

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF: )  
 )  
KEN'S FOODS, INC., ) OTA NO. 20076391  
 )  
 )  
 APPELLANT. )  
 )  
 )  
\_\_\_\_\_ )

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Tuesday, August 20, 2024

Reported by:

Aaron Ellington  
CSR# 13449

Job No.:  
50130 OTA(PM)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES :

Panel Lead: ALJ ASAF KLETTER

Panel Members: ALJ JOHN JOHNSON  
ALJ TOMMY LEUNG

For the Appellant: DELOITTE TAX LLP  
KATHY FREEMAN  
BENJAMIN ELLIOTT  
JESSICA BAKER

For the Respondent: FRANCHISE TAX BOARD  
RYAN IVANUSICH  
KATIE FRANK  
DELINDA TAMAGNI

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

E X H I B I T S

(Appellant's Exhibits were received into evidence via Judge Kletter's minutes and orders)

(Respondent's Exhibits were received into evidence via Judge Kletter's minutes and orders)

O P E N I N G   S T A T E M E N T

(No opening statements were given)

APPELLANT'S WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
M. Johnson		7		

P R E S E N T A T I O N

	PAGE
By Ms. Freeman	7
By Mr. Ivanusich	57

C L O S I N G   S T A T E M E N T

	PAGE
By Ms. Freeman	78

1 Sacramento, California; Tuesday, August 20, 2024

2 1:04 p.m.

3 JUDGE KLETTER: Let's go ahead and go on the record.  
4 This is the appeal of Ken's Foods, OTA Case Number 20076391.  
5 Today is Tuesday, August 20th, 2024, time is 104 p.m. my name  
6 is Asaf Kletter. With me are Administrative Law Judges, Judge  
7 John Johnson, and Tommy Leung. While I'm the administrative  
8 law judge conducting this hearing, all three judges are  
9 coequal decision makers.

10 Also present is our stenographer Aaron Ellington who is  
11 reporting this hearing verbatim. To ensure we have an  
12 accurate record, we ask that everyone speak one at a time and  
13 do not speak over each other. Please speak clearly and  
14 loudly, and when needed Mr. Ellington will stop the hearing  
15 process and ask for clarification, for you to slow down.  
16 After the hearing Mr. Ellington will produce the official  
17 hearing transcript, which will be available on the Office of  
18 Tax Appeals website. The hearing transcript and video  
19 recording are public record.

20 Now I'd like for the parties to please go in turn and  
21 each identify yourself by stating your name for the record,  
22 beginning with appellant.

23 MS. FREEMAN: I'm Kathy Freeman with Deloitte on  
24 behalf of the Appellant.

25 MR. ELLIOTT: Benjamin Elliott with Deloitte on

1 behalf of the Appellant.

2 MS. BACKER: Jessica Backer with Deloitte on behalf  
3 of Appellant.

4 MS. JOHNSON: Marie Johnson, Ken's Foods.

5 JUDGE KLETTER: Thank you. And for Franchise Tax  
6 Board?

7 MR. IVANUSICH: Ryan Ivanusich for FTB.

8 MS. FRANK: Katie Frank for FTB.

9 MS. TAMAGNI: Delinda Tamagni, FTB.

10 JUDGE KLETTER: Thank you so much, and the issue for  
11 today is whether Appellant has established error in FTB's  
12 determination that Appellant's California activities exceeded  
13 the scope of Public Law 86-272 protection. With respect to  
14 the evidentiary record, Franchise Tax Board has provided  
15 Exhibits A through AD. Appellant did not object to the  
16 admissibility of these exhibits, and therefore these exhibits  
17 are admitted into the record.

18 (Respondent's Exhibits A through AD  
19 were marked for identification.)

20 (Respondent's Exhibits A through AD  
21 were admitted.)

22 Appellant has provided Exhibits 1 through 23. FTB did  
23 not object to the admissibility of these exhibits, therefore  
24 these exhibits are entered into the record.

25 (Appellant's Exhibits 1 through 23

1           were marked for identification.)  
2           (Appellant's Exhibits 1 through 23  
3           were admitted.)

4           And as a reminder for today, we have 90 minutes for  
5 Appellant's presentation, inclusive of testimony, and you can  
6 organize it as you wish. Just let us know when you would like  
7 to begin the testimony so that I can swear in the witness, and  
8 for Franchise Tax Board, they will also have 15 minutes, and  
9 when you -- at any point when you would like, or if you would  
10 like to question the witness, we'll just -- just let me know  
11 so that we can prepare that, and I did want to ask Appellant,  
12 and specifically Ms. Johnson, do you have any time limitations  
13 today, or are you available for the entire session?

14           MS. JOHNSON: No. We're available.

15           JUDGE KLETTER: Okay. Thank you. And, you know, to  
16 the extent possible, it would be good to question Ms. Johnson  
17 further on, so she can answer before her presentation just for  
18 time's sake, and then finally, we'll have 15 minutes for  
19 Appellant to provide a closing statement and any rebuttal, so  
20 with that, Ms. Freeman, are you ready for the presentation?

21           MS. FREEMAN: Yes, I am, but we'd like to swear in  
22 the witness now, because we anticipate her providing  
23 clarification throughout our presentation and being available  
24 to answer any questions as we go if necessary, so I think now  
25 would be a good time.

1 JUDGE KLETTER: Okay. So I'll go ahead and swear in  
2 the witness. Ms. Johnson, can you please raise your right  
3 hand, and I will swear you in? That will allow the Office of  
4 Tax Appeals to accept your statements as evidence.

5 Do you solemnly swear or affirm to tell the truth, the  
6 whole truth, and nothing but the truth?

7 MS. JOHNSON: I do.

8 THE COURT: Thank you. Ms. Freeman, you can begin  
9 when you're ready.

10 PRESENTATION

11 MS. FREEMAN: Good afternoon. We appreciate your  
12 time today to facilitate the resolution of this appeal. The  
13 factors at issue are tax years 5-1-2011 through 4-30-2012, so  
14 the tax years are ending 4-30-2012 and 4-30-2013 are the tax  
15 years at issue.

16 Marie Johnson here on behalf of the Appellant, and she  
17 has been the VP of Finance and Treasure and worked for Ken's  
18 Foods for over 25 years. The issue in this appeal is whether  
19 Appellant has immunity from the California franchise tax based  
20 on Public Law 86-272 for these tax years, and the California  
21 franchise tax is a tax based on income, hence public law would  
22 apply if they're immune from Public Law 86-272.

23 Respondent has performed a detailed audit of Appellant's  
24 books and records, conducted multiple employee interviews,  
25 issued follow-up IDR information requests where it sought

1 further inquiry, and upon completion of the audit Respondent  
2 identified specific activities in California that it claims  
3 exceeded the protections of Public Law 86-272. All the other  
4 activities are assumed to have been approved within the scope.

5 Taxpayer has replied to the audit determination letter  
6 attempting to clarify the record and the facts that were  
7 inaccurate or misconstrued to no avail. Taxpayer protested  
8 the audit determination, again attempted to clarify the  
9 record. Respondent proposed a firm -- to which Appellant  
10 attempted to further clarify the record, and again, we've  
11 attempted multiple times to clarify the facts and records in  
12 this case, and here now again are here to clarify the facts  
13 and records in this case.

14 Taxpayer has timely filed its franchise tax returns as an  
15 S corporation. FTB has not asserted any accuracy to the  
16 penalties, has not asserted any penalties for failure to  
17 furnish information, so we're going forward on the record as  
18 it sits today.

19 We believe Appellant's activities within California fall  
20 clearly within the purview of 86272. We believe these  
21 activities implicitly or explicitly facilitate solicitation of  
22 sales, or are ancillary to solicitation of sales or de  
23 minimis.

24 We would add, consistent with Respondent's assertions  
25 that whatever you determine today could actually impact the



1 tax calculations, so there could be some ancillary issues on  
2 how the tax calculations work, but we're not going to address  
3 those here. We just need to put on the record that Respondent  
4 has also made those assertions in their briefing.

5 Appellant is a privately-held, family-owned food  
6 manufacturing company headquartered in Marlborough,  
7 Massachusetts, and additional manufacturing facilities in  
8 Georgia and Nevada. They sell TPP. Basically, they sell  
9 sauces, marinades, and dressings. It's a very simple  
10 portfolio.

11 Appellant is the number one food service dressing and  
12 sauce brand in the country, so they are well known. They've  
13 been around for a long time. Appellant does not have any  
14 facilities, including manufacturing, commercial kitchens or  
15 R&D facilities in California, no warehouses in California,  
16 doesn't own any real or TPP in this state, except for a  
17 nominal amount of lease audits used by the sales people. FTB  
18 has not disputed that fact.

19 Appellant did carry samples into the state, which is a  
20 protected activity, and these were used to prepare food  
21 tastings or hand out to prospective customers, and that is a  
22 protected activity.

23 Appellant only has a commercial kitchen in Marlborough,  
24 Massachusetts, which is where all R&D is conducted. It is  
25 important to know that in order -- in their business, in order

1 to do R&D they need a commercial kitchen, and the only  
2 location they have a commercial kitchen is in Marlborough,  
3 which is outside California.

4 We would point out, as I've pointed out earlier, that it  
5 was clear that the Respondent did not fully understand  
6 Appellant's business operations, or the business of its  
7 brokers, which is why we've repeatedly attempted to clarify  
8 the activities, so that's why we're here now is to clarify the  
9 misconceptions, misstatements, and inaccuracies in the  
10 Appellant's position supporting their notices.

11 Again, Ken's Food is world renowned. It's been around.  
12 Originally there was one Ken's Steakhouse was formed in 1941,  
13 and it was in 1948 that they actually licensed their formulas  
14 and started Ken's Foods there in Marlborough, Massachusetts.

15 Included in their salad dressings was Sweet Baby Ray's,  
16 which was an acquisition back in 2005, and basically Sweet  
17 Baby Ray's is a significant part now of their product  
18 portfolio and sold throughout the U.S.

19 Appellant has two primary business lines. The first line  
20 is wholesale sales of TPP to retailers primarily using an  
21 electronic data interchange to place orders, and in rare  
22 instances Appellant's brokers would take the orders where  
23 there was perhaps a small business and they didn't have access  
24 to an EDI system.

25 Retail customers that they sold their products to

1 include, but are not limited to grocery stores, convenience  
2 stores, membership warehouse clubs, and other online  
3 retailers.

4 And Acosta was their primary broker throughout the U.S.  
5 during these years. The brokers were paid on a commission  
6 basis as a percentage of product sales, and applicable  
7 percentage can be varied based on the product, but basically  
8 their payments are made based on the volume sold. All sales  
9 orders that are placed by the customer directly or Acosta are  
10 sent to Marlborough, Massachusetts for approval, and then  
11 shipped to California from outside of California. All product  
12 pricing was established in Marlborough, Massachusetts.

13 The second line of business was sales of TPP to  
14 commercial food service establishments with the sales being  
15 placed by these establishments to a third party broker. The  
16 sales staff making the sales presentation, once they concluded  
17 and agreed to place a sale, would then direct them to place  
18 the order through the distributor, and such distributors would  
19 include US Foods, Sysco, that's, S-Y-S-C-O. Commercial food  
20 service customers include restaurant chains, independent  
21 restaurants, schools, hotels, etc., but basically it's where  
22 you were gonna prepare the food and then serve it to the  
23 customer.

24 So the distributor would receive orders from the food  
25 service establishment and then place an order themselves for

1 what the customer was looking for with Ken's Foods. Ken's  
2 Foods would then sell it to the distributor, and the  
3 distributor would resell the same product to the food service  
4 business, basically making a profit on the margin between what  
5 they paid for it and what they sold it to the food service  
6 establishment.

7 All orders, again, are placed ultimately through  
8 Marlborough, Appellant's offices outside the state and shipped  
9 from outside the state, and all product pricing is established  
10 by Appellant in Massachusetts.

11 When customers placed orders through brokers and  
12 distributors used in the sales solicitation process, these  
13 brokers are not exclusive to Appellant. Appellant has no  
14 exclusive brokers, dealers or otherwise, and the broker Acosta  
15 actually serviced pretty much everybody in the U.S. They are  
16 in every retail store, retail establishment, and they are not  
17 exclusive to Appellant.

18 Basically offering the products of all the food  
19 manufacturers to the retail store, so they're given them  
20 access to product, and then providing in-store services for  
21 the retail. You know, setting up shelving, moving shelving,  
22 stocking, un-stocking, and other activities in the store  
23 depending on what the retail store chose to pay for for  
24 Acosta, because they have a wide degree of available services  
25 that are available.

1           For the Appellant, all we did was pay them to sell our  
2 product on a commission basis based on volume. There were  
3 deductions potentially from those invoices for various returns  
4 etc., but basically we paid them on the net sales totals that  
5 they accomplished on behalf of Appellant.

6           Appellant does not provide any training related to its  
7 products, and nor is such training necessary. We're talking  
8 about bottles of salad dressing. We don't need to explain to  
9 somebody how to open a bottle. There's instructions on the  
10 bottle. Everybody's opened a bottle.

11           With respect to the sauces provided to the food service  
12 businesses, we're dealing with culinary experts, chefs,  
13 professionally trained. They know how to make sauces. They  
14 know how to use sauces, there's no training required. All  
15 that really is an option is that the food services businesses  
16 have their own menus, they have their own products, and at  
17 best we show them, of a particular sauce offered by Ken's  
18 Food, basically the ability and the versatility of a sauce,  
19 and different ways they can use the same sauce if they want,  
20 but that -- that demonstration on the versatility of a  
21 particular product is just to make a sale on a specific  
22 customer. We don't have group meetings with customers. Every  
23 sale is customer specific at their location.

24           The final point in general that I'd like to make is that  
25 the Appellant's sales teams, whether they're retail or food

1 service, because again, one sells to the store, one sells to  
2 the businesses that are making, preparing food for the  
3 customers, is that they do make and take every available  
4 opportunity to meet with customers either as a team or  
5 individually, and every meeting with a customer is a  
6 opportunity to make a sale regardless of the circumstances.

7 So during these tax years there were, over that two-year  
8 period, there was a total of seven sales employees that were  
9 at issue. So you have the retail regional managers, retail,  
10 again, is the stores, that were involved in the whole west  
11 coast, west region. There was two individuals assigned to  
12 California, not exclusive, so they were servicing other states  
13 as well that were handling the entire State of California.

14 You gotta -- And when you look at retail establishments,  
15 you know, there's tens, if not hundreds of thousands of retail  
16 establishments in California, so two people, it was impossible  
17 for two people to handle meeting with every single retail  
18 customer in the state.

19 That's why the retail regional managers work with Acosta,  
20 an independent contractor, to have them go into the stores,  
21 make appointments, meet with the customers, and take sales.  
22 This included identifying new customers and existing customers  
23 to place orders, so Acosta was an independent contractor used  
24 by Appellant to extend the reach of the two individuals who  
25 are part-time in California to achieve retail sales.

1           The other three employees were called senior national  
2 account managers, and account managers dealt with food  
3 service, which is the restaurants and those preparing food.  
4 They were responsible for selling to the food service  
5 businesses.

6           You also had one other member of -- There was a sales  
7 team that would go in to make these presentations on the food  
8 service, and included on that same sales team was a corporate  
9 chef. That corporate chef, which is one of your questions  
10 that I'll get to, one of them was there for part of 2012 tax  
11 year, and then he left, and then was subsequently replaced  
12 about five or six months later by a second chef. The chefs  
13 were not exclusive to California. Most of the food service  
14 employees were not exclusive to California and had, like, the  
15 whole west coast region, so they were not assigned  
16 specifically to California.

17           The second -- The first chef, David Mack, quit on October  
18 29th, 2011, and was replaced by Gregory Schweizer who was  
19 based in Texas, and he lived in Texas and would visit  
20 California periodically to do sales presentations as part of  
21 -- as a member of the food service sales team.

22           Going back to the retailers, again, Appellant's products  
23 include the salad dressing sauce and marinade that you could  
24 find on the shelves in a grocery stores. Everybody's been  
25 down the condiment aisle. Everybody's seen salad dressing,

1 barbecue sauce, etc., marinades on the aisle. You have  
2 shelving that the product's displayed on.

3 Usually our products are on either on the aisle where the  
4 condiments are or salad dressing or perhaps on an endcap if  
5 the product was being featured, and then if you look at  
6 Exhibits 19 and Exhibit 20 in -- Those were ours. What you'll  
7 see is an example of a retail shelf, but again everybody's  
8 been in a grocery store, seen a retail shelf, knows that you  
9 have multiple levels of shelving, and products are displayed  
10 on there.

11 What you need to understand for Exhibit 20 which is the  
12 planogram, and all the planogram is, is the shelving in the  
13 store and all at issue is how much shelving I get  
14 horizontally, how much shelving I get vertically, and what  
15 product are displayed at what level, because obviously there's  
16 preferred levels of product placement on the shelves.

17 For the retailers, the retailers do send out advertising  
18 mailers. I'm sure we've all gotten them. Appellant's  
19 products may be featured within these mailers, and Appellant  
20 reimburses the retail customer for specific advertising of  
21 their products through trade spend. That's the name for it,  
22 trade spend, T-R-A-D-E-S-P-E-N-D, so the purpose of trade  
23 spend is to reimburse basically the retail customer for  
24 putting the time and effort into advertising their products.  
25 That could also include advertising on the shelves.



1 Advertising is an invitation to make a sale and is a protected  
2 activity.

3 And is what you'll see, is most of Appellant's  
4 advertising is targeted. They're targeting the sales in  
5 store. It's not really national marketing plans. They're  
6 going after specific retailers and their companies, or their  
7 customers to make sales. It is very targeted advertising.

8 The role of the two retail managers was to solicit sales  
9 from retail customer directly themselves, but again, they are  
10 very thinly stretched, they have the whole west region, and  
11 there's only two of them, and there are tens of thousands or  
12 hundreds of thousands of stores to visit, or they would use  
13 their independent contractor, Acosta, to solicit sales on  
14 their behalf.

15 There's just too many stores for them to do it all  
16 themselves, so Acosta was an extension of the retail managers  
17 that allowed them to reach more customers and complete more  
18 solicitations of sales.

19 As part of the process of making a sale, we can't stress  
20 enough the relationships they have to have with the retail  
21 establishments. People don't let you make cold calls anymore,  
22 and you have to have a relationship. You have to maintain the  
23 relationship. They have to know that you are present, or  
24 they'll just use somebody else, so part of the role of the  
25 retail manager was to check in as part of implicit and

1 explicit solicitation with the various retail customers and  
2 see how they were -- how they were doing with the sales so  
3 they could place more orders.

4 Again, the retail managers work with Acosta to expand  
5 Appellant's sales solicitation efforts as it was impossible  
6 for the two retail managers to do it themselves.

7 Again, if you look at Exhibits 12 and 13, which are an  
8 example of Acosta, how we pay our retail commission, those  
9 show that we are in fact paying Acosta a commission based on  
10 sales, and I will defer to Marie briefly to explain, as she  
11 was the one actually paying the invoices for Acosta, how the  
12 invoicing worked.

13 MS. JOHNSON: Sure. So we would just generate a  
14 report for total sales and deduct any, maybe off-invoice  
15 deductions. We would do pricing returns, shorts, damages, and  
16 then just apply the commission percentage to it.

17 MS. FREEMAN: And the services that you pay Acosta  
18 for purely were for sales?

19 MS. JOHNSON: Yes.

20 MS. FREEMAN: We have pointed out repeatedly during  
21 our prior discussions with Respondent that Acosta was --  
22 Acosta was unique that they were also directly hired by the  
23 retailers to provide extensive in-store services, as outlined  
24 in Respondent's exhibits. If you look at Exhibits T, U, V, W,  
25 and X, these are pages from the Acosta website that clearly

1 detail that the services they are providing were to show them  
2 who their inventory food service manufacturers are, which  
3 include Ken's Foods, but to also indicate all the in-store  
4 services they could provide on their -- for their benefit if  
5 they needed them to, because a lot of people have short staffs  
6 or need additional help. Acosta would go in, for a fee, to  
7 provide these services in store. This included, you know,  
8 stocking. This included setting up and tearing planograms and  
9 displays, and perhaps showing pricing modifications and sales  
10 on the shelving.

11 Again, we did not pay Acosta to do this. Now, we do  
12 admit that Acosta was -- First of all, Acosta was working, as  
13 I would say, both sides of the aisle. They were working for  
14 us to sell the product to the retail customers. They were  
15 doing extensive in-store activities on behalf of the  
16 retailers, they were being compensated for by the retailer.

17 Do we know how much? No? But as they said, looking at  
18 the exhibits the Respondent provided, it's very clear the  
19 exhibits, consistent with what we have been saying all along  
20 because it's industry practice, they're getting paid by both  
21 parties, the retailer that we're selling to, and the retailers  
22 themselves to provide in-store services.

23 We're gonna be discussing the activities that were  
24 disputed separately, but it's, again, very important to  
25 understand that Acosta is not exclusive to us. We're just one

1 of the many products in their portfolio that they sell to the  
2 retail establishments, and we paid them to go in, have  
3 meetings with the customers, retail customers, and make a  
4 sale, and they did this for us.

5 For the commercial food service, those are handled  
6 through third party distributors, and again, Sysco, US Foods.  
7 FTB has not expressed any concern about the third party  
8 distributors.

9 Our California sales team consisted of two senior  
10 national chain account managers, and a corporate chef. Now,  
11 taxpayer's products are unique in the fact that its products  
12 actually go into a food item, they are not used exclusively  
13 separate from a food item, so in order to display the  
14 product's versatility, we would use a chef as part of the  
15 sales presentation to go into the -- the -- and work in their  
16 kitchen to prepare food samples, okay?

17 The food samples could be a salad, could be a sandwich,  
18 could be some other item of food, but the whole point of the  
19 chef on there was to allow the chef, the chef is the buyer  
20 that they're selling to, the culinary expert in the -- the  
21 food service business. We're going in and selling to the  
22 buyer, who's the chef. They're the one that's gonna be using  
23 the product in their food, so we go meet with them.

24 They would prepare small menu items. They would give the  
25 chef a menu card that explained what was in, what was being

1 sold as a targeted sales presentation, and explain how the  
2 product could be used in different ways. They could use it  
3 in, perhaps in a salad, or a sandwich, or on a burger. It  
4 showed the versatility of a specific product that was being  
5 sold, and then from there on the chef, if the in-store food  
6 service chef had questions, it was easier for them to  
7 understand through the corporate chef what the product  
8 entailed, then from the sales team who had no real culinary  
9 experience.

10 The corporate chef was instrumental to the sales process,  
11 and as Marie has told me, and I'll let her briefly say, the  
12 value added by when they started using chefs as part of these  
13 food service sales presentation teams.

14 MS. JOHNSON: Yeah. The way it's been explained to  
15 me is just being able to have the two chefs get together and  
16 talk, and talk the same language just makes it a lot easier to  
17 get them to want to bring Ken's product in to use in their  
18 menus and on their items. And sales have increased since we  
19 brought chefs on.

20 MS. FREEMAN: Now, the chefs aren't used on every  
21 single sales presentation, because there's only, at any given  
22 time, there was one chef. Again, David Mack was only there  
23 through October of 2011 and participating in sales  
24 presentations throughout the western U.S., and then you add  
25 Gregory Schweizer who came on in -- on March 5th of 2012 and

1 was there for the duration of tax years, but again, he was  
2 based in Texas, and brought in when necessary to attend these  
3 and participate through creating these small menus, and  
4 basically giving them food samples during the food  
5 presentation to encourage placing a sales order.

6 The food service team, as well as the retail service  
7 teams, took every available opportunity to make a sale, and  
8 there's numerous comments throughout the record by Respondent  
9 that they didn't understand why they kept going back in so  
10 frequently.

11 Every -- Every meeting with a customer is an opportunity  
12 to make a sale. That's the point. All we do is sell product.  
13 We don't take product back. We don't do repairs. We don't do  
14 training. Every opportunity that they -- the staff -- sales  
15 staff had with the customer was to make a sale, you know, and  
16 keep the relationship going, because if -- Unfortunately,  
17 there's a lot of turnover in clients, and if the client that  
18 you're talking to leaves, then you have to start all over with  
19 the relationship just to get in to make a sale, so creating,  
20 maintaining sales relationships with these clients so you  
21 could get back in to make subsequent sales was crucial to the  
22 solicitation process, and absolutely ancillary, and absolutely  
23 necessary, because once you lose a contact, you have to start  
24 all over and figure out how you can get back in with that  
25 client, because there's a thousand other food retailers out

1 there in line waiting to get in if you lose that contact.

2 So with respect to the corporate chef, they were  
3 responsible -- they were a part of the team. They would do  
4 pre-sale -- pre-sales presentation targeted research about the  
5 customer they were going to see, with their menu, look at  
6 their flavor profile, perhaps even meet with the culinary  
7 staff in store and kind of figure out what they get, because  
8 the whole point was to make a successful sale. Not all sales  
9 are successful, but you didn't want to go and waste a  
10 customer's time by making a presentation on, say, Ranch  
11 dressings when they're looking for a marinara sauce. It is  
12 just a complete waste of your time. It was not going to be a  
13 successful sale, and it's gonna be a complete waste of a  
14 customer's time, and they're gonna think you don't know what  
15 you're doing, and probably not let you back for subsequent  
16 sales.

17 During the sales presentation, they would buy groceries,  
18 take to the customer's location and do a -- prepare the food  
19 fresh on site, because you can't bring -- You can't make the  
20 salads in the -- ahead of time, because the product will wilt.  
21 You can't, you know, make the sand witches ahead of time,  
22 because then the bread's gonna get all soggy, so basically  
23 they -- the process was they would bring food items on site to  
24 the customer location and prepare the samples, and at times  
25 they would prepare menu cards that showed you, this is the

1 dressing we're using from Ken's, and this is -- this is what's  
2 in this particular item, and what you put together, so you  
3 could get an idea of flavors, versatility, and each of the  
4 cards would tell you what they were proposing that the client  
5 buy, which was either maybe a new sauce, new seasonal sauce,  
6 existing sauce, or a sauce that maybe met a customer's flavor  
7 profile. Something they could use that's consistent with what  
8 they would want.

9       Once the sales presentation is done, the client makes a  
10 purchasing decision. Menu cards are discarded. The client  
11 can keep them if they want. The customer can keep them if  
12 they want, but we have no use for them, because they're  
13 specifically prepared samples for that customer to display  
14 that customer's -- products that customer might be interested  
15 in, which is the dressings.

16       The corporate chef served an essential role on the sales  
17 solicitation process, because again, he could effectively  
18 communicate with the buyer in the room, which is the  
19 professional chef or culinary expert at the customer, and  
20 again, as result of adding a chef to the sales team, the sales  
21 by the commercial food service had increased over the years  
22 once they started adding chefs to the sales team.

23       It's important note to understand that the Appellant has  
24 other corporate chefs that serve a distinct function. The  
25 sales team member chef was paid similarly to the rest of the



1 sales team. They got bonuses based on sales. They also had  
2 corporate chefs in Marlborough that were involved with  
3 research, development, working directly with customers to  
4 perhaps add a menu item to the customer's specific menu.

5 The customers would approach Ken's Food and say, "I'm  
6 thinking about perhaps adding a burger, a garlic Parmesan  
7 burger to our menu. Do you have any sauces you have that  
8 might work with that so we can add that item?" So we're not  
9 developing the menu item. The customers are coming to us with  
10 ideas, like, "This is what we want. Do you have a sauce that  
11 works with it?"

12 Ken's Foods has 885 formulas of sauces, and over 2,000  
13 products, so even if I made a presentation in California for a  
14 particular food item, if it wasn't perfect, we could then  
15 send, and they said, "Well, I wish it was more like this." We  
16 could send the customer's inquiry back to Marlborough and say,  
17 "Do we have anything closer to this off the shelf in our 885  
18 formulas that might work?" And they could send back samples  
19 to have the customer see if that's closer to the flavor  
20 profile they're looking for, and if not, if they say, "No.  
21 That's not it. We are looking something more like this," they  
22 could then send the customer's inquiry back to Marlborough and  
23 say, "They want it tweaked like this."

24 And we do have the ability to customize products if it  
25 doesn't fit within that 885 that we already have, so, but all

1 of those activities for product customization would occur in  
2 Marlborough, and all we as the sales would be doing is, you  
3 know, facilitating inquiry for modifications and bringing the  
4 sample back and say, "Is this closer?" So there was some back  
5 and forth when they were looking for a more specific product,  
6 but all we were doing is facilitating the inquiries that were  
7 going back and forth between Marlborough and the customer, and  
8 the whole point of these inquiries was to make a sale.

9 All R&D, all modifications, those all occurred in  
10 Marlborough, because that's the location of the commercial  
11 kitchen, and again, with respect to the issue of -- the issue  
12 has come back as far as menu ideation regarding the chef. The  
13 whole idea of that is the customer, we're going to a customer  
14 and trying to sell a particular sauce. We come up with a  
15 variety of offerings and, you know, samples, either  
16 sandwiches, salads, etc., to showcase the product, and the  
17 whole point of these little samples is to sell the product.  
18 The angle of every one of these presentations were  
19 customer-specific to sell the product.

20 With respect to the inquiries in Marlborough to help them  
21 create, you know, maybe a limited-time special, they told us  
22 what they wanted, and all we did was match them up with some  
23 of our 885 products, and if there wasn't something that was  
24 perfect, we did have the ability to make customized products,  
25 but it was purely for the purpose of selling a dressing or

1 sauce to the end customer.

2 Again, solicitation of the sales, here Wrigley is the  
3 primary case. What constitutes solicitation of orders and  
4 speech or conduct explicitly or implicitly to invite orders,  
5 or activities that neither implicitly or explicitly invite an  
6 order but are entirely ancillary to the request for an order.  
7 It's also well accepted that inquiries, whether it's complaint  
8 or for modifications we're allowed, the sales staff, as part  
9 of the sales process, we're allowed to submit inquiries  
10 outside the state, and those are activities are being -- all  
11 we're doing is facilitating communication for the activities  
12 occurring outside the state. We are not performing those  
13 activities here.

14 We're also going to add here before we get into the  
15 specific questions that were asked, this comment that Skagen's  
16 Design has held that inspecting, rearranging, or refilling,  
17 basically, product cases, display cases, are permitted  
18 activities. These are the planograms. We're also  
19 acknowledging that our business is not exactly like Wrigley in  
20 that we -- the product in and of themselves is not used. It  
21 goes into another product, and that basically we do have the  
22 ability to modify our product at the request of a customer to  
23 make the sale, but those modification activities occur outside  
24 the state in Marlborough, Massachusetts.

25 So getting into the actual questions that were provided

1 to us as the issues in dispute, we're gonna go through them  
2 all. Some of them were, in our mind, grouped, so we'll  
3 provide -- for the ones we think they're groupings, we'll  
4 provide the specific -- a general answer to each one of those,  
5 and then get into a discussion.

6 JUDGE KLETTER: Just asking, the questions are FTB's  
7 questions, or what questions?

8 MS. FREEMAN: They were the questions provided at the  
9 preconference hearing as the issues in dispute. The FTB's  
10 questions by Respondent.

11 JUDGE KLETTER: Okay. Thank you.

12 MS. FREEMAN: So the first issue in dispute as  
13 suggested by Respondent was whether job descriptions submitted  
14 by Respondent as Exhibits Y, Z, and Double A, accurately  
15 depict the duties and responsibilities of Appellant's  
16 corporate chef, national account managers, and regional --  
17 retail regional managers in California during the years, and  
18 our answer is no, and then the explanation for that is I  
19 myself, as an auditor, have always told the auditors auditing  
20 us that duty statements provided are always generally  
21 overly-broad and designed to protect the employer from being  
22 sued for working out of class by the employee.

23 The job duty statements that Respondent referenced were  
24 for the subsequent years. These were not provided for this  
25 particular year, and again, these employees, they are not

1 specific to California. These employees were working within  
2 and without California, because they were assigned to  
3 basically the west coast, west region, and we don't have an  
4 idea of what each of these employees was specifically doing  
5 every day during the tax years, however, Appellant did  
6 actually interview employees in each category, and we believe  
7 the best way to understand the duties performed in California  
8 was from the interviews that were conducted by Respondent.  
9 Those Exhibits are A, C, E, and F.

