RealTime Transcriptions

TRANSCRIPTION OF THE

# **COMMISSION OF INQUIRY**

## SOUTH AFRICAN REVENUE SERVICE

### **BEFORE COMMISSIONER**

THE HONOURABLE MR JUSTICE NUGENT (RETIRED)

### ASSISTED BY

PROF M KATZ MR V KAHLA MS M MASILO

#### HELD ON

DAY 13

25 SEPTEMBER 2018

PAGES 2127 - 2271

#### <u>HELD AT</u>

The Auditorium, 2nd Floor Lifton House, Brooklyn Bridge, 570 Fehrsen Street, Brooklyn, Pretoria



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1	Page 2127	1	Page 2129
1	[PROCEEDINGS ON 25 SEPTEMBER 2018]	1	information that the Commission requires and if a witness
2	[09:09] COMMISSIONER: Can I just say a few words	2	has given testimony when there has been no reason to
3	at the outset. You know this Commission comes under	3	suspect it might be false and it turns out later that that
4	regular abuse. Carried sometimes by at least one of the	4	might not be the case then the witness is liable to be
5	media and let me just say immediately I don't mind the	5	recalled and examined more thoroughly. In short the
6	abuse, I tell that people over and over. I'm grown up now,	6	approach counsel will take to oral evidence will be
7	I've been in conflict for 40 years, abuse me as you wish.	7	dictated by the exigencies of the case. Some cases will
8	But a lot of it is being directed at counsel and	8	require the witness to be guided, other cases will require
9	particularly Advocate Steinberg. It says she's acting	9	the witness to be interrogated and some cases might require
10	unprofessionally and so forth. I want to just repeat what	10	a bit of both". That is the role of counsel and they do it
11	I said in a ruling I made as to what counsel's role is.	11	under the Commission's direction and if you to, if anyone
12	Advocate Steinberg, Advocate Siyo and Advocate Hobden are	12	wishes to insult me they're welcome to do so but they will
13	counsel for the Commission and like any other counsel they	13	not pass that onto counsel. Secondly it is, as part of
14	take the instructions from their client and I am the	14	that insult it is said that the Commission does not have an
15	client. What they carry out is carried out on the	15	open mind. I want to say what I said in a judgment in the
16	instruction of the Commission. They don't go off on a	16	appeal court about what is meant by an open mind. That
17	frolic of their own. They do what is required by the	17	related to the public protector but it applies as much to a
18	Commission and that is the role of any advocate and if you	18	Commission. That state of mind is one that is open to all
19	wish to abuse me you may do so but I will not tolerate	19	possibilities and reflects upon whether the truth has been
20	abuse of counsel for the Commission who are doing who are	20	told. It is not one that is unduly suspicious but it is
21	doing their job.	21	also not one that is unduly believing. It asks whether the
22	I said before that the Commission's Act makes it	22	pieces that have been presented fit into place. If at
23	an offence to insult or disparage a Commission, I've said	23	first they do not then it asks questions and seeks out
24	before I'm not going to be diverted by criminal charges and	24	information until they do. It is also not a state of mind
25	so forth along there. But I will be diverted along that	25	that remains static. If the pieces remain out of place
	Page 2128		
	Page 2120		Page 2130
1	course if there is further abuse of counsel. I want to	1	Page 2130 after further inquiry then it might progress to being a
1 2		1 2	
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	Page 2131		Page 2133
1	present, you appear for Mr Massone?	1	upshot of it rather than the actual diagnosis of it, is
2	MR MIN: Yes, correct.	2	that he requires treatment and that he's unfit to subject
3	COMMISSIONER: And do you want to just	3	himself to this Commission of inquiry. It's on that basis
4	tell my colleagues at least why Mr Massone is not present?	4	that his legal representatives sought for him to be excused
5	MR MIN: (inaudible).	5	from being present here today. He is in Italy, his legal
6	COMMISSIONER: Thank you, will you do so.	6	representative have had conversations with him to inquire
7	MR MIN: Thank you Sir.	7	about his progress as late as yesterday as well and I
8	COMMISSIONER: Oh. Mr Min, perhaps you	8	understand that his medical practitioners in Johannesburg
9	could excuse us for a minute. Sorry.	9	are speaking to his medical practitioners in Italy. So to
10	MR BABAMIA: Members of the Commission,	10	the extent that we need to communicate with him via
11	counsel for the Commission, Mr Commissioner, good morning	11	teleconference or emails and the like that is still
