

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF GEORGIA  
3 ATLANTA DIVISION

4 Sebastian Cordoba,  
5 et al,

ZOOM VIDEOCONFERENCE  
DOCKET NO.  
1:15-cv-03755-MHC

6 PLAINTIFFS,

7 v.

Atlanta, Georgia  
Friday, January 7, 2022

8 DirecTV, LLC,  
9 et al,

DEFENDANTS.

10  
11  
12 TRANSCRIPT OF ZOOM VIDEOCONFERENCE  
13 BEFORE THE HONORABLE MARK H. COHEN  
14 UNITED STATES DISTRICT COURT JUDGE

15  
16  
17 APPEARANCES OF COUNSEL:

18 FOR THE PLAINTIFFS:

Sean A. Petterson, Esq.  
Jonathan D. Selbin, Esq.  
G. Taylor Wilson, Esq.  
Daniel M. Hutchinson, Esq.

20 FOR THE DEFENDANTS:

Hans J. Germann, Esq.  
John P. Jett, Esq.

22 COURT REPORTER:

23 JUDITH M. WOLFF, CRR  
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1 (Court was called to order at 9:34 a.m.)

2 THE COURT: This is the case of Cordoba and Romero  
3 vs. DirecTV, LLC, Civil Action No. 15-cv-3755.

4 Will counsel for the plaintiff please identify  
5 themselves for the record.

6 MR. SELBIN: Morning, your Honor. Jonathan Selbin,  
7 Lieff, Cabraser, Heiman & Bernstein. And with me, from my  
8 firm, are Mr. Hutchinson and Mr. Petterson.

9 And as we indicated in our papers, Mr. Petterson, who  
10 is one of our younger lawyers, will be handling the argument  
11 today. I know your Honor encourages that and that is  
12 something we feel strongly about as well.

13 THE COURT: Thank you, Mr. Selbin. And I do feel  
14 strongly about it and I'm glad to be able to facilitate that.

15 And who is here for DirecTV?

16 MR. TAYLOR WILSON: Your Honor, if I may. I  
17 apologize. Taylor Wilson, Wade, Grunberg & Wilson, also here  
18 on behalf of plaintiff.

19 THE COURT: Sorry about that, Mr. Wilson. Thank you.

20 MR. JETT: Good morning, your Honor. John Jett. I'm  
21 local counsel for DirecTV here.

22 Mr. Hans Germann of the Mayer Brown firm is lead  
23 counsel for DirecTV.

24 THE COURT: All right. This is oral argument on the  
25 plaintiff's motion to amend the protective order. So, without

1 further adieu, let me hear from --

2 I'm getting a little feedback. I don't know if you  
3 all are hearing it or not. Are you getting any echo?

4 MR. PETTERSON: I am not.

5 THE COURT: Okay. Good.

6 All right, Mr. Petterson, you can begin.

7 MR. PETTERSON: May it please the Court, Sean  
8 Petterson on behalf of plaintiffs. We appreciate your Honor's  
9 attention to this important matter.

10 This motion is about vindicating the privacy rights  
11 of 9,100 DirecTV customers who had their private information  
12 disclosed by DirecTV, in violation of the STELA statute.

13 DirecTV disclosed their information to a third-party  
14 in blatant violation of the privacy rights that congress  
15 provides to satellite television subscribers.

16 Individuals suffered a harm that remains unremedied  
17 today. It remains unremedied today because DirecTV refuses to  
18 permit plaintiffs' counsel to contact these individuals.  
19 DirecTV is improperly using the protective order as a shield.

20 After the Eleventh Circuit compelled Mr. Romero's  
21 claims to arbitration, plaintiffs sought the Court's  
22 permission, through our initial motion in 2020, to contact  
23 these individuals on a matched accounts list.

24 In the December 2020 order, the Court said that our  
25 motion was premature until we could bring back an arbitration

1 award, but otherwise agreed with our arguments.

2 THE COURT: Well, wait, Mr. Petterson.

3 I didn't otherwise agree to your arguments.

4 What I basically said at that time is I wasn't going  
5 to let you start soliciting new clients. And I said,  
6 basically, let's wait and see what the arbitrator does  
7 because, obviously, if the arbitrator had denied Mr. Romero's  
8 claim, there would be nothing, perhaps, left to talk about,  
9 although there still might be something left to talk about.

10 But the issue here is you say that plaintiffs,  
11 plural, have gone without a remedy. Well, Mr. Romero has not  
12 gone without a remedy. In fact, Mr. Romero has gotten a  
13 pretty good remedy from the arbitrator; you had one other  
14 person go through arbitration that lost.

15 So what you've got to convince me to do now is to  
16 basically amend a protective order that would undo what the  
17 parties had agreed to do.

18 This is different than those cases where a document  
19 has been sealed on the court's docket, and then one of the  
20 parties is arguing to unseal it because it should be part of  
21 the public docket. And the docket of the case is presumed to  
22 be public, and sealing is the exception to the rule, not the  
23 default. So that's one situation.

24 But here you have got a different situation. This is  
25 where discovery -- documents that are exchanged in discovery

1 are not presumptively public. They are between the parties,  
2 they are not on the docket, they don't get filed.

3 So here, the parties agreed amongst themselves to  
4 keep the matched accounts list secret or confidential. And so  
5 basically what you're asking me to do is to go and undo what  
6 the parties agreed to do, honestly, for the purpose of  
7 allowing plaintiffs' counsel to solicit more business.

8 So tell me what -- as you go through your argument, I  
9 want to know cases that support me doing that.

10 And I know you've given me some cases in the brief,  
11 but most of those cases, if not all, involve unsealing where  
12 documents were sealed on the record.

13 I want a case that would basically say that a Court  
14 went in and basically overruled what the parties had agreed to  
15 in a discovery protective order for the purpose of allowing  
16 counsel for one of the parties to go ahead and try to get more  
17 business or, frankly, representing more plaintiffs who are no  
18 longer part of a class action.

19 MR. PETTERSON: Let me address that in a few ways,  
20 your Honor. And thank you for your consideration of  
21 everything. Clearly, you've done your homework.

22 We think that the protective order on its face  
23 provides a route for amendment. It has a good cause in  
24 interest of justice standard. And it also permits the Court  
25 to amend it at any given time.

1           So yes, we did agree with DirecTV to the protective  
2 order, and we agreed that there are documents that can be  
3 marked confidential and exchanged between the parties, but  
4 also provided the flexibility to amend the protective order.

5           And with respect to your question about whether  
6 there's a specific case that involves this situation, we're  
7 not aware of one, and the reason we're not is because it's  
8 quite unusual for one party's action, in discovery, to be the  
9 cause of a separate cause of action.

10           Here, DirecTV disclosed the matched accounts list to  
11 its expert, Dr. Aron, in violation of STELA. That's what the  
12 AAA found already. So, it's hard to imagine another situation  
13 where parties, during the course of a case, would go about  
14 violating a different federal law, but that's exactly what we  
15 have here.

16           So we have looked for those cases, and we understand  
17 that the cases we cited relate to sealing and unsealing, but  
18 we believe this is a bit of a sui generis situation.

19           So if I could proceed, in your prior order, the Court  
20 asked us to bring back an arbitration award, and we did that.  
21 We went to the AAA, we pursued individual arbitration on  
22 behalf of Mr. Romero, and we were successful.

23           The AAA arbitrator's express finding that DirecTV  
24 violated Mr. Romero's privacy rights underscores the need for  
25 the Court to remove the cloak of secrecy that the current

1 protective order grants to DirecTV with respect to the highly  
2 valuable privacy claims that thousands of consumers possess,  
3 otherwise, there is no way of knowing about the violation of  
4 their rights.

5           We believe we have satisfied the applicable standards  
6 to amend for three reasons:

7           First, without amending the protective order,  
8 individuals on the list have no way of knowing about their  
9 STELA claims. The Court already agreed with us on this point  
10 when it said, quote, individuals on the matched accounts list  
11 have no way of knowing about their potential STELA claims  
12 unless they were notified.

13           That's a critical point here. Absent an amendment,  
14 there is no amount of diligence or effort that a STELA  
15 claimant could undertake to learn of their legal claim arising  
16 out of DirecTV's privacy violations.

17           DirecTV would simply be off the hook for violating  
18 STELA for all 9,100 people, except for Mr. Romero. And they  
19 would be off the hook for the sole reason that this came  
20 through a protective order, not for any merits reasons.

21           There is no neutral position here. The status quo  
22 permits DirecTV to use the protective order as a shield,  
23 hiding the truth of its privacy violations from thousands of  
24 its consumers.

25           The fact that STELA protects satellite television

1 subscriber information is not generally known to the public.  
2 Or if individuals on the list receive meaningful information  
3 regarding their claims, DirecTV's actions and the potential  
4 value all must be explained to them in some detail.

5           So if plaintiffs counsel are not permitted to  
6 communicate with individuals, then their rights will never be  
7 vindicated, nor will DirecTV's behavior, which the AAA  
8 arbitrator already found to be illegal, be challenged.

9           During Mr. Romero's arbitration, it was further  
10 revealed that, at that time, DirecTV had not destroyed these  
11 individuals' improperly disclosed personal information.  
12 Clearly, DirecTV should not be permitted to reap the rewards  
13 of misconduct that violated a federal privacy statute by  
14 burying these undisputed facts behind the veil of a protective  
15 order.

16           THE COURT: Well, but don't I have evidence before me  
17 now that the information has been removed? Ms. Aron no longer  
18 has the information; the consultant that processed the  
19 information for Aron, or the defense team, that information is  
20 gone from them as well.

21           So in terms of the group who was allegedly harmed by  
22 the production of that information under STELA, they got no  
23 problem any more with the individuals who had that  
24 information. Correct?

25           MR. PETERSON: Well, your Honor, STELA provides for



1 statutory damages for those individuals as well.

2           So, yes, you are correct that DirecTV got an  
3 affidavit from Dr. Aron and her shop that the list had been  
4 destroyed, but congress still provided for a statutory  
5 penalty.

6           THE COURT: I understand that. But, I mean, one of  
7 the things you are arguing to me is that there is all this  
8 harm that's still out there that I can somehow alleviate.

9           I understand that there is statutory damages for past  
10 harm. That's correct. But I thought what you were telling me  
11 is that there is all this -- the information is out there, and  
12 it really isn't out there.

13           And that brings me to the other -- well, one of the  
14 other problems I think you've got. And that is if I modify  
15 the order the way you're asking me to, which basically says  
16 matched accounts list, no longer confidential, there is  
17 nothing to prevent plaintiffs' counsel from literally sending  
18 that list to ten other lawyers. Right?

19           If you want to go ahead and get ten of your closest  
20 buds to have the list to go ahead and contact people, that's  
21 free and clear after Judge Cohen removes that from the order,  
22 too.

23           So, in that respect, don't you think it's kind of  
24 ironic that you are asking me to kind of put these 9,000 plus  
25 people out there for a whole bunch of other people to contact,

1 and a lot of them may not want those contacts for the same  
2 reason, Don't bother me, DirecTV; Don't bother me, lawyers;  
3 Gosh, how do I get out of this?

4 So that's something that's also a concern of mine.

5 And the third thing, honestly, is that I don't take  
6 sides when I have a litigation in front of me. And if I start  
7 putting the finger on the justice scales in favor of one party  
8 by monkeying around with a confidentiality order -- and let's  
9 face it, it's for the sole purpose of allowing plaintiffs'  
10 counsel to contact people in the hopes that they will  
11 represent them.

12 And so you've told me that well, we'll comply with  
13 all ethics requirements in terms of solicitation, and I don't  
14 doubt that you would, but it has the Court's imprimatur when  
15 it does it.

16 It's kind of like the Court has decided -- has gone  
17 in to an agreement that the parties had entered into and has  
18 decided to modify that agreement upon one party's request for  
19 the principle purpose -- and I know we want to let these  
20 people know that they have a right, but it's former class  
21 counsel whose one class action has been thrown out by the  
22 Eleventh Circuit. The second time around, the Eleventh  
23 Circuit said sorry, folks, you got to go through arbitration.

24 I mean, you did pretty well with me for a couple of  
25 times. I get it. And those orders were reversed.

1           So honestly, folks, if I subscribe to what you want  
2 me to do, what do you think the odds are that that order is  
3 going to get affirmed on appeal? I would say slim and none.  
4 So there is no authority to do this. That's the problem.

5           There is this overview that these poor folks are out  
6 there and they don't know that they have this right to  
7 arbitrate. That happens all the time when class actions get  
8 denied and there is either an individual out there that  
9 doesn't know they have a right or, you know, there is an  
10 arbitration agreement and they don't know they have a right to  
11 go to arbitration and the parties have agreed that certain  
12 things are confidential.

13           And courts just don't go ahead and act as an agent,  
14 frankly, for plaintiffs to undo that, quote, wrong that the  
15 plaintiffs think is out there and start a whole process where  
16 there is solicitation of plaintiffs.

17           So that's -- those things -- I know I'm kind of free  
18 flowing here, but those things are in my mind. And I think  
19 those are problematic for you.

20           And I get the justice argument and all that kind of  
21 stuff, but you're asking me to do something that is really  
22 unprecedented. It really is.

23           And I would like to know -- and I'm putting poor  
24 Mr. Petterson, who is trying to do a good job here and is  
25 doing a very good job, on the spot.

1           And I'll ask you, Mr. Selbin, too. What is your best  
2 case to allow me to do something like this, particularly in  
3 this circuit? Good luck. But maybe somewhere even in the  
4 other parts of the country where a judge has basically said,  
5 after an arbitration award like this, you know what, let me  
6 undo this particular confidentiality provision so that  
7 plaintiffs' lawyers can go ahead and notify other members of a  
8 former class that they have got an arbitration right and, by  
9 the way, we're available, ready, willing and able to represent  
10 you in that.

11           MR. SELBIN: I appreciate the opportunity, your  
12 Honor, and I will try to address that issue.

13           You have used the word "unprecedented," Mr. Petterson  
14 used the word "sui generis". And both of those are accurate.

15           And the reason both of those are accurate is that in  
16 every other case of the type you're talking about, the  
17 individuals who were either part of a class, or not, but have  
18 some claim that they may or may not even know is a legal  
19 claim, know what is happening to them.

