

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of)

ECM BioFilms, Inc.,)
a corporation, also d/b/a)
Enviroplastics International)

Docket No. 9358

PUBLIC DOCUMENT

ORIGINAL

**COMPLAINT COUNSEL'S MOTION TO COMPEL DISCOVERY WRONGLY
WITHHELD BY DR. DAVID STEWART**

Pursuant to Rule 3.38(a), Complaint Counsel respectfully requests that the Court order Respondent ECM Biofilms, Inc. ("ECM") to supplement, immediately, its incomplete responses to document requests issued in November regarding ECM's sophisticated customer defense. Specifically, ECM engaged Dr. David Stewart to opine regarding how ECM's allegedly sophisticated customers understand biodegradation. Because Dr. Stewart wrongly withheld information highly probative (indeed, potentially dispositive) of ECM's sophisticated customer defense, we ask the Court to order ECM to provide all information within its control that responds to outstanding document requests regarding this defense.

BACKGROUND

A. David Stewart's Manufacturer's Pilot Study

Last week, Dr. Stewart testified that he conducted a "manufacturers' pilot study" for ECM.¹ To facilitate this "study," ECM (likely CEO Robert Sinclair) apparently selected a subset of its customers whom interviewers working for Dr. Stewart would contact (as well as the particular employees at those businesses interviewers would contact).² Dr. Stewart's interviewers then asked ECM's hand-picked customers, among other things: "How would you

¹ CXA:1 at 186:20-22.

² *Id.* at 201:3-6 ("Q: ECM not only provided the [] companies your researchers would speak with but the specific people, correct? A: That's correct."); *id.* at 188:24-189:1 (testifying that "it's my understanding that Mr. Sinclair or something in his organization" developed the list).

define biodegradability?”³ Notably, Dr. Stewart further testified that—despite receiving specific individuals’ information—he apparently was able to reach only ten ECM customers out of list containing approximately 150 ECM customers.⁴

Most important, four of the ten cherry-picked customers gave answers inconsistent with ECM’s position that, notwithstanding its marketing claims, its customers understand that ECM Plastic will take much longer than advertised to biodegrade. In particular, one hand-picked customer defined “biodegradability” with reference to “[t]he ability to make materials dissolve **within a year.**”⁵ Two other responses referenced ASTM tests D5511 and D6400, both of which are short-term tests that run for less than a year⁶ (and Dr. Stewart agreed that, given the timeframes of these tests, these ECM customers “**understand[] biodegradation is something that happens in less than a year.**”).⁷ A fourth respondent defined “biodegradation as something that occurs “within 1 to 3 years.”⁸ Suffice it to say, ECM did not instruct Dr. Stewart to convert the pilot study into full-scale research⁹ (Dr. Stewart attributed this largely to allegedly insufficient time).¹⁰

Significantly, notwithstanding the fact that ECM hand-picked the survey respondents, ECM, its counsel, and Dr. Stewart failed to produce the list of their names to us:

QUESTION: Have you ever seen a copy of the list?

³ CXA:2 at Q6.

⁴ CXA:1 at 209:21-25.

⁵ CXA:3 at 3 (emphasis added).

⁶ *Id.*

⁷ CXA:1 at 213:1-215:3 (emphasis added).

⁸ CXA:3 at 3.

⁹ CXA:1 at 217:4-6.

¹⁰ *See id.* at 219:14-220:1. Dr. Stewart testified that he only needed to interview approximately 40 more ECM customers to complete a full-scale study, *see id.* at 220:2-8 (testifying that he needed 50 overall), and it is unclear why he could not have done so in a few days. *See CXA:4* (excerpted and redacted to preserve confidentiality). In fairness, Dr. Stewart also denied knowing “all of the reasons” that may have led to ECM’s decision not to run the pilot study as a full study. *See CXA:1* at 219:14-17 (“Q: Why was the pilot study not rerun as a full scale study? A: I don’t know all of the reasons that may have gone into it.”).

STEWART: I was provided the list, yes.

QUESTION: Why was a copy of that list not produced to Complaint Counsel?

STEWART: Because it's confidential.

QUESTION: Was there any other reason?

STEWART: I [have] an ethical responsibility to protect the identity of survey respondents and so if defense counsel wants to provide it since they provided it to me they're welcome to do that[.]

....

QUESTION: ECM has a copy of the list, correct?

STEWART: That's actually where I obtained it.

QUESTION: Just so the record is clear, you obtained it from Emord & Associates and you infer that Emord & Associates obtained it from ECM?

STEWART: That's fair, yes.¹¹

Although ECM produced the list to Complaint Counsel yesterday evening,¹² it remains impossible to determine which companies (or persons) on the list were interviewed, or who gave which answers. This is because the survey results identify respondents by number, and Complaint Counsel has no way to correlate the numbers on the results with Mr. Sinclair's list of potential respondents. Indeed, Dr. Stewart testified:

QUESTION: So Complaint Counsel based on information that has been produced to us to date cannot identify the manufacturers or the persons that participated in the manufacturer's [study], correct?

¹¹ CXA:1 at 187:3-188:13.

¹² See CXA:4 (excerpted and redacted to preserve confidentiality). ECM implied that it produced this document to Complaint Counsel as part of ECM's initial disclosures. This is false, as the document ECM produced last night is dated "Sunday, May 4, 2014." See *id.* Additionally, several large current customers are missing from the May 4 list ECM provided to Dr. Stewart, and the May 4 list contains at least one company that is not a current ECM customer. Thus: (1) on or about May 4, Dr. Stewart received a partial list of ECM customers he should interview (the list appears both over and under-inclusive); (2) before his deposition, Dr. Stewart produced a report of "pilot study" results that identified survey respondents only by number; and (3) after his deposition, Dr. Stewart produced the May 4 list, which identifies potential survey respondents only by name.

STEWART: That is correct.¹³

Producing the list with names but no numerical identifiers did not solve the problem because the survey data contains only numerical identifiers, not names.¹⁴

B. Complaint Counsel's Document Requests

Seven months ago, Complaint Counsel issued two document requests covering the information at issue:

Request No. 11

Provide all documents, whether prepared by or for ECM or any other entity, including any advertising agency, regarding consumer perception, comprehension, or recall (including, but not limited to, copy tests, marketing or consumer surveys and reports, penetration tests, recall tests, audience reaction tests, and communication tests) of . . . biodegradability in general.

Request No. 12

Provide all documents that support or call into question your contention that your customers or distributors are sophisticated purchasers.¹⁵

ECM has a duty to supplement its responses “in a timely manner.” *See* Rule 3.31(e)(2).

LEGAL STANDARD

Rule 3.31(c)(1) provides that “[p]arties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.” Although Rule 3.31(c)(2) limits discovery in certain respects, there is no statutory, constitutional, or common law “survey research” privilege.

ARGUMENT

ECM apparently makes two arguments against disclosure, both of which fail. First, ECM contends, or at least implies, that it cannot obtain the names of the ECM customers who

¹³ CXA:1 at 261:21-25.

¹⁴ As the Court undoubtedly will recall, this is reminiscent of ECM’s tactic with respect to its initial disclosures. *See* Order (Feb. 4, 2014) at 2 (“The Revenues List, however, does not identify revenue by customer name, and the Customer List does not contain customer numbers. Thus, there is no way to tie the revenues figures disclosed to particular identified customers.”).

¹⁵ CCA:5 at 6-7.

answered Dr. Stewart's telephone calls. However, even if one assumes that ECM and/or its counsel do not have the information, requests under Rule 3.37(a) apply to all materials in ECM's "possession, custody, or **control**."¹⁶ As ECM itself explained, experts are agents of the party hiring them.¹⁷ If the Court so orders, ECM can request the responsive information from Dr. Stewart. To the extent that the responsive information is physically within the custody of the research firm (California Survey Research Services ("CSRS")) that Dr. Stewart engaged to call the manufacturers ECM chose,¹⁸ CSRS is Dr. Stewart's agent, ECM's agent, or both, and ECM thus retains control over the responsive information.¹⁹ The Court should not permit ECM's shell game with this critical data to defeat reasonable, necessary, and probative discovery.

Second, ECM implies that the names of interviewees are somehow protected. However, the telephone calls Dr. Stewart supervised were never a genuine survey. Rather, as discussed above, Dr. Stewart called specific ECM customers (that Mr. Sinclair apparently selected) and specific people at those companies (that ECM also selected). Assuming this is methodologically defensible from a survey research perspective (and it is not), the answers these ECM customers gave bear upon ECM's sophisticated customer defense just as much as answers ECM customers gave in depositions Complaint Counsel took—except that, obviously, ECM knows the names of those deponents and both parties have the opportunity to place responses to questions in

¹⁶ (Emphasis added).

¹⁷ ECM Mtn. to Serve Subpoenas (June 4, 2014) at 2 ("Here, the party receiving the subpoena [an expert for Complaint Counsel] is, in fact, **an agent of the Federal Trade Commission**[.]") (Emphasis added).

¹⁸ ECM offered not to oppose a subpoena to CSRS, knowing that CSRS will almost certainly move to quash. CSRS likely would lose, but this approach would consume considerable time, and trial is less than a month away.

¹⁹ Dr. Stewart was evasive regarding who physically possesses the information at issue, although it seems likely that at least CSRS does. *See* CXA:1 at 260:14-17 ("[W]hat I'm telling you is that the identities of [the] individuals who participated in the pilot [study] are simply not going to be available to you."); *id.* at 260:18-22 ("Q: And to whom are they available? To you? A: I don't even know. Q: They're available to someone under your control? A: **Potentially, yes.**") (emphasis added).

context.²⁰ The Court cannot permit ECM to conduct *de facto* telephonic depositions of its customers without our participation or even disclosing whom its agent, Dr. Stewart, questioned.²¹

Finally, even if one considered the “manufacturer’s pilot study” to be legitimate survey research rather than telephonic interviews with certain apparently cherry-picked ECM customers, there is no privilege protecting the names of such survey respondents from disclosure. The Commission’s rules only protect information privileged “by the Constitution, any applicable act of Congress, or the principles of common law,” Rule 3.31(c)(4), and no survey respondent privilege emanates from any of these sources.²²

CONCLUSION

For these reasons, we respectfully ask the Court to grant Complaint Counsel’s motion to compel ECM to produce information sufficient to establish which ECM customers provided which interview responses to Dr. Stewart’s researchers.

Dated: July 8, 2014

Respectfully submitted,



Katherine Johnson (kjohnson3@ftc.gov)
Jonathan Cohen (jcohen2@ftc.gov)
Arturo Decastro (adecastro@ftc.gov)
Elisa Jillson (ejillson@ftc.gov)
Federal Trade Commission
600 Pennsylvania Ave., N.W. M-8102B
Washington, DC 20580
Phone: 202-326-2185; -2551; -2747; -3001
Fax: 202-326-2551

²⁰ To the extent ECM offers not to rely on Dr. Stewart’s interviews with its customers, this resolution unfairly penalizes Complaint Counsel. As discussed, the pilot study—which ECM and/or Dr. Stewart abruptly terminated—produced data that strongly favors our position, and we are entitled to rely on it.

²¹ Indeed, Complaint Counsel has no way to know whether some of the companies Dr. Stewart called were companies that Complaint Counsel also deposed.

²² Even if the law should be expanded to create a privilege protecting the names of individual consumers responding to surveys, Dr. Stewart supervised telephone interviews with businesses (ECM customers) ECM selected. At very most, ECM could request that the names of these customer/interview participants be treated as nonpublic information.

STATEMENT CONCERNING MEET AND CONFER

The undersigned counsel certifies that Complaint Counsel conferred telephonically with Respondent's counsel on July 3 regarding the issue raised herein. Respondent's counsel stated yesterday evening that Complaint Counsel should seek to subpoena CSRS rather than obtain the information at issue from ECM.

Dated: July 8, 2014

Respectfully submitted,



Katherine Johnson (kjohnson3@ftc.gov)
Jonathan Cohen (jcohen2@ftc.gov)
Arturo Decastro (adecastro@ftc.gov)
Elisa Jillson (ejillson@ftc.gov)
Federal Trade Commission
600 Pennsylvania Ave., N.W. M-8102B
Washington, DC 20580
Phone: 202-326-2185; -2551; -2747; -3001
Fax: 202-326-2551

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2014, I caused a true and correct copy of the foregoing to be served as follows:

One electronic copy to the **Office of the Secretary**, and one copy through the FTC's e-filing system:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Room H-159
Washington, DC 20580
Email: secretary@ftc.gov

One electronic copy and one hard copy to the **Office of the Administrative Law Judge**:

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., NW, Room H-110
Washington, DC 20580

One electronic copy to **Counsel for the Respondent**:

Jonathan W. Emord
Emord & Associates, P.C.
11808 Wolf Run Lane
Clifton, VA 20124
Email: jemord@emord.com

Peter Arhangelsky
Emord & Associates, P.C.
3210 S. Gilbert Road, Suite 4
Chandler, AZ 85286
Email: parhangelsky@emord.com

Eric Awerbuch
Emord & Associates, P.C.
3210 S. Gilbert Road, Suite 4
Chandler, AZ 85286
Email: EAwerbuch@emord.com

Date: July 8, 2014



Katherine Johnson (kjohnson3@ftc.gov)
Jonathan Cohen (jcohen2@ftc.gov)
Elisa Jillson (ejillson@ftc.gov)
Federal Trade Commission
600 Pennsylvania Ave., N.W. M-8102B
Washington, DC 20580
Phone: 202-326-2185; -2551; -3001
Fax: 202-326-2551

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
)	
ECM BioFilms, Inc.,)	Docket No. 9358
a corporation, also d/b/a)	
Enviroplastics International)	PUBLIC DOCUMENT
)	

**EXHIBITS IN SUPPORT OF COMPLAINT COUNSEL'S
MOTION TO COMPEL DISCOVERY WRONGLY
WITHHELD BY DR. DAVID STEWART**

Complaint Counsel Exhibit A

CX-A

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)

ECM BioFilms, Inc.,)
a corporation, also d/b/a)
Envioplastics International)
_____)

**Docket No. 9358
PUBLIC DOCUMENT**

**DECLARATION OF JONATHAN COHEN IN SUPPORT COMPLAINT COUNSEL'S
MOTION TO COMPEL DISCOVERY
DR. DAVID STEWART WRONGFULLY WITHHELD**

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct:

1. I am over 18 years of age, and I am a citizen of the United States. I am employed by the Federal Trade Commission ("FTC") as an attorney in the Division of Enforcement in the Bureau of Consumer Protection. I am an attorney of record in the above-captioned matter, and I have personal knowledge of the facts set forth herein.

2. Attachment 1 hereto is a true and correct copy of a rough transcript of the deposition of Dr. David Stewart, taken on July 1, 2014.


3. Attachment 2 hereto is a true and correct copy of interview questions interviewers working for Dr. David Stewart apparently used when interviewing ECM customers.

4. Attachment 3 hereto is a true and correct copy of responses to interview questions ECM customers provided, as produced by ECM to Complaint Counsel.

5. Attachment 4 hereto is a true and correct copy of a redacted excerpt of ECM customer contact information that was apparently provided to Dr. Stewart in May, 2014.

6. Attachment 5 hereto is a true and correct copy of Complaint Counsel's First Set of Requests for Production of Documents, dated November 27, 2013.

Executed this 8th day of July, 2014 in Washington, D.C.



Jonathan Cohen
Complaint Counsel

**Complaint Counsel
Exhibit A
Attachment 1**

CX-A:1

In the Matter of:

ECM BioFilms, Inc., et al.

July 1, 2014
David Stewart, Ph.D.

Condensed Transcript with Word Index



For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

UNITED STATES DISTRICT COURT
BEFORE THE FEDERAL TRADE COMMISSION

1
2
3
4 In the Matter of)
)
5 ECM BioFilms, Inc.,)
6 a corporation, also d/b/a)
7 Enviroplastics International)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

Tuesday, July 1, 2014

10877 Wilshire Boulevard
Suite 700
Los Angeles, California

The above-entitled came on for
investigational hearing, pursuant to Notice,
at 8:54 a.m.

A P P E A R A N C E S

1
2
3 For the Federal Trade Commission: JONATHAN COHEN, ESQ.
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
(202) 326-2551
jcohen2@ftc.gov
4
5
6
7 BARBARA Y.K. CHUN, ESQ.
10877 Wilshire Boulevard
Suite 700
Los Angeles, CA 90024
(310) 824-4343
8
9
10 For the Respondent: ERIC AWERBUCH, ESQ.
EMORD & ASSOCIATES, P.C.
3210 South Gilbert Road
Suite 4
Chandler, Arizona 85286
(602) 388-8899
parhangelsky@emord.com
11
12
13
14 Also Present: Shane Frederick
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
BEFORE THE FEDERAL TRADE COMMISSION

1
2
3
4 In the Matter of)
)
5 ECM BioFilms, Inc.,)
6 a corporation, also d/b/a)
7 Enviroplastics International)
8)
9)
10)
11)
12)
13 DEPOSITION OF DAVID STEWART, Ph.D., taken on behalf
14 of the Plaintiff, at 10877 Wilshire Boulevard,
15 Suite 700, Los Angeles, California, commencing at
16 8:54 a.m., and concluding at 5:26 p.m., on Tuesday,
17 July 1, 2014, pursuant to Notice, before
18 CHRISTINA KIM-CAMPOS, CSR No. 12598, a Certified
19 Shorthand Reporter, in and for the State of
20 California.
21 ***
22
23
24
25

I N D E X

2	WITNESS	EXAMINATION	PAGE
3	David Stewart, Ph.D.	By Mr. Cohen	
4	Afternoon Session		
5			
6	DEPOSITION EXHIBITS	INITIAL REFERENCE	
7	Stewart Deposition Exhibit No. 1		1
	Stewart Deposition Exhibit No. 2		2
8	Stewart Deposition Exhibit No. 3		3
	Stewart Deposition Exhibit No. 4		4
9	Stewart Deposition Exhibit No. 5		5
	Stewart Deposition Exhibit No. 6		6
10	Stewart Deposition Exhibit No. 7		7
	Stewart Deposition Exhibit No. 8		8
11	Stewart Deposition Exhibit No. 9		9
	Stewart Deposition Exhibit No. 10		10
12	Stewart Deposition Exhibit No. 11		11
	Stewart Deposition Exhibit No. 12		12
13	Stewart Deposition Exhibit No. 13		13
14			
15	QUESTIONS INSTRUCTED NOT TO ANSWER		
16	None.		
17			
18			
19	INFORMATION REQUESTED		
20	None.		
21			
22			
23			
24			
25			

Draft Copy

1 LOS ANGELES, CALIFORNIA; TUESDAY, JULY 1, 2014
2 8:54 A.M.

3
4 DAVID STEWART, Ph.D.,
5 called as a witness by and on behalf of
6 the Plaintiff, being first duly sworn,
7 was examined and testified as follows:

8
9 EXAMINATION

10 BY MR. COHEN:

11 **Q. Good morning, Dr. Stewart.**

12 A. Good morning.

13 **Q. My name is Jonathan Cohen. I'm here on**
14 **behalf complaint counsel at the Federal Trade**
15 **Commission. I understand that you've been deposed**
16 **any a number of times before I won't go over all the**
17 **rules. I know you know them, but if for any reason**
18 **you do have any questions or you need a break please**
19 **let me know.**

20 A. I will do that. Thank you.

21 **Q. Did you personally write every word of your**
22 **expert report in this case?**

23 A. I believe so yes.

24 **Q. Let's mark as Exhibit 1 your expert report**
25 **in this case. Mark Exhibit 1.**

1 **Q. That this was a copy of the report that was**
2 **produced to us?**

3 A. Okay.

4 **Q. And it was printed out. And I'll note as**
5 **well it may be the case there are blue lines on**
6 **certain foot notes that are links and I'm not sure**
7 **they were actually blue in the actual report but it**
8 **looks like that's how the printer printed them?**

9 A. With that caveat well it looks as though it
10 is the report that I wrote minus the minus the
11 appendices although the appendices are identified
12 at the back.

13 **Q. I direct you to page 9 and specifically the**
14 **7th sentence which is in the middle of the first**
15 **paragraph begins with the word similarly. Similarly**
16 **there have been periods where large when large**
17 **numbers of a population have believed in the**
18 **superiority or inferiority of particular races**
19 **actions based on such shared beliefs had not had**
20 **happy outcomes shared beliefs among customers**
21 **especially when those shared beliefs have little**
22 **basis in fact or personal expertise are a poor way**
23 **to inform policy did I read that correctly?**

24 A. You did.

25 **Q. Is policy based on shared beliefs among**

1 **Q. And Professor Stewart it is the fact it is**
2 **the case that what's been marked as Exhibit 1 is**
3 **your expert report in this case. You can go ahead**
4 **and take a look. On?**

5 A. Well there's some coloring that I don't
6 believe was in your original report.

7 **Q. What coloring don't you believe was in the**
8 **original report?**

9 A. Well, there's some there's some text that's
10 in some of it is in red. You know I I don't believe
11 that that was in the original report so I'm not sure
12 where where that.

13 **Q. Can you?**

14 A. May have come from and it looks like it's
15 rather random.

16 **Q. It's possible there's just some eccentricity**
17 **with your copy can you point me to a specific page**
18 **that has some red on it?**

19 A. Oh, sure. Well, if you look at page 5 under
20 scope of assignment there just a number of places
21 where there's sort of random red, doesn't look like
22 you've got red so.

23 **Q. Let me just. That may be a feature of the**
24 **printer that was used but I'll represent to you?**

25 A. Okay.

1 consumers analogous to policies base on the Supreme
2 Court or inferiority of particular races?

3 MR. AWERBUCH: Objection.

4 THE WITNESS: It's analogous in the sense
5 that it represents beliefs. Whether it's beliefs
6 about races or beliefs about particular events or
7 beliefs about the state of the world others we're
8 really talking about beliefs.

9 BY MR. COHEN:

10 **Q. Is there anything the FTC does that you**
11 **would analogize to policies based on the superiority**
12 **or inferiority of particular races?**

13 A. Well it appears to me in this action that's
14 what's occurring is that there is an effort to make
15 policy based only what people believe as opposed to
16 any underlying science.

17 **Q. Why are shared beliefs among consumers a**
18 **poor way to inform policy?**

19 A. Because consumers believe many things that
20 are not true. And to the degree that there is an
21 underlying science or an underlying criterion you'd
22 really like to call upon that in establishing
23 standards not a set of arbitrary on beliefs that are
24 shared by a group of people that may have no basis
25 in fact and may may in fact be wrong.

1 **Q. Are you familiar with the FTCs Q ray**
 2 **litigation?**
 3 A. I don't think I am.
 4 **Q. Then I'll ask you to assume that many**
 5 **consumers believe that magnets have medicinal**
 6 **benefits do you understand the assumption I'm asking**
 7 **you to make?**
 8 A. I do.
 9 **Q. And I'll further ask you to assume that tens**
 10 **of thousands of consumers purchase magnets from a**
 11 **company that marketed them as medicinally beneficial**
 12 **do you understand that assumption as well?**
 13 A. I do.
 14 **Q. When the FTC initiated litigation on behalf**
 15 **of those consumers was that poor policy in your**
 16 **view?**
 17 MR. AWERBUCH: Objection.
 18 THE WITNESS: I can't really answer that
 19 without additional information. The question would
 20 become one of what was the source of those beliefs,
 21 what did the company do, without more information I
 22 really can't give you an answer.
 23 BY MR. COHEN:
 24 **Q. And what additional information would you**
 25 **need to be able to answer that?**

1 **Q. Are shared beliefs or strike that. Why are**
 2 **shared beliefs among consumers a poor way to inform**
 3 **policy when the shared beliefs have little basis in**
 4 **personal expertise?**
 5 A. Because you're essentially asking
 6 individuals to offer an opinion offer a statement to
 7 inform some action some policy that may have little
 8 or no basis in fact in.
 9 **Q. You're aware are you not that the FTC often**
 10 **brings cases against marketers making un**
 11 **substantiated medical claims?**
 12 A. I am aware that have.
 13 **Q. You would agree would you not that most**
 14 **consumers do not have personal experience or**
 15 **expertise in medicine correct?**
 16 MR. AWERBUCH: Objection. Objection.
 17 THE WITNESS: I would agree with that too.
 18 BY MR. COHEN:
 19 **Q. There's no requirement that consumers have**
 20 **personal expertise for an un substantiated medical**
 21 **claim to violate the FTC act is there?**
 22 A. No there's not.
 23 **Q. And in fact people without the personal**
 24 **experience necessary to evaluate claims like those**
 25 **are precisely people whom the FTC act protects isn't**

1 A. Well as indicated I -- I need to know what
 2 the company do, I'd need to know something about the
 3 underlying science, I would need to know something
 4 about what the what the beliefs were what the basis
 5 for those beliefs were.
 6 **Q. Let's assume that consumers had pre-existing**
 7 **beliefs that magnets had medicinal benefits and the**
 8 **companies marketing capitalized on those are**
 9 **pre-existing beliefs, again given those assumptions**
 10 **when the FTC initiated litigation on behalf of those**
 11 **consumers was that poor policy?**
 12 A. Again I would need to know a lot more of the
 13 facts in that particular case. How many consumers
 14 shared that belief? What was the source of those
 15 beliefs, how did the company capitalize on those
 16 beliefs.
 17 **Q. So it may be poor policy or it May not be**
 18 **poor policy depending on the specific factors I**
 19 **haven't give you sufficient information to make that**
 20 **judgment?**
 21 A. That's that's correct. I mean it would need
 22 to be more than just the fact that there were shared
 23 beliefs.
 24 **Q. So shared beliefs alone is not sufficient?**
 25 A. I don't believe so.

1 **it?**
 2 A. It's part of what the FTC act is intended to
 3 protect that's correct that's people who not have
 4 have the expertise to evaluate a specific claim that
 5 was in fact factually incorrect.
 6 **Q. Is it your role as an expert in this case to**
 7 **opine regarding what policies the commission should**
 8 **or should not adopt?**
 9 MR. AWERBUCH: Objection.
 10 THE WITNESS: I believe that part of my role
 11 here is is to opine on that largely because my
 12 understanding was case is quite an unusual case in
 13 the sense that there is a policy making component of
 14 this case as well as an issue of whether something
 15 is deceptively miss leading in terms of a
 16 communication so, but the policy aspect is really
 17 tide up very much with the communication aspect in
 18 this particular case.
 19 BY MR. COHEN:
 20 **Q. Is the case unusual to you in any other**
 21 **respects?**
 22 A. Well it is somewhat unusual in the sense
 23 that at the heart of the case is the definition of a
 24 term and the definition of that term is really quite
 25 ambiguous and I think absent a clear standard on

1 what that definition is, you know it's it's
2 difficult to conclude people are being misled or
3 that they're getting correct factual information.
4 **Q. Do I understand your position correctly that**
5 **it is difficult to conclude that anyone has been**
6 **misled if there is no clear standard as to what a**
7 **term means?**

8 MR. AWERBUCH: Objection.

9 THE WITNESS: Well I wouldn't go that far
10 but I do think that you you cannot simultaneously
11 establish a standard and then apply that standard to
12 particularly a standard that's based on what people
13 already believe and then apply that standard as the
14 basis for bringing an action for deception. I mean
15 if people already believe something it's not because
16 it was communicated by by a marketer.

17 BY MR. COHEN:

18 **Q. Do you consider yourself an expert in policy**
19 **making?**

20 MR. AWERBUCH: Objection.

21 THE WITNESS: Actually I do. I edit a
22 journal in public policy in marketing.

23 BY MR. COHEN:

24 **Q. Let's mark as Exhibit 2 obviously professor**
25 **please maintain Exhibit 1 we'll refer back to that**

1 **let's mark as Exhibit 2 a set of screen shots. I'll**
2 **provide copies to everyone and further more let's**
3 **mark as Exhibit 3 you can set this to the side you**
4 **can take a quick look at it but a compilation of the**
5 **data that we understand is data in response to the**
6 **survey that you under took. Those screen shots in**
7 **exhibit two take a look at this I want to make sure**
8 **that those are in fact the screen shots that contain**
9 **the questions that were asked of the consumer survey**
10 **respondents?**

11 A. I believe they are yes.

12 **Q. I certainly don't expect you to review four**
13 **hundred entries there professor Stewart but please**
14 **glance through and see whether you have any reason**
15 **to disagree with my representation that that's a**
16 **collection of the data?**

17 A. I have no reason to disagree.

18 **Q. Survey question four reads if something is**
19 **bio degradable how long do you think it would take**
20 **for it to decompose or decay correct?**

21 A. That's correct.

22 **Q. I'm going to mark as Stewart three Aan**
23 **excerpt of three a little easier on so you don't**
24 **have to flip through the document containing four**
25 **hundred pages four hundred entries. I direct you to**

1 **case I.D. one zero zero seven six one, it will be**
2 **easier for you to find on Exhibit 3 A. And**
3 **specifically the response to question four. In the**
4 **it's the second row in response to question four**
5 **reads weeks or months, did I read that correctly?**

6 A. I'm not finding where you are.

7 **Q. Take a look on the far left column you'll**
8 **see a survey number one zero zero 7 six one?**

9 A. I found that.

10 **Q. And then if you go over to the response to**
11 **four B, excuse me response to survey question four**
12 **it's in the middle toward the right and you'll see**
13 **weeks or months do you see that there.**

14 A. I do now see that yes thank you.

15 **Q. Would you characterize this consumers**
16 **response as ludicrous?**

17 A. No I would not.

18 **Q. Would you characterize this consumers**
19 **response as absurd?**

20 A. I would not.

21 **Q. And you coded this response correct?**

22 A. I did.

23 **Q. And you didn't disqualify it from your**
24 **survey?**

25 A. I did not.

1 **Q. And why didn't you disqualify it from your**
2 **survey?**

3 A. Because weeks or months is a potentially
4 appropriate answer here. It's unspecified in terms
5 much how many weeks or how many months, but it it's
6 an it's a reasonable response to to the question.

7 **Q. I direct you to case I.D. one zero zero six**
8 **nine seven also the response to question four which**
9 **should be on the next page if I've done this**
10 **correctly. I may have misspoken one zero zero six**
11 **nine seven. That response says within weeks two**
12 **months, did I read that correctly?**

13 A. You certainly did.

14 **Q. Would you characterize this consumers**
15 **response as ludicrous?**

16 A. No I would not.

17 **Q. Would you are characterize this consumers**
18 **response as absurd?**

19 A. No I would not.

20 **Q. You coded this response correct?**

21 A. I did indeed.

22 **Q. You didn't disqualify it from your survey?**

23 A. No, I did not.

24 **Q. Why not?**

25 A. Because it's a perfectly reasonable

1 response. The individual doesn't specify a
2 particular interval they simply indicate weeks to
3 months in both cases plural, both could be could be
4 perfectly reasonable beliefs from the part of an
5 individual. It's nonspecific. But represents what
6 the individual believes.

7 **Q. Is it your contention this consumer may have
8 meant more than a dozen months?**

9 A. That could be the interpretation, I'm I'm
10 not here to tell you what was in the minds of these
11 consumers when they gave these responses. This is
12 the response that they gave I think it's a
13 reasonable response. But you know what they had in
14 mind I don't know. They they clearly didn't put a
15 number around weeks tore months. It could have been
16 a few. It could have been many.

17 **Q. So in your interpretation it's it could have
18 been a hundred and four weeks?**

19 A. Well anything is possible. I -- I suppose.
20 Again you're asking me to go beyond the data here.
21 I don't know what this person had in mind when they
22 gave this response.

23 **Q. You would agree with me that weeks or months
24 probably doesn't mean two years?**

25 MR. AWERBUCH: Objection.

1 A. I would agree that in most cases that's
2 probably correct bull gean we're going beyond the
3 data here.

4 **Q. The data does say weeks or months correct?**

5 A. That's exactly what it says.

6 **Q. And the most plausible interpretation of
7 weeks or months would be some period of time less
8 than a year correct?**

9 MR. AWERBUCH: Objection.

10 THE WITNESS: That is a plausible
11 interpretation but it is an interpretation.

12 BY MR. COHEN:

13 **Q. You didn't strike that you coded their
14 response correct?**

15 A. I certainly did.

16 **Q. And you coded it as being less than a year?**

17 A. I don't recall exactly how I would have
18 coded this it probably would have initially been
19 coded as weeks to months. I did not make an effort
20 to convert the responses into specific numeric
21 values unless a numeric value was provided.

22 **Q. You didn't disqualify from your survey did
23 you?**

24 A. I did not.

25 **Q. I direct you to one zero zero nine five six**

1 **on the next page the response to question four. A
2 couple of weeks parentheses P, then the number one
3 then no, did I read that correctly?**

4 A. Again I'm not finding.

5 **Q. It's in the last row. Roughly speaking the
6 fifth column from the right so sir if you look at
7 the lower left-hand corner you'll see one zero zero
8 nine five six?**

9 A. I do I've now found it I'm sorry. The type
10 is rather small but.

11 **Q. I apologize?**

12 A. Yes, I do see the person says a couple of
13 weeks one month.

14 **Q. Before I forget to ask what does that
15 parentheses P, mean?**

16 A. That would have been what the individual
17 probably the interviewer put a plural on it. You
18 know I don't know whether the respondent said a
19 couple week or the interviewer said a couple of
20 weeks but that's that's as I sit here I can't tell
21 you specifically.

22 **Q. Sticking with the P for a moment if you go
23 over on row left maybe three large subsidiaritive
24 entries there's one that says so that we can leave a
25 cleaner earth for our children. I don't use plastic**

1 **bags I use paper and I recycle. P, no do you see
2 that?**

3 A. Yes.

4 **Q. That does don't indicate plural there could
5 it?**

6 A. Oh no actually actually you ask me now now I
7 now I know what this is. That's not a that's not an
8 S on the that the earlier thing you asked me about.
9 That's a P, and the and that stands for probe. And
10 the same is true in the P for the one you just asked
11 me about. That would be a probe, anything else.

12 **Q. And what do you mean by probe?**

13 A. It would have been a question much as I just
14 used, anything else.

15 **Q. So returning to one zero zero nine five six,
16 which states a couple of weeks before the probe,
17 would you characterize that consumers response as
18 ludicrous?**

19 A. No I would not.

20 **Q. Would you characterize that consumers
21 response as absurd?**

22 A. I would not.

23 **Q. And you coded this response correct?**

24 A. I certainly did.

25 **Q. And you didn't disqualify from the survey?**

1 A. I did not.

2 **Q. Let's go to case number one zero zero nine**
3 **three seven response to question four which is in**
4 **the second row the fifth column from the right. A**
5 **couple of weeks did I will read that correctly?**

6 A. Yes.

7 **Q. Would you characterize this consumers**
8 **response as ludicrous?**

9 A. No I would not.

10 **Q. Would you characterize this consumers**
11 **response as absurd?**

12 A. I would not.

13 **Q. You coded this response correct?**

14 A. I did.

15 **Q. You didn't disqualify from your survey?**

16 A. I did not.

17 **Q. Let's go to one zero zero five one seven the**
18 **response to question to question 4 which is in the**
19 **third row fifth column from the right.**

20 **Probably two weeks did I read that**
21 **correctly?**

22 A. Again you'll have to tell me where you are.

23 **Q. The third row I believe and the so that**
24 **would be the bottom row in this instance. One zero**
25 **zero actually let me, did I call out five one seven,**

1 **you may need to skip ahead an additional page to get**
2 **to five one seven?**

3 A. I do see five one seven.

4 **Q. I apologize I miss directed you so if you go**
5 **to third row again and response to question four**
6 **which is about one two three four five or so from**
7 **the right you see probably two weeks.**

8 A. I do see that yes.

9 **Q. Would you characterize this consumers**
10 **response as ludicrous?**

11 A. I would not.

12 **Q. Would you characterize this consumers**
13 **response as absurd?**

14 A. I would not.

15 **Q. You coded this response correct?**

16 A. I did.

17 **Q. You didn't disqualify it from your survey**
18 **did you?**

19 A. I did not.

20 **Q. Let's go to case I.D. number one zero zero**
21 **eight four nine which may require a little more**
22 **flipping it's toward the end.**

23 **Q. On the correct page it should be the last**
24 **row. Again the fifth column from the right.**

25 A. Uh-huh.

1 **Q. This consumer responded within a couple of**
2 **days did I read that correctly?**

3 A. Yes, you did.

4 **Q. Would you K characterize this consumers**
5 **response as ludicrous?**

6 A. No I would not.

7 **Q. Would you characterize this consumers**
8 **response as absurd?**

9 A. I would not.

10 **Q. You coded this response correct?**

11 A. I sure did.

12 **Q. You didn't disqualify from your survey?**

13 A. I did not.

14 **Q. Let me direct you to your report on page 12**

15 **I believe it's Exhibit 1 and I'm correct am I not**
16 **that you characterized responses that were described**
17 **in terms of seconds minutes hours days or weeks as**
18 **ludicrous and then I believe as well the term absurd**
19 **is used twice on the same page as well also to**
20 **characterize such responses. Have I understood that**
21 **correctly.**

22 A. That's correct.

23 **Q. Why is it that the responses that are in**
24 **Professor Frederick's survey that are in days or**
25 **weeks are ludicrous and absurd whereas the responses**

1 **that are in your survey that are lewd, that are days**
2 **or weeks are not ludicrous and absurd?**

3 A. Well because what I report is actually what
4 the respondent said. What Dr. Frederick reports is
5 a recoding of these, he converts two minutes, two
6 weeks, ten days, all into half a year. That's
7 that's not meaningful, that's ludicrous, that's

8 absurd, I think it's certainly the case that weeks
9 or months in some fashion is a reasonable response
10 from the part of a consumer. It's not necessarily a
11 statement of fact. It's a statement of belief and I
12 believe Professor Frederick actually uses his data
13 as though it's a statement of fact, not simply an
14 uninformed opinion. And in fact many of these
15 responses are ludicrous and absurd. Nanosecond, one
16 second, ten minutes, I mean a thoughtful consume
17 arer doesn't give these kinds of responses.

18 **Q. You said a fuse things there first of all if**
19 **I understood you correctly days and weeks are not**
20 **ludicrous or absurd responses in your view correct?**

21 MR. AWERBUCH: Objection.

22 THE WITNESS: Well it depends on what is
23 says said. I think I think days is unless they say
24 a hundred 80 days, is probably not a very well
25 informed response. Weeks again, weeks could be a

1 perfectly appropriate response if if there's a
2 number on the front of it and it makes sense then it
3 could be a reasonable response. It is not a
4 reasonable substitute for half a year however.
5 Neither neither is it a statement of of a fact.
6 It's a statement of a belief.

7 BY MR. COHEN:

8 **Q. So I understand, if I understand you**
9 **correctly and correct me if I'm wrong, you're saying**
10 **that it's not the weeks or days that's ludicrous and**
11 **absurd but the fact that Professor Frederick coded**
12 **weeks or days as half a year that's what you're**
13 **contending it absurd?**

14 MR. AWERBUCH: Objection.

15 THE WITNESS: Well no I'm also contending
16 that some using some of these responses in and of
17 themselves is is also ludicrous I mean one second
18 one nano second I mean these are just absurd
19 ludicrous responses but they become even more
20 ludicrous when they're put in the context of being
21 coded as half a year.

22 **Q. Let's stick for a moment for weeks.**
23 **Specifically with respect to weeks was it ludicrous**
24 **for Professor Frederick to code a response of weeks**
25 **as half a year.**

1 **restriction coding decision being absurd it says**
2 **that the responses are absurd correct?**

3 A. It talks about the erroneous coding of
4 absurd responses. That is correct.

5 **Q. So it's the responses that are being**
6 **characterized as absurd?**

7 MR. AWERBUCH: Objection.

8 THE WITNESS: The responses and the way
9 they're being coded yes.

10 BY MR. COHEN:

11 **Q. If you go up about three lines there's a**
12 **sentence that begins by counting such ludicrous**
13 **responses and then the sentence goes on. That's a**
14 **reference to the responses being ludicrous correct?**

15 A. That's correct.

16 **Q. If you go to the fourth line from the bottom**
17 **of the middle paragraph on the page the combination**
18 **of coding absurd responses and then it goes on.**
19 **That's a reference to the responses being absurd**
20 **correct?**

21 A. That's correct.

22 **Q. You understand this report will be publicly**
23 **filed in this case correct?**

24 A. I assume it will be correct.

25 **Q. None of the respondents in your survey were**

1 THE WITNESS: Yes.

2 BY MR. COHEN:

3 **Q. And why do you say that?**

4 A. Because two weeks is not half a year. It's
5 factually incorrect.

6 **Q. Two weeks is a shorter period of time than**
7 **half a year isn't it?**

8 A. Much shorter.

9 **Q. So to the extent that Professor Frederick**
10 **coded two weeks as half a year that's a result of**
11 **favor see as isn't it?**

12 MR. AWERBUCH: Objection.

13 THE WITNESS: No I don't think it favors at
14 all. It's it is simply a failure to code what the
15 individual actually said. In contrast to what I
16 did, which was to actually code what people actually
17 had to say, this is a distortion of the data.

18 BY MR. COHEN:

19 **Q. Let's look at the first sentence in the**
20 **first full paragraph. This erroneous coding of**
21 **absurd responses is not the only reason Professor**
22 **Frederick fails to report his results accurately**
23 **diread that correctly?**

24 A. You did.

25 **Q. It doesn't say anything about professor fred**

1 **informed prior to agreeing to participate that their**
2 **responses would be made public were they?**

3 MR. AWERBUCH: Objection.

4 THE WITNESS: They were not informed that
5 their responses would be made public they were
6 informed that their responses would be would not be
7 individually identifiable.

8 BY MR. COHEN:

9 **Q. None of the respondents in your survey were**
10 **informed prior to agreeing to participate that their**
11 **responses would be made public and potentially**
12 **characterized as absurd or ludicrous were they?**

13 A. No and I wouldn't have been able to do that
14 because I, I meant first of all as I've indicated in
15 my own survey I haven't characterized as offering
16 ludicrous or absurd responses. And I would have not
17 have been able to do so in advance because I didn't
18 know what they were going to say.

19 **Q. You certainly could have characterized them**
20 **one way or the other after you knew what they'd**
21 **said.**

22 A. Well I coded them. I didn't characterize
23 them, I coded them as what what they said. It's
24 very typical way of handling verbatim responses to
25 open ended questions.

1 **Q. And for instance, several days is in**
 2 **Professor Frederick's data set is characterized in**
 3 **your report as ludicrous but you would not**
 4 **characterize it in your report as ludicrous?**

5 MR. AWERBUCH: Objection.

6 THE WITNESS: No because I'm using the terms
 7 in very different ways. What I'm reporting is what
 8 people believe. I'm not trying to use their
 9 responses to generate a factual statement about
 10 biodegrade bilt. I'm not trying to convert it into
 11 some sort of numeric code that is beyond what the
 12 individual offered.

13 BY MR. COHEN:

14 **Q. That's what's referenced to professor fred**
 15 **restriction decision to code such responses as half**
 16 **a year. The question I'm asking has to do with**
 17 **whether someone who responded to your survey with a**
 18 **two week response was giving a ludicrous response**
 19 **regardless of how it was coded?**

20 A. No there's a difference in the way the data
 21 are being used. I'm simply reporting what people
 22 said they believe. I'm not making any value
 23 judgment about whether it has in fact. Professor
 24 Frederick is apparently using these responses in
 25 what I would call a ludicrous fashion and that is as

1 irrespective of whether they were coded
 2 inappropriately or not, I would still think that one
 3 second or one nanosecond is pretty ludicrous. I
 4 don't have a problem with it being reported because
 5 that's what the person said. What I do have a
 6 problem with is the way that it is treated as though
 7 it is a factual statement. It is not and it's a
 8 fairly for some of these it's fairly bizarre
 9 statements of fact.

10 BY MR. COHEN:

11 **Q. You would agree that the portrayal of a**
 12 **survey respondents response as ludicrous or absurd**
 13 **is a portrayal of that survey respondents response**
 14 **in a negative light correct?**

15 MR. AWERBUCH: Objection. On.

16 THE WITNESS: It certainly is a
 17 characterization of the response as being
 18 potentially care less flip, uninvolved, and all
 19 those things I suppose could be characterized as
 20 negative.

21 BY MR. COHEN:

22 **Q. You're on the loyal mayor mount faculty**
 23 **ticurrently?**

24 A. I am.

25 **Q. Did the loyal mayor institutional review**

1 a representation of fact. And then converts it into
 2 an even more ludicrous code that corresponds in some
 3 cases but not all, to to a fraction of a year.

4 **Q. With respect to the two references to the**
 5 **word phrases absurd responses and one to ludicrous**
 6 **responses, do any of those refer to the manner in**
 7 **which Professor Frederick lect would to code his**
 8 **responses?**

9 A. Absolutely.

10 **Q. Explain what you mean?**

11 A. It goes to how he's using this data. He is
 12 not merely reporting this is what people said. He's
 13 he is he is basically using it as a statement of
 14 fact that he's then transforming into another
 15 statement of fact. You know. If all he had done
 16 was to simply report the responses and not attempt
 17 to transform them into something that they're not
 18 then I would have taken them at face value. Some I
 19 still would think are ludicrous and absurd.

20 **Q. And which ones do you think are ludicrous**
 21 **and absurd?**

22 A. I wasn't finished.

23 MR. AWERBUCH: Please let him answer the
 24 question.

25 THE WITNESS: What I was going to say was

1 **board approve the study that we're discussing?**

2 A. No, they did not.

3 **Q. How many expert reports have you written?**

4 A. Over 25 years probably, well let me let me
 5 ask for clarification. Do you mean in the context
 6 of litigation or do you mean all all expert reports.

7 **Q. That's a fair question. Any expert report**
 8 **that was in any way connected to litigation?**

9 A. Probably close to a hundred.

10 **Q. Prior to this case have you ever prepared an**
 11 **expert report in which you characterized a response**
 12 **of a consumer you studied as absurd?**

13 A. Yes.

14 **Q. How often have you done that?**

15 A. Not not very often most of the work that I
 16 see is actually pretty good work but I -- I have
 17 seen surveys that I thought were poorly organized
 18 poorly implemented poorly designed and where some of
 19 the responses I would have characterized as absurd.

20 **Q. Prior to this case you've already prepared**
 21 **expert reports in which you characterize responses**
 22 **of consumers you've studies as ludicrous?**

23 MR. AWERBUCH: Objection.

24 THE WITNESS: Quite possibly I don't have a
 25 particular recollection.

1 BY MR. COHEN:

2 **Q. In which cases did you characterize**
3 **consumers survey respondents responses as absurd?**

4 A. I don't really have a recollection as I sit
5 here today of what specific word I may have used in
6 connection with a particular case.

7 **Q. Let's go to what I believe has been marked**
8 **as Exhibit 3, not three A, which is the larger data**
9 **set. And I direct you to the very first entry which**
10 **is case I.D. zero zero zero zero zero three and**
11 **specifically the third text entry over on that row**
12 **that consumer made the following remark regarding**
13 **buy oh degradation, I think it's what I told you.**
14 **It dissolves like those package 53 nuts are made of**
15 **rice or rice products or corn state your full name I**
16 **know it's a product that will dissolve and doesn't**
17 **have to end up in our land fills did I read that**
18 **correctly?**

19 A. You did.

20 **Q. The consumers understanding of**
21 **biodegradation appears to be dissolution here**
22 **correct?**

23 A. That's what they said here.

24 **Q. Consumer gives the example of corn starch**
25 **packing 53 nuts correct?**

1 A. Correct.

2 **Q. Corn starch packing peanuts dissolve in a**
3 **second or two in water correct?**

4 MR. AWERBUCH: Objection.

5 THE WITNESS: I think they can yes.

6 BY MR. COHEN:

7 **Q. If a consumer terms biodegradation to mean**
8 **dissolution why is a second or two an absurd**
9 **response?**

10 MR. AWERBUCH: Objection.

11 THE WITNESS: Because it is simply even too
12 short for the dissolution process to occur and
13 there's no context around it.

14 BY MR. COHEN:

15 **Q. Do you know how long the dissolution process**
16 **takes to occur?**

17 A. I do not.

18 **Q. How do you know that it's too short for the**
19 **dissolution solution process to occur then?**

20 MR. AWERBUCH: Objection.

21 THE WITNESS: Because I have seen no
22 evidence that would suggest that one second is
23 sufficient time for that cycle of dissolution to
24 take place.

25 BY MR. COHEN:

1 **Q. If you saw such evidence would you change**
2 **your view as to whether or not that response was**
3 **absurd?**

4 A. I might. I might not.

5 **Q. And how would you decide whether you would**
6 **or would not change your view?**

7 MR. AWERBUCH: Objection.

8 THE WITNESS: Well I actually think that we
9 need to have a better understanding of what this
10 respondent was talking about in addition to whatever
11 other facts you wish to present.

12 BY MR. COHEN:

13 **Q. Assume this respondent was talking about**
14 **starch peanuts where yous toed them in the water?**

15 MR. AWERBUCH: Objection.

16 THE WITNESS: How were they toed into the
17 water. I mean we don't have a complete
18 understanding of what what this individual is
19 talking about. This is what the person said. It's
20 a perfectly reasonable response to give, is it
21 possible that under some some circumstances that
22 individual meant that it would dissolve in a second?
23 Maybe so. Is it possible that under some
24 circumstances it could dissolve in one second maybe
25 so. We don't know that from what the individual has

1 said here. In fact when the individual was asked
2 about time quite specifically they said I have no
3 idea I can't even guess.

4 MR. AWERBUCH: Can we go off the record for
5 a second. I'd like to take a five-minute break if
6 that's okay.

7 MR. COHEN: We've only been going for half
8 an hour do you need to use the restroom or.

9 MR. AWERBUCH: Yeah.

10 MR. COHEN: We can go off the record.

11 (Recess)

12 (A discussion was held off the record.)

13 BY MR. COHEN:

14 **Q. Let's go back on the record. Dr. Stewart,**
15 **did you speak with your counsel during the break?**

16 A. No.

17 **Q. Did you communicate with anyone representing**
18 **ECM ECM during the break?**

19 A. No, I did not.

20 **Q. Let's return to where we left off. We were**
21 **talking about a consumer that might believe that**
22 **dissolution of a starch based packing peanuts was**
23 **what was meant by biodegradation. Is that your**
24 **recollection as well?**

25 A. That's correct.

1 **Q. And if I understand you correctly I mean**
 2 **again I want you to clarify this if I've got this**
 3 **incorrect. It could be absurd but it might not be**
 4 **absurd depending on various other considerations?**

5 A. I mean anything is possible.

6 **Q. I understand that philosophically anything**
 7 **is possible but if we assume that this consumer**
 8 **understood biodegradation to mean the dissolution of**
 9 **starch packing peanuts that wouldn't be an absurd**
 10 **response would it?**

11 MR. AWERBUCH: Objection.

12 THE WITNESS: It would not be a absurd
 13 response it's what they believe yes it's what they
 14 said.

15 BY MR. COHEN:

16 Q.

17 **Q. Assume that a consumer is asked the question**
 18 **if a package is labeled buy degradable how long will**
 19 **it take to decompose and the consumer interprets**
 20 **biodegradation to mean the beginning of the**
 21 **biodegradation process not the completion of the**
 22 **process do you understand that assumption?**

23 A. I do.

24 **Q. Is it possible such a consumer could believe**
 25 **that certain materials begin buy degrading**

1 ask what is it what does it mean now, well I don't
 2 know. Because the person wasn't wasn't actually
 3 asked the question.

4 **Q. Do you know whether anyone was asked the**
 5 **question if a package is labeled buy oh degradable**
 6 **how long will it take to decompose?**

7 A. I believe they were.

8 **Q. So someone was in fact asked that question?**

9 A. They they were asked that question. They
 10 were not asked the question of to begin to
 11 decompose. To completely decompose. I mean those
 12 are different questions.

13 **Q. Do you understand that my question is if**
 14 **someone was asked the question that we agree was**
 15 **asked, and they had interpreted biodegradation in**
 16 **the context of that particular question that was**
 17 **actually asked to mean the commencement of**
 18 **biodegradation rather than the completion, would a**
 19 **second or two be an absurd response in that**
 20 **circumstance?**

21 MR. AWERBUCH: Objection.

22 THE WITNESS: I believe that it would
 23 generally be an absurd response because I don't
 24 think that's what people typically think about when
 25 they think about biodegradation. They don't think

1 **immediately?**

2 A. That's certainly possible.

3 **Q. Do you know whether certain materials begin**
 4 **buy oh degrading immediately?**

5 MR. AWERBUCH: Objection.

6 THE WITNESS: It's my understanding that
 7 some may under some circumstances.

8 BY MR. COHEN:

9 **Q. Given the assumption that a consumer**
 10 **interprets biodegradation to mean the beginning of**
 11 **the biodegradation process, not the completion of**
 12 **the process, is a second or two an absurd response**
 13 **in that circumstance?**

14 A. No. Now it's an absurd question.

15 **Q. And request is it an absurd question?**

16 A. Well because now what you've done is is R
 17 you said if we ask the person something different
 18 they will give they might give a response that is
 19 sense cal, but now now we're asking now we're
 20 reinterpreting biodegradability to mean the
 21 beginning as opposed to the end I suppose you could
 22 even say in the middle I mean if that's what you
 23 want to ask ask that question but don't attempt to
 24 take a statement out of context and put it into the
 25 context of another question that was not asked. And

1 about the start process and if you want to know
 2 about how quickly will it start ask that question.
 3 Then it's perfectly appropriate. But it's it's a
 4 complete distortion of any data to to begin to
 5 speculate about what an individual might have meant,
 6 by a response based on an interpretation that was
 7 not explicit in the question.

8 BY MR. COHEN:

9 **Q. You didn't recall calculate any of Dr. Fred**
 10 **restriction survey is to see how the results would**
 11 **have changed if the responses deemed absurd were**
 12 **excluded did you?**

13 A. I didn't do that specific computation. I
 14 did do some computations and actually I did
 15 eliminate a lot of the absurd responses. Yes, I did
 16 do some yes, I did do that.

17 **Q. And what were the results of those**
 18 **computations?**

19 A. Off the top of my head my recollection is
 20 that first of all I included all the responses
 21 including those he did not code. The don't knows
 22 the depends write which I think are perfectly
 23 reasonable responses and should be included in any
 24 computation percentages and and my recollection is
 25 that almost 40 percent of the responses in his

1 various surveys were not coded. We really we really
2 need to include them. My recollection is that those
3 that were I think less than I think less than a day
4 a day or less were about 3 percent of the responses.
5 I think those were less than a month were about 13
6 percent of the responses. I do know that of the
7 total responses, about little over 18 percent were
8 responses between 30 days, more than 30 days and a
9 year, which was about the same percentage as the
10 responses of five years or or more. Now, that's
11 based on my computation based on his data and I
12 readily admit I don't fully understand all of the of
13 the data, but that's my rough computation.

14 **Q. What don't you understand about the data?**

15 A. Well it's it's pretty messy data and I have
16 not gone through and tried to make a complete
17 determination of how the how the data was
18 constructed I've tried as best I can but I mean I
19 got the CONCATENATED data late on Friday so I
20 haven't had a lot to do a lot with it.

21 **Q. You've discussed some consumers under some
22 circumstances their responses might be characterized
23 as absurd but with respect to those specific
24 responses how do you ascertain whether a consumers
25 response is absurd enough to be disregarded?**

1 responsive, and and appropriate in the context.
2 Consumer surveys, I believe my expertise qualifies
3 me to to make those judgments and as I said they can
4 accept the response for what it is. You have to be
5 very careful about imbuing it with any meaning
6 beyond what's actually there.

7 **Q. There's the line between a reasonable but
8 factually erroneous response and a factually
9 erroneous response that's too unreasonable or too
10 absurd to be coded?**

11 A. I wouldn't draw a bright line.

12 MR. AWERBUCH: Objection.

13 THE WITNESS: What I would be inclined to do
14 and what I did in my own survey is I would code
15 everything as it was stated. I would not go beyond
16 the data and start making assumptions about things
17 people meant that are that are simply not in the
18 data and in some cases are completely in consistent
19 with the data.

20 BY MR. COHEN:

21 **Q. Why wouldn't you draw a line between
22 reasonable and factually erroneous and too
23 unreasonable?**

24 A. Because I think it would be difficult to
25 establish a hard and fast criteria. I think you

1 MR. AWERBUCH: Objection.
2 THE WITNESS: Well there are two ways to do
3 it. I mean one is you actually don't have to
4 disregard it. You could you could September it and
5 code it as for what it is. But you wouldn't use it
6 necessarily in a computation. In the other case you
7 could simply make a judgment as a well trained
8 professional coder would often do that a particular
9 response really didn't make any sense in the context
10 of the question, was flip was nonresponsive and and
11 and choose to eliminate it. That would be made by
12 that would be a decision made by a professional
13 coder whose job it is to do editing of data sets and
14 I would expect that that individual would be blind
15 the purpose of the study so that the purpose of the
16 study had no impact on the decision on whether to
17 use a particular data point or not.

18 BY MR. COHEN:

19 **Q. What qualifies you or any of the researchers
20 that worked for you to make judgments as to whether
21 a consumers response to a biodegradation time
22 question is too absurd to be coded?**

23 A. I have spent 30 almost 40 years now engaged
24 in doing consumer research. I think I have an
25 understanding of responses that are meaningful

1 could come up with some rules but there would still
2 be a certain amount of subjectivity that would be
3 involved.

4 **Q. Adopting a rule in which you code every
5 response avoids having to draw that type of
6 subjective line correct?**

7 A. Well maybe and maybe not. It depends on how
8 it's coded. I mean if you're actually coding the
9 response as opposed to transforming it to give it
10 different meaning then I think that's okay. The
11 problem becomes one of transforming the actual
12 response into something that may not be.

13 **Q. You criticized Dr. Frederick for coding
14 extremely low numbers correct?**

15 A. I'm not sure what you mean.

16 MR. AWERBUCH: Objection.

17 THE WITNESS: By low numbers.

18 BY MR. COHEN:

19 **Q. Seconds.**

20 A. I do.

21 **Q. Do you have any understanding one way or the
22 other as to whether Dr. Frederick also coded
23 extremely high numbers?**

24 A. I believe he did.

25 **Q. Is one trillion years an absurd response to**

1 a question regarding biodegradation response?

2 A. I think it's an unusual I would put it in
3 the category of absurd yes. I would note however
4 that part of his coding rule also included coding
5 things like eternity and giving that a number. I
6 suppose a trillion years is roughly equivalent to
7 eternity, so that might be completely consistent
8 with his coding scheme.

9 **Q. Did you evaluate the effect that coding
10 extremely high numbers have on Dr. Frederick's data?**

11 A. Not explicitly. It I mean it certainly
12 would increase any mean that you might compute. But
13 I haven't done that analysis explicitly.

14 **Q. It wouldn't be an appropriate coding rule
15 would it to code extreme highs but not extreme lows
16 would it?**

17 MR. AWERBUCH: Objection.

18 THE WITNESS: There may be circumstances
19 where you would do this, I think you could I mean
20 there's a very common approach to analysis of data
21 called trimming where you would eliminate the very
22 high and the very low and that would be perfectly
23 appropriate.

24 BY MR. COHEN:

25 **Q. That's not what I asked respectfully. It**

1 might be appropriate to follow what you just said to
2 trim the very high and the very low correct?

3 A. Correct.

4 **Q. But it wouldn't be appropriate to code the
5 very high but not the very low would it?**

6 MR. AWERBUCH: Objection.

7 THE WITNESS: Well, you're going to have to
8 give me some context. I mean there certainly could
9 be circumstances where that that might make sense.

10 BY MR. COHEN:

11 **Q. Where might that make sense?**

12 A. Well if if somebody were to say for example,
13 a million years, a material years, you could code
14 that for what it is, million a trillion. Whether
15 you would transform it is a whole other question I
16 mean they could say eternity they could say never.
17 I mean all of those are codeable responses whether
18 you would want to transform them into some numeric
19 value or use the numeric value as stated is a
20 different question. And again I think the
21 appropriate approach here would have been what I
22 suggested would have been to trimmed if you wanted
23 to create any any erythematic arithmetic exercise.

24 **Q. In your survey you didn't disallow any
25 responses because they were either too short or too**

1 long did you?

2 A. No, I did not.

3 **Q. Let's back up for a moment to the person who
4 gave the packing peanuts response that suggested an
5 understanding of biodegradation that is something
6 that might also be considered dissolution do recall
7 that?**

8 A. I do.

9 **Q. Let me direct to you what I believe is
10 Exhibit 2 and I apologize if I got this wrong but
11 Exhibit 2 should be some screen shots?**

12 A. And I direct you can specifically to Ssix.
13 That's a screening question that asks potential
14 respondents do you have a general understanding of
15 what the term buy degradable means did I read that
16 correctly.

17 A. Yes you did.

18 **Q. By virtue of the fact that the packing
19 peanuts response appears in the data set we know
20 don't we that the consumer who gave that response
21 answered affirmatively when asked do you have a
22 general understanding of was the term biodegradable
23 means correct?**

24 A. That's correct.

25 **Q. So every consumer you counted in your survey**

1 who gave a response that's arguably with any
2 scientific definition of biodegradation was a
3 consumer who had told your researchers that he or
4 she had a general understanding of what the term
5 biodegradation means correct?

6 A. Yes.

7 MR. AWERBUCH: Objection.

8 THE WITNESS: That is correct.

9 BY MR. COHEN:

10 **Q. Do you know how many consumers that was?**

11 A. I don't no. I've not done a count.

12 **Q. It's necessary to have some basic
13 understanding of the product at issue to study
14 consumer perception of the marketing of that product
15 correct?**

16 MR. AWERBUCH: Objection.

17 THE WITNESS: Well, if the focus is on a
18 product, yes it would be.

19 BY MR. COHEN:

20 **Q. Let's take a look back at your report which
21 is I think marked as Exhibit 1. If you go to I'll
22 direct you to page 4, the first sentence under
23 background, ECM plastics offers a product biofilm
24 which is spelled capital bio capital film that may
25 be applied to plastic products during the**

1 **manufacturing process. Did I read that correctly?**

2 A. Yes you did.

3 **Q. And as you mentioned earlier you wrote that**
4 **sentence yourself?**

5 A. I did.

6 **Q. The product you understood yourself to be**
7 **studying is called buy oh film?**

8 A. That's what it's been referred to as yes.

9 **Q. From the standpoint of mike biology and I**
10 **understand if this is outside your expertise, do you**
11 **know what a buy oh film is?**

12 MR. AWERBUCH: Objection.

13 THE WITNESS: I don't know I don't know
14 specifically in a generic sense what a buy oh film
15 is it's been represented to me that this product is
16 an additive that is used in the manufacture of
17 plastic I believe coats the exterior which is which
18 I think it's called a film, that facilitates the
19 break down of the of the plastic.

20 BY MR. COHEN:

21 **Q. Are you familiar with a product ECM sells**
22 **called master batch pellets capital M, capital B in**
23 **the batch and Capital P for pellets, and then it's**
24 **trade marked?**

25 A. I'm not familiar with that.

1 case.

2 **Q. Which attorney?**

3 MR. AWERBUCH: Objection.

4 THE WITNESS: Well it came to me from Leo
5 Caputo I don't know who may have prepared it.

6 BY MR. COHEN:

7 **Q. Why was it prepared?**

8 MR. AWERBUCH: Objection.

9 THE WITNESS: Because we we talked a bit
10 about what claims might be at issue in in the case
11 and I asked him for a sample of the claims that were
12 at issue.

13 BY MR. COHEN:

14 **Q. Let me direct you to the second bullet on**
15 **the first page that begins master batch pellets TM,**
16 **is a revolution air additive and goes on to make**
17 **various claims. Have I read that correctly?**

18 A. You have.

19 **Q. Did you review and rely upon these sample**
20 **claims in the preparation of your report?**

21 A. I did review them and I -- I selected
22 several that with some modification. I then use
23 indeed my survey.

24 **Q. What was the basis for the selections that**
25 **you made?**

1 **Q. Let me mark as Exhibit 5 excuse me I think**
2 **we're on four I apologize a flyer that Dr. Stewart**
3 **you produced to us. Have you seen this before?**

4 A. I have.

5 **Q. It's entitled mechanism for biodegradation**
6 **of products manufactured with ECM master batch**
7 **pellets and then there's a trade mark up there**
8 **correct?**

9 A. That's correct.

10 **Q. Did you consider this document strike that**
11 **did you rely upon this document in the preparation**
12 **of your report?**

13 A. I don't believe that I did. It was part of
14 a number of documents around the product and company
15 that I was provided but I didn't make any use of it.

16 **Q. Did you review the document prior to**
17 **drafting your report?**

18 A. I probably did review it. I don't, I don't
19 have a strong recollection of it.

20 **Q. Let's mark as Stewart five a document that's**
21 **entitled sample claims by ECM buy oh films have you**
22 **seen this document before Dr. Stewart?**

23 A. I have.

24 **Q. Who prepared this document?**

25 A. I believe the attorneys in this particular

1 A. I was simply looking for for various types
2 of claims that that were made that seemed to be
3 different in terms of specificity, detail, language.

4 **Q. Were you told to use any particular claims?**

5 MR. AWERBUCH: Objection.

6 THE WITNESS: I was not.

7 BY MR. COHEN:

8 **Q. Where is it your understanding that ECM**
9 **sells a product called buy oh film come from?**

10 A. I believe I have seen this in some
11 documents. I think it's been a part of
12 conversations with with the attorneys and and with
13 employees of the company.

14 **Q. Which employees of the company?**

15 A. The president is one I think that was his
16 title. I've had a couple of conversations with him.
17 He's the only one that I've had substantive
18 conversations with.

19 **Q. And which attorneys did you speak with who**
20 **told you that ECM sells a product called bio film?**

21 A. I think Lou Caputo.

22 **Q. Any others?**

23 A. I think that's he think that's the only one.

24 **Q. And I under you may not remember his name**
25 **but the president would that have been Robert**

1 **Sinclair?**

2 A. Yes I believe that's correct.

3 **Q. And he would have told you will that ECM**
4 **sells a product called bio film?**

5 MR. AWERBUCH: Objection.

6 THE WITNESS: Well that's my recollection
7 it's been a while since I talked to him but I
8 certainly had a conversation with him about the
9 product.

10 BY MR. COHEN:

11 **Q. Let's assume just for the purpose of this**
12 **next series of questions that ECM does not sell a**
13 **product called biofilm. That wouldn't change your**
14 **opinions would it?**

15 A. Not at all.

16 **Q. You would just substitute the references in**
17 **the report to the alleged biofilm product to master**
18 **batch pellets?**

19 A. I might. The study that I did was really
20 focused on any specific product, in fact I was I was
21 quite clear in designing the survey that I didn't
22 want to mention any specific product name. I simply
23 wanted to evaluate claims absent reference to a
24 particular vendor. So we could have you know we
25 could have substituted most anything. It wouldn't

1 it is certainly possible that people taking an

2 erroneous belief away from a specific communication
3 could be misled and deceived.

4 BY MR. COHEN:

5 **Q. Let me give you a hypothetical. A juice is**
6 **marketed as having more energy than a competitors**
7 **products. Or competitor products. The only**
8 **difference between the marketers product and the**
9 **competitors product is that the marketers product**
10 **contains more calories. Solely due to the poor**
11 **nutritional education in the United States a**
12 **substantial minority of reasonable consumers**
13 **interpret the marketing reference to more energy to**
14 **mean more vitamins and they buy the product in part**
15 **based on the more energy claim. Have those**
16 **consumers been deceived?**

17 MR. AWERBUCH: Objection.

18 THE WITNESS: If there's evidence that they
19 take away a claim about vitamins, and that they take
20 away that claim based on the communication, and they
21 make a decision based on that that erroneous belief,
22 then yes I think they have been deceived.

23 BY MR. COHEN:

24 **Q. I asked you to assume that the sole basis**
25 **for their belief that more energy meant more**

1 change the report.

2 **Q. Well regardless of what you told survey**
3 **respondents I understand there may be a reason why**
4 **you wouldn't want to tell survey respondents the**
5 **exact name of the product would there be a reason**
6 **that you would use a different name for the product**
7 **in the report?**

8 MR. AWERBUCH: Objection.

9 THE WITNESS: That's the that's the name
10 that stuck with me, that's what I used.

11 BY MR. COHEN:

12 **Q. Is it your view that a reasonable consumer**
13 **must correctly understand a claim to be deceived by**
14 **it?**

15 MR. AWERBUCH: Objection.

16 THE WITNESS: I believe they have to develop
17 an understanding. It pay be an erroneous
18 understanding.

19 BY MR. COHEN:

20 **Q. So a consumer with an erroneous**
21 **understanding of a claim can be deceived by it?**

22 MR. AWERBUCH: Objection.

23 THE WITNESS: That's certainly possible yes.

24 Just because there is an erroneous belief doesn't
25 mean they have been deceived by a communication but

1 **vitamins was the poor state of nutritional education**
2 **in the United States. Again given that assumption**
3 **have those consumers been deceived?**

4 MR. AWERBUCH: Objection.

5 THE WITNESS: If, there, there has to have
6 been some marketing communication as well as the
7 poor state of their knowledge.

8 BY MR. COHEN:

9 **Q. The marketing communication in this example**
10 **is the product is being marketed as having more**
11 **energy.**

12 A. Okay.

13 **Q. Is that a sufficient marketing communication**
14 **in your view such that the consumers who purchase**
15 **the product based on that marketing communication**
16 **have been deceived?**

17 MR. AWERBUCH: Objection.

18 THE WITNESS: I would need to know whether
19 there was evidence that in fact they took a vitamin
20 claim away from communication and that that, that
21 that, that the number of people who took away that
22 claim about vitamins was substantially greater than
23 people take being, would take away from exposure to
24 any fruit juice.

