21 31/23 32/11 34/14 34/23 35/7 54/14 62/24 63/10 72/23 72/24 74/11 75/22 76/22 79/5 79/10 79/18 81/22 86/8 88/22 104/16 106/1 108/22 107/6 107/8 clearly [13] 5/3 37/20 38/17 42/10 63/2 64/24 66/23 67/23 68/16 69/12 78/9 91/18 108/4 clerk [6] 97/15 98/24 99/21 100/14 101/4	101/11 client [2] 68/7 68/9 close [2] 46/10 109/22 coast [3] 85/11 85/12 85/12 Code [1] 71/24 collapses [1] 20/25 Colliers [1] 9/8 Colloquy [2] 98/4 98/14 Colorado [3] 76/2 76/18 76/19 column [1] 94/20 combined [1] 68/23 come [4] 53/16 81/12 102/5 102/9 comes [7] 30/1 30/8 30/10 30/18 31/22 45/2 87/21 commence [1] 10/15 commencement [1] 4/13 comments [2] 45/9 104/12 common [1] 36/15 community [1] 47/6 COMPANY [2] 1/4 59/20 comparable [4] 20/20 46/9 49/16 49/25 compare [2] 20/19 50/4 compared [1] 25/20 comparing [1] 49/12 comparison [1] 70/11 compensate [7] 5/16 14/22 32/8 41/19 42/1 53/8 54/24 compensated [3] 34/5 83/11 83/16 compensates [1] 6/4 compensation [23] 5/2 5/5 7/4 28/1 29/17 30/9 31/22 32/4 34/5 34/8 47/14 52/4 62/19 62/20 64/22 74/4 86/23 86/24 91/5 91/6 91/6 91/17 91/19 compensatory [1] 59/22 competent [4] 44/9 53/20 56/6 61/7 compilation [1] 9/13 complete [3] 38/16 38/17 48/5 completely [8] 17/4 19/20 19/25 51/1 51/16 75/22 81/10 100/5 complex [1] 35/17 complicated [2] 29/9 71/23 compound [1] 56/14 compounded [3] 4/15 10/3 10/16 compute [1] 55/25 concedes [1] 86/22 conceding [1] 52/3 concerned [7] 30/14 44/19 59/13 95/12 97/7
----------	---	---	--	---

C	constitutional [14] 11/8 21/12 27/2 63/9 63/14 69/5 78/14 78/24 87/5 87/12 89/2 89/3 90/11 91/2 constitutionally [1] 5/6 construction [3] 12/7 73/4 73/10 construe [1] 79/21 construing [1] 79/6 contact [2] 23/3 23/6 contemplates [1] 64/24 contend [1] 25/23 contends [1] 31/6 contention [1] 25/7 contest [2] 59/6 59/7 contests [2] 66/2 69/23 context [1] 82/13 contingency [8] 83/8 83/11 83/19 84/4 84/6 86/12 86/14 88/19 continue [2] 33/6 58/6 continuing [1] 33/3 contract [5] 21/23 21/23 24/12 25/7 46/14 contrary [4] 66/4 85/2 88/16 88/17 conversation [1] 75/22 copious [1] 67/15 copy [1] 30/23 cornered [1] 106/13 correct [20] 3/5 23/6 23/19 33/4 41/14 61/22 94/10 95/2 95/5 95/19 96/3 96/9 96/10 97/21 99/6 99/7 99/14 101/6 102/13 102/14 correctly [2] 94/24 110/16 CoStar [2] 9/12 9/12 costs [11] 62/21 62/24 64/23 64/24 72/16 77/25 78/2 78/22 78/25 88/5 91/7 could [31] 5/22 8/11 8/11 13/9 14/7 15/18 16/1 19/13 26/19 33/21 34/17 35/22 39/1 40/16 40/18 42/19 42/23 47/3 48/14 50/23 52/21 52/23 97/2 97/3 98/1 98/5 98/21 103/21 104/16 105/3 109/9 could've [3] 39/7 42/17 52/24 couldn't [1] 12/23 council [4] 13/8 13/8 69/1 69/2 counsel [28] 27/17 29/3 29/15 33/25 34/20 35/14 38/5 38/8 55/21 57/15 57/16 60/7 67/14 70/22 71/1 83/7 84/21 85/17 86/17 88/6 89/6 89/19 90/16 90/19 101/9 102/23 103/4 106/6 counsel's [1] 41/13	counterclaim [1] 80/5 country [3] 28/16 28/13 75/20 county [11] 1/2 2/1 15/6 31/7 67/5 69/8 73/2 73/5 74/15 89/7 107/16 County's [1] 73/20 couple [3] 27/20 89/5 100/13 course [6] 38/20 42/14 45/12 80/21 109/5 109/20 court [257] court's [19] 39/1 45/21 45/23 47/13 51/5 52/5 57/23 58/7 58/7 70/17 83/9 93/21 102/22 103/9 104/6 104/16 106/3 106/9 108/4 Courts [2] 42/25 55/7 covers [2] 3/4 77/1 creditor [1] 40/8 Crockett [1] 13/5 Crockett's [1] 12/22 crystal [1] 19/8 cue [1] 23/10 current [5] 32/14 32/22 96/23 99/3 103/21 currently [7] 43/12 95/21 97/19 99/2 99/22 99/23 102/11 curtailed [1] 78/2 customary [1] 69/13 cut [6] 39/17 45/8 46/17 46/18 49/2 103/23	decided [3] 27/15 37/23 69/18 decision [36] 27/21 29/19 29/22 31/4 33/3 37/25 39/1 45/5 47/22 53/12 56/22 59/11 60/23 61/1 61/2 62/5 70/1 76/3 76/19 76/19 79/3 81/11 84/6 84/7 85/2 85/17 88/17 94/5 96/20 108/2 108/4 108/13 108/20 108/23 108/25 109/9 decisions [3] 59/16 62/2 109/15 declaration [3] 36/12 37/2 37/20 defense [4] 2/8 10/24 78/7 80/6 defined [1] 105/18 definitely [1] 98/12 degree [1] 67/18 DeHart [1] 36/12 DeHart's [1] 37/20 delay [3] 32/9 103/9 103/17 delayed [4] 13/23 13/25 14/8 54/5 deliberate [1] 96/18 denied [3] 38/21 38/23 105/5 deny [1] 90/20 denying [1] 65/14 department [1] 59/18 depend [1] 39/8 deposition [3] 25/1 29/5 29/6 deprived [2] 5/17 43/25 DEPT [1] 1/6 describe [1] 91/18 described [2] 42/4 85/10 desert [1] 47/9 deserve [1] 88/19 deserved [1] 83/16 deserves [1] 101/24 designation [2] 12/17 26/8 detail [1] 68/14 determination [12] 3/14 4/17 5/4 14/12 30/11 31/15 32/2 35/2 45/4 46/20 81/7 93/18 determine [29] 1/13 4/23 5/9 7/12 8/9 9/9 9/16 9/17 16/16 27/25 28/17 29/1 29/16 29/18 33/20 37/4 43/6 44/12 44/22 45/19 47/18 53/24 56/7 57/6 61/10 69/8 82/5 85/21 85/21 determined [7] 45/14 55/22 55/23 56/1 56/2 58/23 68/11 determines [2] 81/22 86/1 determining [6] 5/15 8/23 28/19 31/22 33/12	58/21 develop [5] 12/20 12/21 18/24 42/18 42/19 developed [6] 21/24 26/3 26/7 36/5 46/6 46/7 developer [99] 11/17 11/17 11/20 11/22 12/2 12/3 12/5 12/15 12/19 12/21 12/23 13/4 13/9 13/10 13/12 13/13 14/23 14/24 16/20 18/9 18/10 18/11 18/15 18/18 18/23 19/3 19/24 20/3 20/6 20/7 20/13 20/15 21/12 21/13 21/17 21/21 21/24 22/2 24/8 24/13 24/14 24/20 24/22 25/6 25/12 25/17 25/19 25/23 25/24 26/19 26/19 37/13 37/14 38/25 39/6 40/18 42/4 42/7 42/8 42/11 42/17 42/20 42/22 43/5 43/7 50/5 50/12 50/14 50/17 50/20 50/21 50/23 51/6 51/13 51/17 51/18 51/20 52/9 52/21 52/23 53/3 53/7 53/8 55/6 55/8 55/8 55/16 60/11 71/10 71/14 71/24 77/14 77/23 80/12 80/23 81/10 81/20 82/14 83/17 Developer's [13] 11/24 12/8 18/25 25/13 26/1 26/23 38/22 38/23 39/4 48/16 50/4 50/8 50/14 developers [2] 24/17 25/3 development [4] 12/12 16/4 20/23 42/24 did [22] 16/11 22/14 24/1 26/13 30/22 33/18 35/18 38/4 38/9 49/5 50/19 72/22 74/13 75/9 78/10 78/20 78/22 82/1 83/10 85/18 102/25 107/14 didn't [35] 9/22 12/23 14/13 15/9 15/18 16/1 17/6 17/16 18/20 18/21 18/25 22/8 24/20 27/17 35/16 35/16 37/2 39/9 42/19 42/20 42/22 42/24 43/1 48/2 50/21 50/24 54/20 55/9 61/2 85/4 85/6 90/22 108/23 108/24 109/16 DiFederico [8] 8/20 8/25 9/3 9/7 9/8 46/8 50/2 56/19 different [6] 17/4 19/25 35/19 62/12 64/20 72/5 difficult [1] 107/6 direct [8] 7/5 65/15 72/7 72/8 72/9 87/19 88/23 89/8
----------	---	--	--	--

D	37/10 39/24 57/24 61/5 72/20 72/21 73/19 74/18 75/16 79/23 79/24 84/7 93/3 93/6 93/6 93/8 93/17 103/19 106/23	doesn't [26] 6/8 6/9 12/3 13/22 20/14 25/15 26/16 42/14 50/17 51/21 53/6 65/13 73/24 74/24 75/4 75/18 77/9 78/12 80/17 81/2 81/9 81/17 81/20 88/12 88/15 104/22	doing [2] 57/2 57/9 dollar [5] 12/10 24/7 24/11 24/24 25/10 dollars [18] 11/18 12/14 21/19 21/21 24/15 25/3 25/5 29/13 50/3 50/10 50/13 50/15 80/24 80/25 81/18 83/18 86/15 86/18 domain [48] 4/3 7/5 13/22 13/24 13/25 15/9 15/10 15/14 16/8 17/5 21/8 36/23 39/3 54/5 63/1 63/2 63/19 68/20 68/22 68/25 69/14 69/18 70/22 71/1 77/25 78/2 78/12 78/15 78/16 78/22 79/1 79/9 79/16 84/14 85/10 85/16 86/25 87/5 87/8 87/15 87/20 88/9 88/10 88/20 88/24 90/12 90/16 106/23	drafted [2] 4/2 6/9/6 dramatically [1] 47/7 due [2] 12/16 14/18 during [20] 6/5 8/15 9/18 9/23 10/5 14/1 15/23 15/25 16/13 17/7 17/7 35/25 41/23 43/25 54/23 56/18 57/6 62/14 83/14 98/15	E	enhanced [1] 92/8 enhancing [5] 6/6 enjoy [9] 1/10/11 10/11/12 20/21 52/8 enough [11] 14/4 19/5 40/11 40/13 41/19 41/25 53/8 53/9 73/17 75/21 102/8 enter [1] 37/7 entered [5] 87/1 87/3 87/4 105/3 107/8 entering [1] 106/9 entertain [3] 91/21 109/21 109/23 entire [11] 16/14 20/22 22/1 28/13 28/21 38/18 56/12 68/22 85/11 95/6 101/20 entirely [7] 28/20 28/22 34/12 35/20 36/3 40/7 85/23 entitled [22] 15/16 16/2 26/24 64/2 64/13 65/2 65/6 66/23 67/1 71/20 78/21 81/2 84/19 87/8 87/9 88/6 88/11 90/10 90/13 91/1 93/12 110/17 entitles [1] 72/25 entity [1] 43/18 equivalent [5] 14/16 20/7 74/20 87/6 87/12 erased [1] 107/3 err [1] 75/9 erred [1] 78/9 especially [4] 4/4 5/25 6/25 47/5 ESQ [7] 1/17 1/18 1/21 1/21 1/22 1/22 1/23 essentially [3] 11/9 74/23 83/10 establish [1] 25/10 established [6] 22/1 24/12 24/23 42/10 42/11 80/9 establishes [1] 38/2 estate [32] 18/12 18/13 18/15 19/3 19/6 20/10 20/17 20/23 22/4 22/8 22/11 23/9 23/22 24/17 24/25 25/9 36/16 36/17 39/6 39/21 39/23 40/6 40/9 41/9 41/23 42/24 43/15 54/17 55/2 60/10 60/17 60/17 evaluation [2] 30/16 30/18 evaluations [1] 44/23 even [14] 10/6 12/3 13/12 17/25 20/5 20/5 28/23 34/11 37/2 50/14 51/12 63/3 80/14 82/25 evening [1] 110/13 event [1] 104/15 ever [5] 21/5 21/6 21/6 34/10 100/7 every [11] 4/3 4/4 67/15 69/1 75/19 76/22	78/15 86/3 106/28 106/28 107/22 everybody [2] 22/24 184/13 everyone [12] 2/4 2/15 30/1 30/22 59/15 60/23 96/23 97/8 99/9 101/24 110/2 110/11 everything [6] 49/17 52/13 60/24 80/10 92/13 95/23 evidence [82] 8/4 8/9 8/20 8/22 10/1 10/8 10/19 12/8 14/5 20/16 21/20 21/20 24/12 25/13 27/16 27/17 29/16 31/7 31/19 32/14 32/22 33/5 33/7 33/11 33/23 33/23 34/19 35/24 36/8 36/9 36/10 36/25 37/2 38/1 38/10 38/10 38/12 38/18 38/25 39/20 39/25 40/4 41/8 41/10 43/4 44/10 45/6 45/7 46/12 48/6 48/8 50/11 50/25 51/13 53/6 53/20 54/25 55/15 56/6 57/5 57/11 57/13 57/14 59/3 59/6 59/7 60/3 60/11 60/16 60/16 61/8 61/22 74/14 75/1 75/6 75/10 75/13 76/12 89/21 89/24 96/21 96/23 exact [7] 37/2 37/3 56/15 59/23 64/20 70/8 107/11 exactly [4] 35/24 37/23 86/11 88/7 examined [1] 12/25 example [4] 58/11 67/18 94/9 94/24 exceed [3] 6/24 35/5 35/11 exceeded [1] 35/12 except [2] 10/5 56/21 exception [1] 64/14 excess [1] 59/17 excessive [1] 17/19 exchange [2] 36/22 36/24 excluded [5] 28/25 29/16 29/16 29/17 58/9 excluding [1] 75/10 exclusively [1] 68/25 excuse [2] 25/21 47/25 execution [1] 104/3 exhausted [1] 105/24 Exhibit [4] 36/11 66/6 66/7 66/7 Exhibits [2] 66/9 66/21 exist [2] 72/20 75/16 exists [1] 102/22 exorbitant [1] 51/9 expect [1] 56/14 expenses [9] 62/21 62/25 63/2 63/4 64/23 64/24 88/1 88/5 91/7 experience [4] 68/19
----------	--	---	---	---	----------	---	--

E	102/12 106/12 110/8	financial [3] 72/12	25/2 40/6 43/16 45/25	gives [1] 76/5
experience... [3] 68/23	February 10th [1] 97/4	72/15 76/7	61/3 82/20 100/23	giving [4] 52/8 54/15
69/11 85/15	February 11th [1]	find [4] 45/17 45/23	fourth [1] 53/17	100/7 110/7