20           So, in other words, let's take the TCPA case example,  
21 because that's what this is. They know they got harassing  
22 phone calls that they didn't like -- or maybe they didn't mind  
23 them, but they know they got these phone calls.

24           And so, if the class isn't certified, and nobody  
25 tells them hey, you have a right to go arbitrate these

1 individual TCPA cases, they don't find out about it, but they  
2 will have what I call inquiry notice, of a sort, not for  
3 purposes of statutes of limitation, but they know something  
4 has happened to them that they may not have liked.

5           Here, the reason it's unprecedented, the reason it's  
6 sui generis is for everybody, other than the two folks who  
7 have already arbitrated, they, literally, there is no amount  
8 of due diligence they could do to discover that DirecTV  
9 violated their rights in the discovery process in this case.

10           Literally, no amount of due diligence. This is not a  
11 situation where they otherwise could find out about their  
12 claim in any way, shape or form.

13           So when we talk about the need to notify them, I know  
14 your Honor has repeated the term "solicitation" a lot and this  
15 is about generating business for plaintiffs' counsel, well,  
16 first of all, obviously, under the ethical rules we are  
17 permitted in certain circumstances to solicit clients.

18           It sounds like a dirty word and, when it gets used  
19 that way, it's used as a dirty word, but it's not.

20           THE COURT: It isn't a dirty word, and I don't mean  
21 to say it's a dirty word.

22           You are free to solicit whoever you want. But you're  
23 not free to ask me to help you solicit, necessarily. That's  
24 where I'm coming from.

25           If the Court places its imprimatur on it, it makes it

1 more than just the normal attorneys -- listen, I solicited for  
2 30-plus years when I was sitting where you are. So I like  
3 lawyers making money. That's no problem for me.

4 But it is a problem for me when I think that I'm  
5 being asked to basically aid in that.

6 MR. SELBIN: I hear the concern, your Honor. And I  
7 guess what I would say is what we're asking you to do is not  
8 put a thumb on the scale, but to level the playing field.

9 Because under the current playing field, DirecTV  
10 knows that it improperly provided the matched accounts list to  
11 its expert. An arbitrator has found that. The Court all but  
12 found it in an earlier order, but there is literally no way  
13 for these folks to know.

14 So we're not asking you to put a thumb on the scale;  
15 we're asking you to level the playing field. And we're not  
16 asking -- I should be clear, and I think we were in our  
17 papers -- we're not asking for a court order notice. We're  
18 not asking for the Court to send anything out to folks.

19 We're asking for permission to do what in the  
20 ordinary circumstances we would be able to do, which is to  
21 notify these people, you have a potential claim, and comply  
22 with all the ethical obligations about what we can and can't  
23 say to them, and if you would like to be represented.

24 And I should also say, we're not looking to provide  
25 this list to anybody else. We're not looking to make it

1 public. We're also not bound by STELA, so it wouldn't be a  
2 STELA violation. But I get your concern about the potential  
3 irony of opening up a document that we think shouldn't have  
4 been provided to somebody to the world.

5 But I can commit to the Court, on the record, we're  
6 not going to provide that to anybody else. We're going to use  
7 it to contact these folks and let them know, as the ethical  
8 rules permit, that they have a potential claim.

9 And they can decide what to do once they know that.  
10 They don't have to hire us or do anything at all.

11 And maybe they don't want to be bothered, and that's  
12 fine. We're not going to show up at their homes, we're not  
13 going to call them. It's going to be a letter, a postcard,  
14 something of that nature, which they can throw in the garbage.

15 So from our perspective, we're not asking the Court  
16 to put its imprimatur on anything. We're asking the Court to  
17 level the playing field.

18 THE COURT: Okay. Mr. Petterson, go ahead. I'm  
19 sorry I interrupted your flow.

20 But one thing you will learn in these arguments, and  
21 this is why it's a good thing to get young lawyers the  
22 experience, and some folks that are a lot older than you don't  
23 appreciate this, and that is the argument is actually not for  
24 the lawyers, it's for the judge.

25 So it's important to actually answer the inquiries

1 and the concerns that the judge puts forward, and sometimes  
2 that does interrupt the organization of what your argument is  
3 going to be, but that's reality.

4           So one of the things that we all learned as young  
5 lawyers when we were arguing cases is that you got to be  
6 flexible when you are arguing, because you got these jerk  
7 judges out there that actually keep interrupting you and won't  
8 let you go in the way you've prepared sometimes because they  
9 want to get to an issue that they are interested in.

10           So this is why these things are good experience.

11           So go ahead, Mr. Petterson.

12           MR. PETTERSON: Thank you, your Honor. I will adjust  
13 my presentation accordingly.

14           We think that the STELA claims being meritorious is  
15 particularly important because, as we noted before, it was  
16 premature to know whether other arbitrators would agreed that  
17 STELA had been violated.

18           But, in fact, we went to the AAA, and arbitrator  
19 Jennifer Lupo made the decision that Mr. Romero was entitled  
20 to \$165,100, plus attorneys' fees for injunctive relief after  
21 Aron (indiscernible audio) destroy the matched accounts list.

22           In (indiscernible audio) when you decided that the  
23 (indiscernible inaudible) did not obtain prior consent to  
24 disclosure as STELA required (indiscernible audio).

25           So, to put it simply, we don't believe our request is



1 premature anymore. We think that, frankly, there no good  
2 cause, in our view, to violate federal law. And I want to  
3 echo Mr. Selbin here with him saying that this is quite an  
4 unusual circumstance.

5 In our protective order that you noted in your first  
6 order cannot serve as a shield. And that's exactly what  
7 DirecTV is doing, but without an amendment.

8 And I think I would add that the parties have the  
9 right to amend protective orders for changed circumstances all  
10 the time. (Indiscernible audio) entered prior to the matched  
11 accounts list that is being created (indiscernible audio) any  
12 kind of STELA claim or STELA (indiscernible audio).

13 So we believe that that flexibility for circumstances  
14 where things change and where there is a need to, as  
15 Mr. Selbin said, level the playing field. Because as it  
16 stands, DirecTV is being able to hide behind this protective  
17 order and not have to inform 9,100 people that their rights  
18 have been violated.

19 And I hear what you say -- go ahead.

20 THE COURT: I wanted to make sure that my court  
21 reporter is hearing you well enough.

22 Whatever audio you're using is not great right now.  
23 It's kind of, for whatever reason, not smooth. I don't know  
24 what it is, but there is some kind of defect in the audio  
25 right now that wasn't present initially.

1           I can hear you, and I think we all can make it out,  
2 but I was worried about the court reporter, frankly, getting  
3 it all down.

4           MR. PETTERSON: I appreciate that, your Honor. And I  
5 can switch to my phone, if you would like.

6           THE COURT: Maybe it would be better. Either get out  
7 and dial back in and it may clear itself up, or dial in with  
8 your phone. Either way, I think it would be better.

9           MR. PETTERSON: Give me a minute.

10          THE COURT: Sure. Take your time.

11          MR. SELBIN: The joys of Zoom, your Honor.

12          THE COURT: That's right. It's funny, during trials,  
13 it never ceases to amaze me that -- and I wish I had more  
14 trials now, as you can imagine. Over the past 18 months, it  
15 has been few and far between.

16          But technology is a wonderful thing. I don't think I  
17 have ever had a trial where there has not been at least one  
18 problem with somebody's laptop. It just happens.

19          And I laugh and think about the days of trials with  
20 charts and magic markers and stuff. And we're better off now,  
21 certainly, with all the access to technology we have but, in  
22 some respects, those charts never broke, those magic markers  
23 never ceased to write.

24          Maybe we were all better off back then.

25          MR. SELBIN: It looks like his phone is pulling up.

1           Do you want to try that, Sean?

2           THE COURT: Not yet. You've got your mute on with  
3 respect to the Zoom.

4           MR. PETTERSON: How about this? Does this sound any  
5 better?

6           THE COURT: That is better, yes.

7           MR. PETTERSON: Let me pick up.

8           It's important to understand how meritorious the  
9 STELA claims are. That was a pending issue when we first made  
10 this motion, and I think we've now proven that at least one of  
11 two arbitrators believe that these claims are quite strong and  
12 even worth six figures in statutory and punitive damages.

13           So when you raise a concern about these individuals  
14 being contacted, I think, personally, if I had a potential  
15 six-figure claim, I would at least want to know about it and  
16 know there are lawyers out there who are willing to represent  
17 me.

18           I'm not saying that these individuals have to take  
19 any action or do any specific thing, but we do think that is  
20 valuable information that ought to be shared with these  
21 individuals.

22           And to sort of elaborate on that point, I think that  
23 the concerns the Court might have about our communication,  
24 we're happy to be flexible in terms of what those include, but  
25 we reiterate that those will absolutely follow all of the

1 ethical rules for each state in which we practice, and also  
2 Georgia.

3           So we will not promise any specific return and we  
4 will explain to the individuals how we got their individuals  
5 to contact them. And we, for example, will have  
6 Spanish-speaking individuals on hand, because this is largely  
7 a Spanish-speaking population in the Virginia and Maryland  
8 area. And we'll disclose what costs they might have to face  
9 and things like that.

10           If there are other questions your Honor has, I'm  
11 happy to address them. But otherwise I think you understand  
12 our position.

13           And Mr. Selbin has something to add, too.

14           MR. SELBIN: With your permission, your Honor, just  
15 one further thought about my comments earlier.

16           THE COURT: Yes.

17           MR. SELBIN: In this day and age, I'm sure your Honor  
18 sees these cases, we certainly see them. Privacy issues and  
19 disclosure of private information is a very big issue that  
20 people take very, very seriously.

21           And it's one of the reasons congress enacted these  
22 statutes that have statutory damages, because the notion is  
23 that there is a harm just in having your information  
24 improperly handled.

25           But for the very unusual circumstances here, a

1 disclosure of private information in this way by DirecTV would  
2 be on the front page of newspapers. People would hear about  
3 it, they would have a way to find out about it, and they would  
4 at least be put on inquiry notice.

5           The only reason this isn't on the front page of a  
6 newspaper and people are put on notice at least in that way is  
7 because of the unprecedented nature of how this happened.

8           Now, your Honor is correct, and I think it's  
9 important to note that the ongoing harm has been removed.  
10 DirecTV has, at long last, after many, many, many additional  
11 months, as we understand it, finally taken this information  
12 back from their expert.

13           But that doesn't undo the bigger harm or the bigger  
14 -- I know your Honor alluded earlier to the justice issue that  
15 sort of overlays this, or underlays it, however you want to  
16 look at it, but it's a very real issue, which is that these  
17 people's privacy rights matter.

18           And DirecTV didn't take care of their information in  
19 the way it's required to under STELA. And it's going to get  
20 away with that, period, full stop, unless these people are  
21 informed that they have a claim.

22           So respectfully, we request the opportunity to notify  
23 them that they have a claim.

24           THE COURT: Okay. Mr. Selbin and Mr. Petterson, I  
25 appreciate your argument.

1           Let me hear from DirecTV.

2           MR. GERMANN: Thank you, your Honor. This is  
3 Mr. Germann, from Mayer Brown.

4           Your Honor, there is no good cause to modify the  
5 protective order here. But before I get to that, I would like  
6 to point out an issue of subject matter jurisdiction in light  
7 of a judgment that was entered earlier this week.

8           Now, earlier this week, judgment was entered on  
9 Mr. Romero's claim, and judgment on the other plaintiff's  
10 claim, Mr. Cordoba, was entered early last year.

11           So at this point, all claims have been decided and  
12 judgment has been entered on all the claims, and there is  
13 nothing remaining of the case.

14           I would like to point your Honor to the Eleventh  
15 Circuit's decision from last May, in Absolute Activist Value  
16 Master Fund vs. Devine. It's 998 F.3d 1258.

17           In that case, after extensive discovery, plaintiff  
18 dismissed their case, and then defendant moved to modify the  
19 protective order so she could use confidential discovery  
20 materials in a related action.

21           And the Eleventh Circuit held that the district court  
22 lacked subject matter jurisdiction because the action was  
23 over. And the Court noted that district courts retain  
24 jurisdiction to consider certain collateral issues, like costs  
25 and fees, things like that, but it held that a motion to

1 modify a protective order is not one of those collateral  
2 issues.

3           So if the circumstances were a little different,  
4 because the Devine case involved a voluntary dismissal under  
5 Rule 41, but I think the principle is the same, that at this  
6 point we have a judgment on the named plaintiffs' claims, so I  
7 think there's a question of whether the Court has subject  
8 matter jurisdiction to even entertain the motion at this  
9 point.

10           In any event, we don't think there is good cause to  
11 modify the protective order here.

12           Now, the crux of counsel's argument is that unless  
13 the Court exempts the matched accounts list from the  
14 protective order, no one on the list could possibly know of  
15 their potential STELA claim.

16           But I don't think that argument holds water. And I  
17 think the plaintiffs' reply brief makes clear, and it is set  
18 out in their reply brief, in August of 2017, we produced the  
19 matched accounts list to plaintiffs' counsel.

20           Then, that same month, they told us that they  
21 intended to seek leave to amend the complaint in this case to  
22 add a STELA claim. And, as they say in their reply brief, at  
23 that point they used the matched accounts list to go out and  
24 search for a client to try to find a class representative.

25           And we know they brought and signed up at least two

1 clients, Mr. Romero and Mr. Falla.

2 That was August of 2017. And it was, really, two and  
3 a half years later, February of 2020, when the Eleventh  
4 Circuit held that Mr. Romero has to arbitrate his claim.

5 So the fact is plaintiffs' counsel did notify people  
6 of their potential STELA claims, and they had two and a half  
7 years from the time they got the matched accounts lists until  
8 the Eleventh Circuit held that Romero had to arbitrate.

9 In the meantime, they used that list to notify people  
10 to try to bring their claims in this litigation.

11 Now, what's different, if anything is different now,  
12 it's simply the financial incentive of plaintiffs' counsel  
13 from their own business perspective.