25 BY MR. COHEN:

1 **Q. Okay let's break that down. You said a**
 2 **couple of interesting things there. You would need**
 3 **to know that people took away the vitamin claim from**
 4 **the reference to energy. Did I understand that was**
 5 **one of the two points that you just made?**

6 A. That's correct.

7 **Q. So if the, if there were evidence that the**
 8 **energy claim contained an implied claim of vitamins,**
 9 **would that satisfy your concern now?**

10 A. Well whether it's explicit or implied is not
 11 the issue because that's a characteristic of the
 12 claim what's important is what do people carry away
 13 in terms of a message and you know if they if they
 14 infer something that is implied then they could
 15 conceivably been misled in that case.

16 **Q. And I believe and I apologize you made a**
 17 **second point as well can you refresh my**
 18 **recollection?**

19 A. Yeah.

20 **Q. As to what that second point was?**

21 A. Well the point was there needed to be a
 22 demonstration that it was the marketing
 23 communication that actually created the problem or
 24 the deception if you will so what you want to do is
 25 control for those pre-existing beliefs so for

1 marketer intends to deceive. I suppose that could
 2 be done.

3 BY MR. COHEN:

4 **Q. So if the marketer intends to deceive in the**
 5 **sense that the marketer is capitalizing on a**
 6 **pre-existing erroneous belief. The marketer would**
 7 **be violating the FTC act in that situation correct?**

8 MR. AWERBUCH: Objection objection.

9 THE WITNESS: Well now you're asking me for
 10 a legal opinion and I and I can't give you a legal
 11 opinion. I do think that in that situation if if
 12 those are the only facts on the table there may be
 13 key word is maybe, a basis to believe the individual
 14 has been deceived.

15 BY MR. COHEN:

16 **Q. And just for the record, so the record is**
 17 **clear I understand that you're not a lawyer correct?**

18 A. That's correct.

19 **Q. You do, you are an expert in what I would**
 20 **call general sort of law and marketing would that be**
 21 **a fair sort of rough characterization?**

22 A. That's fair.

23 **Q. And so you wouldn't give me a different**
 24 **answer to the last question if I couched it in terms**
 25 **of based on your expertise as an academic who**

1 example, if you simply provided a fruit juice absent
 2 the particular claim about energy, how many people
 3 make an inference about vitamins in that case, and
 4 is it substantially smaller number than is the case
 5 where people may have been exposed to the claim at
 6 issue.

7 **Q. So if I understand your contention correctly**
 8 **and I'm sure you'll correct me if I don't. If the**
 9 **belief in this example energy means vitamins, does**
 10 **not come from the marketing communication itself**
 11 **there can't be deception?**

12 MR. AWERBUCH: Objection.

13 THE WITNESS: Well it the person may be
 14 deceived for other reasons but they're not being
 15 deceived by virtue of the claim at issue.

16 BY MR. COHEN:

17 **Q. What about a situation where a marketer**
 18 **takes advantage of a preexisting erroneous belief**
 19 **amongst the population? Is that marketer deceiving**
 20 **consumers?**

21 MR. AWERBUCH: Objection.

22 THE WITNESS: You'd have to give me more, I
 23 mean you'd have to give me more fact does I mean
 24 I -- I mean the answer is possibly but possibly not
 25 I mean you have framed the question as though the

1 **studies law and marketing would you?**

2 A. I wouldn't change my answer no.

3 **Q. Let's try one or two more. Let's say that a**
 4 **dietary supplement is marketed to consumers as**
 5 **boosting immunity. The claim is true in the sense**
 6 **that the supplement increases the presence of**
 7 **certain blood components associated with the body's**
 8 **immune system but it's not true in that it reduces**
 9 **the risk of cold and flu however again solely due to**
 10 **the poor state of science education in the United**
 11 **States a substantial minority of reasonable**
 12 **consumers believe that boosting immunity means**
 13 **reducing the risk of cold and flu. That substantial**
 14 **minority buys the product based in part on the**
 15 **boosting immunity claim have those consumers been**
 16 **deceived?**

17 MR. AWERBUCH: Objection.

18 THE WITNESS: It's possible but again I
 19 would need more facts. I would need to know the
 20 extent to which that generalized belief influenced
 21 the purchase of any product. If it's a belief that
 22 people are carrying around with them and was not
 23 created by marketing communication, and people are
 24 using it to make make decisions about all manner of
 25 products then I'm not sure they are deceived. They

1 may have an erroneous belief but I'm not sure we can
2 hold a motherer responsible for that.

3 BY MR. COHEN:

4 **Q. Could you hold the marketer responsible if
5 the marketer is capitalizing on a known erroneous
6 belief?**

7 MR. AWERBUCH: Objection.

8 THE WITNESS: Now you'll need to define
9 capitalize.

10 BY MR. COHEN:

11 **Q. The marketer is aware of the erroneous
12 belief and never the less markets the product
13 without any qualification?**

14 MR. AWERBUCH: Objection.

15 THE WITNESS: Again I would think you have
16 to give me more information in that specific case.

17 BY MR. COHEN:

18 **Q. What I'm sorry go ahead?**

19 A. Well, if people marketers are not
20 responsible for the general beliefs that people
21 carry around that have not been created by by the
22 marketing stimulus or the marketers actions. You
23 know if there is a specific claim that is misleading
24 than and people rely on it, then there may be
25 deception involved but you know I don't think we can

1 the marketplace. Again you can't hold a marketer
2 responsible for beliefs that have been developed by
3 virtue of things that are not within the control of
4 the marketer.

5 BY MR. COHEN:

6 **Q. So if I understand you correctly the
7 marketer has no responsibility for pre-existing
8 erroneous beliefs among of the the population with
9 respect to whether or not it's claim is evaluated as
10 deceptive?**

11 MR. AWERBUCH: Objection.

12 THE WITNESS: No, I didn't say that. I
13 think marketers do have some responsibility but it
14 is also the case that marketers don't have control
15 over many of the things that create erroneous
16 beliefs among consumers and you can't hold marketers
17 responsible for those erroneous beliefs.

18 BY MR. COHEN:

19 **Q. Ma'am could you read back the answer read
20 read?**

21 **Q. Thank you. When you said some
22 responsibility in your answer, what is that
23 responsibility that you referenced?**

24 A. Well I think marketers have a responsibility
25 to be generally aware of of who their consumers are,

1 hold marketers responsible for all the erroneous
2 beliefs people carry around in the marketplace.

3 **Q. And you would maintain that position even if
4 the marketer is knowingly capitalizing on those
5 erroneous beliefs?**

6 MR. AWERBUCH: Objection.

7 THE WITNESS: Again I I don't know I don't
8 know what you mean by capitalizing. I mean that's
9 that's my difficulty with your, you'd have to tell
10 me what the marketer is doing specifically before I
11 can answer that question.

12 BY MR. COHEN:

13 **Q. Well let's stick with the hypothetical for a
14 moment and let's assume that the marketer
15 understands that a significant mine north of
16 consumers understand that boosting immunity will be
17 interpreted -- withdrawn.**

18 **The marketer understands that a significant
19 minority of consumers who see the phrase boosting
20 immunity will interpret that to mean reduces cold
21 and flu. The marketer knows that. In that
22 situation has there been deception?**

23 MR. AWERBUCH: Objection.

24 THE WITNESS: Not necessarily. It depends
25 on the nature of the claim, the characteristics of

1 what they believe, what they buy and to assure that
2 the information that they present to their consumers
3 is, is, is factually accurate.

4 **Q. So again, if it's factually accurate but
5 likely to be misunderstood based on pre-existing
6 beliefs there's no deception there?**

7 MR. AWERBUCH: Objection.

8 THE WITNESS: No that's not what I said
9 there could be but there also may not be and we
10 would have to identify specific cases I believe, to
11 determine whether or not there was there was
12 deception present. I mean again there has to be
13 something that the marketer has done or not done
14 that they can be held responsible to and it has to
15 be you know, a belief that people are acting on.

16 BY MR. COHEN:

17 **Q. Are there any other I guess cry tear I don't
18 know you just gave me two that will help me
19 determine the circumstances in the situation where
20 the marketer would be responsible and the marketer
21 would not be responsible?**

22 A. Well I mean there could be any, in specific
23 situations there could be I suppose any number of
24 other things, but in general there needs to be some
25 evidence first of all that there's even an erroneous

1 belief. Secondly that some how that erroneous
2 belief is there by some action or inaction by the
3 marketer, and thirdly that you know people are you
4 know are behaving differently shop I differently
5 making different purchase decisions by virtue of
6 that erroneous belief created by the marketer.

7 **Q. You took a telephone survey in this case**
8 **correct?**

9 A. I did.

10 **Q. How is it possible to survey consumers**
11 **impressions of the ECM logo over the phone?**

12 MR. AWERBUCH: Objection.

13 THE WITNESS: It's not that wasn't the
14 purpose of the survey.

15 BY MR. COHEN:

16 **Q. In your survey of consumers why didn't you**
17 **ask them how much time it would take for plastic**
18 **labeled buy degradable to biodegrade?**

19 A. Because I wasn't interested in that specific
20 topic. I was interested in peoples general
21 understanding of biodegradability.

22 **Q. And why were you not interested in that**
23 **specific topic?**

24 A. Because I thought it would emerge as a part
25 of the more general discussion of biodegradability

1 **regarding how much time it would take for a plastic**
2 **product labeled biodegradable to biodegrade are you?**

3 MR. AWERBUCH: Objection.

4 THE WITNESS: I'm only offering opinions
5 that are grounded in the survey work that I did. I
6 think I've given you those opinions. There may be
7 others but those are the ones that I -- I can
8 identify as we speak.

9 BY MR. COHEN:

10 **Q. And so the answer to my question is no?**

11 MR. AWERBUCH: Objection.

12 THE WITNESS: Well no the answer is there
13 may be other opinions that the data inform, I may
14 not have fully framed them. They're likely
15 subopinions of what we've talked about, but I'm not
16 going to say that there wouldn't be any opinions
17 that might emerge.

18 BY MR. COHEN:

19 **Q. What other opinions do you anticipate might,**
20 **emerge?**

21 MR. AWERBUCH: Objection.

22 THE WITNESS: I don't know. I was given
23 Dr. Fredericks survey and asked to opine on that. I
24 don't know what else I might be given and might be
25 asked to opine upon. It may also be the question

1 and in fact it did.

2 **Q. Why not ask both the more general questions**
3 **that were in your survey and also, specifically how**
4 **much time will it take for a plastic labeled**
5 **biodegradable to biodegrade?**

6 A. Because that wasn't the purpose of the
7 survey. I could have designed a different survey
8 but that was not the purpose of the say.

9 **Q. You're not offering an opinion about**
10 **consumers views regarding how much time it would**
11 **take for a plastic product labeled biodegradable to**
12 **biodegrade are you?**

13 MR. AWERBUCH: Objection.

14 THE WITNESS: To the extent that I have data
15 that speaks to that issue I am.

16 BY MR. COHEN:

17 **Q. And what is that opinion?**

18 A. Well that by and large there's a great deal
19 of skepticism ignorance, and just general lack of
20 understanding about that topic.

21 **Q. Other than the fact that in your opinion**
22 **with respect to consumers assessments of**
23 **biodegradation times there is a lot of skepticism**
24 **ignorance and lack of understanding. You're not**
25 **offering any other opinions about consumers views**

1 arises that the day an I've collected could inform
2 and then I'll use that data to inform that, you know
3 that opinion.

4 BY MR. COHEN:

5 **Q. These opinions that may develop in the**
6 **future, you would agree by definition they're not in**
7 **the report that was provided to complaint counsel**
8 **correct?**

9 A. I would grow with that yes.

10 **Q. Let's take a look back at Exhibit 2. Which**
11 **I believe is the screen shots but I apologize if I'm**
12 **incorrect I think it is the screen shots?**

13 A. Mm-hmm.

14 **Q. I direct you will to questions four A, and**
15 **four B. Why were these questions asked at all?**

16 A. Because I was trying to develop more
17 complete understanding of whether, what people
18 understood the term biodegrade to mean and I I had
19 seen other studies read other materials, that
20 clearly indicated that that the types of products
21 type of material has an influence on the rapidity of
22 biodegradability and so I wanted to understand what
23 consumers understood about that. I also understood
24 from various sources that there are there are
25 differences in the time it takes for various

1 materials to biodegrade so I wanted to understand
2 something about consumers understanding of that.

3 **Q. Were there any other reasons?**

4 A. I don't believe so. The purpose of the
5 survey was to gain an insight into what people
6 understood about biodegradability.

7 **Q. It would have been possible wouldn't it to
8 ascertain consumers understanding of ECMs marketing
9 without asking questions four A, through four B;
10 correct?**

11 A. I suppose so, that's a different question.

12 **Q. Why were these questions four A. Through
13 four B, asked before the question series that
14 purportedly replicates ECMs marketing which would be
15 the question five series?**

16 MR. AWERBUCH: Objection.

17 THE WITNESS: Because I did not want
18 specific claims to contaminate the answers to the
19 earlier questions. I didn't want to give people a
20 statement that referenced a specific timeframe and
21 then ask them about time. It's generally
22 appropriate in surveys to ask more general questions
23 followed by more specific questions. And that's the
24 approach I followed here.

25 BY MR. COHEN:

1 **Q. Take a look back at question four A, please.
2 Do you think there are differences in the amount of
3 time it takes for different types of products to
4 biodegrade decompose or decay, that's a leading
5 question isn't it?**

6 MR. AWERBUCH: Objection.

7 THE WITNESS: Well it's leading to the
8 extent that it asks people "yes" or "no."

9 BY MR. COHEN:

10 **Q. A leading question is a question that
11 suggests the answer correct?**

12 MR. AWERBUCH: Objection.

13 THE WITNESS: That's correct.

14 BY MR. COHEN:

15 **Q. This question suggests that there are
16 differences in the amount of time it takes for
17 different types of products to biodegrade decompose
18 or decay correct?**

19 A. No it doesn't.

20 **Q. And why don't you think this is a leading
21 question in that regard?**

22 A. It doesn't suggest a yes or a no answer.

23 **Q. You don't believe that this question put in
24 the mind of survey respondents the fact that there
25 are differences in the amount of time it takes for**

1 **different types of products to biodegrade decompose
2 or decay?**

3 A. Well I hope we did put that in their minds
4 because we're asking them whether or not they think
5 there are those differences "yes" or "no", people
6 could say no and some people did.

7 **Q. Most people didn't?**

8 A. Most people did not correct.

9 **Q. Can you think of an alternative question or
10 question series that would enable to learn whether
11 consumers estimate different biodegradation times
12 for different productions. I could have asked a
13 whole series of questions product by product
14 material by material that would have lengthened the
15 questionnaire and I don't think would have begin us
16 any greater insight?**

17 **Q. How about a design where you ask one group
18 how long plastic takes to biodegrade and another
19 group how long wood takes to biodegrade and compare
20 the answers?**

21 A. That that certainly could have been a
22 design. It would have required using two different
23 groups but it certainly something that would have
24 been possible.

25 **Q. Information conveyed to respondents earlier**

1 **in a survey can affect their answers to later
2 questions correct?**

3 A. It certainly can.

4 **Q. What's more important to determining whether
5 ECMs claims are deceptive, whether consumers
6 estimate different biodegradation times for
7 different products or how consumers understand ECM;s
8 marketing?**

9 MR. AWERBUCH: Objection.

10 THE WITNESS: I actually you need to read
11 the question back I'm sorry read read.

12 THE WITNESS: I don't think you can say one
13 is more important than the other in this context.
14 In so far as people are carrying around beliefs that
15 may be highly varied in some cases perhaps erroneous
16 those things may be elicited those beliefs may be
17 elicited in response to any marketing
18 communications. So you really have to have some
19 understanding of sort of the baseline much as I've
20 done here, to gain insight into what the claims may
21 have communicated.

22 BY MR. COHEN:

23 **Q. Questions five A through five C ostensibly
24 simulate ECM's marketing correct?**

25 MR. AWERBUCH: Objection.

1 THE WITNESS: No I wouldn't say they
2 simulate their marketing. What they are are an
3 effort to take three of the claims that were
4 identified for me and put them into a non
5 manufacturer specific form and as we did not
6 identify the manufacturer, and ask people what these
7 claims would mean to them.

8 BY MR. COHEN:

9 **Q. Let me ask you to assume the questions four
10 A, questions four and four A, are leading and let me
11 further more ask you?**

12 A. I won't take that assumption. They're not
13 leading. Unambiguously and so I won't accept that
14 assumption.

15 **Q. You understand that as an expert in a
16 deposition you don't have to agree with the
17 assumption but you have to accept it if you
18 understand it?**

19 A. Well but you're asking me to assume
20 something that's false.

21 **Q. So you will not answer any questions in
22 which you're asked to assume that questions four and
23 four A are leading?**

24 A. They are patently not leading and and
25 therefore, any any answer based on the assumption is

1 not going to be a useful answer.

2 **Q. Shouldn't that be for the court to decide?**

3 A. Well the, no. It's for me to decide whether
4 I can give you a meaningful answer to your question
5 and you've asked me to assume something that is
6 patently false.

7 **Q. Let's mark Exhibit 6 mark mark Exhibit 6.
8 Let me give this to Dr. Stewart.**

9 **Q. Dr. Stewart was is this document?**

10 A. This is a copy of I believe the final
11 progress report on the interviewing that was done
12 for my survey, survey of consumers and it reflects
13 the disposition of the sample.

14 **Q. And I apologize I think you just said this
15 so again I apologize for repeating but this is the
16 final report isn't it?**

17 A. I believe it is the final report yes I was
18 given these on a routine basis not daily but
19 regularly to give me an update on where we stood
20 with respect to collecting data.

21 **Q. And you can tell this is the final report
22 because it reports data for four hundred respondents
23 and you had four hundred respondents in your survey?**

24 A. That's correct.

25 **Q. Based on the information provided here the**

1 **average call length across the four hundred
2 respondents was 12 minutes?**

3 A. That's correct.

4 **Q. Do you know what the range was?**

5 A. As I sit here I don't know exactly what the
6 range was.

7 **Q. Could that information be ascertained?**

8 A. I believe it probably could be yes.

9 **Q. And how would that information be
10 ascertained?**

11 A. The survey research company would very
12 likely have records. It would probably have to
13 be computed but I -- I believe that they would have
14 a record of how long each call lasted.

15 **Q. Based on your professional expertise do you
16 have an approximate range that you can provide us?**

17 MR. AWERBUCH: Objection.

18 THE WITNESS: I would say between five
19 minutes and 20 minutes.

20 BY MR. COHEN:

21 **Q. It would be fair to estimate and I
22 understand this is only an estimate, that by the
23 time respondents were asked question five A, they
24 had already been on the telephone talking about
25 biodegradation for anywhere from seven to ten**

1 **minutes is that fair?**

2 A. That's fair. That's quite possible yes.

3 **Q. The fact that respondents were involved in a
4 seven to ten minute conversation about
5 biodegradation before being asked questions five A to
6 five C could have affected their answers to those
7 questions couldn't it?**

8 MR. AWERBUCH: Objection,.

9 A. Certainly it could have made them more
10 attentive to the questions.

11 BY MR. COHEN:

12 **Q. Could it have affected their answers in any
13 other ways?**

14 A. I don't believe so.

15 **Q. Most consumers don't engage in seven to ten
16 minute conversations about biodegradation when they
17 walk into a store and decide to buy a product do
18 they?**

19 A. Not as a general rule.

20 **Q. So in this respect your survey doesn't
21 simulate the actual consumer experience does it?**

22 MR. AWERBUCH: Objection.

23 THE WITNESS: It does not and that was not
24 its attempt.

25 BY MR. COHEN:

1 **Q. The net impression that a consumer takes**
 2 **away from a biodegradable claim is different when**
 3 **the consumer confronts it on a store shelf rather**
 4 **than after a seven to ten minute conversation about**
 5 **biodegradation correct?**

6 A. I -- I would agree that that is the case.
 7 We didn't show people a logo here. That was not the
 8 purpose of the of the of the research. So there
 9 would be some difference yes.

10 **Q. In professor fred restriction study**
 11 **consumers were shown productions with ECM**
 12 **biodegradable logos but without a seven to ten**
 13 **minute conversations regard biodegrade ability**
 14 **beforehand?**

15 A.

16 MR. AWERBUCH: Objection.

17 THE WITNESS: It's my understanding some of
 18 his surveys did that yes.

19 BY MR. COHEN:

20 **Q. Just so the record is clear and I believe it**
 21 **is clear, you are not going to respond to any**
 22 **questions that ask you to assume that four and four**
 23 **A are leading?**

24 MR. AWERBUCH: Objection asked and answered.

25 THE WITNESS: I I'm not going to make a

1 false assumption and then give you an answer based
 2 on a false assumption.

3 BY MR. COHEN:

4 **Q. With respect to this telephone survey, only**
 5 **land lines were dialed correct?**

6 A. That is correct.

7 **Q. Where did the sample of land lines come**
 8 **from?**

9 A. It came from two sources. One was from
 10 scientific sampling that scientific sampling
 11 generated a random digit dial sample and we
 12 supplemented that with a listed sample that we
 13 obtained from survey sampling. And and the final
 14 sampling frame was a combination of the two.

15 **Q. Was one of those sets of samples something**
 16 **that is known as age enhanced?**

17 A. Well you could you could call it age
 18 enhanced. It was the the the survey sampling survey
 19 recollect the listed sample was obtained in order to
 20 represent more younger consumers, yes.

21 **Q. Why was it necessary to modify the sample to**
 22 **obtain more younger consumers?**

23 MR. AWERBUCH: Objection.

24 THE WITNESS: Because experience generally
 25 demonstrates that a pure random digit survey

1 particularly one that's done over a relatively short
 2 period of time even a month tends to produce larger
 3 numbers of older less mobile consumers in order to
 4 pick up more younger consumers it's necessary to use
 5 a listed sample ask.

6 BY MR. COHEN:

7 **Q. How long over what period of time was this**
 8 **survey conducted?**

9 A. It was about a month.

10 **Q. Are you sure about that?**

11 A. Well it would be it would be in my report.
 12 Well could take a look at that because it is stated
 13 in my report. Yeah I was right it's about a month
 14 the study began March 26 2014 and it was completed on
 15 May 1st 2014. That was the primary study. We had
 16 done a pilot earlier, but you know a little longer
 17 than a month.

18 **Q. What percentage of Americans still has a**
 19 **land line?**

20 A. About 75 percent.

21 **Q. What percentage of Americans uses the**
 22 **Internet?**

23 A. Again about 75 to 80 percent and I'm
 24 assuming by that you mean in the home.

25 **Q. Uses the Internet in the home?**

1 A. Yes.

2 **Q. What percentage of Americans uses the**
 3 **Americans at all?**

4 A. Probably close to 90 percent have some use
 5 of the Internet in some way or fashion. You'd have
 6 to include you'd actually have to include mobile
 7 devices in that. You'd have to include people who
 8 access Internet in limited fashion on the job, who
 9 access kiosks but it would be a very sizeable
 10 percentage of the population.

11 **Q. Do you know whether the percentages of**
 12 **Americans that still have a land line is greater or**
 13 **lesser than number of Americans that use the**
 14 **Internet anywhere may have just begin me that**
 15 **answer?**

16 A. I think I just gave you that answer. You
 17 know I would -- I haven't seen specific numbers but
 18 I think I would be on solid ground to say that more
 19 people have access to the Internet in some form than
 20 have a land line.

21 **Q. It's the case isn't it that Americans that**
 22 **still have a land line are demographically different**
 23 **than Americans who do not correct?**

24 MR. AWERBUCH: Objection.

25 THE WITNESS: Well if, if by that you mean

1 that the demographic characteristics are not the
2 same, then the answer is yes.

3 BY MR. COHEN:

4 **Q. One of the demographic characteristics on**
5 **which what I'll call the land line group and the non**
6 **land line group differ is their income is that**
7 **correct?**

8 A. That that would be generally correct yes.

9 **Q. And another is their age?**

10 A. That would be correct.

11 **Q. And another is their education?**

12 A. Probably. Yes.

13 **Q. Are there others that I've neglected?**

14 A. Have well, the length of time they have been
15 in their residence for example. That's the only
16 other one I could think of.

17 **Q. Assume that a survey of American consumers**
18 **is conducted and further assume that that survey is**
19 **demographically un representative of American**
20 **consumers in a substantial way. Can you conclude**
21 **without additional information whether or not the**
22 **surveys results are valid?**

23 MR. AWERBUCH: Objection.

24 THE WITNESS: In some cases you may be able
25 to in some cases no.

1 BY MR. COHEN:

2 **Q. In the cases where you cannot reach that**
3 **conclusion, what additional information would you**
4 **need?**

5 A. Well it depends on what what the question
6 is. Some questions require a representative sample,
7 some questions do not. Some questions can be
8 addressed just by knowing what people in a sample
9 that is generally representative but not completely,
10 have to say whereas in other cases you you need a
11 more representative sample. So it really depends on
12 the question at hand.

13 **Q. Are the questions in your consumer survey**
14 **questions such that a representative sample is**
15 **necessary?**

16 A. I think it's necessary to have a generally
17 representative sample but I don't think it has to be
18 a perfect replica of the population characteristics.

19 **Q. Would you say the same thing, that with**
20 **respect to Professor Fredericks survey it has to be**
21 **generally representative but not a perfect**
22 **replication of the population?**

23 A. Well if we actually knew what his population
24 was I would say yes but we have no clue who was in
25 his population.

1 **Q. If we assume that we know who his population**
2 **was would you then give the same answer?**

3 A. Again you're asking me to assume something
4 that's false. You know if he had a representative
5 sample which he does not, then I would say great
6 it's representative?

7 **Q. Let's take a look back at Exhibit 6, do I**
8 **understand correctly that your researchers made 70**
9 **thousand two hundred 79 phone calls to obtain a**
10 **final sample of four hundred people?**

11 A. That's correct.

12 **Q. Four thousand 20 people answered the phone**
13 **but refused to participate correct?**

14 A. That's correct mm-hmm.

15 **Q. The line below refuse to participate reads**
16 **RF underscore S1 dash not willing to participate and**
17 **then gives the number 291 do you see that?**

18 A. I do.

19 **Q. What does that line mean?**

20 A. Well, these were people that answered the
21 first question which is would you be willing to
22 answer a few questions, they declined.

23 **Q. What's the difference between people who**
24 **refused to participate and people who refused to**
25 **answer or declined to answer a few questions?**

1 A. Well the people who refused to participate
2 just very early in the telephone call said I'm not
3 interested and didn't even get to the first
4 question. The 291 people who were asked the first
5 question and declined.

6 **Q. So it would be accurate to say that the**
7 **number of people who refused to participate after**
8 **the first question is 4,020 plus two hundred nine**
9 **one?**

10 A. That's correct.

11 **Q. What, if anything, do you know about the**
12 **demographic characteristics about the people who**
13 **refused to participate after the first question?**

14 A. I know little about the demographic
15 characteristics other than they were a random sample
16 of the sampling frame.

17 **Q. What does not qualify interviews what does**
18 **the not qualified interviews category mean?**

19 A. Well this is actually broken out above in
20 the total not qualified interviews there in the
21 middle of the page and so people could have been
22 disqualified for participation for a number of
23 reasons, so for example, there were two individuals
24 where the call was answered by someone under 18 and
25 there was no one in the household who was 18 or

1 older. We disqualified people who were employed by
2 either a plastic product manufacturer or a waste
3 disposal association largely because we thought they
4 would have unusual knowledge there were 11 of those
5 people so we disqualified them we had a few people
6 who had not purchased a plastic container. We had
7 some people that did not have a general
8 understanding of biodegradable and then we
9 established some general quotas based on age and
10 gender and in some cases we were over quota when we
11 reached an individual so that individual was
12 disqualified so it was basically disqualification
13 based on questions in the screener questionnaire.

14 **Q. Why did you exclude people who reported not**
15 **personally purchasing if I plastic product or any**
16 **anyone that came in a plastic container or made of**
17 **plastic in the past month I think email paraphrasing**
18 **there queening question five?**

19 A. Because I thought those individuals would be
20 unrepresentative of the population as a whole.
21 Most people purchase something made of plastic,
22 packaging products what have you and to the people
23 had not had a recent experience of purchasing
24 something made of plastic I thought they would be un
25 represent tiand we excluded them.

1 **giving a particular answer they're more likely to be**
2 **disqualified?**

3 MR. AWERBUCH: Objection.

4 THE WITNESS: Again anything is possible but
5 there's no reason why an individual should think
6 these questions should should lead them to believe
7 that they will be disqualified.

8 BY MR. COHEN:

9 **Q. What, if anything, do you foe about the**
10 **demographic characteristics of the people who you**
11 **deem not qualified for the reason that they**
12 **allegedly had not purchased a plastic product or**
13 **plastic container within the past month?**

14 A. I don't know anything about the demographic
15 characteristics than they were part of the larger
16 sampling frame.

17 **Q. Your researchers spoke with 39 respondents**
18 **who stated that they did not have a general**
19 **understanding of the term biodegradable correct?**

20 A. That's correct.

21 **Q. It's possible that those 39 people changed**
22 **their minds about whether they want today**
23 **participate in the survey?**

24 MR. AWERBUCH: Objection.

25 THE WITNESS: Again anything is possible but

1 **Q. Was it possible some people had purchased**
2 **something made of plastic in the past month but**
3 **didn't remember?**

4 A. That's possible.

5 **Q. Is it possible they weren't telling the**
6 **truth because they had changed their minds about**
7 **whether they wanted to participate in the telephone**
8 **survey?**

9 MR. AWERBUCH: Objection.

10 THE WITNESS: Anything is possible. I think
11 it unlikely.

12

13 **Q. Why do you think it's unlikely?**

14 A. I don't know why -- there's no good reason
15 for that to have occurred. First of all they don't
16 know they're going to be disqualified if they give a
17 particular answer to that question. There's no way
18 that the respondent in advance of giving an answer
19 to any of one of these questions knows whether a
20 particular answer will take them further into the
21 questionnaire or will result in the questionnaire or
22 interview being terminated.

23 BY MR. COHEN:

24 **Q. You don't believe that some questions might**
25 **make it at least plausible to a respondent that by**

1 there was no way for them to know what what outcome
2 would be associated with any answer to this
3 question. This could have been a question that was
4 asked without an instruction to terminate. It could
5 have simply been we like to know for everybody
6 whether they havave general understanding or not but
7 we're going to ask everybody. There was no way for
8 a respondent to know whether that was going to
9 happen or that we might terminate them. In fact
10 there was no way for a respondent to nope whether
11 any of these questions would result in termination.

12 BY MR. COHEN:

13 **Q. It's possible isn't it that these 39**
14 **consumers or some of them had a general**
15 **understanding of what the term biodegradable meant**
16 **but weren't confident enough in that understanding**
17 **to participate once they had an understanding what**
18 **that survey was about?**

19 MR. AWERBUCH: Objection.

20 THE WITNESS: Well they don't at that point
21 know what the survey is about, so I don't I don't
22 know how they could, how they could arrive at that
23 logic. I mean they they may decide that they don't
24 want to participate conceivably but i don't see the
25 i don't see any logic that would lead them to

1 believe one way or another what what the survey is
2 ultimately going to be about.

3 BY MR. COHEN:

4 **Q. The question they were asked was do you have**
5 **a general understand being of what the term**
6 **biodegradeable means that's Exhibit 2 question**
7 **section six, it's possible that consumers who**
8 **answered no to this question did have an**
9 **understanding but weren't confident enough to**
10 **express that to the researcher correct?**

11 MR. AWERBUCH: Objection.

12 THE WITNESS: Anything is possible.
13 Certainly in answering this type of question the
14 degree of certainty, the level of knowledge, plays a
15 role in determining how an individual may respond.

16 BY MR. COHEN:

17 **Q. And in your professional experience and I'm**
18 **not talking about this specific question, but in**
19 **your professional experience generally, it's**
20 **sometimes the case that people hold views but if**
21 **they aren't sufficiently confident in those views**
22 **they may be reluctant to express them correct?**

23 A. That can on occasion happen, yes.

24 **Q. Why did you exclude people who were under**
25 **18?**

1 A. Because we were interested in individualized
2 who had achieved majority status, it's very common
3 in doing surveys of consumers to collect data only
4 on individuals who are 18 of age and older.

5 **Q. Why were you interested in only in**
6 **individuals who had achieved majority status?**

7 A. Because I thought they were the ones most
8 likely to be relevant. I think if we were looking
9 at people who were under 18 we would we would open
10 up a whole variety of other things that we would
11 have to ask, so for example, were they still living
12 at home, did they make purchases as contrasted to
13 their parents making purchases for them. So I think
14 there are a whole set of questions that begin to
15 arise for people who are under 18 that we would have
16 had to have asked to further qualify them that we
17 didn't have to ask for people who are 18 and older.

18 **Q. Limiting the survey to people that are 18 or**
19 **older then makes the survey easier to conduct?**

20 MR. AWERBUCH: Objection.

21 THE WITNESS: Well I think it makes it
22 easier to conduct and it also I believe results in a
23 somewhat more homogeneous group since there are
24 many, many differences that begin to arise when you
25 dealing with people whore under 18 years of age.

1 **Q. Assume there's a convenience store that**
2 **sells bottled water in plastic bottles. Someone**
3 **who's 17 might walk into the convenience store and**
4 **purchase a bottle of water on his or her own.**
5 **That's possible isn't it.**

6 A. Oh sure sure certainly.

7 **Q. And that purchasing decision could be**
8 **influenced by the word biodegradable on some of the**
9 **bottles but not others correct?**

10 A. It's conceivable yes.

11 **Q. And that could be true for someone who is 16**
12 **as well right?**

13 A. Certainly could.

14 **Q. Maybe even someone in junior high school?**

15 A. That certainly could be.

16 **Q. I mean there's probably there's a bottom to**
17 **this right? You you know can't be five or six.**
18 **What percentage of consumers of American consumers**
19 **are above the age where they have the ability to**
20 **make these purchases and potentially be influenced**
21 **by a biodegradeable claim but below the age of**
22 **majority?**

23 A. I I don't know.

24 **Q. You don't have any information at all**
25 **regarding the income ranges of your respondents do**

1 **you?**

2 A. I do not.

3 **Q. Have you conducted any sort of analysis**
4 **regarding whether persons with different income**
5 **levels understand the term biodegradeable**
6 **differently?**

7 A. I have not done that analysis.

8 **Q. You're not offering any opinion on that**
9 **subject are you?**

10 A. I'm not planning to offer an opinion at this
11 point.

12 **Q. You don't have any information at all**
13 **regarding where your respondents reside do you?**

14 A. I don't have specific information, some of
15 that would be retrievable. We would have area
16 codes.

17 **Q. You're not presently in possession of that**
18 **information?**

19 A. No I'm not.

20 **Q. And it didn't influence your analysis one**
21 **way or another?**

22 A. It did not.

23 **Q. You did not rely on that information?**

24 A. I did not.

25 **Q. The survey research firm might have that**

1 **information correct?**

2 A. That's correct.

3 **Q. Did you have any understanding as to whether**
4 **or not the survey research firm was making an effort**
5 **to geographically balance the respondents in your**
6 **survey?**

7 A. Well that would have happened by by random
8 selection. The computer assisted telephone
9 interviewing system that is used by the firm employs
10 a random selection from the sampling frame and and
11 the sampling frame itself was constructed to be
12 representative of United States. So by random
13 selection it should have been representative
14 geographically.

15 **Q. How do you know that that the survey**
16 **research firm did the random selection process**
17 **properly?**

18 A. I've worked with this firm for more than two
19 decades I have visited with them I have seen their
20 system. I've watched them collect data. I have
21 every confidence that they used it appropriately and
22 as I note in my report it is standard practice for
23 interviews to be monitored by by research
24 supervisors in real time. So I I have every
25 confidence that they followed the protocol.

1 and I've done that in this particular case.

2 However, you would also not want to be physically
3 present when the interviewing is taking place for
4 fear of compromising the double blind character of
5 the of the survey so yes you'd have to you have to
6 at some level make an assumption.

7 **Q. Have you conducted any sort of analysis**
8 **regarding whether persons living in different**
9 **regions understand the term biodegradable**
10 **differently?**

11 A. I have not.

12 **Q. You are not offering any opinion on that**
13 **subject are you?**

14 A. I am not.

15 **Q. In your survey respondents gender was**
16 **recorded by your researchers by observation?**

17 A. That's correct.

18 **Q. That means that someone listens to that**
19 **persons voice and makes an estimation regarding that**
20 **persons gender?**

21 A. In general that is true although if it's
22 unclear the strucks are to ask some of the time I
23 don't want to characterize it as let me withdraw it.
24 A significant portion of the time it's done by
25 estimation correct.

1 **Q. Sticking specifically with random geographic**
2 **selection biased on different telephone numbers**
3 **from different regions, however well founded the**
4 **assumption you're making is, it would be fair to say**
5 **it's an assumption; you did not personally**
6 **investigate those?**

7 A. I did not personally investigate that;
8 that's correct. I relied upon the laws of
9 probability.

10 **Q. Is that another way of saying you relied**
11 **upon assumptions that you believed to be well**
12 **founded?**

13 MR. AWERBUCH: Objection.

14 THE WITNESS: Well it's not an assumption.
15 I mean laws of probability are the laws of
16 probability. I relies on their their operating as
17 we would expect them to operate.

18 BY MR. COHEN:

19 **Q. Reliance on the belief that at a survey**
20 **research firm is operating as you would expect them**
21 **to operate with respect to the gathering of data is**
22 **typical in survey research?**

23 A. Can you read that back read read.

24 A. Yes it is quite typical as I indicated there
25 may be ways that you can monitor their procedures

1 MR. AWERBUCH: Objection.

2 THE WITNESS: No it's not done by
3 estimation. It's done by observation.

4 BY MR. COHEN:

5 **Q. That's a fair point. A significant portion**
6 **of the time it's done by observation?**

7 A. Yes.

8 **Q. What's the error rate when survey**
9 **researchers make that observation?**

10 MR. AWERBUCH: Objection.

11 THE WITNESS: Well it depends on what the
12 instructions arement if they're instructs to ask
13 when they're uncertain the error rate is very small.
14 If if people are not asking that question, then you
15 could find maybe 5 percent of the cases where the
16 gender may be miss identified in a telephone call.

17 BY MR. COHEN:

18 **Q. In the situation where individuals are**
19 **instructed researchers are instructed to ask if they**
20 **are uncertain, what's the basis for your assertion**
21 **that the error rate in that situation is very small?**

22 A. I I've done survey research using telephone
23 interviewing for more than 30 years and have seen
24 studies that have looked at just that issue and the
25 error rates tend to be very small.

1 **Q. Can you identify some of those studies for**
2 **me now?**

3 A. Not off the top of my head. Some of them go
4 back to my days in advertising. They would not have
5 been published studies but they would have been
6 research that we did in the context of the
7 advertising research I was engaged in.

8 **Q. Were the survey researchers in your survey**
9 **instructed to inquire if based on observation they**
10 **were uncertain?**

11 A. They were. It's a part of their general
12 training, that if they can't determine, then they
13 should ask the question.

14 **Q. How would you establish that that is a part**
15 **of their general training?**

16 A. Well we'd have to look at the nature of the
17 training they receive.

18 **Q. Is that something that was produced to the**
19 **Federal Trade Commission?**

20 A. No it was not.

21 **Q. Is that something you possess?**

22 A. I don't believe I possess a copy.

23 **Q. Let me direct you to Exhibit 2 which I**
24 **believe is again the screen shots of the survey**
25 **questions and specifically Stwo, it states record**

1 **subject are you?**

2 A. If I'm asked to render an opinion I may. I
3 have data that would speak to that question.

4 **Q. What data do you have that would speak to**
5 **that question?**

6 A. Well we did capture gender in my survey and
7 and so we could do an analysis of people's responses
8 by gender. I have not done that.

9 **Q. That you haven't done that withdrawn. It's**
10 **not in your report at moment correct?**

11 A. It is not.

12 **Q. And you haven't yet been asked to do that**
13 **correct?**

14 A. I have not.

15 **Q. It's is the case isn't it that**
16 **African-Americans represent approximately 12 point**
17 **6 percent of the population?**

18 A. Approximately. I don't know the decimal
19 point but that's a reasonable range.

20 **Q. Do they make up approximately 12 percent of**
21 **the population of persons 66 or older?**

22 A. I -- I haven't looked at that recently I
23 don't know.

24 **Q. More broadly, is the ethenografic make up of**
25 **the population consistent across age groups 18**

1 **gender from observation correct?**

2 A. That's correct.

3 **Q. It doesn't say inquire if you're uncertain**
4 **does it?**

5 A. No it does not.

6 **Q. Is there are other survey questions in**
7 **Exhibit 2 and I'll give you an example but let's go**
8 **to question one for instance. You would agree with**
9 **me would you not in question one there's a specific**
10 **instruction that is given to the researcher about**
11 **how to act depending on what answer they receive**
12 **correct?**

13 A. Well there's an instruction about probing
14 and they were given the specific probe to use. And
15 they were given instructions about how to record the
16 response yes.

17 **Q. And there's no instruction about probing if**
18 **the researcher is uncertain about the respondents**
19 **gender is there?**

20 A. No there's not.

21 **Q. Have you conducted any analysis of any sort**
22 **regarding whether persons of different genders**
23 **understand the term biodegradable differently?**

24 A. I have not.

25 **Q. You're not offering any opinion on that**

1 **through 34, 35 through 49, 50 through 65 and 66 and**
2 **older?**

3 A. You're going to have to read that bck

4 A. Do you mean in my survey read read.

5 **Q. No I mean across the population?**

6 A. Then I'm lost because I don't know what
7 you're asking.

8 **Q. Let's approach it this way and for the next**
9 **series of question we're talking about the**
10 **population we can put your survey to the side for**
11 **the moment. You would agree with me that there are**
12 **many ethnographic groups in the United States;**
13 **correct?**

14 A. Certainly.

15 **Q. And we discussed earlier that 12 percent of**
16 **the population overall is African-American correct?**

17 A. That's correct.

18 **Q. And you testified that you weren't sure one**
19 **way or the other whether they afternoon Americans**
20 **also make up 12 percent of the population of 65 and**
21 **solder. I don't know as I sit here today?**

22 **Q. So you don't know to phrase it differently**
23 **whether with respect to African-Americans, the**
24 **ethnographic make up of the population six or older is**
25 **the same as it is with respect to the population at**

1 large?

2 A. I if I understand the question I think the
3 answer is no.

4 **Q. So putting aside African-Americans as one
5 particular ethno graphic group is the ethnographic
6 make up of the population consistent across age
7 groups 18 to 34, 35 to 49, 50 to 65, and 66 and
8 older?**

9 MR. AWERBUCH: Objection.

10 THE WITNESS: If what you're asking is are
11 there different percentages of various ethnic groups
12 within different age categories the answer is yes.

13 BY MR. COHEN:

14 **Q. You actually -- your articulation is much
15 better than mine.**

16 **The ethnographic makeup of the population of
17 persons 56 or older is disproportionately white
18 isn't it?**

19 A. I believe that's correct.

20 **Q. A survey that over includes people that
21 includes people 66 and older would under include
22 minorities correct?**

23 A. It may yes.

24 **Q. The ethnographic makeup of the population of
25 persons 50 to 55 is disproportionately white isn't**

1 it?

2 A. Yes again if you're defining if you're
3 defining white as to exclude Hispanics for example,
4 yes.

5 **Q. A survey that over includes persons 50 to 65
6 would under include minorities including Hispanics
7 correct?**

8 A. That would be correct.

9 **Q. Have you conducted any analysis of any sort
10 regarding whether minorities understand the term
11 biodegradeable differently?**

12 A. I have not.

13 **Q. You're not offering any opinion on that
14 subject are you?**

15 A. I am not.

16 **Q. You set quotas for how many people 66 and
17 older could participate in your survey correct?**

18 A. I did.

19 **Q. And what were those quota, was that quota
20 based?**

21 A. Well the quota was based on a desire to
22 assure some minimum representation of various age
23 groups and was and they were not hard quotas, they
24 were a range, and I as I sit here today I don't
25 recall the specific range but the idea and purpose

1 behind doing so was to simply assure a reasonable

2 disPersian across the age categories.

3 **Q. You mentioned that part of the goal was to
4 assure minimum representation. Why wouldn't the
5 goal be to assure as close to optimal representation
6 as possible?**

7 A. Because I didn't think that that was
8 necessary given the topic.

9 **Q. And why didn't you think it was necessary
10 given the topic?**

11 A. Because I wasn't interested in specific age
12 differences. I was interested in peoples general
13 understanding of the term biodegradeable,
14 biodegradeable, and I simply wanted a reasonable
15 representative and diverse set of age rainings I
16 wasn't trying to match the population of the United
17 States.

18 **Q. The quota for people 66 and over was a
19 hundred 15 out of four hundred correct?**

20 A. I think that's correct yes.

21 **Q. A hundred four people were excluded because
22 you'd exceeded the quota for people 66 and older
23 correct?**

24 A. That's correct.

25 **Q. The quota for people 50 to 65 was a hundred**

1 **15 out of four hundred correct?**

2 A. I'm sorry.

3 **Q. I apologize I'll just repeat the question
4 withdraw the question he'll repeat it?**

5 A. Yeah.

6 **Q. The quota for people 50 to 65 was a hundred
7 15 out of four hundred correct?**

8 A. That's correct.

9 **Q. 41 people were excluded for exceeding that
10 quota correct?**

11 A. That's correct.

12 **Q. The percentage of respondents in your survey
13 that were 66 and over is 29 percent correct?**

14 A. I believe that's correct.

15 **Q. What percentage of the population of
16 consumers aged 15 and older do people 66 and older
17 represent?**

18 A. I'm sorry. I you're going to have to repeat
19 the question or read it back.

20 MR. COHEN: Ma'am would you read it back
21 read read.

22 THE WITNESS: As you sit here today I really
23 can't tell.

24 BY MR. COHEN:

25 **Q. You that's not something you consider when**

1 preparing your report?

2 A. It was not. I -- I didn't even look at
3 consumers under 18.

4 **Q. Let me rephrase the question to make sure
5 that, and I don't mean to be excessively anytime
6 picky here but what population of the consumers aged
7 18 and over to people 66 and over represent?**

8 A. As I sit here today I don't recall that
9 either.

10 **Q. And that's not something you considered when
11 preparing your report?**

12 A. I didn't give it a great deal of thought no.

13 **Q. You didn't give it any thought or not a
14 great deal of thought?**

15 **Q. What thought did you give it?**

16 A. Well I did give it some thought at the time
17 I established quotas but I was more concerned with
18 establishing you know representation, adequate
19 representation in the various age categories and not
20 with mapping the exact demographics of my sample
21 into the population.

22 **Q. If I told you will that the percentage of
23 consumers aged 15 and older represents around 18
24 percent of the population of American consumers
25 would you have any reason to disagree with me.**

1 A. Let me be sure I understood the question,
2 that consumers 15 years and older represent.

3 **Q. No I misspoke you're absolutely right. If I
4 told you that the percentage of consumers who are 66
5 and older represents around 18 percent of the
6 population of American consumers who are 15 and
7 older, would you have any reason to disagree with
8 me?**

9 A. That sounds about right.

10 **Q. The percentage of respondents in your survey
11 that was 50 to 65 or that were 50 to 65 years of age
12 was also 29 percent correct?**

13 A. I believe that's correct.

14 **Q. What percentage of the population of
15 consumers aged 15 and older do people 50 to 65
16 represent?**

17 A. Again as I sit here today I I don't know the
18 answer to that and and I certainly don't know for 15
19 or 18.

20 **Q. That's not something you considered when
21 preparing your report correct?**

22 A. No only in the most general sense of
23 thinking about establishing quotas.

24 **Q. If I told you will that the population of
25 American consumers between 50 to 65 represent around**

1 **24 percent of the population of American consumers
2 aged 15 and older would you have any reason to
3 disagree with me.**

4 A. Again that sounds about right I haven't
5 looked recently at population demographics.

6 **Q. And just so that the record is clear and I
7 apologize for asking you a question where I think I
8 already know the answer, what percentage of the
9 population of consumers aged 18 and older do people
10 50 to 65 represent?**

11 A. Again as I sit here today, I I can't tell
12 you.

13 **Q. That's not something you considered when
14 preparing your report?**

15 A. I didn't consider that specific fact. I
16 mean as I said I did consider it in the sense of
17 trying to establish reasonable quotas for the
18 sample.

19 **Q. Have you conducted any analysis of any sort
20 whether persons of different ages understand the
21 term biodegradable differently?**

22 A. I have not.

23 **Q. You're not offering any opinion on that
24 subject are you?**

25 A. I have not been asked to offer an opinion.

1 Again it's something for which we have survey data
2 that could be used to inform the quell but I have
3 not been asked to address it.

4 **Q. Photocopy you were provided with information
5 suggesting that older Americans aged 50 and above
6 have a different understanding of the terms
7 biodegradable than younger Americans would that
8 affect your opinions in this case?**

9 A. No.

10 **Q. Why not?**

11 A. I've collected data on both groups. I have
12 I have data. They're both represented here and to
13 the extent that they are different then it would be
14 reflected in the data.

15 **Q. Would it affect the conclusions that you
16 believe could be drawn from the data?**

17 A. I don't believe so.

18 **Q. So even if we assume that older Americans
19 have different views with respect to what the term
20 biodegradable means and over -- we further assume
21 that older Americans are over represented in your
22 survey. That would not affect your conclusions?**

23 A. No it would not

24 **Q. And why not?**

25 A. Because we have data on various age groups

1 we could look at the degree to which there may be
2 age differences. I frankly don't think there are
3 any based on my reading of the responses but as I
4 said earlier I haven't done a specific analysis by
5 age.

6 **Q. What if that analysis were done and**
7 **demonstrated that Americans below the age of 50 had**
8 **different views with respect to what biodegradable**
9 **meant?**

10 A. And what?

11 **Q. Would that affect your conclusions?**

12 A. Well it would depend on what the differences
13 were. It may or may not. They could be uncertain
14 in different ways but still be uncertain. They
15 could be skeptical in different ways but still be
16 skeptical, it would really depend on what the nature
17 of the differences were.

18 **Q. What would be some examples of differences**
19 **where it would affect your overall conclusions?**

20 A. Well if one group categorically greed on a
21 particular definition of biodegradable and another
22 group did not, then I think that's a that's an
23 interesting piece of information and and might be
24 worth pointing out.

25 **Q. Is that the only circumstance you can think**

1 **of where differences between the age groups might**
2 **affect your conclusions?**

3 A. Well, I yes I think so.

4 **Q. You'd agree that measured against the actual**
5 **population of American consumers, aged 15 and**
6 **older the population in your survey is un**
7 **representative at least because Americans 50 and**
8 **older are over represented.**

9 MR. AWERBUCH: Objection.

10 THE WITNESS: Well we keep using 15. I've
11 been very clear that there was no one in the sample
12 under 18. And so so they're not even in the sample
13 so the fact that they're not in the sample clearly
14 means that they are they're not over weighted.
15 They're I mean they're not there. Many.

16 MR. COHEN: Ma'am can you read back my
17 question. Read read. Are.

18 THE WITNESS: You asked me if Americans 15
19 and older are over represented they're not in my
20 sample. They can't be overrepresented.

21 BY MR. COHEN:

22 **Q. That's not what I asked?**

23 A. Okay.

24 **Q. I'll ask it again. You'd agree that**
25 **measured against the actual population of American**

1 **consumers aged 15 and older so not just those**
2 **between 15 and 18, but 15 basically to the end of**
3 **you are an American consumer the population in your**
4 **survey is un representative at least because**
5 **Americans 15 and older are over represented?**

6 MR. AWERBUCH: Objection.

7 THE WITNESS: Are you saying 50 or 15?

8 MR. COHEN: Ma'am can you read back the
9 question please read read.

10 MR. COHEN: I misspoke.

11 THE WITNESS: Okay.

12 BY MR. COHEN:

13 **Q. You're absolutely right. So the end of the**
14 **question I'll try ask see if I can ask the whole**
15 **question again. You'd agree that measured against**
16 **the actual population of American consumers aged 15**
17 **and older the population in your survey is un**
18 **representative at least because Americans 50 and**
19 **over are over represented?**

20 A. Okay. I would agree that is not
21 representative of the actual age distribution of the
22 American population. Aged 15 and older yes.

23 **Q. Notwithstanding the fact that it is not**
24 **representative of the actual age distribution of the**
25 **American population of consumers it remains**

1 **sufficiently valid for the court to rely upon?**

2 MR. AWERBUCH: Objection.

3 THE WITNESS: Absolutely. Yes.

4 BY MR. COHEN:

5 **Q. So let me take a step back. I'm just going**
6 **to re-ask the question that we had I had some**
7 **difficulty articulating earlier but I want to make**
8 **sure that I don't get a different answer if I use**
9 **the word 18 instead of 15. You'd agree that**
10 **measured against the actual population of American**
11 **consumers age 18 and older the population in your**
12 **survey is un representative at minimum because**
13 **Americans 50 and older are over represented?**

14 MR. AWERBUCH: Objection.

15 THE WITNESS: It is certainly the case that
16 is un representative with respect to the actual
17 population demographics related to age.

18 BY MR. COHEN:

19 **Q. And not with stand being that feature they**
20 **remain sufficiently valid for the court to rely**
21 **upon?**

22 MR. AWERBUCH: Objection.

23 THE WITNESS: Yes it does.

24 BY MR. COHEN:

25 **Q. Have we marked Exhibit 7? Let's take a look**

1 at Exhibit 7 Dr. Horizontal a copy four?

2 A. Thank you.

3 **Q. And let me provide copies inform your**
4 **counsel do you recognize this document?**

5 A. I do, it's printed in a different fashion
6 than I believe it was produced but it I do recognize
7 it.

8 **Q. And what is this document?**

9 A. These are summary tabulations of the results
10 of the survey.

11 **Q. I direct you to the results for question S4.**
12 **Which is do you or anyone in your household work for**
13 **any of the following is that correct?**

14 A. That's correct.

15 **Q. 44 percent of the respondents in your survey**
16 **was were coded as being quote retired slash**
17 **unemployed slash disabled correct?**

18 A. That's correct.

19 **Q. What percentage of American consumers aged**
20 **15 and older are retired?**

21 A. As I sit here today I don't know.

22 **Q. That's not something you considered when you**
23 **prepared this report?**

24 A. I really didn't.

25 **Q. Have you conducted any analysis of any sort**

1 A. Off the top of my head, I I can't tell you.

2 And it would vary depending on how you defined
3 unemployed. People have left the labor force and
4 are unemployed but the unemployed statistics don't
5 reflect that. But it's generally thought the real
6 unemployment rate is somewhere in the vicinity of 12
7 to 14 percent.

8 **Q. The percentage of American consumers age 15**
9 **and and older who are unemployed is not something**
10 **you considered when you prepared this report is it?**

11 A. It's not.

12 **Q. Have you conducted any analysis of any sort**
13 **regarding whether unemployed persons understand the**
14 **term biodegradable differently?**

15 A. I have not.

16 **Q. You're not offering any opinion on that**
17 **subject are you?**

18 A. I'm not.

19 **Q. Does disabled as it's used here in table S**
20 **four, include only people who are too disabled to**
21 **work or does it include people with disabilities but**
22 **who are employed?**

23 A. It could include people who are disabled and
24 employed depending on how people interpreted the
25 term.

1 regarding whether retired persons understand the
2 term biodegradable differently?

3 A. I have not.

4 **Q. You're not offering any opinion on that**
5 **subject are you?**

6 A. I have not, I have not been asked to offer
7 such an opinion. The data would lend themselves to
8 doing an analysis of that but I have not done that
9 analysis.

10 **Q. What percentage of Americans consumers**
11 **aged 15 and older are disabled?**

12 A. I as I sit here today I don't know.

13 **Q. That's not something you considered when you**
14 **prepared your report?**

15 A. I really didn't.

16 **Q. Have you considered any strike that. Have**
17 **you conducted any analysis of any sort regarding**
18 **whether disabled persons understand the term**
19 **biodegradable differently?**

20 A. I have not.

21 **Q. And you're not offering any opinion on that**
22 **subject are you?**

23 A. I'm not.

24 **Q. What percentage of American consumers aged**
25 **15 and older are unemployed?**

1 **Q. It would depend on how survey respondents**
2 **interpreted the term?**

3 A. Yes generally I think they would interpret
4 it in the sense of are you employed or not and
5 disabled would be unemployed but I suppose someone
6 could interpret it differently.

7 **Q. You're not sure one way or the other**
8 **definitively?**

9 A. No I'm not.

10 **Q. Can you tell me how many of the 44 percent**
11 **are disabled, how many are unemployed, and how many**
12 **are retired?**

13 A. I cannot.

14 **Q. Does that data exist?**

15 A. I don't believe that's the way the question
16 was asked. But I will tell you momentarily. No
17 there was simply one category retired unemployed
18 disabled that people could select from the list of
19 organizations that people might work for or not work
20 for.

21 **Q. Put differently it's not possible to tell**
22 **how many are disabled how many are unemployed or how**
23 **many are retired based one the way the question was**
24 **asked?**

25 A. That's correct.

1 **Q. Is it possible to determine based on the**
 2 **data produced to the FTC and also publicly available**
 3 **census data or other publicly available data that**
 4 **you're aware of, whether your survey overrepresents**
 5 **people in the category defined as retired slash**
 6 **unemployed slash disabled relative to the percentage**
 7 **of American consumers falling within that category.**

8 A. It would probably be possible to find some
 9 census data that could be brought to bear for
 10 purposes of comparison.

11 **Q. How would we be able to do that if we're not**
 12 **able to tell how many persons are retired versus how**
 13 **many persons in your survey were unemployed versus**
 14 **how many persons in your survey were disabled?**

15 A. Well we would need to find data that either
 16 asks the question in the same way and this is a very
 17 common way to ask this question or we would need to
 18 try to aggregate across multiple categories.

19 **Q. Can you aggregate across multiple categories**
 20 **if a person is both unemployed and disabled?**

21 A. You could get a rough estimate but you run
 22 risk of doing some double counting. We would only
 23 count them once in response to this question but if
 24 you had data that broke things out retired
 25 unemployed disabled a person might conceivably

1 whether or not the results are different for retired
 2 unemployed disabled and the rest of the sample the
 3 data are available we could certainly do that
 4 analysis. I don't have any reason to believe that
 5 we will get a difference.

6 **Q. You didn't ask consumers how much time it**
 7 **would take for plastic labels biodegradable to**
 8 **biodegrade did you?**

9 A. I did not.

10 **Q. That's probative of the consumer per session**
 11 **question at issue in this case isn't it?**

12 MR. AWERBUCH: Objection.

13 THE WITNESS: It certainly is.

14 BY MR. COHEN:

15 **Q. Why didn't you ask consumers how much time**
 16 **it would take for plastic labeled biodegradable to**
 17 **biodegrade?**

18 A. Because I was more interested in
 19 understanding what peoples general understanding of
 20 biodegradability was near obtaining responses in the
 21 respondents own words that provided any caveats
 22 qualifications contin general sees and we did get
 23 people talked about plastic specifically. We had
 24 people who talked about other materials and I
 25 thought this was a much more useful way of asking

1 appear in more than one category.

2 **Q. Is there some piece of survey publicly**
 3 **available survey data that you can point me to where**
 4 **we could get an estimate of the percentage of the**
 5 **population of American consumers that fall within**
 6 **this category retired slash unemployed slash**
 7 **disabled?**

8 A. Not as I sit here today. As I said there
 9 are this is a very common way to ask about this
 10 particular category of unemployment or employment.
 11 But I can't point you to a specific source today.

12 **Q. Assume we can't tell one way or the other**
 13 **whether those individuals are over represented or**
 14 **under represented or represented in exactly the**
 15 **optimal proportion, your survey would still remain**
 16 **sufficiently valid for the court to rely upon it?**

17 A. Yes I believe so.

18 **Q. And why is that?**

19 A. We have, we have data across a range of
 20 types of individuals, employed not employed, you
 21 know we can look at their responses broken out by
 22 whatever category we choose to put them in and
 23 determine whether or not there are differences so if
 24 there's reason, you know if there's reason to do
 25 that analysis if somebody would like to determine

1 questions about the understanding of
 2 biodegradability in general which was the purpose of
 3 the survey rather than the biodegradability of a
 4 very specific substance.

5 **Q. Are there any other reasons?**

6 A. That's the primary reason. I don't I don't
 7 think of any other reasons.

8 **Q. You indicated that you were more interested**
 9 **in and I'm paraphrasing but correct me if it's not**
 10 **fair pair phrase. You're more interested in**
 11 **consumers views of biodegradability generally. Why**
 12 **were you more interested in that?**

13 A. Because I think that's the more relevant
 14 question here. To the degree that there are, that
 15 people perceive there to be differences in the
 16 biodegradability of materials, I think it's
 17 important to understand that. If you ask people
 18 only about one material focus people on only one
 19 material you really don't get an understanding of
 20 the rich necessary that's associated with the
 21 understanding of biodegradability and that's what I
 22 was really interested in. We pick up differences
 23 associated with materials in context in the
 24 responses of the survey, to the survey, but we we
 25 get a much richer understanding of biodegradability

1 by asking the more general open ended questions.
2 **Q. You weren't told by anyone that you should**
3 **focus on that topic were you?**

4 MR. AWERBUCH: Objection.

5 THE WITNESS: I wasn't, no I was not told
6 that I should focus on that topic. I was given two
7 other surveys, one by the American plastics counsel
8 and one by SYNOVATE and asked to evaluate those and
9 asked you know how I would do those differently
10 check check so they they guided my thinking and both
11 of those dealt with the more general question of
12 biodegradability and that's why I took the approach
13 that I did.

14 BY MR. COHEN:

15 **Q. Certain of the questions in APCO and sin**
16 **survey specifically asked consumers for estimates of**
17 **biodegradation times correct?**

18 A. They do check check.

19 **Q. You didn't ask consumers how much time it**
20 **would take for plastic labeled easier to conduct**
21 **biodegradeable to biodegrade did you?**

22 A. I did not.

23 **Q. That's the primary consumer perception**
24 **question at issue in this case isn't it?**

25 MR. AWERBUCH: Objection.

1 or speak to plastic or other materials I think
2 that's relevant and important but again it's the
3 more general understanding of biodegradability that
4 I think is really important here.

5 **Q. Why not ask two sets of questions one**
6 **directed to understanding consumers general**
7 **understanding of biodegradability and another asking**
8 **easier to conduct specific questions such as how**
9 **much time it would take for plastic labeled easier**
10 **to conduct biodegradeable to biodegrade?**

11 A. Because that wasn't really within the scope
12 of my assignment. I was really asked to evaluate
13 the concept of biodegradability recollect to design
14 a survey that would correct the flaws that are
15 present in the Synovate survey and the APCO survey,
16 and that's what I did.

17 **Q. And the scope of your assignment was defined**
18 **by counsel?**

19 A. My clients generally do define the scope of
20 my assignment yes. Even if they're attorneys.

21 **Q. And in this case specifically the scope of**
22 **your assignment was defined by counsel correct?**

23 A. That's correct.

24 **Q. You would agree with me wouldn't you, that**
25 **well let me just ask one further question. There**

1 THE WITNESS: It's I think it's a subclass
2 of the question that's that's at issue in this case.
3 I think that there is a broader issue and that is
4 what do people understand about biodegradability
5 generally.

6 BY MR. COHEN:

7 **Q. When you say it's a subclass of that issue,**
8 **what do you mean by that?**

9 A. Well what I mean by that is if we're not
10 applying a term that demonstrably has many different
11 meanings to consumers in a specific context and I
12 don't think that you can interpret results obtained
13 for plastics or any other specific material alone
14 without having a more general understanding of what
15 people understand the term biodegradability to mean.

16 **Q. Is there any other reason why you didn't ask**
17 **consumers how much time it would take for a plastic**
18 **labeled easier to conduct biodegradeable to**
19 **biodegrade?**

20 A. I was interested as I've said before I was
21 interested in peoples general perceptions of
22 biodegradability without putting in their heads any
23 information about context or material and you know
24 that that's the way the questions were framed and to
25 the extent that we got results that speak to context

1 **isn't any reason why putting aside what the scope of**
2 **your assignment is and putting aside the fact that**
3 **you have an obligation to comply with the scope of**
4 **your assignment, there isn't any reason from the**
5 **standpoint of consumer perception research why one**
6 **could not ask both questions related to the general**
7 **understanding of biodegradability and then also ask**
8 **questions specific to how much time it would take a**
9 **plastic labeled easier to conduct biodegradeable to**
10 **biodegrade correct?**

11 MR. AWERBUCH: Objection.

12 THE WITNESS: You could you certainly could
13 design a different survey that asks different
14 questions.

15 BY MR. COHEN:

16 **Q. You would agree with me wouldn't you, I**
17 **think you've mentioned this I think already that**
18 **consumers understanding of what the word**
19 **biodegradeable means is central to this case?**

20 MR. AWERBUCH: Objection.

21 THE WITNESS: It's my understanding that it
22 is yes.

23 BY MR. COHEN:

24 **Q. Consumers understanding of what a word means**
25 **is always based at least to a degree on their prior**

1 **belief about what the word means isn't it?**

2 A. If they have a prior belief yes.

3 **Q. If an advertiser doesn't do anything one way**
4 **or another to influence how consumers withdrawn.**
5 **It's the case that you had a screening question to**
6 **ask consumers in your survey whether or not they had**
7 **a general understanding of what the phrase term**
8 **biodegradeable means correct?**

9 A. That's correct.

10 **Q. So at least with respect to the respondents**
11 **in your survey we're were not dealing with**
12 **individuals who had no prior belief as to what the**
13 **term biodegradeable means?**

14 A. That's correct.

15 **Q. So if an advertiser doesn't do anything one**
16 **way or another to influence how consumers understand**
17 **a word, then those consumers understanding of that**
18 **word will come exclusivelily from their prior belief**
19 **correct?**

20 MR. AWERBUCH: Objection.

21 THE WITNESS: Well or the media or it could
22 be any number of other sources that may may come
23 into place, it's certainly prior beliefs are one of
24 those.

25 BY MR. COHEN:

1 **meant?**

2 A. Yes.

3 **Q. And what is that?**

4 A. Well I actually Googled the question how
5 long does it take material to biodegrade and there
6 is an enormous amount of material on the Internet
7 that's present. People have contributed to it.
8 Some of this are blogs, some of it are these formal
9 websites. Some of it is is trade organizations.
10 There's just an enormous amount of activity around
11 the definition of this term so clearly clearly
12 consumers are engaged in a conversation about about
13 this topic employ which suggests that people are
14 going on line and sharing information obtaining
15 information.

16 **Q. Do you know one way or another whether those**
17 **consumers are doing that after being exposed to**
18 **marketing materials regard ECM plastic?**

19 A. Do you know whether those consumers that
20 you're reference other represent any material
21 portion of the population of American consumers.

22 MR. AWERBUCH: Objection.

23 THE WITNESS: I don't know what portion they
24 may represent no.

25 BY MR. COHEN:

1 **Q. Well prior beliefs are an amalgam of media**
2 **things the consumer has seen on television, things**
3 **someone told the consumer recollect the consumers**
4 **education and so forth you'd agree with that right?**

5 A. All of those things can influence prior
6 beliefs yes.

7 **Q. So if the advertiser doesn't do anything one**
8 **way or another to influence how consumers understand**
9 **a word, then their understanding of what that word**
10 **means will come exclusively from their prior beliefs**
11 **however those prior beliefs were otherwise created?**

12 MR. AWERBUCH: Objection.

13 THE WITNESS: No. Consumers very frequently
14 when confronted with something they don't understand
15 pull out a smart phone go to the Internet and gather
16 information. And that that wasn't a prior belief.
17 It's it's an immediate communication that will
18 influence their their perceptions. But it's not
19 it's not a prior belief. It's another piece of
20 information.

21 BY MR. COHEN:

22 **Q. Do you have any evidence that suggests that**
23 **any consumer confronted with the claim easier to**
24 **conduct biodegradeable went online and googled or**
25 **researched what the word biodegradeable might have**

1 **Q. Assume that an advertiser doesn't define the**
2 **word free in it's ads. This is probably a problem**
3 **you've confronted before. Consumers would**
4 **understand free based solely on their prior beliefs**
5 **regarding that term correct?**

6 MR. AWERBUCH: Objection.

7 A. Unless there's other information available
8 yes.

9 BY MR. COHEN:

10 **Q. Do you think it's likely the consumers would**
11 **Google was the word free means?**

12 A. Some consumers might very well it's not at
13 all difficult to find consumers sharing information
14 with one another. You know what does this mean and
15 obtain information from others. I don't know how
16 many people would do that but it's certain lip
17 happens.

18 **Q. Let's assume that no material number of**
19 **consumers when confronted with an advertisement that**
20 **says the word free Google what the word free means.**
21 **And let's assume that the advertiser understands**
22 **free to mean that a promotional item is free but the**
23 **consumer will still pay shipping and handling.**
24 **Consumers understand the term free to mean no cost**
25 **of any kind. So do you understand that the**

1 **framework that I'm asking to you assume?**

2 A. I do.

3 **Q. In this case, if an advertiser and consumers**
4 **have a different understanding of what the word free**
5 **means, the advertiser has a burden or the burden to**
6 **clarify what it means correct?**

7 MR. AWERBUCH: Objection.

8 THE WITNESS: I think that's the case where
9 if people didn't have an understanding and I believe
10 they do, that free often excludes shipping and
11 handling. That at some point in the purchase
12 process it would be appropriate for the advertiser
13 to indicate shipping and handling not included.

