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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: APPLE iPhone 3G AND
3GS MMS MARKETING AND SALES
PRACTICES LITIGATION

MDL NO. 2116
NEW ORLEANS, LOUISIANA
FRIDAY, MARCH 12, 2010, 10:00 A.M.

TRANSCRIPT OF STATUS CONFERENCE
HEARD BEFORE THE HONORABLE CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

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P-R-O-C-E-E-D-I-N-G-S

FRIDAY, MARCH 12, 2010

M O R N I N G S E S S I O N

(COURT CALLED TO ORDER)

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7 THE DEPUTY CLERK: All rise.

8 THE COURT: Good morning, everyone. Who's on the phone?
9 We've got two different lists.

10 MR. MORELAND: And I believe someone else just joined,
11 Your Honor.

12 THE COURT: Who's that?

13 MR. MORELAND: This is Matt Moreland and I believe
14 someone else just joined.

15 THE COURT: Who's that?

16 THE SPEAKER: Art Sadin.

17 THE COURT: How do you spell that?

18 THE SPEAKER: S-A-D-I-N. He's going to be coming to the
19 phone.

20 THE COURT: Okay. Who else has joined that's on the
21 phone since we took a roll call?

22 MR. CLIMACO: Climaco, C-L-I-M-A-C-O.

23 THE COURT: No, I heard Mr. Climaco. Who's the next
24 person?

25 MR. MORELAND: That was Matt Moreland, Your Honor.

1 THE COURT: Oh, Matt Moreland. I've got your name,
2 Matt.

3 MR. MORELAND: Thank you, Your Honor.

4 THE COURT: Anyone else?

5 MR. WOOD: Kirk Wood, Your Honor.

6 THE COURT: We've got your name.

7 Okay. Everyone who is here has signed in?

8 Okay. We're here this morning to talk primarily
9 about the scope and timing of discovery. Mr. Bickford.

10 MR. BICKFORD: Good morning, Your Honor.

11 THE COURT: I've read what each side has filed. What I
12 guess I don't understand is, I kind of thought when we had met
13 last time on January 15th that there was, I'm not saying there
14 was absolute agreement, but that even the plaintiffs had more or
15 less acquiesced in the notion that we would let, the plaintiffs
16 would file their amended complaints first. I think you have a
17 deadline in May for that; am I correct?

18 MR. BICKFORD: Yes, Your Honor.

19 THE COURT: We're not even there yet, where you haven't
20 amended your complaints yet.

21 The next step would be the defendants would file
22 their motions based on the pleadings. That would be a motion to
23 enforce arbitration and 12(b)(6) motions or Rule 9 motions,
24 Rule 8 motions.

25 And at that point, you all would meet and confer

1 and see if you all can agree on the scope and need for discovery,
2 if any, pertaining to those motions.

3 I mean, ordinarily, there wouldn't be a need for
4 discovery strictly on a Rule 12 motion, for example. We're
5 looking at your pleas. Have you stated a claim or not? We don't
6 need discovery for that.

7 Now, sometimes documents come into play. For
8 example, if you're suing on a contract, then the contract would
9 be relevant to a Motion to Dismiss. Whether you attached it or
10 not, they could attach it. But now, once I read your memoranda,
11 it looks like you've changed direction here on me.

12 MR. BICKFORD: I don't think that we've changed
13 direction, Your Honor. I think that we had always looked at this
14 case as a consumer products case in which Apple marketed a
15 product that they didn't have. And wasn't available. And we
16 think that the, their marketing practices, be it whatever,
17 however they disclosed or didn't disclose that they had MMS,
18 whatever disclaimers that they had, whether they were purposely
19 designed to attract people or unpurposely designed to attract
20 people, are at issue. And they were at issue from the get-go in
21 this case. And they were at issue from the start of this
22 litigation forward, and that we ought to have the opportunity to
23 discover their marketing practices in this case.

24 Given to Your Honor is a perfect example of the
25 videotape that was attached to our admission, which then Apple

1 attached their videotape. Four minutes into the videotape, there
2 is an entire discussion about MMS and texting. There is no
3 disclaimer. You have to watch to 9 minutes and 14 seconds to see
4 a 1.3-second disclaimer flash across the screen saying, MMS not
5 available until this date.

6 And that's only one example of the marketing
7 practices that we're dealing with. We're dealing with a
8 Smartphone that was marketed to the general public that didn't
9 have a feature that virtually every other phone out there had.
10 It would be like selling a phone that, to you, to make phone
11 calls and you get home and find it only calls California.

12 That's the marketing issues that we're dealing
13 with. There is always going to be issues of adequacy in working.

14 Now, stepping back, on the AT&T side, we do agree
15 with AT&T that there shouldn't be any discovery with regard to,
16 there should only be discovery with regard to the arbitration
17 issues, but only when they are raised. They haven't been raised
18 yet. They haven't been put into play. So when they do get put
19 into play, we believe that arbitration does have some extrinsic
20 discovery attached to it, you know, particularly when we're
21 dealing with claims which seek to ban class actions, seek to ban
22 consumer class actions.

23 THE COURT: There have been a number of cases cited, and
24 frankly, there are a lot of cases, a number of cases that find
25 unconscionable these arbitration agreements that try to ban class

1 actions. But I don't know why you need discovery on that. They
2 are what they are. If they do, it's a legal argument, it seems
3 to me.

4 MR. BICKFORD: No, because we have the right to test the
5 procedural unconscionability and the substantive
6 unconscionability of these things. For instance, how do people
7 contract with Apple? How do they contract with AT&T?

8 THE COURT: How do your clients contract is the issue, I
9 think. How do your clients contract? You should know that,
10 right?

11 MR. BICKFORD: Individually, from a procedural
12 standpoint, that's correct with regard to the procedural nature
13 of the element of looking at --

14 THE COURT: Okay. How many clients do you represent?
15 Who do you represent? Give me an example.

16 MR. BICKFORD: There, right now, there are 30 actions
17 filed in this thing.

18 THE COURT: No, give me an example of an individual that
19 you represent. And what did they do? They went to an Apple
20 store?

21 MR. BICKFORD: They went --

22 THE COURT: Did they go online? Did they go get the
23 contract with AT&T at the store or what?

24 MR. BICKFORD: Both. We represent people that have done
25 a variety of things. But that's the procedural aspect of how did

1 I contract, where was the contract available to me, where was the
2 contract available to the consumers?

3 The substantive deal is, how does the practice,
4 this arbitration clause, how does it affect consumers as a whole?
5 Is it unconscionable as a whole to the marketplace? Does it
6 affect the marketplace?

7 THE COURT: Wait. First you have to file suit on behalf
8 of individuals as class representatives. It seems like we've got
9 to look at how it affects them. Do we have a claim first? If
10 they don't have a claim, they can't represent other people. So
11 if they can't follow class action, that's your argument it seems
12 to me. You may have a very good argument there. I think you
13 probably do, but I don't see the need for a lot of or maybe any
14 discovery on that. It says what it says.

15 Now, unless your people are going to say, I didn't
16 sign that, I didn't agree to that, maybe that's a factual issue,
17 but, whatever it says, it says, and I suspect they have either
18 your clients' signature or they have them clicking a button
19 saying we agree to that. There are a lot ways you can agree to
20 things.

21 MR. BICKFORD: With all due respect, Judge, if you go
22 back to the seminal case of *Prima Paint*, which is the
23 Supreme Court case --

24 THE COURT: We're not going to spend a year, year and a
25 half discovering whether this case goes to arbitration. That's

1 the purpose of arbitration.

2 MR. BICKFORD: I don't think so, and we don't
3 anticipate --

4 THE COURT: Wait. Why don't you let them file the
5 motion, then you can look at it, then you can sit down with them
6 and say, We think we need discovery on this issue, these issues
7 pertaining to arbitration. They might agree with you if you
8 narrowly focus it, and we may not have an issue. But your
9 approach now I don't think is reasonable that you just want to
10 open up discovery totally without even knowing what they are
11 going to file. You haven't seen where they are going to file
12 yet.

13 MR. BICKFORD: What we are proposing today, Judge, to
14 the Court is that we are prepared, there are now 30 suits filed,
15 and that number is growing in the MDL. And I have noticed that
16 there have been a couple of other suits filed recently, and I
17 expect the number will grow. What we are prepared to do, having
18 looked at the motions, having discussed this --

19 THE COURT: You haven't looked at any motions yet. They
20 haven't been filed.

21 MR. BICKFORD: Not the motions, but the briefs in this
22 case. Having looked at that is that we're preparing to file an
23 exemplar suit, one of the lawsuits, amend that lawsuit and file
24 it by April 1st, with the Court, with concomitant discovery on
25 that suit.

1 This, I think, would be a compromise position to
2 the position that AT&T and Apple took is that they wanted to
3 consolidate a complaint. This wouldn't be a consolidated
4 complaint. It would be more like a bellwether or exemplar
5 complaint that goes forward, which will raise, I think, probably
6 95 percent of the issues that the Court is going to have to deal
7 with in the case.

8 There are going to be other issues because of other
9 substantive law issues from other states, et cetera, but there
10 are a core group of issues that I think the Court, having now
11 read these briefs, understands now exist out there. I think by
12 us taking one complaint and going forward and amending that, that
13 we can then tee that up in a fashion which takes care of
14 90 percent, 95 percent of all the issues in the case, which will
15 then be resolved to the other existing complaints.