14 As they made clear in their reply brief, when they  
15 contacted people in late 2017, they were looking for a class  
16 representative. So we don't know how many people they  
17 contacted, maybe they stopped. But it apparently wasn't their  
18 incentive at the time to send 9,000 postcards to notify them.  
19 Maybe they called a smaller number. We don't know. They  
20 haven't told us, they haven't told you what they did initially  
21 when they notified people.

22 But the fact of the matter is they did have an  
23 opportunity to notify people. And we know they exercised that  
24 opportunity to some extent, because that's how they signed up  
25 Mr. Romero and Mr. Falla.



1           Now I could talk a little bit, and I think your Honor  
2 touched on this, but I also think the relief they're seeking  
3 here is completely inappropriate.

4           Now that the case is over, they want to amend the  
5 protective order to completely remove the matched accounts  
6 list from the scope of the protective order. At that point,  
7 they could do whatever they want with it.

8           Basically, they want to turn it into a direct  
9 marketing list so they could telemarket, they can direct mail  
10 to everyone on the list, they could shop around to other  
11 plaintiff's attorneys to see who is interested in contacting  
12 these people.

13           Now obviously we don't agree that there was a STELA  
14 violation at all. We think that Judge Lifland got it right in  
15 the Falla arbitration. But even if there was a STELA  
16 violation, here, the disclosure went no further than to  
17 DirecTV's own retained expert for use in this litigation.

18           And that is a far cry from taking that same list and  
19 turning it into a marketing list for third parties, which is  
20 basically the relief that they're asking for here.

21           I really don't have much more to say, your Honor. I  
22 think you understand our position, but I'm happy to answer any  
23 questions you have.

24           THE COURT: Well, let me ask you this. Would your  
25 position be different -- I understand that the alleged STELA

1 violation here is due to the disclosure to Dr. Aron.

2           If this had been a more wide disclosure, let's say,  
3 and I'm trying to think of something that's analogous to what  
4 usually has happened here. There is the computer hack. It's  
5 not a STELA issue, it's somebody has gotten into personal  
6 information because the company's security system did not  
7 prevent access to personal identifying information.

8           That's the typical thing that happens to companies  
9 nowadays and, of course, the distinction of that is a lot of  
10 times we all read about it, so we know that it has happened.

11           But a lot of times companies, on their own, because  
12 they know what could happen if they don't take voluntary  
13 action, notifies people, and they say we can sign you up for  
14 two years' worth of monitoring your information and all that  
15 kind of stuff.

16           So would your position be different here if it was a  
17 more widespread kind of disclosure? In other words, if this  
18 wasn't just a disclosure that was made to an expert, but it  
19 was a disclosure that was made outside of DirecTV, in the  
20 marketplace? Would your position be different?

21           MR. GERMANN: No, your Honor. I don't think it would  
22 be different. Our position is this list was -- plaintiffs'  
23 counsel has this list only because it was produced in  
24 discovery under a protective order.

25           And it's neither -- there is no party seeking relief

1 here. There is no party saying they need this list to  
2 prosecute a claim in this court or anywhere else.

3 It's simply attorneys asking the Court to, after the  
4 fact, modify a protective order so they can use the list for  
5 marketing.

6 And, no, I don't think our position would be  
7 different. But I do want to point out, your Honor, that the  
8 fact of the disclosure and the fact that there's STELA claims  
9 out there, and even the fact that Mr. Romero got a big award,  
10 those things are public. In fact, there is an Eleventh  
11 Circuit decision out there that is all about, talks about the  
12 disclosure.

13 The only thing that's not public is a list of the  
14 people, the specific people impacted.

15 But those things aren't made public even in the  
16 context of a data breach. The fact that a data breach is  
17 public, just like the fact that this disclosure to Dr. Aron is  
18 public, but just in the case of a data breach, there is not a  
19 list of those impacted that's been made public.

20 THE COURT: I understand that point. And that is  
21 true, and I will tell you that I have had, there are members  
22 of the public out there, consumers, that are very active on  
23 their own and review court orders regularly.

24 I don't doubt that that's true because we have gotten  
25 calls before in cases where we have entered orders, and

1 sometimes there are consumers out there that are amazingly  
2 adept at getting this information and proceeding along their  
3 own lines. So, that is true. I mean, they are public orders.

4 But I think the plaintiffs -- when I say "the  
5 plaintiffs," that's another issue here. Is it really the  
6 plaintiffs? Because Mr. Romero is the plaintiff, and  
7 Mr. Romero has gotten his relief.

8 And this is, technically, plaintiffs' motion, but  
9 that's why I keep getting back to the fact that it is  
10 counsels' desire as much as it is representing the plaintiffs'  
11 class that is no longer a class because Mr. Romero has already  
12 gotten compensated.

13 So those are all the things that I look at in terms  
14 of -- and, Mr. Selbin, I know you are being completely ethical  
15 and aboveboard here and looking out for people that will not  
16 learn that they have a potential arbitrable claim. I get  
17 that.

18 But as everyone would acknowledge, this is a highly  
19 unique situation, and you're asking me to really make new law  
20 right here, and I'm not sure there's authority for me to do  
21 that.

22 And, honestly, as a matter of reality, Mr. Germann  
23 brings up an interesting point about jurisdiction. I hadn't  
24 thought about that. That is an interesting point. You may  
25 want to comment on that, Mr. Selbin.

1           But can you imagine if I do what you suggest, and  
2 DirecTV, I am sure, will want to appeal that order, can you  
3 imagine the Eleventh Circuit affirming that order?

4           I can't.

5           MR. SELBIN: I actually, respectfully, your Honor, I  
6 think you have a tremendous amount of discretion here, which  
7 we acknowledge. And that discretion, in here, is in the  
8 nature of the inquiry. It comes from the protective order  
9 itself. And it comes from sort of the underlying answer to  
10 the question of who and why this is being done, which is an  
11 interest of justice.

12           Again, this is not -- your Honor -- and I just have a  
13 couple of points. I know we have spent a lot of time, but I  
14 do want to address a couple of things, if I could, very  
15 briefly. With your permission, your Honor.

16           THE COURT: Sure.

17           MR. SELBIN: Okay. Your Honor mentions consumers who  
18 track cases and contact the Court and are very on top of these  
19 things. That is undoubtedly true. We see that too.

20           But that is in cases where they know that something  
21 has happened to them. If they don't have the slightest idea,  
22 as these 9,000 people have absolutely no idea.

23           THE COURT: No. Actually, what I meant, Mr. Selbin,  
24 is, no, these are not people that reached us in the newspaper.  
25 These are people that literally track orders that are entered

1 by the courts.

2           So what I'm saying is -- and it's not a large group  
3 of people. I don't want to create that understanding. No.  
4 But what I'm saying is there are people that literally read  
5 all the Eleventh Circuit decisions, and they read decisions of  
6 the court of the Northern District of Georgia.

7           What I was talking about is I have gotten calls from  
8 consumers where there has not been an article in the Atlanta  
9 Journal Constitution. But the only reason they know about it  
10 is they say hey, you entered an order three days ago. And  
11 it's, like, wow. That's pretty impressive.

12           So the order -- I think what DirecTV's counsel's  
13 point was is the orders are not confidential. I mean, they  
14 are out there.

15           MR. SELBIN: Right.

16           THE COURT: So you're right, the average person who  
17 is going about their daily business and who does not keep up  
18 with what judges write will have no idea about this.

19           But it's not that what has been done in this case has  
20 been secretive. The only thing that has been secretive is  
21 what's happened in discovery pursuant to the protective order.

22           MR. SELBIN: Okay. I think that's a fair point, your  
23 Honor.

24           I will note, as Mr. Petterson alluded to, that the  
25 overwhelming majority of the folks on this list are primarily

1 Spanish-speakers.

2 THE COURT: Right.

3 MR. SELBIN: And these orders in the docket are not  
4 in Spanish, but that's just the nature of the system.

5 But I guess just two other points.

6 Your Honor asked the question of Mr. Germann about  
7 would his answer be different if it were much more widespread?  
8 And he said it wouldn't, which I actually think is an  
9 interesting answer because I think it supports us; it doesn't  
10 harm us.

11 But I do want to note that STELA doesn't distinguish  
12 how widespread the mishandling is. The claim is the  
13 mishandling, the improper disclosure. It's not it went to one  
14 person or it went to the whole world. It's whether they  
15 handled it properly, or not.

16 And we have a situation here where I think it's fair  
17 to say that DirecTV, and it's reflected by the fact that even  
18 after everything that happened, they didn't destroy the  
19 document, they didn't call it back. They clearly believed  
20 that they had gotten away with it.

21 And that, alone, I think, weighs on the interest of  
22 justice balance here, which is that they did something that,  
23 again, your Honor all but found was a violation of STELA in  
24 your original order on this, and now an arbitrator has found  
25 it was a STELA violation. And they're not worried about it

1 because they know that all these folks aren't going to find  
2 out about it.

3           And that's really the last point I want to address.  
4 If it is true that after we learned of the violation we,  
5 appropriately, under the rules, went to find a class  
6 representative to bring those claims, but we didn't contact  
7 all 9,000 people, we contacted a handful of people and, as  
8 soon as we found somebody, we stopped because we were bringing  
9 it as a class action.

10           And I think it's fair to say that a lot of other  
11 lawyers in those circumstances would have shot out a letter to  
12 all 9,000 folks and signed them up, and then sought  
13 forgiveness afterwards if there was something improper about  
14 it.

15           We have taken a different tact here. We are of the  
16 view that ethical lines are to be viewed from a safe distance,  
17 we don't walk them. So we came to the Court, and we said to  
18 the Court we would like to do this and we want your permission  
19 to do it.

20           And again, not seeking a thumb on the scale; seeking  
21 a leveling of the playing field.

22           So I do think -- obviously, I hear the writing on the  
23 wall, but I do think that this is an unprecedented situation  
24 and I think your Honor has a tremendous amount of discretion.

25           So I'm not even sure what the appellate issue is,



1 unless it's the subject matter jurisdiction issue, which is  
2 the first time they have raised that and I'm not really  
3 prepared to address that.

4 I'm not familiar with the case that was cited and we  
5 would need to brief that if your Honor is inclined to address  
6 that issue. That could be a real appellate issue, one way or  
7 the other.

8 THE COURT: And that's right. The reason they didn't  
9 address it before now is because I just entered those orders  
10 recently, so they wouldn't have --

11 MR. SELBIN: Right. I'm not being accusatory. I'm  
12 just noting a fact that we haven't had a chance to address it.

13 THE COURT: I hear you.

14 All right. I appreciate everyone's argument in this  
15 case.

16 And also, in all seriousness, I appreciate  
17 plaintiffs' counsel allowing a young lawyer to argue the case  
18 as well.

19 It really bothers me sometimes that I don't see  
20 enough young lawyers in court. I always tell this story, and  
21 I'll tell it here again.

22 I had a trial some years ago in which, amazingly,  
23 both sides allowed associates to try the case. It was an  
24 insurance case, and we had the senior partner sitting at  
25 counsel table. It was actually a jury trial. And there were

1 two senior associates that I would say did 90 percent of the  
2 case.

3 And, in fact, I said this because the Daily Report  
4 did a story about it, and I said, and it's true, it is one of  
5 the best tried cases I have had.

6 And you had these two young lawyers that were just  
7 fabulous for both sides.

8 And unfortunately, I know how clients are and clients  
9 just want the most experienced lawyers representing them in  
10 trials and arguing cases. And I have talked to large law  
11 firms about this and I have said, really, in order to get  
12 young lawyers up to speed to be good senior lawyers or good  
13 partners when they argue is you have got to give them this  
14 kind of opportunity. Some are better than others in doing it.

15 In fact, I had one just not too long ago say to me,  
16 you know, we requested an oral argument in the case and you  
17 didn't grant it. And I said well, you should have had a young  
18 lawyer argue the case and I would have granted it, and they  
19 said well, the client doesn't want that.

20 And I said well, you know something? You need to go  
21 back to the client and say, okay, here's your choice: You can  
22 have oral argument with Judge Cohen if you get a young lawyer  
23 to argue just one issue, or you cannot have oral argument with  
24 Judge Cohen; which do you want?

25 And they said hmm, yeah, I guess you're right.

1           So that's a long way of saying I appreciate,  
2 Mr. Petterson, you arguing today and your partners allowing  
3 you to do so. And you did a good job and I think more  
4 opportunities like that should be given.

5           And my colleagues, it's not just me that does it on  
6 this court, other colleagues of mine do it as well.

7           So we will get an order out fairly quickly on this.

8           And let me just say, since this litigation is  
9 definitely coming to a close, that I appreciate the  
10 professionalism of all the lawyers during the litigation. It  
11 was, actually, I looked, it's a 2015 case. One of my older  
12 cases, obviously. And it has gone back and forth on appeal,  
13 but you have all been, from my perspective, professional in  
14 your advocacy during the entire course of the case.

15           So I appreciate that.

16           MR. SELBIN: Thank you, your Honor.

17           THE COURT: So without further adieu, thank you all.  
18 And Court stands in recess.

19           MR. GERMANN: Thank you, your Honor.

20

21           (Proceedings were adjourned at 10:25 a.m.)

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## REPORTER'S CERTIFICATE

I, Judith M. Wolff, Certified Realtime Reporter and Official Court Reporter for the United States District Court for the Northern District of Georgia, with offices at Atlanta, do hereby certify:

That I reported on the Stenograph machine the proceedings held by video teleconference on Friday, January 7, 2022, in the matter of Sabastian Cordoba, et al vs. DirectTV, LLC, Case No. 1:15-cv-03755-MHC;

That "indiscernible audio" designations are the result of audio interference due to technological limitations beyond my control;

That said proceedings were reduced to typewritten form by me;

And that the foregoing transcript is a true and accurate record of the proceedings to the best of my skill and ability.

This, the 11th day of January, 2022.