14 BY MR. COHEN:

15 **Q. So if a material portion of consumers did**
16 **not understand that free included shipping and**
17 **handling then if I understood you correctly the**
18 **advertiser would have a burden at some point in the**
19 **purchase process to clarify that?**

20 A. I -- I think that is correct yes.

21 **Q. Let's take a look all the way back to**
22 **Exhibit 1, your report in this case. Let me actual**
23 **landfill just ask one follow-up question about the**
24 **hypothetical we were discussing. In the situation**
25 **where the advertiser would have an obligation to**

1 (Whereupon, at the hour of
2 11:50 a.m., a luncheon recess was
3 taken, the deposition to be resumed
4 at 12:50 p.m.)
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 **clarify at some point in the purchase process that**
2 **shipping and handling is going to be assessed so**
3 **it's not prix as some portion of consumers might**
4 **understand that term if the advertiser fails to do**
5 **that you would agree with me would you not that**
6 **deception has occurred?**

7 MR. AWERBUCH: Objection.

8 THE WITNESS: Well I have to put this in the
9 context of your hypothetical which is consumers
10 don't have an understanding that shipping and
11 handling is not included in the term free.

12 BY MR. COHEN:

13 **Q. That was my hypothetical?**

14 A. If that is the case then I would agree with
15 you.

16 **Q. Let's take a look at Exhibit 1 I believe**
17 **page 27?**

18 A. By the way when you get to a stopping point
19 it would be nice to take a break.

20 **Q. Do you need to -- do you want to take a**
21 **lunch break. I mean this is a logical point.**

22 A. At least a break.

23 MR. COHEN: We'll go off the record.
24 (A discussion was held off the record.)
25

1 LOS ANGELES, CALIFORNIA; TUESDAY, JULY 1, 2014
2 12:50 P.M.
3

4 DAVID STEWART, Ph.D.,
5 having been previously duly sworn,
6 was examined and testified as follows:
7

8 EXAMINATION

9 BY MR. COHEN:

10 **Q. Welcome back Mr. Stewart I hope you had a**
11 **nice lunch. Did you speak with anyone during the**
12 **lunch break regarding this deposition or this matter**
13 **in any way?**

14 A. No.

15 **Q. Just to back up something that I believe we**
16 **discussed earlier and again I don't want to**
17 **mischaracterize prior testimony. If I understood**
18 **you correctly, one potential problem with adding**
19 **additional questions to a telephone survey is that**
20 **it makes the telephone survey longer. Did I**
21 **understand that correctly?**

22 MR. AWERBUCH: Objection.

23 THE WITNESS: Yes that's an issue. The
24 length of a survey particularly on the telephone is
25 a cause of concern so the more questions you add the

1 longer it can get.

2 BY MR. COHEN:

3 **Q. And that is something that is of concern?**

4 A. Well we either have to keep things short or
5 we have to make some sort of effort to insent people
6 to stay on the phone for a longer period of time.

7 **Q. What do you mean insent people to stay on
8 the phone or a longer period of time?**

9 A. Well if we know it's going to be a half hour
10 hour interview then it mates be necessary to
11 preschedule that so we identify a time where we call
12 people back. We might need to compensate people
13 some sort of monetary incentive or some other
14 incentive value that might get people to cooperate.

15 **Q. Were any of your calls in your survey
16 prescheduled calls?**

17 A. No they were not.

18 **Q. Were any of the respondents compensated in
19 any way?**

20 A. No they were not.

21 **Q. Let's go to Exhibit 1 which is your report
22 page 27 the last sentence in the first paragraph
23 thus my survey makes clear that two of the three
24 criteria for finding a deception one a false belief
25 attributable to the action of the marketer two**

1 **Q. Are you relying on any source other than the
2 jest Richards book for the contention that deception
3 under the FTC act requires a false belief an
4 attributable to the action of the marketer?**

5 A. Yes.

6 **Q. And what are those other sources?**

7 A. It's the FTC standard.

8 **Q. And can you be more specific please?**

9 A. I -- I can't point you to a specific
10 document. It it's available on the website. But it
11 it's a well known well established FTC standard.

12 **Q. You mean available on the FTCs website?**

13 A. Yes.

14 **Q. Is there a particular case you can direct me
15 to?**

16 A. Not as I sit here today I mean there there
17 is a document on the FTC standards for deception and
18 I -- I just can't point you to the particular source
19 at the moment.

20 **Q. And your contention is that that document
21 that is the FTC standards on deception includes the
22 requirement that the false belief be attributable to
23 the action of the marketer?**

24 A. That's the standard yes.

25 **Q. Other than what you've characterized. The**

1 **material to consumers is not present did I read that
2 correctly?**

3 A. Yes you did.

4 **Q. You refer in a footnote to Jeff Richards
5 1990 deceptive advertising behavioral study of a
6 legal concept is that correct?**

7 A. I do.

8 **Q. And the footnote says that that source will
9 provide a discussion of the legal definition of
10 deception and it's behavioral science foundations.
11 Is that correct?**

12 A. That's correct.

13 **Q. Is it your contention that the Jeff Richards
14 book states that deception cannot be found without a
15 false belief attributable to the market?**

16 A. He discusses three criteria for the
17 establishment of deception in those that that's
18 included in the in the list yes.

19 **Q. What is the first criteria?**

20 A. Well there's three criteria. The first is
21 that there is a false belief the second is that
22 false belief has been created by an action or
23 inaction by the marketer. And the third is that it
24 is material to the consumer that it has some effect
25 on consumer behavior.

1 **Jeff Richards source and what you've characterized
2 in a general way as FTC deception standards is there
3 negligent else that you're relying upon for that
4 proposition?**

5 A. Well there's a very substantial literature
6 in the market in the advertising area that deals
7 with deception. I'm not pointing to any one of
8 those documents or published papers but certainly
9 knowledge of that literature informs my opinion.

10 **Q. A control group isn't always necessary in
11 consumer survey research is it?**

12 A. No there's certain types of consumer survey
13 research that does not require control.

14 **Q. And you can talk to consumer survey research
15 without using a control correct?**

16 A. I have.

17 **Q. Can you identify well in how many instances
18 have you conducted consumer survey research without
19 using a control?**

20 A. I -- I I can't give you an estimate many
21 vase are not intended to establish cause at there's
22 no need for control in those cases. I've done a lot
23 of descriptive surveys for my academic research
24 consulting and in litigation where there was no need
25 for control but we were trying to establish

1 causation.

2 **Q. Were you trying to establish causation of**
3 **any sort in the survey that you conducted for ECM**
4 **bio films?**

5 A. No.

6 **Q. Do you understand Professor Frederick to be**
7 **attempting to establish causation in the survey that**
8 **he conducted for complaint counsel?**

9 A. That's my understanding yes.

10 **Q. That he was attempting to establish**
11 **causation?**

12 A. A relationship between peoples response to
13 the the ECM biofilms logo and certain beliefs yes.

14 **Q. So are you contending and I'm not sure if**
15 **you are, are you contending that Professor Frederick**
16 **should have used a control?**

17 A. Well if he's going to assess causation he
18 should have used a control yes.

19 **Q. What would you suggest that that control**
20 **might have been?**

21 A. I haven't given that a great deal of
22 thought. I mean one approach could have been to
23 simply not use the ECM logo and simply put the term
24 biodegradeable and determine whether the action of
25 the marketer in this case the ECM, produced a

1 **recall that generally?**

2 A. I do.

3 **Q. Is it your contention that there was no**
4 **adequate control for that question?**

5 A. I don't believe there was an adequate
6 control. I think an adequate control would have to
7 include something that examined what people
8 interpret the term biodegrade to mean.

9 **Q. What would be question be that would**
10 **correspond to the question I just asked that would**
11 **constitute an adequate control?**

12 A. Well again I -- I I have not been asked to
13 design such ape survey and I haven't thought a great
14 deal about it but I would think that there would be
15 a need to use the term biodegrade as a part of the
16 control in order to correct for pre-existing beliefs
17 about the definition of the term.

18 **Q. Can you give me an example of what that**
19 **question would sound like?**

20 A. It would sound very similar to the question
21 you just read me what would differ would be what
22 people are shown.

23 **Q. The question that I just read you was not a**
24 **question that was accompanied by any visual image?**

25 A. Okay.

1 different kind of response than a response to the
2 word alone.

3 **Q. Are you aware whether Professor Frederick**
4 **showed certain consumers plastic products that deny**
5 **contain the ECM logo?**

6 A. It was my understanding that he did yes.

7 **Q. And that he showed other sets of consumers**
8 **about plastic products that did contain the ECM logo**
9 **correct?**

10 A. That's my understanding yes.

11 **Q. And why does that not constitute a control?**

12 A. Well it could be a control. I'm not I I
13 don't think I'm following your question. The issue
14 is you know what are you controlling for? It's my
15 understanding that that and I'd have to go back and
16 look at his mini surveys but that some of the
17 surveys were such that they used the buy oh film
18 logo and some did not but I don't remember all the
19 specifics of what was done.

20 **Q. Professor Frederick asked consumers in**
21 **substance how much time would it take for plastic**
22 **label BCM Biodegrade to -- strike that.**

23 **In substance Professor Frederick asked**
24 **consumers how much time it would take for plastic**
25 **label ECM Biodegradable to biodegrade. Do you**

1 **Q. So if it's just a written question what**
2 **would an adequate control be?**

3 A. Well I don't know because if it's just a
4 written question, I'm not sure what the basis of
5 that information of an answer would be based on.

6 **Q. It wouldn't be based on a consumers**
7 **perception or understanding of how much time it**
8 **would take for plastic labeled ECM biodegradeable to**
9 **biodegrade?**

10 A. Well it it would be based on what they
11 believe biodegrade means I don't know what the ECM
12 buy oh film component ads. If people are not aware
13 of that they have no basis for answering that
14 question.

15 **Q. One circumstance when a control would not be**
16 **used is when it's unclear when strike that. One**
17 **circumstance when a control would not be used is**
18 **when it's unclear what would constitute an adequate**
19 **control correct?**

20 MR. AWERBUCH: Objection.

21 THE WITNESS: Well, certainly if you can't
22 think of what a control would be, you can't very
23 well design one in but the fact that you don't have
24 a control puts you in a position where the inference
25 of causality is is really problematic so it's

1 certainly the cause that you may have situations
2 where you don't know what the control might be and
3 obviously you can't just show people a blank piece
4 of paper but the that makes it very difficult to
5 make any inferences about causality.

6 BY MR. COHEN:

7 **Q. What is the inference that you understand**
8 **Professor Frederick to be making with respect to**
9 **cause at when he collected data regarding how much**
10 **time consumers believed it would take for plastic**
11 **products labeled ECM biodegradable to biodegrade?**

12 A. Well I think what he is attempting to do is
13 to draw inferences about what the ECM buy oh film
14 product, it's label, it's logo, information about
15 it, implies to consumers.

16 **Q. If I understand you correctly and I think**
17 **maybe I don't, but if I understand you correctly you**
18 **seem to be testifying that Professor Frederick's**
19 **question which I've just paraphrased was assessing**
20 **how consumers understood the language that was**
21 **presented to them?**

22 A. I think in some cases, the difficulty I'm
23 having is that Professor Frederick asked a lot of
24 different questions and I don't know specifically
25 which one you're referring to and so if we really

1 I think those provide a baseline that of responding
2 that is independent of any reference to the
3 Econsiders M bio film product.

4 **Q. So if Professor Frederick had in fact asked**
5 **the questions that you just described then there**
6 **would be adequate control?**

7 A. Perhaps. Again I would need to see the full
8 design, what people were asked, and and how the
9 analysis was done but certainly that would get
10 closer to a control.

11 **Q. You did review Professor Frederick study in**
12 **preparation for this deposition?**

13 A. Yes, I did.

14 **Q. You didn't use a control in any of the work**
15 **you performed for ECM correct?**

16 A. I did not I was not trying to make any
17 inferences about causality.

18 **Q. Do you contend that Professor Shane**
19 **Frederick is biased?**

20 A. I.

21 MR. AWERBUCH: Objection.

22 THE WITNESS: I think that the approach he
23 took to the analysis demonstrates a lack of
24 objectivity so to that degree yes I think there's
25 bias.

1 want to get into the specifics you know we're going
2 to have to actually look at what was done, what was
3 shown the respondent and what question was asked.
4 It you know there's just too much data there for me
5 to do justice to an answer from memory without
6 having the.

7 **Q. Let's assume that Professor Frederick did in**
8 **fact ask how much time would it take for plastic**
9 **label ECM Biodegradable to biodegrade?**

10 A. Without showing people anything.

11 **Q. Without showing people anything.**

12 A. Okay.

13 **Q. What's the causal inference that you**
14 **understand Professor Frederick to be attempting to**
15 **draw from the results to that survey?**

16 A. That that statement causes consumers to
17 infer something about the length of time that the
18 product will take to biodegrade.

19 **Q. And what would be the control necessary in**
20 **your mind to give that question sufficient validity?**

21 A. I would probably remove the reference to the
22 specific product and simply ask as I did in my
23 survey how long do you think it would take for
24 something to degrade. I might even go so far as to
25 ask how long would it take for plastic to degrade.

1 BY MR. COHEN:

2 **Q. Have you contending that Professor**
3 **Frederick's approach lacks objectivity or that**
4 **Professor Frederick lacks objectivity?**

5 A. Well I can't speak to his personality
6 characteristics. I think his approach the way he's
7 gone about his analysis lacks objectivity.

8 **Q. Would another way to say this be that**
9 **Professor Frederick lacks objectivity because his**
10 **methodology is improper?**

11 A. I'm not sure that's the way I would say it I
12 certainly think his methodology lacks objectivity.

13 **Q. I'm not sure that I understand the**
14 **difference. You've testified that Professor**
15 **Frederick's methodology lacks objectivity. Correct?**

16 A. That's correct.

17 **Q. And what is the basis for your belief that**
18 **his methodology lacks objectivity?**

19 A. Well there's several. I mean first of all,
20 the work that he did was not double blind. Both he
21 and his coders were very much involved in the in the
22 coding and both were very much aware of what they
23 were what they were hoping to find. It's also very
24 clear that he has failed to code items responses
25 that people gave that are clearly relevant such as I

1 don't know, it depends, and has coded some other
2 responses that are you know at best sillily, he's
3 adopted a coding system that I think serves to in
4 analytic system serves to inflate his findings with
5 respect to how long it takes for something
6 particularly plastic to biodegrade.

7 **Q. Methodology aside do you have any other**
8 **basis for your contention that Professor Frederick**
9 **lacks objectivity?**

10 A. No. I what I what I'm addressing and what I
11 addressed in my report really went to the question
12 of the objectivity of the approach and the
13 methodology to the research that's reported. It's
14 not a statement about a personality characteristic.

15 **Q. If it were established that your methodology**
16 **was improper, would that mean that you lack**
17 **objectivity?**

18 MR. AWERBUCH: Objection.

19 THE WITNESS: No not at all. It I mean
20 things can be improper and to be quite objective I
21 mean things can be improper for many reasons, a lack
22 of objectivity might be one of them but there are
23 many reasons why a piece of research may not be
24 valid that have little to do with whether the
25 researcher is objective or not.

1 **I'm going to read what it says. I'm obviously doing**
2 **that because that's what it says. I'm in no respect**
3 **endorsing this. On the second full sentence on the**
4 **page it is quite possible for our respondent for a**
5 **Google survey to be an eight year old or a male**
6 **pretending to be a woman did I read that correctly?**

7 A. Yes you did.

8 **Q. What's wrong with including in a survey of**
9 **American consumers men pretending to be women?**

10 A. Because they are not who they are and by
11 definition they are there to perpetuate a ruse and
12 so I would be we very reluctant to accept a response
13 by someone pretending to someone they are not. I
14 think it would call into question the validity of
15 that that information that they supply.

16 **Q. How do you know that none of the respondents**
17 **to your consumer survey were men pretending to be**
18 **women?**

19 A. Because we actually had a live interviewer
20 who was in contact in talking with the respondents
21 so it's highly improbable. Is it possible? I
22 suppose but highly improbable.

23 **Q. Why do you believe it's more improbable over**
24 **the phone than over the Internet?**

25 A. Well because on the Internet we know that

1 BY MR. COHEN:

2 **Q. Can an expert lack objectivity yet conduct a**
3 **methodologically sound survey?**

4 A. Yes I think so.

5 **Q. Can an expert conduct a methodology I can**
6 **flawed survey yet be objective?**

7 A. Yes I think so.

8 **Q. You testified that if it were to be**
9 **established that your methodology was improper that**
10 **would not necessarily mean that you lack objectivity**
11 **correct?**

12 A. That's correct.

13 **Q. What is it about your critiques about**
14 **professor Frederick's methodology are that suggests**
15 **to you that he lacks objectivity?**

16 A. I think I've answered this question. As
17 I've indicated I think the failure to code what are
18 clearly relevant answers serves to bias the results
19 in a particular direction. I think the way he has
20 coded some of the responses serves to bias the
21 results in a particular direction. Those are those
22 are the bases for my opinion.

23 **Q. Let me direct you to paragraph excuse me**
24 **page 30 of your report. I apologize page 11 of your**
25 **report. I need to make it clear for the record that**

1 many people develop different person as at nettites
2 there's a pseudonym for emails there's a whole
3 industry that sells people privacy protection and
4 and temporary email addresses all for the purpose of
5 people one being able to protect their privacy and
6 two being able to pretend to be someone that they're
7 not. Well documented phenomena.

8 **Q. There could though be men pretending women**
9 **who answer phone calls that?**

10 A. Could happen but it's less likely because we
11 have real interaction between two human beings.

12 **Q. And how would that real interaction be able**
13 **to guard against again I don't like the language but**
14 **men pretending to be women?**

15 A. The voice should help identify who the
16 person is that the interviewer is talking to. We
17 don't have that cue available on the Internet. We
18 also don't have a lot of data that suggests that
19 when people are called on phone surveys that they
20 assume alternative identities. We do have pretty
21 good evidence that happens frequently on the
22 Internet.

23 **Q. Has there been research done as to whether**
24 **people participating in phone surveys sometimes give**
25 **inaccurate demographic information?**

1 A. Yes there is.

2 **Q. Has there been research regarding whether**
3 **respondents on telephone surveys sometimes give an**
4 **accurate information regarding their gender?**

5 A. They can do that yes.

6 **Q. With when your report states that it's quite**
7 **possible for a respondent to be a man pretending to**
8 **a woman, what does quite possible mean?**

9 A. What I really mean there is that there's no
10 control at all there's no ability to determine who
11 the individual is at the other end of the survey.
12 Unlike well constructed well maintained Internet
13 consumer panels where there is an effort made to
14 verify the identity of individuals who participate
15 in surveys, in Google survey there's no ability to
16 identify who is the respondent that is completing
17 the survey.

18 **Q. When you say no ability, you mean absolutely**
19 **no ability or no ability that's sufficiently**
20 **reliable in your mind?**

21 A. In my view at this stage in the development
22 of Google consumer survey, I don't think there is
23 sufficient ability for any given survey to identify
24 with sufficient certainty who the respondent is to
25 allow a conclusion that the survey is in any way

1 A. I'm generally familiar with them I don't
2 think they provide a comprehensive list of the
3 content providers I think they provide general
4 categories.

5 **Q. Do you know whether they provide any**
6 **specific examples at all?**

7 A. I'm not aware of any and it has been
8 changing over time in the two years that it's been
9 in existence.

10 **Q. You don't know one way or the other whether**
11 **Google consumer surveys uses content providers that**
12 **are likely to appeal to small children do you?**

13 MR. AWERBUCH: Objection.

14 THE WITNESS: I don't have specific
15 information but they do use sites that they
16 categorize as entertainment. They do have sites
17 that they categorize as sports. Those would be
18 appealing to younger children.

19 BY MR. COHEN:

20 **Q. Out of more than 28 thousand respondents in**
21 **Professor Frederick surveys how many would have to**
22 **be small children before the results are no longer**
23 **probative of questions before the court?**

24 MR. AWERBUCH: Objection.

25 THE WITNESS: The mere possibility that that

1 valid.

2 **Q. Please quantify the probability that any**
3 **given respondent was a man pretending to be's woman?**

4 A. I can't quantify you. I'm for you. I'm
5 simply giving you I gave you two examples of how
6 somebody could pretend to be who they are not.
7 There are many other ways people could pretend to be
8 who they are not. The problem is there's simply no
9 way with Google consumer survey at least as it is
10 used today to verify the identity of the respondent
11 in contrast to well designed surveys using well
12 constructed and well maintained Internet consumer
13 panels.

14 **Q. When the report states that it's quite**
15 **possible for a respondent to be an eight year old**
16 **what does quite possible mean in that context?**

17 A. That it's possible that there could be an
18 eight year old among the respondents.

19 **Q. Can you quantify the possibility?**

20 A. I didn't attempt to quantify the
21 possibility. It simply making the point that there
22 is no way that you could control for that given the
23 way that Google consumer survey operates.

24 **Q. Are you familiar with the content provider**
25 **Google survey uses?**

1 could half invalidates the entire survey.

2 BY MR. COHEN:

3 **Q. So if it were established let's assume that**
4 **some how we had the ability to know this beyond any**
5 **doubt, that there was one eight year old who had**
6 **responded to one of Professor Frederick's questions**
7 **and no one else below the age of 15 had responded.**
8 **That would invalidate the entire survey?**

9 A. Well no because you've no provided more
10 information because now you've actually suggested
11 there's an eight year old and that everybody else is
12 not an eight year old. Now we can now we can parse
13 the data, we can say awe somebody slipped in, we now
14 have data on that. The problem with the Google
15 consumer survey is we don't know that. We don't
16 know if there was none one a thousand, we just have
17 no way of we have no way of knowing that.

18 **Q. So we if I understand your testimony**
19 **correctly we have no way of knowing whether one out**
20 **of every 28 was an eight year old?**

21 MR. AWERBUCH: Objection.

22 THE WITNESS: We have no way to verify that
23 characteristic. That is correct.

24 BY MR. COHEN:

25 **Q. Even assuming it would be possible to make**

1 reasonable assumptions about that information, the
2 inability to know for certain invalidates the entire
3 survey?

4 A. Well I don't know what assumptions you would
5 make you can certainly make assumptions as you did
6 that there's only only identifiable eight year old
7 and if you if you know that then I think you change
8 the character of the data but as long as there is no
9 way to identify that individual or the number of
10 individuals who meet that characteristic, then it's
11 an invalid survey.

12 **Q. So you need to know precisely the number of**
13 **individuals who meet that characteristic in order**
14 **for the survey to be valid correct?**

15 MR. AWERBUCH: Objection.

16 THE WITNESS: I think you need to know with
17 a high degree of certainty that the respondents are
18 who you think they are yes.

19 BY MR. COHEN:

20 **Q. Do I understand your testimony correctly**
21 **that you need to know with a high degree of**
22 **certainty that the respondents do not include a**
23 **material number of individuals below say the age of**
24 **15?**

25 MR. AWERBUCH: Objection.

1 THE WITNESS: I don't know what you mean by
2 material but you would want to know you would need
3 to know how many of those individuals this were.
4 Ideally you would have a way of screening those
5 individuals out so they were never in the survey to
6 start with.

7 BY MR. COHEN:

8 **Q. So if you don't know an exact number of the**
9 **individuals who shouldn't be in the survey**
10 **population, the survey is invalid and I'll add to**
11 **that let me withdraw the question because you you've**
12 **put an important qualifier in here that I think is**
13 **important to be fair. So if you don't know with a**
14 **high degree of certainty, not perfect certainty but**
15 **if you don't know with I a high degree of certainty**
16 **whether how many individuals are in the pool of**
17 **survey respondents who shouldn't be, the survey is**
18 **invalid?**

19 A. I would say that the survey is invalid. I
20 certainly wouldn't make important decisions based on
21 such a survey.

22 **Q. Have you ever communicated with anyone**
23 **associated with Google consumer survey?**

24 A. Not with Google consume are surveys per se I
25 regularly communicate with people at Google but not

1 related to the surveys.

2 **Q. Who do you communicate with at Google?**

3 A. We have a couple people who sit on our board
4 of visors for something we call the M school. It's
5 an interactive digital branding program that we have
6 on campus and we have representatives at the local
7 office who are part of the advisory group.

8 **Q. What does that advisory group do?**

9 A. It gives us advice on our curriculum. They
10 do some team teaching with our faculty. They raise
11 interesting research questions with us.

12 **Q. Have you ever conducted a survey on Google**
13 **consumer surveys?**

14 A. I've not I've not I don't. I don't believe
15 it currently is sufficiently reliable that I would
16 ever do a survey on it.

17 **Q. How many surveys have you conducted in your**
18 **career?**

19 A. Thousands.

20 **Q. Tens of thousands?**

21 A. Well I don't know if it's tens of thousands
22 but certainly thousands.

23 **Q. Out of the thousands of surveys you've**
24 **conducted in your career how many were conducted on**
25 **line?**

1 A. Well early in my career there wouldn't have
2 been very upon many because you couldn't do it on
3 line but I would say in recent years probably
4 50 percent of the surveys I've done are done on the
5 Internet.

6 **Q. Over the entire course of your career what's**
7 **the percentage that have been done on line?**

8 A. Maybe I don't know maybe 10 percent. It's
9 been the ability to do valid vase on line is really
10 only about oh depends on who you talk to but five to
11 ten years old at most.

12 **Q. And so that's the period during which you**
13 **indicated that you had done 50 percent of your**
14 **research survey research on line?**

15 A. I believe that's correct.

16 **Q. Do you consider yourself an expert who**
17 **specializes in Internet research?**

18 MR. AWERBUCH: Objection.

19 A. Well I don't know what you mean by Internet
20 research. I mean I used Internet survey
21 methodology. Use Internet consumer panels regularly
22 and feel like I have a great deal of expertise in
23 that area. I have also studied the Internet as a
24 communication tool but there are certainly vast
25 areas of Internet in which I don't have have

1 expertise.

2 BY MR. COHEN:

3 **Q. Have you ever published a paper regarding**
4 **Internet research?**

5 A. I have.

6 **Q. And what paper or papers would those be?**

7 A. Well there have been several of the there
8 was a paper I published in the journal much public
9 policy in marketing back around 2000 that dealt with
10 business models in the Internet space. I've done
11 several papers and book chapters around the Internet
12 and more broadly interactive media, papers that have
13 been published in the journal of the market much
14 academy science that's what comes to mind at the
15 moment.

16 **Q. Have you ever spoken on a conference**
17 **regarding Internet research?**

18 A. I have.

19 **Q. Can you give me what examples you can**
20 **recall?**

21 A. I've spoken at the academy of marketing
22 science at the American marketing association, at
23 the association, the American academy of advertising
24 those are the ones that come to mind.

25 **Q. Can you give me dates or other information**

1 **you mentioned four there that are sufficient for us**
2 **to locate those presentations?**

3 A. Well, if, if it was only a presentation they
4 may not have ever existed in hard copy form. I
5 certainly could identify dates. In fact my CV would
6 include my whole list of publications as well as a
7 lot of the presentations I've made so that would
8 give you an indication.

9 **Q. But I don't mean to be difficult here I mean**
10 **there's more than one. I there's more than one**
11 **instance where you've presented at various different**
12 **professional organizations so is there any**
13 **additional information let me ask it this way I'll**
14 **withdraw the question. Do you have copies of any of**
15 **the presentations that you've mentioned?**

16 A. It's possible I don't know.

17 **Q. Are you willing to look and produce them to**
18 **complaint counsel?**

19 A. Sure. I'm happy to do that.

20 **Q. And?**

21 A. As I said they're all listed or at least of
22 them would be listed on my curriculum vitae and the
23 title would probably make it very clear whether they
24 were about the Internet or not.

25 **Q. And the same are true about the articles**

1 **that you mentioned are you willing to look and I'm**
2 **assuming you have copies of those articles produce**
3 **them to counsel?**

4 A. I'm certainly willing to do that.

5 **Q. What's the basis for the opinions included**
6 **in your report, regarding Google consumer surveys?**

7 **MR.: Objection.**

8 THE WITNESS: I have investigated Google
9 consumer surveys and one reason that I've done so is
10 because the question comes up regularly in my role
11 as editor of a journal as to whether or not we would
12 accept for publication a paper based on Google
13 consumer surveys so I've done some investigation to
14 educate myself so that I can give a meaningful
15 relevant answer to that question. Most of what has
16 been written about Google consumer surveys to date
17 has appeared on in the trade press in online trade
18 blogs done by the market research community. There
19 are a number of things that have appeared on what's
20 called the green book online, the green book is
21 actually a publication that deals with market
22 research providers. I've also seen a study by the
23 pew foundation that's looked at the accuracy of
24 Google consumer surveys so I think I have I've
25 informed myself pretty well about what the general

1 thinking is about Google surveys and about what it
2 is. It is however as I indicated still evolving,
3 what it was two years ago when it was introduced is
4 quite different from what it is today. So it's not
5 it's not something that you could evaluate one time
6 and develop a definitive opinion. You kind of
7 really have to figure out where it is at this point
8 in time.

9 **Q. You mentioned a journal. What journal?**

10 A. I'm sorry.

11 **Q. You mentioned a journal in which your role**
12 **with respect to that journal caused you to need to**
13 **become familiar with the consumer surveys?**

14 A. I'm editor, currently the editor of the
15 journal of public policy and marketing it's a
16 publication of the American marketing association.

17 **Q. Have you ever accepted for publication any**
18 **submission in which the author related in whole or**
19 **in part on google consumer surveys?**

20 A. I can say with absolute certainty I have not
21 and I can say that for two reasons first of all
22 Google consumer surveys have not been along for very
23 long so there would have been very little
24 opportunity for people to have crafted papers using
25 that methodology but I at this point where I'd

1 received such say paper I'm certain that I would
2 reject it.

3 **Q. In how many instances that you're aware of**
4 **has Google consumer surveys been far off the mark?**

5 MR. AWERBUCH: Objection.

6 THE WITNESS: I haven't done first of all I
7 haven't done a systematic analysis to see if I can
8 make that determination. Secondly that data are
9 really still quite sparse, the pew foundation
10 project found it was in some cases close in other
11 cases pretty far off. But there just aren't that
12 many instances. Again we've only had two years of
13 history. It is safe to say that one could not with
14 certainty even even with some modest uncertainty,
15 say you could rely on the results obtained from
16 Google surveys for anything more than maybe some
17 directional information maybe a quick snapshot where
18 you weren't really interested in something that was
19 very accurate. And I think that's the general
20 assessment of the research community today as well.

21 BY MR. COHEN:

22 **Q. Is there someone in the research**
23 **communicator publication or references other than**
24 **those contained within your report that you could**
25 **direct me toward that would support the opinion that**

1 **you just provided?**

2 A. Well I did cite some in the report itself.
3 I would refer you to those. Some of the citations
4 are to the green book which I mentioned earlier and
5 is available on line. There there in addition to to
6 those I've sighted there are other papers or blogs
7 by research professionals that have dealt with
8 Google consumer surveys, that's a very useful
9 source. And I would also I think the pew foundation
10 paper is is's very useful source as well there are
11 other sources I just can't identify them at the
12 moment.

13 **Q. And you mentioned blogs other than the ones**
14 **that are in your report can you identify anything in**
15 **particular anything that would enable complaint**
16 **counsel to locate that information?**

17 A. Well again I would send you to the green
18 book which is basically an on going on line trade
19 publication that is used widely by market research
20 professionals as a place to find probably the most
21 current discussion of Google consumer survey outside
22 of Google.

23 **Q. As you sit here today how many instances can**
24 **you name where Google consumer surveys was far off**
25 **the mark?**

1 A. I can't give you a specific count there was
2 one one report that I recall that was early in it's
3 history that was very far off the mark and I can't
4 even recall what was, what it was measuring. I
5 think it was measuring something about media usage
6 but I don't I don't have a specific recollection. I
7 know that in the pew foundation work it was close on
8 some many items but also pretty far off on some
9 other items but I don't remember how many things I
10 looked at.

11 **Q. When you say media use was that a reference**
12 **to wikipedia?**

13 A. I don't as I sit here today I don't recall.

14 **Q. Let me direct you to your report at page 14**
15 **note 11. It's a reference to Jeffrey Henning 2012.**

16 A. Mm-hmm.

17 **Q. Have you read the material referenced?**

18 A. I have.

19 **Q. What sort of material is it?**

20 A. It's on line columns it's blogs, it's it's
21 the sharing of practitioners with other
22 practitioners which is about the only thing you're
23 going to find that's currently available with
24 respect to Google consumer surveys.

25 **Q. It's actually a tweet from Jeffrey Henning**

1 **isn't it?**

2 A. Well it's a long tweet but yeah that's fair,
3 I -- I would characterize that in a way.

4 **Q. Let's mark the blog with the tweet as**
5 **Stewart eight this is the long tweet that you were**
6 **referring to?**

7 A. That's correct.

8 **Q. DeR did you locate this blog post containing**
9 **the tweet yourself?**

10 A. I did.

11 **Q. And it provides one example where Google**
12 **consumer surveys produced an allegedly inaccurate**
13 **result doesn't it?**

14 A. It does.

15 **Q. It doesn't provide more than one such**
16 **instance does it?**

17 A. I do not believe so know.

18 **Q. Who's the author of the blog post?**

19 A. I believe it's Jeffrey Henning.

20 **Q. And what's the basis for that belief?**

21 A. Because that's who's listed at the top as
22 the as the author.

23 **Q. I want to make sure that my question is**
24 **clear. I am in agreement with you that Jeffrey**
25 **Henning is the author of the tweet. Who is the**

1 **author of the blog post? Do you understand the**
2 **difference in the question?**

3 A. I'm not sure that I'm understanding the
4 question.

5 **Q. I will represent to you that my**
6 **understanding is that Jeffrey Henning is the author**
7 **of this tweet.**

8 A. Okay.

9 **Q. The tweet is excerpted from a larger blog**
10 **post. Which is a different piece of material. It**
11 **contains the tweet correct?**

12 A. That's correct.

13 **Q. Who's the author of the blog post?**

14 A. It appears on what on what I believe is
15 brand savant. I don't know who the specific author
16 is in that case.

17 **Q. So the author is not sighted in your report?**

18 A. No.

19 **Q. Is it relevant who the author is?**

20 A. Not for my purposes.

21 **Q. Is it relevant where the author works?**

22 A. It may be but again not for my purposes.

23 **Q. And why is it not relevant for your**
24 **purposes?**

25 A. I'm simply presenting information that's

1 that I have found assessing the quality of Google
2 survey. It's what the literature states.

3 **Q. Is it relevant where she works?**

4 A. I don't again not for my purposes.

5 **Q. And for the same reason?**

6 A. For the same reason.

7 **Q. Let's go to page 14, footnote nine. Kevin**
8 **ought walled is the reference there. Did you locate**
9 **that reference to Kevin Oswald yourself?**

10 A. Yes, I did.

11 **Q. What sort of content is referenced?**

12 A. Well I believe it's content that exists on
13 the website of a research firm and I believe it's
14 discovery research group. And it's an it's an again
15 it's a discussion of his experience with Google
16 consumer surveys.

17 **Q. Kevinos walled is employed by discovery**
18 **research group correct?**

19 A. I think that is correct. I would have to
20 confirm that.

21 **Q. Discovery research group is a competitor of**
22 **grog will consumer surveys is it not?**

23 MR. AWERBUCH: Objection.

24 THE WITNESS: I actually I wouldn't
25 characterize it as that at all. I mean they are

1 available in the in the market research community
2 raising concerns about Google consumer surveys.
3 It's what's available. If there were if there were
4 referee publications I would have sighted those but
5 Google scholar I'm sorry Google survey is so new
6 that there's very little available other than among
7 people who are kind of practicing professionals and
8 so I went looking for things that relevant of what
9 practicing professionals think of the product.

10 **Q. Let's back up to page 11 foot note seven.**
11 **Did you locate the Katrina Lerman reference**
12 **yourself?**

13 A. I did.

14 **Q. What sort of reference is this?**

15 A. Well this appears in the green book
16 something I've referred to earlier. It basically I
17 would characterize it as a blog. This is the green
18 book blog that it appears on. It's essentially an
19 on line publication in which marketing research
20 professionals share information about about best
21 practices.

22 **Q. Is it relevant who Katrina Lerman is?**

23 A. I not for my purposes.

24 **Q. And why is that?**

25 A. Again I'm simply reflecting the literature

1 involved in market research but Google consumer
2 surveys is not. So I don't consider them
3 competitors.

4 BY MR. COHEN:

5 **Q. You don't consider Google consumer surveys**
6 **to be involved in market research?**

7 A. What they do is not market research. It's a
8 way to monetize publications. It's not market
9 research by any definition. That anybody who's a
10 serious scholar would agree with.

11 **Q. As a serious scholar what is your definition**
12 **of market research?**

13 A. Well market research is the collection of of
14 information about consumers and about the
15 marketplace that carries a degree of certainty
16 sufficient to make decisions. Those decisions may
17 vary in terms of what they are and so that the
18 research may vary. But the market research
19 community does not consider Google scholar Google
20 surveys to be a serious competitor at this point.

21 **Q. How do you know whether discovery research**
22 **group considers Google consumer surveys to be a**
23 **competitor or not?**

24 A. I wouldn't consider them a competitor.

25 **Q. How do you know -- please answer my**

1 **question.**

2 **How do you know whether discovery research**
3 **group considers them to be a competitor?**

4 MR. AWERBUCH: Objection.

5 THE WITNESS: My understanding of how Google
6 surveys is viewed in the market research community
7 would suggest to me that serious market
8 research firms would not really consider it a
9 competitor.

10 BY MR. COHEN:

11 **Q. Have you interacted with anyone at Discovery**
12 **research group?**

13 A. I have not.

14 **Q. Do you know whether they are a serious**
15 **marketing firm?**

16 A. I believe they are.

17 **Q. Then what is that belief based?**

18 A. I'm aware of some of the work they have done
19 but I don't have any further basis of that.

20 **Q. You don't actually have any personal**
21 **knowledge as to whether or not they view Google**
22 **consumer surveys as a competitor?**

23 A. I don't have I have not spoken to anyone
24 there I have no personal knowledge that is correct.

25 **Q. Let's say on page 14 the sentence beginning**

1 used by publishers to share information with one
2 another.

3 **Q. Do you know whether withdrawn. The website**
4 **is, the specific content reference is a blog post**
5 **isn't it?**

6 A. It is.

7 **Q. And to whom is the blog post directed?**

8 A. Yes I believe the post is directed at people
9 who are in the largely in the media and publications
10 industry.

11 **Q. Did Thomas Beck tall do any research in**
12 **support of his conclusions?**

13 MR. AWERBUCH: Objection.

14 MR. COHEN: What's the basis for your
15 objection.

16 MR. AWERBUCH: You're asking him something
17 that he can't really have personal knowledge of.

18 THE WITNESS: Yeah I'm as I have I've said
19 before I'm offering you what the what the opinion of
20 Google surveys is in the professional community.
21 What they're based on varies, there is some research
22 that I have pointed to, there are blogs there are
23 opinions, I don't necessarily know what all of the
24 opinions are based on but this is what's out there
25 about Google surveys.

1 **after footnote nine, it's about six or seven lines**
2 **from the bottom, another review noted the annoyance**
3 **factor, the tendency for respondents to give bog us**
4 **answers and concluded that Google surveys is just**
5 **terrible. It annoys your most important asset, your**
6 **reader. It misleads your partners, the brands, and**
7 **it forces you as a publisher to focus on volume over**
8 **quality, which reduces the overall value and lower**
9 **how much people trust your content did I read that**
10 **correctly?**

11 A. Yes you did.

12 **Q. Whose words are those?**

13 A. Those are I -- I you've sighted I've given
14 you the sight there.

15 **Q. Is this a paraphrase of the citation or are**
16 **those your words? I guess only let me withdraw the**
17 **question. Paraphrasing your words would be really**
18 **the same thing. Is it a paraphrase or are you**
19 **actually quoting from the citation there?**

20 A. I think that that that where I'm quoting I
21 would probably have put it in quotes so I would say
22 it's probably a pair phrase.

23 **Q. What source of content is footnote ten**
24 **referencing?**

25 A. Again it's referring to a website that is

1 BY MR. COHEN:

2 **Q. I move to strike that as nonresponsive ma'am**
3 **can you please read back my question read read ?**

4 A. I can't answer that I don't know I don't
5 know the basis of his opinion as I did say in my
6 responsive an answer.

7 **Q. Does it matter who he is?**

8 A. It may. For my purposes it doesn't really
9 matter.

10 **Q. And why doesn't it matter for your purposes?**

11 A. Because what I'm trying to reflect in my
12 report is what the general opinion published opinion
13 admittedly on the website on websites is of Google
14 consumer surveys at this point in time. Some of it
15 I'm certain is purely opinion some of it may be
16 based on research I pointed to some research but
17 there's a the some of all of these suggest an
18 enormous amount of skepticism of Google surveys at
19 least as it's currently constructed.

20 **Q. The sum of all of these what is the all of**
21 **these that you're referring to?**

22 A. I've given you a number of different sites
23 quotations that in summary, lead to a conclusion
24 that you need to be very careful about drawing any
25 inferences from Google surveys.

1 **Q. And it's so the all of these is the**
2 **references in your report?**

3 A. That's correct.

4 **Q. Anything else?**

5 A. Well this is, this is a selection of things
6 that I have found over time. Many of these I was
7 aware of before before I even began working on this
8 project as you needed information in order to be
9 responsive to questions I was receiving from
10 authors. There are other things that I've seen.
11 This is this is simply representative.

12 **Q. Can you identify some of the other things**
13 **that you've seen?**

14 A. Not as I sit here today.

15 **Q. Is it relevant where Thomas Beck tall works?**

16 A. Not for my purposes.

17 **Q. And for the same reasons you've already**
18 **explained?**

19 A. Yes.

20 **Q. You testified and I don't mean to**
21 **mischaracterize I'm sure you'll correct me if I'm**
22 **getting this wrong that Google has made refinements**
23 **in it's methodologies since it's inception is that**
24 **correct?**

25 A. That's correct.

1 other than that I'm not aware of what the specific
2 structure is.

3 **Q. So you don't know how much it would cost for**
4 **instance to ask a hundred respondents one question**
5 **on Google consumer surveys?**

6 A. Not as I sit here this afternoon no.

7 **Q. How would you physically describe the user**
8 **experience when a potential respondent is presented**
9 **with a Google consumer survey?**

10 A. I think it varies by by respondent. I do
11 think that one of the quotes I have here or one the
12 paraphrases I have here is is is accurate. I think
13 many respondents will be annoyed. They are they are
14 they did not come to the sight for the purpose of
15 participating in research un like a well constructed
16 Internet consumer panel. You know they came because
17 they wanted to access content and this now become
18 says a price a door if you will to get to the
19 content. And for some people I think that's going
20 to create annoyance, for some peoplit going to be a
21 matter of trying to get rid of it as quickly as
22 possible. Some people may in fact find of
23 interesting to give their response.

24 **Q. It's your understand being if I understood**
25 **you correctly that google consumer surveys is**

1 **Q. Do you know what those refinements are Lynn?**

2 A. I know some of them I know they have
3 expanded a number of questions that you can ask.
4 It's my understanding that when they initially
5 launched you were restricted to two questions and I
6 think that has been relaxed. I know they have
7 expanded a number of websites where Google surveys
8 now collects data. Those are the two things I'm
9 most aware of.

10 **Q. Are there others?**

11 A. I -- I don't know of others. Those are the
12 ones I'm aware of.

13 **Q. How much does it cost to run a google**
14 **consumer survey?**

15 A. It's my understanding it varies and I don't
16 I don't remember the price structure. It's based in
17 part on the number of questions that you're going to
18 ask. But I I don't remember the pricing structure.

19 **Q. And when you say just so that the record is**
20 **clear when you say you don't remember the pricing**
21 **structure, do you remember anything about the**
22 **pricing structure?**

23 A. Well only that it seems to take into account
24 the number of questions that you're going to, you're
25 going to ask. And I believe the sample sizes, but

1 **preventing an Internet user from accessing content**
2 **that he or she would otherwise be able to access?**

3 **Q. Well there may be other ways that people**
4 **could access the content. They might pay for the**
5 **content they may perform some other task to get to**
6 **the content but it is one of the things that would**
7 **be necessary in order to access the content. They**
8 **may have a choice of several things they can do to**
9 **do it?**

10 **Q. What would those several things be one would**
11 **be to answer the survey right and what would another**
12 **be?**

13 A. Well the other would be to pay for the sight
14 to pay for the content. I you know, I don't know
15 what the others might be. I would envision
16 responding to a promotion. I think there are a lot
17 of things could be done. I don't know specifically
18 what what else they might do.

19 **Q. Do you know one way or the other whether**
20 **potential participates in Google consumer surveys**
21 **are given the option of responding to a promotion to**
22 **access the content?**

23 A. I don't know that with certainty no I have
24 seen some discussion but that may may be an I
25 direction in which they're going to go but I don't

1 know if they have implemented that or not.
 2 **Q. Let's assume that a potential survey**
 3 **respondent is given the option of responding to a**
 4 **survey let's assume for further more it's one**
 5 **question. Or paying to get money, excuse me paying**
 6 **to get behind a pay wall and access otherwise**
 7 **accessible content. Do you understand those**
 8 **assumptions?**

9 A. I do.

10 **Q. Why is it your contention that someone**
 11 **confronted with that decision would be annoyed or**
 12 **disturbed by this?**

13 A. Because people don't like barriers between
 14 what they're interested in accessing and themselves
 15 themselves whether that be to pay for content
 16 publishers have had enormous difficulty getting
 17 people to pay for content that is on line. Having a
 18 survey pop up as a barrier is again an interference
 19 with the goal of the respondent so some respondents
 20 are going to be frustrated and annoyed by that think
 21 wanted content and couldn't get it.

22 **Q. Are respondents more likely to be frustrated**
 23 **by having to pay to get behind the pay wall or**
 24 **having to answer the survey question to get behind**
 25 **the pay wall. I think they may be annoyed in either**

1 ways case?

2 **Q. And you have no view as to which the**
 3 **respondent is likely to prefer?**

4 A. I think you already asked most respond he
 5 wants would say I just want access to the content.

6 **Q. Have you considered whether some respondents**
 7 **might be happy to answer a question that takes 15 to**
 8 **25 seconds in exchange for being able to access**
 9 **content behind a pay wall for free?**

10 A. I don't have any document that there may be
 11 some consumers who would be very happy to give a
 12 response whether it be a nonsense cal sponsor a
 13 meaningful response in order to get some content
 14 that was of interest to them.

15 **Q. What's the average response time across**
 16 **Google consumer surveys?**

17 A. I don't know. I -- I think it would
 18 probably depend on the nature of the question and
 19 and the number of questions.

20 **Q. What's the average response time across**
 21 **Google consumer surveys for single questions?**

22 A. I off the top of my head I don't know that
 23 as I sit here today.

24 **Q. Is that relevant to you at all?**

25 A. No it's not relevant.

1 **Q. What was the average response time across**
 2 **Professor Frederick's studies?**

3 A. I have a recollection somewhere in the
 4 neighborhood of maybe 20 seconds, but that's only a
 5 but that's only a best estimate based on a fault I
 6 will recall.

7 **Q. Is that relevant to you at all?**

8 A. No, sir.

9 **Q. Why is that not relevant to you?**

10 A. Because I think the data is so fundamentally
 11 flawed whether they spent 20 seconds or 20 minutes
 12 doesn't it doesn't rehabilitate the data.

13 **Q. Is it relevant to you with respect to the**
 14 **specific question of whether respondents are likely**
 15 **giving serious consideration to to the question**
 16 **before responding putting aside the overall validity**
 17 **of the survey?**

18 A. No.

19 **Q. Why not?**

20 A. Because I don't, I don't really think it's a
 21 particularly meaningful piece of information. You
 22 know it if it's ten seconds or 20, second really
 23 doesn't matter. You can put a meaningful answer in
 24 for a short question, something where one merely had
 25 to check a box in in five seconds, one could sit and

1 stair at a screen while you're watching the world
 2 cup ask you might be on the screen or you know a
 3 minute before you respond and then you give a really
 4 sillily response so I don't think that tells us
 5 anything one way or another about the validity of
 6 the responding.

7 **Q. You've studied Professor Frederick data to**
 8 **an agree at least haven't you?**

9 A. To a degree yes.

10 **Q. You would agree would you not that**
 11 **substantial majority of respondents give to**
 12 **biodegradation time questions give reasonably**
 13 **plausible answers correct?**

14 MR. AWERBUCH: Objection.

15 THE WITNESS: I wouldn't say an is
 16 substantial majority. Recognize he doesn't even
 17 code almost 40 percent of the responses. So so we
 18 have to take those 40 percent and set those aside.
 19 You know of the of the remaining roughly 60 percent,
 20 yes I think the majority give what I would consider
 21 to be plausible responses, not all but most.

22 BY MR. COHEN:

23 **Q. You, there's obviously disagreement about**
 24 **the parties about this but you believe I don't know**
 25 **is a plausible response?**

1 A. Oh absolutely.

2 **Q. And you believe that it depends is a**
3 **plausible response?**

4 A. Not only do I believe it's a plausible
5 response it's my understanding from the reading I've
6 done about biodegradability that it's probability
7 the most correct response.

8 **Q. So if you add together the respondents who**
9 **give was I'll call plausible numeric responses to**
10 **biodegradation time questions and the respondents**
11 **who give I don't know type responses and the**
12 **respondents who give it depends type responses,**
13 **roughly speaking what percentage of of Professor**
14 **Frederick's data did those three categories**
15 **represent?**

16 A. I can only give you a ballpark figure.

17 **Q. That's fine?**

18 A. But I would say about 75 percent.

19 **Q. Whether or not that, let's assume that**
20 **that's 75 percent figure is correct. Why does that**
21 **not indicate to you that 75 percent of the survey**
22 **respondents are taking the question seriously?**

23 A. Because there's no evidence that they're
24 take being it seriously. They did not come to the
25 survey for the purpose of completing a survey, they

1 it's perfectly plausible and in fact the logic there
2 is perfectly plausible but they didn't necessarily
3 have that belief prior to actually confronting this
4 task that has been set for them that stands as a
5 barrier to get to what they really want.

6 **Q. What's a pilot study?**

7 A. A pilot study is generally a study done on a
8 small scale for purposes of refining a larger study
9 for purposes of estimating sample size for purposes
10 of making modifications that may be necessary given
11 you know un wanted things that may happen during the
12 survey.

13 **Q. Using that definition until I tell you**
14 **otherwise I'm only going to be asking about pilot**
15 **studies related in some way to litigation or**
16 **potential litigation do you understand that**
17 **assumption?**

18 A. I do.

19 **Q. Have you ever been involved with a pilot**
20 **study that was terminated prior to completion?**

21 A. I'm sure I must have been. I don't have a
22 specific recollection.

23 **Q. Can you estimate how many?**

24 A. No. I'm surely that I'm sure that there
25 have been several. I've done a lot of pilot work

1 came to the task for a completely different reason
2 and were interrupted. And just because the
3 responses are plausible in that case one can give at
4 a plausible response that is that is not a real
5 response. It would be very easy for somebody to
6 simply type in one year and they don't believe that
7 it simply a way to make the screen go away and we
8 have no way people weren't screened in in way way
9 they weren't present to to any research you know the
10 entire incentive is to get that screen out of the
11 way and many people are will give a plausible
12 response just to get rid of it. Whether that's what
13 they really think or not, who knows.

14 **Q. Why would someone give a plausible response**
15 **that isn't what they really think?**

16 A. To get rid of the screen.

17 **Q. So on they have one view but they give a**
18 **different plausible view to get rid of the screen is**
19 **that what I understand you to be testifying?**

20 A. No I I'm not sure that they necessarily even
21 have a have a view. But they need to put something
22 in the box to make it go away so you know I've never
23 thought about that question before but one year
24 sounds about right. Let me type that in this thing
25 will go away and I can get on with my business. Now

1 and often been the case that you know you get
2 results that suggest you don't want to go forward or
3 the client simply decides that they don't really
4 want to do the survey after all. But I don't I
5 don't have an estimate of the number of times.

6 **Q. Can you think of any pilot studies in**
7 **particular that were terminated prior to completion?**

8 A. I can't think of any as I sit here today.

9 **Q. Have you ever been involved with a pilot**
10 **study that was terminated prior to completion**
11 **because of concerns with that the results would be**
12 **adverse to the party ultimately funding the study?**

13 A. No I don't believe so.

14 **Q. Let's look back at your report page five.**
15 **The section involve many scope of the assignment.**
16 **Please read the scope of the cement section and just**
17 **look up at me when you're finished.**

18 A. Okay.

19 **Q. The scope of assignment section doesn't**
20 **mention the manufacturers pilot study does it?**

21 A. No it does not.

22 **Q. Why not?**

23 A. Because that study was done we're talk
24 become that study from the very beginning, but that
25 study was done very late in in my assignment and it

1 I simply didn't get it into the scope of assignment
2 here. I would, I would encompass it within the the
3 the larger survey of consumer perceptions these were
4 consumers they just happen to be business people.

5 **Q. Who's the we in that sentence?**

6 A. Where? We?

7 **Q. Ma'am could you read back professor
8 Stewart's response?**

9 **Read read**

10 A. I didn't hear a we in here.

11 **Q. Ma'am maybe I misheard it. I thought I did
12 hear it. If you wouldn't mind just reading it. I
13 think it's towards the beginning.**

14 **Read read.**

15 A. I and the attorneys in discussing what I
16 would do we we went back and forth about what my
17 assignment would be and it changed a bit over time.

18 **Q. In what respects did it change over time?**

19 A. Well early early on I had no notion that
20 that was going to be an expert to whom I was going
21 to be asked to respond early on I was merely asked
22 to comment on evaluate the saneovay and the an co
23 surveys subsequently I was asked to describe's
24 survey in the context of that discussion we talked
25 bye-bye whether it should be of end user customers

1 or whether it should be of manufacturers and in in
2 collaboration with the attorneys we agreed that
3 consistent with the approach that was used in
4 Synovate and APCO we would focus on end user
5 customers but that we would also do an manufacturers
6 survey at some point and ultimately we decided to do
7 a pilot on the manufacturers.

8 **Q. You mentioned attorneys plural which
9 attorneys were you discussing it with?**

10 A. Well it was largely with Lou Caputo I know
11 there were other attorneys who were in the
12 background but most of my conversation until very
13 recently was with Mr. Caputo.

14 **Q. And who were the other attorneys in the
15 background that you know were in the background?**

16 A. First name is Peter, and I don't recall his
17 last name. Eric has only recently become involved.
18 I don't think he was involved in the earlier
19 conversations so that would have been the group.

20 **Q. You did in fact design a manufacturers pilot
21 study for ECM, correct?**

22 A. I did.

23 **Q. Let's go to page 27 of your report the
24 fourth line down beginning in the middle a pilot
25 study was conducted using a list of ECM customers as**

1 **a sampling frame did I read that correctly?**

2 A. You did.

3 **Q. Have you ever seen a copy of the list?**

4 A. I was provided the list yes.

5 **Q. Why was a copy of that list not produced to
6 complaint counsel?**

7 A. Because it's confidential.

8 **Q. Was there any other reason?**

9 A. I haven't have an ethical responsibility to
10 protect theite of survey respondents and so if
11 defense counsel wants to provide it since they
12 provided it to me they're welcome to do that but I
13 will not provide the identity of my respondents.

14 **Q. We won't do this on the record Mr. Our balk
15 but we're going to have to talk about this because
16 let me ask a couple follow-up questions?**

17 MR. AWERBUCH: Are we on the record now.

18 MR. COHEN: No we're on the record the tire
19 entire time.

20 BY MR. COHEN:

21 **Q. You possess a copy but it wasn't produced to
22 complaint counsel because what you understand to be
23 your confidentiality obligations to your survey
24 respondents correct?**

25 A. That is correct.

1 **Q. And what is your understanding if any as to
2 the relationship between whatever obligation that
3 there may be in that regard and the obligations that
4 ECM has under the part three administrative rules?**

5 A. I don't have an understanding. As I said if
6 ECM elects to provide that information that's fine I
7 have an obligation to protect the confidentiality of
8 my research respondents.

9 **Q. ECM has a copy of the list correct.**

10 A. That's actually where I obtained it.

11 **Q. Just so the record is clear, you obtained it
12 from Emord and associates and you infer that Emord
13 and associates obtained it from ECM?**

14 A. That's fair yes.

15 **Q. Did Mr. Sin clar, in particular provide the
16 information to Emord and associates that was then
17 provided to you?**

18 A. It's I was given an initial list which
19 included multiple individuals in each of about two
20 hundred or so companies and I asked through the
21 attorneys that we identify one or two of the most
22 knowledgeable people in each organization rather
23 than having six or eight people that would then
24 become the focus of our work and it's my
25 understanding that Mr. Sinclair or someone in his

1 organization did go through and identify those
2 victims and then through the attorneys I was
3 provided that.

4 **Q. I won't keep repeating this question so the
5 record is clear, any place type of question that I
6 ask you in today's deposition that requires you to
7 disclose the names of the specific customers, you
8 are not going to respond correct?**

9 A. That is correct.

10 **Q. Okay. So we'll save me from having to ask a
11 series of questions related to that issue. Can you
12 tell me whether the list was in electronic format?**

13 A. Well it was an it was transmitted to me as a
14 PD F.

15 **Q. And transmitted to you presumably as a PDF
16 means transmitted to you by email?**

17 A. That is correct.

18 **Q. So both you and Emord and associates have a
19 PD F if an email?**

20 MR. AWERBUCH: Objection.

21 THE WITNESS: Well I may still have it's
22 possible.

23 BY MR. COHEN:

24 **Q. And at least one point in time Emord and
25 associates had a copy of a sent email that contained**

1 **subset of those two hundred companies when were most
2 knowledgeable. Did I say that correctly?**

3 A. No.

4 MR. AWERBUCH: Objection.

5 BY MR. COHEN:

6 **Q. That's why I'm asking?**

7 A. No.

8 **Q. Correct me?**

9 A. No. As I indicated for each, I shouldn't
10 say for each but for many of the companies there
11 were six seven eight different individuals that were
12 listed. And with titles and it was clear to me just
13 in looking at the list that some were likely to be
14 more knowledgeable than others. And it also made
15 little sense to have more than a couple of
16 representatives of each company on the list for
17 purposes of trying to contact the company. I don't
18 want to bombard a company with lots of with lots of
19 calls. So what I asked for was a for each company,
20 a subset of one or two individuals names that would
21 be most likely to be most knowledgeable who could
22 then serve as the sampling frame for the survey
23 research.

24 **Q. So I'll try it a second time and I'm going
25 to break it down in pieces and I want you to usually**

1 **a PD F?**

2 MR. AWERBUCH: Objection.

3 THE WITNESS: That's correct.

4 BY MR. COHEN:

5 **Q. Were any of the companies on the list
6 company that's complaint counsel depose indeed this
7 matter?**

8 MR. AWERBUCH: Objection.

9 THE WITNESS: Not to my knowledge I don't
10 know who complaint counsel has deposed.

11 BY MR. COHEN:

12 **Q. So you don't know the answer to that one way
13 or the other?**

14 A. I don't.

15 **Q. When was the list provided to you?**

16 A. Well the initial list which we which I refer
17 was probably provided quite early in my assignment.
18 Probably probably in the fall or winter of last
19 year. The smaller list the list of most
20 knowledgeable individuals was probably provided more
21 recently, maybe in April.

22 **Q. So there was a list in fall or winter of
23 last year that contained around two hundred
24 companies and then there was a subsequent list in
25 April that contained in one or two individuals at a**

1 **we try not to interrupt you each. This time
2 interrupt me when I've got something wrong okay?**

3 A. Okay uh-huh.

4 **Q. In fall or winter you received a list of
5 approximately 200 companies from Emord and
6 associates?**

7 A. That's correct.

8 **Q. That list contained approximately six to
9 eight names per company?**

10 A. Well as many as six to eight. In some
11 companies it was only a couple but in quite a number
12 of cases it could have been six to eight.

13 **Q. So that list contained as many as eight
14 names per company for the two companies?**

15 A. That's my recollection yes.

16 **Q. You made a judgment that you didn't want to
17 bombard 200 different companies with as many as
18 eight phone calls and in April you were provided a
19 new list of two hundred companies but with a more
20 targetted group of one two two employees per
21 company?**

22 A. That's correct.

23 MR. AWERBUCH: Is it a good time for a break
24 now. We've been going about an hour and a half, use
25 the restroom.

1 MR. COHEN: Sure we'll go off the record.

2 MR. AWERBUCH: Thanks. Recess.

3 MR. AWERBUCH: Regarding any lists supplied
4 ECM or their counsel to Dr. Stewart to the best of
5 our knowledge we provided it to you in our 331A
6 production, to the extent that any list was not
7 production we're more than happy to oblige at this
8 point. Please feel freely to send an email or on
9 our on volition.

10 MR. COHEN: Okay.

11 BY MR. COHEN:

12 **Q. A couple more questions. Dr. Stewart did**
13 **you speak to anyone during the break related to this**
14 **deposition or about this case?**

15 A. No, sir I have not.

16 **Q. This list that we've been discussing was it**
17 **amended at any time, was the list of two hundred**
18 **companies that were on the original list the same as**
19 **the one that was on the one that you received in**
20 **April?**

21 A. Yes I believe so. And just to be clear it's
22 about recollect it's about two hundred companies
23 it's probably a little bit more than that. I just
24 don't remember the specific number.

25 **Q. We won't hold you to the specific number.**

1 **About two hundred. And again I apologize if you**
2 **just answer my question but was there any, were**
3 **there any changes in the list between the ones that**
4 **were there in either the fall or winter of last**
5 **contrary and the ones that were there in April?**

6 A. I do not believe so.

7 **Q. And just withdrawn. Do you recall when you**
8 **received the list, the second list in April? Was it**
9 **early April late April, the middle of the month?**

10 A. I don't have a specific recollection.
11 Probably just given the timing of the events it
12 probably would have been early April but I could be
13 wrong.

14 **Q. When were you engaged in this matter?**

15 A. Well I was contacted and actually did some
16 work beginning in September, maybe eastbound late
17 August of last year. I -- I did not get a formal
18 and I signed a confidentiality agreement in
19 September much I did not get a formal engagement
20 letter until I think December.

21 **Q. Can you just give me a little more detail**
22 **about what you received in September? You mentioned**
23 **that there was I guess a confidentiality agreement?**

24 A. Yes.

25 **Q. And were there other documents that you**

1 **received in September?**

2 A. The only other thing I recall having
3 received in September was the Synovate survey.

4 **Q. And your communications in September were**
5 **with Mr. Caputo?**

6 A. Yes.

7 **Q. Any others?**

8 A. No.

9 **Q. It's been a while but if we go back to page**
10 **between onto the next sentence which is the last**
11 **full sentence on that page, ECM personnel were asked**
12 **to identify by name a representative, a customer**
13 **organizations who was involved in the purchase of**
14 **materials for the manufacturer of plastic and likely**
15 **to be most knowledgeable about the manufacturing**
16 **process much did I read that correctly?**

17 A. Pretty much yes.

18 **Q. Did I read it material others I may have**
19 **misspoken materially incorrectly in any way?**

20 A. No it's just you inserted about rather than
21 of but no problem.

22 **Q. My apologies, who were the ECM personnel you**
23 **referred to?**

24 A. I believe Mr. Sin can.

25 **Q. Anyone else?**

1 A. It was my understanding that either he did
2 it himself or someone in his organization did it but
3 I wouldn't know who those other people were.

4 **Q. And are there any communications with**
5 **Mr. Sin clear that you're aware of related to the**
6 **identification of customer organizations other than**
7 **the two communications we've been discussing? One**
8 **toward the end of last year and one in April of this**
9 **year?**

10 A. Well I did have a conversation with Mr. Sin
11 clear in which the topic of survey of manufacturers
12 came up and it was at that point that I mentioned to
13 him what I'd already talked to the attorneys about
14 and that was it would be helpful to have a more tar
15 getted list of names and could he help me with that
16 and he said yeah if we go down that road that is to
17 do a manufacturer survey, he could he could have
18 that done.

19 **Q. And when was that conversation?**

20 A. January maybe.

21 **Q. Okay.**

22 A. I can't recall.

23 **Q. Were there any other communications with**
24 **Mr. Sin clear?**

25 A. I think I had two telephone conversations

1 with Mr. Sin clear.

2 **Q. Two in addition to the one you just**
3 **mentioned or two including the one?**

4 A. Two including the one I just mentioned.

5 **Q. What was the other one regarding?**

6 A. I -- I said to the attorneys it would be
7 really helpful to me to have a somewhat better
8 understanding of the product and the business and so
9 could somebody do a tutorial for me and arranged a
10 call about a 20 minute call with Mr. Sin clear and
11 he gave me a quick lesson on biodegradability.

12 **Q. And why did you think that would be helpful**
13 **to you?**

14 A. Well I -- I often find it useful to have
15 some understanding of the background in business of
16 the clients with whom I work: I just thought it
17 would be of assistance to me in thinking about the
18 issues in the case.

19 **Q. To simplify things putting together all of**
20 **your communications were Mr. Mr. Sin clear were any**
21 **attorneys present on any of those telephone calls?**

22 A. Actually I don't believe there were.

23 **Q. Again putting together all of your telephone**
24 **calls with Mr. Sin clear were there any subjects**
25 **discussed other than the identification of customer**

1 **organizations and background regarding the business?**

2 A. No that as best as I recall that was the
3 substance of the conversations.

4 **Q. Have you ever met Mr. Sin clear in person?**

5 A. I have not.

6 **Q. Regarding who would participate in the**
7 **manufacturers pilot study, why weren't selections**
8 **made randomly from ECMs customer list?**

9 A. I'm sorry they were. Maybe I'm
10 misunderstanding your question.

11 **Q. Well let me take a step back I may be**
12 **misunderstanding what you're sex plaining to me do**
13 **you have an idea how many customers ECM has**
14 **currently?**

15 A. I don't. I assume that the list that I got
16 was a reasonably complete list. Certainly of the of
17 their larger customers. But I don't have any any
18 other understanding.

19 **Q. Why would smaller customers have been**
20 **excluded?**

21 A. It's not uncommon for's for a firm to
22 maintain a list of major customers significant
23 customers and not necessarily include the one off
24 customer.

25 **Q. The exclusion of smaller customers from the**

1 **manufacturers pilot study would have the potential**
2 **to introduce bias into that study wouldn't it?**

3 A. I don't know even know that there was more
4 customers beyond what was on the list. It is very
5 common in designing survey research particularly in
6 the business to business context to bias sample
7 selection on the volume of of business that one does
8 and if you do that then really small customers would
9 be a very small fraction of the of the total volume
10 of the customers. But as I said I don't even know
11 that the list that I had was in in way in complete.

12 **Q. Do you know how many customers have**
13 **purchased product from ECM over the last five years?**

14 A. I do not.

15 **Q. And you would give me the same answer if I**
16 **asked you for ten years?**

17 A. That's correct.

18 **Q. So you don't know with one way or the other**
19 **whether the two hundred you were provided is the**
20 **entire list or just a fraction of the list?**

21 A. I -- I it was represented to me as the
22 customer list I don't know any more about it than
23 that.

24 **Q. If it were not a complete customer list in**
25 **some regard, that would have the potential to**

1 **introduce bias would it not?**

2 A. It, certainly it has the potential, but
3 again, as I said, to the extent that most of the
4 sales volume would be represented on the list that I
5 was given the bias would not be great if if existed
6 at all.

7 **Q. Why do you believe if you do that large**
8 **customers with substantial sales volume would have**
9 **the same interpretations of ECMs marketing claims as**
10 **a small customers with lower sales volume?**

11 A. No that's not what I says I believe I simply
12 said that in the context of business to business
13 survey research it is customary to go give greater
14 rate to respondents based on their sales volume very
15 common you got a customer who does 50 percent of
16 their business you definitely want to include that
17 customer in your sample because they represent
18 50 percent of your business. You have another
19 customer who has done one purchase in ten years, you
20 know that customer is a trivial portion of the whole
21 business. It's less important that they get
22 represented because they don't represent much sales
23 volume and typically in business to business
24 research we wait the responses of individuals based
25 on the sales volume their organizations represent.

1 **Q. ECM not only provided the companies your**
 2 **researchers would speak with or a subset, withdrawn**
 3 **ECM not only provided the much companies your**
 4 **researchers would speak with but the specific people**
 5 **correct?**

6 A. That's correct.

7 **Q. That has the potential to introduce bias**
 8 **doesn't it?**

9 A. It it certainly could what I asked for were
 10 the people who would be most knowledgeable about the
 11 manufacturing and production process and the
 12 purchasing that was related to to that. I would I
 13 would hope that that's what I got because I think
 14 they are the people who are most relevant to the
 15 topic that we were interested in.

16 **Q. ECM could have spoken those persons before**
 17 **they were surveyed correct?**

18 A. I -- I because they're customers I have to
 19 believe at some point there had been some discussion
 20 with somebody: I don't know what transpired with
 21 those customers. You know after I got the list and
 22 before we conduct would the survey.