16 THE COURT: You're going to do that by the deadline we
17 have previously given you to --

18 MR. BICKFORD: We're going to do that by April 1st,
19 Judge. We would like to concomitantly serve discovery at that
20 point. If, in fact, they think the discovery is beyond bounds,
21 burdensome with regard to their motions, et cetera, they'll have
22 the opportunity to basically come in and object and say --

23 THE COURT: I still think you're putting the cart before
24 the horse here; I think you need to slow down, take a deep
25 breath, file your amended complaint or your exemplar complaint.

1 Let them look at it. They'll have Rule 12 motions to dismiss,
2 Rule 9, Rule 8, whatever, arbitration motions. I don't see any
3 harm to your side of the case by letting them file their motions.
4 We're not going to just go pell-mell and decide, I'm not going to
5 let them file their motion and hear it 15 days later. This is
6 not that kind of case obviously. You look at it. You sit down
7 and confer with them, say, This is the discovery we think we need
8 related to these motions. Maybe they'll agree with at least some
9 of your discovery. I suspect they will. And to the extent you
10 can't agree, then you come to me and we'll have a hearing and
11 I'll decide what discovery you get. But I don't like the
12 approach of just opening up the door to everything at this time
13 for a number of real practical reasons. I mean, first of all, if
14 they are right on any or just some of their motions, it's going
15 to substantially narrow the issues or narrow the scope of the
16 class or so forth, and I don't want the parties on either side
17 spending a lot of money and time and effort that are going to be
18 a total waste of time in the end. It makes no sense.

19 MR. BICKFORD: If we go forward and file by April 1st or
20 exemplar suit, what we would like to do is be able to set aside
21 the rest of the amendments of this growing number of cases. The
22 amendments to those suits would be, I would assume --

23 THE COURT: It's sort of like the same ideas except
24 you're just going to amend one of the individual --

25 MR. BICKFORD: Yes, and go forward and it will have a --

1 THE COURT: I don't see the problem with that. It
2 sounds like a good idea. I don't know the defense should have a
3 problem with that.

4 MR URQUHART: Your Honor, if I could respond briefly.

5 THE COURT: Yes.

6 MR URQUHART: Quentin Urquhart on behalf of Apple. This
7 proposal to file a quote, unquote, exemplar complaint, this is
8 the first we've heard of it.

9 THE COURT: First I've heard of it, too. I don't see
10 any problem with it. What's the problem?

11 MR. URQUHART: Your Honor, our only problem is that we
12 don't, so long as that complaint encompasses the loss applicable
13 to all the other plaintiffs who have named and filed suit, we
14 probably don't have a problem with it. But what we don't want to
15 see happen is an exemplar complaint that is filed just under one
16 law that they happen to select that they prefer under the
17 circumstances. We don't know at this point because this proposal
18 wasn't presented to us what they intend to include in an exemplar
19 complaint, what form that is going to take.

20 THE COURT: You'll find out in about two weeks.

21 MR URQUHART: Yeah, but I guess our point is, Judge, we
22 don't want to in any way be seen as conceding or acquiescing to
23 the filing of such a complaint or following that type of
24 procedure at this juncture when we don't know what's going to be
25 in it, we don't know what form it's going to fall in.

1 THE COURT: Let me tell you what we're going to do: I
2 don't see any harm in letting them file that. In fact, I think
3 they have got a right to file it. They've got an absolute right
4 to file it. They'll be well within the deadline for amending the
5 complaint, so they could file it. If you're not happy with it,
6 you can file something and we'll deal with it at that time.

7 They would still have the right and opportunity to
8 individually amend every complaint, if that's what you want them
9 to do. I'm not sure what you're asking them to do.

10 MR URQUHART: Well, Your Honor, when we were here prior
11 to the initial hearing, the plaintiffs fought filing a master
12 complaint. They took the position they didn't want one.

13 THE COURT: Your side didn't think it was a good idea
14 either.

15 MR URQUHART: Well, under the circumstances, Your Honor,
16 given what was a relatively limited number of complaints that we
17 saw, we agree.

18 THE COURT: All of these complaints allege essentially
19 the same thing. In fact, as you pointed out, 19 of 23 were
20 verbatim a copy from the original complaint.

21 MR URQUHART: And, Your Honor, we agree with this. We
22 just don't want this to open the door to cherry picking one
23 state's law in which they would apply. So that's our point.

24 MR. RUSSO: I think that is -- Gary Russo, Your Honor,
25 on behalf of ATTM. Regardless of whether or not they file an

1 exemplar complaint, which actually we don't think that process
2 even exists, but even if they file that exemplar complaint, there
3 are still 30 separate state laws that apply.

4 Now, Your Honor, that's a perfectly reasonable
5 suggestion that they file it and then we take issue with it
6 through papers at that point. And the other procedure that you
7 set forth is exactly what we had offered originally, that we file
8 our papers and they sit with us and we confer and see if we can
9 avoid all of these discovery issues.

10 THE COURT: Okay.

11 MR URQUHART: We can wait until April 1st and see what
12 happens, Your Honor.

13 THE COURT: By the way, in the interest of full
14 disclosure, I now have an Apple iPhone, which I did not have the
15 last time we were here. I had a Blackberry. I still have my
16 Blackberry, too.

17 MR. BICKFORD: Do you have the plaintiff's app on that?

18 THE COURT: The plaintiff's app? I don't think so. But
19 what happened since we last met is, I was invited to be a
20 participant, there is a pilot program going on in the federal
21 judiciary right now, because some judges want to use iPhones.
22 And I won't bore you with all of the details, but there is an
23 issue of compatibility with, the federal courts use an antiquated
24 e-mail software called Lotus Notes, which people laugh at you
25 when you tell them you use Lotus Notes. Look, Mr. Bickford is

1 laughing now, you know. But that's what we have, and we're kind
2 of stuck with it. And it's not very compatible with iPhones, and
3 they are working on it, and they asked some judges, and I said,
4 Yeah, I'll do it, it might be a good idea. And obviously, I'm
5 not a member of the class because I got this after September of
6 2009.

7 Until this morning, I had never even tried to send,
8 what do you call it, MMS Photo. But I took a picture of my law
9 clerk and I managed to figure out how to do it, so I sent her her
10 own picture to her cell phone and she said she got it, so I guess
11 it's working, for whatever that's worth.

12 But anyway, I figure I should disclose that I have
13 one of these things. I'll be honest, I'm still not as
14 comfortable with it as I am with my Blackberry, but we'll see.
15 We'll see how it goes.

16 All right. I think, one thing that was pointed out
17 in the memoranda that I filed is that it seems that the
18 plaintiffs are making some additional allegations that were not
19 contained in any of the complaints, as far as I can tell. That's
20 fine, but I think you need to make sure you amend your complaint.
21 I guess you're going to do that as part of your --

22 MR. BICKFORD: With specificity, yes, Your Honor.

23 THE COURT: For example, you say in your memorandum that
24 plaintiffs have alleged three different legal theories: A breach
25 of contract that AT&T was contractually obligated to provide MMS

1 and did not provide MMS. And then the second claim or theory is
2 that both Apple and AT&T had a duty to adequately disclose that
3 MMS would not be provided to iPhone users and failed to do so.
4 And then the last one was the misrepresentation claim that they
5 affirmatively marketed and advertised iPhone's MMS functionality
6 without adequate disclosure that such services were not available
7 at the time of purchase. The last claim is what is alleged in
8 the complaint as far as I can tell.

9 MR. BICKFORD: Yes, I think that we additionally briefed
10 that in our briefing, the fact that AT&T was actually billing for
11 MMS services.

12 THE COURT: Yes, and that's not alleged in your
13 complaint either.

14 MR. BICKFORD: Specifically on the, well, this came to
15 light as we started collecting billing information, et cetera, so
16 we will amend that, but we clearly have billing information
17 indicating that AT&T is --

18 THE COURT: In other words, if I understand that
19 allegation, what you're alleging is that when people bought
20 iPhones, even though they didn't have the MMS service capability,
21 they were being charged for it; is that what you're saying?

22 MR. BICKFORD: There was a line item on the bill itself
23 that says, "Texting MMS" and the charge.

24 MR. STRANGE: Your Honor, Bryan Strange for the
25 plaintiffs.

1 THE COURT: Come up to microphone.

2 MR. STRANGE: In our case, the Striker complaint, which
3 was transferred here from California, we did make that exact
4 allegation.

5 THE COURT: Oh, you did? Okay. I didn't read every
6 complaint. I frankly looked at the ones that, I think the
7 defendants say was the first complaint. Goette, G-O-E-T-T-E.

8 MR. STRANGE: Your Honor, the basis of our claim against
9 AT&T was exactly that, that they were charging for a service that
10 they weren't providing.

11 THE COURT: It's a different claim.

12 MR. STRANGE: Yes, Your Honor.

13 THE COURT: Obviously.

14 So as I understand it, Mr. Bickford, what you're
15 proposing is rather than amending, you would prefer just to file
16 the exemplar complaint rather than amending all of the individual
17 complaints; is that what I'm hearing?