/s/ Judith M. Wolff, RPR, CRR  
Official Court Reporter

MR. GERMANN: [3] 22/2 26/21 35/19 MR. JETT: [1] 2/20 MR. PETTERSON: [9] 3/4 3/7 5/19 8/25 16/12 18/4 18/9 19/4 19/7 MR. SELBIN: [14] 2/6 12/11 14/6 18/11 18/25 20/14 20/17 29/5 29/17 30/15 30/22 31/3 33/11 35/16 MR. TAYLOR WILSON: [1] 2/16 THE COURT: [27] 2/2 2/13 2/19 2/24 3/5 4/2 8/16 9/6 13/20 15/18 17/20 18/6 18/10 18/12 19/2 19/6 20/16 21/24 25/24 27/20 29/16 29/23 30/16 31/2 33/8 33/13 35/17	29/23 31/8 33/25 35/11 add [3] 17/8 20/13 23/22 additional [1] 21/10 address [9] 5/19 12/12 20/11 29/14 32/3 33/3 33/5 33/9 33/12 adept [1] 28/2 adieu [2] 3/1 35/17 adjourned [1] 35/21 adjust [1] 16/12 advocacy [1] 35/14 affidavit [1] 9/3 affirmed [1] 11/3 affirming [1] 29/3 after [9] 3/20 9/21 12/5 16/20 21/10 22/17 27/3 31/18 32/4 afterwards [1] 32/13 again [4] 29/12 31/23 32/20 33/21 age [1] 20/17 agent [1] 11/13 ago [3] 30/10 33/22 34/15 agree [3] 4/3 6/1 25/13 agreed [9] 4/1 4/17 5/3 5/6 5/14 6/2 7/9 11/11 16/16 agreement [3] 10/17 10/18 11/10 ahead [8] 5/16 9/19 9/20 11/13 12/7 15/18 16/11 17/19 aid [1] 14/5 al [3] 1/5 1/8 36/10 all [39] alleged [1] 25/25 allegedly [1] 8/21 alleviate [1] 9/8 allow [1] 12/2 allowed [1] 33/23 allowing [5] 5/7 5/15 10/9 33/17 35/2 alluded [2] 21/14 30/24 alone [1] 31/21 along [1] 28/2 already [5] 6/12 7/9 8/8 13/7 28/11 also [9] 2/17 5/24 6/4 10/4 14/24 15/1 20/1 25/2 33/16 although [1] 4/9 always [1] 33/20 am [2] 3/4 29/2 amaze [1] 18/13 amazingly [2] 28/1 33/22 amend [8] 2/25 4/16 5/25 6/4 7/6 17/9 23/21 25/4 amending [1] 7/7 amendment [3] 5/23 7/13 17/7 amongst [1] 5/3 amount [5] 7/14 13/7 13/10 29/6 32/24 analogous [1] 26/3 another [2] 6/12 28/5 answer [5] 15/25 25/22 29/9 31/7 31/9 any [12] 3/3 5/25 7/20 8/23 13/12 17/11 19/4 19/19 19/19 20/3 23/10 25/22 anybody [2] 14/25 15/6 anymore [1] 17/1 anything [4] 14/18 15/10 15/16 24/11 anywhere [1] 27/2 apologize [1] 2/17 apparently [1] 24/17 appeal [3] 11/3 29/2 35/12 APPEARANCES [1] 1/17 appellate [2] 32/25 33/6 applicable [1] 7/5 appreciate [10] 3/8 12/11 15/23 18/4 21/25 33/14 33/16 35/1 35/9 35/15 appropriately [1] 32/5 arbitrable [1] 28/16 arbitrate [4] 11/7 12/25 24/4 24/8 arbitrated [1] 13/7 arbitration [12] 3/21 3/25 4/14 6/20 6/21 8/9 10/23 11/10 11/11 12/5 12/8 25/15 arbitrator [7] 4/6 4/7 4/13 8/8 14/11 16/18 31/24 arbitrator's [1] 6/23 arbitrators [2] 16/16 19/11 are [56] area [1] 20/8 aren't [2] 27/15 32/1	argue [4] 33/17 34/13 34/18 34/23 arguing [6] 4/20 9/7 16/5 16/6 34/10 35/2 argument [13] 2/10 2/24 5/8 11/20 15/23 16/2 21/25 23/12 23/16 33/14 34/16 34/22 34/23 arguments [3] 4/1 4/3 15/20 arising [1] 7/15 Aron [7] 6/11 8/17 8/19 9/3 16/21 26/1 27/17 around [3] 10/8 10/22 25/10 article [1] 30/8 ask [3] 12/1 13/23 25/24 asked [3] 6/20 14/5 31/6 asking [16] 5/5 9/15 9/24 11/21 14/7 14/14 14/15 14/16 14/17 14/18 14/19 15/15 15/16 25/20 27/3 28/19 associates [2] 33/23 34/1 ATLANTA [5] 1/2 1/6 1/24 30/8 36/5 attention [1] 3/9 attorneys [3] 14/1 25/11 27/3 attorneys' [1] 16/20 audio [10] 16/21 16/22 16/24 17/10 17/11 17/12 17/22 17/24 36/12 36/13 August [2] 23/18 24/2 authority [2] 11/4 28/20 available [1] 12/9 average [1] 30/16 award [4] 4/1 6/20 12/5 27/9 aware [1] 6/7 away [2] 21/20 31/20
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<p><b>B</b></p> <p>burying [1] 8/14 business [5] 5/7 5/17 13/15 24/13 30/17</p> <p><b>C</b></p> <p>Cabraser [1] 2/7 call [3] 13/2 15/13 31/19 called [2] 2/1 24/19 calls [4] 12/22 12/23 27/25 30/7 came [2] 7/19 32/17 can [18] 3/6 6/2 9/8 12/7 14/22 15/5 15/9 15/14 18/1 18/1 18/5 18/14 25/9 26/13 27/4 29/1 29/2 34/21 can't [2] 14/22 29/4 cannot [2] 17/6 34/23 care [1] 21/18 case [28] 2/2 4/21 5/13 6/6 6/13 12/2 12/16 12/20 13/9 22/13 22/17 22/18 23/4 23/21 25/4 27/18 30/19 33/4 33/15 33/17 33/23 33/24 34/2 34/16 34/18 35/11 35/14 36/11 cases [15] 4/18 5/9 5/10 5/11 6/16 6/17 13/1 16/5 20/18 27/25 29/18 29/20 34/5 34/10 35/12 cause [6] 5/23 6/9 6/9 17/2 22/4 23/10 ceased [1] 18/23 ceases [1] 18/13 certain [3] 11/11 13/17 22/24 certainly [2] 18/21 20/18 CERTIFICATE [1] 36/1 certified [2] 12/24 36/3 certify [1] 36/6 challenged [1] 8/8 chance [1] 33/12 change [1] 17/14 changed [1] 17/9 charts [2] 18/20 18/22 choice [1] 34/21 circuit [10] 3/20 10/22 10/23 12/3 22/21 24/4 24/8 27/11 29/3 30/5 Circuit's [1] 22/15 circumstance [1] 17/4 circumstances [7] 13/17 14/20 17/9 17/13 20/25 23/3 32/11 cited [2] 6/17 33/4 Civil [1] 2/3 claim [19] 4/8 7/15 12/18 12/19 13/12 14/21 15/8 17/12 19/15 21/21 21/23 22/9 22/10 23/15 23/22 24/4 27/2 28/16 31/12 claimant [1] 7/15 claims [15] 3/21 7/2 7/9 7/11 8/3 16/14 19/9 19/11 22/11 22/12 23/6 24/6 24/10 27/8 32/6 class [13] 5/18 10/20 10/21 11/7 12/8 12/17 12/24 23/24 24/15 28/11 28/11 32/5 32/9 clear [5] 9/21 14/16 18/7 23/17 24/14 clearly [3] 5/21 8/12 31/19 client [3] 23/24 34/19 34/21 clients [5] 4/5 13/17 24/1 34/8 34/8 cloak [1] 6/25 close [1] 35/9 closest [1] 9/19 COHEN [4] 1/13 9/21 34/22 34/24 collateral [2] 22/24 23/1 colleagues [2] 35/5 35/6 comes [2] 29/8 29/9 coming [2] 13/24 35/9 comment [1] 28/25 comments [1] 20/15 commit [1] 15/5 communicate [1] 8/6 communication [1] 19/23 companies [2] 26/8 26/11 company's [1] 26/6 compelled [1] 3/20 compensated [1] 28/12 complaint [1] 23/21 completely [3] 25/3 25/5 28/14 comply [2] 10/12 14/21 computer [1] 26/4 concern [4] 10/4 14/6 15/2 19/13</p>	<p>concerns [2] 16/1 19/23 confidential [6] 5/4 6/3 9/16 11/12 22/19 30/13 confidentiality [2] 10/8 12/6 congress [3] 3/14 9/4 20/21 consent [1] 16/23 consider [1] 22/24 consideration [1] 5/20 Constitution [1] 30/9 consultant [1] 8/18 consumers [6] 7/2 7/24 27/22 28/1 29/17 30/8 contact [9] 3/18 3/22 9/20 9/25 10/10 15/7 20/5 29/18 32/6 contacted [4] 19/14 24/15 24/17 32/7 contacting [1] 25/11 contacts [1] 10/1 context [1] 27/16 control [1] 36/14 convince [1] 4/15 Cordoba [4] 1/4 2/2 22/10 36/10 correct [4] 8/24 9/2 9/10 21/8 costs [2] 20/8 22/24 could [14] 3/25 6/19 7/15 13/8 13/11 22/19 23/14 25/1 25/7 25/9 25/10 26/12 29/14 33/6 counsel [18] 1/17 2/4 2/21 2/23 3/18 5/7 5/16 8/5 9/17 10/10 10/21 13/15 23/19 24/5 24/12 26/23 33/17 33/25 counsel's [2] 23/12 30/12 counsels' [1] 28/10 country [1] 12/4 couple [3] 10/24 29/13 29/14 course [3] 6/13 26/9 35/14 court [39] court's [3] 3/21 4/19 10/14 COURTHOUSE [1] 1/23 courts [3] 11/13 22/23 30/1 create [1] 30/3 created [1] 17/11 critical [1] 7/13 CRR [2] 1/22 36/24 crux [1] 23/12 cry [1] 25/18 current [2] 6/25 14/9 customers [1] 3/11 cv [3] 1/5 2/3 36/11</p> <p><b>D</b></p> <p>daily [2] 30/17 34/3 damages [4] 9/1 9/9 19/12 20/22 Daniel [1] 1/19 data [3] 27/16 27/16 27/18 day [2] 20/17 36/21 days [2] 18/19 30/10 December [1] 3/24 decide [1] 15/9 decided [4] 10/16 10/18 16/22 22/11 decision [3] 16/19 22/15 27/11 decisions [2] 30/5 30/5 default [1] 4/23 defect [1] 17/24 defendant [1] 22/18 DEFENDANTS [2] 1/9 1/20 defense [1] 8/19 definitely [1] 35/9 denied [2] 4/7 11/8 designations [1] 36/12 desire [1] 28/10 destroy [2] 16/21 31/18 destroyed [2] 8/10 9/4 detail [1] 8/4 Devine [2] 22/16 23/4 dial [2] 18/7 18/7 did [12] 6/1 6/20 10/24 16/23 24/5 24/20 24/22 26/6 31/22 34/1 34/4 35/3 didn't [9] 4/3 12/22 12/22 21/18 31/18 31/19 32/6 33/8 34/17 different [13] 4/18 4/24 6/14 23/3 24/11 24/11 25/25 26/16 26/20 26/22 27/7 31/7 32/15 diligence [3] 7/14 13/8 13/10 direct [2] 25/8 25/9 DirectTV [1] 36/10 DirecTV [30] 1/8 2/15 2/21 2/23 3/11</p>	<p>3/12 3/13 3/17 3/19 6/1 6/10 6/23 7/1 7/17 7/22 8/10 8/12 9/2 10/2 13/8 14/9 17/7 17/16 21/1 21/10 21/18 22/1 26/19 29/2 31/17 DirectTV's [5] 7/16 8/3 8/7 25/17 30/12 DirecTV, [1] 2/3 DirecTV, LLC [1] 2/3 dirty [4] 13/18 13/19 13/20 13/21 disclose [1] 20/8 disclosed [4] 3/12 3/13 6/10 8/11 disclosure [13] 16/24 