EXHIBIT 39

Case 1:13-cv-01215-TSC Document 204-45 Filed 11/13/19 Page 2 of 110

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR
TESTING AND MATERIALS,
d/b/a ASTM INTERNATIONAL;
NATIONAL FIRE PROTECTION
ASSOCIATION, INC.; and
AMERICAN SOCIETY OF
HEATING, REFRIGERATION AND
AIR CONDITIONING ENGINEERS,

Plaintiffs and

Counter-Defendants,

v. Civil Action No. 1:13-cv-01215-TSC

PUBLIC.RESOURCE.ORG, INC.,

Defendant and

Counter-Plaintiff. PAGES 1 - 264

Videotaped Deposition of: JAMES FRUCHTERMAN

DATE: Friday, July 31, 2015

TIME: 9:34 a.m.

LOCATION: Morgan, Lewis & Brockius, LLP

Two Palo Alto Square, Suite 700

Palo Alto, California

REPORTED BY: Kelli Combs

Certified Shorthand Reporter

License 7705.

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

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Case 1:13-cv-01215-TSC Document 204-45 Filed 11/13/19 Page 3 of 110

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1 A P P E A R A N C E S 2 FOR THE PLAINTIFF, ASTM: 3 By: JORDANA'S RUBEL, ESQ MORGAN, LEWIS & BOCKIUS, LLP 4 1111 Pennsylvania Avenue, NW Washington, DC 20004 5 202 739 5118 E-mail: jrubel@morganlewis com 6 6 FOR PLAINTIFF, ASHRAE: 8 BY: KATHERINE MERK, ESQ KING & SPALDING 9 JOSEPH R WETZEL, ESQ 101 Second Street, Suite 2300 10 San Francisco, California 94105 415 318 1263 11 E-mail: kmerk@kslaw com jwetzel@kslaw com 12 13 For PLAINTIFF, NFPA: 14 By: THANE REHN, ESQ MUNGER, TOLLES & OLSON, LLP 15 560 Mission Street, 27th Floor San Francisco, California 94105 16 415 512 4073 E-mail: Thane rehn@mto com 17 18 For DEFENDANT PUBLIC RESOURCE ORG, INC: 19 By: SEBASTIAN KAPLAN, ESQ FENWICK & WEST, LLP 20 MATTHEW BECKER, ESQ (Mountain View office) 555 California Street 21 San Francisco, California 94104 415 875 2300 22 E-mail: skaplan@fenwick com 23 24 ALSO PRESENT: 25 Cyril Suszckiewicz, Videographer	1 EXHIBITS FOR IDENTIFICATION 2 PLAINTIFFS' PAGE 3 Exhibit 4000 Journal article authored by 64 James Fruchterman and 4 Allison Lingane published in 2003 5 6 Exhibit 4001 Expert report of James 97 Fruchterman 7 8 Exhibit 4002 Printout of the Bookshare 209 Web page 9 10 Exhibit 4003 A few pages from the PDF 219 version of NFPA 101-2012 11 edition taken from the Public Resource website 12 13 Exhibit 4004 The first 25 pages of 234 ASHRAE standard 90 1-2010 14 as they appear in the PDF version available on 15 Public Resource Org's website 16 17 Exhibit 4005 OCR version of ASHRAE 235 standard 90 1-2010 copied 18 into a Word processing program 19 20 Exhibit 4006 E-mail from Rob Turner to 256 James Fruchterman dated 21 April 10, 2015 22 23 (Exhibits attached to transcript)
3 1	PROCEEDINGS THE VIDEOGRAPHER: Good morning. We're on video record on July 31st, 2015, and the time is y:34 a.m. This is the video-recorded deposition of James Fruchterman. My name is Cyril Suszckiewicz. I'm here with the court reporter, Kelli Combs. We're both here representing Veritext Legal Solutions at the request of the Plaintiffs. This deposition is being held today at Morgan Lewis in Palo Alto, California. The caption of the case is ASTM versus Public Resource. Please note that the audio and the video recordings will take place unless all parties agree to go off the record. Microphones are very sensitive, and they will pick up your private whispers, conversations and cellular interference. Counsel, would you please identify yourself for the record. MS. RUBEL: Jordana Rubel for American Ms. RUBEL: Jordana Rubel for American

Case 1:13-cv-01215-TSC Document 204-45 Filed 11/13/19 Page 4 of 110

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6	8
& Olson for the Plaintiff, National Fire Protection Association.	If you do answer the question, then I'm going to assume that you understood it and you're
2 Association. 3 MS. MERK: Katherine Merk for American	3 answering based on your understanding of the
4 Society of Heating, Refrigerating and Air	4 question.
5 Conditioning Engineers, Incorporated.	5 A Yes.
6 MR. KAPLAN: Sebastian Kaplan for	6 Q The court reporter is going to be
7 Defendant, Public.Resource.Org, Inc.	7 capturing everything that anybody says while we're
8 MR. BECKER: Matthew Becker for Defendant,	8 on the record. So it's important for you to respond
9 Public.Resource.Org, Inc.	9 with audible responses as opposed to shaking your
10 MR. KAPLAN: Two quick things, first I	10 head or nodding your head.
11 have a cough; I'm sorry, I'll try to minimize any	11 Is that okay?
12 disturbance, and second, I just wanted the record to	12 A Yes.
13 reflect that we produced to Plaintiffs Fruchterman	13 Q And please try to let me finish my
14 documents 1 through 5,399 this morning prior to the	14 questions before you begin your answers so that she
15 deposition.	15 can get a clean record.
16	16 A Okay.
17	17 Q I'll do the same; I'll give you a chance 18 to finish your answers before I ask an additional
18	19 question.
20	20 Is there any reason why you can't give
21	21 truthful and accurate testimony today?
22	22 A No.
23	23 Q Are you taking any medications that could
24	24 impact your ability to give truthful and accurate
25	25 testimony today?
7	9
1 JAMES FRUCHTERMAN,	9 1 A No.
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Case 1:13-cv-01215-TSC Document 204-45 Filed 11/13/19 Page 5 of 110

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,	output that it calls for minitered account in the	1	Von indicated that were in accounting	
	extent that it calls for privileged communications.	1	You indicated that you in preparation for today's deposition, you reread your report and	
	I just advise and instruct the witness not to		you also reviewed some accessibility standards and	
I .	respond. But anything else is fair game.	3	also some of the Plaintiffs' standards.	
4	THE WITNESS: No, I didn't consult with	4		
5	anybody else beyond the qualification just	5	Did you do anything else	
6	expressed. BY MS. RUBEL:	6	Did you review any other documents in	
7		7	preparation for today's deposition?	
8	Q So did you speak with your counsel prior	8	A Not that I recall.	
9	to today's deposition?	9	Q Where do you work?	
10	MR. KAPLAN: You can answer that.	10	A Benetech.	
11	THE WITNESS: Yes.	11	Q What is Benetech?	
12	BY MS. RUBEL:	12	A It's 501(c)3 nonprofit located in	
13	Q And when did those discussions take place?	13	Palo Alto, California.	
14	A Last week and this week.	14	Q What kind of 501(c)3 nonprofit is	
15	Q Approximately how long did you discuss the	15	Benetech? What is its mission?	
16	deposition with them for?	16	A To use technology to advance social good.	
17	A Less than a total of eight hours.	17	Q And how does it go about doing that?	
18	Q And your counsel indicated that you	18	A By developing software and services for	
19	produced a number of documents this morning just	19	disadvantaged communities and the nonprofits that	
20	prior to the start of the deposition; is that	20	serve them.	
21	correct?	21	Q Are there any specific types of	
22	A I produced documents to counsel and they	22	disadvantaged communities that Benetech tries to	
23	produced them to you guys.	23	serve?	
24	Q Okay.	24	A We certainly serve a wide range. I'd say	
25	And are those documents that you searched	25	the primary communities we serve are people with	
	11			13
- 1	for?	1	disabilities, especially students with disabilities,	13
2	for? A Yes.	1 2	especially print disabilities, and the human rights	13
3	for? A Yes. Q What did you do to search for those	1 2 3	especially print disabilities, and the human rights movement; we develop software for human rights	13
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Case 1:13-cv-01215-TSC Document 204-45 Filed 11/13/19 Page 6 of 110

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015

14 16 Can you explain what you mean by that? 1 you can create a large print document. For example, 1 2 2 you can take Microsoft Word, select all of the text Is the question about what Arkenstone did? 3 3 and put it in 24-point or 72-point -- whatever you O No. About how does scanning materials to 4 allow -- scanning documents and books into 4 need for your particular disability -- hit "print" accessible formats, how does that work? 5 and then you have a large-print version of that A So -document where all the characters are larger. 7 More commonly today, visually impaired MR. KAPLAN: Objection; vague. 8 THE WITNESS: Okay. I just keep going, people, because large print is really aimed at 9 right? people who can see a little bit, are not completely 10 10 blind, would have a v-screen, a digital screen. MR. KAPLAN: Yes. 11 THE WITNESS: So if you have a printed That could be a tablet, like an iPad, even a 12 document or a book and, let's say, a blind person smartphone or PC or a Mac, and then they will 13 wants to have access to it, one option is to scan 13 enlarge the print. 14 that using a -- generally a desktop scanner which 14 And beyond enlarging the print, there's 15 takes the picture of each page of interest. Then 15 other things that you might do with it. For 16 you use optical character recognition software to example, you might reverse the contrast. That's 17 convert the image into a text equivalent. good for some visual impairments. If you have white 18 Once the contents of a page or a longer characters on a black background, they can see that better than black characters on a white background. 19 document is in a text file, it can then be accessed 20 20 by a blind person through Braille technology and And there's a variety of programs and 21 large mirror, large print technology or audio 21 built-in tools and these devices to see text 22 technology such as synthetic text to speech. 22 enlarged. 23 23 BY MS. RUBEL: Q And is the size of the characters, does 24 Q So you just described three ways -- three that vary by individual what -- what size characters 25 different ways that a person with a print disability 25 the person will be able to read? 15 17 1 may be able to access the text equivalent, Braille, A Yes. As your vision progressively gets 2 enlargement and text to speech. 2 worse, the -- you might need larger and larger A Uh-huh. 3 characters to actually be able to read the document. 4 And it's also possible that people become fatigued 4 Q Can you explain how the Braille system 5 works; how converting it to the Braille would work? 5 and might want to enlarge the characters or switch A So if you have a document in text form, to another way if they get tired. 7 there are two primary ways that you can create Q Is there any way to generalize what's a 8 Braille from that. One is you can have a Braille common character size that people with print 9 embosser, which is the equivalent of a printer, so disabilities would be able to read? 10 you send the file to the embosser and the Braille 10 MR. KAPLAN: Objection; vague. 11 dots are pressed into the paper, and so it comes THE WITNESS: The -- there is a small 12 out. So it's the equivalent of a desktop printer 12 segment of the publishing industry that produces 13 except it creates tactile versions of the document. 13 large-print books, and they tend to pick a single 14 And then the other way is that many blind 14 standard point size as meeting the needs of a 15 people have Braille displays that pop up the Braille 15 significant slice of visually impaired people. It's 16 characters with plastic pins, say, with 20 Braille 16 not practical to produce 10 different sizes in text, 17 characters. The blind person runs their finger 17 18 along the 20 characters, gets to the end, hits the 18 BY MS. RUBEL: Q Do you know what size characters those 19 advance bar and the next 20 characters pop up. 20 publishers use when they're printing large-print So those are the two ways that blind 21 people access Braille from a digital form. 21 text? 22 22 Q Okay. A I don't have the exact knowledge. 23 Q And the third method you described earlier And how does the enlargement process work? 24 A Similar to Braille, there are two ways of was use of a screen reader. Can you explain how 25 doing that. One is you take the text document and that works?

Case 1:13-cv-01215-TSC Document 204-45 Filed 11/13/19 Page 7 of 110

·	18	20
1 A Actually I described using synthes		
1 A Actually, I described using synthet 2 speech, and the screen reader is just one of		1 Recognition Systems, Inc.? 2 A A for-profit developer of optical
3 ways that you use synthetic speech.		3 character recognition technology.
4 Would you like me to talk about sys		4 Q And what was your position there?
5 speech or screen readers?		5 A At the time when I separated, Vice
6 Q Let's talk about synthetic speech	1 3	6 President of Marketing.
7 generally first, and I appreciate the the		7 Q How long were you employed at Calera?
8 clarification.		8 A Seven years.
9 A So synthetic speech is a technolog		9 Q What other positions did you hold, other
10 will take a text stream and turn it into an a	-	
11 stream, and it can be done sort of on the f		
12 it can also be done in a separate process.	12	
So, for example, a separate process		
14 be I could take a chapter from a book and		· · · ·
15 MP3 of that book where a synthetic voice		5 President.
16 narrating that that chapter. And then I of		
17 hand a person an MP3 file of that chapter		_ · · · · · · · · · · · · · · · · · · ·
18 entire book.	18	·
19 It's also possible to have a program	that 19	
20 does synthetic speech reading. There are		
21 reading programs. Its primary goal is to h		1 Q And what was your position there?
22 read a digital book, and you can turn on the	he 22	2 A I Vice President, but I don't remember
23 text-to-speech, and it will read the text alo		3 more details than that.
24 There are screen readers for blind people	that are 24	4 Q And I know we're stretching back many
25 generally how blind people and people wi	ith other 25	5 years at this point. Approximately what was the
	19	21
1 print disabilities access whatever informat		1 time frame that you worked there?
1 print disabilities access whatever informat 2 up on a screen that they can access.	tion shows	
1 -	tion shows	1 time frame that you worked there?
2 up on a screen that they can access.	tion shows 2	1 time frame that you worked there? 2 A 1981. 1981.
2 up on a screen that they can access.3 So, for example, if I am a blind personal contents.	tion shows Son Say,	 1 time frame that you worked there? 2 A 1981. 1981. 3 Q And I think we'll do just maybe one job
 2 up on a screen that they can access. 3 So, for example, if I am a blind pers 4 using Microsoft Word, I have an ability to 	tion shows 2 son 2 say, "Say 3	 time frame that you worked there? A 1981. 1981. Q And I think we'll do just maybe one job before then; if you recall, what was your position
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Case 1:13-cv-01215-TSC Document 204-45 Filed 11/13/19 Page 8 of 110

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	22			24
	Q Do you claim any expertise on any legal	1	as advised by legal experts.	
	issues?		BY MS. RUBEL:	
3	MR. KAPLAN: Objection; vague.	3	Q I'm not trying to ask a tricky question.	
4	THE WITNESS: Not beyond being the Chief	4	I'm trying to understand if you're if you're	
5	Financial Officer or Chief Executive Officer of	5	representing that you have expertise on copyright	
6	corporations where part of my job was to engage	6	law. So I think it should be a simple answer.	
7	attorneys to represent our organizations.	7	MR. KAPLAN: Objection; vague, calls for a	
8	BY MS. RUBEL:	8	legal conclusion, and I'm not sure that counsel's	
9	Q Do you have any expertise in any legal	9	testimony regarding the nature of her question is an	
10	issues that relate to copyright?	10	appropriate part of a question.	
11	MR. KAPLAN: Objection; vague.	11	THE WITNESS: I go to some lengths to say	
12	THE WITNESS: I am not a lawyer, but as a		that I'm not a lawyer when people ask me about legal	
	leading practitioner creating a library for the		matters. I'm happy to tell my peers, "If you're	
	blind and dyslexic, I need to be familiar with		talking to your lawyer, be sure to ask these	
	copyright law to the extent to operate our		questions." So but I don't think I represent	
	institution.		myself as a legal expert. I think I'd be very	
	BY MS. RUBEL:		careful about that.	
18	Q So you would describe yourself as familiar			
19	17 6	19	Q In connection with this case	
20	MR. KAPLAN: Objection; misstates	20	A This case, yes.	
22	testimony, vague. THE WITNESS: I seek advice from counsel	21	Q are you representing yourself as someone who has expertise in copyright law?	
23	on issues that I believe touch on copyright law.	23	A No	
24	MR. KAPLAN: I'll remind the witness that	24	MR. KAPLAN: Objection; vague, calls for a	
	you don't have to get into the content of your		legal conclusion, but go ahead and answer.	
	you don't have to get into the content of your	23	regal conclusion, but go ancad and answer.	
	23			25
1	privileged communications with counsel.	1	THE WITNESS: No. Apologies for jumping	25
1 2		1 2	THE WITNESS: No. Apologies for jumping to an answer.	25
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Case 1:13-cv-01215-TSC Document 204-45 Filed 11/13/19 Page 9 of 110

	26			28
2 3 4 4 5 6 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q So is there an entity that convenes the participants in the development process? MR. KAPLAN: Objection; foundation, vague, relevance. THE WITNESS: The DAISY Consortium is a nonprofit with members, with working groups, and I believe that there's a working group that focuses on the standard as opposed to other elements of the DAISY Consortium's work. BY MS. RUBEL:	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q Do you know how much the membership dues are every year? A My organization pays somewhere in the range between 15 and \$30,000 a year. I'm not precisely aware of what our current dues level is. Q Do you have a sense of whether the other members of the or the other participants in the development of the of standards for the DAISY Consortium are also paying approximately 15 to \$30,000 per year? MR. KAPLAN: Objection; vague. THE WITNESS: The DAISY Consortium has membership tiers, so full members pay a certain amount, associate members pay a different amount. There are friends of the DAISY Consortium, and I'm not familiar with the pricing tiers, but I'm sure the majority of the people involved in the standards have some sort of membership affiliation with the Consortium. BY MS. RUBEL: Q What type of member is Benetech?	
25	Q And the DAISY Consortium convenes groups	25	A A full member. Sorry.	
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	27	1		29
1 2	of volunteers to work on developing their standards? MR. KAPLAN: Objection; lacks foundation,	1 2	Q And you mentioned that the DAISY Consortium also receives grants. Who do they	29
3	of volunteers to work on developing their standards? MR. KAPLAN: Objection; lacks foundation, vague, relevance.	3	Consortium also receives grants. Who do they receive grants from?	29
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Case 1:13-cv-01215-TSC Document 204-45 Eiled 11/13/19 Page 10 of 110

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015

30 32 A So if a publisher creates a book today in 1 little more clarification. 2 the United States, it's highly likely that they will You said, "I assume it's open because 3 sell it in eBook form. It's likely that at some 3 we're closely involved." Do you mean you assume 4 point during the production process, they will 4 that it's open because Benetech is closely involved? 5 create an EPUB version of that title, and there are A I -- I think the -- our goal in being 6 involved in proposing the standard was to encourage 6 automated conversion technologies to turn that EPUB 7 book into an Apple format eBook or an Amazon Kindle all publishers, especially of educational material, 8 format eBook or many other formats. So it's a 8 to label their books or educational videos on 9 common format for eBooks that a lot of proprietary whether it was accessible, and so I'm 90 percent --10 formats are designed to incorporate. 10 99 percent certain that the standard is openly 11 Q Okay. 11 available so that we can encourage maximum adoption 12 of this standard so that as many works are made 12 I think we'll come back to this general 13 topic a little bit later, but can you describe how 13 accessible to our disabled community as possible. 14 the International Digital Publishing Forum develops Q Do you know if any of the three entities 15 the EPUB standard? 15 that you mentioned develops voluntary consensus A They have a standards effort, again, where standards? 16 17 members of the IDPF play a leading role. I'm less 17 MR. KAPLAN: Objection; vague. THE WITNESS: I'm not familiar with the 18 18 familiar with the details of how that works, but, meaning of that as a term of art. 19 you know, please ask more questions and I can try to 20 help. 20 BY MS. RUBEL: 21 Q The third standard you mentioned before 21 Q Do you have any understanding of what that 22 was the Accessibility Metadata standard. Can you 22 23 explain what that is? 23 A Well, the common understanding is, is it 24 24 A The goal of this standard is to make it voluntary and is it developed through consensus? I 25 easier for disabled people when using search engines 25 think that certainly the standards process we are 31 33 1 to find content that will be accessible to them. 1 involved with has a process of, you know, presenting 2 Q And how do they do that? 2 a standard, getting feedback on the standard, A I'm going to try to remember. There is --3 responding to the comments on the standard. There's 4 the name is eluding me at the moment, but there is a 4 processes in that that involve engaging the 5 standards body that is dominated by the major search 5 community. I'm familiar with those processes and 6 engine vendors, and they come up with standards for 6 certainly they characterize the process that my team 7 metadata for search engines, and my organization 7 has been involved with. proposed this particular metadata standard around Q I'll represent to you that voluntary accessibility, and it was accepted by this body. consensus standards as a term of art also includes a 10 Let's see, trying to remember what the 10 requirement that there be a balance of membership in 11 name is, but... 11 the committees that are developing the standards so Q Does that body own the copyright in the 12 that many different groups are represented: 12 13 Manufacturers, consumers, government regulators, 13 Accessibility Metadata standard? 14 MR. KAPLAN: Objection; calls for a legal 14 academics. 15 15 conclusion, lacks foundation, vague. Do you know if any of the organizations 16 THE WITNESS: I'm not familiar with the 16 that develop the three standards you mentioned focus 17 ownership or licensing provisions, other than I on that type of balance of membership making up the 18 committees? 18 assume it's open because we're closely involved. 19 19 BY MS. RUBEL: A I'm not familiar --20 20 MR. KAPLAN: Objection; vague. Q What do you mean by that? THE WITNESS: Sorry. I'm not familiar 21 A I -- I believe that anyone can get a copy 21 22 of this standard and implement it, and certainly 22 with their membership constituency policies. 23 we're encouraging people to make accessible 23 BY MS. RUBEL: 24 Q So you're not --25 Q I guess it would be helpful to get a 25 You don't know that that's something that

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	34			36
1 2	they prioritize? MR. KAPLAN: Objection; asked and	2	legal conclusion. THE WITNESS: No.	
3	answered, vague.	3	BY MS. RUBEL:	
4	THE WITNESS: I'm not aware of it.	4	Q How about limited vision?	
5	BY MS. RUBEL:	5	MR. KAPLAN: Same objections; vague and	
6	Q In your experience on the committees, did	6 7	calls for a legal conclusion. THE WITNESS: No.	
7 .	you notice any sort of balance? MR. KAPLAN: Objection; assumes facts not	,		
8	in evidence, vague.	9	BY MS. RUBEL: Q Do you consider excuse me.	
$\begin{vmatrix} 9 \\ 10 \end{vmatrix}$	THE WITNESS: I'm not actually on the	10	Do you consider excuse me. Do you consider yourself an expert on	
	committees, so please ask the question again.	11	people with learning disabilities?	
	BY MS. RUBEL:	12	MR. KAPLAN: Objection; vague, calls for a	
13	Q From what you've heard from others at	13	legal conclusion.	
14	Benetech who have participated in the development of	14	THE WITNESS: No.	
	the standards, are you able to do you have any	15	BY MS. RUBEL:	
16	information about whether they've observed any kind	16	Q Are you an expert on people with dyslexia?	
17	of balance of membership?	17	MR. KAPLAN: Objection; vague calls for a	
18	MR. KAPLAN: Objection; assumes facts not	18	legal conclusion.	
19	in evidence, vague.	19	THE WITNESS: No.	
20	THE WITNESS: I guess I'm familiar with	20	BY MS. RUBEL:	
	the fact that members that people involved in the	21	Q Are you an expert on people with brain	
	standards process do represent different interests.		injuries?	
	I mean, I'm aware of sort of who's at the around	23	MR. KAPLAN: Objection; vague, calls for a	
	the table at the different standards bodies, so I'm aware that not all of them are the same.	25	legal conclusion. THE WITNESS: No.	
	aware that not an of them are the same.	23	THE WITHESS. NO.	
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	35			37
1	BY MS. RUBEL:	1	BY MS. RUBEL:	37
1 2	BY MS. RUBEL: Q For the DAISY Consortium, you mentioned	1 2	Q Are you an expert on people with physical	37
3	BY MS. RUBEL: Q For the DAISY Consortium, you mentioned that a full member pays 15 to \$30,000 per year. Do	1	Q Are you an expert on people with physical disabilities?	37
3 4	BY MS. RUBEL: Q For the DAISY Consortium, you mentioned that a full member pays 15 to \$30,000 per year. Do you think that might be a barrier to participation	2 3 4	Q Are you an expert on people with physical disabilities? MR. KAPLAN: Objection; vague, calls for a	37
3 4 5	BY MS. RUBEL: Q For the DAISY Consortium, you mentioned that a full member pays 15 to \$30,000 per year. Do you think that might be a barrier to participation for any for anybody?	2 3 4 5	Q Are you an expert on people with physical disabilities? MR. KAPLAN: Objection; vague, calls for a legal conclusion.	37
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	38			40
1	Can we take a brief break so I can have a	1	THE WITNESS: I'm more certain that it was	
$\frac{1}{2}$	little bit of liquid?	1	cited at the appellate level.	
$\begin{vmatrix} 2 \\ 3 \end{vmatrix}$	MS. RUBEL: Sure. I meant to actually	$\frac{2}{3}$	BY MS. RUBEL:	
$\frac{1}{4}$	instruct you at the beginning that you can ask for a	$\frac{3}{4}$	O Okay.	
5	break at any time. If it's just to take a sip of	5	So there was a district court decision and	
6	water, we don't need to go off the record.	6	that was appealed and there was also a an	
7	THE WITNESS: Okay. That's good. Thank	7	appellate decision?	
8	you.	8	A Correct.	
	MR. KAPLAN: Counsel, do you intend to	9	Q Did that case actually go to trial at the	
10	take a break, like, at the hour mark or do you have	10	district court level?	
111		11	A That's not my understanding.	
12	MS. RUBEL: Yeah, that's fine. How long	12	Q Is it your understanding that it was	
	have we been going?	13	decided on Summary Judgment?	
14	THE VIDEOGRAPHER: 44 minutes.	14	MR. KAPLAN: Objection; lacks foundation.	
15	MS. RUBEL: Okay. Let's try to go another	15	You can answer.	
	15 minutes. If at any time you need a break, just	16	THE WITNESS: Correct. That's my	
	let me know and I'll try to get to the end of a	17	understanding.	
18	series of questions to allow you to have a break.	18	BY MS. RUBEL:	
19	THE WITNESS: I'm good with another 15, 20	19	Q How did you first become interested in the	
20	minutes, no problem.	20	issue of making technology accessible to the needs	
21	MS. RUBEL: Great.	21	of people with disabilities?	
22	BY MS. RUBEL:	22	MR. KAPLAN: Objection; argumentative and	
23	Q Have you ever served as an expert in a		vague.	
24	litigation matter before?	24	THE WITNESS: In college.	
25	A I'm not an expert in the technical term,	25		
\perp				
	39			41
1		1	BY MS_RUBEL:	41
	but I don't believe that I've served as an expert		BY MS. RUBEL: O How did that come about?	41
2	but I don't believe that I've served as an expert witness in a legal matter.	2	Q How did that come about?	41
2 3	but I don't believe that I've served as an expert witness in a legal matter. Q Have you ever provided a declaration in a	2 3	Q How did that come about?A I was in a class at Caltech learning about	41
2 3 4	but I don't believe that I've served as an expert witness in a legal matter. Q Have you ever provided a declaration in a legal matter?	2 3 4	Q How did that come about? A I was in a class at Caltech learning about a certain kind of technology, and I thought it could	41
2 3 4 5	but I don't believe that I've served as an expert witness in a legal matter. Q Have you ever provided a declaration in a legal matter? A I understand that I have provided a	2 3 4	Q How did that come about? A I was in a class at Caltech learning about a certain kind of technology, and I thought it could help disabled people, and I was excited about that	41
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	42			44
1	THE WITNESS: Yes.	1	MR. KAPLAN: Objection; vague.	
2	BY MS. RUBEL:	2	THE WITNESS: In my opinion, I think it's	
3	Q Have there been issues with technology	3	not a I don't think it's in their interests.	
4	providers disabling access to eBooks for people with	4	BY MS. RUBEL:	
5	print disabilities?	5	Q You don't think what is in their	
6	MR. KAPLAN: Objection; vague, calls for	6	interests?	
7	1	7	A I think that the technical protection	
8	THE WITNESS: There have been issues with	8	1	
9	technology providers providing the ability to	9	consumers.	
	disable access and that capability being utilized.	10	Q Well, let me take a step back.	
1	Yes.	11	A Uh-huh.	
13	BY MS. RUBEL: Q What's your understanding of why the	12	Q My question was: Do you think it's a valid concern for publishers to be worried that	
1 -	technology providers were making it possible to		consumers may make copies to give away to other	
	disable access to the eBooks for people with print		people? So I want to understand how your response	
	disabilities?		is responsive to my question.	
17	A Public statements by different	17	MR. KAPLAN: Is there a question, Counsel?	
18	stakeholders have mentioned concerns over rights.	18		
19	Did they have the right to provide that, piracy, as	19	Q Do you think it's a valid concern for	
	it's labeled by some, making of unauthorized copies?		1	
	Probably the top two issues that I've heard		making copies to give away?	
	discussed.	22	MR. KAPLAN: Objection; vague.	
23	Q Who do you mean by the "making of	23	THE WITNESS: I think that the way that	
	unauthorized copies"?		publishers try to prevent making of copies is not in	
25	A I guess that's kind of a legal conclusion	25	their interest; so no, I don't think it's a valid	
	43			45
1		1	concern because I think they their interests	45
	whether it's authorized or not, but the Authors		concern because I think they their interests would be better served if they didn't use those	45
2		2	concern because I think they their interests would be better served if they didn't use those technologies.	45
3	whether it's authorized or not, but the Authors Guild, for example, or authors would like to get	2 3	would be better served if they didn't use those	45
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	mechanism free, as reported in industry	1	BY MS. RUBEL:	
	publications. BY MS. RUBEL:	2	Q So it's your belief that the technical protection mechanisms that publishers use are not	
		3 4	actually in their self-interest economically?	
4 5	Q It's your understanding that when those	5	· · · · · · · · · · · · · · · · · · ·	
5	Let's focus on just the American publishers for now.		MR. KAPLAN: Objection; vague,	
6 7	When those when O'Reilley Media and	6 7	argumentative. THE WITNESS: I've certainly made that	
1			-	
Ι.	Baen Books removed the technical protections, they	8	case to them. BY MS. RUBEL:	
9	actually sold more copies of the materials?	9		
10	A That was their expressed experience as	10	Q Have you had any resistance when you've tried to make that case to them?	
12	communicated to the publishing industry.	11 12		
1	Q And how did they communicate that to the	13	MR. KAPLAN: Objection; vague. THE WITNESS: Publishers don't tend to	
13	publishing industry?			
	A I don't know. Writing blog posts on their experience.		resist my organization. BY MS. RUBEL:	
16	•	16		
1	Q Any other way?	17	Q Why is that?	
17	A It gets discussed at conferences. It gets		A Because we're the leading library for	
18	discussed in the industry media. It's a major topic in the field.		blind and dyslexic people in the country, and most publishers find that a worthwhile endeavor.	
1		19	•	
20	Q Are you aware of any other publishers who	20	Q But my understanding of your responses	
	have removed those technical protection mechanisms	21	5 6 6 1	
	who have then reported that they've not sold more		remove their technical protection mechanisms not	
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24 25	MR. KAPLAN: Objection; vague. THE WITNESS: I haven't read those	24 25	generally; is that correct? MR. KAPLAN: Objection; vague, misleading.	
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Case 1:13-cv-01215-TSC Document 204-45 Eiled 11/13/19 Page 15 of 110

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015

50 52 THE WITNESS: My primary role at Benetech Q And what type of entities are authorized 2 is as a public spokesman. We have other people who 2 entities? 3 deal directly with the publishing industry, and I am A I don't have the precise code cite, but 4 aware that we have a handful of major publishers 4 authorized entities have to meet some 5 working to make their works more -- their mainstream 5 qualifications, nonprofit or government agency, 6 works more accessible, and -- which includes getting 6 primary mission to serve people with disabilities. 7 rid of technical protection mechanisms that prohibit 7 It has to be one of their -- one of their primary 8 the access by people with disabilities and making 8 missions. There may be some other qualifications, 9 the materials they create more accessible to people but those are the big ones I think of. 10 with disabilities. Q So if you meet those two qualifications, 11 That's a area of effort for my team. what exception are you provided? 12 BY MS. RUBEL: MR. KAPLAN: Objection; vague, incomplete 13 Q And -- and I understand that piece. I hypothetical, calls for a legal conclusion. 14 guess what I'm trying to understand is, are you THE WITNESS: So some of the provisions of 15 aware of any publishing company that has removed the 15 Chafee, as I recall, are that you can make an 16 technical protections as to the public in general, 16 accessible copy of a literary work with some 17 not just people with print disabilities? 17 exceptions for people with qualifying print 18 MR. KAPLAN: Objection; vague, lacks 18 disabilities. 19 foundation. 19 BY MS. RUBEL: 20 20 THE WITNESS: I'm certain if I research Q And you're permitted to make accessible 21 that, I'd come up with more names. I don't have the 21 copies exclusively for people with disabilities; is 22 that right? 22 names here today. 23 23 BY MS. RUBEL: MR. KAPLAN: Objection; argumentative, 24 24 calls for a legal conclusion, incomplete Q Is it the general practice in the 25 publishing industry to use technical protection 25 hypothetical, vague. 51 53 1 mechanisms in connection with eBooks? THE WITNESS: The word "exclusively" 2 MR. KAPLAN: Objection; competence, lacks 2 probably appears in the statute, but I'm not 3 foundation, vague. 100 percent sure. THE WITNESS: As I've noted, I believe 4 BY MS. RUBEL: 5 more and more publishers are getting rid of them, so Q Well, is it your understanding that under 6 it has gone from being a general practice to being 6 the Chafee Amendment if you meet certain 7 one where there are significant publishers on both requirements, you're permitted to make copies of the sides, and the trends are in favor of getting rid of literary work and distribute them to anyone? technical protection mechanisms. MR. KAPLAN: Objection; calls for a legal 10 MS. RUBEL: This, I think, might be a good conclusion, argumentative, incomplete hypothetical, 11 time for us to take our first break. 11 vague. THE VIDEOGRAPHER: We're going off the THE WITNESS: As an organization that is 12 13 availing itself of the Chafee Amendment, among other 13 record. The time is 10:37. 14 (Recess taken.) 14 things, we go to some length to make sure that 15 THE VIDEOGRAPHER: Okay. We're back on 15 people with print disabilities are the only people 16 the record at 10:55. 16 that are eligible for our service. 17 BY MS. RUBEL: 17 BY MS. RUBEL: Q And do you go to those lengths because 18 Q Are you familiar with the Chafee 19 Amendment? 19 it's your understanding that the Chafee Amendment 20 requires you to only make the materials accessible A I am. 21 Q Can you tell me what your understanding of to people with print disabilities? 22 22 the Chafee Amendment is? MR. KAPLAN: Objection; calls for a legal 23 A It's a copyright exception in U.S. law. 23 conclusion, vague. 24 Q And who does it provide an exception for? THE WITNESS: As someone who operates 25 A Authorized entities. 25 under the Chafee Amendment to support that, we need