12	to you.	12	possible. So that's on the first issue. In respect of the
13	MS STEINBERG: Morning.	13	documents that -
14	MR BABAMIA: My name is Jawaid Babamia,	14	COMMISSIONER: Well let's just deal with
14	I'm from the Johannesburg Bar. I represent Mr Vittorio	15	that issue. I did get a letter from Tabacks I wasn't sure
			5
16	Massone. I'm instructed by Tabacks Attorneys. I	16	who they were representing, whether it's Mr Massone or Bain
17	understand from correspondence exchanged between you	17	or because no one's told me anything, no one tells me
18	Commissioner and my attorney that there are two issues that	18	anything by the way and it outlined what you said. I
19	Mr Massone or rather his legal representative is required	19	subsequently received a report from his medical
20	to deal with. The first issue is pertaining to Mr	20	practitioner. I had said that I will not reveal what had
21	Massone's absence and the second issue pertains to what	21	passed between doctor and patient and I have not done so to
22	should the Commission do, I understand it to be in the form	22	my colleagues and I will not do so and in fact that report
23	of proposals that I ought to make to the Commission on what	23	has been destroyed.
24	it ought to do with the documents that the Commission has	24	MR BABAMIA: We thank the Commissioner.
25	received which the Commission has recently requested or the	25	COMMISSIONER: If it emerges in the press
	Dage 2132		Daga 2134
1	Page 2132 Commission has requested on an ongoing basis pursuant to	1	Page 2134 anywhere it doesn't emerge from our office. But I say to
1 2	Page 2132 Commission has requested on an ongoing basis pursuant to affidavits that it received. On the first issue on Mr	1 2	anywhere it doesn't emerge from our office. But I say to
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	Page 2135		Page 2137
1	answered and I'm not going to tell him to come back. You	1	the frustration that commissions of inquiry undergo and I
2	can give him the report. I'm not going to put anyone's	2	understand your frustration in this matter as well.
3	health at risk. It leaves the problem which you can now	3	COMMISSIONER: I'm not frustrated at all,
4	get to which is and it's really why Mr Min, and I'll raise	4	don't assume that. I just get on with the job as best I
5	that later and Ms Moodley are here, is that we get dumped	5	can. But anyway -
6	with affidavits and some of which raise lots of questions	6	MR BABAMIA: That may be the case. But
7	and everyone disappears and we are left to say well what do	7	Mr Massone has made himself available by commuting to South
8	we make of this. I think that Bain puts itself in a very	8	Africa on a number of occasions and like I said he would be
9	dangerous position by the way, quite apart from us - it	9	willing to do so if it's achievable and if it's feasible
10	being unhelpful for us. Bain itself I don't think	10	from a health perspective. So in a nutshell we're in the
11	recognises the danger that they face by adopting the	11	Commission's hands and we're happy to assist the Commission
12	approach they have and you tell us now what do you say we	12	to the extent that it wants to direct written inquiries to
13	must do with the affidavits?	13	Mr Massone's legal representatives and we will submit
14	MR BABAMIA: Mr Commissioner, the	14	written responses.
15	affidavit say what they say. I can appreciate the fact	15	COMMISSIONER: Well let me just tell you
16	that they would generate a number of questions and I	16	that we are not, this Commission has got a lot of work to
17	understand that they have generated a request for further	17	do. I don't know if you've seen it's terms of reference.
18	documents which have been submitted to the Commission as	18	They are very broad. This Commission has been working
19	well. There are one of two ways of really dealing with	19	night and day, seven days a week to try and get through it.
20	this matter and this is really a proposal that I'm making	20	We are not going to waste our time with written questions
21	and I'm making the proposal on instruction from my attorney	21	which come back. I'll show you some of the type of
22	after having discussed it with my attorney and the rest of	22	questions I'll ask and I'll show you the kind of answers I
23	the legal team. The Commission may direct questions to Mr	23 24	get. So what I want to know is that the affidavits are
24 25	Massone in, with respect to any particular documents that they wish to. I know that is quite a laborious task, I	24 25	now, have been submitted to the Commission and they're in the possession of Advocate Steinberg and they will be
25		25	the possession of Advocate stemberg and they will be