20/19 21/1 25/16 26/1 26/2 26/17 26/18 26/19 27/8 27/12 27/17 31/13 discover [1] 13/8 discovery [9] 4/25 4/25 5/15 6/8 13/9 22/17 22/19 26/24 30/21 discretion [3] 29/6 29/7 32/24 dismissal [1] 23/4 dismissed [1] 22/18 distance [1] 32/16 distinction [1] 26/9 distinguish [1] 31/11 district [8] 1/1 1/1 1/13 22/21 22/23 30/6 36/4 36/5 DIVISION [1] 1/2 do [35] 2/13 4/15 4/17 5/5 5/6 10/3 11/2 11/2 11/4 11/21 11/24 12/2 13/8 14/7 14/19 14/20 15/9 15/10 19/1 19/19 19/19 25/7 27/7 28/20 29/1 29/14 31/11 32/18 32/19 32/22 32/23 34/24 35/3 35/6 36/6 docket [6] 1/4 4/19 4/21 4/21 5/2 31/3 document [3] 4/18 15/3 31/19 documents [3] 4/25 5/12 6/2 does [6] 4/6 10/15 16/2 19/4 30/17 35/5 doesn't [5] 11/9 21/13 31/9 31/11 34/19 doing [4] 5/9 11/25 17/7 34/14 don't [33] 3/2 5/2 8/16 9/23 10/2 10/2 10/5 10/13 11/6 11/10 11/13 13/1 13/20 15/10 15/11 15/22 16/25 17/23 18/16 23/10 23/16 24/16 24/19 25/13 25/21 26/12 26/21 27/6 27/24 29/21 30/3 32/17 33/19 done [3] 5/21 29/10 30/19 doubt [2] 10/14 27/24 down [1] 18/3 Dr. [4] 6/11 9/3 26/1 27/17 Dr. Aron [4] 6/11 9/3 26/1 27/17 DRIVE [1] 1/23 due [4] 13/8 13/10 26/1 36/13 during [5] 6/13 8/9 18/12 35/10 35/14</p> <p><b>E</b></p> <p>each [1] 20/1 earlier [5] 14/12 20/15 21/14 22/7 22/8 early [1] 22/10 echo [2] 3/3 17/3 effort [1] 7/14 either [4] 11/8 12/17 18/6 18/8 elaborate [1] 19/22 Eleventh [10] 3/20 10/22 10/22 22/14 22/21 24/3 24/8 27/10 29/3 30/5 else [3] 14/25 15/6 27/2 enacted [1] 20/21 encourages [1] 2/11 enough [2] 17/21 33/20 entered [10] 10/17 17/10 22/7 22/8 22/10 22/12 27/25 29/25 30/10 33/9 entertain [1] 23/8 entire [1] 35/14 entitled [1] 16/19 Esq [6] 1/18 1/18 1/19 1/19 1/20 1/21 et [3] 1/5 1/8 36/10 ethical [6] 13/16 14/22 15/7 20/1 28/14 32/16 ethics [1] 10/13 even [9] 12/3 12/18 19/12 23/8 25/15 27/9 27/15 31/17 32/25 event [1] 23/10</p>
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<b>E</b> ever [1] 18/17 every [1] 12/16 everybody [1] 13/6 everyone [2] 25/10 28/18 everyone's [1] 33/14 everything [2] 5/21 31/18 evidence [1] 8/16 exactly [2] 6/14 17/6 example [2] 12/20 20/5 except [1] 7/18 exception [1] 4/22 exchanged [2] 4/25 6/3 exempts [1] 23/13 exercised [1] 24/23 experience [2] 15/22 16/10 experienced [1] 34/9 expert [5] 6/11 14/11 21/12 25/17 26/18 explain [1] 20/4 explained [1] 8/4 express [1] 6/23 extensive [1] 22/17 extent [1] 24/24	<b>G</b> gand.uscourts.gov [1] 1/25 garbage [1] 15/14 generally [1] 8/1 generating [1] 13/15 generis [3] 6/18 12/14 13/6 GEORGIA [6] 1/1 1/6 1/24 20/2 30/6 36/5 Germann [5] 1/20 2/22 22/3 28/22 31/6 get [18] 5/2 5/16 9/19 10/3 10/25 11/3 11/7 11/20 15/2 15/21 16/9 18/6 21/19 22/5 28/16 34/11 34/22 35/7 gets [1] 13/18 getting [5] 3/2 3/3 18/2 28/2 28/9 give [2] 18/9 34/13 given [3] 5/10 5/25 35/4 glad [1] 2/14 go [18] 4/14 5/5 5/8 5/16 6/13 9/19 9/20 10/23 11/11 11/13 12/7 12/25 15/18 16/8 16/11 17/19 23/23 34/20 going [11] 4/4 11/3 15/6 15/6 15/12 15/13 15/13 16/3 21/19 30/17 32/1 gone [5] 4/11 4/12 8/20 10/16 35/12 good [15] 2/20 3/5 4/13 5/23 11/24 11/25 12/3 15/21 16/10 17/1 22/4 23/10 34/12 34/12 35/3 Gosh [1] 10/3 got [17] 4/15 4/24 8/22 9/2 9/14 10/23 12/8 12/21 12/23 16/5 16/6 19/2 20/4 24/7 25/14 27/9 34/13 gotten [7] 4/12 26/5 27/24 28/7 28/12 30/7 31/20 grant [1] 34/17 granted [1] 34/18 grants [1] 7/1 great [1] 17/22 group [2] 8/21 30/2 Grunberg [1] 2/17 guess [3] 14/7 31/5 34/25	hey [2] 12/25 30/10 hide [1] 17/16 hiding [1] 7/23 highly [2] 7/1 28/18 him [1] 17/3 hire [1] 15/10 his [4] 18/25 24/4 28/7 31/7 hmm [1] 34/25 holds [1] 23/16 homes [1] 15/12 homework [1] 5/21 honestly [4] 5/6 10/5 11/1 28/22 Honor [35] 2/6 2/11 2/16 2/20 5/20 8/25 12/12 13/14 14/6 16/12 18/4 18/11 20/10 20/14 20/17 21/8 21/14 22/2 22/4 22/14 25/1 25/21 26/21 27/7 29/5 29/12 29/15 29/17 30/23 31/6 31/23 32/24 33/5 35/16 35/19 Honor's [1] 3/8 HONORABLE [1] 1/13 hook [2] 7/17 7/19 hopes [1] 10/10 how [9] 10/3 19/4 19/8 20/4 21/7 24/16 24/24 31/12 34/8 however [1] 21/15 Hutchinson [2] 1/19 2/8
<b>F</b> F.3d [1] 22/16 fabulous [1] 34/7 face [3] 5/22 10/9 20/8 facilitate [1] 2/14 fact [17] 4/12 7/25 16/18 24/5 24/22 27/4 27/8 27/8 27/9 27/10 27/16 27/17 28/9 31/17 33/12 34/3 34/15 facts [1] 8/14 fair [3] 30/22 31/16 32/10 fairly [1] 35/7 Falla [3] 24/1 24/25 25/15 familiar [1] 33/4 far [2] 18/15 25/18 favor [1] 10/7 February [1] 24/3 federal [3] 6/14 8/13 17/2 feedback [1] 3/2 feel [2] 2/12 2/13 fees [2] 16/20 22/25 few [2] 5/19 18/15 field [6] 14/8 14/9 14/15 15/17 17/15 32/21 figure [1] 19/15 figures [1] 19/12 filed [1] 5/2 finally [1] 21/11 financial [1] 24/12 find [6] 13/1 13/11 21/3 23/24 32/1 32/5 finding [1] 6/23 fine [1] 15/12 finger [1] 10/7 firm [2] 2/8 2/22 firms [1] 34/11 first [5] 7/7 13/16 17/5 19/9 33/2 flexibility [2] 6/4 17/13 flexible [2] 16/6 19/24 flow [1] 15/19 flowing [1] 11/18 folks [11] 10/23 11/1 11/5 13/6 14/13 14/18 15/7 15/22 30/25 32/1 32/12 follow [1] 19/25 foregoing [1] 36/17 forgiveness [1] 32/13 form [2] 13/12 36/16 former [2] 10/20 12/8 forth [1] 35/12 forward [1] 16/1 found [7] 6/12 8/8 14/11 14/12 31/23 31/24 32/8 frankly [4] 5/17 11/14 17/1 18/2 free [4] 9/21 11/17 13/22 13/23 Friday [2] 1/7 36/9 front [3] 10/6 21/2 21/5 full [1] 21/20 Fund [1] 22/16 funny [1] 18/12 further [5] 3/1 8/9 20/15 25/16 35/17	<b>H</b> hack [1] 26/4 had [25] 3/11 4/7 4/13 4/17 5/14 8/10 8/23 9/3 10/17 16/17 18/13 18/17 19/14 24/6 24/8 26/2 27/21 31/20 33/12 33/22 33/24 34/5 34/6 34/15 34/17 hadn't [1] 28/23 half [2] 24/3 24/6 hand [1] 20/6 handful [1] 32/7 handled [2] 20/24 31/15 handling [1] 2/10 Hans [2] 1/20 2/22 happen [1] 26/12 happened [7] 13/4 21/7 26/4 26/10 29/21 30/21 31/18 happening [1] 12/19 happens [3] 11/7 18/18 26/8 happy [3] 19/24 20/11 25/22 harassing [1] 12/21 hard [1] 6/12 harm [7] 3/16 9/8 9/10 20/23 21/9 21/13 31/10 harmed [1] 8/21 has [38] have [69] haven't [3] 24/20 24/20 33/12 having [1] 20/23 he [1] 31/8 hear [8] 3/1 14/6 17/19 18/1 21/2 22/1 32/22 33/13 hearing [2] 3/3 17/21 Heiman [1] 2/7 held [5] 22/21 22/25 24/4 24/8 36/9 help [1] 13/23 her [1] 9/3 here [33] 2/15 2/17 2/21 4/10 4/24 5/3 6/10 6/15 7/13 7/21 11/18 11/24 13/5 17/3 20/25 22/5 23/11 25/3 25/16 25/20 26/1 26/4 26/16 27/1 28/5 28/15 28/20 29/6 29/7 31/16 31/22 32/15 33/21 here's [1] 34/21 hereby [1] 36/6	<b>I</b> I'll [2] 12/1 33/21 I'm [21] 2/14 2/20 3/2 11/17 11/23 13/24 14/4 15/18 19/18 20/10 20/17 25/22 26/3 28/20 30/2 30/4 32/25 33/2 33/4 33/11 33/11 idea [3] 29/21 29/22 30/18 identify [1] 2/4 identifying [1] 26/7 illegal [1] 8/8 imagine [4] 6/12 18/14 29/1 29/3 impacted [2] 27/14 27/19 important [5] 3/9 15/25 16/15 19/8 21/9 impressive [1] 30/11 imprimatur [3] 10/14 13/25 15/16 improper [2] 31/13 32/13 improperly [4] 3/19 8/11 14/10 20/24 inappropriate [1] 25/3 inaudible [1] 16/23 incentive [2] 24/12 24/18 inclined [1] 33/5 include [1] 19/24 indicated [1] 2/9 indiscernible [8] 16/21 16/22 16/23 16/24 17/10 17/11 17/12 36/12 individual [3] 6/21 11/8 13/1 individuals [16] 3/16 3/18 3/23 7/8 7/10 8/2 8/6 8/23 9/1 12/17 19/13 19/18 19/21 20/4 20/4 20/6 individuals' [1] 8/11 inform [1] 17/17 information [22] 3/11 3/13 8/1 8/2 8/11 8/17 8/18 8/19 8/19 8/22 8/24 9/11 19/20 20/19 20/23 21/1 21/11 21/18 26/6 26/7 26/14 28/2 informed [1] 21/21 initial [1] 3/22 initially [2] 17/25 24/20 injunctive [1] 16/20 inquiries [1] 15/25 inquiry [3] 13/2 21/4 29/8 insurance [1] 33/24 intended [1] 23/21 interest [3] 5/24 29/11 31/21 interested [2] 16/9 25/11 interesting [3] 28/23 28/24 31/9 interference [1] 36/13 interrupt [1] 16/2 interrupted [1] 15/19 interrupting [1] 16/7 involve [1] 5/11 involved [1] 23/4 involves [1] 6/6 ironic [1] 9/24 irony [1] 15/3 is [152] isn't [4] 9/12 12/24 13/20 21/5 issue [15] 4/10 12/12 16/9 19/9