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	to ensure that we only distribute them to people who	1	goal of serving people with disabilities; is that	
	have qualifying disabilities. Yes.		right?	
3	BY MS. RUBEL:	3	MR. KAPLAN: Objection; misstates the	
4	Q Why is that?	4	testimony.	
5	A Because	5	THE WITNESS: I don't think the word	
6	MR. KAPLAN: Objection; calls for a legal	6	"goal" appears in the statute, but that's the sense	
7	conclusion, calls for speculation, vague. THE WITNESS: I I believe that's the	7	of it, yes. BY MS. RUBEL:	
8 9	language of the statute, that it's that it's	9	Q And how do you advise people on whether	
1	making the materials available for people with		they would qualify as an authorized entity under the	
111	disabilities.	11	Chafee Amendment?	
12	BY MS. RUBEL:	12	MR. KAPLAN: Objection; vague.	
13	Q And I think you mentioned that Benetech	13	THE WITNESS: Are you done?	
	operates as a nonprofit that you would consider an	14	MR. KAPLAN: No.	
15	authorized entity under the Chafee Amendment?	15	Counsel, I need to take a break to discuss	
16	MR. KAPLAN: Objection; misstates	16	privilege issues with my client. Is that okay?	
17	testimony, calls for a legal conclusion, vague.	17	MS. RUBEL: Sure.	
18	THE WITNESS: Yes.	18	THE VIDEOGRAPHER: Off the record at	
19	BY MS. RUBEL:	19	11:01.	
20	Q Are there any other requirements that	20	(Whereupon, the witness and counsel	
	Benetech must meet in order to provide copies of	21	left the conference room and	
22	literary works to people with print disabilities	22	returned.)	
23	under the Chafee Amendment?	23	THE VIDEOGRAPHER: We're back on the	
24	MR. KAPLAN: Objection; calls for a legal conclusion, vague.	24 25	record at 11:04.	
23	conclusion, vague.	23		
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2 3 4	THE WITNESS: As stated earlier, I believe the two primary requirements is that we be a nonprofit or a government agency and that we have a primary mission to serve people with disabilities.	2 3 4	Q The question that was pending was: Do you advise people on whether they would qualify as an authorized entity under the Chafee Amendment?	57
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1	MR. KAPLAN: Objection; vague, calls for a	1	BY MS. RUBEL:	
		2	Q Did Carl Malamud ever discuss with you	
3	And I'll instruct the witness not to		whether Public Resource could qualify as an	
1 4	discuss any privileged communications.	4	authorized entity under the Chafee Amendment?	
5	THE WITNESS: I mentioned the	5	MR. KAPLAN: Objection; vague and calls	
	qualifications, much as I have in my earlier			
	testimony, and suggest they consult with a lawyer.	7	THE WITNESS: No.	
	I do not advise them on whether or not they have	8	BY MS. RUBEL:	
	done the things that trigger that provision or not.	9	Q Have you ever had any discussions with	
	That's just not something I can do for them.		Carl Malamud about the Chafee Amendment?	
	BY MS. RUBEL:	11	A No.	
12	Q What is your understanding of how it would	12	Q Do you believe that Public Resource would	
13	be determined whether an entity one of an	13	qualify as an authorized entity under the Chafee	
	entity's primary missions is to serve people with	14	Amendment?	
	disabilities?	15	MR. KAPLAN: Objection; you're asking my	
16	MR. KAPLAN: Objection; calls for a legal	16	witness to provide a legal opinion?	
17	conclusion, competence, vague.	17	MS. RUBEL: I'm asking whether he has an	
18	THE WITNESS: Yeah. That really seems	18	opinion about whether Public Resource would qualify	
19	like a legal question.	19	as an authorized entity.	
20	BY MS. RUBEL:	20	MR. KAPLAN: I'll object as lacks	
21	Q Do you have an understanding of how that	21	foundation, competence, calls for speculation,	
22	determination would be made?		vague, calls for various legal conclusion.	
23	MR. KAPLAN: Objection; vague.	23	Say it again.	
24	THE WITNESS: If the question is whether	24	THE WITNESS: I haven't thought about	
25	there's a formal process for applying to become an	25	evaluating them on on those bases.	
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	59			61
1		1	BY MS_RUBEL:	61
	authorized entity in the United States, my	1 2	BY MS. RUBEL: O Well I'm asking you to think about it	61
2	authorized entity in the United States, my understanding is the answer is no.	1 2 3	Q Well, I'm asking you to think about it	61
2	authorized entity in the United States, my understanding is the answer is no. BY MS. RUBEL:	ı	Q Well, I'm asking you to think about it right now.	61
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	THE WITNESS: Yes.	1	essentially royalty-free permissions that they	
2	BY MS. RUBEL:	2		
3	Q Can you describe it?	3	transaction cost, which many of them did out of	
4	A In 1996 Senator Chafee of Rhode Island	4	social responsibility. So if they had a copyright	
5	proposed an amendment in copyright that would create	5	exception, you didn't have to bother with the	
6	this exception.	6	permissions department and take their time.	
7	Q And that was subsequently passed by	7	BY MS. RUBEL:	
8	Congress?	8	Q Are there any other ways that that	
9	A My understanding is in 1996 they did.	9	economic interests of publishers were served by the	
10	Q Okay.	10	Chafee Amendment?	
11	And is it your understanding that is now	11	MR. KAPLAN: Objection; vague, calls for	
12	part of the Copyright Act?	12	speculation, lacks foundation.	
13	A Yes.	13	THE WITNESS: People with disabilities	
14	Q Would you describe the Chafee Amendment as	14	, ,	
15	a social bargain between publishers and the	15	have a product for them. So I believe that it	
16	3	16	wasn't so much economics because a blind person	
17	A Yes.	17	couldn't use a print book it was more about	
18	Q How how what makes it a social	18	helping the blind person actually get the book at	
19	E	19	the time in Braille, audio or or digital formats.	
20	A I wasn't part of the negotiations around	20	So that's my best answer on that.	
21	the Chafee Amendment, but my understanding was that	21	MS. RUBEL: I'm going to mark an article.	
22	prior to the Chafee Amendment, organizations helping	22	We're going to start with Exhibit 4000.	
23	the disabled had to get permission from a publisher	23 24	(Plaintiffs' Exhibit 4000 marked for identification.)	
24	to make an accessible copy and that many of those permissions requests were not responded to, and it's	25	for identification.)	
23	permissions requests were not responded to, and it's	23		
	63			65
1	my understanding that the publishing industry and	1	BY MS. RUBEL:	65
		1 2	Q Do you recognize what I have just had	65
3	my understanding that the publishing industry and the disability community participated in the drafting of the Chafee Amendment; that it was			65
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1 that out laud places		1	by the taythook publishers, and though they admitted	
1 that out loud, please. 2 A (Reading):			by the textbook publishers, and though they admitted there was no exception for textbooks in Chafee, they	
3 "The essence of the social			would prefer that we didn't focus on textbooks.	
4 bargain between the publishers and		4	And so in order to actually help blind	
5 the disability community was to		5	people in the initial days of Bookshare, initial	
6 provide easier access to people		_	years, we focused on trade books rather than	
7 with disabilities while protecting		7	textbooks.	
8 the economic interests of		8	I can talk about that because they	
9 publishers. Chafee was drawn		9	threatened me even though they didn't talk to my	
10 narrowly to seal this bargain."			counsel, right?	
11 Q That was the first two sentences of that		11	MR. KAPLAN: Yeah. I mean	
12 third paragraph. So in that paragraph, you did		12	THE WITNESS: Okay. Okay. I can talk	
13 mention the economic interests of publishers; is			about those threats. Okay. I just want to make	
14 that right?			sure, because they did threaten us.	
15 A That is correct.		15	MR. KAPLAN: Yeah. But generally if you	
16 Q What do you mean by providing easier		16	aren't certain about whether or not something	
17 access to people with disabilities while protecting			intrudes into privileged communications, you can	
18 the economic interests of publishers?		18	always ask for a break and we can go discuss that.	
19 MR. KAPLAN: Lacks foundation.		19	THE WITNESS: Okay. Thanks. Okay.	
20 If you recall.		20	BY MS. RUBEL:	
21 THE WITNESS: So at this point in time,		21	Q This article that was marked as	
22 we, in starting Bookshare, had had conversations		22	Exhibit 4000, is that discussing the experiences of	
23 with the publishers where they had asserted that		23	Benetech and Bookshare?	
24 concern.		24	A It certainly was	
25		25	MR. KAPLAN: Objection; vague.	
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	the two sentences at the bottom of the first page of this exhibit?		place might be removed and, therefore, would also become easier to make copies for people who didn't	
$\frac{1}{3}$	MR. KAPLAN: Objection; vague,		have print disabilities?	
4		4	MR. KAPLAN: Objection; misstates	
5	THE WITNESS: Yes. Earlier you asked me	5	testimony	
	about when Chafee was passed and what the	6	Well, sorry, were you finished with your	
	motivations were, and in the prior paragraph to the	7	question?	
	one that you're citing in this exhibit, I talk about	8	MS. RUBEL: Yes.	
		9	MR. KAPLAN: Okay. Objection; misstates	
	which was a few publishers objecting conceptually to	1	testimony, vague.	
	providing permission, making it easier, moving	11	THE WITNESS: I think their concerns were	
	paperwork and legal work, and so the connection that	ı	incorrect, but they were expressed to us that way.	
	I'm making is subsequent to the Chafee Amendment		BY MS. RUBEL:	
	being passed, I created a library that was going to	14	Q Okay.	
	utilize the Chafee Amendment, and the publishers put	15	And you say in the last sentence that you	
	express pressure on us citing economic interests,		also read aloud that Chafee was drawn narrowly to	
	which at the time in this article would have been	17	seal this bargain.	
	quite fresh in my mind.	18	What do you mean by it having been drawn	
	BY MS. RUBEL:		narrowly?	
20	Q Okay.	20	MR. KAPLAN: Objection; argumentative.	
21	So they were citing economic interests	21	THE WITNESS: Chafee is pretty specific in	
22	related to the publishing of post-secondary	22	its provisions.	
23	textbooks?		BY MS. RUBEL:	
24	A Correct.	24	Q What do you mean by that?	
25	Q And they were maintaining that providing	25	A I think there's Chafee has a list of	
	71			73
1		1	things that you need to do that's relatively	73
	easier access to people with disabilities would harm		things that you need to do that's relatively specific, and so and I'm not a legal expert, but	73
2		2	specific, and so and I'm not a legal expert, but	73
2	easier access to people with disabilities would harm their economic interests in the textbook industry; is that correct?	2 3	specific, and so and I'm not a legal expert, but I got the impression that it was more narrowly drawn	73
2 3 4	easier access to people with disabilities would harm their economic interests in the textbook industry; is that correct? MR. KAPLAN: Objection; lacks foundation,	2 3 4	specific, and so and I'm not a legal expert, but	73
2 3 4	easier access to people with disabilities would harm their economic interests in the textbook industry; is that correct?	2 3 4	specific, and so and I'm not a legal expert, but I got the impression that it was more narrowly drawn than most copyright exceptions, but I don't know if	73
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2 3 4 5 6 7	easier access to people with disabilities would harm their economic interests in the textbook industry; is that correct? MR. KAPLAN: Objection; lacks foundation, vague. THE WITNESS: They wouldn't have expressed it that way.	2 3 4 5 6 7	specific, and so and I'm not a legal expert, but I got the impression that it was more narrowly drawn than most copyright exceptions, but I don't know if I really have studied other copyright exceptions. Q If you turn to the next page of that	73
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4	1 DVING BUDGI	
1 utmost integrity"?	1 BY MS. RUBEL:	
2 MR. KAPLAN: Objection; argumentative. 3 THE WITNESS: My organization is committed	Q And one of the requirements of the Chafee3 Amendment is that copies of the materials that are	
4 to ethical operation, and we try to do the right	3 Amendment is that copies of the materials that are 4 made are supposed to be provided only to people with	
5 things right.	5 print disabilities; is that right?	
6 BY MS. RUBEL:	6 MR. KAPLAN: Objection; calls for a legal	
7 Q Can you think of an example of somebody	7 conclusion, lacks foundation, calls for speculation,	
8 who would not be operating with the utmost integrity	8 vague.	
9 as they're trying to act under the Chafee Amendment?	9 THE WITNESS: My interpretation of Chafee	
10 MR. KAPLAN: Objection; vague, calls for	10 is that copies are provided for the benefit of	
11 speculation.	11 people with print disabilities. So a teacher of a	
12 THE WITNESS: I'm trying to parse all of	12 blind student can download a book for the use of	
13 the parts of that question. Is the question, do I	13 that blind student, or a parent can download a book	
14 know of an organization	14 for the use of their disabled student.	
15 BY MS. RUBEL:	But that our interpretation is that	
16 Q I can try to rephrase.	16 these are books for people with disabilities, and	
17 A Okay.	17 that's why they should be downloaded as well as an	
18 Q So I see that you're recommending that	18 individual with disabilities can download it for	
19 organizations operating under Chafee should operate	19 themselves.	
20 with the utmost integrity.	20 BY MS. RUBEL:	
21 A Uh-huh.	21 Q Are you aware of any entity that has	
22 MR. KAPLAN: Objections; misstates the	22 copied materials and made them available to the	
23 document, misleading.	23 public generally when the purpose was to make them	
24 THE WITNESS: Okay.	24 available to people with print disabilities?	
25	25 MR. KAPLAN: Objection; incomprehensible,	
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		\dashv
	75 7	77
1 BY MS. RUBEL:	75 1 lacks foundation, calls for speculation.	77
BY MS. RUBEL: Q What is it that you're trying to caution		77
2 Q What is it that you're trying to caution 3 entities not to do?	 lacks foundation, calls for speculation. THE WITNESS: Yeah. I'm I'm having a hard time understanding. Are you asking about 	77
2 Q What is it that you're trying to caution	 1 lacks foundation, calls for speculation. 2 THE WITNESS: Yeah. I'm I'm having a 3 hard time understanding. Are you asking about 4 organizations that cite Chafee and don't follow it? 	77
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1	we make it available to everybody. If it's creative	1	Those are the three major ways that people	
	comments, we make it available to everybody but let	2	provide proof of disability.	
3	people know that it's creative comments licensed.	3	Q Would that be some kind of doctor?	
4	If it's under a license, we try to follow	4	MR. KAPLAN: Objection; vague.	
5	the terms of the license. And if we're making it	5	THE WITNESS: It varies by disability what	
6	available under the Chafee Amendment, there has to	6	professional credential someone needs to have to	
7	be a person who's on record as having a qualifying	7	provide a certification of disability.	
8	disability or a group that is serving that person to	8	BY MS. RUBEL:	
9	download that particular title.	9	Q So to access materials from Bookshare that	
1	BY MS. RUBEL:	10	are made pursuant to the Chafee Amendment, an	
11	Q Do you keep records of people who have a	11	individual would have had to show some proof of	
	qualifying disability who want to access materials	12	disability by one of the methods that you just	
	through Bookshare?	13	described; is that correct?	
14	MR. KAPLAN: Objection; vague. THE WITNESS: Bookshare has a membership	14	MR. KAPLAN: Objection; misstates	
	database, and different people have different roles	15 16	testimony, vague. THE WITNESS: If the Chafee Amendment is	
	in that database, including individuals with	17	one of the mechanisms we're using to deliver the	
18	disabilities being labeled as people with qualifying	18	book, then there has to be an association with a	
19	print-disabled disabilities.	19	person with a qualifying disability under the Chafee	
	BY MS. RUBEL:	20	Amendment to obtain a copyrighted work. Yes.	
21	Q Do they have to submit any kind of	21	BY MS. RUBEL:	
22	paperwork to support their claim that they're	22	Q And you have that configured into the	
23	somebody with a print disability?	23	software so that the person clicks to open that	
24	MR. KAPLAN: Objection; vague.	24	work, you will have ensured that you have proof of	
25	THE WITNESS: Do you have more?	25	disability on file?	
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	79			81
1	79 MR. KAPLAN: Lacks foundation.	1	MR. KAPLAN: Objection; argumentative,	81
1 2	MR. KAPLAN: Lacks foundation. THE WITNESS: There are multiple	1 2	vague, lacks foundation.	81
1	MR. KAPLAN: Lacks foundation. THE WITNESS: There are multiple mechanisms for people to provide proof of	1 2 3	vague, lacks foundation. THE WITNESS: A user who's logged in who	81
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1	BY MS. RUBEL:	1	MR. KAPLAN: Objection; calls for	
2	Q You mentioned the Authors Guild versus	2	speculation, lacks foundation, vague.	
1	HathiTrust case that you were involved in that you	3	THE WITNESS: My understanding was that	
4	submitted a declaration for previously, correct?	4	one of the uses of the scanned books was to make	
5	MR. KAPLAN: Objection; misstates	5	books accessible to people with disabilities.	
6	testimony.	6	BY MS. RUBEL:	
7	THE WITNESS: I we did talk about that	7	Q Do you know if that consortium had any	
8	case earlier, and I do believe I submitted a	8	safeguards in place that ensured that only people	
9	declaration.	9	with print disabilities would be able to access the	
10	BY MS. RUBEL:	10	copies of those books?	
11	Q And what was your understanding of the	11	MR. KAPLAN: Objection; vague, lacks	
12	issues in that case as they related to people with	12	foundation, calls for speculation.	
13	print disabilities?	13	THE WITNESS: I believe that only faculty,	
14	MR. KAPLAN: Objection; vague and	14	students and staff of the research universities were	
15	privileged.	15	able to access information about the books so that	
16	I'll instruct you not to divulge the	16	that access control was the primary access control.	
17	contents of attorney/client communications or expert	17	I know less about the details of	
18	privileged communications.	18	disability-specific access, but I do believe that	
19	THE WITNESS: I was asked by the National	19	there was some difference between regular,	
20	Federation of the Blind to submit a declaration as	20	nondisabled faculty, staff and students and disabled	
21	they were my understanding is that they legally	21	faculty, staff and students.	
22	became involved in the case alongside the	22	BY MS. RUBEL:	
23	HathiTrust.	23	Q Do you believe there was some sort of	
24	BY MS. RUBEL:		certification required to show that the person had a	
25	Q And do you have an understanding of what	25	print disability to get access to certain of the	
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1	the dispute was between the Plaintiff and the	1	of the books?	85
	the dispute was between the Plaintiff and the		of the books? MR KAPLAN: Objection: yaque	85
2	the dispute was between the Plaintiff and the Defendant in that case that related to print	2	MR. KAPLAN: Objection; vague.	85
3	the dispute was between the Plaintiff and the Defendant in that case that related to print disabilities?	2 3	MR. KAPLAN: Objection; vague. THE WITNESS: There are a lot of research	85
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2 3 4 5 6	the dispute was between the Plaintiff and the Defendant in that case that related to print disabilities? MR. KAPLAN: Objection; vague. THE WITNESS: Separating privileged conversations, I have certainly read articles about	2 3 4 5 6	MR. KAPLAN: Objection; vague. THE WITNESS: There are a lot of research libraries that were involved in the case, and I don't know what their process was beyond saying these people have print disabilities so they'll get	85
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1	including Bookshare, which is the library that my	1	BY MS. RUBEL:	
	nonprofit, Benetech, operates.	2	Q So they may not have a certification	
3	But there are other organizations, many		requirement for people who are blind; is that your	
4	other organizations, that I believe would assert	4	understanding?	
5	that they operate under the Chafee Amendment.	5	MR. KAPLAN: Objection; argumentative,	
	BY MS. RUBEL:		misstates testimony, vague.	
7	Q NLS, do they have some sort of requirement	7	THE WITNESS: I don't understand all of	
8	that an individual provide proof of disability		their process, but I would say that their	
	before being able to access copyrighted materials		identification of visually impaired students through	
	under the Chafee Amendment?	10	school systems and state education agencies is	
11	A Yes.	11	comparable to our seeking a proof of disability from	
12	MR. KAPLAN: Objection; lacks foundation.		the school systems, because the school systems are	
13	BY MS. RUBEL:		legally obligated to serve blind and visually	
14	Q What are their requirements?		impaired students.	
15	A They are stated on the NLS website, and	15	But I did provide proviso that I could	
16	they're similar to those that we use, and we have a	16		
17	agreement with NLS that if someone has submitted NLS	17	of disability. It's not uncommon in our field that	
18	their qualifications, we accept that as proof of	18	hard copy Braille is circulated more broadly, and no	
19	disability for Bookshare services.	19	publisher has ever objected to that.	
20	Q What about Learning Ally; do they have a	20	BY MS. RUBEL:	
21	requirement that the person certify that they have a	21	Q Okay. I understand.	
22	print disability before being able to access the	22	And what about the National Braille Press;	
23	materials?	23	are they providing things only in Braille?	
24	MR. KAPLAN: Objection; vague, lacks	24	MR. KAPLAN: Objection; lacks foundation,	
25	foundation.	25	vague.	
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	87			89
1	THE WITNESS: Yes.	1	THE WITNESS: It's my understanding they	89
		1 2	THE WITNESS: It's my understanding they primarily provide Braille books, but they may	89
	THE WITNESS: Yes.	1 2 3		89
2 3	THE WITNESS: Yes. BY MS. RUBEL:	3	primarily provide Braille books, but they may	89
2 3	THE WITNESS: Yes. BY MS. RUBEL: Q How about the American Printing House for	3	primarily provide Braille books, but they may provide other things. I think of them as The	89
2 3 4 5 6	THE WITNESS: Yes. BY MS. RUBEL: Q How about the American Printing House for the Blind; do they have the same requirement? MR. KAPLAN: Objection; vague, lacks foundation.	3 4	primarily provide Braille books, but they may provide other things. I think of them as The Braille Press, so BY MS. RUBEL: Q Do you know if they have a certification	89
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1	accessible in a broader sense than just disability.	1	A As outlined in my expert report, I was	
2	Q Since being retained as an expert, have	2	asked to assess the accessibility of accessing and	
3	you met Mr. Malamud?	3	using certain standards documents.	
4	A No.	4	Q How much time did you spend working on the	
5	Q So you're not sure if you've ever met him,	5	report?	
6	but you know you haven't met him since you were	6	A I've tracked my time even though I'm	
7	retained?	7	serving pro bono, but I haven't added up the hours.	
8	A Correct.	l ,	Less than 100, more than 20 or 40, but I I have	
9	Q Have you ever discussed this litigation	9	the records. I just don't have them with me.	
10	with Mr. Malamud?	10	Q And you mentioned that you're serving as	
11	A Yes.	11	an expert on a pro bono basis. Why are you serving	
12	Q On more than one occasion?		on a pro bono basis?	
13	A I think it was primarily on one occasion	13	A Because I'm an accessibility expert, and	
14	that we talked about this litigation specifically.		that's my goal is to promote accessibility.	
15	Q And when was that?	15	MS. RUBEL: I know we're running out of	
16	A Early this year. I'd say somewhere in the		time on this tape, so why don't we go ahead and take	
17		17	another break.	
18	little earlier.	18	THE VIDEOGRAPHER: This is the end of Disk	
19	Q And what did you discuss?	19	1. We're off the record at 11:55.	
20	A He asked me if I would help as an expert	20	(Recess taken.)	
21	witness in a case that Public Resource was a	21	THE VIDEOGRAPHER: This is the beginning	
22	Defendant in.	22	of Disk 2. We're back on the record at 12:09.	
23	Q What else did he say?	23	BY MS. RUBEL:	
24	A I think he may have mentioned either the	24	Q Prior to this case, were you familiar with	
25	Plaintiffs or the fact that the Plaintiffs were	25	ASTM?	
\vdash		\vdash		
	91			93
				93
	standards organizations. And after I agreed to be	1	A I had heard of it.	93
2	standards organizations. And after I agreed to be helpful, he said that I should then talk to counsel	1 2	Q In your background as an engineer, did you	93
3	standards organizations. And after I agreed to be helpful, he said that I should then talk to counsel instead of continue to speak with him.	3	Q In your background as an engineer, did you ever have the occasion to use an ASTM standard?	93
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9.		96
1 A No.	1 the case and reading something about the case when	,
2 Q Do you have an understanding of the claims	2 Carl asked me to serve I don't remember if that	1
3 that have been brought by the Plaintiffs against	3 was the Complaint or a Web article I didn't	
4 Public Resource in this case?	4 consult any other material about this case beyond	
5 MR. KAPLAN: Objection; vague, calls for a	5 those excluded as directed by counsel.	
6 legal conclusion.	6 BY MS. RUBEL:	
7 THE WITNESS: I am familiar with the broad	7 Q You mentioned that it is your	
8 outlines of what the case is about.	8 understanding that this is a copyright infringement	
9 BY MS. RUBEL:	9 case; is that right?	
10 Q What is your understanding of what the	10 A Correct.	
11 case is about?	11 Q Do you have an understanding of what	
12 A I believe it's a copyright infringement	12 copyrights Plaintiffs have alleged that Public	
13 case.	13 Resource has infringed?	
14 Q Do you have any additional understanding	MR. KAPLAN: Objection; vague, calls for a	
15 of the issues in the case?	15 legal conclusion.	
16 MR. KAPLAN: Objection; vague, calls for a	THE WITNESS: In my expert report, I was	
17 legal conclusion.	17 directed to look at some standards by counsel, and	
18 THE WITNESS: Not beyond privileged	18 so I assume that those standards were at issue in	
19 conversations.	19 the case.	
20 BY MS. RUBEL:	20 BY MS. RUBEL:	
21 Q Have you reviewed the Complaint?	21 Q How many specific standards did you look	
22 A Probably, but or maybe. I don't know.	22 at?	
23 I don't recall anything about the Complaint.	23 A Counsel	
24 Q Have you reviewed Public Resource's answer	24 MR. KAPLAN: Objection; vague.	
25 and counterclaims?	25 THE WITNESS: Okay. Counsel directed me	e
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9		97
1 A Don't think so.	1 to	97
1 A Don't think so. 2 Q Is the entirety of your understanding of	2 MR. KAPLAN: And I'm going to instruct	97
1 A Don't think so. 2 Q Is the entirety of your understanding of 3 this litigation based on discussions that you've had	2 MR. KAPLAN: And I'm going to instruct 3 THE WITNESS: Okay.	97
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1	BY MS. RUBEL:	1	MR. KAPLAN: Objection; vague.	
2	Q I'll give you an opportunity to take a	2	THE WITNESS: Not in practice.	
3	look at this and see if that refreshes your	3	BY MS. RUBEL:	
4		4	Q Can you explain what you mean by that?	
5		5	A I could imagine a blind person trying to	
6	A NFPA 101-2000, ASHRAE 90.1-2010, five	6	take a picture of the screen, uploading that picture	
7		7	into an OCR device and trying to see the text they	
8	expert report, ASTM standard B57-84e1 of that	8	can't see on the screen. That's really difficult to	
9	standard, as in Edward 1, ASTM A20, like Apple, 20A,	9	do, but it's imaginable.	
10	like Apple, 20M, like Mary, -93a, like Apple. And I	10	Q So theoretically it could be possible for	
11	also	11	a copyright owner to protect the text against	
12	MR. KAPLAN: I believe, for the court		copying while also making it possible for someone	
13			with a print disability to review the material; is	
14	THE WITNESS: Correct. I misread the		that what you were explaining?	
	number. In addition, I accessed the 2012 version of	15	MR. KAPLAN: Objection; misstates the	
	the NPFA standards or NFPA standards. It's NFPA,			
	right?	17 18	argumentative.	
18 19	MR. REHN: NFPA. THE WITNESS: Yeah. So there's an error	19	THE WITNESS: I believe that technology that makes it impossible to access text as text but	
	where I flipped the letters there. Now I'm	20	instead presents a picture of the text is, for all	
	cross-referenced whether the ASHRAE standard is the		intents and purposes, inaccessible to a blind	
	same one that I looked at here. Let's see. Yeah,		person.	
	that looks like the same one. So I wasn't keeping a		BY MS. RUBEL:	
	running count, but I think that's the complete list.	24	Q Is there another way, other than	
	So it's in three, plus five, plus one, plus	25	presenting the material as a picture, that a	
\perp				
	99			101
1	99 another version of the same thing, so on the order	1	copyright owner could provide could protect their	101
			copyright owner could provide could protect their work against copying but at the same time still make	101
	another version of the same thing, so on the order of 10. BY MS. RUBEL:	2	work against copying but at the same time still make it available to be accessed by people with print	101
2 3 4	another version of the same thing, so on the order of 10. BY MS. RUBEL: Q Do you know how many standards the	2	work against copying but at the same time still make it available to be accessed by people with print disabilities?	101
2 3 4 5	another version of the same thing, so on the order of 10. BY MS. RUBEL: Q Do you know how many standards the Plaintiffs have alleged that Public Resource has	2 3 4 5	work against copying but at the same time still make it available to be accessed by people with print disabilities? MR. KAPLAN: Objection; incomplete	101
2 3 4 5 6	another version of the same thing, so on the order of 10. BY MS. RUBEL: Q Do you know how many standards the Plaintiffs have alleged that Public Resource has infringed in this litigation?	2 3 4 5 6	work against copying but at the same time still make it available to be accessed by people with print disabilities? MR. KAPLAN: Objection; incomplete hypothetical, vague, argumentative and calls for a	101
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	to blind people is generally the hardest because		contrast; is that something that also if you	
	they can't see at all. It is possible that a		change the contrast of the material, might that make	
	low-vision person, for example, would be able to		it easier for a person with dyslexia to read the content?	
	some low-vision people would be able to pull out a	4		
	magnifying glass and look at the screen and find it accessible.	5	MR. KAPLAN: Objection; calls for speculation.	
6 7		6	THE WITNESS: Yes, for some.	
1	So I tend to focus on blind people because	^	BY MS. RUBEL:	
	they have the biggest challenge when it comes to accessibility, and then depending on certain subsets	8 9		
	of print-disabled people, might find certain things	10	Q Are there other types of learning disabilities that you would classify as print	
	accessible whereas the blind would not.	11	disabilities, other than dyslexia?	
1	BY MS. RUBEL:	12	A Yes.	
13	Q Is it fair to say that there are certain	13	Q What are they?	
1	tools that people with low vision can use that a	14	A I'm not a expert in learning disabilities,	
	blind person can't use that make additional		and so I can't name specific diagnoses. I can	
	materials accessible?	15 16	describe some functional problems that I've heard	
17	A Yes.	17	about in our user base.	
18	Q And what about people with learning	18	Q Will you please describe those problems.	
1	disabilities; are there additional tools that people	19	A Inability to track text visually,	
	with learning disabilities can use that make	20	inability to go to the correct line and the next	
	materials more accessible to them than to people who	21	line of text, inability to recall material that	
	are blind?	22	you've read or to comprehend it. That's a selection	
23	MR. KAPLAN: Objection; vague.	23	of things that wouldn't necessarily have a dyslexia	
24	THE WITNESS: People with learning	24	diagnosis but is a learning disability that affects	
1	disabilities have a wide array of problems when it		the ability to read print.	
	and and a made and of proceeding made in		and dominy to 14000 prints	
	103			105
1		1	O And the types of tools that you described	105
	comes to accessing text, and so it's difficult to	1 2	Q And the types of tools that you described that assist people with dyslexia, would those same	105
2	comes to accessing text, and so it's difficult to generalize, but there are tools that dyslexic people		that assist people with dyslexia, would those same	105
2 3	comes to accessing text, and so it's difficult to generalize, but there are tools that dyslexic people use that some dyslexic people find especially	3	that assist people with dyslexia, would those same tools be useful for people who have those other	105
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2 3 4 5	comes to accessing text, and so it's difficult to generalize, but there are tools that dyslexic people use that some dyslexic people find especially	3 4	that assist people with dyslexia, would those same tools be useful for people who have those other types of learning disabilities? A Yes, some of them.	105
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1	1	with that take a full wind disability?	
1 speculation. 2 THE WITNESS: I'm having a hard time	2	with that type of physical disability? A Someone with cerebral palsy, someone with	
3 parsing where we're going. I don't really	$\frac{1}{3}$	a fine motor control disease where they can't hold a	
4 understand the difference.		book or turn a page, person with a brain injury,	
5 BY MS. RUBEL:		like many of our returning veterans, quadraplegic	
6 Q I can ask again.	6	and variations on those sort of themes where there	
7 A Okay.	7	is a physical limitation or an injury that	
8 Q You mentioned a few different types of	8		
9 tools that might be useful for someone with	9	Q With people with that type and I	
10 dyslexia.	10		
11 A Right.	11	People with those types of physical	
12 Q And my question is: If we're talking	12	disabilities, do they have difficulty reading text	
13 about someone with a different type of learning	13		
14 disability, are there any additional tools that you	14	-	
15 can think of that might be helpful for those people?	15	A It varies.	
16 A Yes.	16	MR. KAPLAN: Objection.	
17 MR. KAPLAN: Objection; incomplete	17	THE WITNESS: It varies by the disability.	
18 hypothetical, vague.	18	· · · · · · · · · · · · · · · · · · ·	
19 THE WITNESS: Yes.	19		
20 BY MS. RUBEL:	20	Q So in what	
21 Q What what other tools?	21	So if there's some category of people that	
22 A People who serve people with disabilities	22	the issue might be that they can't hold the book but	
23 or their parents or people with disabilities	23	they can see the screen; is that correct?	
24 themselves will try a lot of things. I have heard	24	A There are some people in that category	
25 of people with learning disabilities saying that		that fit that, yes.	
		, <i>J</i>	
	-		
10)7		109
1 Braille helped them. If it does, great. I find)7	Q Are there any other categories	109
		Q Are there any other categories So we've talked about the learning	109
1 Braille helped them. If it does, great. I find	1	So we've talked about the learning	109
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	110			112
1	to certify the people and then represent that to us.	1	both talk what's on the screen as well as send it to	
	And so if a physician looks at someone's disability		a Braille display so you can feel the same	
	and says, "I think they meet the standards of the		characters. And so the Braille display requires,	
	Chafee Amendment," we take that.		for online content, to have a screen reader or a	
5	BY MS. RUBEL:	5	book reading program, but kind of most roads lead	
6	Q You focus in your report on whether the	6	through a screen reader unless you're handed the	
7		7	digital file in an accessible format or someone	
8		8	converts it for you.	
	right?	9	BY MS. RUBEL:	
10	A Yes. That was the primary mechanism I	10	Q What about a screen enlarger; did you	
11	used.	11	consider whether any of the Plaintiffs' standards	
12	Q Why did you select that as the primary	12	that you reviewed, whether a person would be able to	
13	mechanism?	13	use a screen enlarger on those standards?	
14	A Because I outlined in my report, I looked	14	A I did not consider the use of a screen	
15	at the disability challenges of a blind person as	15	enlarger.	
	the most difficult to solve, and a screen reader is	16	Q We'll talk a little more about your the	
17	the number one technology a blind person uses to	17	conclusions that you drew about screen readers, but	
18	access online content, content on their personal	18	is it correct to summarize your opinion that the	
19	computer.	19	versions of the Plaintiffs' standards on the free	
20	Q What other types of tools do they use?	20	on the free access sections of their websites were	
21	MR. KAPLAN: Objection; vague.	21	not accessible by screen readers?	
22	THE WITNESS: Common tools used by blind	22	MR. KAPLAN: Objection; misstates	
23	people around accessibility include Braille	23	testimony, vague.	
24	displays, as I mentioned before, screen readers,	24	THE WITNESS: Yes.	
23	screen enlargers for people with low vision, eBook	25		
	111			113
	111			113
	readers, audio cassette tape players, apps that		BY MS. RUBEL:	113
2	readers, audio cassette tape players, apps that operate on tablets and smartphones. I think most	2	Q Would it be possible for a blind person	113
3	readers, audio cassette tape players, apps that operate on tablets and smartphones. I think most other software applications that take inaccessible	2 3	Q Would it be possible for a blind person who wanted access to those standards to have someone	113
2 3 4	readers, audio cassette tape players, apps that operate on tablets and smartphones. I think most other software applications that take inaccessible material or digital material and make it talk or	2 3 4	Q Would it be possible for a blind person who wanted access to those standards to have someone read those standards aloud to them?	113
2 3 4 5	readers, audio cassette tape players, apps that operate on tablets and smartphones. I think most other software applications that take inaccessible material or digital material and make it talk or larger or tactile. Those are pretty much the ways	2 3 4 5	Q Would it be possible for a blind person who wanted access to those standards to have someone read those standards aloud to them? MR. KAPLAN: Objection; incomplete	113
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	114			116
1	MD VADI AN. Objection organizative	1	of the standards?	
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	MR. KAPLAN: Objection; argumentative, misstates testimony, vague.	$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	A It wasn't always easy to find where to go	
$\frac{1}{3}$	THE WITNESS: In addition to having a	3	to get that, but I eventually was able or was told	
4	sighted person read it aloud, they could have a			
5	sighted person type the standard out into a	5	Q Where you have	
6	accessible document. They could have a sighted	6	Can you explain what you were what part	
7		7	of the website you were having difficulty finding?	
'	type it in from that or try to scan it in from that,	8	MR. KAPLAN: Objection; misstates	
9	and then all the other things you would do to	9	testimony.	
1 .	produce a successful version.	10	THE WITNESS: Yeah. I was engaged to look	
11	Once you have an accessible digital copy,	11	at the accessibility of the process of getting a	
1	you could then do you could produce a Braille	12	standard and the standard itself. And the first	
	copy, a large-print copy, an audio copy. The whole	13	thing you have to do is find how to get a standard	
	idea would be to try to create a text file that you	14		
15	could then turn into these other formats.	15	three standards bodies, I spent 10 minutes without	
16	BY MS. RUBEL:		being able to find out where you got a free copy,	
17	Q So if somebody assisted them with creating	17	and so later on, counsel gave me a link. I'm sure I	
18	the text version, they would then have many options?	18	would have found it eventually. But it was just	
19	MR. KAPLAN: Objection; incomplete	19	hard to locate by navigating around the website	
20	hypothetical, vague.	20	where that spot was. I think that may have been the	
21	THE WITNESS: Yes.	21	ASHRAE site, but I'm not I'm not sure which one	
22	BY MS. RUBEL:	22	of the three it was.	
23	Q Do you recall how long each of the	23	BY MS. RUBEL:	
24	standards that you reviewed each of the	24	Q Okay.	
25	Plaintiffs' standards that you reviewed is?	25	Were you able to eventually access all of	
\vdash		\vdash		
	115			117
		1	the standards from the Plaintiffs' website that you	117
1 2	MR. KAPLAN: Objection; vague.		the standards from the Plaintiffs' website that you tried to access?	117
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1 Q Why did you do that?	1 BY MS. RUBEL:	
2 A I was interested in finding the for	2 Q Did you review copies of Plaintiffs' 3 standards	
3 example, the Public.Resource.Org version of that 4 standard		
	4 Have you ever reviewed copies of	
5 Q So in	5 Plaintiffs' standards that are posted on the 6 Internet Archive?	
6 A because in my expert report, I talk 7 about actually searching for them on Google, so	6 Internet Archive? 7 A No.	
l	8 Q You've testified that counsel referred you 9 to the specific standards that they wanted you to	
1	10 evaluate; is that correct?	
10 Public Resource's website; is that right? 11 MR. KAPLAN: Objection; mischaracterizes	11 MR. KAPLAN: Objection; misstates	
12 testimony.	12 testimony.	
13 THE WITNESS: I searched for the	13 THE WITNESS: Yes.	
14 basically the numbers of the standards, yes. If you	14 BY MS. RUBEL:	
15 give me a minute to actually take a quick look at	15 Q Did you do anything to confirm whether the	
16 my	16 standards they referred you to are the subject of	
17 BY MS. RUBEL:	17 this litigation?	
18 O Sure.	18 MR. KAPLAN: Objection; vague, calls for a	
19 A expert report just to make sure.	19 legal conclusion, argumentative.	
20 Yes. So, for example, in my expert report	20 THE WITNESS: No.	
21 I noted that I had searched the term "NFPA 101	21 BY MS. RUBEL:	
22 Resource.Org" and it showed, for example, Public	22 Q So you don't know if the standards that	
23 Resource's standard on that list, and I didn't see	23 they referred you to are actually the subject of	
24 any other place beyond where I could go get the	24 this litigation; is that right?	
25 standard. If I had, I probably would have clicked	25 MR. KAPLAN: Objection; argumentative,	
25 Standard. 11 1 mad, 1 productly would have cricked	25 Mic. III II 271 V. Objection, digamentative,	
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1 on it and said but I don't recall seeing it		121
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	122			124
1	usage, only their accessibility.	1	professions.	
2	Q Do you know of any person who has ever	2	Q Do any of the standards from Plaintiffs	
3	used any of the 10 standards that you reviewed?	3	that you reviewed relate to computer software	
4	MR. KAPLAN: Objection; vague.	4	engineering?	
5	THE WITNESS: I don't personally know of a	5	A No.	
6	person who has shared with me that they've used	6	Q Has anyone ever informed you that they	
7	these standards.	7	wanted to be able to access a standard that was	
8	BY MS. RUBEL:	8	available on one of Plaintiffs' websites, but they	
9	Q What percentage of people in the United	9	were unable to do so because of a print disability?	
10	States are completely blind?	10	A Nobody has personally asked me about the	
11	A Less than 1 percent.	11	accessibility of a document on one of the	
12	Q What percentage of the population in the	12	Plaintiffs' sites.	
13	United States has print disability?	13	Q Are you aware that anyone with a print	
14	A We do not have a precise number, but our	14	disability has asked anyone else about the ability	
	estimate is in the 2 to 3 percent range that would	15	to access a standard from one of the Plaintiffs'	
16	meet our qualifications.		websites?	
17	Q And that's including the 1 percent that's	17	A Yes.	
1	blind?	18	MR. KAPLAN: You got to let me object.	
19	A Yeah. All people with print disabilities	19	THE WITNESS: Sorry.	
	are in that range.	20	MR. KAPLAN: It's okay.	
21	Q Are you excuse me.			
22	Are you aware of any individual who works	22	Q How many people are you aware of who have	
23	in the field of fire protection who's blind?	23	indicated that they were unable to access a standard	
24	MR. KAPLAN: Objection; vague.		from one of the Plaintiffs' websites because of a	
25	THE WITNESS: No.	25	print disability?	
		-		
	123			125
		1	MR KAPLAN: Objection: misstates	125
1	BY MS. RUBEL:	1 2	MR. KAPLAN: Objection; misstates testimony, misleading, vague.	125
2	BY MS. RUBEL: Q Are you aware of anyone who works in the		testimony, misleading, vague.	125
3	BY MS. RUBEL: Q Are you aware of anyone who works in the field of heating, air conditioning or refrigeration	2 3	testimony, misleading, vague. THE WITNESS: I don't know the number of	125
2 3 4	BY MS. RUBEL: Q Are you aware of anyone who works in the field of heating, air conditioning or refrigeration who's blind?	2 3 4	testimony, misleading, vague. THE WITNESS: I don't know the number of people who have requested the standards. I simply	125
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2 3 4 5 6	BY MS. RUBEL: Q Are you aware of anyone who works in the field of heating, air conditioning or refrigeration who's blind? MR. KAPLAN: Objection; vague. THE WITNESS: No.	2 3 4 5 6	testimony, misleading, vague. THE WITNESS: I don't know the number of people who have requested the standards. I simply know that some of the standards have been requested by print-disabled people.	125
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	126			128
1	report, but I don't have the standard number. Less	1	speculation.	
	than 10 standards, at least 1.	2	THE WITNESS: Perhaps.	
3	Q How do you know it's not the one you	3	BY MS. RUBEL:	
4	examined in this report?	4	Q And it's also possible that they never	
5	A Because I looked at the list and 101	5	contacted NFPA?	
6	wasn't on the in the list.	6	A All I know is they asked us to do it.	
7	Q So	7	Q Is it your understanding that NFPA's	
8	A I can search our website.	8	standards are protected by copyright?	
9	Q Did you produce documents that relate to	9	MR. KAPLAN: Objection; calls for a legal	
10	which NFPA standards are included in the Bookshare	10		
11	collection today?	11	THE WITNESS: As far as I'm aware, any	
12	A I have no such document.	12	document created since a certain date is probably	
13	Q So you did you review the Bookshare	13	copyrighted. I'm sort of vaguely aware that that's	
14	website to determine which NFPA standards are	14	the case in the U.S.	
15	included in the Bookshare collection?	15	BY MS. RUBEL:	
16	A Not in preparation of my expert report.	16	Q So if you	
17	Q In what context did you review the	17	If Bookshare made a copy of an NFPA	
18	Bookshare website to determine if there are any NFPA	18	standard available on Bookshare, would that be	
19	standards in the Bookshare collection?	19	pursuant to the Chafee Amendment?	
20	A I did a search this week but did not	20	MR. KAPLAN: Objection; incomplete	
21	create any document, notes as a result of that Web	21	hypothetical, calls for speculation, lacks	
22	search.		foundation and vague.	
23	Q Would it be possible to recreate your	23	THE WITNESS: That would be the most	
24	search?		probable conclusion I'd draw.	
25	A Yes.	25		
	127			129
1		1	BY MS_RUBEL:	129
1 2	Q How would an NFPA standard have come to be	1 2	BY MS. RUBEL: O So the individual who wanted access to the	129
2	Q How would an NFPA standard have come to be a part of the Bookshare collection?	1 2 3	Q So the individual who wanted access to the	129
2 3	Q How would an NFPA standard have come to be a part of the Bookshare collection? MR. KAPLAN: Objection; calls for	3	Q So the individual who wanted access to the NFPA standard and who is print disabled has access	129
2 3 4	Q How would an NFPA standard have come to be a part of the Bookshare collection?	3	Q So the individual who wanted access to the NFPA standard and who is print disabled has access to that standard now; is that correct?	129
2 3	Q How would an NFPA standard have come to be a part of the Bookshare collection? MR. KAPLAN: Objection; calls for speculation, lacks foundation, vague	3 4	Q So the individual who wanted access to the NFPA standard and who is print disabled has access to that standard now; is that correct? MR. KAPLAN: Objection; calls for	129
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1 priority based on our funding structure of whi 2 titles we will do. If it's for an educational 3 purpose by an American student, we're funded 4 Department Of Education to produce those. 5 If someone didn't have a school reason, 6 could put it on a what we call a wish list, an 7 volunteers could produce the book or the pers 8 disability could cause it to be created themselve 9 and submit it to us to add to our library. 10 BY MS. RUBEL: 11 Q Other than those several NFPA standa 12 the Bookshare collection, are you aware of an 13 standards of the Plaintiffs that anyone with a public standard of the plainti	th	ald have called the Plaintiffs, for example, and seed for an electronic copy of the standard that sey would have been able to use to make it print cessible to someone with a print disability? MR. KAPLAN: Objection; incomplete pothetical, vague. THE WITNESS: Outside the scope of my pert engagement. MS. RUBEL: Q. My question is: Did you ever investigate So the answer may be "no" A. Okay. No. Q. Okay. I'm just going to ask another short series
 15 access because of their print disability? 16 MR. KAPLAN: Objection; vague. 	15 of 16	questions, and then we can take another break. A Okay. Sounds good.
17 THE WITNESS: I have no knowledge 18 BY MS. RUBEL: 19 Q The 10 specific standards that you 20 reviewed, are you aware of any person with a	of that. 17 18 19	Q On page 7 of your report A Yes. Q it's the first full the first mplete sentence on page 7, you indicated that it's
21 disability who attempted to access those stand 22 on the Plaintiffs' websites and was unable to d	ards 21 yo	ur opinion that people with other print abilities, such as vision impairment, dyslexia,
23 MR. KAPLAN: Objection; vague.	23 bra	in injury and physical disabilities, would find
24 THE WITNESS: No. Sorry, I thought 25 were finished.	′ I	s standards accessible with screen readers on blic Resource's website but that the standards on
	131	133
1 MR. KAPLAN: Yeah. No. No. 2 BY MS. RUBEL: 3 Q Do you have any reason to believe that 4 an individual approached any of the Plaintiffs 5 request access of a standard due to their print 6 disability, that the Plaintiffs would not have 7 provided them access? 8 A I'm having a hard time parsing the 9 question. Can you ask it just a little bit more 10 simply. 11 Q Sure. 12 Do you have any reason to believe that 13 Plaintiffs would have said "no" if anybody sai 14 want to access one of your standards, but I can 15 because I have a print disability"? 16 MR. KAPLAN: Objection; incomplete 17 hypothetical, vague. 18 THE WITNESS: I'm not aware either was a print disability of the complete of the properties o	1 the 2 we 3 ma 4 is to 5 6 7 do 8 BY 9 10 the 11 pri 12 sta d, "I 13 t't 14 tha 15 thi 16 bas 17 ass 18 19 mi 20 dig 21	e free reading portions of the Plaintiffs' bisites would not be accessible to the great giority of people with these types of disabilities; that correct? A Correct. MR. KAPLAN: Objection; misstates the cument. MS. RUBEL: Q What's the basis of your conclusion that great majority of people with these types of nt disabilities would not be able to access the ndards from Plaintiffs' free websites? A Because the great majority of people in nt class rely on assistive technology to make ngs accessible, and the free reading portions sically interfere with almost all of those sistive technology. I felt that some people with low vision ght find it usable, and I base that on other gital content like eBook readers. Q So some people with low vision would be
2 BY MS. RUBEL: 3 Q Do you have any reason to believe that 4 an individual approached any of the Plaintiffs 5 request access of a standard due to their print 6 disability, that the Plaintiffs would not have 7 provided them access? 8 A I'm having a hard time parsing the 9 question. Can you ask it just a little bit more 10 simply. 11 Q Sure. 12 Do you have any reason to believe that 13 Plaintiffs would have said "no" if anybody sai 14 want to access one of your standards, but I can 15 because I have a print disability"? 16 MR. KAPLAN: Objection; incomplete 17 hypothetical, vague. 18 THE WITNESS: I'm not aware either was a print disability of the properties of the province of the	1 the 2 we 3 ma 4 is to 5 6 7 do 8 BY 9 10 the 11 pri 12 sta 1, "I 13 14 tha 15 thi 16 ba: 17 ass 18 19 mi 20 dig 21 con 22 abi 23 accidents	e free reading portions of the Plaintiffs' bisites would not be accessible to the great giority of people with these types of disabilities; that correct? A Correct. MR. KAPLAN: Objection; misstates the cument. MS. RUBEL: Q What's the basis of your conclusion that great majority of people with these types of nt disabilities would not be able to access the ndards from Plaintiffs' free websites? A Because the great majority of people in at class rely on assistive technology to make ngs accessible, and the free reading portions sically interfere with almost all of those sistive technology. I felt that some people with low vision ght find it usable, and I base that on other gital content like eBook readers.

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	1 THE WITTHESS II OI	
1 testimony, argumentative, vague.	1 THE WITNESS: I'm sorry. Okay.	
2 THE WITNESS: I believe that some people, 3 as I think I mentioned earlier, could pull out a	2 BY MS. RUBEL:	
· · · · · ·	3 Q You need to just answer my questions.	
4 magnifying glass and be able to use the standards. 5. They may prefer to have a better technical solution.	4 MR. KAPLAN: But I will object to the	
5 They may prefer to have a better technical solution,6 but they would find it somewhat usable.	5 question as misstating testimony.6 THE WITNESS: Okay. We believe that 2 to	
7 BY MS. RUBEL:		
8 Q You said the great majority of people you 9 do not think would find them accessible. Can you	8 qualify for Bookshare. 9 BY MS. RUBEL:	
9 do not think would find them accessible. Can you 10 quantify that?	10 Q And is that based on your understanding	
	11 that 2 to 3 percent of the general population has a	
11 A Well, there's a list of people with 12 disabilities that I tend to track: Blind, visual	12 print disability as you define it?	
13 impairment, dyslexia, brain injury and physical	13 A That would be my assumption, but the	
14 disabilities. And I consider some subset of people	14 source of my number is primarily what percentage of	
15 who are low vision but not blind to be much less	15 general student populations, say, in K-12 or in	
16 than half of that combined population.	16 higher ed, get signed up for Bookshare and so and	
17 Q Much less than half? Is that a quarter?	17 we see numbers in the 2 to 3 percent range of, say,	
18 A I don't have a precise number, but less	18 a school district in Palo Alto might be signed up	
19 than a quarter, potentially less than 10 percent.	19 for us, so that's kind of the basis of that number.	
20 But these aren't numbers that I have a precise	20 Q And then you said that less than half of	
21 number. I just think of what size these different	21 that 2 to 3 percent use has ever used a screen	
22 groups are, and then I take a subset of that, and I	22 reader; is that correct?	
23 can kind of do the math, that a great majority is	23 MR. KAPLAN: Objection; misstates	
24 something that I can stand behind.	24 testimony.	
25 Q Do you know what portion of people who	25 THE WITNESS: I estimated that I would	
25 Q Bo you know what portion of people who	25 THE WITHEST. POSIMATOR that I Would	
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1 have dyslexia in the United States use screen	1 probably say less than half of that general	137
1 have dyslexia in the United States use screen 2 readers?	1 probably say less than half of that general2 population is using a screen reader, and because	137
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		138			140
1	MS DIJBEL: I think this is a good time to		1	would be able to do?	
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	MS. RUBEL: I think this is a good time to take our lunch break.		2	MR. KAPLAN: Objection; misstates	
3	THE VIDEOGRAPHER: We're going off the		3	testimony, argumentative, vague.	
4	record at 1:20.		4	THE WITNESS: I was I chose the	
5	(Lunch recess taken.)			functional tests based on accessibility standards	
6	THE VIDEOGRAPHER: We're back on the			and the ability for a person with a disability to do	
7	record at 2:42.			similar things to people without disabilities, but I	
8	BY MS. RUBEL:		8	didn't evaluate the general usability of the website	
9	Q There were four aspects of each of the		9	for people without disabilities. I chose to focus	
10	Plaintiffs' websites that you evaluated; is that		10	on those elements.	
11	correct?		11	BY MS. RUBEL:	
12	MR. KAPLAN: Objection; vague.		12	Q So maybe I'll give you an example.	
13	THE WITNESS: There were four factors that		13	Did you did you evaluate whether a	
	I investigated in terms of the websites and the			person without a print disability using the	
	standards content.			Plaintiffs' websites would be able to do a full-text	
1	BY MS. RUBEL:			search of the standards?	
17	Q And what were those four factors or		17	MR. KAPLAN: Objection; vague.	
18	aspects?		18	THE WITNESS: I did not evaluate that. I	
19	A Well, I I focused on functional aspects			did evaluate, for example actually, no, I think I	
1	such as could a person with a disability access the		20	did do some checks on full-text searches. My expert	
21	actual standard? Could they read it in its			report mentions where I did those checks. BY MS. RUBEL:	
22 23	entirety? Could they go to a specific spot in the standard and could they do a keyword search on the		23	Q When you were doing the searches for	
24	standard?			full-text searches, was that I'm sorry. I guess	
25	I think those are the four factors that I			we'll get to that when we discuss that portion of	
	Tulink those we the four factors that I			we is get to that when we discuss that pertion of	
		139			141
	used.	139	1	vour report.	141
1 2	used. Q How did you come up with those four	139	1 2	your report. A Uh-huh.	141
1 2 3		139		A Uh-huh.	141
2	Q How did you come up with those four	139	2		141
2 3	Q How did you come up with those four factors?	139	2	A Uh-huh. Q Were you assisted by anybody else in the	141
2 3 4 5	Q How did you come up with those four factors? A Through a functional analysis on what	139	2 3 4	A Uh-huh. Q Were you assisted by anybody else in the drafting of your report?	141
2 3 4 5 6 7	Q How did you come up with those four factors? A Through a functional analysis on what people generally do when they're reading information for content. It's like it's sort of a functional description of can I do what other people would do	139	2 3 4 5 6	A Uh-huh. Q Were you assisted by anybody else in the drafting of your report? MR. KAPLAN: Objection; vague. THE WITNESS: Excluding privileged answers to that question, nobody else helped me draft the	141
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	142			144
1	A I think we focused on the website that	1	guidelines?	
2	didn't have an accessible sign-up process, and I'm	2	A They're the primary Web accessibility	
	happy to find out which one of the three standards	3	standard promulgated by the World Wide Web	
	bodies had that problem, just so I correctly testify	1	Consortium, which is the main standards body in Web	
5	to that.	5	technology.	
6	Q Sure.	6	Q Does Benetech participate in the World	
7	A So I'm looking at my expert report. So we	7	Wide Web Consortium's standards development process?	
′	focused our efforts on NFPA when we did our	8	MR. KAPLAN: Objection; vague.	
9	in-person evaluation.	9	THE WITNESS: Benetech staff have	
10	Q Is Rob Turner blind?			
11	A Yes.		BY MS. RUBEL:	
12	Q What is his background?	12	Q In what capacity?	
13	MR. KAPLAN: Objection; vague.	13	A As a stakeholder with technical expertise	
14	THE WITNESS: He's a blind engineer for my		in the area. So our focus is on accessibility	
	nonprofit organization.	15	aspects of W3C standards.	
	BY MS. RUBEL:	16	Q During what time period did Benetech	
17	Q What what is his role	17	participate in the standards development process for	
18	Is he employed by Benetech?	18	this organization?	
19	A Yes, he's employed by Benetech as a as	19	A In one form or another, we have	
20	a Quality Assurance Engineer.	20	participated in the W3C standards process for	
21	O So what does he do in that role?	21	roughly 20 years.	
22	A He tests the quality of our products,	22	Q And does Benetech currently participate in	
23	including our websites, evaluates accessibility, but	23	the standards development process?	
24	his focus is on our products.	24	A I'm not aware of a current process that	
25	Q Why did you seek Rob Turner's assistance?		we're actively involved with today, but we might	
	140			
	143			145
		1	be we've been involved in the last couple of	145
1 2	A He's one of our blind employees who		be we've been involved in the last couple of vears on an issue that may still be open.	145
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	146			148
8 9	Q So it was counsel's decision to make reference to the license? MR. KAPLAN: Objection; misstates testimony and calls for privileged communications. THE WITNESS: Okay. So I'm going to go back to my expert report and try and find the mention that you're referring to and BY MS. RUBEL: Q Sure. I can refer you to page 7 of your report.	2 3	are government agencies that specify that vendors have to meet a certain level of compliance with the WCAG standards. They're commonly referenced when accessibility requirements are are raised. BY MS. RUBEL: Q What are the three levels of accessibility? A They're generally designated as A, AA and AAA. Q What does what does level A signify?	
11	A Okay. Great.	11	A In common understanding in the field,	
12 13 14	Yes. I guess yes, that was counsel's it was based on privileged conversations about the license.	12 13 14	"should" or no, "must." A is "must" or the equivalent of must. Q What do you mean by that?	
15	Q And you don't recall having read that	15	A If you're accessible, you must do this;	
16	license for many years; is that correct?	16	otherwise, you're not accessible.	
17	A I think I'm aware that the W3C licensed their standards freely. I was aware of that.	17 18	Q And what about a double A; what does that signify?	
18 19	Q When you say license it freely, do you	19	A "Should." If you're accessible, you	
20	mean at no cost?	20	should do these as well as the must requirements.	
21	A Yes.	21	Q And a triple A?	
22 23	Q And so they're they're referred to as WC3 [sic]; is that correct?	22 23	A "Could," "might" if it's easy. It would be overkill to require people to do everything in	
24	A W3C is the most common designation.		AAA, and it also varies on what your functional	
25	Q W3C?	25	objective is, and so, you know, certain things just	
	147			149
1	A Yep. And WCAG is the Web Content		don't apply to certain kinds of content.	149
2	A Yep. And WCAG is the Web Content Accessibility Guidelines.	2	Q If we could turn in Exhibit C to your	149
1	A Yep. And WCAG is the Web Content	2		149
2 3	A Yep. And WCAG is the Web Content Accessibility Guidelines. Q WCAG? A Yeah. W-C-A-G, Web Content Accessibility Guidelines.	2 3	Q If we could turn in Exhibit C to your report, this is a copy of the WCAG guidelines. A Uh-huh. Q On page 1, the very first sentence under	149
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	150			152
	A Yes. Uh-huh.	1	that recommendation was not followed and blind	
2	Q Does everyone who posts content on the	2	people couldn't use those e-Commerce websites.	
3	Internet comply with all of the level A	3	BY MS. RUBEL:	
4	recommendations?	4	Q Do you do you have in mind a specific	
5	A No.	5	website, e-Commerce website, that people weren't	
6	Q Do you have any estimate of what	6	able to use for that reason?	
7	percentage of the content on the Internet complies	7	A Oh, you know, Amazon has been sued or	
8	with those level A recommendations?	8	hassled. There have been airlines. I think Target	
9	A No.	9	was the subject of a major suit. Yeah. I mean,	
10	Q Any ballpark range?	10	those are those are some examples, and I believe	
11	MR. KAPLAN: Objection; asked and	11	they fixed them because they kind of had to.	
12	answered.	12	Q Do you do you believe that when people	
13	THE WITNESS: The Web's a really big place	13	are not compliant with those recommendations,	
14	and I don't know all about it.	14	they're generally purposely trying to prevent people	
15	BY MS. RUBEL:	15	with print disabilities from accessing the website	
16	Q Is there a lot of content on the Internet	16	content? MB. KARLAN: Objection: vague incomplete	
17	that does not comply with the level A recommendations?	17 18	MR. KAPLAN: Objection; vague, incomplete hypothetical.	
18	MR. KAPLAN: Objection; vague.	19	THE WITNESS: I believe the number of Web	
20	THE WITNESS: If you got more specific, it	20	designers that deliberately exclude disabled people	
	would be easier for me to answer questions. But	21	while designing websites are in the minority.	
22	anything like, tell me about what World Wide Web is	22	BY MS. RUBEL:	
1	like is like tell me about every human being on the	23	Q So how does that exclusion of people with	
	planet and generally the characteristics of them.		print disabilities come about if it's not	
	I I it's really hard to be specific.		deliberate?	
	151			153
1		1	MR_KAPLAN: Objection: misstates	153
1 2	BY MS. RUBEL:	1 2	MR. KAPLAN: Objection; misstates testimony, argumentative, vague.	153
1 2 3	BY MS. RUBEL: Q Are you familiar with any content, any	1 2 3	testimony, argumentative, vague.	153
1 2 3 4	BY MS. RUBEL:	_	testimony, argumentative, vague. THE WITNESS: The client designing the	153
1 2 3 4 5	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not	4	testimony, argumentative, vague.	153
3 4 5	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations?	4	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a	153
3 4 5 6	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos	4 5 6	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more	153
3 4 5 6	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos on the Internet that don't have captioning for the deaf, which would be a level A requirement of video content.	4 5 6	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more common of, I'd say, people who aren't professionally	153
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3 4 5 6 7 8 9 10 11 12	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos on the Internet that don't have captioning for the deaf, which would be a level A requirement of video content. Q What about the specific recommendation that relates to providing text alternatives for any non-text content; are you familiar with any content on the Internet that does not comply with that	4 5 6 7 8 9 10 11 12	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more common of, I'd say, people who aren't professionally trained, because I think in the field, accessibility is a topic that's taught as part of a standard curriculum in a university sort of setting for that kind of expertise. They copied an inaccessible	153
3 4 5 6 7 8 9 10 11 12 13	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos on the Internet that don't have captioning for the deaf, which would be a level A requirement of video content. Q What about the specific recommendation that relates to providing text alternatives for any non-text content; are you familiar with any content on the Internet that does not comply with that recommendation?	4 5 6 7 8 9 10 11 12 13	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more common of, I'd say, people who aren't professionally trained, because I think in the field, accessibility is a topic that's taught as part of a standard curriculum in a university sort of setting for that kind of expertise. They copied an inaccessible website is quite common in the Web. "I like the	153
3 4 5 6 7 8 9 10 11 12 13 14	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos on the Internet that don't have captioning for the deaf, which would be a level A requirement of video content. Q What about the specific recommendation that relates to providing text alternatives for any non-text content; are you familiar with any content on the Internet that does not comply with that recommendation? MR. KAPLAN: Objection; argumentative,	4 5 6 7 8 9 10 11 12 13 14	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more common of, I'd say, people who aren't professionally trained, because I think in the field, accessibility is a topic that's taught as part of a standard curriculum in a university sort of setting for that kind of expertise. They copied an inaccessible website is quite common in the Web. "I like the looks of that; I'll just borrow that and change the	153
3 4 5 6 7 8 9 10 11 12 13 14 15	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos on the Internet that don't have captioning for the deaf, which would be a level A requirement of video content. Q What about the specific recommendation that relates to providing text alternatives for any non-text content; are you familiar with any content on the Internet that does not comply with that recommendation? MR. KAPLAN: Objection; argumentative, vague.	4 5 6 7 8 9 10 11 12 13 14 15	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more common of, I'd say, people who aren't professionally trained, because I think in the field, accessibility is a topic that's taught as part of a standard curriculum in a university sort of setting for that kind of expertise. They copied an inaccessible website is quite common in the Web. "I like the looks of that; I'll just borrow that and change the text to be my own."	153
3 4 5 6 7 8 9 10 11 12 13 14 15 16	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos on the Internet that don't have captioning for the deaf, which would be a level A requirement of video content. Q What about the specific recommendation that relates to providing text alternatives for any non-text content; are you familiar with any content on the Internet that does not comply with that recommendation? MR. KAPLAN: Objection; argumentative, vague. THE WITNESS: The NFPA sign-up process is	4 5 6 7 8 9 10 11 12 13 14 15 16	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more common of, I'd say, people who aren't professionally trained, because I think in the field, accessibility is a topic that's taught as part of a standard curriculum in a university sort of setting for that kind of expertise. They copied an inaccessible website is quite common in the Web. "I like the looks of that; I'll just borrow that and change the text to be my own." I'm sure there are other reasons, but, you	153
3 4 4 5 6 7 7 8 9 10 11 12 13 14 15 16 17 7	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos on the Internet that don't have captioning for the deaf, which would be a level A requirement of video content. Q What about the specific recommendation that relates to providing text alternatives for any non-text content; are you familiar with any content on the Internet that does not comply with that recommendation? MR. KAPLAN: Objection; argumentative, vague. THE WITNESS: The NFPA sign-up process is an example I use in my report. That's one example.	4 5 6 7 8 9 10 11 12 13 14 15 16 17	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more common of, I'd say, people who aren't professionally trained, because I think in the field, accessibility is a topic that's taught as part of a standard curriculum in a university sort of setting for that kind of expertise. They copied an inaccessible website is quite common in the Web. "I like the looks of that; I'll just borrow that and change the text to be my own." I'm sure there are other reasons, but, you know, lack of a spec or ignorance of how to do it	153
3 4 4 5 6 7 7 8 9 10 11 12 13 14 15 16 17 18	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos on the Internet that don't have captioning for the deaf, which would be a level A requirement of video content. Q What about the specific recommendation that relates to providing text alternatives for any non-text content; are you familiar with any content on the Internet that does not comply with that recommendation? MR. KAPLAN: Objection; argumentative, vague. THE WITNESS: The NFPA sign-up process is an example I use in my report. That's one example. BY MS. RUBEL:	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more common of, I'd say, people who aren't professionally trained, because I think in the field, accessibility is a topic that's taught as part of a standard curriculum in a university sort of setting for that kind of expertise. They copied an inaccessible website is quite common in the Web. "I like the looks of that; I'll just borrow that and change the text to be my own." I'm sure there are other reasons, but, you know, lack of a spec or ignorance of how to do it are probably the top couple.	153
3 4 4 5 6 7 7 8 9 10 11 12 13 14 15 16 17 18 19	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos on the Internet that don't have captioning for the deaf, which would be a level A requirement of video content. Q What about the specific recommendation that relates to providing text alternatives for any non-text content; are you familiar with any content on the Internet that does not comply with that recommendation? MR. KAPLAN: Objection; argumentative, vague. THE WITNESS: The NFPA sign-up process is an example I use in my report. That's one example.	4 5 6 7 8 9 10 11 12 13 14 15 16 17	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more common of, I'd say, people who aren't professionally trained, because I think in the field, accessibility is a topic that's taught as part of a standard curriculum in a university sort of setting for that kind of expertise. They copied an inaccessible website is quite common in the Web. "I like the looks of that; I'll just borrow that and change the text to be my own." I'm sure there are other reasons, but, you know, lack of a spec or ignorance of how to do it are probably the top couple. BY MS. RUBEL:	153
3 4 4 5 6 7 7 8 9 10 11 12 13 14 15 16 17 18 19	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos on the Internet that don't have captioning for the deaf, which would be a level A requirement of video content. Q What about the specific recommendation that relates to providing text alternatives for any non-text content; are you familiar with any content on the Internet that does not comply with that recommendation? MR. KAPLAN: Objection; argumentative, vague. THE WITNESS: The NFPA sign-up process is an example I use in my report. That's one example. BY MS. RUBEL: Q Other than the Plaintiffs' websites, is it a common issue that there that there are websites	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more common of, I'd say, people who aren't professionally trained, because I think in the field, accessibility is a topic that's taught as part of a standard curriculum in a university sort of setting for that kind of expertise. They copied an inaccessible website is quite common in the Web. "I like the looks of that; I'll just borrow that and change the text to be my own." I'm sure there are other reasons, but, you know, lack of a spec or ignorance of how to do it are probably the top couple.	153
3 4 4 5 6 6 7 8 8 9 10 11 12 13 14 15 16 17 18 19 20 0	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos on the Internet that don't have captioning for the deaf, which would be a level A requirement of video content. Q What about the specific recommendation that relates to providing text alternatives for any non-text content; are you familiar with any content on the Internet that does not comply with that recommendation? MR. KAPLAN: Objection; argumentative, vague. THE WITNESS: The NFPA sign-up process is an example I use in my report. That's one example. BY MS. RUBEL: Q Other than the Plaintiffs' websites, is it	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more common of, I'd say, people who aren't professionally trained, because I think in the field, accessibility is a topic that's taught as part of a standard curriculum in a university sort of setting for that kind of expertise. They copied an inaccessible website is quite common in the Web. "I like the looks of that; I'll just borrow that and change the text to be my own." I'm sure there are other reasons, but, you know, lack of a spec or ignorance of how to do it are probably the top couple. BY MS. RUBEL: Q Was another possibility that there are	153
3 4 4 5 6 7 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos on the Internet that don't have captioning for the deaf, which would be a level A requirement of video content. Q What about the specific recommendation that relates to providing text alternatives for any non-text content; are you familiar with any content on the Internet that does not comply with that recommendation? MR. KAPLAN: Objection; argumentative, vague. THE WITNESS: The NFPA sign-up process is an example I use in my report. That's one example. BY MS. RUBEL: Q Other than the Plaintiffs' websites, is it a common issue that there that there are websites that do not provide text alternatives for non-text	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more common of, I'd say, people who aren't professionally trained, because I think in the field, accessibility is a topic that's taught as part of a standard curriculum in a university sort of setting for that kind of expertise. They copied an inaccessible website is quite common in the Web. "I like the looks of that; I'll just borrow that and change the text to be my own." I'm sure there are other reasons, but, you know, lack of a spec or ignorance of how to do it are probably the top couple. BY MS. RUBEL: Q Was another possibility that there are concerns about how copyright protected works may be	153
3 4 4 5 6 7 8 9 100 111 122 133 144 155 166 177 188 199 200 21 22	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos on the Internet that don't have captioning for the deaf, which would be a level A requirement of video content. Q What about the specific recommendation that relates to providing text alternatives for any non-text content; are you familiar with any content on the Internet that does not comply with that recommendation? MR. KAPLAN: Objection; argumentative, vague. THE WITNESS: The NFPA sign-up process is an example I use in my report. That's one example. BY MS. RUBEL: Q Other than the Plaintiffs' websites, is it a common issue that there that there are websites that do not provide text alternatives for non-text content?	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more common of, I'd say, people who aren't professionally trained, because I think in the field, accessibility is a topic that's taught as part of a standard curriculum in a university sort of setting for that kind of expertise. They copied an inaccessible website is quite common in the Web. "I like the looks of that; I'll just borrow that and change the text to be my own." I'm sure there are other reasons, but, you know, lack of a spec or ignorance of how to do it are probably the top couple. BY MS. RUBEL: Q Was another possibility that there are concerns about how copyright protected works may be used if they are made accessible to the print	153
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	BY MS. RUBEL: Q Are you familiar with any content, any specific content, on the Internet that does not follow the level A recommendations? A Sure. I bet there are a bunch of videos on the Internet that don't have captioning for the deaf, which would be a level A requirement of video content. Q What about the specific recommendation that relates to providing text alternatives for any non-text content; are you familiar with any content on the Internet that does not comply with that recommendation? MR. KAPLAN: Objection; argumentative, vague. THE WITNESS: The NFPA sign-up process is an example I use in my report. That's one example. BY MS. RUBEL: Q Other than the Plaintiffs' websites, is it a common issue that there that there are websites that do not provide text alternatives for non-text content? MR. KAPLAN: Objection; vague.	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	testimony, argumentative, vague. THE WITNESS: The client designing the website did not specify "Display accessibility" as a requirement in the product design is a common cause. The website designer was failed in their training to be educated by accessibility. That's much more common of, I'd say, people who aren't professionally trained, because I think in the field, accessibility is a topic that's taught as part of a standard curriculum in a university sort of setting for that kind of expertise. They copied an inaccessible website is quite common in the Web. "I like the looks of that; I'll just borrow that and change the text to be my own." I'm sure there are other reasons, but, you know, lack of a spec or ignorance of how to do it are probably the top couple. BY MS. RUBEL: Q Was another possibility that there are concerns about how copyright protected works may be used if they are made accessible to the print disabled?	153

