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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
THE HONORABLE DALE S. FISCHER, JUDGE PRESIDING

IN RE: NEXIUM (ESOMEPRAZOLE))
PRODUCTS LIABILITY,)
) No. 12-ML-2404 DSF-SS
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, August 24, 2015, 1:33 P.M.

Motion for Review of Clerk's Taxation Costs

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1 LOS ANGELES, CALIFORNIA; MONDAY, AUGUST 24, 2015; 1:33 P.M.

2 -o0o-

3 THE CLERK: Calling Item No. 10, 12-ML-2404, In Re
4 Nexium. Counsel, state your appearances.

5 MR. GRIFFIN: Good afternoon, Your Honor.
6 Keith Griffin on behalf of the plaintiffs.

7 MS. FISHER: Good afternoon, Your Honor.
8 Amy Fisher from IceMiller on behalf of the defendants.

9 MR. FREEBERY: Your Honor, Jim Freebery on behalf
10 of AstraZeneca.

11 MR. STEIMLE: Your Honor, William Steimle on
12 behalf of AstraZeneca.

13 THE COURT: Good afternoon.

14 I have a few questions. First of all, I will
15 admit that I don't really understand what this paragraph
16 relating to format is in the ESI agreement and,
17 specifically, that comes up in connection with the TIFF
18 issue. That's all caps, T-I-F-F.

19 So someone explain to me. I suppose the defense
20 should explain since you contend that the documents had to
21 be put in TIFF format and plaintiff says that's not required
22 by this order if I understand the arguments correctly.

23 MR. FREEBERY: Good afternoon again, Your Honor.
24 James Freebery on behalf of AstraZeneca.

25 Yes, Your Honor. The ESI agreement was a long

1 negotiated method --

2 THE COURT: That doesn't matter. I just want to
3 know what it says.

4 MR. FREEBERY: So what it says is that any
5 documents needing redaction pretty much or any hard-copy
6 documents must be TIFF'd.

7 THE COURT: So tell me. Documents needing
8 redaction I sort of understand.

9 MR. FREEBERY: Okay.

10 THE COURT: What you haven't identified separately
11 in your motion to tax costs.

12 MR. FREEBERY: That's correct. Because what
13 eventually happened is that all of the documents ended up
14 becoming TIFF'.

15 THE COURT: Okay. So tell me what that means in
16 the context of hard-copy paper documents which seems
17 redundant but maybe not. Maybe there's some difference
18 there.

19 MR. FREEBERY: It does seem a little redundant.

20 But yes. Any hard-copy documents so they can be
21 converted into electronic form so they can be searched and
22 manipulated are TIFF'd, and it's that tagged imaged file
23 format put into that format so that they can be then
24 uploaded and put into the database, allowed to be reviewed,
25 allowed to be redacted when necessary as well.

1 THE COURT: So you're talking about documents that
2 existed originally in hard copy but not in a computer
3 somewhere?

4 MR. FREEBERY: Correct.

5 Within the custodial file, which is among the data
6 sources we produced to the plaintiffs, we would get all
7 their electronic documents but we'd also go knock on their
8 door and say: What do you have in hard copy.

9 And if they had boxes from over the years, we
10 would take those and then convert them to an electronic
11 format so that they could be produced along with the rest of
12 the documents.

13 THE COURT: Mr. Griffin.

14 MR. GRIFFIN: Thank you, Your Honor.

15 Your Honor, our concern with the TIFF documents
16 was that the ESI order does require production of certain
17 documents in TIFF format, specifically hard-copy documents.

18 I think what we just heard counsel say was that at
19 the end of the day everything was produced in a TIFF format.

20 Now, the costs that they're seeking recovery on,
21 on the TIFF section, are approximately \$89,000. I don't
22 think we can tell from what has been submitted thus far
23 which portion of that relates to the hard-copy TIFF
24 documents that are referenced in the ESI order versus the
25 balance of material that may have been TIFF'd for counsel's

1 conveni ence.

2 THE COURT: So thi s paragraph says: Producti ons
3 i n native format wi th deli very i n quasi native rendered
4 format. I don' t understand what that means.

5 MR. GRIFFIN: Well, Your Honor, unfortunately, I
6 thi nk I' m i n a si mi lar boat to you. I don' t necessari ly
7 know what al l that means. Native format, my best
8 understanding i s that i t means ori gi nal format wi thout any
9 ki nd of al terati on made to i t.

10 THE COURT: And then the quasi native rendered
11 format woul d i nclude the TIFF, a TIFF only for hard copy and
12 for redacted documents.