expert [7] 33/13 57/15	101/20	93/15 102/5	frame [1] 105/14	glad [1] 98/16
58/1 60/8 60/14 61/13	federal [52] 63/25 65/7	finder [2] 44/25 96/22	frankly [2] 93/21 97/11	go [32] 2/6 5/19 7/5
75/6	65/10 65/15 65/19	finding [2] 14/11 58/3	free [1] 48/6	8/25 9/1 26/4 31/14
experts [5] 31/19 33/19	65/20 65/21 65/22	findings [3] 87/2 103/3	freely [1] 60/7	31/23 35/16 45/8 49/9
35/19 57/7 57/10	65/22 66/1 66/3 66/4	106/9	frivolous [1] 80/7	49/10 52/14 58/18 60/6
explain [1] 5/13	66/8 66/8 66/10 66/13	finds [1] 53/7	front [6] 30/24 59/20	60/24 62/4 67/11 68/12
explained [2] 18/7	66/14 66/18 66/20	fine [3] 3/21 101/8	92/13 95/21 108/10	69/16 74/11 85/4 88/10
74/24	71/25 72/7 72/8 72/9	109/25	109/24	90/8 95/17 99/19
explains [2] 5/14 75/17	72/12 72/15 72/19 73/2	finish [1] 48/14	frozen [1] 61/18	102/25 103/25 106/2
explanations [1] 79/19	73/5 73/12 73/12 73/13	finished [1] 102/7	Fu [2] 67/5 69/8	107/19 108/5 109/6
expressly [1] 84/9	73/15 73/15 73/22 74/2	firm [2] 68/21 69/1	full [1] 16/14	goes [7] 5/13 24/8
extra [1] 18/25	74/3 74/14 75/2 75/11	first [20] 2/7 3/17 3/19	fully [2] 5/14 87/17	51/14 91/17 93/10
extraordinarily [4]	75/13 75/20 76/7 76/10	5/1 6/1 6/15 8/2 9/2	function [1] 88/2	93/17 106/23
12/3 13/20 43/7 50/17	76/12 76/23 89/9 89/16	13/22 27/21 30/14	funding [8] 72/19 73/2	going [74] 5/19 5/20
extraordinary [2]	89/22 89/23 89/25 90/1	32/19 62/16 63/20 68/1	73/6 73/13 74/2 75/20	19/11 22/22 23/5 23/13
13/14 25/24	90/3	71/11 71/15 72/7 93/12	76/24 77/8	29/21 30/23 32/16 33/4
F	fee [36] 69/12 69/14	98/15	funds [31] 65/8 65/10	35/11 38/5 41/21 45/9
face [2] 72/21 78/14	69/18 69/20 70/3 71/13	firstly [1] 28/20	65/12 65/13 65/15	45/12 46/19 48/10 51/2
facie [3] 31/6 31/11	80/15 81/2 81/3 81/8	fit [1] 42/14	65/19 65/21 65/23 66/1	51/3 51/5 51/6 51/6
31/12	81/9 81/14 81/18 81/18	Fitzsimmons [1] 84/3	66/3 66/8 66/8 66/10	51/11 56/13 57/22 58/6
fact [29] 4/11 6/24 8/3	81/22 81/23 82/6 83/8	five [8] 9/22 28/7 28/7	66/14 66/18 66/20	60/22 60/23 60/24
10/20 11/12 13/7 13/10	83/19 84/4 84/5 84/6	49/23 58/3 61/3 87/4	73/15 73/15 73/23	60/25 61/1 61/4 62/3
27/15 30/15 31/16	84/10 84/21 86/4 86/6	109/15	74/14 75/2 75/11 75/13	65/4 65/5 65/8 67/7
31/18 32/3 32/23 33/5	86/8 86/12 86/14 86/15	Flamingo [1] 74/16	76/12 89/9 89/17 89/19	67/11 68/12 72/17
35/5 36/10 37/10 37/16	86/16 86/19 90/15 93/8	floor [4] 3/24 31/9	89/22 89/25 90/1 90/3	72/19 74/2 74/3 79/17
44/23 44/24 57/12 62/1	93/19 93/22	45/11 62/10	further [6] 31/14 31/14	84/8 84/9 86/6 86/7
66/2 83/15 87/2 96/22	fees [80] 1/15 3/16	fluctuations [1] 58/5	32/1 32/2 105/20 110/5	90/7 93/1 95/13 95/15
103/3 105/8 106/9	62/9 62/13 63/3 63/5	flying [1] 97/5	future [1] 73/9	95/17 96/13 98/8 98/12
factor [4] 68/11 69/13	63/6 63/12 63/20 63/21	focus [4] 42/5 43/5	G	98/25 99/1 99/8 99/16
70/5 70/5	63/22 64/3 64/7 64/9	55/15 61/6	gamble [1] 20/6	100/22 101/12 101/13
factors [14] 68/13	64/14 64/19 64/21	focused [2] 43/23	Garcia [1] 110/23	101/18 101/19 101/23
68/13 68/15 68/16	64/24 65/3 65/7 65/25	68/25	GARIBAY [1] 1/24	102/3 102/4 102/4
68/18 71/5 81/9 81/13	66/2 66/24 67/1 67/3	focuses [2] 68/23	gather [1] 3/12	102/6 102/9 102/10
81/17 85/19 86/3 86/4	67/8 67/22 69/8 71/3	73/19	gave [3] 34/23 35/19	102/15 106/3
86/8 93/20	71/4 71/12 71/15 71/21	follow [6] 49/4 49/8	35/21	golf [1] 38/20
Factors 3 [1] 68/18	72/1 73/1 77/15 79/15	56/13 56/17 65/23	general [6] 5/12 65/17	gone [2] 40/17 94/10
facts [11] 11/12 32/13	80/2 80/16 80/21 80/24	69/25	84/16 84/16 84/17 90/5	good [15] 2/3 2/9 2/15
32/20 37/22 41/13 42/3	81/1 83/2 83/19 84/16	followed [3] 10/4 74/22	94/1	2/15 2/19 2/21 2/23
52/5 52/6 78/8 90/8	86/22 86/25 87/8 87/9	following [7] 10/2	generally [3] 66/9	2/25 3/2 3/10 32/5
93/1	87/19 87/23 88/5 88/6	23/23 44/8 61/6 91/25	73/15 89/25	101/5 101/7 101/9
faded [1] 22/5	88/11 88/15 89/4 89/21	93/18 99/20	GEORGE [4] 1/21 2/19	101/13
failed [1] 75/10	90/10 90/13 90/20 91/1	follows [1] 31/5	102/19 102/20	got [24] 12/13 12/14
fair [13] 14/2 15/4	91/19 91/20 91/24 92/1	forced [1] 87/25	germane [1] 47/11	12/18 20/9 24/21 26/9
24/19 31/7 31/13 32/13	92/4 92/7 92/8 92/9	Fore [1] 2/16	get [35] 14/12 14/14	41/3 46/13 49/16 54/20
33/12 36/9 37/9 38/2	92/19 92/23 93/1 93/12	foremost [1] 30/15	14/22 31/18 42/25 44/3	55/9 55/14 58/12 62/1
41/18 47/3 54/7	94/25 95/12 95/15	forget [1] 59/23	44/4 44/6 48/3 53/6	62/10 70/7 75/19 76/15
fairly [2] 32/11 77/4	95/18 95/22 95/25	formula [1] 67/3	54/17 63/16 67/7 69/17	76/16 77/4 82/1 83/17
fairness [1] 38/5	96/14	forth [23] 2/6 22/2 22/6	70/18 71/23 74/3 77/20	83/18 103/24
falls [1] 76/24	felt [2] 108/17 108/24	23/9 23/22 28/2 28/3	80/14 80/21 81/17	gotten [1] 62/2
false [2] 50/15 73/18	few [1] 68/17	30/25 31/24 32/14	82/25 84/8 86/25 88/15	governed [1] 87/6
familiar [2] 63/24 63/24	fifteen [6] 69/21 70/23	37/19 66/21 67/23 68/2	88/23 90/4 94/23 95/19	government [36] 4/5
far [12] 14/12 30/13	85/4 85/6 85/8 90/17	68/13 70/16 70/18	96/2 96/23 98/19	6/1 7/6 13/23 13/24
35/11 35/12 39/22	fifteen years [2] 70/23	70/19 71/5 88/17 94/8	104/17 109/7 109/23	15/11 16/9 17/5 28/5
44/19 59/12 95/12	85/4	95/22 96/14	gets [2] 44/11 90/3	28/8 29/5 50/19 63/12
95/18 97/7 98/18 109/4	figure [2] 47/10 96/3	fortunate [1] 43/13	getting [4] 24/9 28/1	64/7 65/13 65/14 65/16
Farm [1] 59/20	file [4] 12/24 15/9	Fortune [2] 15/24	39/22 54/19	65/18 65/20 65/22
favor [1] 64/10	109/20 109/20	40/21	GHANEM [2] 1/18 2/16	66/14 74/4 78/25 79/15
features [1] 49/17	filed [3] 4/3 13/12	forward [2] 33/4	give [14] 23/10 38/5	84/15 84/23 84/23 88/8
FEBRUARY [22] 1/12	42/17	104/18	50/6 52/14 53/9 54/23	88/9 88/12 88/14 88/25
2/1 2/4 46/10 48/18	files [1] 88/9	found [8] 9/22 15/2	55/11 58/19 61/1 61/1	89/2 89/3 89/12 105/9
97/2 97/3 97/3 97/4	filling [6] 13/23 13/25	17/12 17/18 17/20 21/6	65/21 65/22 92/11	government's [1]
97/6 97/6 97/10 97/11	54/5 92/7 103/19 104/4	27/23 54/22	101/2	65/18
99/13 99/23 99/24	final [8] 36/4 43/3	four [17] 9/25 11/18	given [10] 37/4 67/16	governmental [1]
100/3 101/20 102/11	66/25 70/5 105/16	12/13 12/14 18/22 19/2	68/2 68/4 68/11 70/14	43/18
	105/18 106/25 107/1	19/15 21/21 24/6 24/11	79/14 83/15 90/16	grand [1] 58/19
	finally [1] 24/21		105/10	grant [1] 87/18

G	18/10 21/8 21/17 22/1 23/12 25/12 26/2 27/14 27/24 28/5 28/8 37/3 37/12 37/17 38/16 38/24 38/24 42/4 42/10 42/10 42/11 43/14 43/16 45/14 45/19 48/10 48/11 50/12 51/17 51/20 57/17 58/1 58/9 60/19 63/1 63/3 65/17 66/16 68/5 68/9 68/11 71/24 72/17 72/18 73/14 73/25 75/17 80/10 80/11 84/15 84/25 85/10 87/1 87/3 87/4 88/21 88/25 89/3 89/8 90/24 92/2 93/12 94/10 94/22 95/4 95/24 102/21 103/13 103/14 104/5 104/14 105/9 107/9	31/5 31/19 33/13 36/3 36/8 36/25 37/15 38/13 39/5 39/5 39/10 39/22 42/15 42/25 44/7 44/17 47/6 47/18 53/5 53/23 55/5 56/12 58/15 59/25 61/6 66/2 66/17 69/15 69/23 69/24 70/12 72/25 73/14 74/1 74/2 74/7 75/15 77/7 78/14 78/17 79/6 80/10 80/17 80/23 80/23 81/5 81/24 82/13 86/13 86/16 89/24 90/24 93/16 94/12 96/2 99/22 105/25 106/5 106/13 here's [14] 6/23 7/25 8/5 8/12 35/17 40/1 44/3 53/14 64/16 67/8 87/23 91/22 92/21 107/14 hereby [1] 110/16 hey [1] 84/7 high [9] 6/13 7/7 12/4 13/23 21/5 21/6 43/7 50/6 50/18 higher [28] 4/5 6/19 10/6 11/10 14/10 16/2 21/9 27/2 40/2 41/5 41/11 41/22 41/22 43/1 45/17 48/11 52/6 52/25 53/3 54/10 54/15 54/18 54/19 54/23 54/25 83/14 85/9 93/22 highest [1] 57/24 him [14] 14/22 22/15 22/13 22/24 22/24 23/6 23/13 23/11 23/12 23/13 23/24 24/1 24/2 55/4 hindsight [4] 20/6 20/9 39/7 40/15 his [25] 5/11 6/16 6/18 7/18 8/13 9/12 9/19 9/24 14/18 27/19 29/3 32/6 33/15 34/3 36/5 46/8 46/8 46/9 48/17 55/4 56/12 56/19 64/17 70/7 81/20 historical [1] 29/24 historically [1] 62/2 history [1] 100/24 hit [1] 2/13 hold [4] 18/16 33/16 38/14 46/25 holding [2] 87/3 87/4 holidays [1] 100/7 home [1] 58/12 honor [154] HONORABLE [1] 1/11 hope [3] 18/16 108/18 109/9 hour [17] 67/19 69/20 70/3 70/20 70/21 70/24 70/25 82/14 82/15 82/15 82/16 85/7 93/24 94/1 100/17 100/22 100/22 hourly [14] 67/17	67/17 70/1 70/10 70/12 83/4 84/2 85/13 86/1 93/15 93/15 94/10 94/11 94/12 hours [19] 67/12 67/12 67/14 67/19 67/21 68/2 68/4 68/8 69/21 70/13 81/16 84/11 85/22 86/2 92/16 93/14 94/15 96/3 100/13 house [2] 43/12 43/14 housing [3] 12/7 46/6 46/7 how [13] 5/14 7/6 7/9 15/20 36/7 41/8 67/1 67/8 79/20 83/9 90/8 102/7 108/13 however [4] 30/7 84/4 92/7 107/21 Hsu [27] 63/23 63/25 64/12 64/15 64/19 64/25 65/5 65/6 67/5 67/6 68/13 69/8 71/5 73/12 81/2 81/2 81/6 81/15 85/17 85/18 85/18 89/7 91/2 93/8 93/8 94/5 95/13 huge [3] 26/9 55/9 55/10 huh [1] 98/13 hundred [10] 19/18 21/18 25/5 29/13 47/4 50/10 50/10 50/11 50/15 92/18 hypothetical [2] 43/11 72/20 hypothetically [2] 43/17 105/3	103/2 103/7 103/8 104/1 104/9 104/16 104/17 104/17 105/25 106/1 106/3 106/13 106/14 106/16 109/11 110/7 I've [11] 18/7 21/7 43/14 47/6 53/17 59/16 59/17 62/2 74/23 97/7 109/22 idea [1] 36/7 identical [1] 37/22 identified [1] 58/1 identifies [3] 33/7 33/11 77/1 identify [1] 9/14 if [92] 8/16 9/1 13/14 14/6 14/16 15/21 15/23 17/22 17/25 18/24 19/8 19/11 19/16 20/5 20/5 23/8 27/3 32/6 37/5 39/5 39/16 40/7 40/17 41/25 43/17 44/9 45/18 46/5 46/5 46/6 46/7 46/25 48/10 48/14 50/22 50/22 50/22 51/12 51/13 52/22 53/19 54/6 54/9 55/2 61/7 64/6 64/9 65/1 65/21 65/23 66/2 66/25 67/18 71/12 75/1 75/20 81/10 85/17 85/18 86/6 86/7 87/7 88/1 88/7 88/9 88/12 92/11 93/1 93/25 96/5 96/19 97/2 97/3 97/14 98/23 99/9 99/9 99/10 101/2 101/21 103/10 104/2 105/3 105/21 106/2 106/4 106/5 106/15 108/19 108/25 109/19 109/24 ill [1] 1/21 implies [1] 76/25 importance [2] 101/24 109/23 important [9] 24/7 30/13 30/20 31/2 31/13 45/2 62/1 79/6 99/18 impossible [1] 27/6 improper [1] 6/9 improperly [2] 6/10 88/25 improved [1] 36/21 improvements [1] 73/3 in [519] INC [2] 1/25 76/18 include [8] 8/19 13/14 62/20 63/2 64/23 91/5 91/7 91/17 included [3] 14/3 91/18 98/11 includes [3] 62/19 63/4 91/19 including [2] 38/19 73/3 increase [7] 8/15 9/17 31/12 40/20 47/1 58/17 81/11
