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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
	)	
-VS-	)	DOCKET NO. 1:20-CR-00296-JPB
	)	VOLUME 7 (PM SESSION)
CARLA JACKSON AND	)	
TELDRIN FOSTER,	)	
	)	
DEFENDANTS.	)	

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE J.P. BOULEE
UNITED STATES DISTRICT JUDGE
FEBRUARY 13, 2024

APPEARANCES:

ON BEHALF OF THE GOVERNMENT:
TAL C. CHAIKEN, ESQ.
SAMIR KAUSHAL, ESQ.
BABASIJIBOMI MOORE, ESQ.
ASSISTANT UNITED STATES ATTORNEYS

ON BEHALF OF THE DEFENDANT - TELDRIN FOSTER:
LEIGH ANN WEBSTER, ESQ.
SARALIENE DURRETT, ESQ.

ON BEHALF OF THE DEFENDANT - CARLA JACKSON:
DAVID D. MARSHALL, ESQ.

STENOGRAPHICALLY RECORDED BY:

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

I N D E X

WITNESS: PAGE:

1. JOHN GAINES

DIRECT EXAMINATION.....137
CROSS-EXAMINATION.....181
REDIRECT EXAMINATION.....232
RECROSS-EXAMINATION.....243
FURTHER REDIRECT EXAMINATION.....250

2. JOSEPH STITES

FURTHER REDIRECT EXAMINATION.....256
FURTHER RECROSS-EXAMINATION.....257

- - - - -

(PROCEEDINGS HELD IN OPEN COURT AT 12:48 PM, ATLANTA, GEORGIA)

THE COURT: Back on the record.

Ms. Webster, did you have an opportunity to speak with Mr. Foster more about his decision to testify or not testify over the lunch break?

MS. WEBSTER: Yes, Your Honor, we did. Thank you.

THE COURT: And what's your understanding of his decision?

MS. WEBSTER: I don't believe he's going to testify, Your Honor.

THE COURT: All right.

Mr. Foster, sir, good afternoon. I just want to ask you some questions about that. And I'm sure that everything I'm about to ask you is the same type of things that Ms. Webster and Ms. Durrett have already gone over with you, but I just need to, for the record, make sure you understand your rights. So that's why I'm asking you these questions.

So, first off, do you understand that you have a right to either testify or not testify?

DEFENDANT FOSTER: Yes.

THE COURT: Okay. And do you understand that if you decide not to testify and if you want me to, I'll give an instruction to the jury telling them that they're not to hold that against you?

Do you understand that?

DEFENDANT FOSTER: Yes.

THE COURT: All right. And you understand that you have a right under the Fifth Amendment not to testify if you don't want to; correct?

DEFENDANT FOSTER: Correct.

THE COURT: All right.

Counsel, does anyone think any further questions are necessary on this? I guess I need to ask the penultimate question, but other than that?

MS. CHAIKEN: No, Your Honor.

THE COURT: Okay. And, Mr. Foster, do I understand correctly from your attorney that you've decided that you do not want to testify?

DEFENDANT FOSTER: Yes.

THE COURT: Okay. Ms. Chaiken has indicated she doesn't think any additional questions are necessary.

Ms. Webster, do you think any additional questions are necessary?

MS. WEBSTER: No, Your Honor.

THE COURT: All right. Thank you.

And do I understand when we bring out the jury you will rest and then it will be Mr. Marshall's case to present?

MS. WEBSTER: Yes, Your Honor.

THE COURT: Okay. Mr. Marshall, how many witnesses do you anticipate?

MR. MARSHALL: Anticipate one, Judge. We'll still have to have the conversation with my client also, Judge.

THE COURT: And is that still Mr. Gaines?

MR. MARSHALL: It is. And he's sitting right outside, Judge. He's ready.

THE COURT: Off the record for a moment.

(Off-the-record discussion.)

THE COURT: So I think we're ready to bring out the jury, agreed?

MS. CHAIKEN: Yes, Your Honor.

MR. MARSHALL: Yes, Your Honor.

MS. WEBSTER: Yes.

THE COURT: Very well.

Please bring out the jury, Officer.

(The jury entered the courtroom at 1:06 p.m.)

THE COURT: Y'all can be seated.

Ladies and gentlemen of the jury, I'm sorry, I forgot something. I'm going to have to have you step out for one more moment. My mistake.

(The jury exited the courtroom at 1:06 p.m.)

THE COURT: Mr. Marshall, could you call your witness to the stand, please.

MR. MARSHALL: Sure can, Your Honor.

THE COURT: Y'all can be seated.

What we haven't done yet is discuss with Mr. Gaines

his Fifth Amendment rights.

Good afternoon, sir.

MR. GAINES: Good afternoon.

THE COURT: Sir, you can come around to the witness stand, please.

All right. If you'd please swear in the witness, Ms. Lee.

(John Gaines was duly sworn.)

THE COURT: Sir, you can be seated. Thank you.

Sir, as you may be aware, I'm JP Boulee. I'm the judge in this case. Mr. Marshall, on behalf of his client, Ms. Jackson, has elected to call you as a witness in this case. And counsel suggested, and I agreed, that we should make sure that you had counsel to represent you and assist you in your decision about whether or not to testify and what you wanted to testify about.

I know that you've now had a chance to consult with Ms. Wiley, who is here via video conference; correct?

THE WITNESS: Yes.

THE COURT: All right. And although I know that she has probably discussed your rights with you, I just want to make sure that you do indeed understand your rights under the Fifth Amendment, that you understand that you can invoke your right not to incriminate yourself if you want to.

Do you understand that?

THE WITNESS: Yes.

THE COURT: Okay.

Counsel, does anyone think any additional questions are necessary of Mr. Gaines on this point?

MS. TIMBERLAKE-WILEY: No, Your Honor.

MS. WEBSTER: No, Your Honor.

THE COURT: Mr. Marshall?

MR. MARSHALL: No, Your Honor.

THE COURT: Ms. Chaiken?

MS. CHAIKEN: No, Your Honor. Thank you.

THE COURT: Okay. Very well.

So, Mr. Gaines, what we're going to do, just administratively, everyone else knows this, but you don't since you just came in, I'm going to call the jury out in a moment, Ms. Webster is going to rest her case and then it'll be Mr. Marshall's case. And he'll formally call you as a witness and we'll re-swear you in in front of the jury and then he'll begin his questioning. Okay?

THE WITNESS: Sure.

THE COURT: All right. Very well.

Officer, thank you.

(The jury entered the courtroom at 1:10 p.m.)

THE COURT: All right. Y'all can be seated. Thank you.

Ladies and gentlemen of the jury, sorry again about

that. There was just something that I had to do that I forgot about, so my fault on that one.

All right. Ms. Webster?

MS. WEBSTER: Mr. Foster rests, Your Honor.

THE COURT: All right. Thank you, Ms. Webster.

Mr. Marshall.

MR. MARSHALL: The State (sic) calls Mr. John Gaines to the stand.

(Also present via Zoom technology is Deana Timberlake-Wiley)

THE COURT: All right. Ms. Lee, if you could swear Mr. Gaines in again in front of the jury, please.

COURTROOM DEPUTY CLERK: Did you say the State called?

MR. MARSHALL: I'm sorry. Ms. Jackson calls.

Correct, Your Honor. Ms. Jackson calls for her defense Mr. John Gaines.

JOHN GAINES

a witness herein, being duly resworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MARSHALL:

Q. Good afternoon, sir.

A. Good afternoon.
Q. Could you please state your full name and spell your first and last name for the court reporter?
A. John Stacey Gaines, S-T-A-C-E-Y, G-A-I-N-E-S, J-O-H-N.
Q. Thank you.

Mr. Gaines, are you one of the defendants in this case that also involves Teldrin Foster and Carla Jackson?
A. Yes.
Q. Do you remember being charged in two of the same counts in the indictment that Ms. Jackson is also charged in?
A. Yes.
Q. And do you remember at some point pleading guilty to one of those two counts in the indictment?
A. Yes.
Q. Do you happen to remember which count of the indictment you pled out to?
A. I think it was number 47, money laundering.
Q. And would that be -- do you recall if that's the one that dealt with the larger amount wire transfer, or do you recall?
A. I don't recall.
Q. Okay. All right.

I'd like to ask you a few questions about your relationship with Ms. Jackson. Do you know Carla Jackson?
A. Yes.
Q. How do you know Ms. Jackson?

A. I was married to her.
Q. How long had you been married to Ms. Jackson?
A. 18 years.
Q. And before that how long had you known her?
A. 15 years.
Q. 15 years. So quite a long time altogether?
A. Yes. Yes.
Q. Okay. Do you and Ms. Jackson have any children together?
A. No.
Q. No? Okay.

Do you have any children at all?

A. Yes.
Q. Can you give me their -- just their ages?
A. 25, 26 and 14.
Q. Do you happen to recall when you and Ms. Jackson got divorced?
A. Might have been 2'17, 2'18.
Q. Well, let me back up a little bit.

Did you and Ms. Jackson get divorced at some time?

A. Yes.
Q. What year was that?
A. 2'17, 2'18, 2'19, somewhere in there.
Q. Do you happen to recall if it became final any time during the time of this case, 2019, 2020?
A. Well before that.

Q. Okay. All right.

Who filed the petition for divorce, do you recall?

A. She did.

Q. Do you know why Ms. Jackson filed for divorce against you?

A. Yes.

Q. What is that?

A. Infidelity.

Q. Infidelity? Okay.

You had an affair with somebody else?

A. Yes.

Q. Did you have any children born with any other women when you were married to Ms. Jackson?

A. Yes.

Q. How many children?

A. Two.

Q. Two? Okay.

Do you recall about when Ms. Jackson found out about your infidelity and these other children?

A. I don't recall right offhand.

Q. Can you tell the jury, how did Ms. Jackson react when she learned about this information?

A. She was a little upset.

Q. Did that form the basis for her wanting to file a divorce, though?

A. Possibly. And probably some other antics.

Q. Now, it sounds like that was a secret you held from Ms. Jackson. Did you hold any other secrets from your ex-wife that you would consider really significant?

A. Yeah. Having the kids out of wedlock, yeah.

Q. How about anything related to this PPP loan application for Gaines Reservation & Travel?

A. Yes.

Q. Did you hide what you were doing with that loan from her?

A. Yes.

Q. So I mentioned Gaines Reservation & Travel. I want to ask you some more questions about that company.

Do you know what type of company Gaines Reservation & Travel is?

A. Supposed to have been a transportation company.

Q. Do you know who the owner of it is?

A. Yes. My cousin Andre Gaines.

Q. Okay. Andre.

And is Andre somebody who's been associated with this case also?

A. Yes.

Q. Is this a first cousin, Andre Gaines?

A. Yes.

Q. Now, were you one of the actual co-owners of the company?

A. Gaines Reservation & Travel?

Q. Yes.
A. No.
Q. Were you one of the signers on the bank accounts, one of the bank accounts for Gaines Reservation & Travel?
A. Yes.

MR. MARSHALL: Ms. Hirani, can you please pull up Government's Exhibit 1100. If you could zoom out a little bit on signatures. Thank you.

BY MR. MARSHALL:

Q. Mr. Gaines, do you recognize what this document is?
A. Yes.
Q. What is this?
A. It's a business signature card.
Q. Okay. Do you see the date down there at all where it has signatures and a couple dates there?
A. Like 10/19 -- 10/10/19.
Q. Is your signature one of those that are shown there in this document?
A. Yes.
Q. Do you recall signing this document?
A. Yes.
Q. What's the name of the bank here?
A. Chase.
Q. Let me ask you, did Ms. Jackson ever have access to this bank account that you know of?

A. No.

Q. Was she ever a signer on this account?

A. No.

MR. MARSHALL: You can take that off, Ms. Hirani. Thank you.

BY MR. MARSHALL:

Q. Was there a point in time when you helped your cousin Andre Gaines prepare a PPP loan for Gaines Reservation & Travel?

A. Yes.

MR. MARSHALL: Ms. Hirani, pull up Government's Exhibit 1000, please.

BY MR. MARSHALL:

Q. I'm showing you, Mr. Gaines, what is Government's Exhibit 1000. This has been previously admitted.

Do you see which company's filled out this application form?

A. Yeah, Gaines Reservation & Travel.

Q. And who is the primary contact there that's listed there?

A. Andre Gaines.

Q. Thank you.

MR. MARSHALL: Ms. Hirani, can you go to the second page. And if you could highlight on the signatures.

BY MR. MARSHALL:

Q. Can you please tell the jury who signed this application?

A. Andre Gaines.

Q. Okay. Thank you.

Now, what involvement did you have, if any, with this PPP loan application for Gaines Reservation & Travel being submitted?

A. I introduced him to the gentleman who was actually processing the loans.

Q. Who was that person?

A. Darrell Thomas.

Q. Darrell Thomas.

And is Darrell Thomas somebody that's also involved in this case?

A. Yes.

Q. Okay. And tell us a little bit more about that. What did you -- what did you tell Mr. Andre Gaines about Darrell Thomas and about the PPP loan application process?

A. He was trying to -- well, we were trying to get some money to fund a project. We were trying to purchase a building and -- over in Alabama, in Montgomery. And I told him that I knew someone who could make it happen, basically.

Q. When you're referring to "him," and so for that pronoun, who are you talking about?

A. I was speaking in reference to my cousin.

Q. Andre Gaines?

A. And Darrell Thomas.

Q. Okay. All right.

So you mentioned this project. Was this something that was your idea and that you raised and discussed it with Mr. Gaines or what?

A. It was kind of both of ours.

Q. All right. Tell the jury a little bit more about this project and what you told Mr. Gaines about that project.

MS. CHAIKEN: Your Honor, objection, hearsay.

MR. MARSHALL: I'm asking what he told them, Judge. I'm not asking for what Mr. Gaines said.

MS. CHAIKEN: It's an out-of-court statement offered for the truth of the matter asserted.

MR. MARSHALL: Judge, I'll move on.

BY MR. MARSHALL:

Q. Do you remember having a discussion, though, at some point about what the purpose of this loan would be for?

A. Yes.

Q. And the moneys that -- do you remember moneys finally being disbursed for this PPP application for Gaines Reservation & Travel?

A. Yes.

Q. Do you recall about how much money that was?

A. Like 800,000.

MR. MARSHALL: Ms. Hirani, please pull up Government's Exhibit 1108. Go ahead and highlight the

deposits and transactions area.
BY MR. MARSHALL:
Q. Do you see the date on this particular transaction here that's listed?
A. Yes. It's May 2019.
Q. Okay. And what's the amount of money?
A. 806,710.
MR. MARSHALL: Ms. Hirani, back out so we can go to the top of that sheet. If you could highlight where the dates are in this statement. Might be at the top portion.
BY MR. MARSHALL:
Q. What's the time frame up there on this document, Government's Exhibit 1108?
A. It says May 1st, 2020, through May 29th, 2020.
Q. So Andre Gaines -- that PPP loan application for Gaines Reservation & Travel, that got submitted for funding; correct?
A. Yes.
Q. And are these the moneys that, to your knowledge, came from that PPP loan?
A. Yes.
Q. All right. Now, do you know if Carla Jackson was involved at all in the submitting or the preparation of this PPP loan application for Gaines Reservation & Travel?
A. No --
Q. At that time did you have any discussions with

Ms. Jackson about what any of these proceeds were going to be for?

A. No.

Q. Did she have any knowledge, Ms. Jackson, about the fraudulent nature of this loan for Gaines Reservation & Travel?

MS. CHAIKEN: Objection, calls for speculation, lack of foundation.

BY MR. MARSHALL:

Q. Well, how long were you married with her, sir?

A. 18 years.

Q. Okay.

MS. CHAIKEN: Same objection, Your Honor. He can't know what she knew.

THE COURT: I understand. I think he was going somewhere differently or asking different questions. That's how I took it, anyways.

Is that correct, Mr. Marshall?

MR. MARSHALL: That's correct.

BY MR. MARSHALL:

Q. Did you see any statements at all from Ms. Jackson or anything where she indicated any kind of knowledge about what this loan was from?

A. No.

Q. And did you ever discuss or tell Ms. Jackson about this

loan application in any way?
A. No.
Q. About the fraudulent nature of it?
A. No.
Q. I want to move to that large deposit that you had there in this Government's Exhibit 1108.

MR. MARSHALL: You can take that down, Ms. Hirani.

I'd like to go to what happened with the money. And I'd like to pull up some exhibits related to that.

BY MR. MARSHALL:
Q. First off, I want to ask you some questions about your ex-wife's company. Do you know what the name of that company was?
A. Management Resource Services.
Q. Management Resource Services.

So if I refer to that as MRS, will you know what I'm talking about?
A. Yes.
Q. So Management Resource Services.

Is this a company that your ex-wife had during the duration of your marriage?
A. I believe so, yes.
Q. Do you know what kind of company it was, what it did?
A. A little bit of everything. Management, consulting. A little bit of everything.

Q. You were married to your ex-wife for quite a long time. Can you tell the jury a little bit about, you know, what your wife's work background was?

A. Pretty much that. She's a project manager. She worked at IBM for 20-some years. And then she moved on and she's been a project manager ever since. So, you know, she's pretty good with organization, consulting, managing, things of the sort.

Q. At the time that she -- now, in this time frame of 2020 -- 2019, 2020, this business was in existence; right?

A. Yes.

Q. MRS?

A. Yes.

Q. All right. And was your wife also working somewhere else at the time, like a regular job and regular salary?

A. Yes.

Q. Do you happen to know what company that was?

A. I can't recall.

MR. MARSHALL: Ms. Hirani, can you pull up Government's Exhibit 1167. If you can pull down to the check image, which is a page or so. Right there is good. Okay. If you can go ahead and pull that out a little bit.

BY MR. MARSHALL:

Q. Now, Mr. Gaines, have you ever seen this check?

A. Yes.

Q. How did you come about seeing this check?
A. It's a check my cousin wrote to my wife's company.
Q. Repeat that, please.
A. It's a check that my cousin wrote to my wife's company.
Q. Were you with -- is that your signature on the bottom there or is that Mr. Andre Gaines's signature?
A. That's my cousin's signature.
Q. Did he fill this out with you present? Did you see him fill this out?
A. Yeah, I was there.
Q. Do you know -- do you have any personal knowledge in the memo line about what these consulting fees or daily business management had to deal with?
A. It had to do with purchase of -- we had purchased a building in Montgomery. This would have been some of the money going towards purchasing, as well as the daily management of the construction workers and all that kind of spreadsheet stuff that you have to do with managing a project.
Q. Okay. So is this referring back a little bit to this discussion of that project that you were discussing with Andre Gaines at some point?
A. Yes.
Q. Okay. And you mentioned also Darrell Thomas; is that correct?
A. Yes.

Q. This particular check, are these funds proceeds from that large deposit that we saw from the PPP loan?

A. Yes.

MR. MARSHALL: You can pull that off, Ms. Hirani. That's fine.

I'd like to go to Government's Exhibit 1169. If you can go down a little bit, please. Keep going, please. Keep going. Some check images coming up, I think. Should be. If you could pull that out, please.

BY MR. MARSHALL:

Q. Now, do you notice the date here -- well, what is this?

A. A check for company 365 Enterprise.

Q. Okay. Now, this exhibit has been previously admitted. Do you see this check has a pay to the order of the payee? Who is that?

A. 365 Enterprise.

Q. What is 365 Enterprise, LLC?

A. Construction company.

Q. Do you know who owns that company?

A. Yes.

Q. Who was that?

A. I was part owner and a friend of mine.

Q. Who is on the remitter up there? Who is the person that took this check out?

A. Carla Jackson.

Q. Can you tell the jury -- what's the dollar amount?
A. $10,000.
Q. Is this the same date or close in date to when that check was deposited at Management Resource Services?
A. Yes.
Q. Can you tell the jury what the purpose of this $10,000 cashier's check was?
A. To pay for construction work that was supposed to be done on the building and other projects I had going on at the time.
Q. And did you instruct or ask Ms. Jackson to get this cashier's check for you?
A. Yes, I did.

MR. MARSHALL: Ms. Hirani, can you go to the next image, please. Pull that out.

BY MR. MARSHALL:

Q. Do you recognize this cashier's check?
A. Yes.
Q. And do you notice the date? Is this the same date as the other check that we saw?
A. Yes.
Q. What's the dollar amount of this one?
A. $10,000 as well.
Q. Who wrote this check or who is the remitter?
A. Carla Jackson.
Q. Now, who is this paid to the order of? Who is this

payable to?

A. Capital One.

Q. Do you know what this cashier's check is for? What it's meant for?

A. Yes.

Q. What is it for?

A. Auto loans.

Q. All right. An auto loan.

Is this for an auto that you owned?

A. Yes.

Q. Down there in the memo line, do you know who wrote or printed that information in there with the name and so forth?

A. I did.

Q. You did. All right.

Did you do this obviously after you got this cashier's check from Ms. Jackson?

A. Yes.

Q. Do you happen to know which loan this was -- was this paying off a loan or was it just a monthly payment or what? Not a monthly payment, but was it a payoff?

A. Yeah, I think I was paying it off at that point. I had had it for a while.

Q. What kind of car was this, do you know?

A. Nissan Titan, I believe.

MR. MARSHALL: Ms. Hirani, can you go to the next

document, please. The same exhibit, just lower. That's right. That's fine. That's good.

BY MR. MARSHALL:

Q. Do you recognize what this document is?

A. Yes.

Q. What is this?

A. $10,000 check to USAA.

Q. Is this also on the same date as the other two checks?

A. Yes.

Q. Who is the remitter on this one?

A. Carla Jackson.

Q. Who is this payable to?

A. USAA.

Q. Do you know anything about what this payment is for or what this cashier's check is for?

A. I believe that may have been a credit card. I'm not 100 percent -- I can't recall.

Q. Can you look down at the bottom part of the check. Is there any printing or any notations in it?

A. Yeah. I wrote "auto loan" and put the account number. I can't remember if it was an auto loan or a credit card, one of the two.

Q. You're not positive if this was for an auto loan or --

A. Yes.

Q. You --

A. No, I'm not.
Q. You're not. Okay.
But this is in the amount of $10,000?
A. That's correct, yes.
Q. Mr. Gaines, I'm going to show you what I've marked as Jackson 13. Take a look at that, please, for a second.
Do you recognize what this is?
A. It appears to be a text message.
Q. Do you know who it's from?
A. Let me see it again.
Q. You can take a look at it. Hold on to that for a second.
Is that a printout of a text message that you texted?
A. Yes.
Q. Does that printout accurately reflect the content of the text message?
A. Yes.
Q. Okay. And do you know who this text message was to?
A. Carla Jackson.
MR. MARSHALL: Judge, I'm going to tender Jackson 13 into evidence.
MS. CHAIKEN: No objection.
MS. WEBSTER: No objection.
THE COURT: It's admitted.
MR. MARSHALL: I'm going to stand next to you for a second, okay? Take a look at that together.

BY MR. MARSHALL:

Q. So tell the jury what this is and what you were texting Ms. Jackson about in J13.

A. It's a text message asking her to get the checks for the $10,000 for USAA and a $10,000 check for Capital One, and a 10,000 cashier's check for 365 Enterprise for renovations.

Q. Okay. Let me move you up before you continue.

At the top of that text message, does it have a date with it?

A. Yeah.

Q. What's the date?

A. June 18th.

Q. And is this the same date, June 18th, that we saw in those cashier's checks that have been taken out?

A. Yes.

Q. The information that's below the cashier's check information, what is that? Where it starts -- excuse me. Let's go here.

What is this 10K cashier's check for 365 Enterprises, LLC, for renovations?

A. Yes, for renovations. Like I said earlier, for the building we was going to purchase and another project I was working on at the time. So that money was for that.

Q. Was that money going to be in part for Management Resource Services and that project in Alabama or something

else, or do you know?
A. Yeah, possibly some of it would have been for the project in Alabama, but I was working on a project here in Georgia as well.
Q. Okay. What is the, Take out $9,700 cash? What is that for? Do you recall?
A. Not right offhand. No, I don't.
Q. What about where it says, Take out 820 out of that, do you happen to know what that is?
A. I believe -- so I think -- usually -- some of the household expenses, things of this sort, it could have been for that. I can't recall.
Q. And you can look at the screen there. I'm going to walk back to the table.
Below that there's another entry.
Do you see that other text message, the second one from you?
A. Yes.
Q. What's the date of that one?
A. June 19th.
Q. And what does that say? What is GM?
A. I guess good morning.
Q. What's red girl?
A. Sometimes I called my wife red girl.
Q. And then it says, Send the correct spelling of MRS. Do

you know what that is?
A. Yeah. Might have been Management Resource Services.
Q. And then what's the -- the other information, what's that about? Is it about account number wiring, routing number? What's that, do you recall?
A. Oh, yeah. That was -- yeah. I was requesting an account -- routing number so that my cousin can wire some additional funds to the Management Resource account.
Q. Did this have to do with anything related to the second wire transfer or do you even recall now?
A. Yes.
Q. You think it was?
A. Yes.
Q. And do you mean a second wire transfer of funds out of Gaines Reservation & Travel?
A. That's correct.
MR. MARSHALL: Ms. Hirani, can we move to Government's Exhibit 1125. Pull this up, please. Just move that down a little bit. Okay.
BY MR. MARSHALL:
Q. Do you see who the person's name is on this document?
A. Yes.
MR. MARSHALL: If you can go back out to the main document, Ms. Hirani.
BY MR. MARSHALL:

Q. Do you see what this document is, what it's entitled on the top?

A. Yes. This is a PNC statement, domestic transfer.

MR. MARSHALL: Ms. Hirani, can you see if there's a date on there you can pull up, please.

BY MR. MARSHALL:

Q. Do you see what the send date is here?

A. 6/22/2020.

MR. MARSHALL: Ms. Hirani, can you go down to where the amount is, if you can find it on the document, please. The amount of the wire transfer, if you can find it.

BY MR. MARSHALL:

Q. Do you see the amount of the wire transfer here?

A. Yes.

Q. And, again, what is the date on this document?

A. 6/22/2020.

Q. Do you recognize what this wire transfer amount is for?

A. That was the second transfer my cousin made to Management Resource from the PNC account.

Q. Now, did you send this transfer?

A. No.

Q. Who sent this transfer?

A. My cousin did, Andre.

Q. Is this amount the one that forms the basis of the count that you pled out to, that Count 47? Do you recall?

A. I don't recall.

Q. Is this amount, these funds here, do these come from the PPP loan proceeds?

A. Yes.

Q. That went to Gaines Reservation & Travel?

A. Yes.

Q. Okay. All right.

Do you know where these funds went to, where they were wired to?

A. Management Resource Services.

MR. MARSHALL: Back out of that, please.

BY MR. MARSHALL:

Q. Now, we saw the first exhibit earlier of that check. Do you remember that? In the amount of about $155,000 plus in Government's Exhibit 1167? Do you remember looking at that?

A. Yes.

Q. And this one here in this document, 1125, government's exhibit, both of these sets of money that went to Management Resource Services, what was the purpose for them going to Management Resource Services?

A. For the project that we were scheduling to do in Montgomery, Alabama.

Q. Is that something you told Mr. Gaines, that you discussed with Mr. Gaines?

A. Yes.

Q. Did you tell anything or discuss anything with Ms. Jackson about this wire transfer?

A. No.

Q. Did she know that the moneys that were coming into her account were related to this project?

MS. CHAIKEN: Objection, calls for speculation, lack of foundation.

BY MR. MARSHALL:

Q. Did you have a discussion with her?

A. No.

Q. Do you know if Ms. Jackson got these?

A. Yes.

Q. All right. Did you ever tell Ms. Jackson anything that -- did you ever tell her that this wire transfer came from funds that were from a fraudulent source?

A. No.

Q. Let's talk a little bit about this project, this Alabama real estate project.

Who all was going to be involved in it?

A. Me and my cousin Andre. And my wife probably would have managed it if everything worked out.

Q. How did -- how did Andre decide to work with Management Resource Services with his company, Gaines Reservation & Travel, to do this project?

A. I think I -- I mentioned it to him.

Q. Did you recommend her company to him?
A. Yes.
Q. Do you know if Ms. Jackson had any other kinds of companies that she was working on in addition to Management Resource Services?
A. Yes, but I can't recall what they were.
Q. Do you know if she did any kind of design business or anything like that?
A. Yes, but I can't recall what the name of it was.
Q. Do you know if she did any renovation work or anything like that?
A. She's done that as well.
Q. I think you testified earlier that she was like a project manager; is that right?
A. Yes. Yes.
Q. So what were her responsibilities going to be for this Alabama project, do you know?
A. Yes.
Q. What were they going to be? Tell the jury.
A. Pretty much, you know, managing the employees, make sure everybody -- everyone gets paid, handling the finances. And just -- you know, pretty much keep me abreast of what was going on. And I was going to be hands on.
Q. And these moneys that went to Management Resource Services, their bank account, they were going to be for this

project?
A. That's correct.
Q. So did you have -- you mentioned this. Did you have a building already selected?
A. Yes.
Q. Had you gone out to -- what city in Alabama was this?
A. Montgomery.
Q. Montgomery?
Had you and Ms. Jackson gone out to that area, to Montgomery, Alabama, to look at sites?
A. No, she didn't go. I went.
Q. She'd never been out with you?
A. No. I beg your pardon?
Q. Had she been out to visit any of the buildings out there with you?
A. No. Not in Montgomery, no.
Q. Had she been out to Alabama to look at some buildings and so forth, do you recall?
A. No.
Q. Let me show you what's been -- that I've marked as Jackson Exhibits 20, 21, 22, 23, 24 and 25.
Mr. Gaines, I'm going to show you these exhibits. I've already identified them. Just take a minute to look through them.
Do you recognize what I just handed you in these

exhibits, J-20 through J-25?
A. Yes.
Q. What are these?
A. Pictures of the actual business -- I mean, the building that I was looking at possibly purchasing and renovating.
Q. These documents I just handed you, these are photographs; correct?
A. That's correct.
Q. Are these photographs fair and accurate representations of the scenes and persons they depict?
A. Yes.

MR. MARSHALL: I move to submit, or tender, J-20 through 25, Judge.

MS. CHAIKEN: Your Honor, I don't have an objection, but I'd ask that additional foundation be laid as to when these photographs were taken.

MR. MARSHALL: I can do that.

BY MR. MARSHALL:
Q. Mr. Gaines, do you know about when these photos would have been taken?
A. 2'19, 2'20, somewhere in there. About the time all this was taking place. I can't recall.
Q. So somewhere in the range of when the PPP loan application got submitted and so forth?
A. Correct. Correct.

MR. MARSHALL: Okay. I tender them, Judge.

Any further objection, Ms. Chaiken?

MS. CHAIKEN: No, Your Honor. I mean --

MS. WEBSTER: No objection.

THE COURT: They're admitted.

MR. MARSHALL: Thank you, Your Honor.

Ms. Hirani, can you please publish 20.

BY MR. MARSHALL:

Q. What is this a picture of?

A. It's a picture of the building in Montgomery, Alabama.

Q. You can't see how big it was here. Is this the time you went out for this project to look for these -- you know, for a proper facility or a building?

A. Yes.

MR. MARSHALL: Put up J-21, please.

BY MR. MARSHALL:

Q. Is this in the same area where this building is and the street sign that's near where this was located?

A. Yes.

MR. MARSHALL: Put up J-22, please.

BY MR. MARSHALL:

Q. Is this the building itself?

A. Yes.

Q. Okay. Now, talk to me a little bit about -- I mean, did you and Andre Gaines have plans for what this would become?

A. Yes.
Q. And did Ms. Jackson have plans for what this building would become?
A. No.
Q. No?
A. No.
Q. Well, did she have -- she was going to be the project manager; right?
A. That's correct.
Q. Okay. So did she have some idea about what you were planning on doing with this?
A. Vaguely, yes. I didn't divulge a whole lot of information at the time.
Q. So what were your -- what was this going to become?
A. Alabama State University is not that far from there, and we were going to renovate the building out and then rent it out to the college students and get the residual income off of it.
Q. Does Andre Gaines have a military background?
A. Yes.
Q. Was there any intent to use it for any kind of military housing or any purposes along those lines?
A. We discussed that as well.
Q. Was that something that Mr. Gaines was interested in in your discussions?

A. Yes. Yes.
Q. Did you ever discuss that with Ms. Jackson, any of that stuff?
A. I really didn't say a whole lot until I -- once I secured it, then I would have went more in depth. But at the time, no.

MR. MARSHALL: Okay. Please show Defendant's Exhibit J-23.

BY MR. MARSHALL:

Q. Is this just another photo you took when you were out there visiting this building?
A. Yes.
Q. Do you recall who was taking these photographs?
A. I can't recall who was with me. To be honest, I had a couple drinks and I was riding with somebody who rode over there with me and I can't remember who was with me at the time.
Q. You don't know if it was Ms. Jackson or not?
A. I can't recall.

MR. MARSHALL: Let's go to J-24, please.

BY MR. MARSHALL:

Q. And who is this in this picture in J-24?
A. That's me.
Q. Is this still in the location where this building was that we saw in one of the earlier photos?

A. No. I just kind of went around to all the historical sites.

MR. MARSHALL: Put up J-25, please.

BY MR. MARSHALL:

Q. Is this one of the other sites that you saw during this visit to go look at this building?

A. Yes.

Q. Did you ever go out -- how many times do you think you went out to go look at this building that's shown in Jackson Exhibit 22?

MR. MARSHALL: If you can put that back up again, please, J-22.

BY MR. MARSHALL:

Q. Do you know how many times you went to look at this building?

A. Maybe two or three. We called -- Andre called. I called. And I went out there a couple times, a few times.

Q. Did you ever go out with any kind of general contractor or anything like that to see about building this out and so forth?

A. No, because I have a background in --

Q. You have a background in construction?

A. Yes.

Q. Okay. All right.

Let's talk about employees. So this is a project --

would there be payroll associated with this project?
A. Yes.
Q. Would you have to hire some employees at some point?
A. Yes.
Q. Contractors?
A. Yes.
Q. Who was going to be in charge of that?
A. I was.
Q. Now, do you remember the exhibit that we put up --
MR. MARSHALL: Ms. Hirani, if you can put back up Defendant's Exhibit (sic) 1167. Go down to that check image that's down -- right there. Just pull that out again.
BY MR. MARSHALL:
Q. Were funds from this check, again, were they for this project that you were looking at in Alabama?
A. Yes.
Q. Okay. Consulting fees, was that going to be for people that you had in Montgomery to help you do this project, or what was that for?
A. Yes.
Q. Who was going to handle any kind of payroll-related matters for this project that you had?
A. Management Resource.
Q. And who owns that company?
A. My ex-wife.

Q. So would she be the one in charge of that?

A. Yes.

MR. MARSHALL: And this is Government Exhibit 1167, not defense exhibit. Thank you.

BY MR. MARSHALL:

Q. How far along did you and Ms. Jackson and Andre Gaines get along in doing this project? How far did it go? Did you end up buying the building?

A. No, we didn't. We -- everything went to shambles before we got a chance.

Q. What happened?

A. FBI showed up and it got real ugly.

Q. Okay. Do you remember telling Ms. Jackson how you would secure the funding for this project in Alabama, like where the funds came from?

A. No.

Q. She's your ex-wife at the time; right?

A. Yes.

Q. Did she ask you where the moneys came from?

A. I don't recall.

Q. But did you ever tell her it came from any kind of fraudulent source?

A. No.

Q. Mr. Gaines, I want to show you a couple other government exhibits. I'm going to move to Government's Exhibit 1150.

MR. MARSHALL: Pull that top part out, please.
BY MR. MARSHALL:
Q. Do you see what this is here?
A. Yes.
MR. MARSHALL: If you can back that out so we can see the title. Thank you. Can you highlight the top of the form so I can see what the title of the document is, Ms. Hirani? Thank you.
BY MR. MARSHALL:
Q. What's this document?
A. It's a bank statement -- signature card for Bank of America.
MR. MARSHALL: Ms. Hirani, can you pull out the signatures at the bottom.
BY MR. MARSHALL:
Q. Mr. Gaines, do you see your name on this portion of the document?
A. Yes.
Q. Do you see the date?
A. Yes.
Q. June 17th, 2020. Did you sign this on this document?
A. Yes.
Q. Is this the first time you had had access and used this bank account for Roadrunner, or had you already been using it and had access to the account, do you recall?

A. I don't recall, but I was a signer on that account.
Q. Do you recall this being a company that you -- company that you formed with Ms. Jackson at some point in the past?
A. Yes.
Q. So you both were kind of co-founders or co-organizers?
A. Yes.

MR. MARSHALL: Please pull up Government's Exhibit 1151.

BY MR. MARSHALL:

Q. Do you see what this document is?
A. Yes.
Q. What is it?
A. Appears to be a bank statement from Bank of America.
Q. Do you see the time period for this bank statement?
A. June 1st, 2020, to June 30th, 2020.

MR. MARSHALL: Ms. Hirani, can you go ahead and go to the page where it has the transactions. Probably the third page, I guess. Please go ahead and pull up deposits.

BY MR. MARSHALL:

Q. Now, Mr. Gaines, you see the first entry here on the deposits that's dated June 5th, 2020?
A. Yes.
Q. What's the dollar amount there?
A. $71,144.35.

(Organizational pause.)

BY MR. MARSHALL:

Q. Do you remember where this deposit of $71,144.35 came from?

A. Yes.

Q. Where did it come from?

A. I think Darrell Thomas wired that.

Q. Was this for your purposes? Do you know why you got this money from Darrell Thomas?

A. I think I asked him to borrow it. Yeah.

Q. Do you know what for, why you're asking to borrow it?

A. I can't recall. Maybe -- I think I was -- I needed some money until I think he got the deal done for my cousin and myself.

Q. Do you have any -- did you tell Ms. Jackson anything about this deposit?

A. No.

MR. MARSHALL: Ms. Hirani, please go down to the transactions, down below.

BY MR. MARSHALL:

Q. Do you happen to recall who got these bank statements? Did you get these in the mail or did you get them e-mailed to you or do you recall when you got these bank statements for Roadrunner?

A. I think they went to a PO Box.

Q. Do you know who used to check those or pick up the mail

from that PO Box?

MR. MARSHALL: You can go back up to the first page.

THE WITNESS: I may have at times and -- or my ex-wife did most of the time.

MR. MARSHALL: If you can pull out the address there at the top, please.

BY MR. MARSHALL:

Q. Is this the PO Box you're talking about?

A. Yes.

Q. Would you pick up mail there occasionally?

A. I have before.

Q. Ms. Jackson would too?

A. Yes.

MR. MARSHALL: Please go back to the transaction page. If you can pull out the transactions. I don't know if you can do that whole block but -- okay.

BY MR. MARSHALL:

Q. All right. So look through these for just a second on this page, from the first entry that says June 8th, 2020, down to the one that says June 17th, 2020. Just take a second to look through those.

Do you see your name on a lot of these transactions?

A. Yes.

Q. Actually, the majority of these transactions, is that your name?

A. Yes.
Q. Okay. On the -- for instance, on June 10th, 2020, USAA payment, credit card, is that for one of your credit cards in the amount of $3,000? Do you recall?
A. Yes.
Q. What about this USAA? Looks like a loan payment of some kind of $1,821. Do you know if that was yours?
A. Yes.
Q. The June 16th, 2020, that cash withdrawal, there's a check. Do you know if you withdrew that, that amount of money, or do you recall?
A. June 16th. Yes.
Q. Was that probably yours?
A. Yes.

MR. MARSHALL: And let's go to down to this --

BY MR. MARSHALL:

Q. The last entry says GEICO. I guess that's an insurance company. Would you agree with me?
A. Yes.
Q. Whose name is next to this one?
A. Carla Jackson.
Q. Do you know what that payment was for?
A. Probably to pay the car insurance.
Q. Car insurance.

Do you recall who the policyholder was for GEICO?

A. I was.

Q. Were you or Ms. Jackson? You were?

A. Yes.

MR. MARSHALL: You can take that off, Ms. Hirani.

BY MR. MARSHALL:

Q. Now, in the time frame of, I guess, 2020 generally up until the dates that you got arrested and people were arrested in this case, where had you been living?

A. Every now and then I would be at the house with my ex-wife. And then I was out at a home in Marietta.

Q. So you already testified earlier you're divorced at this stage; right?

A. Yes.

Q. At some point you were divorced, but you two were still together and you still occasionally stay in the same house?

A. Yes.

Q. Tell the jury, why is that?

A. She still loved me.

Q. Any other reasons? Were they for business purposes or any other things going --

A. As well.

Q. Any other reasons? Any other business -- was it for businesses or anything of that nature or not?

A. Yes.

Q. Now, how often did you stay at her house during the week?

A day a week, couple days?

A. Two days, kind of in and out.

Q. Did you have a computer at that residence?

A. Yes.

Q. Did you have your own room or office, or what did you have there?

A. I had a desk right across from hers.

Q. What kind of computer did you have there?

A. Laptop. I had a desktop, laptop.

Q. Were they yours?

A. Yes.

Q. When you stayed at Ms. Jackson's house overnight, did you access the Internet on those computers?

A. Yes.

Q. Did you access bank accounts on those computers when you were over at Ms. Jackson's house?

A. I don't recall.

Q. But is it something that you could do if you were at her house using those computers?

A. Yes.

Q. And I'm talking about especially the time frame of maybe May 2020 and June 2020. Did you use computers over at the residence on a regular basis?

A. Yes.

MR. MARSHALL: If you can put up Government's

Exhibit 1602. Now this is a document previously admitted.

If you could highlight the Carla Jackson part and the address. Or just pull it out for us, please. Sorry.

BY MR. MARSHALL:

Q. Is this the address where you were staying with Ms. Jackson where she lived? Is this her house?

A. Yes.

Q. And is this the residence and the location where you would use your desktop computer and your laptop computer?

A. Yes.

MR. MARSHALL: You can put that down, please. Thank you.

BY MR. MARSHALL:

Q. And, again, in using your computer, I think you testified earlier, correct me if I'm wrong, did you have access to the Gaines Reservation & Travel bank account?

A. Yes.

Q. Could you access it by computer if you wanted to?

A. Yes.

Q. Did you have the log-in information and password and so forth?

A. Yes.

Q. And could you do that from Ms. Jackson's house when you were using one of your computers?

A. Yes.

Q. Let me step back a little bit, Mr. Gaines, and talk to you about -- now, in this case you received a subpoena to testify from Defendant Jackson; is that right?