10 So job interviews are in there. We -- We went through  
11 them, because there's some -- clarifications were needed to  
12 those responses, so the clarifications provided are relevant.

13 So that's our response to the first issue. That the duty  
14 statements are for subsequent years, and then even in and of  
15 themselves are overly-broad and not necessarily specific to  
16 what was actually happening, which is no different than a duty  
17 service statement provided to a civil service employment  
18 employee in California. As a formal civil service employee in  
19 California, my job duty statement didn't reflect what I was  
20 doing in my job. I mean, I had the title, but it wasn't  
21 particularly accurate to what I was doing, which is why I  
22 believe the Respondent's interviews best reflect for the most  
23 part what was occurring in California.

24 The second issue the FTB has raised is whether a  
25 corporate chef in California, whether there was a corporate

1 chef in California during the taxable year ending April 30th,  
2 2013. The answer was there was a part-time employee during  
3 the tax time ending April 30th, 2013. The first chef, David  
4 Mack, resigned on August 29th, 2011, and there was a period of  
5 time where there was no corporate chef coming into California  
6 to participate in California sales presentations.

7 He was replaced by Gregory Schweizer on March 5th, 2012.  
8 This employee was not based in California. Was assigned to  
9 multiple states in the west region, and would come in as  
10 needed to participate in specific targeted sales presentation  
11 in the food service side. The corporate chefs were never used  
12 in retail sales.

13 The next four questions -- Was there six or four?

14 MR. ELLIOTT: Three.

15 MS. FREEMAN. 3, 4, and 5 are the next questions I  
16 will be answering, and I'm gonna provide a general answer to  
17 each of those three after I read them, and then provide a  
18 basic explanation, and all these relate to the corporate chef.

19 The first question was whether the corporate chef while  
20 in California provided culinary support services for  
21 Appellant's restaurants and food service customers, such as  
22 menu ideation, developing recipes.

23 The answer is -- the short answer, to be followed-up with  
24 discussion, is no.

25 The second question is whether the corporate chef's

1 demonstrations to customers and customer chefs were limited  
2 strictly to sales solicitation process, or whether these  
3 demonstrations occurred outside of sales solicitation process  
4 and served an independent business purpose beyond the  
5 solicitation of orders, such as insuring the proper use of  
6 Appellant's product.

7 The short answer is yes. All the corporate chef's  
8 activities were limited or ancillary to solicitation, as we  
9 will subsequently discuss.

10 The third question related to the corporate chef was  
11 whether the corporate chef ideation using Appellant's product  
12 was part of a targeted sales presentation, or whether it  
13 served independent business purpose apart from strictly  
14 soliciting orders, such as increasing sales of Appellant's  
15 product by developing a variety of uses and applications, and  
16 the short answer is all of the activities were part of a  
17 targeted sales presentation or otherwise to make a sale  
18 through individual meetings with customers, and then we're  
19 gonna now discuss the chef's activities that were at issue.

20 JUDGE KLETTER: And then, this is Judge Kletter. I  
21 just want to let you know that you have 45 minutes left.  
22 You're halfway through your time.

23 MS. FREEMAN: I'm almost halfway through, and I'll  
24 shorten it up, but I still have to talk slow for him.

25 Okay. The Appellant's corporate chef that was part of

1 the sales team is distinct from the corporate chefs in  
2 headquarters, and I'm not going to be talking about, per se,  
3 the chef's activities at headquarters, because that's a  
4 separate function. We're talking about the chefs that were  
5 part of the sales team. The corporate chef's demonstrations  
6 were customer specific. They related to sales solicitation  
7 process and demonstrations for a specific customer. Okay?

8 So they're not -- Other than -- The only person that  
9 knows what particularly is being made is the customer and the  
10 sales team. They don't share these ideas with anybody else,  
11 okay? They do prepare, they do come up with ideas. They talk  
12 to the customer, the proposed customer, to figure out what  
13 they want, okay? They look at their menus, they do research  
14 about the customer so that they can do a targeted sales  
15 presentation so nobody's wasting their time. That doesn't  
16 mean the customer's gonna buy what they're looking for, but  
17 the whole point is, there's no point in going in, again, with,  
18 you know, Ranch dressing if that's not what they're looking  
19 for. They're gonna -- You're wasting their time, and these  
20 people have limited time, and they don't let cold calls in.  
21 You have to have a relationship to get in.

22 So now that you've got the appointment, you're gonna make  
23 a sales presentation. You wanna make the best use of your  
24 time and resources, so the corporate chef would take and get  
25 an idea of what the customer might be interested in based on



1 their flavor profile, based on conversations with them, and  
2 they're gonna go in and, say, make a product presentation.  
3 Here's the salad using this, you know, new seasonal dressing.  
4 It's Italian dressing. Here's another salad with two of our  
5 different salad dressings, because again, I have 8,500 or 885  
6 different formulas. I'm not bringing them all in. I'm just  
7 bringing in a few that I think will match, and then basically  
8 letting the chef taste the food to see if it's something they  
9 might be interested in, and if they're not, he can say, "Well,  
10 maybe we can get you these other flavor things." You know,  
11 they can inquire back to Marlborough and see if they have  
12 something else, but generally the whole point is to get them  
13 an idea of the versatility of the product, the flavor of the  
14 product, and make a sale, and it has been a very successful  
15 process using a chef on the team.

16 Now, is it common? I mean, look at all the other cases.  
17 You don't seen any cases that have a similar product or TPP  
18 footprint where you don't need to do training. You don't need  
19 to do follow-up. You know, are you using it properly? These  
20 companies know how to use my dressings and sauces in their  
21 product, and they're free to use as much or as little as they  
22 want. They're not modifying them. They're just -- It's an  
23 issue of quantity. These people are fully trained on how to  
24 use the sauces. There's no need for training.

25 We are -- He is creating nominal recipes using, you know,

1 salad, and ingredients in the salad, but the dressing is the  
2 dressing, right? They're not changing the dressing that  
3 they're testing with the client or the proposed customer, and  
4 again, the role here was purely for a sales role. As a --  
5 Even though they were culinary, they're a chef, their whole  
6 role is to support the sales team to get the customer to buy  
7 the product through tasting of the product. Through providing  
8 product samples, and product sampling is a permitted activity.  
9 You're allowed to hand out samples.

10 What we're finding in reviewing the Appellant or  
11 Respondent's brief is they seem to be hung up on the fact that  
12 this individual was a corporate chef and was culinary. Well,  
13 yes. We do have a chef, culinary, preparing samples for  
14 culinary customer. You don't want somebody who doesn't know  
15 how to prepare food to make a presentation to a professionally  
16 trained chef. It would make us look foolish and probably  
17 never even get invited back.

18 We don't tell the chefs how to use or show them how to  
19 use the sauce. The chefs know how to use the sauce. The  
20 chefs are fully trained. They can make the sauces themselves.  
21 Not necessarily the exact ones down to the formula. They know  
22 how to make sauces. They know how to use sauces, and if we  
23 were to show them how to use it, they would look at us and  
24 probably throw us out. That's a no-go. It's an insult to a  
25 culinary expert to show them how to do something that they

1 already know how to do.

2 All orders that were potentially placed were then sent  
3 back to Marlborough for approval and fulfillment, and again,  
4 the culinary chef, like the other members of the sales team,  
5 didn't take the order. They seem hung up on the fact that he  
6 never took orders. Well, none of the sales members took  
7 orders. Again, remember they have an EDI process through the  
8 distributor to place the order through the distributor. The  
9 whole goal is then to let them know about our products, show  
10 them where they can place the order, and have them place the  
11 order with the distributor, because again, the distributor  
12 buys the product from us and resells to the customer in this  
13 case.

14 And while I'm citing Pub 1050, which has since been  
15 basically withdrawn, it is consistent with the Wrigley case,  
16 so what's outlined in Pub 1050, despite not being a citable  
17 document, still is consistent with Wrigley and has some valid  
18 points, and what we would point out, that carrying samples of  
19 promotional materials for display or distribution without  
20 charge falls within Public Law 86-272 and is permitted. All  
21 the chef is doing is preparing food samples using their  
22 product and handing them out free of charge during the sales  
23 solicitation process.

24 Respondent has also brought up Kennametal, Inc. versus  
25 Commissioner in arguing that they did not explicitly and

1 implicitly provide an order, but rather served to complete  
2 sales. That's completely inaccurate. This was part of a  
3 targeted sales presentation to a specific customer, and  
4 entirely, the whole point of the presentation was to make a  
5 sale with that customer of that product, or if they didn't  
6 like that product, find something else back at headquarters  
7 that we can provide more samples of, but again, the whole  
8 point is to make a sale of that sauce, or dressing, or  
9 marinade to that customer. That was the whole point.

10 So Kennametal we find is readily distinguishable. We  
11 weren't making presentations to a hundred customers. We were  
12 making a targeted presentation to a single customer. Any  
13 material that we handed out we either threw away, if the  
14 customer wanted to keep it, that was their business. We  
15 didn't charge for them, and we didn't reuse them, because,  
16 again, this was targeted to a specific customer.

17 Respondent also made comments about the corporate chef  
18 going individually to customers locations to -- to talk to the  
19 -- the corporate chef. Again, every opportunity to get in  
20 front of a customer is an opportunity to make a sale. He did  
21 not show people how to use the product. He may have displayed  
22 the versatility of the product in an effort to make a sale,  
23 but it was not training -- there is no training involved here  
24 related to the Appellant's products. It comes in a bottle.  
25 It comes in a one-gallon jug. They know how to apply the

1 product. They need no training. They already got it when  
2 they were in school. In the culinary schools. And the  
3 individual product demonstrations were the sole purpose of  
4 implicitly or explicitly soliciting an order.

5 Again too, the point that us not showing them how to use  
6 the product, it clearly states on FAQs on their website what  
7 other possibility uses exist for my Ken's dressings. It says,  
8 "We cannot tell you all the possibilities for Ken's products  
9 since your own taste, imagination defines them." So again,  
10 we're not showing, or demonstrating, or telling anybody how to  
11 use our product. We're selling the product. We care about  
12 volume, but how they choose, or how much they choose to use on  
13 the products that they sell to their customers is no concern  
14 of ours, because the more they use, the better.

15 The other issue here with respect to the chefs, again, I  
16 think I've kind of gone over this, is menu ideation. Okay.  
17 California corporate chef, their role was to have a customer  
18 as a target, research them, come up with some food tasting  
19 options for the same product, and then meet in person, make  
20 the food product with the sales team present, make the sales  
21 presentation through the culinary expert chef tasting the  
22 food, having follow-up discussions, and placing the order.  
23 That was the role of the sales presentations, okay?

24 That would -- The menu ideation that the FTB is concerned  
25 about are these food samples, so the only thing in there

1 unique is which dressing we put in them, right? And making  
2 sure we're meeting what we think the client is looking for.

3 The other concept of menu ideation occurs in Marlborough  
4 where the commercial kitchen is located. Commercial kitchen  
5 is the place where you have to do R&D. It is required, you  
6 know, regulatorily, so they would have -- They could figure  
7 out products to send back if they didn't like the exact  
8 profile within the 885 different, you know, formulas. If they  
9 didn't like something, they would come back from the sales  
10 team and say, "Well, they didn't like that. They want slight  
11 --" They could modify the product, but all that is occurring  
12 in Marlborough, and all we're doing is facilitating the  
13 customer's inquiry to make a sale here in California. They  
14 would then send product samples back to see if they could find  
15 a product the client was satisfied with, and if so, they would  
16 consummate the sale.

17 There was other options where the client would come to  
18 you and say, "I have this product, and I want you to contract  
19 manufacture for me." All of that would occur in Marlborough,  
20 okay? So we could do contract manufacturing, make a sauce  
21 based on what they gave us, and distribute it to them, and  
22 make a sale.

23 The other option was we had customers who would come to  
24 us and say, "I want a new burger. What sauces, and I want  
25 this sort of flavor profile, what sauces do you have?" They

1 would go through their existing formulas to see if there was  
2 something they had that would meet. If they were satisfied  
3 the customer would make a sale based on the specific request  
4 from a specific client to buy a product, or if there wasn't  
5 something that was perfect, they would attempt to in  
6 Massachusetts make a product would satisfy them for their new  
7 product, okay?

8 We're not developing the recipes, per se. They say they  
9 want a burger. We're trying to match a sauce with their  
10 product. We're not -- Again, they might want a salad. We're  
11 trying to match a sauce with what they're asking for, which is  
12 a new menu item, so we're -- all we're doing is matching our  
13 products, or creating a product for the idea they've already  
14 came up with, so I'm trying to clarify, we're not creating  
15 recipes, we're trying to match our product, or create a  
16 product for a product idea they already came up with.

17 In the course of Respondent's briefing we also noticed  
18 that they are overly concerned about how many times we're  
19 actually going to visit a customer. It's hard to fathom. The  
20 whole point of meeting with customers is to make a sale. The  
21 more times we meet with a customer, the better.

22 Like, we want to make sales, and if the customer is gonna  
23 let us in weekly, monthly, every three months. They want us  
24 to check in so we know -- that they know we care about them  
25 and we maintain our relationship. Even if it's just checking

1 in, it's still an opportunity to make a sale, so how many  
2 times the customer, or us, the Respondent, or Appellant is  
3 going in to meet with the customers to me, every opportunity  
4 to meet with the customer is an opportunity to make a sale,  
5 because again, we don't do R&D. We don't do training in  
6 state. There is not really anything to train them on. We've  
7 sold them on salad dressing. All we can do is follow-up to  
8 see if we can sell more salad dressing next time.

9 The next question Respondent raised as an issue in  
10 dispute was whether the corporate chef and national account  
11 managers worked closely with or served as a liaison between  
12 Appellant's customers and its R&D team when working on  
13 projects, such as product matching or product creation such  
14 that these activities serve an independent business purpose  
15 beyond solicitation.

16 I'll keep this one short. The whole point of product  
17 matching and product creation was to create a sale for a  
18 specific customer, okay? If perhaps a company had an existing  
19 supplier, but they wouldn't give them the formula, and they  
20 come to us and say, "We want to buy it from you for cheaper,  
21 can you match the product?" The customer would then give the  
22 sales team, which is trying to make a sale, a product sample  
23 which would -- all the team here would do is give the product  
24 sample as an inquire from the customer to see if they can make  
25 a sale. Give it to the R&D team in Marlborough to see if they



1 can make the salad dressing, okay?

2 It's a yes or no question, and sometimes it would take  
3 multiple tries. Maybe they did it the first time, it wasn't  
4 an exact match, and they say, "No. It's not quite it." They  
5 would send it back. All we are doing is facilitating an  
6 inquiry for an order, right? And if it was successful, we  
7 would make a sale for that specific customer, okay? That's  
8 product matching.

9 Product creation, again, if I have 885 formulas and one  
10 of them doesn't work, but there's something close or something  
11 different they want, they would go to the sales team and say,  
12 "It's not quite what I want. What else can you do?" So the  
13 sales team would send the customer's inquiry regarding the  
14 flavor profile back to the R&D team back in Massachusetts,  
15 cause you can't do any of that work here, and the R&D team  
16 would work on it, they would come up with a sample, send it  
17 back, they would give it to the sales team to do another  
18 presentation to the customer to see if it's what they wanted.

19 There could be multiple back and forths, but again, we're  
20 just facilitating the inquiry. We're not doing anything, and  
21 the whole point of these inquiries from the customer is to  
22 make a sale, so there's no purpose from this product matching  
23 or product creation beyond trying to make a sale of the  
24 specific product that meets their needs for that customer.

25 So that was a question that they had asked as far as

1 during the preconference hearing as an issue in dispute, and  
2 again, they also, again, still had questions, why do you keep  
3 going back to the customer? Like I said, our view is every --  
4 All we do is sell. We don't train. You either buy your  
5 product or you don't. The more times we can get in front of a  
6 customer, the better. Even if we were going there to meet  
7 with them to match one product, there's an opportunity to even  
8 sell something else, so there should have not been any issues  
9 in the Respondent's briefing about how many times we went to  
10 visit somebody. All we do is sell. It's -- All we're doing  
11 is trying to sell, either through the food service or the  
12 retail customers.

13 The seventh question was whether the corporate chef and  
14 national account managers collected customer competitor and  
15 competitor information, and identified market opportunities  
16 that served independent business purposes beyond solicitation  
17 of orders, such that the Appellant would engage in these  
18 activities independently whether they're conducted by the  
19 sales or culinary staff. What I would point out is none of  
20 the orders are placed with the sales staff, okay?

21 The orders go in directly through an EDI system. Acosta  
22 places them on behalf of a customer. All of the orders are  
23 received and approved outside of the state. Even with the  
24 distributors, the distributor places the order with -- through  
25 the EDI system, and it is approved outside the state, so the

1 local staff does not have access to that information. All of  
2 that data, if it's analyzed, it's outside the state.

3 Now, they can use that data to identify sales  
4 opportunities to the staff that they will then communicate.  
5 You know, you should go to this customer, because they're not  
6 buying any of our stuff. They'll know that from the sales  
7 data that they have, or you should try selling this particular  
8 product to that customer, and stop selling this one, because  
9 nobody's buying it, so the data they're receiving back locally  
10 is to further target their sales efforts and refine the sales  
11 efforts for specific products in order to make an effective  
12 sale, but again, they're not mining the data. They're no --  
13 They don't get the data. All the data is received in  
14 Marlborough through the electronic system, and all that they  
15 get back from Massachusetts is information to further refine  
16 their sales efforts.

17 In the discussion there was a reference to one -- In one  
18 of the employee interviews there was a reference that Georgia  
19 Robbie did in one case get a competitor's sample and submit it  
20 to Marlborough to see if they could product match to take  
21 this, to basically steal the customer from the competitor.  
22 There was only one instance of that that we found in the  
23 records we had.

24 And basically, the whole purpose of obtaining a  
25 competitor's sample in that case was they wanted to see if

1 they could acquire the customer and place an order with that  
2 customer for that same or similar product. We believe that's  
3 part of the solicitation process, looking for new customers  
4 and actually affirmatively attempting to make a sale.

5 Review of the market data and competitor data, as far as  
6 what's selling, all of that, that when it's provided is part  
7 of the due diligence to make sure I'm making an effort to --  
8 I'm making an informed sales pitch, so that if I know what is  
9 selling, I can make a targeted sales pitch. It's making an  
10 educated sales presentation. We're not using -- None of the  
11 marketing happens here. None of the data analysis happens  
12 here. What's happening is we're getting refined data to  
13 refine our sales efforts to make a sale.

14 The next issue was -- that was indicated was in dispute  
15 was whether the national account managers quarterly meetings  
16 with customers, which included business reviews focused on  
17 relationships with customer, were post-solicitation activities  
18 that served an independent business purpose beyond  
19 solicitation.

20 What we're pointing out here is sales solicitation has  
21 evolved over time since Wrigley. You can't just walk up and  
22 knock on someone's door. You have to have relationships.  
23 Cold calls are frowned upon and rarely taken, and in an age of  
24 preferred service providers, relationships are report --  
25 required to get in just to meet the client. You need to come

1 to the client prepared, you need to be familiar with their  
2 business, and you have to make it sure that they know you care  
3 about their business, and you want to partner with them to  
4 sell the -- their goods so that they can -- sell goods to them  
5 so they can sell goods to their customers, so creating,  
6 maintaining an ongoing account maintenance to make sure  
7 customers know you care is essential, because if you don't  
8 show the customer that you're, you know, following-up with  
9 them, you know, even quarterly, there is a hundred service  
10 providers standing right behind you that are willing to step  
11 in your shoes and take over to show the customer that you care  
12 about them and that you're gonna make sure you pay attention  
13 to them, and make sure that you have the best business  
14 relationship to sell the products in question with that  
15 client.

16 The Respondent seems concerned that our customer --  
17 Again, Dan Dillon, remember, he's -- there's only two people  
18 in the state during the year, and they are part-time in the  
19 state serving tens of thousands of customers. They seem  
20 concerned that our customer, we're going in every quarter to  
21 check in on the client. Well, again, every touch point with a  
22 client is an opportunity to sell a product, right? We're not  
23 going to give up every -- any opportunities to meet with those  
24 clients, if they let us in. I mean, the fact that you can get  
25 in quarterly, often is unusual. Sometimes it's less

1 frequently than that, and these were basically with the larger  
2 clients, and they were using Acosta for the rest of the  
3 opportunities to get in and make the sales, but here we're  
4 making sure for the bigger client, they know we care, we're  
5 coming in, checking in to see if there are any product orders  
6 we can place. This is absolutely part and ancillary to the  
7 sales solicitation process, and if there's client turnover in  
8 their staffing, and the person you have a contact with leaves,  
9 and you're not paying attention to that client and meeting  
10 with them, the odds are you're gonna be out. Somebody's gonna  
11 be out, and back in on -- in place of you making sales that  
12 you now no longer can make, and you're gonna have to  
13 reestablish those relationships with those clients, because  
14 again, cold calls just don't happen anymore.

15       If you read the court case in Wrigley, they declined to  
16 conclude that all post-sale activities were necessary and  
17 beyond the scope of solicitation. We're arguing that these  
18 quarterly meetings with the clients are part of the  
19 solicitation process. We're going in, checking in on the  
20 clients with -- in hoping to implicitly or explicitly make a  
21 sale. Even though they take place after the first sale, once  
22 you make the first sale, everything, technically, is post-sale  
23 solicitation of an order, so again, the only reason we go back  
24 in is to make the next sale, right? And we may not make the  
25 sale every time, but we need to be back in there and FTB's

1 assumption that post-sales contact isn't sales related is  
2 without merit. There's no support for that position, and I  
3 would finally comment, every customer knows when you show up  
4 at the door why you're there. You're there to try and make a  
5 sale.

6 The next issue that we have was 9. There's only 11.  
7 We're on 9. Was whether stock checks and retail audits were  
8 performed by the retail managers and Acosta to verify display  
9 price and compliance, such that these stock checks served an  
10 independent and recheck audits serve independent business  
11 functions beyond the solicitation of orders, such as ensuring  
12 proper use of Appellant's trade spend, and our answer to that  
13 question is no.

14 So retail audits are really no different than inspecting  
15 a planogram. Retail audit has been blown out of proportion in  
16 this case as far as what it means, so basically, when we first  
17 set up a relationship with a client, a retail client, because  
18 that's what we're talking about, retail clients, is we go in  
19 with the assistance of Acosta, because basically he's  
20 representing both sides of the aisle, to establish how much  
21 space we're gonna get in that retail location. Again, space  
22 is horizontal, how many feet in, what's the terminology for  
23 that?

24 MS. JOHNSON: Facings.

25 MS. FREEMAN: How many facings we get. I assume the

1 facings is how many bottles in a space. How many facings we  
2 get horizontally, and vertically, and then also at times,  
3 where it's located vertically, 'cause there's obviously a  
4 preferred one, eye level, so we have established planograms,  
5 we've developed our own. We don't provide -- Acosta doesn't  
6 provide planogram service for us. We don't even know what  
7 that is, honestly. Planograms are planograms.

8 Everyone has gone into the store the last, I don't know,  
9 a lot of time, decades, and a grocery store shelf is a grocery  
10 store shelf, right? There's four or five high. The ones that  
11 I usually want are so high I can't reach them. I have to  
12 climb up on the ladders, but the whole point is what's on  
13 those shelves is -- When we go in initially for a retail  
14 client, we're negotiating how much space we get, okay? And  
15 based on how much space we get, that's what we anticipate  
16 we're going to get, and we do periodically go into the store,  
17 not very often, because again, there's only two individuals  
18 doing this, and Acosta's working with us on those two to  
19 verify, you know, our product is where we were told it was  
20 gonna be in the space it was gonna be.

21 But on top of that, the trade spend they get is based on  
22 volume, right? So the more volume we sell, the more trade  
23 spend we get, and the trade spend is used to advertise our  
24 product, you know? Maybe we end up one week on an end cap,  
25 you know? They switch those out. We're not the ones



1 switching those out. That would be Acosta. We don't pay them  
2 for that.

3 We give them money to advertise our products, either on  
4 the shelf where they have the sales little tags, or in the  
5 mailers that go out, so what's important to know is that when  
6 we're doing these retail audits, we're usually doing them in  
7 conjunction with a sales call. We go and review, which is  
8 allowed, inspect the display case as discussed in Skagen. See  
9 if our product's there. See if it's low. As Dan Dillon has  
10 indicated, he was the retail manager. He goes and he looks to  
11 see, you know, what's there, what's missing, are they low to  
12 see if they can do a reorder, and they go back and meet with,  
13 you know, the buyers in the store.

14 He does not pull product from the shelf. He's made that  
15 clear, and it's important to point out that if there's expired  
16 product or damaged product, those products aren't returned,  
17 they're destroyed, okay? If -- The only time you're really  
18 gonna see a product returned is if it's the wrong order, okay?  
19 Basically they'll call up, they'll have contact, even if they  
20 tell in-store staff, it all has to be handled through  
21 Marlborough. Tell them they got the wrong product. They'll  
22 be arrangements made to be picked up at the customer store and  
23 returned to locations outside the state. We don't have any  
24 locations in the state. If it's expired, or damaged, or  
25 returned by a customer, it gets thrown away. The store gets

1 reimbursed for those products.

2 JUDGE KLETTER: Ms. Freeman, just want to let you  
3 know you have 15 minutes of the presentation left.

4 MS. FREEMAN: Okay. I'm almost done.

5 The retail audits, again, have been blown out of  
6 proportion. Really, they are reviewing the retail audits that  
7 they go in, we have -- What exhibit is that? 10. Exhibit 10  
8 is an example of a retail audit. They'll come in the store,  
9 and basically, again, they're not in every store, they don't  
10 go there often, because they have limited time and effort.  
11 They'll go through the store.

12 Once a year generally, the retail managers would go  
13 through the stores prior to Memorial Weekend once, and each of  
14 the retail managers would hit seven or eight customers that  
15 day. They'd go into the store, which they hadn't been in to  
16 or had only been to who knows how many times, infrequently,  
17 glance through their -- their space in the planogram in the  
18 store, which is the sales, you know, exhibit, and see what it  
19 looks like, what's there, what's missing, and then go back and  
20 proceed to make a sales presentation to the store to solicit  
21 sales.

22 So first of all, the retail audits are there for stock  
23 check purposes when Acosta does it to see if it needs to be --  
24 the stock needs to be redone, and then on top of that they'll  
25 go through, you know, spend five minutes reviewing the case to

1 make sure everything is accurate, and then spend the rest of  
2 the time during the retail audit to discuss sales and placing  
3 orders during their, again, their pre-Memorial Day, you know,  
4 anticipation of summer barbecue season is when they -- when  
5 our staff does it.

6 Acosta may go in throughout the year periodically to  
7 verify the planogram, you know, it's in place still, hasn't  
8 fallen down, making sure the product's where it's supposed to  
9 be, and the quantity is supposed to be.

10 Again, clients get paid for trade spend based on products  
11 sold, not about -- not the store shelving spacing. But,  
12 obviously, the more spacing you have, the more you will sell,  
13 and the more trade spend you'll get.

14 They also questioned whether or not the retail audits  
15 performed by the retail managers occurred more than once per  
16 year over Memorial Weekend. Again, they go in once a year for  
17 the pre-Memorial Day Weekend kickoff of summer for retail  
18 audits, but again retail audits are nothing more than  
19 inspecting the in-store planogram, which is permitted under  
20 Skagen. We're allowed under Skagen to inspect the displays to  
21 make sure everything's where it's supposed to be.

22 Oh, yeah. So in Exhibit 20 we gave you an example  
23 planogram. It will be representative of anything you've ever  
24 seen in your life as a child going through the store. You  
25 know, salad dressing on the shelf. The only question is how

1 much space I got. We also gave you Exhibit 21, shows you the  
2 standard -- 21, isn't it?

3 Oh. Number 19 was some sample product shelving and  
4 photos that kind of showed you what it would look like, and  
5 the amount of space that we had, and it varies by store, and  
6 then example or Exhibit 21 is the standard product shelf life  
7 of our products reflecting that the product generally has an  
8 extended shelf life and would turn over and not be expired,  
9 but again, expired product is disposed of. It's not returned,  
10 and the store gets credit for damaged products or expired  
11 products.

12 Number 10, again, again, a retail audit is an inspection  
13 of a planogram, which is permitted by Skagen, and by Wrigley,  
14 and retail managers generally only did it on the pre-sale  
15 Memorial Weekends. They may have done it occasionally other  
16 times, but you gotta remember, you have them operating in the  
17 entire west region in the U.S. on this side of the Rockies,  
18 and they didn't have time to go to the store. They spent most  
19 of their time actually managing Acosta, so if they did go in  
20 the store on other times, it would have been infrequent, and  
21 again it's a permitted activity under Skagen, and in de  
22 minimis on top of that.

23 The next question was Acosta. There was some extensive  
24 references in Respondent's brief regarding Acosta. Question  
25 11, whether Acosta development and implementation of

1 planograms or other service provided by Acosta were performed  
2 on behalf of Appellant, or only on behalf of retail customers  
3 that separately compensated Acosta for these services.

4 If you look at Acosta's website, which are Exhibits T, U,  
5 V, W, and X, I believe. There's extensive detail about  
6 Acosta's business. Acosta is throughout the U.S., and is  
7 support service for retail establishment. They also  
8 distribute manufacturer's food products, including Ken's Foods  
9 products. They offer, basically a centralized location for  
10 the retailer to acquire the products in store.

11 As far as in-store activities, we do not pay them for  
12 in-store activities. I doubt they're doing it for free. That  
13 includes putting up shelving, tearing down shelving, moving  
14 product around, restocking. We don't pay for any of that.

15 Now, Acosta may come in and review our particular  
16 planogram to see if it needs to be restocked. We don't pay  
17 them to restock it. All we do is pay them to -- when the  
18 retail establishment buys our product. They get a commission.  
19 All that data is collected in Massachusetts, because it goes  
20 through the EDI system. We generate the invoice at Acosta.  
21 Marie can attest to how that process works. I'll give her two  
22 seconds to do that.

23 MS. JOHNSON: Yeah. It's what we had talked about  
24 earlier when we run the sales report, take off any invoice  
25 type deductions, allowances, shorts, damages, and pay a

1 commission rate based on the net sales.

2 MS. FREEMAN: And you cut the checks to Acosta?

3 MS. JOHNSON: We write the checks in Marlborough,  
4 yeah.

5 MS. FREEMAN: You do?

6 MS. JOHNSON: Yes.

7 MS. FREEMAN: So Acosta does not generate an invoice  
8 to us. All that data we collect through the EDI system that  
9 has the invoices input, it designates who -- who -- who's the  
10 payee on the commission, which is generally Acosta, because  
11 that's our primary broker, and so we know how much sales have  
12 gone through, and how much to pay Acosta, and how much to  
13 modify their gross sales for returns, etc., and then Marie  
14 cuts the check.

15 So we know based on that we are not paying Acosta for any  
16 in-store service. Now, we agree they do help us negotiate the  
17 planogram, okay? But they are negotiated on behalf of both  
18 sides of the aisle. The retailer has space, we want space,  
19 Acosta wants space that's consistent with, you know, selling  
20 the most modern product, so planograms are not unique. We  
21 have our own. They don't develop planograms for us.

22 Again, it's store shelving. It is what it is. Whatever  
23 shelving is in the store, they're not creating it. It's just,  
24 all we're negotiating about is space, and so they help us do  
25 that. Once it's in place, we do go in and verify when we do

1 our annual reviews as part of the sales process to go in and  
2 look, is our product there? Is it, you know, empty? Is it  
3 full? Things like that. We don't pull the product. We don't  
4 stock the product, and then we go and proceed and meet with  
5 the protective customer and make a sale.

6 As far as Acosta's other activities on our behalf, we  
7 acknowledge they are an independent contractor acting on our  
8 behalf, as well as other food manufacturers, to go into the  
9 store and sell our product to the retail store, so they make  
10 meetings with existing and new customers, go in and make a  
11 sales presentation, and place an order, okay?

12 Customer complaints, the only complaint we'd really have  
13 that is any issue, you could have a complaint by a retail  
14 customer that bought a salad dressing in the store. They're  
15 gonna go back to the store, return it. You're gonna --  
16 They're gonna come back and ask for a price adjustment, we're  
17 gonna give it to them, but all of that price adjustment  
18 activity occurs outside of California.