13 So l et me ask Mr. Freebery again to clari fy.

14 MR. FREEBERY: So that' s accurate, Your Honor; and
15 what Mr. Gri ffin says i s as well. Just to give a bri ef
16 background. When we started --

17 THE COURT: Which i s --

18 MR. FREEBERY: I' m sorry.

19 THE COURT: Which part of hi s i s accurate? That
20 you di dn' t l i mi t i t to hard copy and redacted?

21 MR. FREEBERY: That' s correct; and then hi s
22 descripti on i n our l ayman' s terms of what the native and the
23 quasi native was al so accurate.

24 THE COURT: Okay. So why woul d you be pai d for
25 converti ng to TIFF documents that don' t fal l wi thi n thi s

1 paragraph?

2 MR. FREEBERY: So for background purposes, when we
3 started and we were -- started our production, we were
4 meeting and conferring over months with Jason Gibson
5 co-counsel to the plaintiffs down in Texas.

6 We had made numerous trips back and forth and we
7 had to start because we had deadline start-up production;
8 and he had had some complaints at the time saying: Hey, I
9 need all this stuff TIFF'd and that's what our vendor wants.

10 So we started doing it that way.

11 THE COURT: Who is that?

12 MR. FREEBERY: Jason Gibson.

13 THE COURT: Okay. Do you have some documentation
14 of that?

15 MR. FREEBERY: No, Your Honor. It was through the
16 meet-and-confer process. And I've actually looked back to
17 see if there's any documentation on that but -- and so we
18 ended up producing everything.

19 From what I have looked back, 35.86 percent -- and
20 this is I just looked this week in preparation for the
21 hearing -- of the documents that were produced needed
22 redaction or were hard-copy documents.

23 THE COURT: And, therefore, should be TIFF'd under
24 this.

25 MR. FREEBERY: Under the agreement.

1 THE COURT: Under the paragraph.

2 MR. FREEBERY: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. FREEBERY: I did the math too. I was trying
5 to find it if that helps Your Honor in any way.

6 THE COURT: That would help.

7 MR. FREEBERY: I'm sorry.

8 THE COURT: That would help. I assume Mr. Griffin
9 has no knowledge about this other issue with Mr. Gibson.

10 MR. GRIFFIN: I do not, Your Honor.

11 *(Pause in the proceedings.)*

12 MR. FREEBERY: Thanks for your patience, Your
13 Honor. The numbers that I received from our vendor just
14 checking in this week was that 1,591,867 of the documents
15 that were produced required redaction and 26,431 paper
16 documents were also TIFF'd per this agreement which gave a
17 total of 1,618,298 total documents of the roughly 4-1/2
18 million which was a 35.86 percentage of the documents; and
19 of the \$89,866.65 that we included in our bill of cost for
20 the TIFFing, if you did the math, that would come out to
21 \$32,226.18.

22 THE COURT: All right.

23 Do you want to comment on that, Mr. Griffin?

24 MR. GRIFFIN: Your Honor, I don't have any reason
25 to doubt counsel or the numbers that he said so I rely on

1 his good faith on that.

2 THE COURT: Okay. Thank you.

3 Another issue or question that I have relates to
4 the costs to obtain medical literature. Someone explain to
5 me what exactly you did.

6 MS. FISHER: Your Honor, Amy Fisher on behalf of
7 defendants.

8 When the litigation began and throughout the
9 litigation leading up to the deposition of Dr. Bal, through
10 the general causation first phase of the litigation, we
11 obtained medical literature on the issues in litigation,
12 leading experts and individuals who had written on whether
13 proton pump inhibitors had been associated with an increased
14 risk of fracture.

15 And so those costs were incurred through our law
16 firm obtaining copies of those articles that we used in
17 preparing our defense of the case and preparing for the
18 deposition of Dr. Bal.

19 THE COURT: Okay. Now, the question is how did
20 you do that? What physically did you do?

21 MS. FISHER: We would go to libraries. We would
22 go to universities. We would use online publication
23 searches. So it was a number of different methods but the
24 invoices are in our original submission with the bill of
25 costs for each of those pieces of medical literature that

1 were obtained.

2 THE COURT: So somebody physically would go to a
3 library and make a copy of a book or a magazine article?

4 MS. FISHER: No, I think that might have happened
5 in a couple of instances but, typically, it was done through
6 ordering it on online and having the copies electronically
7 delivered through e-mail or sometimes sent but typically
8 online.