18 MR. BICKFORD: We would, Your Honor. And if, in fact,
19 after we filed, after we file this complaint, if, in fact, the
20 defendants have issue with that procedure and want us to, you
21 know, continue on the road to amend another 30 or 40 complaints
22 at that time, I think we can visit at that moment. But as I
23 said, I think that 90 percent of all of the issues, you know, in
24 this case are going to be contained within that, yes, there are
25 going to be state substantive law issues that are going to change

1 from complaint to complaint; however, having looked at this
2 universe of things, I know the vast majority, and as I say, close
3 to 90 percent of all of the issues are going to get resolved
4 there, I think it's a very expeditious way for this Court to deal
5 with the great bulk of the issues in this case, rather than
6 having to ferret through 30 different petitions, or by that time
7 40 different petitions and complaints and figure out what's what
8 and rule on motions that may be disparate from complaint to
9 complaint.

10 And that's why we were proposing it. And we would
11 ask that we don't have to amend, you know, the other complaints
12 until, you know, we revisit the issue, but we're certainly
13 willing to wait until after April 1st and revisit that issue at
14 that time.

15 THE COURT: All right. So then otherwise, I guess we
16 can stick to the schedule that we put in place last time we were
17 here. In terms of filing of amendments, filing of motions,
18 briefing, responses and so forth.

19 MR. BICKFORD: Well, we would just ask on behalf of the
20 plaintiff that, in fact, if we file by April 1st that I think
21 that the Court gave 30, 45 days.

22 MR. BECNEL: Sixty.

23 MR. BICKFORD: Sixty days to file the motions that the
24 defendants then file within 60 days and we just move it along.

25 MR. STRANGE: Judge, our suggestion is we stay with the

1 schedule we have. We'll look at that exemplar complaint when it
2 comes in and promptly file whatever, if we can't sit down and
3 work it out with Mr. Bickford ahead of time.

4 THE COURT: We're not talking about a big difference in
5 time here. Just a month or so, six weeks or something, so I
6 don't know that that's going to make a lot of difference. I
7 think we'll just stick with the same schedule we have now.

8 But, I think the defendants ought to file something
9 to advise the Court, and the plaintiffs, if you take issue in
10 some respect with what Mr. Bickford suggested.

11 Did someone just join on the phone?

12 MR URQUHART: I think that was the lose signal.

13 MR. RUSSO: Your Honor, if we could have 30 days from
14 April 1st, but that doesn't mean we don't have conversations
15 during that period, but 30 days to file whatever papers we would
16 have with respect to the exemplar complaint. Our objection to
17 the exemplar.

18 THE COURT: Right. So that would put that due somewhere
19 around May 1st, which would still, if there is a problem and the
20 plaintiffs end up needing time to amend their individual
21 complaints, they still have time to do that.

22 MR. BICKFORD: Yes. And I guess what I would ask then
23 is maybe the best timing for the next conference that we have
24 would be sometime shortly after they file whatever papers they
25 intend to file.

1 THE COURT: Maybe the first week of May.

2 Why don't we give you 20 days. Give us a little
3 more cushion, a little cushion in there. The defendants are to
4 file any objections to the plaintiffs' proposed exemplar
5 complaint within 20 days after it's filed, okay? And then we'll
6 have our next conference in the first week of May. Let's get a
7 date for that now. Eileen, do you have your calendar? I
8 probably need the calendar Hope keeps because she's got some
9 other stuff.

10 MR. RUSSO: Judge, I know the preference was to schedule
11 these on a Friday, but with some of the lawyers traveling in,
12 there was a question whether or not a Thursday might be
13 convenient for the Court.

14 THE COURT: It depends on what Thursday it is. Like
15 yesterday, I had a criminal docket that took about two-thirds of
16 the day. I do my criminal matters on Thursdays. I start on
17 Thursday mornings.

18 Are you suggesting that you all would prefer a
19 Thursday to a Friday?

20 MR. RUSSO: I think so, Judge.

21 MR. URQUHART: Yes, Your Honor.

22 MR. RUSSO: From looking at schedules, if the 13th is a
23 convenient day, that's a Thursday, the second week in May.

24 THE COURT: That would be better for me than the 6th,
25 because the 20th I'm going to be out, well, I may be out and the

1 6th is a criminal day for me, a criminal motion day.

2 MR. BECNEL: That would be great.

3 MR URQUHART: That would be great, Your Honor.

4 THE COURT: Is the 13th okay for the plaintiffs' side?

5 MR. BICKFORD: Yeah, that should work, Judge.

6 THE COURT: We'll set the time on Thursday, May 13th for
7 our next status conference.

8 Does anybody have any idea how many different
9 states are involved in these class actions at the present time?

10 MR. BICKFORD: I believe it's 22 or 23. I would suspect
11 the number will grow.

12 MR. MURRAY: Judge, New Jersey and Massachusetts are
13 being filed Tuesday.

14 THE COURT: All right.

15 MR. BECNEL: We have a number of them from almost every
16 state. Daniel Becnel. Parker Waichman and I have a number of
17 them from most of the states. We just hadn't filed them yet.
18 Waiting to do a direct file order to file them directly here.

19 THE COURT: Okay.

20 MR. BICKFORD: And, it was pointed out to me, Judge,
21 there is a nationwide putative class in this, so at some point
22 every law is going to be in place.

23 THE COURT: I understand. Right. So what we will do
24 then, is, as I said, once the defendants file their motions,
25 whether those are Rule 12 motions, Rule 8 or 9 motions or motions

1 to enforce arbitration, and then the briefing is done on that,
2 I'll schedule it for, probably schedule it for oral argument. I
3 don't know if I need to set a deadline for you all to meet and
4 confer with respect to any discovery that the plaintiffs think
5 they need once those motions are filed. I guess you should do
6 that as soon as feasible right after the motions are filed.

7 MR. BICKFORD: Yes, I would suspect that it might be, it
8 might be prudent if we had a small status conference, even in
9 chambers, to just discuss that scheduling issue or on the phone
10 after the motions are filed so that we could pick a timeline. I
11 don't think it's necessary to have a conclave, as it were, on the
12 issue, but I think that liaison counsel could probably confer on
13 the telephone with the Court and pick a reasonable scheduling
14 time.

15 THE COURT: What I mean is, before you raise any issues
16 with me, I want you all to meet and confer among yourselves and
17 try to agree as much as you can on the scope and need for
18 discovery with respect to those motions.

19 MR URQUHART: I think that what we, what our practice
20 would be, would be upon receiving the motions to give the
21 defendants proposed discovery, to let them comment and confer on
22 it and I'll submit what can't be decided to the Court in terms of
23 its scope and --

24 THE COURT: All I'm saying is, I don't want you to just
25 send something by e-mail. I want you to actually sit down with

1 them and talk about it. I think that makes a big difference
2 sometimes. Have a cup of coffee, meet face to face.

3 MR. RUSSO: We'll do that, Your Honor. We understand
4 your direction.

5 THE COURT: Okay.

6 MR URQUHART: We get the message, Your Honor.

7 THE COURT: Do you want me to send it by MMS?

8 MR URQUHART: Touche.

9 THE COURT: By the way, what's that other Apple device
10 now?

11 MR. BICKFORD: iPad?

12 THE COURT: No, no, not that one even. It's the one
13 that's like this but it's not a phone.

14 MR. BECNEL: The iPod Touch. You can't do MMS on that
15 because it's not a phone. Am I right about that? How does that
16 work? It has every feature but a phone?

17 MR URQUHART: It has Internet connectivity, Judge, but
18 it doesn't necessarily have a phone feature.

19 MR. BICKFORD: You can't talk on it. And you can't
20 text. Texting is linked to the phone communication versus the
21 data communication.

22 THE COURT: What else do we need to talk about here this
23 morning? Does anybody have anything else?

24 MR. BICKFORD: We have no other matters, Judge.

25 MR URQUHART: We have no other matters as well.

1 MR. RUSSO: None here, Your Honor.

2 MR. BECNEL: Just as an abundance of caution, Daniel
3 Becnel. There is another Apple case that is scheduled that I
4 will argue before the MDL panel on the 25th in San Diego. It
5 deals with sales taxes on Internet service on AT&T and so on and
6 so forth. So I don't know whether I filed the suit here; it's in
7 another division. I don't know if they are going to send it here
8 or wherever. There is about 50 suits filed.

9 THE COURT: It doesn't sound like it's related. It
10 sounds like a different case than this case.

11 MR. BECNEL: I understand, but I just wanted to alert
12 you. I don't know what they are going to do with it.

13 THE COURT: I'm not volunteering to take every case
14 against Apple or AT&T that's tried. One is enough.

15 All right. Have a good day, folks. Thank you for
16 coming.

17 (WHEREUPON, at 10:15 p.m. the proceedings were
18 concluded.)

