

1 JUDGE HATCHER: Oh, thank you, Kayla.
2 We'll go ahead and be recording this. Let's
3 go ahead and go on the record. Today is
4 September 12, 2025. My name is Charles
5 Hatcher. I'm the regulatory law judge
6 presiding over this discovery conference.
7 Let's move to our introductions of the
8 parties.

9 I'll go ahead and shorten that. With us
10 today, we have Diana Carter of the Empire
11 District Electric Company doing business as
12 Liberty, and Eric Vandergriff of the Staff of
13 the Commission. Are there any corrections to
14 those introductions? Excellent. Hearing
15 none.

16 Are there any other parties that are in
17 attendance? This discovery conference is only
18 involving issues between Liberty and Staff.
19 However, the rules do allow for any other
20 parties to this case. And by the way, this is
21 case number ER-2024-0261. Are there any other
22 counsel in attendance that would like to be
23 introduced on the record?

24 MR. WILLIAMS: Nathan Williams for Public
25 Counsel.

1 JUDGE HATCHER: Thank you. And that was
2 Nathan Williams with the Office of the Public
3 Counsel. Turning up my speaker to make sure
4 that I can hear. Let's go ahead and move to
5 the sum and substance of why we're here. Mr.
6 Vandergriff, can you give us a summary
7 overview of Staff's concerns?

8 MR. VANDERGRIFF: Yes, Your Honor. When
9 we originally requested for the discovery
10 conference, we were missing, I believe, six or
11 seven data requests. And we had two responses
12 that were not response fully responsive to our
13 discovery request.

14 So we wanted an opportunity to receive
15 the data that was requested, that they be
16 fully responsive, and that we have an
17 opportunity to supplement our surrebuttal true
18 up direct or true up direct based off of the
19 information we got from Empire.

20 JUDGE HATCHER: Okay. And Empire --
21 before I ask for your rebuttal or your summary
22 view of what's going on, are there any of
23 those data requests, the six outstanding --
24 and I'm not sure if the six outstanding and
25 the two the staff is stating is incomplete.

1 Are any of those eight items ready to be taken
2 care of this morning that we can just knock
3 right off our list?

4 MS. CARTER: Yes, Judge. I believe 481
5 through 484 have been filed. And my
6 understanding was that the responses for 459
7 and the supplement to 479 were being filed
8 either last night or this morning. I would
9 say I agree completely with -- completely with
10 what Eric said. From my perspective, there's
11 no actual discovery dispute. Like, we don't
12 disagree that we need to answer. We also
13 don't disagree that we're late.

14 And we, we are working on those
15 responses. We would have certainly no
16 objection to staff needing to supplement
17 surrebuttal or anything like that if, if they
18 don't have time to incorporate the details.
19 There are two from the list that to my
20 knowledge, we are still working on and, and
21 haven't been able to get to staff yet and may
22 not be able to get to them today. And that's
23 the additional information on 493 and then
24 also 499.

25 JUDGE HATCHER: Okay. Let me throw this

1 back to Mr. Vandergriff. I just want to see
2 if he accepts that we are now only having a
3 dispute/discussion about two of the data
4 requests, specifically 499 and 493. Am I
5 understanding correctly, Mr. Vandergriff?

6 MR. VANDERGRIFF: We haven't gotten
7 responses back for 479 yet. And I want to
8 give staff witness J. Luebbert an opportunity
9 to speak on data request 41 through 44.

10 JUDGE HATCHER: Okay. Please go ahead.

11 MR. LUEBBERT: Thanks, Eric. Thank you,
12 Judge. Good morning. For 481 through 484,
13 there is a reference, at least in one of them
14 to a couple of files. And I'm assuming that
15 the company either intended to attach them or
16 EFIS didn't allow them to attach them because
17 they were voluminous. If that's the case,
18 we're still waiting on those.

19 There's some discussion within a couple
20 of those responses that states that, that they
21 may not have the information kind of in the,
22 the format that we've requested, but there may
23 be some information available. So to the
24 extent that the company can provide that,
25 that'd be very helpful.

1 But we, we still haven't received, I
2 guess, any of the, the data within those data
3 requests that we asked for. So we still need
4 that. And obviously Diana will, will probably
5 let us know whether or not she can get that to
6 us today.

7 JUDGE HATCHER: Okay, thank you. Ms.
8 Carter, would you talk about the two
9 outstanding ones that I've identified, 499 and
10 493? Do we have an expected date that those
11 will be completed? What's the status?

12 MS. CARTER: So it's about pulling data
13 and I guess each time we go to try to do it,
14 there's been, been a different hiccup. So I,
15 I know that late last night, very late last
16 night, the regulatory folks were working on
17 them and early this morning the operations
18 folks responded regarding what regulatory
19 pulled late last night.

20 I know they are on it and, and working on
21 it. I, I would hope over the weekend. I
22 would really hope today. But I hate to make
23 that promise when I -- when it would be a bit
24 of an empty promise because I'm not real sure.

25 JUDGE HATCHER: Okay. That's a -- thank

1 you. Let me throw out what I'm -- what I'm
2 thinking and we will see if the parties are
3 acceptable. It sounds to my ear that Empire
4 Electric either has filed, is in the process
5 of filing, or might continue tracking down
6 some of that data to file.

7 So my first thought is, as far as the
8 data requests go, how does everyone feel about
9 -- I sound more like a therapist than the
10 judge. Are there any objections to continuing
11 this discovery conference for a week? We'll
12 put it on the calendar for next -- I, I don't
13 have any calendar in front of me. So next
14 Thursday or Friday, something like that, just
15 to notice it up to everyone that that's a due
16 date.

17 And then hopefully either Mr. Vandergriff
18 or Ms. Carter would email me before that date
19 saying, "Hey, everything's taken care of and
20 we're all satisfied on DRs." Does that sound
21 like a path forward for everyone?

22 MS. CARTER: So, surrebuttal is due on
23 Monday, so I'm just going to guess Eric would
24 like that to be much sooner than Thursday or
25 so of next week. I, I certainly wouldn't mind

1 it being Monday if, if that works for
2 everybody.

3 And that will be recorded, will be
4 transcribed, but that'll keep my folks
5 motivated as well, that they understand the
6 urgency. And they do understand the urgency.
7 But Monday I think would be an appropriate
8 check back in.

9 JUDGE HATCHER: Okay. And I, I, I should
10 have mentioned plan -- part two of my plan.
11 I, I shorted staff's consideration. I was
12 also going to ask for objections to allowing
13 staff to -- Mr. Vandergriff explained to me
14 again about the True up direct testimony. I
15 saw that we, we had an order about true up,
16 but I, I didn't see it on the procedural
17 schedule. Do we have true up filing -- true
18 up testimony being filed?

19 MR. VANDERGRIFF: We have true up direct
20 being filed. It's going to -- it has the same
21 due date as surrebuttal and then we have true
22 up rebuttal that's due on the 17th.