23 **Q. There was nothing in the pilot study**
 24 **designed that would have prevented that was there?**

25 A. No.

1 **Q. You don't know do you that the persons**
 2 **surveyed were actually the persons at the companies**
 3 **involved in the purchase of the materials for the**
 4 **manufacturer of plastic and likely to be most**
 5 **knowledgeable about the manufacturing process do**
 6 **you?**

7 A. No I accepted the representation about who
 8 they were.

9 **Q. Do you consider this pilot study to have**
 10 **been double blind?**

11 A. I do.

12 **Q. And why is that?**

13 A. The interviewers were not aware of who the
 14 sponsors were and the calls were all made to the
 15 customers by a representative an interviewer from
 16 California survey research. There was no
 17 identification of ECM as the sponsor.

18 **Q. For purposes of this pilot study the persons**
 19 **involved with the purchasing of materials for the**
 20 **manufacturing of plastic is more important isn't it**
 21 **than whether or not he or she is the person most**
 22 **knowledgeable about the manufacturing process**
 23 **correct?**

24 A. Well I think you may be parsing too finely
 25 because my understanding is manufacturing is very

1 much involved in the purchase decision. And in fact
 2 in many cases the actual person involved in
 3 purchasing say a purchasing agent knows eventually
 4 nothing about what's being purchased employ their
 5 job is to execute the paperwork to maybe it
 6 happenment what you really want is the individual
 7 that's the technical specifier and that's really
 8 what I was interested in and what I talked to
 9 Mr. Sin clarabout.

10 **Q. Someone might be involved with the**
 11 **purchasing decisions but not be the decision maker**
 12 **right?**

13 A. That's very common in business to business
 14 marketing yes.

15 **Q. Let look at what may be exhibit nine in fact**
 16 **it is Exhibit 9 which is the manufacturers pilot**
 17 **study screen shots. The question one asked survey**
 18 **respondents are you involved in the decisions of**
 19 **your organization regarding the materials used in**
 20 **the manufacturing and I think there's a typo there**
 21 **products or product packaging. Have I read that**
 22 **correctly?**

23 A. I didn't uh-huh.

24 **Q. If the person answered affirmatively they**
 25 **were then asked question two, are any of those terms**

1 **plastic or components used for manufacturing plastic**
 2 **correct?**

3 A. That's correct.

4 **Q. And then if the person answered**
 5 **affirmatively again a subset of questions began**
 6 **correct?**

7 A. That's correct.

8 **Q. None of the screening questions ask whether**
 9 **the person being surveyed is involved with the**
 10 **purchase of materials for the manufacture of plastic**
 11 **correct**

12 A. I don't use the term purchase, and I don't
 13 know how you're using the term purchase here. But
 14 we do ask if they're involved in the decisions of
 15 the association regarding materials used in
 16 manufacturing products or product packaging. I
 17 think purchase would be subsumed within decisions.

18 **Q. Why didn't you use the word purchase.**

19 A. Because I thought activities subsumed within
 20 term decisions.

21 **Q. You could have added the word purchase**
 22 **correct?**

23 A. Yeah I could have added a lot of words but
 24 it didn't seem to be necessary.

25 **Q. Your view is that this question is just as**

1 **et cetera I have with or without the word purchase?**

2 A. In my view it was and in part because I had
3 asked that names be prescreened by people in the ECM
4 organization to identify people who would be
5 knowledgeable.

6 **Q. Thus the reason that it's just as effective
7 with and within out word purchase is because the
8 persons being surveyed were prescreened by Mr. Sin
9 clear correct?**

10 MR. AWERBUCH: Objection.

11 THE WITNESS: Well I don't know that he's
12 the one who prescreened them. I got a list of
13 people who were represented to me as like lick to be
14 the most knowledgeable about the manufacturing
15 processes and that the materials that we go into it.

16 BY MR. COHEN:

17 **Q. Take mr. Sinclair out of there. Let's**

18 **Q. The reasons whymt questions are just as
19 effective with and without the word purchase in
20 there is because ECM provided you with the
21 information regarding with whom you should speak, no
22 and I've said this before purchase is subsumed
23 within decisions. The way businesses make decisions
24 there isn't a purchaser in most cases. There's
25 multiple people involved in purchase. There's often**

1 tried very hard to ask questions in a very neutral
2 fashion that did not suggest you know which
3 particular firm we were doing research for.

4 **Q. Why didn't you ask to speak to the person at
5 the organization who made the decision to purchase
6 biodegradeable additives?**

7 A. That seemed that would have seemed to me to
8 be to be very specific. And again could have
9 suggested I suppose, that it was being done by a
10 particular company or small subset of companies. It
11 seemed to me that this was a much more neutral way
12 of asking the question.

13 **Q. Was the manufacturers pilot study study
14 conducted by California research services or CSRS?**

15 A. Yes, it was.

16 **Q. Was CSRS paid to conduct the pilot study?**

17 A. They were.

18 **Q. Why is that not disclosed in your report?**

19 A. I don't know. I -- I I have that
20 information. It was done it was done fairly quickly
21 and it was just something that I added quite late in
22 the in the crafting of of this report.

23 **Q. To clarify the record, the report was done
24 fairly quickly or the pilot study was done fairly
25 quicly?**

1 **a technical specifier, there's often a financial
2 decision maker. There may be users. There may be
3 a whole host of individuals who are involved in the
4 decisions, the and to say purchase, actually
5 connotes that the individual might actually be the
6 one who writes the order form and sends the check.
7 They may know nothing about what they're buying.
8 They all be done by somebody who understands the
9 technical needs, the financial needs of the
10 organization. So it's important to talk about this
11 in terms of the decisions whether or not they were
12 the implementer of the purchase or not. I think
13 decision size a much more appropriate term for what
14 we were looking for here than purchase, which has a
15 very specific connotation in a business.**

16 **Q. Let's talk about the word decision. Why
17 didn't you ask to speak with the person made the
18 decision to purchase the ECM additive?**

19 A. Because if I had asked for the person who
20 purchased the ECM additive, I would have conducted
21 that that's for whom the survey was being conducted.

22 **Q. And you believe the individuals who were
23 surveyed her didn't know for whom this was being
24 conducted?**

25 A. I don't know whether they knew or not. We

1 A. Well the pilot study was done fairly quickly
2 and much of the report was done before the pilot
3 study was completed, so I had relatively little time
4 to add the results in to the final draft.

5 **Q. How much was CSRS paid?**

6 A. My recollection is about 2000 dollars the
7 pilot really was construct the in such a way that we
8 agreed they would do 20 hours worth of calling.
9 That would be what constituted the pilot. So as
10 many as interviews as they could conduct in 20 hours
11 was was the scope of their assignment.

12 **Q. Let me show you what's been marked as
13 Stewart ten and I'll provide a copy to counsel. The
14 formatting may be slightly different but this is a
15 set of data collected from the pilot study correct?**

16 A. That's correct.

17 **Q. The file was produced to complaint counsel
18 and labeled I'm going to read this slowly ma'am.**

19 **Capital P partial, manufacturers capital M, under
20 score data, under score five dash two zero space two
21 XLS. Who gave it that label?**

22 A. That was probably the label given by begin
23 to it by California survey research.

24 **Q. Was there a file number one?**

25 A. There could have been an an incomplete

1 version of this file. I asked for reports of the
2 results and so I think I may have gotten one that
3 may have had maybe the first four or five responses
4 and they just tacked on the others as we completed
5 interviews.

6 **Q. Do you have a copy of the earlier file?**

7 A. I may. I don't I don't recall.

8 **Q. If that was not produced to us I assume
9 you'll be willing to produce that to us?**

10 A. I don't have any problem with that.

11 **Q. If we look at your report, page between, the
12 sentence beginning with the very last two words on
13 the page?**

14 A. Mm-hmm.

15 **Q. Really on page 28 but we'll start on page
16 27. Ten customer representatives participated in a
17 telephone interview carried out by interviewers
18 employed by California research services have I read
19 that correctly?**

20 A. You have.

21 **Q. Why does what's been marked as Stewart ten
22 contain data for only eight companies?**

23 A. I don't know they she carry, there should be
24 ten. Perhaps you got the wrong file but there were
25 ten companies.

1 **Q. If you have access to those two additional
2 companies I assume you'll provide that to us?**

3 A. Be happy to do that.

4 **Q. Is there anything else that complaint
5 counsel could do to get that information?**

6 A. I I'm certain that I can I can find the
7 other two responses it just looks like an incomplete
8 version of the data file so I'm certain there is a
9 version of this that has the ten customers in it.

10 **Q. Am I correct that looking at this data, one
11 where it's you know take a look at the first page,
12 one means that the respondent answered yes and two
13 means that the respondent answered no.**

14 A. That would be correct.

15 **Q. And if you look back at the screen shots to
16 take a look at the questions, question five asks is
17 biodegradability an important consideration in your
18 selection of the plastic materials and supplies used
19 in production and packaging in your organization.
20 Have I read that correctly?**

21 A. You have.

22 **Q. The data in Exhibit 10 ask includes only one
23 response to that question correct?**

24 A. What we have here includes only one response
25 to that question. Again it looks to me like this is

1 simply an incomplete file.

2 **Q. And you believe there's a more complete file
3 out there somewhere?**

4 A. I do.

5 **Q. And it would be possible to obtain that if
6 it hasn't been produced to complaint counsel?**

7 A. I'm certain of that.

8 **Q. You understand these eight survey
9 respondents to be ECM customers that purchased the
10 ECM additive correct?**

11 A. That's correct. Or representatives of the
12 organizations purchased.

13 **Q. Let me just back up to something that's
14 probably self evident but with respect to question
15 five A where there's only one response in the event
16 because maybe I've missed it or because you haven't
17 produced it to us yet you would agree with us that
18 neither the court nor complaint counsel can make
19 reasonable assessment of the results of question
20 five A correct?**

21 A. I absolutely agree.

22 **Q. Again, I think you just answered but I'll
23 ask again. You understand that these eight survey
24 respondents in the manufacturers pilot study that
25 we're aware of are customers who purchased the ECM**

1 additive correct?

2 A. They are representatives of customer
3 organizations yes.

4 **Q. Why would a plastic productions manufacturer
5 purchase the ECM additive if that manufacturer was
6 not interested in making their products
7 biodegradable?**

8 A. I don't know.

9 **Q. And you're not offering well let's actually
10 go to question eight. Question eight is does the
11 term biodegrade suggest or imply to you any amount
12 of time by which decomposition will occur did I read
13 that correctly?**

14 A. Did you.

15 **Q. Now if you'll return before we go further
16 are you offering any opinions regarding the
17 responses you received to question eight?**

18 A. Only in the most general form. And that is
19 that even among customer organizations, there is
20 variability in what the responses are, not
21 inconsistent with the variability we saw among the
22 end user customers.

23 **Q. Let's look at question six. That question
24 asks how would you define biodegradability correct?**

25 A. That's correct.

1 **Q. Let's take a look at the first answer.**
 2 **Using ASTM 6400 and then there's a P, either that or**
 3 **ASTM D5511 P that's all. Did I read that correctly?**
 4 A. You did.
 5 **Q. Do you have an understanding as to what ASTM**
 6 **6400 refers to?**
 7 A. Not in detail. It's apparently a standard
 8 but I don't I'm not familiar with the standard.
 9 **Q. And I understand it isn't your area of**
 10 **expertise --**
 11 A. Yeah.
 12 **Q. But I'm going to ask you to assume that it**
 13 **refers to ASTM P6400 which is a test that's**
 14 **sometimes used to assess biodegradability. And I'm**
 15 **going to further ask you to assume that it's a task**
 16 **that's run for less than a year do you understand**
 17 **those assumptions?**
 18 A. I do.
 19 **Q. What does ASTM D55 11 refer to?**
 20 A. Again it's a standard but again I it's
 21 beyond my expertise.
 22 **Q. Again, I'll ask you to assume that ASTM D**
 23 **5511 is a test that is sometimes used to assess**
 24 **biodegradability and further assume that it's a test**
 25 **that's run for considerably less than a year. Do**

1 **in less than a year?**
 2 A. Again if the standards as you represented it
 3 I think that's a reasonable interpretation.
 4 **Q. There's another person who responded I think**
 5 **it's toward the middle, fourth from the bottom, that**
 6 **the product will be completely decomposed within one**
 7 **to three years, have I read that correctly?**
 8 A. You have.
 9 **Q. So out of the eight, three could be**
 10 **characterized based on assumptions that I've given**
 11 **you as giving time frames of a year or less and the**
 12 **fourth gave one to three years correct?**
 13 A. That's fair yes.
 14 **Q. Why didn't you ask ECMs customers how they**
 15 **understood ECMs claim that it's additive renders**
 16 **plastic 100 percent biodegradeable?**
 17 A. Because I wasn't attempting to test ECMs
 18 claims. I was again as in the consumer survey
 19 attempting to test what the understanding of these
 20 respondents was of what biodegradability means.
 21 **Q. You may have just told me this but you are**
 22 **not offering any opinion then regarding how ECMs**
 23 **customers understood ECMs claim that it renders it's**
 24 **claim that it, lame 100 percent piedable?**
 25 A. That was not the purpose of the survey.

1 **you understand those assumptions?**
 2 A. I do.
 3 **Q. Given those assumptions it would be fair**
 4 **wouldn't it to consider this persons response to be**
 5 **one that understands biodegradation is something**
 6 **that happens in less than a year?**
 7 A. If the standards are what you represent yes
 8 I would agree.
 9 **Q. Let's look at the second response the**
 10 **ability to make materials dissolve within a year.**
 11 **Is it fair to consider this person's response to be**
 12 **one that understands biodegradation is something**
 13 **that happens in less than a year?**
 14 A. I would agree with that.
 15 **Q. Let's look at the next to last response on**
 16 **the page. Something that would break down according**
 17 **to ASTM 6400 standards. Did I read that correctly?**
 18 A. You did.
 19 **Q. I'll again ask you to assume that ASTM D 64**
 20 **hundred is a test that is sometimes use today assess**
 21 **biodegradability and further ask you to assume that**
 22 **it's a test that's run for less than a year. Given**
 23 **those assumptions it would be fair wouldn't it to**
 24 **consider this persons response to be one that**
 25 **understands biodegradation is something that happens**

1 **Q. Why didn't you ask ECMs customers how they**
 2 **understood ECMs claim that it's additive renders**
 3 **plastic biodegradeable within nine months to five**
 4 **years in most land fills?**
 5 A. Because again I wasn't interesting in
 6 testing claims in this survey I was interested in
 7 understanding gaining insight into their general
 8 understanding of biodegradability as it might relate
 9 to plastics.
 10 **Q. You're not offering any opinion regarding**
 11 **how ECM's customers understood ECM's claim that its**
 12 **additive renders plastics biodegradeable in nine**
 13 **months to five years in most landfills?**
 14 A. I am not.
 15 **Q. Why didn't you ask ECM's customers how they**
 16 **understood ECM's claim that its additive renders**
 17 **plastic biodegradeable in some period greater than a**
 18 **year?**
 19 A. Again this was not intended to test specific
 20 claims of ECM. It was intended to gain insight into
 21 general understanding of biodegradability
 22 specifically within the content of plastic and
 23 plastic products.
 24 **Q. You're not offering any opinion regarding**
 25 **how ECMs customers understood ECM's claim that its**

1 **additive renders plastics biodegradeable in some**
2 **period of time greater than a year are you?**

3 A. I am not.

4 **Q. The pilot study was never rerun as a full**
5 **scale study was it?**

6 A. It was not.

7 **Q. You were aware of what the pilot study**
8 **responses were before it was decided that the pilot**
9 **study would not be rerun as a full scale study**
10 **correct?**

11 A. I was.

12 **Q. Emord and associates was aware of what the**
13 **pilot study survey responses were before it was**
14 **decided that the pilot study would not be rerun as a**
15 **full scale study; correct?**

16 A. Actually I don't believe they were aware of
17 the specific results I had given them a brief
18 description but I don't I don't think I had shared
19 the spreadsheet or the results with them prior to
20 our making a decision to not to run a full survey.

21 **Q. You would given them aim description of the**
22 **results?**

23 A. Yes.

24 **Q. ECM was aware of what the pilot Saturday**
25 **responses were before it was decided that the pilot**

1 diversity in the responses and whether they
2 communicated that to ECM, I don't know I just know
3 that there was a decision made not not to proceed
4 with the larger survey and part of that will
5 decision was simply we had run out of time.

6 BY MR. COHEN:

7 **Q. You don't remember the entire, the details**
8 **in full of that communication though do you?**

9 MR. AWERBUCH: Objection you don't have to
10 answer that communication to us.

11 THE WITNESS: I can't and I don't remember
12 the details of the communication.

13 BY MR. COHEN:

14 **Q. Why was the pilot study not rerun as a full**
15 **scale study?**

16 A. I don't know all of the reasons that may
17 have gone into it. I do know that we were we were
18 getting very close to the deadline for when the
19 report was due and I and I indicated that I did not
20 think we could get a full blown survey done in time
21 to meet the deadline as I understood it. And and
22 that was part of my communication to to the
23 attorneys, that begin what we had learned about the
24 amount of time it took to reach these respondents, I
25 estimated that it would we were going to run out of

1 **study would not be rerun as a full scale study**
2 **correct?**

3 A. I don't believe that's correct either. I
4 don't believe I shared any of the specific results
5 other than a verbal description which was largely
6 that there's considerable degree of variability much
7 as we found in the consumer survey, and it and
8 that's I believe all that was communicated prior to
9 the decision not to run a larger survey.

10 **Q. Was that the same verbal description that**
11 **you proud to Emord and associations?**

12 MR. AWERBUCH: Objection that's
13 attorney-client privilege.

14 THE WITNESS: Well I mean first of all I
15 don't think I would have provided it to ECM
16 directly. It would have all been through Emord.

17
18 **Q. But Emord and associates was provided with**
19 **general description of the survey results just not**
20 **the specific survey results correct?**

21 THE WITNESS: Well.

22 MR. AWERBUCH: Objection.

23 THE WITNESS: They were provided with my
24 verbal description of what I thought the results
25 were revealing which was that there was a lot of

1 time before we could complete a full blown survey.

2 **Q. Well how many respondents would you need to**
3 **contact before you could complete a full blown**
4 **survey?**

5 A. Well I indicated that I would like to would
6 like to have contacted as many as 25 percent of the
7 people on the list. That would have been about 50
8 plus people.

9 **Q. And you'll have to remind me when the dates,**
10 **when was the pilot study concluded?**

11 A. Late May, maybe even early June. I believe.

12 **Q. Does the absence of a shared understanding**
13 **among consumers about a particular fact mean that**
14 **deception cannot occur?**

15 A. I'm sorry.

16 **Q. Ever ma'am if you can just read that back**
17 **please read read?**

18 A. Well if deception can occur in individual
19 cases so the question of whether deception can occur
20 is is yes at least in the individual case. I'm
21 struggling a little bit with your question because
22 it has basically a double negative employ the
23 absence of a shared fact and I'm I don't know how to
24 respond to that.

25 **Q. It's only necessary that a legally relevant**

1 minority of consumers share an understanding
2 correct?

3 MR. AWERBUCH: Objection.

4 THE WITNESS: That's my understanding yes.

5 BY MR. COHEN:

6 Q. So let's assume there are two hundred 50
7 million American consumers and if you have a better
8 ballpark I'd be happy to adopt your assumption. Is
9 that my assumption all right?

10 A. Sure.

11 Q. Assume that each of those consumers hold a
12 different understanding for a product to biodegrade
13 so there are two hundred 50 million different
14 understandings. Do you understand that assumption?

15 A. I do understand that.

16 Q. Further assume that 20 percent or 50 million
17 of those consumers understand that the time it takes
18 for a product to biodegrade is some quantum of time
19 one year or less. Do you understand that
20 assumption?

21 A. I understand.

22 Q. Can those consumers in that 20 percent be
23 deceived?

24 A. Well it can be but that fact alone doesn't
25 mean they have been deceived.

1 Q. What additional fact does are necessary to
2 dish that they have been deceived?

3 A. That the belief was created by actions or
4 Nations of the manufacturer or the marketer and
5 that the belief was material to some behavior for
6 purchase decision.

7 Q. Imagine that there's stick with the same
8 hypothetical imagine that there's a hundred
9 marketers and they are all in some minor way
10 contributing to the false belief that's at issue
11 here. Is that sufficient for liability of any one
12 of those marketers?

13 A. I would I would need to know's great deal
14 more that be you've indicated I'd need to know what
15 those marketers were doing what they're doing is if
16 what they're doing is actually having an impact on
17 consumers, what other sources of information may be
18 available, you know a major source of information
19 about biodegradability is actually the government,
20 so I'd like to have some understanding of the degree
21 of which their actions may be dominated by
22 government communications or the or the or the media
23 generally, so I you know I I can't answer that
24 question in the abstract.

25 Q. Let's go back to something we discussed

1 earlier in the day. Let's assume that one of the
2 marketers is capitalizing on consumers false beliefs
3 with respect to biodegradation times and further
4 more assume that that particular marketer is doing
5 so intentionally. Would that be sufficient for a
6 finding of liability under the FTC act?

7 A. I you'll have to and we discussed this
8 earlier today. You'll have to explain to me what
9 you mean by capitalize.

10 Q. Imagine that the marketer is aware that
11 consumers misunderstand what the word biodegradeable
12 means and the marketer knowingly under takes a
13 campaign that they understand will miss lead
14 consumers. Is that sufficient for FTC act
15 liability?

16 A. Again it could be but it depends on depends
17 on a lot of other, a lot of other facts.

18 Q. So it might not be the case?

19 A. It might not be the case.

20 Q. Does the fact that some proportion of
21 consumers are skeptical of a claim mean that
22 deception can customer?

23 A. Deception could occur, not everybody may be
24 skeptical, but to the extent that people discount
25 ape claim and don't use it for decision making for

1 those individuals it would not be material so
2 deception would not occur but it certainly could be
3 the case that there certainly are consumers who are
4 not skeptical.

5 Q. It's the case isn't it that sometimes when
6 consumers are surveyed, consumers who answer I don't
7 know to a question might have a view but just not
8 one that the survey respondent feels sufficiently
9 certain to share?

10 A. I guess. I think we discussed that this
11 morning, that is certainly the case.

12 Q. Researchers might be able to learn that
13 respondent's view by probing or encouraging a
14 respondent to share his or her view correct?

15 A. That's precisely why we used a personal
16 interview on the telephone was that we could
17 encourage those respondents to offer their opinions.

18 Q. And there actually could be a lot of reasons
19 why a consumer doesn't feel sufficiently certain to
20 share his or her view on the first inquiry correct?

21 A. That's correct.

22 Q. We don't need to go through them all but one
23 might be the prospect much embarrassment if they got
24 it wrong?

25 A. That's a possibility.

1 **Q. All right just quickly 'cause you're an**
 2 **expert in this area are there other possibilities**
 3 **that come up frequently?**

4 A. Maybe embarrassment. May just be you know
 5 an individual has a certain tolerance or lack of
 6 tolerance or certainty or uncertainty they just want
 7 to be sure before they offer an opinion. There
 8 could be there could be some social buttons, desire
 9 built component that you know they don't want to
 10 answer a question because they think it reflects
 11 negatively on them or positively on them so there's
 12 a number of reasons.

13 **Q. One struck me as particularly interesting is**
 14 **that different people have different understanding**
 15 **or beliefs as to how certain they need to be before**
 16 **they feel comfortable answering a question.**

17 A. Yes that's correct and I'm going to stop you
 18 because I need to take a break.

19 **Q. That's okay. Recess.**

20 MR. COHEN:

21 BY MR. COHEN:

22 **Q. We were discussing the potential prospects**
 23 **for embarrassment in the context of survey research.**

24 A. Or reasons why people may be reluctant to
 25 give responses and say I don't know.

1 **Q. Very fair. Is the prospect, but the**
 2 **prospect for embarrassment would be one such reason?**

3 A. In in some cases yes that's true.

4 **Q. Is the prospect for embarrassment greater**
 5 **than in an in person interview a mall enter**
 6 **September interview or in a telephone interview with**
 7 **a live interviewer?**

8 A. It would probably be greater with a live
 9 interviewer in a mall.

10 **Q. Is the prospect greater for embarrassment in**
 11 **a telephone interview with a live interviewer or in**
 12 **an on line survey?**

13 A. In most cases it would be greater but not
 14 large in the case of a telephone say.

15 **Q. If a number of people have fuse as to the**
 16 **correct answer to a question but not complete**
 17 **confidence one would expect them to be more likely**
 18 **to answer I don't know in a telephone survey in with**
 19 **a live interviewer than an on line survey correct?**

20 A. I need you to read that back read read.

21 A. No I wouldn't agree with that.

22 **Q. Why not?**

23 A. Just as embarrassment could work in the
 24 direction of people not wanting to respond because
 25 they may be wrong it could also work in the

1 direction of people being embarrassed because they
 2 can't give an answer. And you know the fact that
 3 there is a live person there is actually a motivator
 4 for people to respond. So I -- I wouldn't say that
 5 they're greater, that one is greater than the other
 6 in in that particular context.

7 **Q. Assume that some portion of people who**
 8 **answer I don't know when asked about a**
 9 **biodegradation time regardless of the motive method**
 10 **of survey, actually have a view as to the correct**
 11 **answer, do you understand that assumption?**

12 A. I think. I mean there's an an assumption
 13 here that there is a correct answer.

14 **Q. No I'll withdraw the question and I'll**
 15 **repeat it because I don't suggest that there is a**
 16 **correct answer. I'm merely meaning to suggest that**
 17 **the person may think there's a correct answer?**

18 A. Fair enough.

19 **Q. So assume that some portion of people who**
 20 **answer I don't know when asked about biodegradation**
 21 **time actually have a view as to the correct answer,**
 22 **do you understand that assumption?**

23 A. I do.

24 **Q. Given that assumption do you have any reason**
 25 **to believe that those people as a group are**

1 **demographically different from people who gave**
 2 **responses other than I don't know?**

3 A. It is it is conceivable that they may be
 4 different in terms of their perceived self efficacy,
 5 that is their sense of personal control and personal
 6 knowledge of the world and generally we find that
 7 people who are stronger in self efficacy tend to be
 8 people with more resources, more highly educated,
 9 higher incomes. So that in that way there may be a
 10 link between demographics and the tendency to say I
 11 don't know.

12 **Q. I don't may be to be flip but how confident**
 13 **are you in that response?**

14 A. I think I'm pretty confident in that
 15 response.

16 **Q. Given the assumption that I asked you to**
 17 **make, do you have any reason to believe that people**
 18 **who answer I don't know as a group would have a**
 19 **different distribution of views than people who**
 20 **express their views immediately?**

21 A. No there's literature on the I don't know
 22 response and that literature generally finds that
 23 you don't really change the distribution of
 24 responses substantially based on kind of forcing
 25 people not to have, not to use I don't know. So

1 we'd have fewer people who make the response.

2 **Q. Assume that some portion of people who**
3 **answer equivocally when asked about biodegradation**
4 **time actually have a view as to the correct answer.**

5 **Do you understand that assumption?**

6 A. Again they have a view that they know the
7 correct answer.

8 **Q. That's correct?**

9 A. Okay. Yes.

10 **Q. I'm not saying there is a correct answer?**

11 A. Okay.

12 **Q. I'm saying that they're answering**
13 **equivocally. They're saying it depends. I'm not**
14 **entirely sure. Something along those lines. An**
15 **equivocal answer. Assume that some portion of**
16 **people who answer equivocally when asked about**
17 **biodegradation time actually have a view as to the**
18 **correct answer. Do you understand that assumption?**

19 A. When you say answer equivocally what do you
20 mean?

21 **Q. Let me withdraw the question. And say let**
22 **me I'll withdraw the question because I think you're**
23 **raising a fair objection. Let me ask you something**
24 **else. What's a protest response?**

25 A. A protest response can take one of two

1 forms. One is a protest to being involved in a
2 survey, that is so you know I don't like being
3 interrupted in trying to get my contact, my content
4 on Google survey so I respond by saying get out of
5 here. That's a protest. Another protest response
6 would be one that is offered as more as a
7 substantive opinion, you know I you know I want to
8 protest my view that all products should be
9 biodegradable or you know no products are
10 biodegradable where people actually have a point of
11 view that they're trying to express.

12 **Q. In fairness the first example you will give**
13 **was an example involving the Internet and I don't**
14 **think that's an unfair example but isn't it also a**
15 **protest response if someone gets a call from a**
16 **telephone researcher and hangs up the phone?**

17 A. Sure I would agree that they don't like
18 being interrupted.

19 **Q. Assume that some portion of people who give**
20 **a protest response when asked about biodegradation**
21 **time actually have a view as to a correct answer.**
22 **They just don't want to give it because they don't**
23 **like being interrupted do you understand that**
24 **assumption?**

25 A. I do.

1 **Q. Given that assumption do you have any reason**
2 **to believe that these people as a group are**
3 **demographically different from people who gave**
4 **responses?**

5 A. They may be different demographically I
6 think it would depend on what the nature of the
7 survey was. Some people are particularly more
8 educated people more high people with higher incomes
9 are less likely to want to respond to surveys
10 because they consider it an imposition on their time
11 but by the same token we find that the other end of
12 the income distribution there's also a reluctant of
13 people to participate so in some ways the the
14 demographics kind of wash out. Center.

15 **Q. So the answer to my question is no?**

16 A. Well it's a more subtle answer than that
17 there are demographic factors at work but because
18 there are multiple factors at work there's a
19 canceling effect that tends to occur in the
20 aggregate.

21 **Q. Understood so I think I understand there may**
22 **be some demographic differences but there's enough**
23 **it demographic diss and such demographic differences**
24 **that they're off setting so there's no net effect?**

25 A. That's correct.

1 **Q. Given the assumption that I've asked you to**
2 **make do you have any reason to believe that such**
3 **people providing protest responses as a group would**
4 **have a different distribution of views than people**
5 **who express their views immediately?**

6 A. I I don't know one way or the other. Again
7 I think it would depend on the issue.

8 **Q. And you're not giving an issue about that in**
9 **this matter are you?**

10 A. I'm not.

11 **Q. In what respect if any is the population in**
12 **Professor Frederick survey not properly chosen and**
13 **defined?**

14 A. First of all we don't nope what the
15 population is so without a definition of the
16 population it's very difficult to know whether it
17 has been chosen properly.

18 **Q. Is it not properly chosen and defined for**
19 **any other reasons?**

20 A. Well it's just not defined. It's not clear
21 who is in the population so we start with an ill
22 defined population and then we can move to the
23 sampling frame and it's not clear the sampling frame
24 is representative of that undefined population. So
25 it's a you know it's just a problem that builds on

1 itself I mean if you can't define the population you
2 can't know whether the sample represents that
3 population. If you don't know what the sampling
4 frame is you can't determine whether the sample is
5 representative of the population and you sure can't
6 tell anything if the sampling, if the unknown
7 sampling frame reflects an ill defined population.

8 **Q. Assume that Professor Frederick's chosen**
9 **defined population is American consumers. Was if**
10 **anything would be problematic with that definition?**

11 A. Well, there's nothing wrong with that
12 definition. Of the population. Now the problem
13 becomes one of the sampling frame.

14 **Q. Okay we'll move to the sampling frame in a**
15 **moment. We'll move to the salveling frame now. In**
16 **what respect if any is the sample chosen in**
17 **Professor Frederick study not representative of the**
18 **population of American consumers?**

19 A. It is it is selected based on peoples
20 presence at a particular web, at a small number of
21 specific websites that that are not representative
22 of even people who traffic the Internet. That's the
23 primary reason.

24 **Q. Are there other reasons?**

25 A. They they are not representative because

1 they have been enter Septembered. Largely against
2 their will. Which is a typical of of the typical
3 survey research situation. It is they are not
4 representative in the sense that they are they may
5 not be, as I indicated in my report they may not be
6 who they represent themselves to be. We have no way
7 of knowing who these people are. That's what makes
8 them non representative.

9 **Q. Are there any other objections related to**
10 **the representative necessary of Professor Frederick**
11 **sample or to Google consumer surveys that you have**
12 **not mentioned in your report?**

13 A. I don't believe so.

14 **Q. You did mention that one issue with the**
15 **representative necessary of the Google consumer**
16 **surveys sample is that people are being in effect**
17 **surveyed against their role did I under that**
18 **correctly?**

19 A. That's correct.

20 **Q. How is that different from someone who gets**
21 **a telephone call that maybe they don't want to**
22 **receive?**

23 A. It's it's different in the sense that in
24 order for an individual to access content that
25 they're interested in, they have to perform some

1 action. So this interferes with a motivated
2 behavior in which they're engaged. The telephone
3 call they may not want to participate they may just
4 want to hang up but it doesn't interrupt their their
5 their goal driven behavior. They're not trying to
6 accomplish something else. Yeah it's interruption
7 but sorry I don't have time you hang up. It doesn't
8 interfere with a more goal driven behavior which is
9 what happens with Google survey.

10 **Q. Is there any literature that you're aware of**
11 **that indicates that the interference with the sort**
12 **of goal driven behavior that Google consumer surveys**
13 **capitalizes on result in biased result?**

14 A. As I think I indicated earlier Google says
15 has been around for a very short period of time so
16 there's very little literature that speaks to the
17 validity or the biases that may be present beyond
18 what we've talked about earlier.

19 **Q. My question was specific to not Google**
20 **consumer says is an example but is there literature**
21 **more generally it could be from 50 years ago that**
22 **talks about the fact that the nature of a survey is**
23 **such that interferes with some form of minor goal**
24 **driven behavior means that the results that that say**
25 **produces are likely to be skewed or inaccurate in**

1 **some way?**

2 A. I'm sure there is. I can't identify it as I
3 sit here this afternoon.

4 **Q. An assume that the sample Professor**
5 **Frederick chose is I am perfectly representative but**
6 **still more representative than the sample you chose**
7 **in your consumer study. Given that assumption would**
8 **you contend that Professor Frederick had failed to**
9 **choose a sample will adequately representative of**
10 **the population?**

11 A. Well first of all I just reject the premise.
12 It is not a sample that is more representative than
13 the one I chose. So I mean you're basically asking
14 me to assume something that's factually incorrect.
15 But if I make the assumption, then then clearly the
16 answer has to be yes. I mean you're asking me you
17 know is black black. Well of course black is black.
18 You know but if I'm looking at a white piece of
19 paper and you say that's black assume that that's
20 black is it black, you know, under that assumption I
21 have to say yes but it's you know it it's not an
22 accurate representation of the facts.

23 **Q. In what respect if any was the data gathered**
24 **in Professor Frederick studies not accurately**
25 **reported?**

1 A. He doesn't code, again we've been through
2 this, he doesn't code almost 40 percent of the
3 responses. Including responses that are clearly
4 plausible responses he transforms data in ways that
5 makes it very represent testify very un
6 representative of what the individual actually said.

7 **Q. You're not contending that Professor
8 Frederick false identified data are you. No I'm
9 saying he I'm not saying he invented the data made
10 up the data I'm simply saying the way he treated the
11 data was highly unusual highly selective and does
12 not adequately represent what the data actually
13 show?**

14 **Q. You're not contending that the data received
15 from Google consumer says shows one thing but
16 Professor Frederick reported it as something else
17 are you?**

18 A. Yes actually I am.

19 **Q. In what respect are you making that
20 contention?**

21 A. Well when he when he reports percentages and
22 he doesn't include in denominator responses that he
23 did not code and those responses are 40 percent of
24 the sample, he's basically inflating percentages.
25 And that's that's an inaccurate presentation of the

1 **Q. In what respect other than what you've
2 already told me did Professor Frederick not analyze
3 the data you collected in accordance with accepted
4 statistical principals?**

5 A. I've given you the precise.

6 **Q. What statistical principle or principles did
7 Professor Frederick violate?**

8 A. One he does not base his statistic on all of
9 the available data. Almost 40 percent of the
10 responses are ignored in the computations that he's
11 made. He's also transformed data in ways that are
12 non representative of what the data actually
13 indicate and if you look at what he has done in
14 terms of coding he doesn't even follow his own rules
15 consistently in many cases.

16 **Q. Can you quantify in many cases?**

17 A. I have not attempted to do a specific count.
18 We have, I have only had the data in an in a
19 reasonably manageable analyzable form since late on
20 Friday I believe so I haven't been able to quantify
21 it.

22 **Q. You would agree though that there is some
23 number where in consistent analysis of the data
24 between let's say coders is too insubstantial given
25 the volume to affect the results?**

1 data.

2 **Q. That strikes me as a dispute with his
3 statistical methodology not an issue of accurate
4 reporting of the data?**

5 A. No that's a problem with accurate reporting
6 of the data. Statistics are summary of the data and
7 to the extent he misreports misuses statistics he is
8 not being accurate.

9 **Q. What's the basis for your belief if you have
10 one that Google consumer surveys does not accurately
11 report the data it collects?**

12 A. I didn't say it does not accurately report
13 the data it collects. What I said is he did not
14 accurately report the data because of the way he
15 treats it.

16 **Q. You don't contend then that Google consumer
17 surveys does not accurately report the data it
18 collects?**

19 A. I have no way of knowing one way or the
20 other and that that was not my opinion my opinion
21 was the data are not accurately reported by Dr. Fred
22 and I've given you the reason for that. He ignores
23 a very substantial amount of data that includes
24 highly plausible responses. He transforms the data
25 in ways that are inappropriate.

1 MR. AWERBUCH: Objection.

2 THE WITNESS: I don't know what results
3 we're talking about. I mean I the data are so
4 poorly organized and so poorly that I I don't know
5 how talk about an insubstantial problem it's like
6 it's like saying I've got a barrel of rotten apples
7 might there be one that's not rotten somewhere in
8 the barrel. Possibly but there's so much that's
9 rotten that you would have difficulty finding it and
10 so they're -- you know there's this little trivial
11 problem that's unsubstantial but all the rest are
12 okay. That's not the case with this data. It's
13 fundamentally flawed data and you can't pick one
14 little problem and say well it didn't happen very
15 much because it's not one little problem. It's
16 multiple problems that make this data completely use
17 less.

18 BY MR. COHEN:

19 **Q. Let's mark let me just be clear. You've
20 identified, I believe three statistical principals
21 that Professor Frederick did not follow. Are there
22 others?**

23 A. That's those are the ones that occur to me
24 this afternoon. Let's mark Professor Frederick
25 report as Stewart 11 until I lost track.

1 **Q. Which questions if any do you contend are**
 2 **unclear enough to render them invalid and you'll**
 3 **note that in appendix A there's a list of all of the**
 4 **questions?**

5 A. Well I'm not sure that I follow your
 6 questioning here in the context of was we were just
 7 talking about so you need to help me. Are we
 8 talking about analysis or are we talking about the
 9 questions.

10 **Q. I won't help you. We're talking about the**
 11 **questions. The reason that I'm asking is that your**
 12 **report says Professor Frederick questions are**
 13 **unclear. But it doesn't identify any specific**
 14 **questions. So now I would like you to identify the**
 15 **specific questions that are unclear?**

16 A. Okay. All the questions are unclear to the
 17 extent that they are interpreted as he does to be
 18 evidence of fact. These to ask people in contrast
 19 to what I did where I was asking people for opinions
 20 and and not a statement of fact, what he is doing is
 21 asking questions that he is then transcribing into a
 22 statement of fact. And I -- I genuinely believe
 23 that if people had been asked question one A, if a
 24 package is labeled biodegradeable, okay, how long
 25 will it take to decompose, and were then given a

1 whole variety of qualifiers or caveats you would get
 2 very different responses. So for example if you
 3 were to say if a package or let's let's be more
 4 specific. If a piece of paper or the package of a
 5 ream of paper is labeled biodegradeable how long
 6 will it take to decompose. If a bicycle is labeled
 7 biodegradeable how long will it take to decompose.
 8 If a package is labeled biodegradeable and it were
 9 put in your backyard how long would it take to
 10 decompose. If it were biodegradeable and it were
 11 put into a landfill, how long would it take to
 12 decompose? The results of my survey show that quite
 13 a number of respondents have a clear understanding
 14 that there is no definitive answer to these types of
 15 questions absent a variety of qualifiers. And so to
 16 the extent that these things are asked without
 17 qualification, they're really they're really
 18 unclear.

19 **Q. If I understand you correctly all of**
 20 **Professor Frederick questions are unclear for the**
 21 **reason you just articulated. Are there any, are**
 22 **they hall unclear or are any specific questions**
 23 **unclear for any other reasons?**

24 A. Well again I think when you have a question
 25 like federal regulators should not permit a product

1 to be labeled biodegradable unless it biodegrades
 2 within this time period and then people were asked
 3 for a time period you know without without
 4 qualifiers I don't know how people can give you a
 5 reasonable response to that.

6 **Q. And what was the sort, what would be the**
 7 **sort of qualifier that you're looking for there?**

8 A. The qualifiers might include the type of
 9 material the context in which it biodegrades, very
 10 similar to the other questions and when there's
 11 simply no context put around this coupled with the
 12 fact that federal regulators should not permit I
 13 mean what does that what does that mean, which
 14 federal regulators, what does it mean should not
 15 permit? You know does it mean that if something is
 16 actually superior in terms of it's biodegradability
 17 that a marketer should be forbidden from from
 18 communicating that point of superiority? I mean
 19 there's there's there's no effort here to capture
 20 competitive advantage or differences among products.
 21 It's asked all not guilty abstract as though
 22 something is biodegradeable or it's not, when we
 23 know that there are degrees of biodegradability,
 24 that that are not reflected in the survey.

25 **Q. So if I understand you correctly there are**

1 **the problems you just articulated was with two A and**
 2 **then there's the problem with all of the questions**
 3 **regarding the lack of qualifiers are there any**
 4 **questions that are unclear for various reasons?**

5 A. Well again I think you're asking people for
 6 very specific information factual information, that
 7 that most people are just unlikely to know. So you
 8 show people a label and you say if you saw this on a
 9 water bottle how long would it take to decompose.

10 **Q. Is that a reason for the question being**
 11 **unclear or just a different type of problem with the**
 12 **question?**

13 A. Well it's it's unclear again it doesn't
 14 include appropriate caveats qualifiers, and couples
 15 with that there's no reason to believe that whatever
 16 the response that the respondent gives, it has any
 17 basis in fact or in information. So as I did in my
 18 survey you can ask their opinion but it really is
 19 not a statement of of fact.

20 **Q. Are there other reasons or specific**
 21 **questions why you, are there other specific**
 22 **questions that you believe are unclear or other**
 23 **reasons why you believe that all of the questions**
 24 **are unclear?**

25 A. Most of my my problems are related to what

1 what I've already articulated and that's simply that
2 there's there's simply inadequate information to
3 provide a basis for an answer in most of these cases
4 even if the individual had an answer that was based
5 on fact and being as the results of my survey
6 clearly indicate many people are aware that there
7 are qualifiers there are caveats if they're provided
8 you know influence their response.

9 **Q. Which if any of Professor Frederick**
10 **questions do you contend are leading?**

11 A. I may not have a complete catalog. But I
12 believe two Atwo Btwo C, two D two E, the answer is
13 to the question is really kind of embedded in the in
14 the question. There's an assumption here that you
15 know, people should not be allowed to or marketers
16 should not be allowed to to miss lead. So there's a
17 there's a premise here you know that sets sets these
18 things up as is it misleading, well might not be
19 misleading but you've got a question that sort of
20 starts with you know I consider it misleading if it
21 failed to fully degrade within this amount of time.
22 You know that that is suggesting wrong doing, it's
23 implanting an idea in peoples heads that I think is
24 simply inappropriate.

25 **Q. Are there others?**

1 you're using Google survey and it's not really a
2 survey, it's a pay wall, that's not accepted
3 procedures and as I've indicated earlier, Google
4 survey in my view, is not a market professional
5 market research firm so they, you know they're not
6 qualified by any stretch of the imagination. Maybe
7 they will be in ten years but they're not qualified
8 in any stretch of the imagination to be engaged in
9 survey research. And in fact that's not actually
10 their purpose in setting up Google survey any way
11 it's simply an a way to monitor content on the web.

12 **Q. Did the respondents in Professor Frederick**
13 **survey no who response order his survey?**

14 A. Not to my knowledge.

15 **Q. Did Google consumer surveys no who response**
16 **order Professor Frederick's surveys?**

17 A. Not to my knowledge.

18 **Q. Then the surveys double blind that regard**
19 **isn't it?**

20 A. No it's it's not double blind because you
21 had people who were engaged in the coding which is
22 part of the analysis and part of making ready the
23 data who were very much aware of the purpose and
24 sponsor of the research.

25 **Q. But the respondents and the data collector**

1 A. I believe that 15 A, 15 B, are certainly
2 leading. 'Cause of what they suggest to the
3 respondent is they ought to simply do some multiply
4 indication to arrive at an answer. And are there
5 others I see you're at the end.

6 A. I am at the end.

7 **Q. So there are no others?**

8 A. Not that I can identify.

9 **Q. Did the respondents in Professor Frederick**
10 **strike that in what respect if any was Professor**
11 **Frederick side not conducted by qualified persons**
12 **following proper interview procedures?**

13 A. It was not double blind. He was using
14 apparently was using students to to do coding. You
15 know these are not trained professional market
16 researchers. And and very clearly as we've
17 discussed, there were problems with with sampling, I
18 mean there there were problems with way that data
19 were coded. I mean these were all at variance with
20 accepted research methods.

21 **Q. Qualified persons following proper interview**
22 **procedures isn't really a metric that applies to**
23 **Internet surveys is it?**

24 A. But it is. I mean you still have you have
25 an automated interview, but to the extent that

1 **were not aware of the purpose of the research were**
2 **they?**

3 A. Well I would submit that the person doing
4 the coding is actually a part of the data collector.
5 There's a term that we use called making data and
6 when you're coding is what you're really doing is
7 making data and so that's a part of the of the
8 that's a part of the data collection process and to
9 the extent that your coders are not blind to the
10 sponsor and the purpose of the research, you know it
11 it's not it's not double blind.

12 **Q. What evidence did you have do you have if**
13 **any, that the coders who worked for Professor**
14 **Frederick made errors?**

15 A. I did spot some cases where rules did not
16 appear to be followed appropriately. And and it
17 also appears to me that decisions about how certain
18 things were to coded are not coded were really
19 problematic, as we talked about before when you're
20 not coding almost 40 percent of all the responses,
21 that's that's a problem and a trained coder would
22 have identified that as a problem. And at minimum
23 those data would have been coded but they were not.

24 **Q. At the first part of the your answer you**
25 **said you'd spotted errors, can you identify any in**

1 particular?

2 A. I'm upon going to be able to find them out
3 of 29,000 records. As I sit here this afternoon.
4 But there were cases where non numeric data was in
5 fact given a numeric code, there were cases where
6 numeric data was coded in consistently, and so there
7 there there are there are some errors in the data.

8 **Q. Are you offering any opinions in this case
9 regarding the data coded in Professor Frederick's
10 studies relative to the data that was not coded
11 other than the opinions your report contains?**

12 A. I think my opinions in my report are are
13 pretty consistent that the I would simply elaborate
14 that any statistics that are computed based on the
15 data that ignores the un coded responses is a
16 misrepresentation of the data. I think I say that
17 in my report I just want to be sure that I'm not
18 record as making that clear.

19 **Q. You understand in his initial report
20 Professor Frederick did not code data in which the
21 survey respondent provided a numeric response but
22 not a unit of time correct?**

23 A. That's what I understand although I think
24 there are some examples where that was done.

25 **Q. You understand that that's the rule that at**

250

1 least he was attempting to implement?

2 A. I do understand that yes.

3 **Q. What understanding do you have if any,
4 regarding the number of responses that Professor
5 Frederick did not code because the survey responded
6 provided a numeric response but not a unit of time?**

7 A. As I sit here today, I don't know a number.

8 **Q. You're not offering an opinion are you,
9 regarding whether as groups people who respond to
10 questions asking for estimated biodegradation times
11 and respond with only a number hold different views
12 regarding biodegradation times than those who
13 respond with a number plus a unit of time correct?**

14 A. I hadn't thought about it. It would a
15 number alone without a unit of time would be
16 difficult to interpret.

17 **Q. So the answer to my question as to whether
18 you're offering an opinion is yes or no?**

19 A. Well I think it's a part of the larger
20 opinion related to the problems with the coding of
21 the data.

22 **Q. Prior to my question you hadn't considered
23 it?**

24 A. I hadn't considered that that specific
25 problem. I mean I certainly identified cases of

1 that but I you know the coding is such a mess and so
2 poorly done, I had not tried to identify every
3 possible way it might, it might be wrong.

4 **Q. And the specific question that I asked is
5 not something you addressed in your report is it?**

6 A. I think that's correct yes.

7 **Q. Let's focus on two categories of survey
8 response data that Professor Frederick collected in
9 response to questions asking for biodegrade time.
10 The first category is numbers plus a unit of time
11 like one year where one is the is the number and
12 year is the unit or 30 days, do you follow me so
13 far?**

14 A. I do.

15 **Q. The second category is only numbers like
16 one, nothing else, or 30, and nothing else do you
17 follow me?**

18 A. I do.

19 **Q. Assume that the numbers in the first
20 category have approximately the same distribution as
21 the numbers in the second category. Given that
22 assumption, is it reasonable to assume that as a
23 group survey respondents in the first category have
24 similar views regarding biodegradation time as
25 survey respondents in the second category?**

252

1 A. No.

2 **Q. Why not?**

3 A. Because we don't know what unit they're
4 referring to. Somebody says one without any time it
5 could be and we see this in the data, it could be
6 one second, one minute, one day, one week one year,
7 just the number one alone without a unit doesn't
8 doesn't give us any information. And absent that
9 information there's inform way you can draw any
10 conclusions about the you know the comp bilt of the
11 distributions of those responses with a unit of time
12 versus those without a unit of time.

13 **Q. Assume hypothetically that in response to a
14 particular question regarding biodegradation time,
15 the number of one year responses and I'm this is an
16 assumption is 10 percent. Further assume that the
17 number of responses that is just one is also
18 10 percent. Is it your contention that no
19 inferences can be drawn from that data?**

20 A. No because the one, the one could refer to
21 any unit of time and in fact it may refer to for
22 different respondents it may refer to different
23 units of time. So there's there's nothing you can
24 really do with that data.

25 **Q. You're aware that ECM is asserting a**

1 **sophisticated customer defense are you not?**

2 A. I I don't know what they're asserting but I
3 certainly had that conversation with them about
4 sophisticated customers yes.

5 **Q. Do you understand that ECM to be arguing in
6 this case that it could not have deceived it's
7 customers in part because they are sophisticated?**

8 A. Again I have not been privy to all of the
9 pleadings and legal arguments in the case but it's
10 my understanding that that is a part of their
11 contention yes.

12 **Q. Do you also understand ECM to be arguing in
13 this case that it could not have deceived and used
14 consumers because they're unsophisticated?**

15 A. I'm I'm less aware of that that particular
16 argument. I don't know what the I don't know what
17 the nature of that argument would be other than if
18 people are completely unaware of the meaning of
19 something they can't use it. But I -- I don't have
20 any real information to address that.

21 **Q. Well let's assume that is in fact the
22 argument. That because people are unsophisticated
23 they're not aware of what biodegradation means and
24 therefore they can't be deceived do you understand
25 that ECM is asserting that position?**

1 A. I I've certainly had that conversation with
2 them again I don't know exactly what they're
3 asserting, I mean as I said I'm not privy to all of
4 the legal arguments in the case. I mean I I'm aware
5 that there there is that point of view.

6 **Q. So there is the point of view that ECM could
7 not have deceived and used customers because they
8 are unsophisticated?**

9 A. Yes I don't know what the legal argument is
10 but I do understand the consumer behavior argument
11 yes.

12 **Q. Let's back up for a moment. We were talking
13 before about the circumstance where people gave
14 units without a measure of time versus units and a
15 measure of time. Do you recall that conversation
16 just a few minutes ago?**

17 A. I do.

18 **Q. And you indicated that there was nothing
19 useful that could be accomplished or inferred from
20 the data where people gave only units?**

21 A. That's correct well only numbers not units.

22 **Q. Only numbers, that's what I mean. Let's say
23 I want you to assume that people 10 percent of
24 people gave as a response 30 days, so it's an it's a
25 number and a measure of time. And approximately**

1 **10 percent of people just said 30. Is it a**

2 **reasonable inference that the people who just said
3 30 meant 30 days?**

4 A. No it's not a reasonable inference. 30
5 could refer to 30 years. You know so there's you
6 know possibly some meant that but some didn't and
7 you don't know so you really can't use the data.

8 **Q. If it were the case and we've pointed I've
9 pointed to one and 30 but there's obviously a number
10 of different numbers and combinations that I could
11 point to that the overall distribution of numbers
12 and units provided is similar to the overall
13 distribution of numbers provided. Is it at that
14 point a reasonable inference that the views with
15 respect top biodegradation time are same in both
16 categories?**

17 A. No.

18 **Q. Why not?**

19 A. Because you're mixing apples and oranges.
20 So what that the distributions are the same or
21 similar? That tells you nothing about the what the
22 responses really mean. The distributions could be
23 very similar. But it could be because whatever the
24 number is is a mixture of of you know 30 days, 30
25 weeks, 30 years, and it comes out you know the same

1 as people who said who said 30 years let's say. You
2 know the distributions are constructed from
3 completely different responses of the again there's
4 nothing that you can do with data that lacks a unit
5 identifier.

6 **Q. Let assume that you're absolutely correct
7 that for one particular number you can't draw any
8 inferences. I'm unclear as to why if the overall
9 distribution of all numbers in both categories is
10 approximately the same you can't draw an inference
11 from that?**

12 A. Well now you've lost me. I don't I don't I
13 don't even know now what distribution we're talking
14 about. I don't know what you mean by all numbers.

15 **Q. Well there are a number of number that's are
16 given that are associated with units, units of time
17 correct?**

18 A. That's correct.

19 **Q. I'm making this up it to make it easier one
20 two three four five six seven.**

21 A. Mm-hmm.

22 **Q. And then there are a number of numbers that
23 are begin without numbers of time one two three four
24 five six seven, in the second category. Okay. Even
25 if it's the case that you can't draw an inference**

1 because the ones in the first category happen to be
2 roughly the same percentage as the number of ones in
3 the second category, why does that mean that you
4 cannot draw an inference from the fact that the
5 overall distribution of all of the numbers is
6 approximately the same?

7 A. Because you don't have, you don't have
8 adequate information to to determine what that
9 actually means. I can do two random draws from a
10 distribution that will very closely match one
11 another just just based on chance alone. That
12 doesn't mean I mean that doesn't mean anything other
13 than you know there's some laws of probability at
14 work. You have, you have no basis for placing any
15 interpretation on those units, on those numbers that
16 are not identified by units.

17 **Q. If I understand you correctly and I'm sure**
18 **you'll correct me if I've got this wrong, is that**
19 **one possibility, you seem to be excluding the**
20 **possibility that that the views with respect to**
21 **biodegradation time in both categories are are the**
22 **same. Are you excluding that possibility? It is**
23 **possible isn't it?**

24 A. Well negligent is possible. I'm not
25 excluding that.

1 have, copies of the reports that I got on the
2 progress of the survey.

3 **Q. Before I continue and I apologize, Mr. Hour**
4 **balk, you had mentioned that you were going to**
5 **produce the copy of the customer list that was**
6 **provided to Dr. Stewart correct?**

7 MR. AWERBUCH: Actually I'm glad you brought
8 it up counsel. We confirmed that we did provide all
9 lists that we provided to Dr. Stewart in our three
10 three one production.

11 MR. COHEN: Okay I'm not sure that that's
12 the case.

13 MR. AWERBUCH: To the best of our knowledge
14 of course but we did confirm, as Dr. Stewart
15 testified there were two ways, and we have
16 identified both lists that were sent to you. The
17 original and the condensed one.

18 **Q. And it's possible from the information you**
19 **provided to determine which manufacturers were**
20 **spoken to?**

21 MR. AWERBUCH: I don't know that that's
22 possible or not.

23 MR. COHEN: So if additional information is
24 necessary you'll provide that to us.

25 MR. AWERBUCH: We can discuss that.

1 **Q. You're saying it's not proven?**

2 A. It's not proven.

3 **Q. And the reason that it's not proven if I**
4 **understood you correctly, is that it could occur by**
5 **chance?**

6 A. It certainly could occur by chance yes.

7 **Q. And is there another reason other than it**
8 **occurs by chance, it occurs because the fact the**
9 **views are the same. Is there a third thing out**
10 **there a third consideration?**

11 A. No. I mean the most, the most logical
12 explanation would be that it's a chance occurrence
13 and you know you really can't draw any inferences
14 from it.

15 **Q. Were there any emails writings or other**
16 **written communications of any sort between you and**
17 **the survey research firm CSRS, that conducted your**
18 **studies?**

19 A. Not very many. If if there were, there
20 probably was one with some some cost estimates for
21 the the pilots and the surveys, and I -- I would
22 have communicated to them a draft of the
23 questionnaire and in the case of the manufacturers
24 pilot I would have sent him a copy of the customer
25 list and then of course you have reports that I

1 THE WITNESS: Well I can tell you that they
2 don't know. I don't know. And that's because I
3 have an obligation to maintain the confidentiality
4 of the respondents and so there's simply no way that
5 I can share information on who was spoken to
6 specifically .

7 BY MR. COHEN:

8 **Q. So if I understand correctly Emord and**
9 **associates may have produced to us a less of**
10 **companies identified by number but we complaint**
11 **counsel have no ability to match those up with any**
12 **names of any companies that's your understanding**
13 **Dr. Stewart?**

14 A. Well, no. I what I'm telling you is that
15 the identities of the are individuals who
16 participated in the pilot are simply not going to be
17 available to you.

18 **Q. And to whom are these available? To you?**

19 A. I don't even know.

20 **Q. They're available to someone under your**
21 **control?**

22 A. Potentially yes.

23 **Q. Are they available to Emord and associate**
24 **does no?**

25 **Q. So Emord and associates would not have**

1 **produced them to us?**

2 A. No they would have produced the list what
3 I'm telling you is the identity of the specific
4 respondents in a manufacturers pilot they would not
5 know. I don't know actually.

6 **Q. You do understand that giving us a number
7 like a code case I.D. zero zero zero zero one
8 doesn't actually enable us to learn anything about
9 that survey respondent correct. You know exactly
10 what the survey respondent said?**

11 **Q. But it doesn't enable us to tell who the
12 survey respondent was?**

13 A. That's exactly right.

14 **Q. So to the extent this is what he board and
15 sorts produce to us we don't know who the survey
16 respondents are correct?**

17 A. No and let's be clear what they puced to us
18 are the lists that represented the sampling frame
19 for the manufacturers pilot. I was very careful to
20 assure that no individual was identified by name.

21 **Q. So complaint counsel based on information
22 that has been produced to us to date cannot identify
23 the manufacturers or the persons that participated
24 in the manufacturers say correct?**

25 A. That is correct.

1 **Q. Who directly paid California survey research
2 services or CSRV, to conduct the field work
3 associated with the surveys?**

4 A. I I don't know whether it was the client or
5 the attorney. I believe the the invoice, my
6 instructions were to send the instruction to e board
7 but I don't know who cut the check.

8 **Q. For who are is the contract with the work
9 with CSarrive Swith one party who is the counter
10 party?**

11 A. Women the billing would have been sent to he
12 board.

13 **Q. The billing was sent to he board but who was
14 the counter party to the contract?**

15 A. Well there was no written contract with the
16 survey research company.

17 **Q. Is it typical for there not to be a written
18 contract with the survey research common?**

19 A. It's very common particularly when I'm
20 working with attorneys.

21 **Q. And why when you're working with attorneys
22 is it very common for there not to be a written
23 contract?**

24 A. Because attorneys manage their time so
25 poorly that there's not time to get contracts done.

1 I -- I often have to do surveys on very very short
2 notice. There's simply not time to go through the
3 nice tis of developing a contract. So there's a
4 great deal that gets done basically on the
5 telephonic handshake.

6 **Q. What's your understanding as to why CSRS is
7 willing to undertake a then thousand dollar un
8 taking without a written contract?**

9 A. Because I have a relationship with them.

10 **Q. If we assume that ECM biofilms paid CSRS,
11 then CSRS knew for whom it was conducting the
12 surveys correct?**

13 A. Well the president or the accounting people
14 would ultimately have known. That's true. The
15 people who performed the work would not have known.

16 **Q. And you would have given me the same answer
17 if Emord and associates paid CSRS. The president
18 and accounting people might know for whom the work
19 was being done but not the the researchers and
20 supervisors correct?**

21 A. That's correct.

22 **Q. What if a researcher or supervisor simply
23 typed in the marketing claim from question five B in
24 Exhibit 2 into a search engine he?**

25 A. I don't know what would transpire.

1 **Q. If ECM biofilms would have popped up that
2 would have given the survey researcher an indication
3 as to who was sponsoring the survey correct?**

4 A. Sure and if they had run into somebody in
5 an airport and overheard a conversation that might
6 have happened too. It's unlikely but anything is
7 possible.

8 **Q. Has CSRS always been known by that name?**

9 A. At one time they were simple landfill
10 California survey research ink and I think they have
11 changed their name, I don't know exactly when but to
12 California survey research services Inc.

13 **Q. Does CSRS have any corporate affiliates?**

14 A. Not to my knowledge.

15 **Q. What is the total number of surveys you've
16 conducted through CSRS and any predecessors to SCRS?**

17 A. I don't know over 20 years several dozen.

18 **Q. What's the total amount paid to CSRS and any
19 predecessors for those surveys?**

20 A. I haven't got a clue.

21 **Q. Is it more than five hundred thousand
22 dollars?**

23 A. Probably is.

24 **Q. Is it more than a million?**

25 A. I -- I really don't know.

1 **Q. Is that in the range?**

2 A. I doubt that it's quite that high, but it it
3 could be over a half a million yes. And I'm going
4 to need to take another break.

5 MR. COHEN: That's fine and I'm sympathetic
6 to that we'll go off the record.

7 (Recess)

8 MR. COHEN: Let's go back on the record.

9 BY MR. COHEN:

10 **Q. Do you have any surveys under way with CSRS**
11 **now?**

12 A. I have nothing nothing that's active at the
13 moment. I have some discussions of potential
14 surveys but no, no active projects.

15 **Q. Is there any survey research withdrawn is**
16 **there any research including survey research that**
17 **you conducted for ECM or in any way related to this**
18 **litigation that has not been disclosed to the FTC?**

19 A. No.

20 **Q. You're being paid \$750 an hour for your work**
21 **in this case correct?**

22 A. I am.

23 **Q. What's the total amount that you've received**
24 **so far?**

25 A. I've received one payment of about 64

1 hundred dollars so far.

2 **Q. Is there a contract between I'm sorry from**
3 **whom did you receive that payment?**

4 A. I believe from ECM.

5 **Q. Is there a contract between you and Emord**
6 **and associates regarding this case?**

7 A. I have a letter of the engagement from he
8 board.

9 **Q. And did ECM also sign that letter of the**
10 **engagement?**

11 A. I don't believe so.

12 **Q. Have you received any payment for your work**
13 **in this case from any source other than ECM?**

14 A. No, I have not.

15 **Q. Other than your travel to and physical**
16 **presence at today's deposition, have you completed**
17 **any work in on this matter for which you have not**
18 **yet been paid?**

19 A. Oh, yes.

20 **Q. And what is the total amount owed?**

21 A. Not counting today?

22 **Q. Not counting today.**

23 A. Not counting today probably going to be on
24 the order of 30 thousand dollars or so.

25 **Q. And it's going to be if we assume ten hours**

1 **or so for today is that a reasonable ballpark**
2 **estimate?**

3 A. Close enough. Yeah.

4 **Q. Yeah. So then that would add another 7500?**

5 A. Yeah. Mm-hmm.

6 **Q. So the outstanding balance as we sit here**
7 **today again this I understand is an approximation is**
8 **about \$37,500?**

9 A. That's probably close yeah.

10 **Q. What did you do to prepare for today's**
11 **deposition?**

12 A. I reread my report, I spent some time with
13 Dr. Fredericks report, I had a brief conversation on
14 Friday with counsel. And that's pretty much it.

15 **Q. Without explaining the substance of the**
16 **conversation, who was on the call?**

17 A. Eric was on the call and another attorney
18 who was was it John -- I can't I can't remeber.

19 **Q. Could it have been Jonathan Emord?**

20 A. Could be yeah.

21 **Q. How many times have you testified as an**
22 **expert at trial?**

23 A. I haven't made a specific count recently but
24 over 25 years probably two dozen times or so.

25 **Q. How many times have you testified as an**

1 **expert in a deposition?**

2 A. That's probably probably 70 or 80 times.

3 **Q. In how many different cases have you**
4 **testified as an expert so in I'm looking for total**
5 **number of cases even if there were multiple**
6 **depositions and trial testimony.**

7 A. I don't know. Probably probably less than a
8 hundred but more than 90. I don't I don't I haven't
9 done a recent count.

10 **Q. Between 90 and a hundred is a fair**
11 **statement?**

12 A. Over the last 25 years probably yes.

13 **Q. If you go back even further would the number**
14 **increase?**

15 A. No my first first work I did for as an
16 expert witness was actually for the FTC in 1988.

17 **Q. I'm familiar with the craft litigation. How**
18 **many expert reports have you prepared?**

19 A. For litigation or or.

20 **Q. For litigation in any way connected to**
21 **litigation?**

22 A. I don't know, it would probably be close to
23 the same number of times I've testified. Because
24 I've prepared report where I didn't testify and I
25 have testified where I didn't actually do a form at

1 report but probably 90 to a hundred.

2 **Q. What's the total amount approximately that**
3 **you've been paid as an expert over the course of**
4 **your life?**

5 A. I wouldn't even know where to begin and I
6 assume you're using expert there to refer to.

7 **Q. Litigation expert?**

8 A. Litigation expert. I -- I would not, I
9 wouldn't even know.

10 **Q. Would it be more than a million dollars?**

11 A. It could be.

12 **Q. What's the total amount approximately that**
13 **you've been paid as an expert over the past ten**
14 **years?**

15 A. Again I I have not computation of that.
16 It's probably several hundred thousand dollars.

17 **Q. What about over the past five years?**

18 A. Again probably probably be it would be
19 probably several hundred thousand dollars.

20 **Q. So over the past five years is several**
21 **hundred thousand dollars and over the past ten years**
22 **it would necessarily be a greater number?**

23 A. It would be a greater number although I did
24 less expert witness work for a while and I now
25 started doing more so there wouldn't be that much in

1 A. I believe I read it as a part of this case.

2 **Q. And why was it significant to you?**

3 A. It was sent to me by counsel apparently it
4 was produced by Dr. Shane -- Dr. Frederick, and
5 beyond that I'm not I'm not otherwise sure why it
6 was shared with me.

7 **Q. Let me direct to you what I believe is**
8 **page 5 and in the left column very far down last**
9 **sentence, in middle it states we were curious**
10 **whether the marginally significant repulsion affect**
11 **we obtained would replicate so we reran the study**
12 **using Google surveys which enable us to obtain very**
13 **large samples quickly did I read that correctly?**

14 A. You did.

15 **Q. And then if you flip to the next page under**
16 **three B on the column on the left side I guess it's**
17 **the second paragraph under the three B results and**
18 **discussion, it states the adjusted data replicate**
19 **one aspect of the prior study. We found significant**
20 **attraction effects when quality was represented**
21 **numerically -- and then there's some numbers but no**
22 **effect when the quality was represented visually.**
23 **We did not find further evidence of a repulsion**
24 **effect. Did I read that correctly?**

25 A. Yes you did.

1 the five to ten year period.

2 **Q. So going back ten years would four to five**
3 **hundred thousand dollars be a reasonable**
4 **approximation?**

5 A. Probably a reasonable approximation.

6 **Q. Over the past five years what percentage of**
7 **your professional time has been spent on litigation**
8 **related activities?**

9 A. Probably 20, maybe 20 percent.

10 **Q. Over the past five years what percentage of**
11 **your income has come from litigation related**
12 **activities?**

13 A. Again probably be in the vicinity of 25
14 percent.

15 **Q. Let's mark an article called limits of**
16 **attraction as Stewart 12. Provide a copy to**
17 **everyone. Fish out my own copy.**

18 **Dr. Stewart have you seen this article**
19 **before?**

20 A. I have.

21 **Q. Have you reviewed this article?**

22 A. I did read it briefly yes.

23 **Q. Did you read it briefly as part of your**
24 **activity related to this case or did you read it**
25 **briefly as part of your academic activities?**

1 **Q. Do you understand the authors of this study**
2 **to be saying that a portion of their prior work not**
3 **done on Google surveys was replicated on Google**
4 **surveys?**

5 A. I do understand that.

6 **Q. Do you have any other opinions about this**
7 **article?**

8 A. I think they had the good judgment to sight
9 my prior work in it.

10 **Q. Other than that?**

11 A. No that's all.

12 **Q. Let's go to and I may have lost track here**
13 **so I apologize. But was I believe if you call back**
14 **Exhibit 2 which should be the data excuse me the**
15 **screen shots from your original survey. And then**
16 **Exhibit 7 I think which is summary of our responses**
17 **so I've got exhibit 7. Let me see if I can find**
18 **those screen shots and let me know when you've**
19 **caught up. I apologize for all the shoveling of the**
20 **paper?**

21 A. I think I have them both here yes.

22 **Q. Okay. Let's I direct you to question five A**
23 **in Exhibit 2 and I'm not going to read the whole**
24 **thing but one of the claims that's in the that's**
25 **articulated or the claim the primary claim that's**

1 articulated to survey respondents is it's in bold I
2 won't scream it but transform any plastic into
3 biodegradable plastic exclamation point dot dot dot
4 the revolutionary added technology when combined as
5 a one percent load to the most widely used plastic
6 resins renders the finished products, plastic
7 products biodegradable while maintaining their
8 other desired characteristics. The potential uses
9 of this technology are only limited by the
10 imagination. Did you read that correctly?