9 THE COURT: Well, why is that different from going
10 out and buying the magazine or the book or whatever?

11 MS. FISHER: Back before online methods were
12 available, we would literally send a paralegal to the
13 library to make a photocopy of the article; and now that
14 they're available to be purchased online, that's the way
15 that they're obtained.

16 So it's not that we're buying them so much as just
17 making a copy available for ourselves.

18 THE COURT: Well, I'm not -- I'm not sure that's
19 compensable. You know, if you were going to a deposition
20 and had to make a copy of it to show to the witness and
21 inquire about, that's a different issue. But I'm not sure
22 that this is compensable.

23 Mr. Griffin, what's your position other than you
24 just don't want to pay?

25 MR. GRIFFIN: Well, I just don't want to pay, Your

1 Honor.

2 *(Laughter.)*

3 MR. GRIFFIN: I think it would be one thing if the
4 costs they were seeking on this medical literature were
5 their photocopy charges for this and I probably couldn't say
6 anything about that.

7 But I don't think that's what we have here. I
8 think what we have here are some fees and capital costs
9 associated with obtaining this literature which I don't
10 think are recoverable under Ninth Circuit law.

11 THE COURT: Well, is this like the -- you know, I
12 obviously don't have to pay. At least I assume it's
13 obvious. I don't have to pay if I need to print out a case
14 that you cite from Westlaw.

15 The rest of the public pays for it, but there are
16 charges beyond what it would be if you went to a library and
17 copied it. So are you paying the online download charge for
18 the right to use that material, I guess?

19 MS. FISHER: That's correct, Your Honor.

20 The costs are lumped together in terms of
21 paying -- purchasing the article and having the electronic
22 copy delivered. There's no way to separate that.

23 THE COURT: All right.

24 So I'm not inclined to defer ruling on this issue.
25 I might as well just get it out there and I am inclined to

1 award costs.

2 I'm not sure how many plaintiffs we started with
3 or how one would allocate costs for the plaintiffs who
4 dropped out along the way but I suppose that's not my
5 problem, at least not now.

6 But in any event, there was a substantial number
7 of plaintiffs, at least more than 500, and so that's not the
8 kind of award that's out of line for any individual
9 plaintiff or that I think would chill filing this kind of
10 lawsuit if one actually has a meritorious lawsuit. So I'm
11 going to award the costs.

12 They were originally reduced by the clerk and I
13 think there are probably some further reductions in addition
14 to the TIFF issue we just discussed.

15 And I don't think the medical literature is an
16 appropriate charge. Maybe we'll get new law on that, maybe
17 not, but that doesn't seem appropriate to me. I think with
18 regard to the chambers copy filing and delivery costs, those
19 are properly allowed.

20 The in-house information technology miscellaneous
21 charges, I'm not inclined to allow the charge for ESI
22 processing. That seems to be appropriate under the order.

23 The concept extraction and visualization, I'm not
24 inclined to allow those.

25 Machine language translation, I'm not inclined to

1 allow.

2 Other technology, the custom and Ringtail
3 Consulting Service, I'm not inclined to allow.

4 Online hosting costs are not taxable. I don't see
5 any requirement and order and stipulation. I don't really
6 understand this Ringtail Consulting and review support but
7 it doesn't sound appropriate.

8 Production and endorsing services, that seems
9 appropriate.

10 Data import production export services, again
11 appropriate.

12 Computer hard drives and FedEx seem directly
13 related to the duplication and the transfer of discovery.

14 The H2 category, the descriptions they are really
15 so vague that I don't think it's appropriate and I can't
16 really figure out what all of them are so I'm not inclined
17 to allow those.

18 The costs associated with production of documents,
19 there's a \$240.10 cost. Other than that, I don't think
20 those costs are taxable.

21 Plaintiff produced documents and collected
22 documents. Again, I don't understand that category and it's
23 not described in a way that suggests to me that it has even
24 particularly related to the litigation.

25 The copying and printing -- copy printing costs

1 which sound like it's something that should be taxable, I
2 don't understand why they would be so large and why at this
3 stage in the process \$2,000 in color copies would be
4 appropriate so I'm not inclined to award those.

5 So I guess we'll start with the defense and see if
6 there's any of those issues that you want to say something
7 that's not in your papers but was before the clerk because I
8 don't think you're really supposed to be adding anything
9 that the clerk didn't have before her.

10 MS. FISHER: Your Honor, we don't dispute that.
11 In fact, some of the categories that I think you are
12 disinclined to allow, I believe the clerk already did not
13 allow the copying and printing costs, some of those. So we
14 have nothing more to say on the issue. Thank you.