23 JUDGE HATCHER: Okay. I have in my hip
24 pocket Ms. Carter's agreement that the company
25 would not object to some sort of expansion of

1 the filing of testimony to account for the
2 lateness of the data request. Can you specify
3 what is -- when would staff -- what is staff's
4 request as to when they would be filing
5 testimony addressing these data requests?

6 MR. VANDERGRIFF: All right. First I
7 want to make a correction. I was mentioning
8 my own deadline for the rebuttal, so true up
9 rebuttal is actually due on the 22nd, so
10 excuse me for that. And, and as for the -- I
11 feel like the amount of time for us to
12 supplement our response is highly dependent on
13 when we get the information we're looking for.
14 If Empire can give us the information,
15 specifically, I'm talking about DR 479.

16 If they can get us the information today,
17 we might not need any more time -- any more
18 time to, to respond. But I'm requesting at
19 the very least two business days after we get
20 a satisfactory response from Empire. If that
21 answers your question.

22 JUDGE HATCHER: It does. Thank you. I
23 can work with that. Ms. Carter, do you have
24 any objections to -- whoa -- well now, I don't
25 have know how to phrase it. I understood what

1 Mr. Vandergriff was getting at. Let me break
2 it down into two parts. This is going to be a
3 long question.

4 I'm sorry. Ms. Carter, do you have any
5 objections to making these data requests due
6 end of business Monday? I'm -- I'll give you
7 until the end of Monday. That would be, you
8 know, 11:59. Do you have any objections? So
9 that's question one. Any objections to us
10 kicking this to being due midnight Monday?

11 You know what I mean, 11:59. And two, if
12 you agree to that, would you have any
13 objection to giving staff two business days so
14 until the end of the 17th? And, Mr.
15 Vandergriff, I'm going to look for a nod one
16 way or the other. Is your request to have two
17 business days to, to let me know that you need
18 more time or is it two business days to file
19 that surrebuttal testimony?

20 MR. VANDERGRIFF: Our intention is to
21 file -- is to file the testimony.

22 JUDGE HATCHER: Okay. So Ms. Carter, so
23 my question is are there any. Any objections
24 to making the these eight data requests due by
25 11:59 Monday? And part two, any objections to

1 allowing extending the filing of staff's
2 surrebuttal testimony to Wednesday the 17th?

3 MS. CARTER: No. But I'll just say to
4 Eric and the other staff folks, we have our
5 settlement conference scheduled for starting
6 on the 17th and I know it would be very
7 helpful for us to have your true up direct and
8 surrebuttal as we go into the settlement
9 conference, so everybody just knows where
10 everyone's numbers are.

11 But we will try certainly to get the
12 responses all to you before the end of Monday.
13 But, Judge, easy answer is no, I have no
14 objection to that.

15 MR. WILLIAMS: Judge, if I might --

16 JUDGE HATCHER: Go ahead, Mr. Williams.

17 MR. WILLIAMS: If staff's filing true up
18 direct later than it had -- was -- is
19 scheduled, that could affect parties ability
20 to respond by the current true up rebuttal
21 date. I just want to point that out. I don't
22 know if it'll be a problem, but it has a
23 potential.

24 MR. VANDERGRIFF: Your Honor, so any
25 corrections that we'd have to our direct would

1 be more of an affirmation based off of the
2 information that we have. Right now, we're
3 working off of what we know.

4 Once Empire responds to our request, it
5 would just be to make it more accurate based
6 on information rather than saying that we
7 don't know and we don't have. So I don't
8 think that it will significantly affect other
9 people's responses to our -- to our
10 surrebuttal and true up direct.

11 JUDGE HATCHER: And I just want to
12 confirm true up direct is due September 22nd,
13 that's a Monday.

14 MS. CARTER: True up direct is due along
15 with surrebuttal this coming Monday.

16 JUDGE HATCHER: That's right. I'm sorry.
17 So true up rebuttal is due the 22nd, correct?
18 I did not bring up the true up schedule.

19 MS. CARTER: That's right.

20 MR. VANDERGRIFF: I have the filing date
21 as the 22nd.

22 JUDGE HATCHER: So the situation that I
23 hear from Mr. Williams is they don't know --
24 OPC doesn't know if they will require a few
25 extra days beyond the 22nd to respond to

1 whatever new information that staff might file
2 by the 17th. Mr. Williams, is that a good
3 summary?

4 MR. WILLIAMS: Yes, but I wouldn't limit
5 it to Public Counsel.

6 JUDGE HATCHER: No. That's --

7 MR. WILLIAMS: I mean, other targets are
8 going to see the information as early as they
9 would otherwise. So that might impact their
10 ability to respond by the 22nd. I don't know
11 that it's a problem. I can't tell. Don't
12 have enough information.

13 JUDGE HATCHER: The, the problem I have
14 is we're a couple weeks away from the hearing.
15 And in, in other circumstances, my thought
16 process would be, grant the company until the
17 end of the day Monday to answer the data
18 requests, understanding that the company is
19 going to try and, and address those sooner.

20 Grant staff's requests to extend the
21 filing. I'll circle back to exactly which
22 filing to the 17th on testimony. When I grant
23 that motion from staff, I will extend that to
24 all of the parties. So everyone would have a
25 chance then to extend their filing of

1 testimony to the 17th.

2 And then that gives OPC and other parties
3 two business days for a total of four, maybe
4 five days, depending on how you count it, to
5 then ask for an extension to file their true
6 up rebuttal testimony beyond the 22nd. Like I
7 said, I wouldn't normally have a problem, but
8 I'm looking at list of issues being due on the
9 23rd.

10 And then I got position statements coming
11 in on the 26th. Are we then looking at moving
12 the list of issues, etc., from the 23rd?
13 Moving that back a day or so?

14 MR. VANDERGRIFF: Staff isn't requesting
15 moving back any deadlines. Like --

16 JUDGE HATCHER: Okay. So this testimony
17 -- okay, okay. I -- I'm, I'm cloud up. Okay.
18 I don't -- I don't see that we have a whole
19 lot of choices. So I'm going to lay out what
20 I'm going to do and then I'm going to ask for
21 objections. I intend to grant Ms. Carter's
22 request for the DRs to be due no later than
23 Monday.

24 I intend to grant Mr. Vandergriff's
25 request. Mr. Vandergriff, is -- what

1 testimony are we moving to being due on
2 Wednesday the 17th?

3 MR. VANDERGRIFF: So we want an
4 opportunity to supplement our responses for
5 witness Tyrone Thomason. Potentially, witness
6 Carolyns (phonetic). Potentially witness J.
7 Luebbert, and potentially witness Melanie
8 Merrick. We may not for all of them or even
9 maybe any of them, but those are the witnesses
10 we want an opportunity to supplement the
11 responses for due to these requests.

12 JUDGE HATCHER: Okay. I am not favoring
13 supplementing testimony. And I would much
14 rather it if we could include the -- this --
15 the supplemental or the added responses into
16 one of the true up filings. Would that work
17 for staff?

18 MR. VANDERGRIFF: Any of my experts got
19 any objections to it? You're on the line you
20 can speak.

21 MS. LYONS: This, this is Karen Lyons
22 (phonetic). When -- Judge, thank you. First
23 of all, and I, I, I would say when you say one
24 of the true up filings -- one of the true up
25 filings is Monday. So I, I don't think we

1 would have time to include it in that one.