19 Acosta, really the only thing you might find is the  
20 product, you got the wrong product, okay. They're gonna have  
21 to communicate that inquiry, that complaint, back to  
22 Marlborough. Marlborough's gonna arrange for the product to  
23 come back and be returned, but it's not gonna be returned in  
24 state. The product isn't at our location. It's at the  
25 customer's location, and since any product isn't destroyed,

1 it's returned.

2 All the rest of the activities, if you look on Exhibits  
3 U, V, X, and W they're not -- We don't own the store. They're  
4 not -- We're not -- They're not putting up shelves for us.  
5 They're putting it up for the retail customer. They're not  
6 restocking on our behalf. They're restocking on the  
7 customer's behalf. Again, once the food's in the store,  
8 that's between the retailer and Acosta to deal with, you know,  
9 anything that needs to be changed or adjusted.

10 So if we're short on time, we want to reserve to use it  
11 at the end, if that's possible?

12 JUDGE KLETTER: This is Judge Kletter, so it looks  
13 like you have four minutes remaining. You have 19 minutes on  
14 rebuttal. We're actually going to now take a 15-minute break  
15 to allow the stenographer to rest, and if anyone needs, you  
16 know, to use the facilities or anything like that. Please  
17 make sure to mute your microphones, and I think the live  
18 stream may continue, so close your laptop screens, or don't  
19 have anything viewable. Thank you. And we'll return at 2:49  
20 p.m.

21 (Pause in the proceedings from 2:35 p.m.  
22 until 2:49 p.m.)

23 JUDGE KLETTER: So we're going to go ahead and go  
24 back on the record. We have 90 minutes for Franchise Tax  
25 Board's presentation. Mr. Ivanusich, are you ready to begin?



1 MR. IVANUSICH: Yes, I am.

2 JUDGE KLETTER: Please go ahead.

3 PRESENTATION

4 MR. IVANUSICH: Good afternoon, Judges. The issue in  
5 this case is whether the Appellant is protected from tax in  
6 California under 15 U.S.C. Section 381, which is also referred  
7 to as PL 86-272.

8 I'm first going to discuss the strict limitations of PL  
9 86-272 and Appellant's burden of proof. I will then discuss  
10 Appellant's response to additional evidence submitted by FTB,  
11 since the FTB has not yet had a chance to address these  
12 arguments.

13 Finally, I'll go through each site of Acosta's employees  
14 and broker in California and explain why the evidence  
15 demonstrates that each of them performed activities in  
16 California that went beyond protections of PL 86-272. These  
17 employees include a corporate chef, national account managers,  
18 and regional managers. Appellant also performed activities in  
19 California through its broker referred to as Acosta.

20 During this presentation I hope to highlight three  
21 things. One, that since PL 86-272 provides an exemption from  
22 tax, its protection is very limited and only applies if the  
23 taxpayer's activities in the state are soliciting orders  
24 entirely ancillary to soliciting orders or de minimis. So if  
25 Appellant had even one activity that was not soliciting orders

1 or entirely ancillary to this, it loses all PL 86-272  
2 protection if that activity was not de minimis.

3 Two, Appellant has not provided relevant and credible  
4 evidence supporting its claims, and at times has even  
5 misstated facts or presented facts that are inconsistent with  
6 more reliable evidence, and three, there are multiple sources  
7 of evidence proving that certain unprotected activities did in  
8 fact occur.

9 I'll begin with PL 86-272. Under this law the state  
10 cannot impose a net income tax on a business if its only  
11 activities in the state are limited to the solicitation of  
12 orders of tangible personal property. In Wisconsin Department  
13 of Revenue versus Wrigley the Supreme Court held that the  
14 term, "solicitation of orders," is limited to two things.  
15 One, a verbal request for orders in speech or conduct that  
16 implicitly invites an order, and two, activities that are  
17 entirely ancillary to requests for purchases, which --  
18 activities which serve no independent business function apart  
19 from their connection to soliciting orders.

20 This is contrasted with activities that a company would  
21 have reason to engage in any way, but chooses to allocate to  
22 its in-state sales reps, which are not considered ancillary to  
23 solicitation. Thus, if an activity serves any other business  
24 function, it is not protected.

25 For example, PL 86-272 does not protect the activities

1 that facilitate sales. It only protects activities that  
2 facilitate the requesting of orders. The fact that an  
3 activity is related to sales is not enough, and unprotected  
4 activities are not converted into solicitation just because  
5 they are assigned to a salesperson.

6 In determining the scope of solicitation the Supreme  
7 Court in Wrigley also rejected a broad interpretation that  
8 would include all activities routinely associated with  
9 solicitation or customarily performed by a sales person. As  
10 such, PL 86-272 protection is strictly limited to only  
11 request-related activities. This is evident from its  
12 application over the years. Activities that aren't the  
13 solicitation of orders only receive protection if they are de  
14 minimis.

15 In Wrigley, the unprotected activities were not de  
16 minimis because they occurred as a matter of regular company  
17 policy and on a continuing basis. In determining this, the  
18 activities are not viewed in isolation, but are instead taken  
19 together. In this appeal, each of the unprotected activities  
20 that will be discussed were regular parts of the employees' or  
21 brokers' responsibilities and occurred on a continuing basis,  
22 and thus were not de minimis, especially when taken together.

23 So just to emphasize, Appellant will not be protected at  
24 all under PL 86-272 if any of its California activities, even  
25 just a single one, is not soliciting orders or entirely

1 ancillary to soliciting orders, and was not de minimis.

2 Before discussing Appellant's activities in California, I  
3 want to first briefly discuss Appellant's burden of proof. It  
4 has been held that Appellant has the burden of proving that  
5 FTB's determinations are incorrect, and that unsupported  
6 assertions are not enough to satisfy this burden.

7 In this case Appellant repeatedly states that FTB  
8 misconstrues the facts, however, many of the facts stated by  
9 the FTB in its briefing were pulled directly from interviews  
10 with Appellant's employees. It is important to point out that  
11 Appellant was given the opportunity to review these interviews  
12 and provide clarifications, as can be seen in Exhibit E, so  
13 the interview responses should be treated as accurate.

14 If Appellant now wants to claim that facts based on these  
15 interviews are wrong, it needs to provide evidence showing  
16 why. Up to this point, it has not, and instead relies on  
17 unsupported assertions. For example, we heard today about  
18 several activities related to Appellant's business, and the  
19 activities of its employees, without any indication as to  
20 where this information came from. This is not enough to  
21 overcome its burden.

22 It is also well settled that a taxpayer's failure to  
23 produce evidence within its control gives rise to a  
24 presumption that the evidence is unfavorable to its case.  
25 Here, Appellant did not produce certain items of evidence that

1 were within its control, and would have helped provide  
2 relevant details on facts that are now at issue. These will  
3 be discussed throughout this presentation, but it should be  
4 presumed that the evidence Appellant failed to provide is  
5 unfavorable to its case.

6 I'll now discuss the FTB's request to submit additional  
7 evidence, which included job descriptions for Appellant's  
8 corporate chef, national accounts manager, and regional  
9 manager. These were submitted as Exhibits Y, Z, and AA.  
10 After the OTA granted this request, Appellant filed a response  
11 claiming this additional evidence was not relevant o  
12 reflective of its employee's activities in California. It  
13 points to the fact that during the audit it already provided  
14 the description for the job functions -- a description of the  
15 job functions for each position at issue, which was submitted  
16 as Exhibit B.

17 However, Exhibit B lacks credibility when compared to  
18 Exhibits Y, Z, and AA. Exhibit B was a Word document created  
19 by Appellant specifically for the audit in an attempt to  
20 explain the employees's responsibilities, and only Exhibit B  
21 was provided during the audit for the years at issue.  
22 Exhibits Y, Z, and AA were not provided until later. When  
23 reviewing these documents side by side, Exhibit B contains  
24 descriptions for the national accounts manager, and regional  
25 manager that match word for word with the job descriptions in

1 Exhibits Z and AA, except Exhibit B differs in two ways.

2 One difference is that it omits certain responsibilities  
3 listed in Exhibits Z and AA. For example, Exhibit B's list of  
4 job functions for the national accounts manager omits that  
5 they favorably negotiated pricing agreements and coordinated  
6 development of food service for proprietary products. This is  
7 on Exhibit B under principal accountabilities. The second  
8 difference is that Exhibit B has the term 'solicit' or  
9 'solicitation' under responsibilities. For example, according  
10 to Exhibit AA, the regional manager's principal  
11 accountabilities included, quote, "Optimized retail execution  
12 and maximized brand exposure." In Exhibit B this was changed  
13 to read, "Optimized retail execution and maximize brand  
14 exposure through solicitation of sales," so Exhibit B has the  
15 same description of Exhibit AA, except it added the term,  
16 "through solicitation of sales."

17 This is just one example of this happening. Between the  
18 national accounts manager and regional manager the terms  
19 'solicit' or 'solicitation' were added at least 13 times, so  
20 there are many other examples too. Except for these  
21 differences, the descriptions are mostly identical, so we  
22 don't know how Appellant can claim that Exhibits Z and AA  
23 aren't relevant or accurate while also maintaining that  
24 Exhibit B is. Given the commonalities, it appears that  
25 Appellant had these job descriptions when drafting Exhibit B,

1 yet chose not to provide them, because it cannot be a  
2 coincidence that the descriptions in Exhibit B use not just  
3 similar but identical language to those in Exhibits Z and AA.

4 Also, since the only difference in Exhibit B is that it  
5 omits certain responsibilities and adds the terms 'solicit' or  
6 'solicitation' to many of the descriptions, this gives the  
7 appearance that the description in Exhibit B were intentionally  
8 framed in a way that would not exceed PL 86-272 protection.  
9 This is contrasted with Exhibits Z and AA which appear to be  
10 actual unedited job descriptions.

11 Furthermore, the corporate chef job description, which is  
12 Exhibit Y, was specifically submitted as the job description  
13 for Greg Schweizer, who I'll refer to as Chef Greg. This is  
14 indicated by Appellant in the e-mail included in Exhibit Y.

15 Chef Greg replaced Appellant's prior corporate chef,  
16 David Mack, in 2012, and served this role during both years at  
17 issue, which are the tax years ending April 30th, 2012 and  
18 2013. During the audit though, Appellant stated that Chef  
19 Greg was not an employee during the audit period under  
20 question. This can be seen in Exhibit E, and in its briefing  
21 Appellant claimed that FTB incorrectly asserted that it had a  
22 corporate chef in California during each year in issue, but  
23 today it has stated that Chef Greg was an employee beginning  
24 in 2012, so it doesn't appear that this is at issue, but to  
25 the extent that it is, Chef Greg's LinkedIn, submitted as

1 Exhibit L, states that he's been a corporate chef for  
2 Appellant since March 2012, and expense reports of Appellant's  
3 employees show Chef Greg multiple times in California in 2012,  
4 and that he was employed by Appellant during these meetings.

5 This proves that Chef Greg was not only a corporate chef  
6 for Appellant during both years at issue, but also that he  
7 performed activities in California. Because of this, the job  
8 descriptions for Chef G in Exhibit Y should be viewed as an  
9 accurate representation for the corporate chef's duties for  
10 these years. It is also consistent with information from the  
11 interview with the corporate chef supervisor and other  
12 evidence provided, which will be discussed.

13 I'll now talk about the activities of Appellant's  
14 employees and Acosta and explain why these activities went  
15 beyond soliciting orders. I'll start with the corporate chef.  
16 Appellant did not make the corporate chef available for an  
17 interview, despite requests and demands from the FTB. This  
18 can be seen in Exhibit AB where an interview with David Mack,  
19 the corporate chef before Chef Greg, was requested, and in  
20 Exhibit AC where interviews with Chef Greg were requested four  
21 times and a formal demand was issued.

22 The interview was not provided. Instead, the FTB was  
23 only able to interview the corporate chef supervisor, which  
24 was submitted as Exhibit A. Even just based on this  
25 interview, the corporate chef performed multiple unprotected



1 activities. The ones I'll focus on are the services provided  
2 to customers, ideation of new products, showing customer chefs  
3 how to use Appellant's products, and R&D related activities.  
4 Appellant has made several unsupported claims that these were  
5 not activities performed by the corporate chef or were  
6 misunderstood by the FTB, but I'll explain why the evidence  
7 shows otherwise.

8 First, the corporate chef provided culinary services and  
9 resources to Appellant's food service customers, such as  
10 creating recipes for them. In the interview with the  
11 supervisor he stated that the corporate chef would, quote,  
12 "Certainly put a recipe together for the customer." This  
13 statement is supported by Appellant's culinary services  
14 website, submitted as Exhibit H, which states that it works  
15 hard to keep customers menus up to date, creates menu ideas  
16 tailored to customers' tastes, and that it works with  
17 customers on total recipe development -- Chef Greg is one of  
18 three corporate chefs featured on this page.

19 Appellant's current food service website also advertises  
20 its corporate chefs, including Chef Greg as being able to help  
21 customers build their business, solve customers' problems, and  
22 work with customers on developing a holistic menu strategy.  
23 This is in Exhibit Q.

24 All this information is consistent with the job  
25 description of the corporate chef in Exhibit Y which states

1 that he provides consultative culinary resources, conducts  
2 culinary ideations with customers, and should develop  
3 relationships so that customers view Appellant as a culinary  
4 resource. This is further evidence that these types of  
5 services were performed through the corporate chef. By  
6 providing additional resources and services to customers, even  
7 if these are free of charge, Appellant helps customers build  
8 their businesses, which insures continued sales.

9 This is similar to Brown Group Retail versus FTB where  
10 the taxpayer's employers were used to provide free services to  
11 help retailers establish and enhance their stores. This  
12 cemented relationships with customers, and kept them in  
13 business longer by making them healthier companies. The court  
14 held that while these activities may lead to increased sales,  
15 they were not request-related activities and did not  
16 facilitate the requesting of sales.

17 This is also the case here. The corporate chef's  
18 ideation also involved coming up with a variety of uses for  
19 Appellant's products. When asked how the corporate chef was  
20 involved in the ideation of new dressings, the supervisor  
21 stated that this was his job. If Appellant came up with a new  
22 dressing, the corporate chef was responsible for coming up  
23 with lots of different uses so that Appellant can sell more of  
24 them. This was in Exhibit A.

25 Coming up with different uses of products does not fall

1 within the limited scope of PL 86-272 protection. This is  
2 different from a salesperson simply becoming familiar with the  
3 benefits or virtues of products for solicitation purposes.  
4 Instead, this is actually creating and developing different  
5 uses to increase marketability, which is a separate business  
6 purpose. This may generally increase sales, but it is not a  
7 request-related activity.

8 Next, according to the interview with the supervisor, the  
9 corporate chef met with customer chefs on his own and would,  
10 quote, "go into the customer's kitchen with the other chef and  
11 show them how to use the sauce or dressings." This was stated  
12 as a separate activity from the corporate chef's account  
13 visits with sales reps where he prepared food while the sales  
14 reps spoke with customers. This suggests that the individual  
15 meetings with customer chefs were separate from these account  
16 visits and served different purposes.

17 Also sauces and dressings can be more complicated than  
18 serving them exactly how they come, and a single one of  
19 Appellant's sauces can be used to create a variety of sauces  
20 for different applications. To illustrate this we provided  
21 Exhibit AD which shows that it's home style Ranch dressing can  
22 be used to make several dressings, each using different  
23 ingredients. When Appellant's products are just one of many  
24 ingredients in a sauce used for a recipe, especially if it's  
25 one created by the corporate chef, other chefs could benefit

1 from these meetings since the corporate chef would have more  
2 knowledge on how to use Appellant's products and their  
3 applications. This would save customers and their chefs time  
4 in trying to figure out the right mix of ingredients, while  
5 also ensuring that they are properly using Appellant's  
6 products. This is a business purpose distinct from soliciting  
7 orders.

8 Lastly, the corporate chef performed R&D related  
9 activities. According to the supervisor, the corporate chef  
10 communicated customer recipes to Appellant's R&D staff to  
11 develop samples for customers, and it also appears that he was  
12 involved in new product development. When asked how the  
13 corporate chef -- When asked how often the corporate chef  
14 comes up with a new dressing, the supervisor stated that it  
15 take a long time to develop a new dressing from start to  
16 finish. This was in Exhibit A.

17 There was no response that the corporate chef was not  
18 involved in this, and there were no clarifications to this  
19 response in Exhibit E. This is also supported by the  
20 corporate chef's job description in Exhibit Y which states  
21 that he worked with customer R&D departments in new product  
22 development and reformulations. According to this job  
23 description, the corporate chef also worked with food  
24 scientists to develop, match, and commercialize customer  
25 formulas, kept records of lab work, and participated in

1 testing of R&D projects, new products, and reformulations.

2 At a minimum, the evidence demonstrates that the  
3 corporate chef worked closely with customers, and Appellant's  
4 R&D departments, and provided assistance when customers  
5 desired new products, but it also shows that he participated  
6 in product development and testing too. This -- with  
7 Appellant's R&D process, which is another independent business  
8 purpose.

9 Despite all of this evidence, Appellant claims that the  
10 FTB continues to misconstrue the corporate chef's activities,  
11 but Appellant had multiple chances to provide more  
12 information. It was given the opportunity to review and  
13 clarify answers from the interview with the corporate chef's  
14 supervisor, but it did not feel the need to provide  
15 clarification on the information just discussed. This is  
16 evident in Exhibit E.

17 Also, as shown in Exhibits AB and AC, FTB requested  
18 interviews with Appellant's corporate chefs, but these  
19 interviews were not provided. Appellant's failure to provide  
20 these interviews, which would have provided relevant  
21 information within its control, creates a presumption that the  
22 evidence that would have come from these interviews is  
23 unfavorable to its case, Thus Appellant has not overcome its  
24 burden of proof.

25 The activities of Appellant's corporate chef alone causes

1 Appellant to lose its PL 86-272 protection, but I'll also talk  
2 about Appellant's other unprotected activities.

3 I'll now turn to Acosta. As an independent contractor,  
4 Acosta can solicit sales, make sales, and maintain offices in  
5 California, but if it performs other activities for Appellant  
6 in California, Appellant will lose its PL 86-272 protection,  
7 so the question here is what activities Acosta performed for  
8 Appellant.

9 Appellant did not provide any contracts with Acosta  
10 describing the scope of work, and instead claims that it was  
11 general practice not to have formal agreements, but in the  
12 interview with the regional manager, which is Exhibit F, he  
13 appears to mention a contract with Acosta. When discussing  
14 contracts he states, quote, "If issues are identified, we will  
15 contact Acosta to resolve these issues per contract."

16 Since managing Acosta was one of the regional manager's  
17 primary job functions, he would likely be aware of whether  
18 there's a contract or not. Appellant also made no corrections  
19 to this statement in Exhibit B.

20 Appellant's failure to provide any agreements with Acosta  
21 should give rise to the presumption that it would have been  
22 unfavorable to its case. Without this, we're left relying on  
23 another Word document prepared by Appellant during the audit  
24 titled, "Services performed by Acosta for Ken's Food, Inc., in  
25 California," which is Exhibit G. This document states that

1 Acosta performed both headquarter and retail functions for  
2 Appellant in California.

3 Since a contract was not provided, Acosta's website helps  
4 describe what's included in its headquarter and retail  
5 functions. I'll start with the headquarter functions. These  
6 are not activities that would normally be performed by a sale  
7 staff, and do not involve soliciting orders. There are  
8 instead designed to serve as a substitute for other activities  
9 that would be done at a client's own headquarters. For  
10 example, these headquarter functions include using  
11 space-management analytics for strategic planogram  
12 development. This can be seen in Exhibit W.

13 This is consistent with Exhibit G, which states that  
14 Acosta's headquarter function participated in a planogram  
15 discussion with Appellant. While advice to retailers on how  
16 to display goods may be protected, the actual development of a  
17 planogram goes beyond their advice and is steps removed from  
18 this. If not done by Acosta, this is an activity that would  
19 normally be done by Appellant's non-sales personnel.

20 Appellant has now provided Exhibit 11, which is an e-mail  
21 from one of its employees specifically for this appeal stating  
22 that it established its planogram standards at his  
23 headquarters and communicates its standards to Acosta for  
24 implementation at retail stores. However, according to  
25 Exhibit G, implementation at the store level is done by

1 Acosta's retail function, so if Acosta was only performing  
2 retail functions, such as planogram implementation, it is  
3 unclear why as stated in Exhibit G that Acosta also performed  
4 headquarter functions for it in California.

5 In Exhibit G, Appellant also listed the headquarter  
6 function of participating in the planogram discussion as a  
7 separate activity from its implementation, which indicates  
8 more involvement than just this. This e-mail doesn't prove  
9 that Acosta only performed retail functions for Appellant.  
10 Even if this were the case, Acosta's website indicates that  
11 its retail functions included audits and surveys, stocking,  
12 and product recalls. This can be seen in Exhibits V and X.

13 This is consistent with the regional manager's interview  
14 where he stated that Acosta restocked shelves, replaced stock,  
15 participated in retail audits, and handled issues with bad  
16 products. This was in Exhibit F.

17 In Wrigley refilling displays using agency stock checks,  
18 replacing stock, and keeping inventory data was enough to  
19 defeat PL 86-272 protection. Likewise, in Blue Buffalo  
20 Company versus Comptroller of the Treasury the court  
21 determined that restocking retailer shelves and pulling bad  
22 products for quality control were not ancillary to  
23 solicitation. Here, Appellant was performing similar  
24 activities through Acosta.

25 Appellant claims that some of these activities were done



1 for retail customers and not Appellant, but it is has only  
2 provided exhibits showing that Acosta was paid a commission.  
3 This doesn't approve that Acosta did not perform these  
4 activities for Appellant, nor does it prove that it instead  
5 performed these activities for retail stores. There is no  
6 other evidence supporting this claim, and it actually  
7 contradicts the evidence that is available.

8 For example, Exhibit G specifically states that the  
9 headquarter and retail functions were services performed by  
10 Acosta for Appellant that occurred in California.

11 Also, based on Acosta's website, submitted as Exhibit T,  
12 its clients were brands that manufactured products, including  
13 Appellant, but there's no indication that its clients included  
14 retail stores, and the Acosta brochure, submitted as Exhibit  
15 V, states that it performs these types of retail services for  
16 consumer packaged goods companies. All of the evidence points  
17 to Acosta performing services for brands of consumer packaged  
18 goods such as Appellant.

19 Acosta also worked closely with Appellant's regional  
20 managers. The regional managers, along with Acosta, performed  
21 retail audits which were done to ensure display price and  
22 trade spending compliance. Appellant clarified in Exhibit E  
23 that the retail audits were done to determine the stores were  
24 in compliance with agreed-upon deals that were funded to  
25 increase sales, and that customers received promotional funds

1 to carry these out.

2 Since Appellant is funding these deals, it makes sense  
3 that it would want to make sure that its trade spend is being  
4 properly used by the customers receiving the funds, but this  
5 is not to solicit orders. It was instead done for compliance  
6 purposes.

7 Appellant claims that these retail audits were de minimis  
8 because they occurred once per year, included only seven to  
9 eight customers, and took less than five minutes to complete,  
10 but the FTB is not aware of any evidence in the record  
11 supporting this, and this actually contradicts the interview  
12 with the regional manager which stated that, quote, "Retail  
13 audits take about one hour." This was in Exhibit F.

14 There is also evidence that the regional managers  
15 performed similar activities more frequently, and were not de  
16 minimis when taken together. While they are not referred to  
17 as retail audits, the retail manager stated in Exhibit F that  
18 he went to supermarket stores about once every couple weeks to  
19 make sure everything was as agreed upon, such as how to  
20 display and price products.

21 Appellant clarified that this display and price  
22 compliance was to oversee whether a store put up a display  
23 included in their trade spend, or was really offering a deal  
24 related to their trade spend. This was done to make sure that  
25 Appellant was paying out trade dollars the customer earned,

1 and it was verifying the displays and promotions being  
2 offered. This was stated in Exhibit E. Thus, similar to  
3 retail audits, these visits were done not to solicit orders,  
4 but to ensure the proper use of Appellant's trade spend in  
5 compliance with agreed-upon items.

6 Lastly, I'll briefly discuss the national account  
7 manager's activities related to identifying market  
8 opportunities. According to the interview with the national  
9 account manager, which is Exhibit C, they met frequently with  
10 existing customers. For example, if working on a project like  
11 product matching, they will meet with a customer once a week.

12 As part of this process, the national accounts manager  
13 also picked up competitor samples. In Exhibit E Appellant  
14 clarified that the samples were used to match a product and  
15 take a customer from a competitor. This information is then  
16 communicated to the R&D team, which is used to match -- match  
17 products or create new products. This was also in Exhibit E.

18 These were therefore activities that facilitate product  
19 matching in taking over competitor products. In Blue Buffalo  
20 it was held that providing information regarding market  
21 opportunities and competitor activities was characterized as  
22 competitive research and a collection of market data, which is  
23 a business objective distinct from soliciting orders.

24 Here, by regularly meeting with customers for product  
25 matching and making that competitor promise to take over those

1 products, the national accounts managers were identifying  
2 market opportunities, collecting competitor information, and  
3 providing this information to R&D. As held in Blue Buffalo,  
4 this serves a business purpose independent from soliciting  
5 orders and is not protected.

6 As a final note, Appellant provided Exhibits 10 through  
7 23 for this hearing, but it does not appear that these  
8 exhibits provide any information related specifically to the  
9 job duties or activities of the corporate chef, national  
10 accounts manager, or regional managers, and many of these  
11 exhibits are dated from 2014, which is more than a decade  
12 after the years on appeal, so they should not be considered  
13 relevant for these years. These exhibits may generally  
14 describe certain aspects of Appellant's current business, but  
15 they do not prove that the information relied on by the FTB,  
16 such as the interviews and job descriptions, are incorrect.

17 So just to summarize, PL 86-272 is very limited, and only  
18 provides protections for request-related activities that serve  
19 no other business purpose other than soliciting requests for  
20 orders. If any single activity does not involve soliciting a  
21 request, or is entirely ancillary to soliciting a request, and  
22 is not de minimis, PL 86-272 protection is gone. Here,  
23 Appellant's employees and broker regularly performed a variety  
24 of activities outside of this protection. They were not de  
25 minimis, especially when taken together.

1 Appellant claims that FTB misconstrues these activities,  
2 but it has not provided sufficient or credible evidence  
3 supporting its claims. It has also failed to provide relevant  
4 evidence within its control, despite requests and demands from  
5 the FTB, which gives rise to a presumption that this  
6 information would have been unfavorable to Appellant.

7 Based on this, Appellant has not overcome its burden of  
8 proving that FTB's determination that it was not protected  
9 under PL 86-272 was incorrect. The FTB therefore requests  
10 that the OTA sustain this determination.

11 If there are any questions, I'm happy to try and answer  
12 them.

13 JUDGE KLETTER: This is Judge Kletter. I just wanted  
14 to confirm, Franchise Tax Board, did you have any questions  
15 for Appellant's witness?

16 MR. IVANUSICH: No, we don't.

17 JUDGE KLETTER: Okay. Great. So I am going to turn  
18 it over to my panel. Beginning with Judge Leung, did you have  
19 any questions for either of the parties?

20 JUDGE LEUNG: I am going to hold my question until  
21 after the Appellants finish their closing statement.

22 JUDGE KLETTER: Thank you. And, Judge Johnson, do  
23 you have any questions for either of the parties?

24 JUDGE JOHNSON: Thank you. I'll also hold questions  
25 for now.

1 JUDGE KLETTER: Okay. So it looks like I'm also  
2 going to hold my questions, so Appellant, you'll have 19  
3 minutes on rebuttal. Are you ready to begin your  
4 presentation, Ms. Freeman?

5 MS. FREEMAN: Can we have five minutes?

6 JUDGE KLETTER: Yeah. We'll take a five-minute  
7 break, and we'll return at 3:26. Thank you.

8 (Pause in the proceedings from 3:22 p.m.  
9 until 3:27 p.m.)

10 JUDGE KLETTER: This is Judge Kletter. We're now  
11 going back on the record. It is 3:27 p.m.

12 Ms. Freeman, you'll have 19 minutes for your closing  
13 statement and rebuttal, so please begin when you're ready.

14 CLOSING STATEMENT

15 MS. FREEMAN: Okay. So it's gonna be a collective  
16 response, because there were so many topics, just so you know,  
17 so everyone at this table will be providing responses.

18 JUDGE KLETTER: Just please make sure that they are  
19 speaking directly into the microphone.

20 MS. FREEMAN: Yeah. So it's gonna be a collective  
21 here since there were so many topics.

22 With respect to the job duty descriptions, we provided  
23 duty descriptions for the subsequent audit period. We did  
24 provide a generalized response for the audit period, which is  
25 consistent generally with that, but again, goes to the issue

1 that like in job duty statements for the state employees, that  
2 doesn't mean that was actually what was actually done. So  
3 again, I have emphasized this, in multiple audits that I have  
4 participated in, job duty statements provide broad categories  
5 of activities that are allowed or not allowed.

6 Here, the employees in question work in California and  
7 outside of California, and those duty statements do not  
8 explicitly say what happened in California, okay? We have  
9 acknowledged that the employees -- California employees were  
10 asked to be interviewed. We provided access to the  
11 California-based employees. David Mack was no longer with the  
12 company, which is why we had -- he -- Rodeck interviewed  
13 instead, because Greg Schweizer was not a California-based  
14 employee. He did come in a few occasions to do sales  
15 presentation, but he was not a California employee and was not  
16 asked to be interviewed. FTB seems to take issue with that.

17 We've also indicated, one, that job interviews themselves  
18 are more representative of the actual duties performed, but  
19 again, the FTB has taken what they have indicated on those  
20 interviews out of context. When I go in and show somebody how  
21 to use a sauce, again, I'm dealing with culinary experts. I'm  
22 not training them. I'm in there doing product demonstrations  
23 to participate in the sale. Okay?

24 We don't -- We don't have staff -- Again, these are  
25 employees that -- in the state that are participating in the

1 sales process. We don't have staff available, sufficient  
2 staff to go in and provide culinary support. All of our  
3 culinary support, again, they've confused the activities of  
4 the corporate chefs, which are in Marlborough, with the  
5 corporate activities -- the activities of what actually took  
6 place in the state, okay?

7 David Mack no longer worked with us, so we were relying  
8 on Keith Rodeck's best remembrance of what David was doing.  
9 Again, the state did not ask to interview Greg Schweizer, and  
10 was aware of Greg Schweizer during the audit.

11 With respect to the activities performed by the chef,  
12 again, the chef in the California -- when he was in California  
13 performing sales tasks, he was part of the sales team. His  
14 menu ideation consisted of putting together samples. Wrigley  
15 permits samples to be handed out free of charge.

16 The fact that I had to prepare food to give to a chef,  
17 the reason you do that is you can't just hand a culinary  
18 expert a packet of sauce, rip it open and have him suck on it,  
19 and say, "What do you think?" That's just not how you're  
20 gonna make a sale. I'm sorry. That's why they did these  
21 small food presentations.

22 Those menu ideas, there's no evidence that anybody  
23 incorporated -- that were used in the presentation, there's no  
24 evidence those were ever used by anybody in their menus, and  
25 again, all it is, is basically showing a particular product's



1    versatility in an effort to make a sales call, and make a  
2    sale.

3           MR. ELLIOTT:  I guess I would just add that Wrigley  
4    acknowledges that conduct that implicitly invites an order is  
5    also part of solicitation, and we would say that the chef as  
6    part of the sales team was implicitly inviting the order.

7           MS. FREEMAN:  Yeah.  And there's nothing that says  
8    they had -- they could not meet with the individual customers  
9    wanting to do research to individually attempt to make a sales  
10   appointment, or make a sales call and do a presentation  
11   individually, and similarly make a sales call on their own.  
12   Even though it says they're just culinary, they are implicitly  
13   involved in communicating with the buyer to invite a sale, an  
14   actual sale in process, and these are not -- these are not  
15   activities where you have them going out to a broad range.  
16   These are customized sales visits to specific customers, and  
17   again, every visit to the customer is an opportunity to make a  
18   sale.