15 THE COURT: Okay.

16 Mr. Griffin?

17 MR. GRIFFIN: Nothing further from the plaintiffs,
18 Your Honor.

19 THE COURT: All right. Thank you. I'll get that
20 order out as soon as I can.

21 MS. FISHER: Thank you, Your Honor.

22 MR. FREEBERRY: Thank you, Your Honor.

23 MR. STEIMLE: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 (At 1:54 p.m. proceedings were concluded.)

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CERTIFICATE

I, PAT CUNEO, CSR 1600, hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: August 28, 2015

/s/ PAT CUNEO _____

PAT CUNEO, OFFICIAL REPORTER
CSR NO. 1600

MR. FREEBERRY: [19]
MR. GRIFFIN: [8] 3/4 5/13 6/4 8/9
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MR. STEIMLE: [2] 3/10 14/22
MS. FISHER: [8] 3/6 9/5 9/20 10/3
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THE COURT: [30]

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appearances [2] 2/1 3/4
appropriate [8] 12/16 12/17 12/22
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arguments [1] 3/22
article [3] 10/3 10/13 11/21
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ASTRAZENECA [4] 2/6 3/10 3/12 3/24
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August [3] 1/16 3/1 15/13
available [3] 10/12 10/14 10/17
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best [1] 6/7
beyond [1] 11/16
bill [2] 8/19 9/24
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Boulevard [1] 2/3
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capital [1] 11/8
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case [2] 9/17 11/13
categories [1] 14/11
category [2] 13/14 13/22
causation [1] 9/10
CENTRAL [1] 1/2
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certain [1] 5/16
CERTIFICATE [1] 15/3
certify [1] 15/5
chambers [1] 12/18
charge [3] 11/17 12/16 12/21
charges [3] 11/5 11/16 12/21
checking [1] 8/14
chill [1] 12/9
Circuit [1] 11/10
cite [1] 11/14
clarify [1] 6/13
clerk [4] 12/12 14/7 14/9 14/12
Clerk's [1] 1/17
CM [1] 1/19
co [1] 7/5
co-counsel [1] 7/5
Code [1] 15/6
collected [1] 13/21
color [1] 14/3
come [1] 8/20
comes [1] 3/17
comment [1] 8/23
compensable [2] 10/19 10/22
complaints [1] 7/8
computer [2] 5/2 13/12

C
concept [1] 12/23
concern [1] 5/15
concluded [1] 14/25
confer [1] 7/16
Conference [1] 15/11
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convenience [1] 6/1
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counsel [5] 2/1 3/4 5/18 7/5 8/25
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CRR [1] 1/19
CRR-CM [1] 1/19
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Date [1] 15/13
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DEFENDANT [1] 2/6
defendants [2] 3/8 9/7
defense [3] 3/19 9/17 14/5
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discovery [1] 13/13
discussed [1] 12/14
disinclined [1] 14/12
dispute [1] 14/10
DISTRICT [2] 1/1 1/2
DIVISION [1] 1/3
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down [1] 7/5
download [1] 11/17
Dr. [2] 9/9 9/18
Dr. Bal [2] 9/9 9/18
drives [1] 13/12
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DSF [1] 1/7
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each [1] 9/25
East [1] 1/21
electronic [4] 4/21 5/7 5/10 11/21
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endorsing [1] 13/8
ENGLISH [1] 2/7
entitled [1] 15/9
ESI [5] 3/16 3/25 5/16 5/24 12/21
ESOMEPRAZOLE [1] 1/6
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everything [2] 5/19 7/18
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explain [3] 3/19 3/20 9/4
export [1] 13/10
extraction [1] 12/23

F
fact [1] 14/11
faith [1] 9/1
fall [1] 6/25
far [1] 5/22
Federal [1] 1/20
FedEx [1] 13/12
fees [1] 11/8
few [1] 3/14
figure [1] 13/16
file [2] 4/22 5/5
filing [2] 12/9 12/18
find [1] 8/5
firm [1] 9/16
first [2] 3/14 9/10
FISCHER [2] 1/4 2/15
Fisher [2] 3/8 9/6
Floor [1] 2/8
foregoing [1] 15/7
form [1] 4/21
format [13] 3/16 3/21 4/23 4/23 5/11
5/17 5/19 6/3 6/4 6/7 6/8 6/11 15/9
forth [1] 7/6
fracture [1] 9/14
Francisco [1] 2/13