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1	THE WITNESS: I think we've gotten very	1 MR. KAPLAN: Objection; misleading, vague.	
	narrow as opposed to very broad, so up to this	THE WITNESS: I was evaluating the	
	moment we've been talking about websites in general.	3 functional accessibility test as opposed to trying	
	And I think websites in general, when they are inaccessible to the disabled, it generally doesn't	4 to delve into the technical area it was talking 5 about.	
	have anything to do with copyright or any copyright	6 BY MS. RUBEL:	
	concerns. It's an incredibly narrow group of people	7 Q Did you review any of the text of the	
	who are publishing content where copyright issues	8 standard?	
	might be brought up, but that's kind of more	9 A I skimmed it and attempted to have a	
	hypothetical.	10 screen reader read it aloud, and it wouldn't. I	
	BY MS. RUBEL:	11 could visually see the content of the standard. I	
12	Q I want to ask some questions about ASTM's	12 could read it. I didn't.	
13	public website, which it refers to as the Reading	13 Q How many pages is ASTM's standard B557-84?	
14	Room.	14 A I did not do a page count.	
15	A Right.	15 Q Are you aware of any blind person who has	
16	Q Did you see that notations of it being	16 a need to access ASTM Standard B557-84?	
	referred to as the Reading Room when you were	MR. KAPLAN: Objection; asked and	
	reviewing ASTM's website?	18 answered, vague, argumentative.	
19	A That rings a bell. As a matter of fact,	19 THE WITNESS: I have not been asked	
20	· ·	20 personally by a blind person about this particular	
21	Q What ASTM standard did you evaluate the	21 standard.	
22 23	accessibility of, specifically? A ASTM B557-84e, like Edward, 1.	22 BY MS. RUBEL:23 Q What about a person with another type of	
24	Q Was that counsel that suggested that you	24 print disability?	
	investigate and evaluate that specific standard?	25 MR. KAPLAN: Objection; asked and	
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	155		157
1	A Counsel suggested that I evaluate ASTM	1 answered, vague, argumentative.	157
		1 answered, vague, argumentative.2 THE WITNESS: I have not been asked	157
2	A Counsel suggested that I evaluate ASTM B557-84, and I found e1, which, I guess, is probably		157
2 3 4	A Counsel suggested that I evaluate ASTM B557-84, and I found e1, which, I guess, is probably a specific version under that standard. Q Do you have any understanding of why they	THE WITNESS: I have not been asked personally by any person with print disability about this standard.	157
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	158			160
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	or in the rare cases where I become personally acquainted with a particular person or issue, which is a tiny fraction of both our members and our content. Q You're not aware of any person with a print disability asking anyone at Benetech to provide them access with ASTM Standard B557-84, are you? A I am not. Q Would a blind person be able to perform the tension testing that is described in ASTM Standard B557-84? MR. KAPLAN: Objection; lacks foundation, calls for speculation, vague. THE WITNESS: I am not personally aware of the requirements to utilize this standard technically, but in general, when someone says, "Can a blind person do this technical task?" I see the answer as quite likely. Let's try to figure out how	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	measure a piece of metal, that they have that instrument already. And now we could start walking through any technical measurement device where the answer can be rendered digitally, we can make it talk. BY MS. RUBEL: Q Were you able to set up a free account on ASTM's Reading Room? A Yes.	
20	to do that as opposed to assuming that they can't do	20	Q Did you read any terms in order to set up	
1	it. BY MS, RUBEL:	21 22	the free account? A I probably remember a click-through	
23	Q If if the method of testing tension of	23	license on that account.	
1	certain materials requires precise measurement, is	24	Q Do you remember what the terms of the	
25	that is that something that a blind person can	25	click-through license were?	
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	159			161
	typically do without assistance?	1	A No. But I skimmed it to make sure that I	161
2	typically do without assistance? MR. KAPLAN: Objection; vague,		didn't think that what I was doing violated the	161
2 3	typically do without assistance? MR. KAPLAN: Objection; vague, argumentative, lacks foundation, calls for	3	didn't think that what I was doing violated the license, but I didn't spend more than two minutes	161
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1	62
1 right?	1 is that right?
2 A Yes.	2 MR. KAPLAN: Objection; asked and
3 Q Was this the entire screen that you saw or	3 answered, argumentative, vague.
4 just a portion of the screen?	4 THE WITNESS: Though I don't recall ASTM
5 A A portion, but I'd say that, you know, you	5 particularly, a zoom function is quite common in an
6 can see the scroll bar, that there are multiple	6 image viewer, so I probably just assumed it was
7 scroll bars that I could access to scan down and see	7 there even though I didn't specifically look for it.
8 more of it or to go forward.	8 BY MS. RUBEL:
9 Q So you were able to scroll down to see	9 Q If you look at the screenshot on page 14
10 what was the entire page 1 on the screen of the	10 in the top right-hand corner of where the of the
11 ASTM's Reading Room?	11 window in which the standard is shown, do you see
12 A As a sighted person, I believe that I	12 the icon that's all the way to the right?
13 could see all of page 1, yes.	13 A The plus icon.
14 Q And you could click through and the	14 Q Yes. What what does that indicate to
15 arrows, using the arrows to see page 2; is that	15 you?
16 correct?	16 A It's probably the zoom function that I
17 A As a sighted person, yes, I believe I can.	17 just referred to.
18 Q And all the way through up to page 11; is	18 Q And do you recall pushing that button
19 that right?	19 and
20 A I believe that I doubt that I actually	20 Do you recall pushing that button?
21 went page by page all the way to page 11.	21 A Usually when these windows first come up,
22 Q Was there an option on the ASTM's Reading	22 the standards are illegible, so yeah, usually I
23 Room to make the text larger?	23 probably push the magnification button to make it
24 A I didn't look for that feature.	24 readable. So it's quite typical in an image-based
25 Q Did you believe that was relevant; that an	25 window to have a zoom function, especially because
1	63
1 option to make the text larger would be relevant to	1 you have no idea how big a screen the person is
1 option to make the text larger would be relevant to	1 you have no idea how big a screen the person is
1 option to make the text larger would be relevant to 2 evaluating whether the standard is accessible to	1 you have no idea how big a screen the person is2 viewing this on.
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	166			168
1	text searching function, that's because it isn't	1	didn't have to sign up for anything.	
	there unless it's well hidden. Also, the page looks		BY MS. RUBEL:	
	like a picture of a standards page as opposed to a	3	Q So Public Resource is not providing access	
	text version. So the fact that it was a picture of	1 -	to Plaintiffs' standards exclusively to people with	
	the page, generally that means that text searching	5	print disabilities, correct?	
	tends to be unavailable unless they've done	6	MR. KAPLAN: Objection; vague, calls for a	
7	something extra.	7	legal conclusion.	
8	Q In addition to ASTM standard B557, you	8	THE WITNESS: Yes.	
9	also evaluated one other ASTM standard. What	9	BY MS. RUBEL:	
10	standard was that?	10	Q Does the material that Public Resource	
11	A ASTM A20/A20M, like Mary, -93a, like	11		
1	Apple.		reproduction of the material could be an	
13	Q Why did you evaluate that standard? Why		infringement?	
1	did you choose that standard?	14	MR. KAPLAN: Objection; vague, lacks	
15	A Because it was the first one listed, and I	l	foundation.	
1	just wanted to see, gee, the other standard's	16	THE WITNESS: No. At least it's been long	
17	presenting the same image-based interface. Yes,	17	enough that let me reread the question.	
1	looks like it, and I think I had tested five of them	18	MR. KAPLAN: Can you restate the question.	
19		19	(Record read as follows:	
	tested them, you got to say, "Well, gee, looks like	20	"Q Does the material that	
	they're all presenting this image-based interface,"	21	Public Resource posted on its	
	but obviously I did not comprehensively go through	22	website bear any notice that	
23	every standard to confirm that they all presented	23	further reproduction of the	
1	the same inaccessible interface.	24	material could be an	
25	Q Do you know if ASTM standard A20 is at	25	infringement?")	
		-		
	167			169
1		1	MR, KAPLAN: And I'll make the same	169
1 2	issue in this litigation?	ı	MR. KAPLAN: And I'll make the same objections.	169
1	issue in this litigation? A No, I do not.	ı	objections.	169
2 3	issue in this litigation? A No, I do not. Q Did you review Public Resource's website	2 3	objections. THE WITNESS: Yeah. No, not to my	169
2 3	issue in this litigation? A No, I do not.	2 3 4	objections.	169
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2 3 4 4 5 6 7 8 9 100 111 122 13 144 155 166 177 18 19 20 21 22	hypothetical, vague. THE WITNESS: So screen readers tend to optimize for the most common formats and applications that blind people are likely to use. Web browsers, Microsoft Word are very common formats, so they do extra things to make them accessible. And so the screen reader is looking at the operation of the software itself; its controls, its commands and the content that the software is presenting. Focusing on a Web browser using a screen reader with a Web browser is viewing a Web page, there's multiple kinds of content that the blind person is trying to access, and it's kind of like textual content, plus structure and sometimes multimedia content like videos or audio or pictures. So what the screen reader is trying to do is help the blind person access the information on the Web page and reproduce as much of the functionality that's available to a sighted person as technically possible by analyzing that page and then offering the blind person a bunch of different	16 17 18 19 20 21 22	A You can set up screen readers to do that. MR. KAPLAN: Hold it. You got to let her finish the question and let me object. THE WITNESS: Sorry. MR. KAPLAN: Do you want to finish your question? BY MS. RUBEL: Q It might tell you Column Header A is size, Column Header B is width, Column Header C is length and to describe the full contents of the table; is that right? MR. KAPLAN: It's your question, but I'll object as an incomplete hypothetical. THE WITNESS: Okay. There are a lot of ways to access the same content, so the most common thing would just be, you know, size, width, length, Box A, 7, 3, 4, Box B. You know, it would just read the text as if you said to a human reader, "Just read me the table." And then if you want to say, "Tell me what's at, the head" I'm on this particular cell that says "7." "What's the column header? What's	
23	ways to interact with that content.	23	the left-hand label?" You can also do things like	
24	I can go into more depth on different	24	that. Those would probably be the most common	
	parts of that.		things since a blind person might not remember what	
	171			172
	171			173
1				175
1	BY MS. RUBEL:		row and column they're in when they're looking at a	175
1 2	Q So, for example, if there's a graphic	2	particular cell, especially in a large table.	173
3	Q So, for example, if there's a graphic let's start with a table first.	2	particular cell, especially in a large table. BY MS. RUBEL:	173
3 4	Q So, for example, if there's a graphic let's start with a table first. A Okay.	2 3 4	particular cell, especially in a large table. BY MS. RUBEL: Q How does it work for a screen reader	173
3 4 5	 Q So, for example, if there's a graphic let's start with a table first. A Okay. Q Let's say there's a table that's included 	2 3 4 5	particular cell, especially in a large table. BY MS. RUBEL: Q How does it work for a screen reader trying to read a graphic?	173
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3 4 5 6 7 8 9	Q So, for example, if there's a graphic let's start with a table first. A Okay. Q Let's say there's a table that's included in the on the Web page. A Right. Q How would the screen reader read that table?	2 3 4 5 6 7	particular cell, especially in a large table. BY MS. RUBEL: Q How does it work for a screen reader trying to read a graphic? MR. KAPLAN: Objection; incomplete hypothetical. THE WITNESS: To make a graphic accessible, you add accessibility content about the	1,5
3 4 5 6 7 8 9 10	Q So, for example, if there's a graphic let's start with a table first. A Okay. Q Let's say there's a table that's included in the on the Web page. A Right. Q How would the screen reader read that table? MR. KAPLAN: Objection; incomplete	2 3 4 5 6 7 8 9	particular cell, especially in a large table. BY MS. RUBEL: Q How does it work for a screen reader trying to read a graphic? MR. KAPLAN: Objection; incomplete hypothetical. THE WITNESS: To make a graphic accessible, you add accessibility content about the graphic, and there are a number of standards about	1,5
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	174			176
1	incomplete hypothetical, vague, calls for	1	standards that are available on Public Resource's	
2	speculation.		website in HTML format, do you have enough	
3	THE WITNESS: Yes, and there's an		information to determine whether an engineer who	
4	additional standard for a longer description if it	4	wanted access to that standard would be able to	
5	doesn't fit into the length of an Alt Text tag.	5	obtain all the necessary information from the	
6	BY MS. RUBEL:	6	standard?	
7	Q And in that case, what would you do if it	7	MR. KAPLAN: Objection; incomplete	
8	doesn't fit into the Alt Text tag?	8	hypothetical.	
9	MR. KAPLAN: Objection; incomplete	9	THE WITNESS: No.	
10		10		
11	THE WITNESS: There are a number of	11	Q Do you know how many of the standards on	
12	different other standards, but the most common one	12	Public Resource's website how many of Plaintiff's	
13	is Long Desc, just short for long description, and		standards that are available on Public Resource's	
14	you can attach a long description to that that		website are only available in PDF format?	
15	table that's longer.	15	A No.	
16	For example, if you're looking at a pie	16	Q Do you know how many of the standards that	
17	chart, you might have a link to the underlying data,	17		
18	spreadsheet that created that; that might be a	18	-	
19	common way of providing an alternate way of seeing	19	A No.	
20	the same information.	20	Q Do you know if the number that is	
21	BY MS. RUBEL:	21		
22	Q Did you analyze whether the HTML versions	22	available in HTML format?	
23	that Public Resource provides of Plaintiffs'	23	MR. KAPLAN: Objection; vague.	
24	standards are accessible to blind people?	24	THE WITNESS: It would be likely from my	
25	A Yes. Sorry.	25	inspection of the directories that there would be	
1		ı		
-		\vdash		
	175			177
1		1	more DDEs than herouse I believe that every	177
1 2	MR. KAPLAN: It's okay. Got to give me a		more PDFs than because I believe that every	177
1 2 3	MR. KAPLAN: It's okay. Got to give me a breath here.	2	document that had HTML also had PDF, but I don't	177
3	MR. KAPLAN: It's okay. Got to give me a breath here. THE WITNESS: Okay. I will. I'll try.	2 3	document that had HTML also had PDF, but I don't think the converse was true.	177
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3 4 5	MR. KAPLAN: It's okay. Got to give me a breath here. THE WITNESS: Okay. I will. I'll try. BY MS. RUBEL: Q As part of your analysis, did you analyze whether the tables in the HTML were accessible	2 3 4 5 6	document that had HTML also had PDF, but I don't think the converse was true. BY MS. RUBEL: Q So you believe there were more that are available only in PDF format?	177
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	178			180
1	accessible might be have a lock on it so you	1	PDF format from Public Resource's website?	
	can't look at it, the technical protection	2	A No.	
	mechanism, that doesn't let you get into it.	3	Q You indicated in your report that a blind	
4	The next step up might be just the image.	4	person probably would not use the process that you	
5	The next step up might be a text version of the	5	used for converting the PDF versions of Plaintiffs'	
6	document where Adobe's document reads the text aloud	6	standards; is that right?	
7	as part of its function.	7	MR. KAPLAN: Objection; vague.	
8	I found at least well, the standard I	8	THE WITNESS: Yes.	
9	particularly recall had the image and had the	9	BY MS. RUBEL:	
10	underlying text, but Adobe's normal functionality	10	Q Why is that?	
11	didn't read the text even though it was there, and	11	A It's kind of a technical trick that isn't	
12	that I was able to access that by doing a Control A	12	documented in Adobe that you would try that, but	
13	and pasting that into Microsoft Word and reading it		there's something that made me feel like the text	
	there.		was there. I always try to highlight stuff with the	
15	BY MS. RUBEL:		mouse, and I said, "The text is there, and Adobe's	
16	Q You were able to access the underlying		8 8 8	
17	text from the PDF; is that right?	17	and it worked, but I didn't think that I could	
18	A That's right.	ı	accurately state that that would occur to the	
19	Q And you just hit Control A and then copied	19	average blind person.	
	that content into a Word document; is that right?	20	Q And when you copied the text into a Word	
21	A Right.	21	document, were there any errors in the transcription	
22	Q Did you save a copy of the Word document		in the text in the Word document?	
23 24	that you created? A I don't I'm not sure.	23 24	A Yes. Q What were those errors?	
25	Q Did you create	25	Q What were those errors? A They were errors that are typical of	
	Q Did you create	23	A They were errors that are typical or	
	179			181
		1	ontical character recognition processes	181
1 2	We've discussed that that you reviewed		optical character recognition processes. O Can you give me some examples?	181
2		1 2 3	Q Can you give me some examples?	181
2 3	We've discussed that that you reviewed approximately 10 of Plaintiffs' standards. Did you	2		181
2 3 4	We've discussed that that you reviewed approximately 10 of Plaintiffs' standards. Did you create a different Word document for each one of	2 3 4	Q Can you give me some examples?A I worked in the OCR field for 30 years,	181
2 3 4	We've discussed that that you reviewed approximately 10 of Plaintiffs' standards. Did you create a different Word document for each one of those standards that you obtained from Public	2 3 4 5	Q Can you give me some examples? A I worked in the OCR field for 30 years, and so the kinds of mistakes that OCR makes, I don't	181
2 3 4 5	We've discussed that that you reviewed approximately 10 of Plaintiffs' standards. Did you create a different Word document for each one of those standards that you obtained from Public Resource's website?	2 3 4 5 6	Q Can you give me some examples? A I worked in the OCR field for 30 years, and so the kinds of mistakes that OCR makes, I don't remember the specific ones but, you know, if you	181
2 3 4 5 6 7 8	We've discussed that that you reviewed approximately 10 of Plaintiffs' standards. Did you create a different Word document for each one of those standards that you obtained from Public Resource's website? MR. KAPLAN: Objection; misleading, vague. THE WITNESS: I didn't say I did those things.	2 3 4 5 6 7	Q Can you give me some examples? A I worked in the OCR field for 30 years, and so the kinds of mistakes that OCR makes, I don't remember the specific ones but, you know, if you have a stylized font on the title page, it's far more likely the OCR will mash up the title, that it will say the copyright statement that's in normal	181
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	182			184
1	probably 1 and zero and not I and O.	1	a writing?	
2	And, you know, OCR also misrecognizes	2	MR. KAPLAN: Objection; vague, incomplete	
3	symbols, might occasionally drop a small dot or	3	hypothetical.	
4	specialized characters.	4	THE WITNESS: There are there is	
5	Q Do you know if Plaintiffs' standards use	5	content where the OCR does not do a great job.	
6	specialized symbols?	6	That's very unusual but it happens.	
7	A I don't recall. I would not be surprised	7	BY MS. RUBEL:	
8	if they did.	8	Q Does it happen in the context of technical	
9	Q You described you used the phrase	9	writings frequently?	
	before "mashing up the title." What do you mean by	10	MR. KAPLAN: Objection; vague, incomplete	
1	that?		hypothetical.	
12	A Usually when you're looking at, let's say,	12	THE WITNESS: It can. You might have a	
	a paragraph and the OCR makes an error, it's usually		very detailed graphic that has text that overlays a	
	pretty limited. You can probably figure out from		picture. It's hard for the OCR to separate.	
	context what it is. A stand-alone title, what if	I	BY MS. RUBEL:	
	I don't know only 6 of the 10 letters actually	16	Q Are the Plaintiffs' standards technical	
	showed up and they're spaced apart from each other	1	documents?	
	because it expanded an entire area. That's the sort of thing I think of as mashing up.	18 19	MR. KAPLAN: Objection; vague. THE WITNESS: Generally, yes.	
20	Q So the entire title in that example		BY MS. RUBEL:	
	wouldn't be wouldn't be legible or	21	Q Would you anticipate that there might be	
	understandable?		problems with the OCR of Plaintiffs' standards?	
23	A Yeah. I mean, often books have or	23	MR. KAPLAN: Objection; vague, incomplete	
1	documents have a stylized or a logo or a fancy		hypothetical.	
	title, and the OCR tends to choke on that, but then	25	THE WITNESS: OCR usually makes errors in	
			·	
1				
	183			185
1		1	scanning documents generally, so I'm sure that a raw	185
	when you get to the copyright notice, it's got it		scanning documents generally, so I'm sure that a raw OCR scan of those documents would also have errors.	185
2	when you get to the copyright notice, it's got it right. It's just because this fancy, big, you know,	2	scanning documents generally, so I'm sure that a raw OCR scan of those documents would also have errors. BY MS. RUBEL:	185
2 3	when you get to the copyright notice, it's got it	2	OCR scan of those documents would also have errors.	185
2 3 4	when you get to the copyright notice, it's got it right. It's just because this fancy, big, you know, one word span the entire page, and it thought maybe	2 3 4	OCR scan of those documents would also have errors. BY MS. RUBEL:	185
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2 3 4 5 6	when you get to the copyright notice, it's got it right. It's just because this fancy, big, you know, one word span the entire page, and it thought maybe this is a picture or I don't know. These these things happen. Q And it could be important content, actually, where there's an OCR error about, right?	2 3 4 5	OCR scan of those documents would also have errors. BY MS. RUBEL: Q And, in particular, because they're technical documents, do you think the likelihood of	185
2 3 4 5 6 7 8	when you get to the copyright notice, it's got it right. It's just because this fancy, big, you know, one word span the entire page, and it thought maybe this is a picture or I don't know. These these things happen. Q And it could be important content, actually, where there's an OCR error about, right? MR. KAPLAN: Objection; vague, incomplete	2 3 4 5 6 7 8	OCR scan of those documents would also have errors. BY MS. RUBEL: Q And, in particular, because they're technical documents, do you think the likelihood of errors is greater? MR. KAPLAN: Objection; incomplete hypothetical, vague.	185
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186	188
1 there was an additional way that some users may be 2 able to make PDF standards accessible. 3 Can you explain what that method is? 4 A To do optical character recognition on the 5 page images. 6 Q And how would they do that? 7 A Well, blind people often own an OCR 8 product that primarily is used to take images from a 9 scanner that might scan a document and turn it into 10 a Word processor document but can also be used to do 11 OCR and images that come from a from an already 12 scanned document like a PDF, and also some screen 13 readers have some of that OCR capability built into 14 them. And those tend to focus on online or document 15 content that show up as pictures that you might want 16 to OCR. 17 Q And you described that as a process that 18 advanced computer users might be willing to use; is 19 that right?	1 sure we can fight that out at some point. 2 MR. REHN: I can clarify. You guys gave 3 them to us on a CD today, and we don't we don't 4 have computers here that have CD drives. There was 5 one computer, but most of us don't have access to 6 them. 7 MR. BECKER: You said there was one 8 computer 9 MR. KAPLAN: So we we gave them to you 10 in a standard format and you're not capable of 11 dealing with them. That's that's your argument. 12 That's fine. We'll deal with that. 13 If you want to take a break so that you 14 can try to access a CD, which you should be capable 15 of doing, and then return to questioning, we're also 16 happy to wait a few minutes while you do that. 17 MR. REHN: Well, we we tried over the 18 lunch break. We spent quite a bit of time on it. 19 We were unable to copy the files from the one
20 A Let's see, did I use the term "advanced"? 21 Q Page 17. 22 A Yeah. I would say, you know, a capable, 23 you know, blind computer user would be aware of the 24 ability to do image-based OCR on a PDF that was 25 otherwise accessible.	20 computer that has a CD drive on to other computers 21 for purpose of reviewing them. We don't yet know if 22 that's the problem with the CD or what the issue is. 23 We just need to reserve time to review those at an 24 appropriate time. 25 MR. KAPLAN: I cannot imagine this is a
187	189
1 Q What is an advanced computer user? 2 A Well, an eight-year-old blind student 3 would probably not know how to do this. A college 4 student or employed blind person who is using screen 5 readers on a day-to-day basis, a great majority of 6 them would know how to use this. So a senior 7 citizen who's trying to read the Web and e-mail from 8 their kids may not use so it's a sort of it's 9 the how experienced are they using their 10 accessibility technology. 11 MS. RUBEL: I don't believe I have any 12 more questions. I do want to just say on the record 13 we've been unable to access in any meaningful way 14 the thousands of pages of documents that you 15 produced today, so we want to leave this I want 16 to give my co-counsel a chance to ask additional 17 questions, but we also want to leave the record open 18 in case there are additional questions that we feel 19 like we need to have answered based on those 20 documents once we have a chance to review them. 21 MR. KAPLAN: Obviously we object. We told 22 you that we'd be producing those documents today. 23 If you needed them earlier, you could have asked for 24 it; you didn't. And I don't know what it means that 25 you can't access them in any meaningful way, but I'm	1 problem that is going to take that much time. 2 MR. REHN: We spent, like, a significant 3 amount of time on it already today. We can attempt 4 further later this afternoon, if you guys want to 5 wait around until we're finished. But even then 6 MR. KAPLAN: I don't. I mean, you guys 7 have seven hours. If you want to wait out the clock 8 so that you can try to access the documents, then 9 we'll do that, if necessary. 10 MR. REHN: We have seven hours on the 11 clock. That wouldn't count against the time. 12 MR. KAPLAN: Yeah, it would. 13 MR. REHN: We'll agree to disagree on that 14 for now. 15 MS. RUBEL: I don't have any more 16 questions at this time. 17 MR. KAPLAN: So the deposition is not 18 over. It's just one of the Plaintiffs' counsel has 19 finished her line of questioning, so now we have the 20 next one. 21 THE WITNESS: Okay. 22 MR. KAPLAN: Okay? 23 THE WITNESS: I have to resist temptation. 24 MR. KAPLAN: Counsel, if we set up an FTP 25 account for the documents, would that assist you?

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1	MR. REHN: We asked for an additional way	1	EXAMINATION	
	to get them a while ago this morning. I asked Matt	1	BY MR. REHN:	
	this morning if he had any other way of getting us	3	Q Good afternoon, Mr. Fruchterman.	
4	the documents.	4	A Thane I'm sorry, I don't remember your	
5	MR. BECKER: I have no recollection of	5	last name.	
6	that.	6	Q I'm Thane Rehn and I represent the NFPA in	
7	THE WITNESS: I think he asked you if you	7	this matter.	
8	had a thumb drive, and you said no.	8	A Good to meet you, Mr. Rehn.	
9	MR. BECKER: The question was, do I have a	9	Q And you understand you're still under	
	thumb drive to get the files, and I said no. You		oath?	
1	didn't ask me	11	A Yes.	
12	MR. REHN: Well, I also said we didn't	12	Q And nothing has changed since this morning	
	have access we didn't have the ability to get		that would make you unable to render truthful	
1	that CD back.		testimony in response to my questions?	
15	MR. BECKER: You said you had one computer	15	A No.	
	that had that had a CD drive and that you had	16	Q So I would like to start with your expert report, Exhibit I believe it's 4001.	
	brought thumb drives to remedy the situation. This is the first that we've heard since this morning	18	MR. REHN: Is that right?	
	that there was any complication in that matter.	19	THE REPORTER: Yes.	
20	MS. RUBEL: If you guys prefer to sit here	1	BY MR. REHN:	
	and wait after we're off the record and give us a	21	Q If you could turn to pages 16 and 17 of	
	chance to review the documents, we will be off the		that report.	
	record, and it won't count towards our seven hours,	23	A Okay. I'm there.	
	but we can do that.	24	Q And on page 16 you say that you accessed	
25	MR. KAPLAN: No. Counsel, we're obligated	25	the 2012 version of the NFPA 101 standard and found	
	191			193
1	to make our witness available for a full day of	1	that it was an imaged-based PDF.	
		1		
2	deposition, and we are prepared to do that, and if	2	Do you see that?	
	deposition, and we are prepared to do that, and if you have technical difficulties on your side that			
3		2	Do you see that?	
3 4	you have technical difficulties on your side that	2 3 4	Do you see that? A Correct. Yes.	
3 4 5 6	you have technical difficulties on your side that are preventing you from accessing documents you knew you were going to be receiving today, that's not our responsibility, and we don't think that it's fair or	2 3 4 5 6	Do you see that? A Correct. Yes. Q What is the difference between an imaged-based PDF and a text-based PDF? A If it was a text-based PDF and I press the	
3 4 5 6 7	you have technical difficulties on your side that are preventing you from accessing documents you knew you were going to be receiving today, that's not our responsibility, and we don't think that it's fair or necessary to reproduce our witness because you're	2 3 4 5 6 7	Do you see that? A Correct. Yes. Q What is the difference between an imaged-based PDF and a text-based PDF? A If it was a text-based PDF and I press the "Read" button in Adobe, it would read or my screen	
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1	that it are inverse. I tracks calcut assessment and	1	BY MR. REHN:	
	that it's an image. I try to select some text, and if it doesn't allow me, that's a give-away that it's	$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	Q And you subsequently said, "The text was	
Ι.		$\frac{2}{3}$	there and Adobe did not find it." Were you	
3	-	3	-	
4	3 1	4	referring to the same problem there?	
5	get nothing. Those would all be indicators that it	5	A Yeah. Yeah.	
0	was an image-based PDF instead of text-based PDF.	6	Q But in some documents, the Adobe function	
7	Q Well, for these documents you were able to	1	may not be able to read the text, but a screen	
8	do Control A and paste into Microsoft.	8	reader would be able to? Is that what I understand	
9	A Yes, but that's, like, the third technique	9	you to be saying?	
- 1	I would have used to get there.	10	MR. KAPLAN: Objection; incomplete	
111	Q If you blow a PDF up to a very large size	11	hypothetical.	
12	,	12	THE WITNESS: Generally, if Adobe can't	
13	pretty strong indicator that it's a text-based PDF?	13	find it, the screen reader can't find it because the	
14	MR. KAPLAN: Objection; incomplete	14	screen reader is asking Adobe to give it to it to	
15	hypothetical.	15	speak. That's how the technically, it says,	
16	THE WITNESS: Generally, that would mean	16	Adobe, what's here?	
17	that the program is scaling it up inside itself as	17	And if Adobe says, Uh-huh, the screen	
18	opposed to just magnifying a picture of a letter,	18	reader is going to go Uh, so	
19	and because OCR tends to scan at 300 dots per inch,	19	BY MR. REHN:	
20	that's most typical resolution. If you blow it up	20	Q Have you ever had a situation where the	
21	large, you'll see the jaggies as it were on that	21	Adobe function would not read the document but a	
22	(Reporter clarification)	22	screen reader was able to read the document?	
23	THE WITNESS: Jaggies, J-A-G-G-I-E-S, one	23	A No, but it's not a functionality I've done	
24		24	a lot of extensive testing on.	
25		25	Q How much time have you spent attempting to	
	195			197
				197
1	BY MR. REHN:		read text on PDFs with screen readers or with Adobe?	197
2	BY MR. REHN: Q And in your experience, if it is a	2	MR. KAPLAN: Objection; compound and	197
2 3	BY MR. REHN: Q And in your experience, if it is a text-based PDF, in your experience, a screen reader	2 3	MR. KAPLAN: Objection; compound and vague.	197
3 4	BY MR. REHN: Q And in your experience, if it is a text-based PDF, in your experience, a screen reader will be able to read that document?	2 3 4	MR. KAPLAN: Objection; compound and vague. THE WITNESS: The challenge of Adobe	197
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1 that text into a Word document and then unable to 2 read the resulting Word document with a screen 3 reader? 4 A Yes. 5 Q Do you remember why that was the case? 6 A It was an earlier version of Adobe's 7 product that Adobe tried to make their own optical 8 character recognition solution, and when they were 9 uncertain of a character, they inserted a picture of 10 the character rather than the actual letter, and so 11 when you did a Select, you got the letters that were 12 represented as letters but not the ones represented 13 as pictures, so you're, like, sometimes missing 14 letters in the middle of words that visually look 15 like they were there in the Adobe product, but when 16 you did a search, a Control A and pasted it, it 17 didn't work. This is something that I observed 18 years ago, many years ago, and it's not I don't 19 believe this is currently a problem. 20 Q More than 10 years ago, would you say? 21 A Probably.	1 So what I'm saying is with a modern Adobe 2 product 3 A Yeah. 4 Q is there ever an occasion where that 5 Adobe product cannot recognize a character in a 6 A The modern Adobe products don't try to 7 recognize characters. So that's that's where we 8 start. 9 It was only when Adobe tried to make an 10 optical character recognition product that we ran 11 into this problem. Adobe doesn't, as far as I know, 12 make an OCR product anymore, and so I could probably 13 go in a different direction depending where you want 14 to take that, but they don't do OCR anymore. I 15 don't think it's okay. 16 Sorry. 17 MR. KAPLAN: I wanted you to finish your 18 answer, but it is getting late in the day, and I 19 just wanted to remind you, you want to focus on his 20 questions and answer what he's asking. 21 THE WITNESS: Okay.	
22 Q And you haven't seen that problem since	22 BY MR. REHN:	
23 that time	23 Q When I opened my Adobe Reader on my	
24 A Correct.	24 computer, there is an OCR option that I have. Is	
25 Q with current versions of Adobe?	25 that not an Adobe feature?	
1 A Correct.	1 A I I don't think it's	201
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2 that yes.	2 Q When you were retained to evaluate the	
3 Q Are you aware that NFPA sells PDF versions	3 accessibility of content available on the websites	
4 of its standards on its website?	4 of the Plaintiffs, did you consider whether you	
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6 screenshot. I see a cart on there, so I assume that	6 available from the Plaintiffs?	
7 you guys sell things. I I probably didn't check	7 MR. KAPLAN: You can go ahead and answer.	
8 to see whether you sell PDF versions of the	8 THE WITNESS: No.	
9 standard.	9 BY MR. REHN:	
10 Q Did anybody ask you to check whether any	10 Q You just didn't think	
11 of the Plaintiffs in this case sold PDF standards?	11 That didn't occur to you that that might	
12 MR. KAPLAN: Objection; calls for	12 be a possibility?	
13 privileged communications.	13 MR. KAPLAN: Objection; asked and	
14 You can answer to the extent that you	14 answered, argumentative.	
15 don't divulge privileged communications.	15 THE WITNESS: I'll just go back to my	
16 THE WITNESS: No.	16 expert report and that sentence. I was asked to	
17 BY MR. REHN:	17 evaluate the accessibility of certain online	
18 Q When you were asked to render an opinion	18 content.	
19 about the accessibility of Plaintiffs' standards,	19 BY MR. REHN:	
20 did it occur to you to check whether those standards	20 Q Now, if I can ask you to turn to page 5 of	
21 were available in a PDF version or any other	21 your report, where you say it says "Overview and	
22 electronic version?	22 Summary of Opinions."	
23 MR. KAPLAN: Objection; misleading,	23 A Uh-huh.	
24 misstates testimony, vague, argumentative.	24 Q If you could just read the first sentence	
25 THE WITNESS: Privileged conversation.	25 there, the first full sentence under that heading.	
20	2)3	205
		205
1 BY MR. REHN:	1 A (Reading):	205
1 BY MR. REHN: 2 Q I'm asking what occurred to you, outside	1 A (Reading): 2 "Having reviewed the	205
BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this	1 A (Reading): 2 "Having reviewed the 3 accessibility of the same standards	205
1 BY MR. REHN: 2 Q I'm asking what occurred to you, outside 3 of conversations you had with attorneys about this 4 project.	1 A (Reading): 2 "Having reviewed the 3 accessibility of the same standards 4 content rendered by	205
1 BY MR. REHN: 2 Q I'm asking what occurred to you, outside 3 of conversations you had with attorneys about this 4 project. 5 Did it ever occur to you that that was	1 A (Reading): 2 "Having reviewed the 3 accessibility of the same standards 4 content rendered by 5 Public.Resource.Org and those of	205
1 BY MR. REHN: 2 Q I'm asking what occurred to you, outside 3 of conversations you had with attorneys about this 4 project. 5 Did it ever occur to you that that was 6 something that might be necessary to check?	1 A (Reading): 2 "Having reviewed the 3 accessibility of the same standards 4 content rendered by 5 Public.Resource.Org and those of 6 the free access options provided by	205
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1 BY MR. REHN: 2 Q I'm asking what occurred to you, outside 3 of conversations you had with attorneys about this 4 project. 5 Did it ever occur to you that that was 6 something that might be necessary to check? 7 MR. KAPLAN: Objection; vague. 8 THE WITNESS: Go ahead. I I I think	1 A (Reading): 2 "Having reviewed the 3 accessibility of the same standards 4 content rendered by 5 Public.Resource.Org and those of 6 the free access options provided by 7 the NFPA, ASHRAE and ASTM, it is my 8 opinion that Public.Resource.Org	205
1 BY MR. REHN: 2 Q I'm asking what occurred to you, outside 3 of conversations you had with attorneys about this 4 project. 5 Did it ever occur to you that that was 6 something that might be necessary to check? 7 MR. KAPLAN: Objection; vague. 8 THE WITNESS: Go ahead. I I I think 9 I stated my opinion. I was asked to evaluate the	1 A (Reading): 2 "Having reviewed the 3 accessibility of the same standards 4 content rendered by 5 Public.Resource.Org and those of 6 the free access options provided by 7 the NFPA, ASHRAE and ASTM, it is my 8 opinion that Public.Resource.Org 9 currently provides the only	205
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1 BY MR. REHN: 2 Q I'm asking what occurred to you, outside 3 of conversations you had with attorneys about this 4 project. 5 Did it ever occur to you that that was 6 something that might be necessary to check? 7 MR. KAPLAN: Objection; vague. 8 THE WITNESS: Go ahead. I I I think 9 I stated my opinion. I was asked to evaluate the 10 accessibility 11 MR. KAPLAN: Let's not get into privileged	1 A (Reading): 2 "Having reviewed the 3 accessibility of the same standards 4 content rendered by 5 Public.Resource.Org and those of 6 the free access options provided by 7 the NFPA, ASHRAE and ASTM, it is my 8 opinion that Public.Resource.Org 9 currently provides the only 10 accessible option for 11 people/citizens with print	2205
1 BY MR. REHN: 2 Q I'm asking what occurred to you, outside 3 of conversations you had with attorneys about this 4 project. 5 Did it ever occur to you that that was 6 something that might be necessary to check? 7 MR. KAPLAN: Objection; vague. 8 THE WITNESS: Go ahead. I I I think 9 I stated my opinion. I was asked to evaluate the 10 accessibility 11 MR. KAPLAN: Let's not get into privileged 12 communications.	1 A (Reading): 2 "Having reviewed the 3 accessibility of the same standards 4 content rendered by 5 Public.Resource.Org and those of 6 the free access options provided by 7 the NFPA, ASHRAE and ASTM, it is my 8 opinion that Public.Resource.Org 9 currently provides the only 10 accessible option for 11 people/citizens with print 12 disabilities to access these	2205
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1 BY MR. REHN: 2 Q I'm asking what occurred to you, outside 3 of conversations you had with attorneys about this 4 project. 5 Did it ever occur to you that that was 6 something that might be necessary to check? 7 MR. KAPLAN: Objection; vague. 8 THE WITNESS: Go ahead. I I I think 9 I stated my opinion. I was asked to evaluate the 10 accessibility 11 MR. KAPLAN: Let's not get into privileged 12 communications. 13 THE WITNESS: Okay. All right. 14 BY MR. REHN: 15 Q If you would turn to page 1 of your expert 16 report 17 A Yes. 18 Q it says: 19 "I have been retained by 20 Public.Resource.Org to evaluate the 21 accessibility of certain online 22 content available on the websites	1 A (Reading): 2 "Having reviewed the 3 accessibility of the same standards 4 content rendered by 5 Public.Resource.Org and those of 6 the free access options provided by 7 the NFPA, ASHRAE and ASTM, it is my 8 opinion that Public.Resource.Org 9 currently provides the only 10 accessible option for 11 people/citizens with print 12 disabilities to access these 13 standards." 14 Q And in forming that opinion, you compared 15 the standards that were available on 16 Public.Resource.Org's website with the free access 17 options provided by Plaintiffs in forming that 18 opinion; is that correct? 19 A Correct. 20 Q Did you evaluate any PDFs being sold by 21 NFPA in forming that opinion? 22 A No.	205
1 BY MR. REHN: 2 Q I'm asking what occurred to you, outside 3 of conversations you had with attorneys about this 4 project. 5 Did it ever occur to you that that was 6 something that might be necessary to check? 7 MR. KAPLAN: Objection; vague. 8 THE WITNESS: Go ahead. I I I think 9 I stated my opinion. I was asked to evaluate the 10 accessibility 11 MR. KAPLAN: Let's not get into privileged 12 communications. 13 THE WITNESS: Okay. All right. 14 BY MR. REHN: 15 Q If you would turn to page 1 of your expert 16 report 17 A Yes. 18 Q it says: 19 "I have been retained by 20 Public.Resource.Org to evaluate the 21 accessibility of certain online 22 content available on the websites 23 of the Plaintiffs and the Defendant	1 A (Reading): 2 "Having reviewed the 3 accessibility of the same standards 4 content rendered by 5 Public.Resource.Org and those of 6 the free access options provided by 7 the NFPA, ASHRAE and ASTM, it is my 8 opinion that Public.Resource.Org 9 currently provides the only 10 accessible option for 11 people/citizens with print 12 disabilities to access these 13 standards." 14 Q And in forming that opinion, you compared 15 the standards that were available on 16 Public.Resource.Org's website with the free access 17 options provided by Plaintiffs in forming that 18 opinion; is that correct? 19 A Correct. 20 Q Did you evaluate any PDFs being sold by 21 NFPA in forming that opinion? 22 A No. 23 Q Did you evaluate any PDFs being sold by	205
1 BY MR. REHN: 2 Q I'm asking what occurred to you, outside 3 of conversations you had with attorneys about this 4 project. 5 Did it ever occur to you that that was 6 something that might be necessary to check? 7 MR. KAPLAN: Objection; vague. 8 THE WITNESS: Go ahead. I I I think 9 I stated my opinion. I was asked to evaluate the 10 accessibility 11 MR. KAPLAN: Let's not get into privileged 12 communications. 13 THE WITNESS: Okay. All right. 14 BY MR. REHN: 15 Q If you would turn to page 1 of your expert 16 report 17 A Yes. 18 Q it says: 19 "I have been retained by 20 Public.Resource.Org to evaluate the 21 accessibility of certain online 22 content available on the websites	1 A (Reading): 2 "Having reviewed the 3 accessibility of the same standards 4 content rendered by 5 Public.Resource.Org and those of 6 the free access options provided by 7 the NFPA, ASHRAE and ASTM, it is my 8 opinion that Public.Resource.Org 9 currently provides the only 10 accessible option for 11 people/citizens with print 12 disabilities to access these 13 standards." 14 Q And in forming that opinion, you compared 15 the standards that were available on 16 Public.Resource.Org's website with the free access 17 options provided by Plaintiffs in forming that 18 opinion; is that correct? 19 A Correct. 20 Q Did you evaluate any PDFs being sold by 21 NFPA in forming that opinion? 22 A No.	205