A. Yes.

Q. You received it through your attorney --

A. Yes.

Q. -- Deana Wiley; is that correct?

A. Yes.

Q. And Ms. Wiley is actually participating. And she's here on Zoom while we're asking you questions; correct? Right?

A. Yes.

Q. Okay. All right.

Even if you had not received a subpoena from us to testify, would you have wanted to testify voluntarily anyway?

Did you want to be here?

A. No.

Q. Did you want to be here to testify on your ex-wife's behalf?

A. I mean, I was subpoenaed. So, I mean, last thing I need to do is violate some more rules and get into more trouble, so I'm here.

Q. Would it be fair to say that you kept a lot of this -- all this information about the PPP loans and the fraudulent nature of the loans from Ms. Jackson?

A. Pretty much, yes.

Q. What do you mean by "pretty much"?
A. I didn't tell her anything.
Q. Okay. All right.
You pled out and you're here testifying today. Can you tell us why it's taken almost three years or over three years to come in and finally testify truthfully about this matter?
A. The previous attorney I had basically just told me to plead out and he didn't explain anything to me. And then Ms. Wiley, you know, kept -- pretty much broke everything down for me, gave me all the information and explained to me how the system works.
Q. Let me ask you this: Do you feel responsible in some way for Ms. Jackson being here today?
A. Definitely.
Q. Definitely?
A. Yes.
Q. Would this be because of secrets that you held from her?
A. Yes.
Q. Secrets kind of like when you were unfaithful to her and when you had kids outside the marriage?
A. Yes.
MR. MARSHALL: That's all I have right now, Judge. Thank you, sir.
THE COURT: Any cross?
MS. CHAIKEN: Yes, Your Honor.

THE COURT: Go ahead.

THE WITNESS: Can I get some water?

THE COURT: Certainly.

Thank you, Ms. Lee.

CROSS-EXAMINATION

BY MS. CHAIKEN:

Q. Are you okay to proceed, Mr. Gaines?

A. Yeah, I'm all right.

Q. Good afternoon.

Mr. Gaines, you were charged in this case in July of 2021; correct?

A. Yes.

Q. And until less than two weeks ago you were supposed to be part of this trial; right?

A. Yes.

Q. You were supposed to be sitting at one of these tables here?

A. Yes.

Q. And you pleaded guilty less than a week before the trial was supposed to start; correct?

A. That's correct.

Q. And when you pleaded guilty, you were placed under oath just like you were today; correct?

A. That's correct.

Q. And you swore to tell the truth; correct?

A. Yes.
Q. And you admitted that you committed money laundering; right?
A. That's correct.
Q. And you also admitted that you were part of the underlying PPP loan fraud; correct?
A. Yes.
Q. Now, you've testified this afternoon that the money that Gaines Reservation & Travel paid to Management Resource Services was actually for payroll for a real estate project in Montgomery, Alabama; correct?
A. Yes.
Q. Do you remember when you pleaded guilty, that Judge Boulee explained to you that he could only accept your plea of guilty if he found that there was a factual basis for it?
A. Can you repeat that again?
Q. Do you remember when you pleaded guilty, that Judge Boulee told you he could only accept your plea of guilty if there was a factual basis for the plea?
A. Yes.
Q. And do you remember that he asked me in court to say what we believe the facts that we could prove at trial would be?
A. Yes.
Q. And do you remember that I actually sent your attorney what I was going to read the day before the plea hearing?

A. I can't recall that part.

Q. Now, after Judge Boulee asked me to state those facts, he asked you if you had any disagreement with those facts.

Do you remember that?

A. Yes.

Q. Do you remember saying that you did not have any disagreements other than one clarification about who was the owner of Gaines Reservation & Travel?

A. Yes.

Q. And when I explained what the facts would show at trial as to the wire transfer from Gaines Reservation & Travel to Management Resource Services, I said Gaines Reservation had no payroll and the purpose of the transfer was not payroll services; correct?

A. I don't recall.

Q. Would it refresh your recollection if I showed you a transcript of your plea hearing?

A. Yes. Yes.

Q. I'll direct your attention to page 17, bottom of page 17 and the top of page 18. And if you could just read that to yourself.

MR. MARSHALL: Excuse me, Your Honor. Is the government providing this to Ms. Wiley?

MS. CHAIKEN: Ms. Wiley was at the hearing. I don't --

THE COURT: I've heard no objection from Ms. Wiley, so go ahead, Ms. Chaiken.

BY MS. CHAIKEN:

Q. Mr. Gaines, have you had an opportunity to review the transcript from your plea hearing?

A. No, not yet.

Q. Okay.

A. All right.

MR. MARSHALL: Your Honor, can I see what the government's having him review?

THE COURT: Of course.

MR. MARSHALL: Okay. Thanks.

BY MS. CHAIKEN:

Q. Mr. Gaines, does reviewing the transcript refresh your memory that I said, On June 22nd, 2020, Defendant Gaines caused a wire transfer to be sent from Gaines Reservation to a company called Management Resource Services in the amount of $179,985.72?

A. Yes.

Q. And then I said the purpose of the transfer was listed as payroll services?

A. Yes.

Q. And then I said, In reality, however, Gaines Reservation had no payroll and the purpose of the transfer was not payroll services; correct?

A. Yes.

Q. And then I said, Instead, the transfer was designed to conceal the location, nature and source of the fraudulently obtained PPP loan proceeds by making them appear to be spent on payroll while sending them to an account controlled by Mr. Gaines's ex-wife, Carla Jackson; correct?

A. Yes.

Q. And then your attorney made a clarification for the record about the fact that Andre Gaines is the person who owns Gaines Reservation & Travel; correct?

A. Correct.

Q. And then Judge Boulee asked you, Mr. Gaines, with those caveats, do you disagree with anything else that the Assistant US Attorney said?

Do you remember that?

A. Yes.

Q. And you said, no, you did not disagree; correct?

A. Yes.

Q. So two weeks ago when you were sitting in this very courthouse under oath what you said was that the money was not actually for payroll; correct?

MR. MARSHALL: Judge, I'm going to object. I think -- if I remember, I think I was asking questions to the witness about the funds going to Management Resource Services and to be used for payroll for Management Resource Services.

I thought that was the focus of my question, Judge, not Gaines Reservation & Travel and whether they were using funds for payroll.

THE COURT: Ms. Chaiken.

MS. CHAIKEN: Your Honor, we're talking about the exact same transaction that Mr. Marshall was asking questions about.

THE COURT: Overruled.

BY MS. CHAIKEN:

Q. So, Mr. Gaines, two weeks ago in this courthouse you testified -- you agreed under oath that the purpose of the payment from Gaines Reservation & Travel to Management Resource Services was not actually for any payroll; correct?

A. Based on the transcript, yes.

Q. And your testimony here to this jury today under oath is that it was?

A. The funds were for the purchase of the building and to do construction on the building.

Q. So you've changed your testimony in the past two weeks of what the money was for?

A. That's what it was all the time.

MR. MARSHALL: Judge, I'm going to object. I don't think that's what the facts have shown, but I'd like to put my objection in, Judge.

THE COURT: So, I mean, you've -- I guess you've put

it on the record, but what's the objection?

MR. MARSHALL: Just to what he testified to, Judge. I don't think it's inconsistent. I think the questions that I asked were related to whether the funds that were going into Management Resource Services were going to be payroll related. And if him saying if it was, yes, it was going to be used for that, for hiring people and things like that, that's not being untruthful in his sentencing hearing for about how the funds and -- what representations he made about Gaines Reservation & Travel.

My questions are focused on what he relayed to Ms. Jackson and what the funds were supposed to be for for MRS, Management Resource Services, Judge. Not Gaines.

THE COURT: All right.

Ms. Chaiken, I think you've already responded to that, but do you want to say anything else?

MS. CHAIKEN: No, Your Honor.

THE COURT: All right. Overruled.

BY MS. CHAIKEN:

Q. Now, Mr. Gaines, you testified a lot about Andre Gaines and what his involvement was in Gaines Reservation & Travel.

Do you remember all of that testimony?

A. Today?

Q. Yes.

A. Yes.

Q. Now, isn't it true that Andre Gaines had a stroke in 2018?

A. I don't recall.

Q. You don't recall your cousin, that you worked closely with in business, having a stroke?

A. No, I don't.

Q. Isn't it true that he's been diagnosed as having generalized cerebral dysfunction?

A. Yeah, he has medical issues.

Q. And then in 2020 he was 67 years old; correct?

A. Yes.

Q. Okay. And he was retired?

A. Yes.

Q. And, in fact, he was permanently disabled at that point in time; correct?

A. Yes.

Q. And he had been retired since 2014; right?

A. I don't know. I don't recall. I don't know that.

Q. He had bad short-term memory; right?

A. I don't know his medical history like that.

Q. He was slow to respond when you asked him questions?

A. He's always had a stuttering speech impediment.

Q. But he was also slow to respond because he had trouble understanding; right?

A. I don't know his medical history.

Q. Did you notice in 2018 that his cognitive function got a lot worse?

A. I don't recall. I mean, when we hung out, he spoke well, he moved well, he was capable of functioning daily. So I don't know his medical history.

Q. And so you're saying that you and Mr. Gaines, who was then in his late 60s and had been retired for almost six years, all of a sudden decided to do a construction project together in Alabama?

A. Yes.

Q. And now you testified about Mr. Gaines -- I'm sorry -- about Andre Gaines having involvement in the PPP loan fraud, do you remember that?

A. Yes.

Q. Do you remember testifying that it was his name on the PPP loan application?

A. Yes.

Q. But it wasn't Andre Gaines who actually signed that PPP loan application; right?

A. Based on what -- based on some information I received, it was in all the packets when I was reviewing them. And on the recordings she said he signed it and sent it (sic).

Q. And that's because you told him to say that; right?

A. No.

Q. Because after the FBI called him, you had back-and-forth

phone calls with him the whole day, talking about what to say?
A. No. I don't recall.
Q. You know personally that Darrell Thomas is the person who signed that PPP loan application; correct?
A. I don't know if Darrell even signed it, to be honest with you. I don't know who signed it.
Q. Well, Darrell Thomas e-mailed you the signed PPP loan application after it was signed; right?
A. I beg your pardon?
Q. You use the e-mail address gainesmarty@gmail.com; correct?
A. Yes.
Q. Okay. You use the alias Marty Gaines?
A. Yes.
Q. And after the PPP loan application for Gaines Reservation & Travel was signed, Darrell Thomas sent you those documents; correct?
A. Yes.
Q. So you knew that Darrell Thomas was the one who submitted that loan, not Andre Gaines; right?
A. I can't speak on Darrell -- what Darrell did. I can't speak on what he did or didn't do. I don't know.
Q. And you also don't know whether Andre Gaines did any of that; right?
A. Well, based on the recordings, from one of the recordings

I listened to, he said he signed it and sent it. So I don't know how that played out. We got the funds, that's all I know. We ended up receiving the funds.

Q. Mr. Gaines, it was you, not Andre Gaines, who was working with Darrell Thomas to prepare the PPP loan application; correct?

A. Yes.

Q. You're the one who sent Darrell Thomas a fake bank statement for Gaines Reservation & Travel?

A. I beg your pardon?

Q. You sent him a fake bank statement for Gaines Reservation & Travel?

A. I don't recall sending any documentation or fake bank statement to Darrell. He requested at one point in time that I get a fake bank statement. And I responded, Marie. And that's it. But I never -- I don't recall sending him any bank statements, me, personally sending him a bank statement.

Q. Okay. So your testimony is that you did not prepare fake -- pay someone to prepare fake bank statements for Gaines Reservation & Travel?

A. I don't recall. I said I do not recall.

Q. Okay. Let me see if we can refresh your memory with that.

MS. CHAIKEN: Ms. Holland, could you please pull up Government Exhibit 1408.

BY MS. CHAIKEN:

Q. This is your e-mail address, correct, Mr. Gaines?

A. Yes.

Q. And Marie L. is a person who created fake documents for you?

A. That's -- yeah, I guess so. Yes.

Q. And you asked her to create a fake bank statement for Gaines Reservation & Travel; correct?

A. Yes.

Q. And then you provided that bank statement to Darrell Thomas; correct?

A. I don't know if I ever got the bank statement and provided a bank statement. That's what I'm saying.

MS. CHAIKEN: Ms. Holland, is 1207 in?

MS. HOLLAND: Yes.

MS. CHAIKEN: Could you please publish Exhibit 1207. Okay.

BY MS. CHAIKEN:

Q. Mr. Gaines, does this refresh your memory that you did get fake bank statements from Marie L. and send them to Darrell Thomas?

A. I mean, that's just the text -- e-mail message. I don't recall getting the actual bank statement and sending it to Darrell.

Q. Would you like to see the attachment?

A. Yeah, I'd like to see the statement.

MS. CHAIKEN: Let's publish 1207A, please.

BY MS. CHAIKEN:

Q. Mr. Gaines, this is the attachment to that e-mail that you sent to Darrell Thomas. Does this refresh your recollection that you sent fake bank statements for Gaines Reservation & Travel to Darrell Thomas?

A. Could you scroll it up, please, so I can see the second page?

I don't recall this statement -- me sending this statement from my e-mail.

Q. gainesmarty@gmail.com is your e-mail account; correct?

A. Yes.

Q. Okay. And you're telling this jury that this was not you e-mailing this?

A. I said I don't recall.

Q. Okay. Do you have any reason to doubt that you sent this e-mail?

A. Yes.

Q. What's that?

A. I just don't recall.

Q. Do you have any reason to doubt that someone -- that you used your e-mail account and e-mailed this to Darrell Thomas?

A. I don't recall sending this e-mail to -- this particular document to Darrell Thomas. I don't recall. If you have

the -- if it came from the e-mail, can I see where it came from my e-mail? I don't recall.

MS. CHAIKEN: Yeah. Ms. Holland, could you put 1207 side by side with 1207A, please.

BY MS. CHAIKEN:

Q. So this is the e-mail and then there's -- that's the first attachment. There's two more attachments, which I can show you if you'd like.

A. No. Would the e-mail -- wouldn't the e-mail have my name and the document attached to it going to Darrell if I sent it?

Q. Yes.

On the left, Government Exhibit 1207 is an e-mail from gainesmarty@gmail.com to Darrell Thomas. And there are three attachments.

Do you see that the first one says Jan1.pdf?

A. I don't -- oh, January 1, okay. I don't recall sending that, though. I really don't.

MS. CHAIKEN: Ms. Holland, could you please publish Government Exhibit 1206 side by side with 1206A.

BY MS. CHAIKEN:

Q. Here's another e-mail from gainesmarty@gmail.com to Darrell Thomas attaching a Gaines Reservation & Travel bank statement. Do you remember sending this to Darrell Thomas?

A. I don't recall. It's been three, four years. I mean, I may have sent it. I don't recall, that's all I'm saying.

Q. Do you remember admitting at your plea hearing that you sent multiple fabricated bank statements to Darrell Thomas?
A. I don't recall everything I said.
Q. So two weeks ago at your plea hearing you remembered that you sent fabricated bank statements and now you've forgotten?
A. I'm just trying to refresh my memory.
Q. Okay. Well, so -- did anybody else have access to your e-mail account?
A. People hack stuff all the time.
Q. So you think somebody hacked your e-mail and e-mailed Darrell Thomas a fake bank statement?
A. No disrespect, I just said I don't recall.
Q. Do you have any --

MR. MARSHALL: The question has been asked and answered several times. He can't recall if he's sending these documents is what he's said.

THE COURT: Ms. Chaiken.

MS. CHAIKEN: Your Honor, I don't think he's really answered it because I've asked him multiple times if he has a basis to dispute he sent it and he keeps just saying, I don't recall.

THE COURT: All right. I'm going to sustain the objection. Let's move on, please.

MS. CHAIKEN: Okay.

BY MS. CHAIKEN:

Q. Now, Mr. Gaines, you have been using Marie, checkstubsinfo@gmail.com, to make fake documents for you since at least as far back as 2016; correct?

A. I don't recall. It's 2024.

Q. Would it refresh your recollection to look at some e-mails between you and her?

A. Yes.

Thank you.

MR. MARSHALL: Judge, I'm going to object to this. I don't see the relevance to this, to the line of questioning that I asked him about his involvement with Gaines Reservation & Travel.

MS. CHAIKEN: Your Honor, Mr. Gaines's years long involvement in fabrication of documents is impeachment evidence. It relates to his credibility.

THE COURT: Overruled.

BY MS. CHAIKEN:

Q. Mr. Gaines, does this refresh your recollection that Marie L. has been making documents for you since at least as far back as 2016?

A. Yes.

Q. And she made fake pay stubs for you; right?

A. Yes.

Q. She also made fake titles for you, fake vehicle titles; right?

A. I don't recall.

MR. MARSHALL: Judge, I'm going to object. That's not relevant to what we're talking about. We're talking about PPP loan applications and then we're talking -- we're going beyond that into another area, Judge.

MS. CHAIKEN: Your Honor, Mr. Gaines's credibility is at issue.

THE COURT: Overruled.

BY MS. CHAIKEN:

Q. Mr. Gaines, you asked Marie to make vehicle titles for you; correct?

A. Yes.

Q. You asked her to make driver's licenses for you; correct?

A. Do you have another sample?

Yes.

Q. You asked her to create fake doctor's notes to provide a work excuse for you; correct?

A. Yes.

Q. You asked her to create fake letters saying that your identity had been stolen so that you could send them in to credit bureaus; correct?

A. I don't recall that one.

Thank you.

Q. You sent her a letter that you had drafted that was meant to look like it was a letter from a bank saying that you

had -- that someone had opened an account -- a credit card account in your name without your authorization; correct?

A. This is not my name on the documentation.

Q. If you look at the third page of what I gave you, that's your name there; correct?

A. Oh, yes.

Q. And this is a letter that you typed up that's supposedly about somebody opening an account in your name?

A. Yes.

Q. And then you sent her a real document from a bank and asked her to put your letter onto the bank's letterhead; correct?

A. I don't recall that.

Q. Okay. If you could look at the first page, does that refresh your recollection that you asked her to please cut and paste the letter you typed --

A. Yes.

Q. -- to the letterhead?

A. Yes.

Q. You also used Marie L. to create fake police reports; correct?

A. Yes.

Q. And you used her to create fake utility bills; correct?

A. Yes.

Q. And you used her to create fake social security cards;

correct?

A. Yes.

Q. And you used her to create fake tax forms; correct?

A. Fake what?

Q. Tax forms, like W-2s and things like that.

A. I don't recall.

Thank you.

Q. You asked Marie to create documents reflecting fake earnings for you; correct?

A. Well, they're not for me, but yes.

Q. For other people?

A. Yes.

Q. And you've used Marie to make it look previously like you were actually an employee of Management Resource Services; correct?

A. I don't recall that.

Q. You asked Marie to take a pay stub and change the employer's name to Management Resource Services and change the name on the pay stubs to Marty Gaines; correct?

A. Yes.

Q. And you asked her to change the information on the W-2s to match the pay stubs; correct?

A. Yes.

Q. Is it fair to say that you've used her to make so many fake documents over the years that you don't even remember

what you've asked her for?

A. Possibly.

Q. And in those few years, from 2016 to 2020, any time you needed a document that showed something you didn't have, you just had her make it; right?

A. Pretty much, yes.

Q. Now, I want to switch gears for a moment and talk about Ms. Jackson.

Ms. Jackson's a sophisticated businesswoman, isn't she?

A. Yes.

Q. She's been working for decades in the business world?

A. Yes.

Q. She works on large-scale projects for businesses?

A. Yes.

Q. And she's worked for various companies in corporate America?

A. Yes.

Q. And she's managed projects worth millions of dollars?

A. I mean, I don't know all that. But I'm assuming, yes.

Q. She knows how businesses deal with each other; right?

MR. MARSHALL: Excuse me. Can you repeat that question?

BY MS. CHAIKEN:

Q. She knows how businesses deal with each other?

A. I assume, yes.

Q. Like, she knows, for example, that companies don't make upfront payments of $300,000 for contracts that haven't been signed and deals that haven't been made?

A. I don't know what she thinks or how she perceives certain things. I don't know.

Q. But she's sophisticated; right?

A. Yes.

Q. She's someone who knows business; right?

A. Yes.

Q. Now, you and Ms. Jackson were married for a long time; correct?

A. Yes.

Q. And she -- y'all spent a lot of time together; right?

A. Yes.

Q. And she knew your family?

A. Yes.

Q. And she knew your cousin Andre Gaines?

A. Vaguely, yes.

Q. Yeah. Well, you said you and Andre Gaines worked very closely in business; right?

A. Yes.

Q. And so --

A. This particular project, yes.

Q. And he's your first cousin; right?

A. Yes.

Q. And she knew him?
A. She met him, yes.
Q. Now, you and Ms. Jackson separated around November of 2019; is that right?
A. I can't recall the date. Somewhere around there.
Q. Okay. It was before you got involved in PPP loan fraud; right?
A. Yes.
Q. And you testified that that was because she found out you had been keeping secrets from her?
A. Yes.
Q. And so at that point she didn't trust you anymore, did she?
A. I don't know -- I can't speak on how she felt or what she thought.
Q. Well, you testified that's what caused her to file for divorce; right?
A. My infidelity.
Q. And at that point she knew that you had been keeping secrets from her; right?
A. I assume that. I don't know. You will have to ask her.
Q. Well, you testified that you told her, that she found out that you had been unfaithful; correct?
A. I testified what again?
Q. That you had told her or that she had found out that you

were unfaithful.

A. Yeah. She found out, yes.

Q. And so at that point she knew that you had been keeping secrets from her because you did not previously tell her you had been unfaithful; correct?

A. Yes. Yes.

Q. Now, you testified that you went to Montgomery, Alabama, to look at some real estate; correct?

A. Yes.

Q. And those were the photographs we looked at?

A. Yes.

Q. And those are just photographs of you alone in Montgomery, Alabama; correct?

A. No. I wasn't alone. Someone had to take the picture.

Q. And what I understood you to be saying is that you were so intoxicated on this business trip that you don't even remember who you were with?

A. I said a couple drinks and that was several years ago. I said I don't recall.

Q. You don't remember who you were with on a business trip to scout properties?

A. Not that particular time, no.

Q. And you don't remember when that trip was?

A. Not right offhand, no, not without the pictures. I guess they had a date on there.

Q. Was this trip before the pandemic started or after the pandemic started?

A. I think just -- right after the pandemic, I believe.

Q. After the pandemic started?

A. (Nods head.)

Q. And you have some photographs of you at the Peace and Justice Memorial Center?

A. Yes.

Q. Did you go into the museum on your trip?

A. I don't know if it was open or not. I'm just -- I'm from the Midwest and, you know, you seen a lot of stuff growing up as a kid about history in the south and I was -- I happened to be there, so I just wanted to see it for myself.

Q. But you don't remember if you actually went and saw it?

A. I don't know if it was open or not.

Q. Now, you have some pictures of a building that has the number 2307 on it; right? Those were the pictures we looked at?

A. Yes.

Q. What was the address of that building where you were going to do the project?

A. I guess it was 23 -- it was the whole building, L-shaped building.

Q. What was the address of that building?

A. I can't recall right offhand.

Q. This was a building that you've said you visited several times?

A. Yes.

Q. And you were going to -- you had plans to do a major renovation and construction project there?

A. Yes.

Q. And you don't know what the address of that building is?

A. Not right offhand. That's four, five, six years ago now.

Q. Do you have any copies of any real estate listings of that property being for sale?

A. There was a big sign -- there was a big sign in front to call if you was interested in the building.

Q. That's not in any of your photos, is it?

A. I can't recall. You can pull them back up again and I'll look at them again.

MS. CHAIKEN: Could we pull up 20, please -- sorry, J20.

BY MS. CHAIKEN:

Q. So Defense Exhibit J20, there's no for sale sign in this picture, right, or anything about calling for information?

A. Yeah, I don't see it.

MS. CHAIKEN: Exhibit J21, please.

BY MS. CHAIKEN:

Q. This is a picture of a street sign; right?

A. Yes.

Q. And 27 -- 2307 North Panama, that's not an address that exists; right?

A. I beg your pardon?

Q. 2307 North Panama is not an address that exists; right?

A. That's the area where the building was.

Q. Okay. But this is not the street that the building is the address of; right?

A. Are you going to show me the rest of the photos?

Q. Okay. Well, I'm just asking you to confirm that it's not 2307 North Panama because that address does not exist.

A. I can't recall.

MS. CHAIKEN: If you could go to J22, please.

BY MS. CHAIKEN:

Q. There's no for sale sign in this picture; correct?

A. Yes. Right on the other side of the tree there's a big board. Right where the tree is in front of the building there's a board right there on the window that says call. You can see the white board right -- just beyond the tree. There's a board right there that says if you're interested in this property, call.

Q. Where are you looking?

A. See where the tree is in front of the building where the L is?

Q. Yes.

A. Okay. Now, if you look right there, down -- go down just

below it where the limb is, down -- right there. There's a white board right there with a number for you to call.

Q. Okay. You didn't take a picture of that sign, did you?

A. I don't recall. You got my text messages and all that, pictures and stuff; right? I'm just asking a question.

Q. Mr. Gaines, have you given all of your text messages that you have related to this transaction?

A. I'm not trying to be rude or disrespectful. I'm just saying if you already have all my text messages and everything, that should be in there because I did take a picture of it.

Q. Mr. Gaines, Mr. Marshall showed you one text message that you provided.

A. Well, I mean, there is a sign there that says call this number if you're interested in the property. And that's what I did.

Q. Do you have any communications that you had with a real estate agent about purchasing this property?

A. It was actually privately owned.

Q. Do you have any communications with anybody that you talked to about buying the property?

A. Not at this time, no.

Q. Do you have any text messages between you and the private owner or any communications between you and the private owner?

A. Not to be disrespectful, I mean, you guys have all the

information. I don't have it. I mean, I'm sure if you go through the text messages or whatever, there should be something there somewhere.

MS. CHAIKEN: Your Honor, if there's information, we've not been provided it, so I would --

THE WITNESS: No. You said there wasn't any information saying where the property was, and it's right there on the window.

BY MS. CHAIKEN:

Q. Mr. Gaines, I'm asking you if you have any communications with the owner of this property about buying it.

A. At the time when I called them, yes. After I took the information off the board, yes.

Q. Okay. And you don't have those here with you, do you?

A. No.

Q. Do you have any communications with a bank or a mortgage company about getting a loan to buy the property?

A. Why do I need that when we got the PPP money? I didn't need a loan from a bank.

Q. Well, you testified that you went on this visit right at the beginning of the pandemic; right?

A. I said just after the pandemic, just before we got the PPP loan money.

Q. Right. So at that time you didn't know that you were going to get a PPP loan, did you?

A. That's not what I stated. I said looked at the building several times, just before we got the PPP money. When the PPP money came in, we went back over, looked at it a few more times, talked to the guy who was selling the building, and then everything went crazy.

Q. And you don't have any messages that you exchanged with Andre Gaines about this project you were going to do?

A. If there are, they're in my text messages. And I'm sure you guys have all that information, that's what I'm saying. When you gathered all this information about all the documents I had doctored up, you should have all my text messages and pictures as well.

Q. Mr. Gaines, have you made all of your text messages available to anyone in this case?

A. I didn't make any of this available. You guys presented it to me.

Q. Right. You keep saying that we have your messages.

A. I mean, if you -- all I'm saying -- I'm not trying to be disrespectful --

MR. MARSHALL: Your Honor, I'm going to object at this point. He was not under a duty when he was a defendant in this case to turn over all of his stuff. They had every opportunity to subpoena records, get court orders, get search warrants and everything.

THE COURT: What's your objection, Mr. Marshall? I

mean, you've made a statement about your position on something, but I'm not sure I heard an objection.

MR. MARSHALL: Asked and answered. It's the same question going back and forth about these communications.

THE COURT: Ms. Chaiken?

MS. CHAIKEN: Your Honor, I'm allowed to elicit testimony that he doesn't have anything to corroborate the testimony he's now giving.

MR. MARSHALL: He answered he doesn't have a copy of the real estate transaction. And he's answered several questions along those lines. And he kept saying, if there's anything, you should have it, you have all my e-mails, you have everything.

THE COURT: Ms. Chaiken, anything else in response?

MS. CHAIKEN: No, Your Honor.

THE COURT: Ms. Chaiken, how much more do you have on this?

MS. CHAIKEN: Not a lot, Your Honor.

THE COURT: All right. I'll give you a little leeway. I'm not sure he's answered your question, but I think Mr. Marshall's objection may be well taken if you go on too much further down this line.

MS. CHAIKEN: Ms. Holland, could you please pull up Government Exhibit 13 -- I'm sorry -- Jackson Exhibit 13.

BY MS. CHAIKEN:

Q. Mr. Gaines, do you remember Mr. Marshall showed you this text message?

A. Yes.

Q. Okay. Is this the only text message that you provided related to any of this having to do with the project and the payments to Management Resource Services?

A. Maybe it's me, maybe I just don't understand what's going on because like I said before, I didn't provide anything. You guys obtained this information and now you've presented it to me, about some of the things that I've done in the past. So, therefore, I mean, I don't know. You picked and choosed which ones you wanted to bring. I don't know.

MS. CHAIKEN: Your Honor, I'm going to move to strike that as non-responsive.

THE COURT: All right. One moment.

I'm going to deny the motion to strike.

We've been going a good while. Ms. Chaiken, are you close to the end of your cross or how much more do you have?

MS. CHAIKEN: It would probably be a good time for a break.

THE COURT: Okay.

Ladies and gentlemen of the jury, we will go ahead and take a ten-minute break. Thank you.

(The jury exited the courtroom.)

(After a recess at 2:47 p.m., the proceedings

continued at 3:00 p.m. as follows:)

THE COURT: I understand we have an issue, Mr. Gaines. Do you need to speak with your attorney? Is that right?

THE WITNESS: Yes.

THE COURT: Okay. You know, as we discussed, we can break to let him do that. So we will break and let you have that conversation separately with your attorney. And then we'll go back on the record and bring out the jury, okay?

MR. MARSHALL: I guess, for the record, I'm going to let Mr. Gaines use my phone, I guess.

THE COURT: That's fine.

We're off the record.

(Off-the-record discussion.)

(After a recess at 3:01 p.m., the proceedings continued at 3:07 p.m. as follows:)

(The jury entered the courtroom.)

THE COURT: Y'all can be seated. Thank you.

And, Ms. Chaiken, you can continue with your questioning.

MS. CHAIKEN: Thank you, Your Honor.

Ms. Holland, could you please publish Government Exhibit 1160. And if you could go down to the last page, please.

BY MS. CHAIKEN:

Q. Mr. Gaines, do you recognize the signature on this signature card?

A. Yes.

Q. It's Ms. Jackson's signature?

A. Yes.

MS. CHAIKEN: If you could go to Government Exhibit 1167, please. If you could scroll down, please.

BY MS. CHAIKEN:

Q. This is the first check that Gaines Reservation & Travel wrote to Management Resource Services; correct?

A. Yes.

Q. And you testified that it was Andre Gaines who wrote this check?

A. Yes.

Q. And it was you who told him what to write; correct?

A. Yes.

Q. And it was you who gave that check to Ms. Jackson?

A. I think we both were there.

Q. And it was Ms. Jackson who deposited the check into the Management Resource's account; correct?

A. Yes.

MS. CHAIKEN: If you could go back up to page 1, please, Ms. Holland.

BY MS. CHAIKEN:

Q. That's Ms. Jackson's handwriting on the deposit slip;

correct?
A. Yes.
Q. You recognize it from the time that you were with her?
A. More or less, yes.
MS. CHAIKEN: If you could go back to the check, please, Ms. Holland.
BY MS. CHAIKEN:
Q. Now, when Ms. Jackson got this check from you, she didn't ask you why can't you keep this money in your own account until the project is further underway; right?
A. She could have but she -- that never came up.
Q. She didn't ask you, why are you transferring this to me now if we don't even own the building in Montgomery, Alabama, yet; right?
A. Could you ask me that again now.
Q. Well, she didn't ask you why the payment was coming now even though you didn't even own the building yet; right?
A. Oh. What happened -- what actually happened when we started moving the money over to MRS was Darrell Thomas had called me and told me to tell -- he said that the PPP people were pulling the money back, taking money back from people. And so we decided to move it before they took it back.
Q. So you wanted to get it out of the Gaines Reservation & Travel account to hide it; right?
A. Well, move it to MRS, move it before they took it back,

yes.

Q. But Ms. Jackson didn't ask you, you know, why are you moving it now, we don't even have a project yet; right?

A. I didn't really -- like I said before when we talked about the project, I didn't really go into detail a whole lot about what was going to happen with that building at that time, no. So he just told us we needed to move the money. And we didn't want them to take it back, so we moved it.

Q. At this time in June 8th of 2020, Ms. Jackson was not doing any consulting for Gaines Reservation & Travel; correct?

A. No.

Q. And she was not doing any daily business management; correct?

A. I don't know.

Q. Not that you're aware of; correct?

A. Not that I'm aware of, yeah.

Q. And when you handed her this check for $155,000, she didn't say, why does it say it's for consulting fees or daily business management, I'm not doing that, did she?

A. I don't recall.

Q. Now, she also didn't ask you how you got $155,000 in the middle of a global pandemic, did she?

A. I don't recall.

Q. And at this point in time in June of 2020, the economy was basically ground to a halt; right?

A. I don't think -- Georgia didn't shut down, though, did we?

Q. Businesses were closed; right?

A. I can't recall.

Q. I mean, that was the whole point of the Paycheck Protection Program, right, was that businesses were losing money and couldn't pay their employees?

A. Yes.

Q. And all of a sudden you showed up to Ms. Jackson with a $155,000 check; right?

A. Yes.

Q. And she didn't say, where did you get all this money from?

A. I don't recall, no.

MS. CHAIKEN: Could you please publish J13.

BY MS. CHAIKEN:

Q. So these are the text messages that you sent to Ms. Jackson on June 18th of 2020; correct?

A. Yes.

Q. And on June 18th of 2020 you texted her three cashier's checks she should write and cash she should take out; right?

A. Correct.

Q. And Ms. Jackson went and she got those cashier's check on the very same day; correct?

A. Yes.

Q. And you had told her the first check should be to USAA; correct?

A. I don't remember the order, but yes.

Q. Well, the first one that you texted was USAA; correct?

A. Yes.

Q. And so she knew that that was money that was going to go to USAA; correct?

A. Yes.

Q. Not to Montgomery, Alabama, or anything having to do with the real estate project?

A. No.

Q. No, she knew it wasn't; right? She knew it was to USAA?

A. Yes.

Q. And the second one you told her to write was to Capital One; correct?

A. Yes.

Q. Okay. And so she knew that that was a check that was going to go to Capital One, not to any real estate project in Alabama; correct?

A. Correct.

Q. Okay. And she knew that the third one was going to 365 Enterprises, LLC, which is you; right?

A. Yes.

Q. And then you also told her to take out $9,700 in cash; correct?

A. Yes.
Q. Was that for the driveway renovation that Ms. Jackson did in July of 2020?
A. I don't recall.
Q. She did get her driveway renovated in July of 2020; correct?
A. Yes. Yes.
Q. Now, there's no response from Ms. Jackson to these text messages; correct, on June 18th? The next message is a message from you on June 19th; correct?
A. Right. Yeah. That's what I'm trying -- I'm trying to understand the question, I mean, of her responding back.
Q. Okay. So Ms. Jackson did not respond to your text message and say, wait, hold on, I thought this was for payroll for a project in Alabama, why are you asking me to write checks to USAA and Capital One; right?
A. I just asked her to write the checks and pull the money out and that was it. She didn't respond. But I ended up getting the checks to the places they need to be.
Q. And she didn't ask you any questions about why, if this money was supposedly for payroll, you -- she needed to write checks to banks; right?
A. No.
Q. She didn't say, why can't you use your own money in your own bank accounts to pay off these auto loans or whatever

you're paying off at these banks; correct?
A. You said she -- did she ask me that?
Q. She did not; correct?
A. No. No, she didn't ask.
Q. And then on June 19th you asked her for the account number and wiring information for Management Resource Services; correct?
A. Yes.
Q. And that's because you were getting ready to do another wire?
A. Yeah.
Q. You were getting ready to do a wire?
A. Yes.
Q. Okay. And she just asked you for which account; correct?
A. I don't recall.
Q. Well, if you just look down at the bottom of the messages, she said, Ah, good morning --
A. Okay.
Q. -- for which account; right?
A. Yes, I guess that's what that means, yeah.
Q. She didn't say, what are you wiring me, you know, why are you sending me more money; right?
A. No.
Q. And she didn't say, oh, well, you sent me one check and it was for payroll, but then you had me pay off your auto

loans, so I don't want you to send me more money; right?
A. No.
Q. By the time you sent her that wire, at that point she already knew that what the money was being used for was to pay off your auto loans; right?
A. I don't know what she knew. I just know that she did the checks that I needed to get done and sent me the information to get the wires sent over.
Q. You didn't hide from her what these checks were for; correct? You told her that they were for USAA and Capital one; correct?
A. Yes.
MS. CHAIKEN: If you could go to 1125, please, Government Exhibit 1125.
BY MS. CHAIKEN:
Q. This is the wire transfer confirmation from Gaines Reservation & Travel to Management Resource Services; correct?
A. Yes.
Q. And Mr. Andre Gaines's name is on this wire transfer; correct?
A. Yes.
Q. But you went with him to the bank to do this wire transfer; correct?
A. No. I think he had to make an appointment. He had to make an appointment. And he was all the way out in like

Dallas, Georgia, somewhere and he said he could handle it.
Q. And you went with him; correct?
A. No, I didn't go with him when he made the actual transfer.
Q. You gave him the routing information and the account information for Management Resource Services?
A. I think I did.
Q. You told him what the amount should be of the payment?
A. I believe so.
Q. And you told him what to write as the purpose of the transfer?
A. I don't recall that, but I know I told him to wire the money and gave him the information.
Q. And just so the timing is clear, at this point in time when the wire transfer was sent, Ms. Jackson had already purchased those cashier's checks to pay off your loans; correct?
A. Yeah. She wrote the checks to USAA and Capital One and 365.
Q. And when she got this wire transfer, your testimony is she didn't ask you, wow, where did you get another $179,000 in the middle of a global pandemic?
A. No. She knew it was coming from Gaines Reservation & Travel.
Q. Before the PPP loan Gaines Reservation & Travel had zero

business; correct?
A. Yes.
Q. Nothing?
A. Yes.
Q. No money ever; right?
A. Yes.
Q. Okay. Yes, no money ever?
A. I mean, it had just enough to keep the account open, I guess.
Q. Right. 100 bucks in the account?
A. No, I think the business account you had to have at least 1,500 bucks in there.
Q. Okay. So if we looked at the business account, would we see what the activity was in there?
A. I believe so.
Q. The Chase account for Gaines Reservation & Travel?
A. Yes.
Q. And so Gaines Reservation had never before ever had more than $1,500; correct?
A. Yes. Since the account had actually opened, yes.
Q. And so she just thought all of a sudden Gaines Reservation & Travel, in the middle of a pandemic, came into $335,000 that it was sending to her, that's your testimony?
A. Money was coming from Gaines Travel & Reservation (sic), but she didn't know how we obtained the money.

Q. And she never asked you how you obtained all that money?
A. No.
Q. Now, Agent Stites interviewed both you -- I'm sorry -- both Ms. Jackson and Andre Gaines in early July of 2020; correct?
A. Yeah, I'm assuming so. Yes.
Q. Well, you know he did because they called you and told you afterwards; correct?
A. I think initially when they showed up, I was there.
Q. You were at Ms. Jackson's house; correct?
A. Yes. Yes.
Q. And when Agent Stites called Andre Gaines, you had several calls with him that day; correct?
A. Yes.
Q. So you knew that Agent Stites interviewed Andre Gaines as well?
A. I beg your pardon?
Q. You knew that Agent Stites interviewed Andre Gaines; correct?
A. Yes. Yes.
Q. You knew that Agent Stites gave both of them subpoenas; correct?
A. I don't know when he gave them -- I'm assuming he did because they eventually came.
Q. Well, you know that he did because you told Darrell

Thomas that they had subpoenas; correct?
A. I don't know about subpoenas, but I knew the FBI came.
Q. And you knew that the FBI asked them for records; correct?
A. I beg your pardon?
Q. You knew that the FBI asked Andre Gaines and Carla Jackson for records; correct?
A. I don't know what they asked them.
Q. Do you remember discussing with Darrell Thomas when Andre Gaines was getting ready to send in his subpoena response?
A. I don't recall any of that.
Q. Now, you asked Ms. Jackson to draft Mr. Gaines's response for him, didn't you, Andre Gaines's response?
A. I don't recall that.
Q. Now, on July 27th of 2020, Agent Stites came by Ms. Jackson's house looking for you; correct?
A. I don't remember -- I don't recall the exact date, but he did come by looking for me.
Q. You remember a date that he was there looking for you?
A. I don't recall that day he came out looking for me. He called me and he said, You want to try to help Carla and Andre out.

And I said, Help them out for what? They hadn't done anything.

And then I asked him -- he was telling me, he said -- no.

I asked him -- I didn't know if he was a -- who he said he was. And I asked him, I said, I don't know if you're a real -- who you say you are. I need some identification or something. And then I think he showed up a day or so later.

Q. So there was a day that Agent Stites came by Ms. Jackson's house looking for you; correct?

A. Yes.

Q. And you were there when he came by; correct?

A. No. The first time he came by, he came and he spoke with her.

Q. I'm talking about the time that he came by looking for you.

A. I wasn't there then.

Q. Okay. After he came by, you texted Darrell Thomas; right?

A. I don't recall. I'm not saying I didn't text him, I don't remember the date and, you know, all the other information behind it. He came -- that's -- he came by. He called me. And I know I spoke with Darrell because I knew something wasn't right.

Thank you.

MS. CHAIKEN: I apologize, Your Honor. One moment.

BY MS. CHAIKEN:

Q. You texted Darrell Thomas and you said, The FBI cracker came by my wife's house again today; right?

A. Yes.
Q. And then after that that's when Agent Stites called you; right?
A. I don't know if it was right after that. I don't know when.
Q. Say that again.
A. I don't know if it was right after that or not.
Q. When he called you, you talked to him for a few minutes?
A. Yes.
Q. And during that conversation, you didn't tell him anything you've told this jury today; correct?
A. I didn't tell him anything that I told the jury today?
Q. Uh-huh. You didn't tell him anything about a real estate project in Alabama?
A. No. No.
Q. Okay. When he told you he wanted to talk to you about the Gaines Reservation & Travel loan, you said you couldn't talk to him because you couldn't verify who he was; correct?
A. Yes.
Q. And he offered to meet you somewhere and show you his credentials; right?
A. Yeah. You got to understand at that time, too, we had a lot of stuff going on out here in the world with, you know -- just a lot of things going on out here in the world. And I wasn't about to meet him somewhere -- me personally meet him

to talk with him because anything can happen and then, you know, who's to say what.