G
gave [1] 8/16
general [1] 9/10
get [4] 5/6 11/25 12/16 14/19
Gibson [3] 7/4 7/12 8/9
GIRARDI [1] 2/2
girardikeese.com [1] 2/4
give [1] 6/15
gmail.com [1] 1/22
go [4] 5/7 9/21 9/22 10/2
going [3] 10/9 10/19 12/11
good [5] 3/5 3/7 3/13 3/23 9/1
GRIFFIN [8] 2/2 3/6 5/13 6/15 8/8 8/23
10/23 14/16
guess [2] 11/18 14/5

H
H2 [1] 13/14
had [10] 3/20 5/9 7/6 7/7 7/7 7/8 7/8
9/12 9/13 10/20
happened [2] 4/13 10/4
hard [11] 4/5 4/16 4/20 5/2 5/8 5/17
5/23 6/11 6/20 7/22 13/12
hard-copy [6] 4/5 4/16 4/20 5/17 5/23
7/22
has [4] 5/22 8/9 12/10 13/23
have [14] 3/14 5/8 5/25 7/13 7/19 8/24
9/3 10/4 11/7 11/8 11/12 11/13 14/9
14/14
haven't [1] 4/10
having [2] 10/6 11/21
he [2] 7/8 8/25
heard [1] 5/18
hearing [1] 7/21
held [1] 15/8
help [2] 8/6 8/8
helps [1] 8/5
her [1] 14/9
here [2] 11/7 11/8
hereby [1] 15/5
Hey [1] 7/8
his [3] 6/19 6/21 9/1
Honor [24]
HONORABLE [1] 1/4
hosting [1] 13/4
house [1] 12/20
how [3] 9/19 12/2 12/3

I
I'll [1] 14/19
I'm [15] 6/6 6/18 8/7 10/18 10/18 10/21
11/24 12/2 12/10 12/21 12/23 12/25
13/3 13/16 14/4
I've [1] 7/16
ICE [1] 2/15
IceMiller [1] 3/8
icemiller.com [1] 2/18
identified [1] 4/10
if [11] 3/22 5/9 7/17 8/5 8/20 10/19
11/3 11/13 11/16 12/10 14/5
imaged [1] 4/22
import [1] 13/10
in-house [1] 12/20
inclined [8] 11/24 11/25 12/21 12/24
12/25 13/3 13/16 14/4

I
include [1] 6/11
included [1] 8/19
increased [1] 9/13
incurred [1] 9/15
Indiana [1] 2/17
Indianapolis [1] 2/17
individual [1] 12/8
individuals [1] 9/12
information [1] 12/20
inhibitors [1] 9/13
inquire [1] 10/21
instances [1] 10/5
invoices [1] 9/24
is [17]
issue [7] 3/18 8/9 9/3 10/21 11/24
12/14 14/14
issues [2] 9/11 14/6
it [20]
it's [6] 4/22 10/16 11/12 13/15 13/22
14/1
Item [1] 3/3
Item No. 10 [1] 3/3

J
JAMES [2] 2/7 3/24
James Freebery [1] 3/24
Jason [2] 7/4 7/12
jfreebery [1] 2/10
Jim [1] 3/9
JUDGE [1] 1/4
Judicial [1] 15/10
just [10] 4/2 5/18 6/15 7/20 8/13 10/16
10/24 10/25 11/25 12/14

K
KEESE [1] 2/2
KEITH [2] 2/2 3/6
Keith Griffin [1] 3/6
kgriffin [1] 2/4
kind [3] 6/9 12/8 12/9
King [2] 2/8 2/11
knock [1] 5/7
know [4] 4/3 6/7 10/19 11/11
knowledge [1] 8/9
kslaw.com [1] 2/14

L
language [1] 12/25
large [1] 14/2
Laughter [1] 11/2
law [6] 2/7 2/11 2/16 9/15 11/10 12/16
lawsuit [2] 12/10 12/10
LAWYER [1] 2/2
layman's [1] 6/22
leading [2] 9/9 9/12
least [3] 11/12 12/5 12/7
let [1] 6/13
LIABILITY [1] 1/6
libraries [1] 9/21
library [3] 10/3 10/13 11/16
like [2] 11/11 14/1
limit [1] 6/20
line [1] 12/8
literally [1] 10/12
literature [6] 9/4 9/11 9/25 11/4 11/9
12/15
litigation [5] 9/8 9/9 9/10 9/11 13/24

little [1] 4/19
LLP [2] 2/7 2/15
long [1] 3/25
looked [3] 7/16 7/19 7/20
Los [4] 1/15 1/21 2/3 3/1
lumped [1] 11/20