<b>I</b> <b>issue...</b> [11] 20/19 21/14 21/16 22/6 26/5 28/5 32/25 33/1 33/6 33/6 34/23 <b>issues</b> [3] 20/18 22/24 23/2 <b>it</b> [101] <b>it's</b> [41] <b>its</b> [7] 5/22 6/11 7/23 7/24 13/25 14/11 15/16 <b>itself</b> [2] 18/7 29/9	<b>lines</b> [2] 28/3 32/16 <b>list</b> [31] 3/23 5/4 6/10 7/8 7/10 8/2 9/3 9/16 9/18 9/20 14/10 14/25 16/21 17/11 23/13 23/14 23/19 23/23 24/9 25/6 25/9 25/10 25/18 25/19 26/22 26/23 27/1 27/4 27/13 27/19 30/25 <b>listen</b> [1] 14/1 <b>lists</b> [1] 24/7 <b>literally</b> [6] 9/17 13/7 13/10 14/12 29/25 30/4 <b>litigation</b> [5] 10/6 24/10 25/17 35/8 35/10 <b>little</b> [3] 3/2 23/3 25/1 <b>LLC</b> [3] 1/8 2/3 36/11 <b>local</b> [1] 2/21 <b>long</b> [3] 21/10 34/15 35/1 <b>longer</b> [4] 5/18 8/17 9/16 28/11 <b>look</b> [2] 21/16 28/13 <b>looked</b> [2] 6/16 35/11 <b>looking</b> [4] 14/24 14/25 24/15 28/15 <b>looks</b> [1] 18/25 <b>lost</b> [1] 4/14 <b>lot</b> [7] 10/1 13/14 15/22 26/9 26/11 29/13 32/10 <b>luck</b> [1] 12/3 <b>Lupo</b> [1] 16/19	<b>Mr</b> [3] 2/19 2/22 20/13 <b>Mr.</b> [43] <b>Mr. Cordoba</b> [1] 22/10 <b>Mr. Falla</b> [2] 24/1 24/25 <b>Mr. Germann</b> [3] 22/3 28/22 31/6 <b>Mr. Hutchinson</b> [1] 2/8 <b>Mr. Petterson</b> [11] 2/8 2/9 3/6 4/2 11/24 12/13 15/18 16/11 21/24 30/24 35/2 <b>Mr. Romero</b> [12] 4/11 4/12 6/22 7/18 16/19 24/1 24/4 24/25 27/9 28/6 28/7 28/11 <b>Mr. Romero's</b> [5] 3/20 4/7 6/24 8/9 22/9 <b>Mr. Selbin</b> [5] 2/13 12/1 28/14 28/25 29/23 <b>Mr. Selbin and</b> [1] 21/24 <b>Mr. Selbin here</b> [1] 17/3 <b>Mr. Selbin said</b> [1] 17/15 <b>Ms.</b> [1] 8/17 <b>Ms. Aron</b> [1] 8/17 <b>much</b> [3] 25/21 28/10 31/7 <b>must</b> [1] 8/4 <b>mute</b> [1] 19/2 <b>my</b> [11] 2/7 11/18 16/13 17/20 18/5 20/15 35/5 35/11 35/13 36/14 36/18
<b>J</b> <b>January</b> [3] 1/7 36/9 36/21 <b>Jennifer</b> [1] 16/19 <b>jerk</b> [1] 16/6 <b>Jett</b> [2] 1/21 2/20 <b>job</b> [3] 11/24 11/25 35/3 <b>John</b> [2] 1/21 2/20 <b>Jonathan</b> [2] 1/18 2/6 <b>Journal</b> [1] 30/9 <b>joys</b> [1] 18/11 <b>judge</b> [8] 1/13 9/21 12/4 15/24 16/1 25/14 34/22 34/24 <b>Judge Cohen</b> [3] 9/21 34/22 34/24 <b>judges</b> [2] 16/7 30/18 <b>judgment</b> [5] 22/7 22/8 22/9 22/12 23/6 <b>judith</b> [4] 1/22 1/25 36/3 36/24 <b>jurisdiction</b> [6] 22/6 22/22 22/24 23/8 28/23 33/1 <b>jury</b> [1] 33/25 <b>just</b> [19] 11/13 14/1 18/18 20/14 20/23 26/18 27/17 27/18 29/12 31/4 31/5 33/9 33/12 34/6 34/9 34/15 34/23 35/5 35/8 <b>justice</b> [6] 5/24 10/7 11/20 21/14 29/11 31/22	<b>M</b> <b>machine</b> [1] 36/8 <b>made</b> [7] 16/19 19/9 24/14 26/18 26/19 27/15 27/19 <b>magic</b> [2] 18/20 18/22 <b>mail</b> [1] 25/9 <b>majority</b> [1] 30/25 <b>make</b> [4] 14/25 17/20 18/1 28/19 <b>makes</b> [2] 13/25 23/17 <b>making</b> [1] 14/3 <b>many</b> [4] 21/10 21/10 21/10 24/16 <b>MARK</b> [1] 1/13 <b>marked</b> [1] 6/3 <b>markers</b> [2] 18/20 18/22 <b>marketing</b> [3] 25/9 25/19 27/5 <b>marketplace</b> [1] 26/20 <b>Maryland</b> [1] 20/7 <b>Master</b> [1] 22/16 <b>matched</b> [13] 3/23 5/4 6/10 7/10 9/16 14/10 16/21 17/10 23/13 23/19 23/23 24/7 25/5 <b>materials</b> [1] 22/20 <b>matter</b> [9] 3/9 21/17 22/6 22/22 23/8 24/22 28/22 33/1 36/10 <b>may</b> [9] 2/16 3/7 10/1 12/18 12/18 13/4 18/7 22/15 28/24 <b>maybe</b> [7] 12/3 12/22 15/11 18/6 18/24 24/17 24/19 <b>Mayer</b> [2] 2/22 22/3 <b>me</b> [39] <b>mean</b> [5] 9/6 10/24 13/20 28/3 30/13 <b>meaningful</b> [1] 8/2 <b>meant</b> [1] 29/23 <b>meantime</b> [1] 24/9 <b>members</b> [2] 12/7 27/21 <b>mentions</b> [1] 29/17 <b>meritorious</b> [2] 16/14 19/8 <b>merits</b> [1] 7/20 <b>MHC</b> [2] 1/5 36/11 <b>might</b> [3] 4/9 19/23 20/8 <b>mind</b> [2] 11/18 12/22 <b>mine</b> [2] 10/4 35/6 <b>minute</b> [1] 18/9 <b>misconduct</b> [1] 8/13 <b>mishandling</b> [2] 31/12 31/13 <b>modify</b> [7] 9/14 10/18 22/4 22/18 23/1 23/11 27/4 <b>money</b> [1] 14/3 <b>monitoring</b> [1] 26/14 <b>monkeying</b> [1] 10/8 <b>month</b> [1] 23/20 <b>months</b> [2] 18/14 21/11 <b>more</b> [11] 5/7 5/16 5/17 8/23 14/1 18/13 25/21 26/2 26/17 31/7 35/3 <b>morning</b> [2] 2/6 2/20 <b>most</b> [2] 5/11 34/9 <b>motion</b> [8] 2/25 3/10 3/22 3/25 19/10 22/25 23/8 28/8 <b>moved</b> [1] 22/18	<b>N</b> <b>named</b> [1] 23/6 <b>nature</b> [4] 15/14 21/7 29/8 31/4 <b>necessarily</b> [1] 13/23 <b>need</b> [6] 6/24 13/13 17/14 27/1 33/5 34/20 <b>neither</b> [1] 26/25 <b>neutral</b> [1] 7/21 <b>never</b> [4] 8/6 18/13 18/22 18/23 <b>new</b> [2] 4/5 28/19 <b>newspaper</b> [2] 21/6 29/24 <b>newspapers</b> [1] 21/2 <b>no</b> [31] 1/4 2/3 5/17 7/3 7/8 7/11 7/14 7/21 8/17 8/22 9/16 11/4 13/7 13/10 14/3 14/12 17/1 22/4 23/14 25/16 26/21 26/25 27/1 27/6 28/11 29/22 29/23 29/24 30/3 30/18 36/11 <b>nobody</b> [1] 12/24 <b>none</b> [1] 11/3 <b>normal</b> [1] 14/1 <b>NORTHERN</b> [3] 1/1 30/6 36/5 <b>not</b> [68] <b>note</b> [3] 21/9 30/24 31/11 <b>noted</b> [3] 16/15 17/5 22/23 <b>nothing</b> [3] 4/8 9/17 22/13 <b>notice</b> [4] 13/2 14/17 21/4 21/6 <b>notified</b> [2] 7/12 24/21 <b>notifies</b> [1] 26/13 <b>notify</b> [8] 12/7 13/13 14/21 21/22 24/5 24/9 24/18 24/23 <b>noting</b> [1] 33/12 <b>notion</b> [1] 20/22 <b>now</b> [17] 4/15 8/17 17/22 17/25 18/14 18/20 19/10 21/8 22/8 23/12 24/11 24/11 25/1 25/4 25/13 31/24 33/9 <b>nowadays</b> [1] 26/9 <b>number</b> [1] 24/19
<b>K</b> <b>keep</b> [4] 5/4 16/7 28/9 30/17 <b>kind</b> [11] 9/23 9/24 10/16 11/17 11/20 17/12 17/23 17/24 26/15 26/17 34/14 <b>know</b> [42] <b>knowing</b> [3] 7/3 7/8 7/11 <b>known</b> [1] 8/1 <b>knows</b> [1] 14/10	<b>L</b> <b>lacked</b> [1] 22/22 <b>laptop</b> [1] 18/18 <b>large</b> [2] 30/2 34/10 <b>largely</b> [1] 20/6 <b>last</b> [4] 21/10 22/10 22/15 32/3 <b>late</b> [1] 24/15 <b>later</b> [1] 24/3 <b>laugh</b> [1] 18/19 <b>law</b> [4] 6/14 17/2 28/19 34/10 <b>lawyer</b> [3] 33/17 34/18 34/22 <b>lawyers</b> [16] 2/10 9/18 10/2 12/7 14/3 15/21 15/24 16/5 19/16 32/11 33/20 34/6 34/9 34/12 34/12 35/10 <b>lead</b> [1] 2/22 <b>learn</b> [3] 7/15 15/20 28/16 <b>learned</b> [2] 16/4 32/4 <b>least</b> [6] 18/17 19/10 19/15 21/4 21/6 23/25 <b>leave</b> [1] 23/21 <b>left</b> [2] 4/8 4/9 <b>legal</b> [2] 7/15 12/18 <b>let</b> [11] 3/1 4/5 5/19 10/19 12/5 15/7 16/8 19/7 22/1 25/24 35/8 <b>let's</b> [4] 4/6 10/8 12/20 26/2 <b>letter</b> [2] 15/13 32/11 <b>level</b> [4] 14/8 14/15 15/17 17/15 <b>leveling</b> [1] 32/21 <b>Lieff</b> [1] 2/7 <b>Lifland</b> [1] 25/14 <b>light</b> [1] 22/6 <b>like</b> [19] 10/16 11/23 12/2 12/5 12/22 13/18 14/2 14/23 18/5 18/25 20/9 22/5 22/14 22/24 22/25 27/17 30/11 32/18 35/4 <b>liked</b> [1] 13/4 <b>limitation</b> [1] 13/3 <b>limitations</b> [1] 36/13	<b>O</b> <b>obligations</b> [1] 14/22 <b>obtain</b> [1] 16/23 <b>obviously</b> [5] 4/7 13/16 25/13 32/22 35/12 <b>odds</b> [1] 11/2 <b>off</b> [4] 7/17 7/19 18/20 18/24 <b>offices</b> [1] 36/5 <b>Official</b> [2] 36/4 36/24 <b>okay</b> [6] 3/5 15/18 21/24 29/17 30/22 34/21 <b>older</b> [2] 15/22 35/11 <b>once</b> [1] 15/9 <b>one</b> [26] 2/10 4/13 4/19 4/23 5/16 6/7 6/8 9/6 9/13 10/7 10/18 10/21 15/20 16/4 18/17 19/10 20/15 20/21 23/1 23/14 31/13 33/6 34/4 34/15 34/23 35/11 <b>ongoing</b> [1] 21/9 <b>only</b> [5] 21/5 26/23 27/13 30/9 30/20 <b>opening</b> [1] 15/3



