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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
CASE NO. 20-md-02924-ROSENBERG

**IN RE: ZANTAC (RANITIDINE)** .  
**PRODUCTS LIABILITY** . West Palm Beach, FL  
**LITIGATION.** . March 18, 2022

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DISCOVERY HEARING (through Zoom)  
BEFORE THE HONORABLE BRUCE REINHART  
UNITED STATES MAGISTRATE JUDGE

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1           *THE COURT:* Hello, everybody. This is Case Number  
2 20-2924, In Re: Ranitidine Zantac Product Liability  
3 Litigation. We are here today for a discovery hearing.

4           Let me begin by recognizing the parties. I will start  
5 with counsel for the Plaintiffs.

6           *MR. NIGH:* This is Daniel Nigh on behalf of the  
7 Plaintiffs.

8           *MS. FINKEN:* Good afternoon, Judge Reinhart, Tracy  
9 Finken on behalf of Plaintiffs.

10          *THE COURT:* Good afternoon. On behalf of the brand  
11 Defendants.

12          *MR. SHEEHAN:* Tom Sheehan, your Honor, on behalf of  
13 the brands. Thank you.

14          *THE COURT:* Hold on a second, we have a couple more  
15 people in the waiting room. Let's admit them.

16          Okay. We are here on the Defense's request for  
17 additional time to depose the Plaintiffs' general causation  
18 experts. I received the Defense's motion at Docket Entry 5396  
19 requesting an additional, by my count, 17 hours to depose five  
20 experts, and I received the Plaintiffs' opposition at Docket  
21 Entry 5407.

22          Were there any other filings or submissions that I  
23 have not mentioned, from the Plaintiffs?

24          *MR. NIGH:* No, your Honor.

25          *THE COURT:* From Defense?

1           MR. SHEEHAN: No.

2           THE COURT: Great. It is the Defense's motion, so let  
3 me hear first from Mr. Sheehan.

4           MR. SHEEHAN: Thank you so much for hearing us today,  
5 your Honor. I will try to be succinct, but I do think there  
6 are a few things that need to be laid out just to frame the  
7 issues here.

8           So, the expert opinions that are being offered at this  
9 stage in the litigation by design relate to the threshold issue  
10 of general causation. Does Ranitidine, when used  
11 therapeutically, cause the specific cancers being alleged, five  
12 cancers here. That is, in essence, the question that we are  
13 dealing with in these expert reports.

14           Cancer causation, as you might imagine, is a  
15 complicated subject. Cancer is an extraordinarily  
16 heterogeneous disease, and here in this MDL we have five  
17 different types of cancer that each have their own different  
18 sub types of cancer in five different organ systems, and each  
19 of these types of cancer has its own sort of profile, if you  
20 will, what cell type is at issue, the unique characteristics of  
21 the cancer, the genetic profile of the cancer, different risk  
22 factors, different causes.

23           So, the bottom line is, it is scientifically dense, it  
24 is scientifically complicated to figure out reliably what  
25 causes any particular type of cancer. Irrespective of

1 Ranitidine, as you might know, the scientific community has  
2 been grappling with these issues for decades and decades.

3 Now, the Plaintiffs served 12 expert reports in  
4 support of their position. As you know, they are long, they  
5 are complex, and I don't think anybody can reasonably argue  
6 with that characterization.

7 So, after we got the reports we reviewed them  
8 carefully and we realized, hey, we are going to need more than  
9 seven hours with some of these folks, so we went to the  
10 Plaintiffs, we asked. It took a little time to coordinate, get  
11 together to get a final response, but at the end of the day,  
12 they said, no, we are not giving you any more time.

13 That is why we are here. We are asking for targeted  
14 additional time for five out of the 12 general causation expert  
15 reports that were served, and we believe our request is  
16 warranted under Rule 30 and Rule 26, and that moreover, our  
17 request is quite reasonable for a number of reasons.

18 First, as I mentioned, nobody disputes that cancer  
19 causation is complex. It involves damaged DNA at the cellular  
20 level, cell growth factors, cell programming, DNA repair  
21 mechanisms, to name just a few topics, at sort of the  
22 biological and cellular level of cancer causation.

23 The evidentiary base upon which the Plaintiffs'  
24 experts purport to rely involves in vitro studies, essentially  
25 test tube studies that test different attributes of various

1 compounds at various concentrations relating to topics like  
2 mutagenesis and chemical nitrosation. It involves animal  
3 studies of various species looking at the so-called add me  
4 outcomes, that's absorption, distribution, metabolism,  
5 excretion of various compounds in various animal systems. It  
6 involves animal studies of, frankly, cancer outcomes, the  
7 actual cancer end point in different organ systems in these  
8 animals, involving species with varying relevance, if any, to  
9 humans.

10 Of course, the evidentiary base here also involves  
11 human data, from the Defense perspective, probably the most  
12 pertinent data. Those data also involve these add me outcomes,  
13 absorption, metabolism, that sort of thing. It involves human  
14 data relating to the expression of enzymes in different tissue  
15 beds that are required to even metabolize NDMA to have any sort  
16 of harmful effect on DNA, and naturally it involves cancer  
17 outcomes in humans, which is after all what this litigation is  
18 all about.

19 Even those studies, the epidemiology studies of cancer  
20 outcomes in humans, have different sort of buckets, if you  
21 will. They include studies of various dietary exposures,  
22 whether the NDMA, whether the nitrites, whether the nitrates,  
23 occupational exposures to the rubber workers that you heard  
24 about at Science Day, and finally, studies of folks that took  
25 Ranitidine itself, the drug at issue here, and whether those

1 folks had any increased risk of cancer.

2 I could go on and on, but I just wanted to give you a  
3 sense of the breadth and the complexity of the issues that are  
4 at play here. Because of that complexity, we got massive  
5 reports. We are not complaining about the massive reports, we  
6 detailed that in our brief, hundreds upon hundreds of pages,  
7 hundred upon hundreds of references purportedly supporting the  
8 opinions that are being proffered.

9 In particular, for the five experts where we are  
10 asking for limited additional time, and to add just another  
11 layer here of the complexity for your Honor's consideration,  
12 there are original calculations in these reports that were done  
13 for the purposes of supporting the litigation opinion.

14 For example, Dr. Salmon, he is a toxicologist that is  
15 being offered by the Plaintiffs, he does his own calculations  
16 of dose that he extrapolates from various studies, and then  
17 does dose response analyses that are his own calculations  
18 within the body of his Rule 26 report.

19 Dr. Najafi as well, as you know, he was hired by the  
20 Plaintiffs to do original testing, and he did. He did all  
21 kinds of testing, various experiments, whether in a simulated  
22 gastric context, whether testing the tablets themselves under  
23 various conditions relating to sun, shade. All the things that  
24 are in Dr. Najafi's report are original, and we wouldn't have  
25 seen them prior to getting his Rule 26 report.

1           These were calculations and experiments done for the  
2 purpose of supporting the opinions that are being offered in  
3 the litigation, and I don't have to go into chapter and verse I  
4 hope, but whatever the burden is for complexity of issues and  
5 scope of opinions that warrants additional deposition time, I  
6 think that burden has been met in this litigation for these  
7 five experts.

8           I want to just briefly address some of the arguments  
9 made by the Plaintiffs in their opposition.

10           First, the Plaintiffs say we are trying to modify the  
11 Court's pretrial orders. I don't think that is a fair  
12 characterization. PTO 65 does not speak to the length of any  
13 specific deposition; rather, deposition length is governed by  
14 Rule 30(d)(1), which permits additional time to fairly examine  
15 a deponent where warranted. Here, we think it is warranted.

16           Plaintiffs also reference PTO 54, which is the  
17 deposition protocol. PTO 54 allows the seven-hour presumptive  
18 limit to be extended by Court Order or stipulation. We asked  
19 for a stipulation, obviously there was no agreement, and that  
20 is why we are here. We are asking you now for five specific  
21 witnesses out of the 12 Rule 26 expert reports that were  
22 served.

23           To the extent that Plaintiffs are trying to conflate  
24 30(b)(6) witnesses with expert witnesses, honestly I think it  
25 is apples and oranges. The Plaintiffs' experts were hired

1 specifically to provide expert reports and testimony in this  
2 litigation, and as I have just detailed for your Honor, we  
3 believe our requests for the five experts where we are seeking  
4 additional time are more than justified.

5           Second, the Plaintiffs suggest that our ask is  
6 premature and that we should go take the depositions, get to the  
7 seven-hour limit and then ask for more time. I thought about  
8 that, and honestly, I am not sure I can't think of a more  
9 inefficient way to go about doing this.

10           We are asking up front now because we have already  
11 carefully considered all 12 Plaintiff expert reports, and we  
12 are not asking for more time for all. We are not asking for a  
13 blanket extension of deposition time. We are asking for  
14 additional time, limited additional time for five experts  
15 precisely because we have already determined, based on the  
16 complexity and breadth of the opinions, that we are going to  
17 need the additional time.

18           Getting the time worked out now will actually avoid  
19 disruptions later. If we do it the way the Plaintiffs suggest,  
20 we are going to be asking for more time, there is going to be a  
21 dispute, we are going to have to get a ruling, and then you are  
22 really talking about screwing up the schedule about extensions  
23 to the expert discovery deadline, about extensions to Daubert  
24 briefing, all the stuff that flows from the expert depositions.

25           Third, the Plaintiffs make an argument that I think



1 boils down to something like this: The longer the report, the  
2 less you need a deposition. Respectfully, honestly, I just  
3 don't think that is realistic. For a case like this, longer  
4 and more complex reports require additional time to understand  
5 and explore the bases of the expert opinion.

6 I was thinking about this last night, and I don't know  
7 if this is a good analogy or not a good analogy, but it's tax  
8 season. We are all doing our taxes. Just because the tax code  
9 is very long and complex doesn't mean it is easy to understand  
10 and apply, right? We all know this. They have it a little bit  
11 backwards here, I think.

12 I would add that just because a report is long and  
13 cites to lots of things, it doesn't necessarily mean it is  
14 complete, which is actually what is required under Rule 26.  
15 The five experts at issue here cite to hundreds of references  
16 throughout their reports, but often they don't examine some of  
17 the references in any meaningful way, which is exactly why we  
18 need to be able to explore that, and it warrants additional  
19 time to understand why they are citing to things without an  
20 appropriate explanation or why it supports the proposition for  
21 which it is being cited.

22 One of the cases, one of the primary cases that the  
23 Plaintiffs cite is this Florida automobile case, so we pulled  
24 that case. As far as we can tell, it doesn't make any ruling  
25 on length of depositions; rather, the Court there was deciding

1 whether the Plaintiff in expert reports were complete under  
2 Rule 26, and it decided that they weren't despite their length.

3 Finally, the Plaintiffs say that our reliance on the  
4 Valsartan litigation is misplaced. Quite frankly, we disagree  
5 with them. We think it is very instructive and illustrates  
6 that where the opinions being proffered are lengthy and complex  
7 it warrants more deposition time, not less. Here, the  
8 scientific literature on Ranitidine and cancer outcomes is far  
9 more robust than that for Valsartan and cancer outcomes.

10 So, your Honor, we think we have clearly met the  
11 burden for good cause for additional deposition time with these  
12 five experts, and we respectfully ask that you grant our  
13 request. Thank you so much.

14 *THE COURT:* Thank you, Mr. Sheehan. I will give you a  
15 chance to respond after I hear from the Plaintiffs.

16 Mr. Nigh, let me hear from you.

17 *MR. NIGH:* Thank you, your Honor. Daniel Nigh on  
18 behalf of the Plaintiffs.