M
Machine [1] 12/25
made [2] 6/9 7/6
magazine [2] 10/3 10/10
mail [1] 10/7
make [3] 10/3 10/13 10/20
making [1] 10/17
manipulated [1] 4/22
many [1] 12/2
material [2] 5/25 11/18
math [2] 8/4 8/20
matter [2] 4/2 15/9
may [1] 5/25
maybe [4] 4/17 4/17 12/16 12/16
McCARTER [1] 2/7
mccarter.com [1] 2/10
me [7] 3/19 4/7 4/15 6/13 9/5 12/17
13/23
means [4] 4/15 6/4 6/7 6/8
medical [5] 9/4 9/11 9/25 11/4 12/15
meet [1] 7/16
meet-and-confer [1] 7/16
meeting [1] 7/4
meritorious [1] 12/10
method [1] 4/1
methods [2] 9/23 10/11
might [2] 10/4 11/25
MILLER [1] 2/15
million [1] 8/18
miscellaneous [1] 12/20
ML [2] 1/7 3/3
Monday [2] 1/16 3/1
months [1] 7/4
more [2] 12/7 14/14
motion [2] 1/17 4/11
Mr. [8] 5/13 6/13 6/15 8/8 8/9 8/23
10/23 14/16
Mr. Freebery [1] 6/13
Mr. Gibson [1] 8/9
Mr. Griffin [6] 5/13 6/15 8/8 8/23 10/23
14/16
much [2] 4/5 10/16
must [1] 4/6
my [2] 6/7 12/4

N
native [6] 6/3 6/3 6/7 6/10 6/22 6/23
necessarily [1] 6/6
necessary [1] 4/25
need [2] 7/9 11/13
needed [1] 7/21
needing [2] 4/5 4/7
negotiated [1] 4/1
negotiated method [1] 4/1
new [1] 12/16
NEXIUM [2] 1/6 3/4
Ninth [1] 11/10
no [6] 1/7 7/15 8/9 10/4 11/22 15/19
No. [1] 3/3
not [24]
nothing [2] 14/14 14/17

now [4] 5/20 9/19 10/13 12/5
number [2] 8/23 11/26
numbers [2] 8/13 8/25
numerous [1] 7/6

O
obtain [1] 9/4
obtained [3] 9/11 10/1 10/15
obtaining [2] 9/16 11/9
obvious [1] 11/13
obviously [1] 11/12
Official [2] 1/19 15/19
Okay [8] 4/9 4/15 6/24 7/13 8/3 9/2
9/19 14/15
on [20]
one [4] 2/16 11/3 12/3 12/10
online [7] 9/22 10/6 10/8 10/11 10/14
11/17 13/4
only [1] 6/11
oOo [2] 3/2 15/1
or [10] 4/5 7/22 8/25 9/3 10/3 10/7
10/10 10/10 12/3 12/9
order [6] 3/22 5/16 5/24 12/22 13/5
14/20
ordering [1] 10/6
original [2] 6/8 9/24
originally [2] 5/2 12/12
other [4] 8/9 10/23 13/2 13/19
our [9] 5/15 6/22 7/3 7/9 8/13 8/19
9/15 9/17 9/24
ourselves [1] 10/17
out [8] 8/20 10/10 11/13 11/25 12/4
12/8 13/16 14/20
over [2] 5/9 7/4

P
p.m [3] 1/16 3/1 14/25
page [1] 15/9
paid [1] 6/24
paper [2] 4/16 8/15
papers [1] 14/7
paragraph [4] 3/15 6/2 7/1 8/1
paralegal [1] 10/12
part [1] 6/19
particularly [1] 13/24
PARTNER [1] 2/15
PAT [4] 1/19 15/5 15/18 15/19
patcuneo1600 [1] 1/22
patience [1] 8/12
Pause [1] 8/11
pay [4] 10/24 10/25 11/12 11/13
paying [2] 11/17 11/21
pays [1] 11/15
per [1] 8/16
percent [1] 7/19
percentage [1] 8/18
phase [1] 9/10
photocopy [2] 10/13 11/5
physically [2] 9/20 10/2
pieces [1] 9/25
plaintiff [4] 2/2 3/21 12/9 13/21
plaintiffs [7] 3/6 5/6 7/5 12/2 12/3 12/7
14/17
portion [1] 5/23
position [1] 10/23
preparation [1] 7/20
preparing [2] 9/17 9/17
PRESIDING [1] 1/4