2 But as far as true up rebuttal, we could, if,
3 if the judge allows, we could include some
4 response in true up rebuttal.

5 JUDGE HATCHER: That would be my
6 preference only because a fourth round of
7 testimony is just too much.

8 MR. WILLIAMS: Judge.

9 JUDGE HATCHER: Yes, Mr. Williams.

10 MR. WILLIAMS: I don't think that cures
11 the potential of some party wanting to respond
12 to staff supplemental. Yeah, we're only
13 talking true up in terms of the potential for
14 a response, but.

15 JUDGE HATCHER: Yeah, you're right.
16 You're right.

17 MS. CARTER: Can I throw out a
18 suggestion?

19 JUDGE HATCHER: Please.

20 MS. CARTER: Eric, do you think it would
21 work for staff if we just move the date for
22 surrebuttal and true up direct to Tuesday for
23 everybody and then everything else should be
24 able to stay the same? That's just moving it
25 one day. So we'd still have the six days

1 until true up rebuttal. That way everything
2 would be in before the settlement conference.

3 And it would give staff a day after our
4 latest possible date to get you the DR
5 responses. But we're hoping to get them to
6 you earlier. Just a -- just a possible
7 compromise because it's scary hearing all
8 these other dates moving in relation to how
9 quickly our hearing is coming up.

10 MR. VANDERGRIFF: You know, I'm going to
11 give Kim Bolin an opportunity to chime in.

12 MS. BOLIN: I don't know that Tuesday
13 would be late enough. And I saw J. Luebbert
14 just raise his hand. I'd like to hear from J,
15 too.

16 MR. LUEBBERT: Yeah. I, I was just going
17 to say having one day to process information,
18 do any kind of analysis and write testimony,
19 get it formatted and finalized and approved
20 is, is a pretty steep, steep ask for, for
21 staff. And I, I certainly can't speak to, you
22 know, the, the level of information that's
23 being asked for by the, the other DRs that we
24 haven't gotten yet.

25 But I, I know that some of the

1 information that, that I'm requesting is going
2 to be pretty data heavy. And I don't know
3 that that one day, even if it -- especially,
4 if it's only, you know, let's say from, from
5 midnight on Monday until 5 p.m. or so on
6 Tuesday is going to be enough for, for others
7 or myself to really include that
8 substantially.

9 JUDGE HATCHER: What about noon
10 Wednesday? I hate to be stingy with time to
11 any of the parties, but man, we're just under
12 such a time crunch with the hearing starting.
13 Would Wednesday at noon work for, for staff?

14 MR. VANDERGRIFF: I'm still going to have
15 Kim Bolin.

16 MS. BOLIN: I'm sitting here thinking
17 about that. It's still very close time frame.
18 I mean we can -- Liberty have the data to us
19 on Friday or on Monday.

20 JUDGE HATCHER: I'm sorry, can you say
21 that again? That would work if they --

22 MS. BOLIN: What time frame is Liberty
23 going to provide the data request to get to
24 us?

25 MS. CARTER: Well, I'll throw out. Let's

1 just set it for noon on Monday instead of
2 midnight on Monday. We have to have
3 everything to you by noon on Monday and then
4 everybody's surrebuttal and true up direct
5 could be due at noon on Wednesday. That gives
6 the two business days.

7 MS. BOLIN: Would that give you time --
8 your group time to look at the data? Have
9 time -- I mean, I know it's still going to be
10 close.

11 MR. LUEBBERT: Yeah. I -- it, it will be
12 tight no matter what. Sorry. Or Karen, go
13 ahead.

14 MS. LYONS: Well, I, I was just going to
15 say the same thing. Although I appreciate the
16 extra time, can I say that I can evaluate that
17 data, supplement my testimony just like J
18 said, get it through approval in 48 hours. I,
19 I just don't know because we don't have the
20 data.

21 JUDGE HATCHER: Mr. Williams, I'd like to
22 hear from you, what are your thoughts?

23 MR. WILLIAMS: Well, if you're going to
24 slip the filing of true up direct, that will
25 squeeze the time between of course true up

1 direct and true up rebuttal. So it still
2 raises the same issue of the potential for
3 somebody having issues with the true up
4 direct.

5 I'm not going to speak to surrebuttal
6 because that really is not in play on the, the
7 scheduling other than time before the hearing.
8 I don't think that's as pressing as the true
9 up aspect. But the other point I'd make is
10 we're talking about -- I mean, the true up
11 cutoff is March of this year. So it's all
12 historical information. I think the issue is
13 really on Liberty getting its data together
14 and providing it to the parties who requested
15 it.

16 JUDGE HATCHER: Okay. I have no good
17 solutions. The, the calendar is offering us
18 no good solutions. The best of the bad
19 solutions appears to be DRs due at noon,
20 everyone's surrebuttal and true up direct due
21 at noon on Wednesday, and we roll the dice
22 with true up surrebuttal staying due on
23 September 22nd.

24 I, I understand Mr. Williams' concern and
25 I don't want to discount that, but that one is

1 the furthest out in time and is also the one
2 with the greatest amount of unknown to it. So
3 without any good solutions I do think that the
4 best of the solutions that we have is DRs due
5 at noon, surrebuttal and true up direct due at
6 noon on Wednesday.

7 And if something comes up either on
8 staff's side that they feel that they do need
9 more time to review data and file that
10 supplemental type of testimony that they could
11 file a motion or, or however they want to
12 pursue that.

13 And that also allows a little bit of time
14 for OPC and other parties to review all of
15 this and either file appropriate or true up
16 rebuttal testimony on the 22nd or file some
17 other type of extension motion. If anybody
18 has a better idea, please. Go ahead, Mr.
19 Williams.

20 MR. WILLIAMS: This doesn't pertain to
21 the schedule you've laid out other than the
22 impact on settlement conference. And I mean
23 the commission's not involved in the
24 settlement conference, but you have specific
25 days currently. I don't know what, if

1 anything, the commission wants to do with
2 that.

3 But I think it makes sense for the
4 parties to meet later than what's currently
5 scheduled if the other aspects of the schedule
6 have changed as you just laid out.

7 JUDGE HATCHER: The settlement
8 conference, like Mr. Williams said, I'm not
9 there, doesn't involve me at all. You don't
10 need my permission to change that. I, I want
11 to make sure that it happens.

12 But if you all want to change that from
13 the 17th and 18th to the 18th and 19th, that
14 seems to fit. But again, I don't have a dog
15 in that fight. If you want me to issue an
16 order so it shows up on everybody's calendars
17 as a date change, I can do that. Just hit me
18 up with an email.

19 I don't need a formal motion or anything.
20 But yeah, I mean we're time crunched on
21 everything. I'm sorry, I'm taking up every
22 time. Ms. Carter, you want to talk?