Q. He gave you a lot of options for verifying his credentials; right?

A. No, he didn't.

Q. He told you that you could call the FBI number and give his name and that they would verify that he was an agent?

A. I don't recall the conversation in its entirety.

Q. He texted you from his personal cellphone number and told you his name so that you could verify with FBI that he was a real agent?

A. He did call me and text me from his cellphone, but I forgot what they called that when they -- yeah, he did call me.

Q. Okay. And when he texted you his information, you responded and you said, Wow, a real FBI guy, okay; right?

A. Yes.

Q. After the phone call, you sent a message to Darrell Thomas where you said, He called my phone and talked to me. I was short and sarcastic. Right?

A. Yes.

Q. And you and Agent Stites exchanged several messages; correct?

A. Verbal messages or text messages?

Q. Text messages.

A. Yes.

Q. And in one of those text messages Agent Stites wrote to you, Mr. Gaines, you are connected to a significant money trail from this and other loans involved in our investigation to include your connection to Darrell Thomas. Your cooperation in this investigation can benefit you, Andre and Carla. It's up to you. This investigation is moving quickly, so it's important that we talk soon; right?

A. Yes.

Q. And you copied that message and you sent it to Darrell Thomas; right?

A. Yes.

Q. And then you said, This cracker is desperate, didn't you?

A. I don't recall saying that.

Q. If you could turn to the stapled document I gave you. At the bottom of the first page, that was the text message that Agent Stites sent to you that you then copied to Darrell Thomas; correct? Correct? That's the message I just read?

A. Yes.

Q. And then later that day you said, This cracker is desperate; correct?

A. That's what the text says, yes.

Q. And you didn't tell Agent Stites at that point the story that you told the jury today about the real estate project in Alabama, did you?

A. Was I supposed to tell him all of that over the phone without an attorney representing me?

Q. You didn't tell him anything that you've told the jury today when he texted you and told you that you were connected to a significant money trail and your cooperation could help Andre and Carla and you; correct?

A. No, I didn't.

Q. Instead, you said, This cracker is desperate?

A. That was the text I had sent to Darrell, yes.

Q. Now, Mr. Gaines, you testified that Ms. Jackson had no idea that you got a PPP loan for Gaines Reservation & Travel; correct?

A. Yes.

Q. But Ms. Jackson did know that you were working on PPP loans during that time period, didn't she?

A. Yes.

Q. In fact, you actually had Ms. Jackson fill out a PPP application for Management Resource Services; right?

A. Yes.

Q. Okay.

MS. CHAIKEN: Your Honor, I'm going to move to admit Government Exhibit 1228 and the sub exhibits to it pursuant to Rule 902.11.

MR. MARSHALL: What's the number?

MS. CHAIKEN: 1228.

MR. MARSHALL: Okay. No objection, Judge.

MS. WEBSTER: No objection.

THE COURT: It's admitted.

MS. CHAIKEN: Thank you.

Ms. Holland, could you please publish 1228.

BY MS. CHAIKEN:

Q. This is an e-mail that you sent to Darrell Thomas on April 3rd of 2020; correct?

A. Yes.

Q. And you said, Darrell, this my wife. Real shit. Have this shit in order?

A. Yes.

MS. CHAIKEN: If you could please publish 1228A.

BY MS. CHAIKEN:

Q. What you attached was this PPP application for Management Resource Services; correct?

A. Yes.

Q. And this is Ms. Jackson's handwriting on this document; correct?

A. Yes.

Q. She filled this out?

A. Yes.

MS. CHAIKEN: If you could go to page 2, please. I'm sorry, it's the page 1220 -- I'm sorry. Government Exhibit 1228B is page 2. Okay.

BY MS. CHAIKEN:

Q. This was the second page that you e-mailed to Darrell Thomas?

A. Yes.

Q. And that's Ms. Jackson's signature down at the bottom; correct?

A. Yes.

Q. And this was dated April 2nd, 2020?

A. Yes.

Q. And that's when you had her do that?

A. Yes.

Q. So Ms. Jackson knew as of April of 2020 that you were working on PPP loans; correct?

A. Yes.

MS. CHAIKEN: Can I have one moment, Your Honor?

THE COURT: Yes.

MS. CHAIKEN: Nothing further.

Thank you, Mr. Gaines.

MS. WEBSTER: I have no questions for this witness.

THE COURT: Mr. Marshall, any redirect?

MR. MARSHALL: Yes, Judge.

THE COURT: Go ahead.

MR. MARSHALL: Can you please pull up Government's Exhibit 1228 again, please. Or 1221. 1228, I apologize, the e-mail.

Ms. Holland, yes, please, do you mind? Thank you. 1228.

REDIRECT EXAMINATION

BY MR. MARSHALL:

Q. So these questions about this PPP loan application, again, this is -- the government's brought this in about a PPP loan application form, it looks like it was filled out for -- by Management Resource Services; correct?

A. Yes.

Q. This e-mail from -- do you go by Marty? Is that you?

A. Yes.

Q. So this is April 3rd. These communications -- these communications with you and Darrell, this is just you and Darrell. You never include your wife on any of these communications with Darrell Thomas; right?

A. No.

Q. None of this. So this is stuff that you hide from her; right?

A. Yes.

Q. So when you finally -- you write this e-mail and it said, Darrell, this is my wife. Real shit. Have this shit in order. Is this something -- a PPP loan application that's going to be created fraudulently for Management Resource Services or is this a real legit PPP loan application you're planning?

A. Legit.
Q. Is that why you tell Darrell, look, this is real shit, have this in order; right?
A. Yes.
Q. So this was -- was this something where Darrell Thomas or you were going to create employees, fake employees, a number of employees for Management Resource Services?
A. No.
Q. So if you ever had a conversation with Ms. Jackson about a PPP loan, were you only -- did you only talk about it in legitimate lawful manners?
A. Yes.
Q. Did Ms. Jackson ever fill out a form that had some fake number of employees on anything?
A. No.
Q. Did she ever have any kind of document where there were some misrepresentations on any document related to a PPP loan application?
A. No.
Q. Did Ms. Jackson to your knowledge ever submit any PPP loan application at all?
A. No.
Q. Okay. Do you recall any discussions that you had with her about this application form?
A. No.

Q. No?
A. I don't recall.
Q. All right. Let me ask you, how many years were you married to Ms. Jackson?
A. 18.
Q. 18.
How many years before had you known her?
A. 15, 16, 17, somewhere in there.
Q. And Ms. Chaiken had asked you questions about your ex-wife's a professional businesswoman; right?
A. Yes.
Q. On the up-and-up, she had really good jobs, project manager?
A. Yes.
Q. Senior positions?
A. Yes.
Q. If Carla Jackson had known you were involved in this type of real shit or whatever that document says, what would she have done?

MS. CHAIKEN: Objection, calls for speculation.

MR. MARSHALL: Well, Judge, he's known her his whole life. He probably would know from experience probably how his wife would react if she knew that he was involved in fraudulent applications.

THE COURT: Sustained.

BY MR. MARSHALL:

Q. Mr. Gaines, you were shown several documents by the government about fake documents being created. Do you remember that?

A. Yes.

Q. I don't know if you have copies up there on all those things, but let me show you the one that was referenced for Cabela's CLUB.

A. Yes.

Q. Do you have that document up there?

A. Yeah, it's up there.

Q. Take a look at it.

It's a three-page document that you were shown?

A. Yes.

Q. Do you have that in your hand now?

A. Yes.

Q. What's the date of that e-mail? What year? Front page.

A. September 3rd, 2017.

Q. And this is from who? It's from you?

A. Yes.

Q. To who?

A. Marie L.

Q. Is Carla Jackson copied on this e-mail?

A. No.

Q. Did you ever tell Carla Jackson about anything related to

this fake document?
A. No.
Q. Let's go to the one that says changing the address on a driver's license and expiration date. See if you can find that document up there.
Well, let's make this quicker. All of the documents that you were shown by Ms. Chaiken related to these fake documents and these communications with Marie, everything that you were shown, was Ms. Jackson copied on any of this stuff?
A. No.
Q. Did you tell her anything about these activities that you were involved in?
A. No.
Q. Were these more secrets that you kept from Ms. Jackson?
A. Yes. The whole thing with the documents is the first attorney, I only had -- I only met with him one time and he didn't ask me to provide anything.
Q. Let me just go ahead and keep asking you a couple questions again, okay?
MR. MARSHALL: Can you please pull up 1228A. I'm going to go back a little bit to that PPP loan application. Thank you.
Could you go to 1228B. Sorry.
BY MR. MARSHALL:
Q. Do you see this form you looked at earlier? This is

Government's Exhibit 1228B.

A. Yes.

Q. Again, do you recognize that signature down there?

A. Yes.

Q. Is that Ms. Jackson's?

A. Yes.

Q. Are those her initials along the left-hand side?

A. Yes.

Q. Was this loan application ever submitted, ever?

A. No.

Q. Okay. Ms. Chaiken asked you a question about, if I'm paraphrasing it right, is it unusual for -- unusual for a professional businesswoman with her background to get money before a project is even, I guess, in place. I think that's essentially what she asked.

A. Yes.

Q. Do you remember something like that?

A. Yeah, something along those lines.

Q. Do you recall that businesspeople do that actually oftentimes with projects?

A. I believe so.

Q. Well, have you ever had to hire -- well, you had an attorney. Do you know that people hire attorneys and pay them upfront?

A. Retainer fees.

Q. Right. And that's before they've done any work; right?
A. Yes.
Q. So there are types of business entities where people pay money upfront before the work is all completed; right?
A. Yes.
Q. And it may be pursuant to a contract or some type of agreement that's written up; right?
A. Yes.
Q. Let's go back to some of the initial questions that Ms. Chaiken had for you on -- whether you're being truthful today and statements you made during your -- I guess your plea hearing and the factual background.

Do you remember those initial questions?
A. No, I don't.
Q. Do you remember the questions Ms. Chaiken was asking you about the answers and responses you gave during your change of plea hearing about a week or so ago --
A. Yes.
Q. -- two weeks ago? Okay. All right.

On the questions related to payroll, when I was asking you questions about payroll, was I asking you questions about payroll related to Management Resource Services or was it whether Gaines & Travel (sic) had payroll all established? Do you recall?
A. I think it was MRS you was asking me about.

Q. Okay. All right. Was the plan to have Management Resource Services set up this program for this project in Alabama and have payroll administered through Management Resource Services?

A. Yes.

Q. So in that respect you weren't being untruthful about anything related to your plea hearing, were you?

A. No. Just some of the stuff, I just didn't understand what she was asking me at the time.

Q. Okay. Okay. All right.

I want to ask you, follow up with you a little bit. The prosecutor asked you some questions about Andre and about whether Ms. Jackson knew him. And you said vaguely. Flesh that out a little bit for the jury.

She met him. Am I correct to say that -- in thinking that they really didn't hang around or know -- and, you know, stuff like that?

A. No. He stayed in Dallas, Georgia. And if he came out my way, we were in Tucker, that's a nice haul. He would usually be riding with me. He would come by the house in Marietta, we'd get together, go get something to eat, then hang out a little bit.

Q. Okay. Mr. Gaines, I'm going to see if I can refresh your recollection. There were some questions asked of you about whether you knew where this property was in Alabama and so

forth. Do you remember that?
A. Yes.
Q. I pulled up something on Zillow, and I want to see if this happens to refresh your recollection a little bit.
A. Yes.
Q. Does this property on Zillow refresh your recollection of maybe where the location of this particular building was?
A. Yes.
Q. And what is that address?
A. 2306 State (sic) Charles Street -- State (sic) Charles Avenue.
Q. Is that St. Charles, S-T?
A. Yes. Yes. Montgomery, Alabama.
Q. Does this refresh your recollection maybe in the area where this particular building was?
A. Yes.
Q. Was this the location where you said you saw a call this number placard on the window?
A. Yes.
Q. Let me understand. So the prosecutor asked you some questions about why Ms. Jackson would -- you know, I guess why wouldn't Gaines & Travel keep this money and why have it come over to Management Resource Services. Do you know why you did it that way? What did you testify to earlier?
A. No. Like I said, Darrell had called me and told me to

let my cousin know, Andre, that they were taking the money back.

Q. Okay. So --

A. Reversing the wire. So we decided -- I decided that we need to -- we both decided we need to move it.

Q. Any of that conversation, did you tell that to Carla Jackson? Did she know any of that?

A. No.

Q. So what was -- what did you tell Ms. Jackson, what was her understanding of why she was getting this money, these two big deposits in her account, where they came from? Did she know where the -- I mean, like, if it wasn't a PPP loan, where was the money coming from?

A. No. She didn't ask and I didn't tell.

Q. Do you know anything more about Darrell Thomas's background, like what jobs he's had in the past?

A. No.

Q. Had he ever worked in banking?

A. Yeah. He told me he did something with hedge funds or something like that supposedly. That's what I was told.

Q. Do you know if Darrell Thomas had ever suggested that, like, some kind of financing, that he had secured financing in some way for this project?

A. I can't recall.

Q. So you don't really remember what you told Carla Jackson

about where the -- where are you getting this money?
A. I didn't say anything about where I was getting the money from. I just asked her can we move it. And she said yeah. And that was it.
Q. Well, I just asked you a question, did she know that Darrell Thomas and you were trying to move money. You said no.
A. Right.
Q. Okay. So did she know or not know?
A. No. No. She didn't know the money was coming from a PPP loan, no.
Q. Did you tell her that Darrell Thomas was telling you to move money and things like this?
A. No.
Q. I think the prosecutor asked you a question or two about your interview when Agent Stites, I guess, called you. Was it a phone call with him or did he come to visit you in person, do you recall?
A. He talked to me on the phone. He went by the house, but I wasn't there.
Q. Right. I think there was something, you didn't tell Agent Stites that you were connected to this real estate project. Was that the question that was asked of you?
A. Yes.
Q. Well, you had a very short conversation with Agent

Stites; right? It wasn't very long.

A. Yes.

Q. Right? Was that -- did he ask a question about that?

A. No.

Q. Did you have any other follow-up meetings or interviews with Agent Stites?

A. Other than text messages, no.

Q. Did he ever try to reach out to your attorney to talk to you about any information related to the -- to this real estate project?

A. Not that I recall. No, not that I recall.

Q. Okay.

MR. MARSHALL: Just one minute, Your Honor.

Nothing further, Judge. Thank you.

RECROSS-EXAMINATION

BY MS. CHAIKEN:

Q. Mr. Gaines, do you remember Mr. Marshall just showed you a computer with an address on St. Charles Avenue?

A. Yes.

Q. And he had said that that was a Zillow page, but it wasn't a Zillow page; right? It was a Google page?

A. Yeah. Yeah.

Q. So it wasn't like a Zillow real estate listing of that property being for sale; correct?

A. I have no idea.

Q. Just a picture of a building that he pulled up on Google?
A. No. No. No. The picture he just showed me, I don't know where he got it from that he just pulled up, but the picture that you showed me earlier, that's the actual property where I had gone to look at the property, real estate.
Q. The pictures that were admitted into evidence that we looked at on the screen?
A. Right.
Q. I just want to be clear about what happened at your plea hearing, Mr. Gaines. Do you still have that plea transcript in front of you?
A. Yes.
Q. If you could turn to page 17, please.
A. Yes.
Q. The statements that I made were specific to the wire transfer from Gaines Reservation & Travel to Management Resource Services; correct?
A. Am I supposed to be finding this on this page 17 somewhere?
Q. Yes. At the bottom of page 17 I said: On June 22nd, 2020, Defendant Gaines caused a wire transfer to be sent from Gaines Reservation to a company called Management Resource Services in the amount of $179,985.72; correct?
A. Yes.
Q. And then I said: The purpose of the transfer was listed

as payroll services; right?

A. Yes.

Q. And then I said: In reality, however, Gaines Reservation had no payroll and the purpose of the transfer was not payroll services; correct?

A. Yes.

Q. Okay. And you agreed to that; correct?

A. During the plea hearing?

Q. Yes.

A. Yes. Yes.

MS. CHAIKEN: Your Honor, I would move to admit Government Exhibits 1220, 1225 and 1227, and the sub exhibits to those pursuant to Rule 902.11.

MR. MARSHALL: Judge, I'd object. They're not relevant still. That's my objection.

THE COURT: All right. Can you pass those up or are these on the disk or the jump drive?

MS. CHAIKEN: Should be on the jump drive.

THE COURT: 1220, 1225 and 1227?

MS. CHAIKEN: Yes, Your Honor.

THE COURT: But not the sub exhibits to those?

MS. CHAIKEN: With the sub exhibits, Your Honor.

THE COURT: Ms. Chaiken, what's your response to the relevance objection?

MS. CHAIKEN: Your Honor, this is in response to the

line of questioning about whether the PPP application from Management Resource Services was intended to be a real application. These applications for other businesses show that they all follow the exact same pattern where the business information was filled out, no employee and payroll information, and then were being submitted to Darrell Thomas, who is the same person who processed the fraudulent Gaines Reservation & Travel application.

THE COURT: Mr. Marshall, anything else?

MR. MARSHALL: No, Your Honor.

THE COURT: Overruled. They're admitted.

MS. CHAIKEN: Thank you.

BY MS. CHAIKEN:

Q. Mr. Gaines, you sent PPP applications for various businesses to Darrell Thomas; correct?

A. Yes.

Q. And those were for businesses that did not have any employees; correct?

A. Yes.

Q. And you wanted Darrell Thomas to create fraudulent PPP applications for those businesses, just like he was doing with Gaines Reservation & Travel; correct?

A. Yes.

Q. And you knew that that's what Darrell Thomas was doing during this time period; correct?

A. Yes. I figured it out, yes.
Q. You figured out that he was preparing fraudulent loan applications; correct?
A. Yes.
MS. CHAIKEN: If you could go to 1227, please.
BY MS. CHAIKEN:
Q. This was an e-mail that you sent to Darrell Thomas on May 26th of 2020; correct?
A. Yes.
Q. And it was for a company called Main Street Events?
A. Yes.
Q. And you had the name Marvin Hollman associated with it, but then you said here's my other company; correct?
A. Yes.
Q. And Marvin Hollman is another alias that you use; right?
A. No. No.
Q. It's a name you've had Marie create documents for before; correct?
A. Yeah. There is a Marvin Hollman.
MS. CHAIKEN: And if you could go to 1227A, please.
BY MS. CHAIKEN:
Q. This was the attachment; correct?
A. Yes.
Q. So you sent Darrell Thomas a PPP application for Main Street Events?

A. Yes.

Q. And it left the average monthly payroll, the number of employees blank?

A. Yes.

MS. CHAIKEN: If you could publish 1225, please.

BY MS. CHAIKEN:

Q. This is a PPP application that you sent to Darrell Thomas for a business called DUI School; correct?

A. Yes.

MS. CHAIKEN: And if you could go to 1225A, please.

BY MS. CHAIKEN:

Q. This was the attachment; correct?

A. Yes.

Q. You sent him a PPP application for Driving Under Intelligence, DUI?

A. Yes. Yes.

Q. And, again, the average monthly payroll and the number of employees was blank?

A. Yes.

MS. CHAIKEN: And if you could go to 1220, please.

BY MS. CHAIKEN:

Q. This was for 365 Enterprises, the business we've talked about; correct?

A. Yes.

MS. CHAIKEN: And if you could go to 1220A, please.

If you could go to 1220B, please.

BY MS. CHAIKEN:

Q. This was the PPP application; correct?

A. Yes.

Q. And the PPP application you sent him was blank for average monthly payroll and number of employees?

A. Yes.

MS. CHAIKEN: If we could go back to 1228A, please.

BY MS. CHAIKEN:

Q. This was the PPP application for Management Resource Services; correct?

A. Yes.

Q. And, again, the average monthly payroll and the number of employees was blank?

A. Yes.

Q. And that was the same thing that you had been sending to Darrell Thomas for other businesses; correct?

A. Yes.

Q. And you knew that Management Resource Services didn't have any employees; correct?

A. Yes.

Q. And I think Mr. Marshall asked you if you cc'd Carla Jackson on your e-mail to Darrell Thomas. Do you remember that?

A. Yes.

Q. But you didn't conceal from Carla Jackson that there was a PPP borrower application form for Management Resource Services because she herself filled this out; correct?

A. Yes.

MS. CHAIKEN: Nothing further. Thank you.

MR. MARSHALL: Ms. Chaiken, can I see the transcript you were looking at, page 17, please. Thank you.

FURTHER REDIRECT EXAMINATION

BY MR. MARSHALL:

Q. Mr. Gaines, if you can review page 17 and 18 on your plea transcript. Do you still have that up there in front of you?

A. Yes.

Q. Is it highlighted for you as well?

A. No, it's not.

Q. It's not? Okay.

So the bottom paragraph, starting on line 22. Read that paragraph and go into the next page and go through page 7 on -- excuse me, line 7 on page 18.

A. It says, For example, on June 22nd, 2020, Defendant Gaines caused a wire transfer to be sent from Gaines Reservation to a company called Management Resource in the amount of $179,985.72. The purpose of the transfer was listed as payroll services. In reality, however, Gaines Reservation had no payroll and the purpose of the transfer was not payroll services. Instead the transfer was designed to conceal the

location, nature and source of the fraudulent obtained PPP loan proceeds by making them appear to be spent on payroll, while sending them to an account controlled by Mr. Gaines's ex-wife, Carla Jackson.

Q. Now, again, this is you and Darrell Thomas at the center of this; is that correct?

A. Yes.

Q. Right?

So all of the -- the statement in your plea transcript in here, that's a true statement that you made there, right, in your plea proceeding?

A. Yes.

Q. Or the factual basis that's laid down there for you; correct?

A. Yes.

Q. So none of this -- none of this addresses Carla Jackson knowing anything about the nature of the funds that are coming into Management Resource Services and payroll and their purposes for payroll; right?

A. Yes.

Q. Is this separate, a whole separate thing?

A. Yes.

Q. Okay. All right.

On that PPP loan application for Management Resource Services that was shown, that exhibit, was there a point in

time when Ms. Jackson asked you not to submit that application?

A. I don't recall.

Q. Okay. All right.

MR. MARSHALL: That's all I have. Thank you, Judge. Thank you, Mr. Gaines.

THE COURT: Anything else, Ms. Chaiken? Or anything, Ms. Webster?

MS. CHAIKEN: No, Your Honor.

MS. WEBSTER: No, Your Honor.

THE COURT: All right.

Sir, you can step down. Thank you.

(Witness excused.)

THE COURT: Ladies and gentlemen of the jury, I need to discuss a couple things with counsel and so I think this is a good time for you to take a comfort break. I'm going to discuss some things with counsel and then give counsel and staff a break as well, so this could be a -- instead of a ten-minute-er it might be more like a 20-minute-er or so, okay? Thank you.

(The jury exited the courtroom at 4:01 p.m.)

THE COURT: Y'all can be seated.

MS. WILEY: Excuse me, Your Honor. May I be excused?

THE COURT: You may, Ms. Wiley. Thank you. And we all hope that you feel better.

MS. WILEY: Thank you.

THE COURT: All right. Take care.

Mr. Marshall, do you have any more witnesses?

MR. MARSHALL: No more witnesses, Judge.

THE COURT: Do I take it from that that Ms. Jackson has decided not to testify after consultation with you about that decision?

MR. MARSHALL: That's correct.

THE COURT: Ms. Jackson, I want to ask you some of the same questions I asked Mr. Foster earlier. I know that you've already communicated with your counsel about that issue, but I just want to make it clear for the record.

First off, you understand that you have a Fifth Amendment right against self-incrimination; correct?

DEFENDANT JACKSON: Yes.

THE COURT: And you understand that here when you're on trial, you either get to testify if you want to or you get to not testify if you want to? Do you understand that?

DEFENDANT FOSTER: Yes.

THE COURT: And do you understand that that's your decision?

DEFENDANT FOSTER: Yes.

THE COURT: And do you understand that if you choose not to testify, I will give an instruction that the jury may not consider the fact that you haven't testified in their

deliberations? Do you understand that?

DEFENDANT FOSTER: Yes.

THE COURT: And you've discussed this decision with your attorney. Do I understand that correctly?

DEFENDANT FOSTER: Yes. Yes.

THE COURT: And is it your decision, having discussed that with him and having understood your rights, that you've decided not to testify?

DEFENDANT FOSTER: Yes.

THE COURT: All right. Thank you very much.

All right. What we'll do is we'll go back on the record and I'll let you rest, Mr. Marshall.

But let me ask the government if they anticipate whether or not there will be any rebuttal case?

MS. CHAIKEN: A very brief one, Your Honor. Like five minutes, less than five minutes.

THE COURT: Will that be on the subject of the government's motion to admit evidence of the co-defendants' guilty pleas or will it be on something else?

MS. CHAIKEN: No. Your Honor, after considering the totality of Mr. Foster's case, we're not proceeding on the grounds we articulated in our motion.

However, one of the areas that we do intend to get into on rebuttal is just to establish that Gena Pyfrom-Foster is one of the individuals who was charged, not pleaded guilty

but charged, because we do believe that a misimpression may have been created with the jury that she has escaped any culpability for her conduct by virtue of questions as to the number of people charged, then going through some, but not all, of who those people were, and then presenting a significant amount of evidence in the defense case about Gena Pyfrom-Foster and her involvement. So we just want to clear that up on rebuttal.

THE COURT: All right. Very well.

MR. MARSHALL: Judge?

THE COURT: Yes.

MR. MARSHALL: Just -- as far as timing, I guess when we formally rest our case, I'm going to renew our Rule 29 motion again.

THE COURT: I understand. I'll ask, I guess, after -- you can renew it then or you can renew it after the government gives its rebuttal case.

MR. MARSHALL: That's fine, Judge.

THE COURT: All right. Let's all go ahead and take our own comfort break, then we'll come back and I'll let Mr. Marshall formally rest. And then we'll hear the government's rebuttal case, all right?

MS. CHAIKEN: Thank you.

(After a recess AT 4:06 p.m., the proceedings continued at 4:21 p.m. as follows:)

THE COURT: Are we ready to bring out the jury? I'm going to assume yes.

Let's bring out the jury, please.

(The jury entered the courtroom at 4:23 p.m.)

THE COURT: Y'all can be seated.

Mr. Marshall?

MR. MARSHALL: Your Honor, the defense rests.

THE COURT: All right. Thank you, Mr. Marshall.

Ms. Chaiken, anything in rebuttal?

MS. CHAIKEN: Very briefly, Your Honor.

The United States calls Special Agent Stites to the stand.

THE COURT: Very well.

He's been previously sworn, so I think we're okay.

JOSEPH STITES

a witness herein, was further examined

and testified as follows:

FURTHER REDIRECT EXAMINATION

BY MS. CHAIKEN:

Q. Agent Stites, I promise this will be shorter testimony for you today.

Do you recall being asked questions about how many people were charged in connection with your investigation?

A. Yes.

Q. Do you recall Ms. Webster identifying who some of those people were?

A. Yes.

Q. Were the people that she listed all of the people that have been charged in connection with this case?

A. No.

Q. Tell me whether Gena Pyfrom-Foster has been charged with PPP fraud in connection with this investigation.

A. Yes, she has.

MS. CHAIKEN: Nothing further, Your Honor.

THE COURT: Any cross?

MS. WEBSTER: Yes.

FURTHER RECROSS-EXAMINATION

BY MS. WEBSTER:

Q. Agent Stites, do you know when she was charged?

A. I don't recall the date, but I can look at the criminal information to see what the date was, if you have that.

Q. Was it in 2023?

A. I believe so.

MS. WEBSTER: Thank you.

MR. MARSHALL: No questions, Your Honor.

MS. CHAIKEN: Nothing further, Your Honor.

THE COURT: Sir, you can step down.

(Witness excused.)

MS. CHAIKEN: That concludes our rebuttal case, Your Honor.

THE COURT: All right. Ms. Webster, Mr. Marshall, any rebuttal to the rebuttal?

MS. WEBSTER: No rebuttal, Your Honor, but we have motions.

MR. MARSHALL: No rebuttal, Judge. We have motions too.

THE COURT: All right. Ladies and gentlemen of the jury, the evidence in this case is now closed. You'll receive instructions from me in the morning. And you will also hear closings from the attorneys in the morning as well.

I'm going to go ahead and release you for the night. You're reminded of your instructions for breaks, most importantly, not to talk to anyone about this case, including yourselves, until deliberations begin. And although the evidence is closed, deliberations don't yet start. I'll be very clear to you when I tell you to go start your deliberations. So at this point do not speak to anyone, including yourselves, about this case. And, of course, don't do any research about this case in any way.

I hope you have a wonderful early evening. And we will see you tomorrow at 9:00. Thank you.

(The jury exited the courtroom at 4:26 p.m.)

THE COURT: Y'all can be seated.

Ms. Webster, Mr. Marshall, you've noted you had some renewed motions. Do you want to state those for the record?

MS. WEBSTER: Yes, Your Honor.

We renew our motion under Rule 29 for judgment of acquittal on all counts against Mr. Foster on the same basis as we articulated yesterday.

I'm sorry, one second.

(Pause in proceedings.)

MS. WEBSTER: We don't believe the government has shown that he has any -- has proven -- has met its burden to establish that he was acting with the requisite mens rea, that there was no intent, specifically as to the money laundering count, that -- and there was no evidence that he actually accessed the funds.

I think we proved during our defense case that the funds that were the subject of Count 59 were withdrawn during -- were withdrawn by someone with access to the account and that Ms. Pyfrom-Foster was the only person with access to that account.

And then as to the remaining counts, again, the government has not called anyone who will identify Mr. Foster as the actual participant in the case. I think that's the basis for the renewed Rule 29 motion, Your Honor.

THE COURT: Thank you.

Mr. Marshall?

MR. MARSHALL: Judge, we'd renew our Rule 29 motion on the same bases yesterday generally for both counts. Even with the testimony of Mr. John Gaines, I don't think it changes any of the arguments I said yesterday; no direct evidence that my client had knowledge of the source, the illegal source of the funds, or that the purpose was to conceal the funds as part of the financial transaction.

The government's case is built primarily on circumstantial evidence and we just don't think it's met the standard for proof beyond a reasonable doubt.

I did want to address one more just minor argument related to that -- not to the constructive amendment argument, this is more just sufficiency of the evidence on the elements, Judge.

On Count 46 -- and this may be a little bit premature for my Rule 29 on this issue, but on Rule 29, the elements of the offense that we have in the proposed jury instruction -- and I know we're not there yet, but the third element of that, and this is request number 26, says -- and this has to be proven beyond a reasonable doubt -- money or property did come from a specified unlawful activity, specifically wire fraud.

So the jury is going to be instructed and they will get a definition of what wire fraud is. And if this comes in as is, as this instruction, that transaction was not wire fraud. It was different. So I think this element that the

jury is going to be instructed on, I mean, I would argue in closing that they would have to find him not guilty because -- on Count 46 because it was not wire fraud.

So I'd just make that now preliminarily as a Rule 29 motion for acquittal and additional bases just on that argument, too, Judge.

THE COURT: All right. Thank you.

Ms. Chaiken, what's your response to both motions?

MS. CHAIKEN: Your Honor, on the last point raised by Mr. Marshall, that's a misstatement of the law and I think a misunderstanding of what the elements are. The third element, which refers to the money being derived from a specified unlawful activity, specifically wire fraud, is a reference to where the money came from that was the source of the transaction, which in this case is the PPP loan fraud, which has been proven to be a wire fraud.

The third element has nothing to do with whether the financial transaction involves a wire transfer or a check or anything else. It's a reference to the fact that the source of the money has to be wire fraud, just as it could be a bank fraud or it could be some other specified unlawful activity.

And so not only do we think it's not grounds for a Rule 29, but we also think it would be inappropriate argument to the jury because it misstates what the law is and what the elements are.

As far as the remaining arguments, Your Honor, we would rest on what we argued yesterday. We believe our case has gotten stronger after the defense cases than it was yesterday.

THE COURT: All right. Thank you.

I'm going to deny the motions at this juncture as well. I believe that the evidence viewed in the light most favorable to the government was sufficient -- or is sufficient for a rational trier of fact to find guilt beyond a reasonable doubt as to both defendants on the charges.

All right. Let's go ahead and have a discussion of the jury instructions.

I have in front of me Document 840, the parties' consolidated jury instructions.

Before we begin, are there any of these that we think, now that we know what's come in and hasn't come in, don't apply at this point? I think there may be some.

MS. CHAIKEN: Can we have a moment to look through them, Your Honor?

THE COURT: Sure.

MS. WEBSTER: Your Honor, we will withdraw our request for number 11, the identification instruction. So that can be resolved. And I do think a couple of other ones no longer apply.

THE COURT: And on number 11, that was just requested

by Mr. Foster, not by Ms. Jackson.

Is that correct, Mr. Marshall?

MR. MARSHALL: That's correct.

THE COURT: Okay. So we will -- we're off the record for one moment.

(Off-the-record discussion.)

THE COURT: So we'll strike number 11. It's withdrawn.

MS. CHAIKEN: So, Your Honor, I think 6A will no longer be in because neither defendant testified.

THE COURT: Does everyone agree, 6 is out?

MS. CHAIKEN: 6A.

THE COURT: 6A?

MR. MARSHALL: Yes.

MS. WEBSTER: 6A is out, yes.

THE COURT: Okay.

MS. CHAIKEN: I think with 12, 12C and D are out because no defendant testified.

THE COURT: Does everyone agree?

MS. WEBSTER: Yes.

THE COURT: Hold on one second.

MR. MARSHALL: 12B, Judge?

THE COURT: 12C and D.

MR. MARSHALL: Yeah, C. C and D are out, yes.

THE COURT: Okay. We all agree on that. One moment.

I'm sorry.

Go ahead, Ms. Chaiken.

MS. CHAIKEN: So I think 12B is out because nobody was impeached by a felony conviction. So that would leave us with 12A.

THE COURT: Everyone agree, 12B is out?

MR. MARSHALL: Yes.

MS. WEBSTER: That's fine, Your Honor.

THE COURT: Okay. Go ahead, Ms. Chaiken.

MS. CHAIKEN: Your Honor, we think number 13 is -- should be out because I don't think there was any witness who was impeached by reputation or opinion about truthfulness.

MS. WEBSTER: We agree.

MR. MARSHALL: Agree.

THE COURT: All right. 13 is out.

MS. CHAIKEN: Your Honor, I think 14 should be out as well because I don't believe character evidence was presented as to any defendant.

MS. WEBSTER: We agree.

MR. MARSHALL: Agree.

THE COURT: All right. 14 is out as well.

MS. CHAIKEN: So 15 is -- I think we need to look at 15 because 15 is when a co-defendant with a plea agreement testifies. And here Mr. Gaines testified, but the instruction refers to the government making a plea agreement with a

co-defendant in exchange for his or her testimony.

So I haven't fully read through it, but I think we should put a pin in that as something that may need to be removed.

THE COURT: Come back to 15 and discuss that.

MS. CHAIKEN: I think 16 should be out because no 404(b) evidence was admitted.

THE COURT: Everyone agree, we should delete 16?

MS. WEBSTER: Agreed.

MR. MARSHALL: Yes. Agreed.

THE COURT: All right. And so here's what I have for discussion. I think there was -- we need to discuss number 10, number 15, 26, 32. And then there was a supplemental request to charge by Foster.

Has the government now received that, Ms. Webster.

MS. WEBSTER: Yes. I believe it was e-mailed to all parties.

THE COURT: Okay. We need to discuss all those -- yes.

MS. WEBSTER: I'm sorry. To be clear, we filed one under seal yesterday that we have not distributed, but we are doing right now. And then there was one that we just filed within the past half an hour that was sent to all the parties.

THE COURT: Okay. Well, I haven't even seen that one yet. I saw the one from last night, but I now see that my

inbox includes an e-mail from 4:37. It's 4:38.

MS. WEBSTER: Yes. Yes.

THE COURT: We'll look at that, too.

MS. WEBSTER: Were you done listing the other ones we need to address?

THE COURT: I think that covers the ones that someone had lodged an objection on.

MS. WEBSTER: I think that we have an objection to 30, maybe.

THE COURT: Oh, I forgot to list 30. Yes. I have that tabbed as well. Sorry.

So two supplemental requests, 32, 30, 26, 10 and 15; right?

MS. WEBSTER: That's correct, Your Honor.

MS. CHAIKEN: Yes, Your Honor.

THE COURT: All right. Why don't we just take those in order.

Number 10 is confession or statement of multiple defendants. The issue here is, I believe, that the instruction references, After being arrested or detained, you must consider that evidence with caution and great care.

I understand the government's concern that this is about when somebody is -- makes a statement after being arrested or detained. And, obviously, that's not what happened here.

I know, as you state, Ms. Webster, that Mr. Foster did make a statement but it wasn't after arrested or detained.

Here's a potential solution. We could just say -- and I'm just editing out a little bit of this. We could say, If the government offers evidence that a defendant made a statement or admission to someone, you must decide for yourself, and then just read the rest of the instruction.

Is that agreeable to everyone?

MS. CHAIKEN: That's agreeable to us, Your Honor.

MS. WEBSTER: Yes, Your Honor.

MR. MARSHALL: Yes, Your Honor.

THE COURT: Okay. We'll do that.

Did you get that, Ms. Mueller?

MS. MUELLER: Yes. So everything after "someone" comes out?

THE COURT: Yeah. So you say, Or admission to someone, you must decide for yourself. And then we have the rest of it. Okay.

Moving to 15, give me one moment to look back at that.

Ms. Chaiken, do you take issue with number 15?

MS. CHAIKEN: Your Honor, I don't think it applies given the circumstances of the testimony in this case because it suggests that a witness with a plea agreement may have testified in the hopes of gaining more favorable treatment.

And that -- Mr. Gaines is the only witness or only co-defendant with a plea agreement and he testified on behalf of the defense.

So this was obviously put in there with the expectation that there may be co-defendants with plea agreements who testify for the government. I don't think it applies anymore.

THE COURT: Ms. Webster or Mr. Marshall?

MS. WEBSTER: I don't have strong feelings about this, so I'll defer to whatever Mr. Marshall says.

MR. MARSHALL: Well, I'd like to change the wording entirely around. You know, if you have someone that's coming in without a plea agreement, that --

THE COURT: I'm sorry. You lost me there. You want to what?

MR. MARSHALL: Well, I'd love to tailor this towards somebody that comes in in the situation that my client did -- that Mr. John Gaines came in to testify. But I don't really have an objection to removing this, Judge. It doesn't apply to the facts of this case.

THE COURT: All right. So just so the record's clear, everyone is amenable to deleting number 15.

Correct, Ms. Chaiken?

MS. CHAIKEN: Yes, Your Honor.

THE COURT: Correct, Ms. Webster?

MS. WEBSTER: Yes, Your Honor.

THE COURT: Correct, Mr. Marshall?

MR. MARSHALL: Yes.

THE COURT: All right. Let's move to on 26. And, again, give me one moment.

I guess are there two issues here? One is the original issue, which is the added language in the paragraph to prove the element of concealment on page 44. And then there's the additional issue that Mr. Marshall raised. Is that the universe of what we need to discuss as to 26?

MS. CHAIKEN: Yes, Your Honor.

THE COURT: Okay. Let's take those in order then.

And, again, one moment.

All right. Ms. Webster, you wanted to add this language to the pattern, I believe. So I'll hear from you first.

MS. WEBSTER: Yes, Your Honor.

The language comes from the Supreme Court's decision in *Cuellar*, and the Eleventh Circuit's decision in *Johnson*. And it is necessary to define the element of concealment, which is an essential element of this concealment money laundering offense.

And so the instruction currently does not define what it means to conceal or disguise or that the purpose has to be to conceal and not -- that the purpose has to be to conceal,

not merely the effect. And so this language, which I don't think there's any dispute is an actual and correct statement of the law, I think it's necessary for the jury to fully understand what it must find in order to convict the defendant under -- of concealment money laundering.

THE COURT: All right. Thank you.

Mr. Marshall, anything from you on this before I hear from the government?

MR. MARSHALL: No. Judge, we support Foster's request for that additional language.

THE COURT: Ms. Chaiken?

MS. CHAIKEN: Your Honor, there's a lot of language in various case law about what different statutes and criminal statutes require that are not included in the pattern. This language that's been added is from cases that are more than 15 years old. And the Eleventh Circuit pattern jury instructions have been updated since then.

We're not aware of any authority holding that the pattern jury instructions are in any way insufficient or inaccurate. They're used regularly in this district. And the -- I'm sorry, I'm just scrolling up to the element.

The element of concealment, as it's explained in the pattern instruction, is that the defendant knew the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of

the proceeds.

Design is the same thing as purpose, that's what the jury is being told, is that the transaction has to be designed to conceal. And we don't think that anything further needs to be explained on that.

THE COURT: All right. Thank you.

Anything else, Ms. Webster?

MS. WEBSTER: No, Your Honor.

THE COURT: All right. I think it's a fair statement of the law.

As far as the age of those cases, I guess it depends on your perspective. Maybe it's an oldie but goodie from Mr. Foster's perspective. So I'll allow that language in.

MS. WEBSTER: Thank you.

MR. MARSHALL: You will, Your Honor, yes?

THE COURT: Yes.

MR. MARSHALL: Thank you.

THE COURT: And then, Mr. Marshall, you wanted to be heard on the wire fraud issue? I think Ms. Chaiken had already stated her piece on that.

MR. MARSHALL: Yeah. Judge, I'll withdraw that. If there's an issue, Judge, I may file something additional, but I'll withdraw my argument.

THE COURT: All right. So that request is withdrawn. Nothing to rule on there.

Let's go to 30.

And, again, one moment while I look over my notes.

All right. Let me hear from all of you on this.

MS. CHAIKEN: Your Honor, we request the deliberate ignorance instruction. We believe that, especially in light of the testimony that was given today by Mr. Gaines, there's been ample evidence from which the jury could conclude that Ms. Jackson buried her head in the sand to avoid finding out what the source of the PPP loan funds were.

We believe we can prove actual knowledge as well, but the Eleventh Circuit has held that this instruction is appropriate where the jury, based on the evidence -- or when the evidence could support both actual knowledge or deliberate ignorance. And here the evidence we heard today established that she knew Mr. Gaines was involved in PPP loan applications, she had filled one out for herself. And shortly after that received a huge amount of money and didn't ask any questions about where it was from and what the source of it was, from a business that had never before given her money or had any business.