11 A. You did.

12 **Q. And did you draft that paraphrase of ECMs
13 claims?**

14 A. Yes, I did.

15 **Q. What's one percent load rate mean?**

16 A. I don't really know it's simply a claim that
17 I took from claims that it has been represented to
18 me that ECM has used.

19 **Q. How did you expect consumers to understand
20 what one percent load meant?**

21 A. I didn't actually. I was interested in how
22 consumers would respond to what is clearly very
23 technical information.

24 **Q. The same could be said about widely used
25 plastic resins do you understand consumers have**

1 these claims may have been picked up and transmitted
2 to end user customers and if that were the case I
3 wanted to see how end user customers would respond.

4 **Q. If I understood you correct. So attorneys
5 told you that end use customers might have seen
6 claims involving one percent loads?**

7 A. Well they didn't tell me that specifically,
8 they simply indicated that some of the claims may
9 have been picked up and passed on through some of
10 their customers to end user customers. So what I
11 was trying to do was to simply pick some some
12 different but representative claims to see how end
13 user customers would respond if in fact they were
14 exposed to these claims.

15 **Q. You would agree with me would you not, that
16 it's -- the results of question five A are not
17 particularly illuminating if in fact no end use
18 consumers saw any claim like this?**

19 A. It would not be illuminating if no end use
20 consumers saw a claim like this and would not see a
21 claim like this in the future.

22 **Q. Let's take a look at question five C.
23 Plastic products made with ECM additives. And then
24 it goes on.**

25 A. Mm-hmm.

1 general understanding as to what plastic resins
2 are?

3 A. Yes again I selected three statements and I
4 did so because I thought they represented quite
5 different types of claims. This one was selected
6 because it's a very in my view a very technical
7 claim the others are not so technical, they are
8 fairly straight forward, one one offers a number of
9 different benefits but I selected them principal
10 apply because I thought they were they were quite,
11 quite different of but also represent, quite
12 different but also representative claims that ECM
13 hazardous waste used or at least it's been
14 represented to me that they used.

15 **Q. Do you know one way or the other whether any
16 end use consumer has ever seen marketing material on
17 ECM plastic that referred to a one percent load?**

18 A. I have no idea one way or the other.

19 **Q. Let's assume that the answer is no and there
20 are no such consumers, what would be the purpose of
21 asking question five A?**

22 A. Because I wanted to understand the effect
23 that this particular claim would have on the end end
24 user customers. In my conversations with the
25 attorneys that there was discussion that some of

1 **Q. Why did you choose this one to -- as one of
2 the three that you presented to the survey
3 respondents in your survey?**

4 A. Because I felt like it was making multiple
5 promises to the recipient and the original claim
6 actually had these bulleted and I wanted to I wanted
7 one that was kind of representative of multiple
8 promise points to see how people would respond.

9 **Q. Is it your opinion that consumers generally
10 understand what the word aerobically means?**

11 A. Actually we we had some respondents who did
12 know what the word meant. Do all consumers? No not
13 at all.

14 **Q. Could you characterize the percentage of
15 respondents who knew what the word aerobically
16 meant?**

17 A. I haven't attempted to do a count of people
18 who gave a response that suggested that they know
19 the meaning of this. I just recall that there were
20 such responses.

21 **Q. Aerobic is a technical term strength it?**

22 A. Yes it is.

23 **Q. Would it be fair to characterize the number
24 of respondents who appear to upside the word
25 aerobically as relatively small out of the overall**

1 **population of four hundred?**

2 A. I think that's a fair characterization.

3 **Q. Would you say the same thing with respect to**
4 **the word anaerobically?**

5 A. I would I would agree with that as well.

6 **Q. Help me understand what the purpose of**
7 **asking end use consumers who are unlikely to know**
8 **what the words anaerobeicly or aerobically mean why**
9 **is that helpful,?**

10 A. Because what we wanted to understand what I
11 wanted to understand was you know what people do
12 when they see this claim. They may not know what
13 these things mean people do all sorts of things with
14 terms they don't understand and I wanted to have an
15 understanding if people were exposed to these claims
16 what would they do with them, would it have any
17 material effect on on their understanding on their
18 their degree of skepticism, on their sense of
19 understanding.

20 **Q. Would you agree that if no significant**
21 **number of end use consumers ever saw a claim that**
22 **used the words anaerobically aerobically that the**
23 **results with respect to question five C, would not**
24 **be particularly illuminating?**

25 A. No I would not agree with that. I mean

1 A. Well depends on what you want to know. If
2 we, if we wanted to know consumers response to a
3 claim that's worded in that way obviously if we had
4 interested if how people respond to this claim which
5 is what I was interested in then we need to use this
6 language.

7 **Q. And explain again why were you interested if**
8 **why consumers how consumers understood either**
9 **anaerobically or aerobically in land fills?**

10 A. Well we we actually had some consumers as
11 I've mentioned who seem to understand what these
12 terms were. So to the extent that there are some
13 consumers, may not be many, at least who had an
14 understanding, that's helpful in understanding the
15 totality of the meaning that these terms provide in
16 the end user population.

17 **Q. The first phrase fully biodegradeed nine**
18 **months to five years that's an express claim**
19 **correct?**

20 MR. AWERBUCH: Objection.

21 THE WITNESS: Yes it is.

22 BY MR. COHEN:

23 **Q. Let's take a look at 5 B, plastic products**
24 **manufactured with our additives will biodegrade in**
25 **any biologically active environment including most**

1 quite illuminating in terms of what people might
2 interpret this this message to mean. You know they
3 may not understand these specific words but there's
4 still a claim here that is multi-dimensional and it
5 would make sense to to test this. I mean people
6 might very well for example, focus in on nine months
7 to five years when they don't understand the
8 anaerobic or aerobic terms. They might focus in on
9 landfills. So I think it's a perfectly reasonable
10 approach to trying to understand how end user
11 consumers who if exposed to this claim might give it
12 meaning.

13 **Q. Why not exchange the phrase anaerobe he**
14 **cannily or aerobically in landfills to simply say in**
15 **most landfills?**

16 A. I could have done that but that was not the
17 language that I saw in the claims.

18 **Q. Do you know whether the language that I'm**
19 **suggesting is much closer to what end use consumers**
20 **actually see?**

21 A. No, I don't. I don't know.

22 **Q. Assuming that it is much closer to the**
23 **language that end use consumers actually see, there**
24 **would be a benefit to asking the question that way**
25 **wouldn't there?**

1 **landfills in some period greater than a year. And**
2 **then I direct you to five B in the data set**
3 **obviously toward the back. I do understand**
4 **correctly that when presented with five B24 percent**
5 **of the respondents gave answers that were coded as**
6 **quote gone slash decomposed slash biodegrade in one**
7 **year?**

8 A. That's correct.

9 **Q. Is there any repair the court can rely on**
10 **that result?**

11 A. I think it's a very reliable result based on
12 the well constructed survey.

13 **Q. The gone slash decomposed slash biodegrade**
14 **in one year category is the first one listed on the**
15 **page that's not a trick question I just want to make**
16 **sure the next couple questions are clear. That's**
17 **the first one on the page?**

18 A. Yes it is.

19 **Q. Okay. Well there's a total sample at the**
20 **top?**

21 **Q. Yeah not counting the total sample it's the**
22 **first subcategory underneath total sample. Physical**
23 **a respondent answered question five B by stating**
24 **that the product would biodegrade in six months,**
25 **that response would have been coded in the first**

1 **subcategory here correct?**

2 A. No I don't believe so.

3 **Q. Why not?**

4 A. You know, because I think what we have here
5 are people who said it would biodegrade in one year.

6 **Q. In what category would someone who answered
7 five B by stating that the product would biodegrade
8 in six months have been classified?**

9 A. I'm not sure that we had such a response.
10 It's hobbler that if we had such a response it could
11 be in the other category, the other comments that
12 are on the next page.

13 **Q. So if I understand then gone slash decompose
14 slash biodegrade in one year is one year exactly?**

15 A. Well they would have said something that
16 mentioned a yearment it could have been a response
17 like gone decomposed in almost one year or little
18 over a year but generally the code would have
19 reflects some comment about one year. In contrast
20 to Dr. Frederick I did not attempt to do an
21 arithmetic transformation what I'm trying to report
22 here are categories of verbal responses that people
23 made.

24 **Q. So withdrawn. One year exactly almost a
25 year, a little more than a year would fall within**

1 **more than a year they would fall within that first
2 24 percent. How much further way from a year did
3 they need to be to fall into the second subcategory
4 which includes a longer than a year?**

5 A. No you're misunderstanding the nature of
6 this coding process. The coding process used the
7 verbal responses that people gave us. In stark
8 contrast to what Dr. Frederick did, we did not
9 attempt to interpret and transform responses into
10 into numeric values that the individual did not give
11 so if somebody said some products will take longer
12 they would fall in the category we're talking about.
13 If they said longer than a year, they would fall
14 into that category. You know I don't have a
15 recollection of what all 55 of the responses were
16 but I -- I doubt that there are very many very
17 specific numeric responses that are in here. Could
18 be wrong.

19 **Q. I'm not suggesting that you're wrong. The
20 so longer than a year means in effect people who
21 stated longer than a year without providing further
22 detail?**

23 A. That's correct.

24 **Q. So if the coders felt comfortable that the
25 respondent was close enough to a year so they said's**

1 **the 24 percent there?**

2 A. I believe that's correct employ based on
3 my recollection of the code.

4 **Q. If a respondent answered five B, by stating
5 that the product would biodegrade in ten years, that
6 response would have been coded in the second
7 subcategory which reads some products will take
8 longer slash longer to biodegrade slash longer than
9 a year correct?**

10 A. No. What this would suggest to me is that
11 no one gave that that response that what people gave
12 are responses that are summarized here, some
13 productions will take longer longer to buy, longer
14 than a year, again I did not do transformations of
15 data like Dr. Frederick did and what these represent
16 are classifications that summarize the verbal
17 responses that individuals had made. If somebody
18 had said ten years, we well a number of people had
19 said ten years it would probably have been a
20 category if and of itself. If only one person says
21 that it probably would have ended up in the other
22 comments.

23 **Q. Where I'm having a little bit of difficulty
24 you mentioned and I have no reason to disagree with
25 you if someone said almost a year a year a little**

1 **little more than a year, that would be someone who
2 would fall within the 24 percent whereas if they
3 simply stated longer than a year they would fall
4 within the 14 percent?**

5 A. Yes I believe that is correct.

6 **Q. Let's go back to your report. Page 9 the
7 first paragraph next to the last sentence. Denial
8 of factual information to consumers that is contrary
9 toer ownius briefs does not serve consumer welfare.
10 Did I read that correctly?**

11 A. Yes you did.

12 **Q. In what respect if any would adoption of
13 complaint counsel's position in this case mean
14 denying factual information to consumers that is
15 contrary to erroneous beliefs?**

16 MR. AWERBUCH: Objection.

17 THE WITNESS: To the extent that there is a
18 benefit to a consumer associated with a product that
19 differentiates that product from others in the
20 marketplace that product will only exist in the
21 marketplace if the marketer or manufacturer can in
22 fact communicate to consumers about that product.
23 You if people, if companies cannot communicate
24 advantage says or benefits of a product to the
25 marketplace, they have no incentive to innovate, no

1 incentive to develop new and innovative products
 2 that could genuinely offer real benefits to
 3 consumers. There's very nice piece that was
 4 published in the paper that was published in the
 5 journal of public policy and marketing that looked
 6 at this issue in the context of nutritional
 7 information. If I add one of the authors is a staff
 8 economist at the FTC but it important that companies
 9 have able to community advantages that they have
 10 relate to. Other companies in the marketplace it
 11 we're going to allow invasion to occur if we're
 12 going to encourage invasion and you know that
 13 invasion in turn can contribute to consumer welfare.
 14 BY MR. COHEN:

15 **Q. What is the factual information that you
 16 believe the FTC is proposing to deny to consumers?**

17 A. Well if in fact there is a real benefit
 18 associated with biofilm and I'm not I'm not a
 19 scientist so I can't evaluate that benefit but if
 20 there really is a benefit that causes plastic to
 21 biodegrade to break down faster relative to other
 22 alternatives, that's a real benefit. And that's
 23 something consumers I think would like to know. And
 24 I -- I and to the extent that the firm that offers
 25 that product is unable to communicate that, it has

1 no incentive to bring that beneficial product to the
 2 marketplace.
 3 **Q. I understand you're not an expert, you're
 4 not a polymer scientist you're not a microbiologist
 5 you're not a chemist and you have made -- you've
 6 been candid in not attempting to you know put forth
 7 those opinions. You would agree though if it's the
 8 case or I'll say assume it's the case that ECM
 9 additive does nothing at all. You're understanding
 10 that's the FTCs position. It may not be right
 11 automatic saying but that's the FTCs position. In
 12 that case would denial of information regarding the
 13 ECM additives alleged efficacy serve consumer
 14 welfare?**

15 A. If in fact the claim of the benefit is not
 16 is not factual, and really does do nothing, then
 17 clearly there's no service of consumer welfare
 18 associated with communicated that information to
 19 consumers.

20 **Q. So put differently, the policy prescription
 21 is that if the product is efficacious, then consumer
 22 welfare is served by allowing consumer to learn
 23 about the product; however if the product the
 24 products the claims made regarding the product are
 25 false then consumer welfare is not served?**

1 MR. AWERBUCH: Objection.

2 THE WITNESS: I would I would generally
 3 agree with that with that statement yes if something
 4 is false consumer welfare is not served by by
 5 communicating that false information to the
 6 consumer. It's only in in the case where there is
 7 an identifiable benefit an identifiable point of
 8 sport that can be communicated that consumer welfare
 9 would be served.

10 BY MR. COHEN:

11 **Q. So a tremendous amount much your views with
 12 respect to what is and is not good policy depends on
 13 the court and the commission and ultimately other
 14 reviewing authorities views as to whether or not the
 15 products claims are are substantiated correct?**

16 A. Well I would hope that they would not be
 17 based on the courts and the commissions views. I
 18 would hope that they would be based on good science.
 19 Which would be endorsed by the courts and the
 20 commission.

21 **Q. That's a fair way to put it?**

22 A. Yeah.

23 **Q. So your view with respect to policy really
 24 turns on the science?**

25 A. Yes.

1 **Q. Do you plan to do any additional work on
 2 this case before you testify it willy I withdraw do
 3 you intend to testify in this case?**

4 A. I do intend to testify on that case and and
 5 I -- I know of no additional work that I -- I will
 6 do between now and the time I testify.

7 **Q. Do you intend to testify about anything
 8 other than what your report contains?**

9 A. As I sit here now no, I do not.

10 **Q. Do you intend to offer any opinions other
 11 than those your report contains?**

12 A. There certainly will be no new opinions
 13 there may be elaboration on some of the opinions
 14 based on things that I've learned for example
 15 reading Dr. Fredericks deposition testimony but I
 16 think I've largely captured my general opinions
 17 about that in the report on so to the extent that
 18 there are some degree of new opinions that are
 19 offered they would be based on Dr. Fredericks
 20 deposition testimony.

21 A. Well that would, that and I mean I don't
 22 know what else I may be I may be asked to testify
 23 about I mean to the extent that you know there
 24 is additional information from Dr. Fredericks for
 25 example, I might need to address that.

1 **Q. Are your opinions in your report based on**
2 **anything other than your professional expertise and**
3 **the materials produced to complaint counsel?**

4 A. No. I believe that they're largely based on
5 my professional expertise and the imper cal survey
6 research that I've done.

7 **Q. Are there any fact says not disclosed to**
8 **complaint counsel at this time that are necessary to**
9 **understand the opinions that your report contains?**

10 A. I don't believe so.

11 **Q. Let's go off the record. It's five 13.**

12 **(Recess)**

13 MR. COHEN: Let's go back on the record and
14 I think we're on 13. I'm going to mark this will
15 document as Stewart 13 and provide copies to
16 everyone.

17 Just briefly Dr. Stewart what is this
18 document.

19 A. This would be a report on the progress of
20 the of manufacturers pilot that we did.

21 BY MR. COHEN:

22 **Q. And this report is dated May 20th correct?**

23 A. That's correct.

24 **Q. And that's a month before your expert report**
25 **is due in this case?**

1 number had been already contacted there would be in
2 the ballpark of a hundred 50 left to go?

3 A. Something like that yes.

4 **Q. And explain again why it was not possible to**
5 **complete a survey of a hundred 50 companies begin**
6 **the 30 days remaining before your expert report was**
7 **due?**

8 A. Because as I considered the difficulty of
9 getting these people on the telephone, it just
10 became clear to me that collecting a larger sample
11 in the time available was I mean we could have
12 certainly completed more interviews but we could not
13 have completed the full set of interviews that I
14 would like in the in the time that was available.

15 **Q. Why was it necessary to get all the way to a**
16 **hundred 58 if order to have completed the**
17 **manufacturers pilot study?**

18 A. Well I'm sorry. I mean this was the pilot
19 study. The the full study as I indicated earlier, I
20 would have preferred having at least a 25 percent
21 response rate. It didn't have to be everybody. But
22 I -- I wanted a larger portion of the available
23 sample in the main survey and these are people who
24 don't make a living sitting in their offices so
25 they're very difficult to track down. You know all

1 A. That's correct.

2 **Q. And what are the terms on the left side**
3 **resolved sample and available salve mean?**

4 A. We resolved sample simply means that the
5 sample, that portion of the sample has been used
6 either either an interview has been completed the
7 individual was for some reason not qualified, the
8 individual refused to participate but that would be
9 that would be no further call made to individuals in
10 resolved sample employ. Available sample would be
11 the numbers of people who were still available and
12 kind of active for calling purposes.

13 **Q. Why is the number two hundred or**
14 **approximately two hundred not anywhere on here?**

15 A. Two hundred was my my recollection of the
16 number of companies. I -- I can't tell you I mean
17 this is this is the number of companies that
18 apparently were on the list.

19 **Q. The number of companies apparently on the**
20 **list according to this appears to be 85?**

21 A. No no no it would have been the combination
22 of the 73 which is resolved.

23 **Q. I understand so it would be a hundred 58?**

24 A. That's correct.

25 **Q. Okay. And so not counting whatever small**

1 of the we spent 20 hours resolving the 73 here. And
2 I just made the the judgment that you know I didn't
3 think we were going to be able to complete
4 sufficient numbers in the time available. He
5 communicated that to the attorneys and we just
6 concluded that we wouldn't do any further research.

7 **Q. What is the sufficient number?**

8 A. Well I would like to have had about 25
9 percent but maybe 50.

10 **Q. 25 percent of the two hundred?**

11 A. Yes.

12 **Q. In order for it to be a successful pilot.**
13 **No not a pilot. In order for it to have been a**
14 **successful main survey. The?**

15 **Q. Awe. The pilot was a small?**

16 **Q. I withdraw the question I understand. 25**
17 **percent of the two hundred would be what was**
18 **necessary for you to complete basically transform**
19 **the pilot into a full scale survey?**

20 A. That was my my sense yes.

21 **Q. And you did not believe that it would have**
22 **been possible to obtain 50 response does in the**
23 **remaining 30 days?**

24 A. I based on what we learned in the pilot I
25 did not think it was going to be possible to

1 complete that complete the analysis, and and
2 incorporate the full results into my report. That's
3 correct.

4 **Q. How long was the pilot study going on? When
5 did the pilot study commence?**

6 A. I don't have a recollection of exactly when
7 we started. I think it was in late April early may.

8 **Q. So at this point it had been going on
9 somewhere between three weeks to maybe longer than
10 that?**

11 A. That's my recollection.

12 **Q. And did you evaluate what options might be
13 available to accelerate the response rate?**

14 A. Well, I did, I had a conversation with folks
15 at California survey research about what we might do
16 to accelerate but again one reason you do pilots is
17 you learn something about the people that you're
18 trying to survey, and these just turned out to be
19 people who were who are difficult to catch in the
20 office.

21 **Q. You never talked with Mr. Sin clear about
22 how you might be a better able to catch those people
23 in the office did you?**

24 A. I did not.

25 MR. COHEN: I pass the witness.

1 --o0o--
2 Please be advised I have read the foregoing
3 deposition, and I state there are:

4 (Check one)

5 NO CORRECTIONS
6 CORRECTIONS ATTACHED

7
8
9 DAVID STEWART, Ph.D.

10
11 Date Signed

12
13
14 --o0o--
15
16
17
18
19
20
21
22
23
24
25

1 MR. AWERBUCH: Yeah we have no further
2 questions just like to invoke Dr. Stewart's right to
3 read and sign.

4 MR. COHEN: We'll go off the record.
5 (The deposition was concluded at 5:26 p.m.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3 STATE OF CALIFORNIA)
) ss.
4 COUNTY OF LOS ANGELES)

5
6 I, DAVID STEWART, Ph.D., having appeared for
7 my deposition on July 1, 2014, do this date declare
8 under penalty of perjury that I have read the
9 foregoing deposition, I have made any corrections,
10 additions or deletions that I was desirous of making
11 in order to render the within transcript true and
12 correct.

13 IN WITNESS WHEREOF, I have hereunto
14 subscribed my name this day of ,
15 2014.
16
17
18
19
20
21
22
23
24
25

W I T N E S S

Draft Copy

1 REPORTER'S CERTIFICATE

2

3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby
5 certify;

6 That the foregoing proceedings were taken
7 before me at the time and place herein set forth;
8 that any witnesses in the foregoing proceedings,
9 prior to testifying, were placed under oath; that a
10 verbatim record of the proceedings was made by me
11 using machine shorthand, which was thereafter
12 transcribed under my direction; further, that the
13 foregoing is an accurate transcription thereof.

14 I further certify that I am neither
15 financially interested in the action, nor a relative
16 or employee of any attorney of any of the parties.

17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.

19

20 Dated:

21

22

23

24

CHRISTINA KIM-CAMPOS
25 CERTIFICATE NO. 12598

Draft Copy

A				
Aan 14:22	accept 43:4 73:13,17 147:12 159:12	actual 7:7 44:11 76:21 110:4,25 111:16,21,24	adoption 284:12	105:19 106:11
Aand 244:1	accepted 160:17 202:7 239:3 246:20 247:2	112:10,16 129:22 203:2	ads 128:2 140:12	108:25 109:2,5,7
ability 77:13 91:19 149:10,15,18,19 149:19,23 152:4 156:9 214:10 260:11	access 80:8,9,19 175:17 176:2,4,7 176:22 177:6 178:5,8 210:1 234:24	add 132:25 154:10 181:8 208:4 267:4 285:7	advance 28:17 86:18	110:1 111:21,24 112:11,17 115:8 152:7 153:23
able 9:25 28:13,17 81:24 117:11,12 148:5,6,12 176:2 178:8 224:12 239:20 249:2 285:9 292:3 293:22	accessible 177:7	added 204:21,23 207:21 273:4	advantage 58:18 243:20 284:24	aged 104:16 105:6 105:23 106:15 107:2,9 108:5 111:1,16,22 113:19 114:24
above-entitled 1:18	accessing 176:1 177:14	adding 132:18	advantages 285:9	ageded 110:5
absence 220:12,23	accompanied 139:24	addition 35:10 162:5 197:2	adverse 184:12	agent 203:3
absent 12:25 53:23 58:1 242:15 252:8	accomplish 235:6	additional 9:19,24 22:1 81:21 82:3 132:19 158:13 210:1 222:1 259:23 288:1,5,24	advertisement 128:19	agented 114:11
absolute 160:20	accomplished 254:19	additions 296:10	advertiser 125:3,15 126:7 128:1,21 129:3,5,12,18,25 130:4	ages 107:20
absolutely 30:9 106:3 111:13 112:3 149:18 181:1 211:21 256:6	account 174:23	additive 49:16 51:16 206:18,20 211:10 212:1,5 215:15 216:2,12,16 217:1 286:9	advertising 97:4,7 134:5 136:6 157:23	aggregate 117:18,19 231:20
abstract 222:24 243:21	accounting 263:13 263:18	additives 207:6 275:23 279:24 286:13	advice 155:9	ago 160:3 235:21 254:16
absurd 15:19 16:18 20:21 21:11 22:13 23:8,18,25 24:2,8 24:15,20 25:11,13 25:18 26:21 27:1,2 27:4,6,18,19 28:12 28:16 30:5,19,21 31:12 32:12,19 33:3 34:8 35:3 37:3,4,9,12 38:12 38:14,15 39:19,23 40:11,15 41:23,25 42:22 43:10 44:25 45:3	accurate 64:3,4 84:6 149:4 161:19 175:12 236:22 238:3,5,8 297:13	addresses 148:4 145:11 251:5	advised 295:2	agree 11:13,17 17:23 18:1 31:11 39:14 68:6 73:16 77:6 98:8 100:11 110:4,24 111:15 111:20 112:9 123:24 124:16 126:4 130:5,14 168:10 180:8,10 211:17,21 214:8 214:14 226:21 230:17 239:22 275:15 277:5,20 277:25 286:7 287:3
academic 59:25 136:23 270:25	accurately 26:22 236:24 238:10,12 238:14,17,21	addressed 82:8 145:11 251:5	advisory 155:7,8	agreed 186:2 208:8
academy 157:14,21 157:23	achieved 90:2,6	addresses 148:4	aerobic 276:21 278:8	agreeing 28:1,10
accelerate 293:13 293:16	act 11:21,25 12:2 59:7 98:11 135:3 223:6,14	addressing 145:10	aerobically 276:10 276:15,25 277:8 277:22 278:14 279:9	agreement 164:24 194:18,23
	acting 64:15	adequate 105:18 139:4,5,6,11 140:2 140:18 143:6 257:8	aerobically 276:10 276:15,25 277:8 277:22 278:14 279:9	ahead 6:3 22:1 61:18
	action 8:13 11:7 13:14 65:2 133:25 134:22 135:4,23 137:24 235:1 297:15	adequately 236:9 237:12	affect 72:1 108:8,15 108:22 109:11,19 110:2 239:25 271:10	ail 73:4
	actions 7:19 61:22 222:3,21	adjusted 271:18	affiliates 264:13	aim 217:21
	active 265:12,14 279:25 290:12	administrative 188:4	affirmatively 47:21 203:24 204:5	air 51:16
	activities 204:19 270:8,12,25	admit 41:12	African-American 100:16	airport 264:5
	activity 127:10 270:24	admittedly 172:13	African-Americans 99:16 100:23 101:4	alleged 53:17 286:13
		adopt 12:8 221:8	age 78:16,17 81:9 85:9 90:4,25 91:19 91:21 99:25 101:6 101:12 102:22 103:2,11,15	allegedly 87:12 164:12
		adopted 145:3		
		Adopting 44:4		

allow 149:25 285:11	119:4 143:9,23	77:24 83:12,20	274:10	arrive 88:22 246:4
allowed 245:15,16	144:7 161:7	84:24 89:8 146:16	applying 122:10	article 270:15,18,21
allowing 286:22	239:23 241:8	203:24 204:4	approach 45:20	272:7
alternative 71:9	247:22 293:1	210:12,13 211:22	46:21 69:24 100:8	articles 158:25
148:20	analytic 145:4	280:23 281:6	121:12 137:22	159:2
alternatives 285:22	analyzable 239:19	282:4	143:22 144:3,6	articulated 242:21
amalgam 126:1	analyze 239:2	answering 89:13	145:12 186:3	244:1 245:1
ambiguous 12:25	Angeles 1:15 2:15	140:13 225:16	278:10	272:25 273:1
ambiguously 73:13	3:8 5:1 132:1	229:12	appropriate 16:4	articulating 112:7
amended 193:17	296:4	answers 69:18 71:20	25:1 40:3 43:1	articulation 101:14
American 81:17,19	annoyance 170:2	72:1 76:6,12	45:14,23 46:1,4,21	ascertain 41:24 69:8
91:18 105:24	175:20	146:18 170:4	69:22 129:12	ascertained 75:7,10
106:6,25 107:1	annoyed 175:13	180:13 280:5	206:13 244:14	aside 101:4 124:1,2
110:5,25 111:3,16	177:11,20,25	anticipate 67:19	appropriately 93:21	145:7 179:16
111:22,25 112:10	annoys 170:5	anybody 168:9	248:16	180:18
113:19 114:24	answer 4:15 9:18,22	anytime 105:5	approve 32:1	asked 14:9 20:8,10
115:8 117:7 118:5	9:25 16:4 30:23	APCO 121:15	approve 75:16	36:1 37:17 38:25
121:7 127:21	58:24 59:24 60:2	123:15 186:4	approximately	39:3,4,8,9,10,14
147:9 157:22,23	62:11 63:19,22	ape 139:13 223:25	99:16,18,20 192:5	39:15,17 45:25
160:16 221:7	67:10,12 70:11,22	285:18	192:8 251:20	47:21 51:11 55:24
233:9,18	73:21,25 74:1,4	apologies 195:22	254:25 256:10	67:23,25 68:15
Americans 79:18,21	78:1 80:15,16 81:2	apologize 19:11	257:6 269:2,12	69:13 71:12 73:22
80:2,3,12,13,21,23	83:2,22,25,25	22:4 47:10 50:2	290:14	74:5 75:23 76:5
100:19 108:5,7,18	86:17,18,20 87:1	57:16 68:11 74:14	approximation	77:24 84:4 88:4
108:21 109:7	88:2 98:11 101:3	74:15 104:3 107:7	267:7 270:4,5	89:4 90:16 99:2,12
110:7,18 111:5,18	101:12 106:18	146:24 194:1	April 190:21,25	107:25 108:3
112:13 114:10	107:8 112:8 140:5	259:3 272:13,19	192:18 193:20	110:18,22 114:6
amount 44:2 70:2	142:5 148:9	apparently 29:24	194:5,8,9,9,12	116:16,24 121:8,9
70:16,25 127:6,10	159:15 168:25	213:7 246:14	196:8 293:7	121:16 123:12
172:18 212:11	172:4,6 176:11	271:3 290:18,19	arbitrary 8:23	138:20,23 139:10
219:24 238:23	177:24 178:7	appeal 151:12	area 92:15 136:6	139:12 141:23
245:21 264:18	179:23 190:12	appealing 151:18	156:23 213:9	142:3 143:4,8
265:23 266:20	194:2 199:15	appear 118:1	225:2	178:4 185:21,21
269:2,12 287:11	213:1 219:10	248:16 276:24	areas 156:25	185:23 188:20
anaerobe 278:13	222:23 224:6	appeared 159:17,19	arement 96:12	191:19 195:11
anaerobeicly 277:8	225:10 226:16,18	296:6	arer 24:17	199:16 201:9
anaerobic 278:8	227:2,8,11,13,16	appears 8:13 33:21	arguably 48:1	203:17,25 205:3
anaerobically 277:4	227:17,20,21	47:19 165:14	arguing 253:5,12	206:19 209:1
277:22 279:9	228:18 229:3,4,7	166:15,18 248:17	argument 253:16,17	227:8,20 228:16
analogize 8:11	229:10,15,16,18	290:20	253:22 254:9,10	229:3,16 230:20
analogous 8:1,4	229:19 230:21	append 7:11	arguments 253:9	232:1 241:23
analysis 45:13,20	231:15,16 236:16	appendises 7:11	254:4	242:16 243:2,21
92:3,7,20 95:7	242:14 245:3,4,12	appendix 241:3	arises 68:1	251:4 288:22
98:21 99:7 102:9	246:4 248:24	apples 240:6 255:19	arithmetic 46:23	asking 9:6 11:5
107:19 109:4,6	250:17 263:16	applied 48:25	281:21	17:20 29:16 38:19
113:25 114:8,9,17	274:19	applies 246:22	Arizona 3:12	59:9 69:9 71:4
115:12 118:25	answered 47:21	apply 13:11,13	arranged 197:9	73:19 83:3 96:14

100:7 101:10	157:22,23 160:16	assure 64:1 102:22	135:10,12 148:17	77:16,24 78:23
107:7 119:25	204:15	103:1,4,5 261:20	162:5 163:23	80:24 81:23 86:9
121:1 123:7 129:1	associations 218:11	ASTM 213:2,3,5,13	166:1,3,6 222:18	87:3,24 88:19
171:16 183:14	assume 9:4,9 10:6	213:19,22 214:17	239:9 260:17,18	89:11 90:20 94:13
191:6 207:12	27:24 35:13 37:7	214:19	260:20,23 290:3	96:1,10 101:9
236:13,16 241:11	37:17 53:11 55:24	Ato 76:5	290:10,11 291:11	110:9 111:6 112:2
241:19,21 244:5	62:14 73:9,19,22	ATTACHED 295:6	291:14,22 292:4	112:14,22 119:12
250:10 251:9	74:5 77:22 81:17	attempt 30:16 38:23	293:13	121:4,25 124:11
274:21 277:7	81:18 83:1,3 91:1	76:24 150:20	Avenue 3:3	124:20 125:20
278:24	108:18,20 118:12	281:20 283:9	average 75:1 178:15	126:12 127:22
asks 47:13 70:8	128:1,18,21 129:1	attempted 239:17	178:20 179:1	128:6 129:7 130:7
117:16 124:13	142:7 148:20	276:17	avoids 44:5	132:22 140:20
210:16 212:24	152:3 177:2,4	attempting 137:7,10	aware 11:9,12 61:11	143:21 145:18
aspect 12:16,17	181:19 198:15	141:12 142:14	63:25 117:4 138:3	151:13,24 152:21
271:19	209:8 210:2	215:17,19 250:1	140:12 144:22	153:15,25 156:18
asserting 252:25	213:12,15,22,24	286:6	151:7 161:3	161:5 167:23
253:2,25 254:3	214:19,21 221:6	attentive 76:10	169:18 173:7	169:4 171:13,16
assertion 96:20	221:11,16 223:1,4	attorney 51:2 262:5	174:9,12 175:1	180:14 187:17
assess 137:17	227:7,19 229:2,15	267:17 297:16	196:5 202:13	189:20 190:2,8
213:14,23 214:20	230:19 233:8	attorneys 50:25	211:25 217:7,12	191:4 192:23
assessed 130:2	236:4,14,19	52:12,19 123:20	217:16,24 223:10	193:2,3 205:10
assessing 141:19	251:19,22 252:13	185:15 186:2,8,9	235:10 245:6	218:12,22 219:9
167:1	252:16 253:21	186:11,14 188:21	247:23 248:1	221:3 240:1 259:7
assessment 161:20	254:23 256:6	189:2 196:13	252:25 253:15,23	259:13,21,25
211:19	263:10 266:25	197:6,21 219:23	254:4	279:20 284:16
assessments 66:22	269:6 274:19	262:20,21,24	awe 152:13 292:15	287:1 294:1
asset 170:5	286:8	274:25 275:4	AWERBUCH 3:10	a.m 1:20 2:16 5:2
assignment 6:20	assuming 79:24	292:5	8:3 9:17 11:16	131:2
123:12,17,20,22	152:25 159:2	attorney-client	12:9 13:8,20 17:25	
124:2,4 184:15,19	278:22	218:13	18:9 24:21 25:14	B
184:25 185:1,17	assumption 9:6,12	attraction 270:16	26:12 27:7 28:3	B 15:11 49:22 68:15
190:17 208:11	37:22 38:9 56:2	271:20	29:5 30:23 31:15	69:9,13 246:1
assistance 197:17	73:12,14,17,25	attributable 133:25	32:23 34:4,10,20	263:23 271:16,17
assisted 93:8	78:1,2 94:4,5,14	134:15 135:4,22	35:7,15 36:4,9	279:23 280:2,23
associate 260:23	95:6 183:17 221:8	Atwo 245:12	37:11 38:5 39:21	281:7 282:4
associated 60:7 88:2	221:9,14,20	August 194:17	42:1 43:12 44:16	back 7:12 13:25
120:20,23 154:23	227:11,12,22,24	author 160:18	45:17 46:6 48:7,16	36:14 47:3 48:20
256:16 262:3	228:16 229:5,18	164:18,22,25	49:12 51:3,8 52:5	63:19 68:10 70:1
284:18 285:18	230:24 231:1	165:1,6,13,15,17	53:5 54:8,15,22	72:11 83:7 94:23
286:18	232:1 236:7,15,20	165:19,21	55:17 56:4,17	97:4 104:19,20
associates 3:10	245:14 251:22	authorities 287:14	58:12,21 59:8	110:16 111:8
188:12,13,16	252:16	authors 173:10	60:17 61:7,14 62:6	112:5 129:21
189:18,25 192:6	assumptions 10:9	272:1 285:7	62:23 63:11 64:7	132:10,15 133:12
217:12 218:18	43:16 94:11 153:1	automated 246:25	65:12 66:13 67:3	138:15 157:9
260:9,25 263:17	153:4,5 177:8	automatic 286:11	67:11,21 69:16	166:10 172:3
266:6	213:17 214:1,3,23	available 117:2,3	70:6,12 72:9,25	184:14 185:7,16
association 85:3	215:10	118:3 119:3 128:7	75:17 76:8,22	195:9 198:11

210:15 211:13 220:16 222:25 226:20 254:12 265:8 268:13 270:2 272:13 280:3 284:6 289:13 background 48:23 186:12,15,15 197:15 198:1 backyard 242:9 bags 20:1 balance 93:5 267:6 balk 187:14 259:4 ballpark 181:16 221:8 267:1 291:2 BARBARA 3:6 barrel 240:6,8 barrier 177:18 183:5 barriers 177:13 base 8:1 239:8 based 7:19,25 8:11 8:15 13:12 36:22 40:6 41:11,11 55:15,20,21 56:15 59:25 60:14 64:5 73:25 74:25 75:15 78:1 85:9,13 97:9 102:20,21 109:3 116:23 117:1 124:25 128:4 140:5,6,10 154:20 159:12 169:17 171:21,24 172:16 174:16 179:5 200:14,24 215:10 228:24 233:19 245:4 249:14 257:11 261:21 280:11 282:2 287:17,18 288:14 288:19 289:1,4 292:24 baseline 72:19 143:1 bases 146:22 basic 48:12	basically 30:13 85:12 111:2 162:18 166:16 220:22 236:13 237:24 263:4 292:18 basis 7:22 8:24 10:4 11:3,8 13:14 51:24 55:24 59:13 74:18 96:20 140:4,13 144:17 145:8 159:5 164:20 169:19 171:14 172:5 238:9 244:17 245:3 257:14 batch 49:22,23 50:6 51:15 53:18 bck 100:3 BCM 138:22 bear 117:9 Becausewhat 277:10 Beck 171:11 173:15 began 79:14 173:7 204:5 beginning 37:20 38:10,21 169:25 184:24 185:13 186:24 194:16 209:12 begins 7:15 27:12 51:15 behalf 2:13 5:5,14 9:14 10:10 behaving 65:4 behavior 134:25 222:5 235:2,5,8,12 235:24 254:10 behavioral 134:5,10 beings 148:11 belief 10:14 24:11 25:6 54:24 55:2,21 55:25 58:9,18 59:6 60:20,21 61:1,6,12 64:15 65:1,2,6 94:19 125:1,2,12	125:18 126:16,19 133:24 134:15,21 134:22 135:3,22 144:17 164:20 169:17 183:3 222:3,5,10 238:9 beliefs 7:19,20,21,25 8:5,5,6,7,8,17,23 9:20 10:4,5,7,9,15 10:16,23,24 11:1,2 11:3 17:4 57:25 61:20 62:2,5 63:2 63:8,16,17 64:6 72:14,16 125:23 126:1,6,10,11 128:4 137:13 139:16 223:2 225:15 284:15 believe 5:23 6:6,7,10 8:15,19 9:5 10:25 12:10 13:13,15 14:11 21:23 23:15 23:18 24:12 29:8 29:22 33:7 36:21 37:13,24 39:7,22 43:2 44:24 47:9 49:17 50:13,25 52:10 53:2 54:16 57:16 59:13 60:12 64:1,10 68:11 69:4 70:23 74:10,17 75:8,13 76:14 77:20 86:24 87:6 89:1 90:22 97:22 97:24 101:19 104:14 106:13 108:16,17 113:6 116:15 118:17 119:4 129:9 130:16 132:15 139:5 140:11 147:23 155:14 156:15 164:17,19 165:14 167:12,13 169:16 171:8 174:25 180:24 181:2,4 182:6	184:13 193:21 194:6 195:24 197:22 200:7,11 201:19 206:22 211:2 217:16 218:3,4,8 220:11 227:25 228:17 231:2 232:2 234:13 239:20 240:20 241:22 244:15,22,23 245:12 246:1 262:5 266:4,11 271:1,7 272:13 281:2 282:2 284:5 285:16 289:4,10 292:21 believed 7:17 94:11 141:10 believes 17:6 beneficial 9:11 286:1 benefit 278:24 284:18 285:17,19 285:20,22 286:15 287:7 benefits 9:6 10:7 274:9 284:24 285:2 best 41:18 145:2 166:20 179:5 193:4 198:2 259:13 better 35:9 101:15 197:7 221:7 293:22 beyond 17:20 18:2 29:11 43:6,15 152:4 199:4 213:21 235:17 271:5 be's 150:3 bias 143:25 146:18 146:20 199:2,6 200:1,5 201:7 biased 235:13 biases 235:17	biassed 94:2 143:19 bicycle 242:6 billing 262:11,13 bilt 29:10 225:9 252:10 bio 14:19 48:24 52:20 53:4 137:4 143:3 biodegradability 38:20 65:21,25 68:22 69:6 119:20 120:2,3,11,16,21 120:25 121:12 122:4,15,22 123:3 123:7,13 124:7 181:6 197:11 210:17 212:24 213:14,24 214:21 215:20 216:8,21 222:19 243:16,23 biodegradable 47:22 66:5,11 67:2 88:15 91:8 98:23 108:7 138:25 142:9 243:1 biodegradation 33:21 34:7 36:23 37:8,20,21 38:10 38:11 39:15,18,25 42:21 45:1 47:5 48:2,5 50:5 66:23 71:11 72:6 75:25 76:5,16 77:5 121:17 180:12 181:10 214:5,12 214:25 223:3 227:9,20 229:3,17 230:20 250:10,12 251:24 252:14 253:23 255:15 257:21 biodegrade 29:10 65:18 66:5,12 67:2 68:18 69:1 70:4,17 71:1,18,19 77:13 119:8,17 121:21 122:19 123:10
--	---	--	--	---

161:10,11 192:12 203:2 205:24 220:19 226:3,13 239:15,16 245:3 248:15 249:4,5 250:25 268:3,5 catalog 245:11 catch 293:19,22 categorically 109:20 categories 101:12 103:2 105:19 117:18,19 151:4 181:14 251:7 255:16 256:9 257:21 281:22 categorize 151:16 151:17 category 45:3 84:18 116:17 117:5,7 118:1,6,10,22 251:10,15,20,21 251:23,25 256:24 257:1,3 280:14 281:6,11 282:20 283:12,14 caught 272:19 causal 142:13 causality 140:25 141:5 143:17 causation 137:1,2,7 137:11,17 cause 132:25 136:21 141:1,9 225:1 246:2 caused 160:12 causes 142:16 285:20 caveat 7:9 caveats 119:21 242:1 244:14 245:7 ceases 7:11 cement 184:16 census 117:3,9 Center 231:14 central 124:19 certain 7:6 37:25	38:3 44:2 60:7 121:15 128:16 136:12 137:13 138:4 153:2 161:1 172:15 210:6,8 211:7 224:9,19 225:5,15 248:17 certainly 14:12 16:13 18:15 20:24 24:8 28:19 31:16 38:2 45:11 46:8 53:8 54:23 55:1 71:21,23 72:3 76:9 89:13 91:6,13,15 100:14 106:18 112:15 119:3,13 124:12 125:23 136:8 140:21 141:1 143:9 144:12 153:5 154:20 155:22 156:24 158:5 159:4 198:16 200:2 201:9 224:2 224:3,11 246:1 250:25 253:3 254:1 258:6 288:12 291:12 certainty 89:14 149:24 153:17,22 154:14,14,15 160:20 161:14 168:15 176:23 225:6 CERTIFICATE 297:1,25 Certified 2:18 297:3 certify 297:5,14 cetera 205:1 chance 257:11 258:5 258:6,8,12 Chandler 3:12 change 35:1,6 53:13 54:1 60:2 153:7 185:18 228:23 changed 40:11 86:6 87:21 185:17	264:11 changes 194:3 changing 151:8 chapters 157:11 character 95:4 153:8 characteristic 57:11 145:14 152:23 153:10,13 characteristics 62:25 81:1,4 82:18 84:12,15 87:10,15 144:6 273:8 characterization 31:17 59:21 277:2 characterize 15:15 15:18 16:14,17 20:17,20 21:7,10 22:9,12 23:4,7,20 28:22 29:4 32:21 33:2 95:23 164:3 166:17 167:25 276:14,23 characterized 23:16 27:6 28:12,15,19 29:2 31:19 32:11 32:19 41:22 135:25 136:1 215:10 check 121:10,10,18 121:18 179:25 206:6 262:7 295:4 chemist 286:5 children 19:25 151:12,18,22 choice 176:8 choose 42:11 118:22 236:9 276:1 chose 236:5,6,13 chosen 232:12,17,18 233:8,16 CHRISTINA 2:18 297:24 CHUN 3:6 circumstance 38:13 39:20 109:25 140:15,17 254:13	circumstances 35:21,24 38:7 41:22 45:18 46:9 64:19 citation 170:15,19 citations 162:3 cite 162:2 claim 11:21 12:4 54:13,21 55:15,19 55:20 56:20,22 57:3,8,8,12 58:2,5 58:15 60:5,15 61:23 62:25 63:9 77:2 91:21 126:23 215:15,23,24 216:2,11,16,25 223:21,25 263:23 272:25,25 273:16 274:7,23 275:18 275:20,21 276:5 277:12,21 278:4 278:11 279:3,4,18 286:15 claims 11:11,24 50:21 51:10,11,17 51:20 52:2,4 53:23 69:18 72:5,20 73:3 73:7 200:9 215:18 216:6,20 272:24 273:13,17 274:5 274:12 275:1,6,8 275:12,14 277:15 278:17 286:24 287:15 clar 188:15 clarabout 203:9 clarification 32:5 clarify 37:2 129:6 129:19 130:1 207:23 classifications 282:16 classified 281:8 cleaner 19:25 clear 12:25 13:6 53:21 59:17 77:20 77:21 107:6	110:11 133:23 144:24 146:25 158:23 164:24 174:20 188:11 189:5 191:12 193:21 196:5,11 196:24 197:1,10 197:20,24 198:4 205:9 232:20,23 240:19 242:13 249:18 261:17 280:16 291:10 293:21 clearly 17:14 68:20 110:13 127:11,11 144:25 146:18 236:15 237:3 245:6 246:16 273:22 286:17 client 184:3 262:4 clients 123:19 197:16 close 32:9 80:4 103:5 161:10 163:7 219:18 267:3,9 268:22 283:25 closely 257:10 closer 143:10 278:19,22 clue 82:24 264:20 coats 49:17 code 25:24 26:14,16 29:11,15 30:2,7 40:21 42:5 43:14 44:4 45:15 46:4,13 144:24 146:17 180:17 237:1,2,23 249:5,20 250:5 261:7 281:18 282:3 codeable 46:17 coded 15:21 16:20 18:13,16,18,19 20:23 21:13 22:15 23:10 25:11,21 26:10 27:9 28:22
---	--	---	---	---

28:23 29:19 31:1 41:1 42:22 43:10 44:8,22 113:16 145:1 146:20 246:19 248:18,18 248:23 249:6,9,10 249:15 280:5,25 282:6 coder 42:8,13 248:21 coders 144:21 239:24 248:9,13 283:24 codes 92:16 coding 26:20 27:1,3 27:18 44:8,13 45:4 45:4,8,9,14 144:22 145:3 239:14 246:14 247:21 248:4,6,20 250:20 251:1 283:6,6 Cohen 3:3 4:3 5:10 5:13 8:9 9:23 11:18 12:19 13:17 13:23 18:12 25:7 26:2,18 27:10 28:8 29:13 31:10,21 33:1 34:6,14,25 35:12 36:7,10,13 37:15 38:8 40:8 42:18 43:20 44:18 45:24 46:10 48:9 48:19 49:20 51:6 51:13 52:7 53:10 54:11,19 55:4,23 56:8,25 58:16 59:3 59:15 61:3,10,17 62:12 63:5,18 64:16 65:15 66:16 67:9,18 68:4 69:25 70:9,14 72:22 73:8 75:20 76:11,25 77:19 78:3 79:6 81:3 82:1 86:23 87:8 88:12 89:3,16 94:18 96:4,17 101:13 104:20,24	110:16,21 111:8 111:10,12 112:4 112:18,24 119:14 121:14 122:6 124:15,23 125:25 126:21 127:25 128:9 129:14 130:12,23 132:9 133:2 141:6 144:1 146:1 151:19 152:2,24 153:19 154:7 157:2 161:21 168:4 169:10 171:14 172:1 180:22 187:18,20 189:23 190:4,11 191:5 193:1,10,11 205:16 219:6,13 221:5 225:20,21 240:18 259:11,23 260:7 265:5,8,9 279:22 285:14 287:10 289:13,21 293:25 294:4 cold 60:9,13 62:20 collaboration 186:2 collect 90:3 93:20 collected 68:1 108:11 141:9 208:15 239:3 251:8 collecting 74:20 291:10 collection 14:16 168:13 248:8 collector 247:25 248:4 collects 174:8 238:11,13,18 coloring 6:5,7 column 15:7 19:6 21:4,19 22:24 271:8,16 columns 163:20 combination 27:17 78:14 290:21	combinations 255:10 combined 273:4 come 6:14 44:1 52:9 58:10 78:7 125:18 125:22 126:10 157:24 175:14 181:24 225:3 270:11 comes 157:14 159:10 255:25 comfortable 225:16 283:24 commence 293:5 commencement 39:17 commencing 2:15 comment 185:22 281:19 comments 281:11 282:22 commission 1:2 2:2 3:3 5:15 12:7 97:19 287:13,20 commissions 287:17 common 45:20 90:2 117:17 118:9 199:5 200:15 203:13 262:18,19 262:22 communicate 36:17 154:25 155:2 284:22,23 285:25 communicated 13:16 72:21 154:22 218:8 219:2 258:22 286:18 287:8 292:5 communicating 243:18 287:5 communication 12:16,17 54:25 55:2,20 56:6,9,13 56:15,20 57:23 58:10 60:23 126:17 156:24	219:8,10,12,22 communications 72:18 195:4 196:4 196:7,23 197:20 222:22 258:16 communicator 161:23 community 159:18 161:20 166:1 168:19 169:6 171:20 285:9 comp 252:10 companies 10:8 188:20 190:5,24 191:1,10 192:5,11 192:14,17,19 193:18,22 201:1,3 202:2 207:10 209:22,25 210:2 260:10,12 284:23 285:8,10 290:16 290:17,19 291:5 company 9:11,21 10:2,15 50:14 52:13,14 75:11 190:6 191:16,17 191:18,19 192:9 192:14,21 207:10 262:16 compare 71:19 comparison 117:10 compensate 133:12 compensated 133:18 competitive 243:20 competitor 55:7 167:21 168:20,23 168:24 169:3,9,22 competitors 55:6,9 168:3 compilation 14:4 complaint 5:14 68:7 137:8 158:18 162:15 187:6,22 190:6,10 208:17 210:4 211:6,18 260:10 261:21	284:13 289:3,8 complete 35:17 40:4 41:16 68:17 198:16 199:11,24 211:2 220:1,3 226:16 245:11 291:5 292:3,18 293:1,1 completed 79:14 208:3 209:4 266:16 290:6 291:12,13,16 completely 39:11 43:18 45:7 82:9 182:1 215:6 240:16 253:18 256:3 completing 149:16 181:25 completion 37:21 38:11 39:18 183:20 184:7,10 comply 124:3 component 12:13 140:12 225:9 components 60:7 204:1 comprehensive 151:2 compromising 95:4 computation 40:13 40:24 41:11,13 42:6 269:15 computations 40:14 40:18 239:10 compute 45:12 computed 75:13 249:14 computer 93:8 CONCATTENA... 41:19 conceivable 91:10 228:3 conceivably 57:15 88:24 117:25 concept 123:13 134:6
--	--	--	--	---

concern 57:9 132:25 133:3	confirmed 259:8	consulting 136:24	32:22 33:3,20	contact 147:20
concerned 105:17	confronted 126:14	consume 24:16	41:21,24 42:21	191:17 220:3
concerns 166:2	126:23 128:3,19	154:24	48:10 55:12,16	230:3
184:11	177:11	consumer 14:9 17:7	56:3,14 58:20 60:4	contacted 194:15
conclude 13:2,5	confronting 183:3	23:1 24:10 32:12	60:12,15 62:16,19	220:6 291:1
81:20	confronts 77:3	33:12,24 34:7	63:16,25 64:2	contain 14:8 138:5,8
concluded 170:4	connected 32:8	36:21 37:7,17,19	65:10,16 66:10,22	209:22
220:10 292:6	268:20	37:24 38:9 42:24	66:25 68:23 69:2,8	contained 57:8
294:5	connection 33:6	43:2 47:20,25 48:3	71:11 72:5,7 74:12	161:24 189:25
concluding 2:16	connotation 206:15	48:14 54:12,20	76:15 77:11 78:20	190:23,25 192:8
conclusion 82:3	connotes 206:5	76:21 77:1,3 82:13	78:22 79:3,4 81:17	192:13
149:25 172:23	consider 13:18	111:3 119:10	81:20 88:14 89:7	container 85:6,16
conclusions 108:15	50:10 104:25	121:23 124:5	90:3 91:18,18	87:13
108:22 109:11,19	107:15,16 156:16	126:2,3,23 128:23	104:16 105:3,6,23	containing 14:24
110:2 171:12	168:2,5,19,24	134:24,25 136:11	105:24 106:2,4,6	164:8
252:10	169:8 180:20	136:12,14,18	106:15,25 107:1,9	contains 55:10
condensed 259:17	202:9 214:4,11,24	147:17 149:13,22	110:5 111:1,16,25	165:11 249:11
conduct 90:19,22	231:10 245:20	150:9,12,23	112:11 113:19	288:8,11 289:9
121:20 122:18	considerable 218:6	151:11 152:15	114:10,24 115:8	contaminate 69:18
123:8,10 124:9	considerably 213:25	154:23 155:13	117:7 118:5 119:6	contend 143:18
126:24 146:2,5	consideration	156:21 159:6,9,13	119:15 120:11	236:8 238:16
201:22 207:16	179:15 210:17	159:16,24 160:13	121:16,19 122:11	241:1 245:10
208:10 262:2	258:10	160:19,22 161:4	122:17 123:6	contending 25:13,15
conducted 79:8	considerations 37:4	162:8,21,24	124:18,24 125:4,6	137:14,15 144:2
81:18 92:3 95:7	considered 47:6	163:24 164:12	125:16,17 126:3,8	237:7,14
98:21 102:9	105:10 106:20	166:2 167:16,22	126:13 127:12,17	content 150:24
107:19 113:25	107:13 113:22	168:1,5,22 169:22	127:19,21 128:3	151:3,11 167:11
114:17 115:12	114:13,16 115:10	172:14 174:14	128:10,12,13,19	167:12 170:9,23
136:18 137:3,8	178:6 250:22,24	175:5,9,16,25	128:24 129:3,15	171:4 175:17,19
155:12,17,24,24	291:8	176:20 178:16,21	130:3,9 134:1	176:1,4,5,6,7,14
186:25 206:20,21	considers 168:22	185:3 215:18	138:4,7,20,24	176:22 177:7,15
206:24 207:14	169:3	218:7 224:19	140:6 141:10,15	177:17,21 178:5,9
246:11 258:17	consistent 43:18	234:11,15 235:12	141:20 142:16	178:13 216:22
264:16 265:17	45:7 99:25 101:6	235:20 236:7	147:9 168:14	230:3 234:24
conducting 263:11	186:3 239:23	237:15 238:10,16	178:11 185:4	247:11
conference 157:16	249:13	247:15 254:10	220:13 221:1,7,11	contention 17:7
confidence 93:21,25	consistently 239:15	274:16 284:9,18	221:17,22 222:17	58:7 134:13 135:2
226:17	249:6	285:13 286:13,17	223:2,11,14,21	135:20 139:3
confident 88:16	constitute 138:11	286:21,22,25	224:3,6,6 233:9,18	145:8 177:10
89:9,21 228:12,14	139:11 140:18	287:4,6,8	253:14 273:19,22	237:20 252:18
confidential 187:7	constituted 208:9	consumers 8:1,17	273:25 274:20	253:11
confidentiality	construct 208:7	8:19 9:5,10,15	275:18,20 276:9	context 25:20 32:5
187:23 188:7	constructed 41:18	10:6,11,13 11:2,14	276:12 277:7,21	34:13 38:24,25
194:18,23 260:3	93:11 149:12	11:19 15:15,18	278:11,19,23	39:16 42:9 43:1
confirm 167:20	150:12 172:19	16:14,17 17:11	279:2,8,8,10,13	46:8 72:13 97:6
259:14	175:15 256:2	20:17,20 21:7,10	284:8,14,22 285:3	120:23 122:11,23
	280:12	22:9,12 23:4,7	285:16,23 286:19	122:25 130:9

150:16 185:24 199:6 200:12 225:23 227:6 241:6 243:9,11 285:6 contin 119:22 continue 259:3 contract 262:8,14 262:15,18,23 263:3,8 266:2,5 contracts 262:25 contrary 194:5 284:8,15 contrast 26:15 150:11 241:18 281:19 283:8 contrasted 90:12 contribute 285:13 contributed 127:7 contributing 222:10 control 57:25 63:3 63:14 136:10,13 136:15,19,22,25 137:16,18,19 138:11,12 139:4,6 139:6,11,16 140:2 140:15,17,19,22 140:24 141:2 142:19 143:6,10 143:14 149:10 150:22 228:5 260:21 controlling 138:14 convenience 91:1,3 conversation 53:8 76:4 77:4 127:12 186:12 196:10,19 253:3 254:1,15 264:5 267:13,16 293:14 conversations 52:12 52:16,18 76:16 77:13 186:19 196:25 198:3 274:24 convert 18:20 29:10 converts 24:5 30:1	conveyed 71:25 cooperate 133:14 copies 14:2 113:3 158:14 159:2 259:1 289:15 copy 6:17 7:1 74:10 97:22 113:1 158:4 187:3,5,21 188:9 189:25 208:13 209:6 258:24 259:5 270:16,17 corn 33:15,24 34:2 corner 19:7 corporate 264:13 corporation 1:6 2:6 correct 10:21 11:15 12:3 13:3 14:20,21 15:21 16:20 18:2,4 18:8,14 20:23 21:13 22:15,23 23:10,15,22 24:20 25:9 27:2,4,14,15 27:20,21,23,24 31:14 33:22,25 34:1,3 36:25 44:6 44:14 46:2,3 47:23 47:24 48:5,8,15 50:8,9 53:2 57:6 58:8 59:7,17,18 65:8 68:8 69:10 70:11,13,18 71:8 72:2,24 74:24 75:3 77:5 78:5,6 80:23 81:7,8,10 83:11,13 83:14 84:10 87:19 87:20 89:10,22 91:9 93:1,2 94:8 95:17,25 98:1,2,12 99:10,13 100:13 100:16,17 101:19 101:22 102:7,8,17 103:19,20,23,24 104:1,7,8,10,11,13 104:14 106:12,13 106:21 113:13,14 113:17,18 116:25 120:9 121:17	123:14,22,23 124:10 125:8,9,14 125:19 128:5 129:6,20 134:6,11 134:12 136:15 138:9 139:16 140:19 143:15 144:15,16 146:11 146:12 152:23 153:14 156:15 164:7 165:11,12 167:18,19 169:24 173:3,21,24,25 180:13 181:7,20 186:21 187:24,25 188:9 189:8,9,17 190:3 191:8 192:7 192:22 199:17 201:5,6,17 202:23 204:2,3,6,7,11,22 205:9 208:15,16 210:10,14,23 211:10,11,20 212:1,24,25 215:12 217:10,15 218:2,3,20 221:2 224:14,20,21 225:17 226:16,19 227:10,13,16,17 227:21 229:4,7,8 229:10,18 230:21 231:25 234:19 249:22 250:13 251:6 254:21 256:6,17,18 257:18 259:6 261:9,16,24,25 263:12,20,21 264:3 265:21 275:4 279:19 280:8 281:1 282:2 282:9 283:23 284:5 287:15 289:22,23 290:1 290:24 293:3 296:12 corrections 295:5,6	296:9 correctly 7:23 13:4 15:5 16:10,12 19:3 21:5,21 23:2,21 24:19 25:9 26:23 33:18 37:1 47:16 49:1 51:17 54:13 58:7 63:6 83:8 129:17 132:18,21 134:2 141:16,17 147:6 152:19 153:20 170:10 175:25 187:1 191:2 195:16 203:22 209:19 210:20 212:13 213:3 214:17 215:7 234:18 242:19 243:25 257:17 258:4 260:8 271:13,24 273:10 280:4 284:10 correspond 139:10 corresponds 30:2 cost 128:24 174:13 175:3 258:20 couched 59:24 counsel 5:14 36:15 68:7 113:4 121:7 123:18,22 137:8 158:18 159:3 162:16 187:6,11 187:22 190:6,10 193:4 208:13,17 210:5 211:6,18 259:8 260:11 261:21 267:14 271:3 289:3,8 counsel's 284:13 count 48:11 117:23 163:1 239:17 267:23 268:9 276:17 counted 47:25 counter 262:9,14 counting 27:12	117:22 266:21,22 266:23 280:21 290:25 COUNTY 296:4 couple 19:2,12,19 19:19 20:16 21:5 23:1 52:16 57:2 155:3 187:16 191:15 192:11 193:12 280:16 coupled 243:11 couples 244:14 course 156:6 236:17 258:25 259:14 269:3 court 1:1 2:1 8:2 74:2 112:1,20 118:16 151:23 211:18 280:9 287:13 courts 287:17,19 craft 268:17 crafted 160:24 crafting 207:22 create 46:23 63:15 175:20 created 57:23 60:23 61:21 65:6 126:11 134:22 222:3 criteria 43:25 133:24 134:16,19 134:20 criterion 8:21 criticized 44:13 critiques 146:13 cry 64:17 CSarrive 262:9 CSR 2:18 CSRS 207:14,16 208:5 258:17 263:6,10,11,17 264:8,13,16,18 265:10 CSRV 262:2 cue 148:17 cup 180:2 curious 271:9
---	---	--	---	---

current 162:21	108:1,11,12,14,16	105:14 137:21	154:20 168:16,16	degrading 37:25
currently 155:15	108:25 114:7	139:14 156:22	203:11,18 204:14	38:4
160:14 163:23	116:14 117:2,3,3,9	222:13 263:4	204:17,20 205:23	degree 8:20 89:14
172:19 198:14	117:15,24 118:3	dealing 90:25	205:23 206:4,11	109:1 120:14
curriculum 155:9	118:19 119:3	125:11	248:17	124:25 143:24
158:22	141:9 142:4	deals 136:6 159:21	declare 296:7	153:17,21 154:14
customary 200:13	148:18 152:13,14	dealt 121:11 157:9	declined 83:22,25	154:15 168:15
customer 195:12	153:8 161:8 174:8	162:7	84:5	180:9 218:6
196:6 197:25	179:10,12 180:7	decades 93:19	decompose 14:20	222:20 277:18
198:8,24 199:22	181:14 208:15,20	decay 14:20 70:4,18	37:19 39:6,11,11	288:18
199:24 200:15,17	209:22 210:8,10	71:2	70:4,17 71:1	degrees 243:23
200:19,20 209:16	210:22 236:23	deceive 59:1,4	241:25 242:6,7,10	deletions 296:10
212:2,19 223:22	237:4,8,9,10,11,12	deceived 54:13,21	242:12 244:9	demographic 81:1,4
253:1 258:24	237:14 238:1,4,6,6	54:25 55:3,16,22	281:13	84:12,14 87:10,14
259:5	238:11,13,14,17	56:3,16 58:14,15	decomposed 215:6	148:25 231:17,22
customers 7:20	238:21,23,24	59:14 60:16,25	280:6,13 281:17	231:23,23
185:25 186:5,25	239:3,9,11,12,18	221:23,25 222:2	decomposition	demographically
189:7 198:13,17	239:23 240:3,12	253:6,13,24 254:7	212:12	80:22 81:19 228:1
198:19,22,23,25	240:13,16 246:18	deceiving 58:19	deem 87:11	231:3,5
199:4,8,10,12	247:23,25 248:4,5	December 194:20	deemed 40:11	demographics
200:8,10 201:18	248:7,8,23 249:4,6	deception 13:14	defense 187:11	105:20 107:5
201:21 202:15	249:7,9,10,15,16	57:24 58:11 61:25	253:1	112:17 228:10
210:9 211:9,25	249:20 250:21	62:22 64:6,12	define 61:8 123:19	231:14
212:22 215:14,23	251:8 252:5,19,24	130:6 133:24	128:1 212:24	demonstrably
216:1,11,15,25	254:20 255:7	134:10,14,17	233:1	122:10
253:4,7 254:7	256:4 271:18	135:2,17,21 136:2	defined 115:2 117:5	demonstrated 109:7
274:24 275:2,3,5	272:14 280:2	136:7 220:14,18	123:17,22 232:13	demonstrates 78:25
275:10,10,13	282:15	220:19 223:22,23	232:18,20,22	143:23
cut 262:7	date 159:16 261:22	224:2	233:7,9	demonstration
CV 158:5	295:11 296:7	deceptive 63:10	defining 102:2,3	57:22
cycle 34:23	297:17	72:5 134:5	definitely 200:16	denial 284:7 286:12
D	dated 289:22 297:20	deceptively 12:15	definition 12:23,24	denominator 237:22
D 4:1 213:22 214:19	220:9	decide 35:5 74:2,3	13:1 48:2 68:6	deny 138:4 285:16
245:12	David 2:13 4:3 5:4	76:17 88:23	109:21 127:11	denying 284:14
daily 74:18	132:4 295:9 296:6	decided 186:6 217:8	134:9 139:17	depend 109:12,16
dash 83:16 208:20	day 41:3,4 68:1	217:14,25	147:11 168:9,11	116:1 178:18
data 14:5,5,16 17:20	223:1 252:6	decides 184:3	183:13 232:15	231:6 232:7
18:3,4 24:12 26:17	296:14	decimal 99:18	233:10,12	depending 10:18
29:2,20 30:11 33:8	days 23:2,17,24 24:1	decision 27:1 29:15	definitive 160:6	37:4 98:11 115:2
40:4 41:11,13,14	24:6,19,23,24	42:12,16 55:21	242:14	115:24
41:15,17,19 42:13	25:10,12 29:1 41:8	91:7 177:11 203:1	definitively 116:8	depends 24:22
42:17 43:16,18,19	41:8 97:4 251:12	203:11 206:2,13	degradable 14:19	40:22 44:7 62:24
45:10,20 47:19	254:24 255:3,24	206:16,18 207:5	37:18 39:5 47:15	82:5,11 96:11
66:14 67:13 68:2	291:6 292:23	217:20 218:9	65:18	145:1 156:10
74:20,22 90:3	deadline 219:18,21	219:3,5 222:6	degradation 33:13	181:2,12 223:16
93:20 94:21 99:3,4	deal 66:18 105:12	223:25	degrade 142:24,25	223:16 229:13
		decisions 60:24 65:5	245:21	279:1 287:12

depose 190:6	285:1	275:12	disagreement 180:23	dissolution 33:21 34:8,12,15,19,23 36:22 37:8 47:6
deposed 5:15 190:10	developed 63:2	differentiates 284:19	disallow 46:24	dissolve 33:16 34:2 35:22,24 214:10
deposition 2:13 4:6 4:7,7,8,8,9,9,10,10 4:11,11,12,12,13 73:16 131:3 132:12 143:12 189:6 193:14 266:16 267:11 268:1 288:15,20 294:5 295:3 296:7 296:9	developing 263:3	differently 65:4,4 92:6 95:10 98:23 100:22 102:11 107:21 114:2,19 115:14 116:6,21 121:9 286:20	disclose 189:7	dissolves 33:14
depositions 268:6	development 149:21	difficult 13:2,5 43:24 128:13 141:4 158:9 232:16 250:16 291:25 293:19	disclosed 207:18 265:18 289:7	distortion 26:17 40:4
DeR 164:8	devices 80:7	difficult 13:2,5 43:24 128:13 141:4 158:9 232:16 250:16 291:25 293:19	discount 223:24	distribution 111:21 111:24 228:19,23 231:12 232:4 251:20 255:11,13 256:9,13 257:5,10
describe 175:7	dial 78:11	difficulty 62:9 112:7 141:22 177:16 240:9 282:23 291:8	discovery 167:14,17 167:21 169:2,11	distributions 252:11 255:20,22 256:2
described 23:16 143:5	dialed 78:5	digit 78:11,25	discuss 259:25	DISTRICT 1:1 2:1
describe's 185:23	diary 60:4	digital 155:5	discussed 41:21 100:15 132:16 197:25 222:25 223:7 224:10 246:17	disturbed 177:12
description 217:18 217:21 218:5,10 218:19,24	differ 81:6 139:21	diread 26:23	discusses 134:16	diverse 103:15
descriptive 136:23	difference 29:20 55:8 77:9 83:23 119:5 144:14 165:2	direct 7:13 14:25 16:7 18:25 23:14 33:9 47:9,12 48:22 51:14 68:14 97:23 113:11 135:14 146:23 161:25 163:14 271:7 272:22 280:2	discussing 32:1 129:24 185:15 186:9 193:16 196:7 225:22	diversity 219:1
design 71:17,22 123:13 124:13 139:13 140:23 143:8 186:20	differences 68:25 70:2,16,25 71:5 90:24 103:12 109:2,12,17,18 110:1 118:23 120:15,22 231:22 231:23 243:20	directed 22:4 123:6 171:7,8	discussion 36:12 65:25 130:24 134:9 162:21 167:15 176:24 185:24 201:19 271:18 274:25	document 14:24 50:10,11,16,20,22 50:24 74:9 113:4,8 135:10,17,20 178:10 289:15,18
designed 32:18 66:7 150:11 201:24	different 29:7 38:17 39:12 44:10 46:20 52:3 54:6 59:23 65:5 66:7 69:11 70:3,17 71:1,11,12 71:22 72:6,7 77:2 80:22 92:4 94:2,3 95:8 98:22 101:11 101:12 107:20 108:6,13,19 109:8 109:14,15 112:8 113:5 119:1 122:10 124:13,13 129:4 138:1 141:24 148:1 158:11 160:4 165:10 172:22 182:1,18 191:11 192:17 208:14 221:12,13 225:14 225:14 228:1,4,19 231:3,5 232:4 234:20,23 242:2 244:11 250:11 252:22,22 255:10 256:3 268:3 274:5 274:9,11,12	direction 146:19,21 176:25 226:24 227:1 297:12	discussions 265:13	documented 148:7
designing 53:21 199:5	different 29:7 38:17 39:12 44:10 46:20 52:3 54:6 59:23 65:5 66:7 69:11 70:3,17 71:1,11,12 71:22 72:6,7 77:2 80:22 92:4 94:2,3 95:8 98:22 101:11 101:12 107:20 108:6,13,19 109:8 109:14,15 112:8 113:5 119:1 122:10 124:13,13 129:4 138:1 141:24 148:1 158:11 160:4 165:10 172:22 182:1,18 191:11 192:17 208:14 221:12,13 225:14 225:14 228:1,4,19 231:3,5 232:4 234:20,23 242:2 244:11 250:11 252:22,22 255:10 256:3 268:3 274:5 274:9,11,12	directional 161:17	discovery 168:21	documents 50:14 52:11 136:8 194:25
desire 102:21 225:8	different 29:7 38:17 39:12 44:10 46:20 52:3 54:6 59:23 65:5 66:7 69:11 70:3,17 71:1,11,12 71:22 72:6,7 77:2 80:22 92:4 94:2,3 95:8 98:22 101:11 101:12 107:20 108:6,13,19 109:8 109:14,15 112:8 113:5 119:1 122:10 124:13,13 129:4 138:1 141:24 148:1 158:11 160:4 165:10 172:22 182:1,18 191:11 192:17 208:14 221:12,13 225:14 225:14 228:1,4,19 231:3,5 232:4 234:20,23 242:2 244:11 250:11 252:22,22 255:10 256:3 268:3 274:5 274:9,11,12	directly 218:16 262:1	dish 222:2	doing 42:24 62:10 90:3 103:1 114:8 117:22 127:17 147:1 207:3 222:15,15,16 223:4 241:20 245:22 248:3,6 269:25
desired 273:8	different 29:7 38:17 39:12 44:10 46:20 52:3 54:6 59:23 65:5 66:7 69:11 70:3,17 71:1,11,12 71:22 72:6,7 77:2 80:22 92:4 94:2,3 95:8 98:22 101:11 101:12 107:20 108:6,13,19 109:8 109:14,15 112:8 113:5 119:1 122:10 124:13,13 129:4 138:1 141:24 148:1 158:11 160:4 165:10 172:22 182:1,18 191:11 192:17 208:14 221:12,13 225:14 225:14 228:1,4,19 231:3,5 232:4 234:20,23 242:2 244:11 250:11 252:22,22 255:10 256:3 268:3 274:5 274:9,11,12	disabilities 115:21	disPersian 103:2	dollar 263:7
desirous 296:10	different 29:7 38:17 39:12 44:10 46:20 52:3 54:6 59:23 65:5 66:7 69:11 70:3,17 71:1,11,12 71:22 72:6,7 77:2 80:22 92:4 94:2,3 95:8 98:22 101:11 101:12 107:20 108:6,13,19 109:8 109:14,15 112:8 113:5 119:1 122:10 124:13,13 129:4 138:1 141:24 148:1 158:11 160:4 165:10 172:22 182:1,18 191:11 192:17 208:14 221:12,13 225:14 225:14 228:1,4,19 231:3,5 232:4 234:20,23 242:2 244:11 250:11 252:22,22 255:10 256:3 268:3 274:5 274:9,11,12	disabled 113:17 114:11,18 115:19 115:20,23 116:5 116:11,18,22 117:6,14,20,25 118:7 119:2	disposal 85:3	dollars 208:6 264:22 266:1,24 269:10 269:16,19,21 270:3
detail 52:3 194:21 213:7 283:22	different 29:7 38:17 39:12 44:10 46:20 52:3 54:6 59:23 65:5 66:7 69:11 70:3,17 71:1,11,12 71:22 72:6,7 77:2 80:22 92:4 94:2,3 95:8 98:22 101:11 101:12 107:20 108:6,13,19 109:8 109:14,15 112:8 113:5 119:1 122:10 124:13,13 129:4 138:1 141:24 148:1 158:11 160:4 165:10 172:22 182:1,18 191:11 192:17 208:14 221:12,13 225:14 225:14 228:1,4,19 231:3,5 232:4 234:20,23 242:2 244:11 250:11 252:22,22 255:10 256:3 268:3 274:5 274:9,11,12	directional 161:17	disposition 74:13	dominated 222:21
details 219:7,12	different 29:7 38:17 39:12 44:10 46:20 52:3 54:6 59:23 65:5 66:7 69:11 70:3,17 71:1,11,12 71:22 72:6,7 77:2 80:22 92:4 94:2,3 95:8 98:22 101:11 101:12 107:20 108:6,13,19 109:8 109:14,15 112:8 113:5 119:1 122:10 124:13,13 129:4 138:1 141:24 148:1 158:11 160:4 165:10 172:22 182:1,18 191:11 192:17 208:14 221:12,13 225:14 225:14 228:1,4,19 231:3,5 232:4 234:20,23 242:2 244:11 250:11 252:22,22 255:10 256:3 268:3 274:5 274:9,11,12	directional 161:17	disproportionately 101:17,25	door 175:18
determination 41:17 161:8	different 29:7 38:17 39:12 44:10 46:20 52:3 54:6 59:23 65:5 66:7 69:11 70:3,17 71:1,11,12 71:22 72:6,7 77:2 80:22 92:4 94:2,3 95:8 98:22 101:11 101:12 107:20 108:6,13,19 109:8 109:14,15 112:8 113:5 119:1 122:10 124:13,13 129:4 138:1 141:24 148:1 158:11 160:4 165:10 172:22 182:1,18 191:11 192:17 208:14 221:12,13 225:14 225:14 228:1,4,19 231:3,5 232:4 234:20,23 242:2 244:11 250:11 252:22,22 255:10 256:3 268:3 274:5 274:9,11,12	directional 161:17	dispute 238:2	dot 273:3,3,3
determine 64:11,19 97:12 117:1 118:23,25 137:24 149:10 233:4 257:8 259:19	different 29:7 38:17 39:12 44:10 46:20 52:3 54:6 59:23 65:5 66:7 69:11 70:3,17 71:1,11,12 71:22 72:6,7 77:2 80:22 92:4 94:2,3 95:8 98:22 101:11 101:12 107:20 108:6,13,19 109:8 109:14,15 112:8 113:5 119:1 122:10 124:13,13 129:4 138:1 141:24 148:1 158:11 160:4 165:10 172:22 182:1,18 191:11 192:17 208:14 221:12,13 225:14 225:14 228:1,4,19 231:3,5 232:4 234:20,23 242:2 244:11 250:11 252:22,22 255:10 256:3 268:3 274:5 274:9,11,12	directional 161:17	disqualification 85:12	double 95:4 117:22 144:20 202:10 220:22 246:13
determining 72:4 89:15	different 29:7 38:17 39:12 44:10 46:20 52:3 54:6 59:23 65:5 66:7 69:11 70:3,17 71:1,11,12 71:22 72:6,7 77:2 80:22 92:4 94:2,3 95:8 98:22 101:11 101:12 107:20 108:6,13,19 109:8 109:14,15 112:8 113:5 119:1 122:10 124:13,13 129:4 138:1 141:24 148:1 158:11 160:4 165:10 172:22 182:1,18 191:11 192:17 208:14 221:12,13 225:14 225:14 228:1,4,19 231:3,5 232:4 234:20,23 242:2 244:11 250:11 252:22,22 255:10 256:3 268:3 274:5 274:9,11,12	directional 161:17	disregard 42:4	
develop 54:16 68:5 68:16 148:1 160:6	different 29:7 38:17 39:12 44:10 46:20 52:3 54:6 59:23 65:5 66:7 69:11 70:3,17 71:1,11,12 71:22 72:6,7 77:2 80:22 92:4 94:2,3 95:8 98:22 101:11 101:12 107:20 108:6,13,19 109:8 109:14,15 112:8 113:5 119:1 122:10 124:13,13 129:4 138:1 141:24 148:1 158:11 160:4 165:10 172:22 182:1,18 191:11 192:17 208:14 221:12,13 225:14 225:14 228:1,4,19 231:3,5 232:4 234:20,23 242:2 244:11 250:11 252:22,22 255:10 256:3 268:3 274:5 274:9,11,12	directional 161:17	disregarded 41:25	
	different 29:7 38:17 39:12 44:10 46:20 52:3 54:6 59:23 65:5 66:7 69:11 70:3,17 71:1,11,12 71:22 72:6,7 77:2 80:22 92:4 94:2,3 95:8 98:22 101:11 101:12 107:20 108:6,13,19 109:8 109:14,15 112:8 113:5 119:1 122:10 124:13,13 129:4 138:1 141:24 148:1 158:11 160:4 165:10 172:22 182:1,18 191:11 192:17 208:14 221:12,13 225:14 225:14 228:1,4,19 231:3,5 232:4 234:20,23 242:2 244:11 250:11 252:22,22 255:10 256:3 268:3 274:5 274:9,11,12	directional 161:17	diss 231:23	