19 Your Honor, I wanted to start by first explaining that  
20 I am co-lead counsel in the Valsartan MDL litigation, so I know  
21 those issues well. That is the primary case that the  
22 Defendants cited to, so I am going to talk about some of those  
23 issues and distinguish what has happened in Valsartan versus  
24 here in Zantac.

25 What we know is, if we go over seven hours of record

1 time the depositions will take two days. In Valsartan, these  
2 depositions that we had ten hours of record time, every single  
3 one of them took two days, both on the Defendants' side and the  
4 Plaintiffs' side. So there is no doubt that it is going to  
5 create certainly more time into what is already a crowded  
6 schedule.

7 First, as we talk about what happened in Valsartan,  
8 the Defendants had certain arguments that we don't have here.  
9 One of the main arguments that they raised in terms of the  
10 amount of time that they should be able to examine the experts  
11 was precisely the amount of the time that the Plaintiffs had to  
12 examine their 30(b)(6) witnesses.

13 What we know in terms of 30(b)(6) witnesses here in  
14 Zantac is even more complicated than what it was in Valsartan,  
15 but in Valsartan we had two and a half days, even one witness  
16 that was three days, to examine those 30(b)(6) witnesses  
17 because we got to examine them Rule 30(b)(6), and then some of  
18 them had a facts scenario. We are talking 17 and a half hours  
19 that was given for 30(b)(6) witnesses in Valsartan.

20 Defendants used that and said, well, if they are  
21 allowed to have 17 and a half hours, why can't we have at least  
22 ten hours of deposition time for their experts? That was a  
23 major push in terms of ordering that they could have ten hours  
24 for those expert depositions.

25 On the flip side, in this litigation we have 30(b)(6)

1 witnesses that were involved for nearly 40 years of experience  
2 with either clinical trials, animal studies, scientific  
3 studies. I can go on and on with a long list of complexities  
4 that these 30(b)(6) witnesses had, that we took depositions  
5 here, hundreds of thousands of pages of documents, and the  
6 Defendants refused to give us additional time. Those  
7 depositions took seven hours, we were efficient in those  
8 depositions, and we got them done in seven hours.

9           So, in that same analogy, unlike in Valsartan where we  
10 had plenty of time in terms of taking these depositions on  
11 these key scientific complex issues, we did not here. So,  
12 looking at that, we don't believe that that argument that they  
13 latch on to, that they had in Valsartan applies here.

14           And frankly, they should be able to get these expert  
15 depositions done in seven hours to the extent we were able to  
16 take those very complicated 30(b)(6) witnesses in seven hours.

17           Second, in Valsartan, the number of expert witnesses  
18 that we disclosed on the Plaintiffs' side was five and nine on  
19 the Defense side, so a total of 14 experts. Right now, for  
20 Zantac, we have 12 on the Plaintiffs' side and 13 on the  
21 Defendants' side, so a total of 25 experts, nearly double the  
22 number of experts.

23           On the other side, when we talk about complexities in  
24 Valsartan, as we discussed, we had over ten cancers that passed  
25 Daubert in Valsartan and went through. Here we are only

1 alleging five cancers. So, in terms of complexity, we had  
2 double the number of cancers in Valsartan compared to here.  
3 Those are a lot of the things that distinguish it.

4 Coming back to the scheduling order, as part of our  
5 scheduling order, when we agreed that each expert would get  
6 three days for deposition there was no discussion of two  
7 consecutive days, and it was not envisioned that these  
8 depositions would take two days. So it would create scheduling  
9 havoc to now rewrite the scheduling order and try to get an  
10 extra consecutive day for each of these experts on what is  
11 already a crowded calendar for the next two months.

12 Finally, I will turn to the pages, because the page  
13 count seems to be the majority of the Defendants' arguments  
14 that these are long reports, and we don't believe that is a  
15 valid reason to give more than seven hours.

16 The Defendants' experts and the Plaintiffs' experts  
17 are addressing the same issues. They are the same facts,  
18 similarly, the same scientific theories, so more pages really  
19 means that the experts' bases are thoroughly explained in the  
20 expert report. That is how the analogy goes. There are not  
21 two different tax codes that the Plaintiffs presented and the  
22 Defendants presented, they're based on the same.

23 Here, we have the same issues, same theories, same  
24 explanations, except Defendants' experts have a different view,  
25 and they give much less bases in their expert reports, so we

1 actually have to more thoroughly examine what is the bases for  
2 those, whereas our expert reports lay it out. It is very  
3 clearly explained, so there is less of a reason to have to  
4 explore our expert report topics because they are thoroughly  
5 explained in the expert reports.

6 That is all I have. Thank you.

7 *THE COURT:* Thank you. I have one question though.

8 You say if the Defendants are allotted ten hours, you  
9 have to find consecutive depositions dates. Why? Most of the  
10 depositions in this case are being done by Zoom, they are being  
11 done remotely. Dr. Najafi, if he is available for seven hours  
12 tomorrow and three hours next Tuesday, why can't that be done?  
13 And why couldn't you do the additional three hours for Dr.  
14 Najafi in the morning and the other three hours for Dr.  
15 McTiernan in the afternoon? Why can't those be arranged that  
16 way?

17 *MR. NIGH:* I don't think it is impossible to do it  
18 that way, but I do think that it is an advantage for the  
19 questioner because they can take that transcript and look at  
20 it, they can examine it, the additional time to be able to  
21 think about what are all the additional questions we want to  
22 come back and ask looking at what was answered in the  
23 deposition.

24 And I will say we had that same scenario in Valsartan  
25 and both sides had to be faced with the same task and in every

1 single situation they figured out that they would have to do it  
2 in consecutive days.

3 *THE COURT:* Other than that, not to minimize, but  
4 other than the concern about just the compressed schedule and  
5 having the logistics of scheduling in that additional time, and  
6 assuming what I have always done in this case, which is if I  
7 grant the Defendants' motion to give them additional time, I  
8 will give the Plaintiffs the same time when it comes time for  
9 the Defendants' experts, what is the prejudice to the  
10 Plaintiffs if I allow the additional time?

11 *MR. NIGH:* The prejudice is more so on the scheduling,  
12 and simply that there are 25 experts in two months. That is  
13 probably the gist of it, and then we would, in order to avoid  
14 the prejudice of that, having a break and disadvantage, that we  
15 would need to find consecutive days.

16 *THE COURT:* I appreciate that. Thank you very much.  
17 Let me go back to Mr. Sheehan and let him respond if  
18 you'd like.

19 *MR. SHEEHAN:* Sure. Really briefly, your Honor, I  
20 think, first, we would be happy to work with the Plaintiffs, we  
21 can find consecutive days, nonconsecutive days. We will do it  
22 however it works. This is not just the number of the pages, as  
23 I think I illustrated to you, it is really about the complexity  
24 of the issues. We have thought about it, legitimately thought  
25 about it hard, had conversations internally, how much time do

1 you need to properly take these depositions, and that is  
2 exactly what we laid out for you in our motion.

3 Now, with respect to the idea of, you know, this was  
4 worked out before and -- of course the PTOs were worked out  
5 before. At the time, I think everybody presumes, hey, we can  
6 get it done in seven hours, but you don't know until you see  
7 the reports. Imagine if we had said in advance we are going to  
8 need two days with your experts, they would have said, wait  
9 until you see our reports, you can get it done in one day.

10 The whole process here is looking at the reports,  
11 evaluating what you need, and then asking if we can get more  
12 time and then ultimately coming to you.

13 I think it is a little -- it just doesn't make sense  
14 to go back to the PTO and say, you knew -- you could have said  
15 then that you needed more time with these five experts out of  
16 the 12 that we are asking for.

17 And I think with respect to the 30(b)(6)'s, actually  
18 there was more time for 30(b)(6)'s that was negotiated with  
19 various Defendants. It wasn't a blanket, no, you can't have  
20 more time. That did occur, and those negotiations happened and  
21 in certain instances more time was permitted by agreement.

22 That is all I have, your Honor.

23 *THE COURT:* Thank you very much.

24 *MS. FINKEN:* Your Honor, can I respond to one point  
25 that Mr. Sheehan made, if that is okay?



1           *THE COURT:* Of course.

2           *MS. FINKEN:* Tracy Finken on behalf of Plaintiffs.

3           Your Honor, going back to the PTO 65 issue, you are  
4 well aware of this, but I just want to make this point. It was  
5 a heavily negotiated order by both sides, and when we  
6 negotiated it, and I was one of the people negotiating it, we  
7 contemplated this very expedited schedule on the spring expert  
8 discovery schedule with the express point that there would be  
9 one day contemplated for expert depositions.

10           It is in the order, it is in the order that we would  
11 provide the three possibilities up front so that we could  
12 schedule accordingly. There was never any contemplation of  
13 doing depositions for more than one day of each expert knowing  
14 that we had a very, very condensed schedule and that we would  
15 have a very limited amount of time to get all of the expert  
16 discovery done, and that we needed to get done to get the  
17 Daubert hearings teed up for when Judge Rosenberg wanted them  
18 teed up in the summer.

19           It is something that was contemplated and built into  
20 the schedule that we have the way that it was. I do not think  
21 that is a small point, it is something that the parties  
22 considered and did this expedited schedule jointly and agreed  
23 upon going forward.

24           25 expert depositions for one day in the time that we  
25 have is a lot. If we are adding two days for some of those

1 experts now going forward it is going to be really, really  
2 tight to get that done in a meaningful time to get the Daubert  
3 motions teed up the way that we need to for Judge Rosenberg's  
4 schedule.

5 *THE COURT:* Let me ask you, again, no disrespect, but  
6 it is not a heavy lift to defend the deposition. All you can  
7 do is object on the basis of the form of the question anyway,  
8 you can't lodge substantive objections.

9 You have a lot of lawyers on this case. If you have  
10 to double stack some depositions, again, what is the prejudice  
11 to the Plaintiff defending the deposition if you have to double  
12 stack a deposition and you cover one and another LDC member  
13 covers the other?

14 *MS. FINKEN:* Your Honor, we are already double stacked  
15 and triple stacked, and quadruple stacked, I can tell you that.  
16 Having looked at the schedule yesterday, we are double and  
17 triple stacked already with the experts that need to be deposed  
18 in this period of time with taking Defense expert depositions  
19 and defending our experts as well. So, it already is double  
20 and triple stacked.

21 So, just so you are aware of that, it is already done  
22 that way.

23 *MR. NIGH:* Your Honor, just to highlight here, too --

24 *THE COURT:* Hold on. Go ahead, Mr. Nigh.

25 *MR. NIGH:* Daniel Nigh again.

1           Just to reiterate, every single one of the dates that  
2 the Defendants offered, except for one expert that they offered  
3 some April dates, all the rest of them were in May. I spoke to  
4 two a month, but it is really May, and really the last two  
5 weeks of May where we have multiple experts, you know, really  
6 over stacked. And these experts that they have asked for for  
7 two days, some of those are right in that same time frame, the  
8 two-week time frame. That is what really makes this -- causes  
9 a congestion, so to speak.

10           *THE COURT:* All right. Let me ask Mr. Sheehan.

11           Mr. Sheehan, why don't you respond to that specific  
12 point? I don't know that you directly addressed that.

13           *MR. SHEEHAN:* With respect to whether the schedule is  
14 too congested, is that the ask?

15           *THE COURT:* Yes. I hear Mr. Nigh and Ms. Finken  
16 saying even if we wanted to be accommodating, given the dates  
17 that we have scheduled and the limitations set by Judge  
18 Rosenberg, this is just an impossibility to find the extra time  
19 that is going to be needed.

20           *MR. SHEEHAN:* I don't think that is true necessarily.  
21 We have three days that have been offered for various experts,  
22 and we are asking for limited time for specific experts, for  
23 five out of the 12. We are not asking for two deposition days  
24 for 12 experts, and I imagine the Plaintiffs are not going to  
25 be asking for two additional days for the 13 Defense experts.