And so we think the facts we've heard today strongly support, at the very least, deliberate ignorance. And we'd ask the instruction be given on that basis.

THE COURT: Let me hear from Mr. Marshall first on this one. And then I'm happy to also hear from you,

Ms. Webster.

MS. WEBSTER: Thank you.

MR. MARSHALL: Judge, even with Mr. Gaines's testimony, Judge, I just -- there's no other evidence in the case, any kind of e-mail, anything where it even infers Ms. Jackson was trying to avoid getting knowledge about the source of the funds. We already know -- there's just no directives. It's all between Darrell Thomas and John Gaines.

Even if we accept the testimony that Ms. Jackson knew about PPP loan applications, I asked Mr. Gaines about that, about that e-mail, and he said, well, that communication with Mr. Thomas was because it was going to be a legit PPP loan application. And he didn't want that S-H-I-T messed up for his wife. I don't think that there's any evidence in the record that shows that Ms. Jackson was deliberately trying to not gain knowledge about the illegal source.

And, again, Judge, we have to remember the witnesses that would have been great for the government to help fill in the backstory to this are, you know, Mr. Andre Gaines, who could have testified, and Mr. Darrell Thomas. I just don't think there's evidence to support this charge. And especially based on citations that I put on page 50, Judge.

THE COURT: All right. I'm going to be blunt. I, frankly, can't imagine a case where deliberate ignorance is a more appropriate charge based on the Gaines's testimony that

we had for several hours this afternoon. It strikes right at the heart of this instruction in my opinion based on the evidence.

And I've looked at those citations, and I understand that this is not something to be given frequently, but in a case like this, it seems like it's wholly applicable, at least as to Ms. Jackson in her case.

But let me hear from Ms. Webster vis-a-vis Mr. Foster. And I'm not even sure the government wants the instruction as to Mr. Foster.

MS. CHAIKEN: Your Honor, we don't really have a view as to how the Court should address who it's as to.

THE COURT: All right. Well, Ms. Webster, if you take issue with it, perhaps I can model this to apply to only one defendant then.

MS. WEBSTER: Yes, Your Honor. We do take issue with it. So I think if the Court's going to give it to Ms. Jackson, then we would request that the Court instruct the jury that it only applies as to Ms. Jackson and does not apply as to Mr. Foster.

THE COURT: All right. I'll do that without objection from the government.

So, Ms. Mueller, let's start that one, you know, we'll have the title, "Deliberate Ignorance As Proof of Knowledge."

And before I say the words "if a defendant's knowledge," I'll start off by saying, This next instruction applies only to the government's case against Ms. Jackson. It does not apply as to the government's case against Mr. Foster.

Let's move on to number 30 -- 32 we don't need because there's the stipulation; right? Does everyone agree?

MS. CHAIKEN: Yes, Your Honor.

MS. WEBSTER: Yes.

MR. MARSHALL: Yes.

THE COURT: Okay. Then we've got the supplemental request to charge. And I know those were all coming in here as we were -- or I'd seen one of them, but not the other, and the government, I guess, hadn't seen either of them.

So why don't we take a short recess just in place. But if anybody wants to walk down the hall for a few minutes for a comfort break, we'll do that as well. We'll just all get back on the record here in, you know, maybe ten minutes or so. Okay?

We're in recess. We don't need to stand up. Thank you.

Thank you, Officer.

(After a recess at 4:54 p.m., the proceedings continued at 5:13 p.m. as follows:)

THE COURT: I assume the government's had a chance to look over these two supplemental requests?

MS. CHAIKEN: We have, Your Honor.

THE COURT: Let's take them in order.

First off, defendants' theory of defense. Any objection to that by the government?

MS. CHAIKEN: Yes, Your Honor.

THE COURT: Go ahead.

MS. CHAIKEN: I apologize, Your Honor, I just put lotion on.

THE COURT: Take your time.

MS. CHAIKEN: Just before I touch my computer. Sorry about that.

Your Honor, we were looking at *United States v. Orr*, O-R-R. It's 819 at F.App'x 756. It's an Eleventh Circuit case from 2020.

THE COURT: I'm sorry, that cite again? 18 F.App'x 1156?

MS. CHAIKEN: No, sorry. 819 F.App'x 756.

THE COURT: All right.

MS. CHAIKEN: One moment, Your Honor. My computer is freezing up on me.

So, Your Honor, in that case, the Eleventh Circuit explained that a theory of defense instruction is not appropriate where it is little more than a defendant-friendly commentary on the evidence and where it's argumentative.

And the Court in that case said, Our cases hold that

a defendant is not entitled to an instruction that is more in the nature of legal argument or a judicial narrative of his version of the facts than an objective instruction on the law.

The Court in that case held that the district court did not err by refusing to give the instruction in that case. And that if the district court had given the instruction, it would have impermissibly placed the defendant's desired factual findings into the mouth of the Court instead of fulfilling its role of providing the jury with neutral guidance about the issues for deliberations.

And those are the same issues that we think Mr. Foster's proposed instruction raises. It is basically a closing argument as to what Mr. Foster believes the facts have shown in the case, but it doesn't set forth any statement of the law as to an element or something that would require acquittal that he -- you know, that he doesn't think has been proven. It's more in the nature of just legal argument as to what the evidence has shown. And he's asking the Court to instruct the jury as if that's an instruction on the law. And that is our -- the basis for our objection.

THE COURT: All right. Ms. Webster, I mean, that's a 2020 case, which would seem to be later than your other Fifth Circuit cases and -- that you cite. And I guess you have an Eleventh Circuit from '86.

And then you've got some other cases cited, but as

far as the ones that would say, you know, you're entitled to this, it looks like that's the *Lively* case?

MS. WEBSTER: Yes, Your Honor. And --

THE COURT: It seems like -- I guess I -- obviously I want to look to the most recent Eleventh Circuit case on this. Ms. Chaiken's citing something from 2020. I know that's a F.App'x case, but still persuasive authority, I guess.

MS. WEBSTER: Yes, Your Honor. But I think if you're looking at the actual instruction that was requested in *Orr*, it's quite different from what we had requested. So in that case it is I think someone who was interacting with someone who was underage online.

And so the instruction says, A major component of the entertainment on the Internet is the rapid repartee, in addition to having imaginative fun. When engaging in Internet role play, people love to experiment with their personas. Typically people weave a bit of truth about themselves with a great deal of imagination and/or exaggeration.

And it goes on like that, just sort of describing, like, general hypotheticals -- or not hypotheticals, but generally the idea behind role playing online. That's not at all what we have asked for, Your Honor.

So our proposed instructions specifically are tied to the counts and -- that are charged against him and identifies the piece -- or the element that we do not feel has been

established.

And so I think that -- and it's also phrased instead of in the language of these are facts, which I feel like is how the instruction in *Orr* is phrased, our instruction is phrased in the language of, Mr. Foster contends that the government has not shown. And, you know, he contends that there is no evidence that the PPP applications were submitted to the banks with his knowledge.

And then as to Count 59 specifically, Mr. Foster contends that the government has not shown that he was a willing participant.

And so I think that the instruction that *Orr* is responding to is quite different from the argument that -- or from the proposed instruction that we have submitted. And I think our instruction is permitted under the Eleventh Circuit decision in *Lively* and would ask that it would be given.

THE COURT: Ms. Chaiken?

MS. CHAIKEN: Your Honor, the requested instruction that was at issue in *Lively* was -- it was a short instruction that said, Members of the jury, you are hereby instructed that after the arrest of David Richards, who was an alleged co-conspirator, on March 24th of 1985, he became the government's agent and informer and thereafter could not be a co-conspirator with William David Lively because one who acts as a government agent and enters into a purported conspiracy

in the secret role of an informer cannot be a co-conspirator.

That was a theory of defense that was based on the law that you cannot be a co-conspirator if you are a government informer. And so that instruction was instructing the jury as to law that it should consider in its deliberations that could impact how it -- how it deliberates and what verdict it reaches.

Whereas here, I think in looking at the theory of defense instruction, there's no additional law or no additional concept that is not covered in the jury instructions that the defense is asking the jury to be given. They're just asking basically for their closing argument to be included in the jury instructions and characterize the evidence as part of a jury instruction.

THE COURT: All right. Thank you, Ms. Chaiken.

Yeah, Ms. Webster, you know, we -- it seems like what was at issue in *Lively*, as Ms. Chaiken just quoted, was something that does go to the law involved. Whereas, in the 2020 Eleventh Circuit case, you know, it talked about little more than a defendant-friendly commentary on the evidence and putting the desired factual findings into the mouth of the Court. That seems to be exactly what you're doing here.

I mean, you highlighted your word "contends," but I would say that that's putting me in the realm of what's the 2020 case -- what was the name of that case?

MS. CHAIKEN: It was *Orr*, O-R-R.

THE COURT: Orr? O-R-R? Yeah.

So I'm inclined to sustain the government's objection, but I want to -- it's a conditional ruling. I want to read those cases in their entirety. And happy to hear tomorrow morning if anybody has any additional cases to point to me, but I just think the *Orr* case is persuasive because as you read this, it's not filling in for the jury anything about the law like in *Lively*, it's essentially just kind of, hey, I'm the judge and here's the defense, here's the defense case. And that seems to be, you know, what the *Orr* case is saying is not necessary.

So I'll look over the cases, but just for planning, I'll tell you that I'm leaning to sustaining the government's objection on that.

Let's move to --

MR. MARSHALL: Judge, I have no objection obviously to that charge anyway. Just wanted to put that on the record.

THE COURT: All right. Thank you, Mr. Marshall.

No dog in that hunt, I guess you would say?

MR. MARSHALL: I mean, I'm sitting back here.

THE COURT: All right. Let's move to the next one.

This involves Mr. Dixon. Is there an objection, Ms. Chaiken, to this?

MS. CHAIKEN: There is, Your Honor.

THE COURT: Okay. Go ahead.

MS. CHAIKEN: Your Honor, the case -- the first case that Mr. Foster cites in footnote 1, he has the quote from the Eleventh Circuit in *United States v. Raphael*, 487 F.App'x 490, which says, The Eleventh Circuit Court of Appeals has not yet addressed the issue of whether the government's refusal to grant immunity to a witness may serve as a basis for a missing witness instruction.

The very next sentence of that case, which is not included in this footnote, is, But every circuit to have considered this question has held that the government's mere ability to grant immunity without more does not make a witness who invokes the Fifth Amendment right not to testify peculiarly available to the government within the meaning of the missing witness rule.

And there are cites to a Fifth Circuit case, a Second Circuit case, a First Circuit case, a Ninth Circuit case, a Seventh Circuit case and a DC Circuit case.

So every circuit that has considered this issue has unanimously held that the government's ability to grant immunity to a witness cannot serve as a basis for this missing witness instruction. And here, Your Honor --

THE COURT: One moment, Ms. Chaiken, I'm sorry.

Go ahead, Ms. Chaiken. Sorry for the interruption.

MS. CHAIKEN: Your Honor, the proposed instruction

here says it was particularly within the power of the government to grant immunity to Ricky Dixon. And that, in the circumstances in which this has happened in this case, is not true.

The first time we heard of any request for immunity was this morning, minutes before Mr. Dixon was here. A grant of immunity to a witness requires multiple levels of approval, both from our office and from the Department of Justice. And this case has been on the trial calendar for nine months. We have not heard about it until this morning. And it would be, I think, very misleading to suggest to the jury that we could have decided to grant Mr. Dixon immunity and have him testify under these circumstances because we could not have done so.

I also don't think any record has been made that Mr. Dixon would have given favorable testimony to the defense. We asked them to do so. They refused to do so and to say what he was going to testify about, how they knew that, what they expected him to say.

And so I think in the circumstances where Mr. Dixon has already invoked the Fifth in the presence of the jury, Ms. Webster was permitted to ask him a series of questions as to which she knew he was going to invoke the Fifth and basically allowed her to just say whatever she wanted in the presence of the jury and have him invoke the Fifth, I think the inference, whatever it is, you know, has already been

presented to the jury. But I don't think there's any basis, both given the law and given the circumstances here, to instruct the jury that Mr. Dixon would have provided favorable evidence and to suggest to the jury that the reason why we didn't grant him immunity is because we didn't want him to testify favorably to the defense.

THE COURT: Ms. Webster, let me hear from you. Also I would be interested to hear from you about the -- and, you know, as Ms. Chaiken was reading it, I was also pulling up the case and reading it myself.

One moment.

I guess I'd like to hear you regarding the selective quotation there. I mean, you quoted, This Court has not yet addressed the issue of whether the government's refusal to grant immunity to a witness may serve as a basis for a missing witness instruction, but you didn't give me -- and obviously Ms. Chaiken looked at the case and gave me, and simultaneous with that, my law clerk had pulled the case and sent to me the second sentence right after that that says, But every circuit who has considered this question has held, et cetera.

So I'm, frankly, a little concerned by that.

MS. WEBSTER: Your Honor, may Ms. Durrett address this issue? She was researching it while I was --

THE COURT: Yes. I'd be happy to hear from whoever Mr. Foster's counsel elected to give me just part of that.

MS. DURRETT: Your Honor, it's me. I'm the one that wrote that and sent that to the Court.

The "without more" part of those cases is without a showing that the testimony would be favorable. So the cases say you can't just say, okay, they didn't grant him immunity so we should be able to have an adverse inference in this case. It's that you have to have a witness who is particularly within the control of one of the parties and that you can show that the testimony would be favorable that you want.

And so that's the "without more" component, Your Honor, that we can show that the government had the ability to grant immunity. Mr. Berne requested that immunity. The government denied that request. And Ms. Webster did put on the record that Mr. Dixon would testify in a favorable way.

THE COURT: Well, did the government deny the request or did Ms. Chaiken say she doesn't have the ability to do that, which I think is true? Ms. Chaiken does not sit there as a Department of Justice of one. She didn't have the ability at that moment to grant the immunity.

I mean, could someone have requested that we pause the case and take a week for it to go up to Washington, DC, and back down? Perhaps, but no one did so. So her statement that she didn't have the ability to do that was true. I mean, Ms. Chaiken doesn't have the ability to grant Mr. Dixon

immunity as we were sitting here today.

MS. DURRETT: That's right, Your Honor. But the government also didn't bring Mr. Dixon to testify in this case. They had the ability to bring him as a witness. So the cases talk about the -- how a witness is available to both parties; right?

So typically in a situation where a witness is unavailable, they're unavailable to both parties. But we can -- we have a showing here where the witness was only unavailable as to us. And that's because the government could have brought him, they could have given him immunity to testify, but they chose not to do so. So we are the party that is -- that he is unavailable to. And that's what the cases talk about. And the government didn't say that it would have tried to get immunity.

THE COURT: I'm sorry?

MS. WEBSTER: I think that what the -- if I recall correctly, and I obviously don't have the transcript in front of me, but I think that what the government --

THE COURT: One moment.

Your instruction, It was particularly within the power of the government to grant immunity to Ricky Dixon, who could have given material testimony on an issue in the case, but that's just different than the situation we have.

I mean, you called -- you decided to call -- I mean,

there were dozens of co-defendants the United States could have called or the defense could have called. I assume the decision was made not to call co-defendants because all of them had been engaged in -- or most of them had been engaged in fraud, so perhaps they're not the best witnesses. But this is a situation in which you called the witness. And as we've seen, calling these co-defendants, some of them decide to invoke their Fifth Amendment rights. Mr. Dixon did. Some of them don't. Mr. Gaines testified in great detail.

And so at that moment the government didn't have the ability. And I think that's what Ms. Chaiken said, is -- and we can, you know -- when was that? Was that this afternoon or was it this morning?

MS. CHAIKEN: It was this morning, Your Honor. And I believe we said we don't have authority to do that.

THE COURT: And you don't; is that correct, as an officer of the court?

MS. CHAIKEN: No. We -- and with Mr. Moore, who is here from the Department of Justice, that imposes even greater approval requirements on the grant of immunity because we would each need to get approval from that -- from our -- through our respective processes.

THE COURT: All right.

Ms. Durrett, go ahead.

MS. DURRETT: Your Honor, I mean, I think that what

we've said is our position, that we believe that he was unavailable only as to us, and for that reason we think we're entitled to the instruction.

MS. CHAIKEN: Your Honor?

THE COURT: Yes.

MS. CHAIKEN: I pulled up the first case that was one of the cases cited in the *Raphael* decision about other circuits that have considered this issue. It's a Fifth Circuit case, *United States v. Rios*, 636 F.3d 168. It's a Fifth Circuit case from 2011.

And in that case the Fifth Circuit said -- well, the defendant in that case argued that a particular witness was peculiarly within the government's control because the government had the ability to grant immunity. And further the defendant argued that the witness's testimony allegedly would have been relevant.

The Court then went on to say, The Fifth Circuit has yet to address whether a witness who relies upon his or her constitutional right not to testify is peculiarly within the government's control. Every circuit that has considered the question, though, has held that the government's ability to grant immunity does not make a witness who invokes the Fifth Amendment right not to testify peculiarly available to the government.

That was not dependent in any way on whether or not

the person -- or that the defendant had made a showing that the testimony would have been favorable; it was just addressing the question of whether the government's decision not to grant immunity makes the witness peculiarly within the government's control.

And then the Court went on to say -- the Court went on to say, Some circuits have provided an exception where there's a substantial showing of an abuse of prosecutorial discretion or where circumstances indicate that the witness would have been exculpatory.

And the Court then went on to say, Requiring a missing witness instruction each time the prosecution decides not to immunize a witness would constitute a substantial judicial encroachment upon prosecutorial discretion.

In addition, a prosecutor's decision not to grant immunity does not categorically give rise to an inference that the witness's testimony would be unfavorable to the government.

And the Court then goes on to say, We conclude that the government's failure to grant immunity to a witness who invokes the Fifth Amendment right not to testify does not by itself entitle a defendant to a missing witness instruction.

The defendant in that case did not argue prosecutorial abuse of discretion, so they need not consider whether exceptions apply.

THE COURT: All right. I think that's persuasive authority and I think it applies here. I mean, there's no -- is there any prosecutorial abuse here, Ms. Durrett? I mean, the prosecution was faced with this immunity issue on the fly and said it didn't have the authority to do that, which is true, right during the trial anyway. And no one requested a pause for them to go up the flagpole for that.

MS. WEBSTER: Your Honor, to jump in, we can -- I can review the transcript later, but I think -- I may be wrong, but I thought what the government said was, we don't have the authority to do that and we're not going to do that. And so they did not indicate that there was any willingness to try; therefore, pausing the trial to allow that to happen would have been futile because there was no indication of any willingness by the government to do so.

And I just want to go back and make very clear that, based on our conversations with Mr. Dixon's attorney, there is a very clear belief on our part, and I think -- I want the record to be clear that Mr. Dixon's testimony would have been favorable because he would have said that Darrell Thomas told him to identify Teldrin Foster. And we have a good faith basis for saying that. That is not speculation. And I think I put that on the record this morning, but I just want to be very clear about that. And I think that's all.

THE COURT: Why don't you both give me briefs on this

by 9:00 tomorrow morning. You can just restate what you've already stated if you don't have anything new, or if you have something new, you can add it so I have it all in one place.

Ms. Lee, let's tell the jury, if we have the ability to get in touch with them, to not come until 10:00. I want to make sure I've read the proper cases on this one before we make any decision.

Actually, get me those by 8:30, if you can. That'll give me -- in addition to looking over some things this evening, it'll give me 8:30 to 9:30 to review your filings and then 30 more minutes to talk to you about it if I need it before we bring in the jury at 10:00.

And I'll also look back further on the theory of defense cases which I want to read through.

All right. Anything else from anyone this evening?

MS. CHAIKEN: Your Honor, as far as the time limitation for closing arguments, I had previously, when there was still four defendants, requested 90 minutes. I would like to revise that request to 75 minutes.

THE COURT: Okay. And how much time do each of the defendants want?

MS. WEBSTER: I'm going to request 60, but I don't think I will talk that long.

THE COURT: All right.

Mr. Marshall?

MR. MARSHALL: How much time, Leigh Ann?

MS. WEBSTER: I requested 60.

MR. MARSHALL: Yeah. No more than an hour, Judge. I think that's appropriate. 60 minutes.

THE COURT: All right. Well, if -- Ms. Chaiken, if you need a full 75, you can have it.

Ms. Webster, if you need a full 60, you can have it.

Mr. Marshall, do you know what I'm about to say?

MR. MARSHALL: Same thing I hope, Judge.

THE COURT: Yes. If you need a full 60, you can have it, but I would hope that each of those can be shorter than that.

MS. WEBSTER: Your Honor, I'm sorry, we did have one issue. I am slightly concerned, based on some of the answers to cross-examination yesterday, that I feel like I should renew our motion in limine about the government taking inconsistent positions between this trial and then its positions at Gena Pyfrom-Foster's sentencing hearing.

And it's limited to -- currently to this issue, which is that on the stand the -- I believe that the agent denied that they were -- that Gena Pyfrom-Foster was hiding her communications with Darrell Thomas from Mr. Foster.

And I crossed him on that a little bit more, but at Ms. Foster -- or Ms. Pyfrom-Foster's sentencing hearing, the government specifically stated, There is, if anything, an

indication Ms. Pyfrom-Foster's communications with Darrell Thomas that she was hiding from her husband, that she was talking to Darrell Thomas directly. She talks about Ted all the time in a negative way in her WhatsApp messages. And then she says there was no indication she was being forced to do any of this, she was hiding that she was doing it from Mr. Foster.

And so while we are not currently asking for, you know, any sort of information to go back to the jury, I just wanted to put on the record that if the government takes a position that's inconsistent with its statements, that -- or implies that, you know, Ms. Pyfrom-Foster and Mr. Thomas were all communicating with Mr. Foster together, especially during the relevant time periods, that we believe that -- we would believe that that would be objectionable and will object at the time.

So I just sort of wanted to put that on the record at this point.

THE COURT: So noted.

Anything else from anyone this evening?

MS. CHAIKEN: Your Honor, does the Court instruct the jury before or after closing arguments?

THE COURT: I usually do it after.

MS. CHAIKEN: After? Okay.

MR. MARSHALL: Your Honor, does the jury get a copy

of the jury instructions, a printout to take back for deliberations?

THE COURT: Would everyone like that?

MR. MARSHALL: I would for Ms. Jackson.

MS. CHAIKEN: Yes.

MS. WEBSTER: Yes.

THE COURT: Ms. Webster? All three of you do? That's fine.

MS. CHAIKEN: Your Honor, should we prepare a copy of the indictment to be sent back to the jury?

THE COURT: Yes. I thought we discussed that at the pretrial conference and that y'all were doing that. Do I misremember?

MS. CHAIKEN: I'm probably misremembering, Your Honor.

MR. MARSHALL: Judge -- I'm sorry.

MS. WEBSTER: I don't know that I remember what the conversation was, but is it --

THE COURT: I thought we breached that subject, but I may not remember. I assume --

MS. CHAIKEN: Yeah. I mean, we think --

THE COURT: I don't know how they could do their work without it; right?

MS. CHAIKEN: I agree, yes.

MS. WEBSTER: We agree.

THE COURT: Ms. Webster and Mr. Marshall, it sounds like they agree as well.

MR. MARSHALL: (Nods head.)

THE COURT: I guess that there were going to be some -- then there's the stipulations about the banks or whatnot, was that changed to company one, bank one or something, and then there was a stipulation about that. So I'm not sure how that all panned out.

MS. CHAIKEN: Correct, Your Honor. We have the stipulation that has the chart of what the entities correspond to. And my understanding was that when the Court explained the indictment or told the jury that they were going to get a copy of the indictment, it would let them know that they would have this chart with them, is my understanding.

So we'll send back the jury instructions, the indictment, the stipulations, the exhibits obviously.

I think that's it.

THE COURT: Okay.

MR. MARSHALL: Your Honor, I have one more comment on the jury instructions I don't think we raised. Sorry.

MS. CHAIKEN: Oh, I did have one more question, Your Honor. Sorry.

THE COURT: Hold on. Let me finish my notes, then I'll hear from Mr. Marshall, then I'll hear from you, please.

Okay. Mr. Marshall.

MR. MARSHALL: Judge, on request to charge number 19, did we discuss that, by chance? This has to do with the introduction to offenses instructions, that's request to charge number 19. Since we don't have the same defendants in the case, we have to modify that language in the first paragraph and downward.

THE COURT: All right. This is just what y'all sent me. So what do you want to change from what you've sent me that you wanted earlier?

MR. MARSHALL: Well, it just lays out which defendants are charged with which counts. So Defendant Gaines should not be in here anymore. So that needs to be deleted, that line in the first paragraph where it says, Defendant Gaines is charged in Counts 6 through 8, Count 37 and Counts 44 through 47.

The next line goes out with Defendant Baptiste.

Defendant Jackson can stay in there, just take the "and" out and leave it as -- you know, fix it that way.

The second paragraph, the Defendants Gaines, Baptiste or Foster, that needs to be changed as far as the conspiracy.

And I don't represent -- I don't know, Leigh Ann, if you want to talk about that, how that goes.

MS. WEBSTER: Yeah. The next paragraph, so the third paragraph should also be modified to just say other charge -- other counts charged. I don't think anything -- I mean, it's

just who's charged. I don't think the substance of anything needs to change.

MR. MARSHALL: Yep. It's just who is charged.

THE COURT: All right. So just so we're clear on this -- and I don't think this is any issue, I don't hear Ms. Chaiken saying anything -- but on request to charge 19, we're going to delete, starting with Defendant Gaines, that line, the entire next line, and then through -- 48 through 50?

MS. WEBSTER: Correct.

THE COURT: Okay. And then we're going to delete the words "Gaines," "Baptiste" in the second paragraph, and we're going to delete the words "Gaines," "Baptiste" in the third paragraph; correct?

MS. WEBSTER: Yes.

THE COURT: Correct, Mr. Marshall?

MR. MARSHALL: Yes, Judge.

THE COURT: Correct, Ms. Chaiken?

MS. CHAIKEN: Yes, Your Honor.

THE COURT: Ms. Mueller, do you have that? Wonderful. All right. Thank you.

I need to hear from Ms. Chaiken on something else. I'll be reviewing your filings that I get by 8:30 tomorrow morning. At 8:30 tomorrow morning, I'd like the -- any of the paralegals involved in the case that have been tracking all the exhibits and Ms. Lee to meet to make sure we have a stack

of exhibits ready. You know, if that's not planned in advance, you know, we'll have the instruction -- I'll give them the instructions, I'll tell them to go deliberate and, hold on, we'll get you the exhibits, and then it's an hour later before y'all have the exhibits ready to go back.

So I would like between 8:30 and 9:30 for that to be done by everyone concerned. Y'all can compare lists and make sure the stack is accurate.

Ms. Chaiken, you had an additional issue?

MS. CHAIKEN: Your Honor, just a question as far as the exhibits going back. Does the Court want us to send back a list of our exhibits that have been admitted to aid the jury or not?

THE COURT: If everyone wants to put a list together, that's one combined list, that's not objectionable to anyone, I'd be happy to have you do that. But to the extent we're going to get into disputes about how something's labeled, we won't have any lists.

So if y'all can agree on a combined list of exhibits, what they are, I'm happy to send the list back. But if sending a list back is going to mean that we're going to need to have a conversation about how to describe something, you know, I'll cross that bridge when we come to it, but I can tell you I'm probably not going to want to have that conversation.

MS. CHAIKEN: Understood, Your Honor. We'll talk to defense counsel.

THE COURT: Anything else?

MR. MARSHALL: Ms. Chaiken, verdict forms?

Sorry, Judge. We have one or two issues with the verdict forms or what are suggestions. We want them ready tomorrow.

It can probably be done tomorrow if you want, Judge.

THE COURT: No, let's go ahead and do it tonight. Thank you for the reminder.

I, frankly, hadn't -- as to the verdict form, I had seen these come in. I didn't know there was much controversy about them. I was under the impression there wasn't. Let me know what you disagree on, if any.

I'm looking at Document 841, parties' proposed verdict form. And then I'm looking at 842 and 845.

MS. CHAIKEN: Your Honor, I'm not sure which docket entry is which one because I'm looking at the Word documents. But we are in agreement with Mr. Foster as to the verdict form, that was an agreed verdict form.

With respect to Ms. Jackson's verdict --

THE COURT: So just so the record is clear, and I think it's -- 841 is parties' proposed verdict form as to Mr. Foster. And that's, yeah, correct where I flipped and didn't see any issues.

And then 842, that's Baptiste. We don't need to concern ourselves with that.

But 845 is the proposed verdict form regarding Ms. Jackson. Give me one moment.

MR. MARSHALL: I can make this quick, Judge.

THE COURT: Yes.

MR. MARSHALL: I don't demand that we take our request that we take the word "unanimously" out. I think that was the only remaining issue on mine; right? I think?

MS. CHAIKEN: Well, also you had wanted -- you had wanted to delete, As to Count 46 of the indictment charging money laundering, you had just wanted it to say, We the jury find Defendant Carla Jackson.

MR. MARSHALL: We can leave that in, Judge. I have no objection.

So it can be, As to Count 46 of the indictment, leave all that in and unanimously.

THE COURT: All right. So it sounds like any objections the defense had to the government language are withdrawn.

MR. MARSHALL: Yes.

THE COURT: So we have an agreed-upon form as to Ms. Jackson as well.

I guess the only issue is that the government had noted that the order of guilty, not guilty was different in

Ms. Marshall's (sic) than in Mr. Foster's.

MS. CHAIKEN: Right. Yes. I mean, we just think it should be consistent, whatever it is.

MR. MARSHALL: Judge, I'd just prefer the other. It's always ordered guilty, not guilty, but, you know, there's a presumption of innocence and I like the not guilty appearing first.

MS. WEBSTER: We would also not mind not guilty coming first, but I don't feel strongly about it.

MR. MARSHALL: But I wouldn't want them -- if they're inconsistent between --

THE COURT: All right. Let's just --

MS. WEBSTER: -- all of them, it would be a problem, between the two.

THE COURT: Ms. Chaiken, do you have any position on this?

MS. CHAIKEN: Your Honor, we're fine with whatever order. If Mr. Foster wants to reverse those because it's a long verdict form with a lot of counts. You know, it would just take longer to switch the not guiltys and guiltys on that one than to switch the guilty and not guilty on Ms. Jackson's.

THE COURT: It sounds like Ms. Webster's willing to be the scrivener to make those administrative changes. Is that right, Ms. Webster?

MS. WEBSTER: I thought I was making it easier by

agreeing with Mr. Marshall, but sure, we can change it, yes.

THE COURT: Yeah. Okay. Well, those will -- we'll keep Ms. Jackson's verdict form the way it is, and then Ms. Webster will get us a new verdict form that reverses the guilty, not guilty order.

And I will speak with you at 9:30 regarding that one open issue about Ricky Dixon.

And I'll also look back and -- I've read excerpts of the cases on the other issue, but I'll go back and read the entirety of those cases and let you know if I've changed my mind on that or if you have any additional argument on that.

I hope all concerned have a good evening.

(After a recess at 5:54 p.m., the proceedings continued on February 14, 2024, as follows:)

- - - - -

C E R T I F I C A T E

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 13th Day of February, 2024.

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER

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$1,500 [1] - 222:19
$1,821 [1] - 175:7
$10,000 [7] - 152:2, 152:6, 152:22, 154:7, 155:3, 156:5
$155,000 [4] - 160:14, 215:17, 215:21, 216:10
$179,000 [1] - 221:21
$179,985.72 [3] - 184:18, 244:23, 250:22
$3,000 [1] - 175:4
$300,000 [1] - 201:2
$335,000 [1] - 222:23
$71,144.35 [2] - 172:24, 173:2
$9,700 [2] - 157:5, 217:24

'

'86 [1] - 277:24

1

1 [4] - 131:3, 194:16, 213:22, 282:3
1,500 [1] - 222:12
10 [3] - 265:13, 266:12, 266:18
10,000 [1] - 156:6
10/10/19 [1] - 142:16
10/19 [1] - 142:16
100 [2] - 154:17, 222:10
1000 [2] - 143:12, 143:15
10:00 [2] - 291:5, 291:12
10K [1] - 156:19
10TH [1] - 175:2
11 [3] - 262:22, 262:25, 263:7
1100 [1] - 142:7
1108 [3] - 145:25, 146:13, 148:6
1125 [4] - 158:18, 160:17, 220:13, 220:14
1150 [1] - 170:25
1151 [1] - 172:8
1156 [1] - 276:16
1160 [1] - 212:23
1167 [5] - 149:20, 160:15, 169:11, 170:3, 213:7
1169 [1] - 151:6
12 [1] - 263:17
1206 [1] - 194:19
1206A [1] - 194:19
1207 [4] - 192:14, 192:16, 194:3, 194:12
1207A [2] - 193:2, 194:4
1220 [4] - 230:24, 245:12, 245:19, 248:20
1220A [1] - 248:25
1220B [1] - 249:1
1221 [1] - 231:24
1225 [3] - 245:12, 245:19, 248:5
1225A [1] - 248:10
1227 [3] - 245:12, 245:19, 247:5
1227A [1] - 247:20
1228 [6] - 229:22, 229:25, 230:5, 231:24, 232:2
1228A [3] - 230:13, 236:20, 249:8
1228B [3] - 230:25, 236:23, 237:1
12:48 [1] - 132:1
12A [1] - 264:5
12B [3] - 263:22, 264:3, 264:6
12C [2] - 263:17, 263:23
13 [7] - 130:11, 155:6, 155:19, 210:24, 264:10, 264:15
13TH [1] - 303:9
14 [4] - 139:14, 264:16, 264:21, 302:14
1408 [1] - 191:25
15 [13] - 139:5, 139:6, 234:8, 264:22, 264:23, 265:5, 265:13, 266:12, 267:19, 267:21, 268:22, 270:16
16 [3] - 234:8, 265:6, 265:8
1602 [1] - 178:1
168 [1] - 288:9
16TH [2] - 175:9, 175:12
17 [8] - 183:19, 234:8, 244:13, 244:18, 244:20, 250:7, 250:10
17TH [2] - 171:21, 174:20
18 [8] - 139:3, 147:11, 183:20, 234:5, 234:6, 250:10, 250:18, 276:15
18TH [5] - 156:12, 156:13, 216:18, 216:20, 218:9
19 [3] - 296:1, 296:4, 297:6
1985 [1] - 279:22
19TH [3] - 157:20, 218:10, 219:5
1:06 [2] - 134:15, 134:20
1:10 [1] - 136:22
1:20-CR-00296-JPB [1] - 130:5
1ST [2] - 146:14, 172:15

2

2 [3] - 131:7, 230:23, 230:25
2'17 [2] - 139:17, 139:22
2'18 [2] - 139:17, 139:22
2'19 [2] - 139:22, 164:21
2'20 [1] - 164:21
20 [3] - 163:21, 165:7, 205:16
20-MINUTE-ER [1] - 252:19
20-SOME [1] - 149:5
2011 [1] - 288:10
2014 [1] - 188:17
2016 [3] - 196:3, 196:20, 200:3
2017 [1] - 235:18
2018 [2] - 188:2, 189:1
2019 [4] - 139:24, 146:5, 149:10, 202:4
2020 [38] - 139:24, 146:14, 149:10, 171:21, 172:15, 172:21, 174:19, 174:20, 175:2, 175:9, 176:6, 177:22, 184:15, 188:10, 200:3, 215:9, 215:24, 216:18, 216:20, 218:3, 218:5, 223:4, 224:15, 230:8, 231:8, 231:12, 244:21, 247:8, 250:19, 276:14, 277:22, 278:6, 280:19, 280:25
2021 [1] - 181:11
2023 [1] - 257:19
2024 [4] - 130:11, 196:4, 302:14, 303:9
21 [1] - 163:21
22 [3] - 163:21, 168:10, 250:16
22ND [3] - 184:15, 244:20, 250:19
23 [2] - 163:21, 204:22
2306 [1] - 240:10
2307 [4] - 204:17, 206:1, 206:4, 206:10
24 [1] - 163:21
24TH [1] - 279:22
25 [3] - 139:14, 163:21, 164:13
26 [6] - 139:14, 260:19, 265:13, 266:12, 269:4, 269:10
26TH [1] - 247:8
27 [1] - 206:1
27TH [1] - 224:15
29 [8] - 255:13, 259:4, 259:23, 260:1, 260:16, 261:4, 261:23
29TH [1] - 146:14
2:47 [1] - 211:25
2ND [1] - 231:8

3

30 [6] - 266:9, 266:10, 266:12, 272:1, 275:5, 291:11
30TH [1] - 172:15
32 [3] - 265:13, 266:12, 275:5
365 [8] - 151:12, 151:16, 151:17, 156:6, 156:19, 217:21, 221:19, 248:22
37 [1] - 296:14
3:00 [1] - 212:1
3:01 [1] - 212:15
3:07 [1] - 212:16
3RD [3] - 230:8, 232:12, 235:18

4

404(B [1] - 265:7
44 [2] - 269:8, 296:15
46 [4] - 260:15, 261:3, 300:11, 300:16
47 [3] - 138:17, 159:25, 296:15
48 [1] - 297:8
487 [1] - 282:4
490 [1] - 282:4
4:01 [1] - 252:21
4:06 [1] - 255:24
4:21 [1] - 255:25
4:23 [1] - 256:4
4:26 [1] - 258:24
4:37 [1] - 266:1
4:38 [1] - 266:1
4:54 [1] - 275:22

5

50 [2] - 273:22, 297:8
59 [2] - 259:16, 279:9
5:13 [1] - 275:23
5:54 [1] - 302:13
5TH [1] - 172:21

6

6 [2] - 263:11, 296:14
6/22/2020 [2] - 159:8, 159:16
60 [5] - 291:22, 292:2, 292:4, 292:7, 292:10
60S [1] - 189:7
636 [1] - 288:9
67 [1] - 188:10
6A [4] - 263:9, 263:12, 263:13, 263:15

7

7 [3] - 130:6, 250:17, 250:18
75 [2] - 291:19, 292:6
756 [2] - 276:13, 276:17

8

8 [1] - 296:14
800,000 [1] - 145:23
806,710 [1] - 146:7
819 [2] - 276:13, 276:17
820 [1] - 157:8
840 [1] - 262:13
841 [2] - 299:15, 299:23
842 [2] - 299:16, 300:1
845 [2] - 299:16, 300:3
8:30 [5] - 291:8, 291:10, 297:22, 297:23, 298:6
8TH [2] - 174:19, 215:9

9

90 [2] - 1:5, 291:18
902.11 [2] - 229:23, 245:13
9:00 [2] - 258:23, 291:1
9:30 [3] - 291:10, 298:6, 302:6

A

ABILITY [12] - 282:12, 282:20, 285:12, 285:17, 285:20, 285:24, 285:25, 286:4, 287:11, 288:14, 288:21, 291:4
ABLE [1] - 285:6
ABREAST [1] - 162:22
ABUSE [3] - 289:8, 289:24, 290:3
ACCEPT [3] - 182:14, 182:18, 273:9
ACCESS [10] - 142:24, 171:23, 171:25, 177:13, 177:15, 178:15, 178:18, 195:7, 259:17, 259:18
ACCESSED [1] - 259:14
ACCOUNT [37] - 142:25, 143:2, 154:20, 158:4, 158:7, 158:8, 159:19, 161:5, 162:25, 171:24, 171:25, 172:1, 178:16, 185:5, 193:12, 193:23, 195:8, 198:1, 198:2, 198:8, 213:20, 214:9, 214:24, 219:5, 219:14, 219:19, 221:5, 222:8, 222:10, 222:11, 222:13, 222:16, 222:20, 241:11, 251:3, 259:17, 259:19
ACCOUNTS [4] - 142:3, 142:4, 177:15, 218:25
ACCURATE [2] - 164:9, 298:8
ACCURATELY [1] - 155:14
ACQUITTAL [3] - 259:5, 261:5, 277:16
ACTING [1] - 259:11
ACTIVITIES [1] - 236:11
ACTIVITY [4] - 222:14, 260:21, 261:13, 261:21
ACTS [1] - 279:24
ACTUAL [10] - 141:24, 164:4, 192:23, 221:3, 244:4, 259:22, 270:2, 272:10, 272:13, 278:9
ADD [2] - 269:14, 291:3
ADDED [2] - 269:7, 270:15
ADDITION [4] - 162:4, 278:15, 289:15, 291:9
ADDITIONAL [14] - 133:16, 133:17, 136:3, 158:8, 164:15, 261:5, 269:9, 270:10, 271:22, 280:9, 280:10, 281:6, 298:9, 302:11
ADDRESS [20] - 174:5, 178:3, 178:5, 190:10, 192:2, 204:20, 204:24, 205:7, 206:1, 206:4, 206:7, 206:10, 236:3, 240:9, 243:18, 260:11, 266:5, 274:12, 284:22, 288:18
ADDRESSED [2] - 282:6, 284:14
ADDRESSES [1] - 251:16
ADDRESSING [1] - 289:3
ADMINISTERED [1] - 239:3
ADMINISTRATIVE [1] - 301:23
ADMINISTRATIVELY [1] - 136:13
ADMISSION [2] - 267:6, 267:16
ADMIT [3] - 229:21, 245:11, 254:18
ADMITTED [12] - 143:15, 151:13, 155:23, 165:5, 178:1, 182:2, 182:5, 230:3, 244:6, 246:11, 265:7, 298:12
ADMITTING [1] - 195:1
ADVANCE [1] - 298:2
ADVERSE [1] - 285:6
AFFAIR [1] - 140:10
AFORESAID [1] - 303:8
AFTER [1] - 1:7
AFTERNOON [9] - 132:12, 135:2, 135:3, 137:25, 138:1, 181:9, 182:8, 274:1, 287:12
AFTERWARDS [1] - 223:8
AGE [1] - 271:11
AGENT [19] - 223:3, 223:12, 223:15, 223:18, 223:21, 224:15, 225:5, 226:2, 227:22, 228:2, 228:17, 228:23, 242:16, 242:22, 242:25, 243:6, 256:11, 256:22, 257:16
AGENT [6] - 207:18, 227:7, 227:11, 279:23, 279:25, 292:20
AGES [1] - 139:13
AGO [8] - 181:13, 185:19, 186:10, 195:4, 203:18, 205:8, 238:17, 238:19
AGREE [15] - 175:18, 263:11, 263:19, 263:25, 264:6, 264:13, 264:14, 264:19, 264:20, 265:8, 275:6, 294:24, 294:25, 295:2, 298:19
AGREEABLE [2] - 267:8, 267:9
AGREED [8] - 134:9, 135:13, 186:11, 245:7, 265:9, 265:10, 299:20, 300:22
AGREED-UPON [1] - 300:22
AGREEING [1] - 302:1
AGREEMENT [7] - 238:7, 264:23, 264:25, 267:24, 268:2, 268:13, 299:19
AGREEMENTS [1] - 268:6
AHEAD [19] - 145:25, 149:22, 172:16, 172:18, 181:1, 184:2, 211:22, 231:22, 236:18, 255:19, 258:13, 262:11, 264:2, 264:9, 276:6, 282:1, 282:24, 287:24, 299:9
AID [1] - 298:12
ALABAMA [26] - 144:19, 156:25, 157:3, 160:22, 161:17, 162:17, 163:6, 163:10, 163:17, 165:10, 166:15, 169:15, 170:14, 182:11, 189:9, 203:7, 203:13, 214:13, 217:9, 217:19, 218:15, 226:14, 228:25, 239:3, 239:25, 240:13
ALIAS [2] - 190:13, 247:15
ALLEGED [1] - 279:21
ALLEGEDLY [1] - 288:15
ALLOW [2] - 271:13, 290:13
ALLOWED [2] - 210:6, 283:23
ALMOST [2] - 180:5, 189:7
ALONE [2] - 203:12, 203:14
ALTOGETHER [1] - 139:6
AMENABLE [1] - 268:22
AMENDMENT [1] - 260:12
AMENDMENT [8] - 133:3, 135:1, 135:23, 253:14, 282:13, 287:8, 288:23, 289:21
AMERICA [3] - 171:12, 172:13, 200:16
AMERICA [1] - 130:4
AMOUNT [21] - 138:19, 146:6, 152:1, 152:21, 155:3, 159:10, 159:11, 159:13, 159:17, 159:24, 160:2, 160:14, 172:23, 175:4, 175:10, 184:17, 221:8, 244:23, 250:22, 255:6, 272:17
AMPLE [1] - 272:7
AN [1] - 1:2
AND [3] - 1:4, 1:7, 130:6
ANDRE [45] - 141:17, 141:18, 141:19, 141:22, 143:8, 143:20, 144:1, 144:15, 144:24, 146:15, 150:6, 150:20, 159:23, 161:20, 161:22, 165:25, 166:19, 168:16, 170:6, 185:9, 187:20, 188:1, 189:12, 189:18, 190:20, 190:23, 191:4, 201:17, 201:19, 209:7, 213:12, 220:19, 223:4, 223:12, 223:15, 223:18, 224:6, 224:9, 224:13, 224:21, 228:6, 229:6, 239:12, 241:1, 273:19
ANDRE [1] - 131:3
ANN [2] - 292:1, 296:21
ANN [1] - 130:18