H	had [62] 5/11 5/21 5/23 6/1 7/18 8/12 8/16 9/23 14/6 14/7 14/17 14/18 14/18 16/14 17/12 17/15 17/22 18/1 18/23 19/8 20/15 26/19 28/8 28/24 28/24 30/15 30/17 32/6 32/10 33/21 34/2 34/17 37/5 38/20 39/6 39/16 40/17 41/3 42/12 42/20 47/17 50/20 50/22 54/6 54/9 55/2 55/3 59/17 59/18 59/21 59/23 59/24 74/14 77/17 77/23 83/15 84/7 85/20 88/1 94/16 96/7 102/7 hadn't [1] 41/24 hair [1] 29/9 hairs [1] 87/14 half [14] 11/18 12/10 12/14 18/23 19/2 21/21 21/25 24/7 24/11 24/15 24/24 25/3 45/25 100/22 Hallmark [1] 60/4 HAM [2] 1/18 2/16 hand [2] 94/20 94/21 handle [2] 3/17 3/19 handled [1] 84/3 handling [1] 71/9 happen [1] 106/3 happened [6] 33/25 47/25 48/1 48/12 77/21 90/2 happens [3] 47/5 54/25 99/10 harass [1] 80/12 harassing [1] 80/6 hard [1] 101/25 harm [1] 104/14 harmed [1] 18/21 has [89] 5/1 5/8 5/25 6/1 6/3 6/13 7/10 7/14 11/6 11/22 12/5 12/15 12/19 13/5 14/24 18/7	hasn't [5] 26/5 51/13 95/4 102/22 103/13 have [218] haven't [4] 13/6 26/5 28/9 61/16 having [4] 55/12 66/5 78/25 83/13 he [50] 5/10 7/18 8/18 9/12 9/19 9/22 9/22 9/24 10/5 10/6 11/21 14/4 14/7 14/8 14/22 15/18 18/22 18/22 22/8 22/10 22/11 22/24 23/9 24/3 27/18 27/21 27/22 28/14 32/6 34/17 34/17 48/17 55/1 55/2 55/3 55/3 56/11 56/12 56/21 57/16 57/17 60/14 73/19 73/19 83/9 83/10 83/11 89/21 90/22 97/24 he's [4] 37/13 37/14 56/11 85/11 Headnote [3] 33/13 93/10 94/4 hear [9] 2/12 10/24 23/1 24/4 27/8 32/25 45/12 55/18 71/7 heard [1] 21/5 hearing [7] 27/11 27/16 30/19 35/1 97/1 102/10 106/11 hearings [2] 28/24 100/21 heavily [1] 24/19 Heck [1] 50/9 held [10] 5/1 8/23 17/25 31/15 32/2 73/22 76/4 78/12 78/19 87/24 Henriod [1] 109/13 her [1] 83/11 here [83] 2/10 5/19 6/21 7/9 11/25 12/2 16/11 16/16 16/20 16/25 17/25 18/5 18/10 18/14 19/24 21/11 21/24 22/19 23/2 24/7 24/9 25/23 27/1 27/25	here's [14] 6/23 7/25 8/5 8/12 35/17 40/1 44/3 53/14 64/16 67/8 87/23 91/22 92/21 107/14 hereby [1] 110/16 hey [1] 84/7 high [9] 6/13 7/7 12/4 13/23 21/5 21/6 43/7 50/6 50/18 higher [28] 4/5 6/19 10/6 11/10 14/10 16/2 21/9 27/2 40/2 41/5 41/11 41/22 41/22 43/1 45/17 48/11 52/6 52/25 53/3 54/10 54/15 54/18 54/19 54/23 54/25 83/14 85/9 93/22 highest [1] 57/24 him [14] 14/22 22/15 22/13 22/24 22/24 23/6 23/13 23/11 23/12 23/13 23/24 24/1 24/2 55/4 hindsight [4] 20/6 20/9 39/7 40/15 his [25] 5/11 6/16 6/18 7/18 8/13 9/12 9/19 9/24 14/18 27/19 29/3 32/6 33/15 34/3 36/5 46/8 46/8 46/9 48/17 55/4 56/12 56/19 64/17 70/7 81/20 historical [1] 29/24 historically [1] 62/2 history [1] 100/24 hit [1] 2/13 hold [4] 18/16 33/16 38/14 46/25 holding [2] 87/3 87/4 holidays [1] 100/7 home [1] 58/12 honor [154] HONORABLE [1] 1/11 hope [3] 18/16 108/18 109/9 hour [17] 67/19 69/20 70/3 70/20 70/21 70/24 70/25 82/14 82/15 82/15 82/16 85/7 93/24 94/1 100/17 100/22 100/22 hourly [14] 67/17	67/17 70/1 70/10 70/12 83/4 84/2 85/13 86/1 93/15 93/15 94/10 94/11 94/12 hours [19] 67/12 67/12 67/14 67/19 67/21 68/2 68/4 68/8 69/21 70/13 81/16 84/11 85/22 86/2 92/16 93/14 94/15 96/3 100/13 house [2] 43/12 43/14 housing [3] 12/7 46/6 46/7 how [13] 5/14 7/6 7/9 15/20 36/7 41/8 67/1 67/8 79/20 83/9 90/8 102/7 108/13 however [4] 30/7 84/4 92/7 107/21 Hsu [27] 63/23 63/25 64/12 64/15 64/19 64/25 65/5 65/6 67/5 67/6 68/13 69/8 71/5 73/12 81/2 81/2 81/6 81/15 85/17 85/18 85/18 89/7 91/2 93/8 93/8 94/5 95/13 huge [3] 26/9 55/9 55/10 huh [1] 98/13 hundred [10] 19/18 21/18 25/5 29/13 47/4 50/10 50/10 50/11 50/15 92/18 hypothetical [2] 43/11 72/20 hypothetically [2] 43/17 105/3

I	18/11 18/12 19/14 19/14 19/15 20/3 20/10 25/22 26/20 33/15 33/22 34/17 36/18 37/1 37/5 37/17 39/6 39/8 39/16 40/8 40/9 40/10 40/19 41/3 47/17 51/7 52/22 52/24 52/25 55/1 55/6 55/8 investigated [1] 9/8 investing [3] 19/6 35/22 48/4 investment [23] 11/24 12/6 12/11 12/14 13/18 14/14 14/15 14/25 15/19 15/21 17/24 18/3 21/15 26/20 26/25 37/18 40/16 47/17 50/4 50/6 51/18 52/10 53/9 investments [1] 37/10 investor [2] 37/14 55/7 invests [1] 37/17 invitation [1] 42/18 involved [2] 60/25 65/8 involving [2] 39/2 47/22 irrelevant [6] 27/19 28/20 28/22 28/23 29/1 36/3 is [381] isn't [4] 14/4 97/5 100/12 106/14 issue [35] 4/19 4/22 6/14 7/6 7/23 8/24 10/15 10/17 24/8 27/11 27/13 30/7 34/11 37/8 43/24 44/19 46/18 49/15 52/15 58/9 69/22 69/24 77/11 78/14 89/12 90/18 96/17 100/19 102/21 102/22 105/6 108/18 108/23 109/4 109/10 issues [8] 4/9 4/11 4/13 4/16 6/7 27/19 37/8 89/6 it [250] it's [104] 5/6 6/2 7/25 11/15 16/3 19/22 19/24 21/9 25/17 28/7 28/20 28/23 31/18 31/20 31/24 33/5 33/12 34/12 35/11 36/7 36/11 39/24 40/5 40/7 40/14 40/15 40/15 42/13 42/15 42/25 43/20 43/20 44/5 45/2 45/18 46/6 46/6 46/13 46/16 46/23 48/8 48/10 49/16 49/16 49/24 49/24 49/24 51/14 52/19 54/14 56/24 57/4 57/7 58/10 59/19 61/1 61/2 61/21 62/4 64/6 66/12 67/4 68/2 68/8 69/24 72/8 72/22 73/18 74/23 75/18 78/15 79/5 81/12 81/13 81/22 82/20 83/19 84/3 84/25 85/2	85/8 86/8 87/13 87/16 88/15 88/18 89/23 93/21 95/5 96/19 96/5 97/6 97/12 97/20 98/1 99/9 100/16 100/19 100/19 104/1 104/22 107/22 108/25 109/16 itemized [1] 95/24 itemizes [1] 91/23 its [15] 6/8 12/5 13/10 14/25 16/11 40/13 42/15 51/17 52/9 66/9 72/21 78/7 78/14 88/2 103/13 itself [1] 65/18 J JAMES [10] 1/17 2/9 3/25 22/19 27/9 33/1 55/19 70/20 83/25 106/21 January [1] 92/20 JD [1] 1/25 jeopardizing [1] 66/3 Joel [1] 109/12 Johan [1] 29/7 judge [20] 1/11 7/22 8/5 10/21 12/22 13/5 13/7 24/2 27/11 27/15 33/8 34/23 34/24 35/8 51/24 53/22 65/6 68/12 97/21 110/9 judgment [27] 11/16 12/11 14/25 16/12 16/13 18/8 18/11 19/18 20/6 40/7 43/7 45/15 47/25 50/5 52/2 52/5 64/9 105/3 105/17 105/18 105/19 106/11 106/25 107/2 107/5 107/5 107/9 judgments [1] 69/17 judicial [5] 13/10 107/11 107/12 107/16 108/1 jump [1] 29/21 jumping [1] 58/3 June [5] 67/25 84/12 94/13 94/14 94/14 94/17 June 1st [1] 94/12 jurisdiction [2] 81/24 81/24 jury [5] 98/6 98/7 98/8 99/2 99/4 just [107] 2/3 5/2 5/5 7/4 9/7 9/7 11/12 11/13 12/9 14/20 18/8 20/16 20/17 20/21 21/2 21/2 22/15 26/16 26/22 27/23 28/1 28/14 28/21 29/15 29/23 30/9 30/13 30/24 31/22 32/4 32/23 35/12 36/1 36/13 39/10 40/15 42/25 43/11 45/2 47/11 47/14 48/18 49/4 51/11 51/19 52/4 52/11 53/9 54/25 57/22 59/6 59/24 62/3 62/14 62/19	82/19 84/22 88/17 89/5 70/17 70/17 71/5 72/24 73/25 74/4 74/11 74/21 74/24 75/5 78/5 79/25 80/13 80/19 80/22 81/5 82/13 83/1 83/3 86/23 86/24 86/24 91/3 91/4 91/6 91/6 91/17 91/19 94/6 94/23 95/19 96/15 96/17 96/17 96/18 100/19 100/24 102/4 104/6 104/17 106/1 106/11 107/1 107/2 107/23 108/17 108/21 109/14 justice [1] 26/12 justify [1] 69/12 K keep [1] 46/18 keeps [1] 27/22 Kelly [2] 17/11 38/14 kept [1] 67/16 Kermitt [5] 68/21 69/2 69/7 69/10 82/15 key [1] 78/17 kick [2] 102/2 102/2 kind [13] 20/25 30/20 31/17 40/24 44/3 47/10 51/19 60/3 65/17 75/6 76/15 80/6 106/13 Kluwer [1] 82/2 knew [1] 79/16 know [53] 12/17 15/22 19/5 19/10 19/15 20/1 20/1 20/3 20/9 23/7 23/11 25/16 30/1 39/19 42/25 43/15 46/24 47/9 48/3 50/22 51/3 51/3 51/9 52/4 54/11 54/23 55/13 63/15 73/17 77/4 79/13 79/14 80/2 80/3 80/4 80/4 82/4 82/4 82/24 83/9 83/10 83/12 83/16 93/16 95/8 99/10 101/12 104/2 106/4 108/12 108/24 109/7 109/13 knowledgeable [2] 57/19 57/20 known [2] 66/12 85/11 knows [3] 22/24 36/7 67/10 L LaFayette [2] 78/19 79/2 laid [5] 29/19 63/12 67/14 68/14 84/23 land [43] 1/4 2/10 2/16 6/24 8/13 8/15 8/17 9/10 18/16 18/16 19/2 27/10 33/2 33/15 33/15 33/16 33/22 34/8 34/18 35/6 35/11 35/12 35/22 36/6 36/18 36/21 37/1 37/5 37/10 37/14 37/17 55/20 56/18 57/1 57/3 57/5 58/17 59/1 70/8	73/4 77/2 84/1 106/22 landowner [41] 5/10 5/21 5/22 6/3 6/6 7/17 8/16 9/10 25/28 28/1 28/6 28/12 32/5 32/9 33/14 37/10 37/11 37/12 43/25 44/23 55/20 56/13 62/24 62/25 64/1 64/2 64/6 64/12 65/1 65/25 84/1 87/7 87/24 88/4 88/11 88/15 90/22 90/24 104/25 106/22 landowner's [4] 9/20 27/24 89/1 89/3 landowners [33] 2/11 2/17 4/1 4/24 5/7 5/16 6/10 6/12 7/2 7/2 7/3 7/4 8/12 10/9 28/9 33/2 33/21 35/22 36/5 36/6 57/1 57/9 58/25 63/19 65/6 66/23 70/8 78/25 88/14 88/22 88/23 90/10 90/23 landowners' [4] 1/13 1/15 3/14 3/15 Lands [3] 66/12 73/16 90/3 language [10] 31/3 33/19 44/11 44/15 63/3 64/20 73/19 81/6 90/14 95/18 LAS [25] 1/7 2/1 2/20 2/22 3/1 3/3 4/12 40/6 41/9 47/6 58/12 60/17 66/1 66/13 66/20 75/5 77/22 81/24 82/8 82/18 82/24 86/21 89/25 90/1 107/19 Las Vegas [3] 41/9 47/6 58/12 last [19] 22/6 22/6 23/8 23/22 36/4 40/6 43/16 52/15 61/2 62/1 69/24 79/25 89/5 89/5 90/18 91/3 91/13 105/17 106/16 Laura [1] 83/7 law [22] 11/9 16/15 17/16 29/25 45/16 68/21 69/2 69/6 69/10 75/16 75/23 78/21 79/18 80/9 80/11 81/21 84/25 87/2 87/13 88/17 103/4 106/10 lawsuit [2] 17/8 17/8 lawyer [2] 100/8 109/12 Lawyers [1] 101/25 lays [1] 37/20 least [5] 4/7 14/24 77/8 82/17 95/20 leave [3] 48/5 81/7 93/18 leaving [1] 34/3 LEAVITT [28] 1/17 2/10 4/1 22/19 27/8 27/10 32/25 33/2 45/12 52/14 55/18 55/20 61/17
---	---	---	---	---

L	Liz [1] 110/23	measure [1] 20/12	months [2] 38/22
LEAVITT... [15] 62/10	LLC [2] 1/4 2/10	meet [1] 13/19	49/23
70/20 71/13 73/14	located [1] 47/8	meets [1] 60/1	more [24] 5/14 6/16
77/16 79/11 80/1 82/15	location [1] 49/17	memorandum [1]	11/14 12/1 18/8 21/21
82/20 83/24 84/1 92/22	Locklin [2] 78/19 79/2	96/13	26/13 39/15 43/11
96/24 97/9 106/21	lodestar [6] 67/10	memory [1] 23/8	43/16 44/11 45/6 49/13
left [4] 12/19 12/19	67/11 81/7 85/21 93/13	mentioned [1] 77/18	49/13 50/13 52/16
25/18 94/20	93/18	merit [1] 103/3	53/10 53/22 55/16
left-hand [1] 94/20	long [6] 7/20 52/18	merits [3] 13/1 13/9	59/22 61/9 75/25 86/15
legal [5] 68/6 92/3	52/19 65/23 73/22	26/6	95/11
92/16 95/3 96/7	87/11	met [2] 68/16 69/12	moreover [1] 16/5
legislative [2] 31/10	long-standing [1]	methodology [1] 61/15	morning [2] 98/21
79/20	87/11	might [4] 23/23 26/7	98/22
legislature [12] 7/10	look [16] 41/1 43/12	84/8 98/5	mortgage [1] 33/14
7/11 31/10 40/1 40/23	45/4 51/5 51/8 51/24	mildly [1] 21/16	most [10] 17/8 44/13
45/14 48/2 55/21 55/23	58/18 59/1 67/11 69/16	mile [1] 89/17	53/25 56/7 57/19 57/19
55/23 56/2 107/4	69/17 86/9 96/15 102/7	million [70] 4/24 5/23	60/2 61/3 61/11 71/23
Legislature's [1]	105/4 105/5	6/17 6/19 11/18 12/9	motion [30] 1/13 1/15