1 I think it should be possible to find, whether they  
2 are consecutive or not consecutive, or whether an expert wants  
3 to consider -- I have done ten-hour depositions in one day, I  
4 have done it before. It is not like that is an impossibility.  
5 It is a long day for sure, but it can be done. I don't think  
6 the schedule itself should dictate whether or not additional  
7 deposition time is warranted to properly examine the bases of  
8 the expert opinions that are being offered, which is our  
9 primary argument here, your Honor.

10 *THE COURT:* All right. Thank you.

11 So the issue -- let me start with a couple of things.  
12 First of all, while I hear the argument about the PTOs, I think  
13 the PTOs, at least on their terms, all contemplate that any  
14 party can seek additional time from the Court.

15 While I recognize Ms. Finken's point, and I remember  
16 it well, that this was a very carefully negotiated issue, I do  
17 recognize that on its face the PTO does not preclude the  
18 Defendants from asking for what they are asking for. The  
19 operative rules that I have to apply are Rule 30(d), and also  
20 Rule 26, because any discovery request has to be gauged against  
21 the standards of proportionality in Rule 26.

22 So the question is, is there good cause for the  
23 additional time, and do the other proportionality factors weigh  
24 in a way that I should allow the additional time?

25 So, first of all, I am not persuaded that there have

1 to be consecutive days of deposition here. I hear what Mr.  
2 Nigh and Ms. Finken are saying, but I am not sure that a lawyer  
3 being able to be better prepared because they can go back and  
4 review the early transcript to ask better questions in the  
5 second half of the deposition is improper.

6 The purpose of the deposition is to elicit evidence  
7 and elicit information, so I don't consider that an unfair  
8 tactical advantage necessarily. It may be mean the person is  
9 better prepared and more streamlined. So, while I hear that, I  
10 don't believe that consecutive days are necessary to conduct  
11 these depositions, which means that you could stack the extra  
12 time on the same day if that's what I decided I should allow  
13 you to do.

14 Also, while I am appreciative and it's certainly  
15 informative to know about the Valsartan litigation, I don't  
16 know that case, I don't know what was going on in that case,  
17 and I'd have to rule independent of that particular case. Like  
18 I said, it is informative, but not persuasive, candidly.

19 So, I think, as I said previously, looking at the Rule  
20 26 factors, obviously general causation is an extraordinarily  
21 important factor in this case, we have discussed that from day  
22 one. So, to the extent there is -- one of the proportionality  
23 factors is whether the issue under dispute is important to the  
24 litigation. This is extraordinarily important to the  
25 litigation.

1           Then the question is, is the evidence that is trying  
2 to be elicited here important to proving that fact? Obviously  
3 it is. We have spent the better part of two years building up  
4 to this moment, what we have done. All the discovery hearings  
5 that I have ruled on, all of the hundreds or thousands of hours  
6 that you all have put in is building up to Daubert and to Judge  
7 Rosenberg being able to rule on general causation, which I  
8 think everybody agrees the rulings on Daubert are going to have  
9 a substantial influence on where this litigation goes, if this  
10 litigation proceeds and if it settles, and how quickly it moves  
11 forward and all those things. So this is an extraordinarily  
12 important issue.

13           I do find there is good cause for the additional time  
14 that the Defendants are asking for. I think, given the  
15 investment that all of us have made in getting to this point,  
16 it would be ill advised for me and certainly not in the  
17 interests of the just, speedy, expensive and fair resolution of  
18 this case to truncate this sort of inquiry.

19           To the extent I am going to err on the side of  
20 allowing a more robust discovery at the general causation  
21 stage, I think this is certainly the time to do so.

22           I am going to grant the Defendants the additional time  
23 that they have asked for. I am going to grant the Plaintiffs  
24 the same time when it comes time for the Defense's experts if  
25 the Plaintiffs want to take that time.

1           So the question then becomes -- I am granting the  
2 Defendants three additional hours for Dr. Salmon, three  
3 additional hours for Dr. Najafi, three additional hours for Dr.  
4 Mormon, three additional hours for Dr. Panigrahi, and five  
5 additional hours for Dr. McTiernan. I will grant the  
6 Plaintiffs an additional 17 hours how they choose to allocate  
7 it, if they choose to allocate it, as to the Defense experts.

8           With that, not waiving any objections that the parties  
9 may have to the Court's rulings, let me turn first to the  
10 Defense. Mr. Sheehan, any clarifications or modifications of  
11 the order that you would request at this time?

12           *MR. SHEEHAN:* No, your Honor, I think that is clear.  
13 Thank you very much. If anything comes up we will ask for your  
14 guidance.

15           *THE COURT:* Let me suggest one other question. I  
16 think the Plaintiffs make a fair point, the better -- I know  
17 many times in this case I have told you to take this  
18 incrementally, go take the deposition and see if you really  
19 need the additional time. I recognize I am deviating today  
20 from that normal practice.

21           The reason I am doing it is in part because I do  
22 recognize the compacted schedule that we are facing and I think  
23 any time that would be spent teeing up, litigating, and arguing  
24 whether Defendants should get additional time is better spent  
25 just using that time to take these depositions, given, as I

1 said earlier, my strong feeling that at this stage of the  
2 litigation I am going to err in favor of more robust discovery.

3 I did want to address that argument because I think it  
4 is a fair argument, but I wanted to explain why I was deviating  
5 from what I have done in the past.

6 Let me turn to the Plaintiffs, not waiving any  
7 objection that you may have to the ruling I have made, do you  
8 seek any clarifications?

9 MR. NIGH: No clarifications, your Honor. Thank you.

10 THE COURT: Thank you all very much. I wish everyone  
11 a good weekend. We'll be in recess.

12 MS. FINKEN: Thank you, your Honor.

13 *(Thereupon, the hearing was concluded.)*

14 \* \* \*

15 I certify that the foregoing is a correct transcript  
16 from the record of proceedings in the above matter.

17  
18 Date: March 20, 2022

19 /s/ Pauline A. Stipes, Official Federal Reporter

20 Signature of Court Reporter  
21  
22  
23  
24  
25



<b>MR. NIGH:</b> [8] 2/5 2/23 10/16 14/16 15/10 18/22 18/24 24/8	<b>6</b>	<b>another</b> [2] 6/10 18/12
<b>MR. SHEEHAN:</b> [7] 2/11 2/25 3/3 15/18 19/12 19/19 23/11	<b>65</b> [2] 7/12 17/3	<b>answered</b> [1] 14/22
<b>MS. FINKEN:</b> [5] 2/7 16/23 17/1 18/13 24/11	<b>7</b>	<b>any</b> [17] 2/22 3/25 4/12 5/8 5/15 6/1 7/12 9/17 9/24 17/12 20/13 20/20 23/8 23/10 23/23 24/6 24/8
<b>THE COURT:</b> [18] 1/23 2/9 2/13 2/24 3/1 10/13 14/6 15/2 15/15 16/22 16/25 18/4 18/23 19/9 19/14 20/9 23/14 24/9	<b>7013</b> [1] 1/16	<b>anybody</b> [1] 4/5
	<b>8</b>	<b>anything</b> [1] 23/13
	<b>8400</b> [1] 1/20	<b>anyway</b> [1] 18/7
	<b>850-435-7013</b> [1] 1/16	<b>apples</b> [1] 7/25
	<b>A</b>	<b>applies</b> [1] 12/13
	<b>able</b> [7] 9/18 11/10 12/14 12/15 14/20 21/3 22/7	<b>apply</b> [2] 9/10 20/19
	<b>about</b> [19] 5/18 5/24 6/5 8/7 8/9 8/22 8/22 8/23 9/6 10/22 11/7 12/23 14/21 15/4 15/23 15/24 15/25 20/12 21/15	<b>appreciate</b> [1] 15/16
	<b>above</b> [1] 24/16	<b>appreciative</b> [1] 21/14
	<b>absorption</b> [2] 5/4 5/13	<b>appropriate</b> [1] 9/20
	<b>accommodating</b> [1] 19/16	<b>April</b> [1] 19/3
	<b>accordingly</b> [1] 17/12	<b>are</b> [73]
	<b>actual</b> [1] 5/7	<b>argue</b> [1] 4/5
	<b>actually</b> [4] 8/18 9/14 14/1 16/17	<b>arguing</b> [1] 23/23
	<b>add</b> [4] 5/3 5/12 6/10 9/12	<b>argument</b> [6] 8/25 12/12 20/9 20/12 24/3 24/4
	<b>adding</b> [1] 17/25	<b>arguments</b> [4] 7/8 11/8 11/9 13/13
	<b>additional</b> [35]	<b>arranged</b> [1] 14/15
	<b>address</b> [2] 7/8 24/3	<b>as</b> [17] 3/14 4/1 4/4 4/18 6/19 6/19 8/2 9/24 9/24 11/7 12/24 13/4 15/22 18/19 21/19 23/7 23/25
	<b>addressed</b> [1] 19/12	<b>ask</b> [9] 8/5 8/7 10/12 14/22 18/5 19/10 19/14 21/4 23/13
	<b>addressing</b> [1] 13/17	<b>asked</b> [4] 4/10 7/18 19/6 22/23
	<b>admit</b> [1] 2/15	<b>asking</b> [16] 4/13 6/10 7/20 8/10 8/12 8/12 8/13 8/20 16/11 16/16 19/22 19/23 19/25 20/18 20/18 22/14
	<b>advance</b> [1] 16/7	<b>assuming</b> [1] 15/6
	<b>advantage</b> [2] 14/18 21/8	<b>attributes</b> [1] 4/25
	<b>advised</b> [1] 22/16	<b>automobile</b> [1] 9/23
	<b>after</b> [3] 4/7 5/17 10/15	<b>available</b> [1] 14/11
	<b>afternoon</b> [3] 2/8 2/10 14/15	<b>avoid</b> [2] 8/18 15/13
	<b>again</b> [3] 18/5 18/10 18/25	<b>aware</b> [2] 17/4 18/21
	<b>against</b> [1] 20/20	<b>B</b>
	<b>agreed</b> [2] 13/5 17/22	<b>back</b> [6] 13/4 14/22 15/17 16/14 17/3 21/3
	<b>agreement</b> [2] 7/19 16/21	<b>backwards</b> [1] 9/11
	<b>agrees</b> [1] 22/8	<b>Bacon</b> [1] 1/18
	<b>ahead</b> [1] 18/24	<b>base</b> [2] 4/23 5/10
	<b>all</b> [26]	<b>based</b> [2] 8/15 13/22
	<b>alleged</b> [1] 3/11	<b>bases</b> [5] 9/5 13/19 13/25 14/1 20/7
	<b>alleging</b> [1] 13/1	<b>basis</b> [1] 18/7
	<b>allocate</b> [2] 23/6 23/7	<b>Baylen</b> [1] 1/15
	<b>allotted</b> [1] 14/8	<b>be</b> [30]
	<b>allow</b> [3] 15/10 20/24 21/12	<b>BEACH</b> [3] 1/2 1/4 1/23
	<b>allowed</b> [1] 11/21	<b>Beach/Ft</b> [1] 1/23
	<b>allowing</b> [1] 22/20	<b>because</b> [13] 6/4 8/10 8/15 9/8 9/12 11/17 13/12 14/4 14/19 20/20 21/3 23/21 24/3
	<b>allows</b> [1] 7/17	<b>becomes</b> [1] 23/1
	<b>already</b> [8] 8/10 8/15 11/5 13/11 18/14 18/17 18/19 18/21	<b>beds</b> [1] 5/15
	<b>also</b> [5] 5/10 5/12 7/16 20/19 21/14	<b>been</b> [3] 4/2 7/6 19/21
	<b>always</b> [1] 15/6	<b>before</b> [4] 1/8 16/4 16/5 20/4
	<b>am</b> [13] 8/8 10/20 10/22 20/25 21/2 21/14 22/19 22/22 22/23 23/1 23/19 23/21 24/2	<b>begin</b> [1] 2/4
	<b>amount</b> [3] 11/10 11/11 17/15	<b>behalf</b> [6] 2/6 2/9 2/10 2/12 10/18 17/2
	<b>analogy</b> [4] 9/7 9/7 12/9 13/20	
	<b>analyses</b> [1] 6/17	
	<b>Anapol</b> [1] 1/11	
	<b>animal</b> [4] 5/2 5/5 5/6 12/2	
	<b>animals</b> [1] 5/8	
<b>MR. NIGH:</b> [8] 2/5 2/23 10/16 14/16 15/10 18/22 18/24 24/8		
<b>MR. SHEEHAN:</b> [7] 2/11 2/25 3/3 15/18 19/12 19/19 23/11		
<b>MS. FINKEN:</b> [5] 2/7 16/23 17/1 18/13 24/11		
<b>THE COURT:</b> [18] 1/23 2/9 2/13 2/24 3/1 10/13 14/6 15/2 15/15 16/22 16/25 18/4 18/23 19/9 19/14 20/9 23/14 24/9		
<b>'s</b> [2] 16/17 16/18		
<b>/</b>		
<b>/s</b> [1] 24/19		
<b>1</b>		
<b>1000</b> [1] 1/19		
<b>1130</b> [1] 1/13		
<b>12</b> [8] 4/3 4/14 7/21 8/11 12/20 16/16 19/23 19/24		
<b>13</b> [2] 12/20 19/25		
<b>130</b> [1] 1/12		
<b>14</b> [1] 12/19		
<b>1600</b> [1] 1/12		
<b>17</b> [4] 2/19 11/18 11/21 23/6		
<b>18</b> [1] 1/4		
<b>1800</b> [1] 1/19		
<b>18th</b> [1] 1/12		
<b>19103</b> [1] 1/12		
<b>2</b>		
<b>20</b> [1] 24/18		
<b>20-2924</b> [1] 2/2		
<b>20-md-02924-ROSENBERG</b> [1] 1/2		
<b>20006</b> [1] 1/20		
<b>202-783-8400</b> [1] 1/20		
<b>2022</b> [2] 1/4 24/18		
<b>215-735-1130</b> [1] 1/13		
<b>25</b> [3] 12/21 15/12 17/24		
<b>26</b> [9] 4/16 6/18 6/25 7/21 9/14 10/2 20/20 20/21 21/20		
<b>2924</b> [1] 2/2		
<b>3</b>		
<b>30</b> [14] 4/16 7/14 7/24 11/12 11/13 11/16 11/17 11/19 11/25 12/4 12/16 16/17 16/18 20/19		
<b>316</b> [1] 1/15		
<b>32502</b> [1] 1/15		
<b>3434</b> [1] 1/23		
<b>4</b>		
<b>40</b> [1] 12/1		
<b>5</b>		
<b>5396</b> [1] 2/18		
<b>54</b> [2] 7/16 7/17		
<b>5407</b> [1] 2/21		
<b>561-803-3434</b> [1] 1/23		