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			208
Q Did you evaluate any PDFs sold by ASTM in orming that opinion? A No. Q So when you say that Public.Resource.Org urrently provides the only accessible option for eeople/citizens with print disabilities to access hese standards, you're excluding from that opinion ny PDFs that are being offered by the Plaintiffs? MR. KAPLAN: Objection; misstates the	1 2 3 4 5 6 7 8	yes. Q Are you aware that NFPA sells eBook versions of some of its standards? A I'm I'm not sure I'm aware of that. Q And did you evaluate any eBook versions of standards sold by NFPA or the other two Plaintiffs in this case? A No. I was not asked to. O So do you have an opinion on whether the	
ocument and testimony, misleading and vague. THE WITNESS: In that sentence I refer to free access options." BY MR. REHN: Q So when you said the only accessible options, what you actually meant to say was the only		eBook versions sold by NFPA and the other two	
mreely accessible options without charge? MR. KAPLAN: Objection. Thane, you're setting a little badgering here, but you can answer the question. THE WITNESS: Yes. BY MR. REHN:	17 18 19 20 21	this case are accessible to persons with print disabilities? A No. But in my experience, most PDFs are not accessible or are not let me correct that. Not as accessible as, say, HTML versions of those	
an be described as accessible to people with print lisabilities? MR. KAPLAN: Objection; vague.	23	Q But you don't have an opinion as to these	
207			209
THE WITNESS: Yes. BY MR. REHN: Q Have you ever described a PDF for sale as seing accessible to someone with print disabilities? A Let's see. I'm not sure I've described I'm sure I've described paid products in other formats as accessible, and I'm sure that I've described PDFs as accessible. I'm not sure I've described a paid PDF product as accessible. Q But it's fair to say that if the PDFs seing sold by Plaintiffs are accessible to people with print disabilities, this sentence would be obtentially inaccurate?	1 2 3 4 5 6 7 8 9 10 11 12 13	MR. KAPLAN: Do you want to take a break? THE WITNESS: No, I'll keep going. I'll get water next time. MR. REHN: You can take a break whenever you want. THE WITNESS: No problem. BY MR. REHN: Q So you mentioned earlier that you were aware of an NFPA standard that was available on Bookshare? A Uh-huh. Q If I could just show you a document. MR. REHN: What number are we up to?	
MR. KAPLAN: Objection; misleading, vague, rgumentative. THE WITNESS: I think it's accurate as I	14 15 16	THE REPORTER: We're at 4002. (Plaintiffs' Exhibit 4002 marked for identification.)	
1	ny PDFs that are being offered by the Plaintiffs? MR. KAPLAN: Objection; misstates the ocument and testimony, misleading and vague. THE WITNESS: In that sentence I refer to free access options." Y MR. REHN: Q So when you said the only accessible ptions, what you actually meant to say was the only eely accessible options without charge? MR. KAPLAN: Objection. Thane, you're etting a little badgering here, but you can answer are question. THE WITNESS: Yes. Y MR. REHN: Q Is it possible that documents being sold and be described as accessible to people with print isabilities? MR. KAPLAN: Objection; vague. 207 THE WITNESS: Yes. Y MR. REHN: Q Have you ever described a PDF for sale as exing accessible to someone with print disabilities? A Let's see. I'm not sure I've described	my PDFs that are being offered by the Plaintiffs? MR. KAPLAN: Objection; misstates the ocument and testimony, misleading and vague. THE WITNESS: In that sentence I refer to free access options." Y MR. REHN: Q So when you said the only accessible ptions, what you actually meant to say was the only feely accessible options without charge? MR. KAPLAN: Objection. Thane, you're getting a little badgering here, but you can answer fee question. THE WITNESS: Yes. Y MR. REHN: Q Is it possible that documents being sold and be described as accessible to people with print fisabilities? MR. KAPLAN: Objection; vague. 207 THE WITNESS: Yes. Y MR. REHN: Q Have you ever described a PDF for sale as geing accessible to someone with print disabilities? A Let's see. I'm not sure I've described	ny PDFs that are being offered by the Plaintiffs? MR KAPLAN: Objection; misstates the coument and testimony, misleading and vague. THE WITNESS: In that sentence I refer to free access options." Y MR. REHN: Q So when you said the only accessible ptions, what you actually meant to say was the only eetly accessible options without charge? MR KAPLAN: Objection. Thane, you're etting a little badgering here, but you can answer teting a little badgering here, but you can answer tet question. THE WITNESS: Yes. Y MR. REHN: Q Is it possible that documents being sold an be described as accessible to people with print isabilities? MR. KAPLAN: Objection; vague. A Lan't express an opinion on whether the PDFs are 20 not accessible to persons with print 21 disabilities? A No. I was not asked to. 9 Q So do you have an opinion on whether the other two 21 plaintiffs are accessible to the other two 21 plaintiffs are accessible to persons with print 22 disabilities? A No. I was not asked to. 9 Q So do you have an opinion on whether the 20 desoribe so yersons with print 22 disabilities? A Len't express an opinion without looking 24 at them. 15 Q Do you have opinion on whether the 20 disabilities? A No. I was not asked to. 9 Q So do you have an opinion on whether the 20 disabilities? 14 at them. 15 Q Do you have opinion on whether the 20 being sold by NFPA and the other two 21 intents. 16 being sold by NFPA and the other two Plaintiffs in 2 at them. 17 this case are accessible to persons with print 2 disabilities? A No. But in my experience, most PDFs are 20 not accessible or are not let me correct that. 21 Not as accessible are accessible and PDFs are 20 not accessible accessible and print and print 2 disabilities? A I haven't examined them. 207 THE WITNESS: Yes. Y MR. REHN: Q Have you ever described a PDF for sale as 22 get water next time. MR. KAPLAN: Do you want to take a break? THE WITNESS: No problem. MR. KAPLAN: Objection; vague. A I haven't examined them. MR. REHN: Q But it's fair to say data if the

	7 0	_		
	210			212
1 2	submitted this to Bookshare? A Correct.	2	errors, looking for swear words, looking for length; it's supposed to be 100-page document and it's a	
3	Q Is that on the second page of this		1-page document that's submitted or a thousand-page	
4	exhibit, you see it says "Submitted by Daproim Africa"?	4	document.	
$\begin{bmatrix} 5 \\ 6 \end{bmatrix}$	A Yes.	5	And we also have a human being take a brief look at the document, kind of just do a check	
7	Q Is that who you understand submitted this	7	also to make sure that it makes that it makes	
8	document?	8	sense.	
9	A Yes.	9	Q Are those documents that are submitted	
10	Q How does Bookshare enable certain persons	10	generally PDFs or Word documents or HTML? What	
11	to share documents with Bookshare?	11	format do they usually come in?	
12	A So we're talking about essentially the	12	MR. KAPLAN: Objection; lacks foundation,	
13	content intake mechanisms at Benetech, and you'd	13	calls for speculation, vague.	
14	like me to enumerate those different mechanisms?	14	THE WITNESS: Bookshare has a detailed description of how we want documents submitted to	
16	Q Well, let's start with this Daproim Africa. They're an adult educator; is that what you	15 16	us. In general, we prefer documents that are	
17	said earlier?	17	when they're coming from volunteers that are	
18	A No.	18	scanning that are more Microsoft Word or RTF, which	
19	Q What's your understanding	19	is a related format. For those books that are	
20	Do you know who this submitter is?	20	scanned, that's our preferred format, and we	
21	A Yes.	21	wouldn't accept a PDF.	
22	Q And who are they?		BY MR. REHN:	
23	A They're a subcontractor to Benetech for	23	Q So you accept documents or books that are	
24	books they do the proofreading services on books we've been asked for by a student.	25	scanned by volunteers? MR. KAPLAN: Objection; misstates	
	we've been asked for by a student.	23	WIK, KAI LAN. Objection, misstates	
	211			213
1	Q So a student would have submitted a	1	testimony.	213
1	Q So a student would have submitted a request and because it was educational, you would	2	THE WITNESS: We accept books from quite a	213
1	Q So a student would have submitted a request and because it was educational, you would have approved that request; is that what you	2	THE WITNESS: We accept books from quite a number of sources of which volunteers is one source.	213
2 3 4	Q So a student would have submitted a request and because it was educational, you would have approved that request; is that what you testified to earlier?	2 3 4	THE WITNESS: We accept books from quite a number of sources of which volunteers is one source. BY MR. REHN:	213
2 3 4 5	Q So a student would have submitted a request and because it was educational, you would have approved that request; is that what you testified to earlier? MR. KAPLAN: Objection; misstates	2 3 4 5	THE WITNESS: We accept books from quite a number of sources of which volunteers is one source. BY MR. REHN: Q Can anybody sign up to be a volunteer to	213
2 3 4 5 6	Q So a student would have submitted a request and because it was educational, you would have approved that request; is that what you testified to earlier? MR. KAPLAN: Objection; misstates testimony, calls for speculation.	2 3 4 5 6	THE WITNESS: We accept books from quite a number of sources of which volunteers is one source. BY MR. REHN: Q Can anybody sign up to be a volunteer to submit books or documents?	213
2 3 4 5	Q So a student would have submitted a request and because it was educational, you would have approved that request; is that what you testified to earlier? MR. KAPLAN: Objection; misstates	2 3 4 5 6 7	THE WITNESS: We accept books from quite a number of sources of which volunteers is one source. BY MR. REHN: Q Can anybody sign up to be a volunteer to	213
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1	J 0	_	
	214	ı	216
1	submit such documents?	1 A No.	
	MR. KAPLAN: Objection; vague.		
2	THE WITNESS: Yes.	2 Q Do you think you evaluated more than 5	
$\begin{bmatrix} 3 \\ 4 \end{bmatrix}$	BY MR. REHN:	3 pages?4 A Probably in that range.	
5	Q Have you ever encouraged Carl Malamud to	5 Q Do you have any familiarity with the	
6	submit any documents?	6 purpose of the Life Safety Code?	
7	A No.	7 MR. KAPLAN: Objection; vague.	
8	Q Have you ever discussed that topic with	8 THE WITNESS: No, other than some of the	
9	him?	9 content that I read.	
10	A No.	10 BY MR. REHN:	
11	Q Have you ever told somebody that instead	11 Q Do you know what the average user of the	
12	of volunteering and submitting a document to	12 Life Safety Code uses it for?	
	Bookshare, they should post it on the Internet where	13 MR. KAPLAN: Objection; vague.	
	it can be accessed by anybody in the public?	14 THE WITNESS: No.	
15	MR. KAPLAN: Objection; vague.	15 BY MR. REHN:	
16	THE WITNESS: Not that I recall.	16 Q And then in addition to the NFPA free	
17	BY MR. REHN:	17 access version, you looked at a PDF of this code	
18	Q Now, your expert report says that you	18 that was available on Public Resource's website; is	
19	considered the accessibility of NFPA 101; is that	19 that right?	
20	right?	20 MR. KAPLAN: Objection; misleading.	
21	A I think that's underspecified, but yes. I	21 THE WITNESS: I looked at the 2000 version	
22	was asked to evaluate NPFA sorry, NFPA 101-2000.	22 on the NFPA site and the 2000 version on	
23	Q And then you were asked to evaluate that	23 Public.Resource.Org's site, I looked at the 2012	
24	specific standard?	24 version as well on the Public.Resource.Org website.	
25	A Correct.	25	
	215		217
			217
1	Q Did anybody tell you why you should focus	1 BY MR. REHN:	217
2	Q Did anybody tell you why you should focus on that standard and not some other standard?	1 BY MR. REHN: 2 Q For the 2000 version, your report says	217
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1 1: 1 2: 1 10	١,	O TI 4	
1 and implementing the standard?		Q That's correct.	
2 A No.	2	A Okay.	
3 Q Did you see any graphical material in that 4 standard?	3	MR. KAPLAN: That's excerpts you're	
	4	1 &	
5 A I recall seeing graphical material in the 6 standards I evaluated.	5	MR. REHN: Excerpts, yes. BY MR. REHN:	
6 standards I evaluated. 7 Q Did you assess whether that graphical	6		
8 material was accessible via a screen reader in the	8	Q Then you say that you You said that you copied the text from	
9 HTML version of the Public Resource website?			
	9		
10 MR. KAPLAN: Objection; vague. 11 THE WITNESS: I didn't check for	$\begin{vmatrix} 10 \\ 11 \end{vmatrix}$		
11 THE WITNESS: I didn't check for 12 additional accessible metadata on the images.	12		
13 BY MR. REHN:	13	A According to the three functional tasks that I described as checking on my report.	
14 Q So do you have an opinion on	14		
15 Do you have enough information to know	15		
	16		
	17	_	
17 could use the HTML version of NFPA 101 that is 18 available on Public Resource's website and safely	18		
	19	Q Do you recall whether you evaluated	
19 rely on that for professional purposes?20 MR. KAPLAN: Objection; vague.	20		
21 THE WITNESS: I am not a fire professional	20		
22 expert, so I can't evaluate how this applies	22	MR. KAPLAN: Objection; vague.	
23 specifically to that profession.	23		
24 BY MR. REHN:		outlined as wanting to test, so, for example, could	
25 Q So the answer to my question is "no"?		I navigate to a specific point, let's say, Section	
25 Q 50 the answer to my question is no :	23	Thavigate to a specific point, let's say, Section	
	_		
	219		221
1 MR. KAPLAN: I think he gave you an answer		7.2.1.15.6. Could I read the text, started reading.	221
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2 to your question.	1	listen to the standard, and could I search on a	221
2 to your question. 3 BY MR. REHN:	1	listen to the standard, and could I search on a keyword like "egress" and	221
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1 BY MR. REHN:	1 some level usable and they become more useful the
2 Q Do you have any information to know	2 more the higher the quality is.
3 whether a visually impaired architect could access	3 BY MR. REHN:
4 the PDF version of the NFPA 101 that's on Public	4 Q So the the higher quality is generally
5 Resource's website and safely rely on that for	5 content available from the publisher?
6 professional purposes?	6 A Generally, publisher supply content is the
7 MR. KAPLAN: Objection; incomplete	7 highest quality you can get unless you have invested
8 hypothetical, vague.	8 significant additional time, say, in doing image
9 THE WITNESS: I do know of an awful lot of	9 descriptions or other additional markup beyond what
10 professionals that are delighted to get the kind of	10 the publisher would do.
11 content that is available there, whether it's from	11 Q And I think you testified earlier you
12 my organization or other places, and so but I	12 didn't consider whether any of the Plaintiffs makes
13 don't know about architects in particular.	13 the original publisher content available to visually
14 BY MR. REHN:	14 impaired people in any way, aside from the free
15 Q And, in particular, whether they could	15 access sections of their website?
16 safely rely on the standard as it's available on	16 MR. KAPLAN: Objection; misstates
17 Public Resource's website?	17 testimony. 18 THE WITNESS: Correct.
18 MR. KAPLAN: Objection; asked and	18 THE WITNESS: Correct. 19 BY MR. REHN:
 19 answered, vague, incomplete hypothetical. 20 THE WITNESS: I believe that any person 	20 Q Do you know whether any of the Plaintiffs,
21 with a disability who gets a after-the-fact well,	21 for example, responds to requests from visually
22 actually I would say if it gets any content, needs	22 impaired persons for the publisher version of their
23 to blend their professional judgment if they don't	23 standards?
24 feel like they can rely on a document, to ask for	24 A No.
25 help from a sighted person if they need it. And,	25 Q Did you analyze whether the content of the
	223 225
1 you know, accessibility is on a spectrum, and	
1 you know, accessibility is on a spectrum, and 2 perfection is normally not something that people can	1 standard that you obtained on Public Resource's
 you know, accessibility is on a spectrum, and perfection is normally not something that people can expect today. 	
2 perfection is normally not something that people can	1 standard that you obtained on Public Resource's2 website in HTML format accurately reflected the
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,	they might not have produced it using optical	1	will clarify. If you need a break, please let me	
	character recognition.		know.	
3	BY MR. REHN:	3	A Sounds good.	
4	Q And did you analyze whether the content of	4	Q Are you prepared to proceed?	
5	the standard obtained through the PDF version on	5	A I am.	
6	Public Resource's website was accurate?	6	Q Counsel suggested that you investigate the	
7	MR. KAPLAN: Objection; vague.	7	accessibility of ASHRAE standard 90.1-2010, correct?	
8	THE WITNESS: I've previously observed	8	A Correct.	
9	that it had OCR errors in it that I spotted.	9	Q Do you know why they suggested that	
10	BY MR. REHN:	10	standard?	
11	Q Did you look for any other errors that it	11	MR. KAPLAN: Objection; calls for	
12	may have had?	12	privileged communications, and I will instruct the	
13	A No. I kind of felt like once I kind	13	witness not to answer.	
14	of well, when you see a document that's obviously	14	THE WITNESS: Can't answer.	
15	an OCR document that hasn't been proofread, I don't	15		
16	think it occurs to you to look for additional errors	16	Q Do you have any separate understanding	
17	that might have been, say, in the original	17	5 5	
18	manuscript.	18	of why you were to look into Standard 90.1-2010?	
19	When you see a certain kind of error	19	A No.	
20	that's been introduced, that's probably far more	20	Q Did you have to register on the ASHRAE	
21	likely to have occurred than errors in the original	21		
22	manuscript since almost all published documents have	22	A Let me check to confirm that I'm	
23	some errors in them at some point, but I think the		remembering which standards body is which. No, I	
24	OCR process introduces a lot more by comparison.	24	2 1	
25	Q And you additionally did not go back to	25	the whatever you guys call that, on your website.	
	227			229
1		1	O And you were able to payigate to the	229
	the original document on the NFPA website to	1 2	Q And you were able to navigate to the specific standard on the ASHRAE website?	229
		1 2 3	Q And you were able to navigate to the specific standard on the ASHRAE website? A Correct.	229
2	the original document on the NFPA website to evaluate the accuracy of the version you obtained		specific standard on the ASHRAE website?	229
2 3	the original document on the NFPA website to evaluate the accuracy of the version you obtained from the Public Resource website?	3	specific standard on the ASHRAE website? A Correct. Q Was there an option on the ASHRAE website	229
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2 3 4 5 6	the original document on the NFPA website to evaluate the accuracy of the version you obtained from the Public Resource website? MR. KAPLAN: Objection; vague. THE WITNESS: Correct. That was not part of my evaluation. MR. REHN: I have no further questions. MS. MERK: Would you like to take a break	3 4 5 6	specific standard on the ASHRAE website? A Correct. Q Was there an option on the ASHRAE website to make the text of Standard 90.1-2010 larger? A Looks like there is. Yes. Q Did you test this option? A No.	229
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	230			232
1 2 3 4 5 6 7	Q How did you select these additional five standards? MR. KAPLAN: And I will object to the extent that it calls for divulging privileged communications with counsel and instruct you not to answer to that extent. THE WITNESS: As far as I recall, at	2 3 4 5 6	BY MS. MERK: Q So to test accessibility of the ASHRAE 90.1-2010 standard, you opened the PDF in Adobe Acrobat, and then you employed a "Select All" command and then a "Copy" command, and then you copied the text into a Word processing program, correct?	
	random from a list that I saw on the website, but there is some small chance it might have been five in a row, but I think it was at random. BY MS. MERK:	8 9 10 11	MR. KAPLAN: Objection; misstates testimony. THE WITNESS: Yeah. I opened it in Adobe Reader, not but, yes, that's yeah. That's how	
12 13 14 15	Q Did you test any other ASHRAE standards that are not listed in your report? A No. Q Did you test the 2004 version of 90.1?	13 14	I did it. BY MS. MERK: Q And the text was rendered into a Word processing format using automatic optical character	
16 17 18 19	A No.Q The 2007 version of 90.1?A No.Q Or any version of the ASHRAE handbook?	16 17 18	recognition, which we've been referring to as OCR? MR. KAPLAN: Objection; vague. THE WITNESS: And that's not quite how it worked.	
20 21 22 23	A No. Q Are you aware of which ASHRAE works are at issue in this case? A No.	21 22 23	BY MS. MERK: Q Can you please clarify? A So I believe that the text that was present in the document had been created through an	
24 25	Q Why did you test only one of the ASHRAE works at issue in this case?		OCR process by the telltale signs of the errors. I used Cut and Paste to put that into Microsoft Word	233
7 8 9 10 11 12 13 14 15 16	MR. KAPLAN: I'll object to the extent it calls for privileged communications. THE WITNESS: Can't answer, other than what I've stated that I was directed to test that one. BY MS. MERK: Q You searched for the ASHRAE standard 90.1-2010 on Public.Resource.Org, correct? A Correct. I'm going to confirm that that's what yes. Correct. Q And you found it in PDF format, correct? A Correct. Q You did not find the 90.1-2010 standard in HTML format? A I don't believe so. Q Earlier Ms. Rubel asked for which of Plaintiffs' standards you copied the text into a Word document, and you responded that you did this	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	and then "Read Aloud" or search for specific sections or words. Q Thank you for the clarification. Do you agree that the use of OCR can lead to errors in the transcription? MR. KAPLAN: Objection; vague, incomplete hypothetical, asked and answered. THE WITNESS: Yes. BY MS. MERK: Q And yet you concluded the accuracy was sufficient to perform the functional tasks of reading the entire standard? MR. KAPLAN: Objection; misleading, vague. THE WITNESS: Yes. BY MS. MERK: Q You were able to successfully read the entire standard using a screen reader? MR. KAPLAN: Objection; vague.	233
19 20 21 22	for NFPA 101-2012. Did you also employ this method to test the ASHRAE 90.1-2010 PDF version?	19 20 21	THE WITNESS: I didn't wait till the end. BY MS. MERK: Q I'm sorry, I don't understand your answer.	

		_		
	234			236
1	read the entire standard till the end because in my	1	A Yes.	
2	professional opinion, once you've read the first	$\frac{1}{2}$	Q Are you satisfied that the Word version	
3	page, it tends to work the same for the rest of the	3	and PDF version here are expressing the same portion	
4	document.	4	of the 90.1-2010 standard?	
5	Q So your conclusion that generally the	5	MR. KAPLAN: Objection; vague.	
6	accuracy was sufficient to perform the functional	6	THE WITNESS: Seems seems logical.	
7	tasks, reading the entire standard, navigating to a	7	BY MS. MERK:	
8	specific place in the standard or searching on key	8	Q Now please turn to page 8 of Exhibit 4004.	
9	terms, you did not actually read the entire	9	A Yep.	
10	standard?	10	Q Do you see Figure 3.2 on page 8 of	
11	A Correct.	11	Exhibit 4004?	
12	Q I am going to hand you an excerpt of the	12	A Yep.	
13	first 25 pages of ASHRAE standard 90.1-2010 as they	13	Q Do you see how Figure 3.2 was rendered on	
14	appear in the PDF version available on	14	pages 24 to 25 of Exhibit 4005?	
15	Public.Resource.Org's website. And over the break	15	A Yep.	
16	the court reporter marked this as Exhibit 4004.	16	Q Are there any problems with how Figure 3.2	
17	(Plaintiffs' Exhibit 4004 marked	17	1 &	
18	for identification.)	18	A Yes. The OCR did not do a great job of	
19	THE WITNESS: Okay.	19	pulling the text out of the graphic.	
20	BY MS. MERK:	20	Q Do you believe that a blind person would	
21	Q I'll represent to you that I've utilized	21	be able to understand any of what is communicated in	
22	precisely the steps outlined in your report. I	22	Figure 3.2 as Figure 3.2 is rendered?	
23	, 1	23	A Yes. They would read the caption and know	
	it into a Word processing program, and this		what it was about and know there is a picture there,	
25	document, which has been marked 4005, is the result	25	what it was about, and if they wanted to know the	
	225			
1	235			237
1		1	information in that picture, they would need a human	237
1 2	of that process.		information in that picture, they would need a human being to describe it.	237
l			being to describe it.	237
2	of that process. (Plaintiffs' Exhibit 4005 marked	2 3		237
2 3	of that process. (Plaintiffs' Exhibit 4005 marked for identification.)	2 3	being to describe it. Q So as expressed through a screen reader,	237
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1	don't know that. So I can't actually give you a	1	BY MS, MERK:	
	accessibility opinion until I actually sort of	2	Q Would you please turn to page 20 of	
	assess that because often graphical elements		Exhibit 4004 and page 67 of Exhibit 4005.	
	recapture something that's in other parts of the	4	A 20 of the PDF and 67. Okay.	
	document; that's quite common in technical	5	Q Do you agree that these both represent	
	documents, but I don't know that because I haven't	6	Section 3.3 which lists abbreviations and acronyms	
7	been able to read the detailed content.	7	utilized in the 90.1-2010 standard?	
8	BY MS. MERK:	8	A Sure.	
9	Q I'm sorry, I'm going to ask my question	9	MR. KAPLAN: Wait. You're going to give	
	again.		him time to read it, right?	
11	A Okay.	11	MS. MERK: Certainly.	
12	Q If someone needed an accessible form of	12	THE WITNESS: So I'm just looking at this	
	this standard		one page. Do you want me to look at the entirety of	
14	A Yes.		the page?	
15	Q in order to perform this standard,		BY MS. MERK:	
	would this be an accessible form?	16	Q At the base of 67, 3.3, "Abbreviations and	
17	MR. KAPLAN: Objection; vague,		Acronyms" and then on to the next several pages	
18	argumentative, asked and answered.	18	A Okay.	
19	THE WITNESS: If this graphic is the only	19	Q and page 20 at the top where it says	
20	expression of the information in this graphic and	20	"3.3, Abbreviations and Acronyms" and that complete	
21	that information is not contained in the textual	21	page.	
22	information of the standard, then a blind person	22	A Okay. I'm ready to discuss the document,	
23	would need the help of a sighted person to look at	23	I think.	
24	this graphic and get that information that's not	24	Q Do you agree that these both represent	
25	located elsewhere. So I'm not sure. I can't give a	25	Section 3.3, which lists abbreviations and acronyms	
\vdash		\vdash		
	220			241
	239			241
1	yes/no answer to your question based on my	1	utilized in the 90.1-2010 standard?	241
		1 2	utilized in the 90.1-2010 standard? MR. KAPLAN: Objection; vague.	241
	yes/no answer to your question based on my	1 2 3		241
2	yes/no answer to your question based on my knowledge.	3	MR. KAPLAN: Objection; vague.	241
3	yes/no answer to your question based on my knowledge. BY MS. MERK:	3 4	MR. KAPLAN: Objection; vague. THE WITNESS: Page 20 in the PDF looks	241
2 3 4 5 6	yes/no answer to your question based on my knowledge. BY MS. MERK: Q I understand your clarification. Assuming that that figure is the only place that that information is conveyed in the	3 4 5	MR. KAPLAN: Objection; vague. THE WITNESS: Page 20 in the PDF looks like an image of that page, and pages 68 through	241
2 3 4 5 6 7	yes/no answer to your question based on my knowledge. BY MS. MERK: Q I understand your clarification. Assuming that that figure is the only place that that information is conveyed in the standard, is there any way that a blind person would	3 4 5	MR. KAPLAN: Objection; vague. THE WITNESS: Page 20 in the PDF looks like an image of that page, and pages 68 through I don't know about 73, look like an OCR version of that same table. BY MS. MERK:	241
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2 3 4 5 6 7 8 9 10 11	yes/no answer to your question based on my knowledge. BY MS. MERK: Q I understand your clarification. Assuming that that figure is the only place that that information is conveyed in the standard, is there any way that a blind person would be able to comprehend the entire standard simply using a screen reader? MR. KAPLAN: Objection; incomplete hypothetical, vague.	3 4 5 6 7 8 9 10	MR. KAPLAN: Objection; vague. THE WITNESS: Page 20 in the PDF looks like an image of that page, and pages 68 through I don't know about 73, look like an OCR version of that same table. BY MS. MERK: Q Are there any problems with the rendition of Section 3.3 in Exhibit 4005? A Yes. There are OCR errors of both content and structure.	241
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	1 DV MC MEDIA	
1 A You want me to catalog	1 BY MS. MERK: 2 O Do you find that this is a comprehensible	
2 MR. KAPLAN: Objection; misleading. 3 THE WITNESS: OCR errors on the page,	2 Q Do you find that this is a comprehensible 3 rendition of this text?	
4 or do you have specific kinds of errors that you 5 want to hear about?	4 MR. KAPLAN: Objection; vague. 5 THE WITNESS: As I've said before, the OCR	
6 BY MS. MERK:	6 is making errors, so this is not a perfect,	
7 Q I would like you to explain to me what is	7 well-structured rendition of the document. It has	
8 different about 3.3 in Exhibits 4004 and 4005.	8 many of the words in it, but they don't get paired	
9 A So I'm going to give you	9 up, so it is not a publisher-quality rendition of	
10 MR. KAPLAN: Objection; vague.	10 the document in accessible form. It's an OCR	
11 THE WITNESS: I'm going to give you the	11 version of the document, which is full of errors,	
12 top errors that leap out to me. I'm not	12 which is what OCR does.	
13 representing they are a comprehensive list because I	13 BY MS. MERK:	
14 didn't do a line-by-line compare on everything in	14 Q And would the errors that you see on	
15 here. But things that I noticed on my initial	15 Exhibit 4005 affect a blind person's ability to	
16 reading was specialized symbols being	16 understand a text reader's rendition of other parts	
17 mis-recognized, as I mentioned, degrees, squared,	17 of the standard that rely on the abbreviations and	
18 and then there was structural errors where the OCR	18 acronyms that are defined here?	
19 grouped some content together that should stay	MR. KAPLAN: Objection; incomplete	
20 together and broke other content that should stay	20 hypothetical, vague.	
21 together apart.	21 THE WITNESS: So I'm kind of	
I haven't looked to see how it does with	MR. KAPLAN: Why don't you answer this one	
23 superscripts and subscripts. I could go and look at	23 and we'll take a break.	
24 that if you want me to. That would be another area	24 THE WITNESS: I'm just trying to	
25 I would look for.	25 there's a spectrum of accessibility, and if I was a	
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	243 1 blind person trying to understand the contents of 2 this standard and I read all of the content,	245
1 Do you want me to take more time on the	1 blind person trying to understand the contents of	245
1 Do you want me to take more time on the 2 document and analyze it further?	1 blind person trying to understand the contents of2 this standard and I read all of the content,	245
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1	THE WITNESS: I didn't test any other	1	want to limit your question to that, I have no	
	standards from ASHRAE on the Public.Resource.Org		objection. But your question is objectionable on	
1	website.			
1	BY MS. MERK:		resolve it.	
5	Q You answered some questions earlier about	5	THE WITNESS: Okay. And on the portion	
1	paid PDFs on NFPA's site. Did your testing of	6	about asking ASHRAE, I did not ask anyone at ASHRAE	
	ASHRAE's standards focus solely on free access	7	about anything.	
	through the website portion?		BY MS. MERK:	
9	MR. KAPLAN: Objection; vague.	9	Q Did you ask counsel at all? If there was	
10	THE WITNESS: Yes.		no communication, there cannot be a privilege.	
11	BY MS. MERK:	11	MR. KAPLAN: But you can't get at	
12	Q You did not test any ASHRAE standards		privileged communications by asking the negative.	
1	provided to customers who purchased electronic	13	MS. MERK: Are you instructing him not to	
	copies of the standards from the ASHRAE bookstore?		answer whether or not you had a conversation that	
15	A Yes. I'm sorry, I thought you said you		stated the fact of what format ASHRAE's standards	
1	did not test. Okay.		are available in?	
17	Q So, yes, you did not?	17	MR. KAPLAN: A conversation that stated	
18	A Yes, I did not test.		the fact? And the rule says that if counsel	
19	Q Why not?		identifies facts or data, so is that going to get at	
20	A Privileged conversation.		what you want to ask?	
21	MR. KAPLAN: Yeah. If you can answer it	21	MS. MERK: Sure.	
	without divulging communications.	22	MR. KAPLAN: Then please go ahead.	
23	THE WITNESS: I mean, I already said I was		BY MS. MERK:	
	directed to test that one. Beyond that, I don't	24	Q Did you ask counsel the fact of what	
	want to elaborate.		format ASHRAE's standard available for sale is made	
	247			2/10
	247			249
1	BY MS. MERK:	1	in?	249
1 2	BY MS. MERK: Q Do you know what format purchased copies	2	MR. KAPLAN: We're going in circles here.	249
1	BY MS. MERK:	2 3	MR. KAPLAN: We're going in circles here. The rule says that counsel that communications	249
2	BY MS. MERK: Q Do you know what format purchased copies of ASHRAE standards are provided in? A No.	2 3 4	MR. KAPLAN: We're going in circles here. The rule says that counsel that communications where counsel identifies facts or data are not do	249
2 3	BY MS. MERK: Q Do you know what format purchased copies of ASHRAE standards are provided in?	2 3 4 5	MR. KAPLAN: We're going in circles here. The rule says that counsel that communications where counsel identifies facts or data are not do not fall within the privilege. So if the question	249
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2 3 4 5	BY MS. MERK: Q Do you know what format purchased copies of ASHRAE standards are provided in? A No. Q Did you ever ask this? MR. KAPLAN: Objection; vague. THE WITNESS: Of who?	2 3 4 5 6 7	MR. KAPLAN: We're going in circles here. The rule says that counsel that communications where counsel identifies facts or data are not do not fall within the privilege. So if the question is, did counsel identify facts or data relevant to this topic, then that's fine. But you keep asking	249
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	250			252
1	about in my ownert report	1	O. Why not?	
2	about in my expert report. BY MS. MERK:	2	Q Why not? A Same answer as before.	
$\frac{1}{3}$	Q Why not?	3	Q If you found out that in each instance	
$\frac{1}{4}$	A Because I performed the task I was	1	where a visually-impaired person has approached	
5	assigned to do.	5	ASHRAE concerning access to standards, ASHRAE	
6	THE WITNESS: Is that okay to say?	6	provided a copy of the standard in an accessible	
7	MR. KAPLAN: (Nods head.)	7	format, would that change any of the opinions you	
8	BY MS. MERK:	\ \ \ \ \	offered in your report?	
9	Q Do you know what ASHRAE or any other	9	MR. KAPLAN: Objection; vague and	
10	Plaintiffs' policy is regarding providing free			
111	access to the ASHRAE standards at issue to	11	THE WITNESS: Let's see. So if I knew	
12	vision-impaired people?	12	that the files were available, and I knew they were	
13	MR. KAPLAN: Objection; vague.	13	available for free, and I knew that they were high	
14	THE WITNESS: No.	14	quality, and I was asked to evaluate the	
15	BY MS. MERK:	15	accessibility in that context or it was obvious by	
16	Q Did you seek out this information?			
17	A No.	17	might have written my report differently.	
18	A No. Q Did you ask counsel to seek this			
19	information in discovery?	19	Q I'm sorry, maybe I'm not understanding the	
20	MR. KAPLAN: Objection; it calls for	20		
21	privileged communications.	21	I'm asking if a vision-impaired if you	
22	BY MS. MERK:	22	found out that every time when a vision-impaired	
23	Q When you said you did not seek out this	23	person has asked ASHRAE for access to one of its	
24	information, why not?	24	standards, ASHRAE provided a copy of the standard in	
25	A I answered that question a second ago, I			
25	Transmotor that question a second ago, r		an accession format to that marviadal, would that	
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1		1	change any of the opinions you offered in your	253
	thought. I was asked to evaluate a specific		change any of the opinions you offered in your	253
2	thought. I was asked to evaluate a specific standard and the accessibility around getting to	2	report?	253
3	thought. I was asked to evaluate a specific standard and the accessibility around getting to that standard and trying to access that standard; I	2 3	report? MR. KAPLAN: Objection; vague and	253
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$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	MR. KAPLAN: Objection; vague, incomplete hypothetical.	$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	FURTHER EXAMINATION BY MR. REHN:	
$\frac{2}{3}$	THE WITNESS: I have to start looking	3	Q Good evening, Mr. Fruchterman.	
1	through some of my conclusions to see what I might	4	A Hello.	
5	change, if anything. I don't believe so.	5	Q And do you understand that you're still	
6	BY MS. MERK:	6	under oath?	
7	Q Why not?	7	A Yes.	
8	MR. KAPLAN: Objection; vague.	8	Q Has anything happened between now and the	
9	THE WITNESS: Because I believe that the	9	last time we spoke that would affect your ability to	
10	things that I've said in my document continue to be	10	answer my questions fully and truthfully?	
11	true.	11	A No.	
12	MS. MERK: I have no other questions.	12	Q So I'd like to direct your attention to an	
13	Oh, I would, however, like to state on the	13	exhibit that we are marking as Exhibit Number 4006.	
14	record that we would like to keep this deposition	14	A Yes.	
15	open until the document issue has been resolved.	15	(Plaintiffs' Exhibit 4006 to be	
16	We received over 5,000 pages of documents	16	marked for identification.)	
17	which we have still not had access to because they	17	BY MR. REHN:	
18	were provided in a load file that is not that	18	Q Do you recognize this as an e-mail to	
19	could not be read on our computers in this sort of	19	yourself from Rob Turner that was sent on April 10th	
20	context, and we will maintain the right to question	20	of this year at 10:56 a.m.?	
21	Mr. Fruchterman on anything that is raised in those	21	A Yes.	
22	documents provided today.	22	Q And the subject line is "OCR Document"?	
23	MR. KAPLAN: So are you keeping the	23	A Yes.	
24	1 1	24	Q Do you recall receiving this e-mail?	
25	MS. MERK: Yes.	25	A Yes.	
		\vdash		
1	255			257
				257
1	MR. KAPLAN: Okay. So we will continue to	1	Q And do you know what OCR document	257
2	MR. KAPLAN: Okay. So we will continue to sit here until the tape runs out seven hours run		Mr. Turner is referring to in the subject line?	257
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	BY MR. REHN: Q Did you make any image-based PDFs of documents from any of Plaintiffs' websites? A I didn't make any documents from Plaintiffs' websites. I downloaded whatever document no, I downloaded I viewed the document, yes. So, no. Q After you sent him a document, it would have been one from Public Resource's website? A That's correct. Thank you. Q And if I could direct you to the last sentence of the first paragraph of his e-mail, would you read that sentence, please? A The one "I don't think"? Q Yes. A Yes. "I don't think this type of document can be considered to be accessible." Q So based on your prior testimony, is it your understanding that he is saying that the image-based PDF from Public Resource's website that you sent to Mr. Turner, in his opinion, cannot be considered to be accessible? MR. KAPLAN: Objection; misleading,		1 2 3 4 5 6 7 8 9 10 11 11 12 13 14 15 16 17 18 19 20 21 22 22 23 24 25	THE VIDEOGRAPHER: This concludes today's deposition. We're going off the record at 7:09. (Time noted: 7:09 p m.) (Signature waived.)	
25	MR. KAPLAN: Objection, misleading,	_	<u> </u>		
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	argumentative, vague. THE WITNESS: I think Rob Turner doesn't believe it meets our accessibility standards, which is what his job is to primarily work on our library for the blind. We would not post an image-based PDF and call it accessible. BY MR. REHN: Q And do you agree with Mr. Turner's assessment that this type of document cannot be considered to be accessible? A I think it's less accessible than many of the other documents and more than others, as I wrote in my expert report. I can probably quote from the report. Q There's no question pending. So A Okay. I would direct you to my last sentence of my report MR. KAPLAN: Jim, there's no question pending. THE WITNESS: All right. MR. REHN: I have no further questions. And I believe that concludes Plaintiffs' questioning of this witness.		4 5 6 7 8 9 10 11 12 13 14 15 16	CERTIFICATION OF DEPOSITION OFFICER I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify: That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were administered an oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given. Further, that the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, a review of the transcript [] was [X] was not requested. I further certify I am neither financially interested in the action nor a relative or employee of any attorney or any party to this action.	
24	MR. KAPLAN: I have no questions at this time.		24 25	CSR No. 7705	

	1748	56.1	
\$	12 98:7	2012 98:15 179:21,23	241:9 242:8
\$30,000 28:7,13 35:3	12:09 92:22	192:25 216:23	3:37 175:20
	12:12 95:10	219:5	3:48 175:23
1 1:11 3:17 6:14 65:3	12:16 95:15	2015 1:16 4:21 5:2,6	30 181:3
92:19 98:9 121:14	121 3:14	202 3:15	300 194:19
122:11,17 126:2	14 161:24 164:9	202.739.5118 2:5	31 1:16 5:2
137:24 149:5 154:23 162:10,13	15 28:7,12 35:3	203 3:16	31st 5:6
182:1 203:15	38:16,19 83:19	209 4:8	350,000 157:22,23
1:13-cv-01215-TSC	16 192:21,24	20A 98:9	
1:9	17 160:6 186:21	20M 98:10	4
1:20 138:4	192:21	215 3:17,18	4 3:13 172:17 235:14
10 4:21 17:16 83:19	18 3:15,22	218 3:19	4:55 227:15
99:2 116:15 122:3	189.1-2014 229:25	219 4:10	40 92:8
126:2 130:19 134:19 135:17	19 3:14	227 3:8	4000 4:3 64:22,23
179:2 181:22,23	192 3:7	228 3:20	65:3 68:22
182:16 198:20	1981 21:2	2300 2:9	4001 4:6 97:21,23 192:17
215:24	1996 62:4,9	234 4:13	4002 4:8 209:14,15
10:37 51:13	1-page 212:3	235 4:17	4003 4:10 219:9,10
10:55 51:16		24 235:11,17,18,24	4004 4:13 234:16,17
10:56 256:20	2 2 73:8 92:22 122:15	236:14,17	235:11 236:8,11
100 53:3 92:8	135:15,20	247 3:21	240:3 242:8
100-page 212:2	136:6,11,17,21	24-point 16:3	4005 4:17 234:25
101 2:9 118:21 126:5 179:16,23 192:25	137:12,15,17 162:15 175:19	25 3:19 4:13 234:13 236:14,17	235:2,10 236:14,17 240:3 241:9 242:8
197:10,23 192.23	235:12	, i	244:15
218:17 221:14	2.0 149:7	250 3:22	4006 4:20 256:13,15
222:4	2:42 138:7	256 3:7 4:20	415.318.1263 2:10
101-2000 98:6 214:22	20 15:16,18,19 38:19	26 13:17	415.512.4073 2:16
101-2012 4:10 219:20 231:19	92:8 135:18 137:4	264 1:11	415.875.2300 2:21
107 181:24	144:21 240:2,4,19 241:3	27th 2:15	44 38:14
107 181.24 10th 256:19	2000 216:21,22 217:2	3	
11 162:18,21	2000 216.21,22 217.2 20004 2:4	3 122:15 135:15,20	5
11:01:56:19	20004 2:4 2003 4:4 65:9	136:7,11,17,21	5 3:16,21 75:8 99:8,9 101:17 204:20
11:01 56:19 11:04 56:24	2004 230:15 235:14	137:12,15,17 172:17 175:23	216:2
	2004 230:13 233:14 2007 230:17	3.2 236:10,13,16,22	5,000 254:16
11:55 92:19		237:4	5,399 6:14
1111 2:4	2010 179:17	3.3 240:6,16,20,25	,
		<u> </u>	

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 2

	rag	50 2	
5:09 227:18	90 32:9	132:3 133:11,22	168:3 170:14,18
5:34 245:13	90.1 230:15,17	134:4 139:13,14,24	172:15 176:4
	, and the second	140:1,15 141:20	178:12,16 179:25
5:42 245:16	90.1-2010 4:13,17	143:7,13 152:6	187:13,25 188:5,14
5:55 255:17	98:6 228:7,18,21 229:5 231:8,13,21	158:10 160:17	189:8 190:13
501(c)3 12:12,14	232:3 234:13 236:4	161:11,22 162:9	205:6,12,16
555 2:20	240:7 241:1	163:8	206:6,12 207:22
		165:14,17,22,25	215:17 216:17
560 2:15	90.1-2013 229:24	167:6,25 176:4	221:14 222:3
59 3:13	90.2-2007 229:25	178:12,16 186:2 193:8,14 194:7	224:15 228:21 246:7 250:11
	93a 98:10 166:11	195:4 196:7,8,22	251:3,10,19
6	94104 2:21	197:10,13,18,25	251:5,10,19
6 182:16		223:6 229:1	, and the second
62.1-2013 229:24	94105 2:10,15	233:16,23 236:21	accessed 14:19 98:15
	97 4:6	238:7 239:8	101:3 177:13,19
62.2-2013 229:24	99 32:10	Abstract 149:6	192:24 214:14
64 4:3)) 32.10		accessibility 9:21
67 240:3,4,16		academics 33:14	12:3 25:4 26:1,2 29:8 30:22 31:9,13
68 241:4	a.m 1:18 5:7 256:20	accept 79:10 86:18	37:9 41:7,21
00 2 11.1		212:21,23 213:2	91:8,23 92:2,13,14
7	A20 98:9 166:25	accepted 31:9	93:14,16,19 102:9
7 3:6 132:17,20 146:9	A20/A20M 166:11	access 13:11 14:13	110:23 116:11
172:17,22 181:25	AA 148:8	15:1,21 19:1,2	122:1 124:11
235:10,15,18,19,22	AAA 148:9,24	42:4,10,15 43:7	131:22 139:17,20
, , , , , , , , , , , , , , , , , , ,	, and the second se	50:8 66:6,17	140:5 141:11
7.2.1.15.6 221:1	abbreviations	67:14,22 69:9	142:23 143:25
7:04 255:20	240:6,16,20,25	71:1,18,25 73:17	144:2,14
7:09 260:2,3	241:13 243:12 244:17 245:6	77:9 78:12 80:9	147:2,4,20,22,23,2
700 1:20		84:9,15,16,18,25	5 148:4,7 149:17
	abide 147:22	85:7,13 86:9,22	151:25 153:4,7,9
70-2014 209:22	abilities 159:14	99:12 100:19	154:22 156:3
71 243:7	ability 8:24 19:4 42:9	101:10,12,18	165:12 173:9,13 187:10 197:5,7
72-point 16:3	43:4 103:21 104:25	110:18 111:20,21 112:20	202:19 203:10,21
73 241:5	124:14 140:6	113:3,16,22,25	202.19 203.10,21 204:3,17 205:3
	186:24 190:13	115:12,22 116:4,25	208:22 214:19
7705 1:24 261:24	244:15 256:9	117:2,9	221:25 223:1,21
	able 15:1 16:25	124:7,15,23 127:21	228:7 229:14 232:2
8	17:3,9 34:15 43:9	129:2,3,8,11,21	237:15 238:2
8 3:18 236:8,10	84:9,15 86:9,22	130:15,21	244:25 251:2
80 13:14	102:3,4 108:14	131:5,7,14	252:15 259:3
	111:20,21 112:12	133:11,23 138:20	accessible 13:9,24
9	113:10,24	141:25 143:6,21	14:5 26:13 31:1,23
9 3:20 215:16	115:18,24	156:16 157:7,17	32:9,13 35:10
	116:3,16,25 117:5	158:7 161:19 162:7	40:20 49:9 50:6,9
9:34 1:18 5:7	124:7 129:8 130:14	163:8 165:14 167:6	52:16,20 53:20
			32.10,20 33.20

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	1 48	,	1
62:24 77:24	225:2	administered 261:7	88:10 148:1
83:21,25 84:5	acquainted 158:2	admitted 68:1	agency 52:5 55:3
89:25 90:1 101:25	Acrobat 232:4	Adobe 180:12	aggregate 157:25
102:6,11,16,21 110:7 111:10		193:7,12,14,20,21	66 6
110.7 111.10	acronyms	195:19,22	ago 23:4 93:21 137:20 190:2
115:11 127:16	240:6,17,20,25	196:3,6,12,14,16,1	
129:14 132:4,24	241:13,20,21 243:13 244:18	7,21 197:1,4	198:18,20 250:25
133:2,15,22 134:9		198:7,15,25	agreed 91:1
142:2 148:15,16,19	act 62:12 74:9	199:3,14,24	agreement 9:7,10
149:9 153:22	action 1:9 261:17,18	200:1,5,6,9,11,23,2	86:17 213:12
157:12 163:2 170:7	active 35:19	5 201:4,5,7,9,13,17,2	agreements 79:10
173:9 174:24	actively 25:18 35:18	3,25 202:1	ahead 24:25 77:21
175:6,8,13 177:25	144:25	232:3,10	92:16 119:12 143:9
178:1 186:2,25 205:10	actual 138:21 145:25	·	201:16 203:8 204:7
206:5,14,16,23	198:10	Adobe's 178:6,10 180:15 195:10	223:18 237:11
207:4,7,8,9,11		198:6	243:18 248:22
208:11,17,20,21	actually 9:9 17:3 18:1 34:10 38:3		253:15
213:15 218:8,12	39:9 40:9 46:9 48:4	adoption 32:11	aimed 16:8
229:12 237:18,20	64:18 65:13 68:4	adult 127:10,12 210:16	air 1:6 6:4 123:3
238:12,16 244:10	109:24 118:7,15		airlines 152:8
252:6,25 253:10,20,22,24	120:23 140:19 155:18 162:20	advance 12:16 15:19	align 79:19
258:19,24	163:20,24 182:16	advanced 186:18,20	alleged 96:12 99:5
259:6,10,11	183:7 185:15	187:1	S
accessing 92:2 103:1	206:15 217:22	advice 22:22	Allison 4:4 65:12
115:25 139:12	222:22 225:22	49:5,9,22 57:7	allow 14:4 38:18
152:15 177:23	233:25 234:9	75:24	194:2 211:16
191:4 249:19	238:1,2 257:4	advise 10:2 56:9 57:3	allowed 13:23 81:10
accomplishing	add 130:9 173:9	58:8	allows 167:10
163:14	added 92:7 97:18	advised 23:15 24:1	Ally 85:20 86:20
according 65:9	235:7	57:19	alongside 82:22
220:12	addition 98:15 114:3	advocate 45:14	aloud 18:23 69:5
account 81:23 115:17	166:8 216:16	affect 244:15 256:9	72:16 99:18
143:12	additional 7:22 8:18	affects 104:24 109:23	103:7,17 113:4
160:17,21,23	94:14 97:12,15	affiliation 28:21	114:4 156:10 178:6
161:7,11 189:25	102:15,19 105:21		193:15 195:20,21
accuracy 227:2	106:14 129:12	Africa 210:5,16	233:1
233:10 234:6	174:4 185:24 186:1	afternoon 189:4	already 79:7 105:22
accurate 8:21,24	187:16,18 190:1	192:3 227:21	107:9,15 155:8
111:17 207:16	218:12 224:8,9 225:16 226:16	after-the-fact 222:21	160:12 165:8,14
219:22 226:6	230:1	against 94:3 100:11	186:11 189:3
accurately 180:18		101:2 189:11	221:11,20 246:23
217:10 220:20	additionally 226:25	agencies 75:13,18	Alt 173:13,16,22