108/12	looked [3] 83/11	12/10 12/11 12/13	3/14 3/15 4/2 4/3 10/25
legitimacy [1] 103/3	104/20 108/9	12/13 12/14 12/18	11/3 29/25 56/11 56/19
legitimate [1] 77/12	looking [15] 3/12 21/3	13/15 13/16 16/25	58/7 58/8 62/12 70/19
length [1] 24/17	31/5 32/12 32/12 43/24	18/21 18/23 18/25 19/2	71/20 79/13 80/3 80/25
Lenhart [5] 8/21 9/1	44/1 51/3 91/22 95/22	21/13 21/18 21/18	81/20 83/18 91/23 92/7
9/4 10/4 58/10	96/2 99/22 104/21	21/21 21/25 22/3 24/7	94/8 95/23 99/16
lens [3] 104/20 105/3	105/2 105/10	24/9 24/11 24/15 24/23	100/16 103/2 106/10
105/11	looks [4] 47/15 68/19	24/24 25/3 25/4 25/5	110/11
less [8] 49/14 56/1	81/23 98/12	25/7 25/8 25/14 25/15	motions [3] 3/13 28/24
70/7 70/21 70/25 84/21	lose [4] 22/14 24/1	25/21 25/21 26/2 26/10	82/3
85/7 86/18	55/4 55/9	29/4 29/13 30/16 40/19	move [2] 2/7 99/11
let [6] 16/20 29/19	loses [1] 38/5	45/22 46/1 46/5 47/14	moved [2] 14/18
87/20 99/10 108/17	lost [29] 6/4 14/1 14/1	48/17 50/3 50/9 50/9	102/12
109/3	14/4 14/8 14/23 14/23	50/10 50/10 50/11	moving [3] 95/25 97/17
let's [8] 2/6 23/10 50/8	22/5 22/24 24/2 28/13	50/13 50/15 51/19	110/10
50/11 58/17 58/18	34/1 34/2 34/5 34/12	55/11 59/7 59/11 80/24	Mr [30] 61/17 62/10
98/15 98/19	34/16 40/12 41/14	80/25 81/18 83/18	67/6 70/24 71/13 73/14
letter [1] 26/4	41/20 41/23 42/1 51/10	86/15 86/18 92/19	77/16 77/17 79/11 80/1
level [2] 43/19 47/11	54/4 55/3 55/3 58/25	mind [7] 43/12 44/4	82/15 82/16 82/19
liability [1] 52/3	90/22 91/10 91/12	59/9 59/14 96/16	82/19 83/24 84/22 85/9
lifted [1] 12/17	lot [16] 9/19 29/9 29/25	102/24 110/1	89/17 89/20 92/21
light [2] 32/21 44/20	32/24 44/5 44/5 44/6	minimum [1] 11/4	96/24 97/8 100/1
lightly [1] 108/23	44/17 44/17 45/9 47/5	minute [3] 23/10 103/8	100/15 101/1 102/25
like [23] 8/15 9/1 14/23	59/16 59/24 60/24 62/4	104/17	104/21 107/1 108/8
16/8 16/22 17/10 17/18	101/25	minutes [3] 23/13	109/19
21/4 32/20 35/12 37/13	low [1] 33/16	23/16 67/19	Mr. [36] 3/20 6/16 6/17
41/12 47/6 47/22 48/6	lower [5] 33/8 34/23	misquote [1] 31/25	8/20 8/21 9/8 10/4 23/1
50/23 59/6 59/24 62/2	34/24 83/9 84/24	modification [2] 12/24	23/4 23/21 23/25 24/4
92/12 96/17 98/12	lowest [1] 10/10	13/3	27/8 28/14 29/7 32/25
100/8	Lowy [1] 29/7	MOLINA [2] 1/22 2/24	32/25 34/2 34/15 36/7
likely [1] 45/6	lucky [1] 40/13	moment [1] 9/8	38/5 44/20 45/12 46/8
limine [2] 28/24 58/8	Lucy [1] 23/5	Monday [1] 98/5	48/25 49/2 50/2 52/14
limited [3] 62/20 78/15	luxury [1] 12/7	monetarily [2] 5/10	55/18 56/19 56/23
109/15	M	7/18	58/15 70/7 70/20 85/10
limiting [1] 104/9	ma'am [2] 2/13 23/19	monetary [2] 27/5 32/9	101/21
line [8] 22/20 37/22	made [63] 11/15 12/4	money [57] 5/23 6/12	Mr. Barsy [2] 34/2
51/23 74/1 91/25 92/15	12/5 14/11 14/11 15/20	8/13 8/17 8/17 12/1	34/15
92/16 92/17	18/8 18/10 19/17 21/14	14/1 14/21 15/20 16/1	Mr. DiFederico [5]
listed [1] 62/12	24/9 25/25 26/1 26/2	16/3 16/18 18/12 18/13	8/20 9/8 48/8 50/2
listen [4] 35/4 35/9	26/19 27/4 27/18 27/22	18/19 18/20 18/24 19/4	56/19
49/10 85/5	28/14 28/21 30/11	19/6 19/9 19/15 19/17	Mr. Johan [1] 29/7
listening [1] 22/12	34/12 38/22 39/7 39/7	19/22 19/23 20/3 26/20	Mr. Leavitt [5] 27/8
litigated [3] 34/4 67/5	39/15 40/3 40/20 40/21	33/15 34/2 34/17 35/17	32/25 45/12 52/14
69/9	43/2 45/9 45/21 46/20	37/5 39/6 39/16 40/8	55/18
litigating [1] 83/12	47/16 47/17 48/7 50/5	40/9 40/12 40/22 41/2	Mr. Lenhart [2] 8/21
litigation [2] 43/25	50/18 51/9 51/13 51/17	41/3 42/8 42/21 42/23	10/4
87/25	51/21 52/23 52/25 53/4	44/5 47/17 48/4 52/24	Mr. Ogilvie [3] 3/20
little [5] 19/1 32/15	54/7 54/9 54/24 55/2	55/3 55/7 55/16 59/16	23/1 101/21
82/10 82/13 85/9	55/16 58/16 58/19	60/19 60/25 62/4 74/3	Mr. Schwartz [11] 23/4
live [2] 43/12 43/13	59/16 63/10 72/23 73/6	76/10 106/25 107/3	23/21 23/25 24/4 32/25
		month [1] 46/10	36/7 38/5 44/20 48/25

M	negotiated [2] 24/16 24/20	105/19 105/20 108/8 109/25	61/13	operative [1] 56/8	
Mr. Schwartz... [2] 49/2 56/23	negotiation [1] 24/23	none [4] 20/13 25/12 67/21 81/12	office [6] 68/21 69/2	opinion [2] 26/15 26/16	
Mr. Schwartz's [2] 28/14 58/15	negotiations [1] 22/3	nor [1] 41/20	officials [1] 63/16	opinions [1] 31/21	
Mr. Sisolak [3] 6/16 6/17 70/7	neighborhood [1] 43/13	normally [1] 105/9	OGILVIE [14] 1/21 2/20 3/20 23/1 100/15 101/1 101/21 102/19 102/20 102/25 104/21 107/1 108/8 109/19	opponents [1] 63/10	
Mr. Waters [2] 70/20 85/10	neither [1] 16/5	North [2] 75/5 77/22	Ogilvie's [1] 84/22	opportunity [1] 23/11	
Ms [2] 70/24 84/3	NEVADA [104] 1/2 2/1 5/1 5/3 5/8 5/12 6/13 6/15 6/20 7/10 7/11 7/21 7/24 7/24 7/25 8/2 8/6 8/8 8/14 8/22 13/2 16/23 17/10 17/17 21/5 27/14 28/10 31/4 33/9 33/11 33/24 34/8 34/21 34/22 34/25 37/3 53/17 56/5 56/15 59/1 60/19 62/16 62/17 62/23 63/13 63/18 64/4 64/11 65/1 66/12 67/2 67/7 68/23 69/9 69/10 69/18 69/20 71/19 73/16 74/8 74/25 75/23 76/1 76/16 77/5 77/16 77/24 78/3 78/18 78/22 79/7 79/13 79/16 79/19 79/23 80/17 81/21 83/13 84/12 84/25 85/1 85/18 85/24 87/2 87/3 87/12 87/17 87/22 88/3 88/18 88/21 90/3 90/25 91/16 92/24 95/17 103/10 107/4 107/12 107/15 107/20 108/12 109/3 109/6	note [2] 33/7 63/8	oh [8] 16/20 20/9 75/19 97/17 97/25 98/2 98/8 98/10	opposed [1] 13/9	
Ms. [1] 37/20	NEVADA [104] 1/2 2/1 5/1 5/3 5/8 5/12 6/13 6/15 6/20 7/10 7/11 7/21 7/24 7/24 7/25 8/2 8/6 8/8 8/14 8/22 13/2 16/23 17/10 17/17 21/5 27/14 28/10 31/4 33/9 33/11 33/24 34/8 34/21 34/22 34/25 37/3 53/17 56/5 56/15 59/1 60/19 62/16 62/17 62/23 63/13 63/18 64/4 64/11 65/1 66/12 67/2 67/7 68/23 69/9 69/10 69/18 69/20 71/19 73/16 74/8 74/25 75/23 76/1 76/16 77/5 77/16 77/24 78/3 78/18 78/22 79/7 79/13 79/16 79/19 79/23 80/17 81/21 83/13 84/12 84/25 85/1 85/18 85/24 87/2 87/3 87/12 87/17 87/22 88/3 88/18 88/21 90/3 90/25 91/16 92/24 95/17 103/10 107/4 107/12 107/15 107/20 108/12 109/3 109/6	noted [1] 77/16	opposing [1] 106/6		
Ms. DeHart's [1] 37/20	NEVADA [104] 1/2 2/1 5/1 5/3 5/8 5/12 6/13 6/15 6/20 7/10 7/11 7/21 7/24 7/24 7/25 8/2 8/6 8/8 8/14 8/22 13/2 16/23 17/10 17/17 21/5 27/14 28/10 31/4 33/9 33/11 33/24 34/8 34/21 34/22 34/25 37/3 53/17 56/5 56/15 59/1 60/19 62/16 62/17 62/23 63/13 63/18 64/4 64/11 65/1 66/12 67/2 67/7 68/23 69/9 69/10 69/18 69/20 71/19 73/16 74/8 74/25 75/23 76/1 76/16 77/5 77/16 77/24 78/3 78/18 78/22 79/7 79/13 79/16 79/19 79/23 80/17 81/21 83/13 84/12 84/25 85/1 85/18 85/24 87/2 87/3 87/12 87/17 87/22 88/3 88/18 88/21 90/3 90/25 91/16 92/24 95/17 103/10 107/4 107/12 107/15 107/20 108/12 109/3 109/6	nothing [7] 14/23 30/17 42/13 42/13 84/17 95/10 110/5	on [163]	opposite [3] 11/13 11/13 55/6	
much [6] 7/6 15/20 30/3 49/18 67/1 80/1	NEVADA [104] 1/2 2/1 5/1 5/3 5/8 5/12 6/13 6/15 6/20 7/10 7/11 7/21 7/24 7/24 7/25 8/2 8/6 8/8 8/14 8/22 13/2 16/23 17/10 17/17 21/5 27/14 28/10 31/4 33/9 33/11 33/24 34/8 34/21 34/22 34/25 37/3 53/17 56/5 56/15 59/1 60/19 62/16 62/17 62/23 63/13 63/18 64/4 64/11 65/1 66/12 67/2 67/7 68/23 69/9 69/10 69/18 69/20 71/19 73/16 74/8 74/25 75/23 76/1 76/16 77/5 77/16 77/24 78/3 78/18 78/22 79/7 79/13 79/16 79/19 79/23 80/17 81/21 83/13 84/12 84/25 85/1 85/18 85/24 87/2 87/3 87/12 87/17 87/22 88/3 88/18 88/21 90/3 90/25 91/16 92/24 95/17 103/10 107/4 107/12 107/15 107/20 108/12 109/3 109/6	notice [2] 103/20 104/4	on [163]	opposition [5] 4/12 4/14 71/7 71/9 83/9	
muffled [1] 103/25	NEVADA [104] 1/2 2/1 5/1 5/3 5/8 5/12 6/13 6/15 6/20 7/10 7/11 7/21 7/24 7/24 7/25 8/2 8/6 8/8 8/14 8/22 13/2 16/23 17/10 17/17 21/5 27/14 28/10 31/4 33/9 33/11 33/24 34/8 34/21 34/22 34/25 37/3 53/17 56/5 56/15 59/1 60/19 62/16 62/17 62/23 63/13 63/18 64/4 64/11 65/1 66/12 67/2 67/7 68/23 69/9 69/10 69/18 69/20 71/19 73/16 74/8 74/25 75/23 76/1 76/16 77/5 77/16 77/24 78/3 78/18 78/22 79/7 79/13 79/16 79/19 79/23 80/17 81/21 83/13 84/12 84/25 85/1 85/18 85/24 87/2 87/3 87/12 87/17 87/22 88/3 88/18 88/21 90/3 90/25 91/16 92/24 95/17 103/10 107/4 107/12 107/15 107/20 108/12 109/3 109/6	notion [1] 46/11	or [90] 4/5 4/7 6/7 15/22 17/14 17/15 19/10 19/10 19/14 20/5 20/14 21/7 23/12 25/11 26/7 29/11 30/16 33/15 36/5 36/18 36/21 37/18 40/12 40/21 40/23 43/16 45/5 47/4 51/3 52/3 55/11 59/4 61/3 62/3 63/1 63/16 64/15 65/9 65/18 66/19 67/16 67/23 68/24 70/11 72/5 72/7 72/9 72/11 73/12 74/1 74/4 74/15 76/7 77/4 80/5 80/5 81/11 81/11 81/11 82/20 84/18 85/8 86/1 87/13 89/14 91/13 92/18 94/10 96/5 97/4 97/11 98/9 98/22 98/22 98/23 100/12 100/22 100/23 103/2 103/3 103/5 103/13 104/10 105/17 106/4 106/10 107/20 109/11 109/12 109/15	or [90] 4/5 4/7 6/7 15/22 17/14 17/15 19/10 19/10 19/14 20/5 20/14 21/7 23/12 25/11 26/7 29/11 30/16 33/15 36/5 36/18 36/21 37/18 40/12 40/21 40/23 43/16 45/5 47/4 51/3 52/3 55/11 59/4 61/3 62/3 63/1 63/16 64/15 65/9 65/18 66/19 67/16 67/23 68/24 70/11 72/5 72/7 72/9 72/11 73/12 74/1 74/4 74/15 76/7 77/4 80/5 80/5 81/11 81/11 81/11 82/20 84/18 85/8 86/1 87/13 89/14 91/13 92/18 94/10 96/5 97/4 97/11 98/9 98/22 98/22 98/23 100/12 100/22 100/23 103/2 103/3 103/5 103/13 104/10 105/17 106/4 106/10 107/20 109/11 109/12 109/15	order [25] 4/19 12/22 13/5 14/22 24/21 37/9 45/6 43/6 53/23 58/7 99/3 102/22 103/8 103/13 103/13 103/14 103/15 103/17 104/6 104/13 104/17 106/8 106/15 107/6 107/17
multiplied [2] 40/14 68/8	NEVADA [104] 1/2 2/1 5/1 5/3 5/8 5/12 6/13 6/15 6/20 7/10 7/11 7/21 7/24 7/24 7/25 8/2 8/6 8/8 8/14 8/22 13/2 16/23 17/10 17/17 21/5 27/14 28/10 31/4 33/9 33/11 33/24 34/8 34/21 34/22 34/25 37/3 53/17 56/5 56/15 59/1 60/19 62/16 62/17 62/23 63/13 63/18 64/4 64/11 65/1 66/12 67/2 67/7 68/23 69/9 69/10 69/18 69/20 71/19 73/16 74/8 74/25 75/23 76/1 76/16 77/5 77/16 77/24 78/3 78/18 78/22 79/7 79/13 79/16 79/19 79/23 80/17 81/21 83/13 84/12 84/25 85/1 85/18 85/24 87/2 87/3 87/12 87/17 87/22 88/3 88/18 88/21 90/3 90/25 91/16 92/24 95/17 103/10 107/4 107/12 107/15 107/20 108/12 109/3 109/6	now [55] 4/19 4/22 5/12 6/6 7/9 7/20 10/9 11/17 12/10 12/15 12/15 13/4 16/20 18/9 20/8 21/17 27/25 28/7 28/7 28/13 29/3 29/19 29/25 31/18 33/25 37/13 42/5 42/7 43/9 43/24 44/22 46/1 48/14 50/3 52/14 54/1 55/18 57/2 57/11 58/14 58/19 60/4 60/23 61/18 65/4 71/24 75/22 79/20 81/2 85/17 87/13 99/9 106/11 106/25 109/11	once [11] 3/10 44/9 53/20 56/2 56/6 58/22 61/7 63/17 64/1 82/25 84/4	order [25] 4/19 12/22 13/5 14/22 24/21 37/9 45/6 43/6 53/23 58/7 99/3 102/22 103/8 103/13 103/13 103/14 103/15 103/17 104/6 104/13 104/17 106/8 106/15 107/6 107/17	