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1	mean I understand that the Commission has recently received	1	Page 2138 placed before the Commission by her today. Do you have any
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	Page 2139		Page 2141
1	COMMISSIONER: Thank you very much and	1	Mr Moyane was the Commissioner. And we said here "Would
2	counsel is also here to, it's on a watching brief as it	2	you also kindly furnish me with the report prepared by Mr
3	were for Bain, is that right?	3	Moyane referred to in the evidence of Mr Massone? I would
4	Mr MCNALLY: That is correct, Mr	4	be obliged if Mr Massone would also depose to an affidavit
5	Commissioner. Paul McNally.	5	identifying and describing each occasion he or any other
6	COMMISSIONER: Paul McNally for the	6	person from Bain & Co met or had contact with Mr Moyane
7	record yes. Thank you, Mr Min. Mr Min would you -	7	before the contract was awarded to Bain & Co? The
8	MR MIN: Morning.	8	affidavit should identify four things. One, when and where
9	COMMISSIONER: Do you affirm that the	9	the contact occurred, two, who initiated the contact,
10	evidence you'll give will be the truth, the whole truth and	10	three, what was discussed on each occasion and four, in the
11	nothing but the truth?	11	next paragraph whether any discussions took place between
12	MR MIN: I do.	12	Bain & Company and Mr Moyane concerning its tender at any
13	EVIDENCE OF MR MIN	13	time." So you'll see there were four things that were
14	COMMISSIONER: So, thank you very much.	14	asked.
15	Mr Min, you've heard what I've said, we're left in an	15	MR MIN: Yes, Sir.
16	unfortunate position. We've had affidavits given to us,	16	COMMISSIONER: Now he was required to
17	they raise many questions and we don't know who to ask	17	give that affidavit by Friday which was the 7th of
18	anymore. Mr Massone is not here. We, I get letters from	18	September. Now you and Ms Moodley asked to see me on the
19	counsel all the time, they don't even tell me who they	19	Wednesday before that and you came to Pretoria –
20	representing when they write letters and we just want to	20	MR MINS: Your Honour, I believe it was
21	know who to ask now. So I've asked you to come here so we	21	Friday the 7th of September –
22	can just go through how we got to this position and where	22	COMMISSIONER: Sorry.
23	the shortfall is that we're concerned about and as I've	23	MR MINS: I believe it was Friday the 7th
24	said to you we'll go through it in a minute. Bain is,	24	of September, not the 27th of September.
25	should be very circumspect about its own position. If we	25	COMMISSIONER: Sorry I said 7 September.
			· · ·
	Page 2140		Page 2142
1	are left with facts not all explained we are going to have	1	MR MINS: Oh sorry, apologies.
2	to come to a conclusion of Bain's role in all this and it	2	COMMISSIONER: And you came to see us on
3	might be that we will then have to simply draw inferences	3	the Wednesday I think it was, it doesn't matter precisely
4	because we don't have other facts and we are very capable	4	
E			what day, it's not going to – but I think it was Wednesday.
5	on these, what we've seen thus far, a real possibility that	5	what day, it's not going to – but I think it was Wednesday. You saw Ms Hobden and I.
5 6	on these, what we've seen thus far, a real possibility that one might make very strong inferences against Bain. Now it		, , , , , , , , , , , , , , , , , , ,
	· · · ·	5	You saw Ms Hobden and I.
6	one might make very strong inferences against Bain. Now it	5 6	You saw Ms Hobden and I. MR MINS: Yes.
6 7	one might make very strong inferences against Bain. Now it mustn't complain if we do that and they haven't put	5 6 7	You saw Ms Hobden and I. MR MINS: Yes. COMMISSIONER: And you came there to ask
6 7 8	one might make very strong inferences against Bain. Now it mustn't complain if we do that and they haven't put information before us. You understand that?	5 6 7 8	You saw Ms Hobden and I. MR MINS: Yes. COMMISSIONER: And you came there to ask for an extension of time –
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1	Page 2143 COMMISSIONER: So in response to that on	1	Page 2145
	•	1	statement, give us the statement and he can attest it when
2	Friday – we had also asked for this report. Now on Friday,	2	he comes back, correct?
3	sorry also on Wednesday the 7th of September, you'll see on		MR MIN: Correct.
4	page 4, you'll see that we are asking for the report, "We	4	COMMISSIONER: So the document we've got
5	confirm having advised that Judge Nugent urgently awaits	5	at page 7 came back, it goes from 7 to 12, came back
6	receipt of the report." Do you see that?	6	unsigned which was fine, but this was a statement of Mr