10:10 24:6;25 25:2		1 αξ	, - <u> </u>	
174:19 answer 7:23 8:1 10:10 24:6,25 25:2 40:15 57:17 59:2 40:15 57:17 59:2 40:15 57:17 59:2 40:20 27:20 91:14 94:24 111:17 25:48 132:11 136:3 40:22 150:21 40:15 57:17 59:2 249:22,24 254:5,21 256:8 4nion 155:16,19 41:13 136:18 41:13 136:3 41:13 1	174:5,8	analyzing 170:21	, ,	architect 222:3
alternatives 151:10,21 Alto 1:20,21 5:2,13 12:13 136:18 Aluminum 155:16,19 alm 19:3 21:25 22:12 23:11 29:15 37:22 50:3 51:20 94:7 145:10 157:13 163:18 218:21 219:12 228:5 234:12 261:16 231:3 233:21 239:1 24mazon 30:7 152:7 2amendment 51:19,22 53:6,13,19-25 54:15,23 55:19,23 56:11 57:4,13,19,21 60:4,10,14 61:6,24 60:5,14,21,22 60:3,7 64:10 69:6 70:13,15 73:15 74:9 76:3 78:6 79:19 80:10,16,20 81:5,11 85:14 86:5,10 1104 128:19 American 1:3,5 5:23 63:3 46:5 85:22 87:3 130:3 Americans 137:24 among 53:13 amount 28:17 189:3 analyze 174:22 175:5, 222:5:18 analyze 174:22 175:5, 222:5:18 analyze 174:22 175:5, 222:5:18 analyze 174:22 175:5, 222:6:19 anyone 31:21 53:8 123:2 124:6,13,14 analyze 174:22 175:5, 222:6:19 anyone 20:12,14 analyze 174:22 175:5, 222:5:19 anyone 31:21 53:8 analyze 174:22 175:5, 222:5:19 anyone 20:12,14 analyze 174:22 175:5, 222:5:19 anyone 20:12,14 analyze 174:22 175:5, 224:25 226:4 243:2 anyone 31:21 53:8 analyze 174:22 175:5, 222:5:18 analyze 174:22 175:5, 222:5:18 analyze 174:22 175:5, 222:5:19 anyone 31:21 53:8 analyze 174:22 175:5, 222:5:18 analyze 174:22 175:5, 222:5:18 analyze 174:22 175:5, 222:5:18 analyze 174:22 175:5, 222:5:18 analyze 174:22 175:5 anyone 31:21 53:8 anyone 20:12,14 anyone 31:21 53:8 anyone 31:21 53:4 anyone 31:21 53:8 anyone 20:12,14 anyone 31:21 53:8 anyone 20:12,14 anyone 31:21 53:8 anyone 31:21 53:4 anyone 31:21 53:		Annual 235:20		architects 222:13
10:10 24-6,25 25:2 15:11 0:10 24-6,25 25:2 15:12 0:15 24:35 15:10 0:10 24-6,25 25:2 15:13 16:18 16:15 27:17 59:2 40:15 57:17 59:2 40:15 57:17 59:2 40:15 57:17 59:2 40:15 57:17 59:2 40:15 57:17 59:2 40:15 57:17 59:2 40:12 57:17 59:2 40:15 57:17 59:2 40:15 57:17 59:2 40:12 57:18 19:3 40:24 11:17 40:12 57:17 59:2 40:12 57:17 59:2 40:12 57:17 59:2 40:12 57:17 59:2 40:12 57:17 59:2 40:12 57:17 59:2 40:12 57:17 59:2 40:12 57:17 59:2 40:12 49:22 150:21 40:12 10:18 19:2 40:12 40:2 40:12 40:2 40:12 41:17 40:16 40:6 40:10 40:6 40:1	174:19	answer 7:23 8:1		Archive 119:4,10,24
Alto	alternatives	10:10 24:6,25 25:2		
Alto 1:20,21 5:2,13 12:13 136:18 Aluminum 155:16,19 am 19:3 21:25 22:12 23:11 29:15 37:22 50:3 51:20 94:7 145:10 157:13 163:18 218:21 219:15 228:5 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 235:6,13,19,25 53:6,13,19,25 54:15,23 55:19,23 54:15,23 55:19,23 54:15,23 55:19,23 54:15,23 55:19,23 54:15,23 55:19,23 54:15,23 55:19,23 54:15,23 55:19,23 54:15,23 55:19,23 54:15,23 55:19,23 54:15,23 55:19,23 54:15,23 55:19,23 54:15,23 55:19,23 54:15,23 55:19,23 56:11 57:4,13,19,21 60:4,10,14 61:6,24 60:4,10,14 61:6,24 60:5,14,21,22 63:3,7 64:10 60:6 70:13,15 73:15 70:14 72:10:15 70:13,15 73:15 70:13,15 73:15 70:13,15 73:15 70:13,15 73:15 70:13,15 73:15 70:13,15 73:15 70:13,15 73:15 70:13,15 73:15 70:13,15 73:15 70:13,15 73:15 70:13,15 73:15 70:13,15 73:15 70:13,15 73:15 70:13,15 73:15 70:13,15 73:15 70:13,15 73:15 70:13,	151:10,21			area 50:11 144:14
132:11 136:3	Alto 1:20,21 5:2,13			
Aluminum 155:16,19 am 19:3 21:25 22:12 23:11 29:15 37:22 50:3 51:20 94:7 145:10 157:13 158:9,15 159:5,13 163:18 218:21 219:12 228:5 234:12 261:16 231:3 233:21 239:1 248:14 252:2,20 23:13,19,25 54:15,23 55:19,23 56:11 57:4,13,19,21 604,10,14 61:6,24 62:5,14,21,22 63:3,7 64:10 69:6 79:19 80:10,16,20 81:5,11 85:14 86:5,10 110:4 128:19 American 1:3,5 5:23 6:3 40:5 85:22 87:3 130:3 Americans 137:24 analyze 174:22 175:5 224:25 226:4 243:2 Analyze 174:22 175:5 226:18 237:24 248:25 25:18 149:16;22 150:21 24apart 182:17 24:21 243:23 anywhere 119:2 apart 182:17 242:21 243:23 appologies 25:1 41:17 appologies 25:1 41:17 appeard 4:14 81:21 appear 4:14 81:21 appear 4:14 81:21 appear 53:2 56:6 appear 4:14 81:21 appear 53:2 56:6 Appear 4:14 81:21 appears 53:2 56:6 Appear 4:14 81:21 appear 4:14 81:	12:13 136:18		Anyway 245:9	242:24
am 19:3 21:25 22:12 23:11 29:15 37:22 160:14 200:18.20 202:14 204:7 243:23 apologies 25:1 41:17 argumentative 35:6 23:13 23:21 239:1 228:5 219:1 218:25 219:1 228:5 234:12 261:16 231:3 233:21 239:1 248:24 2246:21 248:24 2246:21 248:24 2246:21 248:25 25:5 36:13 19:25 54:15,23 55:19,23 56:11 55:4,13,19,21 60:4,10,14 61:6,24 62:5,14,21,22 63:3,7 64:10 69:6 79:19 80:10,16,20 81:5,11 88:19 18:19 20:12 22 22 22 23:13 30:13 23:21 23:1 23:1 23:1 23:1 23:1 23:1	Aluminum 155:16,19		· ·	areas 13:4
23:11 29:15 37:22 50:3 51:20 94:7 145:10 157:13 158:9,15 159:5,13 163:18 218:21 219:12 228:5 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:12 28:5 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:12 261:16 234:13 233:21 239:1 248:14 255:20 248:14 256:10 257:7 253:6,13,19,25 36:13,19,25 36:13,19,25 36:13,19,25 36:13,19,21 36:11 36:11 37:4,13,19,21 36:11 36:12 37:13 39:16,24 48:6 52:23 53:10 39pellate 40:2,7 4pple 30:7 98:9,10 166:12 3pplication 37:23 3pplication 31:1:3 3pplication 37:23 3ppl	am 19·3 21·25 22·12		•	aren't 68·16 134·20
50:3 51:20 94:7 145:10 157:13 158:9,15 159:5,13 158:9,15 159:5,13 215:5,6,13,14 219:12 228:5 224:12 261:16 231:3 233:21 239:1 248:22 246:21 248:22 246:21 248:22 246:21 248:14 225:2,20 253:6,13,19,25 53:6,13,19,25 54:15,23 55:19,23 56:11 57:4,13,19,21 60:4,10,14 61:6,24 60:4,10,14 61:6,24 60:4,10,14 61:6,24 60:4,10,14 61:6,24 60:5,14,21,22 63:3,7 64:10 69:6 70:13,15 73:15 74:9 76:3 78:6 79:19 80:10,16,20 81:5,11 85:14 86:5,10 110:4 128:19 American 1:3,5 5:23 6:3 46:5 85:22 87:3 130:3 Americans 137:24 amount 28:17 189:3 analysis 139:4 175:5,25 225:18 analyse 174:22 175:5 224:25 226:4 243:2 202:14 204:7 206:18 appologies 25:1 41:17 appealed 40:6 appear 4:14 81:21 234:1 4 235:8 appear 53:2 56:6 appellate 40:2,7 Apple 30:7 98:9,10 166:12 application 37:23 application 37:23 application 37:23 application 37:23 application 37:23 applies 21:13,20 application 37:23 applies 21:13,20 application 37:23 applies 21:13,20 applies 21:13,20 applies 21:13,20 applies 21:13,20 applies 21:13,20 application 37:23 applies 21:13,20 ap				
158:9,15 159:5,13		202:14 204:7		
163:18 218:21 218:25 219:1 218:25 219:1 219:12 228:5 228:13,14 230:6 234:12 261:16 234:12 233:21 239:1 244:22 246:21 248:14 252:2,20 253:6,14 256:10 257:7 253:6,13,19,25 53:6,13,19,25 54:15,23 55:19,23 56:11 156:18 157:1 164:3 157:4,13,19,21 60:4,10,14 61:6,24 62:5,14,21,22 63:3,7 64:10 69:6 250:25 70:13,15 73:15 74:9 76:3 78:6 79:19 80:10,16,20 221:22 281:5,14 86:5,10 110:4 128:19 American 1:3,5 5:23 6:3 46:5 85:22 87:3 130:3 Americans 137:24 among 53:13 analysis 139:4 answere 20:12,14 anyone 31:21 53:8 123:2 124:6,13,14 130:13 158:6 248:6 242:25 226:4 243:2 anyone 1s 158:14 anyone 1s 158:24 anyone 2s 158:14 anyone 2s 158:44 anyone 2s 158:4			• 0	0 0
219:12 228:5 234:12 261:16 231:3 233:21 239:1 244:22 246:21 248:14 252:2,20 248:14 252:2,20 253:6,14 256:10 257:7 253:6,13,19,25 253:6,13,19,25 254:15,23 55:19,23 256:11 256:18 274:18,19,21 257:4,13,19,21 260:4,10,14 61:6,24 62:5,14,2,12 63:3,7 64:10 69:6 70:13,15 73:15 74:9 76:3 78:6 79:19 80:10,16,20 281:5,11 85:14 86:5,10 110:4 128:19 American 1:3,5 5:23 6:3 46:5 85:22 87:3 130:3 Americans 137:24 among 53:13 analysis 139:4 175:5,25 225:18 analyze 174:22 175:5 224:25 226:4 243:2 228:13,14 230:6 231:3 233:21 239:1 234:14 235:8 appears 53:2 56:6 appellate 40:2,7 Apple 30:7 98:9,10 166:12 application 37:23 applications 111:3 170:4 110:170:4 110:170:4 120:19,25 134:1 140:3 145:16 130:13 158:6 248:6 applicate 40:2,7 Apple 30:7 98:9,10 166:12 applications 111:3 170:4 applications 112:4 applications 112:4 appl	, , ,		appealed 40:6	0
234:12 261:16 amazed 191:24 Amazon 30:7 152:7 amendment 51:19,22 53:6,13,19,25 54:15,23 55:19,23 56:11 57:4,13,19,21 60:4,10,14 61:6,24 62:5,14,21,22 63:3,7 64:10 69:6 70:13,15 73:15 74:9 76:3 78:6 79:19 80:10,16,20 81:5,11 85:14 86:5,10 110:4 128:19 American 1:3,5 5:23 6:3 46:5 85:22 87:3 130:3 Americans 137:24 among 53:13 amount 28:17 189:3 analysis 139:4 175:5,25 225:18 analyze 174:22 175:5 224:25 226:4 243:2 231:3 233:21 239:1 244:22 236:21 248:14 252:2,0 248:14 252:2,0 253:6,14 256:10 257:7 Apple 30:7 98:9,10 166:12 application 37:23 applications 111:3 170:4 applications 111:3 170:4 applications 111:3 170:4 applied 21:13,20 applied 21:13,20 applies 218:22 apply 149:1 approached 131:4 252:4 approached 131:4 252:4 approaches 99:11 appropriate 24:10 188:24 approvainately 10:15 13:14 20:25 28:12 apps 111:1 Arkenstone 13:19,20 14:2 19:19,23 A-R-K-E-N-S-T-O-N-E 13:19 array 102:25 103:16 arrows 162:15 art 32:19 33:9			1	C
amazed 191:24 244:22 246:21 248:14 252:2,20 253:6,14 256:10 253:6,13,19,25 257:7 appelate 40:2,7 4pple 30:7 98:9,10 166:12 30:70:4 71:10 72:20 73:19 74:28 11:1 70:4 3pplications 111:3 170:4			234:14 235:8	
Amazon 30:7 152:7 amendment 51:19,22 53:6,13,19,25 55:11,523 55:19,23 54:15,23 55:19,23 60:4,10,14 61:6,24 60:4,10,14 61:6,24 60:5,14,21,22 63:3,7 64:10 69:6 70:13,15 73:15 74:9 76:3 78:6 79:19 80:10,16,20 81:5,11 85:14 86:5,10 110:4 128:19 American 1:3,5 5:23 6:3 46:5 85:22 87:3 130:3 Americans 137:24 among 53:13 amount 28:17 189:3 analysis 139:4 175:5,25 225:18 analyze 174:22 175:5 224:25 226:4 243:2 248:14 252:2,20 253:6,14 256:10 257:7 Apple 30:7 98:9,10 166:12 application 37:23 applications 111:3 170:4 170:4 120:19,25 134:1 140:3 145:16 147:19 151:14 202:19,25 134:1 140:3 145:16 147:19 151:14 202:19,25 134:1 140:3 145:16 147:19 151:14 202:122 2applying 58:25 applying 58:25 177:15,21 183:9 202:24 204:14 252:4 248:14 252:2,0 257:7 Apple 30:7 98:9,10 166:12 application 37:23 applications 111:3 170:4 applications 11:3 27:19 8:19 170:14 170:4 170:4 170:4 170:4 170:4 170:4 170:4 170:4 170:4 170:4 170:4 170:4 170:4 170:4 170:4 17			appears 53:2 56:6	
Amazon 30:7 152:7 amendment 51:19,22 53:6,13,19,25 54:15,23 55:19,23 56:11 57:4,13,19,21 60:4,10,14 61:6,24 62:5,14,21,22 63:3,7 64:10 69:6 70:13,15 73:15 74:9 76:3 78:6 79:19 80:10,16,20 81:5,11 85:14 86:5,10 110:4 128:19 American 1:3,5 5:23 6:3 46:5 85:22 87:3 130:3 Americans 137:24 among 53:13 anount 28:17 189:3 anount 28:17 189:3 anount 28:17 189:3 anount 28:17 189:3 analysis 139:4 175:5,25 225:18 analyze 174:22 175:5 224:25 226:4 243:2			appellate 40:2,7	
amendment 51:19,22 25/:7 166:12 73:19 74:281:1 87:18 88:5 91:13 100:17 101:6 113:13 114:1 120:19,25 134:1 87:18 88:5 91:13 100:17 101:6 100:17 101:6 100:17 101:6 100:17 101:6 113:13 114:1 120:19,25 134	Amazon 30:7 152:7	5	* *	
53:6,13,19,25 answered 3:12 34:3 application 37:23 87:18 88:5 91:13 54:15,23 55:19,23 56:11 156:18 157:1 164:3 170:4 100:17 101:6 113:13 114:1 57:4,13,19,21 60:4,10,14 61:6,24 222:19 233:7 221:19 233:7 228:18 246:5 225:19 233:7 238:18 246:5 225:19 233:7 238:18 246:5 238:18 246:5 250:25 applied 21:13,20 140:3 145:16 147:19 151:14 153:2,24 156:18 157:1 159:3 163:4 157:1 159:3 163:4 164:3 173:25 157:1 159:3 163:4 164:3 173:25 177:15,21 183:9 202:24 204:14 207:15 215:10 202:24 204:14 207:15 215:10 202:24 204:14 207:15 215:10 202:12 22 238:18 246:5 225:24 207:15 215:10 202:12 22 238:18 246:5 202:12 24 204:14 207:15 215:10 202:12 22 202:12 22 202:12 22 207:15 215:10 202:12 22 221:18 237:22 238:18 246:5 202:12 22 238:18 246:5 202:12 22 202:12 22 202:12 22 202:12 22 202:12 22 202:12 22 202:12 22 202:12 22 202:12 22 202:12 22 202:12 22 202:12 22 238:18 239:22<	·	257:7	••	73:19 74:2 81:1
56:11 57:4,13,19,21 60:4,10,14 61:6,24 62:5,14,21,22 63:3,7 64:10 69:6 70:13,15 73:15 74:9 76:3 78:6 79:19 80:10,16,20 81:5,11 85:14 86:5,10 110:4 128:19 American 1:3,5 5:23 6:3 46:5 85:22 87:3 130:3 Americans 137:24 amount 28:17 189:3 analysis 139:4 175:5,25 225:18 analyze 174:22 175:5 224:25 226:4 243:2 49plications 111:3 170:4 applications 111:3 170:4 applied 21:13,20 applied 21:13,20 applied 21:13,20 applies 218:22 apply 149:1 applying 58:25 177:159:3 163:4 164:3 173:25 177:15,21 183:9 202:24 204:14 222:18 237:22 238:18 239:22 245:25 257:19 259:1 Arkenstone 13:19,20 14:2 19:19,23 A-R-K-E-N-S-T-O-N-E 13:19 array 102:25 103:16 arrows 162:15 array 102:25 103:16 arrows 162:15 art 32:19 33:9		answered 3:12 34:3		
57:4,13,19,21 187:19 204:14 170:4 120:19,25 134:1 60:4,10,14 61:6,24 222:19 233:7 238:18 246:5 applied 21:13,20 140:3 145:16 62:5,14,21,22 238:18 246:5 applied 21:13,20 140:3 145:16 147:19 151:14 63:3,7 64:10 69:6 250:25 answering 8:3 221:22 applies 218:22 153:2,24 156:18 79:19 80:10,16,20 answers 8:14,18 applying 58:25 177:15,21 183:9 164:3 173:25 86:5,10 110:4 141:6 anticipate 184:21 approached 131:4 207:15 215:10 221:18 237:22 American 1:3,5 5:23 185:14 243:16 approaches 99:11 238:18 239:22 245:25 257:19 among 53:13 13:13 141:3,10 202:10 211:16 213:5 214:14 215:1 approved 211:3,9 259:1 amount 28:17 189:3 analysis 139:4 179:2 approximately 10:15 13:14 20:25 28:12 179:2 analyze 174:22 175:5 224:25 226:4 243:2 202:124:6,13,14 256:19 256:19	1 1			
140:3 145:16 147:19 151:14 153:2,24 156:18 157:1 159:3 163:4 157:1 159:3 163:4 164:3 173:25 177:15,21 183:9 185:14 185:1				
62:5,14,21,22 63:3,7 64:10 69:6 70:13,15 73:15 74:9 76:3 78:6 79:19 80:10,16,20 81:5,11 85:14 86:5,10 110:4 128:19 American 1:3,5 5:23 6:3 46:5 85:22 87:3 130:3 Americans 137:24 among 53:13 amount 28:17 189:3 analysis 139:4 175:5,25 225:18 answering 8:3 221:22 answers 8:14,18 141:6 anticipate 184:21 10:5 35:5 57:10 131:13 141:3,10 202:10 211:16 213:5 214:14 215:1 anymore 200:12,14 anyone 31:21 53:8 123:2 124:6,13,14 130:13 158:6 248:6 228:18 246:5 250:25 applied 21:13,20 applies 218:22 apply 149:1 157:1 159:3 163:4 164:3 173:25 177:15,21 183:9 202:24 204:14 252:4 approached 131:4 252:4 approaches 99:11 appropriate 24:10 188:24 approved 211:3,9 approximately 10:15 13:14 20:25 28:12 179:2 approximately 10:15 24:21 19:19,23 A-R-K-E-N-S-T-O-N-E 13:19 array 102:25 103:16 arrows 162:15 art 32:19 33:9	1 ' ' '			· · · · · · · · · · · · · · · · · · ·
63:3,7 64:10 69:6 250:25 applies 218:22 153:2,24 156:18 70:13,15 73:15 250:25 apply 149:1 157:1 159:3 163:4 79:19 80:10,16,20 answering 8:3 221:22 applying 58:25 164:3 173:25 81:5,11 85:14 answers 8:14,18 appreciate 18:7 202:24 204:14 86:5,10 110:4 141:6 approached 131:4 207:15 215:10 128:19 anticipate 184:21 252:4 221:18 237:22 American 1:3,5 5:23 anticipate 184:21 approaches 99:11 238:18 239:22 6:3 46:5 85:22 87:3 131:13 141:3,10 202:10 211:16 202:10 211:16 among 53:13 202:10 211:16 approved 211:3,9 24:2 19:19,23 analysis 139:4 anyone 31:21 53:8 123:2 124:6,13,14 179:2 array 102:25 103:16 analyze 174:22 175:5 224:25 226:4 243:2 approaches 211:1 April 4:21 90:17 art 32:19 33:9				
70:13,15 73:15 answering 8:3 apply 149:1 157:1 159:3 163:4 79:19 80:10,16,20 answers 8:14,18 applying 58:25 177:15,21 183:9 81:5,11 85:14 answers 8:14,18 approached 131:4 202:24 204:14 86:5,10 110:4 141:6 approached 131:4 207:15 215:10 128:19 anticipate 184:21 approached 131:4 207:15 215:10 American 1:3,5 5:23 anybody 8:7 9:24 approaches 99:11 245:25 257:19 130:3 13:13 141:3,10 appropriate 24:10 188:24 among 53:13 202:10 211:16 approved 211:3,9 Arkenstone 13:19,20 analysis 139:4 175:5,25 225:18 13:14 20:25 28:12 N-E 13:19 analyzis 139:4 130:13 158:6 248:6 April 4:21 90:17 array 102:25 103:16 analyze 174:22 175:5 224:25 226:4 243:2 April 4:21 90:17 art 32:19 33:9			applies 218:22	
79:19 80:10,16,20 81:5,11 85:14 86:5,10 110:4 128:19 American 1:3,5 5:23 6:3 46:5 85:22 87:3 130:3 Americans 137:24 among 53:13 amount 28:17 189:3 analysis 139:4 175:5,25 225:18 analyze 174:22 175:5 224:25 226:4 243:2 221:22 applying 58:25 approached 131:4 252:4 approaches 99:11 approaches 99:11 appropriate 24:10 188:24 approaches 99:11 appropriate 24:10 188:24 approaches 99:11 appropriate 24:10 188:24 approaches 211:3,9 approximately 10:15 13:14 20:25 28:12 177:15,21 183:9 202:24 204:14 207:15 215:10 221:18 237:22 238:18 239:22 245:25 257:19 259:1 Arkenstone 13:19,20 13:14 20:25 28:12 179:2 approximately 10:15 13:14 20:25 28:12 177:15,21 183:9 202:24 204:14 207:15 215:10 221:18 237:22 245:25 257:19 259:1 Arkenstone 13:19,20 14:2 19:19,23 A-R-K-E-N-S-T-O-N-E 13:19 array 102:25 103:16 arrows 162:15 art 32:19 33:9	·		apply 149:1	157:1 159:3 163:4
## Answers 8:14,18 ## 141:6 ##			applying 58:25	
86:5,10 110:4 141:6 approached 131:4 207:15 215:10 128:19 221:18 237:22 238:18 239:22 238:18 239:22 American 1:3,5 5:23 anybody 8:7 9:24 approaches 99:11 238:18 239:22 238:18 239:22 38:24 approaches 99:11 approaches 99:11 259:1 38:24 approaches 99:11 approaches 99:11 259:1 38:24 approaches 99:11 approaches 99:11 245:25 257:19 38:18 239:22 245:25 257:19 259:1 38:24 approved 211:3,9 213:14 20:25 28:12 13:14 20:25 28:12 38:18 239:22 245:25 257:19 259:1 38:18 239:22 245:25 257:19 259:1 38:18 239:22 245:25 257:19 259:1 38:24 approximately 10:15 13:14 20:25 28:12 38:18 239:22 245:25 257:19 259:1 38:18 239:22 245:25 257:19 259:1 38:24 approximately 10:15 13:14 20:25 28:12 38:24 approximately 10:15 32:19:19 38:24 approximately 10:15 32:19:19 38:24 approximately 10:15 32:19:1	, , ,	•	1100	
128:19 anticipate 184:21 252:4 221:18 237:22 American 1:3,5 5:23 185:14 243:16 approaches 99:11 238:18 239:22 6:3 46:5 85:22 87:3 anybody 8:7 9:24 approaches 99:11 245:25 257:19 130:3 10:5 35:5 57:10 188:24 Arkenstone 13:19,20 202:10 211:16 202:10 211:16 approximately 10:15 13:14 20:25 28:12 analysis 139:4 anyone 31:21 53:8 123:2 124:6,13,14 130:13 158:6 248:6 April 4:21 90:17 array 102:25 103:16 analyze 174:22 175:5 224:25 226:4 243:2 approaches 99:11 Arkenstone 13:19,20 4 April 4:21 90:17 256:19 array 102:25 103:16 259:1 array 102:25 103:16 259:1 approximately 10:15 13:14 20:25 28:12 179:2 27:18 237:22 238:18 239:22 245:25 257:19 245:25 257:19 259:1 Arkenstone 13:19,20 13:14 20:25 28:12 179:2 256:19 array 102:25 103:16 256:19 art 32:19 33:9	·		* *	
American 1:3,5 5:23 6:3 46:5 85:22 87:3 130:3 Americans 137:24 among 53:13 amount 28:17 189:3 analysis 139:4 175:5,25 225:18 analyze 174:22 175:5 224:25 226:4 243:2 American 1:3,5 5:23 185:14 243:16 anybody 8:7 9:24 10:5 35:5 57:10 188:24 approaches 99:11 appropriate 24:10 188:24 approved 211:3,9 approximately 10:15 13:14 20:25 28:12 179:2 approximately 10:15 256:19	·			
6:3 46:5 85:22 87:3 130:3 Americans 137:24 among 53:13 amount 28:17 189:3 analysis 139:4 175:5,25 225:18 analyze 174:22 175:5 224:25 226:4 243:2 anybody 8:7 9:24 10:5 35:5 57:10 188:24 appropriate 24:10 188:24 approved 211:3,9 approximately 10:15 13:14 20:25 28:12 179:2 approximately 10:15 13:14 20:25 28:12 179:2 apps 111:1 April 4:21 90:17 256:19 245:25 257:19 259:1 Arkenstone 13:19,20 14:2 19:19,23 A-R-K-E-N-S-T-O-N-E 13:19 array 102:25 103:16 arrows 162:15 art 32:19 33:9		_		
130:3 Americans 137:24 among 53:13 amount 28:17 189:3 analysis 139:4 175:5,25 225:18 analyze 174:22 175:5 224:25 226:4 243:2 Americans 137:24 10:5 35:5 57:10 131:13 141:3,10 202:10 211:16 213:5 214:14 215:1 anymore 200:12,14 anyone 31:21 53:8 123:2 124:6,13,14 130:13 158:6 248:6 224:25 226:4 243:2 Appropriate 24:10 188:24 approved 211:3,9 approximately 10:15 13:14 20:25 28:12 179:2 apps 111:1 April 4:21 90:17 259:1 Arkenstone 13:19,20 14:2 19:19,23 A-R-K-E-N-S-T-O-N-E 13:19 array 102:25 103:16 arrows 162:15 art 32:19 33:9				
Americans 137:24 among 53:13 amount 28:17 189:3 analysis 139:4 175:5,25 225:18 analyze 174:22 175:5 224:25 226:4 243:2 131:13 141:3,10 202:10 211:16 213:5 214:14 215:1 anymore 200:12,14 130:13 158:6 248:6 248:6 248:24 approved 211:3,9 approximately 10:15 13:14 20:25 28:12 179:2 approximately 10:15 13:14 20:25 28:12 179:2 approximately 10:15 13:19 20:25 103:16 array 102:25 103:16 arrows 162:15 art 32:19 33:9		· ·		259:1
among 53:13 amount 28:17 189:3 analysis 139:4 175:5,25 225:18 analyze 174:22 175:5 224:25 226:4 243:2 amount 28:13 141:5,10 202:10 211:16 213:5 214:14 215:1 anymore 200:12,14 anyone 31:21 53:8 123:2 124:6,13,14 130:13 158:6 248:6 224:25 226:4 243:2 approved 211:3,9 A-R-K-E-N-S-T-O-N-E 13:19 array 102:25 103:16 arrows 162:15 art 32:19 33:9			188:24	Arkenstone 13:19,20
amount 28:17 189:3 analysis 139:4 175:5,25 225:18 analyze 174:22 175:5 224:25 226:4 243:2 213:5 214:14 215:1 anymore 200:12,14 anymore 200:12,14 anymore 31:21 53:8 123:2 124:6,13,14 130:13 158:6 248:6 anymore 200:12,14 256:19 A-R-K-E-N-S-T-O-N-E 13:19 array 102:25 103:16 arrows 162:15 art 32:19 33:9		· ·	approved 211:3,9	-
analysis 139:4 anymore 200:12,14 179:2 array 102:25 103:16 analyze 174:22 175:5 130:13 158:6 248:6 April 4:21 90:17 art 32:19 33:9 224:25 226:4 243:2 anyone's 150:14 256:19			approximately 10:15	A-R-K-E-N-S-T-O-
analysis 139:4 179:2 175:5,25 225:18 anyone 31:21 53:8 123:2 124:6,13,14 130:13 158:6 248:6 224:25 226:4 243:2 April 4:21 90:17 256:19 array 102:25 103:16 4 April 4:21 90:17 art 32:19 33:9	amount 28:17 189:3	anymore 200:12.14		N-E 13:19
175:5,25 225:18 analyze 174:22 175:5 224:25 226:4 243:2 anyone's 150:14 anyone's 150:14 anyone's 150:14 anyone's 150:14	, ř		179:2	array 102:25 103:16
analyze 174:22 175:5 224:25 226:4 243:2	175:5,25 225:18	•	apps 111:1	•
224.23 220.4 243.2 envono's 150.14 250.19	, ř		_	
article 4:3 64:21	224:25 226:4 243:2	anyone's 159:14	256:19	
(866) 448 - DEPO				article 4:3 04:21

65:6,14 68:21 69:20 70:17 96:3	assistive 99:14,24 133:14,17	attorney/client 82:17	availing 53:13
articles 47:1 83:6	associate 28:17	attorneys 9:8,15 11:16 22:7 203:3	Avenue 2:4
articulating 67:6	associated 125:14	attractive 44:8	average 180:19 216:11
ASHRAE 2:7	association 1:5 6:2	audible 8:9	aware 28:8 29:12
4:13,17 93:25 98:6,7,21 116:21 205:7,24 227:22 228:7,20 229:2,4,15,23,24	association 1:5 6:2 80:18 assume 8:2 31:18 32:2,3 65:15 96:18 160:9 165:25 202:6	audio 5:16 14:21 18:10 64:19 103:16 111:1 114:13 170:16	34:4,23,25 35:8 46:20 47:12 49:3,21 50:4,15 61:14,21 76:21 89:23 122:22
230:12,19,21,24	assumed 163:15	auspices 26:6	123:2,8,17,24
231:7,21 232:2	164:6	author 55:20	124:13,22
234:13 245:19 246:2,12,14	assumes 34:8,18 237:23	authored 4:3	128:11,13 130:12,20 131:18
247:3,20 248:6	assuming 158:20	authoring 69:20	144:24 145:10
249:20,24 250:9,11	239:5 253:12,19	authority 79:23	146:17,18 151:24
251:9,19 252:5,23,24 253:22 ASHRAE's 246:7 248:15,25	assumption 121:3 136:13 139:9 Assurance 142:20	authorized 43:1 51:25 52:1,4 54:15 56:10 57:4,13 59:1 60:4,13,19 61:5	156:15 157:6 158:5,15 159:5 167:14 186:23 202:3 208:2,4
aside 85:11 224:14	ASTM 1:4 2:2 5:14	authors 39:9	209:9 230:21
aspects 131:24 138:9,18,19 144:15	92:25 93:3 98:8,9,13	43:1,2,21 82:2 83:16	away 43:23 44:14,21 245:3
aspersions 159:14	154:21,23 155:1,5,11 156:16	automated 30:6	awful 222:9
assert 79:14 86:4	157:7 158:7,11	211:24	B
asserted 66:23	163:23 164:4 166:8,9,11,25	automatic 232:15	B557 98:13 166:8
asserting 67:2	205:7 206:1	available 4:14 27:22 32:11 54:10	B557-84 155:2
assess 92:2 117:14 218:7 238:3	ASTM's 154:12,18 156:13 160:18 161:12,15,19,20,25	55:16,18,25 76:22,24 77:11,12 78:1,2,6 101:3	156:13,16 157:8 158:7,12 161:20 165:19
assessed 109:19	162:11,22	119:2 124:8 128:18	B557-84e 154:23
assessing 139:17	165:4,18,23 179:25	167:18 170:20	B557-84e1 155:12
assessment 217:24 259:9	attach 145:22 174:14	176:1,13,14,17,21, 22 177:6,12 191:1	B57 98:13
assigned 250:5	attached 4:23 145:25	202:21 203:22	B57-84e1 98:8
assignment 91:24	attempt 189:3	204:3,6 205:15	bachelor's 21:19
assist 105:2 141:10,13 189:25	attempted 81:15 130:21 156:9 attempting 196:25	209:9 213:20 216:18 218:18 219:6 222:11,16	background 16:18,19 21:10 93:2 142:12
assistance 113:20,24	attention 256:12	224:5,13 234:14 237:24 239:16	badgering 206:18
142:25 143:13 159:1,16,25	attorney 261:18	247:21 248:16,25	Baen 45:23 46:8
assisted 114:17 141:3	201.10	252:12,13,16	47:13,19,23
assisted 114.1/ 141.3			

	1 ag	<u>'</u>	
B-A-E-N 45:23	behind 134:24	best 64:20 177:7	238:22 239:7,24
balance 33:10,17	belief 39:22 48:2	bet 151:5	243:16 244:15 245:1 259:5
34:7,17	111:19	better 16:19 45:2	blindness 35:24
ballpark 145:11	believe 9:7,11 19:14	134:5	
150:10 169:16	22:23 26:21 31:21	beyond 10:5 16:14	blog 46:14
bar 15:19 162:6	39:1,18 41:12 49:7	22:4 85:5 94:18	blow 193:24
bargain 62:15,19	51:4 54:8 55:1,19 60:12 61:15 64:15	95:24 96:4 118:24	194:11,20
63:16 66:4,10 69:7	79:23 82:8	224:9 225:17	BOCKIUS 2:3
72:17	84:13,18,23 86:4	246:24 249:23	bodies 34:24 116:15
barrier 35:4	87:22 94:12 98:12	biggest 13:4 102:8	142:4
bars 162:7	100:18 111:13	bit 16:9 30:13 38:2	body 29:22 31:5,9,12
base 104:17 133:19	116:14 131:3,12	49:12 131:9 188:18	144:4 228:23
163:15 235:22,25	134:2 136:6 137:23 145:6 152:10,12,19	black 16:18,19	bono 92:7,11,12
240:16	161:13,17	blend 222:23	book 14:12
based 8:3 59:10	162:12,17,20,25	blind 13:8,23	18:14,15,18,22
95:3,19 130:1	169:9 177:1,5	14:12,20	30:1,7 64:17,18
136:10 139:19	187:11 192:17	15:14,17,20 16:10	76:12,13 80:18
140:5 146:13	195:8 198:19	18:24,25 19:3	87:11 108:4,14,22
155:24 169:4	201:12,19 209:24	22:14 23:23 26:12	112:5 130:7 209:22
175:25 187:19	217:8 222:20	48:18 57:21	books 13:11,24 14:4
193:22 239:1	229:11 231:15 232:22 236:20	64:16,18 68:4	17:13 32:8
257:10 258:20	237:6 254:5,9	76:12,13 79:9 82:20 83:18,21	45:12,15,16,19,23
bases 60:25	259:3,22	85:18,21,22 87:4,9	46:8 47:13,19,23
basically 118:14	bell 154:19	88:3,13 99:17	64:14 68:6 75:13
133:16		100:5,21 101:17,20	76:16 77:24,25
basics 7:20	benefit 63:24 76:10	102:1,7,11,15,22	83:19,24 84:4,5,10,15 85:1
basis 77:24 92:11,12	105:18	107:15 109:4,10	89:2 157:23 182:23
121:19 133:9	benefited 83:19	110:15,17,22	210:24 212:19,23
136:19 157:25	benefits 63:25 103:15	111:10 113:2,9,24	213:2,6,10,15
187:5 237:6 248:3	105:17	122:10,18,23	223:15
bear 168:11,22	Benetech	123:4,9,13,18,25	Bookshare 4:8 13:8
became 82:22	12:10,11,15,22	134:12,15 141:20 142:10,14 143:1	66:22 68:5,23 69:2
	13:5,13,16,21	152:1 156:15,20	77:23 78:13,15
Becker 2:20 6:8	19:19 28:24 29:18	158:10,18,25	80:9 86:1,19
188:7 190:5,9,15	32:4 34:14 50:1	159:5,6,10,23,24	125:13,24
become 17:4 40:19	54:13,21 55:8	160:8,10 161:11,14	126:10,13,15,18,19
58:25 72:2 158:1	68:23 69:14,25	165:11	127:2,20 128:17,18
224:1	77:8 85:12 86:2	170:4,13,18,22	129:7,13,25 130:12
begin 8:14	142:18,19 144:6,9,16,22	172:25 174:24	135:14 136:8,16 209:10,19,25
beginning 38:4 92:21	158:6 210:13,23	175:8,13 177:14,20	210:1,10,11 211:11
99:9 175:22 181:12	ŕ	180:3,19 186:7,23	212:14 213:10,18
	besides 249:19	187:2,4 193:8 229:14 236:20	214:13
		227.14 230.20	

	1 48	Ī	
bookstore 246:14	built 186:13	39:15,19,23 40:9	148:2,25 149:1
borrow 153:14	built-in 16:21 163:10	48:8,11	158:24 161:16
bother 64:5	195:22	82:3,8,12,22	163:18 203:21
	bulb 243:13,14	83:2,7,8,15,22 85:4	204:17 210:10
bottom 70:1 220:16	, í	89:14,16 90:21	225:9 226:19
235:7,19	bunch 151:5 170:22	91:12,25 92:24 93:5,24	229:11
Box 172:17	button 81:21,24	94:4,8,11,13,15	certainly 11:17 12:24
Braille 14:20	143:18 163:13	96:1,4,9,19 97:22	31:22 32:25 33:6
15:1,4,5,8,10,15,16	164:18,20,23 193:7 195:20 202:5	119:7,14 121:5,10	48:7 68:24 69:1 83:6 191:9 239:16
,21,24 64:19 85:23		125:18 128:14	240:11
87:10,12,13	buy 117:13 202:5	155:19 169:19	
88:16,18,22,23		174:7 176:17	certification 80:7 84:24 88:2 89:6
89:2,4 107:1 110:23 111:21	C	187:18 193:13	261:1
110.23 111.21 112:2,3 114:12	Calculated 235:21	198:5 202:11	
<u> </u>	Calera 19:24,25	203:24 208:7,17 230:22,25	Certified 1:23 261:2
brain 36:21 108:4 132:23 134:13	20:7,16	245:20,23 261:13	certify 86:21 109:25
	California 1:21	,	110:1 261:3,16
break	2:10,15,20,21	cases 158:1	Chafee 51:18,22
38:1,5,10,16,18	5:2,13 12:13 21:11	cassette 111:1	52:15
51:11 56:15 68:18 92:17 95:7 132:15	261:3	Cast 155:16	53:6,13,19,25
138:2 175:17	calipers 160:4	casting 159:13	54:15,23 55:19,23 56:11
188:13,18 209:1,4	Caltech 21:12 41:3	catalog 242:1	57:4,13,19,20
227:8 228:1 234:15	capability 42:10	categories 107:12,14	60:4,10,13 61:6,23
244:23 255:14	165:3 186:13	109:1,5	62:4,14,21,22
breath 175:2	capable 186:22	categorizing 63:15	63:3,7,11 64:10
brief 38:1 212:6	188:10,14		66:9 68:2 69:6
briefly 20:14 229:17	capacity 144:12	category 108:21,24 123:24	70:6,13,15 72:16,21,25
broad 94:7 154:2	capital 181:22	cause 130:8 153:5	73:12,21 74:9,19
broader 90:1	caption 5:14 65:9	caution 75:2	75:14 76:2,9 77:4 78:6 79:19
broadly 88:18	236:23	CD 188:3,4,14,20,22	80:10,16,19
Brockius 1:20	captioning 151:6	190:14,16	81:5,11 85:14
broke 242:20 243:23	capture 221:8 225:17	cell 172:21 173:2	86:5,10 87:24 110:4 128:19
brought 94:3 154:9	capturing 8:7	cellular 5:20	challenge 102:8
190:17	care 75:16,19	cerebral 108:2	197:4
browser 163:10	careful 24:17	certain 27:20 28:16	challenges 110:15
170:11,12	Carl 11:17 60:2,10	29:15 32:10 40:1	chance 8:17
browsers 170:5	89:22 96:2 214:5	41:4 47:16 50:20	187:16,20 190:22
build 23:14	cart 202:6	53:6 68:16 83:24 84:25 92:3	230:9
building 171:13	case 5:14 11:9,16	102:9,10,13 121:4	change 104:2 153:14
builds 23:11	24:19,20 25:3,6,8	128:12 147:11	252:7 253:1,20
L	<u> </u>		

	Ι με	, 	
254:5	cited 39:14,19,22	COLUMBIA 1:1	95:23 97:5 119:16
changed 192:12	40:2 71:15 85:25	column 171:24,25	146:4 155:7
chapter 18:14,16,17	citing 70:8,16,21	172:8,9,22 173:1	202:13,15 203:12 215:4,12 228:12
character 14:16 17:8	citizen 187:7 213:14	220:16	230:5 231:2 246:22
20:3 181:1,14	civil 1:9 123:13	combination 109:14	247:13,23 248:12
183:18,24 185:15	claim 22:1 23:18	combined 134:16	249:3,8 250:21
186:4 198:8,9,10 199:15,16,18	78:22	Combs 1:23 5:9	communities
200:5,10 226:2	claims 94:2	261:23	12:19,22,25 37:25
232:15	clarification 18:8	comes 15:11 29:9	community 32:13
characteristics	32:1 89:11 109:22	102:8 103:1	33:5 62:16 63:2,5 66:5 69:9 83:18
149:25 150:24	194:22 201:2 217:15 233:3 239:4	comfortable 137:23	company 19:25
characterize 27:6		coming 212:17	50:15
33:6 47:10	clarify 7:25 49:12 188:2 207:17,21	command 232:5	comparable 88:11
characterizing 63:16	228:1 232:21	commands 170:9	compare 225:13
characters	class 21:22 41:3	comments 33:3	242:14
15:16,17,18,19	107:22 133:14	78:2,3 81:12	compared 205:14
16:6,18,19,23,24 17:3,5,19 112:3	classify 104:10	commercial 29:23,25	comparing 139:23
182:4 193:25 200:7	clean 8:15	201:21	207:22
charge 206:16	clear 159:13	committed 74:3	comparison 226:24
chart 174:17 243:13	click 162:14	committees 33:11,18	compensation 20:20
check 202:7,10,20	clicked 118:25	34:6,11	competence 51:2
203:6 204:5 212:6	clicks 80:23	common 17:8 30:9 32:23 110:22	58:17 60:21
215:9 218:11	click-through	146:24 148:11	competent 79:23
228:22	160:22,25	151:20 153:5,8,13	Complaint 94:21,23
checking 220:13	client 56:16 153:3	164:5 170:3,5	96:3
checks 140:20,21	clock 189:7,11	172:15,24 173:12 174:12,19	complete 98:24
Chief 20:12 22:4,5	closely 31:18 32:3,4	181:20,23 238:5	132:20 181:11
27:13		241:23	239:21 240:20
choke 182:25	co-author 65:7,10,11	commonly 16:7	completed 253:13
choose 166:14	co-counsel 187:16	121:16,20,23 137:3	completely 16:9
chooses 81:4	code 52:3 209:22 215:21 216:6,12,17	148:3	122:10
chose 140:4,9	219:5	communicate 46:12	completion 261:14
chunk 163:7	co-founder 20:18	communicated 46:11 228:17 236:21	complex 147:10 149:15
circles 249:2	collection 125:13,24		183:15,18,25
circulated 88:18	126:11,15,19	communication 248:10	compliance 147:23
circumstances 83:15	127:2,15 130:12	communications	148:2
cite 52:3 77:4	college 40:24 187:3	10:1 23:1 58:4	compliant 23:15
		68:17 82:17,18	152:13
.			

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 9

	Ι ωξ		
complication 190:19	52:13,24 53:10,23	26:11,19,25	216:9 220:11
complies 150:7	54:7,17,25 57:6,15	27:9,12,14,15,21,2	222:11,22
-	58:2,17 60:6,22	4 28:1,12,15,18,22	224:5,6,13,25
comply 149:13	61:9,20 75:10 76:7	29:2,8,14 35:2	225:3,5,14 226:4
150:3,17 151:12	94:6,17 96:15	83:16,23 84:7	238:7 241:10
compound 197:2	101:7 120:19 121:1	85:11 144:4	242:19,20 245:2
225:6 251:12	128:10,24 133:9	145:5,14	contents 14:18 82:17
	145:17 168:7 234:5	,	
comprehend 104:22		Consortium's 26:23	172:10 245:1
239:8	conclusions 25:4	144:7	context 89:21 126:17
comprehensible	112:17 254:4	constituency 33:22	181:21,24 182:15
239:20 244:2	conditioning 1:6 6:5	constraints 23:25	184:8 245:6 252:15
comprehensive	123:3		254:20
242:13	conduct 159:7,10	constructed 185:20	continue 91:3 195:18
	[consult 10:4 57:19	227:9 254:10 255:1
comprehensively	conference 56:21	58:7 75:23 96:4	
166:22	95:12	97:17	contrast 16:16
computer 11:5	conferences 46:17	consulted 95:25	104:1,2
110:19 115:12,22	confidential 1:25		control 43:3,5,8
123:23 124:3	125:19	consumer 43:22	84:16 108:3
186:18,23 187:1		consumers 33:13	178:12,19 194:3,8
188:5,8,20 190:15	configured 80:22	44:9,14,20	198:16 211:19,23
200:24	confirm 120:15	contact 127:23	213:19
computers 188:4,20	166:23 228:22		controls 163:11
254:19	231:9	contacted 127:20	170:8
	Congress 62:8 85:20	128:5	
concentration 21:16		contained 238:21	convenes 26:15,25
conceptually 70:10	connected 183:10	content 22:25 26:14	conversation 93:13
concern 43:6,25	connection 24:19	31:1 41:8 104:4	202:25 246:20
44:13,19 45:1	39:11 51:1	110:18 112:4	248:14,17
66:24 67:2,3,5,10	69:13,18,24 70:12	113:10,23 133:20	conversations 5:20
119:20	115:13,23 119:6	138:15 139:6,10	59:11 66:22 83:6
	167:4	143:25 147:1,4	94:19 146:14
concerned 71:23	consensus 32:15,24	149:1,9,12,20	197:6,7 203:3
213:14	33:9	150:2,7,16	,
concerning 252:5		151:2,3,8,11,22	converse 177:3
concerns 42:18 71:13	consider 23:24 35:23	151.2,3,6,11,22	conversion 30:6
72:11 153:21 154:7	36:9,10 37:17	152:10 154:8	convert 14:17 177:18
	47:22 54:14 111:8	169:24	
concluded 233:10	112:11,14 134:14	170:9,13,15,16,23	converted 127:11
concludes 259:22	204:4 224:12	170.9,13,13,10,23	converting 15:5
260:1	consideration 247:16	172.13 173.9	177:11 180:5
	considered 57:12	183:6,15,17,25	converts 112:8
conclusion 23:21	110:7 214:19	184:5 185:15	
24:8,25 25:11,17		186:15 203:22	convey 217:10
27:19 31:15	247:24 258:18,24 259:10	204:3,18 205:4	220:20
36:1,6,13,18,24		207:23,25 210:13	conveyed 239:6
37:5,13,20 42:25	consortium	407.43,43.410.13	
	!		