multiply [7] 67/12 70/13 81/15 85/22 93/13 93/13 93/16	NEVADA [104] 1/2 2/1 5/1 5/3 5/8 5/12 6/13 6/15 6/20 7/10 7/11 7/21 7/24 7/24 7/25 8/2 8/6 8/8 8/14 8/22 13/2 16/23 17/10 17/17 21/5 27/14 28/10 31/4 33/9 33/11 33/24 34/8 34/21 34/22 34/25 37/3 53/17 56/5 56/15 59/1 60/19 62/16 62/17 62/23 63/13 63/18 64/4 64/11 65/1 66/12 67/2 67/7 68/23 69/9 69/10 69/18 69/20 71/19 73/16 74/8 74/25 75/23 76/1 76/16 77/5 77/16 77/24 78/3 78/18 78/22 79/7 79/13 79/16 79/19 79/23 80/17 81/21 83/13 84/12 84/25 85/1 85/18 85/24 87/2 87/3 87/12 87/17 87/22 88/3 88/18 88/21 90/3 90/25 91/16 92/24 95/17 103/10 107/4 107/12 107/15 107/20 108/12 109/3 109/6	nowhere [4] 34/4 77/17 84/6 84/6	one [67] 3/13 3/17 3/19 6/7 6/7 7/21 8/20 12/11 12/12 13/12 14/10 20/24 26/13 27/17 30/6 35/20 36/4 36/12 46/9 48/16 52/16 56/25 57/23 58/11 62/8 63/8 64/22 65/11 67/10 67/19 69/1 69/15 69/22 71/2 71/10 71/15 71/23 72/2 74/8 74/9 74/8 75/26 76/1 76/2 79/11 83/3 84/23 85/3 86/13 86/18 89/17 90/18 90/20 91/3 96/7 96/17 96/25 98/6 98/11 100/16 100/19 101/24 103/19 107/22 107/23 107/25 109/22	orders [1] 109/21	
municipality [1] 105/9	NEVADA [104] 1/2 2/1 5/1 5/3 5/8 5/12 6/13 6/15 6/20 7/10 7/11 7/21 7/24 7/24 7/25 8/2 8/6 8/8 8/14 8/22 13/2 16/23 17/10 17/17 21/5 27/14 28/10 31/4 33/9 33/11 33/24 34/8 34/21 34/22 34/25 37/3 53/17 56/5 56/15 59/1 60/19 62/16 62/17 62/23 63/13 63/18 64/4 64/11 65/1 66/12 67/2 67/7 68/23 69/9 69/10 69/18 69/20 71/19 73/16 74/8 74/25 75/23 76/1 76/16 77/5 77/16 77/24 78/3 78/18 78/22 79/7 79/13 79/16 79/19 79/23 80/17 81/21 83/13 84/12 84/25 85/1 85/18 85/24 87/2 87/3 87/12 87/17 87/22 88/3 88/18 88/21 90/3 90/25 91/16 92/24 95/17 103/10 107/4 107/12 107/15 107/20 108/12 109/3 109/6	NRCP [1] 67/14	one-third [1] 86/18	OS [2] 12/17 26/8	
must [18] 8/4 18/23 24/2 28/12 35/9 35/10 44/12 53/22 55/25 56/1 56/6 61/10 63/1 72/1 73/21 74/22 86/2 107/5	NEVADA [104] 1/2 2/1 5/1 5/3 5/8 5/12 6/13 6/15 6/20 7/10 7/11 7/21 7/24 7/24 7/25 8/2 8/6 8/8 8/14 8/22 13/2 16/23 17/10 17/17 21/5 27/14 28/10 31/4 33/9 33/11 33/24 34/8 34/21 34/22 34/25 37/3 53/17 56/5 56/15 59/1 60/19 62/16 62/17 62/23 63/13 63/18 64/4 64/11 65/1 66/12 67/2 67/7 68/23 69/9 69/10 69/18 69/20 71/19 73/16 74/8 74/25 75/23 76/1 76/16 77/5 77/16 77/24 78/3 78/18 78/22 79/7 79/13 79/16 79/19 79/23 80/17 81/21 83/13 84/12 84/25 85/1 85/18 85/24 87/2 87/3 87/12 87/17 87/22 88/3 88/18 88/21 90/3 90/25 91/16 92/24 95/17 103/10 107/4 107/12 107/15 107/20 108/12 109/3 109/6	NRS [7] 71/21 74/17 80/3 80/20 92/25 95/17 105/13	only [44] 4/19 7/6 7/21 8/5 8/7 10/8 10/19 11/6 11/6 12/5 13/19 18/4 25/13 27/1 27/3 33/10 36/19 37/8 37/17 37/21 38/1 54/11 54/12 59/2 63/16 65/6 68/21 76/6 78/14 78/22 79/9 84/12 85/14 87/11 89/24 90/5 91/1 91/15 93/7 96/15 98/11 104/5 104/12 106/13	other [31] 8/16 8/21 19/10 22/4 24/24 25/9 25/11 32/24 35/14 37/8 37/18 53/6 55/1 57/15 59/12 62/8 69/16 69/17 69/17 74/4 74/7 74/9 76/16 78/17 80/6 86/11 87/4 96/17 98/4 98/14 98/23	
mute [1] 32/16	NEVADA [104] 1/2 2/1 5/1 5/3 5/8 5/12 6/13 6/15 6/20 7/10 7/11 7/21 7/24 7/24 7/25 8/2 8/6 8/8 8/14 8/22 13/2 16/23 17/10 17/17 21/5 27/14 28/10 31/4 33/9 33/11 33/24 34/8 34/21 34/22 34/25 37/3 53/17 56/5 56/15 59/1 60/19 62/16 62/17 62/23 63/13 63/18 64/4 64/11 65/1 66/12 67/2 67/7 68/23 69/9 69/10 69/18 69/20 71/19 73/16 74/8 74/25 75/23 76/1 76/16 77/5 77/16 77/24 78/3 78/18 78/22 79/7 79/13 79/16 79/19 79/23 80/17 81/21 83/13 84/12 84/25 85/1 85/18 85/24 87/2 87/3 87/12 87/17 87/22 88/3 88/18 88/21 90/3 90/25 91/16 92/24 95/17 103/10 107/4 107/12 107/15 107/20 108/12 109/3 109/6	nowhere [4] 34/4 77/17 84/6 84/6	open [7] 45/9 66/11 66/15 90/4 90/9 97/12 103/20	otherwise [1] 41/22	
my [40] 13/17 19/15 20/22 21/10 23/8 32/19 32/19 42/22 43/3 43/12 43/17 44/7 44/19 45/3 47/10 48/14 51/7 51/7 51/8 51/10 52/19 53/14 59/10 59/19 61/2 62/14 85/7 91/15 91/22 92/21 96/20 103/12 104/9 104/10 104/22 108/13 108/25 109/14 110/1 110/18	NEVADA [104] 1/2 2/1 5/1 5/3 5/8 5/12 6/13 6/15 6/20 7/10 7/11 7/21 7/24 7/24 7/25 8/2 8/6 8/8 8/14 8/22 13/2 16/23 17/10 17/17 21/5 27/14 28/10 31/4 33/9 33/11 33/24 34/8 34/21 34/22 34/25 37/3 53/17 56/5 56/15 59/1 60/19 62/16 62/17 62/23 63/13 63/18 64/4 64/11 65/1 66/12 67/2 67/7 68/23 69/9 69/10 69/18 69/20 71/19 73/16 74/8 74/25 75/23 76/1 76/16 77/5 77/16 77/24 78/3 78/18 78/22 79/7 79/13 79/16 79/19 79/23 80/17 81/21 83/13 84/12 84/25 85/1 85/18 85/24 87/2 87/3 87/12 87/17 87/22 88/3 88/18 88/21 90/3 90/25 91/16 92/24 95/17 103/10 107/4 107/12 107/15 107/20 108/12 109/3 109/6	NRCP [1] 67/14	opening [2] 62/12 70/19	out [33] 8/6 11/21 14/18 17/13 22/5 29/20 30/13 30/20 31/5 31/13 32/23 35/16 37/20 38/5 47/10 63/12 63/23 67/14 68/14 69/1 77/3	
myself [1] 109/3	NEVADA [104] 1/2 2/1 5/1 5/3 5/8 5/12 6/13 6/15 6/20 7/10 7/11 7/21 7/24 7/24 7/25 8/2 8/6 8/8 8/14 8/22 13/2 16/23 17/10 17/17 21/5 27/14 28/10 31/4 33/9 33/11 33/24 34/8 34/21 34/22 34/25 37/3 53/17 56/5 56/15 59/1 60/19 62/16 62/17 62/23 63/13 63/18 64/4 64/11 65/1 66/12 67/2 67/7 68/23 69/9 69/10 69/18 69/20 71/19 73/16 74/8 74/25 75/23 76/1 76/16 77/5 77/16 77/24 78/3 78/18 78/22 79/7 79/13 79/16 79/19 79/23 80/17 81/21 83/13 84/12 84/25 85/1 85/18 85/24 87/2 87/3 87/12 87/17 87/22 88/3 88/18 88/21 90/3 90/25 91/16 92/24 95/17 103/10 107/4 107/12 107/15 107/20 108/12 109/3 109/6	NRS [7] 71/21 74/17 80/3 80/20 92/25 95/17 105/13	operates [1] 31/6		
N	never [9] 12/25 13/12 16/13 21/9 36/17 37/17 56/2 73/21 84/4	number [31] 9/24 10/13 14/30 28/25 36/11 56/25 57/4 57/22 58/1 58/3 54/22 65/11 96/6 66/7 66/7 66/8 66/9 67/13 69/13 71/2 81/16 84/25 85/1 85/1 86/2 90/23 90/21 92/3 93/14 107/25 107/25	operations [1] 66/9		
narrative [1] 42/15	never [9] 12				

O	partners [5] 82/7 82/9 82/11 82/11 82/22	pertinent [1] 31/3	98/4 98/8	28/15 28/17 28/19
out... [12] 79/12 82/1 84/23 87/21 92/18 93/15 96/20 97/2 100/5 100/8 100/23 108/21	partnership [1] 36/15	petition [2] 13/10 104/13	posttrial [3] 4/9 8/4 27/15	28/25 28/25 29/12 30/7 43/4 43/8 43/19 46/12 46/19 47/2 47/4 47/11 48/15 57/17 57/18 57/20 57/23 57/24 58/4 58/9
outcome [1] 86/7	parts [1] 47/7	Petitioner [1] 1/5	potential [2] 105/7 108/15	prices [1] 20/21
Outdoor [1] 76/18	pass [1] 63/18	PETITIONERS [1] 1/17	potentially [1] 60/1	prima [3] 31/6 31/11 31/12
outrageous [2] 80/22 86/17	past [2] 57/2 59/16	phase [1] 7/4	PR [2] 12/17 26/8	primarily [1] 32/18
over [10] 19/18 21/19 22/14 26/1 29/12 43/16 47/1 48/5 52/18 109/15	path [2] 104/5 104/18	Phil [1] 3/2	PR-OS [2] 12/17 26/8	prime [23] 7/13 7/14 11/5 11/10 12/1 15/2 15/4 15/17 15/17 19/7 20/1 21/9 25/25 27/3 34/21 36/19 37/19 45/16 55/22 56/2 56/3 57/14 60/20
overall [1] 41/9	Pause [2] 22/13 22/25	phoretic [1] 36/12	practice [1] 36/15	principals [1] 36/13
overlook [1] 96/7	pay [16] 7/7 20/6 58/16 63/12 64/7 74/4 78/25 79/15 84/8 87/25 89/3 106/24 107/5 107/9 107/17 107/24	phrasing [1] 76/25	pre [4] 78/6 78/11 78/13 90/21	principles [1] 87/7
overlooking [1] 52/12	paying [4] 28/6 88/13 89/1 89/13	physical [5] 16/9 17/6 26/14 38/9 39/3	pre-condemnation [4] 78/6 78/11 78/13 90/21	prior [3] 59/10 94/13 104/4
overruled [1] 74/10	payment [7] 32/9 91/20 103/9 103/17 104/22 104/24 107/13	physically [2] 15/6 15/7	precedent [2] 87/11 88/18	priority [1] 110/7
overwhelming [1] 24/12	Peccole [1] 21/24	picture [1] 21/3	precise [2] 8/22 33/19	probably [7] 29/3 71/10 71/23 98/16 100/16 102/1 109/15
own [2] 12/8 48/23	Peccoles [4] 21/24	piece [1] 8/5	preconcondemnation [5] 34/6 34/7 41/20 41/25 54/8	problem [4] 39/23 97/6 101/6 109/25
owner [48] 11/11 11/14 15/8 15/12 16/13 16/14 16/17 16/18 17/1 17/6 17/15 17/23 18/1 18/1 18/6 18/7 19/11 19/13 27/3 38/11 40/2 41/6 41/12 42/1 42/3 42/6 45/18 45/20 45/24 45/25 46/2 46/5 47/16 48/7 48/12 51/6 54/3 54/4 54/7 54/9 54/12 54/13 54/16 54/24 55/14 64/8 64/17 77/23	pecuniarily [1] 32/6	pile [1] 52/7	precondition [3] 107/5 107/14 108/2	proceeding [2] 37/11 74/17
owner's [2] 46/3 46/4	pending [3] 3/13 10/20 104/14	PISTOL [1] 80/18	predates [2] 74/8 74/9	proceedings [11] 1/8 6/23 22/13 22/25 23/17 31/20 78/15 78/16 107/15 110/14 110/17
owners [6] 16/7 16/12 16/24 17/2 17/19 38/15	Penn [1] 17/1	place [3] 8/8 19/17 94/15	preeminent [1] 85/10	proceeds [7] 5/17 6/5 34/16 36/16 36/20 37/1 58/25
Owners' [1] 68/25	people [1] 69/17	plaintiff [24] 1/13 1/15 2/7 2/10 3/6 3/14 3/15 4/1 27/10 30/16 31/20 33/2 37/16 37/21 55/20 61/13 78/20 84/1 101/10 103/14 104/2 104/3 106/16 106/22	prejudgment [47] 1/13 3/14 3/19 4/2 4/7 4/8 4/17 4/20 4/23 5/2 5/4 6/12 6/19 6/22 7/7 7/22 8/7 8/24 10/12 10/14 10/16 11/5 11/7 13/16 17/21 20/12 21/6 21/8 24/10 26/15 26/17 27/12 28/4 28/4 28/11 28/18 29/18 34/9 45/15 47/22 48/2 51/4 52/17 54/8 55/10 60/20 96/16	process [4] 10/4 88/10 93/9 110/1
P	per [12] 27/23 40/17 50/13 60/15 69/20 70/3 70/20 70/21 82/15 82/15 82/16 93/24	plaintiff and [1] 2/7	premise [2] 28/14 28/21	produce [1] 74/13
p.m [5] 2/1 23/17 23/17 102/12 110/14	percent [44] 6/11 7/13 7/14 9/3 9/5 10/2 10/7 10/10 10/18 11/5 11/10 12/1 13/17 13/18 15/2 15/4 15/17 15/17 19/7 19/18 20/2 21/3 21/9 25/25 27/3 27/19 37/19 38/1 39/12 40/17 45/16 52/9 55/22 56/2 56/3 56/14 56/21 59/5 60/15 60/21 63/14 63/16 63/17 88/15	plaintiff's [2] 102/23 103/4	preparation [1] 96/12	produced [1] 25/13
page [12] 31/3 33/6 91/23 92/9 92/12 92/15 92/16 94/5 94/8 94/8 94/19 95/22	perfect [6] 37/15 37/16 37/21 37/22 49/16 49/25	Plan [1] 21/25	prepared [2] 35/20 106/6	profit [15] 13/18 13/18 14/14 14/14 16/3 19/24 19/25 20/7 26/19 26/24 35/15 35/16 41/4 48/3 52/9
page 718 [2] 31/3 33/6	performed [1] 88/2	planned [1] 72/18	preponderance [1] 45/7	profitable [2] 19/1 20/4