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REPORTER'S CERTIFICATE

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I, Cathy Pepper, Certified Realtime Reporter, Registered Merit Reporter, Registered Professional Reporter, Certified Court Reporter of the State of Louisiana, Official Court Reporter for the United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

s/Cathy Pepper

Cathy Pepper, CRR, RMR, CCR
Official Court Reporter
United States District Court

1	6	agree [1] - 6:1, 7:14, 9:16, 9:19, 10:7, 12:8, 12:10, 14:17, 14:21, 23:17 agreement [1] - 5:14 agreements [1] - 7:25 ahead [1] - 20:3 alert [1] - 25:11 allegation [2] - 17:19, 18:4 allegations [1] - 16:18 allege [1] - 14:18 alleged [3] - 16:24, 17:7, 17:12 alleging [1] - 17:19 almost [1] - 22:15 ALSO [1] - 2:15 amend [8] - 10:23, 12:24, 14:8, 16:20, 17:16, 18:21, 19:11, 20:20 amended [3] - 5:16, 5:20, 11:25 amending [4] - 11:12, 14:4, 18:15, 18:16 amendments [3] - 12:21, 12:22, 19:17 AND [2] - 1:4, 1:5 ANDREW [1] - 2:21 ANELLO [1] - 2:19 ANITA [1] - 3:9 anticipate [1] - 10:3 antiquated [1] - 15:23 anyway [1] - 16:12 app [2] - 15:17, 15:18 APPEARANCES [3] - 1:14, 2:1, 3:1 Apple [1] - 6:14, 6:25, 8:7, 8:19, 11:2, 13:6, 15:14, 17:2, 24:9, 25:3, 25:14 APPLE [1] - 1:4 applicable [1] - 13:12 apply [2] - 14:23, 15:3 approach [2] - 10:9, 12:12 April [7] - 10:24, 11:18, 12:19, 15:11, 19:13, 19:20, 20:14 arbitration [10] - 5:23, 7:16, 7:19, 7:25, 9:4, 9:25, 10:1, 10:7, 12:2, 23:1 argue [1] - 25:4 argument [4] - 8:2, 9:11, 9:12, 23:2 ARMINAK [1] - 3:8 ART [1] - 3:12 Art [1] - 4:16 aside [1] - 12:20	aspect [1] - 8:25 assume [1] - 12:22 AT&T [12] - 7:14, 7:15, 8:7, 8:23, 11:2, 16:25, 17:2, 17:10, 17:17, 18:9, 25:5, 25:14 attach [1] - 6:10 attached [4] - 6:9, 6:25, 7:1, 7:20 ATTM [1] - 14:25 attract [2] - 6:19 available [5] - 6:15, 7:5, 9:1, 9:2, 17:6 AVENUE [1] - 2:10 avoid [1] - 15:9	bore [1] - 15:22 bought [1] - 17:19 bounds [1] - 11:20 breach [1] - 16:24 breath [1] - 11:25 BRIAN [1] - 2:15 BRIEF [1] - 17:9 briefing [3] - 17:10, 19:18, 23:1 briefly [1] - 13:4 briefs [2] - 10:21, 11:11 Bryan [1] - 17:24 bulk [1] - 19:5 burdensome [1] - 11:21 button [1] - 9:18 BY [9] - 1:16, 1:19, 1:22, 2:3, 2:6, 2:9, 2:12, 3:17, 3:18
2	7	B	C	
20 [2] - 21:2, 21:5 20004 [1] - 2:10 2009 [1] - 16:6 2010 [2] - 1:7, 4:2 20th [1] - 21:25 2116 [1] - 1:6 22 [1] - 22:10 23 [2] - 14:19, 22:10 25th [1] - 25:4	8	B406 [1] - 3:15 ban [3] - 7:21, 7:25 BARBIER [1] - 1:11 based [1] - 5:22 basis [1] - 18:8 Becnel [2] - 22:16, 25:3 BECNEL [8] - 1:22, 1:22, 19:22, 22:2, 22:15, 24:14, 25:2, 25:11 BEFORE [1] - 1:11 behalf [4] - 9:7, 13:6, 14:25, 19:19 bellwether [1] - 11:4 best [2] - 20:23, 26:8 better [1] - 21:24 beyond [1] - 11:20 Bickford [5] - 5:9, 15:25, 18:14, 20:3, 20:10 BICKFORD [33] - 1:16, 1:16, 5:10, 5:18, 6:12, 8:4, 8:11, 8:16, 8:21, 8:24, 9:21, 10:2, 10:13, 10:21, 11:18, 12:19, 12:25, 15:17, 16:22, 17:9, 17:14, 17:22, 18:18, 19:19, 19:23, 20:22, 22:5, 22:10, 22:20, 23:7, 24:11, 24:19, 24:24 big [2] - 20:4, 24:1 bill [1] - 17:22 billing [3] - 17:10, 17:15, 17:16 Blackberry [3] - 15:15, 15:16, 16:14 BLOOD [1] - 3:3	20004 [1] - 2:10 2009 [1] - 16:6 2010 [2] - 1:7, 4:2 20th [1] - 21:25 2116 [1] - 1:6 22 [1] - 22:10 23 [2] - 14:19, 22:10 25th [1] - 25:4	C-L-I-M-A-C-O [1] - 4:22 CA [1] - 2:13 calendar [2] - 21:7, 21:8 California [2] - 7:11, 18:3 CALLED [1] - 4:4 CAMBS [1] - 3:6 capability [1] - 17:20 care [1] - 11:13 CARL [1] - 1:11 cart [1] - 11:23 case [19] - 6:14, 6:21, 6:23, 9:22, 9:23, 9:25, 10:22, 11:7, 11:14, 12:3, 12:6, 18:2, 18:24, 19:5, 25:3, 25:10, 25:13 cases [4] - 7:23, 7:24, 12:21 Cathy [2] - 26:3, 26:14 CATHY [1] - 3:15 caution [1] - 25:2 CCR [2] - 3:15, 26:14 cell [1] - 16:10 CENTOLA [1] - 2:18 certainly [1] - 19:12 CERTIFICATE [1] - 26:1 Certified [2] - 26:3, 26:4 certify [1] - 26:7 cetera [3] - 11:9, 11:21, 17:15 chambers [1] - 23:9
3	9			
30 [8] - 8:16, 10:14, 15:3, 18:21, 19:6, 19:21, 20:13, 20:15 338 [1] - 1:17 3G [1] - 1:4 3GS [1] - 1:5	A			
4	A.M [1] - 1:7 ability [1] - 26:8 able [1] - 12:20 above-entitled [1] - 26:9 absolute [2] - 5:14, 14:3 abundance [1] - 25:2 acquiesced [1] - 5:15 acquiescing [1] - 13:22 action [1] - 9:11 actions [5] - 7:21, 7:22, 8:1, 8:16, 22:9 additional [1] - 16:18 additionally [1] - 17:9 adequacy [1] - 7:13 adequate [1] - 17:6 adequately [1] - 17:2 admission [1] - 6:25 advertised [1] - 17:5 advise [1] - 20:9 affect [2] - 9:4, 9:6 affects [1] - 9:9 affirmatively [1] - 17:5	20 [2] - 21:2, 21:5 20004 [1] - 2:10 2009 [1] - 16:6 2010 [2] - 1:7, 4:2 20th [1] - 21:25 2116 [1] - 1:6 22 [1] - 22:10 23 [2] - 14:19, 22:10 25th [1] - 25:4		
5				
50 [1] - 25:8 500 [1] - 3:15 504 [1] - 3:16 589-7779 [1] - 3:16				