19           We did job descriptions.  We did the chef.  Let's go into  
20   Acosta.  FTB has repeatedly said we provided no evidence of  
21   what Acosta's business activities were -- and in fact, the  
22   exhibits provided specifically detail out the activities  
23   Acosta was providing in store for the retail customers.  
24   They're telling us, again, we've given you an invoice on  
25   purpose so you can see how we're paying them, and again -- And

1 I'll let Marie attest to this. Their relationship with  
2 Acosta.

3 With respect to the planograms, we have our own  
4 planograms. They're -- Planograms are planograms. We've had  
5 them for years. They're based on market research, and all  
6 that activity takes place in the headquarters in Marlborough.

7 With respect to Acosta, Acosta's headquarters, which is  
8 involved in the negotiations, isn't even in California. It's  
9 in Jacksonville, Florida, so even if they want to argue that  
10 somehow we're providing planogram services, those activities  
11 aren't happening in California.

12 With respect to actually putting up a -- the display  
13 case, they're doing it in the retail company's store, okay?  
14 We're allowed to have a planogram in the store. There's  
15 nothing that says, even installing -- Not that we're saying  
16 they're doing it on our behalf. There's nothing that says  
17 installing the planogram so that you have the sales display is  
18 an un-permitted activity. They acknowledge planograms are  
19 allowed.

20 As far as the design, all of that activity, it happened  
21 outside of California, and it was purely negotiated. If you  
22 look at the planogram example, which is in, which one? 20.  
23 Planogram's a planogram, whether it's Acosta's planogram or  
24 ours. This is our preferred, you know, product facing, but  
25 once we negotiate, you know, we get six spacings, we're gonna

1 go in the store periodically and make sure we got six  
2 spacings, and if we don't we're gonna go back and negotiate  
3 and make sure they put in the other two that we negotiated.

4 With respect to product -- trade spend, you can't tell  
5 whether they're appropriately doing their trade spend, because  
6 trade spend isn't based on the shelving, right? Trade spend  
7 is based on product sales, how many scans, how many products  
8 are sold, so they're not gonna be able to tell from looking at  
9 the planogram that's in place with our product placed. The  
10 only thing they're gonna be able to tell is whether a product  
11 is properly placed, properly priced, and in the right location  
12 where they said it was gonna be to -- to -- to basically  
13 invite orders, which is an absolutely a hundred percent  
14 permitted activity under both Wrigley and Skagen.

15 Retail audits. Okay. The time that it took to do a  
16 retail audit, okay? Again, they went, and we've admitted they  
17 went in seven or eight per -- per time, which was Memorial  
18 Weekend. The reason they did seven or eight, because yes, it  
19 took 45 minutes to an hour to do a sales presentation. The  
20 retail audit was merely a function of the sales person coming  
21 into the store, looking at the display case, seeing what was  
22 for sale, because every retail store is different.

23 Again, they have tens of thousands of retail stores.  
24 They need to come in and see what they're dealing with. What  
25 products are selling. Is the store -- Is the store empty --

1 Are the shelves empty or full. Again, he's indicated, "I  
2 don't pull product off. I don't restock shelves." They look  
3 at through -- what they have, what they're selling, and then  
4 they go back into the back room at the store, and make a sales  
5 presentation to sell product.

6 It's entirely ancillary, because I need to familiarize  
7 myself with what I'm dealing with, to the sales solicitation  
8 process, and it's followed-up with a sale commensurate with us  
9 telling us all the pricing, you know, promotions on these  
10 products to place the order for that customer.

11 MR. ELLIOTT: And I would just highlight, Exhibit 10,  
12 the sample form, which is actually -- is from 2015, but Marie  
13 can attest that it's similar to the forms they would have used  
14 in the years in issue. You can tell from that form, along  
15 with Exhibit 20, which is the picture of the planogram, and  
16 Exhibit 19, which is a photo of a shelf stock, that the amount  
17 of time that it would take to do those retail audits is  
18 relatively minimal. Definitely less than an hour, closer to  
19 five minutes, and you can tell basically by the simple nature  
20 of that form, along with the size of a planogram section, and  
21 the photos that were provided.

22 MS. FREEMAN: And again, the purpose of the retail  
23 audit is to put down basically store information, so I can go  
24 back and make an informed sales presentation to the person in  
25 the back room. What I just saw in the store, versus, maybe

1 what I hope to add to the store and increase my sales.

2 With respect to the issue of product matching by the  
3 sales staff, we had one example that we found where Georgia  
4 Robbie did pick up a sample from a competitor. The competitor  
5 would have had to give you that sample, or no. The person  
6 asking for the product to be matched from a competitor would  
7 have to be a specific customer, singular, asking, "Can you  
8 make me this product?" Okay? It's absolutely ancillary to  
9 the sales solicitation process. The only person you're gonna  
10 get that product from is a customer or from a potential  
11 customer.

12 She then, as just merely an inquiry, would send it back  
13 to the commercial kitchen in Massachusetts and say, "Hey, this  
14 customer is interested in us making this product, and us  
15 selling this product. Can you do it?" The commercial  
16 kitchen, the corporate chefs back in Marlborough, which are  
17 the only ones that are able to do that, would go back in and  
18 determine if they could match the product, and if they could,  
19 they would send samples back to Georgia, or whoever had asked  
20 for it.

21 In this case, the only sample we have is Georgia, and  
22 they would go back to the customer that asked us to make the  
23 product, see if it met their specifications, and if so, make a  
24 sale. If it wasn't perfect, she'd have to ship it back and  
25 make a second inquiry, but the question was, the whole purpose

1 of getting a competitor's sample from a customer is to see if  
2 we could make that product for them and make a sale. End of  
3 story. We're not in there trying to expand our market,  
4 although we're trying to make a specific sale.

5 With respect to the blank retail audit form, and the  
6 other documents that we've provided are merely, they've argued  
7 that we haven't provided any evidence of -- that all we're  
8 doing is paying Acosta for sales. The whole point of Exhibits  
9 12 through 17, which were not requested by the auditor, is to  
10 show and provide evidence, and Marie has testified, "This is  
11 how we pay them, and I cut the checks on these things, and I  
12 am purely paying them a percentage of the sales, a commission  
13 based on the sale." We are not paying them for anything else.

14 MS. JOHNSON: It was the same calculation nine years  
15 ago. We just weren't asked for it.

16 MS. FREEMAN: Yeah. The FTB did not ask for those  
17 calculations.

18 With respect to the planogram, again, Acosta did not  
19 provide any planogram services that, as a convenience to us.  
20 We already had the planograms. The store shelving was already  
21 there. The negotiations between the retail customer and --  
22 the negotiations that occurred, actually took place in  
23 Jacksonville, Florida from Acosta's perspective, and from  
24 Massachusetts in our perspective, and once it was agreed upon,  
25 the customer, the retail customer is responsible for

1 finalizing the display, and buying the product, and stocking  
2 the shelves. There was also an e-mail in Exhibit 11 from Mark  
3 Holbrook.

4 JUDGE KLETTER: Ms. Freeman, I just want to let you  
5 know you have five minutes left in your presentation.

6 MS. FREEMAN: Yeah. So Exhibit 11 we provided  
7 because their assertion that Acosta is providing these  
8 services for us, confirms that we actually have the  
9 planograms, we designed the planograms, and again, it just  
10 comes down to negotiating product placement with the customer.

11 With respect to, again, 12 through 17, it just shows us  
12 how we're paying as evidence that we're only paying them for a  
13 percentage of sales. We provided some -- from a point of  
14 reference so you can see what we're talking about, which  
15 they've also done. We've provided you some product photos  
16 just so you can see it's a bottle of dressing, there's various  
17 sizes, there's gallons, and the planogram shows the products  
18 sitting on the shelves, consistent with the issue of what is a  
19 planogram and proper placement.

20 All of these -- All of this evidence is relevant to  
21 provide perspective, which is what is lacking from the FTB's  
22 analysis in this case, and it may not be contemporaneous, but  
23 nothing has changed, Marie, right? Everything is identical to  
24 what it was during the audit period with respect to the photos  
25 provided. Even though they're current, that's essentially the

1 same thing.

2 We've also provided sample distributor invoices, even  
3 though they are not at issue, so you can see how the  
4 distributors are paid, which is consistent with what we've  
5 told you.

6 MR. ELLIOTT: They also cited the Brown case, and  
7 tried to compare the chefs -- The Brown Retail Group case, and  
8 tried to compare the chef's activities to the activities of  
9 the non-sales category employees in that case, and in our  
10 case, I would say the chef is part of the sales team, and the  
11 activities that in Brown they were conducting were by  
12 non-sales connected employees, and they were relatively  
13 substantial compared to trying to demonstrate products and  
14 solicit products.

15 In that case they did financial analysis to determine  
16 feasibility and potential for new business, site selection,  
17 lease negotiations, store design, training of office personal,  
18 provision of bookkeeping services, and inventory management  
19 and control, so way more extensive than a chef that's part of  
20 a sales team.

21 MS. FREEMAN: Right. And we're not performing any of  
22 those services. We're selling tangible property in this  
23 state.

24 With respect to the chefs, the FTB is confusing,  
25 regardless of whether it's because Keith Rodeck confused the



1 write-up with respect to David Mack, but the corporate chef's  
2 activities in California are significantly different than the  
3 corporate activities of the corporate chefs in Marlborough,  
4 and many of the activities that they cited to, what were they?  
5 Are not activities performed?

6 MS. JOHNSON: The new formulas or new ways of using  
7 it. That -- I would say that's more of a Marlborough,  
8 Massachusetts corporate chef activity.

9 MS. FREEMAN: And with respect to, like, the exhibit  
10 they provided with the various, you take this dressing and you  
11 can make these dips. Those are recipes that are actually  
12 offered on the website at headquarters. They're not going out  
13 to a corporate chef and saying, "Oh, you can make this dip if  
14 you take this dressing and do this." Those recipes already  
15 exist and are on the website.

16 That's not the function of a corporate chef on the sales  
17 team. They are taking a specific dressing, they're not  
18 reformulating it. They're taking that dressing, whether it's  
19 to match their flavor profile, or to showcase a new dressing,  
20 they're taking that to basically showcase the product  
21 themselves. They are not reformulating anything as a member  
22 of the sales team.

23 So again, I think it's important to point that out  
24 they're confusing the activities. You have to have a  
25 commercial kitchen in California to perform any R&D services.

1 They don't have a commercial kitchen in California. They have  
2 to do product matching to do product modifications to do -- to  
3 take a competitor's sauce in order to make a sale at the  
4 request of a specific customer. You have to take it, it has  
5 to be sent to Marlborough, and they handle all that. All we  
6 are is handling the inquiries, which is a permitted activity.

7 It's just handing things off, going back to the customer  
8 saying, "Is this good enough? Will you make a sale?" Or if  
9 they want changes, you know, just resending it back and  
10 saying, "They want this kind of modification." Getting the  
11 product back. We're just facilitating inquiries, and in --  
12 when all is said and done, asking for a sale. A specific sale  
13 for a specific customer. This is not marketing. This is not  
14 broader application. Any of those such activities, including  
15 data collection, is handled in Massachusetts, because you  
16 can't do it here.

17 JUDGE KLETTER: Ms. Freeman, does not conclude your  
18 presentation?

19 MS. FREEMAN: Anything else? I think for now, unless  
20 you have questions?

21 JUDGE KLETTER: Okay. That is your time, so let me  
22 go ahead and turn it over to my panel again. Judge Leung, do  
23 you have any questions for either party?

24 JUDGE LEUNG: I have questions for both sides. I  
25 will start with the Appellants, and my question for the

1 Appellants concern the -- the sales team chef and Acosta. So  
2 we'll start with the sales team chef. I guess, Mr. Mack and  
3 Schweizer, and I want to get more into this menu ideation  
4 activity that they do, and so let me start by saying, suppose  
5 I own a restaurant in town called River City Baby Backs, and  
6 I've got a menu item call Sacramento Rib Salad, and your sales  
7 team chef looks at that menu item, and then what? What does  
8 he do with that?

9 MS. FREEMAN: So my understanding of the chef's  
10 options is to go look at your menu, see what you're selling,  
11 see what your flavor profile is to see if there's any sauces,  
12 dresses, or marinades that you might be interested in  
13 purchasing related to your food service business.

14 JUDGE LEUNG: Does he actually taste my current menu  
15 item before he makes a suggestion? Does he taste all the menu  
16 items on my restaurant, or how does he go about doing that?

17 MS. FREEMAN: He does research.

18 JUDGE LEUNG: Mm-hmm.

19 MS. FREEMAN: I'm not saying it's out of the realm of  
20 possibility that he could taste your food, but we have no  
21 implicit knowledge since that question was not asked during  
22 the course of the audit, but they would do the research about  
23 the business, what they were selling, you know, the types of  
24 foods they were selling to see if they can find, because  
25 again, the whole goal is to sell my sauces, marinades and

1 dressing to you, and by the way, Baby Ray's is awesome. That  
2 is one of their leading sellers, to see maybe if you wanted  
3 any Baby Ray's dressing or some modified version of that into  
4 your menu, and again, Baby Ray's they have, I don't know, how  
5 many different versions of that do they have? A lot.

6 MS. JOHNSON: 9 to 12.

7 MS. FREEMAN: Yeah. There's a lot of different  
8 version, and again, no restaurant wants the same flavor  
9 profile as another restaurant, so invariably it's not uncommon  
10 to say, "I like this, but why don't you do this to it to make  
11 it unique to me?" Which is when we get into us facilitating  
12 or an inquiry into Marlborough to see if they could tweak it  
13 the way you want it, so it's quite possible they could taste  
14 the food as part of their background research on you, but I  
15 don't know that for sure.

16 JUDGE LEUNG: So part of background research would be  
17 either Schweizer or Mack need to know the market in California  
18 to see what other people are serving?

19 MS. FREEMAN: No. They need to know what you're  
20 doing, so they can determine what you want. There's no need  
21 for market research globally. Their goal is to sell to you.  
22 What do you want. They want to meet your needs. They don't  
23 want to waste your time in a sales presentation. They want to  
24 come to you with some options.

25 Not saying you're gonna like them. I hope you do, but if

1 you don't like them, they're saying, "Well, what can we do to  
2 make you like it?" Here's some ways you can use it. Here's  
3 how it tastes, and if you don't like it exactly, you know,  
4 like I said, we have the 885 formulas. Can we go back to  
5 Marlborough and say, "We have those 885 formulas. Is there  
6 something closer to what you're looking for?"

7 Then they would send -- provide samples back to see if  
8 you could taste test those and see if they're closer, and if  
9 you can't find something that's an exact match, then they  
10 would take, and with discussions with you to see what you're  
11 looking for. Go back to Marlborough and say, "Can you tweak  
12 it this way?" To customize it to get to what you want, and  
13 then have it brought back so you can taste to see if it's what  
14 you want.

15 Again, maybe we never get to exactly what you want, and  
16 you say, "No," but the goal is to get a product, whether it's  
17 off the shelf in our 885 formulas, or something slightly  
18 tweaked that's unique to you to get something to you to you  
19 that you'll buy to close the deal on the sale to you.

20 JUDGE LEUNG: Let's turn to Acosta. I hear what  
21 you're saying about the planogram. That you at Ken and Acosta  
22 negotiate what kind of planogram should be used at a retail  
23 facility, and oftentimes negotiations are done outside of  
24 California, so the implementation of that planogram, that's  
25 wholly on Acosta or the retail outlet?

1 MS. FREEMAN: The retail outlet, it's their shelf  
2 space. It's their real estate, okay? All we're negotiating  
3 for is how much of that shelf we get. Once the negotiation's  
4 done -- Most of the time, the shelf space is already there,  
5 okay? You're only gonna have an issue with putting up  
6 shelving if it's a new store, and it's quite possible by the  
7 time we get there the shelves are already up, right?

8 The retailer can put the shelving up themselves, or they  
9 can pay Acosta to, but we don't pay Acosta to do that. Most  
10 of the time, the shelving's already there --

11 JUDGE LEUNG: Right, but --

12 MS. FREEMAN: -- but we would not pay them to do  
13 that. The retail outlet has already agreed to have shelving  
14 space to put in our facings.

15 JUDGE LEUNG: Right, but --

16 MS. FREEMAN: -- Marie has a comment.

17 MS. JOHNSON: If the facings are being changed, it's  
18 the retail outlet's responsibility to have all those facings  
19 changed. They may do it on their own, or they could hire a  
20 third party to come in and redo all their shelving, you know?  
21 Say everything has to move down two bottles, or move up, but  
22 Ken's isn't -- Ken's does not participate in that. We  
23 wouldn't ask a third party to do it for a retail outlet.

24 JUDGE LEUNG: Can Ken's participate in locating the  
25 shelving space? Like, they want it closer to the meat

1 section? Closer to, you know, the deli section, as opposed to  
2 being close to the -- and soaps.

3 MS. JOHNSON: Well, the planogram is really, Walmart  
4 has decided that this aisle is for condiments, and so we  
5 really can only work within that aisle, but we might say that,  
6 "We currently have 10 facings. We want to expand it to 12."  
7 And that's the negotiation. Whether or not they'll give us  
8 more space -- sorry -- more space in that aisle, but we don't  
9 really have any say how the grocery stores really set up their  
10 entire store. Does that make sense?

11 JUDGE LEUNG: Well, every retail, every business is  
12 different, so retail --

13 MS. JOHNSON: -- Usually in chains, but a Walmart,  
14 for instance, probably has almost exactly the same layout for  
15 that type of store.

16 THE COURT: Mm-hmm, and the actual stocking of the  
17 merchandise is done by either the store or by some distributor  
18 not related to Acosta?

19 MS. JOHNSON: Not related to Ken's. I don't know if  
20 Acosta is doing it for them or not, but it's not related to  
21 Ken's.

22 MS. FREEMAN: From my experience, for example, in  
23 local stores, when I go in there and they're stocking, often  
24 it's their own employees. There is other times I go in and  
25 see, you know, Pepsi stocking the aisles, okay? But again,

1 we're -- we don't -- by the time it's acquired, we don't own  
2 it, so it's not a Ken's Food employee stocking aisles. It's  
3 gonna be either the retailer's employees, which I've seen, or  
4 it's gonna be somebody they've have hired to do it on their  
5 behalf. Whether it's Acosta or somebody else, we don't know,  
6 but we don't pay for it, and we don't do it.

7 JUDGE LEUNG: Thank you. For Franchise Tax Board,  
8 you've read into the record a pretty narrow definition of what  
9 PL 86-272 allows, and only restricted to solicitation, and I'm  
10 wondering, would sales into the state violate 86-272?

11 MR. IVANUSICH: Are you referring to direct sales?

12 JUDGE LEUNG: Correct.

13 MR. IVANUSICH: Yeah. It would. That's one of the  
14 things that Wrigley says destroys PL 86-272 protection. Also  
15 the recent case from Oregon is Santa Fe Natural Tobacco case,  
16 where they said the fact that the distributors in that case  
17 were contractually obligated to accept the orders, that that  
18 converted the salesmen's activities into facilitating sales,  
19 rather than facilitating requests for orders.

20 JUDGE LEUNG: So how would that apply here? I  
21 imagine Ken's has a sales factory in California, which means  
22 it has sales in California?

23 MS. FREEMAN: What was it?

24 JUDGE LEUNG: How would that, what the FTB just said,  
25 apply here? 'Cause it's clear that Ken's has sales in



1 California.

2 MR. ELLIOTT: Well, he's citing to that Santa Fe  
3 case, and we've already addressed that in the prehearing  
4 conference. We don't have the same contractual range that  
5 they had in that case. Those were called pre-booked sales,  
6 and there were certain incentives for them to comply with  
7 those requests to fulfill those orders. We don't have the  
8 same contract as in that case.

9 JUDGE LEUNG: FTB, do you agree with that?

10 MR. IVANUSICH: Well, we don't have a contract with  
11 Acosta, so we don't exactly know what work they performed, and  
12 whether they're contractually obligated to accept orders or if  
13 they even do that for Ken's, but as far as the evidence goes  
14 for their retail or for their food service, it appears that  
15 they use distributors. I'm not aware of any contracts with  
16 those distributors that would have required them to fulfill  
17 those orders.

18 JUDGE LEUNG: Okay. And my final question would be  
19 for FTB. Would it make any difference at all if the  
20 activities were done by an independent contractor or an agent  
21 of the taxpayer?

22 MR. IVANUSICH: So if Acosta was an agent, rather  
23 than independent contractor? I mean, Acosta had offices in  
24 California. The regional manager's interview states that they  
25 have, I think, three, maybe. If Acosta was an agent, it would

1 be treated as an employee, and those offices would destroy  
2 protection, but we don't have any evidence stating that Acosta  
3 only performed activities for Appellant, such that it would be  
4 an agent under PL 86-272. I don't think it's in dispute that  
5 they're an independent contractor.

6 JUDGE LEUNG: Thank you. Judge Kletter?

7 JUDGE KLETTER: Yes. Thank you, Judge Leung. I'd  
8 like to now turn it to over to Judge Johnson. Do you have any  
9 questions for the parties?

10 JUDGE JOHNSON: Thank you. I think I have a few.  
11 Going to Exhibit 10, the retail audit that we talked about  
12 quite a bit. Looking at that, I'm not exactly sure what  
13 happens with this. I know it was mentioned at some point it  
14 goes away. So is this the form that gets printed out, and  
15 they take that into the store, and then they fill it out as  
16 part of the audit.

17 MS. FREEMAN: So as part of going into making a sales  
18 presentation, they take a retail audit form with them, so that  
19 they can go to where their product facings are and take down  
20 notes, you know, what are they selling. Because again, every  
21 retail store is different, they're only going to seven or  
22 eight during the retail audits in question. There's two of  
23 them, so that makes, what, 14 or 16 visits, because it takes  
24 about an hour, 45 minutes to an hour, plus you have to go to  
25 the next spot, the next customer, so they go in and use the

1 retail audits, which is basically equivalent to reviewing the  
2 -- the planogram that you see in Skagen.

3 They're allowed to do that, but the whole point of them  
4 reviewing it is so that they have an idea of what that  
5 particular customer is selling, right? You know, how many  
6 product facings they have? Where they are? So when they go  
7 back, they can go talk to the, you know, the buyer in the  
8 store, and discuss, you know, what they're doing, what they're  
9 selling, and try to make a sale for more products consistent  
10 with the promotional program that they're doing for Memorial  
11 Weekend kickoff summer sales for barbecue.

12 JUDGE JOHNSON: Okay. So on this form itself would  
13 they go through and say, "Okay. There should be, you know,  
14 thirty products here from Ken's Foods. We're gonna go through  
15 and we're gonna count how many are actually on the shelf  
16 currently." Is that why it says --

17 MS. FREEMAN: -- They're just reviewing it to see  
18 what they have. They may count them, you know? But the whole  
19 point of it is to see what their product mix is, you know,  
20 size, content, placement, to see whether they can make  
21 additional sales, and maybe offer up, you know, maybe a  
22 special on Baby Ray's. Let's get more Baby Ray's on the  
23 shelf, so the whole point is part of the sales process. These  
24 are their notes for that particular sales to that particular  
25 customer, and when they're done, they throw them away, because

1 they're done.

2 They don't need to keep them, and their goal was to  
3 solicit placing an order from that customer that day, for that  
4 event, and then they'll throw them away and go to the next  
5 guy. Fill out another one. What am I looking at? What do I  
6 have in the store? Where's this placement? Things like that.  
7 They need to know what the customer is doing in order to make  
8 an informed sales presentation. That's the whole purpose of  
9 the retail audit, and again, we are allowed under Skagen to go  
10 in and review the planograms to see, you know, what they got  
11 going on, and see, you know, the proper placement of its  
12 product. That's what Skagen says.

13 JUDGE JOHNSON: Thank you. And as for soliciting  
14 sales, this would only be for repeat customers at this point,  
15 right? You wouldn't go without a sheet for a --

16 MS. FREEMAN: -- Probably not. I don't see why you  
17 would. This would be, you go back into an existing customer,  
18 and you would do something formal. You're already in the  
19 store. That's why you have an audit sheet.

20 JUDGE JOHNSON: And in addition to just seeing what's  
21 selling, maybe what should offer them, and try to up-sell them  
22 on, or sell new products to them. Is there other functions as  
23 well? Are they making sure products are where they're  
24 supposed to be according to the planogram? Are they making  
25 sure that any displays that are supposed to be up are actually

1 up?

2 MS. FREEMAN: Yeah. I mean, consistent with the  
3 Skagen decision, I'm allowed to go in and see if the planogram  
4 is where they said it was, and displaying the products they  
5 said it was gonna in the proper placement. That's what Skagen  
6 says. I can go in and review the planogram to see if it's,  
7 you know, properly explaining my products, because the whole  
8 point of a planogram and the placement of product is to invite  
9 a sale. I have advertised the price. The whole point of  
10 advertising is to invite a sale, and I wanna -- and I'm going  
11 in there to review it to make sure I'm inviting sales  
12 consistent with the agreement with the customer, but it's more  
13 importantly I wanna see what they are selling so I can go sell  
14 more.

15 JUDGE JOHNSON: Okay. Thank you. Different topic  
16 now.

17 I know we talked about Judge Leung's questions there on  
18 the market research if you're looking at just that restaurant  
19 you're working with, or looking in the general area of  
20 competitors, etc. You mentioned just looking at that  
21 restaurant, so I noticed reference in the documents to Mintel,  
22 M-I-N-T-E-L, and Technomic, T-E-C-H-N-O-M-I-C, and those  
23 looked like they were, I couldn't tell the difference, but  
24 they looked like market research companies perhaps, but the  
25 chefs were instructed to use those services?

1 MS. FREEMAN: We haven't discussed that with the FTB,  
2 and my understanding is there were suggestions that they learn  
3 it, because obviously they didn't learn it, and weren't using  
4 it, so my -- I have -- There's no reference whatsoever in any  
5 of the information we have on them using those services other  
6 than a suggestion by their supervisor that may could --

7 JUDGE JOHNSON: Okay. I'll just ask FTB if there's  
8 anything you wanted to add on Mintel, Technomic or other  
9 market research?

10 MR. IVANUSICH: Mintel and Technomic were both  
11 referenced in the performance evaluations provided for the  
12 employees. It looks like that was Exhibit I. Am I allowed to  
13 speak on other questions that were asked too?

14 JUDGE JOHNSON: If you had some comments you would  
15 like to say, yeah.

16 MR. IVANUSICH: Yeah. So with the retail audits, we  
17 keep talking about that this was done for, like, a sales  
18 presentation that followed, as far as I can tell, there's  
19 nothing really in evidence that says that. Just reading from  
20 Exhibit F, the interview with the regional manager regarding  
21 the retail audits states that retail audits take about one  
22 hour. These are done in conjunction with broker visits, and a  
23 broker will check store shelving, displays, and pricing, make  
24 sure all authorized items are on the shelf, and then in the  
25 clarification, it says that the retail audits performed solely

1 to determine that the stores are in compliance with the  
2 agreed-upon deals that are funded in order to increase sales.  
3 I don't see anything related to a sales presentation that  
4 followed.

5 No reference to just familiarizing themselves with that  
6 for the sales presentation. It seems like based on these  
7 responses that they were compliance activities, and I think  
8 that's all I have.

9 JUDGE JOHNSON: Okay. Thank you. Going back to  
10 Appellant, is there anything you wanted to add to that?

11 MS. JOHNSON: Well, I think some of retail audits, if  
12 they had gone through and looked at the facings and noticed  
13 that five different flavors were just empty and shouldn't have  
14 been, then that would be a discussion, and would follow-up  
15 with an additional order in order to fill the empty facings  
16 according to the planogram that was supposed to be filled.

17 JUDGE JOHNSON: Thank you. There was a topic about  
18 that was discussed about training, training to use the  
19 product. You don't need to. Maybe they should because of  
20 some of the recipes you could have.

21 I wanted to turn to Exhibit A, Page 2. This is the key  
22 product information, Item 6. There was the mention there that  
23 -- Let's see. David, the chef, would showed Ken's salespeople  
24 all the various uses, but ultimately the customer would be  
25 shown the various uses for the sauces as well. Is this the

1 sort of training provided? Not trying to insinuate that  
2 there's no training at all for your salespeople. I mean, that  
3 would be kind of reckless to just send them out and hope they  
4 do a good job, but what is this level of training? What kind  
5 of training was this that was being done?

6 MS. JOHNSON: Most of this training would have  
7 happened in Massachusetts in our large culinary kitchen, and  
8 the chefs really would show the salespeople to put it in  
9 burgers, to put it in pizzas, to put it in salads, those types  
10 of things, so at least when the sales team had to go talk to  
11 customers on their own without a chef, they would have some  
12 type of intimate knowledge on how to use the sauces. It  
13 wasn't training how to cook, and make a full meal, and recipe.  
14 It was really just showing how to use the sauces to the sales  
15 team.

16 MS. FREEMAN: And those trainings did occur outside  
17 of California?

18 MS. JOHNSON: Yeah. It had to have been in our  
19 culinary kitchen, yeah.

20 JUDGE JOHNSON: And then the sales individuals would  
21 take that information, and they would provide services to the  
22 customers in California that kind of mirrored that training?

23 MS. JOHNSON: Right.

24 MS. FREEMAN: Well, as part of the sales presentation  
25 by the chefs, because the whole point of this is to sell



1 sauces. They -- They did show, during a production  
2 presentation where they're providing samples, the variety of  
3 uses on a burger, or on a salad, or on whatever, but it was  
4 part of a specific sales presentation. They just didn't go  
5 into somebody's, you know, kitchen or restaurant and say,  
6 "Hey, let me show you how to do something." Every one of  
7 these opportunities to display a product was part of a sales  
8 presentation.

9 MR. ELLIOTT: And I think calling it training is just  
10 a mischaracterization. It's, you know, what can this product  
11 that we're trying to sell you be used for so that you purchase  
12 this product.

13 The cases that talk about training, Skagen, where they  
14 taught them how to use the watches, so they didn't have to  
15 produce the product manuals. The Schwinn case, the State  
16 Board of Equalization case that did training to the dealers,  
17 those are all technical in nature. This is not training.  
18 It's, buy this product. You can use it on your different  
19 products.

20 MS. FREEMAN: And with respect to the exhibit showing  
21 you can take, you know, Ranch dressing and convert it into a  
22 dip, those are all on the corporate website, and those recipes  
23 are developed in Marlborough, and available to anybody if they  
24 want them. We are not going into somebody's kitchen,  
25 restaurant kitchen, and saying, "Here, let us make a dip.

1 Let's show you how to make a dip."

2 It's already on there. These people already know how to  
3 cook. They're culinary experts. The recipes are provided to  
4 the general public on the website, and we're not doing  
5 formulation as suggested. They're taking specific products  
6 out to demo them, whether it's new product or something that  
7 matches the profile, and saying, "Here's how you can use this  
8 particular product. It seems consistent with your flavor  
9 profile, you know, buy some."

10 JUDGE JOHNSON: Okay. And going off that, I guess,  
11 two ways, let's go with this, that activity, the showing sales  
12 people how to use it, that would happen in Massachusetts? I  
13 know the exhibit we're looking at says that David would  
14 perform this, but would David go to Massachusetts ever, or was  
15 that different chefs in Massachusetts doing that, and that's  
16 just kind of a misstatement?

17 MS. JOHNSON: At the time, David probably came to  
18 Massachusetts. I can't remember if we had a  
19 Massachusetts-based chef at the time, but Massachusetts was  
20 the only location at the time to have a culinary kitchen.

21 JUDGE JOHNSON: Okay. And going with what happens  
22 inside versus outside of California, the national account  
23 manager, I believe, were the ones that had quarterly meetings;  
24 is that correct? With -- with --

25 MS. FREEMAN: -- With some of the -- With some

1 customers.

2 MS. JOHNSON: With some customers.

3 JUDGE JOHNSON: Some customers?

4 MS. FREEMAN: Just remember, they're -- these --  
5 these -- all of the employees, including Greg Schweizer,  
6 California was part of their region, west region, probably,  
7 you know, half the United States. I mean, it's very clear in  
8 the record, that they weren't exclusively California, so the  
9 activities that happened within and without the state could  
10 vary between the states depending on the needs of the customer  
11 in the particular state, but here, they'd perform -- they  
12 would perform quarterly meetings with some customers in the  
13 state, but they were also performing quarterly meetings with  
14 other customers.