<p><b>O</b></p> <p>opportunities [1] 35/4</p> <p>opportunity [5] 12/11 21/22 24/23 24/24 34/14</p> <p>oral [4] 2/24 34/16 34/22 34/23</p> <p>order [42]</p> <p>orders [9] 10/25 17/9 27/23 27/25 28/3 29/25 30/13 31/3 33/9</p> <p>ordinary [1] 14/20</p> <p>organization [1] 16/2</p> <p>original [1] 31/24</p> <p>other [19] 4/13 9/13 9/14 9/18 9/25 12/4 12/7 12/16 12/20 13/6 16/16 20/10 22/9 25/10 26/17 31/5 32/10 33/7 35/6</p> <p>others [1] 34/14</p> <p>otherwise [5] 4/1 4/3 7/3 13/11 20/11</p> <p>ought [1] 19/20</p> <p>our [15] 2/9 2/10 3/22 3/24 4/1 14/16 15/15 16/25 17/2 17/5 19/23 20/12 25/22 26/22 27/6</p> <p>out [31] 7/16 9/8 9/11 9/12 9/25 10/3 10/21 11/5 11/8 11/15 13/1 13/11 14/18 16/7 18/1 18/6 19/16 21/3 22/6 23/18 23/23 27/7 27/9 27/11 27/22 28/1 28/15 30/14 32/2 32/11 35/7</p> <p>outside [1] 26/19</p> <p>overlays [1] 21/15</p> <p>overruled [1] 5/14</p> <p>overview [1] 11/5</p> <p>overwhelming [1] 30/25</p> <p>own [5] 24/13 25/17 26/11 27/23 28/3</p>	<p>playing [6] 14/8 14/9 14/15 15/17 17/15 32/21</p> <p>please [2] 2/4 3/7</p> <p>plural [1] 4/11</p> <p>plus [3] 9/24 14/2 16/20</p> <p>point [17] 7/9 7/13 19/22 22/6 22/11 22/14 23/6 23/9 23/23 25/6 27/7 27/20 28/23 28/24 30/13 30/22 32/3</p> <p>points [2] 29/13 31/5</p> <p>poor [2] 11/5 11/23</p> <p>population [1] 20/7</p> <p>position [8] 7/21 20/12 25/22 25/25 26/16 26/20 26/22 27/6</p> <p>possess [1] 7/2</p> <p>possibly [1] 23/14</p> <p>postcard [1] 15/13</p> <p>postcards [1] 24/18</p> <p>potential [9] 7/11 8/3 14/21 15/2 15/8 19/14 23/15 24/6 28/16</p> <p>practice [1] 20/1</p> <p>premature [3] 3/25 16/16 17/1</p> <p>prepared [2] 16/8 33/3</p> <p>present [1] 17/25</p> <p>presentation [1] 16/13</p> <p>presumed [1] 4/21</p> <p>presumptively [1] 5/1</p> <p>pretty [3] 4/13 10/24 30/11</p> <p>prevent [2] 9/17 26/7</p> <p>primarily [1] 30/25</p> <p>principle [2] 10/19 23/5</p> <p>prior [3] 6/19 16/23 17/10</p> <p>privacy [9] 3/10 3/14 6/24 7/2 7/16 7/23 8/13 20/18 21/17</p> <p>private [3] 3/11 20/19 21/1</p> <p>problem [5] 8/23 11/4 14/3 14/4 18/18</p> <p>problematic [1] 11/19</p> <p>problems [1] 9/14</p> <p>proceed [1] 6/19</p> <p>proceeding [1] 28/2</p> <p>proceedings [4] 35/21 36/9 36/15 36/18</p> <p>process [2] 11/15 13/9</p> <p>processed [1] 8/18</p> <p>produced [2] 23/18 26/23</p> <p>production [1] 8/22</p> <p>professional [1] 35/13</p> <p>professionalism [1] 35/10</p> <p>promise [1] 20/3</p> <p>properly [1] 31/15</p> <p>prosecute [1] 27/2</p> <p>protective [26] 2/25 3/19 4/16 5/15 5/22 6/1 6/4 7/1 7/7 7/20 7/22 8/14 17/5 17/9 17/16 22/5 22/19 23/1 23/11 23/14 25/5 25/6 26/24 27/4 29/8 30/21</p> <p>protects [1] 7/25</p> <p>proven [1] 19/10</p> <p>provide [2] 14/24 15/6</p> <p>provided [4] 6/4 9/4 14/10 15/4</p> <p>provides [3] 3/15 5/23 8/25</p> <p>provision [1] 12/6</p> <p>public [13] 4/21 4/22 5/1 8/1 15/1 27/10 27/13 27/15 27/17 27/18 27/19 27/22 28/3</p> <p>pulling [1] 18/25</p> <p>punitive [1] 19/12</p> <p>purpose [4] 5/6 5/15 10/9 10/19</p> <p>purposes [1] 13/3</p> <p>pursuant [1] 30/21</p> <p>pursued [1] 6/21</p> <p>put [7] 9/24 14/8 14/14 15/16 16/25 21/4 21/6</p> <p>puts [1] 16/1</p> <p>putting [2] 10/7 11/23</p>	<p>raised [1] 33/2</p> <p>reached [1] 29/24</p> <p>read [3] 26/10 30/4 30/5</p> <p>ready [1] 12/9</p> <p>real [2] 21/16 33/6</p> <p>reality [2] 16/3 28/22</p> <p>really [11] 9/12 11/21 11/22 24/2 25/21 28/5 28/19 32/3 33/2 33/19 34/11</p> <p>Realtime [1] 36/3</p> <p>reap [1] 8/12</p> <p>reason [10] 6/7 7/19 10/2 12/15 13/5 13/5 17/23 21/5 30/9 33/8</p> <p>reasons [3] 7/6 7/20 20/21</p> <p>receive [1] 8/2</p> <p>recently [1] 33/10</p> <p>recess [1] 35/18</p> <p>record [4] 2/5 5/12 15/5 36/18</p> <p>reduced [1] 36/15</p> <p>reflected [1] 31/17</p> <p>refuses [1] 3/17</p> <p>regarding [1] 8/3</p> <p>regularly [1] 27/23</p> <p>reiterate [1] 19/25</p> <p>relate [1] 6/17</p> <p>related [1] 22/20</p> <p>relief [5] 16/20 25/2 25/20 26/25 28/7</p> <p>remaining [1] 22/13</p> <p>remains [2] 3/16 3/17</p> <p>remedy [3] 4/11 4/12 4/13</p> <p>remove [2] 6/25 25/5</p> <p>removed [2] 8/17 21/9</p> <p>removes [1] 9/21</p> <p>repeated [1] 13/14</p> <p>reply [4] 23/17 23/18 23/22 24/14</p> <p>Report [1] 34/3</p> <p>reported [1] 36/8</p> <p>reporter [6] 1/22 17/21 18/2 36/3 36/4 36/24</p> <p>REPORTER'S [1] 35/23</p> <p>represent [3] 10/11 12/9 19/16</p> <p>representative [3] 23/24 24/16 32/6</p> <p>represented [1] 14/23</p> <p>representing [3] 5/17 28/10 34/9</p> <p>request [3] 10/18 16/25 21/22</p> <p>requested [1] 34/16</p> <p>required [2] 16/24 21/19</p> <p>requirements [1] 10/13</p> <p>respect [4] 6/5 7/1 9/23 19/3</p> <p>respectfully [2] 21/22 29/5</p> <p>respects [1] 18/22</p> <p>result [1] 36/13</p> <p>retain [1] 22/23</p> <p>retained [1] 25/17</p> <p>return [1] 20/3</p> <p>revealed [1] 8/10</p> <p>reversed [1] 10/25</p> <p>review [1] 27/23</p> <p>rewards [1] 8/12</p> <p>right [22] 2/24 3/6 9/18 10/20 11/6 11/9 11/10 12/8 12/25 17/9 17/22 17/25 18/12 25/14 28/20 30/15 30/16 31/2 33/8 33/11 33/14 34/25</p> <p>rights [8] 3/10 3/14 6/24 7/4 8/6 13/9 17/17 21/17</p> <p>Romero [14] 2/2 4/11 4/12 6/22 7/18 16/19 24/1 24/4 24/8 24/25 27/9 28/6 28/7 28/11</p> <p>Romero's [5] 3/20 4/7 6/24 8/9 22/9</p> <p>route [1] 5/23</p> <p>RPR [1] 36/24</p> <p>rule [2] 4/22 23/5</p> <p>rules [4] 13/16 15/8 20/1 32/5</p>
<p><b>P</b></p> <p>page [2] 21/2 21/5</p> <p>papers [2] 2/9 14/17</p> <p>part [3] 4/20 5/18 12/17</p> <p>particular [1] 12/6</p> <p>particularly [2] 12/2 16/15</p> <p>parties [13] 4/17 4/20 5/1 5/3 5/6 5/14 5/16 6/3 6/13 10/17 11/11 17/8 25/19</p> <p>partner [1] 33/24</p> <p>partners [2] 34/13 35/2</p> <p>parts [1] 12/4</p> <p>party [4] 3/13 10/7 26/25 27/1</p> <p>party's [2] 6/8 10/18</p> <p>past [2] 9/9 18/14</p> <p>penalty [1] 9/5</p> <p>pending [1] 19/9</p> <p>people [30] 7/18 9/20 9/25 9/25 10/10 10/20 14/21 17/17 20/20 21/2 21/6 21/20 24/5 24/9 24/15 24/16 24/21 24/23 25/12 26/13 27/14 27/14 28/15 29/22 29/24 29/25 30/3 30/4 32/7 32/7</p> <p>people's [1] 21/17</p> <p>percent [1] 34/1</p> <p>perhaps [1] 4/8</p> <p>period [1] 21/20</p> <p>permission [5] 3/22 14/19 20/14 29/15 32/18</p> <p>permit [2] 3/18 15/8</p> <p>permits [2] 5/24 7/22</p> <p>permitted [3] 8/5 8/12 13/17</p> <p>person [3] 4/14 30/16 31/14</p> <p>personal [3] 8/11 26/5 26/7</p> <p>personally [1] 19/14</p> <p>perspective [3] 15/15 24/13 35/13</p> <p>Petterson [13] 1/18 2/8 2/9 3/6 3/8 4/2 11/24 12/13 15/18 16/11 21/24 30/24 35/2</p> <p>phone [5] 12/22 12/23 18/5 18/8 18/25</p> <p>pick [1] 19/7</p> <p>places [1] 13/25</p> <p>plaintiff [4] 2/4 2/18 22/17 28/6</p> <p>plaintiff's [3] 2/25 22/9 25/11</p> <p>plaintiffs [13] 1/6 1/18 3/8 3/21 4/10 5/17 8/5 11/14 11/15 11/16 28/4 28/5 28/6</p> <p>plaintiffs' [15] 3/18 5/7 9/17 10/9 12/7 13/15 23/6 23/17 23/19 24/5 24/12 26/22 28/8 28/10 33/17</p>	<p><b>Q</b></p> <p>question [4] 6/5 23/7 29/10 31/6</p> <p>questions [2] 20/10 25/23</p> <p>quickly [1] 35/7</p> <p>quite [3] 6/8 17/3 19/11</p> <p>quo [1] 7/21</p> <p>quote [2] 7/10 11/14</p> <p><b>R</b></p> <p>raise [1] 19/13</p>	<p><b>S</b></p> <p>S.W [1] 1/23</p> <p>Sabastian [1] 36/10</p> <p>safe [1] 32/16</p> <p>said [17] 3/24 4/4 4/5 7/10 10/23 12/4 17/15 31/8 32/17 34/3 34/4 34/11 34/17 34/19 34/20 34/25 36/15</p> <p>same [4] 10/1 23/5 23/20 25/18</p> <p>satellite [2] 3/15 7/25</p> <p>satisfied [1] 7/5</p> <p>say [20] 4/10 5/13 11/3 13/21 14/7</p>