ANSWERED [6] - 195:15, 195:19, 210:3, 210:9, 210:10, 210:20
ANSWERS [2] - 238:16, 292:14
ANTICIPATE [3] - 133:25, 134:1, 254:13
ANTICS [1] - 141:1
ANY [1] - 1:9
ANYWAY [3] - 179:14, 281:18, 290:6
ANYWAYS [1] - 147:17
APOLOGIZE [3] - 225:22, 231:24, 276:7
APPEALS [1] - 282:5
APPEAR [2] - 185:4, 251:2
APPEARANCES [1] - 130:13
APPEARING [1] - 301:6
APPLICABLE [1] - 274:6
APPLICATION [40] - 141:6, 143:16, 143:25, 144:4, 144:16, 145:19, 146:15, 146:23, 148:1, 164:24, 189:16, 189:19, 190:4, 190:8, 190:15, 191:5, 229:18, 230:15, 232:5, 232:7, 232:22, 232:24, 233:18, 233:21, 233:24, 236:21, 237:9, 246:1, 246:3, 246:8, 247:24, 248:7, 248:14, 249:3, 249:5, 249:10, 250:2, 251:24, 252:2, 273:13
APPLICATIONS [9] - 197:4, 234:24, 246:3, 246:14, 246:21, 247:3, 272:16, 273:10, 279:7
APPLIES [5] - 267:22, 268:7, 274:19, 275:3, 290:2
APPLY [7] - 262:17, 262:24, 268:19, 274:14, 274:19, 275:4, 289:25
APPOINTMENT [2] - 220:24, 220:25
APPROPRIATE [4] - 272:12, 273:25, 276:23, 292:4
APPROVAL [3] - 283:7, 287:20, 287:21
APRIL [4] - 230:8, 231:8, 231:12, 232:12
ARE [1] - 1:8
AREA [6] - 146:1, 163:9, 165:17, 197:5, 206:5, 240:14
AREAS [1] - 254:23
ARGUE [2] - 261:1, 289:23
ARGUED [3] - 262:2, 288:12, 288:15
ARGUMENT [11] - 260:11, 260:12, 261:6, 261:23, 271:23, 277:2, 277:13, 277:17, 279:13, 280:12, 302:11
ARGUMENTATIVE [1] - 276:24
ARGUMENTS [4] - 260:4, 262:1, 291:17, 293:22
ARREST [1] - 279:21
ARRESTED [5] - 176:7, 266:20, 266:24, 267:2
ARTICULATED [2] - 254:22, 259:6
ASSERTED [1] - 145:12
ASSIST [1] - 135:14
ASSISTANT [1] - 130:16
ASSISTANT [1] - 185:13
ASSOCIATED [3] - 141:19, 169:1, 247:12
ASSUME [6] - 200:25, 202:21, 256:2, 275:24, 287:2, 294:20
ASSUMING [3] - 200:19, 223:6, 223:23
AT [2] - 132:1, 255:24
ATLANTA [3] - 130:2, 130:25, 132:1
ATTACHED [2] - 194:10, 230:15
ATTACHED [1] - 1:6
ATTACHING [1] - 194:22
ATTACHING [1] - 1:9
ATTACHMENT [5] - 192:25, 193:4, 194:7, 247:22, 248:12
ATTACHMENTS [2] - 194:7, 194:14
ATTENTION [1] - 183:19
ATTORNEY [13] - 133:12, 179:5, 180:7, 182:24, 185:8, 212:3, 212:8, 229:2, 236:16, 237:23, 243:8, 254:4, 290:17
ATTORNEY [1] - 185:14
ATTORNEYS [2] - 237:23, 258:12
ATTORNEYS [1] - 130:16
AUTHORITY [6] - 270:18, 278:7, 287:15, 290:2, 290:5, 290:11
AUTHORIZATION [1] - 198:2
AUTO [9] - 153:7, 153:8, 153:9, 154:20, 154:21, 154:23, 218:25, 219:25, 220:5
AVAILABLE [5] - 209:14, 209:15, 282:14, 286:5, 288:23
AVENUE [2] - 240:11, 243:18
AVERAGE [4] - 248:2, 248:17, 249:6, 249:13
AVOID [2] - 272:8, 273:6
AWARE [4] - 135:10, 215:15, 215:16, 270:18

B

BABASIJIBOMI [1] - 130:15
BACK-AND-FORTH [1] - 189:25
BACKGROUND [7] - 149:3, 166:19, 168:21, 168:22, 237:13, 238:12, 241:16
BACKSTORY [1] - 273:19
BAD [1] - 188:19
BANK [39] - 142:3, 142:4, 142:22, 142:25, 162:25, 171:11, 171:24, 172:13, 172:14, 173:20, 173:22, 177:15, 178:16, 191:8, 191:11, 191:13, 191:15, 191:16, 191:17, 191:19, 192:7, 192:10, 192:12, 192:13, 192:20, 192:23, 193:6, 194:22, 195:2, 195:5, 195:11, 197:25, 198:10, 208:16, 208:19, 218:25, 220:22, 261:20, 295:6
BANK [2] - 171:11, 172:13
BANK'S [1] - 198:11
BANKING [1] - 241:18
BANKS [4] - 218:22, 219:1, 279:8, 295:5
BAPTISTE [5] - 296:16, 296:19, 297:11, 297:12, 300:1
BASED [11] - 186:14, 189:20, 190:25, 272:12, 273:22, 273:25, 274:2, 280:2, 290:17, 292:14
BASES [2] - 260:2, 261:5
BASIS [16] - 140:24, 159:24, 177:23, 182:15, 182:19, 195:20, 251:13, 259:5, 259:23, 272:23, 277:20, 282:7, 282:21, 284:1, 284:15, 290:22
BE [2] - 1:3, 1:4
BECAME [2] - 139:23, 279:22
BECOME [3] - 165:25, 166:3, 166:14
BEFORE [1] - 130:10
BEG [6] - 163:13, 190:9, 191:10, 206:3, 223:17, 224:5
BEGIN [3] - 136:18, 258:16, 262:15
BEGINNING [1] - 208:21
BEHALF [3] - 130:14, 130:17, 130:20
BEHALF [3] - 135:11, 179:18, 268:2
BEHIND [2] - 225:18, 278:21
BELIEF [1] - 290:18
BELIEVES [1] - 277:13
BELOW [4] - 156:16, 157:15, 173:18, 207:1
BENEFIT [1] - 228:6
BERNE [1] - 285:13
BEST [1] - 287:5
BETTER [1] - 252:25
BETWEEN [8] - 196:6, 207:23, 207:24, 273:8, 292:17, 298:6, 301:11, 301:14
BEYOND [5] - 197:5, 206:18, 260:10, 260:20, 262:9
BIG [5] - 165:11, 205:11, 206:15, 241:11
BILLS [1] - 198:23
BIT [23] - 139:18, 142:7, 144:14, 145:6, 148:24, 148:25, 149:2, 149:22, 150:19, 151:7, 158:19, 161:17, 165:24, 179:1, 236:21, 239:11, 239:14, 239:22, 240:4, 260:15, 267:4, 278:17, 292:23
BLANK [4] - 248:3, 248:18, 249:5, 249:14
BLOCK [1] - 174:16
BLUNT [1] - 273:23
BOARD [6] - 206:16, 206:17, 206:18, 206:19, 207:2, 208:13
BORN [1] - 140:12
BORROW [2] - 173:9, 173:10
BORROWER [1] - 250:2
BOTTOM [9] - 150:5, 154:18, 171:14, 183:19, 219:16, 228:16, 231:5, 244:20, 250:16
BOULEE [1] - 130:10
BOULEE [5] - 135:10, 182:14, 182:18, 183:2, 185:12
BOX [3] - 173:24, 174:1, 174:8
BREACHED [1] - 294:19
BREAK [9] - 132:5, 211:20, 211:23, 212:7, 252:16, 252:18, 255:20, 275:16
BREAKS [1] - 258:14
BRIDGE [1] - 298:23
BRIEF [1] - 254:15
BRIEFLY [1] - 256:10
BRIEFS [1] - 290:25

BRING [10] - 133:21, 134:8, 134:14, 211:12, 212:9, 256:1, 256:3, 286:3, 286:4, 291:12
BROKE [1] - 180:9
BROUGHT [2] - 232:6, 286:11
BUCKS [2] - 222:10, 222:12
BUILDING [41] - 144:19, 150:15, 152:9, 156:22, 163:4, 164:4, 165:10, 165:13, 165:17, 165:22, 166:2, 166:16, 167:11, 167:24, 168:6, 168:9, 168:15, 168:19, 170:8, 186:17, 186:18, 204:16, 204:20, 204:22, 204:23, 204:24, 205:1, 205:7, 205:12, 206:5, 206:6, 206:16, 206:22, 209:1, 209:4, 214:13, 214:17, 215:6, 240:7, 240:15, 244:1
BUILDINGS [2] - 163:14, 163:17
BUILT [1] - 260:8
BURDEN [1] - 259:10
BUREAUS [1] - 197:21
BURIED [1] - 272:8
BUSINESS [24] - 142:13, 149:10, 150:12, 162:7, 164:4, 176:19, 176:22, 188:5, 200:11, 201:8, 201:20, 203:16, 203:20, 215:12, 215:19, 222:1, 222:11, 222:13, 238:3, 246:4, 248:8, 248:22, 272:19, 272:20
BUSINESSES [11] - 176:23, 200:13, 200:20, 200:24, 216:3, 216:6, 246:3, 246:15, 246:17, 246:21, 249:17
BUSINESSPEOPLE [1] - 237:19
BUSINESSWOMAN [3] - 200:9, 234:10, 237:13
BUY [1] - 208:17
BUYING [3] - 170:8, 207:21, 208:11
BY [92] - 1:4, 1:6, 130:23, 137:24, 142:9, 143:6, 143:13, 143:24, 145:14, 146:2, 146:11, 147:9, 147:20, 148:10, 149:23, 151:10, 152:15, 154:3, 156:1, 158:20, 158:25, 159:6, 159:12, 160:12, 161:8, 164:18, 165:8, 165:16, 165:21, 167:9, 167:21, 168:4, 168:13, 169:13, 170:5, 171:2, 171:9, 171:15, 172:9, 172:19, 173:1, 173:19, 174:7, 174:17, 175:16, 176:5, 178:4, 178:13, 181:6, 184:3, 184:13, 186:9, 187:19, 192:1, 192:18, 193:3, 194:5, 194:20, 195:25, 196:17, 197:9, 200:23, 205:18, 205:23, 206:13, 208:9, 210:25, 212:25, 213:8, 213:24, 214:7, 216:16, 220:15, 225:23, 230:6, 230:14, 231:1, 232:4, 235:1, 236:24, 243:16, 246:13, 247:6, 247:21, 248:6, 248:11, 248:21, 249:2, 249:9, 250:9, 256:21, 257:15

C

CABELA'S [1] - 235:8
CALENDAR [1] - 283:9
CANNOT [3] - 280:1, 280:3, 282:21
CAPABLE [1] - 189:4
CAPITAL [7] - 153:2, 156:5, 217:14, 217:18, 218:16, 220:10, 221:18
CAR [3] - 153:23, 175:23, 175:24
CARD [7] - 142:13, 154:16, 154:21, 171:11, 175:3, 198:1, 213:2
CARDS [2] - 175:3, 198:25
CARE [2] - 253:2, 266:21
CARLA [24] - 138:7, 138:23, 146:21, 151:25, 152:24, 154:11, 155:18, 175:21, 178:2, 185:6, 224:6, 224:21, 228:7, 229:6, 234:17, 235:23, 235:25, 241:6, 241:25, 249:22, 250:1, 251:4, 251:16, 300:13
CARLA [2] - 130:6, 130:20
CASE [84] - 133:22, 135:11, 135:13, 136:15, 136:16, 138:6, 139:24, 141:20, 144:12, 176:8, 179:2, 181:10, 209:14, 209:22, 254:14, 254:21, 255:6, 255:13, 255:17, 255:22, 257:6, 258:1, 258:10, 258:15, 258:20, 258:21, 259:15, 259:22, 260:8, 261:15, 262:2, 267:23, 268:20, 270:13, 273:5, 273:24, 274:6, 274:7, 275:3, 275:4, 276:14, 276:21, 276:25, 277:4, 277:5, 277:14, 277:22, 278:2, 278:5, 278:7, 278:11, 280:19, 280:25, 281:7, 281:10, 281:11, 282:2, 282:9, 282:16, 282:17, 282:18, 283:3, 283:9, 284:10, 284:17, 284:18, 285:7, 285:22, 286:4, 286:23, 288:6, 288:9, 288:10, 288:11, 288:12, 289:23, 296:5, 297:24, 303:8
CASES [18] - 262:3, 270:15, 271:11, 276:25, 277:23, 277:25, 281:5, 281:6, 281:13, 285:3, 285:4, 286:5, 286:14, 288:7, 291:6, 291:14, 302:9, 302:10
CASH [4] - 157:5, 175:9, 216:21, 217:24
CASHIER'S [13] - 152:7, 152:11, 152:16, 153:3, 153:15, 154:15, 156:6, 156:14, 156:16, 156:19, 216:20, 216:23, 221:16
CATEGORICALLY [1] - 289:16
CAUSED [4] - 184:16, 202:16, 244:21, 250:20
CAUTION [1] - 266:21
CAVEATS [1] - 185:13
CC'D [1] - 249:22
CELLPHONE [2] - 227:9, 227:12
CENTER [1] - 204:7
CENTER [1] - 251:5
CEREBRAL [1] - 188:8
CERTAIN [1] - 201:4
CERTAINLY [1] - 181:3
CERTIFY [1] - 303:6
CETERA [1] - 284:20
CHAIKEN [47] - 133:15, 136:9, 165:2, 184:2, 186:4, 187:15, 195:17, 210:5, 210:14, 210:16, 211:17, 212:19, 234:9, 236:7, 237:11, 238:10, 238:15, 245:23, 250:6, 252:7, 256:9, 261:8, 264:2, 264:9, 267:21, 268:23, 270:11, 271:19, 279:17, 280:15, 280:17, 281:24, 282:23, 282:24, 284:9, 284:17, 285:17, 285:18, 285:25, 287:11, 292:5, 297:6, 297:17, 297:21, 298:9, 299:4, 301:15
CHAIKEN [163] - 130:14, 133:10, 134:10, 136:10, 145:8, 145:11, 147:7, 147:13, 155:21, 161:6, 164:14, 165:3, 180:25, 181:6, 183:24, 184:3, 184:13, 186:5, 186:9, 187:17, 187:19, 191:24, 192:1, 192:14, 192:16, 192:18, 193:2, 193:3, 194:3, 194:5, 194:18, 194:20, 195:18, 195:24, 195:25, 196:13, 196:17, 197:6, 197:9, 200:23, 205:16, 205:18, 205:22, 205:23, 206:12, 206:13, 208:4, 208:9, 210:6, 210:15, 210:18, 210:23, 210:25, 211:13, 211:19, 212:21, 212:25, 213:6, 213:8, 213:22, 213:24, 214:5, 214:7, 216:15, 216:16, 220:13, 220:15, 225:22, 225:23, 229:21, 229:25, 230:4, 230:6, 230:13, 230:14, 230:23, 231:1, 231:15, 231:17, 234:20, 243:16, 245:11, 245:18, 245:20, 245:22, 245:25, 246:12, 246:13, 247:5, 247:6, 247:20, 247:21, 248:5, 248:6, 248:10, 248:11, 248:20, 248:21, 248:25, 249:2, 249:8, 249:9, 250:5, 252:9, 254:15, 254:20, 255:23, 256:10, 256:21, 257:11, 257:23, 258:1, 261:9, 262:18, 263:9, 263:12, 263:17, 264:3, 264:10, 264:16, 264:22, 265:6, 266:15, 267:9, 267:22, 268:24, 269:11, 270:12, 272:4, 274:11, 275:7, 276:1, 276:5, 276:7, 276:10, 276:17, 276:19, 279:18, 281:1, 281:25, 282:2, 282:25, 287:14, 287:18, 288:4, 288:6, 291:16, 293:21, 293:24, 294:5, 294:9, 294:14, 294:21, 294:24, 295:9, 295:21, 297:18, 298:10, 299:1, 299:17, 300:10, 301:2, 301:17
CHAIKEN'S [1] - 278:6
CHANCE [4] - 135:17, 170:10, 275:24, 296:2
CHANGE [8] - 199:17, 199:18, 199:21, 238:16, 268:11, 296:8, 297:2, 302:1
CHANGED [4] - 186:19, 295:6, 296:20, 302:10
CHANGES [2] - 260:4, 301:23
CHANGING [1] - 236:3
CHARACTER [1] - 264:17
CHARACTERIZE [1] - 280:13
CHARGE [11] - 169:7, 170:1, 265:14, 273:21, 273:25, 275:11, 281:18, 296:1, 296:4, 296:24, 297:6
CHARGED [16] - 138:9, 138:10, 181:10, 254:25, 255:1, 255:4, 256:25, 257:6, 257:8, 257:16, 278:24, 296:11,

296:14, 296:25, 297:1, 297:3
CHARGES [1] - 262:10
CHARGING [1] - 300:11
CHARLES [4] - 240:10, 240:12, 243:18
CHART [2] - 295:10, 295:14
CHASE [1] - 222:16
CHASE [1] - 142:23
CHECK [43] - 149:20, 149:24, 150:1, 150:2, 150:4, 151:1, 151:8, 151:12, 151:14, 151:24, 152:3, 152:7, 152:11, 152:16, 152:19, 152:23, 153:3, 153:16, 154:7, 154:15, 154:18, 156:5, 156:6, 156:16, 156:19, 160:13, 169:11, 169:14, 173:25, 175:10, 213:9, 213:13, 213:17, 213:19, 214:5, 214:8, 215:17, 216:10, 216:23, 217:1, 217:17, 219:24, 261:18
CHECKS [12] - 154:8, 156:4, 156:14, 216:21, 218:16, 218:17, 218:19, 218:22, 220:7, 220:9, 221:16, 221:18
CHECKSTUBSINFO@GMAIL.COM [1] - 196:2
CHILDREN [5] - 139:8, 139:11, 140:12, 140:15, 140:19
CHOOSE [1] - 253:23
CHOOSED [1] - 211:11
CHOSE [1] - 286:12
CIRCUIT [4] - 282:10, 282:19, 284:19, 288:20
CIRCUIT [21] - 270:16, 272:11, 276:13, 276:21, 277:23, 277:24, 278:5, 279:15, 280:19, 282:4, 282:5, 282:16, 282:17, 282:18, 288:9, 288:10, 288:11, 288:17
CIRCUIT'S [1] - 269:19
CIRCUITS [2] - 288:8, 289:7
CIRCUMSTANCES [6] - 267:23, 283:3, 283:13, 283:19, 284:2, 289:9
CIRCUMSTANTIAL [1] - 260:9
CITATIONS [2] - 273:22, 274:4
CITE [1] - 1:5
CITE [2] - 276:15, 277:23
CITED [2] - 277:25, 288:7
CITES [2] - 282:3, 282:16
CITING [1] - 278:6
CITY [1] - 163:6
CLARIFICATION [2] - 183:7, 185:8
CLEAR [13] - 221:14, 244:9, 253:12, 255:7, 258:18, 265:20, 268:22, 290:16, 290:18, 290:19, 290:24, 297:4, 299:22
CLERK [1] - 137:13
CLERK [1] - 284:18
CLIENT [4] - 134:2, 135:11, 260:5, 268:17
CLOSE [2] - 152:3, 211:18
CLOSED [3] - 216:3, 258:10, 258:17
CLOSELY [2] - 188:4, 201:20
CLOSING [5] - 261:2, 277:13, 280:12, 291:17, 293:22
CLOSINGS [1] - 258:12
CLUB [1] - 235:8
CM/ECF [2] - 1:3, 1:5
CO [15] - 141:24, 172:5, 254:18, 264:23, 265:1, 268:2, 268:5, 279:22, 279:24, 280:1, 280:3, 287:1, 287:3, 287:7
CO-CONSPIRATOR [4] - 279:22, 279:24, 280:1, 280:3
CO-DEFENDANT [3] - 264:23, 265:1, 268:2
CO-DEFENDANTS [4] - 268:5, 287:1, 287:3, 287:7
CO-DEFENDANTS' [1] - 254:18
CO-FOUNDERS [1] - 172:5
CO-ORGANIZERS [1] - 172:5
CO-OWNERS [1] - 141:24
COGNITIVE [1] - 189:1
COLLEGE [1] - 166:17
COMBINED [2] - 298:15, 298:19
COMFORT [3] - 252:16, 255:20, 275:16
COMING [11] - 151:8, 161:4, 214:16, 221:23, 222:24, 241:13, 242:10, 251:17, 268:12, 275:11, 301:9
COMMENT [1] - 295:19
COMMENTARY [2] - 276:24, 280:20
COMMITTED [1] - 182:2
COMMUNICATED [1] - 253:11
COMMUNICATING [1] - 293:13
COMMUNICATION [1] - 273:11
COMMUNICATIONS [12] - 207:17, 207:20, 207:24, 208:10, 208:16, 210:4, 232:12, 232:13, 232:15, 236:8, 292:22, 293:1
COMPANIES [3] - 162:4, 200:15, 201:1
COMPANY [27] - 141:12, 141:13, 141:15, 141:24, 148:12, 148:20, 148:23, 149:17, 150:2, 150:4, 151:12, 151:18, 151:19, 161:23, 162:1, 169:24, 172:2, 175:18, 184:17, 208:17, 244:22, 247:10, 247:13, 250:21, 295:6
COMPANY'S [1] - 143:16
COMPARE [1] - 298:7
COMPLETED [1] - 238:4
COMPONENT [2] - 278:13, 285:11
COMPUTER [9] - 177:3, 177:8, 178:9, 178:14, 178:18, 243:18, 276:10, 276:19
COMPUTERS [5] - 177:13, 177:15, 177:19, 177:22, 178:24
CONCEAL [9] - 185:3, 250:1, 250:25, 260:7, 269:24, 269:25, 270:24, 271:4
CONCEALMENT [5] - 269:8, 269:20, 269:21, 270:5, 270:22
CONCEPT [1] - 280:10
CONCERN [2] - 266:22, 300:2
CONCERNED [4] - 284:21, 292:14, 298:7, 302:12
CONCLUDE [2] - 272:7, 289:19
CONCLUDES [1] - 258:1
CONDITIONAL [1] - 281:4
CONDUCT [1] - 255:3
CONFERENCE [2] - 135:18, 294:12
CONFESSION [1] - 266:18
CONFIRM [1] - 206:9
CONFIRMATION [1] - 220:16
CONNECTED [3] - 228:3, 229:4, 242:22
CONNECTION [4] - 228:5, 256:25, 257:6, 257:9
CONSIDER [5] - 141:4, 253:25, 266:21, 280:5, 289:24
CONSIDERED [5] - 282:11, 282:19, 284:20, 288:8, 288:20
CONSIDERING [1] - 254:20
CONSISTENT [1] - 301:3
CONSOLIDATED [1] - 262:14
CONSPIRACY [2] - 279:25, 296:20
CONSPIRATOR [4] - 279:22, 279:24, 280:1, 280:3
CONSTITUTE [1] - 289:13
CONSTITUTIONAL [1] - 288:19
CONSTRUCTION [7] - 150:17, 151:18, 152:8, 168:22, 186:18, 189:8, 205:5
CONSTRUCTIVE [1] - 260:12
CONSULT [1] - 135:17
CONSULTATION [1] - 253:6
CONSULTING [6] - 148:24, 149:7, 150:12, 169:17, 215:10, 215:18
CONTACT [1] - 143:19
CONTENDS [4] - 279:5, 279:6, 279:10, 280:23
CONTENT [1] - 155:14
CONTINUE [2] - 156:7, 212:19
CONTINUED [5] - 212:1, 212:16, 255:25, 275:23, 302:14
CONTRACT [1] - 238:6
CONTRACTOR [1] - 168:18
CONTRACTORS [1] - 169:5
CONTRACTS [1] - 201:2
CONTROL [5] - 270:25, 285:8, 288:13, 288:20, 289:5
CONTROLLED [2] - 185:5, 251:3
CONTROVERSY [1] - 299:12
CONVERSATION [10] - 134:2, 212:8, 226:10, 227:8, 233:9, 241:6, 242:25, 294:18, 298:22, 298:25
CONVERSATIONS [1] - 290:17
CONVICT [1] - 270:4
CONVICTION [1] - 264:4
COOPERATION [2] - 228:6, 229:5
COPIED [4] - 228:10, 228:17, 235:23, 236:9
COPIES [2] - 205:9, 235:6
COPY [4] - 210:9, 293:25, 294:9, 295:13
CORPORATE [1] - 200:15
CORRECT [170] - 133:4, 133:5, 135:18, 137:16, 146:16, 147:18, 147:19, 150:24, 155:4, 157:25, 158:16, 163:2, 164:7, 164:8, 164:25, 166:9, 178:15,

179:7, 179:10, 181:11, 181:20, 181:21, 181:23, 181:24, 181:25, 182:4, 182:6, 182:11, 183:14, 184:25, 185:6, 185:10, 185:11, 185:17, 185:21, 186:13, 188:10, 188:15, 190:4, 190:11, 190:17, 191:6, 192:2, 192:8, 192:11, 193:12, 196:3, 197:11, 197:13, 197:17, 197:21, 198:2, 198:5, 198:12, 198:21, 198:23, 199:1, 199:3, 199:9, 199:15, 199:19, 199:22, 201:11, 202:23, 203:5, 203:8, 203:13, 206:14, 213:10, 213:15, 213:20, 214:1, 215:10, 215:13, 215:15, 216:18, 216:22, 216:24, 217:2, 217:4, 217:7, 217:15, 217:19, 217:20, 217:25, 218:6, 218:9, 218:10, 219:1, 219:3, 219:7, 219:14, 220:10, 220:11, 220:17, 220:20, 220:23, 221:2, 221:17, 222:1, 222:19, 223:5, 223:8, 223:10, 223:13, 223:19, 223:22, 224:1, 224:4, 224:7, 224:16, 225:6, 225:8, 226:11, 226:18, 227:23, 228:18, 228:21, 229:6, 229:12, 230:8, 230:16, 230:19, 231:6, 231:13, 232:8, 239:15, 243:24, 244:17, 244:23, 245:5, 245:7, 246:15, 246:18, 246:22, 246:25, 247:3, 247:8, 247:13, 247:18, 247:22, 248:8, 248:12, 248:23, 249:3, 249:11, 249:17, 249:20, 250:3, 251:6, 251:14, 253:8, 253:14, 263:2, 263:3, 266:14, 268:23, 268:25, 269:2, 270:2, 287:16, 295:9, 297:9, 297:13, 297:15, 297:17, 299:24, 303:7

CORRECTLY [3] - 133:12, 254:4, 286:18

CORRESPOND [1] - 295:10

CORROBORATE [1] - 210:7

COUDRIET [2] - 130:24, 303:15

COUNSEL [10] - 133:7, 135:13, 135:14, 136:3, 252:15, 252:17, 253:11, 284:25, 299:2

COUNT [3] - 138:15, 159:24, 259:13

COUNT [8] - 159:25, 259:16, 260:15, 261:3, 279:9, 296:14, 300:11, 300:16

COUNTS [9] - 138:9, 138:13, 259:5, 259:20, 260:2, 278:24, 296:11, 296:25, 301:19

COUNTS [2] - 296:14

COUPLE [9] - 142:15, 167:15, 168:17, 170:24, 177:1, 203:18, 236:18, 252:15, 262:23

COURSE [2] - 184:11, 258:20

COURT [209] - 1:4, 1:7, 1:10, 130:1, 130:24, 130:25, 132:1, 132:2, 132:7, 132:11, 132:21, 133:2, 133:6, 133:11, 133:15, 133:20, 133:24, 134:3, 134:6, 134:8, 134:13, 134:16, 134:21, 134:24, 135:4, 135:9, 135:20, 136:2, 136:7, 136:9, 136:11, 136:20, 136:23, 137:5, 137:11, 147:15, 155:23, 165:5, 180:24, 181:1, 181:3, 184:1, 184:11, 186:4, 186:8, 186:25, 187:14, 187:18, 195:17, 195:22, 196:16, 197:8, 209:25, 210:5, 210:14, 210:16, 210:19, 211:15, 211:21, 212:2, 212:6, 212:12, 212:18, 230:3, 231:16, 231:20, 231:22, 234:25, 245:16, 245:19, 245:21, 245:23, 246:9, 246:11, 252:7, 252:11, 252:14, 252:22, 252:24, 253:2, 253:5, 253:9, 253:16, 253:20, 253:23, 254:3, 254:6, 254:10, 254:17, 255:9, 255:11, 255:15, 255:19, 256:1, 256:5, 256:8, 256:13, 257:12, 257:24, 258:3, 258:9, 258:25, 259:24, 261:7, 262:5, 262:20, 262:25, 263:4, 263:7, 263:11, 263:13, 263:16, 263:19, 263:21, 263:23, 263:25, 264:6, 264:9, 264:15, 264:21, 265:5, 265:8, 265:11, 265:18, 265:24, 266:3, 266:6, 266:10, 266:16, 267:12, 267:16, 268:8, 268:14, 268:21, 268:25, 269:2, 269:4, 269:12, 270:6, 270:11, 271:6, 271:9, 271:16, 271:18, 271:24, 272:24, 273:23, 274:13, 274:21, 275:10, 275:24, 276:2, 276:6, 276:9, 276:15, 276:18, 277:21, 278:4, 279:17, 280:15, 281:2, 281:19, 281:22, 282:1, 282:23, 284:7, 284:24, 285:16, 286:16, 286:20, 287:16, 287:23, 288:5, 290:1, 290:25, 291:20, 291:24, 292:5, 292:10, 293:19, 293:23, 294:3, 294:7, 294:11, 294:19, 294:22, 295:1, 295:4, 295:18, 295:23, 296:7, 297:4, 297:10, 297:15, 297:17, 297:19, 298:14, 299:3, 299:9, 299:22, 300:6, 300:18, 300:22, 301:12, 301:15, 301:22, 302:2, 303:3, 303:15

COURT [18] - 274:12, 274:18, 276:25, 277:4, 277:8, 277:18, 280:22, 282:5, 284:13, 285:2, 288:17, 289:6, 289:11, 289:19, 293:21, 295:11, 298:11

COURT [7] - 138:3, 145:11, 182:21, 209:23, 277:4, 277:6, 287:17

COURT'S [2] - 269:18, 274:17

COURTHOUSE [2] - 185:20, 186:10

COURTROOM [8] - 134:15, 134:20, 136:22, 211:24, 212:17, 252:21, 256:4, 258:24

COURTROOM [1] - 137:13

COUSIN [15] - 141:17, 141:22, 143:7, 144:23, 150:2, 150:4, 158:7, 159:18, 159:23, 161:20, 173:12, 188:4, 201:17, 201:24, 241:1

COUSIN'S [1] - 150:7

COVERED [1] - 280:10

COVERS [1] - 266:6

CRACKER [4] - 225:24, 228:13, 228:20, 229:8

CRAZY [1] - 209:5

CREATE [11] - 192:7, 197:16, 197:19, 198:20, 198:23, 198:25, 199:3, 199:8, 233:6, 246:20, 247:17

CREATED [4] - 192:4, 232:23, 235:3, 255:2

CREDENTIALS [2] - 226:21, 227:4

CREDIBILITY [2] - 196:15, 197:6

CREDIT [6] - 154:16, 154:21, 175:3, 197:21, 198:1

CRIMINAL [2] - 257:17, 270:13

CROSS [2] - 131:4, 181:5

CROSS [5] - 180:24, 211:18, 257:12, 292:15, 298:23

CROSS-EXAMINATION [1] - 292:15

CROSS-EXAMINATION [1] - 181:5

CROSS-EXAMINATION.....181 [1] - 131:4

CROSSED [1] - 292:23

CRR [2] - 130:24, 303:15

CUELLAR [1] - 269:19

CULPABILITY [1] - 255:3

CUT [1] - 198:15

D

DAILY [5] - 150:12, 150:16, 189:4, 215:12, 215:18

DALLAS [2] - 221:1, 239:18

DARRELL [72] - 144:9, 144:10, 144:11, 144:15, 144:25, 150:23, 173:6, 173:8, 190:3, 190:5, 190:7, 190:16, 190:19, 190:21, 191:5, 191:8, 191:14, 192:10, 192:21, 192:24, 193:5, 193:7, 193:23, 193:25, 194:10, 194:13, 194:22, 194:23, 195:2, 195:11, 214:19, 223:25, 224:9, 225:14, 225:19, 225:24, 227:18, 228:5, 228:10, 228:17, 229:9, 230:7, 230:10, 231:2, 232:13, 232:14, 232:15, 232:21, 233:2, 233:5, 240:25, 241:15, 241:21, 242:6, 242:12, 246:6, 246:15, 246:20, 246:24, 247:7, 247:24, 248:7, 249:17, 249:23, 251:5, 273:8, 273:20, 290:20, 292:22, 293:1, 293:3

DATE [25] - 142:14, 146:3, 151:11, 152:3, 152:18, 154:8, 156:8, 156:11, 156:13, 157:19, 159:5, 159:7, 159:15, 171:19, 202:5, 203:25, 224:17, 224:19, 225:17, 235:17, 236:4, 257:17, 257:18

DATED [2] - 172:21, 231:8

DATES [3] - 142:15, 146:9, 176:7

DAVID [2] - 279:21, 279:24

DAVID [1] - 130:20

DAYS [2] - 177:1, 177:2

DAYS [1] - 1:5

DC [2] - 282:18, 285:22

DEAL [5] - 150:13, 173:12, 200:20, 200:24, 278:18

DEALS [1] - 201:3

DEALT [1] - 138:19

DEANA [2] - 137:9, 179:7
DECADES [1] - 200:11
DECIDE [5] - 132:22, 161:22, 267:6, 267:17, 287:7
DECIDED [10] - 133:12, 189:8, 214:22, 241:4, 241:5, 253:6, 254:8, 283:12, 286:25
DECIDES [1] - 289:12
DECISION [15] - 132:4, 132:8, 135:15, 253:7, 253:21, 254:3, 254:6, 269:18, 269:19, 279:16, 287:3, 288:7, 289:3, 289:15, 291:7
DEFENDANT [19] - 209:21, 263:10, 263:18, 264:18, 264:23, 265:1, 267:5, 268:2, 270:4, 270:23, 274:15, 276:23, 277:1, 280:20, 288:12, 288:15, 289:1, 289:22, 289:23
DEFENDANT [10] - 179:3, 184:15, 244:21, 250:19, 296:11, 296:13, 296:16, 296:17, 297:7, 300:13
DEFENDANT [12] - 130:17, 130:20, 132:20, 133:1, 133:5, 133:14, 253:15, 253:19, 253:22, 254:2, 254:5, 254:9
DEFENDANT'S [2] - 167:7, 169:11
DEFENDANT'S [2] - 275:1, 277:7
DEFENDANT-FRIENDLY [2] - 276:23, 280:20
DEFENDANTS [1] - 296:19
DEFENDANTS [11] - 138:6, 262:10, 266:19, 268:5, 287:1, 287:3, 287:7, 291:18, 291:21, 296:4, 296:11
DEFENDANTS [1] - 130:8
DEFENDANTS' [2] - 254:18, 276:3
DEFENSE [20] - 137:17, 170:4, 255:6, 256:7, 259:15, 262:3, 268:3, 276:3, 276:22, 280:2, 280:9, 280:11, 281:10, 283:15, 284:6, 287:2, 291:14, 299:2, 300:19
DEFENSE [1] - 205:19
DEFER [1] - 268:10
DEFINE [2] - 269:20, 269:23
DEFINITELY [2] - 180:14, 180:15
DEFINITION [1] - 260:23
DELETE [5] - 265:8, 297:7, 297:10, 297:12, 300:11
DELETED [1] - 296:12
DELETING [1] - 268:22
DELIBERATE [5] - 272:4, 272:13, 272:22, 273:24, 298:3
DELIBERATE [1] - 274:24
DELIBERATELY [1] - 273:15
DELIBERATES [1] - 280:6
DELIBERATIONS [7] - 254:1, 258:16, 258:17, 258:19, 277:10, 280:6, 294:2
DEMAND [1] - 300:7
DENIED [2] - 285:14, 292:20
DENY [3] - 211:16, 262:6, 285:16
DEPARTMENT [3] - 283:8, 285:19, 287:19
DEPENDENT [1] - 288:25
DEPICT [1] - 164:10
DEPOSIT [5] - 148:5, 151:2, 173:2, 173:15, 213:25
DEPOSITED [2] - 152:4, 213:19
DEPOSITS [4] - 146:1, 172:18, 172:21, 241:11
DEPTH [1] - 167:5
DEPUTY [1] - 137:13
DERIVED [1] - 261:12
DESCRIBE [1] - 298:22
DESCRIBING [1] - 278:19
DESIGN [2] - 162:7, 271:2
DESIGNED [4] - 185:2, 250:25, 270:24, 271:3
DESIRED [2] - 277:7, 280:21
DESK [1] - 177:7
DESKTOP [2] - 177:9, 178:9
DESPERATE [3] - 228:13, 228:21, 229:8
DETAIL [2] - 215:5, 287:9
DETAINED [3] - 266:20, 266:24, 267:2
DIAGNOSED [1] - 188:7
DIFFERENT [7] - 147:16, 260:25, 270:13, 278:10, 279:13, 286:24, 300:25
DIFFERENTLY [1] - 147:16
DIRECT [2] - 183:19, 260:4
DIRECT [2] - 131:4, 137:23
DIRECTIVES [1] - 273:8
DIRECTLY [1] - 293:3
DISABLED [1] - 188:14
DISAGREE [3] - 185:13, 185:17, 299:14
DISAGREEMENT [1] - 183:3
DISAGREEMENTS [1] - 183:7
DISBURSED [1] - 145:19
DISCRETION [3] - 289:9, 289:14, 289:24
DISCUSS [11] - 134:25, 147:25, 161:1, 167:2, 252:15, 252:17, 265:5, 265:12, 265:18, 269:10, 296:2
DISCUSSED [8] - 135:21, 145:3, 160:23, 166:23, 212:6, 254:3, 254:6, 294:11
DISCUSSING [2] - 150:20, 224:9
DISCUSSION [8] - 134:7, 145:15, 150:20, 161:9, 212:14, 262:11, 263:6, 265:12
DISCUSSIONS [3] - 146:25, 166:25, 233:23
DISGUISE [2] - 269:24, 270:25
DISK [1] - 245:17
DISPUTE [2] - 195:20, 270:2
DISPUTES [1] - 298:17
DISRESPECT [1] - 195:12
DISRESPECTFUL [3] - 207:8, 207:25, 209:19
DISTRIBUTED [1] - 265:21
DISTRICT [6] - 130:1, 130:1, 130:10, 130:25, 303:3, 303:4
DISTRICT [3] - 270:20, 277:4, 277:6
DIVISION [1] - 130:2
DIVORCE [4] - 140:2, 140:4, 140:25, 202:17
DIVORCED [4] - 139:16, 139:19, 176:11, 176:14
DIVULGE [1] - 166:12
DIXON [13] - 281:23, 283:2, 283:6, 283:12, 283:15, 283:19, 284:3, 285:15, 285:25, 286:3, 286:22, 287:8, 302:7
DIXON'S [2] - 290:17, 290:19
DOCKET [1] - 299:17
DOCKET [2] - 1:6, 130:5
DOCTOR'S [1] - 197:16
DOCTORED [1] - 209:11
DOCUMENT [31] - 142:10, 142:18, 142:20, 146:12, 154:1, 154:4, 158:21, 158:24, 159:1, 159:10, 159:15, 160:17, 171:7, 171:10, 171:17, 171:21, 172:10, 178:1, 193:25, 194:10, 198:10, 200:4, 228:15, 230:18, 233:16, 233:17, 234:18, 235:10, 235:13, 236:1, 236:5
DOCUMENT [1] - 1:10
DOCUMENT [2] - 262:13, 299:15
DOCUMENTATION [2] - 191:13, 198:3
DOCUMENTS [17] - 164:6, 190:17, 192:4, 195:16, 196:2, 196:14, 196:19, 199:8, 199:25, 209:10, 235:2, 235:3, 236:6, 236:7, 236:15, 247:17, 299:18
DOG [1] - 281:20
DOLLAR [3] - 152:1, 152:21, 172:23
DOLLARS [1] - 200:18
DOMESTIC [1] - 159:3
DONE [13] - 134:25, 152:8, 162:12, 173:12, 211:10, 220:7, 224:23, 234:19, 238:1, 266:4, 283:13, 298:7, 299:8
DOUBT [5] - 193:17, 193:22, 260:10, 260:20, 262:10
DOWN [32] - 142:14, 148:7, 149:20, 151:7, 153:11, 154:18, 158:19, 159:9, 169:11, 169:12, 173:17, 173:18, 174:19, 175:15, 178:11, 180:9, 206:25, 207:1, 210:22, 212:23, 213:7, 216:1, 219:16, 231:5, 237:3, 251:13, 252:12, 257:24, 275:15, 285:23, 303:7
DOWNWARD [1] - 296:6
DOZENS [1] - 287:1
DRAFT [1] - 224:12
DRAFTED [1] - 197:24
DRINKS [2] - 167:15, 203:18
DRIVE [2] - 245:17, 245:18
DRIVER'S [2] - 197:13, 236:4
DRIVEWAY [2] - 218:2, 218:5
DRIVING [1] - 248:14
DUI [2] - 248:8, 248:15
DULY [2] - 135:8, 137:20
DURATION [1] - 148:21