15 But the whole -- the whole goal is you have to stay in  
16 contact with the customers. You have to maintain your  
17 relationships, but any visit -- We accept any visit to get in  
18 front of a customer, because it's an opportunity to make a  
19 sale, so just checking-in was ancillary to -- The customer  
20 knows why you're there. They want you -- They know you --  
21 you're there to sell them something. They absolutely -- I  
22 mean, that's absolutely a given.

23 JUDGE JOHNSON: Right. That was probably a simpler  
24 question then it ended up to be, but as far as those meetings  
25 and any kind of check-ins, the preference would probably be to

1 be in person, but with limited resources and individuals, were  
2 any of these done by telephone or other remote means, or are  
3 there --

4 MS. JOHNSON: -- 2012, 2013, probably not.

5 JUDGE JOHNSON: Not even by phone?

6 MS. JOHNSON: They might have made phone calls.

7 MS. FREEMAN: But we don't know for sure. Could  
8 have.

9 MS. JOHNSON: 10 years ago. It was very different  
10 from now.

11 JUDGE JOHNSON: Right. So it would probably assume  
12 that at least most of them were done in person, in state for  
13 the California --

14 MS. FREEMAN: -- For the California customers.  
15 Again, they -- they -- they -- they're servicing the whole  
16 west coast.

17 JUDGE JOHNSON: Sure. Two more questions. Thank  
18 you.

19 We mentioned talk about the chefs performing certain  
20 solicitation sales activities at the locations of the  
21 customers. We mentioned them being there with the sales pitch  
22 as part of the sales pitch. We mentioned that they would --  
23 You guys mentioned that they would go sometimes before the  
24 sales pitch so that they can get an idea of what the  
25 restaurant is like. What they're using, so they have a better

1 idea of what to prepare when they show up, and could we give  
2 just sort of an overall list of the various things they would  
3 do before a sale, during the sale, and after the sale with a  
4 customer?

5 MS. FREEMAN: We don't really have it broken down.  
6 We know they meet -- they can meet with the customer. They  
7 can review their menu. Before the actual sales presentation,  
8 they have to go shopping for the product to actually prepare  
9 at -- They can meet with the customer to get an idea of what  
10 they were looking for, or where they were going, but again,  
11 the whole point of the process with the corporate chef, who is  
12 part of the sales team, he can even try to pitch it himself  
13 ahead of time. Who knows.

14 I mean, there's no -- nothing prohibiting every single  
15 opportunity to meet with a customer is an opportunity to make  
16 a sale. They could have tried to make the sale themselves.  
17 They could have demoed, you know, something ahead of time as  
18 well, and then followed-up with a follow-up presentation, but  
19 the corporate chef, again, isn't exclusive to California, and  
20 isn't necessarily taken on every single sales presentation.

21 Taken on some, but they have to balance the use in other  
22 states, and in the time that's spent for research, and when  
23 they have a particular customer that they want to do the  
24 sample presentation, then they bring them in, have them do  
25 sufficient research so he can do a targeted sales

1 presentation. That's the whole point of these activities.

2 JUDGE JOHNSON: Thank you. The last question for Ms.  
3 Johnson. On Exhibit B, you provided some information. I  
4 believe it was information described by the departments  
5 regarding the duties for the various sales team members. I  
6 guess just going to the general for the individuals that we've  
7 been talking about for activities, the chefs, David, and Greg,  
8 during the years at issue, did you have any personal knowledge  
9 of the kind of activities they were performing in California,  
10 or any personal knowledge about the statements on Exhibit B,  
11 or is that sort of information you provided for us?

12 MS. JOHNSON: At the time, this was information that  
13 we collected from conversations with them, because originally  
14 we weren't asked for actual job descriptions. We were just  
15 asked for a list of duties, so we reached out to the sales  
16 teams, to the chefs, we created the list of duties, and then  
17 later on, I think in 2017, the FTB asked us for actual job  
18 descriptions.

19 MS. FREEMAN: The duty statement.

20 MS. JOHNSON: The duty statements, yeah.

21 JUDGE JOHNSON: I guess everything -- FTB, was there  
22 anything you wanted to add on those topics I covered?

23 MR. IVANUSICH: No. Not much. Just again, saying  
24 that the trainings occurred in Massachusetts, I don't see  
25 anything in the record that indicates that. Like you

1 mentioned, this was David. This was a corporate chef that was  
2 based in California. Other than that, I don't have anything  
3 else to add.

4 JUDGE JOHNSON: Okay. Thank you. Done with  
5 questions. Thank you.

6 JUDGE KLETTER: And this is Judge Kletter. Thank  
7 you, Judge Johnson. I have a few questions. They are more in  
8 the nature of confirmations so just quick yes, no questions.

9 So with respect to the corporate, and these are questions  
10 primarily for Appellant, but I will indicate, and, you know,  
11 FTB, if you have any comment after, I'll turn to you, but, the  
12 corporate chef, I just wanted to confirm is it Appellant's  
13 position that the practical job function of David Mack and  
14 Greg Schweizer were substantially similar?

15 MS. JOHNSON: Yes.

16 MS. FREEMAN: Yeah. And again, they are not  
17 full-time in California.

18 JUDGE KLETTER: Yeah. Just asking if they're  
19 substantially similar? Okay. Great. Thank you.

20 Next question is, so the corporate chef, that was -- So  
21 Ken's has, sells product for retail sale and also for  
22 commercial food service, so the corporate chef was for food  
23 service only?

24 MS. FREEMAN: Correct. There's no need for a chef  
25 related to retail sales.

1 JUDGE KLETTER: Great. And the two senior national  
2 chain account managers, those were food service only?

3 MS. JOHNSON: Yes.

4 JUDGE KLETTER: And together, those two employee  
5 categories, made up the sales team for food service?

6 MS. JOHNSON: In California, yes.

7 JUDGE KLETTER: Thank you. And the retail regional  
8 managers, those were for retail only?

9 MS. JOHNSON: Yes.

10 JUDGE KLETTER: And for these three categories of  
11 employees, how were they compensated?

12 MS. JOHNSON: Salary, plus bonus based on volume.

13 JUDGE KLETTER: And for the -- Sorry. I'm just  
14 looking here. So you mentioned that for retail customers that  
15 they would generally place their orders through the EDI, and  
16 in very limited circumstances, maybe when they were a smaller  
17 retailer or didn't have access, then they would place those  
18 orders through Acosta, the broker.

19 I just wanted to confirm for food service, you mentioned  
20 that they usually worked with a distributor like Sysco. I  
21 forget what the other one was. Is that how they would place  
22 their orders, or they would also place the orders through the  
23 EDI.

24 MS. JOHNSON: Well, EDI would come directly from  
25 those distributors, so US Foods Service, Sysco would send an



1 order via EDI directly to Ken's.

2 JUDGE KLETTER: Okay. Thank you. Now, Ms. Johnson,  
3 I just have a question. I know you just answered that, a  
4 question about this, but just relatedly, so for those Exhibits  
5 10 through 23, you know, there were a couple questions on  
6 rebuttal that came up that I didn't get clear answers from  
7 you, so are you or were you responsible for preparing those  
8 Exhibits 10 through 23 for the audits -- audit years at issue?

9 MS. JOHNSON: I -- Audit years at issue. So I think  
10 10 came out during the audit period, but 11 through 17 were  
11 just presented now.

12 JUDGE KLETTER: Yeah. I guess, I just mean, like,  
13 was it part of your job duties --

14 MS. JOHNSON: -- I don't create them. I would pay  
15 them. We have a food service administrative team in  
16 Marlborough that would actually run the reports, generate the  
17 reports, submit them to me, and I'd approve them for payment.

18 JUDGE KLETTER: So you are familiar with these forms,  
19 or you were --

20 MS. JOHNSON: -- Yes.

21 JUDGE KLETTER: -- familiar with these forms --

22 MS. JOHNSON: -- Yes.

23 JUDGE KLETTER: -- during the audit period?

24 MS. JOHNSON: Yes.

25 JUDGE KLETTER: Okay. And then I know that one of

1 the representatives asked you, but are you, like, with a  
2 verbal, "yes," are you attesting that Exhibit 10 is  
3 representative of the forms for the audit period at issue?

4 MS. JOHNSON: Yes.

5 JUDGE KLETTER: Okay. And then also, you were asked  
6 that for those Exhibits 10 through 23, that everything is  
7 identical to the audit period at issue?

8 MS. JOHNSON: Yes. Same format, uh-huh.

9 JUDGE KLETTER: Okay. Okay. And then I just have --  
10 just one or two more questions from the presentation.

11 So, Ms. Freeman, you mentioned that when conducting the  
12 pre-sales research, those corporate chefs would meet with the  
13 food service, commercial food service, I guess, companies or  
14 chefs, and they would discuss the menu, the flavor profile,  
15 and then you said, "And what they got," so I'm wondering,  
16 like, what that refers to?

17 MS. FREEMAN: Well, they don't -- I'm not sure I mean  
18 either, but the -- They didn't always meet ahead of time.  
19 They could. At times, they did, but they basically were there  
20 to gather background information for the sales presentation,  
21 which included, you know, what are they selling, you know, and  
22 they're looking to change anything, or, you know, things like  
23 that on their menu, the question is what flavor profile were  
24 they gonna be going with so that we could make sure we brought  
25 the right product to the presentation, so --

1 Oh. And is there anything in particular they're looking  
2 for? Like, are they looking for a particular type of sauce,  
3 so that we could bring it with us, right? The whole point of  
4 these pre-sales meetings when they did happen was to get an  
5 idea of what they want so that I can bring samples,  
6 appropriate samples, with me of our, you know, 885 formulas to  
7 do a presentation to hopefully get -- sell something to them  
8 that they're actually looking for.

9 Like I said before, I don't want to take Ranch dressing  
10 if they want Marinara sauce. There's no point to that, so you  
11 just get a feel for what the client was -- so we can target  
12 and -- So I can make a targeted sales presentation.

13 JUDGE KLETTER: My last question is, you know, in  
14 another part of the presentation you were talking about that  
15 the sales team doesn't get data from the EDI system, or  
16 doesn't track that market data. That's something that  
17 headquarters may provide the sales team information of, but  
18 right after that, you said that the sales team reviews market  
19 and competitor data. What did you mean by that?

20 MS. FREEMAN: What I said was all of the data is  
21 collected and mined in Marlborough, Massachusetts. All the  
22 marketing, all of that type of activity would happen at  
23 headquarters. If there was data that would be useful to do  
24 more targeted sales effort by the respective retail manager,  
25 they would push that out, discuss it with them, so that they

1 could perhaps augment their existing, you know, sales efforts  
2 to more target the specific customer's needs, so that  
3 particular customer is selling, you know, pomegranate  
4 dressing, and it's not selling, they need to convey to the  
5 retail manager, "It's not selling, so sell this instead and  
6 stop selling that one, because it's not selling."

7 JUDGE KLETTER: Okay. And my last question. Just  
8 now it was mentioned that the sales team, they were paid  
9 salary, and they were also reimbursed based on the volume of  
10 sale. How is that volume of sales determined? Was that --

11 MS. JOHNSON: -- Well, they got bonuses based on --

12 JUDGE KLETTER: -- I'm sorry. Bonuses based on the  
13 volume of sales. How was that determined what their volume of  
14 sales was?

15 MS. JOHNSON: It would just be total sales to  
16 whatever region they were responsible for, and so each year a  
17 target was set. Could be based on last year's, plus three  
18 percent or five percent, and if they hit that dollar volume  
19 for retail, or pounds for volume for food service, they would  
20 get their bonus.

21 JUDGE KLETTER: So when you say total sales, you mean  
22 sales, like, distributor sales --

23 MS. JOHNSON: -- food service distributor sales, and  
24 for retail, it would be sales to grocery stores, for instance.

25 JUDGE KLETTER: Okay. Great. Thank you. I do not

1 have any more questions, but I did want to just ask FTB, do  
2 you have any response or any comment on my topic that -- of  
3 questions? Just quickly?

4 MR. IVANUSICH: No. Not that I can think of.

5 JUDGE KLETTER: Okay. Thank you. And I just want to  
6 ask my panel one last time if there are any questions in case  
7 something has come up.

8 Judge Leung, did you have any further question?

9 JUDGE LEUNG: No further questions. Thank you.

10 JUDGE KLETTER: And, Judge Johnson, do you have any  
11 further questions?

12 JUDGE JOHNSON: No further questions, just thank you  
13 for your time and testimony today.

14 JUDGE KLETTER: Yeah. So I really appreciate  
15 everyone's time. This concludes the hearing. The panel will  
16 meet and decide this case based on the documentation in the  
17 record, and also the testimony provided.

18 We will issue our written decision no later than a  
19 hundred days from today. The case is submitted, and the  
20 record is now closed, and this concludes this hearing session.  
21 Thanks so much, everyone.

22 (Whereupon the proceedings were concluded.)

23 ---oo0oo---

24

25

1 REPORTER'S CERTIFICATION

2  
3 I, the undersigned, a Certified  
4 Shorthand Reporter of the State of California, do  
5 hereby certify:


6 That the foregoing proceedings were taken before  
7 me at the time and place herein set forth; that any  
8 witnesses in the foregoing proceedings, prior to  
9 testifying, were duly sworn; that a record of the  
10 proceedings was made by me using machine shorthand, which  
11 was thereafter transcribed under my direction; that the  
12 foregoing transcript is a true record of the testimony  
13 given.

14 Further, that if the foregoing pertains to the  
15 original transcript of a deposition in a federal case,  
16 before completion of the proceedings, review of the  
17 transcript [ ] was [X] was not requested.

18 I further certify I am neither financially  
19 interested in the action nor a relative or employee of any  
20 attorney or party to this action.

21 IN WITNESS WHEREOF, I have this date subscribed  
22 my name.

23 Dated: SEPTEMBER 13, 2024

24   
25 Certified Shorthand Reporter  
For The State of California

<hr/>	<b>20076391</b> 4:4	<hr/>	<b>AC</b> 64:20 69:17
-	<b>2011</b> 15:18 21:23 30:4	<b>5</b>	<b>accept</b> 7:4 96:17 97:12 107:17
<hr/>	<b>2012</b> 15:10 21:25 30:7 63:16,17,24 64:2,3 108:4	<b>5</b> 30:15	<b>accepted</b> 27:7
---oo0oo---	<b>2013</b> 30:2,3 63:18 108:4	<b>5-1-2011</b> 7:13	<b>access</b> 10:23 12:20 43:1 79:10 112:17
117:23	<b>2015</b> 84:12	<b>5th</b> 21:25 30:7	
<hr/>	<b>2017</b> 110:17	<hr/>	<b>accomplished</b> 13:5
<b>1</b>	<b>2024</b> 4:1,5 76:11	<b>6</b>	<b>account</b> 15:2 20:10 28:16 40:10 42:14 44:15 45:6 57:17 67:12,15 75:6,9 106:22 112:2
<hr/>	<b>20th</b> 4:5	<hr/>	<b>accountabilities</b> 62:7,11
<b>1</b> 5:22,25 6:2	<b>21</b> 52:1,2,6	<b>6</b> 103:22	<b>accounts</b> 61:8,24 62:4,18 75:12 76:1,10
<b>10</b> 50:7 52:12 76:6 84:11 95:6 98:11 108:9 113:5,8,10 114:2,6	<b>23</b> 5:22,25 6:2 76:7 113:5,8 114:6	<hr/>	<b>accuracy</b> 8:15
<b>104</b> 4:5	<b>25</b> 7:18	<b>8</b>	<b>accurate</b> 4:12 29:21 51:1 60:13 62:23 64:9
<b>1050</b> 35:14,16	<b>29th</b> 15:18 30:4	<hr/>	<b>accurately</b> 28:14
<b>11</b> 47:6 52:25 71:20 87:2,6 113:10	<b>2:35</b> 56:21	<b>8,500</b> 33:5	<b>achieve</b> 14:25
<b>12</b> 18:7 86:9 87:11 92:6 95:6	<b>2:49</b> 56:19,22	<b>86-272</b> 5:13 7:20, 22 8:3 35:20 57:7, 9,16,21 58:1,9,25 59:10,24 63:8 67:1 70:1,6 72:19 76:17,22 77:9 96:9,10,14 98:4	<b>acknowledge</b> 55:7 82:18
<b>13</b> 18:7 62:19	<hr/>	<b>86272</b> 8:20	<b>acknowledged</b> 79:9
<b>14</b> 98:23	<b>3</b>	<b>885</b> 25:12,17,25 26:23 33:5 38:8 41:9 93:4,5,17 115:6	<b>acknowledges</b> 81:4
<b>15</b> 6:8,18 50:3 57:6	<hr/>	<hr/>	<b>acknowledging</b> 27:19
<b>15-minute</b> 56:14	<b>3</b> 30:15	<b>9</b>	<b>Acosta</b> 11:4,9 12:14,24 14:19,23 17:13,16 18:4,8,9, 11,17,21,22,25 19:6,11,12,25 42:21 46:2 47:8, 19 48:5 49:1 50:23 51:6 52:19, 23,24,25 53:1,3,6, 15,20 54:2,7,10, 12,15,19 55:19
<b>16</b> 98:23	<b>30th</b> 30:1,3 63:17	<hr/>	
<b>17</b> 86:9 87:11 113:10	<b>381</b> 57:6	<b>9</b> 47:6,7 92:6	
<b>19</b> 16:6 52:3 56:13 78:2,12 84:16	<b>3:22</b> 78:8	<b>90</b> 6:4 56:24	
<b>1941</b> 10:12	<b>3:26</b> 78:7	<hr/>	
<b>1948</b> 10:13	<b>3:27</b> 78:9,11	<b>A</b>	
<b>1:04</b> 4:2	<hr/>	<hr/>	
<hr/>	<b>4</b>	<b>AA</b> 61:9,18,22 62:1,3,10,15,22 63:3,9	
<b>2</b>	<b>4</b> 30:15	<b>Aaron</b> 4:10	
<hr/>	<b>4-30-2012</b> 7:13,14	<b>AB</b> 64:18 69:17	
<b>2</b> 103:21	<b>4-30-2013</b> 7:14	<b>ability</b> 13:18 25:24 26:24 27:22	
<b>2,000</b> 25:12	<b>45</b> 31:21 83:19 98:24	<b>absolutely</b> 22:22 46:6 83:13 85:8 107:21,22	
<b>20</b> 4:1 16:6,11 51:22 82:22 84:15			
<b>2005</b> 10:16			

- 56:8 57:19 64:14  
70:3,4,7,9,13,15,  
16,20,24 71:1,18,  
23 72:1,3,9,14,24  
73:2,3,10,14,17,  
19,20 81:20,23  
82:2,7 86:8,18  
87:7 91:1 93:20,  
21,25 94:9 95:18,  
20 96:5 97:11,22,  
23,25 98:2 112:18
- Acosta's** 48:18  
53:4,6 55:6 57:13  
71:3,14 72:1,10  
73:11 81:21 82:7,  
23 86:23
- acquire** 44:1  
53:10
- acquired** 96:1
- acquisition** 10:16
- acting** 55:7
- activities** 5:12  
8:2,4,19,21 10:8  
12:22 19:15,23  
26:1 27:5,10,11,  
13,18,23 31:8,16,  
19 32:3 40:14  
42:18 44:17 46:16  
53:11,12 55:6  
56:2 57:15,18,23  
58:7,11,16,18,20,  
25 59:1,4,8,11,12,  
15,18,19,24 60:2,  
18,19 61:12 64:7,  
13,14 65:1,3,5  
66:14,15 68:9  
69:10,25 70:2,5,7  
71:6,8 72:24,25  
73:4,5 74:15 75:7,  
18,21 76:9,18,24  
77:1 79:5 80:3,5,  
11 81:15,21,22  
82:10 88:8,11  
89:2,3,4,5,24  
90:14 96:18 97:20  
98:3 103:7 107:9  
108:20 110:1,7,9
- activity** 9:20,22  
17:2 34:8 52:21  
55:18 57:25 58:2,  
23 59:3 67:7,12  
71:18 72:7 76:20  
82:6,18,20 83:14  
89:8 90:6 91:4  
106:11 115:22
- actual** 27:25  
63:10 71:16 79:18  
81:14 95:16 109:7  
110:14,17
- AD** 5:15,18,20  
67:21
- add** 8:24 21:24  
25:4,8 27:14 81:3  
85:1 102:8 103:10  
110:22 111:3
- added** 21:12  
62:15,19
- adding** 24:20,22  
25:6
- addition** 100:20
- additional** 9:7  
19:6 57:10 61:6,  
11 66:6 99:21  
103:15
- address** 9:2  
57:11
- addressed** 97:3
- adds** 63:5
- adjusted** 56:9
- adjustment**  
55:16,17
- administrative**  
4:6,7 113:15
- admissibility**  
5:16,23
- admit** 19:12
- admitted** 5:17,21  
6:3 83:16
- advertise** 48:23  
49:3
- advertised** 101:9
- advertises** 65:19
- advertising**  
16:17,20,24,25  
17:1,4,7 101:10
- advice** 71:15,17
- affirm** 7:5
- affirmatively**  
44:4
- afternoon** 7:11  
57:4
- age** 44:23
- agency** 72:17
- agent** 97:20,22,25  
98:4
- agree** 54:16 97:9
- agreed** 11:17  
74:19 86:24 94:13
- agreed-upon**  
73:24 75:5 103:2
- agreement**  
101:12
- agreements** 62:5  
70:11,20
- ahead** 4:3 7:1  
23:20,21 56:23  
57:2 90:22  
109:13,17 114:18
- aisle** 15:25 16:1,3  
19:13 47:20 54:18  
95:4,5,8
- aisles** 95:25 96:2
- allocates** 58:21
- allowances**  
53:25
- allowed** 17:17  
27:8,9 34:9 49:8  
51:20 79:5 82:14,  
19 99:3 100:9  
101:3 102:12
- amount** 9:17 52:5  
84:16
- analysis** 44:11  
87:22 88:15
- analytics** 71:11
- analyzed** 43:2
- ancillary** 8:22 9:1  
22:22 27:6 31:8  
46:6 57:24 58:1,  
17,22 60:1 72:22  
76:21 84:6 85:8  
107:19
- angle** 26:18
- annual** 55:1
- answering** 30:16
- answers** 69:13  
113:6
- anticipate** 6:22  
48:15
- anticipation** 51:4
- anymore** 17:21  
46:14
- appeal** 4:4 7:12,  
18 59:19 71:21  
76:12
- Appeals** 4:18 7:4
- appears** 62:24  
63:7 68:11 70:13  
97:14
- appellant** 4:22,24  
5:1,3,11,15,22  
6:11,19 7:16,19  
8:9 9:5,11,13,19,  
23 10:19 12:10,  
13,17 13:1,5,6  
14:24 16:19 24:23  
29:5 34:10 40:2  
42:17 53:2 57:5,  
18,25 58:3 59:23  
60:4,7,11,14,25  
61:4,10,19 62:22,  
25 63:14,18,21  
64:2,4,6,16 65:4  
66:3,7,21,23 69:9,  
11,23 70:1,5,6,8,  
9,18,23 71:2,15,  
20 72:5,9,23,25  
73:1,4,10,13,18,  
22 74:2,7,21,25  
75:13 76:6 77:1,6,



- 7 78:2 98:3  
103:10 111:10
- appellant's** 5:12,  
25 6:2,5 7:23 8:19  
10:6,10,22 12:8  
13:25 15:22 16:18  
17:3 18:5 28:15  
30:21 31:6,11,14,  
25 36:24 40:12  
47:12 57:9,10  
60:2,3,10,18 61:7  
63:15 64:2,13  
65:3,9,13,19  
66:19 67:19,23  
68:2,5,10 69:3,7,  
18,19,25 70:2,20  
71:19 73:19 75:4  
76:14,23 77:15  
111:12
- Appellants** 77:21  
90:25 91:1
- applicable** 11:6
- application** 59:12  
90:14
- applications**  
31:15 67:20 68:3
- applies** 57:22
- apply** 7:22 18:16  
36:25 96:20,25
- appointment**  
32:22 81:10
- appointments**  
14:21
- approach** 25:5
- appropriately**  
83:5
- approval** 11:10  
35:3
- approve** 73:3  
113:17
- approved** 8:4  
42:23,25
- April** 30:1,3 63:17
- area** 101:19
- argue** 82:9
- argued** 86:6
- arguing** 35:25  
46:17
- arguments** 57:12
- arrange** 55:22
- arrangements**  
49:22
- Asaf** 4:6
- aspects** 76:14
- asserted** 8:15,16  
63:21
- assertion** 87:7
- assertions** 8:24  
9:4 60:6,17
- assigned** 14:11  
15:15 29:2 30:8  
59:5
- assistance** 47:19  
69:4
- assume** 47:25  
108:11
- assumed** 8:4
- assumption** 47:1
- attempt** 39:5  
61:19 81:9
- attempted** 8:8,10,  
11 10:7
- attempting** 8:6  
44:4
- attend** 22:2
- attention** 45:12  
46:9
- attest** 53:21 82:1  
84:13
- attesting** 114:2
- audit** 7:23 8:1,5,8  
47:15 50:8 51:2  
52:12 61:13,19,21  
63:18,19 70:23  
78:23,24 80:10
- 83:16,20 84:23  
86:5 87:24 91:22  
98:11,16,18  
100:9,19 113:8,9,  
10,23 114:3,7
- auditing** 28:19
- auditor** 28:19  
86:9
- auditors** 28:19
- audits** 9:17 47:7,  
10,14 49:6 50:5,6,  
22 51:14,18  
72:11,15 73:21,23  
74:7,13,17 75:3  
79:3 83:15 84:17  
98:22 99:1  
102:16,21,25  
103:11 113:8
- augment** 116:1
- August** 4:1,5 30:4
- authorized**  
102:24
- avail** 8:7
- aware** 70:17  
74:10 80:10 97:15
- awesome** 92:1
- 
- B**
- 
- B's** 62:3
- Baby** 10:15,17  
91:5 92:1,3,4  
99:22
- back** 10:16 15:22  
22:9,13,21,24  
23:15 25:16,18,22  
26:4,7,12 33:11  
34:17 35:3 36:6  
38:7,9,14 41:5,14,  
17,19 42:3 43:9,  
15 46:11,23,25  
49:12 50:19  
55:15,16,21,23  
56:24 78:11 83:2  
84:4,24,25 85:12,  
16,17,19,22,24
- 90:7,9,11 93:4,7,  
11,13 99:7 100:17  
103:9
- Backer** 5:2
- background**  
92:14,16 114:20
- Backs** 91:5
- bad** 72:15,21
- balance** 109:21
- barbecue** 16:1  
51:4 99:11
- based** 7:19,21  
11:7,8 13:2 15:19  
18:9 22:2 25:1  
30:8 32:25 33:1  
38:21 39:3 48:15,  
21 51:10 54:1,15  
60:14 64:24 73:11  
77:7 82:5 83:6,7  
86:13 103:6 111:2  
112:12 116:9,11,  
12,17 117:16
- basic** 30:18
- basically** 9:8  
10:16 11:7,21  
12:4,18 13:4,18  
16:23 22:4 23:22  
27:17,21 29:3  
33:7 35:15 43:21,  
24 46:1 47:16,19  
49:19 50:9 53:9  
80:25 83:12  
84:19,23 89:20  
99:1 114:19
- basis** 11:6 13:2  
59:17,21
- begin** 6:7 7:8  
56:25 58:9 78:3,  
13
- beginning** 4:22  
63:23 77:18
- behalf** 4:24 5:1,2  
7:16 13:5 17:14  
19:15 42:22 53:2  
54:17 55:6,8 56:6,  
7 82:16 96:5

- benefit** 19:4 67:25  
**benefits** 67:3  
**Benjamin** 4:25  
**bigger** 46:4  
**bit** 98:12  
**blank** 86:5  
**blown** 47:15 50:5  
**Blue** 72:19 75:19  
76:3  
**Board** 5:6,14 6:8  
77:14 96:7 105:16  
**Board's** 56:25  
**bonus** 112:12  
116:20  
**bonuses** 25:1  
116:11,12  
**bookkeeping**  
88:18  
**books** 7:24  
**bottle** 13:9,10  
36:24 87:16  
**bottles** 13:8 48:1  
94:21  
**bought** 55:14  
**brand** 9:12 62:12,  
13  
**brands** 73:12,17  
**bread's** 23:22  
**break** 56:14 78:7  
**briefing** 9:4 39:17  
42:9 60:9 63:20  
**briefly** 18:10  
21:11 60:3 75:6  
**bring** 21:17 23:19,  
23 109:24 115:3,5  
**bringing** 26:3  
33:6,7  
**broad** 59:7 79:4  
81:15  
**broader** 90:14  
**brochure** 73:14  
**broken** 109:5  
**broker** 11:4,15  
12:14 54:11  
57:14,19 76:23  
102:22,23 112:18  
**brokers** 10:7,22  
11:5 12:11,13,14  
**brokers'** 59:21  
**brought** 21:19  
22:2 35:24 93:13  
114:24  
**Brown** 66:9 88:6,  
7,11  
**Buffalo** 72:19  
75:19 76:3  
**build** 65:21 66:7  
**burden** 57:9 60:3,  
4,6,21 69:24 77:7  
**burger** 21:3 25:6,  
7 38:24 39:9  
105:3  
**burgers** 104:9  
**business** 9:25  
10:6,19,23 11:13  
12:4 20:21 27:19  
31:4,13 36:14  
40:14 42:16  
44:16,18 45:2,3,  
13 47:10 53:6  
58:10,18,23 60:18  
65:21 66:13 67:5  
68:6 69:7 75:23  
76:4,14,19 81:21  
88:16 91:13,23  
95:11  
**businesses**  
13:12,15 14:2  
15:5 66:8  
**buy** 23:17 24:5  
32:16 34:6 39:4  
40:20 42:4 93:19  
105:18 106:9  
**buyer** 20:19,22  
24:18 81:13 99:7  
**buyers** 49:13  
**buying** 43:6,9  
87:1  
**buys** 35:12 53:18
- 
- C**
- 
- calculation** 86:14  
**calculations** 9:1,  
2 86:17  
**California** 4:1  
5:12 7:19,20 8:2,  
19 9:15 10:3  
11:11 14:12,13,  
16,25 15:13,14,  
16,20 20:9 25:13  
28:17 29:1,2,7,18,  
19,23,25 30:1,5,6,  
8,20 37:17 38:13  
55:18 57:6,14,16,  
19 59:24 60:2  
61:12 63:22 64:3,  
7 70:5,6,25 71:2  
72:4 73:10 79:6,7,  
8,9,15 80:12 82:8,  
11,21 89:2,25  
90:1 92:17 93:24  
96:21,22 97:1,24  
104:17,22 106:22  
107:6,8 108:13,14  
109:19 110:9  
111:2,17 112:6  
**California-based**  
79:11,13  
**call** 49:7,19 81:1,  
10,11 91:6  
**called** 15:1 91:5  
97:5  
**calling** 105:9  
**calls** 17:21 32:20  
44:23 46:14 108:6  
**cap** 48:24  
**card** 20:25  
**cards** 23:25 24:4,  
10  
**care** 37:11 39:24  
45:2,7,11 46:4  
**carry** 9:19 74:1  
**carrying** 35:18  
**case** 4:4 8:12,13  
27:3 35:13,15  
43:19,25 46:15  
47:16 49:8 50:25  
57:5 60:7,24 61:5  
66:17 69:23 70:22  
72:10 82:13 83:21  
85:21 87:22 88:6,  
7,9,10,15 96:15,  
16 97:3,5,8  
105:15,16 117:6,  
16,19  
**cases** 27:17  
33:16,17 105:13  
**categories** 79:4  
112:5,10  
**category** 29:6  
88:9  
**cemented** 66:12  
**centralized** 53:9  
**chain** 20:10 112:2  
**chains** 11:20  
95:13  
**chance** 57:11  
**chances** 69:11  
**change** 114:22  
**changed** 56:9  
62:12 87:23  
94:17,19  
**changing** 34:2  
**characterized**  
75:21  
**charge** 35:20,22  
36:15 66:7 80:15  
**cheaper** 40:20  
**check** 17:25  
39:24 45:21 50:23