<p>change [1] - 18:25 changed [2] - 6:11, 6:12 charge [1] - 17:23 charged [1] - 17:21 charging [1] - 18:9 cherry [1] - 14:22 CIALKOWSKI [1] - 3:3 circumstances [2] - 13:17, 14:15 cited [1] - 7:23 claim [8] - 6:5, 9:9, 9:10, 17:1, 17:4, 17:7, 18:8, 18:11 claims [1] - 7:21 class [9] - 7:21, 7:22, 7:25, 9:8, 9:11, 12:16, 16:5, 22:9, 22:21 clause [1] - 9:4 clearly [1] - 17:16 CLERK [1] - 4:7 clerk [1] - 16:9 clicking [1] - 9:18 clients [3] - 8:8, 8:9, 8:14 clients' [1] - 9:18 Climaco [2] - 4:22, 4:23 CLIMACO [2] - 2:19, 4:22 close [1] - 19:2 coffee [1] - 24:2 collecting [1] - 17:15 comfortable [1] - 16:14 coming [2] - 4:18, 25:16 comment [1] - 23:21 communication [2] - 24:20, 24:21 compatibility [1] - 15:23 compatible [1] - 16:2 complaint [32] - 11:3, 11:4, 11:5, 11:12, 11:25, 13:7, 13:12, 13:15, 13:19, 13:23, 14:5, 14:8, 14:12, 14:20, 15:1, 15:2, 16:20, 17:8, 17:13, 18:2, 18:6, 18:7, 18:16, 18:19, 19:1, 19:8, 19:9, 20:1, 20:16, 21:5 complaints [11] - 5:16, 5:20, 11:15, 14:16, 14:18, 16:19, 18:17, 18:21, 19:7, 19:11, 20:21</p>	<p>compromise [1] - 11:1 COMPUTER [1] - 3:18 conceding [1] - 13:22 conclave [1] - 23:11 concluded [1] - 25:18 concomitant [1] - 10:24 concomitantly [1] - 11:19 confer [7] - 5:25, 12:7, 15:8, 23:4, 23:12, 23:16, 23:21 conference [4] - 20:23, 21:6, 22:7, 23:8 CONFERENCE [1] - 1:10 connectivity [1] - 24:17 consolidate [1] - 11:3 consolidated [1] - 11:3 consumer [2] - 6:14, 7:22 consumers [2] - 9:2, 9:4 contained [2] - 16:19, 18:24 continue [1] - 18:21 CONTINUED [2] - 2:1, 3:1 contract [11] - 6:8, 8:7, 8:8, 8:9, 8:23, 9:1, 9:2, 16:25 contractually [1] - 16:25 convenient [2] - 21:13, 21:23 conversations [1] - 20:14 copy [1] - 14:20 core [1] - 11:10 correct [3] - 5:17, 8:12, 26:7 counsel [1] - 23:12 couple [1] - 10:16 COURT [63] - 1:1, 3:15, 4:4, 4:8, 4:12, 4:15, 4:17, 4:20, 4:23, 5:1, 5:4, 5:6, 5:11, 5:19, 7:23, 8:8, 8:14, 8:18, 8:22, 9:7, 9:24, 10:4, 10:19, 11:16, 11:23, 12:23, 13:1, 13:5, 13:9, 13:20, 14:1, 14:13, 14:18, 15:10, 15:13, 15:18, 16:23, 17:12, 17:18, 18:1, 18:5, 18:11, 18:13, 19:15,</p>	<p>20:4, 20:18, 21:1, 21:14, 21:24, 22:4, 22:6, 22:14, 22:19, 22:23, 23:15, 23:24, 24:5, 24:7, 24:9, 24:12, 24:22, 25:9, 25:13 Court [16] - 9:23, 10:14, 10:24, 11:6, 11:10, 19:4, 19:21, 20:9, 21:13, 23:13, 23:22, 26:4, 26:5, 26:6, 26:15, 26:16 courts [1] - 15:23 criminal [4] - 21:15, 21:16, 22:1 CROWELL [1] - 2:9 CRR [2] - 3:15, 26:14 cup [1] - 24:2 cushion [2] - 21:3</p> <p style="text-align: center;">D</p> <p>DANIEL [3] - 1:22, 1:22, 3:8 Daniel [2] - 22:16, 25:2 data [1] - 24:21 date [2] - 7:5, 21:7 DAVID [2] - 2:21, 3:3 days [8] - 12:5, 19:21, 19:23, 19:24, 20:13, 20:15, 21:2, 21:5 DC [1] - 2:10 deadline [4] - 5:17, 11:16, 14:4, 23:3 deal [4] - 9:3, 11:6, 14:6, 19:4 dealing [4] - 7:7, 7:12, 7:21 deals [1] - 25:5 decide [2] - 12:4, 12:11 decided [1] - 23:22 deep [1] - 11:24 DEFENDANT [1] - 2:3 defendants [8] - 5:21, 18:7, 18:20, 19:24, 20:8, 21:3, 22:24, 23:21 defense [1] - 13:2 DEPUTY [1] - 4:7 designed [2] - 6:19 details [1] - 15:22 device [1] - 24:9 Diego [1] - 25:4 difference [3] - 20:4, 20:6, 24:1 different [7] - 4:9,</p>	<p>16:24, 18:11, 19:6, 19:7, 22:8, 25:10 direct [1] - 22:18 direction [3] - 6:11, 6:13, 24:4 directly [1] - 22:18 disclaimer [2] - 7:3, 7:4 disclaimers [1] - 6:18 disclose [3] - 6:17, 16:12, 17:2 disclosed [1] - 6:17 disclosure [2] - 15:14, 17:6 discover [1] - 6:23 discovering [1] - 9:25 discovery [21] - 5:9, 6:1, 6:4, 6:6, 7:15, 7:16, 7:20, 8:1, 9:14, 10:6, 10:10, 10:24, 11:19, 11:20, 12:7, 12:9, 12:11, 15:9, 23:4, 23:18, 23:21 discuss [1] - 23:9 discussed [1] - 10:18 discussion [1] - 7:2 dismiss [1] - 12:1 Dismiss [1] - 6:9 disparate [1] - 19:8 District [3] - 26:6, 26:16 DISTRICT [3] - 1:1, 1:2, 1:11 division [1] - 25:7 docket [1] - 21:15 documents [1] - 6:7 done [2] - 8:24, 23:1 door [2] - 12:12, 14:22 DOUGLAS [1] - 2:18 down [5] - 10:5, 11:24, 12:6, 20:2, 23:25 due [2] - 9:21, 20:18 DUGAN [1] - 2:16 during [1] - 20:15 duty [1] - 17:2</p> <p style="text-align: center;">E</p> <p>e-mail [2] - 15:24, 23:25 Eastern [1] - 26:6 EASTERN [1] - 1:2 effort [1] - 12:17 Eileen [1] - 21:7 either [4] - 9:17, 12:16, 14:14, 17:13 element [1] - 8:13 encompasses [1] - 13:12</p>	<p>end [2] - 12:18, 20:20 enforce [2] - 5:23, 23:1 ENGELMEYER [1] - 3:10 entire [1] - 7:2 entitled [1] - 26:9 ESQUIRE [32] - 1:16, 1:19, 1:22, 2:3, 2:6, 2:9, 2:12, 2:12, 2:15, 2:16, 2:16, 2:18, 2:18, 2:19, 2:19, 2:21, 2:21, 2:22, 2:22, 3:3, 3:3, 3:4, 3:5, 3:6, 3:6, 3:8, 3:8, 3:9, 3:10, 3:11, 3:11, 3:12 essentially [1] - 14:18 et [3] - 11:9, 11:21, 17:15 exact [1] - 18:3 exactly [2] - 15:7, 18:9 example [7] - 6:4, 6:8, 6:24, 7:6, 8:15, 8:18, 16:23 except [1] - 12:23 exemplar [14] - 10:23, 11:4, 11:25, 12:20, 13:7, 13:15, 13:18, 15:1, 15:2, 18:16, 20:1, 20:16, 20:17, 21:4 exist [1] - 11:11 existing [1] - 11:15 exists [1] - 15:2 expect [1] - 10:17 expeditious [1] - 19:4 extent [1] - 12:9 extrinsic [1] - 7:19</p> <p style="text-align: center;">F</p> <p>face [2] - 24:2 fact [7] - 11:20, 14:2, 14:19, 17:10, 18:18, 18:19, 19:20 factual [1] - 9:16 failed [1] - 17:3 fall [1] - 13:25 far [2] - 16:19, 17:8 fashion [1] - 11:13 feasible [1] - 23:6 feature [3] - 7:9, 24:16, 24:18 federal [2] - 15:20, 15:23 ferret [1] - 19:6 figure [3] - 16:9, 16:12, 19:7</p>
---	---	--	---	---