DURING [14] - 139:24, 148:20, 168:5, 176:25, 226:10, 229:15, 238:11, 238:16, 245:8, 246:25, 259:15, 259:17, 290:6, 293:13
DURRETT [4] - 132:15, 284:22, 287:24, 290:3
DURRETT [4] - 130:18, 285:1, 286:2, 287:25
DUTY [1] - 209:21
DYSFUNCTION [1] - 188:8

E

E-MAIL [29] - 190:10, 192:2, 192:22, 193:4, 193:11, 193:12, 193:18, 193:23, 193:24, 194:1, 194:2, 194:6, 194:9, 194:12, 194:21, 195:8, 195:10, 230:7, 231:25, 232:10, 232:20, 235:17, 235:23, 247:7, 249:23, 266:1, 273:5, 273:11
E-MAILED [6] - 173:21, 190:7, 193:23, 195:10, 231:2, 265:16
E-MAILING [1] - 193:15
E-MAILS [2] - 196:6, 210:12
EARLY [2] - 223:4, 258:22
EARNINGS [1] - 199:9
EASIER [1] - 301:25
EAT [1] - 239:21
ECONOMY [1] - 215:24
EDITING [1] - 267:4
EFFECT [1] - 270:1
EITHER [3] - 132:19, 253:17, 275:13
ELECTED [2] - 135:12, 284:25
ELEMENT [11] - 260:18, 260:25, 261:11, 261:17, 269:8, 269:20, 269:21, 270:21, 270:22, 277:15, 278:25
ELEMENTS [4] - 260:13, 260:16, 261:11, 261:25
ELEVENTH [11] - 269:19, 270:16, 272:11, 276:13, 276:21, 277:24, 278:5, 279:15, 280:19, 282:4, 282:5
ELICIT [1] - 210:6
EMPLOYEE [2] - 199:14, 246:5
EMPLOYEES [14] - 162:20, 168:25, 169:3, 216:7, 233:6, 233:7, 233:14, 246:18, 248:3, 248:18, 249:6, 249:14, 249:20
EMPLOYER'S [1] - 199:18
ENCROACHMENT [1] - 289:14
END [2] - 170:8, 211:18
ENDED [2] - 191:3, 218:18
ENGAGED [2] - 287:4
ENGAGING [1] - 278:15
ENTERED [4] - 134:15, 136:22, 212:17, 256:4
ENTERPRISE [4] - 151:12, 151:16, 151:17, 156:6
ENTERPRISES [3] - 156:19, 217:22, 248:22
ENTERS [1] - 279:25
ENTERTAINMENT [1] - 278:14
ENTIRE [1] - 297:8
ENTIRELY [1] - 268:12
ENTIRETY [3] - 227:8, 281:5, 302:10
ENTITIES [2] - 238:3, 295:10
ENTITLE [1] - 289:22
ENTITLED [4] - 159:1, 277:1, 278:1, 288:3
ENTRY [1] - 1:6
ENTRY [5] - 157:15, 172:20, 174:19, 175:17, 299:18
ER [1] - 252:19
ERR [1] - 277:5
ESCAPED [1] - 255:2
ESPECIALLY [4] - 177:21, 272:5, 273:21, 293:13
ESQ [6] - 130:14, 130:15, 130:15, 130:18, 130:18, 130:20
ESSENTIAL [1] - 269:21
ESSENTIALLY [2] - 237:15, 281:9
ESTABLISH [2] - 254:24, 259:11
ESTABLISHED [3] - 238:23, 272:14, 279:1
ESTATE [14] - 161:18, 182:10, 203:8, 205:9, 207:18, 210:10, 217:10, 217:18, 226:13, 228:24, 242:22, 243:10, 243:23, 244:5
ET [1] - 284:20
EVENING [5] - 258:22, 291:10, 291:15, 293:20, 302:12
EVENTS [2] - 247:10, 247:25
EVENTUALLY [1] - 223:24
EVIDENCE [30] - 155:20, 196:15, 244:6, 254:18, 255:6, 258:10, 258:17, 259:13, 260:5, 260:9, 260:13, 262:7, 264:17, 265:7, 266:21, 267:5, 272:7, 272:12, 272:13, 272:14, 273:4, 273:14, 273:21, 274:3, 276:24, 277:18, 279:7, 280:14, 280:20, 284:4
EX [12] - 141:3, 148:12, 148:20, 149:1, 169:25, 170:17, 174:4, 176:10, 179:17, 185:6, 234:10, 251:4
EX-WIFE [9] - 141:3, 148:20, 149:1, 169:25, 170:17, 174:4, 176:10, 185:6, 251:4
EX-WIFE'S [3] - 148:12, 179:17, 234:10
EXACT [3] - 186:6, 224:17, 246:4
EXACTLY [1] - 280:22
EXAGGERATION [1] - 278:18
EXAMINATION [7] - 137:23, 181:5, 232:3, 243:15, 250:8, 256:20, 257:14
EXAMINATION [1] - 292:15
EXAMINATION.....181 [1] - 131:4
EXAMINATION.....137 [1] - 131:4
EXAMINATION.....243 [1] - 131:5
EXAMINATION.....232 [1] - 131:5
EXAMINATION.....257 [1] - 131:9
EXAMINATION.....250 [1] - 131:6
EXAMINATION.....256 [1] - 131:8
EXAMINED [2] - 137:21, 256:17
EXAMPLE [2] - 201:1, 250:19
EXCEPTION [1] - 289:7
EXCEPTIONS [1] - 289:25
EXCERPTS [1] - 302:8
EXCHANGE [1] - 265:1
EXCHANGED [2] - 209:6, 227:22
EXCULPATORY [1] - 289:10
EXCUSE [6] - 156:17, 183:22, 197:17, 200:21, 250:18, 252:23
EXCUSED [3] - 252:13, 252:23, 257:25
EXHIBIT [7] - 151:13, 154:1, 160:13, 160:18, 169:9, 170:4, 251:25
EXHIBIT [32] - 142:7, 143:12, 143:15, 145:25, 146:13, 148:6, 149:20, 151:6, 158:18, 160:15, 167:8, 168:10, 169:11, 170:3, 170:25, 172:8, 178:1, 191:25, 192:16, 194:12, 194:19, 205:19, 205:22, 210:24, 212:23, 213:7, 220:14, 229:22, 230:25, 231:24, 237:1
EXHIBITS [2] - 163:21, 245:12
EXHIBITS [16] - 148:9, 163:22, 164:1, 170:25, 229:22, 245:12, 245:21, 245:22, 295:16, 297:25, 298:1, 298:4, 298:5, 298:11, 298:12, 298:19
EXIST [1] - 206:10
EXISTENCE [1] - 149:10
EXISTS [2] - 206:2, 206:4
EXITED [4] - 134:20, 211:24, 252:21, 258:24
EXPECTATION [1] - 268:5
EXPECTED [1] - 283:18
EXPENSES [1] - 157:11
EXPERIENCE [1] - 234:22
EXPERIMENT [1] - 278:16
EXPIRATION [1] - 236:4
EXPLAIN [1] - 180:8
EXPLAINED [7] - 180:10, 182:14, 183:10, 270:22, 271:5, 276:22, 295:11
EXTENT [1] - 298:16

F

F.3D [1] - 288:9
F.APP'X [5] - 276:13, 276:15, 276:17, 278:7, 282:4
FABRICATED [2] - 195:2, 195:5
FABRICATION [1] - 196:14
FACED [1] - 290:4
FACILITY [1] - 165:13
FACT [6] - 185:9, 188:14, 229:17, 253:25, 261:19, 262:9
FACTS [10] - 182:22, 183:2, 183:3, 183:10, 186:23, 268:20, 272:21, 277:3, 277:13, 279:3
FACTUAL [6] - 182:15, 182:19, 238:12,

251:13, 277:8, 280:21
FAILURE [1] - 289:20
FAIR [4] - 164:9, 179:22, 199:24, 271:9
FAITH [1] - 290:21
FAKE [29] - 191:8, 191:11, 191:13, 191:15, 191:19, 192:4, 192:7, 192:20, 193:6, 195:11, 196:2, 196:22, 196:24, 197:16, 197:19, 198:20, 198:23, 198:25, 199:3, 199:4, 199:8, 199:25, 233:6, 233:13, 235:3, 236:1, 236:7
FAMILY [1] - 201:15
FAR [12] - 166:15, 170:6, 170:7, 196:3, 196:20, 255:12, 262:1, 271:11, 278:1, 291:16, 296:20, 298:10
FAULT [1] - 137:2
FAVORABLE [9] - 262:8, 267:25, 283:15, 284:3, 285:4, 285:9, 285:15, 289:2, 290:20
FAVORABLY [1] - 284:6
FBI [9] - 170:12, 189:25, 224:2, 224:3, 224:6, 225:24, 227:6, 227:10, 227:16
FEBRUARY [1] - 130:11
FEBRUARY [2] - 302:14, 303:9
FEELINGS [1] - 268:9
FEES [4] - 150:12, 169:17, 215:18, 237:25
FELONY [1] - 264:4
FELT [1] - 202:14
FEW [6] - 138:22, 168:17, 200:3, 209:3, 226:8, 275:15
FIFTH [17] - 133:3, 135:1, 135:23, 253:13, 277:22, 282:13, 282:16, 283:20, 283:22, 283:24, 287:8, 288:8, 288:10, 288:11, 288:17, 288:22, 289:21
FIGURED [2] - 247:1, 247:2
FILE [3] - 140:24, 202:16, 271:22
FILED [3] - 1:3, 1:8, 1:10
FILED [4] - 140:2, 140:4, 265:20, 265:22
FILINGS [2] - 291:10, 297:22
FILL [5] - 150:8, 150:9, 229:17, 233:13, 273:18
FILLED [6] - 143:16, 230:21, 232:7, 246:5, 250:3, 272:16
FILLING [1] - 281:8
FINAL [1] - 139:23
FINALLY [3] - 145:18, 180:6, 232:20
FINANCES [1] - 162:21
FINANCIAL [2] - 260:7, 261:18
FINANCING [2] - 241:22
FINDINGS [2] - 277:8, 280:21
FINE [7] - 151:5, 154:2, 212:12, 255:18, 264:8, 294:8, 301:17
FINISH [1] - 295:23
FIRST [30] - 132:18, 138:3, 141:22, 148:11, 160:13, 171:23, 172:20, 174:2, 174:19, 194:7, 194:15, 198:14, 201:24, 213:9, 217:1, 217:4, 225:9, 228:16, 236:15, 253:13, 269:16, 272:24, 276:3, 282:2, 283:5, 288:6, 296:5, 296:13, 301:7, 301:9
FIRST [1] - 282:17
FIVE [3] - 205:8, 254:16
FIX [1] - 296:18
FLAGPOLE [1] - 290:7
FLESH [1] - 239:13
FLIPPED [1] - 299:24
FLY [1] - 290:4
FOCUS [1] - 186:1
FOCUSED [1] - 187:11
FOLLOW [3] - 239:11, 243:5, 246:4
FOLLOW-UP [1] - 243:5
FOLLOWING [1] - 1:2
FOLLOWS [7] - 137:21, 212:1, 212:16, 255:25, 256:18, 275:23, 302:14
FOOTNOTE [2] - 282:3, 282:10
FOR [2] - 1:5, 130:1
FORCED [1] - 293:5
FOREGOING [1] - 303:6
FORGOT [4] - 134:17, 137:1, 227:13, 266:10
FORGOTTEN [1] - 195:5
FORM [18] - 140:24, 143:17, 171:6, 232:7, 233:13, 233:24, 236:25, 250:2, 299:11, 299:16, 299:20, 299:23, 300:3, 300:22, 301:19, 302:3, 302:4
FORMALLY [3] - 136:16, 255:13, 255:21
FORMED [1] - 172:3
FORMS [5] - 159:24, 199:3, 199:5, 299:4, 299:6
FORTH [9] - 153:12, 163:18, 164:24, 168:20, 178:21, 189:25, 210:4, 240:1, 277:14
FOSTER [34] - 132:4, 132:12, 133:11, 137:4, 138:7, 253:10, 254:24, 255:7, 257:8, 259:5, 259:18, 259:21, 263:1, 265:14, 267:1, 274:9, 274:10, 274:20, 275:4, 277:13, 279:5, 279:9, 282:3, 290:21, 292:21, 292:22, 292:24, 293:7, 293:12, 293:13, 296:20, 299:19, 299:24, 301:18
FOSTER [11] - 130:7, 130:17, 132:20, 133:1, 133:5, 133:14, 253:19, 253:22, 254:2, 254:5, 254:9
FOSTER'S [9] - 254:21, 270:9, 271:13, 277:12, 284:25, 292:18, 292:24, 293:1, 301:1
FOUNDATION [3] - 147:8, 161:7, 164:15
FOUNDERS [1] - 172:5
FOUR [3] - 194:24, 205:8, 291:18
FRAME [4] - 146:12, 149:9, 176:6, 177:21
FRANKLY [3] - 273:24, 284:21, 299:11
FRAUD [15] - 182:6, 189:12, 202:6, 257:9, 260:21, 260:23, 260:25, 261:3, 261:13, 261:15, 261:16, 261:20, 261:21, 271:19, 287:5
FRAUDULENT [10] - 147:5, 148:3, 161:15, 170:22, 179:23, 234:24, 246:7, 246:20, 247:2, 251:1
FRAUDULENTLY [2] - 185:3, 232:23
FREEZING [1] - 276:20
FREQUENTLY [1] - 274:5
FRIEND [1] - 151:22
FRIENDLY [2] - 276:23, 280:20
FROM [1] - 1:9
FRONT [10] - 136:17, 137:12, 205:11, 206:16, 206:22, 235:17, 244:11, 250:11, 262:13, 286:18
FULFILLING [1] - 277:9
FULL [1] - 1:9
FULL [4] - 138:2, 292:6, 292:7, 292:10
FULLY [2] - 265:2, 270:3
FUN [1] - 278:15
FUNCTION [1] - 189:1
FUNCTIONING [1] - 189:4
FUND [1] - 144:18
FUNDING [2] - 146:16, 170:14
FUNDS [24] - 151:1, 158:8, 158:14, 160:2, 160:8, 161:15, 169:14, 170:15, 185:24, 186:2, 186:17, 187:4, 187:8, 187:12, 191:2, 191:3, 241:19, 251:17, 259:14, 259:16, 260:6, 260:7, 272:9, 273:7
FURTHER [6] - 131:6, 131:8, 131:9, 250:8, 256:20, 257:14
FUTILE [1] - 290:14

G

GAIN [1] - 273:16
GAINES [4] - 131:3, 135:3, 137:19, 138:4
GAINES [168] - 134:3, 134:25, 135:8, 136:4, 136:12, 137:7, 137:12, 137:17, 138:4, 138:6, 141:7, 141:11, 141:13, 141:17, 141:22, 141:25, 142:4, 142:10, 143:8, 143:14, 143:18, 143:20, 144:1, 144:4, 144:15, 144:24, 145:4, 145:7, 145:10, 145:19, 146:15, 146:23, 147:5, 149:24, 150:21, 155:5, 158:15, 160:5, 160:23, 160:24, 161:23, 163:22, 164:19, 165:25, 166:19, 166:24, 170:6, 170:24, 171:16, 172:20, 178:16, 179:1, 181:7, 181:10, 182:9, 183:8, 183:11, 183:12, 184:4, 184:14, 184:15, 184:16, 184:23, 185:9, 185:10, 185:12, 186:1, 186:10, 186:12, 187:9, 187:13, 187:20, 187:21, 188:1, 189:6, 189:11, 189:12, 189:18, 190:13, 190:15, 190:20, 190:23, 191:4, 191:9, 191:11, 191:19, 192:2, 192:8, 192:19, 193:4, 193:6, 194:22, 196:1, 196:11, 196:18, 197:10, 199:19, 201:17, 201:19, 207:6, 207:12, 208:10, 209:7, 209:13, 211:1, 212:3, 212:11, 213:1, 213:9, 213:12, 214:23, 215:10, 220:16,

221:23, 221:25, 222:16, 222:18, 222:21, 222:24, 223:4, 223:12, 223:15, 223:18, 224:6, 224:10, 226:17, 228:3, 229:10, 229:11, 231:18, 235:2, 238:23, 239:23, 240:22, 243:17, 244:10, 244:16, 244:21, 244:22, 245:3, 246:7, 246:14, 246:22, 250:10, 250:20, 250:23, 252:6, 260:3, 264:24, 268:1, 268:18, 272:6, 272:15, 273:8, 273:10, 273:19, 287:9, 296:11, 296:14, 296:19, 297:7, 297:11, 297:12

GAINES'S [10] - 150:6, 185:6, 196:13, 197:6, 220:19, 224:12, 224:13, 251:3, 273:3, 273:25

GAINESMARTY@GMAIL.COM [4] - 190:10, 193:12, 194:13, 194:21

GAINING [1] - 267:25

GATHERED [1] - 209:10

GEARS [1] - 200:7

GEICO [2] - 175:17, 175:25

GENA [5] - 254:24, 255:6, 257:8, 292:18, 292:21

GENERAL [2] - 168:18, 278:20

GENERALIZED [1] - 188:8

GENERALLY [3] - 176:6, 260:2, 278:21

GENTLEMAN [1] - 144:6

GENTLEMEN [5] - 134:17, 136:25, 211:22, 252:14, 258:9

GEORGIA [4] - 157:3, 216:1, 221:1, 239:18

GEORGIA [4] - 130:1, 130:25, 132:1, 303:4

GIRL [2] - 157:23, 157:24

GIVEN [14] - 207:6, 267:23, 272:6, 272:19, 272:23, 274:5, 277:6, 279:16, 280:11, 283:15, 284:2, 286:11, 286:23

GLOBAL [2] - 215:22, 221:22

GM [1] - 157:21

GOODIE [1] - 271:12

GOOGLE [2] - 243:21, 244:1

GOVERNMENT [1] - 130:14

GOVERNMENT [11] - 170:3, 191:25, 194:12, 194:19, 210:24, 212:22, 213:6, 220:14, 229:22, 230:24, 245:12

GOVERNMENT [43] - 170:24, 183:23, 235:3, 254:13, 255:17, 259:9, 259:21, 262:8, 264:25, 265:15, 267:5, 268:6, 270:8, 273:18, 274:9, 274:22, 275:13, 276:4, 279:6, 279:10, 279:25, 280:4, 282:14, 283:2, 285:12, 285:14, 285:16, 286:3, 286:10, 286:14, 286:19, 286:22, 287:10, 288:14, 288:24, 289:18, 290:10, 290:15, 292:16, 292:25, 293:10, 300:19, 300:24

GOVERNMENT'S [15] - 142:7, 143:11, 143:14, 145:25, 146:13, 148:6, 149:20, 151:6, 158:18, 160:15, 170:25, 172:7, 177:25, 231:23, 237:1

GOVERNMENT'S [23] - 160:17, 184:10, 232:6, 254:18, 255:22, 260:8, 266:22, 275:3, 275:4, 275:24, 279:23, 281:3, 281:14, 282:6, 282:11, 282:20, 284:14, 288:13, 288:20, 288:21, 289:3, 289:5, 289:20

GRANT [19] - 282:7, 282:12, 282:20, 283:2, 283:6, 283:12, 284:5, 284:15, 285:5, 285:13, 285:20, 285:25, 286:22, 287:20, 288:14, 288:22, 289:4, 289:15, 289:20

GREAT [4] - 266:21, 273:18, 278:18, 287:9

GREATER [1] - 287:19

GROUND [1] - 215:25

GROUNDS [2] - 254:22, 261:22

GROWING [1] - 204:11

GUESS [29] - 133:8, 157:22, 172:18, 175:17, 176:6, 186:25, 192:6, 203:24, 204:22, 212:10, 212:11, 219:20, 222:9, 237:14, 238:11, 240:21, 242:16, 255:12, 255:15, 269:6, 271:11, 275:13, 277:23, 278:4, 278:7, 281:20, 284:12, 295:4, 300:24

GUIDANCE [1] - 277:10

GUILT [1] - 262:9

GUILTY [20] - 138:12, 181:19, 181:22, 182:13, 182:15, 182:17, 182:18, 254:19, 254:25, 261:2, 300:25, 301:5, 301:6, 301:8, 301:21, 302:5

GUILTYS [2] - 301:20

GUY [2] - 209:4, 227:16

GUYS [4] - 207:25, 209:9, 209:15, 211:9

H

HACK [1] - 195:9

HACKED [1] - 195:10

HALF [1] - 265:23

HALL [1] - 275:15

HALT [1] - 215:25

HAND [2] - 235:15, 237:7

HANDED [3] - 163:25, 164:6, 215:17

HANDLE [2] - 169:21, 221:1

HANDLING [1] - 162:21

HANDS [1] - 162:23

HANDWRITING [2] - 213:25, 230:18

HANG [2] - 239:16, 239:21

HAPPY [5] - 272:25, 281:5, 284:24, 298:16, 298:20

HAS [1] - 1:8

HAUL [1] - 239:19

HEAD [3] - 204:5, 272:8, 295:3

HEAR [17] - 255:21, 258:11, 269:15, 270:7, 272:3, 272:24, 272:25, 274:8, 281:5, 284:7, 284:8, 284:12, 284:24, 295:24, 297:5, 297:21

HEARD [7] - 184:1, 210:2, 271:19, 272:14, 272:21, 283:5, 283:10

HEARING [14] - 182:25, 183:17, 183:24, 184:5, 187:8, 195:1, 195:4, 238:12, 238:17, 239:7, 244:10, 245:8, 292:18, 292:24

HEARSAY [1] - 145:8

HEART [1] - 274:2

HEDGE [1] - 241:19

HELD [1] - 132:1

HELD [8] - 141:2, 180:17, 272:11, 277:4, 282:11, 282:20, 284:20, 288:21

HELP [4] - 169:18, 224:21, 229:5, 273:18

HELP [1] - 224:23

HELPED [1] - 143:7

HEREBY [2] - 279:20, 303:6

HEREIN [2] - 137:20, 256:17

HERSELF [2] - 250:3, 272:16

HIDE [4] - 141:9, 214:24, 220:9, 232:17

HIDING [3] - 292:21, 293:2, 293:6

HIGHLIGHT [5] - 143:23, 145:25, 146:9, 171:6, 178:2

HIGHLIGHTED [2] - 250:13, 280:23

HIRANI [22] - 142:6, 143:4, 143:11, 143:22, 145:24, 146:8, 148:7, 149:19, 151:4, 152:13, 153:25, 158:17, 158:24, 159:4, 159:9, 165:7, 169:10, 171:7, 171:13, 172:16, 173:17, 176:4

HIRE [3] - 169:3, 237:22, 237:23

HIRING [1] - 187:7

HISTORICAL [1] - 168:1

HISTORY [4] - 188:20, 188:25, 189:5, 204:12

HOLD [8] - 132:23, 141:3, 155:11, 218:14, 263:21, 276:25, 295:23, 298:4

HOLDING [1] - 270:18

HOLLAND [10] - 191:24, 192:14, 194:3, 194:18, 210:23, 212:22, 213:23, 214:6, 230:5, 232:1

HOLLAND [1] - 192:15

HOLLMAN [3] - 247:12, 247:15, 247:19

HOME [1] - 176:10

HONEST [2] - 167:14, 190:5

HONOR [118] - 132:6, 132:10, 133:10, 133:19, 133:23, 134:10, 134:11, 134:23, 136:5, 136:6, 136:8, 136:10, 137:4, 137:16, 145:8, 147:13, 164:14, 165:3, 165:6, 180:25, 183:22, 184:9, 186:5, 187:17, 195:18, 196:13, 197:6, 208:4, 209:20, 210:6, 210:15, 210:18, 211:13, 212:21, 225:22, 229:21, 231:15, 243:13, 245:11, 245:20, 245:22, 245:25, 246:10, 252:9, 252:10, 252:23, 254:15, 254:20, 256:7, 256:10, 257:11, 257:22, 257:23, 258:2, 258:5, 259:3, 259:23, 261:9, 262:1, 262:19, 262:21, 263:9, 264:8, 264:10, 264:16, 266:14, 266:15, 267:9, 267:10, 267:11, 267:22, 268:24, 269:1, 269:11, 269:17, 270:12, 271:8, 271:15, 272:4, 274:11, 274:16, 275:7, 276:1, 276:5,

276:7, 276:12, 276:19, 276:21, 278:3, 278:8, 278:22, 279:18, 281:25, 282:2, 282:22, 282:25, 284:22, 285:1, 285:12, 286:2, 287:14, 287:25, 288:4, 290:8, 291:16, 292:13, 293:21, 293:25, 294:9, 294:15, 295:9, 295:19, 295:22, 297:18, 298:10, 299:1, 299:17, 301:17
HONORABLE [1] - 130:10
HOPE [5] - 252:25, 258:22, 292:9, 292:11, 302:12
HOPES [1] - 267:25
HOUR [3] - 265:23, 292:3, 298:4
HOURS [1] - 274:1
HOUSE [14] - 176:9, 176:15, 176:25, 177:12, 177:16, 177:19, 178:6, 178:23, 223:10, 224:16, 225:6, 225:25, 239:20, 242:19
HOUSEHOLD [1] - 157:11
HOUSING [1] - 166:22
HOWEVER [1] - 1:8
HUGE [1] - 272:17
HUNG [1] - 189:3
HUNT [1] - 281:20
HUSBAND [1] - 293:2
HYPOTHETICALS [2] - 278:20

I

IBM [1] - 149:5
IDEA [5] - 145:3, 166:10, 229:11, 243:25, 278:21
IDENTIFICATION [2] - 225:3, 262:22
IDENTIFIED [1] - 163:23
IDENTIFIES [1] - 278:24
IDENTIFY [2] - 259:21, 290:21
IDENTIFYING [1] - 257:2
IDENTITY [1] - 197:20
IGNORANCE [4] - 272:5, 272:14, 272:22, 273:24
IGNORANCE [1] - 274:24
ILLEGAL [2] - 260:6, 273:16
IMAGE [3] - 149:21, 152:14, 169:11
IMAGES [1] - 151:8
IMAGINATION [1] - 278:18
IMAGINATIVE [1] - 278:15
IMAGINE [1] - 273:24
IMMUNITY [24] - 282:7, 282:12, 282:21, 283:2, 283:5, 283:7, 283:12, 284:5, 284:15, 285:5, 285:13, 285:20, 286:1, 286:11, 286:15, 286:22, 287:20, 288:14, 288:22, 289:4, 289:16, 289:20, 290:4
IMMUNIZE [1] - 289:13
IMPACT [1] - 280:6
IMPEACHED [2] - 264:4, 264:12
IMPEACHMENT [1] - 196:14
IMPEDIMENT [1] - 188:22
IMPERMISSIBLY [1] - 277:7
IMPLIES [1] - 293:12
IMPORTANT [1] - 228:8
IMPORTANTLY [1] - 258:15
IMPOSES [1] - 287:19
IMPRESSION [1] - 299:13
IN [3] - 1:3, 1:4, 132:1
INACCURATE [1] - 270:20
INAPPROPRIATE [1] - 261:23
INBOX [1] - 266:1
INCLINED [1] - 281:3
INCLUDE [2] - 228:5, 232:14
INCLUDED [3] - 270:14, 280:13, 282:10
INCLUDES [1] - 266:1
INCLUDING [2] - 258:15, 258:20
INCOME [1] - 166:17
INCONSISTENT [4] - 187:3, 292:17, 293:11, 301:11
INCRIMINATE [1] - 135:24
INCRIMINATION [1] - 253:14
INDEED [1] - 135:22
INDICATE [2] - 289:9, 290:12
INDICATED [2] - 133:15, 147:22
INDICATION [3] - 290:14, 293:1, 293:5
INDICTMENT [9] - 138:10, 138:13, 138:15, 294:10, 295:12, 295:13, 295:16, 300:11, 300:16
INDIVIDUALS [1] - 254:25
INFERENCE [3] - 283:25, 285:6, 289:16
INFERS [1] - 273:5
INFIDELITY [4] - 140:8, 140:9, 140:19, 202:18
INFORMATION [31] - 140:22, 153:12, 156:16, 156:17, 158:3, 166:13, 178:20, 179:23, 180:10, 189:20, 199:21, 205:20, 208:1, 208:4, 208:7, 208:13, 209:9, 209:10, 211:9, 219:6, 220:7, 221:5, 221:6, 221:13, 225:18, 227:15, 243:9, 246:5, 246:6, 257:18, 293:9
INFORMER [3] - 279:23, 280:1, 280:4
INITIAL [2] - 238:9, 238:13
INITIALS [1] - 237:7
INNOCENCE [1] - 301:6
INSTANCE [1] - 175:2
INSTEAD [5] - 229:8, 250:25, 252:18, 277:8, 279:2
INSTEAD [1] - 185:2
INSTRUCT [5] - 152:10, 274:18, 277:19, 284:3, 293:21
INSTRUCTED [3] - 260:22, 261:1, 279:20
INSTRUCTING [1] - 280:4
INSTRUCTION [44] - 132:23, 253:24, 260:17, 260:24, 262:22, 264:24, 266:20, 267:7, 269:23, 270:23, 272:5, 272:11, 272:23, 274:2, 274:10, 275:2, 276:22, 277:1, 277:3, 277:5, 277:6, 277:12, 277:19, 278:9, 278:13, 279:4, 279:12, 279:14, 279:15, 279:18, 279:19, 280:4, 280:9, 280:14, 282:8, 282:22, 282:25, 284:16, 286:21, 288:3, 289:12, 289:22, 298:2
INSTRUCTIONS [14] - 258:11, 258:14, 262:12, 262:14, 270:17, 270:19, 278:23, 280:11, 280:13, 294:1, 295:15, 295:20, 296:3, 298:3
INSUFFICIENT [1] - 270:19
INSURANCE [3] - 175:17, 175:23, 175:24
INTELLIGENCE [1] - 248:15
INTEND [1] - 254:23
INTENDED [1] - 246:2
INTENT [2] - 166:21, 259:12
INTERACTING [1] - 278:11
INTERESTED [5] - 166:24, 205:12, 206:19, 207:15, 284:8
INTERNET [3] - 177:13, 278:14, 278:15
INTERRUPTION [1] - 282:24
INTERVIEW [1] - 242:16
INTERVIEWED [3] - 223:3, 223:15, 223:18
INTERVIEWS [1] - 243:5
INTOXICATED [1] - 203:16
INTRODUCED [1] - 144:6
INTRODUCTION [1] - 296:3
INVESTIGATION [5] - 228:4, 228:6, 228:7, 256:25, 257:9
INVOKE [4] - 135:23, 283:22, 283:24, 287:8
INVOKED [1] - 283:20
INVOKES [3] - 282:13, 288:22, 289:21
INVOLVED [11] - 144:11, 146:22, 161:19, 202:6, 228:4, 234:17, 234:23, 236:12, 272:15, 280:18, 297:24
INVOLVEMENT [6] - 144:3, 187:21, 189:12, 196:11, 196:14, 255:7
INVOLVES [3] - 138:7, 261:18, 281:23
IS [1] - 1:2
ISSUE [29] - 197:7, 212:2, 253:12, 260:16, 266:19, 267:21, 269:7, 269:9, 271:19, 271:22, 274:14, 274:16, 279:19, 280:17, 282:6, 282:19, 284:14, 284:23, 286:23, 288:8, 290:4, 292:14, 292:19, 297:5, 298:9, 300:9, 300:24, 302:7, 302:9
ISSUES [6] - 188:9, 269:6, 277:10, 277:11, 299:5, 299:25
IT'LL [2] - 136:15, 291:10
ITSELF [2] - 165:22, 289:22

J

J-20 [2] - 164:1, 164:12
J-21 [1] - 165:15
J-22 [2] - 165:20, 168:12
J-23 [1] - 167:8
J-24 [2] - 167:20, 167:22
J-25 [2] - 164:1, 168:3
J-O-H-N [1] - 138:4
J.P [1] - 130:10
J13 [2] - 156:3, 216:15

J20 [2] - 205:17, 205:19
J21 [1] - 205:22
J22 [1] - 206:12
JACKSON [3] - 130:6, 130:20, 253:15
JACKSON [114] - 135:12, 137:15, 137:16, 138:7, 138:10, 138:23, 138:25, 139:2, 139:8, 139:15, 139:19, 140:4, 140:13, 140:18, 140:21, 141:3, 142:24, 146:21, 147:1, 147:4, 147:21, 147:25, 151:25, 152:10, 152:24, 153:16, 154:11, 155:6, 155:18, 155:19, 156:3, 161:2, 161:11, 161:13, 162:3, 163:9, 163:21, 166:2, 167:2, 167:18, 168:9, 170:6, 170:13, 172:3, 173:14, 174:12, 175:21, 176:2, 178:2, 178:6, 179:3, 179:24, 180:13, 185:6, 187:12, 200:8, 201:10, 202:3, 210:24, 213:17, 213:19, 214:8, 215:2, 215:9, 216:9, 216:18, 216:23, 218:2, 218:8, 218:13, 221:15, 223:4, 224:7, 224:12, 229:10, 229:14, 229:17, 231:12, 233:9, 233:13, 233:20, 234:4, 234:17, 235:23, 235:25, 236:9, 236:14, 239:13, 240:21, 241:7, 241:9, 241:25, 249:23, 250:1, 251:4, 251:16, 252:1, 253:5, 253:9, 263:1, 272:8, 273:6, 273:9, 273:15, 274:7, 274:18, 274:19, 275:3, 294:4, 296:17, 300:4, 300:13, 300:23
JACKSON'S [15] - 177:12, 177:16, 178:23, 200:9, 213:4, 213:25, 223:10, 224:16, 225:6, 230:18, 231:5, 237:5, 299:21, 301:21, 302:3
JAN1.PDF [1] - 194:15
JANUARY [1] - 194:16
JOB [1] - 149:15
JOBS [2] - 234:12, 241:16
JOHN [6] - 137:7, 137:17, 138:4, 260:3, 268:18, 273:8
JOHN [1] - 135:8
JOHN [1] - 137:19
JOHNSON [1] - 269:19
JOSEPH [2] - 131:7, 256:16
JP [1] - 135:10
JUDGE [40] - 134:1, 134:2, 134:5, 145:9, 164:13, 165:1, 180:22, 182:13, 182:17, 183:2, 185:12, 186:1, 186:24, 187:2, 187:13, 197:5, 230:1, 231:21, 234:21, 243:14, 252:5, 253:4, 255:18, 258:7, 260:14, 261:6, 263:22, 268:19, 270:9, 271:22, 273:4, 273:17, 273:22, 292:3, 292:9, 297:16, 299:5, 299:8, 300:5, 300:14
JUDGE [1] - 130:10
JUDGE [17] - 135:11, 145:13, 155:19, 185:22, 186:22, 196:9, 197:2, 245:14, 255:10, 260:1, 271:21, 273:3, 281:10, 281:17, 294:16, 296:1, 301:4
JUDGMENT [1] - 259:4
JUDICIAL [2] - 277:2, 289:14
JULY [5] - 181:10, 218:3, 218:5, 223:4, 224:15
JUMP [3] - 245:17, 245:18, 290:8
JUNCTURE [1] - 262:6
JUNE [23] - 156:12, 156:13, 157:20, 171:21, 172:15, 172:21, 174:19, 174:20, 175:2, 175:9, 175:12, 177:22, 184:15, 215:9, 215:24, 216:18, 216:20, 218:9, 218:10, 219:5, 244:20, 250:19
JURY [81] - 132:23, 133:21, 134:9, 134:14, 134:15, 134:17, 134:20, 136:14, 136:17, 136:22, 136:25, 137:12, 140:21, 143:25, 145:6, 149:2, 152:1, 152:6, 156:2, 162:19, 176:17, 186:15, 193:14, 211:22, 211:24, 212:9, 212:17, 226:11, 226:12, 228:24, 229:3, 239:14, 252:14, 252:21, 253:24, 255:2, 256:1, 256:3, 256:4, 258:10, 258:24, 260:17, 260:22, 261:1, 261:24, 262:12, 262:14, 270:3, 270:16, 270:19, 271:3, 272:7, 272:12, 274:19, 277:9, 277:19, 279:20, 280:5, 280:10, 280:11, 280:13, 280:14, 281:8, 283:11, 283:20, 283:24, 284:1, 284:3, 284:4, 291:4, 291:12, 293:9, 293:22, 293:25, 294:1, 294:10, 295:12, 295:15, 295:20, 298:12, 300:12
JURY [1] - 130:9
JUSTICE [4] - 204:7, 283:8, 285:19, 287:19

K

KAUSHAL [1] - 130:15
KEEP [9] - 151:7, 162:22, 209:17, 214:9, 222:8, 236:18, 240:22, 302:3
KEEPING [3] - 202:10, 202:19, 203:3
KEEPS [1] - 195:20
KEPT [4] - 179:22, 180:9, 210:11, 236:14
KID [1] - 204:12
KIDS [2] - 141:5, 180:20
KIND [20] - 145:5, 147:22, 148:23, 150:17, 153:23, 162:7, 166:21, 168:1, 168:18, 169:21, 170:21, 172:5, 175:7, 177:2, 177:8, 180:19, 233:16, 241:22, 273:5, 281:9
KINDS [1] - 162:3
KNOWING [1] - 251:17
KNOWLEDGE [12] - 146:18, 147:4, 147:22, 150:11, 233:20, 260:5, 272:10, 272:13, 273:6, 273:16, 275:2, 279:8
KNOWLEDGE [1] - 274:25
KNOWN [4] - 139:4, 234:7, 234:17, 234:21
KNOWS [5] - 136:13, 200:20, 200:24, 201:1, 201:8

L

L-SHAPED [1] - 204:22
LABELED [1] - 298:17
LACK [2] - 147:7, 161:6
LADIES [5] - 134:17, 136:25, 211:22, 252:14, 258:9
LAID [2] - 164:15, 251:13
LANGUAGE [12] - 269:7, 269:15, 269:18, 270:1, 270:10, 270:12, 270:15, 271:13, 279:3, 279:5, 296:5, 300:19
LAPTOP [3] - 177:9, 178:9
LARGE [3] - 148:5, 151:2, 200:13
LARGE-SCALE [1] - 200:13
LARGER [1] - 138:19
LAST [6] - 138:3, 175:17, 179:19, 212:23, 261:9, 265:25
LATE [1] - 189:7
LAUNDERING [6] - 138:17, 182:2, 259:12, 269:22, 270:5, 300:12
LAW [15] - 261:10, 261:24, 270:3, 270:13, 271:10, 277:3, 277:15, 277:19, 280:3, 280:5, 280:9, 280:18, 281:9, 284:2, 284:18
LAWFUL [1] - 233:11
LAYS [1] - 296:10
LEANING [1] - 281:14
LEARNED [1] - 140:22
LEAST [5] - 196:3, 196:19, 222:11, 272:22, 274:6
LEAVE [4] - 264:4, 296:18, 300:14, 300:16
LEE [5] - 135:7, 137:11, 181:4, 291:4, 297:25
LEEWAY [1] - 210:20
LEFT [3] - 194:12, 237:7, 248:2
LEFT-HAND [1] - 237:7
LEGAL [2] - 277:2, 277:17
LEGIT [3] - 232:24, 233:1, 273:12
LEGITIMATE [1] - 233:11
LEIGH [2] - 292:1, 296:21
LEIGH [1] - 130:18
LESS [4] - 181:13, 181:19, 214:4, 254:16
LETTER [5] - 197:24, 197:25, 198:7, 198:11, 198:16
LETTERHEAD [2] - 198:11, 198:18
LETTERS [1] - 197:19
LEVELS [1] - 283:7
LICENSE [1] - 236:4
LICENSES [1] - 197:13
LIFE [1] - 234:22
LIGHT [2] - 262:7, 272:5
LIMB [1] - 207:1
LIMINE [1] - 292:16
LIMITATION [1] - 291:17
LIMITED [1] - 292:19
LINE [11] - 150:12, 153:11, 196:10, 210:22, 246:1, 250:16, 250:18,