paid [31] 5/18 5/23 6/3 8/17 11/17 11/18 11/20 18/22 19/1 21/21 25/19 25/20 28/9 28/12 29/4 33/14 34/7 34/8 34/15 43/5 46/2 50/14 50/15 58/18 79/17 83/14 83/17 83/18 84/8 91/24 107/3	perhaps [1] 3/18	pleadings [1] 61/23	present [3] 6/22 74/16 78/5	profits [2] 39/8 51/9
parcel [2] 58/11 77/2	period [26] 5/16 6/5 8/16 9/4 9/6 9/18 9/24 10/6 14/1 15/24 15/25 28/12 31/7 31/17 35/25 40/14 43/24 52/18 52/19 54/20 56/18 57/6 58/24 104/24 105/5 105/22	plenty [1] 100/21	presented [12] 33/6 33/18 33/19 34/19 36/10 38/18 44/10 53/21 60/9 61/8 66/5 89/21	program [7] 65/18 72/7 72/8 72/9 72/11 73/12 74/1
park [1] 90/9	permissible [1] 31/9	plus [27] 7/13 7/14 11/5 11/10 12/1 12/18 15/2 15/4 15/17 15/17 19/7 21/9 25/25 27/3 34/21 36/19 37/19 45/13 45/22 55/22 56/2 56/3 57/14 60/20 92/2 96/6 96/8	pretend [1] 37/13	programs [2] 72/5 72/14
parks [3] 66/11 66/15 90/4	permit [4] 42/12 44/13 53/24 61/10	PMK [3] 29/6 29/7 29/13	pretrial [1] 28/24	prohibition [2] 107/15 107/20
Parkway [1] 47/8	permitted [2] 26/7 30/7	PMKs [2] 29/14 29/15	pretty [12] 5/12 31/21 54/14 62/2 72/22 77/10 77/10 77/19 79/10 81/19 81/22 82/9	project [35] 13/25 15/8 15/8 18/22 35/16 41/18 72/7 72/10 72/11 72/16 72/18 72/20 73/12 73/13 74/1 74/6 75/2 75/3 75/3 75/12 75/13 75/14 75/14 75/15 75/15 76/16 77/2 77/7 77/9 89/9 89/11 89/13 89/18 89/19 89/20
part [15] 4/17 5/2 5/5 5/6 12/12 17/8 34/10 62/25 69/2 72/16 80/12 86/22 86/24 89/18 91/19	person [2] 57/19 57/19	point [17] 30/13 30/20 31/13 42/22 43/3 47/10 48/14 53/4 61/22 64/6 85/3 86/12 87/15 96/19 103/18 105/25 108/21	prevail [1] 78/20	projects [2] 72/6 72/15
participated [1] 77/17	personally [2] 23/12 71/8	pointed [1] 79/11	prevailed [2] 77/22 78/7	
particular [2] 37/9 77/2	perspective [5] 29/24 61/14 105/21 106/5 108/9	policies [2] 71/16 74/22	prevails [5] 64/1 64/6 64/13 65/1 90/24	
particularly [1] 19/1	pertained [1] 59/11	policy [4] 5/24 87/21 88/7 88/16	prevent [1] 73/9	
parties [2] 1/10 25/8	pertains [3] 31/23 46/20 61/15	Polsonberg [1] 109/12	price [35] 22/4 24/7 24/11 24/14 24/20 24/24 25/2 25/4 25/5 25/11 25/11 25/14	
		portion [4] 12/9 12/22 36/13 74/15		
		position [9] 5/10 7/18 26/24 27/5 32/5 44/21 49/5 92/25 106/14		
		possession [12] 15/6 15/7 15/11 15/15 16/10 16/14 17/6 17/7 28/8 38/11 39/3 41/17		
		post [4] 43/24 74/9		

P	pursuant [11] 37/25 56/21 67/14 68/1 92/23 92/24 94/22 95/16 104/21 105/10 108/16 pushed [1] 109/7 put [9] 5/9 7/17 15/21 15/23 15/24 21/16 22/22 27/4 32/5 puts [1] 82/13	26/5 26/9 26/9 27/1 30/13 31/2 31/13 31/23 32/12 38/13 44/12 44/18 53/4 53/15 61/15 69/22 69/23 77/11 80/14 102/25 105/6 reargues [1] 57/16 rearguing [1] 103/2 reason [10] 11/14 16/13 42/14 53/15 54/13 55/10 77/20 89/23 103/7 106/13 reasonable [30] 44/13 44/14 53/25 54/2 54/11 56/7 56/8 56/17 56/20 60/2 60/10 60/11 60/14 61/11 62/21 64/19 67/12 68/6 71/13 80/15 81/14 81/16 81/22 81/23 82/24 83/21 84/13 85/21 86/1 93/15 reasonableness [1] 82/6 reasonably [2] 56/13 93/14 reasons [7] 29/17 30/6 38/15 56/25 65/11 79/22 85/9 REBECCA [2] 1/23 3/1 recall [1] 34/10 receive [7] 28/1 56/6 72/13 73/5 73/15 73/22 74/2 received [10] 6/17 12/15 26/9 48/4 70/22 73/2 74/14 75/2 89/9 89/13 receives [12] 65/16 66/8 66/8 66/10 66/13 66/21 73/13 73/15 75/23 89/22 89/25 90/1 receiving [4] 65/18 66/1 66/3 72/11 recent [3] 77/4 77/4 79/3 recess [2] 23/10 23/16 recessed [1] 23/17 recognize [1] 109/9 recollection [3] 59/19 61/2 104/22 recommend [1] 97/21 reconnect [1] 23/11 reconsideration [1] 106/7 record [14] 22/6 23/9 23/13 23/22 29/23 30/21 30/24 32/14 34/13 45/6 53/18 96/14 102/9 102/10 recorded [2] 1/24 67/23 RECORDER [1] 1/24 records [1] 67/16 recover [6] 67/22 71/15 87/8 87/9 89/20 93/12 recovered [1] 4/5 recovers [1] 62/24 recovery [1] 62/13 reduce [4] 59/18 59/23	86/6 86/8 reduced [1] 59/19 refer [1] 71/17 reference [1] 9/7 referenced [1] 9/12 references [1] 83/4 referred [4] 9/19 31/8 37/11 37/12 referring [1] 105/13 refers [2] 78/14 105/13 refile [1] 13/5 refiled [1] 13/6 reflect [1] 57/24 regard [2] 29/24 32/24 regarding [13] 4/12 46/21 59/16 62/9 75/8 92/22 98/4 98/14 102/23 104/6 104/6 105/6 106/10 Regional [1] 76/17 regulate [1] 16/12 regulation [8] 16/7 16/24 17/2 17/19 38/15 72/3 72/13 76/25 regulations [3] 71/25 76/5 76/20 regulatory [2] 16/6 27/22 Rehfeldt [1] 83/7 reimburse [1] 65/24 reimbursed [2] 63/19 64/9 reimbursement [7] 63/21 64/23 65/2 66/23 67/1 90/10 90/13 reinvested [2] 36/6 36/20 rejected [4] 73/20 75/6 75/24 109/22 related [2] 1/10 77/8 relates [2] 92/25 105/8 relationship [1] 59/22 relative [2] 102/22 104/18 relatively [1] 61/1 release [2] 24/21 24/22 relevancy [1] 30/2 relevant [19] 8/16 9/4 9/5 9/18 9/24 10/6 30/10 35/25 43/8 43/19 46/13 46/20 46/23 48/20 49/1 56/18 57/6 81/23 81/24 relied [3] 8/14 33/24 48/17 relief [6] 103/6 104/2 104/6 105/20 106/3 106/17 relies [3] 28/17 57/4 57/5 Relocation [20] 63/25 68/4 71/18 71/18 71/22 72/5 72/25 73/18 73/23 74/21 75/7 75/9 76/21 77/9 77/12 80/17 89/6 89/23 92/23 95/16 relying [2] 57/10 77/14 remand [1] 13/7 remanded [1] 34/22	remedy [5] 27/25 28/2 28/3 28/3 28/5 remember [6] 29/25 41/16 47/8 90/7 100/7 105/18 remote [2] 58/4 58/10 rendered [1] 64/10 rendition [2] 34/12 41/13 repeated [2] 29/3 64/20 repeatedly [2] 37/11 37/12 replace [1] 16/19 reply [5] 36/11 70/16 70/19 92/9 94/8 report [19] 9/1 9/2 9/3 9/4 9/7 9/12 9/19 56/10 56/19 61/16 70/9 82/2 82/2 82/6 84/16 84/16 84/20 84/23 84/25 Reporter [1] 31/4 REPORTING [1] 1/25 reports [3] 8/19 9/2 35/20 representing [1] 11/2 reputation [2] 85/15 86/5 request [8] 10/14 37/24 59/4 63/5 70/13 71/3 108/19 109/9 requested [4] 25/6 59/15 85/13 94/22 requesting [3] 80/25 82/14 82/20 require [2] 4/16 63/11 required [5] 44/16 45/1 66/18 104/24 106/24 requirement [3] 21/12 66/1 107/24 requirements [1] 72/13 requires [3] 32/5 39/11 107/13 requiring [2] 51/14 107/17 resales [2] 9/13 10/5 research [2] 21/10 56/12 reservation [1] 100/6 resold [2] 9/16 9/23 resolve [1] 4/17 resolved [1] 4/9 respect [2] 82/19 108/14 respected [1] 9/9 respectfully [4] 37/24 59/4 63/5 71/3 respects [2] 30/18 108/25 respond [2] 79/11 80/21 Respondent [2] 1/9 1/21 restrain [1] 107/16 result [4] 21/16 34/3 51/17 109/2 resulted [1] 17/20 return [53] 4/21 5/4 5/9 5/15 5/22 6/9 6/11 7/9
----------	--	--	--	--

R	S			
return.... [45] 7/15 7/16 7/23 8/3 8/3 8/9 8/24 9/3 9/5 9/10 10/1 10/7 10/9 10/11 10/18 14/7 14/21 16/3 19/7 19/22 27/12 27/18 28/20 33/17 33/20 35/22 35/24 37/4 37/9 37/19 37/25 38/2 40/5 41/2 41/3 54/18 54/19 54/19 56/18 56/25 57/1 57/5 59/5 60/8 69/24	said [56] 5/15 7/25 8/2 8/10 13/2 13/4 13/23 14/5 14/15 15/16 16/2 21/7 22/11 25/5 28/10 31/14 32/1 33/19 35/2 36/5 41/14 41/21 46/4 48/16 49/5 49/7 49/9 50/2 52/13 54/4 54/17 55/21 56/4 56/6 59/1 60/14 60/14 64/15 64/16 66/5 67/7 71/2 73/24 73/24 75/7 77/23 77/25 78/1 79/14 81/6 81/15 85/25 94/25 103/8 103/24 107/13 sale [7] 21/23 46/11 46/13 48/19 49/14 49/22 57/19 sales [10] 9/13 9/19 10/5 20/20 46/9 46/9 48/17 49/1 49/12 49/18 same [29] 5/10 7/18 10/4 20/24 27/4 29/17 40/16 48/20 49/14 49/15 49/16 49/16 49/17 49/17 49/18 50/2 50/3 56/20 62/3 64/19 70/3 74/23 77/6 77/20 87/7 88/19 89/7 89/24 97/14 Sarah [1] 23/5 say [62] 2/3 6/21 6/24 14/13 15/18 16/1 19/10 19/19 20/8 20/22 20/24 22/8 26/13 26/16 35/17 36/1 36/20 40/7 40/16 40/18 48/2 48/20 48/22 49/3 49/6 49/21 49/23 50/11 50/23 51/2 51/5 51/7 52/14 58/12 64/1 65/5 65/8 65/20 75/19 75/25 76/9 78/4 78/8 81/2 81/9 81/17 84/7 85/5 85/20 86/24 88/7 91/3 93/3 93/7 93/8 93/17 93/17 101/1 105/4 105/5 106/2 109/19 saying [16] 5/19 11/9 19/4 26/4 27/22 40/1 43/12 51/24 59/9 59/14 59/24 75/1 88/3 96/16 100/23 109/3 says [36] 7/11 7/12 17/24 18/11 26/17 33/13 41/5 42/7 47/14 55/24 56/12 61/6 61/6 61/9 61/11 62/19 64/6 64/8 64/22 65/22 72/4 72/13 72/24 74/12 74/21 74/23 81/3 86/17 86/23 91/4 91/25 93/11 93/13 104/17 105/16 107/4 scenario [1] 61/12 scheme [1] 109/1 Schneider [2] 70/24	82/13 school [1] 76/11 Schools [1] 76/3 SCHWARTZ [17] 1/22 2/22 11/2 23/4 23/21 23/25 24/4 32/25 36/7 38/5 44/20 48/25 49/2 56/23 99/15 100/1 101/8 Schwartz's [2] 28/14 58/15 se [1] 27/23 search [1] 81/10 second [13] 3/15 14/13 29/21 63/22 71/12 71/13 72/11 77/21 80/14 107/11 107/12 107/16 108/1 secondly [5] 6/2 8/3 30/15 84/20 87/18 seconds [1] 91/13 section [17] 62/18 63/18 63/21 64/8 69/6 71/13 71/25 72/3 72/4 72/23 76/4 76/6 77/15 77/13 78/3 79/23 91/16 Section 24.101 [1] 72/4 see [9] 3/12 47/12 61/5 65/13 82/4 92/12 94/19 97/14 98/2 seek [7] 103/10 103/18 103/21 104/3 104/12 106/17 107/10 seeking [8] 13/15 19/24 67/22 103/6 103/16 104/5 104/19 106/1 seems [3] 20/11 21/19 102/1 seen [1] 7/1 segment [2] 11/20 12/7 seller [2] 24/25 29/6 sending [1] 35/8 sense [3] 23/8 87/18 88/13 sent [2] 26/4 35/3 seriously [2] 13/13 25/23 set [34] 2/6 17/25 22/6 23/9 23/22 28/2 28/3 30/25 31/24 32/14 37/13 41/1 41/5 41/21 66/21 67/23 68/2 68/13 70/13 70/18 70/19 71/5 88/17 94/8 95/22 96/14 97/23 97/20 98/15 99/2 99/23 101/19 102/11 106/11 sets [2] 53/17 77/3 setting [3] 40/24 47/15 98/3 seven [5] 10/5 21/25 24/15 24/24 67/19 Seventh [4] 76/2 76/2 76/4 76/9 shall [9] 7/11 7/12 62/23 64/7 64/8 64/23 91/5 91/6 91/17	sharing [1] 110/1 she [6] 36/12 37/20 83/7 83/15 83/16 84/10 she's [1] 23/6 shielded [1] 78/21 shields [1] 78/24 shocks [1] 51/19 shoe [1] 51/8 shortening [1] 109/21 should [35] 3/17 4/21 4/23 5/14 5/18 7/15 7/16 8/23 10/11 10/14 10/16 10/18 11/9 28/1 29/17 32/21 44/2 44/9 48/4 51/24 53/19 57/14 59/5 61/7 67/2 68/18 70/3 71/20 77/10 80/14 81/1 88/8 100/17 102/6 109/12 show [12] 25/16 27/3 38/15 40/2 40/2 65/9 66/7 68/10 68/18 75/1 75/11 77/8 showed [2] 65/7 82/6 showing [2] 53/3 75/13 shows [4] 9/14 60/16 60/16 91/25 shred [2] 25/13 27/17 side [2] 80/6 94/21 sight [1] 39/5 signal [1] 34/24 signed [2] 25/7 103/13 significant [2] 46/1 59/15 significantly [1] 6/19 signs [1] 106/15 similar [17] 8/13 8/18 9/10 9/15 9/20 15/13 33/15 33/22 34/18 35/23 37/6 49/12 49/13 70/1 70/6 70/14 90/15 simple [1] 77/11 simply [8] 58/3 73/18 74/5 74/21 74/24 80/13 87/15 93/25 since [10] 40/18 47/7 58/13 74/13 87/16 94/9 94/15 94/17 94/24 96/1 single [2] 25/14 25/16 sir [25] 3/24 10/22 22/5 22/21 23/1 23/23 27/7 38/6 45/8 46/15 51/23 52/11 52/14 55/17 62/10 71/6 83/3 83/22 91/10 99/19 100/2 100/11 102/13 102/18 110/6 Sisolak [71] 6/15 6/16 6/17 26/13 26/21 35/13 52/16 52/20 53/2 63/23 63/24 64/5 64/12 64/15 64/16 64/25 65/5 65/6 69/19 69/25 70/2 70/2 70/6 70/7 70/9 70/10 70/11 70/13 70/14 70/22 71/1 72/22 72/23 72/25 73/11 73/20 73/20 73/21 74/8 74/9 74/9 74/10 74/25 75/4	75/17 83/4 83/6 83/7 83/20 84/2 84/3 85/2 85/4 85/5 85/14 86/11 87/21 87/22 88/17 89/8 89/14 89/14 89/16 89/20 90/14 90/17 91/2 93/24 94/1 94/2 94/22 Sisolak's [3] 85/7 85/8 89/17 sit [2] 61/2 62/5 situation [4] 37/15 55/5 55/6 89/14 situations [1] 77/1 six [1] 109/15 skill [3] 68/19 69/11 86/5 small [1] 36/13 SNPLMA [2] 66/13 66/13 so [197] sold [4] 9/16 9/23 24/13 49/25 solely [3] 67/20 68/22 68/24 some [30] 14/4 15/19 17/15 17/21 18/2 18/12 18/13 26/20 31/2 38/4 39/7 39/9 39/9 42/23 46/12 47/7 47/17 59/21 65/9 65/17 66/17 76/15 80/5 89/18 90/19 96/19 104/17 106/1 106/1 109/13 somebody [3] 32/16 80/5 109/12 something [12] 14/22 22/22 25/25 46/25 48/12 50/18 53/7 77/17 81/10 99/10 106/1 109/16 sometimes [1] 46/25 soon [1] 98/19 sophisticated [1] 24/17 sorry [11] 2/14 2/14 24/5 30/25 66/19 92/18 92/18 97/25 101/8 102/10 104/1 sort [3] 59/21 73/25 109/13 sought [1] 105/20 sound [3] 81/7 93/19 93/22 sounds [1] 99/4 source [1] 62/16 sources [3] 9/25 62/12 62/14 Southern [3] 66/12 73/16 90/2 space [4] 66/11 66/15 90/4 90/9 SpaceX [1] 19/15 special [1] 98/3 specialized [8] 68/20 69/14 70/22 70/25 84/18 84/19 85/13 90/16 specializes [2] 68/22 84/13

S	41/6 41/11 44/9 48/11 51/24 52/2 52/6 52/20 52/25 53/19 54/11 54/15 61/7 105/7 109/1	76/8	tenable [3] 103/21 103/24 104/1	79/5 81/16 85/22 86/2 86/10 91/13 91/17 91/21 93/17 93/20 94/21 95/25 97/13 103/24
specializing [1] 85/15	stay [15] 102/23 103/10 103/16 103/18 103/21 104/7 104/13 104/18 104/19 105/5 105/6 106/8 107/10 107/21 109/5	supreme [73] 5/1 5/8 5/13 5/15 6/13 6/15 6/20 7/24 7/24 7/25 8/2 8/8 8/14 8/22 13/2 17/12 17/17 26/15 27/14 28/10 30/25 33/9 33/11 33/24 34/9 34/21 34/22 34/25 37/3 53/17 56/5 56/16 59/1 59/20 64/4 64/11 67/2 67/7 69/13 69/18 69/20 74/8 74/25 75/23 76/1 76/17 77/5 78/18 78/23 83/13 85/13 85/24 87/2 87/3 87/17 87/22 88/3 88/18 88/21 103/6 103/11 103/20 104/15 104/19 105/4 106/2 106/17 107/13 107/20 108/5 108/17 109/4 109/6	tenants [16] 14/1 14/4 14/7 14/17 14/18 34/2 34/3 34/12 41/14 41/20 42/1 54/4 54/19 54/21 55/2 55/4	there [91] 3/21 4/11 4/14 9/22 10/10 10/10 11/4 11/13 13/23 14/13 15/5 15/15 16/22 17/10 17/14 21/20 22/7 23/3 23/25 24/3 26/17 26/21 26/23 27/23 28/16 29/9 30/11 38/16 38/17 41/10 43/3 43/18 45/10 46/11 53/3 54/10 54/22 56/8 59/7 59/12 65/7 65/12 65/16 66/17 71/11 71/12 71/14 72/15 73/21 73/22 73/24 73/25 74/19 75/1 75/2 75/3 75/7 75/14 75/17 75/18 76/12 76/19 76/20 77/23 78/10 79/5 80/11 84/2 84/11 84/17 85/23 85/23 88/3 89/8 89/11 89/19 91/10 91/12 93/9 93/12 94/20 95/7 95/24 95/24 100/12 104/14 104/15 105/20 106/14 108/4 108/15
specialties [1] 69/17	Stew [14] 75/5 75/5 75/10 75/24 75/25 76/17 77/5 77/21 78/1 78/23 90/18 90/19 90/20 90/23	sure [16] 23/6 29/22 29/23 35/1 44/18 44/21 49/3 49/3 49/5 52/12 83/6 91/15 94/6 94/23 95/13 96/2	test [8] 5/8 8/11 11/6 13/19 13/19 48/9 48/10 55/13	text [1] 30/23
specific [12] 6/6 31/1 33/23 44/19 67/2 69/22 73/21 73/24 75/18 90/2 90/5 93/9	stick [1] 51/24	survey [2] 9/9 9/9	than [41] 4/5 6/16 6/19 11/14 19/7 21/9 21/21 25/11 27/3 30/3 41/6 41/11 41/22 43/11 43/16 45/6 45/17 48/11 50/14 52/6 52/17 52/25 54/10 54/15 54/19 56/1 57/15 59/22 60/20 70/7 70/21 70/25 84/21 85/7 86/11 86/15 86/18 88/1 88/1 88/23 93/22	testified [1] 33/13
specifically [7] 33/7 44/14 66/11 67/20 73/6 82/3 105/8	stiff [7] 12/19 17/19 22/19 26/1 26/3 26/6 38/20	system [1] 76/12	testify [1] 58/2	testimony [2] 60/8 75/8
speculate [2] 15/20 39/11	stock [4] 15/22 19/16 40/17 40/19	Systems [1] 76/18	text [1] 30/23	than [41] 4/5 6/16 6/19 11/14 19/7 21/9 21/21 25/11 27/3 30/3 41/6 41/11 41/22 43/11 43/16 45/6 45/17 48/11 50/14 52/6 52/17 52/25 54/10 54/15 54/19 56/1 57/15 59/22 60/20 70/7 70/21 70/25 84/21 85/7 86/11 86/15 86/18 88/1 88/1 88/23 93/22
speculation [5] 21/1 39/12 39/18 40/24 51/15	stocks [2] 15/24 37/18	T	thank [23] 3/25 22/21 23/15 27/6 27/7 27/9 33/1 38/7 55/17 55/19 59/8 60/21 62/7 62/11 71/6 71/8 83/22 83/23 100/10 101/22 110/6 110/12 110/13	that [758]
speculative [19] 15/19 15/21 16/4 18/3 18/13 19/20 19/25 20/8 20/23 26/20 26/25 40/7 40/16 40/22 48/6 48/9 51/1 56/24 56/25	straight [3] 44/7 53/16 109/6	take [14] 7/3 15/18 20/17 23/10 23/11 23/13 29/10 44/19 50/8 65/23 88/13 88/25 89/12 105/4	that's [166]	their [32] 8/17 18/15 20/16 21/14 35/20 37/17 38/19 48/23 50/5 53/9 55/12 63/20 64/2 64/9 64/10 64/14 65/2 65/25 66/23 70/9 71/20 78/25 79/13 80/2 80/25 83/18 87/8 87/9 88/6 90/13 91/1 109/8
spending [1] 44/4	straightforward [1] 10/14	taken [24] 5/11 6/2 7/19 7/23 8/4 19/4 32/7 32/13 34/18 35/11 35/12 40/19 52/24 66/17 66/19 66/20 69/9 69/9 83/15 89/10 89/11 90/7 90/8 105/19	that's [166]	them [23] 13/9 19/7 26/4 26/10 29/7 37/12 42/4 50/6 50/7 53/9 55/11 64/1 68/14 68/17 92/12 93/2 96/20 98/15 98/19 102/5 107/17 109/23 109/23
spent [7] 21/18 50/8 67/22 80/1 81/16 93/14 96/12	street [1] 75/3	takes [1] 107/1	that's [166]	then [55] 2/7 3/23 7/12 7/23 9/22 9/24 13/2 13/4 13/11 15/22 17/20 25/18 30/17 32/25 33/16 34/7 35/4 36/19 40/18 41/4 42/1 43/8 52/14 53/24 54/9 58/6 58/23 58/23 59/14 61/12 64/25 66/9 68/5 70/5 71/19 75/3 75/21 76/9 77/3 77/9 78/4
split [1] 87/14	stress [1] 101/25	taking [37] 5/18 6/3 6/18 16/6 16/23 16/24 17/3 17/12 17/18 17/20 17/23 18/2 26/14 27/23 27/23 28/6 30/9 30/12 38/15 43/18 43/20 43/25 46/22 47/3 47/21 48/1 48/1 48/5 48/13 51/5 65/8 65/10 65/14 65/15 83/12 90/2 100/5	that's [166]	there [91] 3/21 4/11 4/14 9/22 10/10 10/10 11/4 11/13 13/23 14/13 15/5 15/15 16/22 17/10 17/14 21/20 22/7 23/3 23/25 24/3 26/17 26/21 26/23 27/23 28/16 29/9 30/11 38/16 38/17 41/10 43/3 43/18 45/10 46/11 53/3 54/10 54/22 56/8 59/7 59/12 65/7 65/12 65/16 66/17 71/11 71/12 71/14 72/15 73/21 73/22 73/24 73/25 74/19 75/1 75/2 75/3 75/7 75/14 75/17 75/18 76/12 76/19 76/20 77/23 78/10 79/5 80/11 84/2 84/11 84/17 85/23 85/23 88/3 89/8 89/11 89/19 91/10 91/12 93/9 93/12 94/20 95/7 95/24 95/24 100/12 104/14 104/15 105/20 106/14 108/4 108/15
St. [1] 47/8	strong [1] 5/24	talk [2] 19/21 81/20	that's [166]	thereafter [2] 97/4 97/11
St. Rose [1] 47/8	stronger [1] 12/3	talking [4] 49/4 91/8 97/15 99/12	that's [166]	therefore [13] 14/20 63/5 65/14 73/17 78/7 79/16 84/12 87/7 88/5 89/22 90/9 90/23 91/19
stage [1] 31/20	Sturman [1] 13/7	tangentially [1] 75/6	that's [166]	these [24] 7/8 33/19 36/5 36/6 38/8 40/11 48/5 49/1 51/9 63/19 64/10 77/6 79/7 79/8 80/21 81/13 81/17 82/3 82/23 86/3 92/1 93/9 96/21 107/22
stamp [1] 56/11	subclause [1] 62/18	targeted [1] 86/4	that's [166]	they [102] 6/21 8/23 7/1 9/14 13/6 13/19 14/5 17/10 18/15 18/16 19/4 19/5 19/8 19/8 19/8 19/10 19/16 19/17 20/8 20/8 20/17 21/13 21/17 24/23 25/5 25/19 25/22 26/6 26/7 26/9
standard [12] 4/3 10/2 11/6 11/8 18/6 39/5 42/5 45/7 53/15 56/15 58/20 58/21	subject [4] 48/2 49/12 49/14 74/16	task [1] 45/23	that's [166]	
standing [1] 87/11	submarket [1] 82/18	tax [1] 38/19	that's [166]	
star [1] 2/13	submit [4] 61/23 77/10 80/8 93/25	taxpayers [1] 43/1	that's [166]	
Stars [1] 2/16	submitted [3] 103/4 103/4 106/16	tell [6] 46/15 49/9 60/22 96/2 96/5 102/4	that's [166]	
start [4] 2/7 71/22 84/2 91/24	subpart [1] 72/14	telling [3] 74/7 77/19 102/24	that's [166]	
starting [1] 86/12	subsection [5] 71/19 71/21 72/12 77/15 78/3		that's [166]	
starts [2] 31/5 93/10	subsequent [1] 92/7		that's [166]	
state [19] 8/1 17/11 32/22 38/14 55/24 59/20 63/13 64/25 64/25 68/22 69/1 74/20 76/23 87/11 90/25 107/11 107/12 107/14 107/15	substantial [4] 6/22 35/5 45/6 76/10		that's [166]	
stated [14] 29/10 31/24 32/4 33/25 34/20 57/20 67/15 71/13 76/20 84/5 84/10 87/5 89/19 108/4	substantially [1] 20/11		that's [166]	
statement [2] 38/22 91/15	substantive [1] 108/15		that's [166]	
statements [1] 36/2	successful [1] 64/17		that's [166]	
states [5] 5/3 25/11 55/24 62/18 91/16	succinctly [1] 64/16		that's [166]	
status [2] 96/21 98/17	such [7] 33/16 60/15 60/15 78/2 84/7 86/20 109/8		that's [166]	
statute [11] 4/10 7/10 7/11 11/10 55/24 74/19 75/21 76/4 104/22 104/25 108/16	sue [1] 88/14		that's [166]	
statutes [6] 4/16 19/21 28/3 108/10 108/12 108/13	sum [2] 59/23 106/25		that's [166]	
statutory [25] 4/7 4/8 11/15 26/22 31/6 31/8 31/11 31/17 32/4 39/25	sums [5] 59/15 59/17 74/4 76/10 104/4		that's [166]	
	support [2] 9/24 25/7		that's [166]	
	supported [2] 45/5 80/10		that's [166]	
	supporting [3] 44/10 53/21 61/8		that's [166]	
	supports [2] 26/23		that's [166]	