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 10

	I ug	İ	
cooperated 83:17	183:1	69:16 75:23 91:2	178:23 232:23
cooperative 79:9	copyrighted 55:15	95:4,11,20	creates 15:13 29:22
1 *	75:15,19 80:20	96:5,17,23,25	30:1 201:25
copied 4:17 76:22	81:4,10,14 85:14	116:4,17 119:13	
153:12 178:19	86:9 128:13	120:8 121:3 145:25	creating 22:13
180:20 220:8		154:24 155:1	114:17
231:17 232:6	copyrights 96:12	189:18,24 190:25	creative 78:1,3 81:12
234:23	corner 164:10	228:6,17 230:5	credential 80:6
copies 42:20,24	corporations 22:6	247:9,14,16,19,23	cross-referenced
43:3,5,9,15,23	correct 10:21 23:7	248:9,18,24	98:21
44:14,21,24	39:13 40:8,16	249:3,4,6 250:18	
45:11,19 46:9,23	41:17 48:24	counsel's 24:8	CSR 261:24
47:5 52:21 53:7	49:1,16,19 66:15	146:1,13	cultural 157:11
54:21 55:9,24	70:24 71:3 80:13	count 98:24 156:14	current 28:8 137:7
67:4,6,11 71:13	82:4 83:23 90:8	189:11 190:23	144:24 198:25
72:2 76:3,10 77:8,10 83:24	96:10 98:14 99:19	counterclaims 94:25	199:2
84:10 85:13 87:13	104:20 108:23		
113:25 120:2,4	112:18 113:11	Counter-Defendants	currently 137:18 144:22 198:19
167:11 246:14	120:10 129:4,14	1:8	205:9 206:5
247:2	133:4,5 135:23	Counter-Plaintiff	
	136:22 138:11	1:11	curriculum 153:11
copy 31:21 52:16	143:10 146:16,23	country 48:18	cursory 177:7
62:24 87:10,12 88:18 99:13,23	149:10 162:16	_	customers 246:13
113:22 114:7,11,13	167:19 168:5 193:3	couple 93:20 125:11 141:14,17 145:1	
116:16 127:16	195:12 197:15	153:18 177:22	Cut 232:25
128:17 132:2	198:24 199:1,16	195:6 245:10	Cyril 2:25 5:8
145:22 149:3	203:25 205:18,19		
178:22 179:12	208:20 210:2	course 73:10	D
188:19 191:18	214:25 220:1	court 1:1 5:9 8:6	d/b/a 1:4
197:10,16,25	224:18 227:5 228:7,8 229:3,16	39:14,19,23	DAISY
199:15 219:16	231:8,9,10,11,12	40:5,10 98:12	26:1,10,11,19,23,2
223:6 232:5	231.8,9,10,11,12	234:16	5 27:9,11,15,21,24
252:6,24	257:18 258:10	Courtesy 219:16	28:1,11,15,18
copying 100:12		covered 83:10 107:9	29:1,7,13 35:2
101:2,19	correctly 142:4		Daproim 210:4,15
,	243:24	covers 149:7 245:4,5	• /
copyright	correlated 125:14	create 15:7 16:1	dash 181:9,12
22:10,15,19,23 23:5,9,12,19,24	cost 64:3 146:20	18:14 26:13,14	data 174:17 248:19
24:5,22 27:21	235:20	30:5 50:9 62:5	249:4,6
31:12 43:4 51:23	cough 6:11	114:14 126:21	database 78:16,17
55:16,20 62:5,12		173:22 178:25	ŕ
64:4 73:4,5 94:12	counsel 5:21 9:3,5,12	179:3 185:15	date 1:16 55:21
96:8 100:11 101:1	10:8,18,22 11:22	created 70:14	128:12 179:16
128:8 153:21	22:22 23:1,16 38:9	71:13,19 128:12	dated 4:20
154:6,8 181:8	44:17 56:15,20	130:8 174:18	day 191:1,16 200:18
	59:20 61:10 68:10		
		DEDO	

	1 46		
255:7	221:22 223:21	153:3	19:8,12 28:17
days 68:5	depose 255:7	desktop 14:14 15:12	33:12 34:22,24
day-to-day 187:5	deposed 7:10 39:11	detail 175:10	42:17 67:8,9 78:16 87:8 89:24 101:14
DC 2:4	deposition 1:14	detailed 159:9	106:8,13 109:14
deaf 109:10 151:7	5:7,12 6:15 7:17	184:13 212:14	134:21 137:6
deal 35:9 50:3 63:25	9:19 10:9,16,20	238:7 239:15	147:23 170:22,24 174:12 179:3
188:12	12:2,7 189:17 191:2 235:7	details 20:23 30:18	174.12 179.3
dealing 188:11	254:14,24 260:2	84:17 127:9 157:24	201:13 202:1
deals 155:22	261:1,13	determination 58:22 59:22	210:14 242:8
decided 40:13	depth 97:13 170:24	determine 57:24	differently 39:10
decision 39:15 40:5,7	Desc 174:13	126:14,18 139:11	252:17
146:1	describe 22:18 30:13	176:3 193:17	difficult 43:22 100:8
decisions 83:8	47:18 62:3,14	determined 58:13	103:1 109:15 110:16 173:22
declaration 39:3,6,14	104:16,18 109:6 147:16 172:10	59:5,14	183:19 185:10
82:4,9,20	173:14 177:10	develop 13:3 27:17	difficulties 141:20,22
dedicated 18:20	237:2	29:19 33:16	191:3,8
deeper 165:12	described 14:24	developed 26:5,10 32:24 35:16	difficulty 108:12
Defendant 1:11 2:18	17:23 18:1 19:11		115:25 116:7
6:7,8 83:2 90:22	80:13 105:1 107:13 158:11 182:9	developer 20:2	digital 11:20 13:8
203:23	186:17 206:23	developing 12:18 25:23 27:1 33:11	15:21 16:10 18:22 29:21,23,24 30:14
Defendants 11:7	207:3,5,6,8,9	35:8	64:19 111:4 112:7
Defendant's 9:8	220:13	development	113:22 114:11
define 136:12	describes 173:13	25:14,19 26:16	133:20
defined 244:18	description 139:7	28:11 34:14 35:20	digitally 160:14
degree 21:14,18,21	173:19 174:4,13,14 212:15 219:23	144:7,17,23 145:4	223:24
135:8 241:22	239:15	develops 30:14 32:15 145:15	direct 256:12 258:11 259:16
degrees 21:11 242:17	descriptions 224:9		directed 96:5,17,25
deliberate 152:25	design 153:5	device 100:7 160:13	121:3 231:4 246:24
deliberately 152:20	235:20,21	devices 16:21	direction 200:13
delighted 222:10	designate 125:18	diagnosed 137:3	261:9
deliver 80:17	designated 148:8	diagnoses 104:15	directly 50:3 163:20
delve 156:4	designation 146:24	diagnosis 104:24	directories 176:25
department 64:6	designed 30:10	diagrams	disabilities 13:1,2,10
130:4	139:18	185:9,10,13	17:9 19:1 36:11
depending 102:9	designer 153:6	dictionary 103:18	37:3,11,24 40:21
149:20 200:13	designers 152:20	difference 84:19 106:4 193:4	41:8,22 42:5,16 43:7,13 48:23
depends 181:21	designing 152:21	different 14:25 17:16	49:10 50:8,10,17
	(066) 116		

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 12

	0		
52:6,18,21	135:22 136:12	110:24	184:17 185:1,2,5
53:15,21	138:20 139:24,25	dispute 83:1	187:14,20,22
54:2,11,22 55:4,18	140:6,14 156:24	•	189:8,25 190:4,22
56:1 57:25 58:15	157:3,7 158:6	distinguish 101:13	191:4,16 194:7
59:15 61:18 64:13	222:21	distribute 53:8 54:1	196:6 201:25 202:1
66:7,17 67:15,22	disability-specific	district 1:1 39:23	206:22 210:11
69:10 71:1,14,15,18,24	84:18	40:5,10 136:18	211:16,20 212:9,10,15,16,23
72:3 73:22	disable 42:10,15	disturbance 6:12	213:6,10,15,17
76:5,11,16,18,24	disabled 30:25 32:13	divulge 82:16 202:15	214:1,6 223:10
77:10,13 78:18,19	41:5 43:16 62:23	S	226:22 238:6
82:13 83:3,14,25	63:13,23 76:14	divulging 230:4 246:22	254:16,22 255:10
84:5,9 85:6 91:9	84:20 85:19 87:12		257:6 258:3,4
99:16,25 101:4	101:11 109:6 129:3	doctor 37:22 80:3	259:12
102:19,20,25	152:20 153:23	document 14:12,19	domain 77:25 81:12
103:15	154:5 177:24	15:6,13,25 16:1,6	dominated 31:5
104:10,11,14	disabling 42:4 43:14	17:3 74:23 101:23	
105:4,24	disadvantaged	114:6 124:11	done 18:11,12 56:13
106:22,23,25	12:19,22 37:24	126:12,21 128:12	58:9 75:18 83:9
107:6,8,13,16,21 108:12 109:3	, and the second	133:7 177:2,23	89:24 166:6 196:23
115:14 122:19	disagree 189:13	178:6,20,22	dot 182:3
132:22,23 133:3,11	disclose 95:22	179:3,13 180:21,22	dots 15:11 194:19
134:12,14 135:7	discovery 250:19	186:9,10,12,14	double 148:17
140:7,9 152:15,24	discuss 10:15 56:15	193:20 195:4 196:21,22 197:17	
157:13,15,16,22	58:4 60:2 68:18	198:1,2 206:10	doubt 162:20
163:3 165:22	90:19 91:4 140:25	209:12 210:8	download
167:19,24 168:5	240:22	211:11,25	76:12,13,18 78:9
205:12 206:6,24		212:2,3,4,6 214:12	81:4,10,12,15,21,2
207:4,12 208:12,18	discussed 41:23	215:9 220:9,10	3,25 201:24
disability 13:6 14:25	42:22 46:17,18	222:24 223:24	downloaded 76:17
16:4 62:16 63:2,4	57:18,20,23 90:9	226:14,15 227:1	258:5,6
66:5 69:8	107:15 163:6 179:1 214:8 223:22	231:18 232:23	draft 141:7
78:8,12,23	229:10	234:4,25 235:8	
79:4,8,10,15,21,25		237:16 238:5	drafting 63:3 65:13
80:2,5,7,12,19,25	discussing 19:15	239:16 240:22	98:5 141:4
81:10,16,20 84:25	68:22	243:2 244:7,10,11	draw 128:24
86:8,19,22	discussions 10:13	245:8 254:10,15	drawing 173:23
88:11,17 89:8 90:1	59:20 60:9 95:3,19	256:22 257:1,4,11	S
100:13 104:24	disease 108:3	258:6,7,8,18 259:9	drawn 66:9 72:16,18 73:3
105:13 106:14	Disk 92:18,22	documented 180:12	
107:22 108:1,17	175:19,23	documents 6:14	drew 112:17
109:7,9,10,19,20	ŕ	10:19,22,25	drive 188:20
110:2,15 122:13	disparate 67:7	11:4,11,19,24 12:6	190:8,10,16
124:9,14,25	display 111:22	13:24 14:4 92:3	drives 188:4 190:17
130:8,14,15,21	112:2,3 153:4	121:16,20 126:9	
131:6,15 132:4	displays 15:15	131:22 182:24	drop 182:3

	1 ag		
dry 243:13	e-Commerce 152:2,5	else 10:3,5 12:5 79:12	37:22 93:2
due 131:5	economic 63:8 64:9	90:23 105:19 113:15,19 119:2	123:8,13,18,22 142:14,20 176:3
dues 28:2,4,8	66:8,13,18 67:3	124:14 141:3,7,10	ŕ
duly 7:2	69:11 70:16,21 71:2,16	143:16 249:25	engineering 20:20 21:13,15,17 124:4
during 11:21 30:4	economically 48:4	else's 113:19	160:5
141:15 144:16 dyslexia 36:16	economics 63:12 64:16	elsewhere 101:24 238:25	engineers 1:6 6:5 123:23 159:6
103:15,22	ed 71:13 127:10,13	eluding 31:4	engines 30:25 31:7
104:3,11,23 105:2,15,23 106:10	136:16	e-mail 2:5,11,16,22	enlarge 16:13 17:5
109:11 132:22	edited 65:16	4:20 187:7	enlarged 16:22
134:13	edition 4:11 219:5,20	256:18,24 257:10 258:12	enlargement 15:2,23
135:1,5,8,12 137:3	educated 153:7	embosser 15:9,10	103:23 163:13
dyslexic 13:9,23 22:14 23:23 26:12	education 67:12	employ 231:20	enlarger 112:10,13,15
48:18 79:9 85:22	79:14,16,17,18 88:10 130:4	employed 20:7 27:5	enlargers 110:25
103:2,3,9,11,21		142:18,19 187:4	_
	educational 21:10 32:7,8 129:18	232:4	enlarging 16:14
e1 155:2	130:2 157:12 211:2	employee 261:17	enrolled 79:13
earlier 17:23 55:1	educator 210:16	employees 13:13	ensure 54:1 213:17
58:6 70:5 82:8	Edward 98:9 154:23	27:16 143:1	ensured 80:24 84:8
90:18 113:15 121:2	effort 30:16 50:11	employment 19:18,23	entire 18:18 162:3,10 182:18,20 183:3
127:5,8 134:3 165:8 187:23 195:9	efforts 25:20 142:8	enable 210:10	233:12,17,24
198:6 209:8,24	144:10	enabled 81:24	234:1,7,9 239:8
210:17 211:4	egress 221:3		241:14
224:11 227:24	eight 10:17	encountered 141:15	entirety 95:2,18
229:10 231:16 246:5	eight-year-old 187:2	encourage 32:6,11 213:25	138:22 240:13
Early 90:16	either 90:24 131:18	encouraged 214:5	entities 29:13 32:14 51:25 52:1,2,4 75:3
easier 30:25 66:6,16	247:19	encouraging 31:23	entity 26:5,6,15
67:14,22 69:9	elaborate 246:25	48:21	54:15 55:24 56:10
70:11 71:1,24 72:2	electrical 21:6,16	endeavor 48:19	57:4,11,13,24
104:3 150:21	209:22	Energy 235:20	58:13 59:1,14
easy 87:13 116:2 148:22 163:19	electronic 11:22 81:6	engage 22:6 211:19	60:4,13,19 61:5 76:21
	132:2 202:22 246:13	engaged 116:10	entity's 58:14
eBook 29:23,24 30:3,7,8 110:25			enumerate 210:14
133:20 208:2,5,10	elements 26:22 140:10 238:3	engagement 132:8	
eBooks 13:9 30:9	elephant 173:16,18	engaging 33:4	EPUB 26:2 29:19,22 30:5,6,15
41:16,21 42:4,15	eligible 53:16	engine 31:6	equivalent 14:17
43:7 51:1	engible 55.10	engineer 21:7 23:11	15:1,9,12 148:13
			10.1,7,12 110.13

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 14

226:9,11,16,21,23			Γ	
133:7 226:19	1		-	,
241:23,25	181:18,23 182:13	evaluating 60:25	181.2	200.19
errors 180:21,24,25 181:15,20 183:10 184:25 185:2,6 212:1 213:18 225:10,16,17,22,25 226:9,11,16,21,23 232:24 233:5 241:10,12,21 242:3,4,12,18 244:6,11,14 245:3 especially 13:1,2,11 32:7 99:16 101:17,20 103:3 164:25 173:2 215:9 ESQ 2:3,8,9,14,19,20 essence 66:3 escentially 64:1 210:12 estimated 135:20 estimated 135:20 estimated 135:20 estimated 135:20 estimated 135:20 estimated 135:20 ethical 74:4 evaluate 120:10 211:25 216:13 173:11 203:9,20 204:2,17 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 208:5 214:20 223:5 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 215:2,124 216:2 222:11 225:8 241:20 243:3.42 21 evaluation 141:19 68:2 249:10 69:2 excerpt 324:12 6xcerpt 324:12 6xclude 152:20 6xcerpt 324:12 6xclude 152:20 6xcerpt 324:12 6xclude 152:20 6xcerpt 324:12 6xclude 16:5 6xcerpt 324:12 6xclude 15	183:7 226:19	139:20 141:10	except 15:13	experienced 187:9
errors 180:21,24,25 175:9 evaluation 141:19 142:9 227:6 68:2 249:10 69:2	241:23,25	156:2 159:10 163:2	-	197:24
181:15,20 183:10	errors 180.21 24 25	175:9		evneriences 62.77
184:25 185:2,6 212:1 213:18 225:10,16,17,22,25 226:9,11,16,21,23 232:24 233:5 241:10,12,21 242:3,4,12,18 244:6,11,14 245:3 242:14,12,11 32:7 99:16 101:17,20 103:3 164:25 173:2 215:9 201:24 201:25 20		avaluation 1/1:10		-
212:1 213:18 225:10,16,17,22,25 226:9,11,16,21,23 232:24 233:5 241:10,12,21 242:3,4,12,18 242:3,4,12,18 242:3,4,12,18 242:6,11,14 245:3 242:3,4,12,18 242:5,173:2 215:9 250:20,23,28,9,14,19,20 250:20,124 250:11 20:12 20:12 20:24 20:24 20:24 20:12				
225:10,16,17,22,25 226:9,11,16,21,23 evening 191:15 256:3 evert 93:16 evert 93:16 evert 93:15 execrpt 234:12 23:24:23,4,12,18 244:6,11,14 245:3 eventually eventually exclude 152:20 39:17 32:23;25 9,14 35:23 36:10,16,21 37:2,17 38:23,25 36:10,16,21 37:2,17 38:23,25 25:5,9,14 35:23 36:10,16,21 37:2,17 38:23,25 25:5,9,14 35:23 36:10,16,21 37:2,17 38:23,25 25:5,9,14 35:23 36:10,16,21 37:2,17 38:23,25 25:5,9,14 35:23 36:10,16,21 37:2,17 38:23,25 25:5,9,14 35:23 36:10,16,21 37:2,17 38:23,25 25:5,9,14 35:23 36:10,16,21 37:2,17 38:23,25 25:5,9,14 35:23 36:10,16,21 37:2,17 38:23,25 25:5,9,14 35:23 26:10 14:5 20:12 excluded 96:5 excluded 96:5 excluding 141:6 20:6;7 96:16 20:6;7 96:16 20:6;7 96:16 20:124 excrept 234:14 exclusively 52:21 20:124 excrept 234:14 excluding 141:6 20:17 20:124 excrept 234:14 exclusively 52:21 20:124 exclusively 52:21 20:124 excrept 234:15 20:14 20:14 20:14:14 20:14:14 excluding 141:6 20:17 20:17 20:17 20:11 20:12 exact 17:22 exact 17:22 exact 17:22 exact 17:22 exact 17:22 exact 17:22 examination 3:4 7:5 64:22,23 65:3 140:22 12:125 20:15 22:14 20:	·			experiencing 191:8
226:9,11,16,21,23 232:24 233:5 241:10,12,21 242:3,4,12,18 2244:6,11,14 245:3 especially 13:1,2,11 32:7 99:16 101:17,20 103:3 164:25 173:2 215:9 ESQ 2:3,8,9,14,19,20 essence 66:3 essentially 64:1 210:12 estimated 122:15 150:6 169:16 estimated 135:20 136:25 137:16 ethical 74:4 evaluate 120:10 121:25 140:8,13,18,19 154:21,25 155:1 1203:9,20 204:2,17 205:20,23 206:1 208:25 140:8,13,18,19 154:21,25 155:1 166:13 175:11 203:9,20 204:2,17 205:20,23 206:1 208:25 14:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 215:21,24 216:2 218:6 (20:19) event 93:16 events 93:15 excited 41:5 excluded 96:5 excluding 141:6 206:7 exclusion 152:23 exclusively 52:21 53:1 167:18 168:4 excuse 25:24 36:9 37:8 122:21 53:1 167:18 168:4 excuse 25:24 36:9 37:8 122:21 Executive 20:14 22:5 exhibit 4:3,6,8,10,13,17,20 64:22,23 65:3 145:23 149:2 220:15 234:16,17 235:2,10,11 208:25 14:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 215:21,24 216:2 218:6 (220:19) events 93:15 excited 41:5 excluding 141:6 206:7 exclusion 152:23 exclusively 52:21 53:1 167:18 168:4 excuse 25:24 36:9 37:8 122:21 53:1 167:18 168:4 excuse 25:24 36:9 37:8 122:21 Executive 20:14 22:5 exhibit 4:3,6,8,10,13,17,20 64:22,365:3 145:23 149:2 249:22 251:1 208:25 142:2,23 210:12 220:15 234:16,17 235:2,10,11 208:25 142:2,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 215:21,24 216:2 224:21 225:8 241:20 243:4,22 241:12 223:3 241:			ĺ	expert 4:6 9:8,20,22
232:24 233:5 241:10,12,21 242:3,4,12,18 242:6,11,14 245:3 events 93:15 events 93:15 eventually 116:3,18,25 eventually 116:3,18,25 everybody 78:1,2 149:12 everybody 78:1,2 149:12 everyone 150:2 everything 8:7 148:23 242:14 evidence 34:9,19 exact 17:22 example 16:1,16 121:25 examination 3:4 7:5 136:25 137:16 177:8 192:1 227:19 examination 3:4 7:5 140:8,13,18,19 154:21,25 155:1 208:25 126:4 169:4,11 203:9,20 204:2,17 205:20,23 206:1 203:20 201:22 201:0 221:7 227:2 220:10 221:7 227:2 220:10 221:7 227:2 249:22 25:11 252:14 evaluated 138:10 166:9 207:25 218:20 201:6 48: 201:9 21 125:25 126:16 18:20 199:21 125:22 125:22 1	226:9,11,16,21,23	evening 191:15 256:3	excerpt 234:12	
242:3,4,12,18 244:6,11,14 245:3 especially 13:1,2,11 32:7 99:16 everybody 78:1,2 10:117,20 103:3 164:25 173:2 215:9 ESQ 2:3,8,9,14,19,20 essence 66:3 essentially 64:1 210:12 estimate 122:15 150:6 169:16 estimated 135:20 136:25 137:16 ethical 74:4 evaluate 120:10 121:25 evaluate 120:10 121:25 140:8,13,18,19 154:21,25 155:1 166:13 175:11 203:9,20 204:2,17 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 eventually 116:3,18,25 eventually 116:3,18,20 136:25 137:16 examined 125:25 126:4 169:4,11 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 215:21,24 216:2 218:6 220:19 241:20 243:4,22 241:12 252:14 eventually 116:3,18,25 eventually 116:3,18,25 evendued 96:5 exclude 152:20 exclude 152:20 exclude 152:20 97:1,10,17,18,21 206:7 exclusively 52:21 exclusively 52:21 53:1 167:18 168:4 125:25 126:16 206:7 exclusively 52:21 53:1 167:18 168:4 1215:25 22:14 1252:21 223:19 37:8 122:21 Executive 20:14 22:5 exhibit 4:3,6,8,10,13,17,20 64:22,3 65:3 68:22 70:2,8 73:7 75:10 97:21,23 144:13 153:12 expertise 22:1.9 24:5,22 37:8,9,22 220:15 234:16,17 236:8,11,14,17 236:8,11,14,17 236:8,11,14,17 236:8,11,14,17 236:8,11,14,17 236:8,11,14,17 236:8,11,14,17 236:8,11,14,17 240:3 241:9 244:15 256:13,15 Exhibits 4:1,23 242:8 expertise 22:1.9 24:5,22 37:8,9,22 249:22 251:1 15:17 160:3 171:2 173:24 174:16 explaid 41:6 206:7 92:1,11,13 95:25 96:16 excluding 141:6 206:7 97:7,10,17,18,21 126:21 220:13 22:1 220:12 22:1 222:1 122:2 222:1 122:2 222:1 223:6:3 222:1 222:4 222:1 223:6:3 221:24,22 23 65:3 221:24,22 23 65:3 221:24,22 23 65:3 221:24,22 23 65:3 221:24,22 23 65:3 221:24,22 23 65:3 221:24,22 23 65:3 221:24,22 23 66:2 220:15 23:24:24,22 220:15 23:24:24,22 220:15 23:24:24,22 220:15 23:24:24,22 220:15 23:25 25:21 220:10 22:17 227:2 220:10 22:17 227:2 220:10 22:17 227:2 220:10 22:17 227:2 220:10 22:17 227:2 220:10 22:17 227:2	232:24 233:5	event 93:16	excerpts 220:3,5	r r
244:6,11,14 245:3 especially 13:1,2,11 32:7 99:16 101:17,20 103:3 164:25 173:2 215:9 ESQ 2:3,8,9,14,19,20 essence 66:3 esentially 64:1 210:12 estimate 122:15 150:6 169:16 estimated 135:20 136:25 137:16 ethical 74:4 evaluate 120:10 121:25 evamined 125:25 140:18,13,18,19 154:21,25 155:1 208:25 214(8,13,18,19 154:21,25 155:1 208:25 220:10 221:7 227:2 220:20 204:2,17 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 215:21,24 216:2 218:6 220:19 244:20 243:4.22 218:6 220:19 245:24 224:21 225:8 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 215:21,24 216:2 218:6 220:19 241:20 243:4.22 218:6 220:19 241:12 expertisee 34:6 exclude 152:20 exclude 96:5 excluded 96:5 excluding 141:6 206:7 exclusion 152:23 exclusively 52:21 53:1 167:18 168:4 excuse 25:24 36:9 37:8 122:21 Executive 20:14 22:5 exhibit 4:3,6,8,10,13,17,20 64:22,23 65:3 68:22 70:2,8 73:7 75:10 97:7,10,17,18,21 97:7,10,17,18,21 97:7,10,17,18,21 192:12,32 118:6,19,20 121:1 125:25 126:16 131:2 132:8 140:22 142:1 Executive 20:14 22:5 exhibit 4:3,6,8,10,13,17,20 64:22,23 65:3 68:22 70:2,8 73:7 75:10 97:7,10,17,18,21 97:7,10,17,18,21 192:12,23 exclusively 52:21 18:8:10:24 104:1 125:25 126:16 131:2 1 132:8 140:20 142:7 144:20 23:15 25:21 25:21 25:21 249:22 23:15 25:21 25:22 20:12 24:12 22:12 25:8 exeluding 141:6 206:7 exclusion 152:23 exclusively 52:21 53:1 166:48 excuse 25:24 36:9 37:8 122:21 Executive 20:14 22:5 exhibit 4:3,6,8,10,13,17,20 64:22,23 65:3 68:22 70:2,8 73:7 75:10 97:7,10,17,18,21 118:6,19,20 121:1 125:25 126:16 131:2:1 132:8 131:2:1 132:8 131:2:1 132:8 131:2:1 132:8 140:20 142:7 144:20 23:15 25:21 4:20,23 65:3 68:22 70:2,3 75:7 75:10 97:10 118:6,19,20 121:1 22:5 exhibit 4:3,6,8,10,13,17,20 64:22,23 65:3 68:22 70:2,8 73:7 75:10 97:10 120:22 12:225:2 192:17 209:15 210:4 219:9,10 220:15 234:16,17 220:15 234:16,17 220:12 234:12,14 220:13 234:16,17 220:12 234:12,14 220:13 234:16,17 220:12 234:12,14 220:13 234:16,17 220:12 234:12,14 220:13 234:16,17 220:12 234:12,14 220:13 234:16,17 220:13 2	1 1	events 93:15	excited 41:5	
especially 13:1,2,11 32:7 99:16 101:17,20 103:3 164:25 173:2 215:9 ESQ 2:3,8,9,14,19,20 essence 66:3 essentially 64:1 210:12 estimate 122:15 150:6 169:16 estimated 135:20 136:25 137:16 ethical 74:4 evaluate 120:10 121:25 140:8,13,18,19 154:21,25 155:1 166:13 175:11 203:9,20 204:2,17 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 25:11 252:14 evaluated 138:10 166:9 207:25 218:20 218:6 220:19 21:16:3,18,25 everybody 78:1,2 149:12 149:12 201:24 everyone 150:2 201:24 everyone 150:2 201:24 everything 8:7 148:23 242:14 evidence 34:9,19 37:8 122:21 53:1 167:18 168:4 exclusively 52:21 53:1 167:18 168:4 17:4 19:2 19:2 1	1 1 1	·	exclude 152:20	39:1 73:2 82:17
everybody 78:1,2	l ' '	116:3,18,25	excluded 96:5	
101:17,20 103:3		everybody 78:1.2		
Sesure 10:17,20:10:13 everyone 150:2 201:24 everything 8:7 148:23 242:14 evidence 34:9,19 estimate 122:15 exact 17:22 examination 3:47:5 136:25 137:16 examination 3:47:5 121:25 126:4 169:4,11 203:9,20 204:2,17 208:5 214:22, 232:14 evaluate 130:10 208:5 214:22, 232:14 evaluate 130:20 208:5 214:22, 232:14 evaluate 130:10 208:5 214:22, 232:14 208:5 214:22, 232:14 evaluate 130:10 208:5 214:22, 232:14 208:25 107:25 118:3, 20,22 132:1 140:12, 19 151:17 160:3 171:2 252:14 evaluate 138:10 166:9 207:25 215:21,24 216:2 224:21 225:8 215:21,24 216:2 224:21 225:8 215:21,24 216:2 224:21 225:8 241:20 243:4,22 experience 34:6 experience 34:6 exclusion 152:23 exclusion 152:23 exclusively 52:21 53:1 167:18 168:4 excluse 25:24 36:9 37:8 102:21 18:6,19,20 121:1 125:25 126:16 131:21 132:8 140:20 142:5 excutive 20:14 22:5 excutive 20:14 22			9	2 2
ESQ 2:3,8,9,14,19,20 essence 66:3 essentially 64:1 210:12 estimate 122:15 150:6 169:16 estimated 135:20 136:25 137:16 ethical 74:4 evaluate 120:10 121:25 evaluate 120:10 121:25 140:8,13,18,19 154:21,25 155:1 166:13 175:11 203:9,20 204:2,17 205:20,23 206:1 208:25 166:3 175:11 208:25 177:8 192:1 227:19 208:25 166:13 175:11 208:25 176:10 29:10 121:25 examined 125:25 166:13 175:11 208:25 177:8 192:1 227:19 208:25 166:13 175:11 208:25 177:8 192:1 209:15 166:13 175:11 208:25 126:4 169:4,11 208:25 126:4 169:4,11 208:25 127:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 177:8 192:1 227:29 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 177:8 192:1 227:29 249:22 251:1 252:14 evaluated 138:10 182:20 199:21 211:25 220:15,24 218:6 220:19 241:20 243:4,22 241:12 experience 34:6				
essence 66:3 essentially 64:1 210:12 estimate 122:15 150:6 169:16 estimated 135:20 136:25 137:16 ethical 74:4 evaluate 120:10 121:25 140:8,13,18,19 154:21,25 155:1 166:13 175:11 203:9,20 204:2,17 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 218:6 220:19 212:5 exprising 8:7 148:23 242:14 evidence 34:9,19 exact 17:22 exact 16:3:16:16 131:21 132:8 140:20 142:8 220:12 23:140:2 125:16 218:22 220:15 234:16,17 240:3 241:19:9,10 236:8,11,14,17 240:3 241:19 exact 17:20 exact 17:22 exact 17:22 exact 10:2:4:18 215:16 218:22 220:15 234:16,17 240:3 241:19:9,10 236:8,1			exclusion 152:23	
essence 66:3 essentially 64:1 210:12 estimate 122:15 150:6 169:16 estimated 135:20 136:25 137:16 ethical 74:4 evaluate 120:10 121:25 140:8,13,18,19 154:21,25 155:1 166:13 175:11 203:9,20 204:2,17 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 25:11 evaluated 138:10 166:9 207:25 218:6 220:19 essentially 64:1 evidence 34:9,19 exact 17:22 5 exhibit 4:3,6,8,10,13,17,20 64:22,23.65:3 68:22 70:2,8 73:7 75:10 97:12,23 145:23 149:2 220:17 29:17 209:15 244:13 153:12 221:24,25 247:24 220:15 234:16,17 235:2,10,11 236:8,11,14,17 240:3 244:15 256:13,15 exhibits 4:3,6,8,10,13,17,20 64:22,23.65:3 68:22 70:2,8 73:7 75:10 97:12,23 144:13 153:12 221:24,25 247:24 220:15 234:16,17 235:2,10,11 236:8,11,14,17 240:3 244:15 256:13,15 exhibit 4:3,6,8,10,13,17,20 64:22,23.65:3 68:22 70:2,8 73:7 75:10 97:12,23 145:21 23:1 220:15 234:16,17 220:15 234:16,17 220:15 234:16,17 220:15 234:16,17 220:15 234:16,17 220:15 234:16,17 220:15 234:16,17 220:15 234:16,17 220:15 234:16,17 220:15 234:16,17	ESQ 2:3,8,9,14,19,20		exclusively 52:21	
148:23 242:14 evidence 34:9,19 exact 17:22 exact 17:22 exact 17:22 exact 17:22 exact 17:22 exact 17:22 exactly 29:17 159:17 examination 3:4 7:5 177:8 192:1 227:19 256:1 examine 121:4 examine 121:4 examine 125:25 140:8,13,18,19 154:21,25 155:1 166:13 175:11 203:9,20 204:2,17 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 218:6 220:19 241:25 220:16 2243:4,22 228:6 220:19 241:25 23:16 218:22 221:24,25 247:24 250:10 241:15 241:12 experts 24:1 experts 24:1 explain 14:1 15:4 17:24 29:19 30:23 242:7 explain 12:14 explaining 100:14 explaining 100:14 explaining 100:14 express 70:16 208:19 exact 17:22 experience 34:6 excuse 25:24 36:9 37:8 122:21 131:21 132:8 140:20 142:7 146 167:4 179:18 167:4 179:18 192:16 203:15 204:16 214:18 215:16 218:22 221:24,52 247:24 250:1 25:15 259:1 25:10 97:21,23 145:23 149:2 192:17 209:15 245:52 237:8,9,22 144:13 153:12 experts 22:1,9 24:5,22 37:8,9,22 144:13 153:12 experts 24:1 explain 14:1 15:4 17:24 29:19 30:22 26:13,15 Exhibits 4:1,23 242:8 exist 47:1,16 expanded 182:18 expect 27:21 223:3 241:12 explaining 100:14 explaining 100:14 explaining 100:14 explaining 100:14 expressed 10:6 46:1	essence 66:3		·	f f
estimate 122:15 150:6 169:16 estimated 135:20 136:25 137:16 ethical 74:4 evaluate 120:10 121:25 140:8,13,18,19 154:21,25 155:1 166:13 175:11 203:9,20 204:2,17 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 218:6 220:19 2 evidence 34:9,19 2 exact 17:22 exact 17:23 exact 17:25 exact 17:25 exact 17:25 examination 3:4 7:5 177:8 192:1 227:19 64:22,23 65:3 68:22 70:2,8 73:7 75:10 97:21,23 145:23 149:2 192:17 209:15 210:4 219:9,10 220:15 234:16,17 235:2,10,11 236:8,11,14,17 235:2,10,11 236:8,11,14,17 240:3 241:9 244:15 256:13,15 Exhibits 4:1,23 242:8 expert se 22:1,9 24:12 249:12 25:14 evaluated 138:10 166:9 207:25 215:21,24 216:2 228:20:15,24 224:21 225:8 218:6 220:19 exact 17:22 Executive 20:14 22:5 exhibit 4:3,6,8,10,13,17,20 64:22,23 65:3 68:22 70:2,8 73:7 75:10 97:21,23 145:23 149:2 192:17 209:15 220:12 23:1 25:15 259:1 220:15 234:16,17 235:2,10,11 236:8,11,14,17 235:2,10,11 240:3 241:9 244:15 256:13,15 Exhibits 4:1,23 242:8 exparined 125:25 Exhibits 4:1,23 242:8 exparined 182:18 expanded 182:18 experts 22:1,9 24:12 223:3 241:12 experts 22:10:6:2 250:1 254:22:33:3 241:12 experts 22:10:6:2 250:1 254:22:33:3 241:12 experts 22:19 24:5:22:37:8,922 250:1 254:5:22:37:8,922 250:1 251:5:25:20:15:4 256:13,15 Excutive 20:14 22:5 166:2 20:15;20:15:52 250:1 25:15:21:52:52:15 250:1 25:15:15:15:15 250:1 25:15:15:		148:23 242:14		
estimate 122:15 150:6 169:16 estimated 135:20 136:25 137:16 ethical 74:4 evaluate 120:10 121:25 140:8,13,18,19 154:21,25 155:1 1203:9,20 204:2,17 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 evaluated 138:10 166:9 207:25 218:6 220:19 exact 17:22 exactly 29:17 159:17 examination 3:4 7:5 177:8 192:1 227:19 256:1 examination 3:4 7:5 177:8 192:1 227:19 256:1 examine 121:4 examine 121:4 examined 125:25 126:4 169:4,11 208:25 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 218:6 220:19 exact 17:22 exactly 29:17 159:17 examination 3:4 7:5 177:8 192:1 227:19 64:22,23 65:3 68:22 70:2,8 73:7 75:10 97:21,23 145:23 149:2 192:17 209:15 210:4 219:9,10 220:15 234:16,17 235:2,10,11 236:8,11,14,17 240:3 241:9 244:15 256:13,15 Exhibits 4:1,23 242:8 exist 47:1,16 expanded 182:18 expect 27:21 223:3 241:12 experience 34:6 expressed 10:6 46:1	· ·	evidence 34·9 19		
cstimated 135:20		ĺ		140:20 142:7 146:6
estimated 135:20 136:25 137:16 ethical 74:4 evaluate 120:10 121:25 140:8,13,18,19 154:21,25 155:1 203:9,20 204:2,17 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 218:6 220:19 256:1 examination 3:4 7:5 177:8 192:1 227:19 256:1 examined 125:25 126:4 169:4,11 208:25 example 16:1,16 18:13 19:3 29:6 43:2 45:10 74:7 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 218:6 220:19 examined 125:4 examined 125:25 126:4 169:4,11 208:25 120:4 219:9,10 220:15 234:16,17 235:2,10,11 236:8,11,14,17 240:3 241:9 244:15 256:13,15 Exhibits 4:1,23 242:8 expertise 22:1,9 24:5,22 37:8,9,22 144:13 153:12 experts 24:1 experts 24:1 explain 14:1 15:4 17:24 29:19 30:23 69:18,24 100:4 101:20 116:6 186 242:7 expertise 22:1,9 24:5,22 37:8,9,22 144:13 153:12 experts 24:1 explain 14:1 15:4 17:24 29:19 30:23 69:18,24 100:4 101:20 116:6 186 242:7 explained 227:24 explaining 100:14 explaining 100:14 explaining 100:14 express 70:16 208:1 expressed 10:6 46:1	1		Executive 20:14 22:5	
estimated 135:20 examination 3:4 7:5 4:3,6,8,10,13,17,20 204:16 214:18 ethical 74:4 256:1 64:22,23 65:3 215:16 218:22 evaluate 120:10 examine 121:4 examine 121:4 examine 125:25 250:1 251:5 259:1 140:8,13,18,19 154:21,25 155:1 126:4 169:4,11 208:25 192:17 209:15 24:5,22 37:8,9,22 166:13 175:11 example 16:1,16 18:13 19:3 29:6 236:8,11,14,17 experts 24:1 208:5 214:22,23 87:16 102:3 103:5 256:13,15 Exhibits 4:1,23 242:8 explain 14:1 15:4 24:3,6,8,10,13,17,20 64:22,23 65:3 20:12 247:24 expert se 22:1,9 20:12 25:15:5 259:1 126:4 169:4,11 208:25 126:4 169:4,11 208:25 20:15 234:16,17 220:15 234:16,17 235:2,10,11 235:2,10,11 236:8,11,14,17 240:3 241:9 244:15 256:13,15 explain 14:1 15:4 17:24 29:19 30:23 69:18,24 100:4 101:20 116:6 186 24:7 explained 227:24 explained 227:24 explaining 100:14 explaining 100:14 explaining 100:14 explaining 100:14 explaining 100:6 46:1 explaining 100:6 46:1	150:6 169:16	exactly 29:17 159:17	exhibit	
136:25 137:16 ethical 74:4 evaluate 120:10 121:25 140:8,13,18,19 154:21,25 155:1 166:13 175:11 203:9,20 204:2,17 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 218:6 220:19 177:8 192:1 227:19 64:22,23 65:3 68:22 70:2,8 73:7 75:10 97:21,23 145:23 149:2 192:17 209:15 210:4 219:9,10 220:15 234:16,17 235:2,10,11 236:8,11,14,17 240:3 241:9 244:15 256:13,15 Exhibits 4:1,23 242:8 expertise 22:1,9 24:5,22 37:8,9,22 144:13 153:12 experts 24:1 experts 24:1 explain 14:1 15:4 17:24 29:19 30:23 69:18,24 100:4 101:20 116:6 186 242:7 expertise 22:1,9 24:5,22 37:8,9,22 144:13 153:12 experts 24:1 explain 14:1 15:4 17:24 29:19 30:23 69:18,24 100:4 101:20 116:6 186 242:7 expertise 22:1,9 24:5,22 37:8,9,22 144:13 153:12 experts 24:1 explain 14:1 15:4 17:24 29:19 30:23 69:18,24 100:4 101:20 116:6 186 242:7 expertise 22:1,9 24:5,22 37:8,9,22 144:13 153:12 experts 24:1 explain 14:1 15:4 17:24 29:19 30:23 69:18,24 100:4 101:20 116:6 186 242:7 explaining 100:14 explaining 100:14 explaining 100:14 explaining 100:14 explaining 100:14 explaining 100:14 express 70:16 208:1	estimated 135:20	examination 3.4 7.5		
ethical 74:4 evaluate 120:10 121:25 140:8,13,18,19 154:21,25 155:1 208:25 166:13 175:11 203:9,20 204:2,17 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 218:6 220:19 256:1 examine 121:4 examined 125:25 126:4 169:4,11 208:25 126:4 169:4,11 208:25 126:4 169:4,11 208:25 120:4 219:9,10 220:15 234:16,17 235:2,10,11 236:8,11,14,17 240:3 241:9 244:15 256:13,15 Exhibits 4:1,23 242:8 expertise 22:1,9 24:5,22 37:8,9,22 144:13 153:12 experts 24:1 explain 14:1 15:4 17:24 29:19 30:23 69:18,24 100:4 101:20 116:6 186 242:7 explained 227:24 explaining 100:14 expressed 10:6 46:1				
evaluate 120:10 examine 121:4 75:10 97:21,23 250:1 251:5 259:1 140:8,13,18,19 154:21,25 155:1 126:4 169:4,11 208:25 192:17 209:15 24:5,22 37:8,9,22 166:13 175:11 208:25 220:15 234:16,17 235:2,10,11 235:2,10,11 235:2,10,11 236:8,11,14,17 240:3 241:9 244:15 256:13,15 explain 14:1 15:4 17:24 29:19 30:23 69:18,24 100:4 101:20 116:6 186 242:7 220:10 221:7 227:2 249:22 251:1 151:17 160:3 171:2 256:13,15 Exhibits 4:1,23 242:8 242:7 explained 227:24 explaining 100:14 explaining 10:64:66:1 explaining 100:14 explainin			· · · · · · · · · · · · · · · · · · ·	
evaluate 120:10 121:25 140:8,13,18,19 154:21,25 155:1 166:13 175:11 203:9,20 204:2,17 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 218:6 220:19 examined 125:25 126:4 169:4,11 208:25 126:4 169:4,11 208:25 example 16:1,16 18:13 19:3 29:6 43:2 45:10 74:7 87:16 102:3 103:5 107:25 118:3,20,22 132:1 140:12,19 151:17 160:3 171:2 173:24 174:16 182:20 199:21 211:25 220:15,24 224:21 225:8 218:6 220:19 examined 125:25 192:17 209:15 210:4 219:9,10 220:15 234:16,17 235:2,10,11 236:8,11,14,17 240:3 241:9 244:15 256:13,15 Exhibits 4:1,23 242:8 expertise 22:1,9 24:5,22 37:8,9,22 144:13 153:12 experts 24:1 explain 14:1 15:4 17:24 29:19 30:23 69:18,24 100:4 101:20 116:6 186 242:7 explained 227:24 explaining 100:14 explaining 100:14 explaining 100:14 explaining 100:14 explaining 100:14 explaining 100:14 expressed 10:6 46:1			*	250:1 251:5 259:13
121:25			· · · · · · · · · · · · · · · · · · ·	expertise 22:1,9
140:8,13,18,19 154:21,25 155:1 208:25 example 16:1,16 18:13 19:3 29:6 43:2 45:10 74:7 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 215:21,24 216:2 218:6 220:19 126:4 169:4,11 208:25 example 16:1,16 18:13 19:3 29:6 43:2 45:10 74:7 87:16 102:3 103:5 107:25 118:3,20,22 132:1 140:12,19 151:17 160:3 171:2 173:24 174:16 182:20 199:21 211:25 220:15,24 224:21 225:8 241:12 experience 34:6 1210:4 219:9,10 220:15 234:16,17 235:2,10,11 236:8,11,14,17 240:3 241:9 244:15 256:13,15 Exhibits 4:1,23 242:8 explaining 100:14		examined 125:25		24:5,22 37:8,9,22
154:21,25 155:1 166:13 175:11 203:9,20 204:2,17 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 218:6 220:19 208:25 208:25 208:25 example 16:1,16 18:13 19:3 29:6 43:2 45:10 74:7 87:16 102:3 103:5 107:25 118:3,20,22 132:1 140:12,19 151:17 160:3 171:2 173:24 174:16 182:20 199:21 211:25 220:15,24 224:21 225:8 241:12 220:15 234:16,17 235:2,10,11 236:8,11,14,17 240:3 241:9 244:15 256:13,15 Exhibits 4:1,23 242:8 expanded 182:18 explaining 100:14	, , ,			
cxample 16:1,16	·		· ·	
18:13 19:3 29:6 205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 218:6 220:19 18:13 19:3 29:6 43:2 45:10 74:7 87:16 102:3 103:5 107:25 118:3,20,22 132:1 140:12,19 151:17 160:3 171:2 173:24 174:16 182:20 199:21 211:25 220:15,24 224:21 225:8 241:20 243:4,22 18:13 19:3 29:6 43:2 45:10 74:7 240:3 241:9 244:15 256:13,15 Exhibits 4:1,23 242:8 expanded 182:18 expanded 182:18 explain 14:1 15:4 17:24 29:19 30:23 69:18,24 100:4 101:20 116:6 186 242:7 explained 227:24 explaining 100:14		example 16·1 16	,	•
205:20,23 206:1 208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 215:21,24 216:2 218:6 220:19 43:2 45:10 74:7 87:16 102:3 103:5 107:25 118:3,20,22 132:1 140:12,19 151:17 160:3 171:2 173:24 174:16 182:20 199:21 241:25 220:15,24 224:21 225:8 241:20 243:4.22 240:3 241:9 244:15 256:13,15 Exhibits 4:1,23 242:8 expanded 182:18 expanded 182:18 expanded 182:18 expanded 182:18 expect 27:21 223:3 241:12 express 70:16 208:1	1			-
208:5 214:22,23 217:9 218:22 220:10 221:7 227:2 249:22 251:1 252:14 evaluated 138:10 166:9 207:25 215:21,24 216:2 218:6 220:19 87:16 102:3 103:5 107:25 118:3,20,22 132:1 140:12,19 151:17 160:3 171:2 173:24 174:16 182:20 199:21 211:25 220:15,24 224:21 225:8 241:20 243:4.22 256:13,15 Exhibits 4:1,23 242:8 expanded 182:18 expanded 182:18 expanded 182:18 expect 27:21 223:3 241:12 experience 34:6 expressed 10:6 46:1	·			17:24 29:19 30:23
107:25 118:3,20,22 220:10 221:7 227:2 23:1 140:12,19 151:17 160:3 171:2 242:7 242:7 252:14 252:14 252:14 252:14 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 213:24 174:16 224:21 223:3 241:12 224:21 225:8 241:20 243:4.22 241:20 243:4.22 241:20 243:4.22 241:20 243:4.22 241:24 24:40 241:40 243:4.22 241:40 243:4.23 241:40 243:4.23 241:40 243:4.23 241:40 243:4.23 241:40 243:4.23 241:40 243:4.23 241:40 243:4.23 241:40 243:4.23 241:40 243:4.23 241:40	,			· · · · · · · · · · · · · · · · · · ·
132:1 140:12,19 151:17 160:3 171:2 242:7 249:22 251:1 151:17 160:3 171:2 173:24 174:16 expanded 182:18 expanded 182:18 expanded 182:18 expect 27:21 223:3 241:12 express 70:16 208:1 expressed 10:6 46:1				101:20 116:6 186:3
249:22 251:1 252:14			Exhibits 4:1,23 242:8	242:7
252:14 evaluated 138:10 166:9 207:25 215:21,24 216:2 218:6 220:19 expanded 182:18 expanded 182:18 explaining 100:14 express 70:16 208:1			exist 47:1,16	explained 227:24
evaluated 138:10 182:20 199:21 expect 27:21 223:3 explanation 127:14 166:9 207:25 211:25 220:15,24 241:12 experience 34:6 215:21,24 216:2 241:20 243:4.22 experience 34:6 expressed 10:6 46:1			expanded 182:18	•
215:21,24 216:2 218:6 220:19 218:6 220:19 218:6 220:19 218:6 220:19 218:6 220:19 218:6 220:19 218:6 220:19 218:6 220:19 218:6 220:19 241:20 243:4.22 241:12 241:12 241:12 241:12 241:12 241:12 241:12 241:12 241:12 241:12 241:12 241:12 241:12 241:12 241:12	I	182:20 199:21	exnect 27-21 223-3	•
215:21,24 216:2 224:21 225:8 experience 34:6 express 70:16 208:1		,	· •	•
1 210.0 220.17 211.20 213.1.22 1	· · · · · · · · · · · · · · · · · · ·			express 70:16 208:13
70.10,13 103.12	218:6 220:19	241:20 243:4,22	-	expressed 10:6 46:10
			70.10,13 103.12	

	1 ag	1	
67:10 71:6,13,17	33:5,19,21 34:20	237:4 239:5	fixed 152:11
72:12 237:3 247:25	35:14,20 45:22,23	figured 165:13	flippant 251:7
expressing 25:3	51:18 85:10,12 89:16 92:24	figures 237:8 239:20	flipped 98:20
236:3	93:5,8,9,24 94:7	file 14:19 15:10	Floor 2:15
expression 73:20 238:20	145:13 151:2,11	18:17 79:15 80:25	fly 18:11
extensive 85:7	157:24 237:14	81:16 112:7 114:14 254:18	focus 33:16 46:5 68:3
196:24	familiarity 23:8 216:5	files 188:19 190:10	102:7 110:6 139:19
extent 10:1 22:15	familiarize 23:13	191:18 252:12	140:9 141:16
23:5 202:14		final 65:17	142:24 144:14 149:24 186:14
215:3,11 230:4,6	fancy 182:24 183:2	Finance 20:11	200:19 215:1 246:7
231:1	farther 125:17	Financial 20:12 22:5	focused 68:6 87:8
extra 166:7 170:6 251:6	fatigued 17:4	financially 261:16	138:19 142:1,8
extract 185:25	favor 51:8	finding 116:7 118:2	165:10 229:13
	feature 103:8 162:24 199:19 200:25	180:16	focuses 26:21
extremely 73:10	201:8,18	fine 38:12 108:3	Focusing 170:11
eye 159:9	February 90:17	157:10 188:12	follow-ups 19:9
F	Federal 29:9 261:13	249:7	font 181:6
facilitating 235:6	Federation 82:20	finger 15:17	force 147:13
fact 34:21 90:25	feed 181:12	finish 8:13,18 69:21	foregoing
154:19 163:23	feedback 33:2	172:3,5 200:17	261:4,6,10,12
166:4 247:13 248:15,18,24	feel 112:2 163:16	finished 7:22 72:6 130:25 189:5,19	foreseeable 191:9,10
factors 138:13,17,25	180:13 187:18	fire 1:4 6:1 93:10	form 11:22 15:6,21 30:3 79:22 139:13
139:3	222:24	122:23 218:16,21	144:19 237:18,20
facts 34:8,18 61:14	fees 145:3,7	221:13,21,23,24	238:12,16 244:10
247:16,24 248:19	felt 83:18 133:18	first 4:13 6:10 7:13	253:24
249:4,6	165:13 226:13	18:7 40:19 51:11	formal 58:25 155:22
faculty 84:13,20,21	Fenwick 2:19 9:13	65:22,23,25 66:11 69:22 70:1 116:12	format 30:7,8,9
85:8	fiction 47:24	121:15 132:19	112:7 169:14,20,24 176:2,14,18,21,22
failed 153:6	field 46:19 47:21	143:10 149:5	177:6,13 180:1
fair 10:3 102:13 191:6 207:10	85:17 88:17 91:23	164:21 166:15	188:10
	122:23 123:3 148:11 153:9 181:3	171:3 181:11 190:18 204:24,25	212:11,19,20 225:2
fairly 77:21	197:5	234:2,13 241:18	231:11,14 232:15 247:2,20 248:15,25
fall 249:5,9	fields 35:19	245:8 258:12	252:7,25 253:10,20
falls 223:22	fight 188:1	fit 108:25 174:5,8	formats 13:25 14:5
familiar 7:16 22:14,18 23:5,25	figure 67:17 158:19	five 98:6,25 166:18	30:8,10 64:19
28:19 29:16 30:18	182:14 199:10	227:11 229:19,23 230:1,9	114:15 169:6,10 170:3,6 207:7
31:16 32:18	236:10,13,16,22	230.1,7	1/0.3,0 40/./

	1 ag		
formerly 85:21	fresh 70:18	49:16,23 50:16,24	gone 45:25 51:6
forming	Friday 1:16 5:2	51:6 135:4,21	75:14
205:14,17,21,24	·	136:7,11,15	Google 83:17 118:7,8
206:2 247:25	friends 28:18	137:1,5,11,17	,
	Fruchterman 1:14	139:11,21 140:8	gotten 154:1
for-profit 20:2	3:3 4:3,6,20 5:8	154:3,4 158:17	government 29:10
forth 261:5	6:13 7:1,9,11 192:3	167:6,24 212:16	33:13 52:5 55:3
Forum 29:21 30:14	227:21 254:21	generalize 17:7 103:2	75:12 148:1
forward 73:16 162:8	255:8 256:3	108:10	grabbed 155:21
	FTP 189:24	generally 14:14	gradations 165:12
foundation 26:17	full 7:8 28:16,25 35:3	18:7,25 27:4	
27:2,18 29:4 31:15	132:19 155:21	41:9,22 47:3 48:24	grant 29:7
39:17,25 40:14 41:11,24 43:11,19	172:10 191:1,16	68:15 76:23 77:11	grants 28:2 29:2,3,13
47:7 50:19 51:3	204:25 244:11	87:23 99:13,21	graphic 171:2
60:21 61:7,20	255:7	102:1 105:14	173:5,8,10,19
63:9,21 64:12	full-text	135:13 139:5	184:13 236:19
66:19 71:4 76:7	140:15,20,24	147:24 148:8	237:24,25
77:1 79:1 81:2,18	full-time 19:23	150:24 152:14	238:19,20,24
84:2,12 86:12,25		154:5 165:9 166:5	239:13,15
87:6,18 88:24	fully 195:7 256:10	173:14 184:19	graphical 217:6
127:4 128:22	function 164:5,16,25	185:1 194:16	218:3,5,7 238:3
158:13 159:3	165:18 166:1 178:7	196:12 197:18 212:10 223:10	graphics 175:11
168:15 169:8	195:22 196:6,21	224:4,6 234:5	
212:12	functional 104:16	241:18	great 9:2 38:21 73:21
fraction 158:3	138:19 139:4,6		95:8 107:1,7 133:2,10,13
frame 21:1	140:5 141:19	generated 225:24	133.2,10,13
-	147:21 148:24	Germany's 45:24	184:5 187:5 194:24
Francisco 2:10,15,21	156:3 220:12	gets 15:18 17:1 46:17	235:16 236:18
Frankly 249:14	233:11 234:6	109:20 222:21,22	
free 46:1 99:11	functionality 170:20	getting 33:2 50:6	greater 176:21 185:6
112:19,20 115:17	178:10 195:10	51:5,8 71:18	grew 137:20
116:4,16	196:23 229:13	116:11 165:12	group 26:21 78:8
133:1,12,15,23	functions 139:14	190:3 200:18	154:7
143:12 160:17,21	funded 20:19 27:25	206:18 223:23	grouped 242:19
161:11,15 201:24	28:1 130:3	251:2 255:12	groups 13:4 26:20,25
205:6,16 206:12		give-away 193:25	33:12 101:14
207:22 213:17	funders 29:16	194:2	134:22
215:17 216:16 224:14 246:7	funding 29:9 130:1	given 243:15 261:11	
249:23 250:10			guess 7:19 19:13 31:25 34:20 42:25
252:13	G	glass 102:5 134:4	50:14 63:18 140:24
	game 10:3	goal 18:21 30:24 32:5	146:12 155:2 177:7
freely 27:22 146:18,19 206:16	GCH 21:6	56:1,6 67:13,21	
ŕ		92:14	guidelines 144:1
frequently 157:13	gee 166:16,20	goals 147:21	147:2,5,8 149:3,13
159:7 184:9	general 30:12		Guild 39:9 43:2 82:2