<p><b>S</b></p> <p><b>say...</b> [15] 14/23 14/24 17/19 23/22 25/21 26/2 26/13 28/4 30/10 31/17 32/10 34/1 34/15 34/21 35/8</p> <p><b>saying</b> [6] 17/3 19/18 27/1 30/2 30/4 35/1</p> <p><b>says</b> [1] 9/15</p> <p><b>scale</b> [3] 14/8 14/14 32/20</p> <p><b>scales</b> [1] 10/7</p> <p><b>scope</b> [1] 25/6</p> <p><b>sealed</b> [2] 4/19 5/12</p> <p><b>sealing</b> [2] 4/22 6/17</p> <p><b>Sean</b> [3] 1/18 3/7 19/1</p> <p><b>search</b> [1] 23/24</p> <p><b>Sebastian</b> [1] 1/4</p> <p><b>second</b> [1] 10/22</p> <p><b>secrecy</b> [1] 6/25</p> <p><b>secret</b> [1] 5/4</p> <p><b>secretive</b> [2] 30/20 30/20</p> <p><b>security</b> [1] 26/6</p> <p><b>see</b> [5] 4/6 20/18 25/11 29/19 33/19</p> <p><b>seek</b> [1] 23/21</p> <p><b>seeking</b> [4] 25/2 26/25 32/20 32/20</p> <p><b>sees</b> [1] 20/18</p> <p><b>Selbin</b> [11] 1/18 2/6 2/13 12/1 17/3 17/15 20/13 21/24 28/14 28/25 29/23</p> <p><b>send</b> [2] 14/18 24/18</p> <p><b>sending</b> [1] 9/17</p> <p><b>senior</b> [3] 33/24 34/1 34/12</p> <p><b>separate</b> [1] 6/9</p> <p><b>seriously</b> [1] 20/20</p> <p><b>seriousness</b> [1] 33/16</p> <p><b>serve</b> [1] 17/6</p> <p><b>set</b> [1] 23/17</p> <p><b>shape</b> [1] 13/12</p> <p><b>shared</b> [1] 19/20</p> <p><b>she</b> [1] 22/19</p> <p><b>shield</b> [3] 3/19 7/22 17/6</p> <p><b>shop</b> [2] 9/3 25/10</p> <p><b>shot</b> [1] 32/11</p> <p><b>should</b> [6] 4/20 8/12 14/16 14/24 34/17 35/4</p> <p><b>shouldn't</b> [1] 15/3</p> <p><b>show</b> [1] 15/12</p> <p><b>sides</b> [3] 10/6 33/23 34/7</p> <p><b>sign</b> [1] 26/13</p> <p><b>signed</b> [3] 23/25 24/24 32/12</p> <p><b>simply</b> [4] 7/17 16/25 24/12 27/3</p> <p><b>since</b> [1] 35/8</p> <p><b>sitting</b> [2] 14/2 33/24</p> <p><b>situation</b> [9] 4/23 4/24 6/6 6/12 6/18 13/11 28/19 31/16 32/23</p> <p><b>six</b> [2] 19/12 19/15</p> <p><b>six-figure</b> [1] 19/15</p> <p><b>skill</b> [1] 36/18</p> <p><b>slightest</b> [1] 29/21</p> <p><b>slim</b> [1] 11/3</p> <p><b>smaller</b> [1] 24/19</p> <p><b>smooth</b> [1] 17/23</p> <p><b>sole</b> [2] 7/19 10/9</p> <p><b>solicit</b> [4] 5/7 13/17 13/22 13/23</p> <p><b>solicitation</b> [3] 10/13 11/16 13/14</p> <p><b>solicited</b> [1] 14/1</p> <p><b>soliciting</b> [1] 4/5</p> <p><b>some</b> [9] 5/10 8/4 12/18 15/22 17/24 18/22 24/24 33/22 34/14</p> <p><b>somebody</b> [3] 15/4 26/5 32/8</p> <p><b>somebody's</b> [1] 18/18</p> <p><b>somehow</b> [1] 9/8</p> <p><b>something</b> [13] 2/12 4/9 10/4 11/21 12/2 13/3 15/14 20/13 26/3 29/20 31/22 32/13 34/20</p> <p><b>sometimes</b> [4] 16/1 16/8 28/1 33/19</p> <p><b>somewhere</b> [1] 12/3</p> <p><b>soon</b> [1] 32/8</p> <p><b>sorry</b> [3] 2/19 10/23 15/19</p> <p><b>sort</b> [4] 13/2 19/22 21/15 29/9</p> <p><b>sought</b> [2] 3/21 32/12</p> <p><b>sound</b> [1] 19/4</p> <p><b>sounds</b> [1] 13/18</p> <p><b>Spanish</b> [4] 20/6 20/7 31/1 31/4</p> <p><b>Spanish-speakers</b> [1] 31/1</p> <p><b>Spanish-speaking</b> [2] 20/6 20/7</p> <p><b>speakers</b> [1] 31/1</p> <p><b>speaking</b> [2] 20/6 20/7</p> <p><b>specific</b> [4] 6/6 19/19 20/3 27/14</p>	<p><b>speed</b> [1] 34/12</p> <p><b>spent</b> [1] 29/13</p> <p><b>spot</b> [1] 11/25</p> <p><b>standard</b> [1] 5/24</p> <p><b>standards</b> [1] 7/5</p> <p><b>stands</b> [2] 17/16 35/18</p> <p><b>start</b> [3] 4/5 10/6 11/15</p> <p><b>state</b> [1] 20/1</p> <p><b>STATES</b> [3] 1/1 1/13 36/4</p> <p><b>status</b> [1] 7/21</p> <p><b>statute</b> [2] 3/12 8/13</p> <p><b>statutes</b> [2] 13/3 20/22</p> <p><b>statutory</b> [5] 9/1 9/4 9/9 19/12 20/22</p> <p><b>STELA</b> [29] 3/12 6/11 7/9 7/11 7/14 7/18 7/25 8/22 8/25 15/1 15/2 16/14 16/17 16/24 17/12 17/12 19/9 21/19 23/15 23/22 24/6 25/13 25/15 25/25 26/5 27/8 31/11 31/23 31/25</p> <p><b>Stenograph</b> [1] 36/8</p> <p><b>still</b> [3] 4/9 9/4 9/8</p> <p><b>stop</b> [1] 21/20</p> <p><b>stopped</b> [2] 24/17 32/8</p> <p><b>story</b> [2] 33/20 34/4</p> <p><b>strong</b> [1] 19/11</p> <p><b>strongly</b> [2] 2/12 2/14</p> <p><b>stuff</b> [3] 11/21 18/20 26/15</p> <p><b>subject</b> [4] 22/6 22/22 23/7 33/1</p> <p><b>subscribe</b> [1] 11/1</p> <p><b>subscriber</b> [1] 8/1</p> <p><b>subscribers</b> [1] 3/15</p> <p><b>successful</b> [1] 6/22</p> <p><b>suffered</b> [1] 3/16</p> <p><b>suggest</b> [1] 29/1</p> <p><b>sui</b> [3] 6/18 12/14 13/6</p> <p><b>sui generis</b> [3] 6/18 12/14 13/6</p> <p><b>support</b> [1] 5/9</p> <p><b>supports</b> [1] 31/9</p> <p><b>sure</b> [7] 17/20 18/10 20/17 28/20 29/2 29/16 32/25</p> <p><b>switch</b> [1] 18/5</p> <p><b>system</b> [2] 26/6 31/4</p> <p><b>T</b></p> <p><b>table</b> [1] 33/25</p> <p><b>tact</b> [1] 32/15</p> <p><b>take</b> [7] 10/5 12/20 18/10 19/18 20/20 21/18 26/12</p> <p><b>taken</b> [2] 21/11 32/15</p> <p><b>taking</b> [1] 25/18</p> <p><b>talk</b> [4] 4/8 4/9 13/13 25/1</p> <p><b>talked</b> [1] 34/10</p> <p><b>talking</b> [2] 12/16 30/7</p> <p><b>talks</b> [1] 27/11</p> <p><b>Taylor</b> [2] 1/19 2/17</p> <p><b>TCPA</b> [2] 12/20 13/1</p> <p><b>team</b> [1] 8/19</p> <p><b>technically</b> [1] 28/8</p> <p><b>technological</b> [1] 36/13</p> <p><b>technology</b> [2] 18/16 18/21</p> <p><b>TED</b> [1] 1/23</p> <p><b>teleconference</b> [1] 36/9</p> <p><b>telemarket</b> [1] 25/9</p> <p><b>television</b> [2] 3/15 7/25</p> <p><b>tell</b> [4] 5/8 27/21 33/20 33/21</p> <p><b>telling</b> [1] 9/10</p> <p><b>tells</b> [1] 12/25</p> <p><b>ten</b> [2] 9/18 9/19</p> <p><b>term</b> [1] 13/14</p> <p><b>terms</b> [4] 8/21 10/13 19/24 28/13</p> <p><b>than</b> [6] 4/18 13/6 14/1 15/22 25/16 34/14</p> <p><b>thank</b> [8] 2/13 2/19 5/20 16/12 22/2 35/16 35/17 35/19</p> <p><b>that</b> [236]</p> <p><b>that's</b> [32] 4/23 6/11 6/14 7/13 9/8 9/10 9/20 10/4 10/4 11/4 11/17 12/21 13/23 14/3 15/11 16/3 17/6 18/12 24/24 26/3 26/8 27/13 27/19 27/24 28/5 28/9 30/11 30/22 31/4 32/3 33/8 35/1</p> <p><b>their</b> [28] 3/11 3/13 7/4 7/8 7/11 7/15 8/3 8/6 13/9 13/11 15/12 17/17 20/4 21/12 21/18 22/18 23/15 23/18 23/22 24/6 24/10 24/13 24/14 24/17 26/11 27/23 28/2 30/17</p>	<p><b>them</b> [22] 8/4 8/20 10/1 10/11 12/19 12/23 12/25 13/4 13/13 14/23 15/7 15/13 20/5 20/11 20/18 21/23 24/18 29/21 32/12 32/17 34/9 34/13</p> <p><b>themselves</b> [2] 2/5 5/3</p> <p><b>then</b> [6] 4/19 8/6 18/24 22/18 23/20 32/12</p> <p><b>there</b> [54]</p> <p><b>there's</b> [4] 6/6 23/7 27/8 28/20</p> <p><b>these</b> [31] 3/18 3/23 8/10 8/14 9/24 10/19 11/5 12/23 12/25 14/13 14/21 15/7 15/20 16/6 16/10 19/11 19/13 19/18 19/20 20/18 20/21 21/16 21/20 25/12 29/18 29/22 29/24 29/25 31/3 32/1 34/6</p> <p><b>they</b> [95]</p> <p><b>they're</b> [3] 25/2 25/20 31/25</p> <p><b>thing</b> [8] 10/5 15/20 15/21 18/16 19/19 26/8 27/13 30/20</p> <p><b>things</b> [14] 9/7 11/12 11/17 11/18 16/4 16/10 17/14 20/9 22/25 27/10 27/15 28/13 29/14 29/19</p> <p><b>think</b> [47]</p> <p><b>third</b> [3] 3/13 10/5 25/19</p> <p><b>third-party</b> [1] 3/13</p> <p><b>this</b> [78]</p> <p><b>those</b> [23] 4/18 5/11 6/16 9/1 10/1 10/25 11/17 11/18 11/19 12/14 12/15 18/22 18/22 19/24 19/25 23/1 27/10 27/15 27/19 28/13 32/6 32/11 33/9</p> <p><b>thought</b> [3] 9/10 20/15 28/24</p> <p><b>thousands</b> [2] 7/2 7/23</p> <p><b>three</b> [2] 7/6 30/10</p> <p><b>through</b> [5] 3/22 4/14 5/8 7/20 10/23</p> <p><b>throw</b> [1] 15/14</p> <p><b>thrown</b> [1] 10/21</p> <p><b>thumb</b> [3] 14/8 14/14 32/20</p> <p><b>time</b> [11] 4/4 5/25 8/10 10/22 11/7 17/10 18/10 24/7 24/18 29/13 33/2</p> <p><b>times</b> [3] 10/25 26/10 26/11</p> <p><b>today</b> [4] 2/11 3/17 3/17 35/2</p> <p><b>told</b> [4] 10/12 23/20 24/20 24/20</p> <p><b>too</b> [5] 9/22 12/1 20/13 29/19 34/15</p> <p><b>top</b> [1] 29/18</p> <p><b>touched</b> [1] 25/2</p> <p><b>track</b> [2] 29/18 29/25</p> <p><b>transcript</b> [2] 1/12 36/17</p> <p><b>tremendous</b> [2] 29/6 32/24</p> <p><b>trial</b> [3] 18/17 33/22 33/25</p> <p><b>trials</b> [4] 18/12 18/14 18/19 34/10</p> <p><b>tried</b> [1] 34/5</p> <p><b>true</b> [7] 27/21 27/24 28/3 29/19 32/4 34/4 36/17</p> <p><b>truth</b> [1] 7/23</p> <p><b>try</b> [6] 5/16 12/12 19/1 23/24 24/10 33/23</p> <p><b>trying</b> [2] 11/24 26/3</p> <p><b>turn</b> [1] 25/8</p> <p><b>TURNER</b> [1] 1/23</p> <p><b>turning</b> [1] 25/19</p> <p><b>two</b> [9] 13/6 19/11 23/25 24/2 24/6 26/14 31/5 34/1 34/6</p> <p><b>type</b> [1] 12/16</p> <p><b>typewritten</b> [1] 36/15</p> <p><b>typical</b> [1] 26/8</p> <p><b>U</b></p> <p><b>U.S</b> [1] 1/23</p> <p><b>under</b> [7] 8/22 13/16 14/9 21/19 23/4 26/24 32/5</p> <p><b>underlays</b> [1] 21/15</p> <p><b>underlying</b> [1] 29/9</p> <p><b>underscores</b> [1] 6/24</p> <p><b>understand</b> [9] 6/16 9/6 9/9 19/8 20/11 21/11 25/22 25/25 27/20</p> <p><b>understanding</b> [1] 30/3</p> <p><b>undertake</b> [1] 7/15</p> <p><b>undisputed</b> [1] 8/14</p> <p><b>undo</b> [5] 4/16 5/5 11/14 12/6 21/13</p> <p><b>undoubtedly</b> [1] 29/19</p> <p><b>unfortunately</b> [1] 34/8</p> <p><b>unique</b> [1] 28/19</p> <p><b>UNITED</b> [3] 1/1 1/13 36/4</p> <p><b>unless</b> [4] 7/12 21/20 23/12 33/1</p> <p><b>unprecedented</b> [5] 11/22 12/13 13/5 21/7 32/23</p>
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<b>U</b> <b>unremedied</b> [2] 3/16 3/17 <b>unseal</b> [1] 4/20 <b>unsealing</b> [2] 5/11 6/17 <b>until</b> [2] 3/25 24/7 <b>unusual</b> [3] 6/8 17/4 20/25 <b>up</b> [12] 15/3 15/12 18/7 18/25 19/7 23/25 24/24 26/13 28/23 30/17 32/12 34/12 <b>upon</b> [1] 10/18 <b>us</b> [8] 6/20 7/9 15/10 23/20 24/20 29/24 31/9 31/10 <b>use</b> [5] 7/22 15/6 22/19 25/17 27/4 <b>used</b> [6] 12/13 12/14 13/18 13/19 23/23 24/9 <b>using</b> [2] 3/19 17/22 <b>usually</b> [1] 26/4	<b>when</b> [18] 7/10 10/6 10/14 11/7 13/13 13/18 14/2 14/4 16/5 16/6 16/22 19/9 19/13 24/3 24/14 24/21 28/4 34/13 <b>where</b> [16] 4/18 4/25 5/11 6/13 11/15 12/4 13/11 13/24 14/2 17/14 17/14 18/17 27/25 29/20 30/8 31/16 <b>whether</b> [4] 6/5 16/16 23/7 31/14 <b>which</b> [14] 8/7 9/15 14/20 15/14 20/1 21/16 25/19 29/6 29/10 31/8 31/22 33/1 33/22 34/24 <b>who</b> [15] 2/9 2/15 3/11 5/17 8/21 8/23 11/24 12/17 13/6 19/16 25/11 29/10 29/17 30/16 30/17 <b>whoever</b> [1] 13/22 <b>whole</b> [3] 9/25 11/15 31/14 <b>whose</b> [1] 10/21 <b>why</b> [4] 15/21 16/10 28/9 29/10 <b>wide</b> [1] 26/2 <b>widespread</b> [3] 26/17 31/7 31/12 <b>will</b> [19] 2/4 2/10 8/6 8/7 10/10 12/12 13/2 15/20 16/12 19/25 20/3 20/4 20/5 27/21 28/15 29/2 30/18 30/24 35/7 <b>willing</b> [2] 12/9 19/16 <b>Wilson</b> [4] 1/19 2/17 2/17 2/19 <b>wish</b> [1] 18/13 <b>without</b> [6] 2/25 4/11 4/12 7/7 17/7 35/17 <b>wolff</b> [4] 1/22 1/25 36/3 36/24 <b>won't</b> [1] 16/7 <b>wonderful</b> [1] 18/16 <b>word</b> [6] 12/13 12/14 13/18 13/19 13/20 13/21 <b>words</b> [2] 12/20 26/17 <b>world</b> [2] 15/4 31/14 <b>worried</b> [2] 18/2 31/25 <b>worth</b> [2] 19/12 26/14 <b>would</b> [36] 4/8 4/16 5/13 6/13 7/17 7/19 10/14 11/3 11/23 14/7 14/20 14/23 16/16 17/8 18/5 18/6 18/8 19/15 21/1 21/2 21/3 21/3 22/5 22/14 25/24 26/16 26/20 26/21 27/6 28/18 31/7 32/11 32/18 33/5 34/1 34/18 <b>wouldn't</b> [3] 15/1 31/8 33/10 <b>wow</b> [1] 30/11 <b>write</b> [2] 18/23 30/18 <b>writing</b> [1] 32/22 <b>wrong</b> [1] 11/14
<b>V</b> <b>valuable</b> [2] 7/2 19/20 <b>value</b> [2] 8/4 22/15 <b>veil</b> [1] 8/14 <b>very</b> [9] 11/25 20/19 20/20 20/20 20/25 21/16 27/22 29/14 29/18 <b>video</b> [1] 36/9 <b>VIDEOCONFERENCE</b> [2] 1/4 1/12 <b>view</b> [2] 17/2 32/16 <b>viewed</b> [1] 32/16 <b>vindicated</b> [1] 8/7 <b>vindicating</b> [1] 3/10 <b>violate</b> [1] 17/2 <b>violated</b> [5] 6/24 8/13 13/9 16/17 17/18 <b>violating</b> [2] 6/14 7/17 <b>violation</b> [11] 3/12 3/14 6/11 7/3 15/2 25/14 25/16 26/1 31/23 31/25 32/4 <b>violations</b> [2] 7/16 7/23 <b>Virginia</b> [1] 20/7 <b>voluntary</b> [2] 23/4 26/12 <b>vs</b> [3] 2/3 22/16 36/10	<b>Y</b> <b>yeah</b> [1] 34/25 <b>year</b> [1] 22/10 <b>years</b> [4] 14/2 24/3 24/7 33/22 <b>years'</b> [1] 26/14 <b>yes</b> [4] 6/1 9/2 19/6 20/16 <b>yet</b> [1] 19/2 <b>you</b> [90] <b>you're</b> [9] 5/5 9/15 11/21 12/16 13/22 17/22 28/19 30/16 34/25 <b>you've</b> [7] 4/15 5/10 5/21 9/14 10/12 16/8 19/2 <b>young</b> [8] 15/21 16/4 33/17 33/20 34/6 34/12 34/17 34/22 <b>younger</b> [1] 2/10 <b>your</b> [64]
<b>W</b> <b>Wade</b> [1] 2/17 <b>wait</b> [2] 4/2 4/6 <b>walk</b> [1] 32/17 <b>wall</b> [1] 32/23 <b>want</b> [27] 5/9 5/13 9/19 10/1 10/19 11/1 13/22 15/11 16/9 17/2 19/1 19/15 21/15 25/4 25/7 25/8 27/7 28/25 29/2 29/14 30/3 31/11 32/3 32/18 34/9 34/19 34/24 <b>wanted</b> [1] 17/20 <b>was</b> [32] 2/1 3/25 8/9 8/21 14/2 16/15 16/19 18/2 19/9 22/7 22/8 22/10 22/22 24/2 24/2 25/13 25/15 26/16 26/18 26/19 26/19 26/22 26/23 30/7 30/13 31/23 31/25 32/13 33/4 33/23 33/25 35/11 <b>wasn't</b> [4] 4/4 17/25 24/17 26/18 <b>water</b> [1] 23/16 <b>way</b> [16] 7/3 7/8 7/11 9/15 12/9 13/12 13/19 14/12 16/8 18/8 21/1 21/3 21/6 21/19 33/6 35/1 <b>ways</b> [1] 5/19 <b>we</b> [84] <b>we'll</b> [2] 10/12 20/8 <b>we're</b> [21] 6/6 6/7 12/9 14/7 14/14 14/15 14/15 14/17 14/17 14/19 14/24 14/25 15/1 15/5 15/6 15/12 15/12 15/15 15/16 18/20 19/24 <b>we've</b> [1] 19/10 <b>week</b> [2] 22/7 22/8 <b>weighs</b> [1] 31/21 <b>well</b> [18] 2/12 4/2 4/11 8/16 8/20 8/25 9/1 9/13 10/12 10/24 13/15 17/21 25/24 33/18 34/17 34/19 34/20 35/6 <b>went</b> [7] 5/14 6/21 16/18 25/16 31/13 31/14 32/5 <b>were</b> [17] 5/12 6/22 7/12 9/10 10/25 12/17 14/16 16/5 18/24 23/3 24/15 31/7 32/8 33/25 34/6 35/21 36/15 <b>what</b> [41] <b>what's</b> [2] 24/11 30/21 <b>whatever</b> [3] 17/22 17/23 25/7	<b>Z</b> <b>zoom</b> [4] 1/4 1/12 18/11 19/3