<p><b>B</b></p> <p><b>being</b> [12] 3/8 3/11 6/8 6/15 7/2 9/21 10/6 14/10 14/10 20/8 21/3 22/7</p> <p><b>believe</b> [5] 4/15 8/3 12/12 13/14 21/10</p> <p><b>believe our</b> [1] 4/15</p> <p><b>better</b> [6] 21/3 21/4 21/9 22/3 23/16 23/24</p> <p><b>biological</b> [1] 4/22</p> <p><b>bit</b> [1] 9/10</p> <p><b>blanket</b> [2] 8/13 16/19</p> <p><b>body</b> [1] 6/18</p> <p><b>boils</b> [1] 9/1</p> <p><b>both</b> [3] 11/3 14/25 17/5</p> <p><b>bottom</b> [1] 3/23</p> <p><b>brand</b> [1] 2/10</p> <p><b>brands</b> [1] 2/13</p> <p><b>breadth</b> [2] 6/3 8/16</p> <p><b>break</b> [1] 15/14</p> <p><b>brief</b> [1] 6/6</p> <p><b>briefing</b> [1] 8/24</p> <p><b>briefly</b> [2] 7/8 15/19</p> <p><b>BRUCE</b> [1] 1/8</p> <p><b>buckets</b> [1] 5/20</p> <p><b>building</b> [2] 22/3 22/6</p> <p><b>built</b> [1] 17/19</p> <p><b>burden</b> [3] 7/4 7/6 10/11</p>	<p><b>characteristics</b> [1] 3/20</p> <p><b>characterization</b> [2] 4/6 7/12</p> <p><b>chemical</b> [1] 5/2</p> <p><b>choose</b> [2] 23/6 23/7</p> <p><b>cite</b> [2] 9/15 9/23</p> <p><b>cited</b> [2] 9/21 10/22</p> <p><b>cites</b> [1] 9/13</p> <p><b>citing</b> [1] 9/19</p> <p><b>clarifications</b> [3] 23/10 24/8 24/9</p> <p><b>clear</b> [1] 23/12</p> <p><b>clearly</b> [2] 10/10 14/3</p> <p><b>clinical</b> [1] 12/2</p> <p><b>co</b> [1] 10/20</p> <p><b>co-lead</b> [1] 10/20</p> <p><b>code</b> [1] 9/8</p> <p><b>codes</b> [1] 13/21</p> <p><b>come</b> [1] 14/22</p> <p><b>comes</b> [3] 15/8 22/24 23/13</p> <p><b>coming</b> [2] 13/4 16/12</p> <p><b>community</b> [1] 4/1</p> <p><b>compacted</b> [1] 23/22</p> <p><b>compared</b> [1] 13/2</p> <p><b>complaining</b> [1] 6/5</p> <p><b>complete</b> [2] 9/14 10/1</p> <p><b>complex</b> [6] 4/5 4/19 9/4 9/9 10/6 12/11</p> <p><b>complexities</b> [2] 12/3 12/23</p> <p><b>complexity</b> [7] 6/3 6/4 6/11 7/4 8/16 13/1 15/23</p> <p><b>complicated</b> [4] 3/15 3/24 11/14 12/16</p> <p><b>compounds</b> [2] 5/1 5/5</p> <p><b>compressed</b> [1] 15/4</p> <p><b>concentrations</b> [1] 5/1</p> <p><b>concern</b> [1] 15/4</p> <p><b>concluded</b> [1] 24/13</p> <p><b>condensed</b> [1] 17/14</p> <p><b>conditions</b> [1] 6/23</p> <p><b>conduct</b> [1] 21/10</p> <p><b>conflate</b> [1] 7/23</p> <p><b>congested</b> [1] 19/14</p> <p><b>congestion</b> [1] 19/9</p> <p><b>consecutive</b> [10] 13/7 13/10 14/9 15/2 15/15 15/21 20/2 20/2 21/1 21/10</p> <p><b>consider</b> [2] 20/3 21/7</p> <p><b>consideration</b> [1] 6/11</p> <p><b>considered</b> [2] 8/11 17/22</p> <p><b>contemplate</b> [1] 20/13</p> <p><b>contemplated</b> [3] 17/7 17/9 17/19</p> <p><b>contemplation</b> [1] 17/12</p> <p><b>context</b> [1] 6/22</p> <p><b>conversations</b> [1] 15/25</p> <p><b>coordinate</b> [1] 4/10</p> <p><b>correct</b> [1] 24/15</p> <p><b>could</b> [5] 6/2 11/23 16/14 17/11 21/11</p> <p><b>couldn't</b> [1] 14/13</p> <p><b>counsel</b> [2] 2/5 10/20</p> <p><b>count</b> [2] 2/19 13/13</p> <p><b>couple</b> [2] 2/14 20/11</p> <p><b>course</b> [3] 5/10 16/4 17/1</p> <p><b>COURT</b> [6] 1/1 1/22 7/18 9/25 20/14 24/20</p> <p><b>Court's</b> [2] 7/11 23/9</p>	<p><b>cover</b> [1] 18/12</p> <p><b>covers</b> [1] 18/13</p> <p><b>create</b> [2] 11/5 13/8</p> <p><b>crowded</b> [2] 11/5 13/11</p>
<p><b>C</b></p> <p><b>calculations</b> [4] 6/12 6/15 6/17 7/1</p> <p><b>calendar</b> [1] 13/11</p> <p><b>called</b> [1] 5/3</p> <p><b>can</b> [15] 4/5 9/24 12/3 14/19 14/20 15/21 16/5 16/9 16/11 16/24 18/6 18/15 20/5 20/14 21/3</p> <p><b>can't</b> [6] 8/8 11/21 14/12 14/15 16/19 18/8</p> <p><b>cancer</b> [17] 3/14 3/15 3/17 3/18 3/19 3/21 3/21 3/25 4/18 4/22 5/6 5/7 5/16 5/19 6/1 10/8 10/9</p> <p><b>cancers</b> [5] 3/11 3/12 12/24 13/1 13/2</p> <p><b>candidly</b> [1] 21/18</p> <p><b>carefully</b> [3] 4/8 8/11 20/16</p> <p><b>case</b> [15] 1/2 2/1 9/3 9/23 9/24 10/21 14/10 15/6 18/9 21/16 21/16 21/17 21/21 22/18 23/17</p> <p><b>cases</b> [2] 9/22 9/22</p> <p><b>causation</b> [9] 2/17 3/10 3/14 4/14 4/19 4/22 21/20 22/7 22/20</p> <p><b>cause</b> [4] 3/11 10/11 20/22 22/13</p> <p><b>causes</b> [3] 3/22 3/25 19/8</p> <p><b>cell</b> [3] 3/20 4/20 4/20</p> <p><b>cellular</b> [2] 4/19 4/22</p> <p><b>certain</b> [2] 11/8 16/21</p> <p><b>certainly</b> [4] 11/5 21/14 22/16 22/21</p> <p><b>certify</b> [1] 24/15</p> <p><b>chance</b> [1] 10/15</p> <p><b>chapter</b> [1] 7/3</p>	<p><b>characteristics</b> [1] 3/20</p> <p><b>characterization</b> [2] 4/6 7/12</p> <p><b>chemical</b> [1] 5/2</p> <p><b>choose</b> [2] 23/6 23/7</p> <p><b>cite</b> [2] 9/15 9/23</p> <p><b>cited</b> [2] 9/21 10/22</p> <p><b>cites</b> [1] 9/13</p> <p><b>citing</b> [1] 9/19</p> <p><b>clarifications</b> [3] 23/10 24/8 24/9</p> <p><b>clear</b> [1] 23/12</p> <p><b>clearly</b> [2] 10/10 14/3</p> <p><b>clinical</b> [1] 12/2</p> <p><b>co</b> [1] 10/20</p> <p><b>co-lead</b> [1] 10/20</p> <p><b>code</b> [1] 9/8</p> <p><b>codes</b> [1] 13/21</p> <p><b>come</b> [1] 14/22</p> <p><b>comes</b> [3] 15/8 22/24 23/13</p> <p><b>coming</b> [2] 13/4 16/12</p> <p><b>community</b> [1] 4/1</p> <p><b>compacted</b> [1] 23/22</p> <p><b>compared</b> [1] 13/2</p> <p><b>complaining</b> [1] 6/5</p> <p><b>complete</b> [2] 9/14 10/1</p> <p><b>complex</b> [6] 4/5 4/19 9/4 9/9 10/6 12/11</p> <p><b>complexities</b> [2] 12/3 12/23</p> <p><b>complexity</b> [7] 6/3 6/4 6/11 7/4 8/16 13/1 15/23</p> <p><b>complicated</b> [4] 3/15 3/24 11/14 12/16</p> <p><b>compounds</b> [2] 5/1 5/5</p> <p><b>compressed</b> [1] 15/4</p> <p><b>concentrations</b> [1] 5/1</p> <p><b>concern</b> [1] 15/4</p> <p><b>concluded</b> [1] 24/13</p> <p><b>condensed</b> [1] 17/14</p> <p><b>conditions</b> [1] 6/23</p> <p><b>conduct</b> [1] 21/10</p> <p><b>conflate</b> [1] 7/23</p> <p><b>congested</b> [1] 19/14</p> <p><b>congestion</b> [1] 19/9</p> <p><b>consecutive</b> [10] 13/7 13/10 14/9 15/2 15/15 15/21 20/2 20/2 21/1 21/10</p> <p><b>consider</b> [2] 20/3 21/7</p> <p><b>consideration</b> [1] 6/11</p> <p><b>considered</b> [2] 8/11 17/22</p> <p><b>contemplate</b> [1] 20/13</p> <p><b>contemplated</b> [3] 17/7 17/9 17/19</p> <p><b>contemplation</b> [1] 17/12</p> <p><b>context</b> [1] 6/22</p> <p><b>conversations</b> [1] 15/25</p> <p><b>coordinate</b> [1] 4/10</p> <p><b>correct</b> [1] 24/15</p> <p><b>could</b> [5] 6/2 11/23 16/14 17/11 21/11</p> <p><b>couldn't</b> [1] 14/13</p> <p><b>counsel</b> [2] 2/5 10/20</p> <p><b>count</b> [2] 2/19 13/13</p> <p><b>couple</b> [2] 2/14 20/11</p> <p><b>course</b> [3] 5/10 16/4 17/1</p> <p><b>COURT</b> [6] 1/1 1/22 7/18 9/25 20/14 24/20</p> <p><b>Court's</b> [2] 7/11 23/9</p>	<p><b>D</b></p> <p><b>D.C</b> [1] 1/20</p> <p><b>damaged</b> [1] 4/19</p> <p><b>DANIEL</b> [4] 1/14 2/6 10/17 18/25</p> <p><b>data</b> [4] 5/11 5/12 5/12 5/14</p> <p><b>Date</b> [1] 24/18</p> <p><b>dates</b> [4] 14/9 19/1 19/3 19/16</p> <p><b>Daubert</b> [6] 8/23 12/25 17/17 18/2 22/6 22/8</p> <p><b>day</b> [11] 4/11 5/24 13/10 16/9 17/9 17/13 17/24 20/3 20/5 21/12 21/21</p> <p><b>days</b> [19] 11/1 11/3 11/15 11/16 13/6 13/7 13/8 15/2 15/15 15/21 15/21 16/8 17/25 19/7 19/21 19/23 19/25 21/1 21/10</p> <p><b>deadline</b> [1] 8/23</p> <p><b>dealing</b> [1] 3/13</p> <p><b>decades</b> [2] 4/2 4/2</p> <p><b>decades and</b> [1] 4/2</p> <p><b>decided</b> [2] 10/2 21/12</p> <p><b>deciding</b> [1] 9/25</p> <p><b>defend</b> [1] 18/6</p> <p><b>DEFENDANTS</b> [15] 1/18 2/11 10/22 11/8 11/20 12/6 13/22 14/8 16/19 19/2 20/18 22/14 22/22 23/2 23/24</p> <p><b>Defendants'</b> [7] 11/3 12/21 13/13 13/16 13/24 15/7 15/9</p> <p><b>defending</b> [2] 18/11 18/19</p> <p><b>Defense</b> [7] 2/25 5/11 12/19 18/18 19/25 23/7 23/10</p> <p><b>Defense's</b> [4] 2/16 2/18 3/2 22/24</p> <p><b>dense</b> [1] 3/23</p> <p><b>deponent</b> [1] 7/15</p> <p><b>depos</b> [1] 8/6</p> <p><b>depose</b> [2] 2/17 2/19</p> <p><b>deposed</b> [1] 18/17</p> <p><b>deposition</b> [20] 7/5 7/13 7/13 7/17 8/13 9/2 10/7 10/11 11/22 13/6 14/23 18/6 18/11 18/12 19/23 20/7 21/1 21/5 21/6 23/18</p> <p><b>depositions</b> [22] 8/24 9/25 11/1 11/2 11/24 12/4 12/7 12/8 12/10 12/15 13/8 14/9 14/10 16/1 17/9 17/13 17/24 18/10 18/18 20/3 21/11 23/25</p> <p><b>design</b> [1] 3/9</p> <p><b>despite</b> [1] 10/2</p> <p><b>detailed</b> [2] 6/6 8/2</p> <p><b>determined</b> [1] 8/15</p> <p><b>deviating</b> [2] 23/19 24/4</p> <p><b>dictate</b> [1] 20/6</p> <p><b>did</b> [6] 6/20 6/20 12/11 16/20 17/22 24/3</p> <p><b>dietary</b> [1] 5/21</p> <p><b>different</b> [11] 3/17 3/17 3/18 3/21 3/22 4/25 5/7 5/14</p>