<p>file ^[36] - 5:16, 5:21, 9:7, 10:4, 10:11, 10:22, 10:23, 11:25, 12:3, 12:5, 12:19, 13:7, 14:2, 14:3, 14:4, 14:5, 14:6, 14:25, 15:2, 15:5, 15:7, 18:15, 18:19, 19:20, 19:23, 19:24, 20:2, 20:8, 20:15, 20:24, 20:25, 21:4, 22:18, 22:24</p> <p>filed ^[17] - 5:11, 8:17, 10:14, 10:16, 10:20, 13:13, 13:15, 16:17, 18:19, 21:5, 22:13, 22:17, 23:5, 23:6, 23:10, 25:6, 25:8</p> <p>filing ^[4] - 13:23, 14:11, 19:17</p> <p>fine ^[1] - 16:20</p> <p>FIRM ^[1] - 1:19</p> <p>first ^[9] - 5:16, 9:7, 9:9, 12:13, 13:8, 13:9, 18:7, 21:1, 21:6</p> <p>flash ^[1] - 7:4</p> <p>focus ^[1] - 10:8</p> <p>folks ^[1] - 25:15</p> <p>follow ^[1] - 9:11</p> <p>following ^[1] - 13:23</p> <p>FOR ^[2] - 1:16, 2:3</p> <p>foregoing ^[1] - 26:7</p> <p>FORESTER ^[1] - 2:11</p> <p>form ^[2] - 13:19, 13:25</p> <p>forth ^[4] - 12:16, 15:7, 19:18, 25:6</p> <p>forward ^[5] - 6:22, 11:5, 11:12, 12:19, 12:25</p> <p>fought ^[1] - 14:11</p> <p>four ^[1] - 7:1</p> <p>FRANCISCO ^[1] - 2:13</p> <p>FRANK ^[1] - 3:11</p> <p>frankly ^[2] - 7:24, 18:6</p> <p>FRIDAY ^[2] - 1:7, 4:2</p> <p>Friday ^[2] - 21:11, 21:19</p> <p>FRITCHIE ^[1] - 2:3</p> <p>full ^[1] - 15:13</p> <p>functionality ^[1] - 17:5</p>	<p>get-go ^[1] - 6:20</p> <p>given ^[3] - 6:24, 11:17, 14:16</p> <p>Goette ^[1] - 18:7</p> <p>great ^[3] - 19:5, 22:2, 22:3</p> <p>group ^[1] - 11:10</p> <p>grow ^[2] - 10:17, 22:11</p> <p>growing ^[2] - 10:15, 12:21</p> <p>guess ^[7] - 5:12, 13:21, 16:10, 16:21, 19:15, 20:22, 23:5</p> <p>GURLEY ^[1] - 2:22</p>	<p>individuals ^[1] - 9:8</p> <p>information ^[2] - 17:15, 17:16</p> <p>initial ^[1] - 14:11</p> <p>instance ^[1] - 8:6</p> <p>intend ^[2] - 13:18, 20:25</p> <p>interest ^[1] - 15:13</p> <p>Internet ^[2] - 24:17, 25:5</p> <p>invited ^[1] - 15:19</p> <p>involved ^[1] - 22:9</p> <p>iPad ^[1] - 24:11</p> <p>iPhone ^[3] - 1:4, 15:14, 17:3</p> <p>iPhone's ^[1] - 17:5</p> <p>iPhones ^[3] - 15:21, 16:2, 17:20</p> <p>iPod ^[1] - 24:14</p> <p>IRWIN ^[1] - 2:3</p> <p>issue ^[15] - 6:20, 6:21, 8:8, 9:16, 10:6, 10:8, 15:5, 15:23, 18:20, 19:12, 19:13, 20:9, 23:9, 23:12</p> <p>issues ^[16] - 7:12, 7:13, 7:17, 10:6, 11:6, 11:8, 11:9, 11:10, 11:14, 12:15, 15:9, 18:23, 18:25, 19:3, 19:5, 23:15</p> <p>item ^[1] - 17:22</p> <p>itself ^[1] - 17:22</p>	<p style="text-align: center;">K</p> <p>KALISH ^[1] - 3:6</p> <p>KATHLEEN ^[1] - 2:9</p> <p>keeps ^[1] - 21:8</p> <p>kind ^[3] - 5:12, 12:6, 16:1</p> <p>KIRK ^[1] - 3:4</p> <p>Kirk ^[1] - 5:5</p> <p>knowing ^[1] - 10:10</p>	<p>26:6</p> <p>LOUISIANA ^[2] - 1:2, 1:6</p>
G	H	J	L	M
<p>G-O-E-T-T-E ^[1] - 18:7</p> <p>GARY ^[1] - 2:6</p> <p>Gary ^[1] - 14:24</p> <p>general ^[1] - 7:8</p> <p>GERMAIN ^[1] - 3:8</p>	<p>half ^[1] - 9:25</p> <p>happy ^[1] - 14:5</p> <p>harm ^[2] - 12:3, 14:2</p> <p>hear ^[1] - 12:5</p> <p>heard ^[3] - 4:23, 13:8, 13:9</p> <p>HEARD ^[1] - 1:11</p> <p>hearing ^[3] - 12:10, 14:11, 18:17</p> <p>HEATHER ^[1] - 2:12</p> <p>hereby ^[1] - 26:7</p> <p>home ^[1] - 7:11</p> <p>honest ^[1] - 16:13</p> <p>Honor ^[27] - 4:11, 4:25, 5:3, 5:5, 5:10, 5:18, 6:13, 6:24, 13:4, 13:11, 14:10, 14:15, 14:21, 14:24, 15:4, 15:12, 16:22, 17:24, 18:8, 18:12, 18:18, 20:13, 21:21, 22:3, 24:3, 24:6, 25:1</p> <p>HONORABLE ^[1] - 1:11</p> <p>Hope ^[1] - 21:8</p> <p>horse ^[1] - 11:24</p>	<p>JAMES ^[1] - 2:16</p> <p>January ^[1] - 5:13</p> <p>JASKOT ^[1] - 3:9</p> <p>JEFFERSON ^[1] - 2:7</p> <p>Jersey ^[1] - 22:12</p> <p>JOHN ^[1] - 2:19</p> <p>join ^[1] - 20:11</p> <p>joined ^[3] - 4:10, 4:14, 4:20</p> <p>JONES ^[1] - 2:6</p> <p>JR ^[1] - 2:3</p> <p>JUDGE ^[1] - 1:11</p> <p>Judge ^[10] - 9:21, 10:13, 11:19, 13:21, 21:10, 21:20, 22:5, 22:20, 24:17, 24:24</p> <p>judge ^[2] - 19:25, 22:12</p> <p>judges ^[2] - 15:21, 16:3</p> <p>judiciary ^[1] - 15:21</p> <p>juncture ^[1] - 13:24</p>	<p>LA ^[6] - 1:17, 1:20, 1:23, 2:4, 2:7, 3:16</p> <p>LAFAYETTE ^[2] - 1:17, 2:7</p> <p>last ^[6] - 5:13, 15:15, 15:19, 17:4, 17:7, 19:16</p> <p>laugh ^[1] - 15:24</p> <p>laughing ^[1] - 16:1</p> <p>law ^[6] - 11:9, 13:16, 14:23, 16:8, 18:25, 22:22</p> <p>LAW ^[3] - 1:16, 1:19, 1:22</p> <p>LAWRENCE ^[1] - 2:18</p> <p>laws ^[1] - 15:3</p> <p>lawsuit ^[1] - 10:23</p> <p>lawsuits ^[1] - 10:23</p> <p>lawyers ^[1] - 21:11</p> <p>least ^[1] - 12:8</p> <p>legal ^[2] - 8:2, 16:24</p> <p>less ^[1] - 5:15</p> <p>letting ^[2] - 12:3, 14:2</p> <p>liaison ^[1] - 23:12</p> <p>light ^[1] - 17:15</p> <p>limited ^[1] - 14:16</p> <p>line ^[1] - 17:22</p> <p>linked ^[1] - 24:20</p> <p>lists ^[1] - 4:9</p> <p>LITIGATION ^[1] - 1:5</p> <p>litigation ^[1] - 6:22</p> <p>look ^[6] - 9:9, 10:5, 12:1, 12:6, 15:25, 20:1</p> <p>looked ^[6] - 6:13, 10:18, 10:19, 10:22, 18:6, 19:1</p> <p>looking ^[3] - 6:5, 8:13, 21:22</p> <p>looks ^[1] - 6:11</p> <p>lose ^[1] - 20:12</p> <p>loss ^[1] - 13:12</p> <p>Lotus ^[2] - 15:24, 15:25</p> <p>Louisiana ^[2] - 26:5,</p>	<p>mail ^[2] - 15:24, 23:25</p> <p>majority ^[1] - 19:2</p> <p>managed ^[1] - 16:9</p> <p>MARCH ^[2] - 1:7, 4:2</p> <p>MARKET ^[1] - 2:13</p> <p>marketed ^[3] - 6:14, 7:8, 17:5</p> <p>MARKETING ^[1] - 1:5</p> <p>marketing ^[4] - 6:16, 6:23, 7:6, 7:12</p> <p>marketplace ^[2] - 9:5, 9:6</p> <p>Massachusetts ^[1] - 22:12</p> <p>master ^[1] - 14:11</p> <p>MATT ^[1] - 3:11</p> <p>Matt ^[4] - 4:13, 4:25, 5:1, 5:2</p> <p>matter ^[1] - 26:10</p> <p>matters ^[3] - 21:16, 24:24, 24:25</p> <p>MDL ^[3] - 1:6, 10:15, 25:4</p> <p>mean ^[4] - 6:3, 12:13, 20:14, 23:15</p> <p>MECHANICAL ^[1] - 3:17</p> <p>meet ^[4] - 5:25, 23:3, 23:16, 24:2</p> <p>mell ^[1] - 12:4</p> <p>member ^[1] - 16:5</p> <p>memoranda ^[2] - 6:10, 16:17</p> <p>memorandum ^[1] - 16:23</p> <p>Merit ^[1] - 26:4</p> <p>message ^[1] - 24:6</p> <p>met ^[2] - 5:12, 15:19</p> <p>MEYER ^[1] - 2:21</p> <p>MICHAEL ^[1] - 2:22</p> <p>microphone ^[1] - 18:1</p> <p>might ^[5] - 10:7, 16:4, 21:12, 23:7, 23:8</p> <p>minutes ^[2] - 7:1, 7:3</p> <p>misrepresentation ^[1] - 17:4</p> <p>MMS ^[14] - 1:5, 6:17, 7:2, 7:4, 16:8, 16:25, 17:1, 17:3, 17:5, 17:11, 17:20, 17:23, 24:7, 24:14</p> <p>moment ^[1] - 18:22</p> <p>money ^[1] - 12:17</p>