- 54:14 102:23  
**check-ins** 107:25  
**checking** 39:25  
46:5,19  
**checking-in**  
107:19  
**checks** 47:7,9  
54:2,3 72:17  
86:11  
**chef** 15:9,12,17  
20:10,14,19,22,25  
21:5,6,7,10,22  
23:2 24:16,19,20,  
25 26:12 28:16  
29:25 30:1,3,5,18,  
19 31:10,11,25  
32:24 33:8,15  
34:5,12,13,16  
35:4,21 36:17,19  
37:17,21 40:10  
42:13 57:17 61:8  
63:11,13,15,18,  
22,23,25 64:1,3,5,  
8,11,15,16,19,20,  
23,25 65:5,8,11,  
17,20,25 66:5,19,  
22 67:9,10,25  
68:1,8,9,13,17,23  
69:3,25 76:9  
80:11,12,16 81:5,  
19 88:10,19 89:8,  
13,16 91:1,2,7  
103:23 104:11  
106:19 109:11,19  
111:1,12,20,22,24  
**chef's** 30:25 31:7,  
19 32:3,5 64:9  
66:17 67:12 68:20  
69:10,13 88:8  
89:1 91:9  
**chefs** 13:12 15:12  
21:12,15,19,20  
24:22,24 25:2  
30:11 31:1 32:1,4  
34:18,19,20 37:15  
65:2,18,20 67:9,  
15,25 68:3 69:18  
80:4 85:16 88:7,  
24 89:3 101:25  
104:8,25 106:15  
108:19 110:7,16  
114:12,14  
**child** 51:24  
**choose** 37:12  
**chooses** 58:21  
**chose** 12:23 63:1  
**circumstances**  
14:6 112:16  
**citable** 35:16  
**cited** 88:6 89:4  
**citing** 35:14 97:2  
**City** 91:5  
**civil** 29:17,18  
**claim** 60:14 62:22  
73:6  
**claimed** 63:21  
**claiming** 61:11  
**claims** 8:2 58:4  
65:4 69:9 70:10  
72:25 74:7 77:1,3  
**clarification** 4:15  
6:23 69:15 102:25  
**clarifications**  
29:11,12 60:12  
68:18  
**clarified** 73:22  
74:21 75:14  
**clarify** 8:6,8,10,  
11,12 10:7,8  
39:14 69:13  
**class** 28:22  
**clear** 10:5 19:18  
49:15 96:25 107:7  
113:6  
**client** 22:17,25  
24:4,9,10 34:3  
38:2,15,17 39:4  
44:25 45:1,15,21,  
22 46:4,7,9 47:17  
48:14 115:11  
**client's** 71:9  
**clients** 22:17,20  
45:24 46:2,13,18,  
20 47:18 51:10  
73:12,13  
**climb** 48:12  
**close** 41:10 56:18  
93:19 95:2  
**closed** 117:20  
**closely** 40:11  
69:3 73:19  
**closer** 25:17,19  
26:4 84:18 93:6,8  
94:25 95:1  
**closing** 6:19  
77:21 78:12,14  
**clubs** 11:2  
**coast** 14:11 15:15  
29:3 108:16  
**coequal** 4:9  
**coincidence** 63:2  
**cold** 17:21 32:20  
44:23 46:14  
**collect** 54:8  
**collected** 42:14  
53:19 110:13  
115:21  
**collecting** 76:2  
**collection** 75:22  
90:15  
**collective** 78:15,  
20  
**commensurate**  
84:8  
**comment** 27:15  
47:3 94:16 111:11  
117:2  
**comments** 22:8  
36:17 102:14  
**commercial** 9:14,  
23 10:1,2 11:14,  
19 20:5 24:21  
26:10 38:4 85:13,  
15 89:25 90:1  
111:22 114:13  
**commercialize**  
68:24  
**commission**  
11:5 13:2 18:8,9,  
16 53:18 54:1,10  
73:2 86:12  
**Commissioner**  
35:25  
**common** 33:16  
**commonalities**  
62:24  
**communicate**  
24:18 43:4 55:21  
**communicated**  
68:10 75:16  
**communicates**  
71:23  
**communicating**  
81:13  
**communication**  
27:11  
**companies** 17:6  
33:20 66:13 73:16  
101:24 114:13  
**company** 9:6  
40:18 58:20 59:16  
72:20 79:12  
**company's** 82:13  
**compare** 88:7,8  
**compared** 61:17  
88:13  
**compensated**  
19:16 53:3 112:11  
**competitive**  
75:22  
**competitor**  
42:14,15 43:21  
44:5 75:13,15,19,  
21,25 76:2 85:4,6  
115:19  
**competitor's**  
43:19,25 86:1

- 90:3
- competitors** 101:20
- complaint** 27:7  
55:12,13
- complaints** 55:12
- complete** 17:17  
23:12,13 36:1  
74:9
- completely** 36:2
- completion** 8:1
- compliance** 47:9  
73:22,24 74:5,22  
75:5 103:1,7
- compliant** 55:21
- complicated** 67:17
- comply** 97:6
- Comptroller** 72:20
- concept** 38:3
- concern** 20:7  
37:13 91:1
- concerned** 37:24  
39:18 45:16,20
- conclude** 46:16  
90:17
- concluded** 11:16  
117:22
- concludes** 117:15,20
- condiment** 15:25
- condiments** 16:4  
95:4
- conduct** 27:4  
58:15 81:4
- conducted** 7:24  
9:24 29:8 42:18
- conducting** 4:8  
88:11 114:11
- conducts** 66:1
- conference** 97:4
- confirm** 77:14  
111:12 112:19
- confirmations** 111:8
- confirms** 87:8
- confused** 80:3  
88:25
- confusing** 88:24  
89:24
- conjunction** 49:7  
102:22
- connected** 88:12
- connection** 58:19
- considered** 58:22 76:12
- consisted** 20:9  
80:14
- consistent** 8:24  
19:19 24:7 35:15,  
17 54:19 64:10  
65:24 71:13 72:13  
78:25 87:18 88:4  
99:9 101:2,12  
106:8
- constitutes** 27:3
- consultative** 66:1
- consumer** 73:16,  
17
- consummate** 38:16
- contact** 22:23  
23:1 46:8 47:1  
49:19 70:15  
107:16
- contemporaneo  
us** 87:22
- content** 99:20
- context** 79:20
- continue** 56:18
- continued** 66:8
- continues** 69:10
- continuing** 59:17,21
- contract** 38:18,20  
70:13,15,18 71:3  
97:8,10
- contractor** 14:20,  
23 17:13 55:7  
70:3 97:20,23  
98:5
- contracts** 70:9,14  
97:15
- contractual** 97:4
- contractually** 96:17 97:12
- contradicts** 73:7  
74:11
- contrasted** 58:20  
63:9
- control** 60:23  
61:1 69:21 72:22  
77:4 88:19
- convenience** 11:1 86:19
- conversations** 33:1 110:13
- convert** 105:21
- converted** 59:4  
96:18
- convey** 116:4
- cook** 104:13  
106:3
- coordinated** 62:5
- corporate** 15:8,9  
20:10 21:7,10  
23:2 24:16,24  
25:2 28:16 29:25  
30:5,11,18,19,25  
31:7,10,11,25  
32:1,5,24 34:12  
36:17,19 37:17  
40:10 42:13 57:17  
61:8 63:11,15,22
- 64:1,5,9,11,15,16,  
19,23,25 65:5,8,  
11,18,20,25 66:5,  
17,19,22 67:9,12,  
25 68:1,8,9,13,17,  
20,23 69:3,10,13,  
18,25 76:9 80:4,5  
85:16 89:1,3,8,13,  
16 105:22 109:11,  
19 111:1,9,12,20,  
22 114:12
- corporation** 8:15
- correct** 96:12  
106:24 111:24
- corrections** 70:18
- count** 99:15,18
- country** 9:12
- couple** 74:18  
113:5
- court** 7:8 46:15  
58:13 59:7 66:13  
72:20 95:16
- covered** 110:22
- create** 26:21  
39:15 40:17 67:19  
75:17 113:14
- created** 61:18  
67:25 110:16
- creates** 65:15  
69:21
- creating** 22:3,19  
33:25 39:13,14  
45:5 54:23 65:10  
67:4
- creation** 40:13,17  
41:9,23
- credibility** 61:17
- credible** 58:3  
77:2
- credit** 52:10
- crucial** 22:21
- culinary** 13:12  
20:20 21:8 23:6

- 24:19 30:20 34:5,  
12,13,14,25 35:4  
37:2,21 42:19  
65:8,13 66:1,2,3  
79:21 80:2,3,17  
81:12 104:7,19  
106:3,20
- current** 65:19  
76:14 87:25 91:14
- customarily** 59:9
- customer** 11:9,23  
12:1 13:22,23  
14:5,18 16:20,23  
17:9 22:11,15  
23:5,24 24:11,13,  
14,19 25:19 26:7,  
13 27:1,22 31:1  
32:6,7,9,12,14,25  
34:3,6,14 35:12  
36:3,5,9,12,14,16,  
20 37:17 39:3,19,  
21,22 40:2,4,18,  
21,24 41:7,18,21,  
24 42:3,6,14,22  
43:5,8,21 44:1,2,  
17 45:8,11,16,20  
47:3 49:22,25  
55:5,12,14 56:5  
65:2,12 67:9,15  
68:10,21,24 74:25  
75:11,15 81:17  
84:10 85:7,10,11,  
14,22 86:1,21,25  
87:10 90:4,7,13  
98:25 99:5,25  
100:3,7,17 101:12  
103:24 107:10,18,  
19 109:4,6,9,15,  
23 116:3
- customer's**  
23:10,14,18 24:6,  
14 25:4,16,22  
32:16 38:13 41:13  
55:25 56:7 67:10  
116:2
- customer-  
specific** 26:19
- customers** 9:21  
10:25 11:20 12:11  
13:22 14:3,4,21,  
22 17:7,17 18:1  
19:14 20:3 25:3,5,  
9 30:21 31:1,18  
36:11,18 37:13  
38:23 39:20 40:3,  
12 42:12 44:3,16  
45:5,7,19 50:14  
53:2 55:10 65:2,9,  
15,17,21,22 66:2,  
3,6,7,12 67:14  
68:3,11 69:3,4  
73:1,25 74:4,9  
75:10,24 81:8,16,  
23 100:14 104:11,  
22 107:1,2,3,12,  
14,16 108:14,21  
112:14
- customers'**  
65:16,21
- customization**  
26:1
- customize** 25:24  
93:12
- customized**  
26:24 81:16
- cut** 54:2 86:11
- cuts** 54:14
- 
- D**
- 
- dale** 93:19
- damaged** 49:16,  
24 52:10
- damages** 18:15  
53:25
- Dan** 45:17 49:9
- data** 10:21 43:2,3,  
7,9,12,13 44:5,11,  
12 53:19 54:8  
72:18 75:22 90:15  
115:15,16,19,20,  
23
- date** 65:15
- dated** 76:11
- David** 15:17 21:22  
30:3 63:16 64:18  
79:11 80:7,8 89:1  
103:23 106:13,14,  
17 110:7 111:1,13
- day** 29:5 50:15  
51:3,17 100:3
- days** 117:19
- de** 8:22 52:21  
57:24 58:2 59:13,  
15,22 60:1 74:7,  
15 76:22,24
- deal** 56:8 74:23
- dealers** 12:14  
105:16
- dealing** 13:12  
79:21 83:24 84:7
- deals** 73:24 74:2  
103:2
- dealt** 15:2
- decade** 76:11
- decades** 48:9
- decide** 117:16
- decided** 95:4
- decision** 4:9  
24:10 101:3  
117:18
- declined** 46:15
- deduct** 18:14
- deductions** 13:3  
18:15 53:25
- defeat** 72:19
- defer** 18:10
- defines** 37:9
- definition** 96:8
- degree** 12:24
- deli** 95:1
- Delinda** 5:9
- Deloitte** 4:23,25  
5:2
- demand** 64:21
- demands** 64:17  
77:4
- demo** 106:6
- demoed** 109:17
- demonstrate**  
88:13
- demonstrates**  
57:15 69:2
- demonstrating**  
37:10
- demonstration**  
13:20
- demonstrations**  
31:1,3 32:5,7 37:3  
79:22
- Department**  
58:12
- departments**  
68:21 69:4 110:4
- depending** 12:23  
107:10
- depict** 28:15
- describe** 71:4  
76:14
- describing** 70:10
- description**  
61:14 62:15 63:7,  
11,12 65:25  
68:20,23
- descriptions**  
28:13 61:7,24,25  
62:21,25 63:2,6,  
10 64:8 76:16  
78:22,23 81:19  
110:14,18
- design** 27:16  
82:20 88:17
- designates** 54:9
- designed** 28:21  
71:8 87:9
- desired** 69:5
- destroy** 98:1

- destroyed** 49:17  
55:25
- destroys** 96:14
- detail** 19:1 53:5  
81:22
- detailed** 7:23
- details** 61:2
- determination**  
5:12 8:5,8 77:8,10
- determinations**  
60:5
- determine** 8:25  
73:23 85:18 88:15  
92:20 103:1
- determined**  
72:21 116:10,13
- determining**  
59:6,17
- develop** 54:21  
66:2 68:11,15,24
- developed** 48:5  
105:23
- developing** 25:9  
30:22 31:15 39:8  
65:22 67:4
- development**  
25:3 52:25 62:6  
65:17 68:12,22  
69:6 71:12,16
- difference** 62:2,8  
63:4 97:19 101:23
- differences**  
62:21
- differs** 62:1
- diligence** 44:7
- Dillon** 45:17 49:9
- dip** 89:13 105:22,  
25 106:1
- dips** 89:11
- direct** 11:17 96:11
- directly** 11:9 17:9  
18:22 25:3 42:21
- 60:9 78:19 112:24  
113:1
- discarded** 24:10
- discuss** 31:9,19  
51:2 57:8,9 60:3  
61:6 75:6 99:8  
114:14 115:25
- discussed** 49:8  
59:20 61:3 64:12  
69:15 102:1  
103:18
- discussing** 19:23  
60:2 70:13
- discussion** 28:5  
30:24 43:17 71:15  
72:6 103:14
- discussions**  
18:21 37:22 93:10
- display** 20:13  
24:13 27:17 35:19  
47:8 49:8 71:16  
73:21 74:20,21,22  
82:12,17 83:21  
87:1 105:7
- displayed** 16:2,9,  
15 36:21
- displaying** 101:4
- displays** 19:9  
51:20 72:17 75:1  
100:25 102:23
- disposed** 52:9
- dispute** 28:1,9,12  
40:10 42:1 44:14  
98:4
- disputed** 9:18  
19:24
- distinct** 24:24  
32:1 68:6 75:23
- distinguishable**  
36:10
- distribute** 38:21  
53:8
- distribution**  
35:19
- distributor** 11:18,  
24 12:2,3 35:8,11  
42:24 88:2 95:17  
112:20 116:22,23
- distributors**  
11:18 12:12 20:6,  
8 42:24 88:4  
96:16 97:15,16  
112:25
- document** 35:17  
61:18 70:23,25
- documentation**  
117:16
- documents**  
61:23 86:6 101:21
- dollar** 116:18
- dollars** 74:25
- door** 44:22 47:4
- Double** 28:14
- doubt** 53:12
- drafting** 62:25
- dresses** 91:12
- dressings** 9:11  
13:8 15:23,25  
16:4 24:1 26:25  
32:18 33:3,4 34:1,  
2 36:8 38:1 40:7,8  
41:1 51:25 55:14  
66:22 67:21  
68:14,15 87:16  
89:10,14,17,18,19  
92:1,3 105:21  
115:9 116:4
- dressings** 9:9  
10:15 23:11 24:15  
33:5,20 37:7  
66:20 67:11,17,22
- due** 44:7
- duration** 22:1
- duties** 28:15 29:7  
64:9 76:9 79:18  
110:5,15,16  
113:13
- duty** 28:20,23
- 29:13,16,19  
78:22,23 79:1,4,7  
110:19,20
- 
- E**
- 
- e-mail** 63:14  
71:20 72:8 87:2
- earlier** 10:4 53:24
- earned** 74:25
- easier** 21:6,16
- EDI** 10:24 35:7  
42:21,25 53:20  
54:8 112:15,23,24  
113:1 115:15
- educated** 44:10
- effective** 43:11
- effectively** 24:17
- effort** 16:24 36:22  
44:7 50:10 81:1  
115:24
- efforts** 18:5  
43:10,11,16 44:13  
116:1
- electronic** 10:21  
43:14
- Ellington** 4:10,14,  
16
- Elliott** 4:25 30:14  
81:3 84:11 88:6  
97:2 105:9
- emphasize** 59:23
- emphasized** 79:3
- employed** 64:4
- employee** 7:24  
28:22 29:18 30:2,  
8 43:18 63:19,23  
79:14,15 96:2  
98:1 112:4
- employee's**  
61:12
- employees** 14:8  
15:1,14 28:25

- 29:1,4,6 57:13,17  
60:10,19 64:3,14  
71:21 76:23 79:1,  
6,9,11,25 88:9,12  
95:24 96:3 102:12  
107:5 112:11
- employees'**  
59:20
- employees's**  
61:20
- employer** 28:21
- employers** 66:10
- employment**  
29:17
- empty** 55:2 83:25  
84:1 103:13,15
- encourage** 22:5
- end** 27:1 48:24  
56:11 86:2
- endcap** 16:4
- ended** 107:24
- ending** 7:14 30:1,  
3 63:17
- engage** 42:17  
58:21
- enhance** 66:11
- ensure** 4:11 73:21  
75:4
- ensuring** 47:11  
68:5
- entailed** 21:8
- entered** 5:24
- entire** 6:13 14:13  
52:17 95:10
- Equalization**  
105:16
- equivalent** 99:1
- error** 5:11
- essential** 24:16  
45:7
- essentially** 87:25
- establish** 47:20  
66:11
- established** 5:11  
11:12 12:9 48:4  
71:22
- establishment**  
11:25 12:6,16  
53:7,18
- establishments**  
11:14,15 14:14,16  
17:21 20:2
- estate** 94:2
- evaluations**  
102:11
- event** 100:4
- everybody's**  
13:10 15:24,25  
16:7
- everyone's**  
117:15
- everything's**  
51:21
- evidence** 7:4  
57:10,14 58:4,6,7  
60:15,23,24,25  
61:4,7,11 64:12  
65:6 66:4 69:2,9,  
22 73:6,7,16  
74:10,14 77:2,4  
80:22,24 81:20  
86:7,10 87:12,20  
97:13 98:2 102:19
- evident** 59:11  
69:16
- evidentiary** 5:14
- evolved** 44:21
- exact** 34:21 38:7  
41:4 93:9
- examples** 62:20
- exceed** 63:8
- exceeded** 5:12  
8:3
- exclusive** 12:13,  
14,17 14:12  
15:13,14 19:25  
109:19
- exclusively**  
20:12 107:8
- execution** 62:11,  
13
- exemption** 57:21
- exhibit** 16:6,11  
50:7,18 51:22  
52:1,6 60:12  
61:16,17,18,20,23  
62:1,3,7,8,10,12,  
14,15,24,25 63:2,  
4,7,12,14,20 64:1,  
8,18,20,24 65:14,  
23,25 66:24 67:21  
68:16,19,20 69:16  
70:12,19,25  
71:12,13,20,25  
72:3,5,16 73:8,11,  
14,22 74:13,17  
75:2,9,13,17  
84:11,15,16 87:2,  
6 89:9 98:11  
102:12,20 103:21  
105:20 106:13  
110:3,10 114:2
- exhibits** 5:15,16,  
18,20,22,23,24,25  
6:2 16:6 18:7,24  
19:18,19 28:14  
29:9 53:4 56:2  
61:9,18,22 62:1,3,  
22 63:3,9 69:17  
72:12 73:2 76:6,8,  
11,13 81:22 86:8  
113:4,8 114:6
- exist** 37:7 89:15
- existing** 14:22  
24:6 39:1 40:18  
55:10 75:10  
100:17 116:1
- expand** 18:4 86:3  
95:6
- expense** 64:2
- experience** 21:9  
95:22
- expert** 20:20  
24:19 34:25 37:21  
80:18
- experts** 13:12  
79:21 106:3
- expired** 49:15,24  
52:8,9,10
- explain** 13:8  
18:10 21:1 57:14  
61:20 64:14 65:6
- explained** 20:25  
21:14
- explaining** 101:7
- explanation**  
28:18 30:18
- explicit** 18:1
- explicitly** 8:21  
27:4,5 35:25 37:4  
46:20 79:8
- exposure** 62:12,  
14
- expressed** 20:7
- extend** 14:24
- extended** 52:8
- extension** 17:16
- extensive** 18:23  
19:15 52:23 53:5  
88:19
- extent** 6:16 63:25
- eye** 48:4
- 
- F**
- 
- facilitate** 7:12  
8:21 59:1,2 66:16  
75:18
- facilitating** 26:3,6  
27:11 38:12 41:5,  
20 90:11 92:11  
96:18,19
- facilities** 9:7,14,  
15 56:16

- facility** 93:23
- facing** 82:24
- facings** 47:24,25  
48:1 94:14,17,18  
95:6 98:19 99:6  
103:12,15
- fact** 9:18 18:9  
20:11 34:11 35:5  
45:24 58:8 59:2  
61:13 80:16 81:21  
96:16
- factors** 7:13
- factory** 96:21
- facts** 8:6,11,12  
58:5 60:8,14 61:2
- failed** 61:4 77:3
- failure** 8:16 60:22  
69:19 70:20
- fall** 8:19 66:25
- fallen** 51:8
- falls** 35:20
- familiar** 45:1 67:2  
113:18,21
- familiarize** 84:6
- familiarizing**  
103:5
- family-owned**  
9:5
- FAQS** 37:6
- fathom** 39:19
- favorably** 62:5
- Fe** 96:15 97:2
- feasibility** 88:16
- featured** 16:5,19  
65:18
- fee** 19:6
- feel** 69:14 115:11
- feet** 47:22
- figure** 22:24 23:7  
32:12 38:6 68:4
- filed** 8:14 61:10
- fill** 98:15 100:5  
103:15
- filled** 103:16
- final** 13:24 76:6  
97:18
- finalizing** 87:1
- finally** 6:18 47:3  
57:13
- Finance** 7:17
- financial** 88:15
- find** 15:24 36:6,10  
38:14 55:19 91:24  
93:9
- finding** 34:10
- finish** 68:16 77:21
- firm** 8:9
- fist** 60:3
- fit** 25:25
- five-minute** 78:6
- flavor** 23:6 24:6  
25:19 33:1,10,13  
38:25 41:14 89:19  
91:11 92:8 106:8  
114:14,23
- flavors** 24:3  
103:13
- Florida** 82:9  
86:23
- focus** 65:1
- focused** 44:16
- follow-up** 7:25  
33:19 37:22 40:7  
103:14 109:18
- followed-up**  
30:23 84:8 109:18
- following-up**  
45:8
- food** 9:5,11,20  
10:11 11:14,19,  
22,24 12:3,5,18  
13:11,15,18,25  
14:2 15:2,3,4,7,  
13,21 19:2 20:5,  
12,13,16,17,18,  
21,23 21:5,13  
22:4,6,25 23:18,  
23 24:21 25:5,14  
30:11,21 33:8  
34:15 35:21  
37:18,20,22,25  
42:11 53:8 55:8  
62:6 65:9,19  
67:13 68:23 70:24  
80:16,21 91:13,20  
92:14 96:2 97:14  
111:22 112:2,5,19  
113:15 114:13  
116:19,23
- food's** 56:7
- foods** 4:4 5:4 7:18  
10:14 11:19 12:1,  
2 19:3 20:6 25:12  
53:8 91:24 99:14  
112:25
- foolish** 34:16
- footprint** 33:18
- forget** 112:21
- form** 84:12,14,20  
86:5 98:14,18  
99:12
- formal** 29:18  
64:21 70:11  
100:18
- format** 114:8
- formed** 10:12
- forms** 84:13  
113:18,21 114:3
- formula** 34:21  
40:19
- formulas** 10:13  
25:12,18 33:6  
38:8 39:1 41:9  
68:25 89:6 93:4,5,  
17 115:6
- formulation**  
106:5
- forths** 41:19
- forward** 8:17
- found** 43:22 85:3
- framed** 63:8
- franchise** 5:5,14  
6:8 7:19,21 8:14  
56:24 77:14 96:7
- Frank** 5:8
- free** 33:21 35:22  
53:12 66:7,10  
80:15
- Freeman** 4:23  
6:20,21 7:8,11  
18:17,20 21:20  
28:8,12 30:15  
31:23 47:25 50:2,  
4 54:2,5,7 78:4,5,  
12,15,20 81:7  
84:22 86:16 87:4,  
6 88:21 89:9  
90:17,19 91:9,17,  
19 92:7,19 94:1,  
12,16 95:22 96:23  
98:17 99:17  
100:16 101:2  
102:1 104:16,24  
105:20 106:25  
107:4 108:7,14  
109:5 110:19  
111:16,24 114:11,  
17 115:20
- frequently** 22:10  
46:1 74:15 75:9
- fresh** 23:19
- front** 36:20 42:5  
107:18
- frowned** 44:23
- FTB** 5:7,8,9,22  
8:15 9:17 20:7  
29:24 37:24  
57:10,11 60:7,9  
63:21 64:17,22  
65:6 66:9 69:10,  
17 74:10 76:15  
77:1,5,9 79:16,19  
81:20 86:16 88:24  
96:24 97:9,19



102:1,7 110:17,21  
111:11 117:1

**FTB's** 5:11 28:6,9  
46:25 60:5 61:6  
77:8 87:21

**fulfill** 97:7,16

**fulfillment** 35:3

**full** 55:3 84:1  
104:13

**full-time** 111:17

**fully** 10:5 33:23  
34:20

**function** 24:24  
32:4 58:18,24  
71:14 72:1,6  
83:20 89:16  
111:13

**functions** 47:11  
61:14,15 62:4  
70:17 71:1,5,10  
72:2,4,9,11 73:9  
100:22

**funded** 73:24  
103:2

**funding** 74:2

**funds** 73:25 74:4

**furnish** 8:17

---

## G

---

**gallons** 87:17

**garlic** 25:6

**gather** 114:20

**gave** 38:21 51:22  
52:1

**general** 13:24  
28:4 30:16 70:11  
101:19 106:4  
110:6

**generalized**  
78:24

**generally** 28:20  
33:12 50:12 52:7,

14 54:10 67:6  
76:13 78:25  
112:15

**generate** 18:13  
53:20 54:7 113:16

**Georgia** 9:8 43:18  
85:3,19,21

**get all** 23:22

**give** 20:24 40:19,  
21,23,25 41:17  
45:23 49:3 53:21  
55:17 70:21 80:16  
85:5 95:7 109:1

**giving** 22:4

**glance** 50:17

**globally** 92:21

**goal** 35:9 91:25  
92:21 93:16 100:2  
107:15

**good** 6:16,25 7:11  
57:4 90:8 104:4

**goods** 45:4,5  
71:16 73:16,18

**gotta** 14:14 52:16

**granted** 61:10

**Great** 77:17  
111:19 112:1  
116:25

**Greg** 63:13,15,19,  
23 64:3,5,19,20  
65:17,20 79:13  
80:9,10 107:5  
110:7 111:14

**Greg's** 63:25

**Gregory** 15:18  
21:25 30:7

**groceries** 23:17

**grocery** 11:1  
15:24 16:8 48:9  
95:9 116:24

**gross** 54:13

**group** 13:22 66:9  
88:7

**grouped** 28:2

**groupings** 28:3

**guess** 81:3 91:2  
106:10 110:6,21  
113:12 114:13

**guy** 100:5

**guys** 108:23

---

## H

---

**half** 107:7

**halfway** 31:22,23

**hand** 7:3 9:21  
34:9 80:17

**handed** 36:13  
80:15

**handing** 35:22  
90:7

**handle** 14:17 90:5

**handled** 20:5  
49:20 72:15 90:15

**handling** 14:13  
90:6

**happen** 46:14  
106:12 115:4,22

**happened** 79:8  
82:20 104:7 107:9

**happening** 29:16  
44:12 62:17 82:11

**happy** 77:11

**hard** 39:19 65:15

**headquarter**  
71:1,4,5,10,14  
72:4,5 73:9

**headquartered**  
9:6

**headquarters**  
32:2,3 36:6 71:9,  
23 82:6,7 89:12  
115:17,23

**healthier** 66:13

**hear** 93:20

**heard** 60:17

**hearing** 4:8,11,  
14,16,17,18 28:9  
42:1 76:7 117:15,  
20

**held** 27:16 58:13  
60:4 66:14 75:20  
76:3

**helped** 61:1

**helps** 66:7 71:3

**Hey** 85:13 105:6

**high** 48:10,11

**highlight** 57:20  
84:11

**hire** 94:19

**hired** 18:22 96:4

**hit** 50:14 116:18

**Holbrook** 87:3

**hold** 77:20,24  
78:2

**holistic** 65:22

**home** 67:21

**honestly** 48:7

**hope** 57:20 85:1  
92:25 104:3

**hoping** 46:20

**horizontal** 47:22

**horizontally**  
16:14 48:2

**hotels** 11:21

**hour** 74:13 83:19  
84:18 98:24  
102:22

**hundred** 36:11  
45:9 83:13 117:19

**hundreds** 14:15  
17:12

**hung** 34:11 35:5

---

**I**


---

- idea** 24:3 26:13  
29:4 32:25 33:13  
39:13,16 99:4  
108:24 109:1,9  
115:5
- ideas** 25:10 32:10,  
11 65:15 80:22
- ideation** 26:12  
30:22 31:11  
37:16,24 38:3  
65:2 66:18,20  
80:14 91:3
- ideations** 66:2
- identical** 62:21  
63:3 87:23 114:7
- identification**  
5:19 6:1
- identified** 8:2  
42:15 70:14
- identify** 4:21 43:3
- identifying** 14:22  
75:7 76:1
- IDR** 7:25
- illustrate** 67:20
- imagination** 37:9
- imagine** 96:21
- immune** 7:22
- immunity** 7:19
- impact** 8:25
- implementation**  
52:25 71:24,25  
72:2,7 93:24
- implicit** 17:25  
91:21
- implicitly** 8:21  
27:4,5 36:1 37:4  
46:20 58:16 81:4,  
6,12
- important** 9:25  
19:24 24:23 49:5,  
15 60:10 89:23
- importantly**  
101:13
- impose** 58:10
- impossible** 14:16  
18:5
- in-state** 58:22
- in-store** 12:20  
18:23 19:3,15,22  
21:5 49:20 51:19  
53:11,12 54:16
- inaccuracies**  
10:9
- inaccurate** 8:7  
36:2
- incentives** 97:6
- include** 11:1,19,  
20 15:23 16:25  
19:3 57:17 59:8  
71:10
- included** 10:15  
14:22 15:8 19:7,8  
44:16 61:7 62:11  
63:14 71:4 72:11  
73:13 74:8,23  
114:21
- includes** 53:13
- including** 9:14  
53:8 65:20 73:12  
90:14 107:5
- inclusive** 6:5
- income** 7:21  
58:10
- inconsistent**  
58:5
- incorporated**  
80:23
- incorrect** 60:5  
76:16 77:9
- incorrectly** 63:21
- increase** 67:5,6  
73:25 85:1 103:2
- increased** 21:18  
24:21 66:14
- increasing** 31:14
- independent**  
11:20 14:20,23  
17:13 31:4,13  
40:14 42:16 44:18  
47:10 55:7 58:18  
69:7 70:3 76:4  
97:20,23 98:5
- independently**  
42:18
- indication** 60:19  
73:13
- individual** 31:18  
34:12 37:3 67:14  
81:8
- individually** 14:5  
36:18 81:9,11
- individuals**  
14:11,24 48:17  
104:20 108:1  
110:6
- industry** 19:20
- information** 7:25  
8:17 42:15 43:1,  
15 60:20 64:10  
65:24 69:12,15,21  
75:15,20 76:2,3,8,  
15 77:6 84:23  
102:5 103:22  
104:21 110:3,4,  
11,12 114:20  
115:17
- informed** 44:8  
84:24 100:8
- infrequent** 52:20
- infrequently**  
50:16
- ingredients** 34:1  
67:23,24 68:4
- initially** 48:13
- input** 54:9
- inquire** 33:11  
40:24
- inquiries** 26:6,8,  
20 27:7,9 41:21  
90:6,11
- inquiry** 8:1 25:16,  
22 26:3 38:13  
41:6,13,20 55:21  
85:12,25 92:12
- inside** 106:22
- insinuate** 104:1
- inspect** 49:8  
51:20
- inspecting** 27:16  
47:14 51:19
- inspection** 52:12
- installing** 82:15,  
17
- instance** 43:22  
95:14 116:24
- instances** 10:22
- instructed**  
101:25
- instructions** 13:9
- instrumental**  
21:10
- insult** 34:24
- insures** 66:8
- insuring** 31:5
- intentionally**  
63:7
- interchange**  
10:21
- interested** 24:14  
32:25 33:9 85:14  
91:12
- interpretation**  
59:7
- interview** 29:6  
60:13 64:11,17,  
18,22,23,25 65:10  
67:8 69:13 70:12  
72:13 74:11 75:8  
80:9 97:24 102:20