23 MS. CARTER: I was just going to say,
24 personally, I think we could just start at
25 1:00 on the 17th. We generally, with some

1 conferences, have some discussion and then we
2 break and people have to come back. So
3 anyhow, I think Nathan and Eric, if we started
4 at 1:00 on the 17th, we could still keep the
5 17th and 18th dates and, and be all good.

6 JUDGE HATCHER: Yeah. And nothing is
7 stopping anybody from having some phone calls
8 or their own WebEx on the 19th or on Saturday
9 or Sunday, whenever you all want to meet. MS.

10 CARTER: Yes.

11 JUDGE HATCHER: The Commission is
12 strongly encouraging settlement as it does in
13 all of its cases. But I do just want to make
14 sure that the settlement conference occurs.
15 Okay. Hearing no better ideas, I will throw
16 it open one last time. Anybody have a better
17 idea?

18 Otherwise, we're going to end our
19 discovery conference and I'm going to issue a
20 notice of orders being given at this discovery
21 conference. And here's what that is going to
22 say. "DRs due at noon." I see Luebbert's
23 hand. Let me finish my sentence real quick.
24 My order would say, "DRs due at noon on
25 Monday. Surrebuttal, true up direct, due on

1 Wednesday at noon."

2 Yeah. And then period. Everything else
3 would be -- if you all need time, I would
4 certainly be happy to listen to motions for
5 extension, etc. Mr. Williams, go ahead.

6 MR. WILLIAMS: I'll just point out that
7 the commission does have the option of
8 extending the operation of raw data and could
9 reschedule the hearing. I'm not proposing
10 that, I'm just pointing that out.

11 JUDGE HATCHER: I appreciate that.
12 That's going to be my last option. So I want
13 to try and -- I want to try and take advantage
14 of every other opportunity to avoid that. But
15 I appreciate you bringing that up. Mr.
16 Luebbert, I skipped over you. You were first,
17 but Mr. Williams, avatar box thingy popped up
18 first on my window. Mr. Luebbert, go ahead.

19 MR. LUEBBERT: That's quite all right,
20 Judge. I was just going to ask if Diana could
21 possibly send the files that were referenced
22 in those data requests but not attached. If
23 we can get those as soon as we can today. It
24 sounded like they were already completed. So
25 if we can get those today, that would be

1 great. Thank you.

2 MS. CARTER: Most definitely. J, I have
3 been messaging while we've been on here.

4 MR. LUEBBERT: Thanks.

5 JUDGE HATCHER: Okay. I'm ready to call
6 this all the win. Last call, thoughts,
7 objections? Star six, if you're on a phone
8 and you would like to unmute. Okay. I'm
9 calling it done. I will get out a -- whatever
10 I'm going to call it, an order or a notice of
11 orders given. But we're going to change those
12 two dates. DRs, these DRs, eight are going to
13 be due at noon on Monday the 15th if not
14 earlier.

15 Strong emphasis on earlier, please. We
16 will change the due date of the
17 surrebuttal/true up direct to noon on
18 Wednesday the 17th. You all on your own will
19 be figuring out how you want to deal with
20 settlement conference. And you all on your
21 own will be deciding if you need to request an
22 extension for any filing of true up
23 surrebuttal, or if anyone needs to file
24 supplemental that, that evil fourth round of
25 testimony.

1 Okay, Good. Let's call it done. We are
2 adjourned. And let's go off the record. I
3 don't have a gavel. Awesome.

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6 (End of audio recording.)

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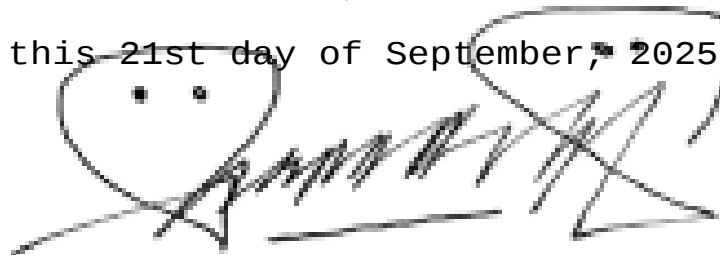
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A handwritten signature in black ink, appearing to read 'Elizaphan Njuguna', is written over a horizontal line. The signature is stylized and somewhat cursive.

Elizaphan Njuguna

1 11:59 10:8,11, 25 12 2:4 17th 8:22 10:14 11:2,6 13:2,22 14:1 15:2 22:13,25 23:4,5 18th 22:13 23:5 19th 22:13 23:8 1:00 22:25 23:4 2 2025 2:4 22nd 9:9 12:12,17,21, 25 13:10 14:6 20:23 21:16 23rd 14:9,12 26th 14:11 4 41 5:9 44 5:9 459 4:6 479 4:7 5:7 9:15 48 19:18 481 4:4 5:12	484 4:5 5:12 493 4:23 5:4 6:10 499 4:24 5:4 6:9 5 5 18:5 A ability 11:19 13:10 able 4:21,22 16:24 about 5:3 6:8, 12 7:8 8:14, 15 9:15 18:9, 17 20:10 acceptable 7:3 accepts 5:2 account 9:1 accurate 12:5 actual 4:11 actually 9:9 added 15:15 additional 4:23 address 13:19 addressing 9:5 advantage 24:13	affect 11:19 12:8 affirmation 12:1 after 9:19 17:3 again 8:14 18:21 22:14 agree 4:9 10:12 agreement 8:24 ahead 2:2,3,9 3:4 5:10 11:16 19:13 21:18 24:5,18 all 7:20 9:6 11:12 13:24 15:8,23 17:7 20:11 21:14 22:9,12 23:5, 9,13 24:3,19 allow 2:19 5:16 allowing 8:12 11:1 allows 16:3 21:13 along 12:14 already 24:24 also 4:12,24 8:12 21:1,13 Although 19:15 amount 9:11 21:2 analysis	17:18 answer 4:12 11:13 13:17 answers 9:21 any 2:13,16, 19,21 3:22 4:1 6:2 7:10, 13 9:17,24 10:4,8,9,12, 23,25 11:24 14:15 15:9, 18,19 17:18 18:11 21:3 anybody 21:17 23:7,16 anyhow 23:3 anything 4:17 22:1,19 appears 20:19 appreciate 19:15 24:11, 15 appropriate 8:7 21:15 approval 19:18 approved 17:19 as 2:11 7:7 8:5,21 9:4,10 11:8 12:21 13:8 16:2 20:8 22:6,17 23:12 24:23 ask 3:21 8:12 14:5,20 17:20 24:20	asked 6:3 17:23 aspect 20:9 aspects 22:5 assuming 5:14 at 5:13 9:18 10:1 14:8,11 18:13 19:5,8 20:19,21 21:5 22:9,24 23:4, 20,22,24 24:1 attach 5:15,16 attached 24:22 attendance 2:17,22 available 5:23 avatar 24:17 avoid 24:14 away 13:14 B back 5:1,7 8:8 13:21 14:13, 15 23:2 bad 20:18 based 3:18 12:1,5 because 5:16 6:24 16:6 17:7 19:19 20:6 before 3:21 7:18 11:12 17:2 20:7
--	--	--	--	--