247:18,20 248:11 doubt 152:5 265:2 283:16 dozen 17:8 264:17 267:24 Dr 5:11 24:4 36:14 40:9 44:13,22 45:10 50:2,22 67:23 74:8,9 113:1 193:4,12 238:21 259:6,9,14 260:13 267:13 270:18 271:4,4 281:20 282:15 283:8 288:15,19,24 289:17 294:2 draft 208:4 258:22 273:12 drafting 50:17 draw 43:11,21 44:5 141:13 142:15 252:9 256:7,10,25 257:4 258:13 drawing 172:24 drawn 108:16 252:19 draws 257:9 driven 235:5,8,12 235:24 due 55:10 60:9 219:19 289:25 291:7 duly 5:6 132:5 D.C 3:4 d/b/a 1:6 2:6 D55 213:19 D5511 213:3	223:1,8 235:14,18 247:3 291:19 early 84:2 156:1 163:2 185:19,19 185:21 190:17 194:9,12 220:11 293:7 earth 19:25 easier 14:23 15:2 90:19,22 121:20 122:18 123:8,9 124:9 126:23 256:19 eastbound 194:16 easy 182:5 eccentricity 6:16 ECM 1:5 2:5 36:18 36:18 48:23 49:21 50:6,21 52:8,20 53:3,12 65:11 77:11 127:18 137:3,13,23,25 138:5,8,25 140:8 140:11 141:11,13 142:9 143:15 186:21,25 188:4,6 188:9,13 193:4 195:11,22 198:13 199:13 201:1,3,16 202:17 205:3,20 206:18,20 211:9 211:10,25 212:5 216:20 218:15 219:2 252:25 253:5,12,25 254:6 263:10 264:1 265:17 266:4,9,13 273:18 274:12,17 275:23 286:8,13 ECMs 69:8,14 72:5 198:8 200:9 215:14,15,17,22 215:23 216:1,2,25 273:12 ECMwas 217:24 ECM's 72:24 216:11,11,15,16	216:25 ECM;s 72:7 economist 285:8 Econsiders 143:3 edit 13:21 editing 42:13 editor 159:11 160:14,14 educate 159:14 educated 228:8 231:8 education 55:11 56:1 60:10 81:11 126:4 effect 45:9 134:24 231:19,24 234:16 271:22,24 274:22 277:17 283:20 effective 205:6,19 effects 271:20 efficacious 286:21 efficacy 228:4,7 286:13 effort 8:14 18:19 73:3 93:4 133:5 149:13 243:19 eight 22:21 147:5 150:15,18 152:5 152:11,12,20 153:6 164:5 188:23 191:11 192:9,10,12,13,18 209:22 211:8,23 212:10,10,17 215:9 either 46:25 85:2 105:9 117:15 133:4 177:25 194:4 196:1 213:2 218:3 279:8 290:6 290:6 elaborate 249:13 elaboration 288:13 electronic 189:12 elects 188:6 elicited 72:16,17 eliminate 40:15	42:11 45:21 email 85:17 148:4 189:16,19,25 193:8 emails 148:2 258:15 embarrassed 227:1 embarrassment 224:23 225:4,23 226:2,4,10,23 embedded 245:13 emerge 65:24 67:17 67:20 Emord 3:10 188:12 188:12,16 189:18 189:24 192:5 217:12 218:11,16 218:18 260:8,23 260:25 263:17 266:5 267:19 employ 127:13 203:4 220:22 282:2 290:10 employed 85:1 115:22,24 116:4 118:20,20 167:17 209:18 employee 297:16 employees 52:13,14 192:20 employment 118:10 employs 93:9 enable 71:10 162:15 261:8,11 271:12 encompass 185:2 encourage 224:17 285:12 encouraging 224:13 ended 28:25 121:1 282:21 endorsed 287:19 endorsing 147:3 energy 55:6,13,15 55:25 56:11 57:4,8 58:2,9 engage 76:15 engaged 42:23 97:7 127:12 194:14	235:2 247:8,21 engagement 194:19 266:7,10 engine 263:24 enhanced 78:16,18 enormous 127:6,10 172:18 177:16 enter 226:5 234:1 entertainment 151:16 entire 152:1,8 153:2 156:6 182:10 187:19 199:20 219:7 entirely 229:14 entitled 50:5,21 entries 14:13,25 19:24 entry 33:9,11 environment 279:25 Envioplastics 1:6 2:6 envision 176:15 equivalent 45:6 equivocal 229:15 equivocally 229:3 229:13,16,19 Eric 3:10 186:17 267:17 erroneous 26:20 27:3 43:8,9,22 54:17,20,24 55:2 55:21 58:18 59:6 61:1,5,11 62:1,5 63:8,15,17 64:25 65:1,6 72:15 284:15 error 96:8,13,21,25 errors 248:14,25 249:7 erythematic 46:23 especially 7:21 ESQ 3:3,6,10 essentially 11:5 166:18 establish 13:11 43:25 97:14
E				
e 3:1,1 4:1 245:12 262:6 296:21 earlier 20:8 49:3 69:19 71:25 79:16 100:15 109:4 112:7 132:16 162:4 166:16 186:18 209:6				

107:17 136:21,25 137:2,7,10 established 85:9 105:17 135:11 145:15 146:9 152:3 establishing 8:22 105:18 106:23 establishment 134:17 estimate 71:11 72:6 75:21,22 117:21 118:4 136:20 179:5 183:23 184:5 267:2 estimated 219:25 250:10 estimates 121:16 258:20 estimating 183:9 estimation 95:19,25 96:3 et 205:1 eternity 45:5,7 46:16 ethnographic 99:24 ethgraphic 100:24 ethical 187:9 ethnic 101:11 ethno 101:5 ethnographic 100:12 101:5,16 101:24 evaluate 11:24 12:4 45:9 53:23 121:8 123:12 160:5 185:22 285:19 293:12 evaluated 63:9 event 211:15 events 8:6 194:11 eventuallily 203:3 everybody 88:5,7 152:11 223:23 291:21 evidence 34:22 35:1 55:18 56:19 57:7	64:25 126:22 148:21 181:23 241:18 248:12 271:23 evident 211:14 evolving 160:2 exact 54:5 105:20 154:8 exactly 18:5,17 75:5 118:14 254:2 261:9,13 264:11 281:14,24 293:6 EXAMINATION 4:2 5:9 132:8 examined 5:7 132:6 139:7 example 33:24 46:12 56:9 58:1,9 81:15 84:23 90:11 98:7 102:3 139:18 164:11 230:12,13 230:14 235:20 242:2 278:6 288:14,25 examples 109:18 150:5 151:6 157:19 249:24 exceeded 103:22 exceeding 104:9 excerpt 14:23 excerpted 165:9 excessively 105:5 exchange 178:8 278:13 exclamation 273:3 exclude 85:14 89:24 102:3 excluded 40:12 85:25 103:21 104:9 198:20 excludes 129:10 excluding 257:19,22 257:25 exclusion 198:25 exclusivelily 125:18 exclusively 126:10 excuse 15:11 50:1	146:23 177:5 272:14 execute 203:5 exercise 46:23 exhibit 4:7,7,8,8,9,9 4:10,10,11,11,12 4:12,13 5:24,25 6:2 13:24,25 14:1 14:3,7 15:2 23:15 33:8 47:10,11 48:21 50:1 68:10 74:7,7 83:7 89:6 97:23 98:7 112:25 113:1 129:22 130:16 133:21 203:15,16 210:22 263:24 272:14,16 272:17,23 EXHIBITS 4:6 exist 116:14 284:20 existed 158:4 200:5 existence 151:9 exists 167:12 expanded 174:3,7 expect 14:12 42:14 94:17,20 226:17 273:19 experience 11:14,24 76:21 78:24 85:23 89:17,19 167:15 175:8 expert 5:22,24 6:3 12:6 13:18 32:3,6 32:7,11,21 59:19 73:15 146:2,5 156:16 185:20 225:2 267:22 268:1,4,16,18 269:3,6,7,8,13,24 286:3 289:24 291:6 expertise 7:22 11:4 11:15,20 12:4 43:2 49:10 59:25 75:15 156:22 157:1 213:10,21 289:2,5 explain 30:10 223:8	279:7 291:4 explained 173:18 explaining 267:15 explanation 258:12 explicit 40:7 57:10 explicitly 45:11,13 exposed 58:5 127:17 275:14 277:15 278:11 exposure 56:23 express 89:10,22 228:20 230:11 232:5 279:18 extent 26:9 60:20 66:14 70:8 108:13 122:25 193:6 200:3 223:24 238:7 241:17 242:16 246:25 248:9 261:14 279:12 284:17 285:24 288:17,23 exterior 49:17 extreme 45:15,15 extremely 44:14,23 45:10	227:2 235:22 241:18,20,22 243:12 244:17,19 245:5 247:9 249:5 252:21 253:21 257:4 258:8 275:13,17 284:22 285:17 286:15 289:7 factor 170:3 factors 10:18 231:17 231:18 facts 10:13 35:11 59:12 60:19 223:17 236:22 factual 13:3 29:9 31:7 244:6 284:8 284:14 285:15 286:16 factually 12:5 26:5 43:8,8,22 64:3,4 236:14 faculty 31:22 155:10 failed 144:24 236:8 245:21 fails 26:22 130:4 failure 26:14 146:17 fair 32:7 59:21,22 75:21 76:1,2 94:4 96:5 120:10 154:13 164:2 188:14 214:3,11 214:23 215:13 226:1 227:18 229:23 268:10 276:23 277:2 287:21 fairly 31:8,8 207:20 207:24,24 208:1 274:8 fairness 230:12 fall 118:5 190:18,22 192:4 194:4 281:25 283:1,3,12 283:13 284:2,3 falling 117:7 false 73:20 74:6 78:1
F				
			F 189:14 190:1 face 30:18 facilitates 49:18 fact 6:1 7:22 8:25,25 10:22 11:8,23 12:5 14:8 24:11,13,14 25:5,11 29:23 30:1 30:14,15 31:9 36:1 39:8 47:18 53:20 56:19 58:23 66:1 66:21 70:24 76:3 88:9 107:15 110:13 111:23 124:2 140:23 142:8 143:4 158:5 175:22 183:1 186:20 203:1,15 220:13,23 221:24 222:1 223:20	

78:2 83:4 133:24 134:15,21,22 135:3,22 222:10 223:2 237:8 286:25 287:4,5 familiar 9:1 49:21 49:25 150:24 151:1 160:13 213:8 268:17 far 13:9 15:7 72:14 142:24 161:4,11 162:24 163:3,8 251:13 265:24 266:1 271:8 fashion 24:9 29:25 80:5,8 113:5 207:2 fast 43:25 faster 285:21 fault 179:5 favor 26:11 favours 26:13 fear 95:4 feature 6:23 112:19 federal 1:2 2:2 3:3 5:14 97:19 242:25 243:12,14 feel 156:22 193:8 224:19 225:16 feels 224:8 felt 276:4 283:24 fewer 229:1 field 262:2 Fif 189:19 fifth 19:6 21:4,19 22:24 figure 160:7 181:16 181:20 file 208:17,24 209:1 209:6,24 210:8 211:1,2 filed 27:23 fills 33:17 216:4 279:9 film 48:24 49:7,11 49:14,18 52:9,20 53:4 138:17 140:12 141:13	143:3 films 50:21 137:4 final 74:10,16,17,21 78:13 83:10 208:4 financial 206:1,9 financially 297:15 find 15:2 96:15 117:8,15 128:13 144:23 162:20 163:23 175:22 197:14 210:6 228:6 231:11 249:2 271:23 272:17 finding 15:6 19:4 133:24 223:6 240:9 findings 145:4 finds 228:22 fine 181:17 188:6 265:5 finely 202:24 finished 30:22 184:17 273:6 firm 92:25 93:4,9,16 93:18 94:20 167:13 169:15 198:21 207:3 247:5 258:17 285:24 firms 169:8 first 5:6 7:14 24:18 26:19,20 28:14 33:9 40:20 48:22 51:15 64:25 83:21 84:3,4,8,13 86:15 133:22 134:19,20 144:19 160:21 161:6 186:16 209:3 210:11 213:1 218:14 224:20 230:12 232:14 236:11 248:24 251:10,19 251:23 257:1 268:15,15 279:17 280:14,17,22,25	283:1 284:7 Fish 270:17 five 18:25 19:8 20:15 21:17,25 22:2,3,6 41:10 50:20 69:15 72:23 72:23 75:18,23 76:5,6 85:18 91:17 156:10 179:25 184:14 199:13 208:20 209:3 210:16 211:15,20 216:3,13 256:20 256:24 263:23 264:21 269:17,20 270:1,2,6,10 272:22 274:21 275:16,22 277:23 278:7 279:18 280:2,4,23 281:7 282:4 289:11 five-minute 36:5 flawed 146:6 179:11 240:13 flaws 123:14 flip 14:24 31:18 42:10 228:12 271:15 flipping 22:22 flu 60:9,13 62:21 flyer 50:2 focus 48:17 120:18 121:3,6 170:7 186:4 188:24 251:7 278:6,8 focused 53:20 foe 87:9 folks 293:14 follow 46:1 239:14 240:21 241:5 251:12,17 followed 69:23,24 93:25 248:16 following 33:12 113:13 138:13 246:12,21 follows 5:7 132:6	follow-up 129:23 187:16 foot 7:6 166:10 footnote 134:4,8 167:7 170:1,23 forbidden 243:17 force 115:3 forces 170:7 forcing 228:24 foregoing 295:2 296:9 297:6,8,13 forget 19:14 form 73:5 80:19 158:4 206:6 212:18 235:23 239:19 268:25 formal 127:8 194:17 194:19 format 189:12 formatting 208:14 forms 230:1 forth 126:4 185:16 286:6 297:7 forward 184:2 274:8 for's 198:21 found 15:9 19:9 134:14 161:10 167:1 173:6 218:7 271:19 foundation 159:23 161:9 162:9 163:7 foundations 134:10 founded 94:3,12 four 14:12,18,24,25 15:3,4,11,11 16:8 17:18 19:1 21:3 22:5,6,21 50:2 68:14,15 69:9,9,12 69:13 70:1 73:9,10 73:10,22,23 74:22 74:23 75:1 77:22 77:22 83:10,12 103:19,21 104:1,7 113:1 115:20 158:1 209:3 256:20,23 270:2	277:1 fourth 27:16 186:24 215:5,12 fraction 30:3 199:9 199:20 frame 78:14 84:16 87:16 93:10,11 187:1 191:22 232:23,23 233:4,7 233:13,14,15 261:18 framed 58:25 67:14 122:24 frames 215:11 framework 129:1 frankly 109:2 fred 26:25 29:14 40:9 77:10 238:21 Frederick 3:14 24:4 24:12 25:11,24 26:9,22 29:24 30:7 44:13,22 137:6,15 138:3,20,23 141:8 141:23 142:7,14 143:4,11,19 144:4 144:9 145:8 151:21 180:7 232:12 233:17 234:10 236:5,8,24 237:8,16 239:2,7 240:21,24 241:12 242:20 245:9 246:9,11 247:12 248:14 249:20 250:5 251:8 271:4 281:20 282:15 283:8 Fredericks 67:23 82:20 267:13 288:15,19,24 Frederick's 23:24 29:2 45:10 141:18 144:3,15 146:14 152:6 179:2 181:14 233:8 247:16 249:9 free 128:2,4,11,20
--	--	---	---	--

128:20,22,22,24 129:4,10,16 130:11 178:9 freely 193:8 frequently 126:13 148:21 225:3 Friday 41:19 239:20 267:14 front 25:2 fruit 56:24 58:1 frustrated 177:20 177:22 FTC 8:10 9:14 10:10 11:9,21,25 12:2 59:7 117:2 135:3,7,11,17,21 136:2 223:6,14 265:18 268:16 285:8,16 FTCs 9:1 135:12 286:10,11 full 26:20 33:15 143:7 147:3 195:11 217:4,9,15 217:20 218:1 219:8,14,20 220:1 220:3 291:13,19 292:19 293:2 fully 41:12 67:14 245:21 279:17 fundamentally 179:10 240:13 funding 184:12 further 9:9 14:2 73:11 81:18 86:20 90:16 108:20 123:25 169:19 177:4 212:15 213:15,24 214:21 221:16 223:3 252:16 268:13 271:23 283:2,21 290:9 292:6 294:1 297:12,14 fuse 24:18 226:15 future 68:6 275:21	G	gain 69:5 72:20 216:20 gaining 216:7 gather 126:15 gathered 236:23 gathering 94:21 gean 18:2 gender 85:10 95:15 95:20 96:16 98:1 98:19 99:6,8 149:4 genders 98:22 general 47:14,22 48:4 59:20 61:20 64:24 65:20,25 66:2,19 69:22 76:19 85:7,9 87:18 88:6,14 89:5 95:21 97:11,15 103:12 106:22 119:19,22 120:2 121:1,11 122:14,21 123:3,6 124:6 125:7 136:2 151:3 159:25 161:19 172:12 212:18 216:7,21 218:19 274:1 288:16 generalized 60:20 generally 39:23 63:25 69:21 78:24 81:8 82:9,16,21 89:19 115:5 116:3 120:11 122:5 123:19 139:1 151:1 183:7 222:23 228:6,22 235:21 276:9 281:18 287:2 generate 29:9 generated 78:11 generic 49:14 genuinely 241:22 285:2 geographic 94:1 geographically 93:5 93:14	getted 196:15 getting 13:3 173:22 177:16 219:18 291:9 Gilbert 3:11 give 9:22 10:19 24:17 35:20 38:18 38:18 44:9 46:8 55:5 58:22,23 59:10,23 61:16 69:19 74:4,8,19 78:1 83:2 86:16 98:7 105:12,13,15 105:16 136:20 139:18 142:20 148:24 149:3 157:19,25 158:8 159:14 163:1 170:3 175:23 178:11 180:3,11 180:12,20 181:9 181:11,12,16 182:3,11,14,17 194:21 199:15 200:13 225:25 227:2 230:19,22 243:4 252:8 278:11 283:10 given 10:9 38:9 56:2 67:6,22,24 74:18 98:10,14,15 103:8 103:10 121:6 137:21 149:23 150:3,22 170:13 172:22 176:21 177:3 183:10 188:18 194:11 200:5 208:22 214:3,22 215:10 217:17,21 227:24 228:16 231:1 232:1 236:7 238:22 239:5,24 241:25 249:5 251:21 256:16 263:16 264:2 gives 33:24 83:17	155:9 244:16 giving 29:18 45:5 86:18 87:1 150:5 179:15 215:11 232:8 261:6 glad 259:7 glance 14:14 go 5:16 6:3 13:9 15:10 17:20 19:22 21:2,17 22:4,20 27:11,16 33:7 36:4 36:10,14 43:15 48:21 61:18 97:3 98:7 126:15 130:23 133:21 138:15 142:24 167:7 176:25 182:7,22,25 184:2 186:23 189:1 193:1 195:9 196:16 200:13 205:15 212:10,15 222:25 224:22 263:2 265:6,8 268:13 272:12 284:6 289:11,13 291:2 294:4 goal 103:3,5 177:19 235:5,8,12,23 goes 27:13,18 30:11 51:16 275:24 going 14:22 18:2 28:18 30:25 36:7 46:7 67:16 74:1 77:21,25 86:16 88:7,8 89:2 100:3 104:18 112:5 127:14 130:2 133:9 137:17 142:1 147:1 162:18 163:23 174:17,24,25 175:19,20 176:25 177:20 183:14 185:20,20 187:15 189:8 191:24 192:24 208:18	213:12,15 219:25 225:17 249:2 259:4 260:16 265:3 266:23,25 270:2 272:23 285:11,12 289:14 292:3,25 293:4,8 good 5:11,12 32:16 86:14 148:21 192:23 272:8 287:12,18 google 128:11,20 147:5 149:15,22 150:9,23,25 151:11 152:14 154:23,24,25 155:2,12 159:6,8 159:12,16,24 160:1,19,22 161:4 161:16 162:8,21 162:22,24 163:24 164:11 166:2,5,5 167:1,15 168:1,5 168:19,19,22 169:5,21 170:4 171:20,25 172:13 172:18,25 173:22 174:7,13 175:5,9 175:25 176:20 178:16,21 230:4 234:11,15 235:9 235:12,14,19 237:15 238:10,16 247:1,3,10,15 271:12 272:3,3 googled 126:24 127:4 gotten 209:2 government 222:19 222:22 graphic 101:5 great 66:18 83:5 105:12,14 137:21 139:13 156:22 200:5 222:13 263:4 greater 56:22 71:16
--	----------	--	---	--	---

80:12 200:13 216:17 217:2 226:4,8,10,13 227:5,5 269:22,23 280:1 greed 109:20 green 159:20,20 162:4,17 166:15 166:17 grog 167:22 ground 80:18 grounded 67:5 group 8:24 71:17,19 81:5,6 90:23 101:5 109:20,22 136:10 155:7,8 167:14,18 167:21 168:22 169:3,12 186:19 192:20 227:25 228:18 231:2 232:3 251:23 groups 71:23 99:25 100:12 101:7,11 102:23 108:11,25 110:1 250:9 grow 68:9 guard 148:13 guess 36:3 64:17 170:16 194:23 224:10 271:16 guided 121:10 guilty 243:21	happen 88:9 89:23 148:10 183:11 185:4 240:14 257:1 happened 93:7 264:6 happenment 203:6 happens 128:17 148:21 214:6,13 214:25 235:9 happy 7:20 158:19 178:7,11 193:7 210:3 221:8 hard 43:25 102:23 158:4 207:1 havave 88:6 hazardous 274:13 head 40:19 97:3 115:1 178:22 heads 122:22 245:23 hear 185:10,12 hearing 1:19 heart 12:23 held 36:12 64:14 130:24 help 64:18 148:15 196:15 241:7,10 277:6 helpful 196:14 197:7,12 277:9 279:14 Henning 163:15,25 164:19,25 165:6 hereunto 296:13 he'll 104:4 high 44:23 45:10,22 46:2,5 91:14 153:17,21 154:14 154:15 231:8 265:2 higher 228:9 231:8 highly 72:15 147:21 147:22 228:8 237:11,11 238:24 highs 45:15 Hispanics 102:3,6 history 161:13	163:3 hobble 281:10 hold 61:2,4 62:1 63:1,16 89:20 193:25 221:11 250:11 home 79:24,25 90:12 homogeneous 90:23 hope 71:3 132:10 201:13 287:16,18 hoping 144:23 Horizontal 113:1 host 206:3 hour 36:8 131:1 133:9,10 192:24 259:3 265:20 hours 23:17 208:8 208:10 266:25 292:1 household 84:25 113:12 human 148:11 hundred 14:13,25 14:25 17:18 24:24 32:9 74:22,23 75:1 83:9,10 84:8 103:19,19,21,25 104:1,6,7 175:4 188:20 190:23 191:1 192:19 193:17,22 194:1 199:19 214:20 221:6,13 222:8 264:21 266:1 268:8,10 269:1,16 269:19,21 270:3 277:1 290:13,14 290:15,23 291:2,5 291:16 292:10,17 hypothetical 55:5 62:13 129:24 130:9,13 222:8 hypothetically 252:13	idea 36:3 102:25 198:13 245:23 274:18 Ideally 154:4 identifiable 28:7 153:6 287:7,7 identification 196:6 197:25 202:17 identified 7:11 73:4 96:16 237:8 240:20 248:22 250:25 257:16 259:16 260:10 261:20 identifier 256:5 identify 64:10 67:8 73:6 97:1 133:11 136:17 148:15 149:16,23 153:9 158:5 162:11,14 173:12 188:21 189:1 195:12 205:4 236:2 241:13,14 246:8 248:25 251:2 261:22 identities 148:20 260:15 identity 149:14 150:10 187:13 261:3 ignorance 66:19,24 ignored 239:10 ignores 238:22 249:15 ill 232:21 233:7 illuminating 275:17 275:19 277:24 278:1 image 139:24 imagination 247:6,8 273:10 imagine 222:7,8 223:10 imbuing 43:5 immediate 126:17 immediately 38:1,4	228:20 232:5 immune 60:8 immunity 60:5,12 60:15 62:16,20 impact 42:16 222:16 imper 289:5 implanting 245:23 implement 250:1 implemented 32:18 177:1 implementer 206:12 implied 57:8,10,14 implies 141:15 imply 212:11 important 57:12 72:4,13 120:17 123:2,4 154:12,13 154:20 170:5 200:21 202:20 206:10 210:17 285:8 imposition 231:10 impression 77:1 impressions 65:11 improbable 147:21 147:22,23 improper 144:10 145:16,20,21 146:9 inability 153:2 inaccurate 148:25 164:12 235:25 237:25 inaction 65:2 134:23 inadequate 245:2 inappropriate 238:25 245:24 inappropriately 31:2 incentive 133:13,14 182:10 284:25 285:1 286:1 inception 173:23 inclined 43:13 include 41:2 80:6,6 80:7 101:21 102:6 115:20,21,23
<hr/> H <hr/>				
half 24:6 25:4,12,21 25:25 26:4,7,10 29:15 36:7 133:9 152:1 192:24 265:3 hall 242:22 hand 82:12 handling 28:24 128:23 129:11,13 129:17 130:2,11 handshake 263:5 hang 235:4,7 hangs 230:16				
		<hr/> I <hr/>		

139:7 153:22 158:6 198:23 200:16 237:22 243:8 244:14 included 40:20,23 45:4 129:13,16 130:11 134:18 159:5 188:19 includes 101:20,21 102:5 135:21 210:22,24 238:23 283:4 including 40:21 102:6 147:8 197:3 197:4 237:3 265:16 279:25 income 81:6 91:25 92:4 231:12 270:11 incomes 228:9 231:8 incomplete 208:25 210:7 211:1 inconsistent 212:21 incorporate 293:2 incorrect 12:5 26:5 37:3 68:12 236:14 incorrectly 195:19 increase 45:12 268:14 increases 60:6 independent 143:2 indicate 17:2 20:4 129:13 181:21 239:13 245:6 indicated 10:1 28:14 68:20 94:24 120:8 146:17 156:13 160:2 191:9 219:19 220:5 222:14 234:5 235:14 247:3 254:18 275:8 291:19 indicates 235:11 indication 158:8 246:4 264:2 individual 17:1,5,6	19:16 26:15 29:12 35:18,22,25 36:1 40:5 42:14 59:13 85:11,11 87:5 89:15 149:11 153:9 203:6 206:5 220:18,20 225:5 234:24 237:6 245:4 261:20 283:10 290:7,8 individuated 90:1 individually 28:7 individuals 11:6 84:23 85:19 90:4,6 96:18 118:13,20 125:12 149:14 153:10,13,23 154:3,5,9,16 188:19 190:20,25 191:11,20 200:24 206:3,22 224:1 260:15 282:17 290:9 industry 148:3 171:10 infer 57:14 142:17 188:12 inference 58:3 140:24 141:7 142:13 255:2,4,14 256:10,25 257:4 inferences 141:5,13 143:17 172:25 252:19 256:8 258:13 inferiority 7:18 8:2 8:12 inferred 254:19 inflate 145:4 inflating 237:24 influence 68:21 92:20 125:4,16 126:5,8,18 245:8 influenced 60:20 91:8,20 inform 7:23 8:18 11:2,7 67:13 68:1	68:2 108:2 113:3 252:9 information 4:19 9:19,21,24 10:19 13:3 61:16 64:2 71:25 74:25 75:7,9 81:21 82:3 91:24 92:12,14,18,23 93:1 108:4 109:23 122:23 126:16,20 127:14,15 128:7 128:13,15 140:5 141:14 147:15 148:25 149:4 151:15 152:10 153:1 157:25 158:13 161:17 162:16 165:25 166:20 168:14 171:1 173:8 179:21 188:6,16 205:21 207:20 210:5 222:17,18 244:6,6,17 245:2 252:8,9 253:20 257:8 259:18,23 260:5 261:21 273:23 284:8,14 285:7,15 286:12 286:18 287:5 288:24 informed 24:25 28:1 28:4,6,10 159:25 informs 136:9 initial 4:6 188:18 190:16 249:19 initially 18:18 174:4 initiated 9:14 10:10 ink 264:10 innovate 284:25 innovative 285:1 inquire 97:9 98:3 inquiry 224:20 ins 274:1 insent 133:5,7 inserted 195:20 insight 69:5 71:16	72:20 216:7,20 instance 21:24 29:1 98:8 158:11 164:16 175:4 instances 136:17 161:3,12 162:23 institutional 31:25 instructed 4:15 96:19,19 97:9 instruction 88:4 98:10,13,17 262:6 instructions 96:12 98:15 262:6 instructs 96:12 insubstantial 239:24 240:5 intend 288:3,4,7,10 intended 12:2 136:21 216:19,20 intends 59:1,4 intentionally 223:5 interacted 169:11 interaction 148:11 148:12 interactive 155:5 157:12 interest 178:14 interested 65:19,20 65:22 84:3 90:1,5 103:11,12 119:18 120:8,10,12,22 122:20,21 161:18 177:14 201:15 203:8 212:6 216:6 234:25 273:21 279:4,5,7 297:15 interesting 57:2 109:23 155:11 175:23 216:5 225:13 interfere 235:8 interference 177:18 235:11 interferes 235:1,23 International 1:6 2:6 Internet 79:22,25	80:5,8,14,19 126:15 127:6 147:24,25 148:17 148:22 149:12 150:12 156:5,17 156:19,20,21,23 156:25 157:4,10 157:11,17 158:24 175:16 176:1 230:13 233:22 246:23 interpret 55:13 62:20 116:3,6 122:12 139:8 250:16 278:2 283:9 interpretation 17:9 17:17 18:6,11,11 40:6 215:3 257:15 interpretations 200:9 interpreted 39:15 62:17 115:24 116:2 241:17 interprets 37:19 38:10 interrupt 192:1,2 235:4 interrupted 182:2 230:3,18,23 interruption 235:6 interval 17:2 interview 86:22 133:10 209:17 224:16 226:5,6,6 226:11 246:12,21 246:25 290:6 interviewer 19:17 19:19 147:19 148:16 202:15 226:7,9,11,19 interviewers 202:13 209:17 interviewing 74:11 93:9 95:3 96:23 interviews 84:17,18 84:20 93:23
--	---	--	---	--

208:10 209:5 291:12,13 introduce 199:2 200:1 201:7 introduced 160:3 invalid 153:11 154:10,18,19 241:2 invalidate 152:8 invalidates 152:1 153:2 invasion 285:11,12 285:13 invented 237:9 investigate 94:6,7 investigated 159:8 investigation 159:13 investigational 1:19 invoice 262:5 invoke 294:2 involve 184:15 involved 44:3 61:25 76:3 144:21 168:1 168:6 183:19 184:9 186:17,18 195:13 202:3,19 203:1,2,10,18 204:9,14 205:25 206:3 230:1 involving 230:13 275:6 irrespective 31:1 issue 12:14 48:13 51:10,12 57:11 58:6,15 66:15 96:24 119:11 121:24 122:2,3,7 132:23 138:13 189:11 222:10 232:7,8 234:14 238:3 285:6 issues 197:18 is's 162:10 item 128:22 items 144:24 163:8 163:9 I.D 15:1 16:7 22:20	33:10 261:7 <hr/> J January 196:20 jcohen2@ftc.gov 3:5 Jeff 134:4,13 136:1 Jeffrey 163:15,25 164:19,24 165:6 jest 135:2 job 42:13 80:8 203:5 John 267:18 Jonathan 3:3 5:13 267:19 journal 13:22 157:8 157:13 159:11 160:9,9,11,12,15 285:5 judgment 10:20 29:23 42:7 192:16 272:8 292:2 judgments 42:20 43:3 juice 55:5 56:24 58:1 July 1:12 2:17 5:1 132:1 296:7 June 220:11 junior 91:14 justice 142:5 <hr/> K K 23:4 katrina 166:11,22 keep 110:10 133:4 189:4 kevin 167:7,9 Kevinos 167:17 key 59:13 KIM-CAMPOS 2:18 297:24 kind 128:25 138:1 160:6 166:7 228:24 231:14 245:13 276:7 290:12 kinds 24:17	kiosks 80:9 knew 28:20 82:23 206:25 263:11 276:15 know 5:17,17,19 6:10 10:1,2,3,12 13:1 17:13,14,21 19:18,18 20:7 28:18 30:15 33:16 34:15,18 35:25 38:3 39:2,4 40:1 41:6 47:19 48:10 49:11,13,13 51:5 53:24 56:18 57:3 57:13 60:19 61:23 61:25 62:7,8 64:15 64:18 65:3,4 67:22 67:24 68:2 75:4,5 79:16 80:11,17 83:1,4 84:11,14 86:14,16 87:14 88:1,5,8,21,22 91:17,23 93:15 99:18,23 100:6,21 100:22 105:18 106:17,18 107:8 113:21 114:12 118:21,24 121:9 122:23 127:16,19 127:23 128:14,15 133:9 138:14 140:3,11 141:2,24 142:1,4 145:1,2 147:16,25 151:5 151:10 152:4,15 152:16 153:2,4,7 153:12,16,21 154:1,2,3,8,13,15 155:21 156:8,19 158:16 163:7 164:17 165:15 168:21,25 169:2 169:14 171:3,23 172:4,5 174:1,2,2 174:6,11 175:3,16 176:14,14,17,19 176:23 177:1	178:17,22 179:22 180:2,19,24 181:11 182:9,22 183:11 184:1 186:10,15 190:10 190:12 196:3 199:3,3,10,12,18 199:22 200:20 201:20,21 202:1 204:13 205:11 206:7,23,25 207:2 207:19 209:23 210:11 212:8 219:2,2,16,17 220:23 222:14,18 222:23 224:7 225:4,9,25 226:18 227:2,8,20 228:2 228:11,18,21,25 229:6 230:2,7,7,9 232:6,16,25 233:2 233:3 236:17,18 236:20,21 240:2,4 240:10 243:3,4,15 243:23 244:7 245:8,15,17,20,22 246:15 247:5 248:10 250:7 251:1 252:3,10 253:2,16,16 254:2 254:9 255:5,6,7,24 255:25 256:2,13 256:14 257:13 258:13 259:21 260:2,2,19 261:5,5 261:9,15 262:4,7 263:18,25 264:11 264:17,25 268:7 268:22 269:5,9 272:18 273:16 274:15 276:12,18 277:7,11,12 278:2 278:18,21 279:1,2 281:4 283:14 285:12,23 286:6 288:5,22,23 291:25 292:2	knowing 82:8 152:17,19 234:7 238:19 knowingly 62:4 223:12 knowledge 56:7 85:4 89:14 136:9 169:21,24 171:17 190:9 193:5 228:6 247:14,17 259:13 264:14 knowledgeable 188:22 190:20 191:2,14,21 195:15 201:10 202:5,22 205:5,14 known 61:5 78:16 135:11 263:14,15 264:8 knows 40:21 62:21 86:19 182:13 203:3 know's 222:13 <hr/> L label 138:22,25 141:14 142:9 208:21,22 244:8 labeled 37:18 39:5 65:18 66:4,11 67:2 119:16 121:20 122:18 123:9 124:9 140:8 141:11 208:18 241:24 242:5,6,8 243:1 labels 119:7 labor 115:3 lack 66:19,24 143:23 145:16,21 146:2,10 225:5 244:3 lacks 144:3,4,7,9,12 144:15,18 145:9 146:15 256:4 lame 215:24 land 33:17 78:5,7
---	--	--	--	--

79:19 80:12,20,22 81:5,6 216:4 279:9 landfill 129:23 242:11 264:9 landfills 216:13 278:9,14,15 280:1 language 52:3 141:20 148:13 278:17,18,23 279:6 large 7:16,16 19:23 66:18 101:1 200:7 226:14 271:13 largely 12:11 85:3 171:9 186:10 218:5 234:1 288:16 289:4 larger 33:8 79:2 87:15 165:9 183:8 185:3 198:17 218:9 219:4 250:19 291:10,22 lasted 75:14 late 41:19 184:25 194:9,16 207:21 220:11 239:19 293:7 launched 174:5 law 59:20 60:1 laws 94:8,15,15 257:13 lawyer 59:17 lead 87:6 88:25 172:23 223:13 245:16 leading 12:15 70:4,7 70:10,20 73:10,13 73:23,24 77:23 245:10 246:2 learn 71:10 224:12 261:8 286:22 293:17 learned 219:23 288:14 292:24 leave 19:24 lect 30:7 left 15:7 19:23 36:20	115:3 271:8,16 290:2 291:2 left-hand 19:7 legal 59:10,10 134:6 134:9 253:9 254:4 254:9 legally 220:25 lend 114:7 length 75:1 81:14 132:24 142:17 lengthened 71:14 Leo 51:4 lerman 166:11 lesser 80:13 lesson 197:11 letter 166:22 194:20 266:7,9 let's 5:24 10:6 13:24 14:1,2 21:2,17 22:20 25:22 26:19 33:7 36:14,20 47:3 48:20 50:20 53:11 57:1 60:3,3 62:13 62:14 68:10 74:7 83:7 98:7 100:8 112:25 128:18,21 129:21 130:16 133:21 142:7 152:3 164:4 166:10 167:7 169:25 177:2,4 181:19 184:14 186:23 205:17 206:16 212:9,23 213:1 214:9,15 221:6 222:25 223:1 239:24 240:19,24 242:3,3 251:7 253:21 254:12,22 256:1 261:17 265:8 270:15 272:12,22 274:19 275:22 279:23 284:6 289:11,13 level 89:14 95:6 levels 92:5	lewd 24:1 liability 222:11 223:6,15 lick 205:13 life 269:4 light 31:14 limited 80:8 273:9 Limiting 90:18 limits 270:15 line 27:16 43:7,11 43:21 44:6 79:19 80:12,20,22 81:5,6 83:15,19 127:14 155:25 156:3,7,9 156:14 162:5,18 163:20 166:19 177:17 186:24 226:12,19 lines 7:5 27:11 78:5 78:7 170:1 229:14 link 228:10 links 7:6 lip 128:16 list 116:18 134:18 151:2 158:6 186:25 187:3,4,5 188:9,18 189:12 190:5,15,16,19,19 190:22,24 191:13 191:16 192:4,8,13 192:19 193:6,16 193:17,18 194:3,8 194:8 196:15 198:8,15,16,22 199:4,11,20,20,22 199:24 200:4 201:21 205:12 220:7 241:3 258:25 259:5 261:2 290:18,20 listed 78:12,19 79:5 158:21,22 164:21 191:12 280:14 listens 95:18 lists 193:3 259:9,16 261:18 literature 136:5,9	166:25 167:2 228:21,22 235:10 235:16,20 litigation 9:2,14 10:10 32:6,8 136:24 183:15,16 265:18 268:17,19 268:20,21 269:7,8 270:7,11 little 7:21 11:3,7 14:23 22:21 41:7 79:16 84:14 145:24 160:23 166:6 191:15 193:23 194:21 208:3 220:21 235:16 240:10,14 240:15 281:17,25 282:23,25 284:1 live 147:19 226:7,8 226:11,19 227:3 living 90:11 95:8 291:24 load 273:5,15,20 274:17 loads 275:6 local 155:6 locate 158:2 162:16 164:8 166:11 167:8 logic 88:23,25 183:1 logical 130:21 258:11 logo 65:11 77:7 137:13,23 138:5,8 138:18 141:14 logos 77:12 long 14:19 34:15 37:18 39:6 47:1 71:18,19 75:14 79:7 127:5 142:23 142:25 145:5 153:8 160:23 164:2,5 241:24 242:5,7,9,11 244:9 293:4 longer 79:16 132:20	133:1,6,8 151:22 282:8,8,8,13,13,13 283:4,11,13,20,21 284:3 293:9 look 6:4,19,21 14:4 14:7 15:7 19:6 26:19 48:20 68:10 70:1 79:12 83:7 97:16 105:2 109:1 112:25 118:21 129:21 130:16 138:16 142:2 158:17 159:1 184:14,17 203:15 209:11 210:11,15 210:16 212:23 213:1 214:9,15 239:13 275:22 279:23 looked 96:24 99:22 107:5 159:23 163:10 285:5 looking 52:1 90:8 166:8 191:13 206:14 210:10 236:18 243:7 268:4 looks 6:14 7:8,9 210:7,25 Los 1:15 2:15 3:8 5:1 132:1 296:4 lost 100:6 240:25 256:12 272:12 lot 10:12 40:15 41:20,20 66:23 136:22 141:23 148:18 158:7 176:16 183:25 204:23 218:25 223:17,17 224:18 lots 191:18,18 Lou 52:21 186:10 low 44:14,17 45:22 46:2,5 lower 19:7 170:8 200:10 lows 45:15
---	---	--	--	---

loyal 31:22,25	manage 262:24	247:4,5	222:5 224:1 243:9	158:9,9 167:25
ludicrous 15:16	manageable 239:19	marketed 9:11 55:6	274:16 277:17	173:20 218:14
16:15 20:18 21:8	manner 30:6 60:24	56:10 60:4	materially 195:19	220:13 221:25
22:10 23:5,18,25	manufacture 49:16	marketer 13:16	materials 37:25	223:9,21 227:12
24:2,7,15,20 25:10	204:10	58:17,19 59:1,4,5	38:3 68:19 69:1	229:20 233:1
25:17,19,20,23	manufactured 50:6	59:6 61:4,5,11	119:24 120:16,23	236:13,16 240:3
27:12,14 28:12,16	279:24	62:4,10,14,18,21	123:1 127:18	243:13,13,14,15
29:3,4,18,25 30:2	manufacturer 73:5	63:1,4,7 64:13,20	195:14 202:3,19	243:18 246:18,19
30:5,19,20 31:3,12	73:6 85:2 195:14	64:20 65:3,6	203:19 204:10,15	246:24 250:25
32:22	196:17 202:4	133:25 134:23	205:15 210:18	254:3,4,22 255:22
lunch 130:21 132:11	212:4,5 222:4	135:4,23 137:25	214:10 289:3	256:14 257:3,12
132:12	284:21	222:4 223:4,10,12	mates 133:10	257:12,12 258:11
luncheon 131:2	manufacturering	243:17 284:21	matter 1:4 2:4	273:15 277:8,13
Lynn 174:1	201:11	marketers 11:10	132:12 172:7,9,10	277:25 278:2,5
	manufacturers	55:8,9 61:19,22	175:21 179:23	284:13 288:21,23
	184:20 186:1,5,7	62:1 63:13,14,16	190:7 194:14	290:3,16 291:11
	186:20 196:11	63:24 222:9,12,15	232:9 266:17	291:18
	198:7 199:1	223:2 245:15	mayor 31:22,25	meaning 43:5 44:10
	203:16 207:13	marketing 10:8	ma'am 63:19 104:20	227:16 253:18
	208:19 211:24	13:22 48:14 55:13	110:16 111:8	276:19 278:12
	258:23 259:19	56:6,9,13,15 57:22	172:2 185:7,11	279:15
	261:4,19,23,24	58:10 59:20 60:1	208:18 220:16	meaningful 24:7
	289:20 291:17	60:23 61:22 69:8	mean 10:21 13:14	42:25 74:4 159:14
	manufacturing 49:1	69:14 72:8,17,24	17:24 19:15 20:12	178:13 179:21,23
	195:15 202:5,20	73:2 127:18 157:9	24:16 25:17,18	meanings 122:11
	202:22,25 203:20	157:21,22 160:15	30:10 32:5,6 34:7	means 13:7 47:15,23
	204:1,16 205:14	160:16 166:19	35:17 37:1,5,8,20	48:5 58:9 60:12
	mapping 105:20	169:15 200:9	38:10,20,22 39:1	89:6 95:18 108:20
	March 79:14	203:14 263:23	39:11,17 41:18	110:14 124:19,24
	marginally 271:10	274:16 285:5	42:3 44:8,15 45:11	125:1,8,13 126:10
	mark 5:24,25 13:24	marketplace 62:2	45:12,19 46:8,16	128:11,20 129:5,6
	14:1,3,22 50:1,7	63:1 168:15	46:17 54:25 55:14	140:11 189:16
	50:20 74:7,7,7	284:20,21,25	58:23,23,24,25	210:12,13 215:20
	161:4 162:25	285:10 286:2	62:8,8,20 64:12,22	223:12 235:24
	163:3 164:4	markets 61:12	68:18 73:7 79:24	253:23 257:9
	240:19,24 270:15	master 49:22 50:6	80:25 83:19 84:18	276:10 283:20
	289:14	51:15 53:17	88:23 91:16 94:15	290:4
	marked 6:2 33:7	match 103:16	100:4,5 105:5	meant 17:8 28:14
	48:21 49:24	257:10 260:11	107:16 110:15	35:22 36:23 40:5
	112:25 208:12	material 46:13	122:8,9,15 128:14	43:17 55:25 88:15
	209:21	68:21 71:14,14	128:22,24 130:21	109:9 127:1 255:3
	market 134:15	120:18,19 122:13	133:7 135:12,16	255:6 273:20
	136:6 157:13	122:23 127:5,6,20	137:22 139:8	276:12,16
	159:18,21 162:19	128:18 129:15	144:19 145:16,19	measure 254:14,15
	166:1 168:1,6,7,8	134:1,24 153:23	145:21 146:10	254:25
	168:12,13,18	154:2 163:17,19	149:8,9,18 150:16	measured 110:4,25
	169:6,7 246:15	165:10 195:18	154:1 156:19,20	111:15 112:10

measuring 163:4,5	middle 7:14 15:12 27:17 38:22 84:21 186:24 194:9 215:5 271:9	misspoken 16:10 195:19	motivated 235:1	259:24 289:8
mechanism 50:5	mike 49:9	misunderstand 223:11	motivator 227:3	291:15 292:18
media 125:21 126:1 157:12 163:5,11 171:9 222:22	million 46:13,14 221:7,13,16 264:24 265:3 269:10	misunderstanding 198:10,12 283:5	motive 227:9	need 5:18 9:25 10:1 10:2,3,12,21 22:1 35:9 36:8 41:2 56:18 57:2 60:19 60:19 61:8 72:10 82:4,10 117:15,17 130:20 133:12 136:22,24 139:15 143:7 146:25 153:12,16,21 154:2 160:12 172:24 182:21 220:2 222:13,14 224:22 225:15,18 226:20 241:7 265:4 279:5 283:3 288:25
medical 11:11,20	mind 17:14,21 70:24 142:20 149:20 157:14,24 185:12	misunderstood 64:5	mount 31:22	needed 57:21 173:8
medicinal 9:5 10:7	minds 17:10 71:3 86:6 87:22	misuses 238:7	move 172:2 232:22 233:14,15	needs 64:24 206:9,9
medicinally 9:11	mine 62:15 101:15	mixing 255:19	multiple 117:18,19 188:19 205:25 231:18 240:16 268:5 276:4,7	negative 31:14,20 220:22
medicine 11:15	mini 138:16	mixture 255:24	multiply 246:3	negatively 225:11
meet 153:10,13 219:21	minimum 102:22 103:4 112:12 248:22	mm-hmm 68:13 83:14 163:16 209:14 256:21 267:5 275:25	multi-dimensional 278:4	neglected 81:13
memory 142:5	minor 222:9 235:23	mobile 79:3 80:6	<hr/> N <hr/>	negligent 136:3 257:24
men 147:9,17 148:8 148:14	minorities 101:22 102:6,10	models 157:10	N 3:1 4:1 296:21	neighborhood 179:4
mention 53:22 184:20 234:14	minority 55:12 60:11,14 62:19 221:1	modest 161:14	Nactions 222:4	neither 25:5,5 211:18 297:14
mentioned 49:3 103:3 124:17 158:1,15 159:1 160:9,11 162:4,13 186:8 194:22 196:12 197:3,4 234:12 259:4 279:11 281:16 282:24	minus 7:10,10	modification 51:22	name 5:13 33:15 52:24 53:22 54:5,6 54:9 162:24 186:16,17 195:12 261:20 264:8,11 296:14 297:18	net 77:1 231:24
mere 151:25	minute 76:4,16 77:4 77:13 180:3 197:10 252:6	modifications 183:10	54:9 162:24 186:16,17 195:12 261:20 264:8,11 296:14 297:18	nettites 148:1
merely 30:12 179:24 185:21 227:16	minutes 23:17 24:5 24:16 75:2,19,19 76:1 179:11 254:16	modify 78:21	names 189:7 191:20 192:9,14 196:15 205:3 260:12	neutral 207:1,11
mess 251:1	mischaracterize 132:17 173:21	moment 19:22 25:22 47:3 62:14 99:10 100:11 135:19 157:15 162:12 233:15 254:12 265:13	205:3 260:12	never 46:16 61:12 154:5 182:22 217:4 293:21
message 57:13 278:2	misheard 185:11	momentarily 116:16	nano 25:18	new 166:5 192:19 285:1 288:12,18
messy 41:15	misleading 61:23 245:18,19,20	monetary 133:13	nanosecond 24:15 31:3	nice 130:19 132:11 263:3 285:3
met 198:4	misleads 170:6	monetize 168:8	nature 62:25 97:16 109:16 178:18 231:6 235:22 253:17 283:5	nine 16:8,11 18:25 19:8 20:15 21:2 22:21 84:8 167:7 170:1 203:15 216:3,12 278:6 279:17
method 227:9	misled 13:2,6 55:3 57:15	monitor 94:25 247:11	near 119:20	non 73:4 81:5 234:8
methodologically 146:3	misreports 238:7	monitored 93:23	necessarily 24:10 42:6 62:24 146:10 171:23 182:20 183:2 198:23 269:22	
methodologies 173:23	misrepresentation 249:16	months 15:5,13 16:3 16:5,12 17:3,8,15 17:23 18:4,7,19 24:9 216:3,13 278:6 279:18 280:24 281:8	necessary 11:24 48:12 78:21 79:4 82:15,16 103:8,9 120:20 133:10 136:10 142:19 176:7 183:10 204:24 220:25 222:1 234:10,15	
methodology 144:10 144:12,15,18 145:7,13,15 146:5 146:9,14 156:21 160:25 238:3	missed 211:16	morning 5:11,12 224:11		
methods 246:20	misspoke 106:3 111:10	motherer 61:2		
metric 246:22				
microbiologist 286:4				

239:12 249:4	251:10,15,19,21	126:12 127:22	220:19 223:23	old 147:5 150:15,18
nonresponsive	254:21,22 255:10	128:6 129:7 130:7	224:2 231:19	152:5,11,12,20
42:10 172:2	255:11,13 256:9	132:22 140:20	240:23 258:4,6	153:6 156:11
nonsense 178:12	256:14,22,23	143:21 145:18	285:11	older 79:3 85:1 90:4
nonspecific 17:5	257:5,15 271:21	151:13,24 152:21	occurred 86:15	90:17,19 99:21
nope 88:10 232:14	290:11 292:4	153:15,25 156:18	130:6	100:2,24 101:8,17
north 62:15	numeric 18:20,21	159:7 161:5	occurrence 258:12	101:21 102:17
note 7:4 45:3 93:22	29:11 46:18,19	167:23 169:4	occurring 8:14	103:22 104:16,16
163:15 166:10	181:9 249:4,5,6,21	171:13,15 180:14	occurs 258:8,8	105:23 106:2,5,7
241:3	250:6 283:10,17	189:20 190:2,8	offer 11:6,6 92:10	106:15 107:2,9
noted 170:2	numerically 271:21	191:4 205:10	107:25 114:6	108:5,18,21 110:6
notes 7:6	nutritional 55:11	218:12,22 219:9	224:17 225:7	110:8,19 111:1,5
notice 1:19 2:17	56:1 285:6	221:3 229:23	285:2 288:10	111:17,22 112:11
263:2	nuts 33:14,25	240:1 279:20	offered 29:12 230:6	112:13 113:20
notion 185:19	NW 3:3	284:16 287:1	288:19	114:11,25 115:9
Notwithstanding		objections 234:9	offering 28:15 66:9	once 88:17 117:23
111:23	O	objective 145:20,25	66:25 67:4 92:8	ones 30:20 67:7 90:7
number 5:16 6:20	oath 297:9	146:6	95:12 98:25	157:24 162:13
15:8 17:15 19:2	objection 8:3 9:17	objectivit 144:7	102:13 107:23	174:12 194:3,5
21:2 22:20 25:2	11:16,16 12:9 13:8	objectivity 143:24	114:4,21 115:16	240:23 257:1,2
45:5 50:14 56:21	13:20 17:25 18:9	144:3,4,9,12,15,18	171:19 212:9,16	online 126:24
58:4 64:23 80:13	24:21 25:14 26:12	145:9,12,17,22	215:22 216:10,24	159:17,20
83:17 84:7,22	27:7 28:3 29:5	146:2,10,15	249:8 250:8,18	open 28:25 90:9
125:22 128:18	31:15 32:23 34:4	obligation 124:3	offers 48:23 274:8	121:1
153:9,12,23 154:8	34:10,20 35:7,15	129:25 188:2,7	285:24	operate 94:17,21
159:19 172:22	37:11 38:5 39:21	260:3	office 155:7 293:20	operates 150:23
174:3,7,17,24	42:1 43:12 44:16	obligations 187:23	293:23	operating 94:16,20
178:19 184:5	45:17 46:6 48:7,16	188:3	offices 291:24	opine 12:7,11 67:23
192:11 193:24,25	49:12 51:3,8 52:5	oblige 193:7	oh 6:19 20:6 33:13	67:25
208:24 225:12	53:5 54:8,15,22	observation 95:16	38:4 39:5 49:7,11	opinion 11:6 24:14
226:15 233:20	55:17 56:4,17	96:3,6,9 97:9 98:1	49:14 50:21 52:9	59:10,11 66:9,17
239:23 242:13	58:12,21 59:8,8	obtain 78:22 83:9	91:6 138:17	66:21 68:3 92:8,10
250:4,7,11,13,15	60:17 61:7,14 62:6	128:15 211:5	140:12 141:13	95:12 98:25 99:2
251:11 252:7,15	62:23 63:11 64:7	271:12 292:22	156:10 181:1	102:13 107:23,25
252:17 254:25	65:12 66:13 67:3	obtained 78:13,19	266:19	114:4,7,21 115:16
255:9,24 256:7,15	67:11,21 69:16	122:12 161:15	okay 6:25 7:3 36:6	136:9 146:22
256:15,22 257:2	70:6,12 72:9,25	188:10,11,13	44:10 56:12 57:1	160:6 161:25
260:10 261:6	75:17 76:8,22	271:11	110:23 111:11,20	171:19 172:5,12
264:15 268:5,13	77:16,24 78:23	obtaining 119:20	139:25 142:12	172:12,15 215:22
268:23 269:22,23	80:24 81:23 86:9	127:14	165:8 184:18	216:10,24 225:7
274:8 276:23	87:3,24 88:19	obviously 13:24	189:10 192:2,3	230:7 238:20,20
277:21 282:18	89:11 90:20 94:13	141:3 147:1	193:10 196:21	244:18 250:8,18
290:13,16,17,19	96:1,10 101:9	180:23 255:9	225:19 229:9,11	250:20 276:9
291:1 292:7	110:9 111:6 112:2	279:3 280:3	233:14 240:12	opinions 53:14
numbers 7:17 44:14	112:14,22 119:12	occasion 89:23	241:16,24 256:24	66:25 67:4,6,13,16
44:17,23 45:10	121:4,25 124:11	occur 34:12,16,19	259:11 272:22	67:19 68:5 108:8
79:3 80:17 94:2	124:20 125:20	212:12 220:14,18	280:19 290:25	159:5 171:23,24

212:16 224:17 241:19 249:8,11 249:12 272:6 286:7 288:10,12 288:13,16,18 289:1,9 opportunity 160:24 opposed 8:15 38:21 44:9 optimal 103:5 118:15 option 176:21 177:3 options 293:12 oranges 255:19 order 78:19 79:3 139:16 153:13 173:8 176:7 178:13 206:6 234:24 247:13,16 266:24 291:16 292:12,13 296:11 organization 188:22 189:1 196:2 203:19 205:4 206:10 207:5 210:19 organizations 116:19 127:9 158:12 195:13 196:6 198:1 200:25 211:12 212:3,19 organized 32:17 240:4 original 6:6,8,11 193:18 259:17 272:15 276:5 ostensibly 72:23 Oswald 167:9 ought 167:8 246:3 outcome 88:1 outcomes 7:20 outside 49:10 162:21 outstanding 267:6 overall 100:16 109:19 170:8	179:16 255:11,12 256:8 257:5 276:25 overheard 264:5 overrepresented 110:20 overrepresents 117:4 owed 266:20 ownius 284:9 o0o 295:1,14 <hr/> P P 3:1,1 19:2,15,22 20:1,9,10 49:23 208:19 213:2,3 package 33:14 37:18 39:5 241:24 242:3,4,8 packaging 85:22 203:21 204:16 210:19 packing 33:25 34:2 36:22 37:9 47:4,18 page 4:2 6:17,19 7:13 16:9 19:1 22:1,23 23:14,19 27:17 48:22 51:15 84:21 130:17 133:22 146:24,24 147:4 163:14 166:10 167:7 169:25 184:14 186:23 195:9,11 209:11,13,15,15 210:11 214:16 271:8,15 280:15 280:17 281:12 284:6 pages 14:25 paid 207:16 208:5 262:1 263:10,17 264:18 265:20 266:18 269:3,13 pair 120:10 170:22 panel 175:16 panels 149:13	150:13 156:21 paper 20:1 141:4 157:3,6,8 159:12 161:1 162:10 236:19 242:4,5 272:20 285:4 papers 136:8 157:6 157:11,12 160:24 162:6 paperwork 203:5 paragraph 7:15 26:20 27:17 133:22 146:23 271:17 284:7 paraphrase 170:15 170:18 273:12 paraphrased 141:19 paraphrases 175:12 paraphrasing 85:17 120:9 170:17 parentheses 19:2,15 parents 90:13 parhangelsky@e... 3:13 parse 152:12 parsing 202:24 part 12:2,10 17:4 24:10 45:4 50:13 52:11 55:14 60:14 65:24 87:15 97:11 97:14 103:3 139:15 155:7 160:19 174:17 188:4 205:2 219:4 219:22 247:22,22 248:4,7,8,24 250:19 253:7,10 270:23,25 271:1 partial 208:19 participate 28:1,10 83:13,15,16,24 84:1,7,13 86:7 87:23 88:17,24 102:17 149:14 198:6 231:13 235:3 290:8 participated 209:16	260:16 261:23 participates 176:20 participating 148:24 175:15 participation 84:22 particular 7:18 8:2 8:6,12 10:13 12:18 17:2 32:25 33:6 39:16 42:8,17 50:25 52:4 53:24 58:2 86:17,20 87:1 95:1 101:5 109:21 118:10 135:14,18 146:19,21 162:15 184:7 188:15 207:3,10 220:13 223:4 227:6 233:20 249:1 252:14 253:15 256:7 274:23 particularly 13:12 79:1 132:24 145:6 179:21 199:5 225:13 231:7 262:19 275:17 277:24 parties 180:24 297:16 partners 170:6 party 184:12 262:9 262:10,14 pass 293:25 passed 275:9 patently 73:24 74:6 pay 54:17 128:23 176:4,13,14 177:6 177:15,17,23,23 177:25 178:9 247:2 paying 177:5,5 payment 265:25 266:3,12 PD 189:14,19 190:1 PDF 189:15 peanuts 34:2 35:14 36:22 37:9 47:4,19 pellets 49:22,23 50:7	51:15 53:18 penalty 296:8 Pennsylvania 3:3 people 8:15,24 11:23,25 12:3 13:2 13:12,15 26:16 29:8,21 30:12 39:24 43:17 55:1 56:21,23 57:3,12 58:2,5 60:22,23 61:19,20,24 62:2 64:15 65:3 68:17 69:5,19 70:8 71:5 71:6,7,8 72:14 73:6 77:7 80:7,19 82:8 83:10,12,20 83:23,24 84:1,4,7 84:12,21 85:1,5,5 85:7,14,21,22 86:1 87:10,21 89:20,24 90:9,15,17,18,25 96:14 101:20,21 102:16 103:18,21 103:22,25 104:6,9 104:16 105:7 106:15 107:9 115:3,20,21,23,24 116:18,19 117:5 119:23,24 120:15 120:17,18 122:4 122:15 127:7,13 128:16 129:9 133:5,7,12,12,14 139:7,22 140:12 141:3 142:10,11 143:8 144:25 148:1,3,5,19,24 150:7 154:25 155:3 160:24 166:7 170:9 171:8 175:19,22 176:3 177:13,17 182:8 182:11 185:4 188:22,23 196:3 201:4,10,14 205:3 205:4,13,25 220:7 220:8 223:24
--	---	---	---	---