P
 pretty [1] 4/5
 print [1] 11/13
 printing [3] 13/25 13/25 14/13
 probably [2] 11/5 12/13
 problem [1] 12/5
 proceedings [4] 1/13 8/11 14/25 15/8
 process [2] 7/16 14/3
 processing [1] 12/22
 produced [6] 5/6 5/11 5/19 7/21 8/15 13/21
 producing [1] 7/18
 production [6] 5/16 7/3 7/7 13/8 13/10 13/18
 Productions [1] 6/2
 PRODUCTS [1] 1/6
 properly [1] 12/19
 proton [1] 9/13
 public [1] 11/15
 publication [1] 9/22
 pump [1] 9/13
 purchased [1] 10/14
 purchasing [1] 11/21
 purposes [1] 7/2
 pursuant [1] 15/6
 put [3] 3/21 4/23 4/24

Q
 quasi [3] 6/3 6/10 6/23
 question [2] 9/3 9/19
 questions [1] 3/14

R
 RE [2] 1/6 3/3
 really [5] 3/15 13/5 13/14 13/16 14/8
 reason [1] 8/24
 received [1] 8/13
 recoverable [1] 11/10
 recovery [1] 5/20
 redacted [3] 4/25 6/12 6/20
 redaction [4] 4/5 4/8 7/22 8/15
 reduced [1] 12/12
 reductions [1] 12/13
 redundant [2] 4/17 4/19
 referenced [1] 5/24
 regard [1] 12/18
 regulations [1] 15/10
 related [2] 13/13 13/24
 relates [2] 5/23 9/3
 relating [1] 3/16
 rely [1] 8/25
 Renaissance [1] 2/8
 rendered [2] 6/3 6/10
 reported [1] 15/8
 Reporter [2] 1/19 15/19
 REPORTER'S [1] 1/13
 require [1] 5/16
 required [2] 3/21 8/15
 requirement [1] 13/5
 rest [2] 5/11 11/15
 review [2] 1/17 13/6
 reviewed [1] 4/24
 right [4] 8/22 11/18 11/23 14/19
 Ringtail [2] 13/2 13/6
 risk [1] 9/14
 Room [1] 1/20
 roughly [1] 8/17
 Roybal [1] 1/20

S
 said [1] 8/25
 San [1] 2/13
 say [5] 5/8 5/18 11/5 14/6 14/14
 saying [1] 7/8
 says [5] 3/21 4/3 4/4 6/2 6/15
 searched [1] 4/21
 searches [1] 9/23
 Second [1] 2/12
 section [2] 5/21 15/6
 see [3] 7/17 13/4 14/5
 seeking [2] 5/20 11/4
 seem [3] 4/19 12/17 13/12
 seems [3] 4/16 12/22 13/8
 send [1] 10/12
 sent [1] 10/7
 separate [1] 11/22
 separately [1] 4/10
 Service [1] 13/3
 services [2] 13/8 13/10
 should [3] 3/20 7/23 14/1
 show [1] 10/20
 similar [1] 6/6
 since [1] 3/20
 so [32]
 some [7] 4/17 7/8 7/13 11/8 12/13 14/11 14/13
 somebody [1] 10/2
 someone [2] 3/19 9/4
 something [2] 14/1 14/6
 sometimes [1] 10/7
 somewhere [1] 5/3
 soon [1] 14/20
 sorry [2] 6/18 8/7
 sort [1] 4/8
 sound [2] 13/7 14/1
 sources [1] 5/6
 SPALDING [1] 2/11
 specifically [2] 3/17 5/17
 Square [1] 2/16
 SS [1] 1/7
 stage [1] 14/3
 start [3] 7/7 7/7 14/5
 start-up [1] 7/7
 started [5] 6/16 7/3 7/3 7/10 12/2
 state [1] 3/4
 STATES [3] 1/1 15/6 15/11
 STEIMLE [2] 2/11 3/11
 stenographically [1] 15/8
 stipulation [1] 13/5
 Street [3] 1/21 2/8 2/12
 stuff [1] 7/9
 submission [1] 9/24
 submitted [1] 5/22
 substantial [1] 12/6
 suggests [1] 13/23
 Suite [2] 2/12 2/17
 support [1] 13/6
 suppose [2] 3/19 12/4
 supposed [1] 14/8
 sure [3] 10/18 10/21 12/2