believe 3:10 4:4	C	circumstance s 13:15	continue 7:5 24:8,22	
best 20:18 21:4	calendar 7:12,13 20:17	close 18:17 19:10	continuing 7:10	date 6:10 7:16,18 8:21 11:21 12:20 16:21 17:4 22:17
better 21:18 23:15,16	calendars 22:16	cloud 14:17	correct 12:17	
between 2:18 19:25	calls 23:7	come 23:2	correction 9:7	
beyond 12:25 14:6	care 4:2 7:19	comes 21:7	corrections 2:13 11:25	dates 17:8 23:5
bit 6:23 21:13	Carolyns 15:6	coming 12:15 14:10 17:9	correctly 5:5	day 13:17 14:13 16:25 17:3,17 18:3
Bolin 17:11, 12 18:15,16, 22 19:7	Carter 2:10 4:4 6:8,12 7:18,22 9:23 10:4,22 11:3 12:14,19 16:17,20 18:25 22:22, 23 23:10	commission 2:13 22:1 23:11 24:7	could 11:19 15:14 16:2,3 19:5 21:10 22:24 23:4 24:8,20	days 9:19 10:13,17,18 12:25 14:3,4 16:25 19:6 21:25
box 24:17	Carter's 8:24 14:21	commission's 21:23	counsel 2:22, 25 3:3 13:5	deadline 9:8
break 10:1 23:2	case 2:20,21 5:17	company 2:11 5:15,24 8:24 13:16,18	count 14:4	deadlines 14:15
bring 12:18	Cases 23:13	completed 6:11 24:24	couple 5:14, 19 13:14	dependent 9:12
bringing 24:15	certainly 4:15 7:25 11:11 17:21 24:4	completely 4:9	course 19:25	depending 14:4
business 2:11 9:19 10:6,13, 17,18 14:3 19:6	chance 13:25	compromise 17:7	crunch 18:12	details 4:18
but 5:22 6:1, 22 8:4,7,16 9:18 11:3,11, 13,22 13:4 14:7 15:9 16:2,14 17:5, 25 18:11 20:9,25 21:24 22:3,12,14,20 23:13 24:14, 17,22	change 22:10, 12,17	concern 20:24	crunched 22:20	Diana 2:10 6:4 24:20
by 2:20 10:24 11:20 13:2,10 17:23 19:3	changed 22:6	concerns 3:7	cures 16:10	dice 20:21
	Charles 2:4	conference 2:6,17 3:10 7:11 11:5,9 17:2 21:22,24 22:8 23:14, 19,21	current 11:20	different 6:14
	check 8:8	conferences 23:1	currently 21:25 22:4	direct 3:18 8:14,19 11:7, 18,25 12:10, 12,14 16:22 19:4,24 20:1, 4,20 21:5 23:25
	chime 17:11	confirm 12:12	cutoff 20:11	disagree 4:12,13
	choices 14:19	consideration 8:11	D	
	circle 13:21		data 3:11,15, 23 5:3,9 6:2, 12 7:6,8 9:2,5 10:5,24 13:17 18:2,18,23 19:8,17,20 20:13 21:9	

discount 20:25 discovery 2:6,17 3:9,13 4:11 7:11 23:19,20 discussion 5:19 23:1 dispute 4:11 dispute/ discussion 5:3 District 2:11 dog 22:14 doing 2:11 down 7:5 10:2 DR 9:15 17:4 DRS 7:20 14:22 17:23 20:19 21:4 23:22,24 due 7:15,22 8:21,22 9:9 10:5,10,24 12:12,14,17 14:8,22 15:1, 11 19:5 20:19,20,22 21:4,5 23:22, 24,25	easy 11:13 EFIS 5:16 eight 4:1 10:24 either 4:8 5:15 7:4,17 21:7,15 Electric 2:11 7:4 else 16:23 24:2 email 7:18 22:18 Empire 2:10 3:19,20 7:3 9:14,20 12:4 empty 6:24 encouraging 23:12 end 10:6,7,14 11:12 13:17 23:18 enough 13:12 17:13 18:6 ER-2024-0261 2:21 Eric 2:12 4:10 5:11 7:23 11:4 16:20 23:3 especially 18:3 etc 14:12 24:5 evaluate 19:16 even 15:8 18:3	every 22:21 24:14 everybody 8:2 11:9 16:23 everybody's 19:4 22:16 everyone 7:8, 15,21 13:24 everyone's 11:10 20:20 everything 16:23 17:1 19:3 22:21 24:2 everything's 7:19 exactly 13:21 Excellent 2:14 excuse 9:10 expansion 8:25 expected 6:10 experts 15:18 explained 8:13 extend 13:20, 23,25 extending 11:1 24:8 extension 14:5 21:17 24:5 extent 5:24 extra 12:25 19:16	F far 7:7 16:2 favoring 15:12 feel 7:8 9:11 21:8 few 12:24 fight 22:15 file 7:6 10:18, 21 13:1 14:5 21:9,11,15,16 filed 4:5,7 7:4 8:18,20 files 5:14 24:21 filing 7:5 8:17 9:1,4 11:1,17 12:20 13:21, 22,25 19:24 filings 15:16, 24,25 finalized 17:19 finish 23:23 first 7:7 9:6 15:22 24:16, 18 fit 22:14 five 14:4 folks 6:16,18 8:4 11:4 for 2:19,24 3:9,21 4:6 5:7,12 6:3 7:11,12,21 8:1,12 9:1,8,	10,11,13 10:15 11:5,7 14:3,5,20,22 15:4,8,11,17 16:13,21,22 17:20,23 18:6,13 19:1 20:2 21:14 22:3 24:4 formal 22:19 format 5:22 formatted 17:19 forward 7:21 four 14:3 fourth 16:6 frame 18:17, 22 Friday 7:14 18:19 from 3:19 4:10,19 9:20 12:23 13:14, 23 14:12 17:14 18:4 19:22 22:12 23:7 front 7:13 fully 3:12,16 furthest 21:1
E each 6:13 ear 7:3 earlier 17:6 early 6:17 13:8				G generally 22:25 get 4:21,22 6:5 9:13,16, 19 11:11