7	MR MINS: Yes, Sir.	7	Massone that he was going to attest to.
8	COMMISSIONER: And eventually we said on	8	MR MIN: Correct, Sir.
9	the next page at 5, "Commissioner Judge Nugent insists that	9	COMMISSIONER: And he had been asked, as
10	you furnish the report with or without the statement	10	we now understand it, to give his recollection of having
11	immediately failing which you'll be summonsed to produce	11	met Mr Moyane, correct?
12	it." Because your reply had been, at the foot of page 5,	12	MR MIN: Correct.
13	"The statement contains important information that provides	13	COMMISSIONER: And what we get back is a
14	context to the report hence we will be sending both	14	statement that tells us that Bain & Company welcomes the
15	together by this afternoon." Your attitude was the report	15	opportunity to engage with the Commission and it goes on in
16	should not get to us without the statement, correct?	16	paragraph after paragraph to say that he went abroad, that
17	MR MINS: We believed that the statement	17	he did this and that and the other. He doesn't have a
18	would be ready shortly, Sir and so we wanted to send them	18	clear recollection and he'll then go on telling us how
19	both in together.	19	difficult it is to find all the documents, etcetera which
20	COMMISSIONER: Yes as I said to you your	20	is not what we were asking, we asked for him to tell us his
21	view was that the report should come in with the statement.	21	recall of meeting Mr Moyane, correct?
22	MR MINS: Yes, Sir.	22	MR MIN: Yes, Sir.
23	COMMISSIONER: Now we did not ask for the	23	COMMISSIONER: And then go to page 11.
23 24	report with the statement, we said give us the report which	23	What we get of his recall is one line, two lines sorry. In
24 25		24 25	paragraph 16, do you see it? "I am in the process of
25	you had in your possession at that time, correct?	20	paragraph to, do you see it? I ain in the process of
	Dogo 2144		Dogo 2144
1	Page 2144 MR MINS: Correct.	1	Page 2146 trying to establish full details of contacts with Mr Moyane
1	MR MINS: Correct.	1	trying to establish full details of contacts with Mr Moyane
2	MR MINS: Correct. COMMISSIONER: Why couldn't you just send	2	trying to establish full details of contacts with Mr Moyane prior to the tender being awarded. But at this stage I
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	Page 2147		Page 2149
1	he consider it necessary. I regret that I do not consider	1	COMMISSIONER: And Bain had said we'll
2	the statement of Mr Massone to reflect cooperation with the	2	give you the report in due course, you're waiting until you
3	Commission. Kindly advise me by return whether I am to	3	got the statement.
4	understand the statement to mean he has no present recall	4	MR MIN: I believe it was within an hour
5	of having met Mr Moyane to discuss SARS? Or whether I am	5	or so of the emails requesting the report, Sir.
6	to understand it to mean he refuses to respond to the	6	COMMISSIONER: How long did it take you
7	request." Do you see that?	7	to find that report?
8	MR MIN: Yes, Sir.	8	MR MIN: We had it in our possession,
9	COMMISSIONER: "If it is the former i.e.	9	Sir.
10	if he's saying he has no present recall of having met Mr	10	COMMISSIONER: You'd had it in your
11	Moyane to discuss SARS would he kindly say so explicitly	11	possession for a week.
12	when he attests to the statement?" Do you see that?	12	MR MIN: Yes, Sir.
13	MR MIN: Yes, Sir.	13	COMMISSIONER: From Monday to Friday and
14	COMMISSIONER: "If it is the latter could	14	in that time you hadn't given us the report, correct?
15	he kindly explain his refusal?" It then says at the foot	15	MR MIN: No, Sir, that's correct.
16	"It appears to me that the document furnished is not the	16	COMMISSIONER: Secondly we had asked for
17	full and only report, kindly let me have by the same time	17	a statement of his recall and all we had got he's saying,
18	all reports, in full, prepared by Mr Moyane in relation to	18	"I remember being introduced to him and we talked about in
19	SARS." Do you see that?	19	broad terms this," – yet we knew that eight times he had
20	MR MIN: Yes, Sir.	20	met him if you ask me whether I accept that out of those
21	COMMISSIONER: Okay so –	21	eight periods, which we will refer to just now, he could
22	MR KAHLA: Four.	22	not recall one of them, I'm afraid I'm too sceptical to
23	COMMISSIONER: Prepared in full –	23	accept it.
24	MR KAHLA: For –	24	MR MIN: Sir, I don't believe he was
25	COMMISSIONER: Sorry.	25	aware of the full eight meetings at the time he made that
	Page 2148		Page 2150
1	Page 2148 MR KAHLA: For Mr Moyane.	1	Page 2150 statement. That was as a result of the additional forensic
1 2	-	1 2	5
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Inquiry