<p>month ^[1] - 20:5</p> <p>MOORE ^[2] - 2:3, 2:18</p> <p>MORELAND ^[5] - 3:11, 4:10, 4:13, 4:25, 5:3</p> <p>Moreland ^[3] - 4:13, 4:25, 5:1</p> <p>MORING ^[1] - 2:9</p> <p>morning ^[5] - 4:8, 5:8, 5:10, 16:7, 24:23</p> <p>mornings ^[1] - 21:17</p> <p>MORRISON ^[1] - 2:11</p> <p>MOSER ^[1] - 2:12</p> <p>most ^[1] - 22:17</p> <p>Motion ^[1] - 6:9</p> <p>motion ^[5] - 5:22, 6:4, 10:5, 12:5, 22:1</p> <p>motions ^[26] - 5:22, 5:23, 5:24, 6:2, 10:18, 10:19, 10:21, 11:21, 12:1, 12:2, 12:3, 12:8, 12:14, 19:8, 19:17, 19:23, 22:24, 22:25, 23:5, 23:6, 23:10, 23:18, 23:20</p> <p>move ^[1] - 19:24</p> <p>MR ^[72] - 4:10, 4:13, 4:22, 4:25, 5:3, 5:5, 5:10, 5:18, 6:12, 8:4, 8:11, 8:16, 8:21, 8:24, 9:21, 10:2, 10:13, 10:21, 11:18, 12:19, 12:25, 13:4, 13:6, 13:11, 13:21, 14:10, 14:15, 14:21, 14:24, 15:11, 15:17, 16:22, 17:9, 17:14, 17:22, 17:24, 18:2, 18:8, 18:12, 18:18, 19:19, 19:22, 19:23, 19:25, 20:12, 20:13, 20:22, 21:10, 21:20, 21:21, 21:22, 22:2, 22:3, 22:5, 22:10, 22:12, 22:15, 22:20, 23:7, 23:19, 24:3, 24:6, 24:8, 24:11, 24:14, 24:17, 24:19, 24:24, 24:25, 25:1, 25:2, 25:11</p> <p>MURRAY ^[3] - 1:19, 1:19, 22:12</p>	<p>narrowly ^[1] - 10:8</p> <p>nationwide ^[1] - 22:21</p> <p>nature ^[1] - 8:12</p> <p>necessarily ^[1] - 24:18</p> <p>necessary ^[1] - 23:11</p> <p>need ^[14] - 6:1, 6:3, 6:6, 8:1, 9:13, 10:6, 11:24, 12:7, 16:20, 21:8, 23:3, 23:5, 23:17, 24:22</p> <p>needing ^[1] - 20:20</p> <p>never ^[1] - 16:7</p> <p>NEW ^[5] - 1:6, 1:17, 1:20, 2:4, 3:16</p> <p>New ^[1] - 22:12</p> <p>next ^[5] - 4:23, 5:21, 20:23, 21:6, 22:7</p> <p>NO ^[1] - 1:6</p> <p>none ^[1] - 25:1</p> <p>Notes ^[2] - 15:24, 15:25</p> <p>noticed ^[1] - 10:15</p> <p>notion ^[1] - 5:15</p> <p>number ^[10] - 7:23, 7:24, 10:15, 10:17, 12:13, 12:21, 14:16, 22:11, 22:15, 22:16</p> <p>numbered ^[1] - 26:9</p> <p>NW ^[1] - 2:10</p>	<p>11:22, 14:7</p> <p>oral ^[1] - 23:2</p> <p>ORDER ^[1] - 4:4</p> <p>order ^[1] - 22:18</p> <p>ordinarily ^[1] - 6:3</p> <p>original ^[1] - 14:20</p> <p>originally ^[1] - 15:7</p> <p>ORLEANS ^[5] - 1:6, 1:17, 1:20, 2:4, 3:16</p> <p>otherwise ^[1] - 19:15</p> <p>ought ^[2] - 6:22, 20:8</p> <p>own ^[1] - 16:10</p>	<p>pilot ^[1] - 15:20</p> <p>PISCITELLI ^[1] - 3:11</p> <p>place ^[2] - 19:16, 22:22</p> <p>PLAINTIFF ^[1] - 1:16</p> <p>plaintiff ^[1] - 19:20</p> <p>plaintiff's ^[2] - 15:17, 15:18</p> <p>plaintiffs ^[10] - 5:14, 5:15, 13:13, 14:11, 16:18, 16:24, 17:25, 20:9, 20:20, 23:4</p> <p>plaintiffs' ^[2] - 21:4, 22:4</p> <p>play ^[3] - 6:7, 7:18, 7:19</p> <p>pleadings ^[1] - 5:22</p> <p>pleas ^[1] - 6:5</p> <p>point ^[7] - 5:25, 11:20, 13:17, 13:21, 14:23, 15:6, 22:21</p> <p>pointed ^[3] - 14:19, 16:16, 22:20</p> <p>position ^[3] - 11:1, 11:2, 14:12</p> <p>POYDRAS ^[3] - 1:20, 2:4, 3:15</p> <p>practical ^[1] - 12:13</p> <p>practice ^[2] - 9:3, 23:19</p> <p>PRACTICES ^[1] - 1:5</p> <p>practices ^[3] - 6:16, 6:23, 7:7</p> <p>prefer ^[3] - 13:16, 18:15, 21:18</p> <p>preference ^[1] - 21:10</p> <p>PREOVOLOS ^[1] - 2:12</p> <p>prepared ^[2] - 10:14, 10:17</p> <p>preparing ^[1] - 10:22</p> <p>present ^[1] - 22:9</p> <p>PRESENT ^[2] - 2:15, 3:3</p> <p>presented ^[1] - 13:18</p> <p>previously ^[1] - 11:17</p> <p>Prima ^[1] - 9:22</p> <p>primarily ^[1] - 5:8</p> <p>problem ^[7] - 13:1, 13:3, 13:10, 13:11, 13:14, 20:19</p> <p>procedural ^[4] - 8:5, 8:11, 8:12, 8:25</p> <p>procedure ^[3] - 13:24, 15:6, 18:20</p> <p>proceedings ^[2] - 25:17, 26:9</p> <p>PROCEEDINGS ^[2] - 3:17, 4:1</p> <p>process ^[1] - 15:1</p>	<p>PRODUCED ^[1] - 3:18</p> <p>product ^[1] - 6:15</p> <p>products ^[1] - 6:14</p> <p>Professional ^[1] - 26:4</p> <p>program ^[1] - 15:20</p> <p>promptly ^[1] - 20:2</p> <p>proposal ^[2] - 13:7, 13:17</p> <p>proposed ^[2] - 21:4, 23:21</p> <p>proposing ^[3] - 10:13, 18:15, 19:10</p> <p>provide ^[2] - 16:25, 17:1</p> <p>provided ^[1] - 17:3</p> <p>providing ^[1] - 18:10</p> <p>prudent ^[1] - 23:8</p> <p>public ^[1] - 7:8</p> <p>purchase ^[1] - 17:7</p> <p>purpose ^[1] - 10:1</p> <p>purposely ^[1] - 6:18</p> <p>put ^[4] - 7:18, 19:16, 20:18</p> <p>putative ^[1] - 22:21</p> <p>putting ^[1] - 11:23</p>
		P		Q
		<p>p.m ^[1] - 25:17</p> <p>Paint ^[1] - 9:22</p> <p>panel ^[1] - 25:4</p> <p>papers ^[4] - 15:6, 15:8, 20:15, 20:24</p> <p>Parker ^[1] - 22:16</p> <p>part ^[1] - 16:21</p> <p>participant ^[1] - 15:20</p> <p>particularly ^[1] - 7:20</p> <p>parties ^[1] - 12:16</p> <p>PATRICK ^[1] - 3:5</p> <p>pell ^[1] - 12:4</p> <p>pell-mell ^[1] - 12:4</p> <p>PENELOPE ^[1] - 2:12</p> <p>PENNSYLVANIA ^[1] - 2:10</p> <p>PENTON ^[1] - 2:16</p> <p>people ^[8] - 6:19, 6:20, 8:6, 8:24, 9:10, 9:15, 15:24, 17:19</p> <p>Pepper ^[3] - 26:3, 26:13, 26:14</p> <p>PEPPER ^[1] - 3:15</p> <p>percent ^[5] - 11:6, 11:14, 18:23, 19:3</p> <p>perfect ^[1] - 6:24</p> <p>perfectly ^[1] - 15:4</p> <p>period ^[1] - 20:15</p> <p>person ^[1] - 4:24</p> <p>pertaining ^[2] - 6:2, 10:7</p> <p>PETER ^[1] - 3:6</p> <p>petitions ^[2] - 19:6, 19:7</p> <p>phone ^[14] - 4:8, 4:19, 4:21, 7:9, 7:10, 16:10, 20:11, 23:9, 24:13, 24:15, 24:16, 24:18, 24:20</p> <p>Photo ^[1] - 16:8</p> <p>pick ^[2] - 23:10, 23:13</p> <p>picking ^[1] - 14:22</p> <p>picture ^[2] - 16:8, 16:10</p>		<p>QUENTIN ^[1] - 2:3</p> <p>Quentin ^[1] - 13:6</p> <p>quote ^[1] - 13:7</p>
	O			R
	<p>O'QUINN ^[1] - 2:21</p> <p>object ^[1] - 11:22</p> <p>objection ^[1] - 20:16</p> <p>objections ^[1] - 21:4</p> <p>obligated ^[1] - 16:25</p> <p>obviously ^[3] - 12:6, 16:4, 18:13</p> <p>OF ^[3] - 1:2, 1:10, 1:16</p> <p>offered ^[1] - 15:7</p> <p>OFFICES ^[2] - 1:16, 1:22</p> <p>Official ^[2] - 26:5, 26:15</p> <p>OFFICIAL ^[1] - 3:15</p> <p>once ^[3] - 6:10, 22:24, 23:5</p> <p>one ^[13] - 7:6, 10:23, 11:12, 12:24, 13:15, 14:12, 14:22, 16:13, 16:16, 17:4, 24:12, 25:14</p> <p>ones ^[1] - 18:6</p> <p>online ^[1] - 8:22</p> <p>open ^[2] - 10:10, 14:22</p> <p>opening ^[1] - 12:12</p> <p>opportunity ^[3] - 6:22,</p>			<p>raise ^[2] - 11:5, 23:15</p> <p>raised ^[2] - 7:17</p> <p>rather ^[3] - 18:15, 18:16, 19:5</p> <p>RE ^[1] - 1:4</p> <p>read ^[4] - 5:11, 6:10, 11:11, 18:5</p> <p>real ^[1] - 12:13</p> <p>Realtime ^[1] - 26:3</p> <p>reasonable ^[3] - 10:9, 15:4, 23:13</p> <p>reasons ^[1] - 12:13</p> <p>receiving ^[1] - 23:20</p> <p>recently ^[1] - 10:16</p> <p>record ^[1] - 26:9</p> <p>RECORDED ^[1] - 3:17</p> <p>regard ^[4] - 7:15, 7:16, 8:12, 11:21</p> <p>regardless ^[1] - 14:25</p> <p>Registered ^[2] - 26:3, 26:4</p> <p>related ^[2] - 12:8, 25:9</p> <p>relatively ^[1] - 14:16</p>
N				
<p>name ^[2] - 5:1, 5:6</p> <p>named ^[1] - 13:13</p> <p>narrow ^[2] - 12:15</p>				