- interviewed** 113:8,9 114:3,7  
79:10,12,16
- interviews** 7:24  
29:8,10,22 43:18  
60:9,11,15 64:20  
69:18,19,20,22  
76:16 79:17,20
- intimate** 104:12
- invariably** 92:9
- inventory** 19:2  
72:18 88:18
- invitation** 17:1
- invite** 27:4,5  
81:13 83:13  
101:8,10
- invited** 34:17
- invites** 58:16 81:4
- inviting** 81:6  
101:11
- invoice** 53:20,24  
54:7 81:24
- invoices** 13:3  
18:11 54:9 88:2
- invoicing** 18:12
- involve** 71:7  
76:20
- involved** 14:10  
25:2 36:23 66:18,  
20 68:12,18 81:13  
82:8
- involvement**  
72:8
- isolation** 59:18
- issue** 5:10 7:13,  
15,18 14:9 16:13  
26:11 28:12  
29:13,24 31:19  
33:23 37:15 40:9  
42:1 44:14 47:6  
55:13 57:4 61:2,  
15,21 63:17,22,24  
64:6 78:25 79:16  
84:14 85:2 87:18  
88:3 94:5 110:8
- issued** 7:25 64:21
- issues** 9:1 28:1,9  
42:8 70:14,15  
72:15
- Italian** 33:4
- item** 20:12,13,18  
24:2 25:4,8,9,14  
39:12 91:6,7,15  
103:22
- items** 20:24 21:18  
23:23 60:25 75:5  
91:16 102:24
- Ivanusich** 5:7  
56:25 57:1,4  
77:16 96:11,13  
97:10,22 102:10,  
16 110:23 117:4
- 
- J**
- 
- Jacksonville**  
82:9 86:23
- Jessica** 5:2
- job** 28:13,23  
29:10,19,20 61:7,  
14,15,25 62:4,25  
63:10,11,12 64:7  
65:24 66:21  
68:20,22 70:17  
76:9,16 78:22  
79:1,4,17 81:19  
104:4 110:14,17  
111:13 113:13
- John** 4:7
- Johnson** 4:7 5:4  
6:12,14,16 7:2,7,  
16 18:13,19 21:14  
47:24 53:23 54:3,  
6 77:22,24 86:14  
89:6 92:6 94:17  
95:3,13,19 98:8,  
10 99:12 100:13,  
20 101:15 102:7,  
14 103:9,11,17  
104:6,18,20,23
- 106:10,17,21  
107:2,3,23 108:4,  
5,6,9,11,17 110:2,  
3,12,20,21 111:4,  
7,15 112:3,6,9,12,  
24 113:2,9,14,20,  
22,24 114:4,8  
116:11,15,23  
117:10,12
- judge** 4:3,6,8 5:5,  
10 6:15 7:1 28:6,  
11 31:20 50:2  
56:12,23 57:2  
77:13,17,18,20,  
22,24 78:1,6,10,  
18 87:4 90:17,21,  
22,24 91:14,18  
92:16 93:20  
94:11,15,24 95:11  
96:7,12,20,24  
97:9,18 98:6,7,8,  
10 99:12 100:13,  
20 101:15,17  
102:7,14 103:9,17  
104:20 106:10,21  
107:3,23 108:5,  
11,17 110:2,21  
111:4,6,7,18  
112:1,4,7,10,13  
113:2,12,18,21,  
23,25 114:5,9  
115:13 116:7,12,  
21,25 117:5,8,9,  
10,12,14
- judges** 4:6,8 57:4
- jug** 36:25
- 
- K**
- 
- Kathy** 4:23
- Katie** 5:8
- keeping** 72:18
- Keith** 80:8 88:25
- Ken** 93:21
- Ken's** 4:4 5:4 7:17  
10:11,12,14 12:1  
13:17 19:3 21:17  
24:1 25:5,12 37:7,  
8 53:8 70:24  
94:22,24 95:19,21  
96:2,21,25 97:13  
99:14 103:23  
111:21 113:1
- Kennametal**  
35:24 36:10
- key** 103:21
- kickoff** 51:17  
99:11
- kind** 23:7 37:16  
52:4 90:10 93:22  
104:3,4,22 106:16  
107:25 110:9
- kitchen** 9:23 10:1,  
2 20:16 26:11  
38:4 67:10 85:13,  
16 89:25 90:1  
104:7,19 105:5,  
24,25 106:20
- kitchens** 9:14
- Kletter** 4:3,6 5:5,  
10 6:15 7:1 28:6,  
11 31:20 50:2  
56:12,23 57:2  
77:13,17,22 78:1,  
6,10,18 87:4  
90:17,21 98:6,7  
111:6,18 112:1,4,  
7,10,13 113:2,12,  
18,21,23,25  
114:5,9 115:13  
116:7,12,21,25  
117:5,10,14
- knock** 44:22
- knowledge** 68:2  
91:21 104:12  
110:8,10
- 
- L**
- 
- lab** 68:25
- lacking** 87:21
- lacks** 61:17
- ladders** 48:12

- language** 21:16  
63:3
- laptop** 56:18
- large** 104:7
- larger** 46:1
- Lastly** 68:8 75:6
- law** 4:6,8 5:13  
7:20,21,22 8:3  
35:20 58:9
- layout** 95:14
- lead** 66:14
- leading** 92:2
- learn** 102:2,3
- lease** 9:17 88:17
- leaves** 22:18 46:8
- left** 15:11 31:21  
50:3 70:22 87:5
- letter** 8:5
- letting** 33:8
- Leung** 4:7 77:18,  
20 90:22,24  
91:14,18 92:16  
93:20 94:11,15,24  
95:11 96:7,12,20,  
24 97:9,18 98:6,7  
117:8,9
- Leung's** 101:17
- level** 16:15 48:4  
71:25 104:4
- levels** 16:9,16
- liaison** 40:11
- licensed** 10:13
- life** 51:24 52:6,8
- Likewise** 72:19
- limitations** 6:12  
57:8
- limited** 11:1 31:1,  
8 32:20 50:10  
57:22 58:11,14  
59:10 67:1 76:17  
108:1 112:16
- limited-time**  
26:21
- lines** 10:19
- LinkedIn** 63:25
- list** 62:3 109:2  
110:15,16
- listed** 62:3 72:5
- live** 56:17
- lived** 15:19
- local** 43:1 95:23
- locally** 43:9
- located** 38:4 48:3
- locating** 94:24
- location** 10:2  
13:23 23:18,24  
26:10 47:21 53:9  
55:24,25 83:11  
106:20
- locations** 36:18  
49:23,24 108:20
- long** 9:13 68:15
- longer** 46:12  
66:13 79:11 80:7
- looked** 101:23,24  
103:12
- lose** 22:23 23:1  
70:1,6
- loses** 58:1
- lot** 19:5 21:16  
22:17 48:9 92:5,7
- lots** 66:23
- loudly** 4:14
- low** 49:9,11
- 
- M**
- 
- M-I-N-T-E-L**  
101:22
- Mack** 15:17 21:22  
30:4 63:16 64:18  
79:11 80:7 89:1  
91:2 92:17 111:13
- made** 9:4 11:8  
25:13 32:9 36:17  
49:14,22 65:4  
70:18 108:6 112:5
- mailers** 16:18,19  
49:5
- maintain** 17:22  
39:25 70:4 107:16
- maintaining**  
22:20 45:6 62:23
- maintenance**  
45:6
- make** 13:13,21,24  
14:3,6,21 15:7  
17:1,7,21 20:3  
22:7,12,15,19,21  
23:8,19,21 26:8,  
24 27:23 31:17  
32:22,23 33:2,14  
34:15,16,20,22  
36:4,8,20,22  
37:19,20 38:13,  
20,22 39:3,6,20,  
22 40:1,4,22,24  
41:1,7,22,23  
43:11 44:4,7,9,13  
45:2,6,12,13 46:3,  
12,20,22,24 47:4  
50:20 51:1,21  
55:5,9,10 56:17  
64:16 67:22 70:4  
74:3,19,24 78:18  
80:20 81:1,9,10,  
11,17 83:1,3 84:4,  
24 85:8,22,23,25  
86:2,4 89:11,13  
90:3,8 92:10 93:2  
95:10 97:19 99:9,  
20 100:7 101:11  
102:23 104:13  
105:25 106:1  
107:18 109:15,16  
114:24 115:12
- makers** 4:9
- makes** 21:16 24:9  
74:2 91:15 98:23
- making** 11:16
- 12:4 14:2 17:19  
23:10 36:11,12  
38:1 44:7,8,9  
46:4,11 51:8  
66:13 75:25 85:14  
98:17 100:23,24
- management**  
88:18
- manager** 17:25  
49:10 61:8,9,24,  
25 62:4,18 70:12  
74:12,17 75:9,12  
76:10 102:20  
106:23 115:24  
116:5
- manager's** 62:10  
70:16 72:13 75:7  
97:24
- managers** 14:9,  
19 15:2 17:8,16  
18:4,6 20:10  
28:16,17 40:11  
42:14 44:15 47:8  
50:12,14 51:15  
52:14 57:17,18  
73:20 74:14 76:1,  
10 112:2,8
- managing** 52:19  
70:16
- manuals** 105:15
- manufacture**  
38:19
- manufactured**  
73:12
- manufacturer's**  
53:8
- manufacturers**  
12:19 19:2 55:8
- manufacturing**  
9:6,7,14 38:20
- March** 21:25 30:7  
64:2
- margin** 12:4
- Marie** 5:4 7:16  
18:10 21:11 53:21  
54:13 82:1 84:12

- 86:10 87:23 94:16  
**marinade** 15:23  
36:9  
**marinades** 9:9  
16:1 91:12,25  
**marinara** 23:11  
115:10  
**Mark** 87:2  
**marked** 5:19 6:1  
**market** 42:15 44:5  
75:7,20,22 76:2  
82:5 86:3 92:17,  
21 101:18,24  
102:9 115:16,18  
**marketability**  
67:5  
**marketing** 17:5  
44:11 90:13  
115:22  
**Marlborough**  
9:6,23 10:2,14  
11:10,12 12:8  
25:2,16,22 26:2,7,  
10,20 27:24 33:11  
35:3 38:3,12,19  
40:25 43:14,20  
49:21 54:3 55:22  
80:4 82:6 85:16  
89:3,7 90:5 92:12  
93:5,11 105:23  
113:16 115:21  
**Marlborough's**  
55:22  
**Massachusetts**  
9:7,24 10:14  
11:10,12 12:10  
27:24 39:6 41:14  
43:15 53:19 85:13  
86:24 89:8 90:15  
104:7 106:12,14,  
15,18,19 110:24  
115:21  
**Massachusetts-**  
**based** 106:19  
**match** 26:22 33:7  
39:9,11,15 40:21  
41:4 42:7 43:20  
61:25 68:24  
75:14,16 85:18  
89:19 93:9  
**matched** 85:6  
**matches** 106:7  
**matching** 39:12  
40:13,17 41:8,22  
75:11,19,25 85:2  
90:2  
**material** 36:13  
**materials** 35:19  
**matter** 59:16  
**maximize** 62:13  
**maximized** 62:12  
**meal** 104:13  
**means** 47:16  
96:21 108:2  
**meat** 94:25  
**meet** 14:4,21  
20:23 23:6 37:19  
39:2,21 40:3,4  
42:6 44:25 45:23  
49:12 55:4 75:11  
81:8 92:22 109:6,  
9,15 114:12,18  
117:16  
**meeting** 14:5,17  
22:11 38:2 39:20  
46:9 75:24  
**meetings** 13:22  
20:3 31:18 44:15  
46:18 55:10 64:4  
67:15 68:1 106:23  
107:12,13,24  
115:4  
**meets** 41:24  
**member** 15:6,21  
24:25 89:21  
**members** 35:4,6  
110:5  
**membership**  
11:2  
**Memorial** 50:13  
51:16 52:15 83:17  
99:10  
**mention** 70:13  
103:22  
**mentioned** 98:13  
101:20 108:19,21,  
22,23 111:1  
112:14,19 114:11  
116:8  
**menu** 20:24,25  
23:5,25 24:10  
25:4,7,9 26:12  
30:22 37:16,24  
38:3 39:12 65:15,  
22 80:14,22 91:3,  
6,7,10,14,15 92:4  
109:7 114:14,23  
**menus** 13:16  
21:18 22:3 32:13  
65:15 80:24  
**merchandise**  
95:17  
**merit** 47:2  
**met** 24:6 67:9 75:9  
85:23  
**microphone**  
78:19  
**microphones**  
56:17  
**mind** 28:2  
**mined** 115:21  
**minimal** 84:18  
**minimis** 8:23  
52:22 57:24 58:2  
59:14,16,22 60:1  
74:7,16 76:22,25  
**minimum** 69:2  
**mining** 43:12  
**Mintel** 101:21  
102:8,10  
**minutes** 6:4,8,18  
31:21 50:3,25  
56:13,24 74:9  
78:3,5,12 83:19  
84:19 87:5 98:24  
**mirrored** 104:22  
**mischaracterizat**  
**ion** 105:10  
**misconceptions**  
10:9  
**misconstrue**  
69:10  
**misconstrued**  
8:7  
**misconstrues**  
60:8 77:1  
**missing** 49:11  
50:19  
**misstated** 58:5  
**misstatement**  
106:16  
**misstatements**  
10:9  
**misunderstood**  
65:6  
**mix** 68:4 99:19  
**Mm-hmm** 91:18  
95:16  
**modern** 54:20  
**modification**  
27:23 90:10  
**modifications**  
19:9 26:3,9 27:8  
90:2  
**modified** 92:3  
**modify** 27:22  
38:11 54:13  
**modifying** 33:22  
**money** 49:3  
**monthly** 39:23  
**months** 15:12  
39:23  
**move** 94:21

**moving** 12:21  
53:13

**multiple** 7:24  
8:11 16:9 30:9  
41:3,19 58:6 64:3,  
25 69:11 79:3

**mute** 56:17

---

**N**

---

**narrow** 96:8

**national** 15:1  
17:5 20:10 28:16  
40:10 42:14 44:15  
57:17 61:8,24  
62:4,18 75:6,8,12  
76:1,9 106:22  
112:1

**Natural** 96:15

**nature** 84:19  
105:17 111:8

**necessarily**  
29:15 34:21  
109:20

**needed** 4:14 19:5  
29:11 30:10

**negotiate** 54:16  
82:25 83:2 93:22

**negotiated** 54:17  
62:5 82:21 83:3

**negotiating**  
48:14 54:24 87:10  
94:2

**negotiation** 95:7

**negotiation's**  
94:3

**negotiations**  
82:8 86:21,22  
88:17 93:23

**net** 13:4 54:1  
58:10

**Nevada** 9:8

**no-go** 34:24

**nobody's** 32:15  
43:9

**nominal** 9:17  
33:25

**non-sales** 71:19  
88:9,12

**note** 24:23 76:6,7

**notes** 98:20 99:24

**noticed** 39:17  
101:21 103:12

**notices** 10:10

**number** 4:4 9:11  
52:3,12

**numerous** 22:8

---

**O**

---

**object** 5:15,23

**objective** 75:23

**obligated** 96:17  
97:12

**obtaining** 43:24

**occasionally**  
52:15

**occasions** 79:14

**occur** 26:1 27:23  
38:19 58:8 104:16

**occurred** 26:9  
31:3 51:15 59:16,  
21 73:10 74:8  
86:22 110:24

**occurring** 27:12  
29:23 38:11

**occurs** 38:3 55:18

**October** 15:17  
21:23

**odds** 46:10

**off-invoice** 18:14

**offer** 53:9 99:21  
100:21

**offered** 13:17  
75:2 89:12

**offering** 12:18  
74:23

**offerings** 26:15

**office** 4:17 7:3  
88:17

**offices** 12:8 70:4  
97:23 98:1

**official** 4:16

**oftentimes** 93:23

**omits** 62:2,4 63:5

**one-gallon** 36:25

**ongoing** 45:6

**online** 11:2

**open** 13:9 80:18

**opened** 13:10

**operating** 52:16

**operations** 10:6

**opportunities**  
42:15 43:4 45:23  
46:3 75:8,21 76:2  
105:7

**opportunity** 14:4,  
6 22:7,11,14  
36:19,20 40:1,3,4  
42:7 45:22 60:11  
69:12 81:17  
107:18 109:15

**opposed** 95:1

**Optimized** 62:11,  
13

**option** 13:15  
38:23

**options** 37:19  
38:17 91:10 92:24

**order** 9:25 11:18,  
25 20:13 22:5  
27:6 35:5,8,10,11  
36:1 37:4,22 41:6  
42:24 43:11 44:1  
46:23 49:18 55:11

58:16 81:4,6  
84:10 90:3 100:3,  
7 103:2,15 113:1

**orders** 10:21,22  
11:9,24 12:7,11  
14:23 18:3 27:3,4  
31:5,14 35:2,6,7  
42:17,20,21,22  
46:5 47:11 51:3  
57:23,24,25  
58:12,14,15,19  
59:2,13,25 60:1  
64:15 68:7 71:7  
74:5 75:3,23 76:5,  
20 83:13 96:17,19  
97:7,12,17  
112:15,18,22

**Oregon** 96:15

**organize** 6:6

**originally** 10:12  
110:13

**OTA** 4:4 61:10  
77:10

**outlet** 93:25 94:1,  
13,23

**outlet's** 94:18

**outlined** 18:23  
35:16

**overcome** 60:21  
69:23 77:7

**overly** 39:18

**overly-broad**  
28:21 29:15

**oversee** 74:22

---

**P**

---

**p.m.** 4:2,5 56:20,  
21,22 78:8,9,11

**packaged** 73:16,  
17

**packet** 80:18

**pages** 18:25

**paid** 11:5 12:5

13:4 19:20 20:2  
24:25 51:10 73:2  
88:4 116:8

**panel** 77:18 90:22  
117:6,15

**Parmesan** 25:6

**part** 10:17 15:10,  
20 17:19,24,25  
20:14 21:12 23:3  
27:8 29:23 31:12,  
16,25 32:5 36:2  
44:3,6 46:6,18  
55:1 75:12 80:13  
81:5,6 88:10,19  
92:14,16 98:16,17  
99:23 104:24  
105:4,7 107:6  
108:22 109:12  
113:13 115:14

**part-time** 14:25  
30:2 45:18

**participate** 22:3  
30:6,10 79:23  
94:22,24

**participated**  
68:25 69:5 71:14  
72:15 79:4

**participating**  
21:23 72:6 79:25

**parties** 4:20 19:21  
77:19,23 98:9

**partner** 45:3

**parts** 59:20

**party** 11:15 20:6,7  
90:23 94:20,23

**pause** 56:21 78:8

**pay** 12:23 13:1  
18:8,17 19:11  
45:12 49:1 53:11,  
14,16,17,25 54:12  
86:11 94:9,12  
96:6 113:14

**payee** 54:10

**paying** 18:9,11  
46:9 54:15 74:25

81:25 86:8,12,13  
87:12

**payment** 113:17

**payments** 11:8

**penalties** 8:16

**people** 9:17  
14:16,17 17:21  
19:5 32:20 33:23  
36:21 45:17 92:18  
106:2,12

**Pepsi** 95:25

**percent** 83:13  
116:18

**percentage** 11:6,  
7 18:16 86:12  
87:13

**perfect** 25:14  
26:24 39:5 85:24

**perform** 73:3  
89:25 106:14  
107:11,12

**performance**  
102:11

**performed** 7:23  
29:7 47:8 51:15  
53:1 57:15,18  
59:9 64:7,25 65:5  
66:5 68:8 70:7,24  
71:1,6 72:3,9  
73:5,9,20 74:15  
76:23 79:18 80:11  
89:5 97:11 98:3  
102:25

**performing** 27:12  
72:1,23 73:17  
80:13 88:21  
107:13 108:19  
110:9

**performs** 70:5  
73:15

**period** 14:8 30:4  
63:19 78:23,24  
87:24 113:10,23  
114:3,7

**periodically**

15:20 48:16 51:6  
83:1

**permits** 80:15

**permitted** 27:17  
34:8 35:20 51:19  
52:13,21 83:14  
90:6

**person** 32:8  
37:19 46:8 59:9  
83:20 84:24 85:5,  
9 108:1,12

**personal** 58:12  
88:17 110:8,10

**personnel** 71:19

**perspective**  
86:23,24 87:21

**phone** 108:5,6

**photo** 84:16

**photos** 52:4  
84:21 87:15,24

**pick** 85:4

**picked** 49:22  
75:13

**picture** 84:15

**pitch** 44:8,9  
108:21,22,24  
109:12

**pizzas** 104:9

**PL** 57:7,8,16,21  
58:1,9,25 59:10,  
24 63:8 67:1 70:1,  
6 72:19 76:17,22  
77:9 96:9,14 98:4

**place** 10:21 11:17,  
25 14:23 18:3  
35:8,10 38:5 44:1  
46:6,11,21 51:7  
54:25 55:11 80:6  
82:6 83:9 84:10  
86:22 112:15,17,  
21,22

**placement** 16:16  
87:10,19 99:20  
100:6,11 101:5,8

**places** 42:22,24

**placing** 22:5  
37:22 51:2 100:3

**planogram** 16:12  
47:15 48:6 50:17  
51:7,19,23 52:13  
53:16 54:17  
71:11,14,17,22  
72:2,6 82:10,14,  
17,22,23 83:9  
84:15,20 86:18,19  
87:17,19 93:21,  
22,24 95:3 99:2  
100:24 101:3,6,8  
103:16

**Planogram's**  
82:23

**planograms** 19:8  
27:18 48:4,7 53:1  
54:20,21 82:3,4,  
18 86:20 87:9  
100:10

**plans** 17:5

**point** 6:9 10:4  
13:24 20:18 22:12  
23:8 26:8,17  
32:17 33:12 35:18  
36:4,8,9 37:5  
39:20 40:16 41:21  
42:19 45:21 48:12  
49:15 60:10,16  
86:8 87:13 89:23  
98:13 99:3,19,23  
100:14 101:8,9  
104:25 109:11  
110:1 115:3,10

**pointed** 10:4  
18:20

**pointing** 44:20

**points** 35:18  
61:13 73:16

**policy** 59:17

**pomegranate**  
116:3

**portfolio** 9:10  
10:18 20:1

- position** 10:10  
47:2 61:15 111:13
- possibilities** 37:8
- possibility** 37:7  
91:20
- post-sale** 46:16,  
22
- post-sales** 47:1
- post-solicitation**  
44:17
- potential** 85:10  
88:16
- potentially** 13:3  
35:2
- pounds** 116:19
- practical** 111:13
- practice** 19:20  
70:11
- pre-booked** 97:5
- pre-memorial**  
51:3,17
- pre-sale** 23:4  
52:14
- pre-sales** 23:4  
114:12 115:4
- preconference**  
28:9 42:1
- preference**  
107:25
- preferred** 16:16  
44:24 48:4 82:24
- prehearing** 97:3
- prepare** 6:11 9:20  
11:22 20:16,24  
23:18,24,25 32:11  
34:15 80:16  
109:1,8
- prepared** 24:13  
45:1 67:13 70:23
- preparing** 14:2  
15:3 34:13 35:21  
113:7
- present** 4:10  
17:23 37:20
- presentation** 6:5,  
17,20,23 7:10  
11:16 20:15 21:1,  
13,21 22:5 23:4,  
10,17 24:9 25:13  
30:10 31:12,17  
32:15,23 33:2  
34:15 36:3,4,12  
37:21 41:18 44:10  
50:3,20 55:11  
56:25 57:3,20  
61:3 78:4 79:15  
80:23 81:10 83:19  
84:5,24 87:5  
90:18 92:23 98:18  
100:8 102:18  
103:3,6 104:24  
105:2,4,8 109:7,  
18,20,24 110:1  
114:10,20,25  
115:7,12,14
- presentations**  
15:7,20 21:24  
26:18 30:6 36:11  
37:23 80:21
- presented** 58:5  
113:11
- presumed** 61:4
- presumption**  
60:24 69:21 70:21  
77:5
- pretty** 12:15 96:8
- price** 47:9 55:16,  
17 73:21 74:20,21  
101:9
- priced** 83:11
- pricing** 11:12  
12:9 18:15 19:9  
62:5 84:9 102:23
- primarily** 10:20  
111:10
- primary** 10:19  
11:4 27:3 54:11  
70:17
- principal** 62:7,10  
18,24 79:22 82:24  
83:4,7,9,10 84:2,5  
85:2,6,8,10,14,15,  
18,23 86:2 87:1,  
10,15 89:20 90:2,  
11 93:16 98:19  
99:6,19 100:12  
101:8 103:19,22  
105:7,10,12,15,18  
106:6,8 109:8  
111:21 114:25
- printed** 98:14
- prior** 18:21 50:13  
63:15
- privately-held**  
9:5
- problems** 65:21
- proceed** 50:20  
55:4
- proceedings**  
56:21 78:8 117:22
- process** 4:15  
12:12 17:19 21:10  
22:22 23:23 24:17  
27:9 31:2,3 32:7  
33:15 35:7,23  
44:3 46:7,19  
53:21 55:1 69:7  
75:12 80:1 81:14  
84:8 85:9 99:23  
109:11
- produce** 4:16  
60:23,25 105:15
- product** 10:17  
11:6,7,11 12:3,9,  
20 13:2,21 16:5,  
15,16 19:14 20:23  
21:2,4,7,17 22:12,  
13 23:20 26:1,5,  
16,17,19 27:17,  
20,21,22 31:6,11,  
15 33:2,13,14,17,  
21 34:7,8 35:12,  
22 36:5,6,21,22  
37:1,3,6,11,19,20  
38:11,14,15,18  
39:4,6,7,10,13,15,  
16 40:13,16,17,  
21,22,23 41:8,9,  
22,23,24 42:5,7  
43:8,20 44:2  
45:22 46:5 48:19,  
24 49:14,16,18,21  
52:3,6,7,9 53:14,  
18 54:20 55:2,3,4,  
9,20,22,24,25  
68:12,21 69:6  
72:12 75:11,14,  
18,24 79:22 82:24  
83:4,7,9,10 84:2,5  
85:2,6,8,10,14,15,  
18,23 86:2 87:1,  
10,15 89:20 90:2,  
11 93:16 98:19  
99:6,19 100:12  
101:8 103:19,22  
105:7,10,12,15,18  
106:6,8 109:8  
111:21 114:25
- product's** 16:2  
20:14 49:9 51:8  
80:25
- production** 105:1
- products** 10:25  
12:18 13:7,16  
15:22 16:3,9,19,  
21,24 20:1,11  
24:14 25:13,24  
26:23,24 35:9  
36:24 37:8,13  
38:7 39:13 43:11  
45:14 49:3,16  
50:1 51:10 52:7,  
10,11 53:8,9,10  
62:6 65:2,3 66:19,  
25 67:3,23 68:2,6  
69:1,5 72:16,22  
73:12 74:20  
75:17,19 76:1  
83:7,25 84:10  
87:17 88:13,14  
99:9,14 100:22,23  
101:4,7 105:19  
106:5
- professional**  
24:19
- professionally**  
13:13 34:15
- profile** 23:6 24:7  
25:20 33:1 38:8,  
25 41:14 89:19  
91:11 92:9 106:7,  
9 114:14,23
- profit** 12:4
- program** 99:10
- prohibiting**



- 109:14  
**project** 75:10  
**projects** 40:13  
69:1  
**promise** 75:25  
**promotional**  
35:19 73:25 99:10  
**promotions** 75:1  
84:9  
**proof** 57:9 60:3  
69:24  
**proper** 31:5 47:12  
75:4 87:19 100:11  
101:5  
**properly** 33:19  
68:5 74:4 83:11  
101:7  
**property** 58:12  
88:22  
**proportion** 47:15  
50:6  
**proposed** 8:9  
32:12 34:3  
**proposing** 24:4  
**proprietary** 62:6  
**prospective** 9:21  
**protect** 28:21  
58:25  
**protected** 9:20,22  
17:1 57:5 58:24  
59:23 71:16 76:5  
77:8  
**protection** 5:13  
57:22 58:2 59:10,  
13 63:8 67:1 70:1,  
6 72:19 76:22,24  
96:14 98:2  
**protections** 8:3  
57:16 76:18  
**protective** 55:5  
**protects** 59:1  
**protested** 8:7
- prove** 72:8 73:4  
76:15  
**proves** 64:5  
**provide** 6:19 13:6  
18:23 19:4,7,22  
28:3,4 30:16,17  
36:1,7 48:5,6  
60:12,15 61:1,4  
63:1 66:10 69:11,  
14,19 70:9,20  
76:8 77:3 78:24  
79:4 80:2 86:10,  
19 87:21 93:7  
104:21 115:17  
**provided** 5:14,22  
13:11 19:18 27:25  
28:8,20,24 29:12,  
17 30:20 44:6  
53:1 58:3 61:13,  
21,22 64:12,22  
65:1,8 67:20 69:4,  
19,20 71:3,20  
73:2 76:6 77:2  
78:22 79:10  
81:20,22 84:21  
86:6,7 87:6,13,15,  
25 88:2 89:10  
102:11 104:1  
106:3 110:3,11  
117:17  
**providers** 44:24  
45:10  
**providing** 6:22  
12:20 19:1 34:7  
66:6 75:20 76:3  
78:17 81:23 82:10  
87:7 105:2  
**proving** 58:7 60:4  
77:8  
**provision** 88:18  
**Pub** 35:14,16  
**public** 4:19 5:13  
7:20,21,22 8:3  
35:20 106:4  
**pull** 49:14 55:3  
84:2  
**pulled** 60:9
- pulling** 72:21  
**purchase** 105:11  
**purchases** 58:17  
**purchasing**  
24:10 91:13  
**purely** 18:18  
26:25 34:4 82:21  
86:12  
**purpose** 16:22  
26:25 31:4,13  
37:3 40:14 41:22  
43:24 44:18 67:6  
68:6 69:8 76:4,19  
81:25 84:22 85:25  
100:8  
**purposes** 42:16  
50:23 67:3,16  
74:6  
**purview** 8:20  
**push** 115:25  
**put** 9:3 24:2 38:1  
65:12 74:22 83:3  
84:23 94:8,14  
104:8,9  
**putting** 16:24  
53:13 56:4,5  
80:14 82:12 94:5
- 
- Q**
- 
- quality** 72:22  
**quantity** 33:23  
51:9  
**quarter** 45:20  
**quarterly** 44:15  
45:9,25 46:18  
106:23 107:12,13  
**question** 6:10,16  
30:19,25 31:10  
40:9 41:2,25  
42:13 45:14 47:13  
51:25 52:23,24  
63:20 70:7 77:20  
79:6 85:25 90:25  
91:21 97:18 98:22
- 107:24 110:2  
111:20 113:3,4  
114:23 115:13  
116:7 117:8  
**questioned**  
51:14  
**questions** 6:24  
15:9 21:6 27:15,  
25 28:6,7,8,10  
30:13,15 42:2  
77:11,14,19,23,24  
78:2 90:20,23,24  
98:9 101:17  
102:13 108:17  
111:5,7,8,9 113:5  
114:10 117:1,3,6,  
9,11,12  
**quick** 111:8  
**quickly** 117:3  
**quit** 15:17  
**quote** 62:11 65:11  
67:10 70:14 74:12
- 
- R**
- 
- R&d** 9:15,24 10:1  
26:9 38:5 40:5,12,  
25 41:14,15 65:3  
68:8,10,21 69:1,4,  
7 75:16 76:3  
89:25  
**raise** 7:2  
**raised** 29:24 40:9  
**Ranch** 23:10  
32:18 67:21  
105:21 115:9  
**range** 81:15 97:4  
**rare** 10:21  
**rarely** 44:23  
**rate** 54:1  
**Ray's** 10:15,17  
92:1,3,4 99:22  
**reach** 14:24 17:17  
48:11