<p><b>D</b></p> <p>different... [3] 5/20 13/21 13/24</p> <p>directly [1] 19/12</p> <p>disadvantage [1] 15/14</p> <p>disagree [1] 10/4</p> <p>disclosed [1] 12/18</p> <p>discovery [9] 1/8 2/3 8/23 17/8 17/16 20/20 22/4 22/20 24/2</p> <p>discussed [2] 12/24 21/21</p> <p>discussion [1] 13/6</p> <p>disease [1] 3/16</p> <p>dispute [2] 8/21 21/23</p> <p>disputes [1] 4/18</p> <p>disrespect [1] 18/5</p> <p>disruptions [1] 8/19</p> <p>distinguish [2] 10/23 13/3</p> <p>distribution [1] 5/4</p> <p>DISTRICT [2] 1/1 1/1</p> <p>DIVISION [1] 1/2</p> <p>DNA [3] 4/19 4/20 5/16</p> <p>do [18] 3/5 6/20 8/19 14/13 14/17 14/18 15/1 15/21 15/25 17/20 18/7 20/16 20/23 21/13 22/13 22/21 23/21 24/7</p> <p>Docket [2] 2/18 2/20</p> <p>documents [1] 12/5</p> <p>does [5] 3/10 6/15 6/17 7/12 20/17</p> <p>doesn't [4] 9/9 9/13 9/24 16/13</p> <p>doing [4] 8/9 9/8 17/13 23/21</p> <p>don't [19] 4/5 7/3 7/11 9/3 9/6 9/16 11/8 12/12 13/14 14/17 16/6 19/11 19/12 19/20 20/5 21/7 21/10 21/15 21/16</p> <p>done [19] 6/12 7/1 12/8 12/15 14/10 14/11 14/12 15/6 16/6 16/9 17/16 17/16 18/2 18/21 20/3 20/4 20/5 22/4 24/5</p> <p>dose [2] 6/16 6/17</p> <p>double [7] 12/21 13/2 18/10 18/11 18/14 18/16 18/19</p> <p>doubt [1] 11/4</p> <p>down [1] 9/1</p> <p>Dr [11] 6/14 6/19 6/24 14/11 14/13 14/14 23/2 23/3 23/3 23/4 23/5</p> <p>drug [1] 5/25</p>	<p>enzymes [1] 5/14</p> <p>epidemiology [1] 5/19</p> <p>err [2] 22/19 24/2</p> <p>ESQ [3] 1/10 1/14 1/18</p> <p>essence [1] 3/12</p> <p>essentially [1] 4/24</p> <p>evaluating [1] 16/11</p> <p>even [5] 5/15 5/19 11/14 11/15 19/16</p> <p>every [3] 11/2 14/25 19/1</p> <p>everybody [3] 2/1 16/5 22/8</p> <p>everyone [1] 24/10</p> <p>evidence [2] 21/6 22/1</p> <p>evidentiary [2] 4/23 5/10</p> <p>exactly [2] 9/17 16/2</p> <p>examine [9] 7/14 9/16 11/10 11/12 11/16 11/17 14/1 14/20 20/7</p> <p>example [1] 6/14</p> <p>except [2] 13/24 19/2</p> <p>excretion [1] 5/5</p> <p>excretion of [1] 5/5</p> <p>expedited [2] 17/7 17/22</p> <p>expensive [1] 22/17</p> <p>experience [1] 12/1</p> <p>experiments [2] 6/21 7/1</p> <p>expert [30]</p> <p>experts [34]</p> <p>experts' [1] 13/19</p> <p>explain [1] 24/4</p> <p>explained [3] 13/19 14/3 14/5</p> <p>explaining [1] 10/19</p> <p>explanation [1] 9/20</p> <p>explanations [1] 13/24</p> <p>explore [3] 9/5 9/18 14/4</p> <p>exposures [2] 5/21 5/23</p> <p>express [1] 17/8</p> <p>expression [1] 5/14</p> <p>extended [1] 7/18</p> <p>extension [1] 8/13</p> <p>extensions [2] 8/22 8/23</p> <p>extent [4] 7/23 12/15 21/22 22/19</p> <p>extra [3] 13/10 19/18 21/11</p> <p>extraordinarily [4] 3/15 21/20 21/24 22/11</p> <p>extrapolates [1] 6/16</p>	<p>filings [1] 2/22</p> <p>final [1] 4/11</p> <p>finally [3] 5/24 10/3 13/12</p> <p>find [6] 14/9 15/15 15/21 19/18 20/1 22/13</p> <p>FINKEN [5] 1/10 2/9 17/2 19/15 21/2</p> <p>Finken's [1] 20/15</p> <p>first [9] 3/3 4/18 7/10 10/19 11/7 15/20 20/12 20/25 23/9</p> <p>five [17] 2/19 3/11 3/16 3/18 4/14 6/9 7/7 7/20 8/3 8/14 9/15 10/12 12/18 13/1 16/15 19/23 23/4</p> <p>FL [3] 1/4 1/15 1/23</p> <p>flip [1] 11/25</p> <p>FLORIDA [2] 1/1 9/23</p> <p>flows [1] 8/24</p> <p>folks [3] 4/9 5/24 6/1</p> <p>foregoing [1] 24/15</p> <p>form [1] 18/7</p> <p>forward [3] 17/23 18/1 22/11</p> <p>frame [3] 3/6 19/7 19/8</p> <p>frankly [3] 5/6 10/4 12/14</p> <p>front [2] 8/10 17/11</p> <p>Ft [1] 1/23</p>
<p><b>E</b></p> <p>each [5] 3/17 3/18 13/5 13/10 17/13</p> <p>earlier [1] 24/1</p> <p>early [1] 21/4</p> <p>easy [1] 9/9</p> <p>effect [1] 5/16</p> <p>efficient [1] 12/7</p> <p>either [1] 12/2</p> <p>elicit [2] 21/6 21/7</p> <p>elicited [1] 22/2</p> <p>end [2] 4/11 5/7</p> <p>Entry [2] 2/18 2/21</p> <p>envisioned [1] 13/7</p>	<p><b>F</b></p> <p>face [1] 20/17</p> <p>faced [1] 14/25</p> <p>facing [1] 23/22</p> <p>fact [1] 22/2</p> <p>factor [1] 21/21</p> <p>factors [5] 3/22 4/20 20/23 21/20 21/23</p> <p>facts [2] 11/18 13/17</p> <p>fair [4] 7/11 22/17 23/16 24/4</p> <p>fairly [1] 7/14</p> <p>far [2] 9/24 10/8</p> <p>favor [1] 24/2</p> <p>Federal [1] 24/19</p> <p>feeling [1] 24/1</p> <p>few [2] 3/6 4/21</p> <p>figure [1] 3/24</p> <p>figured [1] 15/1</p>	<p><b>G</b></p> <p>gastric [1] 6/22</p> <p>gauged [1] 20/20</p> <p>general [6] 2/17 3/10 4/14 21/20 22/7 22/20</p> <p>genetic [1] 3/21</p> <p>get [16] 4/10 4/11 8/6 8/21 12/14 13/5 13/9 16/6 16/9 16/11 17/15 17/16 17/16 18/2 18/2 23/24</p> <p>getting [3] 6/25 8/18 22/15</p> <p>gist [1] 15/13</p> <p>give [7] 6/2 10/14 12/6 13/15 13/25 15/7 15/8</p> <p>given [4] 11/19 19/16 22/14 23/25</p> <p>giving [1] 4/12</p> <p>go [11] 6/2 7/3 8/6 8/9 10/25 12/3 15/17 16/14 18/24 21/3 23/18</p> <p>goes [2] 13/20 22/9</p> <p>going [20] 4/8 8/16 8/20 8/20 8/21 10/22 11/4 16/7 17/3 17/23 18/1 18/1 19/19 19/24 21/16 22/8 22/19 22/22 22/23 24/2</p> <p>good [8] 2/8 2/10 9/7 9/7 10/11 20/22 22/13 24/11</p> <p>got [4] 4/7 6/4 11/17 12/8</p> <p>governed [1] 7/13</p> <p>grant [5] 10/12 15/7 22/22 22/23 23/5</p> <p>granting [1] 23/1</p> <p>grappling [1] 4/2</p> <p>Great [1] 3/2</p> <p>growth [1] 4/20</p> <p>guidance [1] 23/14</p> <p><b>H</b></p> <p>had [16] 6/1 11/2 11/8 11/11</p>