	1 ag		
83:16	72:18 77:2 78:7	high 252:13	173:7 174:1,10
guy 191:17	95:25 106:2 107:13	higher 67:12 71:12	176:8 183:9,21
guys 10:23 188:2	113:19 114:3 116:7	136:16 224:2,4	184:3,11,24
189:4,6 190:20	131:8 135:21	highest 224:7	185:8,18 194:15
191:12 202:7	145:19 146:15		196:11 197:21
228:25	159:8 205:2	highlight 180:14	199:7 213:22 221:18 222:8,19
	head 8:10 172:21	highlighted 103:7	225:20 233:7
H	250:7	highly 30:2	239:11 241:16
half 134:16,17	header 171:24,25	history 19:18 61:23	243:20 244:20
135:17 136:20	172:8,9,22	hit 16:4 178:19	251:13 252:10
137:1,17,21 181:11	heading 204:25		253:4 254:2
hand 18:17 234:12	hear 242:5	hits 15:18	
handbook 230:19	heard 34:13 42:21	hold 20:9 108:3,22	I
	89:19,21 93:1	172:2 237:10	icon 164:12,13
handed 112:6 113:22 239:17	104:16 106:24	holding 108:13	I'd 12:24 24:16 47:21
handful 50:4	107:4 135:11	hour 38:10	50:21 67:9,25
	190:18	hours 10:17 92:7	90:16 91:8 97:17
happen 81:16	heating 1:6 6:4 123:3	189:7,10 190:23	99:22 128:24 153:8 162:5 256:12
183:5,11 184:8	held 5:12	255:2	
happened 256:8	Hello 256:4	House 85:22 87:3	idea 114:14 165:1 245:4
happens 143:2 184:6	help 18:21 27:17	HTML	
199:2	30:20 41:5 68:4	169:11,14,20,24	identification 4:1
happy 24:13 142:3	90:20 105:15,22,23	171:12 174:22	64:24 88:9 97:24 209:16 219:11
188:16 207:17	107:8 113:15	175:6,7 176:2,22	234:18 235:3
237:14	163:25 170:18	177:2 208:21	256:16
hard 43:14 77:3	222:25 238:23	212:10	
87:12 88:18 106:2	239:14,25	217:3,11,13,17	identified 91:11,20 247:16
108:10 116:19	helped 107:1 141:7	218:9,17 225:2,22 231:14	
131:8 150:25	helpful 31:25 91:2		identifies 247:24
184:14	103:24 105:10	human 13:2,3 150:23	248:19 249:4
hardest 102:1	106:15	172:18 212:5 237:1 239:14	identify 5:21 249:6
harm 71:1	helping 62:22		IDPF 30:17
hassled 152:8	63:12,23 64:18	Hundreds 115:9	ignorance 153:17
HathiTrust 39:8,10	helps 29:18 105:14	hypothetical 52:13,25 53:10	I'll 6:11 7:19,20,25
82:3,23 83:7 85:12	hereby 261:3	52:13,25 53:10 61:8 71:19 77:15	8:17 19:9 22:24
H-A-T-H-I-T-R-U-	herein 261:5	81:18 100:16 101:6	33:8 38:17 58:3
S-T 39:8		106:18 109:17	60:20 82:16 98:2
haven't 46:25 60:24	he's 142:14,19 143:1	113:6,13 114:20	140:12 153:14 169:1 172:12 175:3
90:6 92:7 198:22	200:20 257:11	127:7 128:21	199:10 204:15
208:25 238:6	hidden 166:2	129:16,24 131:17	209:2 231:1 234:21
242:22	hierarchy 129:25	132:6 152:18	
having 7:2 67:11	177:24	154:10 160:2 170:1	illegal 67:4,6
		171:11 172:13	

illegible 164:22	241:4	104:19,20,21	incorporate 30:10
I'm 5:9 6:11 7:22 8:1	image-based 163:18	inaccessible 100:21	117.21
9:6,25	164:24 166:17,21	111:3 153:12 154:5	Incorporated 6:5
24:3,4,8,12,13	186:24 193:18	166:24 239:13	21:6
25:3,5 27:20	194:6	inaccurate 207:13	incorrect 72:12
28:7,18,19 29:16	257:13,14,16,22	225:4	incredibly 154:7
30:17 31:3,16	258:2,22 259:5	inappropriate 61:11	· I
32:9,18 33:5,19,21	imaged-based		incur 64:2
34:4,10,20,23,24	193:1,5	Inc 1:5,10 2:18 6:7,9	independent 59:13
35:8,18,19 37:21 38:19,25 40:1	images 186:5,8,11	13:19 19:24	independently
45:22,23 47:16	218:12	20:1,20	121:5,25 161:12
50:14,20 53:2 57:8	imaginable 100:9	inch 194:19	index 11:5
59:17 60:17	<u> </u>	include 110:23	
61:2,14,21 64:21	imagine 88:16 100:5	included 99:21	indicate 9:9 101:25
67:19 69:13 70:13	157:15 185:19	125:24 126:10,15	164:14
73:2 74:12 77:2	188:25	171:5	indicated 10:18 12:1
87:9 91:22 92:6,13	immediately 19:22		55:22 99:10 101:16
95:21 97:2,20	257:3	includes 33:9 50:6	124:23 130:14
98:20 104:14 106:2	impact 8:24 67:11	including 78:17 86:1	132:20 180:3
116:17,21 123:24	103:20	103:15 122:17	185:23
125:18 128:11,13	impaired 16:7 17:15	142:23 245:3	indicating 79:24
131:8,18 132:14	85:19 87:9,22	incomplete 52:12,24	indication 81:7 160:6
135:10,19 136:1	88:9,14 165:13	53:10 61:8 77:14	
137:10,23 140:24	213:16 218:16	81:17 100:16 101:5	indicative 127:12
142:2,7 144:24	221:13 222:3	106:17 109:16	indicator 194:13
146:5,17 147:11	224:14,22	113:5,12 114:19	indicators 194:5
151:24 153:16	· ·	127:6 128:20	
157:23 159:14,20	impairment 109:12 132:22 134:13	129:15,23 131:16	individual 16:24
167:14 172:21		132:5 152:17 160:1	76:18 80:11 86:8
178:24 185:1	impairments 16:17	169:25 171:10	122:22 127:19
187:25 191:14,23	87:21 109:14	172:13 173:6	129:2,11 131:4
192:4,6,23 200:1	167:11	174:1,9 176:7	252:25 253:24
201:23 203:2 207:5,6,7,8,17	implement 31:22	183:8,20	individuals 78:17
208:4 217:22 219:8	57:20 75:23 163:12	184:2,10,23	industry 17:12
208.4 217.22 219.8 221:24,25 228:22	implementing 218:1	185:7,17 194:14	41:9,23 45:14
231:9 233:21		196:10 197:20	46:1,11,13,18
237:14 238:9,25	importance 217:25	199:6 213:21 221:18 222:7,19	50:3,25 63:1,23
240:12,22 241:18	important 8:8	225:19 233:6	67:7,8 71:2 83:10
242:9,11,12	73:11,15	239:10 241:15	information 19:1
244:21,24 246:15	183:6,12,13 215:9	243:19 244:19	34:16 84:15 139:5
247:19 251:5,6	impossible	251:13 252:10	170:18 171:18
252:19,21 253:15	99:12,14,23,24	253:4 254:1	174:20 176:3,5
image 14:17 164:6	100:19 101:9,11		218:15 221:12
178:4,9 193:22	impression 73:3	incomprehensible	222:2 237:1,24
194:1,3 224:8	•	76:25 185:16	238:20,21,22,24
177.1,5 227.0	inability		

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 19

	1 ag		
239:6,13	interact 67:13,21	32:3,4,6 33:1,7	132:19,20 135:7
250:16,19,24	170:23	34:21 35:18	137:5,20 139:6
251:24 253:5	interest 14:15 44:25	82:3,22 83:8 85:4	148:22 149:15
informed 69:1 124:6	45:15 157:18	144:25 145:1 197:6	150:25 152:24
		involvement 41:15	154:7 164:16,24
infringed 96:13 99:6	interested 40:19		166:2 168:16
infringement 94:12	83:22 118:2 261:17	I-P 229:25	170:14 171:13,15
96:8 168:13,25	interests 34:22	iPad 16:11	172:12 173:23
initial 68:5 242:15	43:13,15 44:3,6	Island 62:4	175:1 179:17
initially 67:25	45:1,7 63:8 64:9	isn't 166:1 180:11	180:11 181:6,25
	66:8,13,18 67:3	237:25	182:13 183:1,2 184:14 187:8
injuries 36:22	69:11 70:16,21		189:18 191:6
injury 108:4,7	71:2,16	issue 40:20 41:7,9	192:17 193:21
132:23 134:13	interface	43:16 96:18 108:22 145:2 151:20 158:2	194:1,2,3,13
in-person 142:9	166:17,21,24	167:1 169:19	195:21,22 196:23
inquire 247:23	interfere 107:21	176:17 188:22	198:18 200:15
1 1	133:16	195:8 197:7	201:1 207:10,16
inquiring 253:25	interference 5:20	230:22,25 243:5	212:2 222:11,16
inserted 198:9	interferes 108:8	245:20,23 250:11	223:5,20 244:10
inside 194:17		254:15	249:15 259:11
inspect 193:20	International 1:4 29:21 30:14	issues 22:2,10,19,23	I've 39:1 42:21 48:7
inspection 176:25		23:9 25:9 42:3,8,21	51:4 92:6 95:24
_	Internet 41:8 115:13,23	43:18 56:16 70:9	104:16 121:2 155:8
instance 252:3	119:4,10,24 120:6	82:12 83:7,13	196:23 197:6
instead 91:3 100:20	149:13 150:3,7,16	94:15 154:8 181:19	207:5,6,7,8 226:8 231:4 234:21 244:5
194:6 199:15	151:3,6,12 214:13	237:15	254:10
214:11		it's 7:22 8:8 12:12	234.10
Institute 21:12	interpretation 45:13 76:9,15	15:12 17:4,15	
institution 22:16	,	18:19 19:6 21:19	jaggies 194:21,23
23:6	introduced 226:20	30:2,3,8 31:18	,
instruct 10:2 38:4	introduces 226:24	32:2,4 35:9 38:5 39:9 42:20 43:1	J-A-G-G-I-E-S
58:3 82:16 95:22	intrudes 68:17	44:2,3,12,19,25	194:23
97:2 215:4,12	invested 224:7	45:15 46:4,18 48:2	James 1:14 3:3
228:12 230:5		51:23 53:19 54:9	4:3,6,20 5:8 7:1,9
instructing 248:13	investigate 121:6 131:20,22,23,25	62:25 63:12 65:6	Jim 77:18 259:18
instrument 160:12	132:10 154:25	73:20 75:9 77:25	job 21:3 22:6 184:5
instruments 160:7	228:6 245:18	78:1,3,4 79:22 88:17 89:1 91:16	236:18 259:4
	investigated 138:14	94:12 97:6	Jordana 2:3 5:23
intake 210:13	investigation 141:15	98:16,25 100:9	JOSEPH 2:9
integrity 73:13 74:1,8,20	involve 26:1 33:4	101:17 103:1	journal 4:3 65:6
		108:10 111:19	Jr 7:9
intend 38:9	involved 25:19,20,23,25	119:22 121:21	
intents 100:21	27:12 28:20 31:18	124:20 126:3 127:23 128:4 130:2	jrubel@morganlewi
	27.12 20.20 31.10	127.23 120.4 130.2	

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 20

s.com 2:5	79:1 80:4,14	194.2 10 10 22	
		184:2,10,18,23	221:3
judgment 40:13	81:1,17 82:5,14	185:7,17 187:21	keywords 11:6,14,18
221:23 222:23	83:4 84:1,11	188:9,25	•
	85:2,15 86:12,24	189:6,12,17,22,24	kids 187:8
July 1:16 5:2,6	87:5,17 88:5,24	190:25 191:14	Kindle 30:7
jumping 25:1	89:9,18 91:6,13,16	194:14 195:13,16	kinds 103:11 149:1
justifications 81:6	94:5,16 95:5,7,21	196:10 197:2,20	170:13 181:4 242:4
jwetzel@kslaw.com	96:14,24 97:2,4,8	199:6 200:17	KING 2:8
2:11	98:12 100:1,15	201:10 202:12,23	
2.11	101:5,22 102:23	203:7,11 204:7,13	kmerk@kslaw.com
K	103:13 104:5 105:6,11,25 106:17	206:9,17,25 207:14 209:1 211:5,12	2:11
	107:18 108:16	212:12,25 213:21	knew 191:4
K-12 136:15	109:16 110:21	214:2,15 215:3,10	252:11,12,13
Kaplan 2:19 6:6,10	111:12,23 112:22	216:7,13,20	knowledge 17:22
9:25 10:10 14:7,10	113:5,12 114:1,19	218:10,20 219:1,16	121:22 130:17
17:10	115:1,15 116:8	220:3,22 221:17	169:4 239:2
22:3,11,20,24	117:3,18 118:11	222:7,18 223:12,18	known 21:12 85:21
23:10,20 24:7,24	119:5,11,15,19	224:16 225:6,19	91:22
25:10,16 26:17	120:11,18,25	226:7 227:4,11)1.22
27:2,18 28:14 29:4	121:11 122:4,24	228:11 230:3	
31:14 32:17 33:20	123:5,10,14,20	231:1,22 232:8,17	<u>L</u>
34:2,8,18 35:6,17,25	124:18,20 125:1,17	233:6,13,18 236:5	label 32:8 172:23
36:5,12,17,23	127:3,6,25	237:10,21 238:17	labeled 42:20 78:18
37:4,12,19 38:9	128:9,20	239:10,22 240:9	labels 171:16
39:16,24 40:14,22	129:5,15,23	241:2,15 242:2,10	lack 153:17
41:10,18,24 42:6	130:16,23 131:1,16	243:19 244:4,19,22	
43:10,19	132:5 133:6,25	245:10,25 246:9,21	lacks 27:2,18 29:4
44:1,17,22 45:8,21	135:24 136:4,23	247:6,11,15,22	31:15 39:17,25
46:24 47:6,20	137:13 138:12	248:11,17,22	40:14 41:10,24
48:5,12,25	139:15 140:2,17	249:2,16,21	43:10,19 47:7 50:18 51:2 60:20
49:6,17,24 50:18	141:5 142:13 143:8	250:7,13,20	61:7,20 63:9,21
51:2 52:12,23	144:8 145:16 146:3 147:9,18 149:14	251:12,21 252:9 253:3,13	64:12 66:19 71:4
53:9,22 54:6,16,24	150:11,19	253.5,15 254:1,8,23	76:7 77:1 79:1
55:10 56:3,12,14	151:14,23 152:17	254.1,8,25 255:1,6,11,14	81:2,18 84:2,11
57:5,14 58:1,16,23	153:1,24 155:6	257:7,19 258:25	86:12,24 87:5,18
59:6,16,23	156:1,17,25 157:9	259:18,24	88:24 127:4 128:21
60:5,15,20	158:13 159:2,17	,	158:13 159:3
61:7,19,25 63:9,20	160:13 163:2,17	karaoke-style 103:6	168:14 169:8
64:11 65:19 66:19	165:6 167:13,20	105:14	212:12
67:16,23	168:6,14,18	Katherine 2:8 6:3	language 54:9
68:11,15,25 69:16,21 70:3	169:1,8,25 171:10	Katie 227:22	8 8
71:4,10 72:4,9,20	172:2,5,12	Kelli 1:23 5:9 261:23	large 14:21 16:1,8
73:19 74:2,10,22	173:6,25 174:9		173:2 194:11,21
75:4,20 76:6,25	175:1 176:7,23	key 234:8	large-print 16:5
77:14,18 78:14,24	177:15,21 179:6,18	keyword 138:23	17:13,20 114:13
, , , , , , , , , , , , , , , , , , , ,	180:7 183:8,20		

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 21

I			
larger 16:6 17:2 111:5 162:23 163:1,11,13,19,25 165:4 229:5 largest 13:7 85:20 last 10:14 19:14 65:22 72:15 75:9 99:9 121:14 137:4 145:1 192:5 256:9 258:11 259:16 late 191:15 200:18 later 30:13 116:17 189:4 191:13 197:9 law 22:15,23 23:5,19 24:6,22 51:23 73:14 75:22 147:13 lawsuits 151:25 lawyer 21:24,25 22:12 24:12 14	37:5,13,20 39:2,4 42:25 52:13,24 53:9,22 54:6,17,24 57:6,7,15 58:2,16,19 60:6,16,22 61:8,19 70:12 73:2 76:6 94:6,17 96:15 101:7 120:19 121:1 128:9 145:17 149:21 168:7 legally 82:21 88:13 legible 182:21 length 19:9 53:14 172:9,16 174:5 212:1 lengths 24:11 53:18 75:14 less 10:17 30:17 44:8	149:24 150:3,8,17 151:4,7 224:1 levels 147:23,24 148:6 149:16 Lewis 1:20 2:3 5:12 libraries 23:23 26:12,14 27:6,10,16 35:9 79:8 83:17,18,24 85:4 library 13:8 22:13 48:17 57:21 70:14 85:18,19 86:1 130:9 259:4 license 1:24 78:4,5 145:13,19,22 146:2,14,16,19 160:23,25 161:3 licensed 78:3 146:17	118:23 126:5,6 130:6 134:11 230:8 242:13 257:5 listed 11:12 95:25 117:4 127:10 141:21 166:15 229:19 230:13 listen 221:2 233:25 lists 240:6,25 literary 52:16 53:8 54:22 litigation 38:24 90:9,14 91:21 95:3,18 99:6 120:17,24 167:1 little 16:9 30:13 32:1 38:2 49:12 90:18 112:16 131:9 137:10 206:18
22:12 24:12,14 57:8,20 58:7 59:8,11	84:17 92:8 122:11 126:1	licensing 25:9 31:17	LLP 1:20 2:3,14,19
lead 112:5 233:4 leading 22:13 23:22 29:23 30:17 48:17	134:15,17,18,19 135:17 136:20 137:1,16,21,24 163:18 259:11	Life 215:21 216:6,12 219:5 likelihood 185:5 likely 30:2,3 127:14	load 254:18 locate 116:19 165:17,25 located 12:12 143:3
leap 73:16 242:12 learning 36:11 41:3 85:20 86:20 102:18,20,24 103:14 104:9,14,24 105:4,24 106:13,25	let's 14:12 18:6 19:18 26:9 31:10 38:15 46:5 95:7 98:22 149:24 158:19 171:3,5,13 179:10 182:12 186:20 191:25 202:5	136:7 158:19 170:4 176:24 181:7 226:21 limit 248:1 limitation 108:7 limitations 213:12	161:16 238:25 LOCATION 1:20 locations 143:3 lock 178:1 logged 81:3
107:5,8,16 109:2 least 93:21 125:11 126:2 168:16 177:25 178:8 201:7 leave 187:15,17	203:11 207:5 210:15 220:25 248:3 252:11 letter 73:14 194:18 198:10 199:3,5	limited 36:4 37:9 182:14 line 3:12 104:20,21 181:12 189:19	logical 171:22 236:6 logo 182:24 long 10:15 13:15 20:7 38:12 114:23
left-hand 172:23 legal 5:10 21:22 22:1,9,19 23:8,20 24:1,8,12,16,25 25:4,5,10,17 27:19 31:14	letters 98:20 182:16 194:12 198:11,12,14 241:20 243:24 letting 43:8	256:22 257:2 line-by-line 242:14 Lingane 4:4 65:12 link 116:17 161:17 174:17	115:3 137:20 168:16 174:13,14 longer 14:18 174:4,15 215:22 longest 115:8 longstanding 197:5

lot 30:9 70:9 85:3	mandatory 147:8	matter 38:24	159:11,25
106:24 150:16	manner 167:17	39:2,4,7,12 135:7	measures 147:22
172:14 193:20 196:24 222:9	Manufacturers	154:19 190:19 192:7 227:23	mechanical 123:8
226:24	33:13	237:14	160:4
	manuscript		mechanism 46:1
loud 66:1 217:23	226:18,22	matters 24:13 25:6	79:11 110:10,13
low 102:14 110:25	, and the second	Matthew 2:20 6:8	167:9 178:3 223:11
133:18,21 134:15	march 223:25	maximum 32:11	
165:9	mark 38:10 64:21		mechanisms 44:8
low-vision 102:3,4	97:21 219:8	may 7:21 15:1 44:14 52:8 88:2 89:2	45:6,11,12 46:21 47:4,15 48:3,22
163:7 229:11	marked 64:23 65:3	90:24 109:13	50:7 51:1,9 79:3
lunch 138:2,5 188:18	68:21 97:23 209:15	116:20 132:11	80:17 113:17
1unch 138.2,3 188.18	219:10	134:5 145:2 153:21	177:23 210:13,14
	234:16,17,25 235:2	186:1 187:8 196:7	
M	256:16	225:16 226:12	media 45:23 46:7,18
Mac 16:12	Marketing 20:6,10		47:13,18
machine 261:8	g ,	maybe 21:3 94:22	medical 37:21 109:8
machining 160:5	marking 256:13	140:12 183:3 199:9,10 252:19	medications 8:23
machinists 159:6	markup 224:9	,	meet 52:4,10 53:6
	Mary 98:10 166:11	MD 37:21	54:21 110:3 122:16
Magnesium-Alloy	mash 181:7	mean 9:7 14:1 29:24	148:2 192:8
155:16,20		31:20 32:3 34:23	meeting 17:14 89:23
magnification	mashing 182:10,19	42:23 66:16 68:11	147:11
164:23	master's 21:18,21	72:18,24 73:18,25	
magnifier 163:10,21	material 31:24 32:7	100:4 109:18	meets 259:3
magnifying 102:5	43:9,15 55:9,16	141:17 146:20	member 27:5,10,16
134:4 194:18	96:4 100:13,25	148:14 149:17	28:24,25 35:3
	101:18,25 103:21	152:9 182:10,23	129:8 167:24
main 144:4	104:2,21 111:4,16	189:6 194:16	members 26:20
mainstream 50:5	157:12 167:12	195:15 243:17	28:10,16,17 30:17
maintain 11:20	168:10,12,20,24	246:23 255:7 257:5	34:21 145:7,9
194:12 254:20	217:7,10,13,16,21,	meaning 32:19	158:3
	23,25 218:3,5,8	183:11	
maintaining 70:25	220:14,17,21 221:8	meaningful	membership
major 31:5 45:24	materials 1:3 5:24	187:13,25	28:2,4,16,21
46:18 47:19 50:4	14:3 37:10 39:18	, and the second	33:10,17,22 34:17
63:24 79:8 80:1	46:9 50:9 53:20	means 32:22 166:5	78:15
152:9	54:10 75:15,19	187:24 249:19	mention 66:13
majority 28:20 107:7	76:3,22 77:8 78:12	meant 38:3 206:15	107:11 146:7
133:3,10,13	80:9 86:9,23	207:18,21	mentioned 26:5
134:8,23 187:5	102:16,21 157:14	measure 115:7	29:1,18 30:21
, and the second	158:24	160:11	32:15 33:16 35:2
Malamud 11:17		measurement 158:24	41:14 42:18 54:13
60:2,10 89:22	math 134:23	159:7 160:4,13	58:5 65:10 82:2
90:3,10 214:5	Matt 190:2	, i	90:24 92:10 96:7
		measurements	

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 23

	1 ag		
103:25 105:22	mild 135:8,12	153:1 167:20	73:3 87:8
106:8 110:24	mils 160:6	195:16 202:24	national 1:4 6:1
113:14,21 127:5,8		206:9 211:5 212:25	82:19 85:16,18,23
134:3 209:8 242:17	mind 55:5 70:18	224:16 231:22	88:22
mentions 140:21	152:4	232:8	nationally 91:22
257:4	minimize 6:11	misstating 136:5	·
Merk 2:8 3:8 6:3	minority 152:21	mistakes 181:4	nature 24:9
7:21 227:8,20,22	minute 118:15	modern 199:23	navigate 161:14
228:15 230:11	minutes 38:14,16,20	200:1,6	220:25 229:1
231:6 232:1,13,20	116:15 161:3	moment 23:4 31:4	navigating 116:19
233:9,15,20 234:20	188:16 227:12	154:3	234:7
235:5 236:7 237:17	245:11		necessarily 104:23
238:8 239:3,18 240:1,11,15	mirror 14:21	more-than-10-year- ago 199:17	necessary 23:6 176:5
240:1,11,13	mischaracterizes		189:9 191:7 203:6
243:3 244:1,13	118:11	Morgan 1:20 2:3	negative 248:12
245:17 246:4,11		5:12	<u> </u>
247:1,8,13,18	misleading 48:25 74:23 101:23 125:2	morning 5:5 6:14 7:7	negotiations 62:20
248:8,13,21,23	156:1 179:6 202:23	10:19 190:2,3,18	neither 261:16
249:14,17	206:10 207:14	192:12	NF 125:16
250:2,8,15,22	216:20 233:13	motivations 70:7	NFPA 2:13 4:10
251:16,23 252:18 253:7,17	242:2 257:20	motor 108:3	93:6,11,15
254:6,12,25	258:25	Mountain 2:20	98:6,16,18 118:21
255:4,9	misread 98:14	mouse 180:15	125:11,23
met 89:22 90:3,5,6	mis-recognized		126:10,14,18
	242:17	move 191:25	127:1,20,24 128:5,17
metadata 26:3 30:22 31:7,8,13 125:14	misrecognizes 182:2	movement 13:3	129:3,12,22 130:11
218:12	missed 225:25	moving 70:11	142:8 151:16
metal 155:13,14,22		MP3 18:15,17	192:6,25 197:10
160:10,11	missing 198:13 225:4	multimedia 170:16	202:3 205:7,21
<u> </u>	mission 2:15 12:15	multiple 79:2 149:16	208:2,6,10,16,24
method 17:23 155:25 158:23 186:3	52:6 55:4 59:15	157:15 162:6 169:9	209:9,21 214:19,22
231:20	61:18	170:13	215:18 216:16,22 218:17 219:5,20
	missions 52:8 55:25	Munger 2:14 5:25	218.17 219.3,20 221:14 222:4 227:1
methods 79:6,21 80:12 155:18	57:25 58:14	S	231:19
	misstates 22:20 35:7	myself 23:13,24	NFPA's 128:7 143:7
Microphones 5:18	49:17 54:16 56:3	24:16 25:5 251:6	246:6
Microsoft 16:2 19:4	72:4,9 74:22 80:14	N	NLS 85:20
170:5 178:13	82:5 87:17 88:6 100:15 101:22	narrating 18:16	86:7,15,17
181:10 194:4,8 197:11 212:18	100.13 101.22	_	r r
232:25	112:22 114:2 116:8	narrow 154:2,7	nobody 124:10 141:7
	120:11 125:1	narrowly 37:15	nodding 8:10
middle 181:9 198:14	133:6,25 135:24	66:10 72:16,19	Nods 250:7
	136:23 140:2 146:3		

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 24

	1 ag		1
nondisabled 84:20	95:21 124:18 136:4	113:5,12 114:1,19	237:10,21 238:17
101:10	172:3,13 187:21	115:1,15 116:8	239:10,22 241:2,15
none 157:20	230:3 231:1 243:19	117:3,18 118:11	242:2,10 244:4,19
	objected 88:19	119:5,11	245:25 246:9
nonlegal 57:12	ŭ	120:11,18,25	247:6,11 248:2
nonprofit 12:12,14	objecting 70:10	121:11 122:4,24	249:21 250:13,20
13:16,18 26:20	objection 14:7 17:10	123:5,10,14,20	251:12,21 252:9
52:5 54:14 55:3	22:3,11,20	125:1 127:3,25	253:3 254:1,8
61:15 75:12 86:2	23:10,20 24:7,24	128:9,20	257:19 258:25
142:15	25:10,16 26:17	129:5,15,23	objectionable 248:2
nonprofits 12:19	27:2,18 28:14 29:4	130:16,23 131:16	objections 36:5 74:22
non-text 151:11,21	31:14 32:17 33:20	132:5 133:6,25	169:2
· ·	34:2,8,18	136:23 137:13	
Nope 123:15	35:6,17,25	138:12 139:15	objective 148:25
nor 261:17	36:12,17,23	140:2,17 141:5	obligated 88:13
normal 178:10 181:8	37:4,12,19	142:13 143:8 144:8 145:16 146:3	190:25
195:10	39:16,24 40:14,22		obtain 80:20 114:7
	41:10,24 42:6	147:9,18 149:14 150:11,19	176:5
normally 223:2	43:10,19 44:1,22 45:8,21 46:24	151:14,23 152:17	
notations 154:16	47:6,20 48:5,12,25	153:1,24 155:6	obtained 179:4 225:1
note 5:16	49:6,17,24 50:18	156:1,17,25 157:9	226:5 227:2
	51:2 52:12,23	158:13 159:2 160:1	obvious 252:15
notebooks 11:20,21	53:9,22 54:6,16,24	163:4 164:2 165:6	obviously 166:22
noted 51:4 118:21	55:10 56:3,12	167:13,20 168:6,14	187:21 226:14
260:3	57:5,14 58:1,16,23	169:8,25 171:10	occasion 90:12,13
notes 126:21	59:6,16,23 60:5,15	173:6,25 174:9	93:3 200:4
nothing 161:8 192:12	61:7,19,25 63:9,20	176:7,23 177:15,21	
194:5	64:11 65:19	179:6 180:7	occasionally 182:3
	67:16,23 68:25	183:8,20	occur 180:18 202:20
notice 34:7	70:3 71:4,10,17	184:2,10,18,23	203:5 204:11
55:12,14,15	72:4,9,20 73:19	185:7,17 194:14	occurred 203:2
168:11,22 183:1	74:2,10 75:4,20	195:13,16 196:10	226:21
217:6	76:6,25 77:14	197:2,20 199:6	occurs 226:16
noticed 177:9 242:15	78:14,24 80:4,14	201:10 202:12,23	
notices 55:8	81:1,17 82:5,14	203:7 204:13	OCR 4:17 100:7
NPFA 98:16	83:4 84:1,11	206:9,17,25 207:14	181:3,4,7,17,20,23,
179:16,23 214:22	85:2,15 86:12,24	211:5,12 212:12,25	24 182:2,13,25
, and the second	87:5,17 88:5,24	213:21 214:2,15	183:7,10
NW 2:4	89:9,18 91:6,13	215:3,10	184:5,14,22,25
	94:5,16 95:5	216:7,13,20	185:2,21
0	96:14,24 100:1,15	218:10,20 220:22	186:7,11,13,16,24 194:19 199:4
o0o 5:3 7:3	101:5,22 102:23	221:17 222:7,18 223:12,18,19	200:12,14,24
oath 192:10 256:6	103:13 104:5	223:12,18,19 224:16 225:6,19	200.12,14,24 201:8,18 211:25
261:7	105:6,11,25 106:17 107:2,18 108:16	224.16 223.6,19 226:7 227:4 228:11	223:7,11,16,22,23
	107.2,18 108.10	231:22 232:8,17	225:10,17,25
object 9:25 60:20	111:12,23 112:22	231.22 232.8,17	226:9,15,24
	111.12,43 114.44	233.0,13,10 230.3	220.7,13,2 T

232:16,24 233:4	253:15 255:1	opportunity 98:2	originated 225:3
236:18 241:5,10,23	259:16	opposed 8:9 26:22	others 20:13 34:13
242:3,18 243:22	Olson 2:14 6:1	143:2 154:2 156:3	105:15 117:19
244:5,10,12 245:3	ones 45:13 52:9 55:5	158:20 165:11	259:12
256:22 257:1	97:13 105:10,22	166:3 194:18	otherwise 148:16
offer 249:18,24	107:15 117:4 181:5	optical 14:16 20:2	157:6 186:25
offered 117:12 206:8	198:12	181:1 186:4 198:7	ours 29:16
252:8 253:1,21	online 37:10 110:18	199:18 200:10	
offering 170:22	112:4 186:14	226:1 232:15	ourselves 109:25
offers 245:19	203:21 204:17	optimize 170:3	outlined 92:1 97:9 98:7 110:14 149:19
office 2:20 143:2	open 31:18 32:2,4	option 14:13 162:22	220:24 234:22
Officer 20:12 22:5	80:23 145:2 187:17	163:1 200:24	outlines 94:8
27:13 261:1	201:4 254:15,24	205:10 206:5	
Oh 152:7 181:25	opened 200:23	229:4,7	outside 132:7 203:2
219:17 235:13	232:3,10	options 103:16,17,23	228:17 249:9
254:13	openly 32:10	114:18 163:24	overall 83:15
okay 7:15 8:11,16	operate 22:15	205:6,17 206:12,15,16	overbroad 241:19
9:14 10:24 11:25	23:6,12,22,23,25	207:22	overkill 148:23
14:8 15:22	74:19 86:5 99:25 111:2	order 1:25 54:21	overlays 184:13
19:10,17 26:8		68:4 99:1 125:20	oversee 25:19
30:11 38:7,15 40:4 41:18 51:15 56:16	operates 53:24 54:14 61:13 86:2 149:21	145:3 160:20	Overview 204:21
62:10 68:12,13,19		171:22 237:19	
69:4 70:20 72:9,14	operating 73:12,25	238:15	owner 100:11 101:1
74:17,24 77:7	74:8,19 171:17	O'Reilley 45:22 46:7	ownership 31:17
79:20 88:21 91:18	operation 74:4 170:8	47:13,18,22	owns 27:21
95:8 96:25 97:3,6,9	operations 75:24	organization 23:15	
106:7 107:10	opinion 39:23 44:2	25:18,22 28:6 29:7	P
116:24 119:17	57:12 60:16,18	31:7 48:14 53:12	p.m 245:16 260:3
124:20 125:21	61:4 112:18 132:21	74:3,14 87:21	_
127:8 132:12,13,16	161:10 202:18	89:24 109:24	page 3:4,12 4:2,8 14:15,18 65:22,23
136:1,6 146:5,11	203:9	142:15 144:18	70:1 73:6,8 75:8,9
155:21 171:4	205:8,14,18,21,24	213:8 222:12	81:21 98:7 99:8,9
172:14 175:1,3	206:2,7	organizations 22:7	101:17 108:4
179:10,20,22	208:9,13,15,23	29:12,17 33:15	121:14 132:17,20
189:21,22 191:24	218:14 221:10	62:22 73:11,22	146:9 149:5 156:14
192:23 195:19	223:6,9,15 225:25	74:19 77:4	161:24
199:17 200:15,21	234:2 237:13 238:2	85:13,17,25 86:3,4	162:10,13,15,18,21
201:12,15,20	239:19 249:18,24	91:1 97:12 251:15	164:9 166:2,3,5
203:13 220:2	258:23	organization's 41:15	170:12,19,21 171:6
227:13 234:19	opinions 67:9 204:22	<u> </u>	181:6 183:3
235:4,16,18 237:9 238:11 240:4,18,22	247:25 252:7	original 223:24	186:5,21 192:24
243:6,8,11 246:16	253:1,21	224:13 226:17,21	203:15 204:20
248:5 249:16 250:6	,	227:1 261:13	209:19 210:3
2 10.3 277.10 230.0			
	(966) 110	R _ DEPO	

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 26

	1 46		
215:16 220:15	171:19 172:21	236:3 240:4 241:3	101:3,10,11,17,21
234:3	173:2 181:17	257:22 258:22	102:1,4,7,10,14,18,
235:7,10,11,12,19,	185:4,13 199:3,21	259:5	19,21,24
22,24 236:8,10	222:13,15 229:13		103:2,3,9,12,14,22
240:2,3,13,14,19,2	251:15	PDFs 177:1 185:25	105:2,3,14,23
1 241:3,4 242:3		197:1 205:20,23	105.2,3,14,23
243:7	particularly 164:5	206:1,8 207:8,10	100.13,22,23,23
	169:10 178:9	208:15,19,24	
pages 1:11 4:10,13	parties 5:17	212:10 246:6	7,20 108:9,11,21,24
115:7,9 156:13	•	257:14,16,17 258:2	
187:14 192:21	partner 209:25	peers 24:13	109:3,5,7,25 110:1,23,25
215:20,25 216:3	partners 127:11		
219:9,15,19 234:13	party 261:18	pen 11:20	111:6,10 122:9,19 123:25 124:22
236:14,17 240:17		pending 57:2 95:17	
241:4 254:16	passed 62:7 70:6,14	259:15,19	125:4,6,9 132:21
paid 207:6,9 246:6	213:19	Pennsylvania 2:4	133:3,10,13,18,21
	past 199:14	·	134:2,8,11,14,25
paired 244:8	paste 179:13 194:4,8	people 12:25	135:5,8,11,12,13,1
Palo 1:20,21 5:2,13	197:11,17,25 199:4	13:9,10,23	5 137:3,20
12:13 136:18	232:25	15:15,21 16:8,9	139:5,7,10,19
palsy 108:2		17:4,8,15 18:24,25	140:7,9 145:6,7
• •	pasted 198:16 220:9	24:12 25:20	148:23 149:17
paper 11:19,23 15:11	pasting 178:13	27:4,11 28:20	152:2,5,12,14,20,2
paperwork 70:12		30:25 31:23 34:21	3 153:8 154:7
78:22	patterns 177:8	36:11,16,21	157:12,14,16,22
namagmanh 65:22	pay 28:16,17 35:12	37:2,10,23 40:21	160:8 163:3,7,12
paragraph 65:22 66:12 69:5 70:7	145:3,7,9	41:5,8,21 42:4,15	165:8,11,13,21
99:9 121:15 182:13	paying 28:12	43:7,13,16,23	167:10,18,23 168:4
1		44:15 45:14	170:4 174:24
235:25 258:12	payment 117:9	48:18,23 49:9	175:8,13 177:20
paragraphs 185:11	pays 28:6 35:3	50:2,8,9,17	186:7 206:23
parent 76:13	PC 16:12 191:18	52:6,17,21	207:11 223:2
*		53:15,21	224:14 229:11
parents 106:23	PDF 4:10,14 169:11	54:1,10,22 55:4,18	245:7 250:12
parse 74:12	176:14,18,21	56:1,9 57:3,8,18,25	people/citizens
parsing 106:3 131:8	177:2,6,12,19,23	58:14 59:15 61:18	205:11 206:6
•	178:17 180:1,5	63:13,23 64:13	per 28:13 35:3 71:18
participants 26:16	186:2,12,24	66:6,17 67:14,22	per 28:13 33:3 /1:18 194:19
28:10 145:3	193:1,5,6,17,18,20,	68:5 69:10	-, .,-,
participate	21 194:6,11,13	71:1,18,24 72:2	perceivable 149:18
144:6,17,22 145:4	195:3,8 197:17,25	73:21	percent 32:9,10 53:3
<u> </u>	201:4	76:4,11,16,24	122:11,15,17
participated 34:14 63:2 144:10,20	202:3,8,11,21	77:9,12	134:19
ĺ	204:5 207:3,9	78:3,11,16,18 79:3	135:15,18,20
participation 35:4	212:21 216:17	80:1 82:12	136:7,11,17,21
particular 16:4 31:8	219:4,19,24 221:14	83:13,21,25 84:5,8	137:12,15,17,24
35:20 45:9 78:9	222:4 223:7 226:5	85:6 87:11 88:3	
156:20 158:2	231:11,21 232:3	91:9 99:15,17,25	percentage 122:9,12
150.20 150.2	234:14,23 235:9,15		135:5,14 136:14
	(966) 119		

150:7	170:14,18,20,22	piece 50:13 160:11	plastic 15:16
percentages 47:10	172:25 177:14,24 180:4,19 187:4	pieces 160:10	play 30:17
perfect 244:6	193:9 222:20,25	pins 15:16	players 111:1
perfection 223:2	236:20 238:22,23	piracy 42:19	please 5:16,21 7:7
perform 139:14	239:7,24 243:16	pixelated 193:25	8:13 30:19 34:11
158:10 159:24	245:1 251:11,18 252:4,23	places 19:22 55:8	66:1 77:21 104:18 227:25 228:1
233:11 234:6	, and the second	147:11 222:12	232:21 235:10
237:19 238:15	personal 110:18 121:22 157:18,24	Plaintiff 2:2,7,13 6:1	236:8 240:2 248:22
performed 237:7		83:1	258:13
250:4	personally 122:5 123:24 124:10	Plaintiffs 1:7 5:11	plugs 193:12
Perhaps 128:2	156:20 157:3,23	6:13 11:16 12:4	plus 97:12 98:25
period 144:16	158:1,15	35:15 64:23 90:25	164:13 170:15
periodicals 13:12	persons 115:13	94:3 96:12	point 17:14 20:25
periods 11:21	208:11,17 210:10	97:11,23 99:5 111:9 112:11,19	30:4 66:21 67:19
permission 62:23	211:20 224:22	113:25 114:25	89:23 181:9 188:1
70:11	person's 105:13	115:11	220:25 226:23
permissions 62:25	109:19 244:15	117:1,12,17,21	policies 33:22
64:1,6	pertains 261:12	120:2,5 121:8	policy 250:10
permitted 52:20 53:7	Phoenix 20:20	124:2,8,12,15,24 130:13,22	pop 15:15,19
81:8 247:22	phrase 32:22 182:9	131:4,6,13,23	population 122:12
person 14:12,20,25	235:25	132:1 133:1,12,24	134:16 135:15,21
15:17 16:25 18:17	physical 37:2 107:20	138:10 139:13	136:7,11
19:3 64:16,18	108:1,7,11 109:3	140:15 141:11 143:22 151:19	137:2,5,12,18,21
78:7,8 79:13,24 80:19,23 84:24	132:23 134:13	167:17 168:4	139:12
86:21 93:11	Physically 85:19	169:7,13 174:23	populations 136:15
100:5,22 102:3,15	physician 110:2	175:12,25 177:11	portion 134:25
103:21 104:3 108:4	physics 21:13,20	179:2,11 180:5	140:25 162:4,5 215:18 236:3 246:8
109:15 110:15,17	pick 5:19 17:13 45:9	182:5 184:16,22	213.18 230.3 240.8 248:5
112:12 113:2,9,22,24	171:22	189:18 202:11,19 203:23 204:4,6	portions 133:1,15,23
114:4,5,7	Picking 160:3	205:17 206:8	• , ,
115:12,22 122:2,6	picture 14:15	207:11,23	position 20:4,21 21:4 47:9
127:16 130:7,20	100:6,20,25	208:6,11,16 209:15	positions 20:9
138:20 139:23,25	166:3,4 173:15	219:10 224:12,20 231:17 234:17	•
140:6,14 141:12,20 143:13	183:4 184:14	235:2 250:10	possibility 153:20 204:12
156:15,20,23	194:18 198:9	251:9,19 256:15	
157:3,6	199:15 236:24 237:1	258:3,5 259:22	possible 17:4 18:19 32:13 42:14 79:22
158:2,5,10,18,25		Plaintiff's 176:12	91:21 100:10,12
159:10,24 160:10	pictures 170:16 186:15 198:13	PLAINTIFFS 4:2	102:2 113:2,21
161:11,14 162:12,17 165:1	pie 174:16	planet 150:24	126:23 127:23
102.12,17 100.1	pic 1/7.10	ринест 150.2 т	128:4 159:8,15

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 28

	1 46		
170:21 206:22	251:10	82:13 83:2,13,25	121:21 141:6
post 214:13 259:5	presenting 33:1	84:9,25 85:6 86:22	146:4,13 155:7
*	100:25 166:17,21	89:7 99:16,25	202:13,15,25
posted 117:16,22	170:10	100:13 101:3	203:11 215:4,11
119:3,9 120:5		104:10,25	228:12 230:4 231:2
143:22 168:11,21	presents 100:20	107:13,21	246:20
169:14,19	President	109:6,9,21,24	247:10,12,14
posts 46:14 149:12	20:6,10,11,15,22	115:14 122:13,19	248:12 250:21
150:2	press 83:10 85:23	124:9,13,25 129:3	pro 92:7,11,12
post-secondary 67:9	88:22 89:4 193:6	130:13,15,20	probable 128:24
70:22	195:20	131:5,15	•
potential 91:12	pressed 15:11	132:3,4,21 133:11	probably 28:3 42:21
*	•	135:22 136:12	53:2 85:24 89:22
potentially 134:19	pressure 70:16	139:24,25 140:14	91:7,15
207:13	presumes 221:19	152:15,24 153:22	93:10,11,15,16
practical 17:16	pretty 7:22 72:21	156:24	94:22 118:25
practice 27:13 50:24	111:5 165:7 182:14	157:3,7,12,14	128:12 129:19
51:6 100:2	194:13 241:23	158:6 163:3 165:21	137:1,19,20,21
	245:4	167:11,18 168:5	139:9 153:18 155:2
practitioner 22:13		205:11 206:6,23 207:4,12 208:11,17	160:22 164:6,16,23
precise 47:10,17 52:3	prevent 44:20,24	·	171:14,20,21 172:24 180:4
122:14 125:10	152:14	print-disabled 78:19	
134:18,20 135:3	preventing 191:4	102:10 125:6,9	181:25 182:1,14 187:3 191:22
158:24 159:25	previously 82:4	127:16	198:21 200:12
precisely 28:8 115:7	83:20 226:8	printed 14:11 114:7	202:7 216:4 226:20
234:22		printer 15:9,12	257:21 259:13
precision 160:4	pricing 28:19	•	
*	primarily 28:1 89:2	printing 17:20 85:22	problem 38:20
predecessor 13:16,18	90:13 136:14 186:8	87:3	108:13 109:8 142:4
predicate 221:19	259:4	printout 4:8 209:18	161:6 188:22 189:1
prefer 68:3 134:5	primary 11:18 12:25	prior 6:14 10:8,20	196:4 198:19,22 200:11 209:6
190:20 212:16	13:22 15:7 18:21	20:16 59:20 62:22	
	43:14,18 50:1	70:7 89:14,15	problems 102:25
preferred 212:20	52:6,7 55:2,4,25	92:24 93:5,24	104:16,18 111:13
preparation 12:1,7	57:24 58:14 59:15	257:3 258:20 261:6	141:14,18 184:22
119:23 126:16	61:17 84:16 109:7	prioritize 34:1	191:23 236:16
prepare 9:18	110:10,12 144:2	-	241:8
* *	print 13:2,6 14:21,25	priority 130:1	proceed 228:4
prepared 191:2 228:4	16:1,4,8,13,14 17:8	private 5:19 21:9	proceedings
	19:1 37:10 41:8,21	privilege 56:16 95:6	261:4,6,8,14
present 2:24 13:7	42:5,15 43:7 48:23	248:3,10 249:5,10	process 7:16 15:23
157:23 232:23	50:17 52:17	, , , , , , , , , , , , , , , , , , ,	18:12,13 26:16
presentation	53:15,21 54:22	privileged 10:1 23:1 58:4 59:7 68:17	30:4 32:25 33:1,6
103:6,16,23	55:18 64:14,17	82:15,18 83:5	34:22 35:14 58:25
presented 166:23	72:3 76:5,11,24	94:18 95:23 97:4	71:23 85:5 88:8
Presented 100.23	77:10,13 78:23	119:15,19,22	98:5 108:8 116:11
		117.13,17,22	70.5 100.0 110.11