17:4,5,19 18:23 19:18 24:23,25 getting 10:1 20:13 give 3:6 5:8 9:14 10:6 17:3,11 19:7 given 23:20 gives 14:2 19:5 giving 10:13 go 2:2,3,9 3:4 5:10 6:13 7:8 11:8,16 19:12 21:18 24:5,18 going 3:22 7:23 8:12,20 10:2,15 13:8, 19 14:19,20 17:10,16 18:1,6,14,23 19:9,14,23 20:5 22:23 23:18,19,21 24:12,20 good 5:12 13:2 20:16,18 21:3 23:5 got 3:19 14:10 15:18 gotten 5:6 17:24 grant 13:16, 20,22 14:21, 24 greatest 21:2 group 19:8	guess 6:2,13 7:23 H hand 17:14 23:23 happens 22:11 happy 24:4 Hatcher 2:1,5 3:1,20 4:25 5:10 6:7,25 8:9,23 9:22 10:22 11:16 12:11,16,22 13:6,13 14:16 15:12 16:5,9, 15,19 18:9,20 19:21 20:16 22:7 23:6,11 24:11 hate 6:22 18:10 having 5:2 17:17 20:3 23:7 hear 3:4 12:23 17:14 19:22 hearing 2:14 13:14 17:7,9 18:12 20:7 23:15 24:9 heavy 18:2 helpful 5:25 11:7 here 3:5 18:16 here's 23:21	Hey 7:19 hiccup 6:14 highly 9:12 hip 8:23 historical 20:12 hit 22:17 Honor 3:8 11:24 hope 6:21,22 hopefully 7:17 hoping 17:5 hours 19:18 how 7:8 9:25 14:4 17:8 however 2:19 21:11 I idea 21:18 23:17 ideas 23:15 identified 6:9 if 3:24 4:17 5:2,17 7:2 8:1 9:14,16,20 10:11 11:15, 17,22 12:24 15:14 16:2,3, 21 18:3,4,21 19:23 21:7, 17,25 22:5, 12,15 23:3 24:3,20,22,25 impact 13:9	21:22 in 2:16,22 5:13,21 7:4, 13 8:8,23 13:15 14:11 16:1,4,13 17:2,8,11 19:18 20:6 21:1,23 22:15 23:12 24:22 include 15:14 16:1,3 18:7 incomplete 3:25 incorporate 4:18 information 3:19 4:23 5:21,23 9:13, 14,16 12:2,6 13:1,8,12 17:17,22 18:1 20:12 instead 19:1 intend 14:21, 24 intended 5:15 intention 10:20 into 10:2 11:8 15:15 introduced 2:23 introductions 2:7,14 involve 22:9 involved 21:23	involving 2:18 issue 20:2,12 22:15 23:19 issues 2:18 14:8,12 20:3 it 6:13,20,21, 23 7:3,12,15 8:1,16,20 9:22,25 10:2, 18 11:6,18,22 12:4,5,8 13:5 14:4 15:14,19 16:1,20,24 17:3,19 18:3 19:1,11,18 20:1,14,15 21:2 22:3,11, 16 23:12,16 24:23 it'll 11:22 it's 6:12 8:20 13:11 17:7 18:4,17 19:9 20:11 items 4:1 its 20:13 23:13 J judge 2:1,5 3:1,20 4:4,25 5:10,12 6:7, 25 7:10 8:9, 23 9:22 10:22 11:13,15,16 12:11,16,22 13:6,13 14:16 15:12,22 16:3,5,8,9,15,
--	--	---	---	--

19 18:9,20 19:21 20:16 22:7 23:6,11 24:11,20 just 4:2 5:1 7:14,23 11:3, 9,21 12:5,11 16:7,21,24 17:6,14,16 18:11 19:1, 14,17,19 22:6,17,23,24 23:13 24:6, 10,20	L laid 21:21 22:6 last 4:8 6:15, 19 23:16 24:12 late 4:13 6:15, 19 17:13 lateness 9:2 later 11:18 14:22 22:4 latest 17:4 law 2:5 lay 14:19 least 5:13 9:19 let 4:25 6:5 7:1 10:1,17 23:23 let's 2:2,7 3:4 18:4,25 level 17:22 Liberty 2:12, 18 18:18,22 20:13 like 2:22 4:11, 17 7:9,14,21, 24 9:11 14:6, 15 17:14 19:17,21 22:8 24:24 limit 13:4 line 15:19 list 4:3,19 14:8,12	listen 24:4 little 21:13 long 10:3 look 10:15 19:8 looking 9:13 14:8,11 lot 14:19 Luebbert 5:8, 11 15:7 17:13,16 19:11 24:16, 18,19 Luebbert's 23:22 Lyons 15:21 19:14	13:7 18:18 19:9 20:10 21:22 22:20 meet 22:4 23:9 Melanie 15:7 mentioned 8:10 mentioning 9:7 Merrick 15:8 midnight 10:10 18:5 19:2 mind 7:25 missing 3:10 Monday 7:23 8:1,7 10:6,7, 10,25 11:12 12:13,15 13:17 14:23 15:25 18:5,19 19:1,2,3 23:25 more 7:9 9:17 10:18 12:1,5 21:9 morning 4:2,8 5:12 6:17 motion 13:23 21:11,17 22:19 motions 24:4 motivated 8:5 move 2:7 3:4 16:21 moving	14:11,13,15 15:1 16:24 17:8 Mr 2:24 3:5,8 5:1,5,6,11 7:17 8:13,19 9:6 10:1,14, 20 11:15,16, 17,24 12:20, 23 13:2,4,7 14:14,24,25 15:3,18 16:8, 9,10 17:10,16 18:14 19:11, 21,23 20:24 21:18,20 22:8 24:5,6,15,17, 18,19 Ms 4:4 6:7,12 7:18,22 8:24 9:23 10:4,22 11:3 12:14,19 14:21 15:21 16:17,20 17:12 18:16, 22,25 19:7,14 22:22,23 23:9 much 7:24 15:13 16:7 my 2:4 3:3 4:5,10,19 7:3, 7 8:4,10,23 9:8 10:23 13:15 15:18 16:5 19:17 22:10 23:23, 24 24:12,18 myself 18:7
K Karen 15:21 19:12 Kayla 2:1 keep 8:4 23:4 kicking 10:10 Kim 17:11 18:15 kind 5:21 17:18 knock 4:2 know 6:5,15, 20 9:25 10:8, 11,17 11:6,22 12:3,7,23,24 13:10 17:10, 12,22,25 18:2,4 19:9, 19 21:25 knowledge 4:20 knows 11:9		M make 3:3 6:22 9:7 12:5 20:9 22:11 23:13 makes 22:3 making 10:5, 24 man 18:11 March 20:11 matter 19:12 maybe 14:3 15:9 me 4:25 7:1, 13,18 8:13 9:10 10:1,17 22:9,15,17 23:23 mean 10:11		N name 2:4