<b>H</b>	<p> <b>had...</b> [12] 11/15 11/18 12/4  12/10 12/13 12/24 13/1 14/24  14/25 15/25 16/7 17/14  <b>had a</b> [1] 11/18  <b>half</b> [4] 11/15 11/18 11/21  21/5  <b>happened</b> [3] 10/23 11/7  16/20  <b>happy</b> [1] 15/20  <b>hard</b> [1] 15/25  <b>Hardy</b> [1] 1/18  <b>harmful</b> [1] 5/16  <b>has</b> [5] 3/19 4/1 7/6 10/23  20/20  <b>have</b> [63]  <b>having</b> [3] 15/5 15/14 18/16  <b>havoc</b> [1] 13/9  <b>he</b> [7] 6/14 6/15 6/16 6/19  6/20 6/20 14/11  <b>hear</b> [7] 3/3 10/15 10/16  19/15 20/12 21/1 21/9  <b>heard</b> [1] 5/23  <b>hearing</b> [4] 1/8 2/3 3/4  24/13  <b>hearings</b> [2] 17/17 22/4  <b>heavily</b> [1] 17/5  <b>heavy</b> [1] 18/6  <b>Hello</b> [1] 2/1  <b>here</b> [29]  <b>Here we</b> [1] 12/25  <b>heterogeneous</b> [1] 3/16  <b>hey</b> [2] 4/8 16/5  <b>highlight</b> [1] 18/23  <b>him</b> [1] 15/17  <b>hired</b> [2] 6/19 7/25  <b>his</b> [4] 6/15 6/17 6/18 6/25  <b>Hold</b> [2] 2/14 18/24  <b>HON</b> [1] 1/22  <b>honestly</b> [3] 7/24 8/8 9/2  <b>Honor</b> [17] 2/12 2/24 3/5 8/2  10/10 10/17 10/19 15/19  16/22 16/24 17/3 18/14 18/23  20/9 23/12 24/9 24/12  <b>Honor's</b> [1] 6/11  <b>HONORABLE</b> [1] 1/8  <b>hope</b> [1] 7/4  <b>hour</b> [3] 7/17 8/7 20/3  <b>hours</b> [26]  <b>how</b> [4] 13/20 15/25 22/10  23/6  <b>however</b> [1] 15/22  <b>human</b> [2] 5/11 5/13  <b>humans</b> [3] 5/9 5/17 5/20  <b>hundred</b> [1] 6/7  <b>hundreds</b> [6] 6/6 6/6 6/7  9/15 12/5 22/5 </p>	<p> <b>impossibility</b> [2] 19/18 20/4  <b>impossible</b> [1] 14/17  <b>improper</b> [1] 21/5  <b>include</b> [1] 5/21  <b>increased</b> [1] 6/1  <b>incrementally</b> [1] 23/18  <b>independent</b> [1] 21/17  <b>inefficient</b> [1] 8/9  <b>influence</b> [1] 22/9  <b>information</b> [1] 21/7  <b>informative</b> [2] 21/15 21/18  <b>inquiry</b> [1] 22/18  <b>instances</b> [1] 16/21  <b>instructive</b> [1] 10/5  <b>interests</b> [1] 22/17  <b>internally</b> [1] 15/25  <b>investment</b> [1] 22/15  <b>involve</b> [1] 5/12  <b>involved</b> [1] 12/1  <b>involves</b> [7] 4/19 4/24 5/2  5/6 5/10 5/13 5/16  <b>involving</b> [1] 5/8  <b>Irrespective</b> [1] 3/25  <b>is</b> [116]  <b>issue</b> [9] 3/9 3/20 5/25 9/15  17/3 20/11 20/16 21/23 22/12  <b>issues</b> [10] 3/7 4/2 6/3 7/4  10/21 10/23 12/11 13/17  13/23 15/24  <b>it</b> [78]  <b>it's</b> [2] 9/7 21/14  <b>its</b> [2] 3/19 20/17  <b>itself</b> [2] 5/25 20/6 </p>	<p> 10/2  <b>lengthy</b> [1] 10/6  <b>less</b> [4] 9/2 10/7 13/25 14/3  <b>let</b> [11] 2/4 3/2 10/16 15/17  15/17 18/5 19/10 20/11 23/9  23/15 24/6  <b>Let's</b> [1] 2/15  <b>level</b> [2] 4/20 4/22  <b>Levin</b> [1] 1/14  <b>LIABILITY</b> [2] 1/4 2/2  <b>lift</b> [1] 18/6  <b>like</b> [6] 5/1 9/1 9/3 15/18  20/4 21/17  <b>limit</b> [2] 7/18 8/7  <b>limitations</b> [1] 19/17  <b>limited</b> [4] 6/10 8/14 17/15  19/22  <b>line</b> [1] 3/23  <b>list</b> [1] 12/3  <b>literature</b> [1] 10/8  <b>litigating</b> [1] 23/23  <b>litigation</b> [17] 1/4 2/3 3/9  5/17 6/13 7/3 7/6 8/2 10/4  10/20 11/25 21/15 21/24  21/25 22/9 22/10 24/2  <b>little</b> [3] 4/10 9/10 16/13  <b>LLP</b> [1] 1/18  <b>lodge</b> [1] 18/8  <b>Logan</b> [1] 1/11  <b>logistics</b> [1] 15/5  <b>long</b> [6] 4/4 9/9 9/12 12/3  13/14 20/5  <b>longer</b> [2] 9/1 9/3  <b>look</b> [1] 14/19  <b>looked</b> [1] 18/16  <b>looking</b> [5] 5/3 12/12 14/22  16/10 21/19  <b>lot</b> [3] 13/3 17/25 18/9  <b>lots</b> [1] 9/13 </p>		
<b>I</b>	<p> <b>I'd</b> [1] 21/17  <b>idea</b> [1] 16/3  <b>ill</b> [1] 22/16  <b>illustrated</b> [1] 15/23  <b>illustrates</b> [1] 10/5  <b>imagine</b> [3] 3/14 16/7 19/24  <b>important</b> [5] 21/21 21/23  21/24 22/2 22/12 </p>	<b>J</b>	<p> <b>jointly</b> [1] 17/22  <b>JUDGE</b> [6] 1/9 2/8 17/17 18/3  19/17 22/6  <b>just</b> [19] 3/6 4/21 6/2 6/10  7/8 8/2 9/2 9/8 9/12 15/4  15/22 16/13 17/4 18/21 18/23  19/1 19/18 22/17 23/25  <b>justified</b> [1] 8/4 </p>	<b>M</b>	<p> <b>made</b> [4] 7/9 16/25 22/15  24/7  <b>MAGISTRATE</b> [1] 1/9  <b>main</b> [1] 11/9  <b>major</b> [1] 11/23  <b>majority</b> [1] 13/13  <b>make</b> [5] 8/25 9/24 16/13  17/4 23/16  <b>makes</b> [1] 19/8  <b>many</b> [1] 23/17  <b>March</b> [2] 1/4 24/18  <b>massive</b> [2] 6/4 6/5  <b>matter</b> [1] 24/16  <b>may</b> [6] 19/3 19/4 19/5 21/8  23/9 24/7  <b>McTiernan</b> [2] 14/15 23/5  <b>md</b> [1] 1/2  <b>MDL</b> [2] 3/16 10/20  <b>me</b> [13] 2/4 3/3 5/3 5/12  10/16 15/17 18/5 19/10 20/11  22/16 23/9 23/15 24/6  <b>mean</b> [3] 9/9 9/13 21/8  <b>meaningful</b> [2] 9/17 18/2  <b>means</b> [2] 13/19 21/11  <b>mechanisms</b> [1] 4/21  <b>member</b> [1] 18/12  <b>mentioned</b> [2] 2/23 4/18 </p>
<b>K</b>	<p> <b>key</b> [1] 12/11  <b>kinds</b> [1] 6/21  <b>knew</b> [1] 16/14  <b>know</b> [16] 4/1 4/4 6/19 9/6  9/10 10/20 10/25 11/13 16/3  16/6 19/5 19/12 21/15 21/16  21/16 23/16  <b>knowing</b> [1] 17/13 </p>	<b>L</b>	<p> <b>laid</b> [2] 3/6 16/2  <b>last</b> [2] 9/6 19/4  <b>latch</b> [1] 12/13  <b>later</b> [1] 8/19  <b>lawyer</b> [1] 21/2  <b>lawyers</b> [1] 18/9  <b>lay</b> [1] 14/2  <b>layer</b> [1] 6/11  <b>LDC</b> [1] 18/12  <b>lead</b> [1] 10/20  <b>least</b> [2] 11/21 20/13  <b>legitimately</b> [1] 15/24  <b>length</b> [4] 7/12 7/13 9/25 </p>		