T
 T-I-F-F [1] 3/18
 tagged [1] 4/22
 take [1] 5/10

T
 talking [1] 5/1
 tax [1] 4/1
 taxable [3] 13/4 13/20 14/1
 Taxation [1] 1/17
 technology [2] 12/20 13/2
 tell [3] 4/7 4/15 5/22
 Temple [1] 1/21
 terms [2] 6/22 11/20
 Texas [1] 7/5
 than [3] 10/23 12/7 13/19
 Thank [7] 5/14 9/2 14/14 14/19 14/21 14/22 14/23
 Thanks [1] 8/12
 that [71]
 that's [15] 3/18 3/21 4/12 6/14 6/21 7/9 10/14 10/18 10/21 11/7 11/19 12/4 12/7 12/8 14/7
 their [3] 5/7 5/7 11/5
 them [3] 5/10 10/16 13/16
 then [4] 4/23 5/10 6/10 6/21
 there [5] 4/18 11/15 11/25 12/6 12/13
 there's [5] 4/17 7/17 11/22 13/19 14/6
 therefore [1] 7/23
 they [9] 4/20 4/21 4/23 5/9 5/11 11/4 12/12 13/14 14/2
 they're [3] 5/20 10/14 10/15
 thing [1] 11/3
 think [16]
 this [20]
 those [11] 5/10 9/15 9/16 9/25 12/18 12/24 13/17 13/20 14/4 14/6 14/13
 through [5] 7/15 9/9 9/15 10/5 10/7
 throughout [1] 9/8
 thus [1] 5/22
 TIFF [11] 3/17 3/21 5/15 5/17 5/19 5/21 5/23 6/11 6/11 6/25 12/14
 TIFF' [1] 4/14
 TIFF'd [6] 4/6 4/22 5/25 7/9 7/23 8/16
 TIFFing [1] 8/20
 time [1] 7/8
 Title [1] 15/6
 together [1] 11/20
 too [1] 8/4
 total [2] 8/17 8/17
 transcript [3] 1/13 15/7 15/9
 transfer [1] 13/13
 translation [1] 12/25
 trips [1] 7/6
 true [1] 15/7
 trying [1] 8/4
 typically [2] 10/5 10/7

U
 under [5] 7/23 7/25 8/1 11/10 12/22
 understand [7] 3/15 3/22 4/8 6/4 13/6 13/22 14/2
 understanding [1] 6/8
 unfortunately [1] 6/5
 UNITED [3] 1/1 15/6 15/11
 universities [1] 9/22
 up [5] 3/17 4/13 7/7 7/18 9/9
 uploaded [1] 4/24
 use [2] 9/22 11/18
 used [1] 9/16

V
 vague [1] 13/15
 vendor [2] 7/9 8/13

V**versus [1]** 5/24**visualization [1]** 12/23**W****want [5]** 4/2 8/23 10/24 10/25 14/6**wants [1]** 7/9**was [13]** 3/25 5/16 5/18 5/19 6/23 7/15

8/4 8/14 8/18 9/23 10/5 12/6 14/7

way [6] 7/10 8/5 10/14 11/22 12/4

13/23

we [27]**we'd [1]** 5/7**we'll [2]** 12/16 14/5**we're [1]** 10/16**week [2]** 7/20 8/14**welcome [1]** 14/24**well [8]** 4/25 6/5 6/15 10/9 10/18 10/25

11/11 11/25

went [1] 11/16**were [14]** 7/3 7/3 7/21 7/22 8/15 8/16

9/15 10/1 10/11 10/19 11/4 11/4 12/12

14/25

WESTERN [1] 1/3**Westlaw [1]** 11/14**what [21]****what's [1]** 10/23**whatever [1]** 10/10**when [4]** 4/25 6/16 7/2 9/8**whether [1]** 9/12**which [9]** 4/16 5/5 5/23 6/17 6/19 8/16

8/18 11/9 14/1

who [3] 7/11 9/12 12/3**why [4]** 6/24 10/9 14/2 14/2**will [1]** 3/14**WILLIAM [2]** 2/11 3/11**William Steimle [1]** 3/11**Wilmington [1]** 2/9**Wilshire [1]** 2/3**within [2]** 5/5 6/25**without [1]** 6/8**witness [1]** 10/20**would [18]****written [1]** 9/12**wsteimle [1]** 2/14**www.patcuneo.com [1]** 1/23**Y****years [1]** 5/9**yes [3]** 3/25 4/20 8/2**you [28]****you're [3]** 5/1 14/8 14/24**your [29]**