	Page 2151		Dogo 2152
1	press statement?	1	Page 2153 conditional, correct?
2	MR MIN: That probably was an oversight	2	MR MIN: It was our attempt, Sir, to say
3	on our part, Sir, we had not yet determined exactly what we	3	that if there were findings by the Commission that
4	intended to do with the money. The important part was that	4	indicated that the money should be spent in a certain way
5	we were setting it aside and making sure that it would be	5	we would obviously honour that.
6	separate and not returned to Bain & Company, so –	6	COMMISSIONER: It was conditional,
7	COMMISSIONER: Yes but it would be made	7	correct?
8	available to the Commission to decide what should happen to	8	MR MIN: The payment of the money away
9	it, not made available physically, but the Commission would	9	from Bain & Company is not conditional, Sir, that is
10	decide what would happen.	10	absolute, it will take place.
11	MR MIN: That was one of the options. We	11	COMMISSIONER: And when will it take
12	didn't know what the findings of the Commission would be,	12	place?
13	to what extent it would prescribe possible remedies and so	13	MR MIN: When there is a final
14	we were simply holding that open as an option.	14	determination of all the facts and we can determine what is
15	COMMISSIONER: So you're holding it as an	15	the best use of that money.
16	option until we have completed our inquiry, is that the	16	COMMISSIONER: So it is conditional upon
17	idea?	17	you determining once we are finished on the best use of
18	MR MIN: Yes, Sir.	18	that money, is that correct?
19	COMMISSIONER: So the money is not	19	MR MIN: In consultation with a broad
20	available to the Commission to decide what it's going to	20	group of constituents within South Africa.
21	do, but it depends what the outcome is, is that the point?	21	COMMISSIONER: That may well be so, but
22	MR MIN: Yes, Sir.	22	it's conditional upon you being satisfied as to how it will
23	COMMISSIONER: Why didn't you say that	23	be spent once the Commission has reached its conclusion.
24	here, tell the public this money is actually not available	24	Is that correct?
25	for the Commission to decide, the money will become	25	MR MIN: Yes, Sir, but we have made an
	Page 2152		Page 2154
1	available once we find out what the Commission decides?	1	absolute commitment that the money will be paid.
2	Because that's now what happened, you're not suggesting	2	COMMISSIONER: Yes. If I ask you
3	that this is what it reflects, that this money will be	3	questions will you kindly answer them and then you can
4	available to the Commission conditionally, conditional upon	4	explain afterwards. You've got the full right to tell me
5	what it finds. That's what in fact your offer was,	5	anything you want to know, but when I ask the question I'd
6	correct?	6	like an answer directly first.
7	MR MIN: Yes, Sir.	7	MR MIN: Yes, Sir.
8	COMMISSIONER: So this money, the public	8	COMMISSIONER: Now I understand that
9	believes this money is going to be paid and in fact we	9	there have been discussions with SARS now at another
10	don't know yet that it will be paid, correct?	10	meeting with Bain. I said look this money came from SARS,
11	MR MIN: What we are certain of, Sir, is	11	it's not for us to decide what should happen to money from
12	that the money has been set aside by Bain & Company, it	12	SARS and there have been discussions with SARS.