296:13, 296:16, 297:8
LINE [1] - 1:7
LINES [3] - 166:22, 210:11, 237:18
LIST [7] - 266:10, 298:12, 298:14, 298:15, 298:19, 298:20, 298:21
LISTED [6] - 143:19, 146:4, 184:20, 244:25, 250:22, 257:5
LISTENED [1] - 191:1
LISTING [2] - 243:23, 266:4
LISTINGS [1] - 205:9
LISTS [2] - 298:7, 298:18
LIVED [1] - 178:6
LIVELY [6] - 278:2, 279:16, 279:19, 279:24, 280:17, 281:9
LIVING [1] - 176:8
LLC [3] - 151:17, 156:20, 217:22
LOAN [60] - 141:6, 141:9, 143:8, 144:4, 144:16, 145:16, 146:15, 146:19, 146:23, 147:5, 147:23, 148:1, 151:2, 153:8, 153:18, 153:19, 154:20, 154:21, 154:23, 160:3, 164:23, 175:6, 182:6, 185:4, 189:12, 189:16, 189:19, 190:4, 190:7, 190:15, 190:20, 191:5, 197:4, 202:6, 208:17, 208:19, 208:23, 208:25, 221:25, 226:17, 229:11, 232:5, 232:7, 232:22, 232:24, 233:10, 233:17, 233:21, 236:21, 237:9, 241:12, 242:11, 247:2, 251:2, 251:24, 261:15, 272:9, 272:15, 273:10, 273:12
LOANS [11] - 144:7, 153:7, 179:23, 179:24, 218:25, 220:1, 220:5, 221:16, 228:4, 229:15, 231:13
LOCATED [1] - 165:18
LOCATION [7] - 167:24, 178:8, 185:3, 240:7, 240:17, 251:1, 270:25
LODGED [1] - 266:7
LOG [1] - 178:20
LOG-IN [1] - 178:20
LOOK [37] - 154:18, 155:6, 155:11, 155:25, 157:13, 163:10, 163:17, 163:23, 165:12, 168:6, 168:9, 168:14, 174:18, 174:21, 196:5, 197:25, 198:4, 198:14, 199:13, 203:8, 205:15, 206:25, 219:16, 233:2, 235:12, 244:5, 257:17, 262:18, 264:22, 266:3, 267:19, 272:2, 275:25, 278:5, 281:13, 291:13, 302:8
LOOKED [9] - 203:10, 204:17, 209:1, 209:3, 222:13, 236:25, 244:7, 274:4, 284:17
LOOKING [18] - 160:15, 164:5, 169:15, 206:21, 224:16, 224:18, 224:19, 224:20, 225:6, 225:11, 250:7, 276:12, 278:9, 280:8, 291:9, 299:15, 299:16, 299:18
LOOKS [3] - 175:6, 232:7, 278:2
LOSING [1] - 216:6
LOST [1] - 268:14
LOTION [1] - 276:8
LOVE [2] - 268:16, 278:16
LOVED [1] - 176:18
LOWER [1] - 154:1
LUNCH [1] - 132:5

M

MAIL [32] - 173:21, 173:25, 174:10, 190:10, 192:2, 192:22, 193:4, 193:11, 193:12, 193:18, 193:23, 193:24, 194:1, 194:2, 194:6, 194:9, 194:12, 194:21, 195:8, 195:10, 230:7, 231:25, 232:10, 232:20, 235:17, 235:23, 247:7, 249:23, 266:1, 273:5, 273:11
MAILED [6] - 173:21, 190:7, 193:23, 195:10, 231:2, 265:16
MAILING [1] - 193:15
MAILS [2] - 196:6, 210:12
MAIN [1] - 158:23
MAIN [2] - 247:10, 247:24
MAJOR [2] - 205:4, 278:13
MAJORITY [1] - 174:24
MANAGED [2] - 161:21, 200:18
MANAGEMENT [49] - 148:14, 148:15, 148:19, 152:4, 156:24, 158:2, 158:8, 159:18, 160:10, 160:18, 160:20, 161:22, 162:4, 162:24, 169:23, 182:9, 183:12, 184:17, 185:24, 185:25, 186:12, 187:5, 187:13, 199:14, 199:18, 211:6, 213:10, 213:20, 219:6, 220:17, 221:6, 229:18, 230:15, 232:8, 232:23, 233:7, 238:22, 239:1, 239:3, 240:23, 244:16, 244:22, 246:2, 249:10, 249:19, 250:2, 250:21, 251:18, 251:24
MANAGEMENT [5] - 148:24, 150:13, 150:17, 215:12, 215:19
MANAGER [5] - 149:4, 149:6, 162:14, 166:8, 234:13
MANAGING [3] - 149:7, 150:18, 162:20
MANNERS [1] - 233:11
MARCH [1] - 279:22
MARIE [13] - 191:15, 192:4, 192:20, 196:1, 196:19, 197:10, 198:20, 199:8, 199:13, 199:17, 235:22, 236:8, 247:17
MARIETTA [2] - 176:10, 239:20
MARKED [2] - 155:5, 163:20
MARRIAGE [2] - 148:21, 180:20
MARRIED [7] - 139:1, 139:2, 140:13, 147:10, 149:1, 201:10, 234:4
MARSHALL [2] - 270:7, 292:8
MARSHALL [37] - 133:24, 134:21, 135:11, 136:7, 137:6, 147:18, 186:6, 207:12, 209:25, 211:1, 231:20, 243:17, 246:9, 249:22, 253:3, 254:12, 255:21, 256:6, 256:8, 258:3, 259:1, 259:25, 261:10, 263:2, 268:8, 268:10, 269:2, 269:9, 271:18, 272:24, 281:19, 291:25, 295:1, 295:24, 295:25, 297:15, 302:1
MARSHALL [177] - 130:20, 134:1, 134:4, 134:11, 134:23, 136:8, 137:7, 137:15, 137:24, 142:6, 142:9, 143:4, 143:6, 143:11, 143:13, 143:22, 143:24, 145:9, 145:13, 145:14, 145:24, 146:2, 146:8, 146:11, 147:9, 147:19, 147:20, 148:7, 148:10, 149:19, 149:23, 151:4, 151:10, 152:13, 152:15, 153:25, 154:3, 155:19, 155:24, 156:1, 158:17, 158:20, 158:23, 158:25, 159:4, 159:6, 159:9, 159:12, 160:11, 160:12, 161:8, 164:12, 164:17, 164:18, 165:1, 165:6, 165:8, 165:15, 165:16, 165:20, 165:21, 167:7, 167:9, 167:20, 167:21, 168:3, 168:4, 168:11, 168:13, 169:10, 169:13, 170:3, 170:5, 171:1, 171:2, 171:5, 171:9, 171:13, 171:15, 172:7, 172:9, 172:16, 172:19, 173:1, 173:17, 173:19, 174:2, 174:5, 174:7, 174:14, 174:17, 175:15, 175:16, 176:4, 176:5, 177:25, 178:4, 178:11, 178:13, 180:22, 183:22, 184:9, 184:12, 185:22, 186:22, 187:2, 195:14, 196:9, 197:2, 200:21, 209:20, 210:3, 210:9, 212:10, 229:24, 230:1, 231:21, 231:23, 232:4, 234:21, 235:1, 236:20, 236:24, 243:13, 245:14, 246:10, 250:6, 250:9, 252:5, 253:4, 253:8, 255:10, 255:12, 255:18, 256:7, 257:22, 258:7, 260:1, 263:3, 263:14, 263:22, 263:24, 264:7, 264:14, 264:20, 265:10, 267:11, 268:11, 268:16, 269:3, 270:9, 271:15, 271:17, 271:21, 273:3, 275:9, 281:17, 281:21, 292:1, 292:3, 292:9, 293:25, 294:4, 294:16, 295:3, 295:19, 296:1, 296:10, 297:3, 297:16, 299:4, 300:5, 300:7, 300:14, 300:21, 301:4, 301:10
MARSHALL'S [1] - 301:1
MARSHALL'S [3] - 133:22, 136:16, 210:21
MARTY [3] - 190:13, 199:19, 232:10
MARVIN [3] - 247:12, 247:15, 247:19
MATCH [1] - 199:22
MATERIAL [1] - 286:23
MATTER [2] - 145:12, 180:6
MATTERS [1] - 169:22
MAY [2] - 1:3, 1:5
MEAN [38] - 158:14, 164:4, 165:3, 165:24, 179:19, 180:1, 186:25, 189:3, 192:22, 194:24, 200:19, 207:14, 207:25, 208:1, 209:18, 210:1, 211:11, 216:5, 218:12, 222:8, 241:12, 261:1, 277:21, 280:23, 281:21, 284:13, 285:21, 285:24, 286:25, 287:25, 290:2, 290:3, 294:21, 296:25, 298:21, 301:2
MEANING [1] - 282:14
MEANS [2] - 219:20, 269:24
MEANT [2] - 153:4, 197:24

MEDICAL [4] - 188:9, 188:20, 188:25, 189:5
MEET [4] - 226:20, 226:25, 297:25
MEETINGS [1] - 243:5
MEMBERS [1] - 279:20
MEMO [2] - 150:12, 153:11
MEMORIAL [1] - 204:7
MEMORY [5] - 184:15, 188:19, 191:22, 192:19, 195:6
MENS [1] - 259:11
MENTIONED [5] - 141:11, 145:2, 150:23, 161:25, 163:3
MERE [1] - 282:11
MERELY [1] - 270:1
MESSAGE [18] - 155:8, 155:12, 155:15, 155:17, 156:4, 156:8, 157:16, 192:22, 207:12, 211:2, 211:4, 218:9, 218:10, 218:14, 227:18, 228:10, 228:16, 228:18
MESSAGES [20] - 207:4, 207:6, 207:9, 207:23, 208:2, 209:6, 209:8, 209:11, 209:13, 209:17, 216:17, 218:9, 219:17, 227:22, 227:24, 227:25, 228:2, 243:7, 293:4
MESSED [1] - 273:13
MET [5] - 202:2, 236:16, 239:15, 259:10, 260:9
MIDDLE [3] - 215:22, 221:22, 222:22
MIDWEST [1] - 204:11
MIGHT [4] - 139:17, 146:10, 158:2, 252:19
MILITARY [2] - 166:19, 166:21
MILLIONS [1] - 200:18
MIND [3] - 232:1, 301:8, 302:11
MINE [2] - 151:22, 300:9
MINOR [1] - 260:11
MINUTE [4] - 163:23, 211:23, 243:13, 252:19
MINUTES [10] - 226:8, 254:16, 275:15, 275:17, 283:6, 291:11, 291:18, 291:19, 292:4
MISIMPRESSION [1] - 255:1
MISLEADING [1] - 283:11
MISREMEMBER [1] - 294:13
MISREMEMBERING [1] - 294:14
MISREPRESENTATIONS [1] - 233:17
MISSING [6] - 282:7, 282:15, 282:21, 284:15, 289:12, 289:22
MISSTATEMENT [1] - 261:10
MISSTATES [1] - 261:24
MISTAKE [1] - 134:19
MISUNDERSTANDING [1] - 261:11
MODEL [1] - 274:14
MODIFIED [1] - 296:24
MODIFY [1] - 296:5
MOMENT [21] - 134:6, 134:19, 136:15, 200:7, 211:15, 225:22, 231:15, 262:18, 263:5, 263:25, 267:19, 269:5, 269:13, 272:2, 276:19, 282:23, 284:11, 285:20, 286:20, 287:10, 300:4
MONEY [63] - 138:17, 144:18, 145:22, 146:6, 148:8, 150:16, 156:23, 156:24, 160:18, 173:8, 173:12, 175:11, 182:2, 182:8, 185:20, 186:20, 208:18, 208:23, 209:2, 209:3, 214:9, 214:19, 214:21, 215:7, 216:7, 216:12, 217:6, 218:17, 218:21, 218:24, 219:22, 220:1, 220:4, 221:13, 222:5, 222:7, 222:24, 222:25, 223:1, 228:3, 229:5, 237:13, 238:4, 240:22, 241:1, 241:10, 241:13, 242:1, 242:2, 242:6, 242:10, 242:13, 259:12, 260:20, 261:12, 261:14, 261:20, 269:21, 270:5, 272:17, 272:19, 300:12
MONEYS [6] - 145:18, 146:18, 161:4, 162:24, 170:19
MONTGOMERY [14] - 144:19, 150:15, 160:22, 163:7, 163:10, 163:16, 165:10, 169:18, 182:11, 203:7, 203:13, 214:13, 217:9, 240:13
MONTGOMERY [1] - 163:8
MONTHLY [6] - 153:19, 153:20, 248:2, 248:17, 249:6, 249:13
MONTHS [1] - 283:9
MOORE [1] - 130:15
MOORE [1] - 287:18
MORNING [13] - 157:22, 219:17, 258:11, 258:12, 281:6, 283:6, 283:10, 287:13, 287:14, 290:23, 291:1, 297:23
MORTGAGE [1] - 208:16
MOST [5] - 174:4, 258:14, 262:7, 278:5, 287:4
MOTION [9] - 211:16, 254:18, 254:22, 255:14, 259:4, 259:23, 260:1, 261:5, 292:16
MOTIONS [5] - 258:6, 258:7, 259:2, 261:8, 262:6
MOUTH [2] - 277:8, 280:21
MOVE [23] - 145:13, 148:5, 156:7, 158:17, 158:18, 164:12, 170:25, 195:23, 211:13, 214:22, 214:25, 215:7, 229:21, 241:5, 242:3, 242:6, 242:13, 245:11, 269:4, 275:5, 281:16, 281:22
MOVED [3] - 149:5, 189:4, 215:8
MOVING [4] - 214:19, 215:3, 228:7, 267:19
MR [177] - 134:1, 134:4, 134:11, 134:23, 135:3, 136:8, 137:7, 137:15, 137:24, 142:6, 142:9, 143:4, 143:6, 143:11, 143:13, 143:22, 143:24, 145:9, 145:13, 145:14, 145:24, 146:2, 146:8, 146:11, 147:9, 147:19, 147:20, 148:7, 148:10, 149:19, 149:23, 151:4, 151:10, 152:13, 152:15, 153:25, 154:3, 155:19, 155:24, 156:1, 158:17, 158:20, 158:23, 158:25, 159:4, 159:6, 159:9, 159:12, 160:11, 160:12, 161:8, 164:12, 164:17, 164:18, 165:1, 165:6, 165:8, 165:15, 165:16, 165:20, 165:21, 167:7, 167:9, 167:20, 167:21, 168:3, 168:4, 168:11, 168:13, 169:10, 169:13, 170:3, 170:5, 171:1, 171:2, 171:5, 171:9, 171:13, 171:15, 172:7, 172:9, 172:16, 172:19, 173:1, 173:17, 173:19, 174:2, 174:5, 174:7, 174:14, 174:17, 175:15, 175:16, 176:4, 176:5, 177:25, 178:4, 178:11, 178:13, 180:22, 183:22, 184:9, 184:12, 185:22, 186:22, 187:2, 195:14, 196:9, 197:2, 200:21, 209:20, 210:3, 210:9, 212:10, 229:24, 230:1, 231:21, 231:23, 232:4, 234:21, 235:1, 236:20, 236:24, 243:13, 245:14, 246:10, 250:6, 250:9, 252:5, 253:4, 253:8, 255:10, 255:12, 255:18, 256:7, 257:22, 258:7, 260:1, 263:3, 263:14, 263:22, 263:24, 264:7, 264:14, 264:20, 265:10, 267:11, 268:11, 268:16, 269:3, 270:9, 271:15, 271:17, 271:21, 273:3, 275:9, 281:17, 281:21, 292:1, 292:3, 292:9, 293:25, 294:4, 294:16, 295:3, 295:19, 296:1, 296:10, 297:3, 297:16, 299:4, 300:5, 300:7, 300:14, 300:21, 301:4, 301:10
MRS [7] - 148:16, 149:12, 157:25, 187:13, 214:19, 214:25, 238:25
MS [226] - 132:6, 132:9, 133:10, 133:19, 133:23, 134:10, 134:12, 136:5, 136:6, 136:10, 137:4, 145:8, 145:11, 147:7, 147:13, 155:21, 155:22, 161:6, 164:14, 165:3, 165:4, 180:25, 181:6, 183:24, 184:3, 184:13, 186:5, 186:9, 187:17, 187:19, 191:24, 192:1, 192:14, 192:15, 192:16, 192:18, 193:2, 193:3, 194:3, 194:5, 194:18, 194:20, 195:18, 195:24, 195:25, 196:13, 196:17, 197:6, 197:9, 200:23, 205:16, 205:18, 205:22, 205:23, 206:12, 206:13, 208:4, 208:9, 210:6, 210:15, 210:18, 210:23, 210:25, 211:13, 211:19, 212:21, 212:25, 213:6, 213:8, 213:22, 213:24, 214:5, 214:7, 216:15, 216:16, 220:13, 220:15, 225:22, 225:23, 229:21, 229:25, 230:2, 230:4, 230:6, 230:13, 230:14, 230:23, 231:1, 231:15, 231:17, 231:19, 234:20, 243:16, 245:11, 245:18, 245:20, 245:22, 245:25, 246:12, 246:13, 247:5, 247:6, 247:20, 247:21, 248:5, 248:6, 248:10, 248:11, 248:20, 248:21, 248:25, 249:2, 249:8, 249:9, 250:5, 252:9, 252:10, 252:23, 253:1, 254:15, 254:20, 255:23, 256:10, 256:21, 257:11, 257:13, 257:15, 257:21, 257:23, 258:1, 258:5, 259:3, 259:9, 261:9, 262:18, 262:21, 263:9, 263:12, 263:15, 263:17, 263:20, 264:3, 264:8, 264:10, 264:13, 264:16, 264:19, 264:22, 265:6, 265:9, 265:16, 265:20,

266:2, 266:4, 266:8, 266:14, 266:15, 267:9, 267:10, 267:22, 268:9, 268:24, 269:1, 269:11, 269:17, 270:12, 271:8, 271:14, 272:4, 273:2, 274:11, 274:16, 275:7, 275:8, 276:1, 276:5, 276:7, 276:10, 276:17, 276:19, 278:3, 278:8, 279:18, 281:1, 281:25, 282:2, 282:25, 284:22, 285:1, 286:2, 286:17, 287:14, 287:18, 287:25, 288:4, 288:6, 290:8, 291:16, 291:22, 292:2, 292:13, 293:21, 293:24, 294:5, 294:6, 294:9, 294:14, 294:17, 294:21, 294:24, 294:25, 295:9, 295:21, 296:23, 297:9, 297:14, 297:18, 298:10, 299:1, 299:17, 300:10, 301:2, 301:8, 301:13, 301:17, 301:25

MUELLER [2] - 267:13, 274:23

MUELLER [1] - 297:19

MUELLER [1] - 267:14

MULTIPLE [4] - 195:2, 195:19, 266:18, 283:7

MUSEUM [1] - 204:9

MUST [4] - 266:21, 267:6, 267:17, 270:4

N

NAME [25] - 138:2, 138:3, 142:22, 148:12, 153:12, 158:21, 162:9, 171:16, 174:22, 174:25, 175:20, 189:15, 194:9, 198:2, 198:3, 198:5, 198:8, 199:18, 199:19, 220:19, 227:7, 227:10, 247:12, 247:17, 280:25

NARRATIVE [1] - 277:2

NATURE [10] - 147:5, 148:3, 176:23, 179:24, 185:3, 251:1, 251:17, 270:25, 277:2, 277:17

NEAR [1] - 165:18

NECESSARY [7] - 133:8, 133:16, 133:18, 136:4, 269:20, 270:3, 281:12

NEED [28] - 132:16, 133:8, 179:19, 208:18, 208:19, 212:3, 218:19, 225:3, 241:5, 252:14, 264:22, 265:3, 265:12, 265:18, 266:5, 269:10, 275:5, 275:19, 287:21, 289:24, 291:11, 292:6, 292:7, 292:10, 297:21, 298:21, 300:1

NEEDED [5] - 173:11, 200:4, 215:7, 218:21, 220:7

NEEDS [4] - 271:4, 296:12, 296:20, 297:2

NEGATIVE [1] - 293:4

NEUTRAL [1] - 277:9

NEVER [7] - 163:12, 191:16, 214:11, 222:18, 223:1, 232:14, 272:19

NEW [3] - 291:2, 291:3, 302:4

NEXT [12] - 152:13, 153:25, 155:24, 175:20, 218:9, 250:17, 275:2, 281:22, 282:9, 296:16, 296:23, 297:8

NICE [1] - 239:19

NIGHT [2] - 258:13, 265:25

NINE [1] - 283:9

NINTH [1] - 282:17

NISSAN [1] - 153:24

NO [1] - 130:5

NOBODY [1] - 264:3

NON [1] - 211:14

NON-RESPONSIVE [1] - 211:14

NONE [3] - 232:17, 251:16

NORTH [3] - 206:1, 206:4, 206:10

NORTHERN [2] - 130:1, 303:4

NOTATIONS [1] - 154:19

NOTED [3] - 259:1, 293:19, 300:25

NOTES [3] - 197:16, 272:2, 295:23

NOTHING [8] - 222:3, 231:17, 243:14, 250:5, 257:11, 257:23, 261:17, 271:25

NOTICE [3] - 151:11, 152:18, 189:1

NOVEMBER [1] - 202:3

NUMBER [33] - 138:17, 154:20, 158:4, 158:7, 204:17, 207:2, 207:15, 219:6, 227:6, 227:9, 229:24, 233:6, 233:14, 240:18, 248:2, 248:17, 249:6, 249:13, 255:4, 260:19, 262:22, 262:25, 263:7, 264:10, 265:13, 266:18, 267:21, 268:22, 275:5, 296:1, 296:4

NUMBER [2] - 1:6, 1:7

O

O-R-R [2] - 276:13, 281:1

OATH [4] - 181:22, 185:20, 186:11, 186:15

OBJECT [7] - 185:22, 186:22, 196:9, 197:2, 209:20, 245:14, 293:15

OBJECTION [32] - 145:8, 147:7, 147:13, 155:21, 155:22, 161:6, 164:14, 165:2, 165:4, 184:1, 186:24, 187:1, 195:23, 209:25, 210:2, 210:21, 230:1, 230:2, 234:20, 245:15, 245:24, 266:7, 266:8, 268:19, 274:22, 276:4, 277:20, 281:4, 281:15, 281:17, 281:23, 300:15

OBJECTIONABLE [2] - 293:15, 298:15

OBJECTIONS [1] - 300:19

OBJECTIVE [1] - 277:3

OBTAINED [5] - 185:4, 211:9, 222:25, 223:1, 251:1

OBVIOUSLY [8] - 153:15, 266:24, 268:4, 278:4, 281:17, 284:16, 286:18, 295:16

OCCASIONALLY [2] - 174:10, 176:15

OF [10] - 1:2, 1:5, 1:6, 130:1, 130:4, 130:9, 130:14, 130:17, 130:20, 303:4

OFF-THE-RECORD [3] - 134:7, 212:14, 263:6

OFFENSE [2] - 260:17, 269:22

OFFENSES [1] - 296:3

OFFERED [2] - 145:11, 226:20

OFFERS [1] - 267:5

OFFHAND [5] - 140:20, 157:7, 203:24, 204:25, 205:8

OFFICE [2] - 177:5, 283:8

OFFICER [2] - 134:14, 275:21

OFFICER [2] - 136:21, 287:17

OFFICIAL [6] - 1:2, 1:3, 1:4, 1:8, 130:24, 303:15

OFTEN [1] - 176:25

OFTENTIMES [1] - 237:20

OLD [2] - 188:10, 270:16

OLDIE [1] - 271:12

ON [3] - 130:14, 130:17, 130:20

ONCE [1] - 167:4

ONE [6] - 153:2, 156:5, 217:15, 217:18, 218:16, 221:18

ONE [93] - 134:1, 134:18, 137:2, 138:6, 138:12, 138:18, 141:24, 142:3, 142:17, 152:21, 154:10, 154:21, 157:16, 157:19, 159:24, 160:17, 167:25, 168:5, 170:1, 174:20, 175:3, 175:20, 178:24, 181:16, 183:7, 190:19, 190:25, 191:8, 191:14, 194:15, 197:22, 207:12, 211:15, 217:4, 217:14, 217:21, 219:24, 220:11, 225:22, 228:2, 231:15, 235:7, 236:3, 236:16, 243:13, 254:15, 254:23, 254:25, 259:7, 260:11, 263:5, 263:21, 263:25, 265:20, 265:22, 265:24, 265:25, 267:19, 269:5, 269:6, 269:13, 272:2, 272:16, 272:25, 274:15, 274:23, 275:12, 276:19, 279:24, 281:22, 282:23, 284:11, 285:1, 285:8, 285:19, 285:23, 286:20, 288:7, 290:6, 291:3, 291:6, 292:13, 295:6, 295:19, 295:21, 298:15, 299:5, 299:18, 300:4, 301:21, 302:6

ONES [5] - 211:12, 262:23, 266:4, 266:6, 278:1

ONLINE [2] - 278:12, 278:21

ONLY [2] - 1:3, 1:7

OPEN [4] - 204:10, 204:15, 222:8, 302:7

OPEN [1] - 132:1

OPENED [2] - 198:1, 222:20

OPENING [1] - 198:8

OPINION [2] - 264:12, 274:2

OPPORTUNITY [3] - 132:3, 184:4, 209:23

OPTIONS [1] - 227:3

OR [1] - 1:9

ORDER [13] - 151:14, 152:25, 217:3, 230:11, 232:22, 233:3, 266:17, 269:12, 270:4, 276:2, 300:25, 301:18, 302:5

ORDERED [1] - 301:5

ORDERS [1] - 209:23

ORGANIZATION [1] - 149:7

ORGANIZATIONAL [1] - 172:25

ORGANIZERS [1] - 172:5

ORIGINAL [1] - 269:7

ORR [1] - 281:2

ORR [2] - 276:12, 281:2

ORR [6] - 278:9, 279:4, 279:12, 281:1, 281:7, 281:11

OURSELVES [1] - 300:2

OUT-OF-COURT [1] - 145:11
OUTSIDE [2] - 134:5, 180:20
OVERNIGHT [1] - 177:12
OVERRULED [5] - 186:8, 187:18, 196:16, 197:8, 246:11
OWN [7] - 177:5, 214:9, 214:13, 214:17, 218:24, 218:25, 255:20
OWNED [2] - 153:9, 207:19
OWNER [6] - 141:16, 151:22, 183:8, 207:24, 208:11
OWNERS [1] - 141:24
OWNERSHIP [1] - 270:25
OWNS [3] - 151:19, 169:24, 185:9

P

P.M [15] - 134:15, 134:20, 136:22, 211:25, 212:1, 212:15, 212:16, 252:21, 255:24, 255:25, 256:4, 258:24, 275:22, 275:23, 302:13
PACKETS [1] - 189:21
PAGE [36] - 131:2, 143:23, 149:21, 172:17, 172:18, 174:2, 174:15, 174:19, 183:19, 183:20, 193:9, 198:4, 198:14, 212:23, 213:22, 228:16, 230:23, 230:24, 230:25, 231:2, 235:13, 235:17, 243:20, 243:21, 244:13, 244:18, 244:20, 250:7, 250:10, 250:17, 250:18, 269:8, 273:22
PAGE [1] - 1:7
PAGES [1] - 303:6
PAID [3] - 152:25, 162:21, 182:9
PANAMA [3] - 206:1, 206:4, 206:10
PANDEMIC [9] - 204:1, 204:2, 204:3, 204:4, 208:21, 208:22, 215:22, 221:22, 222:22
PANNED [1] - 295:8
PARAGRAPH [10] - 250:16, 250:17, 269:7, 296:6, 296:13, 296:19, 296:23, 296:24, 297:11, 297:13
PARALEGALS [1] - 297:24
PARAPHRASING [1] - 237:12
PARDON [6] - 163:13, 190:9, 191:10, 206:3, 223:17, 224:5
PART [14] - 151:22, 154:18, 156:24, 171:1, 178:2, 181:14, 182:5, 183:1, 260:7, 270:24, 280:14, 284:25, 285:3, 290:18
PARTIAL [1] - 1:9
PARTICIPANT [2] - 259:22, 279:11
PARTICIPATING [1] - 179:9
PARTICULAR [8] - 146:3, 151:1, 193:24, 201:23, 203:22, 240:7, 240:15, 288:12
PARTICULARLY [3] - 283:1, 285:8, 286:21
PARTIES [5] - 265:17, 265:23, 285:8, 286:6, 286:8
PARTIES' [3] - 262:13, 299:15, 299:23
PARTY [1] - 286:12
PASS [1] - 245:16
PASSWORD [1] - 178:20
PAST [5] - 172:3, 186:19, 211:10, 241:16, 265:23
PASTE [1] - 198:16
PATTERN [6] - 246:4, 269:15, 270:14, 270:16, 270:19, 270:23
PAUSE [3] - 172:25, 285:21, 290:7
PAUSE [1] - 259:8
PAUSING [1] - 290:13
PAY [15] - 151:14, 152:8, 175:23, 191:19, 196:22, 199:17, 199:19, 199:22, 216:7, 218:25, 219:25, 220:4, 221:16, 237:23, 238:3
PAYABLE [2] - 153:1, 154:12
PAYCHECK [1] - 216:5
PAYEE [1] - 151:14
PAYING [3] - 153:19, 153:21, 219:1
PAYMENT [9] - 153:19, 153:20, 154:14, 175:3, 175:6, 175:22, 186:12, 214:16, 221:8
PAYMENTS [2] - 201:2, 211:6
PAYOFF [1] - 153:20
PAYROLL [36] - 169:1, 169:21, 182:10, 183:13, 184:21, 184:24, 185:5, 185:21, 185:25, 186:3, 186:13, 187:5, 218:14, 218:21, 219:25, 238:20, 238:21, 238:22, 238:23, 239:3, 245:1, 245:4, 246:5, 248:2, 248:17, 249:6, 249:13, 250:23, 250:24, 251:2, 251:18, 251:19
PAYROLL-RELATED [1] - 169:21
PDF [1] - 1:2
PEACE [1] - 204:6
PECULIARLY [5] - 282:14, 288:13, 288:19, 288:23, 289:4
PENNY [2] - 130:24, 303:15
PENULTIMATE [1] - 133:8
PEOPLE [17] - 169:17, 176:7, 187:7, 195:9, 199:11, 214:20, 214:21, 237:23, 238:3, 255:4, 255:5, 256:24, 257:3, 257:5, 278:16, 278:17
PERCEIVES [1] - 201:4
PERCENT [1] - 154:17
PERHAPS [3] - 274:14, 285:23, 287:5
PERIOD [1] - 1:5
PERIOD [3] - 172:14, 229:15, 246:25
PERIODS [1] - 293:14
PERMANENTLY [1] - 188:14
PERMITTED [2] - 279:15, 283:21
PERSON [9] - 144:8, 151:23, 185:9, 190:3, 192:4, 242:17, 246:7, 259:18, 289:1
PERSON'S [1] - 158:21
PERSONAL [2] - 150:11, 227:9
PERSONALLY [3] - 190:3, 191:17, 226:25
PERSONAS [1] - 278:16
PERSONS [1] - 164:10
PERSPECTIVE [2] - 271:12, 271:13
PERSUASIVE [3] - 278:7, 281:7, 290:1
PETITION [1] - 140:2
PHONE [7] - 190:1, 212:11, 227:18, 227:19, 229:1, 242:17, 242:19
PHOTO [1] - 167:10
PHOTOGRAPHS [7] - 164:6, 164:9, 164:16, 167:13, 203:10, 203:12, 204:6
PHOTOS [4] - 164:19, 167:25, 205:13, 206:8
PHRASED [3] - 279:2, 279:4, 279:5
PICK [2] - 173:25, 174:10
PICKED [1] - 211:11
PICTURE [12] - 165:9, 165:10, 167:22, 203:14, 205:20, 205:24, 206:14, 207:3, 207:11, 244:1, 244:2, 244:4
PICTURES [7] - 164:4, 203:24, 204:16, 204:17, 207:5, 209:12, 244:6
PIECE [2] - 271:20, 278:25
PIN [1] - 265:3
PLACARD [1] - 240:18
PLACE [4] - 164:22, 237:14, 275:14, 291:3
PLACED [2] - 181:22, 277:7
PLACES [1] - 218:19
PLAN [1] - 239:1
PLANNED [1] - 298:1
PLANNING [3] - 166:11, 232:25, 281:13
PLANS [3] - 165:25, 166:2, 205:4
PLAY [1] - 278:16
PLAYED [1] - 191:2
PLAYING [1] - 278:21
PLEA [23] - 182:14, 182:18, 182:19, 182:25, 183:17, 184:5, 195:1, 195:4, 238:11, 238:17, 239:7, 244:9, 244:10, 245:8, 250:10, 251:9, 251:11, 264:23, 264:25, 267:24, 268:2, 268:5, 268:13
PLEAD [1] - 180:8
PLEADED [5] - 181:19, 181:22, 182:13, 182:17, 254:25
PLEADING [1] - 138:12
PLEAS [1] - 254:19
PLED [3] - 138:16, 159:25, 180:4
PLUS [1] - 160:14
PM [2] - 130:6, 132:1
PNC [2] - 159:3, 159:19
PO [3] - 173:24, 174:1, 174:8
POINT [26] - 136:4, 138:12, 143:7, 145:16, 150:21, 153:21, 169:3, 172:3, 176:14, 188:14, 191:14, 202:12, 202:19, 203:3, 209:21, 215:24, 216:5, 220:3, 221:14, 228:23, 251:25, 258:19, 261:9, 262:17, 281:6, 293:18
POLICE [1] - 198:20
POLICYHOLDER [1] - 175:25
PORTION [1] - 1:5
PORTION [2] - 146:10, 171:16
POSITION [4] - 210:1, 288:1, 293:11, 301:15
POSITIONS [3] - 234:15, 292:17, 292:18

POSITIVE [1] - 154:23
POSSIBLY [4] - 141:1, 157:2, 164:5, 200:2
POTENTIAL [1] - 267:3
POWER [2] - 283:1, 286:22
PPP [64] - 141:6, 143:8, 144:3, 144:16, 145:19, 146:15, 146:19, 146:23, 151:2, 160:3, 164:23, 179:23, 182:6, 185:4, 189:12, 189:16, 189:18, 190:4, 190:7, 190:15, 191:5, 197:4, 202:6, 208:18, 208:23, 208:25, 209:2, 214:20, 221:25, 229:11, 229:14, 229:17, 230:15, 231:13, 232:5, 232:6, 232:22, 232:24, 233:10, 233:17, 233:20, 236:21, 241:12, 242:10, 246:1, 246:14, 246:20, 247:24, 248:7, 248:14, 249:3, 249:5, 249:10, 250:2, 251:1, 251:24, 257:9, 261:15, 272:9, 272:15, 273:10, 273:12, 279:7
PREFER [1] - 301:4
PRELIMINARILY [1] - 261:4
PREMATURE [1] - 260:15
PREPARATION [1] - 146:22
PREPARE [5] - 143:8, 191:5, 191:18, 191:19, 294:9
PREPARING [1] - 247:2
PRESENCE [2] - 283:20, 283:24
PRESENT [3] - 133:22, 137:9, 150:8
PRESENTED [4] - 209:15, 211:9, 264:17, 284:1
PRESENTING [1] - 255:5
PRESUMPTION [1] - 301:6
PRETRIAL [1] - 294:12
PRETTY [8] - 149:4, 149:6, 162:20, 162:22, 179:25, 180:1, 180:9, 200:6
PREVIOUS [1] - 180:7
PREVIOUSLY [7] - 143:15, 151:13, 178:1, 199:13, 203:4, 256:14, 291:17
PRIMARILY [1] - 260:8
PRIMARY [1] - 143:19
PRINTED [1] - 153:12
PRINTING [1] - 154:19
PRINTOUT [3] - 155:12, 155:14, 294:1
PRITTY [2] - 130:24, 303:15
PRIVATE [2] - 207:23, 207:24
PRIVATELY [1] - 207:19
PROBLEM [1] - 301:13
PROCEED [1] - 181:7
PROCEEDING [2] - 251:11, 254:21
PROCEEDINGS [7] - 211:25, 212:15, 255:24, 259:8, 275:22, 302:13, 303:7
PROCEEDINGS [2] - 130:9, 132:1
PROCEEDS [6] - 147:1, 151:1, 160:3, 185:4, 251:2, 271:1
PROCESS [1] - 144:16
PROCESSED [1] - 246:7
PROCESSES [1] - 287:22
PROCESSING [1] - 144:7
PROFESSIONAL [2] - 234:10, 237:13
PROGRAM [1] - 216:6
PROGRAM [1] - 239:2
PROHIBITED [1] - 1:9
PROJECT [50] - 144:18, 145:2, 145:7, 149:4, 149:6, 150:18, 150:20, 156:22, 156:25, 157:2, 157:3, 160:21, 161:5, 161:17, 161:18, 161:24, 162:13, 162:17, 163:1, 165:12, 166:7, 168:25, 169:1, 169:15, 169:18, 169:22, 170:7, 170:14, 182:10, 189:8, 201:23, 204:21, 205:5, 209:7, 211:5, 214:10, 215:3, 215:5, 217:10, 217:18, 218:15, 226:14, 228:24, 234:12, 237:14, 239:2, 241:23, 242:23, 243:10
PROJECTS [4] - 152:9, 200:13, 200:18, 237:20
PROMISE [1] - 256:22
PRONOUN [1] - 144:21
PROOF [1] - 260:10
PROOF [1] - 274:24
PROPER [2] - 165:13, 291:6
PROPERTIES [1] - 203:21
PROPERTY [14] - 205:10, 206:20, 207:15, 207:18, 207:21, 208:7, 208:11, 208:17, 239:25, 240:6, 243:24, 244:4, 244:5, 260:20
PROPOSED [8] - 260:17, 277:12, 278:23, 279:14, 282:25, 299:15, 299:23, 300:3
PROSECUTION [2] - 289:12, 290:4
PROSECUTOR [3] - 239:12, 240:20, 242:15
PROSECUTOR'S [1] - 289:15
PROSECUTORIAL [4] - 289:8, 289:14, 289:24, 290:3
PROTECTION [1] - 216:6
PROVE [3] - 182:22, 269:8, 272:10
PROVED [1] - 259:15
PROVEN [4] - 259:10, 260:20, 261:16, 277:17
PROVIDE [3] - 197:16, 211:8, 236:17
PROVIDED [7] - 192:10, 192:13, 207:13, 208:5, 211:4, 284:3, 289:7
PROVIDING [2] - 183:23, 277:9
PUBLISH [9] - 165:7, 192:16, 193:2, 194:18, 212:22, 216:15, 230:5, 230:13, 248:5
PULL [27] - 142:6, 143:11, 145:24, 148:9, 149:19, 149:20, 149:22, 151:4, 151:9, 152:14, 158:18, 159:5, 169:12, 171:1, 171:13, 172:7, 172:18, 174:5, 174:15, 178:3, 191:24, 205:14, 205:16, 210:23, 218:17, 231:23, 236:20
PULLED [5] - 240:3, 244:1, 244:3, 284:18, 288:6
PULLING [2] - 214:21, 284:9
PURCHASE [4] - 144:18, 150:14, 156:22, 186:17
PURCHASED [2] - 150:14, 221:16
PURCHASING [3] - 150:16, 164:5, 207:18
PURPORTED [1] - 279:25
PURPOSE [16] - 145:16, 152:6, 160:19, 183:13, 184:20, 184:24, 186:11, 221:10, 244:25, 245:4, 250:22, 250:24, 260:6, 269:24, 269:25, 271:2
PURPOSES [4] - 166:22, 173:7, 176:19, 251:19
PURSUANT [3] - 229:22, 238:6, 245:13
PUT [23] - 154:20, 165:15, 165:20, 168:3, 168:11, 169:9, 169:10, 177:25, 178:11, 186:23, 186:25, 194:3, 198:11, 265:3, 268:4, 273:22, 276:7, 281:18, 285:14, 290:23, 293:10, 293:17, 298:14
PUTTING [2] - 280:21, 280:24
PYFROM [9] - 254:24, 255:7, 257:8, 259:18, 292:18, 292:21, 292:24, 293:1, 293:12
PYFROM-FOSTER [6] - 254:24, 255:7, 257:8, 259:18, 292:21, 293:12
PYFROM-FOSTER'S [3] - 292:18, 292:24, 293:1

Q

QUESTIONING [4] - 136:18, 196:10, 212:20, 246:1
QUESTIONS [37] - 132:13, 132:17, 133:7, 133:16, 133:17, 136:3, 138:22, 141:12, 147:16, 148:11, 179:10, 185:23, 186:6, 187:3, 187:11, 188:21, 210:11, 218:20, 231:19, 232:5, 234:9, 236:19, 238:9, 238:13, 238:15, 238:20, 238:21, 239:12, 239:24, 240:21, 253:10, 255:3, 256:24, 257:22, 272:18, 283:21
QUICK [1] - 300:5
QUICKER [1] - 236:6
QUICKLY [1] - 228:7
QUITE [4] - 139:6, 149:1, 278:10, 279:13
QUOTATION [1] - 284:13
QUOTE [1] - 282:3
QUOTED [2] - 280:17, 284:13

R

RAISED [4] - 145:3, 261:9, 269:9, 295:20
RAISES [1] - 277:12
RANGE [1] - 164:23
RAPHAEL [2] - 282:4, 288:7
RAPID [1] - 278:14
RATIONAL [1] - 262:9
RE [1] - 136:17
RE-SWEAR [1] - 136:17
REA [1] - 259:11
REACH [1] - 243:8
REACHES [1] - 280:7
REACT [2] - 140:21, 234:23