<p><b>M</b></p> <p>met [2] 7/6 10/10</p> <p>metabolism [2] 5/4 5/13</p> <p>metabolize [1] 5/15</p> <p>might [2] 3/14 4/1</p> <p>minimize [1] 15/3</p> <p>misplaced [1] 10/4</p> <p>modifications [1] 23/10</p> <p>modify [1] 7/10</p> <p>moment [1] 22/4</p> <p>month [1] 19/4</p> <p>months [2] 13/11 15/12</p> <p>more [26]</p> <p>moreover [1] 4/16</p> <p>Mormon [1] 23/4</p> <p>morning [1] 14/14</p> <p>most [2] 5/11 14/9</p> <p>motion [4] 2/18 3/2 15/7 16/2</p> <p>motions [1] 18/3</p> <p>moves [1] 22/10</p> <p>Mr [11] 3/3 10/14 10/16 15/17 16/25 18/24 19/10 19/11 19/15 21/1 23/10</p> <p>Ms [2] 20/15 21/2</p> <p>Ms. [1] 19/15</p> <p>Ms. Finken [1] 19/15</p> <p>much [8] 3/4 10/13 13/25 15/16 15/25 16/23 23/13 24/10</p> <p>multiple [1] 19/5</p> <p>mutagenesis [1] 5/2</p> <p>my [2] 2/19 24/1</p>	<p>normal [1] 23/20</p> <p>not [28]</p> <p>now [8] 4/3 7/20 8/10 8/18 12/19 13/9 16/3 18/1</p> <p>number [6] 2/1 4/17 12/17 12/22 13/2 15/22</p> <p>NW [1] 1/19</p>	<p>Pauline [2] 1/22 24/19</p> <p>Pensacola [1] 1/15</p> <p>people [2] 2/15 17/6</p> <p>period [1] 18/18</p> <p>permits [1] 7/14</p> <p>permitted [1] 16/21</p> <p>person [1] 21/8</p>
<p><b>N</b></p> <p>Najafi [4] 6/19 14/11 14/14 23/3</p> <p>Najafi's [1] 6/24</p> <p>name [1] 4/21</p> <p>naturally [1] 5/16</p> <p>NDMA [2] 5/15 5/22</p> <p>nearly [2] 12/1 12/21</p> <p>necessarily [3] 9/13 19/20 21/8</p> <p>necessary [1] 21/10</p> <p>need [12] 3/6 4/8 8/17 9/2 9/18 15/15 16/1 16/8 16/11 18/3 18/17 23/19</p> <p>needed [3] 16/15 17/16 19/19</p> <p>negotiated [4] 16/18 17/5 17/6 20/16</p> <p>negotiating [1] 17/6</p> <p>negotiations [1] 16/20</p> <p>never [1] 17/12</p> <p>next [2] 13/11 14/12</p> <p>NIGH [8] 1/14 2/6 10/16 10/17 18/24 18/25 19/15 21/2</p> <p>night [1] 9/6</p> <p>nine [1] 12/18</p> <p>nitrates [1] 5/22</p> <p>nitrites [1] 5/22</p> <p>nitrosation [1] 5/2</p> <p>no [11] 1/2 2/24 3/1 4/12 7/19 11/4 13/6 16/19 18/5 23/12 24/9</p> <p>nobody [1] 4/18</p> <p>nonconsecutive [1] 15/21</p>	<p><b>O</b></p> <p>object [1] 18/7</p> <p>objection [1] 24/7</p> <p>objections [2] 18/8 23/8</p> <p>obviously [3] 7/19 21/20 22/2</p> <p>occupational [1] 5/23</p> <p>occur [1] 16/20</p> <p>offered [7] 3/8 6/15 7/2 19/2 19/2 19/21 20/8</p> <p>Official [2] 1/22 24/19</p> <p>often [1] 9/16</p> <p>okay [2] 2/16 16/25</p> <p>one [20] 1/11 9/22 9/22 11/3 11/9 11/15 14/7 16/9 16/24 17/6 17/9 17/13 17/24 18/12 19/1 19/2 20/3 21/22 21/22 23/15</p> <p>only [1] 12/25</p> <p>operative [1] 20/19</p> <p>opinion [2] 6/13 9/5</p> <p>opinions [7] 3/8 6/8 7/2 7/5 8/16 10/6 20/8</p> <p>opposition [2] 2/20 7/9</p> <p>oranges [1] 7/25</p> <p>order [9] 7/18 13/4 13/5 13/9 15/13 17/5 17/10 17/10 23/11</p> <p>ordering [1] 11/23</p> <p>orders [1] 7/11</p> <p>organ [2] 3/18 5/7</p> <p>original [3] 6/12 6/20 6/24</p> <p>other [8] 2/22 12/23 14/14 15/3 15/4 18/13 20/23 23/15</p> <p>our [15] 4/15 4/16 6/6 8/3 8/5 9/8 10/3 10/12 13/4 14/2 14/4 16/2 16/9 18/19 20/8</p> <p>out [12] 3/6 3/24 4/14 7/21 8/18 14/2 15/1 16/2 16/4 16/4 16/15 19/23</p> <p>outcomes [7] 5/4 5/6 5/12 5/17 5/20 10/8 10/9</p> <p>over [3] 10/25 12/24 19/6</p> <p>own [4] 3/17 3/19 6/15 6/17</p>	<p>perspective [1] 5/11</p> <p>persuaded [1] 20/25</p> <p>persuasive [1] 21/18</p> <p>pertinent [1] 5/12</p> <p>Philadelphia [1] 1/12</p> <p>Pierce [1] 1/23</p> <p>Plaintiff [3] 8/11 10/1 18/11</p> <p>PLAINTIFFS [32]</p> <p>Plaintiffs' [8] 2/17 2/20 4/23 7/25 11/4 12/18 12/20 13/16</p> <p>play [1] 6/4</p> <p>plenty [1] 12/10</p> <p>point [9] 5/7 16/24 17/4 17/8 17/21 19/12 20/15 22/15 23/16</p> <p>position [1] 4/4</p> <p>possibilities [1] 17/11</p> <p>possible [1] 20/1</p> <p>practice [1] 23/20</p> <p>precisely [2] 8/15 11/11</p> <p>preclude [1] 20/17</p> <p>prejudice [4] 15/9 15/11 15/14 18/10</p> <p>premature [1] 8/6</p> <p>prepared [2] 21/3 21/9</p> <p>presented [2] 13/21 13/22</p> <p>presumes [1] 16/5</p> <p>presumptive [1] 7/17</p> <p>pretrial [1] 7/11</p> <p>previously [1] 21/19</p> <p>primary [3] 9/22 10/21 20/9</p> <p>prior [1] 6/25</p> <p>probably [2] 5/11 15/13</p> <p>proceedings [1] 24/16</p> <p>proceeds [1] 22/10</p> <p>process [1] 16/10</p> <p>Product [1] 2/2</p> <p>PRODUCTS [1] 1/4</p> <p>proffered [2] 6/8 10/6</p> <p>profile [2] 3/19 3/21</p> <p>programming [1] 4/20</p> <p>properly [2] 16/1 20/7</p> <p>proportionality [3] 20/21 20/23 21/22</p> <p>proposition [1] 9/20</p> <p>protocol [1] 7/17</p> <p>provide [2] 8/1 17/11</p> <p>proving [1] 22/2</p> <p>PTO [6] 7/12 7/16 7/17 16/14 17/3 20/17</p> <p>PTOs [3] 16/4 20/12 20/13</p> <p>pulled [1] 9/23</p> <p>purport [1] 4/24</p> <p>purportedly [1] 6/7</p> <p>purpose [2] 7/2 21/6</p> <p>purposes [1] 6/13</p> <p>push [1] 11/23</p> <p>put [1] 22/6</p>
	<p><b>P</b></p> <p>PA [1] 1/12</p> <p>page [1] 13/12</p> <p>pages [5] 6/6 12/5 13/12 13/18 15/22</p> <p>PALM [3] 1/2 1/4 1/23</p> <p>Panigrahi [1] 23/4</p> <p>Papantonio [1] 1/14</p> <p>part [3] 13/4 22/3 23/21</p> <p>particular [3] 3/25 6/9 21/17</p> <p>parties [3] 2/4 17/21 23/8</p> <p>party [1] 20/14</p> <p>passed [1] 12/24</p> <p>past [1] 24/5</p>	

<b>Q</b>		
question [7] 3/12 14/7 18/7 20/22 22/1 23/1 23/15	review [1] 21/4	should [8] 8/6 11/10 12/14 20/1 20/6 20/24 21/12 23/24
questioner [1] 14/19	reviewed [1] 4/7	side [9] 11/3 11/4 11/25 12/18 12/19 12/20 12/21 12/23 22/19
questions [2] 14/21 21/4	rewrite [1] 13/9	sides [2] 14/25 17/5
quickly [1] 22/10	right [5] 9/10 12/19 19/7 19/10 20/10	Signature [1] 24/20
quite [2] 4/17 10/4	risk [2] 3/21 6/1	similarly [1] 13/18
<b>R</b>	ROBIN [1] 1/22	simply [1] 15/12
Rafferty [1] 1/14	robust [3] 10/9 22/20 24/2	simulated [1] 6/21
raised [1] 11/9	room [1] 2/15	single [3] 11/2 15/1 19/1
RANITIDINE [6] 1/3 2/2 3/10 4/1 5/25 10/8	ROSENBERG [5] 1/2 1/22 17/17 19/18 22/7	situation [1] 15/1
rather [2] 7/13 9/25	Rosenberg's [1] 18/3	small [1] 17/21
RE [2] 1/3 2/2	rubber [1] 5/23	so [38]
realistic [1] 9/3	rule [15] 4/16 4/16 6/18 6/25 7/14 7/21 9/14 10/2 11/17 20/19 20/20 20/21 21/17 21/19 22/7	so-called [1] 5/3
realized [1] 4/8	ruled [1] 22/5	some [9] 4/9 7/8 9/16 10/22 11/17 17/25 18/10 19/3 19/7
really [11] 8/22 13/18 15/19 15/23 18/1 18/1 19/4 19/4 19/5 19/8 23/18	rules [1] 20/19	something [3] 9/1 17/19 17/21
reason [3] 13/15 14/3 23/21	ruling [3] 8/21 9/24 24/7	sort [6] 3/19 4/21 5/13 5/15 5/20 22/18
reasonable [1] 4/17	rulings [2] 22/8 23/9	South [1] 1/15
reasonably [1] 4/5	<b>S</b>	SOUTHERN [1] 1/1
reasons [1] 4/17	said [8] 4/12 11/20 16/7 16/8 16/14 21/18 21/19 24/1	speak [2] 7/12 19/9
received [2] 2/18 2/20	Salmon [2] 6/14 23/2	species [2] 5/3 5/8
recess [1] 24/11	same [14] 12/9 13/17 13/17 13/18 13/22 13/23 13/23 13/23 14/24 14/25 15/8 19/7 21/12 22/24	specific [5] 3/11 7/13 7/20 19/11 19/22
recognize [4] 20/15 20/17 23/19 23/22	say [5] 7/10 10/3 14/8 14/24 16/14	specifically [1] 8/1
recognizing [1] 2/4	saying [2] 19/16 21/2	speedy [1] 22/17
record [3] 10/25 11/2 24/16	scenario [2] 11/18 14/24	spent [3] 22/3 23/23 23/24
reference [1] 7/16	schedule [14] 8/22 11/6 15/4 17/7 17/8 17/12 17/14 17/20 17/22 18/4 18/16 19/13 20/6 23/22	spoke [1] 19/3
references [3] 6/7 9/15 9/17	scheduled [1] 19/17	spring [1] 17/7
refused [1] 12/6	scheduling [6] 13/4 13/5 13/8 13/9 15/5 15/11	Square [1] 1/11
REINHART [2] 1/8 2/8	Science [1] 5/24	stack [3] 18/10 18/12 21/11
reiterate [1] 19/1	scientific [5] 4/1 10/8 12/2 12/11 13/18	stacked [6] 18/14 18/15 18/15 18/17 18/20 19/6
relate [1] 3/9	scientifically [2] 3/23 3/24	stage [3] 3/9 22/21 24/1
relating [3] 5/1 5/14 6/23	scope [1] 7/5	standards [1] 20/21
relevance [1] 5/8	screwing [1] 8/22	start [3] 2/4 10/19 20/11
reliably [1] 3/24	season [1] 9/8	STATES [2] 1/1 1/9
reliance [1] 10/3	second [4] 2/14 8/5 12/17 21/5	Stipes [2] 1/22 24/19
rely [1] 4/24	see [3] 16/6 16/9 23/18	stipulation [2] 7/18 7/19
rely involves [1] 4/24	seek [2] 20/14 24/8	streamlined [1] 21/9
remember [1] 20/15	seeking [1] 8/3	Street [3] 1/12 1/15 1/19
remotely [1] 14/11	seems [1] 13/13	strong [1] 24/1
repair [1] 4/20	seen [1] 6/25	studies [11] 4/24 4/25 5/3 5/6 5/19 5/19 5/21 5/24 6/16 12/2 12/3
report [7] 6/18 6/24 6/25 9/1 9/12 13/20 14/4	sense [2] 6/3 16/13	stuff [1] 8/24
Reporter [3] 1/22 24/19 24/20	served [3] 4/3 4/15 7/22	sub [1] 3/18
reports [20] 3/13 4/3 4/7 4/15 6/5 6/5 6/12 7/21 8/1 8/11 9/4 9/16 10/1 13/14 13/25 14/2 14/5 16/7 16/9 16/10	set [1] 19/17	subject [1] 3/15
request [6] 2/16 4/15 4/17 10/13 20/20 23/11	settles [1] 22/10	submissions [1] 2/22
requesting [1] 2/19	seven [11] 4/9 7/17 8/7 10/25 12/7 12/8 12/15 12/16 13/15 14/11 16/6	substantial [1] 22/9
requests [1] 8/3	seven-hour [2] 7/17 8/7	substantial influence [1] 22/9
require [1] 9/4	shade [1] 6/23	substantive [1] 18/8
required [2] 5/15 9/14	SHEEHAN [9] 1/18 2/12 3/3 10/14 15/17 16/25 19/10 19/11 23/10	succinct [1] 3/5
resolution [1] 22/17	Shook [1] 1/18	suggest [3] 8/5 8/19 23/15
respect [3] 16/3 16/17 19/13		Suite [2] 1/12 1/19
respectfully [2] 9/2 10/12		summer [1] 17/18
respond [4] 10/15 15/17 16/24 19/11		sun [1] 6/23
response [2] 4/11 6/17		support [1] 4/4
rest [1] 19/3		supporting [3] 6/7 6/13 7/2
		supports [1] 9/20
		sure [4] 8/8 15/19 20/5 21/2
		systems [3] 3/18 5/5 5/7