<p>relevant [1] - 6:9 Reporter [6] - 26:3, 26:4, 26:5, 26:15 REPORTER [1] - 3:15 REPORTER'S [1] - 26:1 represent [5] - 8:14, 8:15, 8:19, 8:24, 9:10 representatives [1] - 9:8 RESERVE [1] - 1:23 resolved [2] - 11:15, 19:3 respect [5] - 9:21, 20:10, 20:16, 23:4, 23:18 respond [1] - 13:4 responses [1] - 19:18 rest [1] - 12:21 revisit [2] - 19:12, 19:13 rise [1] - 4:7 RMR [2] - 3:15, 26:14 road [1] - 18:21 roll [1] - 4:21 RONNIE [1] - 2:16 ROOM [1] - 3:15 rule [1] - 19:8 Rule [8] - 5:23, 5:24, 6:4, 12:1, 12:2, 22:25 Russo [1] - 14:24 RUSSO [8] - 2:6, 14:24, 20:13, 21:10, 21:20, 21:22, 24:3, 25:1</p>	<p>1:16, 3:6 screen [1] - 7:4 second [2] - 17:1, 21:23 seconds [1] - 7:3 see [12] - 6:1, 7:3, 9:13, 12:2, 13:1, 13:9, 13:15, 14:2, 15:8, 15:11, 16:14, 16:15 seek [2] - 7:21 select [1] - 13:16 selling [1] - 7:10 seminal [1] - 9:22 send [4] - 16:7, 23:25, 24:7, 25:7 sense [1] - 12:18 sent [1] - 16:9 separate [1] - 15:3 September [1] - 16:5 serve [1] - 11:19 service [3] - 17:20, 18:9, 25:5 services [2] - 17:6, 17:11 set [4] - 12:20, 15:7, 22:6, 23:3 shortly [1] - 20:24 side [6] - 5:11, 7:14, 12:3, 12:16, 14:13, 22:4 sign [1] - 9:16 signal [1] - 20:12 signature [1] - 9:18 signed [1] - 5:7 sit [5] - 10:5, 12:6, 15:8, 20:2, 23:25 six [1] - 20:5 sixty [2] - 19:22, 19:23 slow [1] - 11:24 small [1] - 23:8 Smartphone [1] - 7:8 software [1] - 15:24 someone [3] - 4:10, 4:14, 20:11 sometime [1] - 20:24 sometimes [2] - 6:7, 24:2 somewhere [1] - 20:18 soon [1] - 23:6 SOOY [1] - 2:9 sort [1] - 12:23 sound [1] - 25:9 sounds [2] - 13:2, 25:10 SPEAKER [2] - 4:16, 4:18 specifically [1] - 17:14</p>	<p>specificity [1] - 16:22 spell [1] - 4:17 spend [1] - 9:24 spending [1] - 12:17 standpoint [1] - 8:12 start [2] - 6:21, 21:16 started [1] - 17:15 state [3] - 15:3, 18:25, 22:16 State [1] - 26:5 state's [1] - 14:23 states [3] - 11:9, 22:9, 22:17 STATES [2] - 1:1, 1:11 States [2] - 26:6, 26:16 status [2] - 22:7, 23:8 STATUS [1] - 1:10 stay [1] - 19:25 STENOGRAPHY [1] - 3:17 step [1] - 5:21 STEPHEN [2] - 1:19, 2:22 stepping [1] - 7:14 stick [2] - 19:16, 20:7 still [7] - 11:23, 14:7, 15:3, 15:15, 16:13, 20:19, 20:21 store [2] - 8:20, 8:23 Strange [1] - 17:24 STRANGE [6] - 2:15, 17:24, 18:2, 18:8, 18:12, 19:25 STREET [7] - 1:17, 1:20, 1:23, 2:4, 2:7, 2:13, 3:15 strictly [1] - 6:4 Striker [1] - 18:2 stuck [1] - 16:2 stuff [1] - 21:9 submit [1] - 23:22 substantially [1] - 12:15 substantive [4] - 8:5, 9:3, 11:9, 18:25 suggested [1] - 20:10 suggesting [1] - 21:18 suggestion [2] - 15:5, 19:25 suing [1] - 6:8 suit [6] - 9:7, 10:23, 10:25, 12:20, 13:13, 25:6 SUITE [2] - 1:20, 2:7 suits [4] - 10:14, 10:16, 12:22, 25:8 Supreme [1] - 9:23 suspect [4] - 9:17,</p>	<p>12:9, 22:10, 23:7 SWEDLOW [1] - 2:22</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>TAMAR [1] - 3:8 taxes [1] - 25:5 tee [1] - 11:13 telephone [1] - 23:13 TELEPHONE [1] - 3:3 terms [2] - 19:17, 23:22 test [1] - 8:4 text [1] - 24:20 Texting [1] - 17:23 texting [2] - 7:2, 24:20 THE [67] - 1:11, 1:16, 1:19, 2:3, 4:7, 4:8, 4:12, 4:15, 4:16, 4:17, 4:18, 4:20, 4:23, 5:1, 5:4, 5:6, 5:11, 5:19, 7:23, 8:8, 8:14, 8:18, 8:22, 9:7, 9:24, 10:4, 10:19, 11:16, 11:23, 12:23, 13:1, 13:5, 13:9, 13:20, 14:1, 14:13, 14:18, 15:10, 15:13, 15:18, 16:23, 17:12, 17:18, 18:1, 18:5, 18:11, 18:13, 19:15, 20:4, 20:18, 21:1, 21:14, 21:24, 22:4, 22:6, 22:14, 22:19, 22:23, 23:15, 23:24, 24:5, 24:7, 24:9, 24:12, 24:22, 25:9, 25:13 theories [1] - 16:24 theory [1] - 17:1 they've [1] - 14:3 thirds [1] - 21:15 three [1] - 16:24 Thursday [6] - 21:12, 21:14, 21:17, 21:19, 21:23, 22:6 Thursdays [1] - 21:16 TIM [1] - 3:10 timeline [1] - 23:10 timing [2] - 5:9, 20:23 TIMOTHY [1] - 3:3 TO [1] - 4:4 today [1] - 10:13 took [5] - 4:21, 11:2, 14:12, 16:8, 21:15 total [1] - 12:18 totally [1] - 10:10 Touch [1] - 24:14 Touche [1] - 24:8</p>	<p>transcript [1] - 26:8 TRANSCRIPT [2] - 1:10, 3:17 transferred [1] - 18:3 traveling [1] - 21:11 tried [2] - 16:7, 25:14 true [1] - 26:7 try [2] - 7:25, 23:17 Tuesday [1] - 22:13 two [3] - 4:9, 13:20, 21:15 two-thirds [1] - 21:15 type [1] - 13:23</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>unconscionability [2] - 8:5, 8:6 unconscionable [2] - 7:25, 9:5 under [3] - 13:15, 13:16, 14:15 United [2] - 26:6, 26:16 UNITED [2] - 1:1, 1:11 universe [1] - 19:2 unless [1] - 9:15 unpurposely [1] - 6:19 unquote [1] - 13:7 up [5] - 10:10, 11:13, 12:12, 18:1, 20:20 Urquhart [1] - 13:6 URQUHART [18] - 2:3, 2:3, 13:4, 13:6, 13:11, 13:21, 14:10, 14:15, 14:21, 15:11, 20:12, 21:21, 22:3, 23:19, 24:6, 24:8, 24:17, 24:25 users [1] - 17:3</p>
S				
<p>S-A-D-I-N [1] - 4:18 s/Cathy [1] - 26:13 SADIN [1] - 3:12 Sadin [1] - 4:16 sales [1] - 25:5 SALES [1] - 1:5 SAN [1] - 2:13 San [1] - 25:4 saw [1] - 14:17 schedule [6] - 19:16, 20:1, 20:7, 21:10, 23:2 scheduled [1] - 25:3 schedules [1] - 21:22 scheduling [2] - 23:9, 23:13 scope [5] - 5:9, 6:1, 12:15, 23:17, 23:23 SCOTT [3] - 1:16,</p>				<p style="text-align: center;">V</p> <hr/> <p>variety [1] - 8:25 vast [1] - 19:2 verbatim [1] - 14:20 versus [1] - 24:20 VIA [1] - 3:3 videotape [3] - 6:25, 7:1 VIRGINIA [1] - 2:19 virtually [1] - 7:9 visit [1] - 18:22 volunteering [1] - 25:13</p>

W**Waichman** ^[1] - 22:16**wait** ^[4] - 9:7, 10:4,
15:11, 19:13**waiting** ^[1] - 22:18**WALKER** ^[1] - 2:6**WARNER** ^[1] - 3:5**WASHINGTON** ^[1] -
2:10**waste** ^[1] - 12:18**watch** ^[1] - 7:3**ways** ^[1] - 9:19**week** ^[3] - 21:1, 21:6,
21:23**weeks** ^[2] - 13:20,
20:5**WEST** ^[1] - 1:23**WHEREUPON** ^[1] -
25:17**whole** ^[2] - 9:4, 9:5**willing** ^[1] - 19:13**WOOD** ^[2] - 3:4, 5:5**Wood** ^[1] - 5:5**words** ^[1] - 17:18**worth** ^[1] - 16:11**Y****year** ^[2] - 9:24**yesterday** ^[1] - 21:15**yourselves** ^[1] - 23:16