T	though [1] 53/14 thought [7] 19/16 22/11 59/10 59/10 100/22 108/22 110/1 thoughts [2] 32/24 96/19 three [12] 4/8 16/22 17/10 43/16 51/4 56/24 62/12 71/14 82/20 85/1 95/15 100/23 through [21] 7/5 8/25 9/1 34/5 37/11 38/15 62/4 67/11 68/12 71/24 73/16 88/10 90/8 93/11 104/13 104/20 105/2 105/11 106/8 106/14 106/23 throw [1] 32/23 THURSDAY [2] 1/12 98/3 tied [1] 90/6 Tien [2] 67/5 69/8 time [46] 5/18 7/20 10/22 16/14 18/2 18/24 19/4 19/12 19/22 21/19 23/12 30/3 30/9 41/2 41/24 43/20 43/24 44/5 44/19 46/21 47/3 47/21 51/4 52/18 52/19 58/24 60/18 61/23 62/1 65/19 80/1 83/14 95/6 96/12 97/5 97/14 98/15 102/1 102/8 103/10 104/21 104/23 105/5 105/13 105/22 109/21 timely [1] 34/15 times [27] 11/16 11/24 12/5 14/25 18/8 21/14 25/19 25/21 26/1 29/3 35/11 40/14 46/2 46/3 47/4 47/4 50/5 51/17 53/9 55/7 69/20 82/20 82/21 84/11 86/2 98/23 109/21 TIMOTHY [1] 1/11 title [2] 41/17 71/24 today [12] 35/1 36/3 36/9 36/25 43/18 47/9 62/15 69/23 95/10 96/12 96/12 99/22 told [1] 35/4 too [6] 6/13 32/24 48/9 49/24 49/24 58/4 took [15] 13/23 15/6 15/7 15/11 15/14 15/15 16/9 17/5 29/5 38/11 41/17 41/17 73/7 83/7 94/2 top [2] 34/8 52/8 topography [1] 49/17 total [5] 68/2 68/3 91/25 92/3 96/3 totals [1] 92/2 towards [1] 86/4 TRAN [1] 1/1 transaction [7] 24/18 24/19 29/9 49/9 49/21 57/24 58/4 transcribed [2] 1/25	110/17 Transcriber [2] 110/21 110/23 TRANSCRIPT [1] 1/8 Transportation [1] 76/17 trial [14] 7/6 25/4 30/3 30/24 32/20 50/21 53/22 96/21 98/6 98/7 98/15 98/18 99/2 102/4 trials [2] 98/8 99/4 tried [3] 42/19 84/15 88/25 tries [3] 57/18 88/13 89/12 trigger [1] 75/21 triple [1] 55/11 tripling [1] 55/12 true [8] 6/25 18/14 20/13 28/23 34/22 65/11 80/13 84/3 truly [3] 30/10 108/21 110/16 try [4] 80/12 87/14 98/19 99/1 trying [4] 47/10 47/18 88/6 104/17 Tuesday [3] 97/18 99/5 99/13 turn [1] 86/21 turned [1] 100/23 twelve [9] 68/11 68/12 68/13 68/16 81/9 85/19 86/3 86/3 93/20 twice [4] 6/14 50/14 69/13 82/17 two [43] 3/13 4/11 4/13 4/15 8/19 24/16 30/14 31/13 33/19 34/21 35/13 36/19 37/8 38/22 44/23 49/22 49/22 51/3 57/4 57/14 58/1 62/14 64/4 64/20 65/11 66/22 67/9 71/11 72/5 74/7 76/1 85/1 87/12 90/21 92/13 98/12 99/2 99/4 103/19 105/18 106/16 107/23 108/1 two months [1] 38/22 two weeks [2] 98/12 105/18 two-week [2] 99/2 99/4 type [10] 8/8 20/17 33/11 35/1 36/18 37/18 65/9 66/17 72/11 90/19 types [3] 40/6 72/5 82/3 typical [1] 86/18 typically [3] 48/8 84/24 86/14 U U.S.C [1] 64/5 ultimate [2] 46/20 109/1 ultimately [5] 15/3 15/15 30/8 44/22 76/23 unchallenged [4] 44/9 53/23 61/7 61/22	uncle's [3] 51/7 51/8 51/9 unclear [1] 91/4 unconscionable [1] 52/7 under [36] 12/22 21/1 28/10 32/13 32/20 54/9 55/13 58/15 60/4 63/6 66/11 66/13 71/15 71/21 72/12 76/20 78/8 80/3 81/2 85/21 86/22 87/19 88/11 90/2 90/11 90/14 91/1 91/2 93/1 95/15 96/21 104/25 105/22 106/24 107/25 108/1 understand [26] 30/1 30/4 31/18 44/5 44/6 44/21 49/5 52/11 61/14 61/25 92/24 94/7 95/13 96/20 96/23 101/24 103/1 103/12 104/8 105/12 107/7 108/15 108/19 108/23 108/24 109/23 understanding [3] 45/3 52/19 103/16 understands [1] 30/2 understood [1] 85/24 undisputed [1] 4/11 Unfortunately [1] 98/2 unheard [1] 58/13 Uniform [15] 71/15 71/17 71/22 72/4 73/17 73/23 74/20 74/20 75/7 76/21 77/9 77/12 80/17 92/23 95/16 unique [2] 67/4 105/6 units [3] 12/7 12/18 42/12 unjust [2] 21/16 51/16 unless [8] 10/13 11/10 40/1 40/2 53/7 77/7 77/7 103/18 unreasonable [1] 87/16 unrefuted [1] 52/5 unsuccessful [1] 78/5 until [5] 23/17 47/21 104/23 105/23 107/2 up [32] 7/23 15/25 16/21 34/1 34/11 34/12 37/22 40/17 41/22 41/23 45/9 47/21 51/16 55/2 67/20 67/25 69/9 69/9 81/10 81/12 83/13 85/6 85/17 92/2 92/19 94/10 94/11 94/13 98/17 103/24 109/2 109/14 upon [32] 7/23 8/4 8/14 9/25 27/16 27/19 28/17 32/13 33/5 33/24 34/17 35/10 36/10 56/17 57/1 57/4 57/5 61/23 61/24 67/13 71/4 71/5 81/9 86/17 93/20 94/16 94/25 95/20 95/21 96/3 99/3 103/9	upward [2] 81/12 86/11 urgency [2] 108/19 109/9 us [6] 4/16 23/4 24/4 33/20 36/25 99/20 usage [1] 44/1 use [27] 5/17 6/1 6/4 16/7 16/12 16/15 16/15 16/24 17/2 17/7 17/13 17/15 17/19 26/7 28/13 34/16 38/15 38/20 54/23 57/25 58/25 76/3 83/20 99/10 100/9 100/9 100/12 used [15] 4/21 4/23 5/8 10/5 44/9 46/9 53/19 55/25 56/15 61/7 75/11 75/14 76/7 76/13 82/5 uses [1] 26/7 using [2] 42/25 92/1 usury [1] 21/4 V vacant [1] 36/21 vacate [1] 102/10 vacation [4] 99/16 99/18 100/1 101/24 vacations [1] 100/8 Valley [1] 47/7 valuation [3] 20/16 30/11 58/22 value [44] 6/24 12/9 12/12 12/16 14/2 14/3 14/17 17/13 19/23 29/1 29/2 30/8 30/14 35/6 35/11 35/12 38/16 38/17 40/14 41/2 41/2 41/15 41/18 41/19 41/23 43/14 46/9 46/21 47/3 48/17 48/21 49/20 49/23 50/21 54/7 57/25 58/5 58/17 58/21 58/22 58/24 59/7 59/12 60/19 values [2] 20/16 49/11 various [1] 94/3 VEGAS [25] 1/7 2/1 2/20 2/22 3/1 3/3 4/12 40/6 41/9 47/6 58/12 60/18 66/1 66/13 66/21 75/5 77/22 81/25 82/8 82/18 82/24 86/21 89/25 90/1 107/19 vehicle [1] 106/14 venture [3] 18/13 20/4 20/8 verbatim [1] 81/6 verdict [1] 4/25 version [1] 36/23 versus [3] 8/1 31/7 108/16 very [39] 5/3 6/22 7/1 7/7 27/11 27/14 34/14 34/23 35/4 35/7 36/13 37/20 48/20 49/14 49/15 52/18 52/18 57/22 63/10 63/23 63/24 64/15 68/20 68/20 70/17 77/4 79/3
----------	--	--	---	---

V	105/24 110/10	33/12 41/24 45/2 47/3	58/16 58/20	96/5
very... [12] 79/18 88/22	we've [23] 7/20 8/19	48/23 49/19 50/4 63/8	why [33] 7/7 19/21	wrote [1] 13/4
90/15 91/10 91/12	37/10 46/13 58/8 58/8	74/21 76/6 80/4 81/22	29/15 30/6 36/3 36/8	X
99/18 101/25 106/22	59/2 59/24 62/24 63/12	88/4 90/24 91/13	39/18 41/20 42/1 43/18	XVI [1] 1/6
107/6 107/8 109/10	67/14 67/15 68/1 68/4	105/13 108/10 108/21	43/20 43/23 44/4 46/1	Y
109/24	68/14 69/5 70/16 77/4	Whenever [1] 97/19	46/19 47/2 47/11 48/9	yeah [13] 2/13 20/9
vexatious [1] 80/7	80/8 80/10 85/13 89/24	where [49] 4/4 7/21 8/8	50/9 53/15 54/22 56/23	39/5 41/8 43/23 52/16
VIA [1] 1/16	105/5	15/5 15/10 15/13 16/9	57/14 61/5 72/22 72/23	60/6 92/13 92/15 96/25
viable [1] 104/5	wear [1] 88/7	16/15 16/23 17/1 17/5	86/4 86/6 93/1 100/9	101/8 102/20 108/8
Vicki [1] 36/12	Wednesday [2] 97/22	17/15 17/20 21/8 26/14	101/1 107/4 107/6	year [9] 10/2 28/17
victimized [1] 42/15	98/3	27/24 31/11 31/17	widen [1] 74/15	28/19 40/18 56/14
video [6] 24/21 26/2	week [21] 61/3 62/3	32/17 32/21 33/7 33/10	widening [1] 75/3	60/15 82/5 82/5 94/13
47/18 91/8 103/22	97/1 97/17 98/6 98/11	37/13 40/12 40/13	will [20] 5/9 8/9 45/20	years [26] 19/18 28/7
110/17	98/16 98/18 99/2 99/2	43/25 44/11 47/8 51/1	47/4 51/16 56/10 58/11	28/7 40/7 43/14 43/16
violates [1] 89/2	99/4 99/5 99/17 99/19	54/1 54/17 55/2 55/6	62/6 62/14 65/20 65/22	47/2 49/22 49/22 51/4
violation [1] 89/1	99/20 99/24 100/1	59/21 59/25 60/19	86/13 87/25 99/19	58/18 67/6 68/23 68/24
vote [1] 63/16	100/3 100/12 100/13	61/12 64/12 69/15	100/16 100/23 101/20	69/9 69/21 70/23 85/4
voted [1] 63/18	105/17	72/15 72/17 73/20 77/1	102/12 107/8 110/8	85/6 85/8 85/15 90/17
voters [6] 63/10 63/13	weeks [2] 98/12	84/2 93/13 93/24	WILLIAMS [2] 1/11	100/7 109/16 109/22
63/15 79/9 79/13 79/16	105/18	105/24 107/12 110/10	110/21	109/22
W	weigh [1] 96/22	wherein [3] 9/14 68/24	win [1] 90/22	yes [19] 3/6 3/9 3/22
want [37] 2/3 6/6 24/20	weighs [1] 68/15	78/6	windfall [10] 14/24	11/1 22/18 23/2 23/20
26/13 27/20 29/23	welcome [1] 2/4	whether [9] 19/10	26/10 42/25 51/21	24/5 55/11 62/11 83/25
31/23 31/25 33/20	well [48] 3/18 7/21 9/2	20/24 24/8 43/6 45/5	51/22 52/7 52/8 55/9	92/6 93/5 97/19 101/15
39/17 44/18 44/18	9/9 12/25 14/3 15/20	47/15 68/18 93/22	55/11 55/12	101/16 101/17 102/21
44/21 45/8 46/17 46/18	15/22 15/22 18/11	109/11	window [2] 107/10	106/20
49/2 49/4 49/8 49/10	18/14 18/19 19/13	which [72] 3/17 4/13	108/5	yesterday [1] 103/5
61/17 62/4 63/8 85/5	19/16 19/18 20/11	4/14 5/9 5/13 7/17 8/19	wins [1] 76/23	yet [2] 55/16 103/13
85/19 86/5 86/7 94/6	20/22 39/20 40/18 41/5	9/14 12/20 14/17 14/21	wipe [1] 17/13	yield [1] 52/2
94/23 95/19 96/6 96/17	42/7 42/10 42/14 43/22	18/5 24/7 25/21 33/23	wipeout [2] 38/16	yields [1] 36/19
96/18 102/2 103/23	46/1 48/18 50/23 51/2	36/8 36/23 37/22 37/23	38/17	you [228]
105/25 107/21	51/6 51/7 52/24 54/17	38/2 39/22 39/25 42/5	wise [1] 40/11	you'd [4] 9/1 54/18
wanted [6] 13/24 34/25	54/22 55/1 72/22 72/22	42/15 44/13 48/17	within [11] 62/3 76/24	54/19 92/12
35/7 52/11 54/16	73/14 77/25 79/18 80/9	53/24 54/20 56/1 56/7	93/21 104/14 105/4	you'll [2] 2/13 22/16
108/21	86/24 88/7 90/7 94/11	56/13 56/17 58/13	106/16 106/25 107/3	you're [12] 7/21 30/23
wants [1] 37/13	99/18 102/21 108/6	58/25 61/10 62/18	107/10 107/25 108/5	33/4 45/13 51/24 61/18
was [195]	109/3	64/25 66/7 66/16 68/23	without [8] 27/5 27/5	63/23 63/24 67/7 91/13
Washoe [1] 107/16	well-established [1]	70/21 70/25 74/16 76/4	64/14 88/13 89/1 89/13	93/11 100/1
wasn't [13] 17/13 18/9	80/9	80/15 82/14 82/21	89/13 100/6	you've [7] 7/1 12/13
18/21 38/17 52/12	well-respected [1] 9/9	84/13 84/16 84/16 85/3	WOLFSON [2] 1/23 3/1	12/13 12/18 20/9 58/19
52/21 52/21 52/21	went [15] 9/22 15/23	86/13 86/16 89/1 89/9	Wolters [1] 82/2	62/10
54/24 83/19 89/18	15/24 18/22 22/2 30/19	89/11 90/6 90/11 94/4	won [1] 90/23	your [174]
101/5 107/6	32/1 76/9 78/4 82/1	94/13 97/1 100/1	won't [2] 61/25 62/5	yourself [1] 101/2
Waters [12] 68/21 69/3	82/10 82/11 94/11	103/20 103/21 105/19	wondering [1] 97/2	Z
69/7 69/11 70/20 70/24	94/13 108/12	106/2 106/11 106/15	word [7] 22/6 22/8 23/9	zero [1] 46/6
77/17 82/15 82/16	were [27] 5/17 20/5	107/4 107/10 107/10	23/22 52/15 77/18	Zoom [1] 19/14
82/19 85/9 85/10	27/5 29/15 41/25 49/4	108/5	81/11	
way [6] 15/1 35/20	52/22 65/6 65/7 67/16	while [5] 44/8 53/19	words [2] 8/16 56/8	
83/13 106/17 107/22	67/17 67/20 67/22	54/4 61/6 76/10	work [6] 68/25 96/7	
109/1	68/16 69/6 75/11 75/14	who [11] 8/20 21/24	98/23 99/2 101/25	
we [169]	75/21 79/8 79/13 79/17	24/13 25/15 35/19	109/15	
we'd [1] 90/14	86/9 91/19 91/24 92/8	37/13 37/16 54/24	worked [7] 67/19 68/2	
we'll [18] 2/7 2/7 3/23	93/2 100/22	64/17 78/20 84/13	68/4 68/8 70/13 86/2	
10/24 23/7 23/16 27/8	weren't [1] 17/14	who's [5] 8/21 19/10	92/16	
32/25 54/23 54/23	west [2] 85/11 85/12	19/13 20/23 21/5	worry [1] 100/11	
55/18 58/19 65/21 71/7	what [201]	whoever's [1] 10/25	worth [8] 20/15 43/20	
71/17 99/9 99/11 99/19	what's [14] 37/9 41/2	whole [48] 11/11 11/15	43/20 46/4 46/6 47/10	
we're [37] 5/19 5/20	41/3 48/3 66/11 69/13	11/13 12/2 12/4 13/14	50/3 58/14	
14/12 23/13 23/18	74/7 81/21 82/24 83/21	14/4 14/11 18/6 18/8	would [134]	
31/17 32/12 32/12	91/11 91/18 106/3	18/13 19/20 20/25	would've [11] 19/4	
32/17 35/1 35/14 35/15	108/3	21/12 21/14 24/9 25/25	19/9 19/13 19/14 20/9	
36/3 36/8 39/22 41/21	whatever [4] 23/12	26/1 27/4 40/3 41/7	20/15 40/9 40/11 40/19	
43/24 45/12 52/2 54/1	26/18 45/5 109/20	41/12 42/3 42/6 42/8	40/21 55/2	
69/7 84/8 84/9 86/16	whatsoever [4] 38/10	42/23 43/2 43/8 45/18	wouldn't [11] 18/19	
91/8 98/8 98/25 99/1	38/12 87/18 88/16	45/23 45/24 47/16	20/18 36/6 40/12 75/21	
99/3 99/8 101/19 102/6	when [32] 5/14 8/23	48/12 50/7 50/18 51/13	75/23 93/2 105/22	
102/9 102/10 102/15	14/2 14/8 18/22 19/1	53/4 54/3 54/7 54/9	107/2 109/5 109/7	
	25/25 28/19 29/10 30/1	54/12 54/13 54/16	writ [2] 104/13 109/13	
	30/8 30/11 30/18 31/21	54/24 55/14 55/16	wrong [3] 23/23 42/4	