READ [12] - 182:25, 183:20, 228:18, 250:16, 265:2, 267:7, 281:5, 281:8, 291:6, 291:14, 302:8, 302:9
READING [2] - 284:9, 284:10
READY [9] - 134:5, 134:8, 219:9, 219:12, 224:10, 256:1, 298:1, 298:5, 299:6
REAL [25] - 161:18, 170:12, 182:10, 198:10, 203:8, 205:9, 207:17, 210:10, 217:10, 217:18, 225:3, 226:13, 227:11, 227:16, 228:24, 230:10, 232:21, 232:24, 233:2, 234:18, 242:22, 243:9, 243:23, 244:5, 246:2
REALITY [3] - 184:23, 245:3, 250:23
REALLY [11] - 141:4, 167:4, 194:17, 195:18, 215:4, 215:5, 234:12, 239:16, 241:25, 268:18, 274:11
REALM [1] - 280:24
REASON [4] - 193:17, 193:22, 284:4, 288:2
REASONABLE [3] - 260:10, 260:20, 262:9
REASONS [2] - 176:19, 176:22
REBUTTAL [11] - 254:14, 254:24, 255:8, 255:17, 255:22, 256:9, 258:1, 258:4, 258:5, 258:7
RECEIVE [1] - 258:10
RECEIVED [6] - 179:2, 179:5, 179:13, 189:20, 265:15, 272:17
RECEIVING [1] - 191:3
RECENT [1] - 278:5
RECESS [7] - 211:25, 212:15, 255:24, 275:14, 275:19, 275:22, 302:13
RECOGNIZE [9] - 142:10, 152:16, 154:4, 155:7, 159:17, 163:25, 213:1, 214:3, 237:3
RECOLLECTION [9] - 183:16, 193:6, 196:5, 196:18, 198:15, 239:24, 240:4, 240:6, 240:14
RECOMMEND [1] - 162:1
RECORD [25] - 132:2, 132:16, 134:6, 134:7, 185:9, 187:1, 212:9, 212:10, 212:13, 212:14, 253:12, 254:12, 259:2, 263:4, 263:6, 273:15, 275:17, 281:18, 283:14, 285:15, 290:19, 290:23, 293:10, 293:17, 299:22
RECORD'S [1] - 268:21
RECORDED [1] - 130:23
RECORDINGS [3] - 189:22, 190:25
RECORDS [3] - 209:23, 224:3, 224:7
RECROSS [4] - 131:5, 131:9, 243:15, 257:14
RECROSS-EXAMINATION [2] - 243:15, 257:14
RECROSS-EXAMINATION.....243 [1] - 131:5
RECROSS-EXAMINATION.....257 [1] - 131:9
RED [2] - 157:23, 157:24
REDIRECT [6] - 131:5, 131:6, 131:8, 232:3, 250:8, 256:20
REDIRECT [1] - 231:20
REFER [1] - 148:16
REFERENCE [3] - 144:23, 261:13, 261:19
REFERENCED [1] - 235:7
REFERENCES [1] - 266:20
REFERENCING [1] - 1:7
REFERRING [2] - 144:21, 150:19
REFERS [2] - 261:12, 264:25
REFLECT [1] - 155:14
REFLECTING [1] - 199:8
REFRESH [13] - 183:16, 184:14, 191:22, 192:19, 193:5, 195:6, 196:5, 196:18, 198:15, 239:23, 240:4, 240:6, 240:14
REFUSAL [2] - 282:6, 284:14
REFUSED [1] - 283:16
REFUSING [1] - 277:5
REGARDING [3] - 284:12, 300:3, 302:6
REGULAR [3] - 149:15, 177:23
REGULARLY [1] - 270:20
RELATED [17] - 141:6, 148:9, 158:9, 161:5, 169:21, 187:4, 187:5, 207:7, 211:5, 233:17, 235:25, 236:7, 238:20, 238:22, 239:7, 243:9, 260:12
RELATES [1] - 196:15
RELATIONSHIP [1] - 138:23
RELAYED [1] - 187:11
RELEASE [1] - 258:13
RELEVANCE [2] - 196:10, 245:24
RELEVANT [4] - 197:3, 245:15, 288:16, 293:14
RELIES [1] - 288:18
REMAINING [3] - 259:20, 262:1, 300:9
REMEMBER [47] - 138:9, 138:12, 138:15, 145:15, 145:18, 154:21, 160:14, 160:15, 167:16, 169:9, 170:13, 173:2, 182:13, 182:17, 182:21, 182:24, 183:4, 183:6, 185:15, 185:23, 187:22, 189:13, 189:15, 194:23, 195:1, 199:25, 203:17, 203:20, 203:23, 204:14, 211:1, 217:3, 224:9, 224:17, 224:19, 225:17, 235:4, 237:17, 238:13, 238:15, 240:1, 241:25, 243:17, 249:23, 273:17, 294:17, 294:20
REMEMBERED [1] - 195:4
REMINDED [1] - 258:14
REMINDER [1] - 299:10
REMITTER [3] - 151:23, 152:23, 154:10
REMOVED [1] - 265:4
REMOVING [1] - 268:19
RENEW [6] - 255:13, 255:16, 259:4, 260:1, 292:16
RENEWED [2] - 259:2, 259:23
RENOVATE [1] - 166:16
RENOVATED [1] - 218:5
RENOVATING [1] - 164:5
RENOVATION [3] - 162:10, 205:5, 218:2
RENOVATIONS [3] - 156:6, 156:20, 156:21
RENT [1] - 166:16
REPARTEE [1] - 278:14
REPEAT [3] - 150:3, 182:16, 200:21
REPORTER [4] - 1:4, 1:8, 130:24, 303:15
REPORTER [1] - 138:3
REPORTS [1] - 198:20
REPRESENT [2] - 135:14, 296:21
REPRESENTATIONS [2] - 164:9, 187:9
REPRESENTING [1] - 229:2
REPUTATION [1] - 264:12
REQUEST [17] - 260:19, 262:22, 265:14, 270:10, 271:24, 272:4, 274:18, 275:11, 283:5, 285:14, 285:16, 291:19, 291:22, 296:1, 296:3, 297:6, 300:8
REQUESTED [10] - 191:14, 262:25, 278:9, 278:10, 279:18, 285:13, 285:21, 290:6, 291:18, 292:2
REQUESTING [1] - 158:6
REQUESTS [2] - 266:12, 275:25
REQUIRE [2] - 270:14, 277:15
REQUIREMENTS [1] - 287:20
REQUIRES [1] - 283:7
REQUIRING [1] - 289:11
REQUISITE [1] - 259:11
RESEARCH [1] - 258:21
RESEARCHING [1] - 284:23
RESERVATION [54] - 141:7, 141:11, 141:13, 141:25, 142:4, 143:8, 143:18, 144:4, 145:20, 146:16, 146:23, 147:5, 158:15, 160:5, 161:23, 178:16, 182:9, 183:8, 183:11, 183:12, 184:16, 184:23, 185:10, 186:2, 186:12, 187:9, 187:21, 190:16, 191:9, 191:11, 191:20, 192:8, 193:7, 194:22, 196:12, 213:9, 214:23, 215:10, 220:17, 221:23, 221:25, 222:16, 222:18, 222:22, 222:24, 226:17, 229:11, 244:16, 244:22, 245:3, 246:8, 246:22, 250:21, 250:23
RESIDENCE [3] - 177:3, 177:23, 178:8
RESIDUAL [1] - 166:17
RESOLVED [1] - 262:23
RESOURCE [48] - 148:14, 148:15, 148:19, 152:4, 156:25, 158:2, 158:8, 159:19, 160:10, 160:19, 160:20, 161:23, 162:5, 162:24, 169:23, 182:9, 183:12, 184:17, 185:24, 185:25, 186:13, 187:5, 187:13, 199:14, 199:18, 211:6, 213:10, 219:6, 220:17, 221:6, 229:18, 230:16, 232:8, 232:23, 233:7, 238:22, 239:2, 239:4, 240:23, 244:17, 244:22, 246:2, 249:10, 249:19, 250:2, 250:21, 251:18, 251:24
RESOURCE'S [1] - 213:20
RESPECT [2] - 239:6, 299:21
RESPECTIVE [1] - 287:22

RESPOND [4] - 188:21, 188:23, 218:13, 218:18
RESPONDED [3] - 187:15, 191:15, 227:16
RESPONDING [2] - 218:12, 279:13
RESPONSE [8] - 210:14, 218:8, 224:10, 224:12, 224:13, 245:23, 245:25, 261:8
RESPONSES [1] - 238:16
RESPONSIBILITIES [1] - 162:16
RESPONSIBLE [1] - 180:12
RESPONSIVE [1] - 211:14
REST [9] - 133:22, 136:15, 206:8, 254:12, 255:13, 255:21, 262:2, 267:7, 267:18
RESTATE [1] - 291:1
RESTRICTED [1] - 1:4
RESTS [2] - 137:4, 256:7
RESWORN [1] - 137:20
RETAINER [1] - 237:25
RETIRED [3] - 188:12, 188:17, 189:7
REVERSE [1] - 301:18
REVERSES [1] - 302:4
REVERSING [1] - 241:4
REVIEW [5] - 184:4, 184:10, 250:10, 290:9, 291:10
REVIEWING [3] - 184:14, 189:21, 297:22
REVISE [1] - 291:19
RICHARDS [1] - 279:21
RICKY [3] - 283:2, 286:22, 302:7
RIDING [2] - 167:15, 239:20
RIGHTS [6] - 132:17, 135:1, 135:21, 135:22, 254:7, 287:8
RIOS [1] - 288:9
RISE [1] - 289:16
RMR [2] - 130:24, 303:15
ROADRUNNER [2] - 171:24, 173:23
RODE [1] - 167:15
ROLE [4] - 277:9, 278:16, 278:21, 280:1
ROOM [1] - 177:5
ROUTING [3] - 158:4, 158:7, 221:5
RUDE [1] - 207:8
RULE [10] - 229:23, 245:13, 255:13, 259:4, 259:23, 260:1, 260:16, 261:4, 261:23
RULE [2] - 271:25, 282:15
RULES [1] - 179:20
RULING [1] - 281:4

S

SALARY [1] - 149:15
SALE [4] - 205:10, 205:19, 206:14, 243:24
SAMIR [1] - 130:15
SAMPLE [1] - 197:14
SAND [1] - 272:8
SARALIENE [1] - 130:18
SARCASTIC [1] - 227:20
SAW [9] - 151:2, 152:19, 156:13, 160:13, 167:25, 168:5, 204:14, 240:17, 265:25
SCALE [1] - 200:13
SCENES [1] - 164:10
SCHEDULING [1] - 160:21
SCHOOL [1] - 248:8
SCOUT [1] - 203:21
SCREEN [2] - 157:13, 244:7
SCRIVENER [1] - 301:23
SCROLL [2] - 193:8, 213:7
SCROLLING [1] - 270:21
SEAL [1] - 265:21
SEARCH [1] - 209:23
SEATED [8] - 134:16, 134:24, 135:9, 136:23, 212:18, 252:22, 256:5, 258:25
SECOND [18] - 143:22, 155:6, 155:11, 155:25, 157:16, 158:9, 158:14, 159:18, 174:18, 174:20, 193:8, 217:14, 231:2, 259:7, 263:21, 284:19, 296:19, 297:11
SECOND [1] - 282:16
SECRET [2] - 141:2, 280:1
SECRETS [7] - 141:3, 180:17, 180:19, 202:10, 202:20, 203:4, 236:14
SECURE [1] - 170:14
SECURED [2] - 167:4, 241:22
SECURITY [1] - 198:25
SEE [46] - 142:14, 143:16, 146:3, 147:21, 150:8, 151:14, 155:10, 157:16, 158:21, 159:1, 159:4, 159:7, 159:13, 165:11, 168:19, 171:3, 171:5, 171:7, 171:16, 171:19, 172:10, 172:14, 172:20, 174:22, 184:9, 191:22, 192:25, 193:1, 193:8, 194:1, 194:15, 196:10, 204:13, 205:21, 206:18, 206:22, 222:14, 236:4, 236:25, 239:23, 240:3, 250:6, 257:18, 258:23, 265:25, 299:25
SEEING [1] - 150:1
SEEM [1] - 277:22
SELECTED [1] - 163:4
SELECTIVE [1] - 284:12
SELF [1] - 253:14
SELF-INCRIMINATION [1] - 253:14
SELLING [1] - 209:4
SEND [1] - 157:25
SEND [9] - 159:7, 159:20, 192:20, 197:20, 220:1, 224:10, 295:15, 298:11, 298:20
SENDING [15] - 185:5, 191:13, 191:16, 191:17, 192:23, 193:10, 193:24, 194:16, 194:23, 195:15, 219:22, 222:23, 249:16, 251:3, 298:21
SENIOR [1] - 234:15
SENT [43] - 159:22, 182:24, 184:16, 189:22, 190:16, 191:1, 191:8, 191:11, 193:5, 193:6, 193:17, 194:10, 194:25, 195:2, 195:5, 195:20, 197:24, 198:10, 216:17, 219:24, 220:3, 220:7, 220:8, 221:15, 227:18, 228:10, 228:17, 229:9, 230:7, 244:21, 246:14, 247:7, 247:24, 248:7, 248:14, 249:5, 250:20, 265:23, 284:18, 285:2, 294:10, 296:7, 296:8
SENTENCE [2] - 282:9, 284:19
SENTENCING [3] - 187:8, 292:18, 292:24
SEPARATE [2] - 251:21
SEPARATED [1] - 202:3
SEPARATELY [1] - 212:8
SEPTEMBER [1] - 235:18
SERIES [1] - 283:21
SERVE [3] - 282:7, 282:21, 284:15
SERVICES [44] - 148:14, 148:15, 148:19, 152:4, 156:25, 158:2, 160:10, 160:19, 160:20, 161:23, 162:5, 162:25, 182:10, 183:12, 184:17, 185:24, 185:25, 186:13, 187:5, 187:13, 199:14, 199:18, 211:6, 213:10, 219:7, 220:17, 221:6, 229:18, 230:16, 232:8, 232:24, 233:7, 238:22, 239:2, 239:4, 240:23, 244:17, 244:23, 246:2, 249:11, 249:19, 250:3, 251:18, 251:25
SERVICES [7] - 183:14, 184:21, 184:25, 245:1, 245:5, 250:23, 250:25
SESSION [1] - 130:6
SET [2] - 239:2, 277:14
SETS [1] - 160:18
SEVENTH [1] - 282:18
SEVERAL [9] - 195:15, 203:18, 205:1, 209:2, 210:10, 223:13, 227:22, 235:2, 274:1
SHAMBLES [1] - 170:9
SHAPED [1] - 204:22
SHEET [1] - 146:9
SHIT [1] - 273:13
SHIT [6] - 230:10, 230:11, 232:21, 233:2, 234:18
SHORT [5] - 188:19, 227:20, 242:25, 275:14, 279:19
SHORT-TERM [1] - 188:19
SHORTER [2] - 256:22, 292:11
SHORTLY [1] - 272:16
SHOW [13] - 155:5, 163:20, 163:22, 167:7, 170:24, 183:10, 194:8, 206:8, 226:20, 235:7, 246:3, 285:9, 285:12
SHOWED [11] - 170:12, 183:16, 200:4, 207:12, 211:1, 216:9, 223:9, 225:4, 243:17, 244:2, 244:4
SHOWING [5] - 143:14, 285:4, 286:9, 289:1, 289:8
SHOWN [13] - 142:17, 168:9, 186:23, 235:2, 235:13, 236:7, 236:9, 251:25, 259:10, 277:14, 277:18, 279:6, 279:10
SHOWS [1] - 273:15
SHUT [1] - 216:1
SIC [7] - 137:7, 169:11, 222:24, 238:23, 240:10, 301:1
SIC) [1] - 189:22

SIDE [6] - 194:4, 194:19, 206:15, 237:7
SIGN [9] - 165:18, 171:21, 205:11, 205:19, 205:24, 206:14, 207:3, 207:14
SIGNATURE [11] - 142:13, 142:17, 150:5, 150:6, 150:7, 171:11, 213:1, 213:2, 213:4, 231:5, 237:3
SIGNATURES [4] - 142:8, 142:15, 143:23, 171:14
SIGNED [11] - 143:25, 189:18, 189:22, 190:4, 190:5, 190:6, 190:7, 190:8, 190:16, 191:1, 201:3
SIGNER [2] - 143:2, 172:1
SIGNERS [1] - 142:3
SIGNIFICANT [4] - 141:4, 228:3, 229:5, 255:6
SIGNING [1] - 142:20
SIMULTANEOUS [1] - 284:17
SIT [1] - 285:18
SITES [3] - 163:10, 168:2, 168:5
SITTING [5] - 134:4, 181:16, 185:19, 281:21, 286:1
SITUATION [4] - 268:17, 286:7, 286:24, 287:6
SIX [2] - 189:7, 205:8
SLIGHTLY [1] - 292:14
SLIP [1] - 213:25
SLOW [2] - 188:21, 188:23
SOCIAL [1] - 198:25
SOLUTION [1] - 267:3
SOMEONE [15] - 144:20, 191:19, 193:22, 198:1, 201:8, 203:14, 259:17, 266:6, 267:6, 267:14, 267:17, 268:12, 278:11, 285:21
SOMETHING'S [1] - 298:17
SOMETIMES [1] - 157:24
SOMEWHERE [12] - 139:22, 147:16, 149:14, 164:21, 164:23, 202:5, 208:3, 221:1, 226:20, 226:25, 234:8, 244:19
SOON [1] - 228:8
SOPHISTICATED [2] - 200:9, 201:6
SORRY [27] - 134:17, 136:25, 137:15, 178:3, 189:11, 205:16, 210:24, 223:3, 230:24, 236:23, 259:7, 264:1, 265:20, 266:11, 268:14, 270:21, 276:10, 276:15, 276:17, 282:23, 282:24, 286:16, 292:13, 294:16, 295:20, 295:22
SORRY [1] - 299:5
SORT [5] - 149:8, 157:11, 278:19, 293:9, 293:17
SOUNDS [4] - 141:2, 295:1, 300:18, 301:22
SOURCE [13] - 161:15, 170:22, 185:3, 251:1, 260:5, 260:6, 261:14, 261:19, 270:25, 272:9, 272:18, 273:7, 273:16
SOUTH [1] - 204:12
SPEAKING [1] - 144:23
SPECIAL [1] - 256:11
SPECIFIC [1] - 244:15
SPECIFICALLY [6] - 259:12, 260:21, 261:13, 278:23, 279:9, 292:25
SPECIFIED [3] - 260:21, 261:12, 261:21
SPECULATION [4] - 147:7, 161:6, 234:20, 290:22
SPEECH [1] - 188:22
SPELL [1] - 138:2
SPELLING [1] - 157:25
SPENT [3] - 185:4, 201:13, 251:2
SPREADSHEET [1] - 150:18
ST [2] - 240:12, 243:18
ST [1] - 240:12
STACEY [1] - 138:4
STACEY [1] - 138:4
STACK [2] - 297:25, 298:8
STAFF [1] - 252:18
STAGE [1] - 176:12
STAND [7] - 134:22, 135:5, 137:8, 155:24, 256:12, 275:19, 292:20
STANDARD [1] - 260:10
STAPLED [1] - 228:15
START [5] - 181:20, 258:17, 258:18, 274:23, 275:2
STARTED [4] - 204:1, 204:2, 204:4, 214:19
STARTING [2] - 250:16, 297:7
STARTS [1] - 156:17
STATE [5] - 137:7, 137:13, 166:15, 240:10
STATE [4] - 138:2, 183:2, 259:2, 267:1
STATEMENT [32] - 145:11, 146:10, 159:3, 171:11, 172:13, 172:14, 191:9, 191:11, 191:14, 191:15, 191:17, 192:7, 192:10, 192:12, 192:13, 192:23, 193:1, 193:10, 193:11, 194:23, 195:11, 210:1, 251:9, 251:10, 266:18, 266:23, 267:2, 267:6, 270:2, 271:9, 277:14, 285:23
STATEMENTS [12] - 147:21, 173:20, 173:22, 191:17, 191:19, 192:20, 193:6, 195:2, 195:5, 238:11, 244:15, 293:11
STATES [5] - 256:11, 276:12, 282:4, 287:1, 288:9
STATES [6] - 130:1, 130:4, 130:10, 130:16, 130:25, 303:3
STATUTES [2] - 270:13, 270:14
STAY [3] - 176:15, 176:25, 296:17
STAYED [2] - 177:12, 239:18
STAYING [1] - 178:5
STENOGRAPHICALLY [1] - 130:23
STEP [4] - 134:18, 179:1, 252:12, 257:24
STILL [11] - 134:1, 134:3, 167:24, 176:14, 176:15, 176:18, 244:10, 245:15, 250:11, 278:7, 291:18
STIPULATION [3] - 275:6, 295:7, 295:10
STIPULATIONS [2] - 295:5, 295:16
STITES [19] - 223:3, 223:12, 223:15, 223:18, 223:21, 224:15, 225:5, 226:2, 227:22, 228:2, 228:17, 228:23, 242:16, 242:22, 243:1, 243:6, 256:11, 256:22, 257:16
STITES [2] - 131:7, 256:16
STOLEN [1] - 197:20
STORY [1] - 228:23
STREET [3] - 165:18, 205:24, 206:6
STREET [3] - 240:10, 247:10, 247:25
STRIKE [3] - 211:13, 211:16, 263:7
STRIKES [1] - 274:1
STROKE [2] - 188:1, 188:5
STRONG [1] - 268:9
STRONGER [1] - 262:3
STRONGLY [2] - 272:21, 301:9
STUB [1] - 199:17
STUBS [3] - 196:22, 199:19, 199:22
STUDENTS [1] - 166:17
STUFF [11] - 150:18, 167:3, 195:9, 204:11, 207:5, 209:22, 226:23, 232:17, 236:9, 239:8, 239:17
STUTTERING [1] - 188:22
SUB [4] - 229:22, 245:12, 245:21, 245:22
SUBJECT [3] - 254:17, 259:16, 294:19
SUBMIT [3] - 164:12, 233:20, 252:1
SUBMITTED [8] - 144:5, 146:16, 164:24, 190:19, 237:9, 246:6, 279:7, 279:14
SUBMITTING [1] - 146:22
SUBPOENA [4] - 179:2, 179:13, 209:23, 224:10
SUBPOENAED [1] - 179:19
SUBPOENAS [3] - 223:21, 224:1, 224:2
SUBSTANCE [1] - 297:1
SUBSTANTIAL [2] - 289:8, 289:13
SUDDEN [3] - 189:8, 216:9, 222:21
SUFFICIENCY [1] - 260:13
SUFFICIENT [2] - 262:8
SUGGEST [2] - 283:11, 284:4
SUGGESTED [2] - 135:13, 241:21
SUGGESTIONS [1] - 299:6
SUGGESTS [1] - 267:24
SUPPLEMENTAL [4] - 265:14, 266:12, 275:10, 275:25
SUPPORT [4] - 270:9, 272:13, 272:22, 273:21
SUPPOSED [8] - 141:15, 152:8, 181:13, 181:16, 181:20, 187:12, 229:1, 244:18
SUPPOSEDLY [3] - 198:7, 218:21, 241:20
SUPREME [1] - 269:18
SUSTAIN [2] - 195:22, 281:3
SUSTAINED [1] - 234:25
SUSTAINING [1] - 281:14
SWEAR [3] - 135:6, 136:17, 137:11
SWITCH [3] - 200:7, 301:20, 301:21
SWORE [1] - 181:25
SWORN [2] - 135:8, 256:14
SYSTEM [1] - 180:11

T

TABBED [1] - 266:11
TABLE [1] - 157:14
TABLES [1] - 181:16
TAILOR [1] - 268:16
TAL [1] - 130:14
TALKS [1] - 293:3
TAX [2] - 199:3, 199:5
TECHNOLOGY [1] - 137:9
TED [1] - 293:3
TELDRIN [2] - 130:7, 130:17
TELDRIN [2] - 138:7, 290:21
TEN [3] - 211:23, 252:19, 275:17
TEN-MINUTE [1] - 211:23
TEN-MINUTE-ER [1] - 252:19
TENDER [3] - 155:19, 164:12, 165:1
TERM [1] - 188:19
TESTIFIED [26] - 137:21, 162:13, 176:11, 178:14, 182:8, 186:11, 187:2, 187:20, 189:11, 202:9, 202:16, 202:22, 202:24, 203:7, 208:20, 213:12, 229:10, 253:25, 256:18, 263:10, 263:18, 264:24, 267:25, 268:2, 273:20, 287:9
TESTIFIES [1] - 264:24
TESTIFY [33] - 132:4, 132:5, 132:9, 132:19, 132:22, 133:3, 133:13, 135:15, 135:16, 179:3, 179:14, 179:17, 180:6, 240:24, 253:6, 253:17, 253:18, 253:24, 254:8, 268:6, 268:18, 282:13, 283:12, 283:17, 284:6, 285:15, 286:3, 286:12, 288:19, 288:23, 289:21
TESTIFYING [2] - 180:4, 189:15
TESTIMONY [24] - 186:15, 186:19, 187:22, 191:18, 210:7, 210:8, 221:20, 222:23, 256:22, 260:3, 265:1, 267:23, 272:6, 273:4, 273:9, 273:25, 283:15, 285:4, 285:9, 286:23, 288:15, 289:2, 289:17, 290:19
TEXT [31] - 155:8, 155:12, 155:15, 155:17, 156:4, 156:8, 157:16, 192:22, 207:4, 207:6, 207:9, 207:12, 207:23, 208:2, 209:8, 209:11, 209:13, 211:2, 211:4, 216:17, 218:8, 218:13, 225:16, 227:12, 227:24, 227:25, 228:2, 228:16, 228:22, 229:9, 243:7
TEXTED [8] - 155:12, 216:20, 217:4, 225:14, 225:24, 227:9, 227:15, 229:4
TEXTING [1] - 156:2
THAT'LL [1] - 291:8
THE [220] - 1:2, 1:4, 1:6, 1:7, 1:8, 1:10, 130:1, 130:10, 130:14, 130:17, 130:20, 132:2, 132:7, 132:11, 132:21, 133:2, 133:6, 133:11, 133:15, 133:20, 133:24, 134:3, 134:6, 134:8, 134:13, 134:16, 134:21, 134:24, 135:4, 135:9, 135:19, 135:20, 136:1, 136:2, 136:7, 136:9, 136:11, 136:19, 136:20, 136:23, 137:5, 137:11, 147:15, 155:23, 165:5, 174:3, 180:24, 181:1, 181:2, 181:3, 184:1, 184:11, 186:4, 186:8, 186:25, 187:14, 187:18, 195:17, 195:22, 196:16, 197:8, 208:6, 209:25, 210:5, 210:14, 210:16, 210:19, 211:15, 211:21, 212:2, 212:5, 212:6, 212:12, 212:18, 230:3, 231:16, 231:20, 231:22, 234:25, 245:16, 245:19, 245:21, 245:23, 246:9, 246:11, 252:7, 252:11, 252:14, 252:22, 252:24, 253:2, 253:5, 253:9, 253:16, 253:20, 253:23, 254:3, 254:6, 254:10, 254:17, 255:9, 255:11, 255:15, 255:19, 256:1, 256:5, 256:8, 256:13, 257:12, 257:24, 258:3, 258:9, 258:25, 259:24, 261:7, 262:5, 262:20, 262:25, 263:4, 263:7, 263:11, 263:13, 263:16, 263:19, 263:21, 263:23, 263:25, 264:6, 264:9, 264:15, 264:21, 265:5, 265:8, 265:11, 265:18, 265:24, 266:3, 266:6, 266:10, 266:16, 267:12, 267:16, 268:8, 268:14, 268:21, 268:25, 269:2, 269:4, 269:12, 270:6, 270:11, 271:6, 271:9, 271:16, 271:18, 271:24, 272:24, 273:23, 274:13, 274:21, 275:10, 275:24, 276:2, 276:6, 276:9, 276:15, 276:18, 277:21, 278:4, 279:17, 280:15, 281:2, 281:19, 281:22, 282:1, 282:23, 284:7, 284:24, 285:16, 286:16, 286:20, 287:16, 287:23, 288:5, 290:1, 290:25, 291:20, 291:24, 292:5, 292:10, 293:19, 293:23, 294:3, 294:7, 294:11, 294:19, 294:22, 295:1, 295:4, 295:18, 295:23, 296:7, 297:4, 297:10, 297:15, 297:17, 297:19, 298:14, 299:3, 299:9, 299:22, 300:6, 300:18, 300:22, 301:12, 301:15, 301:22, 302:2
THEMSELVES [1] - 278:17
THEORY [5] - 276:3, 276:22, 280:2, 280:8, 291:13
THEREAFTER [1] - 279:23
THEREFORE [2] - 211:11, 290:13
THEY'VE [1] - 238:1
THINKING [1] - 239:15
THINKS [1] - 201:4
THIRD [8] - 172:17, 198:4, 217:21, 260:18, 261:11, 261:17, 296:23, 297:12
THOMAS [59] - 144:9, 144:10, 144:11, 144:16, 144:25, 150:23, 173:6, 173:8, 190:3, 190:7, 190:16, 190:19, 191:5, 191:8, 192:11, 192:21, 193:5, 193:7, 193:23, 193:25, 194:13, 194:22, 194:23, 195:2, 195:11, 214:19, 224:1, 224:9, 225:14, 225:24, 227:19, 228:5, 228:11, 228:18, 230:7, 231:3, 232:15, 233:5, 241:21, 242:6, 242:12, 246:6, 246:15, 246:20, 246:24, 247:7, 247:24, 248:7, 249:17, 249:23, 251:5, 273:8, 273:12, 273:20, 290:20, 292:22, 293:2, 293:3, 293:12
THOMAS'S [1] - 241:15
THREE [8] - 168:16, 180:5, 194:13, 194:24, 216:20, 235:13, 294:7
THREE-PAGE [1] - 235:13
TIED [1] - 278:23
TIMBERLAKE [1] - 137:10
TIMBERLAKE [1] - 136:5
TIMBERLAKE-WILEY [1] - 137:10
TIMBERLAKE-WILEY [1] - 136:5
TIMING [2] - 221:14, 255:12
TITAN [1] - 153:24
TITLE [3] - 171:6, 171:7, 274:24
TITLES [3] - 196:24, 197:10
TO [2] - 1:5, 1:9
TODAY [16] - 180:4, 180:13, 181:23, 186:15, 187:23, 225:25, 226:11, 226:12, 228:24, 229:4, 238:11, 256:23, 272:6, 272:14, 272:21, 286:1
TOGETHER [8] - 139:8, 155:25, 176:15, 189:9, 201:13, 239:21, 293:13, 298:14
TOMORROW [7] - 258:23, 281:6, 291:1, 297:22, 297:23, 299:7, 299:8
TONIGHT [1] - 299:9
TOOK [6] - 147:17, 151:24, 167:10, 208:12, 214:22, 214:25
TOP [8] - 146:9, 146:10, 156:8, 159:2, 171:1, 171:6, 174:6, 183:20
TOTALITY [1] - 254:21
TOUCH [2] - 276:10, 291:5
TOWARDS [2] - 150:16, 268:16
TRACKING [1] - 297:24
TRAIL [2] - 228:4, 229:5
TRANSACTION [11] - 146:3, 174:14, 186:6, 207:7, 210:10, 260:7, 260:24, 261:15, 261:18, 270:24, 271:3
TRANSACTIONS [6] - 146:1, 172:17, 173:18, 174:15, 174:22, 174:24
TRANSCRIPT [5] - 1:3, 1:6, 1:8, 1:9, 130:9
TRANSCRIPT [11] - 183:17, 184:5, 184:14, 186:14, 244:10, 250:6, 250:11, 251:9, 286:18, 290:9, 303:7
TRANSCRIPTS [1] - 1:3
TRANSFER [34] - 138:19, 158:10, 158:14, 159:3, 159:11, 159:13, 159:17, 159:18, 159:20, 159:22, 161:2, 161:14, 183:11, 183:13, 184:16, 184:20, 184:24, 185:2, 220:16, 220:19, 220:23, 221:4, 221:11, 221:15, 221:20, 244:16, 244:21, 244:25, 245:4, 250:20, 250:22, 250:24, 250:25, 261:18
TRANSFERRING [1] - 214:12
TRANSPORTATION [1] - 141:15
TRAVEL [48] - 141:7, 141:11, 141:14, 141:25, 142:4, 143:9, 143:18, 144:4, 145:20, 146:16, 146:23, 147:6,

158:15, 160:5, 161:24, 178:16, 182:9, 183:8, 183:11, 185:10, 186:2, 186:12, 187:10, 187:21, 190:16, 191:9, 191:12, 191:20, 192:8, 193:7, 194:22, 196:12, 213:9, 214:24, 215:10, 220:17, 221:24, 221:25, 222:16, 222:22, 222:24, 226:17, 229:11, 238:23, 240:22, 244:16, 246:8, 246:22
TREATMENT [1] - 267:25
TREE [4] - 206:15, 206:16, 206:18, 206:22
TRIAL [1] - 130:9
TRIAL [9] - 181:14, 181:19, 182:22, 183:10, 253:17, 283:9, 290:6, 290:13, 292:17
TRIED [1] - 286:15
TRIER [1] - 262:9
TRIP [5] - 203:16, 203:20, 203:23, 204:1, 204:9
TROUBLE [2] - 179:20, 188:23
TRUE [8] - 188:1, 188:7, 251:10, 283:4, 285:18, 285:24, 290:6, 303:6
TRUST [1] - 202:12
TRUTH [3] - 145:12, 181:25, 278:17
TRUTHFUL [1] - 238:10
TRUTHFULLY [1] - 180:6
TRUTHFULNESS [1] - 264:12
TRY [3] - 224:21, 243:8, 290:12
TRYING [11] - 144:17, 144:18, 195:6, 207:8, 209:18, 218:11, 242:6, 273:6, 273:15
TUCKER [1] - 239:19
TURN [3] - 209:22, 228:15, 244:13
TWO [23] - 138:9, 138:13, 140:16, 140:17, 154:8, 154:22, 168:16, 176:14, 177:2, 181:13, 185:19, 186:10, 186:19, 194:7, 195:4, 238:19, 241:10, 242:15, 266:12, 269:6, 275:25, 299:5, 301:14
TYPE [4] - 132:14, 141:13, 234:17, 238:6
TYPED [2] - 198:7, 198:16
TYPES [1] - 238:3
TYPICALLY [2] - 278:17, 286:7

U

UGLY [1] - 170:12
UNANIMOUSLY [3] - 282:20, 300:8, 300:17
UNAVAILABLE [5] - 286:8, 286:10, 286:13, 288:2
UNDER [13] - 133:3, 135:22, 181:22, 185:20, 186:11, 186:15, 209:21, 259:4, 265:21, 270:5, 279:15, 283:13, 299:13
UNDER [1] - 248:14
UNDERAGE [1] - 278:12
UNDERLYING [1] - 182:6
UNDERSTOOD [3] - 203:15, 254:7, 299:1
UNDERWAY [1] - 214:10
UNFAITHFUL [4] - 180:19, 202:23, 203:1, 203:5
UNFAVORABLE [1] - 289:17
UNITED [6] - 130:1, 130:4, 130:10, 130:16, 130:25, 303:3
UNITED [5] - 256:11, 276:12, 282:4, 287:1, 288:9
UNIVERSE [1] - 269:10
UNIVERSITY [1] - 166:15
UNLAWFUL [3] - 260:21, 261:13, 261:21
UNTRUTHFUL [2] - 187:8, 239:6
UNUSUAL [2] - 237:12
UP [69] - 139:18, 142:6, 143:11, 145:24, 146:12, 148:9, 149:19, 151:8, 151:23, 156:7, 158:18, 159:5, 165:15, 165:20, 168:3, 168:11, 169:9, 169:10, 170:8, 170:12, 172:7, 172:18, 173:25, 174:2, 174:10, 176:6, 177:25, 191:3, 191:24, 193:8, 198:7, 204:11, 205:14, 205:16, 209:11, 210:23, 213:22, 214:11, 216:9, 218:18, 223:9, 225:4, 228:7, 231:23, 234:12, 235:6, 235:10, 235:11, 236:5, 236:20, 238:7, 239:2, 239:11, 240:3, 243:5, 244:1, 244:3, 245:16, 250:11, 255:8, 270:21, 273:13, 275:19, 276:20, 284:9, 285:22, 288:6, 290:7
UP-AND-UP [1] - 234:12
UPDATED [1] - 270:17
UPFRONT [3] - 201:2, 237:24, 238:4
UPSET [1] - 140:23
US [1] - 185:14
USAA [12] - 154:7, 154:13, 156:5, 175:2, 175:6, 217:1, 217:4, 217:7, 217:12, 218:16, 220:10, 221:18
UTILITY [1] - 198:23

V

VAGUELY [3] - 166:12, 201:18, 239:13
VARIOUS [3] - 200:15, 246:14, 270:13
VEHICLE [2] - 196:24, 197:10
VERBAL [1] - 227:24
VERDICT [13] - 280:7, 299:4, 299:6, 299:11, 299:16, 299:19, 299:20, 299:21, 299:23, 300:3, 301:19, 302:3, 302:4
VERIFY [3] - 226:18, 227:7, 227:10
VERIFYING [1] - 227:3
VERSION [1] - 277:3
VIA [2] - 135:18, 137:9
VIDEO [1] - 135:18
VIEW [1] - 274:12
VIEWED [1] - 262:7
VIOLATE [1] - 179:20
VIRTUE [1] - 255:3
VIS [2] - 274:8
VIS-A-VIS [1] - 274:8
VISIT [4] - 163:14, 168:6, 208:20, 242:17
VISITED [1] - 205:1
VISITING [1] - 167:11
VOLUME [1] - 130:6
VOLUNTARILY [1] - 179:14
VS [1] - 130:5

W

W-2S [2] - 199:5, 199:21
WAIT [1] - 218:14
WALK [2] - 157:13, 275:15
WANTS [4] - 274:9, 275:15, 298:14, 301:18
WARRANTS [1] - 209:24
WASHINGTON [1] - 285:22
WATER [1] - 181:2
WEAVE [1] - 278:17
WEBSTER [29] - 132:3, 132:15, 133:17, 136:15, 137:3, 137:5, 252:8, 257:2, 258:3, 259:1, 265:15, 267:1, 268:8, 268:25, 269:14, 271:7, 273:1, 274:8, 274:13, 277:21, 280:16, 283:21, 284:7, 285:14, 292:7, 294:7, 295:1, 301:24, 302:4
WEBSTER [58] - 130:18, 132:6, 132:9, 133:19, 133:23, 134:12, 136:6, 137:4, 155:22, 165:4, 230:2, 231:19, 252:10, 257:13, 257:15, 257:21, 258:5, 259:3, 259:9, 262:21, 263:15, 263:20, 264:8, 264:13, 264:19, 265:9, 265:16, 265:20, 266:2, 266:4, 266:8, 266:14, 267:10, 268:9, 269:1, 269:17, 271:8, 271:14, 273:2, 274:16, 275:8, 278:3, 278:8, 284:22, 286:17, 290:8, 291:22, 292:2, 292:13, 294:6, 294:17, 294:25, 296:23, 297:9, 297:14, 301:8, 301:13, 301:25
WEBSTER'S [1] - 301:22
WEDLOCK [1] - 141:5
WEEK [5] - 176:25, 177:1, 181:19, 238:17, 285:22
WEEKS [6] - 181:13, 185:19, 186:10, 186:19, 195:4, 238:19
WHATNOT [1] - 295:6
WHATSAPP [1] - 293:4
WHEREAS [2] - 280:8, 280:18
WHITE [2] - 206:18, 207:2
WHOLE [11] - 166:12, 167:4, 174:16, 190:1, 204:22, 215:5, 216:5, 234:21, 236:15, 251:21, 270:24
WHOLLY [1] - 274:6
WIFE [17] - 141:3, 148:20, 149:1, 149:14, 157:24, 161:20, 169:25, 170:17, 174:4, 176:10, 185:6, 230:10, 232:14, 232:21, 234:23, 251:4, 273:14
WIFE'S [7] - 148:12, 149:3, 150:2, 150:4, 179:17, 225:25, 234:10

WILEY [9] - 135:18, 137:10, 179:7, 179:9, 180:9, 183:23, 183:24, 184:1, 252:24
WILEY [3] - 136:5, 252:23, 253:1
WILL [1] - 1:4
WILLIAM [1] - 279:24
WILLING [2] - 279:11, 301:22
WILLINGNESS [2] - 290:12, 290:15
WINDOW [3] - 206:17, 208:8, 240:18
WIRE [33] - 138:19, 158:7, 158:10, 158:14, 159:11, 159:13, 159:17, 161:2, 161:14, 183:11, 184:16, 219:10, 219:12, 220:3, 220:16, 220:19, 220:22, 221:12, 221:15, 221:20, 241:4, 244:15, 244:21, 250:20, 260:21, 260:23, 260:24, 261:3, 261:13, 261:16, 261:18, 261:20, 271:19
WIRED [2] - 160:9, 173:6
WIRES [1] - 220:8
WIRING [3] - 158:4, 219:6, 219:21
WITH [1] - 1:10
WITHDRAW [3] - 262:21, 271:21, 271:23
WITHDRAWAL [1] - 175:9
WITHDRAWN [5] - 259:16, 259:17, 263:8, 271:24, 300:20
WITHDREW [1] - 175:10
WITNESS [37] - 131:2, 134:21, 135:4, 135:6, 135:12, 136:17, 137:20, 185:24, 231:19, 256:17, 264:11, 267:24, 268:1, 282:7, 282:8, 282:12, 282:15, 282:21, 282:22, 283:7, 284:15, 284:16, 285:7, 286:4, 286:5, 286:7, 286:9, 287:6, 288:12, 288:18, 288:22, 289:4, 289:9, 289:12, 289:13, 289:20, 289:22
WITNESS [7] - 135:19, 136:1, 136:19, 174:3, 181:2, 208:6, 212:5
WITNESS [2] - 252:13, 257:25
WITNESS'S [2] - 288:15, 289:17
WITNESSES [5] - 133:24, 253:3, 253:4, 273:17, 287:5
WOMEN [1] - 140:12
WONDERFUL [2] - 258:22, 297:20
WORD [1] - 299:18
WORD [2] - 280:23, 300:8
WORDING [1] - 268:11
WORDS [3] - 275:1, 297:11, 297:12
WORKERS [1] - 150:17
WORKS [2] - 180:11, 200:13
WORLD [3] - 200:11, 226:23, 226:24
WORSE [1] - 189:2
WORTH [1] - 200:18
WOW [1] - 227:16
WOW [1] - 221:21
WRITE [8] - 213:15, 216:21, 217:14, 218:15, 218:17, 218:21, 221:10, 232:20
WRITTEN [1] - 238:7
WROTE [10] - 150:2, 150:4, 152:23, 153:11, 154:20, 213:10, 213:12, 221:18, 228:2, 285:2

Y

Y'ALL [13] - 134:16, 134:24, 136:23, 201:13, 212:18, 252:22, 256:5, 258:25, 294:12, 296:7, 298:5, 298:7, 298:19
YEAR [2] - 139:21, 235:17
YEARS [18] - 139:3, 139:5, 139:6, 147:11, 149:5, 180:5, 188:10, 189:8, 194:24, 196:13, 199:25, 200:3, 203:18, 205:8, 234:3, 234:7, 270:16
YESTERDAY [7] - 259:6, 260:2, 260:4, 262:2, 262:4, 265:21, 292:15
YOU [2] - 1:5, 1:8
YOURSELF [4] - 135:24, 183:21, 267:7, 267:17
YOURSELVES [2] - 258:16, 258:20

Z

ZERO [1] - 221:25
ZILLOW [5] - 240:3, 240:6, 243:20, 243:21, 243:23
ZOOM [2] - 137:9, 179:10
ZOOM [1] - 142:7