225:14,24 226:15 226:24 227:1,4,7 227:19,25 228:1,7 228:8,17,19,25 229:1,2,16 230:10 230:19 231:2,3,7,8 231:8,13 232:3,4 233:22 234:7,16 241:18,19,23 243:2,4 244:5,7,8 245:6,15 247:21 250:9 253:18,22 254:13,20,23,24 255:1,2 256:1 263:13,15,18 276:8,17 277:11 277:13,15 278:1,5 279:4 281:5,22 282:11,18 283:7 283:20 284:23 290:11 291:9,23 293:17,19,22 peoples 65:20 103:12 119:19 122:21 137:12 233:19 245:23 people's 99:7 peoplit 175:20 perceive 120:15 perceived 228:4 percent 40:25 41:4,6 41:7 79:20,23 80:4 96:15 99:17,20 100:15,20 104:13 105:24 106:5,12 107:1 113:15 115:7 116:10 156:4,8,13 180:17 180:18,19 181:18 181:20,21 200:15 200:18 215:16,24 220:6 221:16,22 237:2,23 239:9 248:20 252:16,18 254:23 255:1 270:9,14 273:5,15 273:20 274:17	275:6 280:4 282:1 283:2 284:2,4 291:20 292:9,10 292:17 percentage 41:9 79:18,21 80:2,10 91:18 104:12,15 105:22 106:4,10 106:14 107:8 113:19 114:10,24 115:8 117:6 118:4 156:7 181:13 257:2 270:6,10 276:14 percentages 40:24 80:11 101:11 237:21,24 perception 48:14 121:23 124:5 140:7 perceptions 122:21 126:18 185:3 perfect 82:18,21 154:14 perfectly 16:25 17:4 25:1 35:20 40:3,22 45:22 183:1,2 236:5 278:9 perform 176:5 234:25 performed 143:15 263:15 period 18:7 26:6 79:2,7 133:6,8 156:12 216:17 217:2 235:15 243:2,3 270:1 280:1 periods 7:16 perjury 296:8 permit 242:25 243:12,15 perpetuate 147:11 person 17:21 19:12 31:5 35:19 38:17 39:2 47:3 58:13 117:20,25 148:1	148:16 198:4 202:21 203:2,24 204:4,9 206:17,19 207:4 215:4 226:5 227:3,17 248:3 282:20 personal 7:22 11:4 11:14,20,23 169:20,24 171:17 224:15 228:5,5 personality 144:5 145:14 personally 5:21 85:15 94:5,7 personnel 195:11,22 persons 92:4 95:8 95:19,20 98:22 99:21 101:17,25 102:5 107:20 114:1,18 115:13 117:12,13,14 201:16 202:1,2,18 205:8 214:4,24 246:11,21 261:23 person's 214:11 Peter 186:16 pew 159:23 161:9 162:9 163:7 phenomena 148:7 philosophically 37:6 phone 65:11 83:9,12 126:15 133:6,8 147:24 148:9,19 148:24 192:18 230:16 Photocopy 108:4 phrase 62:19 100:22 120:10 125:7 170:22 278:13 279:17 phrases 30:5 physical 266:15 280:22 physically 95:2 175:7 Ph.D 2:13 4:3 5:4 132:4 295:9 296:6	pick 79:4 120:22 240:13 275:11 picked 275:1,9 picky 105:6 piece 109:23 118:2 126:19 141:3 145:23 165:10 179:21 236:18 242:4 285:3 pieces 191:25 pedable 215:24 pilot 79:16 183:6,7 183:14,19,25 184:6,9,20 186:7 186:20,24 198:7 199:1 201:23 202:9,18 203:16 207:13,16,24 208:1,2,7,9,15 211:24 217:4,7,8 217:13,14,24,25 219:14 220:10 258:24 260:16 261:4,19 289:20 291:17,18 292:12 292:13,15,19,24 293:4,5 pilots 258:21 293:16 place 34:24 95:3 125:23 162:20 189:5 297:7 placed 297:9 places 6:20 placing 257:14 plaining 198:12 Plaintiff 2:14 5:6 plan 288:1 planning 92:10 plastic 19:25 48:25 49:17,19 65:17 66:4,11 67:1 71:18 85:2,6,15,16,17,21 85:24 86:2 87:12 87:13 91:2 119:7 119:16,23 121:20 122:17 123:1,9 124:9 127:18	138:4,8,21,24 140:8 141:10 142:8,25 145:6 195:14 202:4,20 204:1,1,10 210:18 212:4 215:16 216:3,17,22,23 273:2,3,5,6,25 274:1,17 275:23 279:23 285:20 plastics 48:23 121:7 122:13 216:9,12 217:1 plausible 18:6,10 86:25 180:13,21 180:25 181:3,4,9 182:3,4,11,14,18 183:1,2 237:4 238:24 plays 89:14 pleadings 253:9 please 5:18 13:25 14:13 30:23 70:1 111:9 135:8 150:2 168:25 172:3 184:16 193:8 220:17 295:2 plural 17:3 19:17 20:4 186:8 plus 84:8 220:8 250:13 251:10 point 6:17 42:17 57:17,20,21 88:20 92:11 96:5 99:16 99:19 118:3,11 129:11,18 130:1 130:18,21 135:9 135:18 150:21 160:7,25 168:20 172:14 186:6 189:24 193:8 196:12 201:19 230:10 243:18 254:5,6 255:11,14 273:3 287:7 293:8 pointed 171:22 172:16 255:8,9
---	--	--	---	---

pointing 109:24 136:7	position 13:4 62:3 140:24 253:25 284:13 286:10,11	163:22	150:7	probably 17:24 18:2 18:18 19:17 21:20 22:7 24:24 32:4,9 50:18 75:8,12 80:4 81:12 91:16 117:8 128:2 142:21 156:3 158:23 162:20 170:21,22 178:18 190:17,18 190:18,20 193:23 194:11,12 208:22 211:14 226:8 258:20 264:23 266:23 267:9,24 268:2,2,7,7,12,22 269:1,16,18,18,19 270:5,9,13 282:19 282:21
points 57:5 276:8	positively 225:11	precise 239:5	pretending 147:6,9 147:13,17 148:8 148:14 149:7 150:3	probative 119:10 151:23
policies 8:1,11 12:7	possess 97:21,22 187:21	precisely 11:25 153:12 224:15	predecessors 264:16 264:19	probe 20:9,11,12,16 98:14
policy 7:23,25 8:15 8:18 9:15 10:11,17 10:18 11:3,7 12:13 12:16 13:18,22 157:9 160:15 285:5 286:20 287:12,23	possession 92:17	preexisting 58:18	prevented 201:24	probing 98:13,17 224:13
polymer 286:4	possibilities 225:2	prefer 178:3	preventing 176:1	problem 31:4,6 44:11 57:23 128:2 132:18 150:8 152:14 195:21 209:10 232:25 233:12 238:5 240:5,11,14,15 244:2,11 248:21 248:22 250:25
pool 154:16	possibility 150:19 150:21 151:25 224:25 257:19,20 257:22	preferred 291:20	previously 132:5	problematic 140:25 233:10 248:19
poor 7:22 8:18 9:15 10:11,17,18 11:2 55:10 56:1,7 60:10	possible 6:16 17:19 35:21,23 37:5,7,24 38:2 54:23 55:1 60:18 65:10 69:7 71:24 76:2 86:1,4 86:5,10 87:4,21,25 88:13 89:7,12 91:5 103:6 116:21 117:1,8 147:4,21 149:7,8 150:15,16 150:17 152:25 158:16 175:22 189:22 211:5 251:3 257:23,24 259:18,22 264:7 291:4 292:22,25	premise 236:11 245:17	pre-existing 10:6,9 57:25 59:6 63:7 64:5 139:16	problems 240:16 244:1,25 246:17 246:18 250:20
poorly 32:17,18,18 240:4,4 251:2 262:25	possibly 32:24 58:24 58:24 240:8 255:6	preparing 105:1,11 106:21 107:14	price 174:16 175:18	procedures 94:25 246:12,22 247:3
pop 177:18	post 164:8,18 165:1 165:10,13 171:4,7 171:8	preschedule 133:11 133:16	pricing 174:18,20 174:22	proceed 219:3
popped 264:1	potential 47:13 132:18 175:8 176:20 177:2 183:16 199:1,25 200:2 201:7 225:22 265:13 273:8	prescheduled 133:16	primary 79:15 120:6 121:23 233:23 272:25	proceedings 297:6,8 297:10
population 7:17 58:19 63:8 80:10 82:18,22,23,25 83:1 85:20 99:17 99:21,25 100:5,10 100:16,20,24,25 101:6,16,24 103:16 104:15 105:6,21,24 106:6 106:14,24 107:1,5 107:9 110:5,6,25 111:3,16,17,22,25 112:10,11,17 118:5 127:21 154:10 232:11,15 232:16,21,22,24 233:1,3,5,7,9,12 233:18 236:10 277:1 279:16	potentially 16:3 28:11 31:18 91:20 260:22	prescreened 205:3,8 205:12	principal 274:9	process 34:12,15,19 37:21,22 38:11,12 40:1 49:1 93:16 129:12,19 130:1
portion 95:24 96:5 127:21,23 129:15 130:3 200:20 227:7,19 229:2,15 230:19 272:2 290:5 291:22	practicing 166:7,9	prescription 286:20	principals 239:4 240:20	
portrayal 31:11,13	practices 166:21	presence 60:6 233:20 266:16	principle 239:6	
	practitioners 163:21	present 3:14 35:11 64:2,12 95:3 123:15 127:7 134:1 182:9 197:21 235:17	principles 239:6	
		presentation 158:3 237:25	printed 7:4,8 113:5	
		presentations 158:2 158:7,15	printer 6:24 7:8	
		presented 141:21 158:11 175:8 276:2 280:4	printed 7:4,8 113:5	
		presenting 165:25	printer 6:24 7:8	
		presently 92:17	prior 28:1,10 32:10 32:20 50:16 124:25 125:2,12 125:18,23 126:1,5 126:10,11,16,19 128:4 132:17 183:3,20 184:7,10 217:19 218:8 250:22 271:19 272:2,9 297:9	
		president 52:15,25 263:13,17	privacy 148:3,5	
		press 159:17	privilege 218:13	
		presumably 189:15	privy 253:8 254:3	
		pretend 148:6 150:6	prix 130:3	
			probability 94:9,15 94:16 150:2 181:6 257:13	

195:16 201:11 202:5,22 248:8 283:6,6 processes 205:15 produce 79:2 158:17 159:2 209:9 259:5 261:15 produced 7:2 50:3 97:18 113:6 117:2 137:25 164:12 187:5,21 208:17 209:8 211:6,17 260:9 261:1,2,22 271:4 289:3 produces 235:25 product 33:16 48:13 48:14,18,23 49:6 49:15,21 50:14 52:9,20 53:4,9,13 53:17,20,22 54:5,6 55:8,9,9,14 56:10 56:15 60:14,21 61:12 66:11 67:2 71:13,13 76:17 85:2,15 87:12 141:14 142:18,22 143:3 166:9 197:8 199:13 203:21 204:16 215:6 221:12,18 242:25 280:24 281:7 282:5 284:18,19 284:20,22,24 285:25 286:1,21 286:23,23,24 production 193:6,7 201:11 210:19 259:10 productions 71:12 77:11 212:4 282:13 products 33:15 48:25 50:6 55:7,7 60:25 68:20 70:3 70:17 71:1 72:7 85:22 138:4,8	141:11 203:21 204:16 212:6 216:23 230:8,9 243:20 273:6,7 275:23 279:23 282:7 283:11 285:1 286:24 287:15 professional 42:8,12 75:15 89:17,19 158:12 171:20 246:15 247:4 270:7 289:2,5 professionals 162:7 162:20 166:7,9,20 professor 6:1 13:24 14:13 23:24 24:12 25:11,24 26:9,21 26:25 29:2,14,23 30:7 77:10 82:20 137:6,15 138:3,20 138:23 141:8,18 141:23 142:7,14 143:4,11,18 144:2 144:4,9,14 145:8 146:14 151:21 152:6 179:2 180:7 181:13 185:7 232:12 233:8,17 234:10 236:4,8,24 237:7,16 239:2,7 240:21,24 241:12 242:20 245:9 246:9,10 247:12 247:16 248:13 249:9,20 250:4 251:8 program 155:5 progress 74:11 259:2 289:19 project 161:10 173:8 projects 265:14 promise 276:8 promises 276:5 promotion 176:16 176:21	promotional 128:22 proper 246:12,21 properly 93:17 232:12,17,18 proportion 118:15 223:20 proposing 285:16 proposition 136:4 prospect 224:23 226:1,2,4,10 prospects 225:22 protect 12:3 148:5 187:10 188:7 protection 148:3 protects 11:25 protest 229:24,25 230:1,5,5,8,15,20 232:3 protocol 93:25 proud 218:11 proven 258:1,2,3 provide 14:2 75:16 113:3 134:9 143:1 151:2,3,5 164:15 187:11,13 188:6 188:15 208:13 210:2 245:3 259:8 259:24 270:16 279:15 289:15 provided 18:21 50:15 58:1 68:7 74:25 108:4 119:21 152:9 162:1 187:4,12 188:17 189:3 190:15,17,20 192:18 193:5 199:19 201:1,3 205:20 218:15,18 218:23 245:7 249:21 250:6 255:12,13 259:6,9 259:19 provider 150:24 providers 151:3,11 159:22 provides 164:11	providing 232:3 283:21 pseudonym 148:2 public 13:22 28:2,5 28:11 157:8 160:15 285:5 publication 159:12 159:21 160:16,17 161:23 162:19 166:19 publications 158:6 166:4 168:8 171:9 publicly 27:22 117:2 117:3 118:2 published 97:5 136:8 157:3,8,13 172:12 285:4,4 publisher 170:7 publishers 171:1 177:16 puced 261:17 pull 126:15 purchase 9:10 56:14 60:21 65:5 85:21 91:4 129:11,19 130:1 195:13 200:19 202:3 203:1 204:10,12 204:13,17,18,21 205:1,7,19,22,25 206:4,12,14,18 207:5 212:5 222:6 purchased 85:6 86:1 87:12 199:13 203:4 206:20 211:9,12,25 purchaser 205:24 purchases 90:12,13 91:20 purchasing 85:15 85:23 91:7 201:12 202:19 203:3,3,11 pure 78:25 purely 172:15 purportedly 69:14 purpose 42:15,15 53:11 65:14 66:6,8	69:4 77:8 102:25 120:2 148:4 175:14 181:25 215:25 247:10,23 248:1,10 274:20 277:6 purposes 117:10 165:20,22,24 166:23 167:4 172:8,10 173:16 183:8,9,9 191:17 202:18 290:12 pursuant 1:19 2:17 put 17:14 19:17 25:20 38:24 45:2 70:23 71:3 73:4 100:10 116:21 118:22 130:8 137:23 154:12 170:21 179:23 182:21 242:9,11 243:11 286:6,20 287:21 puts 140:24 putting 101:4 122:22 124:1,2 179:16 197:19,23 P.C 3:10 p.m 2:16 131:4 132:2 294:5 P6400 213:13
Q				
qualification 61:13 242:17 qualifications 119:22 qualified 84:18,20 87:11 246:11,21 247:6,7 290:7 qualifier 154:12 243:7 qualifiers 242:1,15 243:4,8 244:3,14 245:7 qualifies 42:19 43:2 qualify 84:17 90:16				

150:4	170:17 172:3	180:12 181:10	random 6:15,21	185:12 288:15
quality 167:1 170:8	175:4 177:5,24	187:16 189:11	78:11,25 84:15	reads 14:18 15:5
271:20,22	178:7,18 179:14	193:12 204:5,8	93:7,10,12,16 94:1	83:15 282:7
quantify 150:2,19	179:15,24 181:22	205:18 207:1	257:9	ready 247:22
150:20 239:16,20	182:23 189:4,5	210:16 241:1,4,9	randomly 198:8	real 93:24 115:5
quantum 221:18	194:2 198:10	241:11,12,14,15	range 75:4,6,16	148:11,12 182:4
queening 85:18	203:17,25 204:25	241:16,21 242:15	99:19 102:24,25	253:20 285:2,17
quell 108:2	207:12 210:16,23	242:20,22 243:10	118:19 265:1	285:22
question 9:19 14:18	210:25 211:14,19	244:2,4,21,22,23	ranges 91:25	really 8:8,22 9:18,22
15:3,4,11 16:6,8	212:10,10,17,23	245:10 250:10	rapidity 68:21	12:16,24 33:4 41:1
19:1 20:13 21:3,18	212:23 220:19,21	251:9 280:16	rate 96:8,13,21	41:1 42:9 53:19
21:18 22:5 29:16	222:24 224:7	294:2	115:6 200:14	72:18 82:11
30:24 32:7 37:17	225:10,16 226:16	quick 14:4 161:17	273:15 291:21	104:22 109:16
38:14,15,23,25	227:14 229:21,22	197:11	293:13	113:24 114:15
39:3,5,8,9,10,13	231:15 235:19	quickly 40:2 175:21	rates 96:25	120:19,22 123:4
39:14,16 40:2,7	241:23 242:24	207:20,24 208:1	ray 9:1	123:11,12 140:25
42:10,22 45:1	244:10,12 245:13	225:1 271:13	reach 82:2 219:24	141:25 145:11
46:15,20 47:13	245:14,19 250:17	quicly 207:25	reached 85:11	149:9 156:9 160:7
58:25 59:24 62:11	250:22 251:4	quite 12:12,24 32:24	read 7:23 15:5 16:12	161:9,18 169:8
67:10,25 69:11,13	252:14 263:23	36:2 53:21 76:2	19:3 21:5,20 23:2	170:17 171:17
69:15 70:1,5,10,10	272:22 274:21	94:24 145:20	33:17 47:15 49:1	172:8 179:20,22
70:15,21,23 71:9	275:16,22 277:23	147:4 149:6,8	51:17 63:19,19,20	180:3 182:13,15
71:10 72:11 74:4	278:24 280:15,23	150:14,16 160:4	68:19 72:10,11,11	183:5 184:3 197:7
75:23 82:5,12	292:16	161:9 190:17	94:23,23,23 100:3	199:8 203:6,7
83:21 84:4,5,8,13	questioning 241:6	192:11 207:21	100:4,4 104:19,20	208:7 209:15
85:18 86:17 88:3,3	questionnaire 71:15	242:12 265:2	104:21,21 110:16	228:23 242:17,17
89:4,6,8,13,18	85:13 86:21,21	274:4,10,11,11	110:17,17 111:8,9	244:18 245:13
96:14 97:13 98:8,9	258:23	278:1	111:9 134:1	246:22 247:1
99:3,5 100:9 101:2	questions 4:15 5:18	quota 85:10 102:19	139:21,23 147:1,6	248:6,18 252:24
104:3,4,19 105:4	14:9 28:25 39:12	102:19,21 103:18	163:17 170:9	255:7,22 258:13
106:1 107:7	53:12 66:2 68:14	103:22,25 104:6	172:3,3,3 184:16	264:25 273:16
110:17 111:9,14	68:15 69:9,12,19	104:10	185:7,9,9,14,14	285:20 286:16
111:15 112:6	69:22,23 71:13	quotas 85:9 102:16	187:1 195:16,18	287:23
113:11 116:15,23	72:2,23 73:9,10,21	102:23 105:17	203:21 208:18	ream 242:5
117:16,17,23	73:22 76:5,7,10	106:23 107:17	209:18 210:20	reason 5:17 14:14
119:11 120:14	77:22 82:6,7,7,13	quotations 172:23	212:12 213:3	14:17 26:21 54:3,5
121:11,24 122:2	82:14 83:22,25	quote 113:16 280:6	214:17 215:7	86:14 87:5,11
123:25 125:5	85:13 86:19,24	quotes 170:21	220:16,17,17	105:25 106:7
127:4 129:23	87:6 88:11 90:14	175:11	226:20,20,20	107:2 118:24,24
138:13 139:4,9,10	97:25 98:6 120:1	quoting 170:19,20	270:22,23,24	119:4 120:6
139:19,20,23,24	121:1,15 122:24		271:1,13,24	122:16 124:1,4
140:1,4,14 141:19	123:5,8 124:6,8,14	R	272:23 273:10	159:9 167:5,6
142:3,20 145:11	132:19,25 141:24	R 3:1 38:16	284:10 294:3	182:1 187:8 205:6
146:16 147:14	143:5 151:23	races 7:18 8:2,6,12	295:2 296:8	226:2 227:24
154:11 158:14	152:6 155:11	rainings 103:15	reader 170:6	228:17 231:1
159:10,15 164:23	173:9 174:3,5,17	raise 155:10	readily 41:12	232:2 233:23
165:2,4 169:1	174:24 178:19,21	raising 166:2 229:23	reading 109:3 181:5	238:22 241:11

242:21 244:10,15 258:3,7 282:24 290:7 293:16	recollect 78:19 123:13 126:3 193:22	53:16 161:23 173:2	154:25 156:21 159:10	remain 112:20 118:15
reasonable 16:6,25 17:4,13 24:9 25:3 25:4 35:20 40:23 43:7,22 54:12 55:12 60:11 99:19 103:1,14 107:17 153:1 211:19 215:3 243:5 251:22 255:2,4,14 267:1 270:3,5 278:9	recollection 32:25 33:4 36:24 40:19 40:24 41:2 50:19 53:6 57:18 163:6 179:3 183:22 192:15 194:10 208:6 282:3 283:15 290:15 293:6,11	referencing 170:24 referred 49:8 166:16 195:23 274:17	regulators 242:25 243:12,14	remaining 180:19 291:6 292:23
reasonably 180:12 198:16 239:19	record 36:4,10,12 36:14 59:16,16 75:14 77:20 97:25 98:15 107:6 130:23,24 146:25 174:19 187:14,17 187:18 188:11 189:5 193:1 207:23 249:18 265:6,8 289:11,13 294:4 297:10	referring 141:25 164:6 170:25 172:21 252:4	rehabilitate 179:12 reinterpreting 38:20	remains 111:25
reasons 58:14 69:3 84:23 120:5,7 145:21,23 160:21 173:17 205:18 219:16 224:18 225:12,24 232:19 233:24 242:23 244:4,20,23	recorded 95:16	refers 213:6,13	reject 161:2 236:11	remark 33:12
recall 18:17 40:9 47:6 102:25 105:8 139:1 157:20 163:2,4,13 179:6 186:16 194:7 195:2 196:22 198:2 209:7 254:15 276:19	records 75:12 249:3	refinements 173:22 174:1	relate 216:8 285:10	remeber 267:18
receive 97:17 98:11 234:22 266:3	recycle 20:1	refining 183:8	related 112:17 124:6 155:1 160:18 183:15 189:11 193:13 196:5 201:12 234:9 244:25 250:20 265:17 270:8,11,24	remember 52:24 86:3 138:18 163:9 174:16,18,20,21 193:24 219:7,11
received 161:1 192:4 193:19 194:8,22 195:1,3 212:17 237:14 265:23,25 266:12	red 6:10,18,21,22	reflect 115:5 172:11 reflected 108:14 243:24	relationship 137:12 188:2 263:9	remind 220:9
receiving 173:9	reduces 60:8 62:20 170:8	reflecting 166:25	relative 117:6 249:10 285:21 297:15	remove 142:21
recess 36:11 131:2 193:2 225:19 265:7 289:12	reducing 60:13	reflects 74:12 225:10 233:7 281:19	relatively 79:1 208:3 276:25	render 99:2 241:2 296:11
recipient 276:5	refer 13:25 30:6 134:4 162:3 190:16 213:19 252:20,21,22 255:5 269:6	refused 83:15 84:1,7,13 290:8	relaxed 174:6	renders 215:15,23 216:2,12,16 217:1 273:6
recoding 24:5	reference 4:6 27:14 27:19 53:23 55:13 57:4 127:20 142:21 143:2 163:11,15 166:11 166:14 167:8,9 171:4	regard 70:21 77:13 127:18 188:3 199:25 247:18	relevant 90:8 120:13 123:2 144:25 146:18 159:15 165:19,21 165:23 166:8,22 167:3 173:15 178:24,25 179:7,9 179:13 201:14 220:25	repair 280:9
recognize 113:4,6 180:16	referenced 29:14 63:23 69:20 163:17 167:11	regarding 12:7 33:12 45:1 66:10 67:1 91:25 92:4,13 95:8,19 98:22 102:10 114:1,17 115:13 128:5 132:12 141:9 149:2,4 157:3,17 159:6 193:3 197:5 198:1,6 203:19 204:15 205:21 212:16 215:22 216:10,24 244:3 249:9 250:4,9,12 251:24 252:14 266:6 286:12,24	reliant 149:20 155:15 280:11	repeat 104:3,4,18 227:15
	references 30:4	regardless 29:19 54:2 227:9	reliance 94:19	repeating 74:15 189:4
		regions 94:3 95:9	relied 94:8,10	rephrase 105:4
		regularly 74:19	relies 94:16	replica 82:18
			reluctant 89:22 147:12 225:24 231:12	replicate 271:11,18
			rely 50:11 51:19 61:24 92:23 112:1 112:20 118:16 161:15 280:9	replicated 272:3
			relying 135:1 136:3	replicates 69:14
				replication 82:22
				report 5:22,24 6:3,6 6:8,11 7:1,7,10 23:14 24:3 26:22 27:22 29:3,4 30:16 32:7,11 48:20 50:12,17 51:20 53:17 54:1,7 68:7 74:11,16,17,21 79:11,13 93:22 99:10 105:1,11 106:21 107:14 113:23 114:14 115:10 129:22 133:21 145:11 146:24,25 149:6 150:14 159:6 161:24 162:2,14 163:2,14 165:17

172:12 173:2 184:14 186:23 207:18,22,23 208:2 209:11 219:19 234:5,12 238:11,12,14,17 240:25 241:12 249:11,12,17,19 251:5 267:12,13 268:24 269:1 281:21 284:6 288:8,11,17 289:1 289:9,19,22,24 291:6 293:2 reported 31:4 85:14 145:13 236:25 237:16 238:21 Reporter 2:19 297:4 REPORTER'S 297:1 reporting 29:7,21 30:12 238:4,5 reports 24:4 32:3,6 32:21 74:22 209:1 237:21 258:25 259:1 268:18 represent 6:24 78:20 85:25 99:16 104:17 105:7 106:2,16,25 107:10 127:20,24 165:5 181:15 200:17,22,25 214:7 234:6 237:5 237:12 274:11 282:15 representation 14:15 30:1 102:22 103:4,5 105:18,19 202:7 236:22 representative 81:19 82:6,9,11,14 82:17,21 83:4,6 85:20 93:12,13 103:15 110:7 111:4,18,21,24 112:12,16 173:11	195:12 202:15 232:24 233:5,17 233:21,25 234:4,8 234:10,15 236:5,6 236:9,12 237:6 239:12 274:12 275:12 276:7 representatives 155:6 191:16 209:16 211:11 212:2 represented 49:15 108:12,21 110:8 110:19 111:5,19 112:13 118:13,14 118:14 199:21 200:4,22 205:13 215:2 261:18 271:20,22 273:17 274:4,14 representing 36:17 represents 8:5 17:5 105:23 106:5 233:2 repulsion 271:10,23 request 38:15 REQUESTED 4:19 require 22:21 82:6 136:13 required 71:22 requirement 11:19 135:22 requires 135:3 189:6 reran 271:11 reread 267:12 rerun 217:4,9,14 218:1 219:14 res 274:1 research 42:24 75:11 77:8 92:25 93:4,16,23 94:20 94:22 96:22 97:6,7 124:5 136:11,13 136:14,18,23 145:13,23 148:23 149:2 155:11	156:14,14,17,20 157:4,17 159:18 159:22 161:20,22 162:7,19 166:1,19 167:13,14,18,21 168:1,6,7,9,12,13 168:18,18,21 169:2,6,8,12 171:11,21 172:16 172:16 175:15 182:9 188:8 191:23 199:5 200:13,24 202:16 207:3,14 208:23 209:18 225:23 234:3 246:20 247:5,9,24 248:1 248:10 258:17 262:1,16,18 264:10,12 265:15 265:16,16 289:6 292:6 293:15 researched 126:25 researcher 89:10 98:10,18 145:25 230:16 263:22 264:2 researchers 42:19 48:3 83:8 87:17 95:16 96:9,19 97:8 201:2,4 224:12 246:16 263:19 reside 92:13 residence 81:15 resins 273:6,25 resolved 290:3,4,10 290:22 resolving 292:1 resources 228:8 respect 25:23 30:4 41:23 63:9 66:22 74:20 76:20 78:4 82:20 94:21 100:23,25 108:19 109:8 112:16 125:10 141:8 145:5 147:2	160:12 163:24 179:13 211:14 223:3 232:11 233:16 236:23 237:19 239:1 246:10 255:15 257:20 277:3,23 284:12 287:12,23 respectfully 45:25 respects 12:21 185:18 respond 77:21 89:15 178:4 180:3 185:21 189:8 220:24 226:24 227:4 230:4 231:9 250:9,11,13 273:22 275:3,13 276:8 279:4 responded 23:1 29:17 152:6,7 215:4 250:5 respondent 3:10 19:18 24:4 35:10 35:13 86:18,25 88:8,10 142:3 147:4 149:7,16,24 150:3,10,15 175:8 175:10 177:3,19 178:3 210:12,13 224:8,14 244:16 246:3 249:21 261:9,10,12 280:23 282:4 283:25 respondents 14:10 27:25 28:9 31:12 31:13 33:3 47:14 54:3,4 70:24 71:25 74:22,23 75:2,23 76:3 87:17 91:25 92:13 93:5 95:15 98:18 104:12 106:10 113:15 116:1 119:21 125:10 133:18 147:16,20 149:3	150:18 151:20 153:17,22 154:17 170:3 175:4,13 177:19,22 178:6 179:14 180:11 181:8,10,12,22 187:10,13,24 188:8 200:14 203:18 211:9,24 215:20 219:24 220:2 224:17 242:13 246:9 247:12,25 251:23 251:25 252:22 260:4 261:4,16 273:1 276:3,11,15 276:24 280:5 respondent's 224:13 responding 143:1 176:16,21 177:3 179:16 180:6 response 14:5 15:3,4 15:10,11,16,19,21 16:6,8,11,15,18,20 17:1,12,13,22 18:14 19:1 20:17 20:21,23 21:3,8,11 21:13,18 22:5,10 22:13,15 23:5,8,10 24:9,25 25:1,3,24 29:18,18 31:12,13 31:17 32:11 34:9 35:2,20 37:10,13 38:12,18 39:19,23 40:6 41:25 42:9,21 43:4,8,9 44:5,9,12 44:25 45:1 47:4,19 47:20 48:1 72:17 98:16 117:23 137:12 138:1,1 147:12 175:23 178:12,13,15,20 179:1 180:4,25 181:3,5,7 182:4,5 182:12,14 185:8 210:23,24 211:15 214:4,9,11,15,24
---	--	--	--	---

228:13,15,22 229:1,24,25 230:5 230:15,20 243:5 244:16 245:8 247:13,15 249:21 250:6 251:8,9 252:13 254:24 276:18 279:2 280:25 281:9,10 281:16 282:6,11 291:21 292:22 293:13 responses 17:11 18:20 23:16,20,23 23:25 24:15,17,20 25:16,19 26:21 27:2,4,5,8,13,14 27:18,19 28:2,5,6 28:11,16,24 29:9 29:15,24 30:5,6,8 30:16 32:19,21 33:3 40:11,15,20 40:23,25 41:4,6,7 41:8,10,22,24 42:25 46:17,25 99:7 109:3 118:21 119:20 120:24 144:24 145:2 146:20 180:17,21 181:9,11,12 182:3 200:24 209:3 210:7 212:17,20 217:8,13,25 219:1 225:25 228:2,24 231:4 232:3 237:3 237:3,4,22,23 238:24 239:10 242:2 248:20 249:15 250:4 252:11,15,17 255:22 256:3 272:16 276:20 281:22 282:12,17 283:7,9,15,17 responsibility 63:7 63:13,22,23,24 187:9	responsible 61:2,4 61:20 62:1 63:2,17 64:14,20,21 responsive 43:1 172:6 173:9 rest 119:2 240:11 restricted 174:5 restriction 27:1 29:15 40:10 77:10 restroom 36:8 192:25 result 26:10 86:21 88:11 164:13 235:13,13 280:10 280:11 results 26:22 40:10 40:17 81:22 90:22 113:9,11 119:1 122:12,25 142:15 146:18,21 151:22 161:15 184:2,11 208:4 209:2 211:19 217:17,19 217:22 218:4,19 218:20,24 235:24 239:25 240:2 242:12 245:5 271:17 275:16 277:23 293:2 resumed 131:3 retired 113:16,20 114:1 116:12,17 116:23 117:5,12 117:24 118:6 119:1 retrievable 92:15 return 36:20 212:15 returning 20:15 revealing 218:25 review 14:12 31:25 50:16,18 51:19,21 143:11 170:2 reviewed 270:21 reviewing 287:14 revolution 51:16 revolutionary 273:4 re-ask 112:6	RF 83:16 rice 33:15,15 rich 120:20 Richards 134:4,13 135:2 136:1 richer 120:25 rid 175:21 182:12 182:16,18 right 15:12 19:6 21:4,19 22:7,24 79:13 91:12,17 106:3,9 107:4 111:13 126:4 176:11 182:24 203:12 221:9 225:1 261:13 286:10 294:2 risk 60:9,13 117:22 road 3:11 196:16 Robert 52:25 role 12:6,10 89:15 159:10 160:11 234:17 rotten 240:6,7,9 rough 41:13 59:21 117:21 roughly 19:5 45:6 180:19 181:13 257:2 routine 74:18 row 15:4 19:5,23 21:4,19,23,24 22:5 22:24 33:11 rule 44:4 45:4,14 76:19 249:25 rules 5:17 44:1 188:4 239:14 248:15 run 117:21 174:13 213:16,25 214:22 217:20 218:9 219:5,25 264:4 ruse 147:11	safe 161:13 said's 283:25 sales 200:4,8,10,14 200:22,25 salve 290:3 salveling 233:15 sample 50:21 51:11 51:19 74:13 78:7 78:11,12,19,21 79:5 82:6,8,11,14 82:17 83:5,10 84:15 105:20 107:18 110:11,12 110:13,20 119:2 174:25 183:9 199:6 200:17 233:2,4,16 234:11 234:16 236:4,6,9 236:12 237:24 280:19,21,22 290:3,4,5,5,10,10 291:10,23 samples 78:15 271:13 sampling 78:10,10 78:13,14,18 84:16 87:16 93:10,11 187:1 191:22 232:23,23 233:3,6 233:7,13,14 246:17 261:18 saneovay 185:22 satisfy 57:9 Saturday 217:24 savant 165:15 save 189:10 saw 35:1 212:21 244:8 275:18,20 277:21 278:17 saying 25:9 94:10 111:7 229:10,12 229:13 230:4 237:9,9,10 240:6 258:1 272:2 286:11 says 16:11 18:5 19:12,24 24:23	27:1 128:20 134:8 147:1,2 175:18 200:11 235:14,20 237:15 241:12 252:4 282:20 284:24 289:7 scale 183:8 217:5,9 217:15 218:1 219:15 292:19 scheme 45:8 scholar 166:5 168:10,11,19 school 91:14 155:4 science 8:16,21 10:3 60:10 134:10 157:14,22 287:18 287:24 scientific 48:2 78:10 78:10 scientist 285:19 286:4 scope 6:20 123:11 123:17,19,21 124:1,3 184:15,16 184:19 185:1 208:11 score 208:20,20 scream 273:2 screen 14:1,6,8 47:11 68:11,12 97:24 180:1,2 182:7,10,16,18 203:17 210:15 272:15,18 screened 182:8 screeener 85:13 screening 47:13 125:5 154:4 204:8 SCRS 264:16 se 154:24 search 263:24 second 15:4 21:4 24:16 25:17,18 31:3 34:3,8,22 35:22,24 36:5 38:12 39:19 51:14 57:17,20 134:21
S				
S 3:1 20:8 115:19 296:21,21				

147:3 179:22	sends 206:6	245:17,17	246:11 271:16	203:9 205:8
191:24 194:8	sense 8:4 12:13,22	setting 231:24	290:2	293:21
214:9 251:15,21	25:2 38:19 42:9	247:10	sight 170:14 175:14	Sinclair 53:1
251:25 252:6	46:9,11 49:14 59:5	seven 15:1 16:8,11	176:13 272:8	205:17
256:24 257:3	60:5 106:22	21:3,17,25 22:2,3	sighted 162:6	Sinclair 188:25
271:17 282:6	107:16 116:4	75:25 76:4,15 77:4	165:17 166:4	single 178:21
283:3	191:15 228:5	77:12 166:10	170:13	sir 19:6 179:8
Secondly 65:1 161:8	234:4,23 277:18	170:1 191:11	sign 266:9 294:3	193:15
seconds 23:17 44:19	278:5 292:20	256:20,24	signed 194:18	sit 19:20 33:4 75:5
178:8 179:4,11,22	sent 189:25 258:24	sex 198:12	295:11	100:21 102:24
179:25	259:16 262:11,13	Shane 3:14 143:18	significant 62:15,18	104:22 105:8
section 89:7 184:15	271:3	271:4	95:24 96:5 198:22	106:17 107:11
184:16,19	sentence 7:14 26:19	share 166:20 171:1	271:2,10,19	113:21 114:12
see 14:14 15:8,12,13	27:12,13 48:22	221:1 224:9,14,20	277:20	118:8 135:16
15:14 19:7,12 20:1	49:4 133:22 147:3	260:5	sillily 145:2 180:4	155:3 162:23
22:3,7,8 26:11	169:25 185:5	shared 7:19,20,21	similar 139:20	163:13 173:14
32:16 40:10 62:19	195:10,11 209:12	7:25 8:17,24 10:14	243:10 251:24	175:6 178:23
83:17 88:24,25	271:9 284:7	10:22,24 11:1,2,3	255:12,21,23	179:25 184:8
111:14 143:7	September 42:4	217:18 218:4	similarly 7:15,15	236:3 249:3 250:7
161:7 246:5 252:5	194:16,19,22	220:12,23 271:6	simple 264:9	267:6 288:9
272:17 275:3,12	195:1,3,4 226:6	sharing 127:14	simplify 197:19	sites 151:15,16
275:20 276:8	Septembred 234:1	128:13 163:21	simply 17:2 24:13	172:22
277:12 278:20,23	series 53:12 69:13	shelf 77:3	26:14 29:21 30:16	sitting 291:24
seen 32:17 34:21	69:15 71:10,13	shipping 128:23	34:11 42:7 43:17	situation 58:17 59:7
50:3,22 52:10	100:9 189:11	129:10,13,16	52:1 53:22 58:1	59:11 62:22 64:19
68:19 80:17 93:19	serious 168:10,11,20	130:2,10	88:5 103:1,14	96:18,21 129:24
96:23 126:2	169:7,14 179:15	shop 65:4	116:17 137:23,23	234:3
159:22 173:10,13	seriously 181:22,24	short 34:12,18 46:25	142:22 150:5,8,21	situations 64:23
176:24 187:3	serve 191:22 284:9	79:1 133:4 179:24	165:25 166:25	141:1
270:18 274:16	286:13	235:15 263:1	173:11 182:6,7	six 15:1,8 16:7,10
275:5	served 286:22,25	shorter 26:6,8	184:3 185:1	18:25 19:8 20:15
sees 119:22	287:4,9	shorthand 2:19	200:11 211:1	89:7 91:17 100:24
select 116:18	serves 145:3,4	297:3,11	219:5 237:10	170:1 188:23
selected 51:21	146:18,20	shots 14:1,6,8 47:11	243:11 245:1,2,24	191:11 192:8,10
233:19 274:3,5,9	service 286:17	68:11,12 97:24	246:3 247:11	192:12 212:23
selection 93:8,10,13	services 207:14	203:17 210:15	249:13 260:4,16	256:20,24 280:24
93:16 94:2 173:5	209:18 262:2	272:15,18	263:2,22 273:16	281:8
199:7 210:18	264:12	shoveling 272:19	275:8,11 278:14	size 183:9 206:13
selections 51:24	session 4:4 119:10	show 77:7 141:3	284:3 290:4	sizeable 80:9
198:7	set 8:23 14:1,3 29:2	208:12 237:13	simulate 72:24 73:2	sizes 174:25
selective 237:11	33:9 47:19 90:14	242:12 244:8	76:21	skeptical 109:15,16
self 211:14 228:4,7	102:16 103:15	showed 138:4,7	simultaneously	223:21,24 224:4
sell 53:12	180:18 183:4	showing 142:10,11	13:10	skepticism 66:19,23
sells 49:21 52:9,20	208:15 280:2	shown 77:11 139:22	sin 121:15 188:15	172:18 277:18
53:4 91:2 148:3	291:13 297:7	142:3	195:24 196:5,10	skewed 235:25
send 162:17 193:8	sets 42:13 78:15	shows 237:15	196:24 197:1,10	skip 22:1
262:6	123:5 138:7	side 14:3 100:10	197:20,24 198:4	slash 113:16,17

117:5,6 118:6,6 280:6,6,13,13 281:13,14 282:8,8 slightly 208:14 slipped 152:13 slowly 208:18 small 19:10 96:13 96:21,25 151:12 151:22 183:8 199:8,9 200:10 207:10 233:20 276:25 290:25 292:15 smaller 58:4 190:19 198:19,25 smart 126:15 snapshot 161:17 social 225:8 solder 100:21 sole 55:24 solely 55:10 60:9 128:4 solid 80:18 solution 34:19 somebody 46:12 118:25 150:6 152:13 182:5 197:9 201:20 206:8 252:4 264:4 282:17 283:11 somewhat 12:22 90:23 197:7 sophisticated 253:1 253:4,7 sorry 19:9 61:18 72:11 104:2,18 160:10 166:5 198:9 220:15 235:7 266:2 291:18 sort 6:21 29:11 59:20,21 72:19 92:3 95:7 98:21 102:9 107:19 113:25 114:17 115:12 133:5,13 137:3 163:19	166:14 167:11 235:11 243:6,7 245:19 258:16 sorts 261:15 277:13 sound 139:19,20 146:3 sounds 106:9 107:4 182:24 source 9:20 10:14 118:11 134:8 135:1,18 136:1 162:9,10 170:23 222:18 266:13 sources 68:24 78:9 125:22 135:6 162:11 222:17 South 3:11 space 157:10 208:20 sparse 161:9 speak 36:15 52:19 67:8 99:3,4 122:25 123:1 132:11 144:5 193:13 201:2,4 205:21 206:17 207:4 speaking 19:5 181:13 speaks 66:15 235:16 specializes 156:17 specific 6:17 10:18 12:4 18:20 33:5 40:13 41:23 53:20 53:22 55:2 61:16 61:23 64:10,22 65:19,23 69:18,20 69:23 73:5 80:17 89:18 92:14 98:9 98:14 102:25 103:11 107:15 109:4 118:11 120:4 122:11,13 123:8 124:8 135:8 135:9 142:22 151:6,14 163:1,6 165:15 171:4 175:1 179:14 183:22 189:7	193:24,25 194:10 201:4 206:15 207:8 216:19 217:17 218:4,20 233:21 235:19 239:17 241:13,15 242:4,22 244:6,20 244:21 250:24 251:4 261:3 267:23 278:3 283:17 specifically 7:13 15:3 19:21 25:23 33:11 36:2 47:12 49:14 62:10 66:3 94:1 97:25 119:23 121:16 123:21 141:24 176:17 216:22 260:6 275:7 specificity 52:3 specifics 138:19 142:1 specifier 203:7 206:1 specify 17:1 speculate 40:5 spelled 48:24 spent 42:23 179:11 267:12 270:7 292:1 spoke 87:17 spoken 157:16,21 169:23 201:16 259:20 260:5 sponsor 178:12 202:17 247:24 248:10 sponsoring 264:3 sponsors 202:14 sport 287:8 sports 151:17 spot 248:15 spotted 248:25 spreadsheet 217:19 ss 296:3 Ssix 47:12	staff 285:7 stage 149:21 stair 180:1 stand 112:19 standard 12:25 13:6 13:11,11,12,13 93:22 135:7,11,24 213:7,8,20 standards 8:23 135:17,21 136:2 214:7,17 215:2 standpoint 49:9 124:5 stands 20:9 183:4 starch 33:24 34:2 35:14 36:22 37:9 stark 283:7 start 40:1,2 43:16 154:6 209:15 232:21 started 269:25 293:7 starts 245:20 state 2:19 8:7 33:15 56:1,7 60:10 295:3 296:3 297:4 stated 43:15 46:19 79:12 87:18 283:21 284:3 statement 11:6 24:11,11,13 25:5,6 29:9 30:13,15 31:7 38:24 69:20 142:16 145:14 241:20,22 244:19 268:11 287:3 statements 31:9 274:3 states 1:1 2:1 20:16 55:11 56:2 60:11 93:12 97:25 100:12 103:17 134:14 149:6 150:14 167:2 271:9,18 stating 280:23 281:7 282:4	statistic 239:8 statistical 238:3 239:4,6 240:20 statistics 115:4 238:6,7 249:14 status 90:2,6 stay 133:6,7 step 112:5 198:11 Stewart 2:13 4:3,7,7 4:8,8,9,9,10,10,11 4:11,12,12,13 5:4 5:11 6:1 14:13,22 36:14 50:2,20,22 74:8,9 132:4,10 164:5 193:4,12 208:13 209:21 240:25 259:6,9,14 260:13 270:16,18 289:15,17 295:9 296:6 stewart's 185:8 294:2 stick 25:22 62:13 222:7 Sticking 19:22 94:1 stimulus 61:22 stood 74:19 stop 225:17 stopping 130:18 store 76:17 77:3 91:1,3 straight 274:8 strength 276:21 stretch 247:6,8 strike 11:1 18:13 50:10 114:16 138:22 140:16 172:2 246:10 strikes 238:2 strong 50:19 stronger 228:7 struck 225:13 strucks 95:22 structure 174:16,18 174:21,22 175:2 struggling 220:21 stuck 54:10
--	---	--	--	---

students 246:14	subset 191:1,20	126:22 127:13	survey 14:6,9,18	167:2 174:14
studied 32:12	201:2 204:5	146:14 148:18	15:8,11,24 16:2,22	175:9 176:11
156:23 180:7	207:10	Suite 1:14 2:15 3:7	18:22 20:25 21:15	177:2,4,18,24
studies 32:22 60:1	subsidiaritive 19:23	3:11	22:17 23:12,24	179:17 181:21,25
68:19 96:24 97:1,5	substance 120:4	sum 172:20	24:1 27:25 28:9,15	181:25 183:12
179:2 183:15	138:21,23 198:3	summarize 282:16	29:17 31:12,13	184:4 185:3,24
184:6 236:24	267:15	summarized 282:12	33:3 40:10 43:14	186:6 187:10,23
249:10 258:18	substantial 55:12	summary 113:9	46:24 47:25 51:23	191:22 195:3
study 32:1 42:15,16	60:11,13 81:20	172:23 238:6	53:21 54:2,4 65:7	196:11,17 199:5
48:13 53:19 77:10	136:5 180:11,16	272:16	65:10,14,16 66:3,7	200:13 201:22
79:14,15 134:5	200:8 238:23	superior 243:16	66:7 67:5,23 69:5	202:16 203:17
143:11 159:22	substantially 56:22	superiority 7:18	70:24 72:1 74:12	206:21 208:23
183:6,7,7,8,20	58:4 228:24	8:11 243:18	74:12,23 75:11	211:8,23 215:18
184:10,12,20,23	substantiated 11:11	supervisor 263:22	76:20 78:4,13,18	215:25 216:6
184:24,25 186:21	11:20 287:15	supervisors 93:24	78:18,25 79:8	217:13,20 218:7,9
186:25 198:7	substantive 52:17	263:20	81:17,18 82:13,20	218:19,20 219:4
199:1,2 201:23	230:7	supplement 60:4,6	86:8 87:23 88:18	219:20 220:1,4
202:9,18 203:17	substitute 25:4	supplemented 78:12	88:21 89:1 90:18	224:8 225:23
207:13,13,16,24	53:16	supplied 193:3	90:19 92:25 93:4,6	226:12,18,19
208:1,3,15 211:24	substituted 53:25	supplies 210:18	93:15 94:19,22	227:10 230:2,4
217:4,5,7,9,9,13	subsumed 204:17	supply 147:15	95:5,15 96:8,22	231:7 232:12
217:14,15 218:1,1	204:19 205:22	support 161:25	97:8,8,24 98:6	234:3 235:9,22
219:14,15 220:10	subtle 231:16	171:12	99:6 100:4,10	242:12 243:24
233:17 236:7	successful 292:12,14	suppose 17:19 31:19	101:20 102:5,17	244:18 245:5
271:11,19 272:1	sufficient 10:19,24	38:21 45:6 59:1	104:12 106:10	247:1,2,4,9,10,13
291:17,19,19	34:23 56:13	64:23 69:11 116:5	108:1,22 110:6	247:13 249:21
293:4,5	142:20 149:23,24	147:22 207:9	111:4,17 112:12	250:5 251:7,23,25
studying 49:7	158:1 168:16	Supreme 8:1	113:10,15 116:1	258:17 259:2
Stwo 97:25	222:11 223:5,14	sure 6:11,19 7:6	117:4,13,14 118:2	261:9,10,12,15
subcategory 280:22	292:4,7	14:7 23:11 44:15	118:3,15 120:3,24	262:1,16,18 264:2
281:1 282:7 283:3	sufficiently 89:21	58:8 60:25 61:1	120:24 121:16	264:3,10,12
subclass 122:1,7	112:1,20 118:16	79:10 91:6,6	123:14,15,15	265:15,16 272:15
subject 92:9 95:13	149:19 155:15	100:18 105:4	124:13 125:6,11	273:1 276:2,3
99:1 102:14	224:8,19	106:1 112:8 116:7	132:19,20,24	280:12 289:5
107:24 114:5,22	suggest 34:22 70:22	137:14 140:4	133:15,23 136:11	291:5,23 292:14
115:17	137:19 169:7	144:11,13 158:19	136:12,14,18	292:19 293:15,18
subjective 44:6	172:17 184:2	164:23 165:3	137:3,7 139:13	surveyed 201:17
subjectivity 44:2	207:2 212:11	173:21 182:20	142:15,23 146:3,6	202:2 204:9 205:8
subjects 197:24	227:16 246:2	183:21,24 193:1	147:5,8,17 149:11	206:23 224:6
submission 160:18	282:10	221:10 225:7	149:15,17,22,23	234:17
submit 248:3	suggested 46:22	229:14 230:17	149:25 150:9,23	surveys 32:17 41:1
subopinions 67:15	47:4 152:10 207:9	233:5 236:2 241:5	150:25 152:1,8,15	43:2 69:22 77:18
subscribed 296:14	276:18	249:17 257:17	153:3,11,14 154:5	81:22 90:3 121:7
297:18	suggesting 108:5	259:11 264:4	154:9,10,17,17,19	136:23 138:16,17
subsequent 190:24	245:22 278:19	271:5 280:16	154:21,23 155:12	148:19,24 149:3
subsequently	283:19	281:9	155:16 156:14,20	149:15 150:11
185:23	suggests 70:11,15	surely 183:24	162:21 166:5	151:11,21 154:24

155:1,13,17,23	121:20 122:17	technical 203:7	48:4 68:18 87:19	63:21 113:2
156:4 159:6,9,13	123:9 124:8 127:5	206:1,9 273:23	88:15 89:5 92:5	Thanks 193:2
159:16,24 160:1	129:21 130:16,19	274:6,7 276:21	95:9 98:23 102:10	Thatwould 210:14
160:13,19,22	130:20 138:21,24	technology 273:4,9	103:13 107:21	theite 187:10
161:4,16 162:8,24	140:8 141:10	telephone 65:7	108:19 114:2,18	thereof 297:13
163:24 164:12	142:8,18,23,25	75:24 78:4 84:2	115:14,25 116:2	theys 35:16
166:2 167:16,22	174:23 180:18	86:7 93:8 94:2	122:10,15 125:7	they'd 28:20
168:2,5,20,22	181:24 198:11	96:16,22 132:19	125:13 127:11	thing 20:8 82:19
169:6,22 170:4	205:17 210:11,16	132:20,24 149:3	128:5,24 130:4,11	163:22 170:18
171:20,25 172:14	213:1 225:18	196:25 197:21,23	137:23 139:8,15	182:24 195:2
172:18,25 174:7	229:25 241:25	209:17 224:16	139:17 204:12,13	237:15 258:9
175:5,25 176:20	242:6,7,11 244:9	226:6,11,14,18	204:20 206:13	272:24 277:3
178:16,21 185:23	265:4 275:22	230:16 234:21	212:11 248:5	things 8:19 24:18
231:9 234:11,16	279:23 282:7,13	235:2 291:9	276:21	31:19 43:16 45:5
235:12 238:10,17	283:11	telephonic 263:5	terminate 88:4,9	57:2 63:3,15 64:24
246:23 247:15,16	taken 2:13 30:18	television 126:2	terminated 86:22	72:16 90:10
247:18 258:21	131:3 297:6	tell 17:10 19:20	183:20 184:7,10	117:24 126:2,2,5
262:3 263:1,12	takes 34:16 58:18	21:22 54:4 62:9	termination 88:11	133:4 145:20,21
264:15,19 265:10	68:25 70:3,16,25	74:21 104:23	terms 12:15 16:4	159:19 163:9
265:14 271:12	71:18,19 77:1	107:11 115:1	23:17 29:6 34:7	166:8 173:5,10,12
272:3,4	145:5 178:7	116:10,16,21	52:3 57:13 59:24	174:8 176:6,8,10
Swith 262:9	221:17 223:12	117:12 118:12	108:6 168:17	176:17 183:11
sworn 5:6 132:5	talk 136:14 156:10	183:13 189:12	203:25 206:11	197:19 242:16
sympathetic 265:5	184:23 187:15	233:6 260:1	228:4 239:14	245:18 248:18
Synovate 121:8	206:10,16 240:5	261:11 275:7	243:16 277:14	277:13,13 288:14
123:15 186:4	242:9	290:16	278:1,8 279:12,15	think 9:3 12:25
195:3	talked 51:9 53:7	telling 86:5 260:14	290:2	13:10 14:19 17:12
system 60:8 93:9,20	67:15 119:23,24	261:3	terrible 170:5	24:8,23,23 26:13
145:3,4	185:24 196:13	tells 180:4 255:21	test 213:13,23,24	30:19,20 31:2
systematic 161:7	203:8 235:18	temporary 148:4	214:20,22 215:17	33:13 34:5 35:8
S1 83:16	248:19 293:21	ten 24:6,16 75:25	215:19 216:19	39:24,24,25,25
S4 113:11	talking 8:8 35:10,13	76:4,15 77:4,12	278:5	40:22 41:3,3,5
	35:19 36:21 75:24	156:11 170:23	testified 5:7 100:18	42:24 43:24,25
	89:18 100:9	179:22 199:16	132:6 144:14	44:10 45:2,19
	147:20 148:16	200:19 208:13	146:8 173:20	46:20 48:21 49:18
	240:3 241:7,8,8,10	209:16,21,24,25	259:15 267:21,25	50:1 52:11,15,21
	254:12 256:13	210:9 247:7	268:4,23,25	52:23,23 55:22
	283:12	266:25 269:13,21	testify 237:5 268:24	59:11 61:15,25
	talks 27:3 235:22	270:1,2 282:5,18	288:2,3,4,6,7,22	63:13,24 67:6
	tall 171:11 173:15	282:19	testifying 141:18	68:12 70:2,20 71:4
	tar 196:14	tend 96:25 228:7	182:19 297:9	71:9,15 72:12
	targetted 192:20	tendency 170:3	testimony 132:17	74:14 80:16,18
	task 176:5 182:1	228:10	152:18 153:20	81:16 82:16,17
	183:4 213:15	tends 79:2 231:19	268:6 288:15,20	85:17 86:10,13
	teaching 155:10	tens 9:9 155:20,21	testing 216:6	87:5 90:8,13,21
	team 155:10	term 12:24,24 13:7	text 6:9 33:11	101:2 103:7,9,20
	tear 64:17	23:18 47:15,22	thank 5:20 15:14	107:7 109:2,22,25

T

T 296:21
table 59:12 115:19
tabulations 113:9
tacked 209:4
take 6:4 14:4,7,19
15:7 34:24 36:5
37:19 38:24 39:6
48:20 55:19,19
56:23,23 65:17
66:4,11 67:1 68:10
70:1 73:3,12 79:12
83:7 86:20 112:5
112:25 119:7,16

110:3 116:3 120:7 120:13,16 122:1,3 122:12 123:1,4 124:17,17 128:10 129:8,20 138:13 139:6,14 140:22 141:12,16,22 142:23 143:1,22 143:24 144:6,12 145:3 146:4,7,16 146:17,19 147:14 149:22 151:2,3 153:7,16,18 154:12 159:24 161:19 162:9 163:5 166:9 167:19 170:20 174:6 175:10,11 175:12,19 176:16 177:20,25 178:4 178:17 179:10,20 180:4,20 182:13 182:15 184:6,8 185:13 186:18 194:20 196:25 197:12 201:13 202:24 203:20 204:17 206:12 209:2 211:22 215:3,4 217:18 218:15 219:20 224:10 225:10 227:12,17 228:14 229:22 230:14 231:6,21 232:7 235:14 242:24 244:5 245:23 249:12,16,23 250:19 251:6 264:10 272:8,16 272:21 277:2 278:9 280:11 281:4 285:23 288:16 289:14 292:3,25 293:7 thinking 106:23 121:10 160:1	197:17 third 21:19,23 22:5 33:11 134:23 258:9,10 thirdly 65:3 Thomas 171:11 173:15 thought 32:17 65:24 85:3,19,24 90:7 105:12,13,14,15 105:16 115:5 119:25 137:22 139:13 182:23 185:11 197:16 204:19 218:24 250:14 274:4,10 thoughtful 24:16 thousand 83:9,12 151:20 152:16 263:7 264:21 266:24 269:16,19 269:21 270:3 thousands 9:10 155:19,20,21,22 155:23 three 14:22,23 19:23 21:3 22:6 27:11 33:8,10 73:3 133:23 134:16,20 181:14 188:4 215:7,9,12 240:20 256:20,23 259:9 259:10 271:16,17 274:3 276:2 293:9 tiand 85:25 ticurrently 31:23 tide 12:17 time 18:7 26:6 34:23 36:2 42:21 65:17 66:4,10 67:1 68:25 69:21 70:3,16,25 75:23 79:2,7 81:14 93:24 95:22,24 96:6 105:16 119:6 119:15 121:19 122:17 123:9 124:8 133:6,8,11	138:21,24 140:7 141:10 142:8,17 151:8 160:5,8 172:14 173:6 178:15,20 179:1 180:12 181:10 185:17,18 187:19 189:24 191:24 192:1,23 193:17 208:3 212:12 215:11 217:2 219:5,20,24 220:1 221:17,18 227:9 227:21 229:4,17 230:21 231:10 235:7,15 243:2,3 245:21 249:22 250:6,13,15 251:9 251:10,24 252:4 252:11,12,14,21 252:23 254:14,15 254:25 255:15 256:16,23 257:21 262:24,25 263:2 264:9 267:12 270:7 288:6 289:8 291:11,14 292:4 297:7 timeframe 69:20 times 5:16 66:23 71:11 72:6 121:17 184:5 223:3 250:10,12 267:21 267:24,25 268:2 268:23 timing 194:11 tire 187:18 tis 263:3 title 52:16 158:23 titles 191:12 TM 51:15 today 33:5 87:22 100:21 102:24 104:22 105:8 106:17 107:11 113:21 114:12 118:8,11 135:16	150:10 160:4 161:20 162:23 163:13 173:14 178:23 184:8 214:20 223:8 250:7 266:21,22 266:23 267:1,7 today's 189:6 266:16 267:10 toed 35:14,16 toer 284:9 token 231:11 told 33:13 48:3 52:4 52:20 53:3 54:2 105:22 106:4,24 121:2,5 126:3 215:21 239:2 275:5 tolerance 225:5,6 tool 156:24 top 40:19 97:3 115:1 164:21 178:22 255:15 280:20 topic 65:20,23 66:20 103:8,10 121:3,6 127:13 196:11 201:15 tore 17:15 total 41:7 84:20 199:9 264:15,18 265:23 266:20 268:4 269:2,12 280:19,21,22 totality 279:15 track 240:25 272:12 291:25 trade 1:2 2:2 3:3 5:14 49:24 50:7 97:19 127:9 159:17,17 162:18 traffic 233:22 trained 42:7 246:15 248:21 training 97:12,15,17 transcribed 297:12 transcribing 241:21 transcript 296:11	transcription 297:13 transform 30:17 46:15,18 273:2 283:9 292:18 transformation 281:21 transformations 282:14 transformed 239:11 transforming 30:14 44:9,11 transforms 237:4 238:24 transmitted 189:15 transmitted 189:13 189:16 275:1 transpire 263:25 transpired 201:20 travel 266:15 treated 31:6 237:10 treats 238:15 tremendous 287:11 trial 267:22 268:6 trick 280:15 tried 41:16,18 207:1 251:2 trillion 44:25 45:6 46:14 trim 46:2 trimmed 46:22 trimming 45:21 trivial 200:20 240:10 true 8:20 20:10 60:5 60:8 91:11 95:21 158:25 226:3 263:14 296:11 trust 170:9 truth 86:6 try 60:3 111:14 117:18 191:24 192:1 trying 29:8,10 68:16 103:16 107:17 136:25 137:2 143:16 172:11
--	--	---	---	---

175:21 191:17 230:3,11 235:5 275:11 278:10 281:21 293:18 Tuesday 1:12 2:16 5:1 132:1 turn 285:13 turned 293:18 turns 287:24 tutorial 197:9 tweet 163:25 164:2 164:4,5,9,25 165:7 165:9,11 twice 23:19 two 14:7 16:11 17:24 21:20 22:6,7 24:5,5 26:4,6,10 29:18 30:4 34:3,8 38:12 39:19 42:2 57:5 60:3 64:18 71:22 78:9,14 83:9 84:8,23 93:18 121:6 123:5 133:23,25 148:6 148:11 150:5 151:8 160:3,21 161:12 174:5,8 188:19,21 190:23 190:25 191:1,20 192:14,19,20,20 193:17,22 194:1 196:7,25 197:2,3,4 199:19 203:25 208:20,20 209:12 210:1,7,12 221:6 221:13 229:25 244:1 245:12,12 245:12 251:7 256:20,23 257:9 259:15 267:24 290:13,14,15 292:10,17 type 19:9 44:5 68:21 89:13 181:11,12 182:6,24 189:5 243:8 244:11 typed 263:23	types 52:1 68:20 70:3,17 71:1 118:20 136:12 242:14 274:5 typical 28:24 94:22 94:24 234:2,2 262:17 typically 39:24 200:23 typo 203:20 <hr/> U <hr/> uh-huh 22:25 192:3 203:23 ultimately 89:2 184:12 186:6 263:14 287:13 un 11:10,20 73:13 81:19 85:20,24 110:6 111:4,17 112:12,16 175:15 183:11 237:5 249:15 263:7 unable 285:25 unaware 253:18 uncertain 96:13,20 97:10 98:3,18 109:13,14 uncertainty 161:14 225:6 unclear 95:22 140:16,18 241:2 241:13,15,16 242:18,20,22,23 244:4,11,13,22,24 256:8 uncommon 198:21 undefined 232:24 underlying 8:16,21 8:21 10:3 underneath 280:22 underscore 83:16 undersigned 297:3 understand 5:15 9:6 9:12 13:4 14:5 25:8,8 27:22 37:1 37:6,22 39:13	41:12,14 49:10 54:3,13 57:4 58:7 59:17 62:16 63:6 68:22 69:1 72:7 73:15,18 75:22 83:8 89:5 92:5 95:9 98:23 101:2 102:10 107:20 114:1,18 115:13 120:17 122:4,15 125:16 126:8,14 128:4,24,25 129:16 130:4 132:21 137:6 141:7,16,17 142:14 144:13 152:18 153:20 165:1 175:24 182:19 183:16 187:22 211:8,23 213:9,16 214:1 221:14,15,17,19 221:21 223:13 227:11,22 229:5 229:18 230:23 231:21 242:19 243:25 249:19,23 249:25 250:2 253:5,12,24 254:10 257:17 260:8 261:6 267:7 272:1,5 273:19,25 274:22 276:10 277:6,10,11,14 278:3,7,10 279:11 280:3 281:13 286:3 289:9 290:23 292:16 understanding 12:12 33:20 35:9 35:18 38:6 42:25 44:21 47:5,14,22 48:4,13 52:8 54:17 54:18,21 65:21 66:20,24 68:17 69:2,8 72:19 77:17 85:8 87:19 88:6,15	88:16,17 89:9 93:3 103:13 108:6 119:19,19 120:1 120:19,21,25 122:14 123:3,6,7 124:7,18,21,24 125:7,17 126:9 129:4,9 130:10 137:9 138:6,10,15 140:7 165:3,6 169:5 174:4,15 181:5 188:1,5,25 196:1 197:8,15 198:18 202:25 213:5 215:19 216:7,8,21 220:12 221:1,4,12 222:20 225:14 242:13 250:3 253:10 260:12 263:6 274:1 277:15,17 277:19 279:14,14 286:9 understandings 221:14 understands 62:15 62:18 128:21 206:8 214:5,12,25 understood 23:20 24:19 37:8 49:6 68:18,23,23 69:6 106:1 129:17 132:17 141:20 175:24 177:7 215:15,23 216:2 216:11,16,25 219:21 231:21 258:4 275:4 279:8 undertake 263:7 unemployed 113:17 114:25 115:3,4,4,9 115:13 116:5,11 116:17,22 117:6 117:13,20,25 118:6 119:2 unemployment 115:6 118:10	unfair 230:14 uninformed 24:14 uninvolved 31:18 unit 249:22 250:6,13 250:15 251:10,12 252:3,7,11,12,21 256:4 United 1:1 2:1 55:11 56:2 60:10 93:12 100:12 103:16 units 252:23 254:14 254:14,20,21 255:12 256:16,16 257:15,16 unknown 233:6 unreasonable 43:9 43:23 unsophisticated 253:14,22 254:8 unspecified 16:4 unsubstantial 240:11 unusual 12:12,20,22 45:2 85:4 237:11 update 74:19 upside 276:24 usage 163:5 use 19:25 20:1 29:8 36:8 42:5,17 46:19 50:15 51:22 52:4 54:6 68:2 79:4 80:4,13 98:14 112:8 137:23 139:15 143:14 151:15 156:21 163:11 192:24 204:12,18 214:20 223:25 228:25 240:16 248:5 253:19 255:7 274:16 275:5,17 275:19 277:7,21 278:19,23 279:5 useful 74:1 119:25 162:8,10 197:14 254:19 user 175:7 176:1
---	--	---	---	--