Nathan 2:24 3:2 23:3 need 4:12 6:3 9:17 10:17 21:8 22:10,19 24:3 needing 4:16 new 13:1 next 7:12,13, 25 night 4:8 6:15,16,19 no 4:11,15 11:3,13 13:6 14:22 19:12 20:16,18 23:15 nod 10:15 none 2:15 noon 18:9,13 19:1,3,5 20:19,21 21:5,6 23:22, 24 24:1 normally 14:7 not 3:12,24 4:22 5:21 6:5, 24 8:25 9:17 12:18 15:8,12 20:5,6 21:23 22:8 24:9,22 nothing 23:6 notice 7:15 23:20 now 5:2 9:24 12:2 number 2:21	numbers 11:10 O object 8:25 objection 4:16 10:13 11:14 objections 7:10 8:12 9:24 10:5,8,9, 23,25 14:21 15:19 obviously 6:4 occurs 23:14 of 2:7,10,12 3:2,5,7,18,22 4:1,2 5:3,13, 14,20,21 6:2, 24 7:5,6,13, 19,25 8:10,25 9:1,2,11 10:6, 7,14 11:1,12 12:1,3 13:17, 24,25 14:3,8, 12,19 15:8,9, 16,18,23,24 16:6,11,13 17:18,22,25 18:11 19:1, 24,25 20:2, 11,18 21:2,4, 10,13,14,17 22:5 23:13,20 24:7,8,14 off 3:18 4:3 12:1,3 offering 20:17 Office 3:2	on 2:3,23 3:22 4:14,20,23 5:9,18 6:16, 20 7:12,20,22 8:16,22 9:9, 12 11:6 12:6 13:22 14:4,8, 11 15:1,19 18:5,19 19:1, 2,3,5 20:6,13, 21,22 21:6,7, 16,22 22:16, 20,25 23:4,8, 24,25 24:18 Once 12:4 one 5:13 10:9, 15 15:16,23, 24 16:1,25 17:17 18:3 20:25 21:1 23:16 ones 6:9 only 2:17 5:2 16:6,12 18:4 OPC 12:24 14:2 21:14 open 23:16 operation 24:8 operations 6:17 opportunity 3:14,17 5:8 15:4,10 17:11 24:14 option 24:7, 12 order 8:15 22:16 23:24	orders 23:20 originally 3:9 other 2:16,19, 21 10:16 11:4 12:8 13:7,15 14:2 17:8,23 20:7,9 21:14, 17,21 22:5 24:14 others 18:6 otherwise 13:9 23:18 our 2:7 3:12, 17 4:3 9:12 10:20 11:4,25 12:4,9 15:4 17:3,9 23:18 out 7:1 11:21 14:19 16:17 18:25 21:1,21 22:6 24:6,10 outstanding 3:23,24 6:9 over 2:6 6:21 24:16 overview 3:7 own 9:8 23:8 P p.m. 18:5 part 8:10 10:25 parties 2:8, 16,20 7:2 11:19 13:24 14:2 18:11 20:14 21:14 22:4	parts 10:2 party 16:11 path 7:21 people 23:2 people's 12:9 period 24:2 permission 22:10 personally 22:24 perspective 4:10 pertain 21:20 phone 23:7 phonetic 15:6,22 phrase 9:25 plan 8:10 play 20:6 please 5:10 16:19 21:18 pocket 8:24 point 11:21 20:9 24:6 pointing 24:10 popped 24:17 position 14:10 possible 17:4, 6 possibly 24:21 potential 11:23 16:11,
---	--	--	---	---

13 20:2 potentially 15:5,6,7 preference 16:6 presiding 2:6 pressing 20:8 pretty 17:20 18:2 probably 6:4 problem 11:22 13:11, 13 14:7 procedural 8:16 process 7:4 13:16 17:17 promise 6:23, 24 proposing 24:9 provide 5:24 18:23 providing 20:14 Public 2:24 3:2 13:5 pulled 6:19 pulling 6:12 pursue 21:12 put 7:12	quick 23:23 quickly 17:9 quite 24:19 R raise 17:14 raises 20:2 rather 12:6 15:14 raw 24:8 ready 4:1 real 6:24 23:23 really 6:22 18:7 20:6,13 rebuttal 3:21 8:22 9:8,9 11:20 12:17 14:6 16:2,4 17:1 20:1 21:16 receive 3:14 received 6:1 record 2:3,23 recorded 8:3 recording 2:2 reference 5:13 referenced 24:21 regarding 6:18 regulatory 2:5 6:16,18 relation 17:8	request 3:13 5:9 9:2,4 10:16 12:4 14:22,25 18:23 requested 3:9,15 5:22 20:14 requesting 9:18 14:14 18:1 requests 3:11,23 5:4 6:3 7:8 9:5 10:5,24 13:18,20 15:11 24:22 require 12:24 reschedule 24:9 respond 9:18 11:20 12:25 13:10 16:11 responded 6:18 responds 12:4 response 3:12 9:12,20 16:4,14 responses 3:11 4:6,15 5:7,20 11:12 12:9 15:4,11, 15 17:5 responsive 3:12,16 review 21:9, 14	right 4:3 9:6 12:2,16,19 16:15,16 24:19 roll 20:21 round 16:6 rules 2:19 S said 4:10 14:7 19:18 22:8 same 8:20 16:24 19:15 20:2 satisfactory 9:20 satisfied 7:20 Saturday 23:8 saw 8:15 17:13 say 4:9 11:3 15:23 17:17 18:4,20 19:15,16 22:23 23:22, 24 saying 7:19 12:6 scary 17:7 schedule 8:17 12:18 21:21 22:5 scheduled 11:5,19 22:5 scheduling 20:7	see 5:1 7:2 8:16 13:8 14:18 23:22 seems 22:14 send 24:21 sense 22:3 sentence 23:23 September 2:4 12:12 20:23 set 19:1 settlement 11:5,8 17:2 21:22,24 22:7 23:12,14 seven 3:11 shorted 8:11 shorten 2:9 should 8:9 16:23 shows 22:16 side 21:8 significantly 12:8 sitting 18:16 situation 12:22 six 3:10,23,24 16:25 skipped 24:16 slip 19:24 solutions 20:17,18,19 21:3,4
---	--	--	---	---

some 5:19,23 7:6 8:25 16:3, 11 17:25 21:16 22:25 23:1,7	18:13	supplement 3:17 4:7,16 9:12 15:4,10 19:17	16	thinking 7:2 18:16
somebody 20:3	staff's 3:7 8:11 9:3 11:1, 17 13:20 21:8	supplemental 15:15 16:12 21:10	than 7:9,24 11:18 12:6 14:22 20:7 21:21 22:4	this 2:2,6,17, 20 4:2,8,25 6:17 7:11 10:2,10 12:15 14:16 15:14, 21 20:11 21:15,20 23:20
something 7:14 21:7	start 22:24	supplementin g 15:13	thank 2:1 3:1 5:11 6:7,25 9:22 15:22	Thomason 15:5
soon 24:23	started 23:3	sure 3:3,24 6:24 22:11 23:14	Thanks 5:11	those 2:14 3:23 4:1,14 5:18,20 6:2, 10 13:19 15:9 24:22,23,25
sooner 7:24 13:19	starting 11:5 18:12	surrebuttal 3:17 4:17 7:22 8:21 10:19 11:2,8 12:10,15 16:22 19:4 20:5,20,22 21:5 23:25	that'd 5:25	thought 7:7 13:15
sorry 10:4 12:16 18:20 19:12 22:21	statements 14:10	T	that's 4:22 5:17 6:25 7:15 8:22 10:9 12:13, 16,19 13:6 16:24 17:22 20:8 24:12,19	thoughts 19:22
sort 8:25	states 5:20		them 4:22 5:13,15,16 6:17 15:8,9 17:5	through 4:5 5:9,12 19:18
sound 7:9,20	stating 3:25	take 24:13	then 4:23 7:17 8:21 13:25 14:2,5,10,11, 20 16:23 19:3 23:1 24:2	throw 4:25 7:1 16:17 18:25 23:15
sounded 24:24	status 6:11	taken 4:1 7:19	therapist 7:9	Thursday 7:14,24
sounds 7:3	stay 16:24	taking 22:21	there's 4:10 5:19 6:14	tight 19:12
speak 5:9 15:20 17:21 20:5	staying 20:22	talk 6:8 22:22	these 9:5 10:5,24 15:11 17:8	time 4:18 6:13 9:11,17,18 10:18 16:1 18:10,12,17, 22 19:7,8,9, 16,25 20:7 21:1,9,13 22:20,22 23:16 24:3
speaker 3:3	steep 17:20	talking 9:15 16:13 20:10	thing 19:15	to 2:7,13,20, 22 3:3,4,12,
specific 21:24	still 4:20 5:18 6:1,3 16:25 18:14,17 19:9 20:1 23:4	targets 13:7	there's 4:10 5:19 6:14	
specifically 5:4 9:15	stingy 18:10	tell 13:11	these 9:5 10:5,24 15:11 17:8	
specify 9:2	stopping 23:7	terms 16:13	thingy 24:17	
squeeze 19:25	strongly 23:12	testimony 8:14,18 9:1,5 10:19,21 11:2 13:22 14:1,6, 16 15:1,13 16:7 17:18 19:17 21:10,	think 8:7 12:8 15:25 16:10, 20 20:8,12 21:3 22:3,24 23:3	
staff 2:12,18 3:25 4:16,21 5:8 8:13 9:3 10:13 11:4 13:1,23 14:14 15:17 16:12, 21 17:3,21	substance 3:5			
	substantially 18:8			
	such 18:12			
	suggestion 16:18			
	sum 3:5			
	summary 3:6, 21 13:3			
	Sunday 23:9			