**reached** 110:15  
**read** 30:17 46:15  
62:13 96:8  
**readily** 36:10  
**reading** 102:19  
**ready** 6:20 7:9  
56:25 78:3,13  
**real** 9:16 21:8 94:2  
**realm** 91:19  
**rearranging**  
27:16  
**reason** 46:23  
58:21 80:17 83:18  
**rebuttal** 6:19  
56:14 78:3,13  
113:6  
**recalls** 72:12  
**receive** 11:24  
59:13  
**received** 42:23  
43:13 73:25  
**receiving** 43:9  
74:4  
**recent** 96:15  
**recheck** 47:10  
**recipe** 65:12,17  
67:24 104:13  
**recipes** 30:22  
33:25 39:8,15  
65:10 68:10  
89:11,14 103:20  
105:22 106:3  
**reckless** 104:3  
**record** 4:3,12,19,  
21 5:14,17,24 8:6,  
9,10,17 9:3 22:8  
56:24 74:10 78:11  
96:8 107:8 110:25  
117:17,20  
**recording** 4:19  
**records** 7:24  
8:11,13 43:23  
68:25  
**redo** 94:20  
**redone** 50:24  
**reestablish** 46:13  
**refer** 63:13  
**reference** 43:17,  
18 87:14 101:21  
102:4 103:5  
**referenced** 28:23  
102:11  
**references** 52:24  
**referred** 57:6,19  
74:16  
**referring** 96:11  
**refers** 114:16  
**refilling** 27:16  
72:17  
**refine** 43:10,15  
44:13  
**refined** 44:12  
**reflect** 29:19,22  
**reflecting** 52:7  
**reflective** 61:12  
**reformulating**  
89:18,21  
**reformulations**  
68:22 69:1  
**region** 14:11  
15:15 17:10 29:3  
30:9 52:17 107:6  
116:16  
**regional** 14:9,19  
28:16,17 57:18  
61:8,24 62:10,18  
70:12,16 72:13  
73:19,20 74:12,14  
76:10 97:24  
102:20 112:7  
**regular** 59:16,20  
**regularly** 75:24  
76:23  
**regulatorily** 38:6  
**reimburse** 16:23  
**reimbursed** 50:1  
116:9  
**reimburses**  
16:20  
**rejected** 59:7  
**relate** 30:18  
**related** 13:6 31:10  
32:6 36:24 47:1  
59:3 60:18 65:3  
68:8 74:24 75:7  
76:8 91:13 95:18,  
19,20 103:3  
111:25  
**relatedly** 113:4  
**relationship**  
17:22,23 22:16,19  
32:21 39:25 45:14  
47:17 82:1  
**relationships**  
17:20 22:20  
44:17,22,24 46:13  
66:3,12 107:17  
**relevant** 29:12  
58:3 61:2,11  
62:23 69:20 76:13  
77:3 87:20  
**reliable** 58:6  
**relied** 76:15  
**relies** 60:16  
**relying** 70:22 80:7  
**remaining** 56:13  
**remember** 35:7  
45:17 52:16  
106:18 107:4  
**remembrance**  
80:8  
**reminder** 6:4  
**remote** 108:2  
**removed** 71:17  
**renowned** 10:11  
**reorder** 49:12  
**repairs** 22:13  
**repeat** 100:14  
**repeatedly** 10:7  
18:20 60:7 81:20  
**replaced** 15:11,  
18 30:7 63:15  
72:14  
**replacing** 72:18  
**replied** 8:5  
**report** 18:14  
44:24 53:24  
**reporting** 4:11  
**reports** 64:2  
113:16,17  
**representation**  
64:9  
**representative**  
51:23 79:18 114:3  
**representatives**  
114:1  
**representing**  
47:20  
**reps** 58:22 67:13,  
14  
**request** 27:6,22  
39:3 58:15 61:6,  
10 76:21 90:4  
**request-related**  
59:11 66:15 67:7  
76:18  
**requested** 64:19,  
20 69:17 86:9  
**requesting** 59:2  
66:16  
**requests** 7:25  
58:17 64:17 76:19  
77:4,9 96:19 97:7  
**required** 13:14  
38:5 44:25 97:16  
**research** 23:4  
25:3 32:13 37:18

- 75:22 81:9 82:5  
91:17,22 92:14,  
16,21 101:18,24  
102:9 109:22,25  
114:12
- resell** 12:3
- resells** 35:12
- resending** 90:9
- reserve** 56:10
- resigned** 30:4
- resolution** 7:12
- resolve** 70:15
- resource** 66:4
- resources** 32:24  
65:9 66:1,6 108:1
- respect** 5:13  
13:11 23:2 26:11,  
20 37:15 78:22  
80:11 82:3,7,12  
83:4 85:2 86:5,18  
87:11,24 88:24  
89:1,9 105:20  
111:9
- respective**  
115:24
- Respondent** 7:23  
8:1,9 9:3 10:5  
18:21 19:18 22:8  
28:10,13,14,23  
29:8 35:24 36:17  
40:2,9 45:16
- respondent's**  
5:18,20 8:24  
18:24 29:22 34:11  
39:17 42:9 52:24
- response** 29:13  
57:10 61:10  
68:17,19 78:16,24  
117:2
- responses** 29:12  
60:13 78:17 103:7
- responsibilities**  
28:15 59:21 61:20  
62:2,9 63:5
- responsibility**  
94:18
- responsible** 15:4  
23:3 66:22 86:25  
113:7 116:16
- rest** 24:25 46:2  
51:1 56:2,15
- restaurant** 11:20  
91:5,16 92:8,9  
101:18,21 105:5,  
25 108:25
- restaurants**  
11:21 15:3 30:21
- restock** 53:17  
84:2
- restocked** 53:16  
72:14
- restocking** 53:14  
56:6 72:21
- restricted** 96:9
- result** 24:20
- retail** 10:25 12:16,  
19,21,23 13:25  
14:9,14,15,17,19,  
25 16:7,8,20,23  
17:8,9,16,20,25  
18:1,4,6,8 19:14  
20:2,3 22:6 28:17  
30:12 42:12 47:7,  
8,14,15,17,18,21  
48:13 49:6,10  
50:5,6,8,12,14,22  
51:2,14,15,17,18  
52:12,14 53:2,7,  
18 55:9,13 56:5  
62:11,13 66:9  
71:1,4,24 72:1,2,  
9,11,15 73:1,5,9,  
14,15,21,23 74:7,  
12,17 75:3 81:23  
82:13 83:15,16,  
20,22,23 84:17,22  
86:5,21,25 88:7  
93:22,25 94:1,13,  
18,23 95:11,12  
97:14 98:11,18,  
21,22 99:1 100:9  
102:16,21,25
- 103:11 111:21,25  
112:7,8,14 115:24  
116:5,19,24
- retailer** 19:16,21  
53:10 54:18 56:8  
72:21 94:8 112:17
- retailer's** 96:3
- retailers** 10:20  
11:3 15:22 16:17  
17:6 18:23 19:16,  
21 22:25 66:11  
71:15
- return** 55:15  
56:19 78:7
- returned** 49:16,  
18,23,25 52:9  
55:23 56:1
- returns** 8:14 13:3  
18:15 54:13
- reuse** 36:15
- Revenue** 58:13
- review** 44:5 49:7  
53:15 60:11 69:12  
100:10 101:6,11  
109:7
- reviewing** 34:10  
50:6,25 61:23  
99:1,4,17
- reviews** 44:16  
55:1 115:18
- Rib** 91:6
- rip** 80:18
- rise** 60:23 70:21  
77:5
- River** 91:5
- Robbie** 43:19  
85:4
- Rockies** 52:17
- Rodeck** 79:12  
88:25
- Rodeck's** 80:8
- role** 17:8,24 24:16  
34:4,6 37:17,23
- 63:16
- room** 24:18 84:4,  
25
- routinely** 59:8
- run** 53:24 113:16
- Ryan** 5:7
- 
- S**
- 
- S-Y-S-C-O** 11:19
- Sacramento** 4:1  
91:6
- sake** 6:18
- salad** 10:15 13:8  
15:23,25 16:4  
20:17 21:3 33:3,4,  
5 34:1 39:10 40:7,  
8 41:1 51:25  
55:14 91:6 105:3
- salads** 23:20  
26:16 104:9
- salary** 112:12  
116:9
- sale** 11:17 13:21,  
23 14:6 17:1,19  
20:4 22:7,12,15,  
19 23:8,13 26:8  
27:23 31:17 33:14  
36:5,8,20,22  
38:13,16,22 39:3,  
20 40:1,4,17,22,  
25 41:7,22,23  
43:12 44:4,13  
46:21,22,24,25  
47:5 55:5 71:6  
79:23 80:20 81:2,  
13,14,18 83:22  
84:8 85:24 86:2,4,  
13 90:3,8,12  
93:19 99:9 101:9,  
10 107:19 109:3,  
16 111:21 116:10
- sales** 8:22 9:17  
10:20 11:6,8,13,  
14,16 12:12 13:4,  
25 14:8,21,25  
15:6,8,20,21 17:4,

- 7,8,13,18 18:2,5,  
10,14,18 19:9  
20:9,15 21:1,8,10,  
13,18,21,23 22:5,  
14,20,21 23:8,16,  
17 24:9,16,20,22,  
25 25:1 26:2 27:2,  
8,9 30:6,10,12  
31:2,3,12,14,17  
32:1,5,6,10,14,23  
34:4,6 35:4,6,22  
36:2,3 37:20,23  
38:9 39:22 40:22  
41:11,13,17  
42:19,20 43:3,6,  
10,16 44:8,9,10,  
13,20 46:3,7,11  
47:1 49:4,7 50:18,  
20,21 51:2 53:24  
54:1,11,13 55:1,  
11 58:22 59:1,3,9  
62:14,16 66:8,14,  
16 67:6,13 70:4  
73:25 79:14 80:1,  
13 81:1,6,9,10,11,  
16 82:17 83:7,19,  
20 84:4,7,24 85:1,  
3,9 86:8,12 87:13  
88:10,20 89:16,22  
91:1,2,6 92:23  
96:10,11,18,21,  
22,25 97:5 98:17  
99:11,21,23,24  
100:8,14 101:11  
102:17 103:2,3,6  
104:10,14,20,24  
105:4,7 106:11  
108:20,21,22,24  
109:7,12,20,25  
110:5,15 111:25  
112:5 114:20  
115:12,15,17,18,  
24 116:1,8,10,13,  
14,15,21,22,23,24
- salesmen's**  
96:18
- salespeople**  
103:23 104:2,8
- salesperson**  
59:5 67:2
- sample** 26:4
- 40:22,24 41:16  
43:19,25 52:3  
84:12 85:4,5,21  
86:1 88:2 109:24
- samples** 9:19  
20:16,17 22:4  
23:24 24:13 25:18  
26:15,17 34:8,9,  
13 35:18,21 36:7  
37:25 38:14 68:11  
75:13,14 80:14,15  
85:19 93:7 105:2  
115:5,6
- sampling** 34:8
- sand** 23:21
- sandwich** 20:17  
21:3
- sandwiches**  
26:16
- Santa** 96:15 97:2
- satisfied** 38:15  
39:2
- satisfy** 39:6 60:6
- sauce** 9:12 13:17,  
18,19 15:23 16:1  
23:11 24:5,6  
25:10 26:14 27:1  
34:19 36:8 38:20  
39:9,11 67:11,24  
79:21 80:18 90:3  
115:2,10
- saucers** 9:9 13:11,  
13,14 25:7,12  
33:20,24 34:20,22  
38:24,25 67:17,19  
91:11,25 103:25  
104:12,14 105:1
- save** 68:3
- scans** 83:7
- school** 37:2
- schools** 11:21  
37:2
- Schweizer** 15:18  
21:25 30:7 63:13  
79:13 80:9,10
- 91:3 92:17 107:5  
111:14
- Schwinn** 105:15
- scientists** 68:24
- scope** 5:13 8:4  
46:17 59:6 67:1  
70:10
- screens** 56:18
- season** 51:4
- seasonal** 24:5  
33:3
- seconds** 53:22
- section** 57:6  
84:20 95:1
- selection** 88:16
- sell** 9:8 12:2 13:1  
19:14 20:1 22:12  
26:14,17,19 37:13  
40:8 42:4,8,10,11  
45:4,5,14,22  
48:22 51:12 55:9  
66:23 84:5 91:25  
92:21 100:22  
101:13 104:25  
105:11 107:21  
115:7 116:5
- sellers** 92:2
- selling** 15:4 19:21  
20:20,21 26:25  
37:11 43:7,8 44:6,  
9 54:19 83:25  
84:3 85:15 88:22  
91:10,23,24 98:20  
99:5,9 100:21  
101:13 114:21  
116:3,4,5,6
- sells** 14:1 111:21
- send** 16:17 25:15,  
16,18,22 38:7,14  
41:5,13,16 85:12,  
19 93:7 104:3  
112:25
- senior** 15:1 20:9  
112:1
- sense** 74:2 95:10
- separate** 20:13  
32:4 67:5,12,15  
72:7
- separately** 19:24  
53:3
- serve** 11:22 24:24  
40:14 47:10 58:18  
71:8 76:18
- served** 24:16  
31:4,13 36:1  
40:11 42:16 44:18  
47:9 63:16 67:16
- serves** 58:23 76:4
- service** 9:11  
11:14,20,25 12:3,  
5 13:11 14:1 15:3,  
4,8,13,21 19:2  
20:5,21 21:6,13  
22:6 24:21 29:17,  
18 30:11,21 42:11  
44:24 45:9 48:6  
53:1,7 54:16 62:6  
65:9,19 91:13  
97:14 111:22,23  
112:2,5,19,25  
113:15 114:13  
116:19,23
- serviced** 12:15
- services** 12:20,24  
13:15 18:17,23  
19:1,4,7,22 30:20  
53:3 65:1,8,13  
66:5,6,10 70:24  
73:9,15,17 82:10  
86:19 87:8 88:18,  
22 89:25 101:25  
102:5 104:21
- servicing** 14:12  
108:15
- serving** 45:19  
67:18 92:18
- session** 6:13  
117:20
- set** 47:17 95:9  
116:17

- setting** 12:21 19:8  
**settled** 60:22  
**seventh** 42:13  
**share** 32:10  
**she'd** 85:24  
**sheet** 100:15,19  
**shelf** 16:7,8 25:17  
48:9,10 49:4,14  
51:25 52:6,8  
84:16 93:17 94:1,  
4 99:15,23 102:24  
**shelves** 15:24  
16:16,25 48:13  
56:4 72:14,21  
84:1,2 87:2,18  
94:7  
**shelving** 12:21  
16:2,9,12,13,14  
19:10 51:11 52:3  
53:13 54:22,23  
83:6 86:20 94:6,8,  
13,20,25 102:23  
**shelving's** 94:10  
**ship** 85:24  
**shipped** 11:11  
12:8  
**shoes** 45:11  
**shopping** 109:8  
**shore** 83:25  
**short** 19:5 30:23  
31:7,16 40:16  
56:10  
**shorten** 31:24  
**shorts** 18:15  
53:25  
**show** 13:17 18:9  
19:1 34:18,23,25  
35:9 36:21 45:8,  
11 47:3 64:3  
67:11 79:20 86:10  
104:8 105:1,6  
106:1 109:1  
**showcase** 26:16  
89:19,20  
**showed** 21:4  
23:25 52:4 103:23  
**showing** 19:9  
37:5,10 60:15  
65:2 73:2 80:25  
104:14 105:20  
106:11  
**shown** 69:17  
103:25  
**shows** 52:1 65:7  
67:21 69:5 87:11,  
17  
**side** 30:11 52:17  
61:23  
**sides** 19:13 47:20  
54:18 90:24  
**significant** 10:17  
**significantly**  
89:2  
**similar** 33:17 44:2  
63:3 66:9 72:23  
74:15 75:2 84:13  
111:14,19  
**similarly** 24:25  
81:11  
**simple** 9:9 84:19  
**simpler** 107:23  
**simply** 67:2  
**single** 14:17  
21:21 36:12 59:25  
67:18 76:20  
109:14,20  
**singular** 85:7  
**site** 23:19,23  
57:13 88:16  
**sits** 8:18  
**sitting** 87:18  
**size** 84:20 99:20  
**sizes** 87:17  
**Skagen** 49:8  
51:20 52:13,21  
83:14 99:2 100:9,  
12 101:3,5 105:13  
**Skagen's** 27:15  
**slight** 38:10  
**slightly** 93:17  
**slow** 4:15 31:24  
**small** 10:23 20:24  
22:3 80:21  
**smaller** 112:16  
**soaps** 95:2  
**soggy** 23:22  
**sold** 10:18,25 11:8  
12:5 21:1,5 40:7  
51:11 83:8  
**sole** 37:3  
**solely** 102:25  
**solemnly** 7:5  
**solicit** 17:8,13  
50:20 62:8,19  
63:5 70:4 74:5  
75:3 88:14 100:3  
**solicitation** 8:21,  
22 12:12 18:1,5  
22:22 24:17 27:2,  
3 31:2,3,5,8 32:6  
35:23 40:15 42:16  
44:3,19,20 46:7,  
17,19,23 47:11  
58:11,14,23 59:4,  
6,9,13 62:9,14,16,  
19 63:6 67:3  
72:23 81:5 84:7  
85:9 96:9 108:20  
**solicitations**  
17:18  
**soliciting** 31:14  
37:4 57:23,24,25  
58:19 59:25 60:1  
64:15 68:6 71:7  
75:23 76:4,19,20,  
21 100:13  
**solve** 65:21  
**somebody's**  
46:10 105:5,24  
**someone's** 44:22  
**sort** 38:25 104:1  
109:2 110:11  
**sought** 7:25  
**sources** 58:6  
**space** 47:21 48:1,  
14,15,20 50:17  
52:1,5 54:18,19,  
24 94:2,4,14,25  
95:8  
**space-**  
**management**  
71:11  
**spacing** 51:11,12  
**spacings** 82:25  
83:2  
**sole** 4:12,13  
102:13  
**speaking** 78:19  
**special** 26:21  
99:22  
**specific** 8:2  
13:21,23 16:20  
17:6 21:4 25:4  
26:5 27:15 28:4  
29:1,15 30:10  
32:6,7 36:3,16  
39:3,4 40:18 41:7,  
24 43:11 81:16  
85:7 86:4 89:17  
90:4,12,13 105:4  
106:5 116:2  
**specifically** 6:12  
15:16 24:13 29:4  
61:19 63:12 71:21  
73:8 76:8 81:22  
**specifications**  
85:23  
**speech** 27:4  
58:15  
**spend** 16:21,22,  
23 47:12 48:21,23  
50:25 51:1,10,13  
74:3,23,24 75:4  
83:4,5,6

- spending** 73:22
- spent** 52:18  
109:22
- spoke** 67:14
- spot** 98:25
- staff** 11:16 22:14,  
15 23:7 27:8  
42:19,20 43:1,4  
49:20 51:5 68:10  
71:7 79:24 80:1,2  
85:3
- staffing** 46:8
- staffs** 19:5
- standard** 52:2,6
- standards** 71:22,  
23
- standing** 45:10
- start** 22:18,23  
64:15 68:15 71:5  
90:25 91:2,4
- started** 10:14  
21:12 24:22
- state** 9:16,19  
12:8,9 14:13,18  
27:10,12,24 40:6  
42:23,25 43:2  
45:18,19 49:23,24  
55:24 57:23 58:9,  
11 79:1,25 80:6,9  
88:23 96:10  
105:15 107:9,11,  
13 108:12
- stated** 60:8 63:18,  
23 65:11 66:21  
67:11 68:14 72:3,  
14 74:12,17 75:2
- statement** 6:19  
29:17,19 65:13  
70:19 77:21  
78:13,14 110:19
- statements** 7:4  
28:20,23 29:14  
79:1,4,7 110:10,  
20
- states** 14:12 30:9  
37:6 60:7 64:1  
65:14,25 68:20  
70:14,25 71:13  
73:8,15 97:24  
102:21 107:7,10  
109:22
- stating** 4:21 71:21  
98:2
- stay** 107:15
- Steakhouse**  
10:12
- steal** 43:21
- stenographer**  
4:10 56:15
- step** 45:10
- steps** 71:17
- stock** 47:7,9  
50:22,24 55:4  
72:14,17,18 84:16
- stocking** 12:22  
19:8 72:11 87:1  
95:16,23,25 96:2
- stop** 4:14 43:8  
116:6
- store** 12:16,19,22,  
23 14:1 16:8,13  
17:5 19:7 23:7  
48:8,9,10,16  
49:13,22,25 50:8,  
9,11,15,18,20  
51:11,24 52:5,10,  
18,20 53:10  
54:22,23 55:9,14,  
15 56:3,7 71:25  
74:22 81:23  
82:13,14 83:1,21,  
22,25 84:4,23,25  
85:1 86:20 88:17  
94:6 95:10,15,17  
98:15,21 99:8  
100:6,19 102:23
- stores** 11:1,2  
14:10,20 15:24  
17:12,15 50:13  
66:11 71:24 73:5,  
14,23 74:18 83:23  
95:9,23 103:1  
116:24
- story** 86:3
- strategic** 71:11
- strategy** 65:22
- stream** 56:18
- stress** 17:19
- stretched** 17:10
- strict** 57:8
- strictly** 31:2,13  
59:10
- stuff** 43:6
- style** 67:21
- submit** 27:9 43:19  
61:6 113:17
- submitted** 28:13  
57:10 61:9,15  
63:12,25 64:24  
65:14 73:11,14  
117:19
- subsequent**  
22:21 23:15 28:24  
29:14 78:23
- subsequently**  
15:11 31:9
- substantial** 88:13
- substantially**  
111:14,19
- substitute** 71:8
- successful** 23:8,  
9,13 33:14 41:6
- suck** 80:18
- sued** 28:22
- sufficient** 77:2  
80:1 109:25
- suggested** 28:13  
106:5
- suggestion**  
91:15 102:6
- suggestions**  
102:2
- suggests** 67:14
- summarize** 76:17
- summer** 51:4,17  
99:11
- supermarket**  
74:18
- supervisor**  
64:11,23 65:11  
66:20 67:8 68:9,  
14 69:14 102:6
- supplier** 40:19
- support** 30:20  
34:6 47:2 53:7  
80:2,3
- supported** 65:13  
68:19
- supporting** 10:10  
58:4 73:6 74:11  
77:3
- suppose** 91:4
- supposed** 51:8,9,  
21 100:24,25  
103:16
- Supreme** 58:13  
59:6
- surveys** 72:11
- sustain** 77:10
- swear** 6:7,21 7:1,  
3,5
- Sweet** 10:15,16
- switch** 48:25
- switching** 49:1
- Sysco** 11:19 20:6  
112:20,25
- system** 10:24  
42:21,25 43:14  
53:20 54:8 115:15
- 
- T**
- 
- T-E-C-H-N-O-M-I-C**  
C 101:22

**T-R-A-D-E-S-P-E-N-D** 16:22  
**table** 78:17  
**tags** 49:4  
**tailored** 65:16  
**takes** 82:6 98:23  
**taking** 75:19  
89:17,18,20 106:5  
**talk** 21:16 31:24  
32:11 36:18 64:13  
70:1 99:7 104:10  
105:13 108:19  
**talked** 53:23  
98:11 101:17  
**talking** 13:7 22:18  
32:2,4 47:18  
87:14 102:17  
110:7 115:14  
**Tamagni** 5:9  
**tangible** 58:12  
88:22  
**target** 37:18 43:10  
115:11 116:2,17  
**targeted** 17:4,7  
21:1 23:4 30:10  
31:12,17 32:14  
36:3,12,16 44:9  
109:25 115:12,24  
**targeting** 17:4  
**tasks** 80:13  
**taste** 33:8 37:9  
91:14,15,20 92:13  
93:8,13  
**tastes** 65:16 93:3  
**tasting** 34:7  
37:18,21  
**tastings** 9:21  
**taught** 105:14  
**tax** 4:18 5:5,14 6:8  
7:4,13,14,19,20,  
21 8:14 9:1,2 14:7  
15:10 22:1 29:5  
30:3 56:24 57:5,  
22 58:10 63:17  
77:14 96:7  
**taxable** 30:1  
**taxpayer** 8:5,7,14  
97:21  
**taxpayer's** 20:11  
57:23 60:22 66:10  
**team** 14:4 15:7,8,  
21 20:9 21:8 22:6  
23:3 24:20,22,25  
25:1 32:1,5,10  
33:15 34:6 35:4  
37:20 38:10  
40:12,22,23,25  
41:11,13,14,15,17  
75:16 80:13 81:6  
88:10,20 89:17,22  
91:1,2,7 104:10,  
15 109:12 110:5  
112:5 113:15  
115:15,17,18  
116:8  
**teams** 13:25  
21:13 22:7 110:16  
**tearing** 19:8  
53:13  
**technical** 105:17  
**technically** 46:22  
**Technomic**  
101:22 102:8,10  
**telephone** 108:2  
**telling** 37:10  
81:24 84:9  
**tens** 14:15 17:11  
45:19 83:23  
**term** 58:14 62:8,  
15  
**terminology**  
47:22  
**terms** 62:18 63:5  
**test** 93:8  
**testified** 86:10  
**testimony** 6:5,7  
117:13,17  
**testing** 34:3 69:1,  
6  
**Texas** 15:19 22:2  
**thing** 37:25 55:19  
83:10 88:1  
**things** 33:10 55:3  
57:21 58:14 86:11  
90:7 96:14 100:6  
104:10 109:2  
114:22  
**thinking** 25:6  
**thinly** 17:10  
**thirty** 99:14  
**thousand** 22:25  
**thousands** 14:15  
17:11,12 45:19  
83:23  
**threw** 36:13  
**throw** 34:24 99:25  
100:4  
**thrown** 49:25  
**time** 4:5,12 6:12,  
25 7:12 9:13  
16:24 21:22  
23:10,12,14,20,21  
30:3,5 31:22  
32:15,19,20,24  
40:8 41:3 44:21  
46:25 48:9 49:17  
50:10 51:2 52:18,  
19 56:10 68:3,15  
83:15,17 84:17  
90:21 92:23 94:4,  
7,10 96:1 106:17,  
19,20 109:13,17,  
22 110:12 114:18  
117:6,13,15  
**time's** 6:18  
**timely** 8:14  
**times** 8:11 23:24  
39:18,21 40:2  
42:5,9 48:2 50:16  
52:16,20 58:4  
62:19 64:3,21  
95:24 114:19  
**title** 29:20  
**titled** 70:24  
**Tobacco** 96:15  
**today** 4:5 5:11  
6:4,13 7:12 8:18,  
25 60:17 63:23  
117:13,19  
**told** 21:11 26:21  
28:19 48:19 88:5  
**Tommy** 4:7  
**top** 48:21 50:24  
52:22  
**topic** 101:15  
103:17 117:2  
**topics** 78:16,21  
110:22  
**total** 14:8 18:14  
65:17 116:15,21  
**totals** 13:4  
**touch** 45:21  
**town** 91:5  
**TPP** 9:8,16 10:20  
11:13 33:17  
**track** 115:16  
**trade** 16:21,22  
47:12 48:21,22,23  
51:10,13 73:22  
74:3,23,24,25  
75:4 83:4,5,6  
**train** 40:6 42:4  
**trained** 13:13  
33:23 34:16,20  
**training** 13:6,7,14  
22:14 33:18,24  
36:23 37:1 40:5  
79:22 88:17  
103:18 104:1,2,4,  
5,6,13,22 105:9,  
13,16,17  
**trainings** 104:16  
110:24  
**transcript** 4:17,  
18

**Treasure** 7:17**Treasury** 72:20**treated** 60:13  
98:1**truth** 7:5,6**Tuesday** 4:1,5**turn** 4:20 52:8  
70:3 77:17 90:22  
93:20 98:8 103:21  
111:11**turnover** 22:17  
46:7**tweak** 92:12 93:11**tweaked** 25:23  
93:18**two-year** 14:7**type** 53:25 95:15  
104:12 115:2,22**types** 66:4 73:15  
91:23 104:9

---

**U**

---

**U.S.** 10:18 11:4  
12:15 21:24 52:17  
53:6**U.S.C.** 57:6**uh-huh** 114:8**ultimately** 12:7  
103:24**un-permitted**  
82:18**un-stocking**  
12:22**unclear** 72:3**uncommon** 92:9**understand** 10:5  
16:11 19:25 21:7  
22:9 24:23 29:7**understanding**  
91:9 102:2**unedited** 63:10**unfavorable**  
60:24 61:5 69:23  
70:22 77:6**unique** 18:22  
20:11 38:1 54:20  
92:11 93:18**United** 107:7**unprotected** 58:7  
59:3,15,19 64:25  
70:2**unsupported**  
60:5,17 65:4**unusual** 45:25**up-sell** 100:21

---

**V**

---

**valid** 35:17**varied** 11:7**varies** 52:5**variety** 26:15  
31:15 66:18 67:19  
76:23 105:2**vary** 107:10**verbal** 58:15  
114:2**verbatim** 4:11**verify** 47:8 48:19  
51:7 54:25**verifying** 75:1**versatility** 13:18,  
20 20:14 21:4  
24:3 33:13 36:22  
81:1**version** 92:3,8**versions** 92:5**versus** 35:24  
58:13 66:9 72:20  
84:25 106:22**vertically** 16:14  
48:2,3**video** 4:18**view** 42:3 66:3**viewable** 56:19**viewed** 59:18  
64:8**violate** 96:10**virtues** 67:3**visit** 15:19 17:12  
39:19 42:10 81:17  
107:17**visits** 67:13,16  
75:3 81:16 98:23  
102:22**volume** 11:8 13:2  
37:12 48:22  
112:12 116:9,10,  
13,18,19**VP** 7:17

---

**W**

---

**waiting** 23:1**walk** 44:21**Walmart** 95:3,13**wanna** 32:23  
101:10,13**wanted** 26:22  
36:14 41:18 43:25  
77:13 92:2 102:8  
103:10,21 110:22  
111:12 112:19**wanting** 81:9**warehouse** 11:2**warehouses** 9:15**waste** 23:9,12,13  
92:23**wasting** 32:15,19**watches** 105:14**ways** 13:19 21:2  
62:1 89:6 93:2  
106:11**website** 4:18  
18:25 37:6 53:4  
65:14,19 71:3  
72:10 73:11  
89:12,15 105:22  
106:4**week** 48:24 75:11**Weekend** 50:13  
51:16,17 83:18  
99:11**Weekends** 52:15**weekly** 39:23**weeks** 74:18**west** 14:10,11  
15:15 17:10 29:3  
30:9 52:17 107:6  
108:16**western** 21:24**whatsoever**  
102:4**wholesale** 10:20**wholly** 93:25**wide** 12:24**wilt** 23:20**Wisconsin** 58:12**witches** 23:21**withdrawn** 35:15**wondering** 96:10  
114:15**word** 61:18,25  
70:23**work** 9:2 14:19  
18:4 20:15 25:8,  
18 41:10,15,16  
65:22 68:25 70:10  
79:6 95:5 97:11**worked** 7:17  
18:12 40:11  
68:21,23 69:3  
73:19 80:7 112:20**working** 19:12,13  
25:3 28:22 29:1  
40:12 48:18 75:10



101:19

**works** 25:11  
53:21 65:14,16

**world** 10:11

**Wrigley** 27:2,19  
35:15,17 44:21  
46:15 52:13 58:13  
59:7,15 72:17  
80:14 81:3 83:14  
96:14

**write** 54:3

**write-up** 89:1

**written** 117:18

**wrong** 49:18,21  
55:20 60:15

---

**Y**

---

**year** 15:11 28:25  
30:1 45:18 50:12  
51:6,16 63:22  
74:8 116:16

**year's** 116:17

**years** 7:13,14,15,  
18,20 11:5 14:7  
22:1 24:21 28:17,  
24 29:5,14 59:12  
61:21 63:16,17  
64:6,10 76:12,13  
82:5 84:14 86:14  
108:9 110:8  
113:8,9