		ı	
142:2 143:11	professionally 153:8	protecting 66:7,17	provisionally 125:19
144:7,17,20,23,24	professionals 109:25	69:11	provisions 31:17
145:4 151:16	221:22,24 222:10	protection 1:4 6:1	52:14 55:17 72:22
177:10,18 180:4	professions 124:1	44:7 45:11,25	73:23 159:9
183:12 185:24	_	46:21 47:4,14	proviso 88:15
186:17 211:23	program 4:18 11:5	48:3,22 50:7,25	-
213:19 226:24	18:19 112:5 193:11	51:9 122:23 178:2	public 4:11 5:15
232:24 235:1	194:17 232:6	protections 45:19	11:17 42:17
253:10	234:24	46:8 49:15,23	49:15,23 50:2,16
processes 19:12	programs 16:20	50:16	60:3,12,18 61:13
33:4,5 35:21 181:1	18:21 19:8		76:23 77:11,25
processing 4:18	progress 49:8	protective 1:25	81:12 90:21
232:6,15 234:24	1 0	125:19	94:4,24 95:4,19
<u> </u>	progressively 17:1	prove 87:11	96:12 99:5 117:17
processor 186:10	prohibit 50:7	provide 7:23 29:13	118:10,22 132:25
produce 17:16	project 13:7 21:9	42:19 51:24 54:21	139:21 143:22
114:10,12 126:9	203:4	57:7 60:16 66:6	154:13
130:4,7		69:9 77:24 79:3	167:3,6,7,9,16,23,2
produced 6:13	projects 29:8	80:2,7 85:13 86:8	5 168:3,10,21
10:19,22,23 187:15	promote 92:14	88:15 89:2,3 101:1	169:6,14,19 174:23
226:1 257:6	promulgated 144:3	151:21 158:7 169:7	175:7,13
		251:19	176:1,12,13,18
produces 17:12	pronounced 39:10		177:12 179:4,12
producing 187:22	proof 79:3,7,10,15	provided 11:22	180:1 214:14
product 13:22 44:8	80:2,11,24	39:3,5,19 52:11	216:18 217:4,11
64:15 65:17 153:5	81:9,15,20 86:8,18	71:14 73:16	218:9,18
186:8 195:23	88:11,16	76:4,10 81:9,20	219:6,20,24 221:14
198:7,15 199:17	proofread 211:10	131:7 163:24	222:4,17 225:1 226:6 227:3 249:19
200:2,5,10,12	213:17 223:23	205:6,17 207:22	257:18 258:9,22
201:5,9 202:1	226:15	246:13 247:3,21	,
207:9		252:6,24	Public.Resource.Org
	proofreading 127:11	253:6,19,23 254:18,22 255:9	1:10 2:18 6:7,9
production 30:4	210:24	,	89:17 118:3 203:20
products 23:14	propagate 241:13	providers 42:4,9,14	205:5,8 206:4
142:22,24	proportion 137:15	67:10	207:24 216:24
155:13,14,17,20,23		provides 13:9 29:7	225:23 231:8
199:24 200:6	proposed 31:8 62:5	77:23 165:4 174:23	245:19,24 246:2
201:13 207:6	235:21	205:9 206:5	257:22
profession 218:23	proposing 32:6	providing 42:9 43:6	Public.Resource.Org
professional 80:6	proprietary 30:9	66:16 67:14,22	's 4:15 205:16
109:19 123:24		70:11,25 75:13	216:23 234:15
129:22 157:18	prospect 41:6	77:9 79:16	publication 65:16
201:22	protect 63:7 73:14	87:10,15 88:23	publications 46:2
218:16,19,21	100:11 101:1	151:10 168:3	47:15
221:13,16 222:6,23	protected 128:8	174:19 250:10	
234:2	153:21	provision 58:9	published 4:4 167:16
		Provision 50.7	

	pushing 164:18,20	questioning 188:15	136:22 137:2,22,25
publisher 30:1 45:18		189:19 259:22	156:10 165:11
49:3,21 62:23	Q	questions 3:12	169:22,23
88:19 223:24	quadraplegic 108:5	7:21,22 8:14 24:15	170:7,12,17
224:5,6,10,13,22	qualification 10:5	30:19 38:18 131:24	171:8,14,17 172:18
225:4,13	•	132:15 136:3	173:4 193:8,10,13,17
publisher-quality	qualifications 52:5,8,10 58:6	150:21 154:12	195:3,19,22
244:9	86:18 122:16	159:19	196:8,13,14,18,22
publishers 17:20		187:12,17,18	197:13,18 198:3
32:7 43:22	qualify 56:10 57:3	189:16 191:25	200:23
44:13,20,24	60:3,13,18 61:5,14	192:14 200:20	201:4,5,7,17,23
45:10,25 46:6,20	109:8 135:13,16,21	221:22 227:7,25	217:10,20,23 218:8
47:3,9,12,19,22,23	136:8	246:5 254:12	220:10,20 221:8
48:3,13,19,21	qualifying 52:17	256:10 259:21,24	229:14 232:11
49:8,14 50:4 51:5,7	54:2 78:7,12,18	quick 6:10 118:15	233:17,24,25 237:3
62:15 63:4,8,19	79:24 80:19 87:24	quite 19:22 70:18	239:9
64:9,14	quality 142:20,22	153:13 158:19	readers 18:5,24
66:4,9,13,18,23	211:19,23,24	159:8 164:5,24	19:15 110:24 111:1
67:25 68:1	213:19 224:2,4,7	188:18 199:9 213:2	112:17,21 132:24
69:8,12,15	252:14	232:18 238:5	133:20 135:2,6
70:10,15 71:13	quantify 134:10	quote 195:9 259:13	170:2 172:1 186:13
publishing 17:12	- · ·	Quotes 217:17	187:5 197:1
29:21 30:14	quarter 134:17,19	Quotes 217.17	reader's 244:16
41:9,23 46:11,13	question 7:23,24	R	
50:3,15,25 63:1,22	8:1,4,19 9:6,22		reading 13:22 18:20,21 66:2 73:9
67:7,8 70:22 83:10	14:2 24:3,9,10	raised 148:4 254:21	96:1 103:17 105:14
154:8	34:11 44:12,16,17 49:12 57:2,16	raises 119:19	107:21 108:8,12
pull 102:4 134:3	58:19,24 59:18	ran 141:20,22 175:18	109:23 112:5
pulling 236:19	61:11 63:18 67:18	200:10	115:17 133:1,15,23
• 0	69:16,22 72:7	random 230:8,10	139:5 143:12
purchased 246:13	74:13 77:6,19,20	,	154:13,17 157:24
247:2	91:17 95:6,17	range 12:24 28:7	160:18
purpose 76:23 77:9	106:12 121:21	122:15,20 136:17 149:8 150:10 216:4	161:12,15,20,25
111:8 129:18,22	131:9 132:10 136:5		162:11,22 163:24
130:3 188:21 216:6	141:7 143:20	rare 158:1	165:19,23 178:13
purposely 152:14	145:18 149:15,22	rather 68:6	205:1 221:1 233:12
purposes 100:21	159:15 168:17,18	139:17,20 198:10	234:7 242:16
218:19 221:16	172:3,6,12 190:9	raw 185:1 223:22	245:7,9
222:6 235:6	199:9,20 206:19		reads 178:6
pursuant 1:25 80:10	218:25 219:2	reaction 127:15	ready 240:22
128:19	237:23 238:9 239:1	readable 164:24	ř
	248:1,2 249:5,12	reader 17:24 18:2	really 16:8 58:18
push 164:23	250:25 252:20	87:16 110:8,16	61:10 73:5 100:8
pushed 143:18	254:20 257:8	111:11,14,20,25	106:3 150:13,25 165:10 193:24
	259:15,18	112:4,6 135:9,17	103.10 193.24

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 31

	1 46		
241:19	recognized 201:8	reflect 6:13	22:19 23:9 39:23
reason 8:20 43:14	243:23	reflected 225:2	41:15 70:22 82:12
119:10 129:21	recollection 98:4	refreshes 98:3	83:2,13 212:19
130:5 131:3,12	190:5 257:23		relates 151:10
152:6	recommendation	Refrigerating 6:4	relative 261:17
reasonably 191:9	49:4 151:9,13	refrigeration 1:6	relatively 29:15 73:1
reasons 153:16	152:1	123:3	•
reassembled 181:10	recommendations	regarding 24:9	relevance 26:18 27:3 29:5 47:7 119:11
	147:17 149:8	121:23 249:18	
recall 11:14 12:8	150:4,8,18 151:4	250:10	relevant 11:6 107:22
21:4 52:15 65:15 66:20 70:9 89:23	152:13	regime 23:13,24	121:5 162:25 163:1 199:22 249:6
91:7 93:4,12,18	recommended 49:14	149:21	
94:23 104:21	recommending 74:18	register 228:20	rely 109:25 133:14
114:23 119:1	record 5:6,18,22 6:12	registration 87:20	218:19 221:15 222:5,16,24 244:17
121:12 145:19	8:8,15 38:6	regular 84:19 85:7	´ ´
146:15 164:4,18,20	51:13,16 56:18,24	9	remedy 190:17
175:9 178:9 182:7	78:7 92:19,22	regularly 143:2	remember 20:22
214:16 218:5	95:9,15 138:4,7	regulators 33:13	31:3,10 93:22 96:2
220:19 230:7 256:24	168:19 175:20,23	Rehn 2:14 3:7 5:25	160:22,24 172:25
	183:17 187:12,17	7:21 98:18 179:21	181:5,16 192:4 198:5 215:20,22
recapture 238:4	190:21,23 191:23	188:2,17	257:12
receive 29:3	227:14,18	189:2,10,13	
received 11:9	245:12,15 254:14 255:5,7,13,17,20	190:1,12	remembering 228:23
69:14,25 254:16	260:2 261:7,10	192:2,6,8,18,20 195:1,14 196:1,19	remind 22:24 200:19
receives 29:2	Í (1	197:8,23 199:12	remove 47:4 48:22
	Recording 85:21	200:22 201:3,14	49:14
receiving 49:22 191:5 256:24	recordings 5:17	202:17 203:1,14	removed 46:8,21
	records 78:11 92:9	204:9,19 206:13,21	47:14 49:22 50:15
recent 179:16	recreate 126:23	207:2,19	72:1
recess 51:14 92:20	redundant 237:25	209:4,7,13,17	render 192:13
138:5 175:21		211:8,15 212:22	202:18
227:16 245:14	refer 115:21 121:15	213:4,24 214:4,17	rendered 160:14
255:18	146:9 206:11	215:7,15 216:10,15 217:1,19 218:13,24	205:4 207:24
recognition 14:16	reference 146:2	217:1,19 218:13,24 219:3,8,14,17	223:7,11 232:14
19:24 20:1,3	referenced 148:3	220:5,6 221:4	235:9,25
181:1,15 183:18,24 185:15 186:4 198:8	referred 9:20	222:1,14 223:4,14	236:13,17,22
199:19 200:10	120:8,16,23 146:22	224:3,19 225:12	243:15
201:18 226:2	154:17 164:17	226:3,10 227:7	rendering 241:12
232:16	referring 137:11	256:2,17 257:9	rendition 241:8
recognize 65:2	146:7 196:4 232:16	258:1 259:7,21	244:3,7,9,16
199:14,18 200:5,7	257:2,11	relate 22:10 124:3	repeat 67:18
209:18 256:18	refers 154:13	126:9	·
	101010 10 1.13	related 11:11 13:10	rephrase 74:16

report 4:6 9:20,22	reproduce 170:19	11:17 60:3,12,18	retain 9:5
12:2 91:4,5 92:1,5	191:7	61:13 90:21 94:4	
95:25 96:16	-, -,,	96:13 99:5 117:17	retained 89:15 90:2,7 121:9 203:19 204:2
97:7,10,17,19,21	reproduced 141:14,17	167:16,23	
98:5,8 99:8 101:25	reproduction	168:3,10,21	return 188:15
107:11 110:6,14	168:12,23	169:14,19 174:23	returned 56:22 95:13
111:9 117:5	·	217:11 218:9 219:6,20,25 227:3	returning 108:5
118:6,19,20 119:23 121:14 126:1,4,16	request 5:11 125:15 127:15,20 129:13	· · ·	revenues 67:12
131:21 132:17	131:5 157:21	Resource.Org	reverse 16:16
140:21 141:1,4,8	211:2,3,9 251:10	118:22	
142:7 145:23	requested 125:4,5,8	Resource's 94:24	review 11:8 12:6 100:13 117:11,15
146:6,10 149:3	127:13 251:18	95:4,20 118:10,23	119:3,9 120:2
151:17 161:24	261:15	132:25 143:23 167:3,7,10 169:6	126:13,17 156:7
167:4 177:10		175:7,13	167:3 179:18
179:19 180:3	requests 62:25 224:21	176:1,12,13,18	187:20 188:23
185:23 192:17,22 197:9 203:16		177:12 179:5,12	190:22 191:16
204:16,21 214:18	require 87:11 148:23	180:1 216:18 217:4	261:14
215:17 217:2	required 84:24	218:18 221:15	reviewed 12:3
220:13 223:5	requirement 33:10	222:5,17 225:1	94:21,24 98:5
229:19 230:13	86:7,21 87:4,7 88:3	226:6 257:18	112:12 114:24,25
234:22 250:1	89:7 147:12 151:7	258:9,22	115:6,11 120:4
252:8,17 253:2,21	153:5	respect 73:23 145:14	121:9,24 122:3
259:13,14,17	requirements 23:14	respond 8:8 10:3	124:3 130:20
reported 1:23	53:7 54:20 55:2,23	251:9	179:1,12 205:2
46:1,22	76:2 86:14	responded 62:25	reviewing 154:18
reporter 1:23 5:9 8:6	148:4,20 158:16	231:18	188:21 191:12
89:11 98:13 109:22	requires 53:20 112:3	responding 33:3	217:7
191:20 192:19	158:24	- 0	Rhode 62:4
194:22 201:2	reread 9:20 12:2	responds 224:21	rid 50:7 51:5,8
209:14 217:15	168:17	response 44:15	right-hand 164:10
234:16 261:3	research 50:20 83:16	192:14	rights 13:2,3 42:18
represent 22:7 24:15	84:14 85:3	responses 8:9 48:20	,
33:8 34:22 110:1 192:6 219:14	resemble 11:23 107:8	responsibility 64:4	rings 154:19
227:22 234:21	reserve 188:23	191:6	roadblock 143:19
240:5,24	resident 213:8,9	responsive 44:16	roads 112:5
represented 9:3	resist 48:14 189:23	rest 181:13 234:3	Rob 4:20
33:12 129:17		restate 168:18	141:12,13,21,24
198:12	resistance 48:10	restrictions 101:18	142:10,25 143:6,21 256:19 259:2
representing 5:10	resolution 194:12,20	result 126:21 234:25	Robert 7:9
9:10 24:5,21 25:5,8	resolve 248:4		
220:4 242:13	resolved 254:15	resulting 198:2	rocket 21:9
represents 65:17	Resource 4:11 5:15	results 194:4	role 30:17 50:1
Tepresents 05.17	Resource 4:11 5:15		1010 30.17 30.1

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 33

	rago	-	
142:17,21	82:1,10,24 83:11	185:3,12,22 187:11	scenario 109:13
roles 78:16	84:6,22 85:9	189:15 190:20	school 79:14
	86:6,13 87:2,14	191:11,19 219:18	88:10,12 130:5
room 56:21 95:12	88:1,20 89:5,13,20	227:24 231:16	136:18 137:4
154:14,17 160:18	91:10,19 92:15,23	255:12	
161:12,15,20,25	94:9,20 95:16	rule 248:18 249:3	science 47:23
162:11,23 163:25	96:6,20 97:14,20	rules 75:6	scientific 157:13
165:19,24	98:1 99:3 100:3,23		scientists 159:6
roughly 144:21	101:15 102:12 103:10,19 104:8	run 111:14,15 211:24 255:2	scope 131:21 132:7
row 173:1 230:10	105:9,20 106:5,20		scores 211:25
royalty-free 64:1	107:24 108:19	running 92:15 98:24	
RTF 212:18	110:5 111:7,18	runs 15:17 255:2	scratch 221:11
Rubel 2:3 3:6 5:23	112:9 113:1,8,18		screen 16:10 17:24
7:6 10:7,12 14:23	114:16,22 115:4,20	S	18:2,5,24 19:2,5,15
17:18 22:8,17	116:23 117:7,20	safeguards 71:25	87:16 100:6,8
23:3,17 24:2,18	118:17 119:8	84:8	102:5 108:13,23
25:7,13,21 26:24	120:1,14,21	safely 218:18 221:15	110:8,16,24,25
27:8,23 28:23	121:7,13 122:8	222:5,16	111:11,14,20,25
29:11 31:19 32:20	123:1,7,12,16,21	, and the second	112:1,4,6,10,13,14,
33:23 34:5,12	124:21 125:7,22	safety 215:21	17,21 132:24
35:1,11,22	127:18 128:3,15	216:6,12 218:16	135:1,5,9,17
	129:1,10,20	219:5	136:21 137:2,22,25
36:3,8,15,20	130:10,18 131:2,19	221:13,21,23,24	156:10 162:3,4,10
37:1,7,16	132:9 133:8 134:7	sale 117:12 207:3	163:9,20 165:1,11
38:3,12,15,21,22	136:2,9 137:8	247:21 248:25	169:22,23
39:21 40:3,18	138:1,8,16 139:22		170:2,7,11,17
41:1,13,19 42:2,12	140:11,22 141:9	sample 217:14	171:8,14,17 172:1
43:17,24 44:4,18	142:16 143:15	San 2:10,15,21	173:4 186:12 187:4
45:4,17 46:3	144:11 145:21	satisfied 236:2	193:7,10,13,17
47:2,11 48:1,9,15	146:8 147:7,15		195:3,21
49:2,11,20	148:5 149:23	save 178:22	196:7,13,14,17,22
50:12,23 51:10,17	150:15 151:1,18	saw 162:3 217:13,16	197:1,13,18 198:2
52:19 53:4,17	152:3,22 153:19	230:8	217:9,20,23 218:8
54:3,12,19 55:7,13	154:11 155:10	scaling 194:17	220:10,20 221:7
56:8,17 57:1,9,22	156:6,22 157:5,19	<u> </u>	229:14
58:11,20 59:3,9,19	158:22 159:12,22	scan 13:24 14:13	233:17,24,25 237:3
60:1,8,17	160:16 163:22	83:17 114:8 162:7	239:9
61:1,16,22 62:2	164:8 165:16	185:2 186:9 194:19	screenshot 161:25
63:14 64:7,21	167:15 168:2,9	213:16	164:9 202:6 215:17
65:1,21 67:1,20	169:5,12 171:1,23	scanned 83:20 84:4	
68:20 69:3,17,23	172:7 173:3,21	186:12 212:20,24	scroll 162:6,7,9
70:19 71:8,21	174:6,21	223:16	se 71:18
72:8,13,23 73:24 74:6,15 75:1,7	175:4,17,24 176:10	scanner 14:14 186:9	seal 66:10 72:17
76:1,20 77:5	177:4,17 178:15		
78:10,20 77:5	179:9,24 180:9	scanning 14:3,4	search 11:3,11,19
80:8,21 81:13	183:14,23	127:11 185:1	30:25 31:5,7
00.0,21 01.13	184:7,15,20	212:18	126:8,20,22,24

1	1 4 1004 00		l l
	elected 234:23	services 12:18 23:12	20:19 51:7 189:2 224:8
l 198:16 221:2 233:1 l	election 104:22	79:16,17,18 86:19 135:16 210:24	signify 148:10,18
searched 10:25	elf-interest 48:4	serving 56:1 59:15	signs 232:24
110.13,21 223.9	ell 30:3 45:16 47:4	61:18 78:8	9
231:7	202:7,8	92:7,10,11	sign-up 142:2 143:11 151:16
searches 11.13	ells 202:3 208:2	setting 153:11 161:6	similar 13:20,22
·	emantic 183:11	seven 20:8 189:7,10	15:24 29:16 86:16
l	enator 62:4	190:23 255:2	111:15 140:7
searching 118:7 165:17 166:1,5	end 15:10 112:1	several 19:11 107:11	simpatico 249:11
234:8 245:6 S	enior 187:6	130:11 240:17	simple 7:23 24:6
	eniors 137:19	shaking 8:9	simply 125:4 131:10
	ense 28:9 47:8 56:6	share 210:11	159:14 239:8
193:13 210:3	90:1 135:4 212:8	shared 122:6 257:13	single 17:13
	ensitive 5:19	shifted 47:9	sip 38:5
	ent 256:19 257:16	short 115:2,5 132:14	sit 190:20 191:12
secondary 43:16	258:8,23	147:6 174:13	233:25 255:2
	entence 65:25 72:15	shortest 115:5	site 116:21 131:23
75:9,11	73:7,18 75:11 101:16 121:15	shorthand 1:23	216:22,23 246:6
section 75:10 220:25 225:9,10 240:6,25	132:20 149:5	261:2,8	249:24
241:9	204:16,24,25	showed 118:22	sites 124:12
sections 112:20	206:11 207:12,18	182:17	situation 190:17
224:15 233:2	258:12,13 259:17	showing 79:21 160:6 181:16	196:20 197:24
seeing 119:1 174:19	entences 66:11 70:1		size 16:23,24
181:16 218:5 s	eparate 18:12,13	shown 164:11	17:8,14,19 103:20 134:21 171:25
seek 22:22 142:25	184:14 193:11 228:16	shows 19:1 81:24	172:8,16 181:9
250:16,18,23		sic 146:23 179:16,23	194:11
231.21	eparated 20:5	sides 51:8	sizes 17:16
500.11	eparating 83:5	sighted 114:4,5,6	skaplan@fenwick.co
seeks 55:24	eries 38:18 132:14	139:18 143:13	m 2:22
seem 167:23	erve 12:20,23,24,25	162:12,17 170:20 193:19 222:25	skimmed 156:9
seems 58:18 61:10	13:6 52:6 55:4 57:25 58:14 87:23	238:23	161:1
159:8,17 236:6	88:13,16 96:2	sign 143:12 168:1	slice 17:15
241:19	106:22	213:5,9 228:24	small 17:11 137:5
seen 121:8 198:22	erved 38:23 39:1	signature 181:17	182:3 230:9
segment 17:12	45:2 64:9	260:4	smart 101:13
	erves 87:22	signed 9:7 115:17	smartphone 16:12
194:1 198:11 230:1 s	ervice 53:16 85:18	136:16,18	smartphones 111:2
232:4		significant 17:15	

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 35

	1 age		
social 12:16 62:15,18	200:16 214:22	specified 145:24	stakeholder 144:13
63:16 64:4 66:3 69:7	219:17 223:18 233:21 235:13	specifies 213:12	stakeholders 42:18
	238:9 246:15 251:7	specify 55:20 148:1	stand 134:24
Society 1:3,5 5:24 6:4	252:19 253:18	153:4	stand-alone 182:15
software 12:18 13:3 14:16 80:23 111:3	257:4,5	spectrum 208:22	standard 4:13,17
123:23 124:3	sort 18:11 28:21	223:1,21 244:25	17:14 25:23
170:8,9 193:11	34:7,23 84:23 86:7	speculate 145:12	26:2,3,10,13,22
sold 45:11,19 46:9,22	108:6 117:8 128:13 139:6,19 153:11	speculation 35:7	27:22
202:11 205:20,23	182:18 187:8	41:25 42:7	29:19,22,23,25 30:15,21,22,24
206:1,22 207:11	195:24 201:8 223:7	43:11,20 47:7 54:7	31:8,13,22
208:6,10,16,24	238:2 254:19	60:21 61:20	32:6,10,12 33:2,3
solely 246:7	Sounds 132:16	63:10,21 64:12 74:11 75:21 76:7	93:3 98:8,9,13,21
solution 101:9 134:5	227:13 228:3	77:1,15 84:2,12	114:5,7 115:5,8
198:8	source 136:14 213:3	104:6 105:7 106:1	116:12,13 117:5,25
Solutions 5:11	217:14,17,18	109:17 127:4	118:4,23,25
	, ,	128:1,21 129:6,16	121:16,20
solve 110:16	sources 213:3	158:14 159:4	124:7,15,23 126:1 127:1,9,21 128:18
somebody 74:7 78:23	spaced 182:17	167:21 174:2,10	129:3,4,9,14,22
113:19 114:17	SPALDING 2:8	201:11 211:6,13	131:5 132:2
131:25 159:15 163:25 214:11	span 183:3	212:13	138:21,23,24
	speak 10:8 91:3	speech 14:22 15:2	143:20 144:3
somehow 43:8 77:12	196:15	18:2,3,5,6,9,20	145:4,24,25 147:12
121:4	spec 153:17	19:12	149:19 153:10
someone 24:22 53:24	*	spend 92:4 161:3	154:21,25
80:6 81:9 86:17	special 35:9	191:12	155:3,5,11,12,15,1
100:12 105:17,23 106:9,13 107:25	79:13,15,17,18	spent 116:15 188:18	156:8,11,13,16,21
108:2 109:10 112:7	specialized 182:4,6	189:2 196:25	157:4,8,17
113:3,15 130:5	241:21 242:16	spoke 67:24 93:22	158:7,12,16 159:9
132:4 158:17 207:4	specific 12:21 72:21	256:9	161:18,19,22
237:18 238:12	73:2 96:21 97:10	spoken 103:7	163:2,9 164:11
someone's 110:2	104:15 120:9 127:17 130:19	spokesman 50:2	165:15,19
somewhat 134:6	138:22 150:20,25	spot 116:20 138:22	166:8,9,10,13,14,2 3,25 167:17 173:12
somewhere 28:6	151:3,9 152:4	spotted 226:9	174:4 176:4,6
90:16	154:25 155:3,5,14	•	178:8 179:15
sorry 6:11 28:25	181:5 208:24	spreadsheet 171:18 174:18	188:10 192:25
33:21 65:3 72:6	214:24 220:25		201:17 202:9 209:9
75:9 85:25 89:10	229:2 233:1 234:8 242:4 251:1	Square 1:20	214:24 215:2
113:20 119:17		squared 241:22	218:1,4 221:2
124:19 130:24	specifically 19:15	242:17	222:16 225:1,3,23 226:5
133:22 135:10	26:1 90:14 91:24	staff 84:14,20,21	228:7,10,18,21
136:1 140:24 167:8	110:8 154:22 164:7 218:23	85:8 144:9	229:2,5 231:7,13
172:4 174:25 192:4	210.2J		

	- 0		
232:3 233:12,17,24	147:10,21,25 148:3	statements 42:17	subject 120:16,23
234:1,7,8,10,13	161:16 164:22		152:9 237:13
236:4	165:10,23 166:3,19	States 1:1 30:2 47:14	256:22 257:2
237:7,8,19,25	167:17,22,25 168:4	59:1 122:10,13	
1 1 1		135:1,6 157:16	submit 78:21 79:22
238:13,15,22	169:7,10,14,18	s4s4s4s 52.2 54.0	82:20 129:12 130:9
239:7,8,20,21	173:10 174:12,24	statute 53:2 54:9	211:16,21
240:7 241:1,14	175:12	55:6 56:6	213:6,10,18
243:17 244:17	176:1,11,13,16	stay 242:19,20	2 2
245:2,4 248:25	177:11,19		214:1,6
249:23,25 251:2,3	179:2,4,11,25	step 44:10 45:20	submitted 79:7
		178:4,5 179:10	82:4,8 86:17 97:22
252:6,24 253:24	180:6 182:5	steps 9:18 234:22	210:1,4,7 211:1
standards 9:21,22	184:16,22 186:2	steps 9.16 234.22	
12:3,4	202:4,11,19,20	stick 55:5	212:3,9,15
25:15,19,20,22,25	205:3,13,15 206:7	atinulates 55.10	submitter 210:20
26:4 27:1,5,12,16	208:3,6 215:23	stipulates 55:19	
	218:6 224:23	stream 18:10,11	submitting 214:12
28:11,20 30:16	228:23,24	, i	subpoena 11:8,12
31:5,6 32:16,25	229:15,18,24	Street 2:9,15,20	subscript 243:5
33:9,11,16 34:15,22,24	230:2,12 231:17	stretching 20:24	•
35:15,20 41:15	245:20,23	strict 73:14	subscripts 242:23
91:1 92:3 93:10	246:2,7,12,14	strike 113:20 183:16	subsequent 70:13
96:17,18,21	247:3,20 248:15	strong 194:13	subsequently 62:7
97:11,12,15	249:20 250:11	Strong 194.13	196:2
98:4,7,16 99:4	251:11,20 252:5,24	structural 242:18	1 1241400
1 ' '	253:23 257:13	structure 130:1	subset 134:14,22
110:3,7 111:10	259:3		155:21
112:11,13,19		170:15 177:8 241:11	subsets 102:9
113:3,4,11,16,23,2 5 114:24,25	standard's 166:16		substance 93:12
115:10,18 116:1,15	stands 243:13	student 76:12,13,14	
	start 10:20 64:22	79:16 125:15	successful 114:10
117:1,11,13,15,21	160:12 171:3	127:13 130:3	185:21
118:9,14	l .	136:15 187:2,4	successfully
119:3,9,25	192:16 200:8	210:25 211:1	· ·
120:3,5,9,16,22	210:15 254:3		233:16,23
121:4,9,16,23	started 221:1	students 13:1,6,11	sued 83:16 152:7
122:3,7 124:2	starting 7:20 66:22	71:14,15	sufficient 233:11
125:4,5,8,23	69:2	84:14,20,21 85:8	234:6
126:2,10,14,19	09.2	87:9,20,23 88:9,14	
128:8 129:12	startup 20:18	137:7	suggest 58:7 105:16
130:11,13,19,21	state 7:7 88:10	studied 73:5	suggested 154:24
131:14 132:24,25	180:18 254:13	stuff 180:14 221:20	155:1,5 191:11
133:12,23 134:4	261:3		228:6,9
138:15		stylized 181:6 182:24	suggests 63:16
139:12,17,20	stated 23:4 55:1	subcontractor	66
140:5,16 141:24	86:15 203:9 231:4 248:15,17	210:23 211:10	suit 152:9
142:3 143:6,22	, í	subcontractors	Suite 1:20 2:9
144:4,7,10,15,17,2	statement 121:19	211:17,20	summarize 112:18
0,23 145:14 146:18	181:8	211.17,20	Summarize 112.10
		DEDO	

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 37

Summary 40:13	199:4	task 158:18 250:4	temptation 189:23
204:22	systems 13:23 19:24	tasks 159:7 220:12	tend 17:13 48:13
superscript 243:5	20:1 79:18	233:11 234:7	102:7 134:12 170:2
superscripts 242:23	88:10,12	taught 153:10	186:14 241:20,22
supply 224:6		TDB 243:9,16	tends 103:8 166:6
support 53:25 78:22		teacher 76:11	182:25 194:19
* *	table 34:24 171:3,5,9,13,14,15,		234:3
supported 63:4	19 172:10,19 173:2	team 33:6 50:11	tension 155:19 158:11,23
supports 103:17	174:15 185:20	tech 191:23	,
supposed 76:4	241:6	technical 38:25 44:7	term 32:19 33:9
173:14 212:2	tables 175:6,7,9	45:10,18,25	38:25 79:23 118:21
219:12	185:10,14	46:8,21 47:14,21	186:20
sure 9:6 24:8,14	tablet 16:11	48:2,22 49:15,23	terms 63:5 78:5
28:19 38:3 53:3,14		50:7,16,25 51:9	138:14 160:20,24
56:17 59:17 67:19	tablets 111:2	134:5 144:13 156:4	161:5,9 194:24
68:14 87:10 90:5	tabular	157:14 158:18	234:9
116:17,21	217:6,10,13,16,21,	160:13 173:23	test 155:25 156:3
118:18,19 131:11	22,25 220:17,21	178:2 180:11	163:17,20 220:24
135:10,19 137:9	221:8	184:8,16 185:5 191:3,8 194:24	229:7,12
142:6 146:9 147:11	tactile 15:13 111:5	223:9,15 237:13	230:12,15,24
151:5 153:16 161:1		238:5 245:8	231:4,20 232:2
175:17 178:24	tag 173:13,23 174:5,8		245:22
185:1 188:1	tags 171:12	technically 158:17	246:1,12,16,18,24
207:5,6,7,8,20	taking 8:23 45:20	170:21 196:15	tested 166:18,20
208:4 212:7 217:22		technique 194:9	220:23 221:6
219:14 238:25	talk 9:24 18:4,6	technological 45:6	229:15,23
240:8 248:21	68:8,9,12 70:8 82:7	S	ŕ
249:11	83:7 91:2 111:4	technologies 30:6	testified 7:2 120:8
surprised 182:7	112:1,16 118:6	45:3 107:9 111:16	195:9 211:4 224:11
surrounding 237:15	119:21 143:4 160:15 237:15	137:18	testify 142:4
Suszckiewicz 2:25	talked 19:19 90:14	technologist 91:23	testifying 261:7
5:8	93:11,14,18 109:2	technology 12:16	testimony 8:21,25
swear 212:1	, , ,	13:10 14:20,21,22	22:21 24:9 35:7
	talking 24:14 59:8	18:9 20:3 21:12	49:18 54:17 56:4
switch 17:5 199:23	103:18 106:12	27:13 37:23 40:20	58:7 72:5,10 80:15
sworn 7:2	135:14 137:6,14,19	41:4 42:3,9,14 45:6	82:6 87:18 88:6
symbols 182:3,6	154:3 156:4	99:15,24 100:18	100:16 107:19
241:22 242:16	160:7,9 195:7	101:9,12 110:17	111:24 112:23
	199:22 201:13,23	133:14,17 137:16	114:2 116:9 118:12
syndrome 109:11	210:12 241:17	144:5 183:24	120:12 125:2 134:1
synthetic 14:22	talks 63:11 69:6	187:10 223:17	135:25 136:5,24
18:1,3,4,6,9,15,20	tape 92:16 111:1	telltale 232:24	140:3 146:4 153:2
19:12	175:18 255:2	temperature	167:21 192:14
system 15:4 87:20		243:13,14	195:17 202:24
10.107.20	Target 152:8		206:10 211:6 213:1
	(866) 118	DEDO	

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 38

	1 ug		1
224:17 229:10	71:2	231:9 232:11,18	69:14,25
231:23 232:9		237:5 238:4,5,24	·
258:20 261:11	textbooks 68:2,3,7	247:11 249:7	throughout 241:14
	70:23	257:23 258:10	243:17
testing 1:3 5:24	text-to-speech 18:23		thumb 190:8,10,17
155:19 158:11,23	19:8	themes 108:6	tiers 28:16,19
165:10 196:24	40×4× al 170·15	themselves 76:19	, , , , , , , , , , , , , , , , , , ,
246:6	textual 170:15	106:24 130:8	till 233:19 234:1
tests 140:5 142:22	238:21 239:15	theoretically 100:10	tiny 158:3
text 14:17,19,22	Thane 2:14 5:25 192:4,6 206:17	thereafter 261:9	tired 17:6
15:1,2,6,25 16:2,21	Thane.rehn@mto.co	therefore 72:1	title 30:5 55:20 77:25
17:16,21 18:10,23	m 2:16		78:9 81:21 125:15
19:5 99:13,17,23	· ·	there's 16:14,20 19:7	127:13,17
100:7,11,19,20	Thank 23:2 38:7	26:21 33:3 58:25	155:15,18,22,24
101:10,12,19	179:22 233:3	72:25 81:24 98:19	181:6,7
103:1,20,22	258:10	108:21 113:9	182:10,15,20,25
104:19,21	Thanks 68:19	134:11 170:13	
108:12,14		171:2,5 174:3	titles 45:11 130:2
114:14,18 141:8	that's 9:15,17,23	180:13 183:7 243:9	157:25
149:18 151:10,21	16:16 19:5 28:3	244:25 259:15,18	today 5:12 8:21,25
153:15 156:7	33:25 37:14	they'll 85:6	9:16 16:7 30:1
162:23	38:7,12 39:20		50:22 126:11
163:1,11,13,25	40:11,16 41:18,22	they're 17:20 61:15	144:25 187:15,22
165:5,17,23	42:25 43:3,25	74:9 78:22 79:16	188:3 189:3 191:5
166:1,4,5 169:23	49:1,19 50:11 54:8	81:7 86:16	223:3 254:22
172:18	56:6 58:10 59:7	87:8,10,11,15	
173:13,17,23	64:20 71:9 73:1	129:7 139:5 144:2	today's 9:19 10:9
174:5,8	76:17 79:11 83:21	146:22 147:10,12	12:2,7 260:1
178:5,6,10,11,17	92:14 98:24 100:8	148:3,8 152:14	Tolles 2:14 5:25
179:13	104:22 111:17	160:7 166:21 173:1	tools 16:21 23:12
180:13,15,20,22	122:17 128:13	182:17 185:4	
184:13 185:11,25	136:19 137:5	210:16,23 212:17	102:14,19 103:2,11
193:14,21 194:1,3	149:11 151:17	213:17 223:10	105:1,3,21
195:11,21,23	153:7,10 154:9		106:9,14,21
196:2,7	157:10 159:17	they've 34:16 46:22	107:4,7 110:20,22
,	164:12 166:1	79:7 122:6 166:6	111:11
197:1,10,16,19,25	170:20 171:5	thick 160:6	top 42:21 47:22,23
198:1 201:8 220:8	174:15 177:7	third 17:23 30:21	73:8 153:18 164:10
221:1 223:6 229:5	178:18 181:8,17,23	66:12 194:9	171:16 240:19
231:17 232:6,14,22	182:18 184:6		242:12
234:23 235:9	185:16	thoughts 57:23 65:18	
236:19 243:15	188:11,12,22 191:5	thousand-page 212:3	topic 30:13 41:22
244:3,16	193:10,25	thousands 187:14	46:18 91:5 153:10 214:8 249:7
text-based 163:17	194:2,9,20 195:5		
193:5,6,18	196:15 199:8,19	threaten 68:14	topics 11:12 57:8
194:6,13 195:3	200:7 212:3,20	threatened 67:25	245:5
textbook 67:10 68:1	214:21 220:1,3	68:9	total 10:17 98:4
	222:4 226:14,20	threats 68:13	
		till cats 00.13	

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 39

	1 ug		
touch 22:23	77:17,22 78:4	106:8 108:11	understandable
towards 190:23	105:17,18 106:24	110:20 133:3,10	182:22
TPM-free 45:14	114:8,14 143:6,20,21 146:6	typical 164:24	understanding 8:3
track 104:19 134:12	158:19 161:19	180:25 194:20	9:17 32:21,23 39:20 40:11,12,17
tracked 92:6	175:3 180:12,14	typically 159:1	41:20 42:13 43:4
trade 68:6	188:14 189:8 194:1,4 199:4		46:4 48:20 49:13
tradition 63:23	200:6 213:25	U.S 29:9 51:23	51:21 53:5,19
trained 153:9	trying 13:5 24:3,4	128:14 213:7,9	58:12,21 59:2,4,10,13,21
	31:10 50:14 67:17	Uh 196:18	62:9,11,21 63:1
training 153:6	69:13 74:9,12 75:2	Uh-huh 15:3	65:18 77:3 81:19
transaction 64:3	100:5,7 152:14	19:16,20 44:11	82:11,21,25 83:12
transcribed 261:9	156:3 159:20 170:14,17 173:5	74:21 75:17 141:2	84:3 88:4 89:1 94:2,10,14 95:2,18
transcript 4:23	187:7 244:24 245:1	149:4 150:1 196:17 204:23 209:11	96:8,11 115:16
125:18 261:10,13,15	251:3	220:18 223:8	128:7 136:10
transcription 180:21	turn 18:10,22 30:6	unable 124:9,23	148:11 155:4,25
183:12 233:5	73:6 75:8 99:8	130:22 187:13	209:25 210:19 215:8 217:25
treat 75:15,18	108:4 114:15 149:2 186:9 192:21	188:19 192:13	228:16 237:7
trees 173:18	203:15 204:20	198:1 237:4	251:8,17 252:19
	235:10 236:8 240:2	unauthorized	258:21
trends 51:8	Turner 4:20	42:20,24 67:4,11	understood 8:2 71:9
trial 40:9	141:12,13,24	unavailable 166:6	87:23 199:13
trick 180:11	142:10 256:19	uncertain 198:9	unique 105:13
tricky 24:3	257:2,17 258:23 259:2	unclear 137:10	United 1:1 30:2
tried 48:11 117:2	Turner's 142:25	227:25	47:13 59:1 122:9,13 135:1,6
141:25 180:16 188:17 191:19	259:8	uncommon 88:17	157:16
198:7 199:18 200:9	TWB 243:10,17	underlying 174:17	universities 84:14
tries 12:22	two-by 171:15	178:10,16	university 153:11
trigger 58:9	two-by-two 171:14	undersigned 261:2	unless 5:17 81:23
triple 148:21	two-thirds 243:9	underspecified 214:21	112:6 166:2,6
true 177:3 254:11	type 19:6 21:8,14	understand 7:24 9:6	224:7 239:14
261:10	28:24 33:17 52:1	24:4 39:5 44:15	unusable 183:25
truthful 8:21,24	106:13 108:1,9	50:13,14 57:16	223:10,16
192:13	109:13 114:5,8 123:17,22 149:21	59:17 69:13 71:22	unusual 107:2 184:6
truthfully 256:10	156:23 258:17	77:18,19 88:7,21 99:22 106:4 108:10	upload 211:11
try 6:11 7:25 8:13	259:9	137:9 192:9 195:7	uploading 100:6
23:13 30:19 31:3	typed 11:6 19:6	196:8 210:7 233:21	usability 140:8
38:15,17 44:24	types 12:21 19:12	236:21 237:4 239:4	usable 133:19 134:6
74:4,16 75:23	104:9 105:1,4,24	244:16 245:1 256:5	224:1
	•		

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 40

	1 ag		
usage 122:1	75:4,20 76:8 77:14	233:6,13,18 236:5	253:22
useful 103:4,8 105:3	78:14,24 80:4,15	237:10,21 238:17	versions 15:13
106:9 107:5 224:1	81:2 82:14 83:4	239:11,23 241:2	112:19 160:7
	84:2,11 85:2,15	242:10 244:4,20	161:15 174:22
user 81:3 104:17	86:24 87:5,18	246:9 247:6 249:21	180:5 198:25 199:2
165:4 186:23 187:1	88:6,25 89:9,18	250:13 251:12,21	202:3,8 204:5
193:16,19 216:11	91:6 94:5,16	252:9 253:3	208:3,5,10,21
users 165:11	95:5,22 96:14,24	254:1,8 257:20	
186:1,18	100:1,16 101:6,23	259:1	versus 5:14 82:2
usual 193:25	102:23 103:13	vaguely 128:13	veterans 108:5
usually 164:21,22	105:6,11,25 106:18	valid 43:25	via 218:8
182:12,13 184:25	107:18 110:21	44:13,19,25	Vice 20:5,10,11,14,22
212:11	111:12 112:23		
	113:13 114:2,20 115:1,15 117:3,18	value 221:23	video 5:6,16 151:7
utilize 70:15 158:16	115:1,15 117:3,18	variations 108:6	Videographer 2:25
utilized 42:10 234:21	121:1,11 122:4,24	varies 77:25 80:5	5:5 38:14 51:12,15
237:8 240:7 241:1	123:5,10,14,20	108:15,17 148:24	56:18,23 92:18,21
243:17	125:3,10,14,20	149:22	95:9,14 138:3,6
utmost 73:13	128:10,22	variety 16:20 10:7	175:16,19,22
74:1,8,20	129:16,24	variety 16:20 19:7 113:17	227:14,17
,, .,	130:16,23 131:17		245:12,15
V	132:6 134:1 137:13	various 60:22	255:16,19 260:1
vague 14:7 17:10	138:12 139:15	vary 16:24	video-recorded 5:7
22:3,11,21	140:3,17 141:5	vendors 31:6 148:1	videos 32:8 151:5
23:10,21 24:7,24	142:13 143:8 144:8		170:16
25:10,21 24:7,24 25:11,16 26:17	145:17 147:9,18	Veritext 5:10	
27:3,19 28:14	149:14 150:19	version 4:10,14,17	Videotaped 1:14
31:15 32:17 33:20	151:15,23 152:17	16:5 30:5 98:15	view 2:20 115:18
34:3,9,19 35:17,25	153:2,25 156:1,18	99:1 114:10,18	167:11
36:5,12,17,23	157:1,9 158:14	118:3 155:3 165:18	217:14,17,18
37:4,12,19 40:23	159:2 160:1 163:5	166:4 177:19 178:5	228:24
41:10,25 42:6	164:3 165:6 167:13	179:23 192:25	viewed 139:16 258:6
43:10,20 44:1,22	168:6,14 170:1	198:6	viewer 164:6
45:8 46:24 47:7,20	174:1,10 176:23	201:7,21,22,23	
48:5,12,25	179:6 180:7	202:21,22	viewing 115:18 165:2
49:6,17,24 50:18	183:8,20	216:17,21,22,24	170:12
51:3 52:12,25	184:2,10,18,23	217:2,3,11	violated 161:2
53:11,23	185:8,17 197:3	218:9,17	violating 161:9
54:7,17,25 55:11	202:24 203:7	219:4,7,19,24	o .
56:12 57:5,14	206:10,25 207:14	221:14 222:4	vision 17:1 36:4
58:1,17,23	211:12 212:13	224:22 225:14,23	102:14 109:11
59:6,16,23 60:5,22	213:22 214:2,15	226:5 227:2	110:25 132:22
61:25 63:10,21	216:7,13 218:10,20	230:15,17,19	133:18,21 134:15
64:11 67:16,23	220:22 221:17	231:21 234:14	165:9
68:25 70:3 71:5,11	222:8,19 223:12,19	235:15,17 236:2,3	vision-impaired
72:10 74:10	225:7,19 226:7	239:19,21 241:5	250:12 251:11,18
	227:4 232:17	244:11 249:23	

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 41

	1 ag	C 11	
252:21,22	126:6 143:13	227:1,3 228:21,25	255:4,12,16,19
visual 16:17 87:21	165:25 239:16	229:2,4 230:8	260:2
103:16,23 134:12	water 38:6 209:3	234:15 246:3,8	West 2:19 9:13
160:5		249:19 252:16	
	ways 14:24,25	257:18,23 258:9,22	wet 243:14
visually 16:7 17:15	15:7,20,24 18:3	websites 112:20	WETZEL 2:9
85:18 87:9,22	64:8 80:1 99:22	115:10	we've 19:19 107:9,15
88:9,13 103:7	111:5 113:23	117:12,16,22	109:2 145:1
104:19 156:11	170:23 172:15	124:8,16,24 130:22	154:1,3 179:1
161:23 165:13	WC3 146:23	133:2,12,24	187:13 190:18
185:20 198:14 213:15 218:16	WCAG 147:1,3,6,8	138:10,14	210:25 223:22
221:13 222:3	148:3 149:3,7,13	139:13,18 140:15	232:16
224:13,21	W-C-A-G 147:4,6	141:11 142:23	whatever 16:3 19:1
<u> </u>	Í	149:18	173:19 228:25
visually-impaired	Web 4:8 96:3	151:19,20,25	258:5
252:4	117:23,24 126:21	152:2,21 154:3,4	
visually-presented	143:25 144:2,3,4,7	163:12 203:22	whenever 209:4
163:8	147:1,4 149:9	204:3 207:23	whereas 102:11
voice 18:15	150:22 152:19	258:3,5	181:24
	153:13	we'd 187:22	Whereupon 56:20
voluntary 32:15,24 33:8	170:5,11,12,19 171:6 173:12 187:7	week 10:14 126:20	95:11
	209:19		whether 28:9 32:9
volunteer		we'll 21:3 30:12	34:16 43:1 56:9
213:5,11,16	Web's 150:13	112:16 140:25	57:3,12 58:8,13,24
volunteering 214:12	website 4:11,15	188:12 189:9,13	60:3,17,18
251:5	86:15 116:7,14,19	244:23 255:14	61:4,13,17 68:16
volunteers 27:1,7	117:1,6,16 118:10	well-known 85:17	98:21 110:6 111:9
130:7 212:17,24	126:8,14,18 132:25	well-structured	112:11,12 120:15
213:3,25	140:8 142:1	244:7	131:25 139:11,23
v-screen 16:10	143:7,23 149:21	we're 5:5,10 8:7	140:13 141:22
v-screen 10.10	152:5,15	20:24 31:18,23	159:10,15 161:10
	153:4,6,13	32:3 48:17	163:2 165:21
W W C 144 10 15 20	154:13,18	51:12,15 56:23	174:22 175:6,11
W3C 144:10,15,20	163:15,17 165:4	64:22 71:19 78:5	176:3 193:17,21
145:7,19,24	166:19 167:3,7,10,12,23	80:17 81:4	202:8,10,20 204:4
146:17,24,25	168:11,22 169:7	92:15,19,22 95:14	208:9,15 217:9
wait 188:16 189:5,7	175:7,14	106:3,12 130:3	218:7,16 220:19,20
190:21 191:12,15	176:2,12,14,18	135:14 137:14,19	221:7,13
233:19,22 240:9	177:12 179:5,12	138:3,6 144:25	222:3,11,15
waived 260:4	180:1 202:4 205:16	160:9 175:20,23	224:12,20,25
walk 245:3	213:20 215:18	188:15 189:5	225:4,25 226:4 245:18 248:14
	216:18,24 217:4,12	190:21,25 199:22	245:18 248:14 251:17
walking 160:12	218:9,18	201:12 209:14	
Washington 2:4	219:6,21,25 221:15	210:12 227:14,17	whispers 5:20
wasn't 62:20 63:6	222:5,17 224:15	241:17 245:12	white 16:17,19
64:16 98:23 116:2	225:2,24 226:6	249:2	, in the second second
64·16 98·23 116·2	225:2,24 226:6	249.2	

American Society for Testing and Materials, et al. v. Public Resources 07-31-2015 Page 42

	Page		
whole 114:13	65:20 66:21	165:7 167:14,22	26:23 27:1,9,10,11
whom 49:3	67:17,24 68:12,19	168:8,16 169:3,9	29:8 52:16 53:8
	69:1 70:5 71:6,12	170:2 171:12	70:12 80:20,24
who's 34:23 78:7	72:11,21 73:20	172:4,14 173:8	81:4,11,12,14,22
81:3 122:23	74:3,12,24 75:5,22	174:3,11 175:3	101:2 107:23
123:4,13,18 187:7	76:9 77:2,16,23	176:9,24 177:16,22	127:12 163:16,17
whose 109:7	78:15,25 79:2	179:7,20,22 180:8	167:23 173:4
wide 12:24 19:7	80:5,16 81:3,19	183:10,22	183:16 198:17
102:25 103:16	82:7,19 83:5	184:4,12,19,25	199:5 234:3 249:12
144:3,7 149:7	84:3,13 85:3,16	185:9,19 189:21,23	251:6 259:4
150:22	87:1,7,19 88:7	190:7	worked 13:15 20:19
	89:1,10,12,19	191:1,7,17,22	21:1,9 180:17
widely 83:10 149:22	90:21	194:16,23 195:19	181:3 232:19
width 172:9,16	91:7,12,15,18	196:12 197:4,22	
Wikipedia 245:7	94:7,18	199:8 200:21	working 26:20,21
·	95:6,8,11,22,24	201:12 202:16,25	27:5 50:5 91:23
willing 186:18	96:16,25 97:3,6,9	203:8,13 204:8,15	92:4 255:12
window 115:19	98:14,19 100:2,18	206:11,20 207:1,16	works 15:5 17:25
163:18 164:11,25	101:8,24 102:24	209:2,6 211:7,14	30:18 32:12 49:9
windows 164:21	103:14 104:7	212:14 213:2,23	50:5,6 54:22 55:24
	105:8,12 106:2,19	214:3,16	85:7,14 122:22
wish 130:6	107:20 108:17	215:5,6,12,14	123:2 153:21 199:9
witness 9:8 10:2,4,11	109:18,23 110:22	216:8,14,21 217:16	230:21,25
14:8,11 17:11	111:13,25 112:24	218:11,21 219:12	world 26:13 35:9
22:4,12,22,24	113:7,14 114:3,21	220:23 221:19	144:3,6 150:22
23:2,11,22 24:11	115:2,16 116:10	222:9,20 223:13,20	worldwide 147:13
25:1,12,18 26:19	117:4,19 118:13	224:18 225:8,21	
27:4,20 28:15 29:6	119:6,13,17,21	226:8 227:5,10,13	worried 44:13 71:20
31:16 32:18 33:21	120:13,20 121:2,12	228:13,14 230:7	worry 69:22
34:4,10,20 35:8,18	122:5,25	231:3,24 232:10,18	worse 17:2
36:2,7,14,19,25	123:6,11,15 124:19 125:3,21 127:5,8	233:8,14,19 234:19 235:4 236:6	
37:6,14,21 38:7,19	128:2,11,23	237:12,23 238:19	worth 249:15
39:2,18 40:1,16,24	128.2,11,23	239:12,24 240:12	worthwhile 48:19
41:12 42:1,8	130:17,24 131:18	241:3,19 242:3,11	writing 46:14 184:1
43:12,21 44:2,23	132:7 134:2	243:21 244:5,21,24	191:21
45:9,22 46:25	136:1,6,25 137:14	246:1,10,23 247:7	
47:8,21 48:7,13 49:1,7,19 50:1,20	138:13 139:16	248:5 249:22	writings 184:9
51:4 52:14	140:4,18 141:6	250:6,14 251:14,22	written 65:8
53:1,12,24 54:8,18	142:14 143:10	252:11 253:5,15	183:15,17 252:17
55:1,12 56:5,13,20	144:9 145:18 146:5	254:3,9 257:21	wrong 241:22
57:7,18	147:10,20 149:15	259:2,20,23	wrote 207:17 249:25
58:3,5,18,24	150:13,20	witnesses 261:6	259:12
59:7,17,24	151:16,24 152:19		
60:7,16,24	153:3 154:1 155:8	work 11:7 12:9	Wrought 155:16,19
61:12,21 62:1	156:2,19 157:2,11	13:4,20,21 14:5	
63:11,22 64:13	158:15 159:5,20	15:5,23 19:21	<u>Y</u>
	160:3 163:6 164:4	20:16,17 21:8	Yep 65:24 147:1
	-		-

	Pag	e 43	
236:9,12,15			
yes/no 239:1			
yet 188:21 233:10			
you'll 75:8 194:21 209:21 220:14			
yourself 5:22 22:18 24:21 25:8 35:23 36:10 37:17 247:14 256:19			
you've 19:11 34:13 48:10 49:4,13 90:5 95:3,19 104:22 105:22 120:8 166:19 234:2			
Z zero 182:1			
zone 90:17			
zoom 164:5,16,25 165:3			