14,17 4:1,7, 12,16,18,19, 21,22 5:1,7,9, 14,15,16,23 6:5,13,22 7:3, 6,10,15,23,24 8:12,13,20,25 9:1,4,7,11,18, 24,25 10:2,5, 9,10,12,13, 15,16,17,18, 20,21,24,25 11:2,3,7,11, 12,14,20,21, 25 12:4,5,9, 11,25 13:5,8, 10,17,19,20, 21,22,23,25 14:1,4,5,19, 20,21,22,24 15:1,4,10,11, 19 16:1,11, 12,22,24 17:4,5,8,10, 11,14,17,21 18:2,6,7,10, 14,18,23 19:2,3,8,9,14, 21,23 20:5, 14,19,25 21:2,9,11,14, 20 22:1,4,10, 11,12,13,14, 15,22,23 23:2,9,13,18, 19,21 24:4, 12,13,14,20	too 16:7 17:15 total 14:3 tracking 7:5 transcribed 8:4 true 3:17,18 8:14,15,17, 19,21 9:8 11:7,17,20 12:10,12,14, 17,18 14:5 15:16,24 16:2,4,13,22 17:1 19:4,24, 25 20:1,3,8, 10,20,22 21:5,15 23:25 try 6:13 11:11 13:19 24:13 Tuesday 16:22 17:12 18:6 Turning 3:3 two 3:11,25 4:19 5:3 6:8 8:10 9:19 10:2,11,13, 16,18,25 14:3 19:6 type 21:10,17 Tyrone 15:5	13:18 understood 9:25 unknown 21:2 until 10:7,14 13:16 17:1 18:5 up 3:3,18 7:15 8:14,15,17, 18,19,22 9:8 11:7,17,20 12:10,12,14, 17,18 14:6,17 15:16,24 16:2,4,13,22 17:1,9 19:4, 24,25 20:1,3, 9,10,20,22 21:5,7,15 22:16,18,21 23:25 24:15, 17 urgency 8:6 us 2:9 3:6 6:5, 6 9:11,14,16 10:9 11:7 18:18,24 20:17	Vandergriff's 14:24 very 5:25 6:15 9:19 11:6 18:17 view 3:22 voluminous 5:17 W waiting 5:18 want 5:1,7 9:7 11:21 12:11 15:3,10 20:25 21:11 22:10, 12,15,22 23:9,13 24:12,13 wanted 3:14 wanting 16:11 wants 22:1 way 2:20 10:16 17:1 we 2:10 3:9, 10,11,14,16, 19 4:2,11,12, 14,15,20 5:2, 6 6:1,3,10,13 7:2 8:15,17, 19,21 9:13, 17,19 11:4,8, 11 12:2,3,6,7 14:11,18 15:1,3,8,10, 14,25 16:2,3, 21 17:23 18:18 19:2,19 20:21 21:4 22:24,25	23:1,3,4 24:23,25 we'd 11:25 16:25 We'll 2:2 7:11 we're 3:5 4:13 5:18 7:20 9:13 12:2 13:14 16:12 17:5 18:11 20:10 22:20 23:18 we've 5:22 Webex 23:8 Wednesday 11:2 15:2 18:10,13 19:5 20:21 21:6 24:1 week 7:11,25 weekend 6:21 weeks 13:14 well 8:5 9:24 18:25 19:14, 23 what 4:10 6:18 7:1 9:3, 25 10:11 12:3 14:19,25 18:9,22 19:12,22 21:25 23:21 what's 3:22 6:11 22:4 whatever 13:1 when 3:8 6:23 9:3,4,13 13:22 15:22,
today 2:3,10 4:22 6:6,22 9:16 24:23,25 together 20:13	U under 18:11 understand 8:5,6 20:24 understandin g 4:6 5:5	V Vandergriff 2:12 3:6,8 5:1,5,6 7:17 8:13,19 9:6 10:1,15,20 11:24 12:20 14:14,25 15:3,18 17:10 18:14		

23	15:9	
whenever	work 9:23	
23:9	15:16 16:21	
where 11:9	18:13,21	
whether 6:5	working 4:14,	
which 13:21	20 6:16,20	
who 20:14	12:3	
whoa 9:24	works 8:1	
whole 14:18	would 2:22	
why 3:5	4:8,15 6:8,21,	
will 6:4,11 7:2	22,23 7:18,23	
8:3 11:11	8:7,25 9:3,4	
12:8,24 13:23	10:7,12 11:6,	
19:11,24	25 12:5 13:9,	
23:15	16,24 15:13,	
Williams 2:24	16,23 16:1,5,	
3:2 11:15,16,	20 17:2,3,13	
17 12:23	18:13,21 19:7	
13:2,4,7 16:8,	23:24 24:3,25	
9,10 19:21,23	wouldn't 7:25	
21:19,20 22:8	13:4 14:7	
24:5,6,17	write 17:18	
Williams'		
20:24	Y	
window 24:18	yeah 16:12,15	
with 2:9 3:2	17:16 19:11	
4:9 9:23	22:20 23:6	
12:15 18:10,	24:2	
12 20:3,22	year 20:11	
21:2 22:1,18,	Yes 3:8 4:4	
25	13:4 16:9	
within 5:19	23:10	
6:2	yet 4:21 5:7	
without 21:3	17:24	
witness 5:8		
15:5,6,7		
witnesses		