<p><b>T</b></p> <p>tactical [1] 21/8</p> <p>take [10] 8/6 11/1 12/16 13/8 14/19 16/1 22/25 23/17 23/18 23/25</p> <p>taking [2] 12/10 18/18</p> <p>talk [3] 10/22 11/7 12/23</p> <p>talking [2] 8/22 11/18</p> <p>targeted [1] 4/13</p> <p>task [1] 14/25</p> <p>tax [3] 9/7 9/8 13/21</p> <p>taxes [1] 9/8</p> <p>teed [3] 17/17 17/18 18/3</p> <p>teeing [1] 23/23</p> <p>tell [2] 9/24 18/15</p> <p>ten [6] 11/2 11/22 11/23 12/24 14/8 20/3</p> <p>ten-hour [1] 20/3</p> <p>terms [6] 11/9 11/13 11/23 12/10 13/1 20/13</p> <p>test [2] 4/25 4/25</p> <p>testimony [1] 8/1</p> <p>testing [3] 6/20 6/21 6/22</p> <p>than [8] 4/8 8/4 10/9 11/14 13/15 15/3 15/4 17/13</p> <p>Thank [14] 2/13 3/4 10/13 10/14 10/17 14/6 14/7 15/16 16/23 20/10 23/13 24/9 24/10 24/12</p> <p>that [172]</p> <p>that's [2] 5/4 21/12</p> <p>their [9] 3/17 4/4 7/9 9/16 10/2 11/12 11/22 13/25 20/13</p> <p>them [11] 2/15 4/7 6/25 10/5 11/3 11/17 11/18 12/8 15/7 17/17 19/3</p> <p>themselves [1] 6/22</p> <p>then [10] 6/16 8/7 8/21 11/17 15/13 16/11 16/12 16/15 22/1 23/1</p> <p>theories [2] 13/18 13/23</p> <p>therapeutically [1] 3/11</p> <p>there [18] 2/22 3/5 6/12 7/19 8/20 9/25 11/4 13/6 13/20 14/3 15/12 16/18 17/8 17/12 20/22 20/25 21/22 22/13</p> <p>Thereupon [1] 24/13</p> <p>these [23] 3/13 3/19 4/2 4/9 5/7 5/12 6/12 7/1 7/6 10/11 11/1 12/4 12/10 12/11 12/14 13/7 13/10 13/14 16/1 16/15 19/6 21/11 23/25</p> <p>they [32]</p> <p>they're [1] 13/22</p> <p>thing [1] 5/13</p> <p>things [7] 3/6 6/23 9/13 9/19 13/3 20/11 22/11</p> <p>think [33]</p> <p>thinking [1] 9/6</p> <p>Third [1] 8/25</p> <p>this [42]</p> <p>THOMAS [1] 1/18</p> <p>thoroughly [3] 13/19 14/1 14/4</p> <p>those [17] 5/12 5/19 5/25 10/21 10/22 11/16 11/24 12/6</p>	<p>12/7 12/16 13/3 14/2 14/15 16/20 17/25 19/7 22/11</p> <p>though [1] 14/7</p> <p>thought [3] 8/7 15/24 15/24</p> <p>thousands [2] 12/5 22/5</p> <p>three [11] 11/16 13/6 14/12 14/13 14/14 17/11 19/21 23/2 23/2 23/3 23/4</p> <p>threshold [1] 3/9</p> <p>through [2] 1/8 12/25</p> <p>throughout [1] 9/16</p> <p>tight [1] 18/2</p> <p>time [65]</p> <p>times [1] 23/17</p> <p>tissue [1] 5/14</p> <p>today [3] 2/3 3/4 23/19</p> <p>together [1] 4/11</p> <p>told [1] 23/17</p> <p>Tom [1] 2/12</p> <p>tomorrow [1] 14/12</p> <p>too [2] 18/23 19/14</p> <p>took [5] 4/10 5/24 11/3 12/4 12/7</p> <p>topics [3] 4/21 5/1 14/4</p> <p>total [2] 12/19 12/21</p> <p>toxicologist [1] 6/14</p> <p>TRACY [3] 1/10 2/8 17/2</p> <p>transcript [3] 14/19 21/4 24/15</p> <p>trials [1] 12/2</p> <p>triple [3] 18/15 18/17 18/20</p> <p>true [1] 19/20</p> <p>truncate [1] 22/18</p> <p>try [2] 3/5 13/9</p> <p>trying [3] 7/10 7/23 22/1</p> <p>tube [1] 4/25</p> <p>Tuesday [1] 14/12</p> <p>turn [3] 13/12 23/9 24/6</p> <p>two [17] 11/1 11/3 11/15 13/6 13/8 13/11 13/21 15/12 16/8 17/25 19/4 19/4 19/7 19/8 19/23 19/25 22/3</p> <p>two-week [1] 19/8</p> <p>type [2] 3/20 3/25</p> <p>types [3] 3/17 3/18 3/19</p> <p><b>U</b></p> <p>ultimately [1] 16/12</p> <p>under [5] 4/16 6/22 9/14 10/1 21/23</p> <p>understand [3] 9/4 9/9 9/19</p> <p>unfair [1] 21/7</p> <p>unique [1] 3/20</p> <p>UNITED [2] 1/1 1/9</p> <p>unlike [1] 12/9</p> <p>until [2] 16/6 16/9</p> <p>up [10] 8/10 8/22 17/11 17/17 17/18 18/3 22/3 22/6 23/13 23/23</p> <p>upon [4] 4/23 6/6 6/7 17/23</p> <p>us [3] 3/4 12/6 22/15</p> <p>used [2] 3/10 11/20</p> <p>using [1] 23/25</p> <p><b>V</b></p> <p>valid [1] 13/15</p> <p>Valsartan [17] 10/4 10/9 10/20 10/23 11/1 11/7 11/14</p>	<p>11/15 11/19 12/9 12/13 12/17 12/24 12/25 13/2 14/24 21/15</p> <p>various [11] 4/25 5/1 5/3 5/5 5/5 5/21 6/16 6/21 6/23 16/19 19/21</p> <p>varying [1] 5/8</p> <p>verse [1] 7/3</p> <p>versus [1] 10/23</p> <p>very [13] 9/9 10/5 12/16 14/2 15/16 16/23 17/7 17/14 17/14 17/15 20/16 23/13 24/10</p> <p>view [1] 13/24</p> <p>vitro [1] 4/24</p> <p><b>W</b></p> <p>wait [1] 16/8</p> <p>waiting [1] 2/15</p> <p>waiving [2] 23/8 24/6</p> <p>want [5] 7/8 14/21 17/4 22/25 24/3</p> <p>wanted [5] 6/2 10/19 17/17 19/16 24/4</p> <p>wants [1] 20/2</p> <p>warranted [4] 4/16 7/15 7/15 20/7</p> <p>warrants [3] 7/5 9/18 10/7</p> <p>was [26]</p> <p>Washington [1] 1/20</p> <p>wasn't [1] 16/19</p> <p>way [9] 8/9 8/19 9/17 14/16 14/18 17/20 18/3 18/22 20/24</p> <p>we [115]</p> <p>We'll [1] 24/11</p> <p>week [1] 19/8</p> <p>weekend [1] 24/11</p> <p>weeks [1] 19/5</p> <p>weigh [1] 20/23</p> <p>Weiss [1] 1/11</p> <p>well [6] 6/19 10/21 11/20 17/4 18/19 20/16</p> <p>went [2] 4/9 12/25</p> <p>were [12] 2/22 4/15 6/12 7/1 7/21 7/25 10/1 12/1 12/7 12/15 16/4 19/3</p> <p>weren't [1] 10/2</p> <p>WEST [3] 1/2 1/4 1/23</p> <p>what [26]</p> <p>whatever [1] 7/4</p> <p>when [7] 3/10 12/23 13/5 15/8 17/5 17/17 22/24</p> <p>where [7] 6/9 7/15 8/3 10/6 12/9 19/5 22/9</p> <p>whereas [1] 14/2</p> <p>whether [13] 5/22 5/22 5/22 5/25 6/21 6/22 10/1 19/13 20/1 20/2 20/6 21/23 23/24</p> <p>which [11] 4/23 5/17 7/14 7/16 9/14 9/17 9/21 15/6 20/8 21/11 22/7</p> <p>while [4] 20/12 20/15 21/9 21/14</p> <p>whole [1] 16/10</p> <p>why [12] 4/13 7/20 9/17 9/19 9/20 11/21 14/9 14/12 14/13 14/15 19/11 24/4</p> <p>will [13] 2/4 3/5 3/20 5/21 8/18 10/14 11/1 13/12 14/24</p>
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**W**

**will...** [4] 15/8 15/21 23/5  
 23/13  
**wish** [1] 24/10  
**within** [1] 6/18  
**without** [1] 9/19  
**witness** [1] 11/15  
**witnesses** [11] 7/21 7/24  
 7/24 11/12 11/13 11/16 11/19  
 12/1 12/4 12/16 12/17  
**work** [1] 15/20  
**worked** [3] 8/18 16/4 16/4  
**workers** [1] 5/23  
**works** [1] 15/22  
**would** [15] 9/12 13/5 13/8  
 13/8 15/1 15/13 15/15 15/20  
 16/8 17/8 17/10 17/14 22/16  
 23/11 23/23  
**wouldn't** [1] 6/24

**Y**

**years** [2] 12/1 22/3  
**Yes** [1] 19/15  
**yesterday** [1] 18/16  
**you** [67]  
**you'd** [1] 15/18  
**your** [20] 2/12 2/24 3/5 6/11  
 8/2 10/10 10/17 10/19 15/19  
 16/8 16/22 16/24 17/3 18/14  
 18/23 20/9 23/12 23/13 24/9  
 24/12

**Z**

**ZANTAC** [5] 1/3 2/2 10/24  
 11/14 12/20  
**Zoom** [2] 1/8 14/10