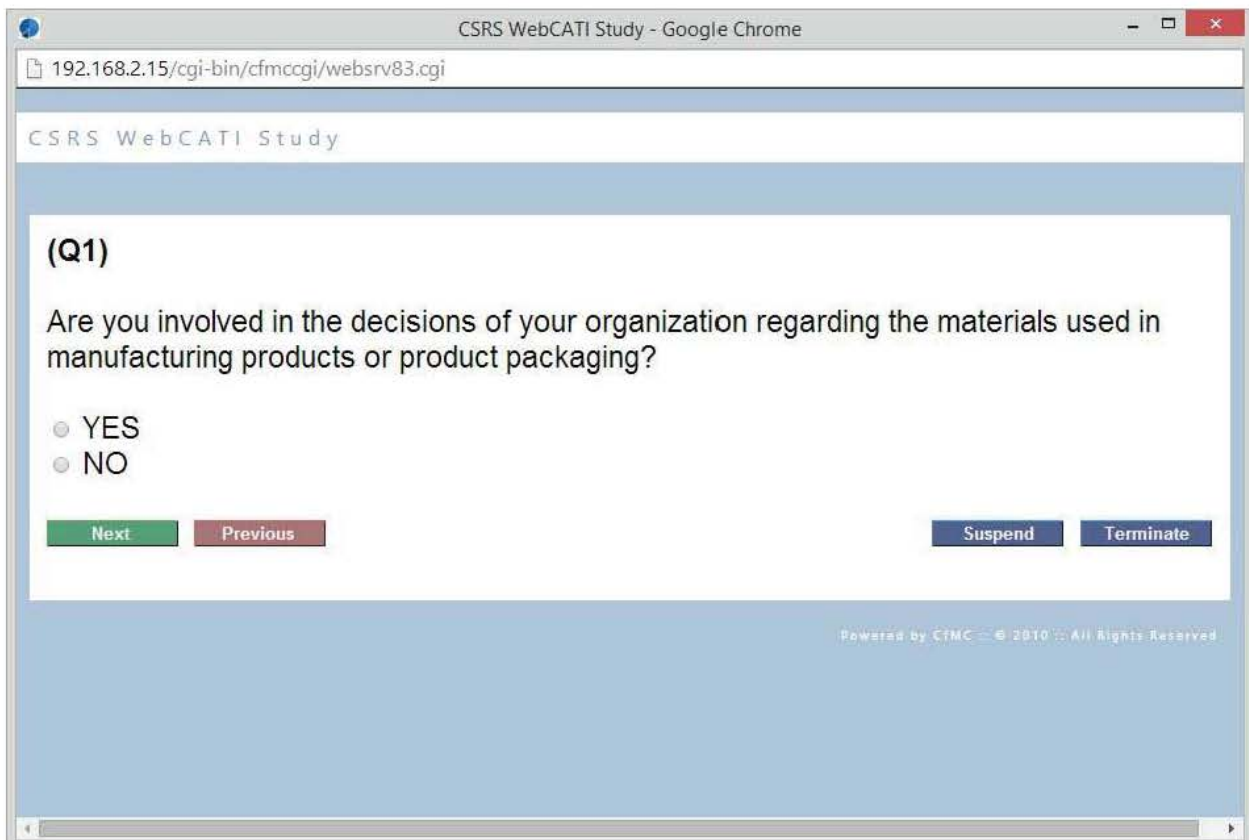
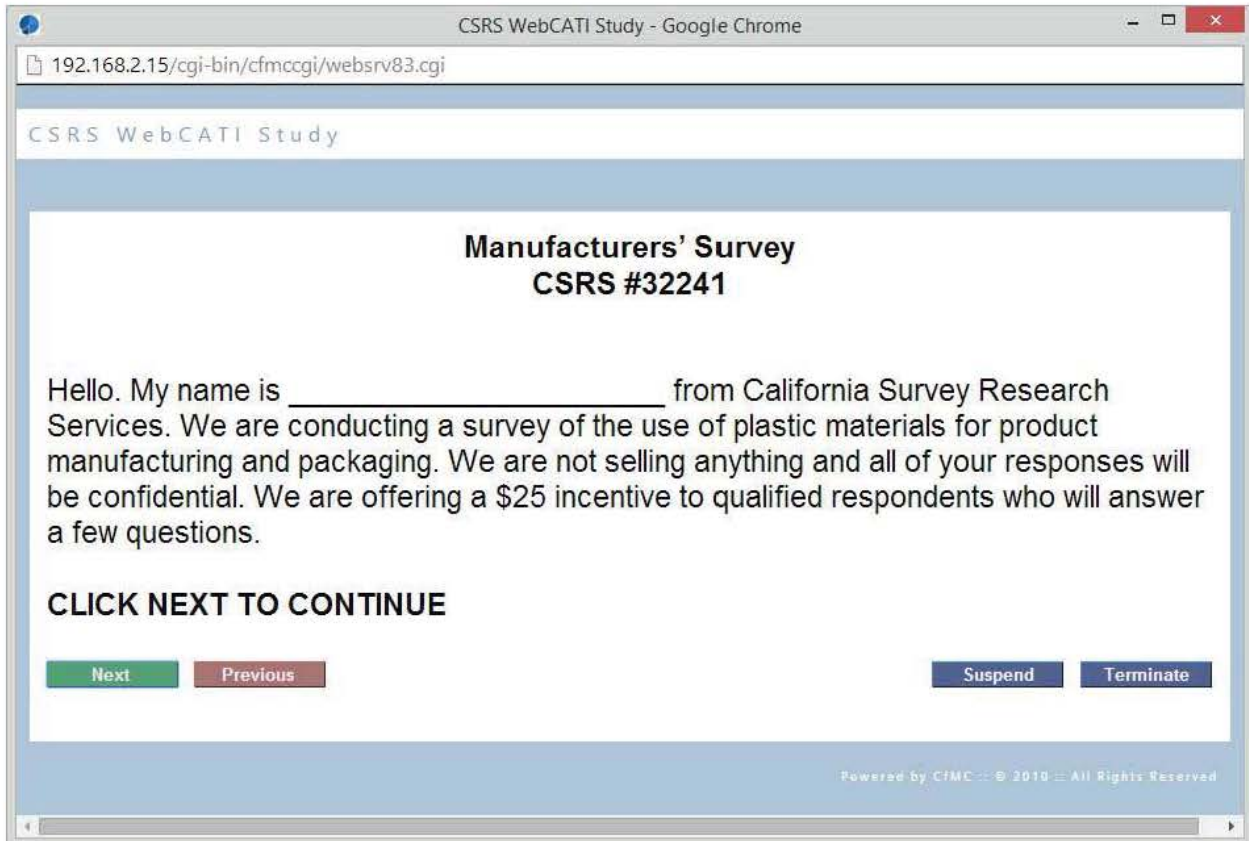
185:25 186:4 212:22 274:24 275:2,3,10,13 278:10 279:16 users 206:2 uses 24:12 79:21,25 80:2 150:25 151:11 273:8 usually 191:25	150:10 152:22 version 209:1 210:8 210:9 versus 117:12,13 252:12 254:14 vicinity 115:6 270:13 victims 189:2 view 9:16 24:20 35:2 35:6 54:12 56:14 149:21 169:21 178:2 182:17,18 182:21 204:25 205:2 224:7,13,14 224:20 227:10,21 229:4,6,17 230:8 230:11,21 247:4 254:5,6 274:6 287:23 viewed 169:6 views 66:10,25 89:20,21 108:19 109:8 120:11 228:19,20 232:4,5 250:11 251:24 255:14 257:20 258:9 287:11,14 287:17 violate 11:21 239:7 violating 59:7 virtue 47:18 58:15 63:3 65:5 visited 93:19 visors 155:4 visual 139:24 visually 271:22 vitae 158:22 vitamin 56:19 57:3 vitamins 55:14,19 56:1,22 57:8 58:3 58:9 voice 95:19 148:15 volition 193:9 volume 170:7 199:7 199:9 200:4,8,10 200:14,23,25 239:25	W W 296:21 wait 200:24 walk 76:17 91:3 wall 177:6,23,25 178:9 247:2 walled 167:8,17 want 14:7 37:2 38:23 40:1 46:18 53:22 54:4 57:24 69:17,19 87:22 88:24 95:2,23 112:7 130:20 132:16 142:1 154:2 164:23 178:5 183:5 184:2 184:4 191:18,25 192:16 200:16 203:6 225:6,9 230:7,22 231:9 234:21 235:3,4 249:17 254:23 279:1 280:15 wanted 46:22 53:23 68:22 69:1 86:7 103:14 175:17 177:21 183:11 274:22 275:3 276:6,6 277:10,11 277:14 279:2 291:22 wanting 226:24 wants 178:5 187:11 wash 231:14 Washington 3:4 wasn't 30:22 39:2,2 65:13,19 66:6 103:11,16 121:5 123:11 126:16 187:21 215:17 216:5 waste 85:2 274:13 watched 93:20 watching 180:1 water 34:3 35:14,17 91:2,4 244:9 way 7:22 8:18 11:2	27:8 28:20,24 29:20 31:6 32:8 44:21 80:5 81:20 86:17 88:1,7,10 89:1 92:21 94:10 100:8,19 116:7,15 116:23 117:16,17 118:9,12 119:25 122:24 125:3,16 126:8 127:16 129:21 130:18 132:13 133:19 136:2 144:6,8,11 146:19 149:25 150:9,22,23 151:10 152:17,17 152:19,22 153:9 154:4 158:13 164:3 168:8 176:19 180:5 182:7,8,8,8,11 183:15 190:12 195:19 199:11,18 205:23 207:11 208:7 222:9 228:9 232:6 234:6 236:1 237:10 238:14,19 238:19 246:18 247:10,11 251:3 252:9 260:4 265:10,17 268:20 274:15,18 278:24 279:3 283:2 287:21 291:15 ways 29:7 42:2 76:13 94:25 109:14,15 150:7 176:3 178:1 231:13 237:4 238:25 239:11 259:15 web 233:20 247:11 website 135:10,12 167:13 170:25 171:3 172:13 websites 127:9 172:13 174:7	233:21 week 19:19 29:18 252:6 weeks 15:5,13 16:3 16:5,11 17:2,15,18 17:23 18:4,7,19 19:2,13,20 20:16 21:5,20 22:7 23:17 23:25 24:2,6,8,19 24:25,25 25:10,12 25:22,23,24 26:4,6 26:10 255:25 293:9 weighted 110:14 welcome 132:10 187:12 welfare 284:9 285:13 286:14,17 286:22,25 287:4,8 went 126:24 145:11 166:8 185:16 weren't 86:5 88:16 89:9 100:18 121:2 161:18 182:8,9 198:7 we'll 13:25 130:23 189:10 193:1 209:15 233:14,15 265:6 294:4 we're 8:7 18:2 32:1 38:19,19 50:2 71:4 88:7 100:9 117:11 122:9 125:11 142:1 184:23 187:15,18 193:7 211:25 240:3 241:10 256:13 283:12 285:11,11 289:14 we've 36:7 67:15 161:12 192:24 193:16 196:7 235:18 237:1 246:16 255:8 WHEREOF 296:13 297:17 white 101:17,25
---	---	---	--	---

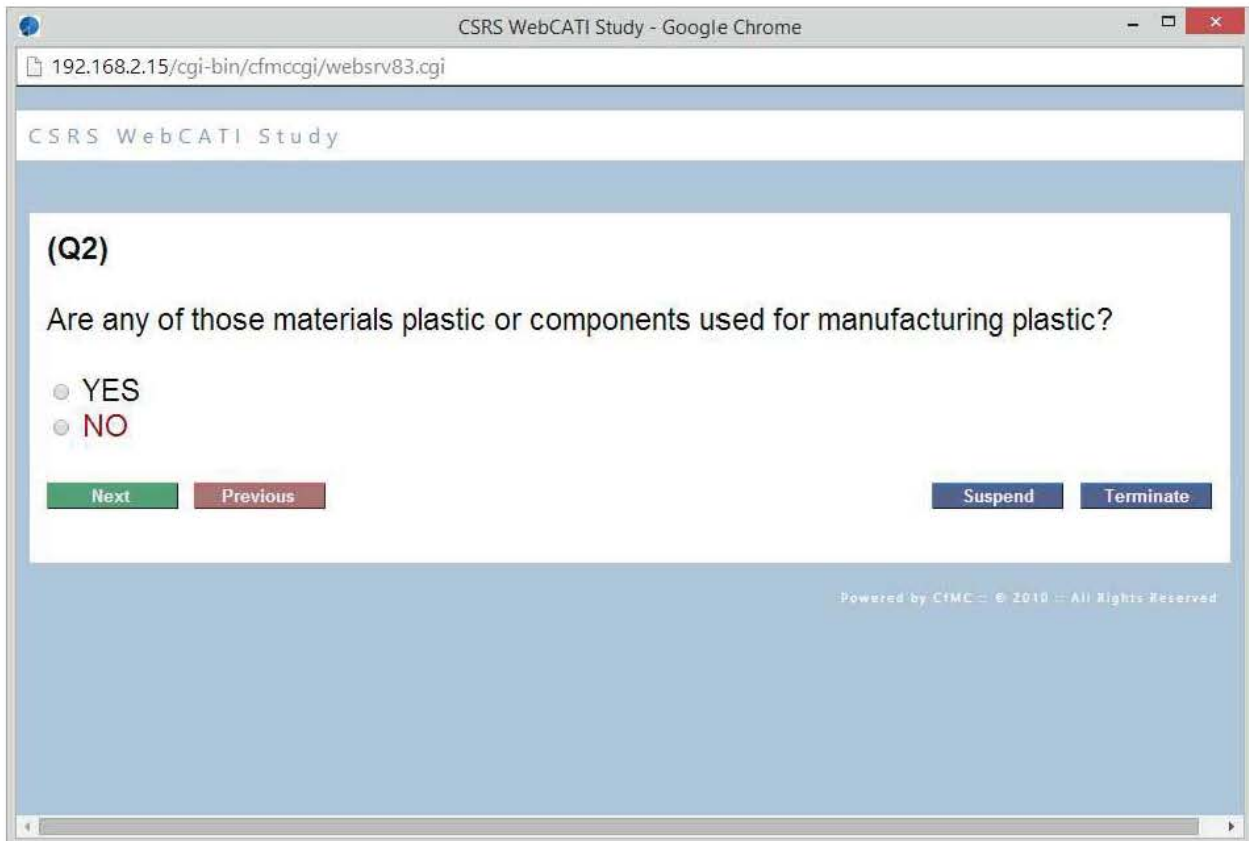
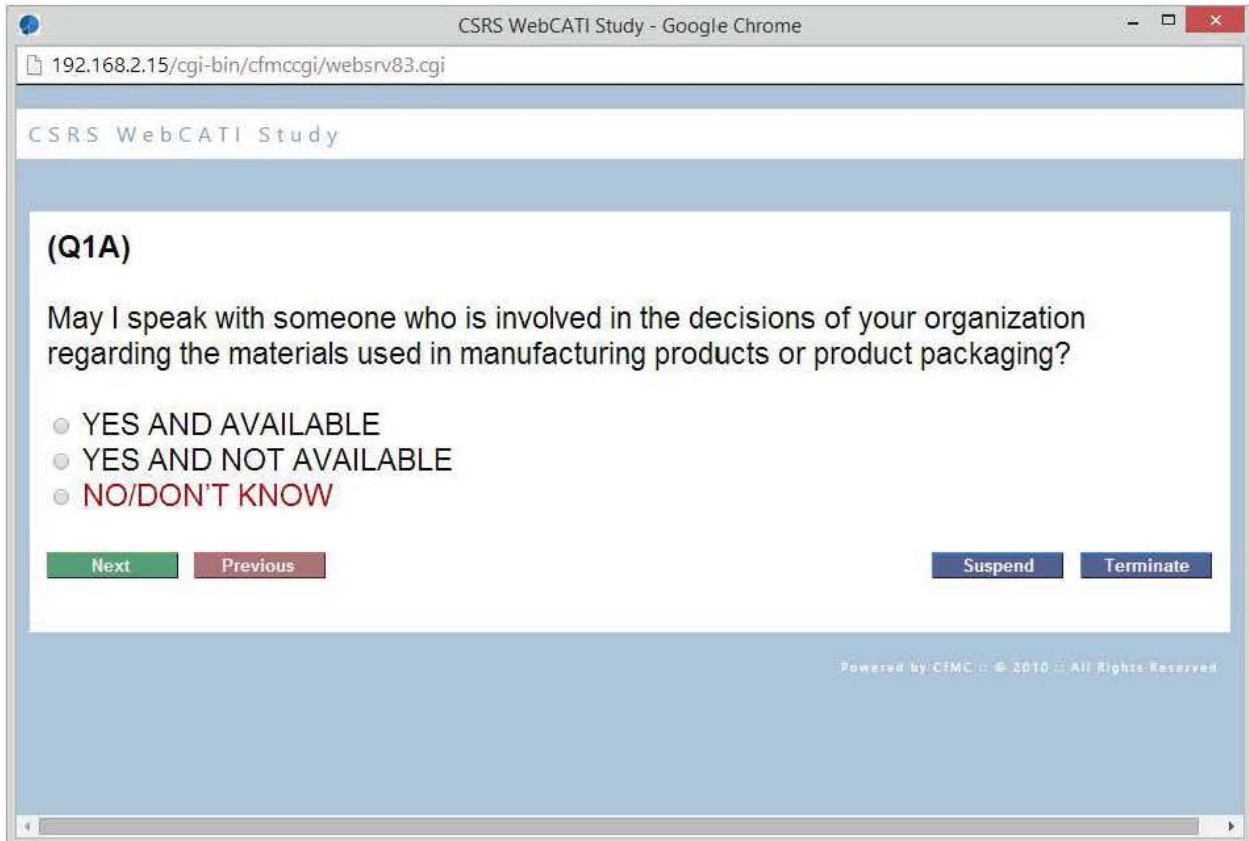
102:3 236:18 whore 90:25 whyment 205:18 wikipedia 163:12 widely 162:19 273:5 273:24 willing 83:16,21 158:17 159:1,4 209:9 263:7 willy 288:2 Wilshire 1:14 2:14 3:7 winter 190:18,22 192:4 194:4 wish 35:11 withdraw 95:23 104:4 154:11 158:14 170:16 227:14 229:21,22 288:2 292:16 withdrawn 62:17 99:9 125:4 171:3 194:7 201:2 265:15 281:24 witness 4:2 5:5 8:4 9:18 11:17 12:10 13:9,21 18:10 24:22 25:15 26:1 26:13 27:8 28:4 29:6 30:25 31:16 32:24 34:5,11,21 35:8,16 37:12 38:6 39:22 42:2 43:13 44:17 45:18 46:7 48:8,17 49:13 51:4 51:9 52:6 53:6 54:9,16,23 55:18 56:5,18 58:13,22 59:9 60:18 61:8,15 62:7,24 63:12 64:8 65:13 66:14 67:4 67:12,22 69:17 70:7,13 72:10,12 73:1 75:18 76:23 77:17,25 78:24 80:25 81:24 86:10 87:4,25 88:20	89:12 90:21 94:14 96:2,11 101:10 104:22 110:10,18 111:7,11 112:3,15 112:23 119:13 121:5 122:1 124:12,21 125:21 126:13 127:23 129:8 130:8 132:23 140:21 143:22 145:19 151:14,25 152:22 153:16 154:1 159:8 161:6 167:24 169:5 171:18 180:15 189:21 190:3,9 205:11 218:14,21 218:23 219:11 221:4 240:2 260:1 268:16 269:24 279:21 284:17 287:2 293:25 296:13 297:17 witnesses 297:8 woman 147:6 149:8 150:3 women 147:9,18 148:8,14 262:11 wood 71:19 word 5:21 7:15 30:5 33:5 59:13 91:8 112:9 124:18,24 125:1,17,18 126:9 126:9,25 128:2,11 128:20,20 129:4 138:2 204:18,21 205:1,7,19 206:16 223:11 276:10,12 276:15,24 277:4 worded 279:3 words 119:21 170:12,16,17 204:23 209:12 277:8,22 278:3 work 32:15,16 67:5 113:12 115:21	116:19,19 143:14 144:20 163:7 169:18 183:25 188:24 194:16 197:16 226:23,25 231:17,18 257:14 262:2,8 263:15,18 265:20 266:12,17 268:15 269:24 272:2,9 288:1,5 worked 42:20 93:18 248:13 working 173:7 262:20,21 works 165:21 167:3 173:15 world 8:7 180:1 228:6 worth 109:24 208:8 wouldn't 13:9 28:13 37:9 42:5 43:11,21 45:14 46:4 53:13 53:25 54:4 59:23 60:2 67:16 69:7 73:1 103:4 123:24 124:16 140:6 154:20 156:1 167:24 168:24 180:15 185:12 196:3 199:2 214:4 214:23 226:21 227:4 269:5,9,25 278:25 292:6 write 5:21 40:22 writes 206:6 writings 258:15 written 32:3 140:1,4 159:16 258:16 262:15,17,22 263:8 wrong 8:25 25:9 47:10 147:8 173:22 192:2 194:13 209:24 224:24 226:25 233:11 245:22 251:3 257:18	283:18,19 wrote 7:10 49:3 <hr/> X <hr/> X 4:1 XLS 208:21 <hr/> Y <hr/> yeah 36:9 57:19 79:13 104:5 164:2 171:18 196:16 204:23 213:11 235:6 267:3,4,5,9 267:20 280:21 287:22 294:1 year 18:8,16 24:6 25:4,12,21,25 26:4 26:7,10 29:16 30:3 41:9 147:5 150:15 150:18 152:5,11 152:12,20 153:6 182:6,23 190:19 190:23 194:17 196:8,9 213:16,25 214:6,10,13,22 215:1,11 216:18 217:2 221:19 251:11,12 252:6 252:15 270:1 280:1,7,14 281:5 281:14,14,17,18 281:19,24,25,25 282:9,14,25,25 283:1,2,4,13,20,21 283:25 284:1,3 yearment 281:16 years 17:24 32:4 41:10 42:23 44:25 45:6 46:13,13 90:25 96:23 106:2 106:11 151:8 156:3,11 160:3 161:12 199:13,16 200:19 215:7,12 216:4,13 235:21 247:7 255:5,25 256:1 264:17	267:24 268:12 269:14,17,20,21 270:2,6,10 278:7 279:18 282:5,18 282:19 younger 78:20,22 79:4 108:7 151:18 yous 35:14 Y.K 3:6 <hr/> Z <hr/> zero 15:1,1,8,8 16:7 16:7,10,10 18:25 18:25 19:7,7 20:15 20:15 21:2,2,17,17 21:24,25 22:20,20 33:10,10,10,10,10 208:20 261:7,7,7,7 <hr/> \$ <hr/> \$37,500 267:8 \$750 265:20 <hr/> 1 <hr/> 1 1:12 2:17 4:7 5:1 5:24,25 6:2 13:25 23:15 48:21 129:22 130:16 132:1 133:21 296:7 1st 79:15 10 4:11 156:8 210:22 252:16,18 254:23 255:1 100 215:16,24 10877 1:14 2:14 3:7 11 4:12 85:4 146:24 163:15 166:10 213:19 240:25 11:50 131:2 12 4:12 23:14 75:2 99:16,20 100:15 100:20 115:6 270:16 12:50 131:4 132:2 12598 2:18 297:25 13 4:13 41:5 289:11
---	--	---	---	--

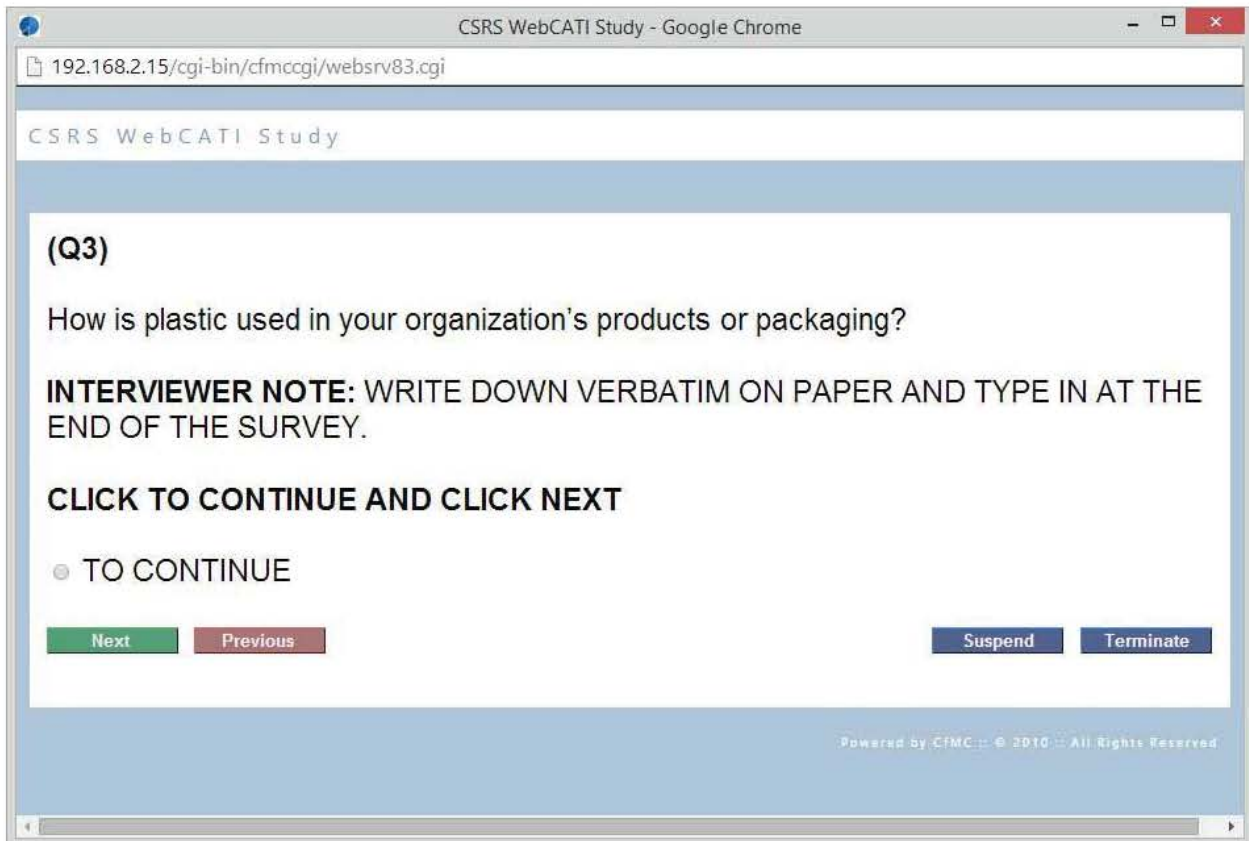
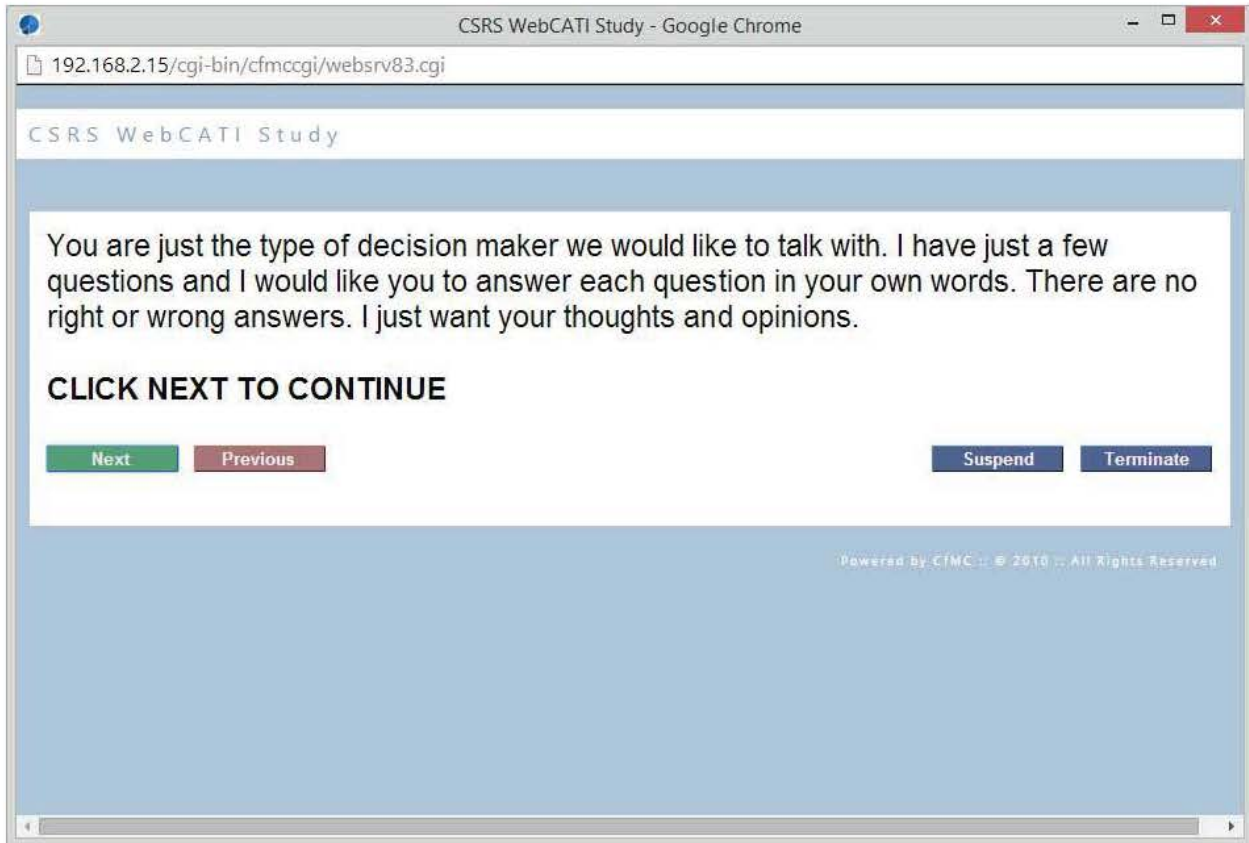
289:14,15	283:2 284:2	96:15 271:8	7500 267:4
14 115:7 163:14	25 32:4 178:8 220:6	279:23	79 83:9
167:7 169:25	267:24 268:12	5:26 2:16 294:5	
284:4	270:13 291:20	50 100:1 101:7,25	<hr/> 8 <hr/>
15 103:19 104:1,7	292:8,10,16	102:5 103:25	8 4:10
104:16 105:23	262014 79:14	104:6 106:11,11	8:54 1:20 2:16 5:2
106:2,6,15,18	27 130:17 133:22	106:15,25 107:10	80 24:24 79:23
107:2 110:5,10,18	186:23 209:16	108:5 109:7 110:7	268:2
111:1,2,2,5,7,16	28 151:20 152:20	111:7,18 112:13	824-4343 3:8
111:22 112:9	209:15	156:4,13 200:15	85 290:20
113:20 114:11,25	29 104:13 106:12	200:18 220:7	85286 3:12
115:8 152:7	29,000 249:3	221:6,13,16	<hr/> 9 <hr/>
153:24 178:7	291 83:17 84:4	235:21 291:2,5	9 4:11 7:13 203:16
246:1,1	<hr/> 3 <hr/>	292:9,22	284:6
16 91:11	3 4:8 14:3 15:2 33:8	53 33:14,25	90 80:4 268:8,10
17 91:3	41:4	55 101:25 283:15	269:1
18 41:7 84:24,25	30 41:8,8 42:23	5511 213:23	90024 3:8
89:25 90:4,9,15,17	96:23 146:24	56 101:17	
90:18,25 99:25	251:12,16 254:24	58 290:23 291:16	
101:7 105:3,7,23	255:1,3,3,4,5,9,24	<hr/> 6 <hr/>	
106:5,19 107:9	255:24,25 256:1	6 4:9 74:7,7 83:7	
110:12 111:2	266:24 291:6	99:17	
112:9,11	292:23	60 180:19	
19 suggest 227:15	310 3:8	600 3:3	
1988 268:16	3210 3:11	602 3:12	
1990 134:5	326-2551 3:4	64 214:19 265:25	
<hr/> 2 <hr/>	331A 193:5	6400 213:2,6 214:17	
2 4:7 13:24 14:1	34 100:1 101:7	65 100:1,20 101:7	
47:10,11 68:10	35 100:1 101:7	102:5 103:25	
89:6 97:23 98:7	388-8899 3:12	104:6 106:11,11	
263:24 272:14,23	39 87:17,21 88:13	106:15,25 107:10	
20 75:19 83:12	<hr/> 4 <hr/>	66 99:21 100:1	
179:4,11,11,22	4 3:11 4:8 21:18	101:7,21 102:16	
197:10 208:8,10	48:22	103:18,22 104:13	
221:16,22 264:17	4,020 84:8	104:16 105:7	
270:9,9 292:1	40 40:25 42:23	106:4	
20th 289:22	180:17,18 237:2	<hr/> 7 <hr/>	
200 192:5,17	237:23 239:9	7 4:10 15:8 112:25	
2000 157:9 208:6	248:20	113:1 272:16,17	
2012 163:15	41 104:9	7th 7:14	
2014 1:12 2:17 5:1	44 113:15 116:10	70 83:8 268:2	
79:15 132:1 296:7	49 100:1 101:7	700 1:14 2:15 3:7	
296:15	<hr/> 5 <hr/>	73 290:22 292:1	
202 3:4	5 4:9 6:19 50:1	75 79:20,23 181:18	
20580 3:4		181:20,21	
24 107:1 282:1			

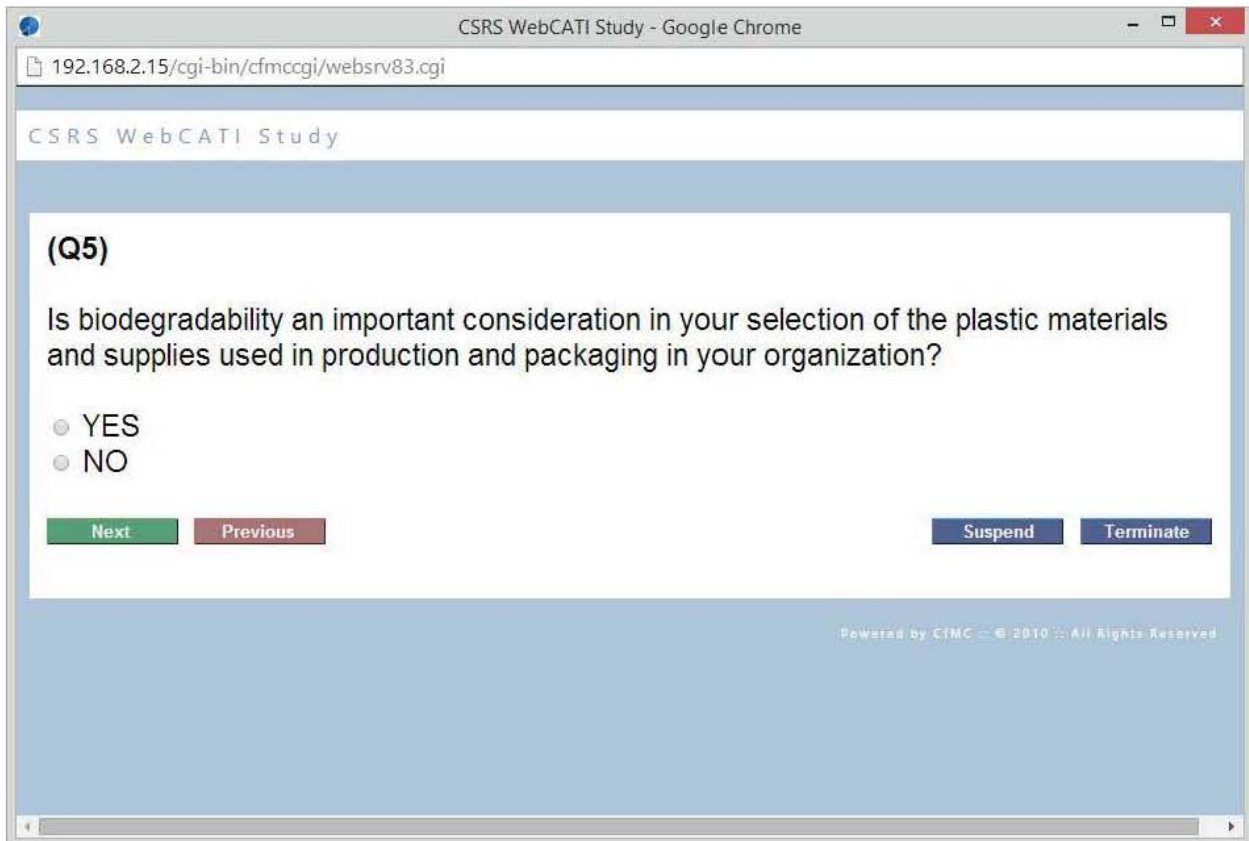
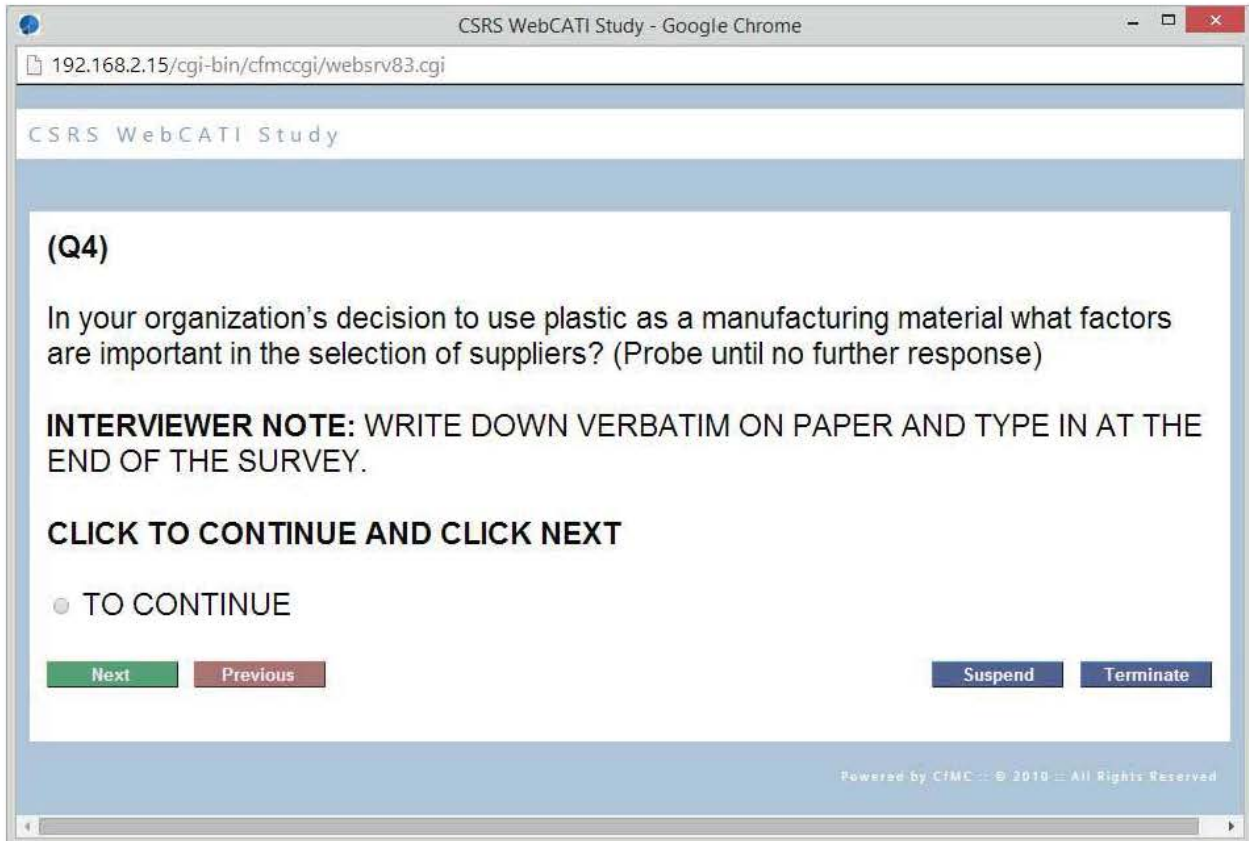
**Complaint Counsel
Exhibit A
Attachment 2**

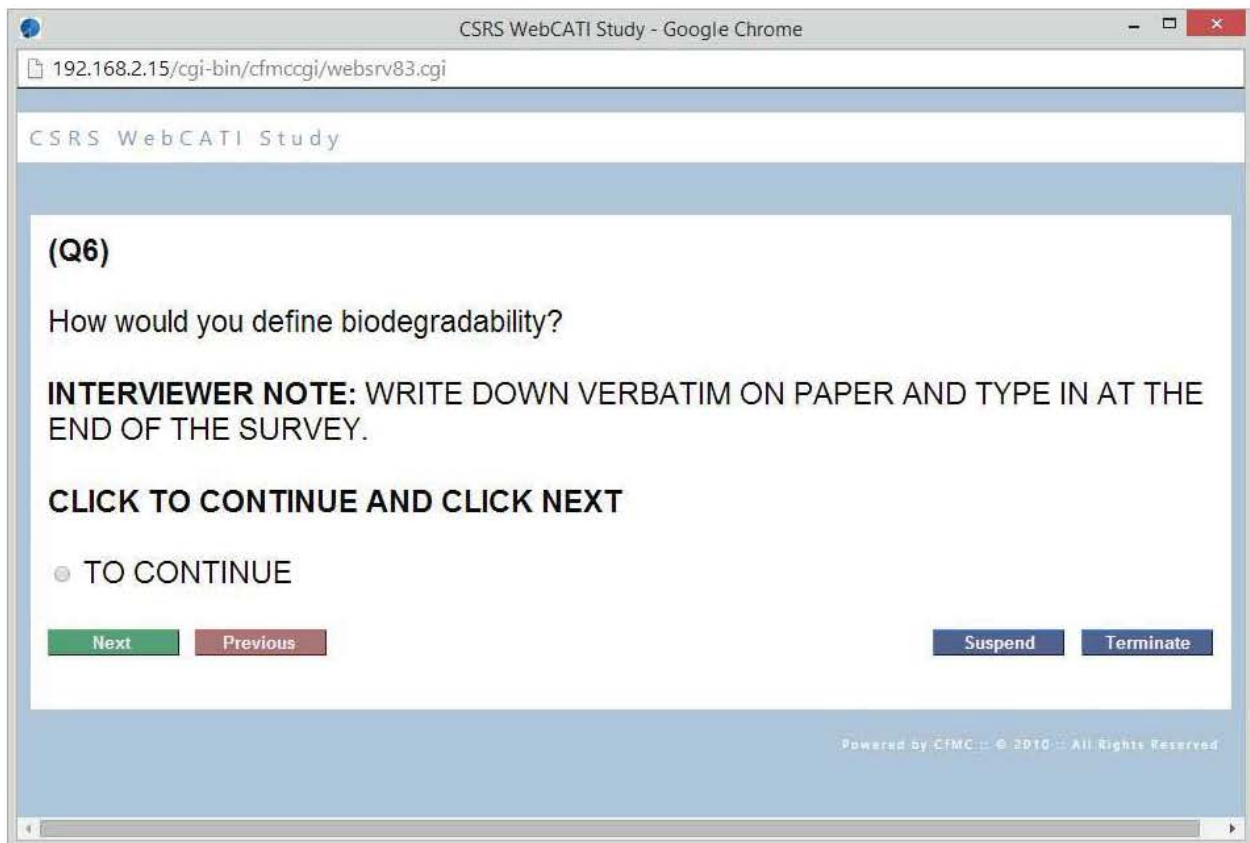
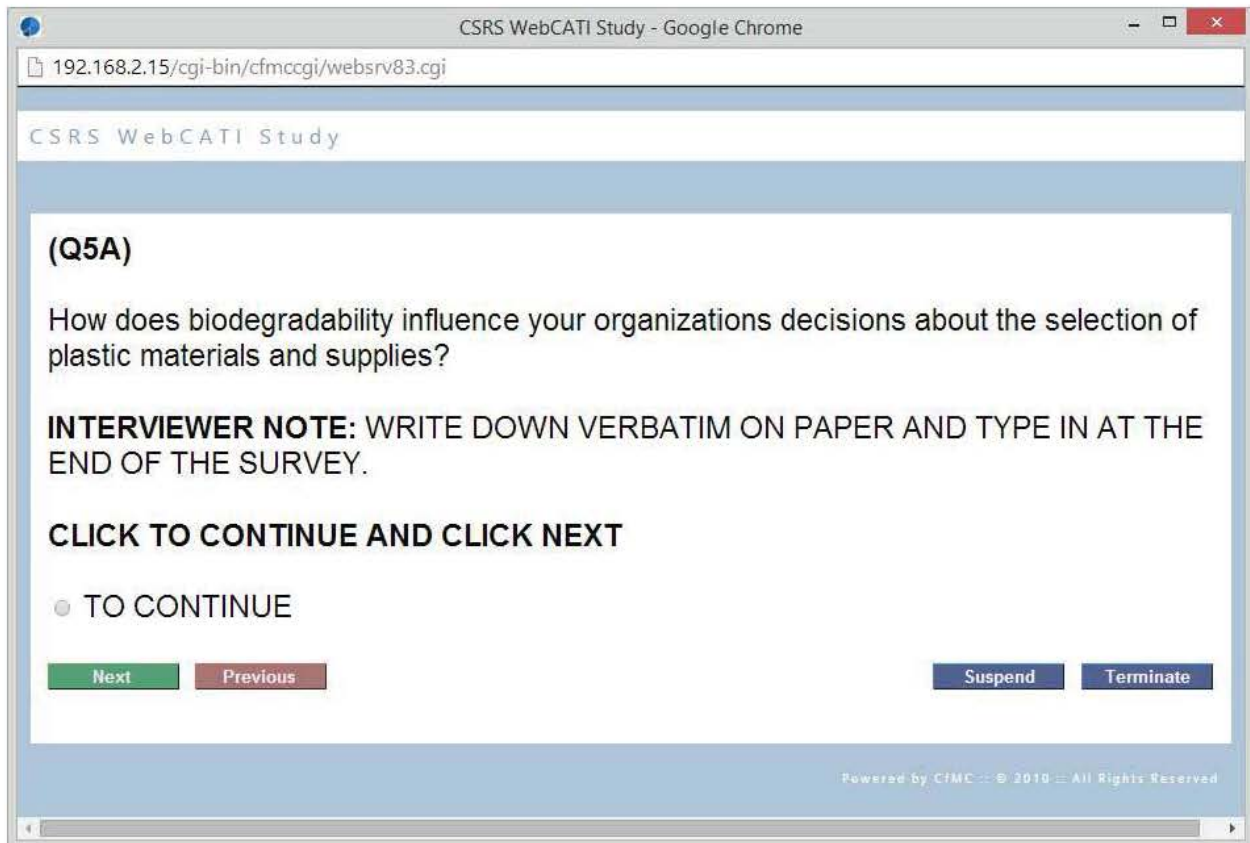
CX-A:2

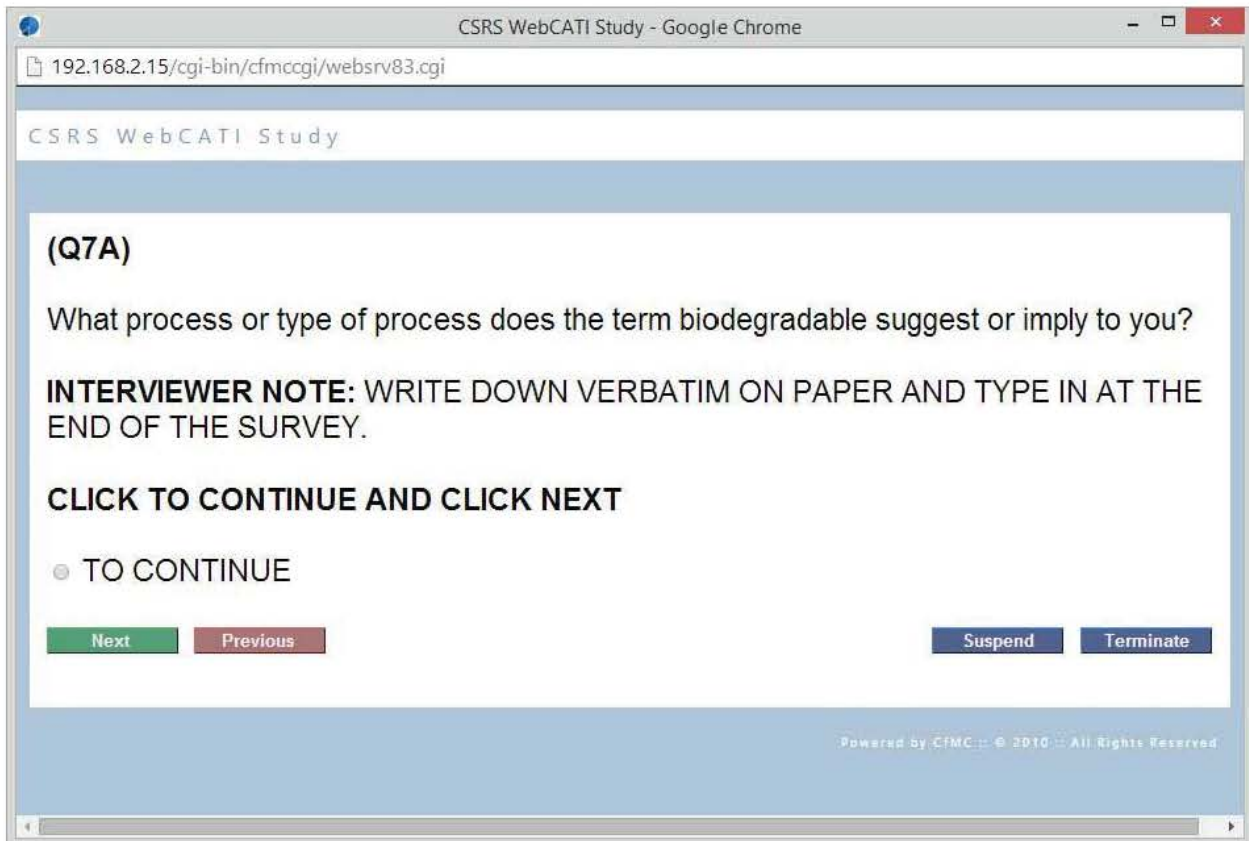
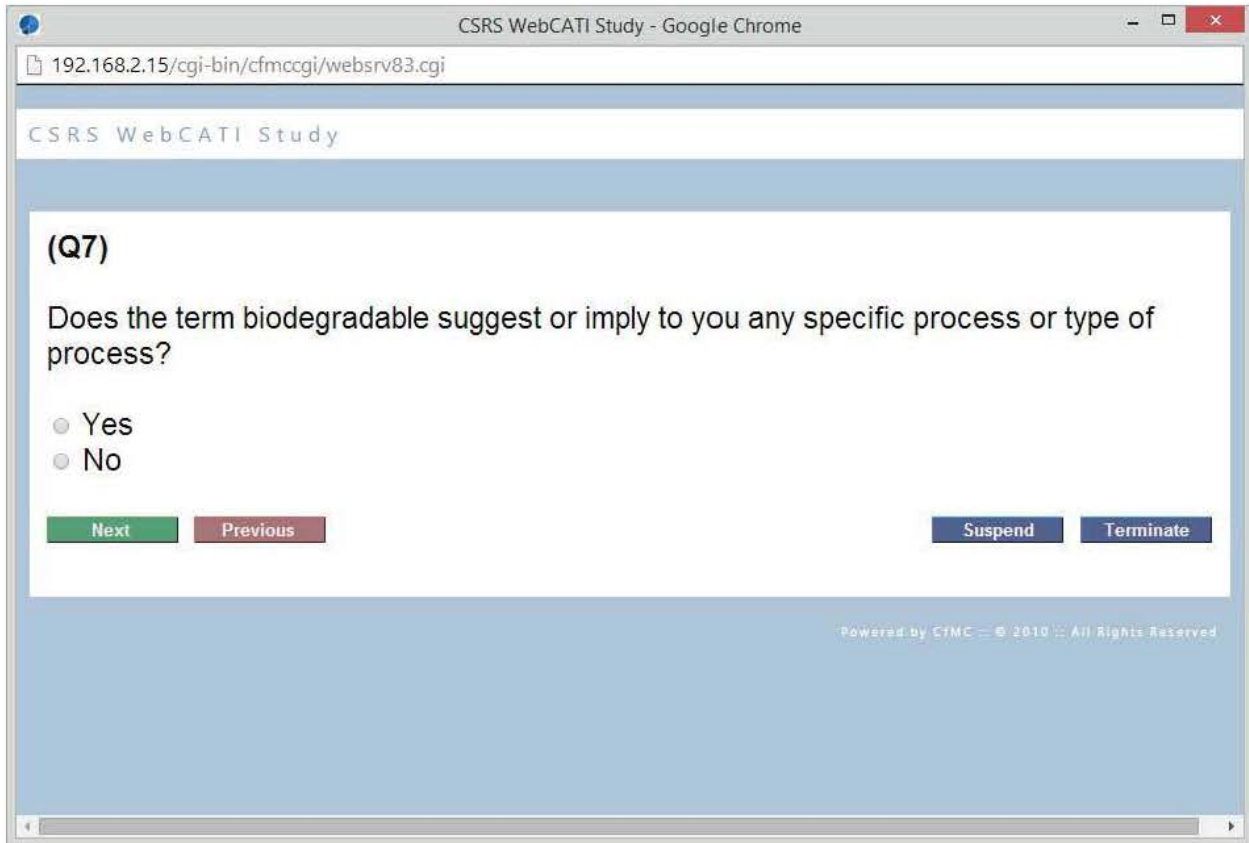












CSRS WebCATI Study - Google Chrome

192.168.2.15/cgi-bin/cfmccgi/websrv83.cgi

CSRS WebCATI Study

(Q8)

Does the term biodegradable suggest or imply to you any amount of time by which decomposition will occur.

Yes

No

[Next](#) [Previous](#) [Suspend](#) [Terminate](#)

Powered by CFMC © 2010 All Rights Reserved

CSRS WebCATI Study - Google Chrome

192.168.2.15/cgi-bin/cfmccgi/websrv83.cgi

CSRS WebCATI Study

(Q8A)

What does the term biodegradable suggest or imply to you about the specific amount of time by which decomposition will occur.

INTERVIEWER NOTE: WRITE DOWN VERBATIM ON PAPER AND TYPE IN AT THE END OF THE SURVEY.

CLICK TO CONTINUE AND CLICK NEXT

TO CONTINUE

[Next](#) [Previous](#) [Suspend](#) [Terminate](#)

Powered by CFMC © 2010 All Rights Reserved

CSRS WebCATI Study - Google Chrome

192.168.2.15/cgi-bin/cfmccgi/websrv83.cgi

CSRS WebCATI Study

(Q8B)

Is the amount of time by which decomposition will occur important in your organization's selection of material and supplies used in production and packaging?

Yes

No

[Next](#) [Previous](#) [Suspend](#) [Terminate](#)

Powered by CFMC :: © 2010 :: All Rights Reserved

CSRS WebCATI Study - Google Chrome

192.168.2.15/cgi-bin/cfmccgi/websrv83.cgi

CSRS WebCATI Study

(Q8C)

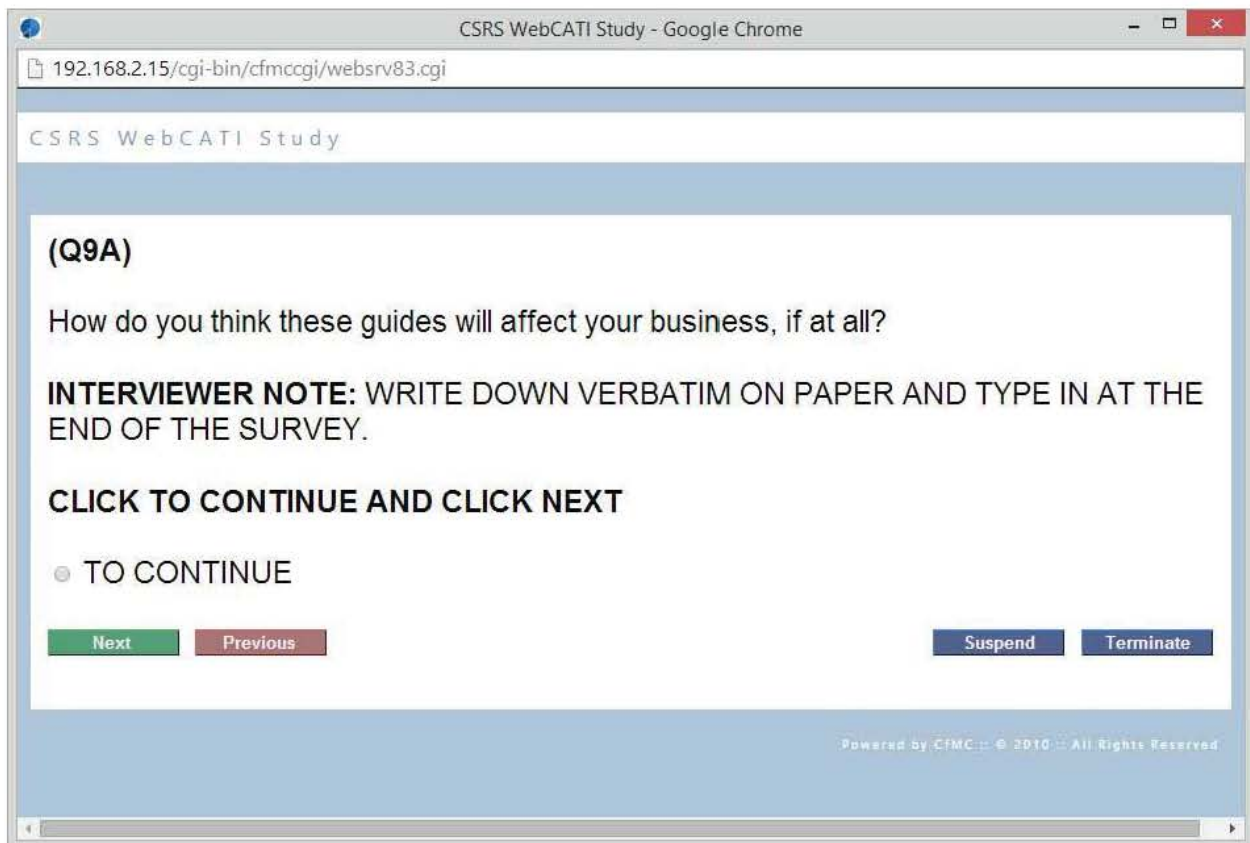
Thinking specifically about plastic, is the amount of time it takes for a material to biodegrade an important consideration in your organization's selection of the plastic materials and supplies used in production and packaging?

Yes

No

[Next](#) [Previous](#) [Suspend](#) [Terminate](#)

Powered by CFMC :: © 2010 :: All Rights Reserved



**Complaint Counsel
Exhibit A
Attachment 3**

CX-A:3

caseident	Q1	Q1a	Q2	Q3	Q3	Q4	Q4	Q5	Q5A
					OEQ3	OEQ4	OEQ4		
100001	1		1	1	Uhm they're our film our products is made into pla	1	Price (P) Ability to supply at a good price.	9	
100003	1		1	1	We make plastic bags.	1	Quality (P) That's it.	9	
100004	1		1	1	We use Pipe Propiline resins to manufacture little	1	I would think it's quality that it complies with FDA (9	
100005	1		1	1	We extrude plastic from pellet form to make trash	1	Pricing, quality and on time delivery. (P) Not mucr	9	
100006	1		1	1	It used to manufacture our product.	1	Quality (P) Consistency (P) Verification of compor	9	
100007	1		1	1	We make plastic food packaging. (P) No	1	Gotta be food grade and price. (P) No	1	1
100008	1		1	1	We make plastic packaging for food, medical and	1	Uhm quality (P) Price (P) and companies standing	9	
100010	1		1	1	We're custom plastic injection company so pretty	1	Price, quality and delivery (P) That's all.	9	
100011	1		1	1	Uh it is flexible film that we use to make food cont	1	Specification of the material (P) Service and pricir	9	
100012	1		1	1	We manufacture plastic bags.	1	Cost, (P) No nothing else, just cost.	9	

OEQ5A

Q6

- 1
- 1
- 1
- 1
- 1
- 1

Well how does it, I guess we would consider biode

- 1
- 1
- 1
- 1
- 1

OEQ6

Using ASTM 6400 (P) Uhm either that or ASTM D5511. (P) That's all.

The ability to make materials to dissolve within a year.

Based on what resins specs dictate

It's a joke right now. (P) No

That the product will completely uh decompose within 1 to 3 years.

That's a difficult one, Biodegradability means it has to biodegrade in a landfill. 30% goes to incinerator and 70% to landfills. (P) No

Something that would break down according to the ASTM 6400 standards.

Classical definition is the breakdown of the chemical components. (P) That's it

Uhm material that degrades in the presence of light, air and moisture.

Umm, for plastic bags, will break down in a reasonable amount of time in the environment.

Q7 Q:

2

1 1

1 1

1 1

1 1

2

2

1 1

2

1 1

OEQ8A

Greater than 50% within 60 days.

I would say maybe 30% increase (P) 30% increase in decomposition so it decomposes 30% faster than normal material
 It reduces the time for decomposition. (P) No
 1-3 years.

I cant remember the time but its the time specified in the ASTM 6400 that I mentioned earlier.

Over a year it will decompose
 Within a few years.

Q8B	Q8C	Q9	Q9A
1	2	1	1
		2	
2		2	
2		1	1
2		2	
		1	1
1	1	2	
		2	
1	1	2	
2		1	1

OEQ9A

Q10

Uhm it is affected us in a negative way because w 1

1

1

If the public demands it, we will have to fall in line 1

1

Well I think guides makes it difficult to make any s 1

2

1

1

They will change the product/additive I use for baç 1

**Complaint Counsel
Exhibit A
Attachment 4**

CX-A:4

Manufacturers/Distributors

The following companies may be able to assist with your desire to purchase biodegradable plastic products, components or packaging made with ECM BioFilms additives:

Organization Name Address	Contact Name	Phones	Email/Website	Company/Products Info.
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] Inc.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**Complaint Counsel
Exhibit A
Attachment 5**

CX-A:5

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	
)	
ECM BioFilms, Inc.,)	Docket No. 9358
a corporation, also d/b/a)	
Envioplastics International)	
_____)	

**COMPLAINT COUNSEL’S FIRST SET OF
REQUESTS FOR PRODUCTION OF DOUMENTS**

Pursuant to Rule 3.37 of the Federal Trade Commission’s Rules of Practice for Adjudicative Proceedings, Complaint Counsel hereby request that ECM Biofilms, Inc. (“ECM”) respond to these Requests within the time prescribed by the Federal Trade Commission’s Rules of Practice, and produce the following documents and/or tangible things for inspection and copying at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, M-8102B, Washington, DC 20580, or at such time and place as may be agreed upon by all counsel.

INSTRUCTIONS

1. These instructions and definitions should be construed to require responses based upon the information available to ECM as well as your attorneys, representatives, investigators, and others acting on your behalf.
2. If you are unable to produce a document or property requested, state in writing why you cannot produce the document or the property and, if your inability to produce the document or the property is because it is not in your possession or the possession of a person from whom you could obtain it, state the name, address, and telephone number of any person you believe may have the original or a copy of any such document or property.

3. If you object to a portion or an aspect of any Request, state the grounds of your objection with specificity and respond to the remainder of the Request.

4. If, in answering these Requests, you encounter any ambiguities when construing a request, instruction, or definition, your response shall set for the matter deemed ambiguous and the construction used in responding.

5. Where a claim of privilege is asserted in responding or objecting to any discovery requested in these Requests and information is not provide on the basis of such assertion, you shall, in your response or objection, identify the nature of the privilege (including work product) which is being claimed. When any privilege is claimed, you shall indicate, as to the information requested, whether (a) any documents exist, or (b) any communications took place, and (c) also provide the following information for each such document in a “privileged documents log” or similar format:

- a. the type of document;
- b. the general subject matter of the document;
- c. the date of the document;
- d. the author(s) of the document;
- e. the addressee(s) and any other recipient(s) of the document; and
- f. the custodian of the document, where applicable.

6. If the requested documents are maintained in a file, the file folder is included in the request for production of those documents.

7. These Requests for Production seek documents not already produced by you pursuant to the FTC’s letter requests. To the extent responsive documents have already been produced by you, you should so indicate and include the Bates Number identifying the

documents responsive to that Request. If the document previously produced by you was wholly or partially redacted, please provide an unredacted copy, or the basis for claiming privilege or other protection as described in Instruction No. 5. If the document includes charts or graphs, provide color copies of such documents.

8. Every Request for Production herein shall be deemed a continuing Request for Production, and Respondent is to supplement its answers promptly if and when you obtain responsive documents which add to or are in any way inconsistent with Respondent's initial production.

DEFINITIONS

Notwithstanding any definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Trade Commission's Rules of Practice.

1. "All" means and includes "any and all."
2. "Advertisement" means any written or verbal statement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears on the Internet, in email, on packaging, in a brochure, newspaper, magazine, pamphlet, leaflet, webinar, circular, mailer, book insert, free standing insert, letter, catalog, poster, chart, billboard, point of purchase material (including, but not limited to, a display or an item worn by salespeople), fact sheet, film, slide, radio, broadcast or cable television, audio program transmitted over a telephone system, program-length commercial, or in any other medium.
3. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request any information that might otherwise be construed to be outside its scope.

4. “Any” means and includes “any and all.”

5. “Document” or “documents” are synonymous in meaning and equal in scope to the usage of the terms as defined by 16 C.F.R. 3.34(b), and includes, without limitation, any written material, whether typed, handwritten, printed or otherwise, and whether in draft or final form, of any kind or nature, or any photograph, photostat, microfilm or other reproduction thereof, including, without limitation, each note, memorandum, letter, release, article, report, prospectus, memorandum of any telephone or in-person conversation, any financial statement, analysis, drawing, graph, chart, account, book, notebook, draft, summary, diary, transcript, computer database, computer printout, or other computer-generated matter, contract or order, laboratory report, patent, trademark or copyright, and other data compilations from which information can be obtained. Electronic mail is included within the definition. A draft or non-identical copy is a separate document.

6. “ECM” shall mean ECM Biofilms, Inc., including without limitation, its agents, employees, officers, or anyone else acting on its behalf.

7. “ECM Additive” means the plastic additive manufactured by ECM, including but not limited to “Masterbatch Pellets.”

8. “ECM Plastics” means plastics that contain ECM Additives.

9. “Regarding” means and includes affecting, concerning, constituting, dealing with, describing, embodying, evidencing, identifying, involving, providing a basis for, reflecting, relating to, respecting, stating, or in any manner whatsoever pertaining to that subject.

REQUESTS

Request 1

Provide all documents regarding the efficacy of the ECM Additive in initiating, causing, enabling, promoting, or enhancing the biodegradation of plastics containing the ECM Additive.

Request 2

Provide all documents regarding whether or how to market ECM Additives as capable of initiating, promoting, causing, enhancing, or enabling the biodegradation of plastic.

Request 3

Provide all documents regarding the duration of time for complete biodegradation of a plastic product containing the ECM Additive.

Request 4

Provide all documents regarding whether and how plastics containing ECM Additives will biodegrade in different disposal conditions.

Request 5

Provide all documents regarding ASTM D5511 or ASTM D5526.

Request 6

Provide all documents regarding any express or implied claims that ECM Additives initiate, cause, enable, promote, or enhance the biodegradation of plastics containing the ECM Additive, and specifically including the following representations:

- a. ECM Plastics will completely break down and decompose into elements found in nature within a reasonably short period of time after customary disposal;
- b. ECM Plastics will completely break down and decompose into elements found in nature within a reasonably short period of time in a landfill;
- c. ECM Plastics will completely break down and decompose into elements found in nature within a nine months to five years in a landfill;
- d. ECM Plastics will completely break down and decompose into elements found in nature within one year in a landfill; and

- e. ECM Plastics have been shown to perform as stated in (a) through (d) under various scientific tests including, but not limited to, ASTM D5511.

Request 7

Provide all documents that tend to call into question or disprove any express or implied claims that ECM Additives initiate, cause, enable, promote, or enhance the biodegradation of plastics containing the ECM Additive.

Request 8

Provide all documents regarding any tests conducted on ECM Additives or plastics containing ECM Additives purporting to show biodegradability of ECM Additives or plastics containing ECM Additives.

Request 9

Provide copies of each different ECM advertisement (including those disseminated to or by ECM distributors) that represents, expressly or by implication, that ECM Additives initiate, cause, enable, promote, or enhance biodegradation of plastic.

Request 10

Provide copies of any materials relating to any ECM Additive made available to any ECM Additive distributor or customer, including, but not limited to: packaging, clipart, seals, logos, other marketing materials, instructions or suggestions regarding making marketing claims, or instructions for the use or marketing of the ECM Additive.

Request 11

Provide all documents, whether prepared by or for ECM or any other entity, including any advertising agency, regarding consumer perception, comprehension, or recall (including, but

not limited to, copy tests, marketing or consumer surveys and reports, penetration tests, recall tests, audience reaction tests, and communication tests) of:

- a. any advertisement, whether disseminated or not, that represents, expressly or by implication, that ECM Additives initiate, promote, or enhance biodegradation of plastic; and/or
- b. biodegradability in general.

Request 12

Provide all documents that support or call into question your contention that your customers or distributors are sophisticated purchasers.

Request 13

Provide all communications with customers, distributors, potential customers, or potential distributors regarding ECM Additives.

Request 14

Provide all documents regarding your strategy for selling the ECM Additive to customers or distributors, including any documents used for verbal sales communications or in preparation for verbal sales communications.

Dated: November 27, 2013

Respectfully submitted,

/s/ Katherine Johnson

Katherine Johnson (202) 326-2185

Elisa K. Jillson (202) 326-3001

Division of Enforcement

Bureau of Consumer Protection

Federal Trade Commission

600 Pennsylvania Avenue, NW

Mailstop M-8102B

Washington, DC 20580

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2013, I caused a true and correct copy of the paper original of the foregoing *Complaint Counsel's First Set of Requests for Production of Documents* to be served as follows:

One electronic copy to **Counsel for the Respondent:**

Jonathan W. Emord
Emord & Associates, P.C.
11808 Wolf Run Lane
Clifton, VA 20124
Email: jemord@emord.com

Peter Arhangelsky
Emord & Associates, P.C.
3210 S. Gilbert Road, Suite 4
Chandler, AZ 85286
Email: parhangelsky@emord.com

Lou Caputo
Emord & Associates, P.C.
3210 S. Gilbert Road, Suite 4
Chandler, AZ 85286
Email: lcaputo@emord.com

I further certify that I possess a paper copy of the signed original of the foregoing document that is available for review by the parties and the adjudicator.

/s/ Katherine Johnson
Katherine Johnson
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave., NW, M-8102B
Washington, DC 20580
Telephone: (202) 326-2185
Facsimile: (202) 326-2558
Email: kjohnson3@ftc.gov