13	will be paid, the exact form of payment, to whom it goes	13	MR MIN: Yes, Sir.
1 4		14	COMMISSIONER: But there has been no
14 15	that is something that is yet to be determined. But it	1 -	unconditional offer to CADC to may the many the
15	will paid, Sir.	15 16	unconditional offer to SARS to pay the money either.
15 16	will paid, Sir. COMMISSIONER: But it awaits and depends	16	MR MIN: That's correct, Sir.
15 16 17	will paid, Sir. COMMISSIONER: But it awaits and depends on the outcome of the inquiry.	16 17	MR MIN: That's correct, Sir. COMMISSIONER: So if the public thinks
15 16 17 18	will paid, Sir. COMMISSIONER: But it awaits and depends on the outcome of the inquiry. MR MIN: That as one of the factors we	16 17 18	MR MIN: That's correct, Sir. COMMISSIONER: So if the public thinks that this money is now being repaid they are completely
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	Page 2155		Page 2157
1	made, Sir.	1	incorrect version.
2	COMMISSIONER: But Bain is setting the	2	COMMISSIONER: Did it go out to the
3	conditions.	3	press?
4	MR MIN: We will take into account all	4	MR MIN: Excuse me.
5	the factors, once we have the facts.	5	COMMISSIONER: Did it go out to the
6	COMMISSIONER: I understand you will. My	6	press?
7	question is Bain will decide whether the conditions are	7	MR MIN: Yes this did go out, this did go
8	suitable to it. Is that correct?	8	out, but there was an internal mistake that we had made and
9	MR MIN: Ultimately yes, Sir.	9	I believe that you have been sent the version of September
10	COMMISSIONER: Now if you go to the 1, 2,	10	10 which was the version that was actually approved for
11	3, 4, 5, 6th paragraph. To reinforce the independence of	11	issuance by Bain & Company.
12	the investigation we have established an oversight	12	COMMISSIONER: But the 9th of September
13	committee made of senior global Bain partners, Athol	13	one went out.
14	Williams, a Bain alumnus and a respected independent	14	MR MIN: It did, it did.
15	advisor will chair this committee.	15	COMMISSIONER: And that was incorrect.
16	MR MIN: Yes, Sir.	16	MR MIN: It did and we issued a
17	COMMISSIONER: Now I understand from Mr	17	clarification once we sent out the correct press release.
18	Williams there has not been such a committee.	18	COMMISSIONER: Perhaps I've missed the
19	MR MIN: We are in the process of putting	19	one of the 10th then. Well I'll look at that and we'll come
20	it together.	20	back to that.
21	COMMISSIONER: But you've finished your	21	MR MIN: Because it does correct actually
22	investigation haven't you?	22	that language in particular.
23	MR MIN: No, Sir, not our internal	23	COMMISSIONER: Yes we'll come back to
24	investigation.	24	that.
25	COMMISSIONER: When are you going to –	25	MR MIN: With respect to your specific
	Page 2156		Page 2158
1	but you've been very busy with this investigation.	1	question of the operating principles this was a reference
2	MR MIN: Yes, Sir –	2	to our admission statement where our first principle is we
		_	
3	COMMISSIONER: Not under the oversight of	3	create higher economic value for our clients. That is our
3 4	COMMISSIONER: Not under the oversight of a committee because it hasn't yet been established.		
	-	3	create higher economic value for our clients. That is our
4	a committee because it hasn't yet been established.	3 4	create higher economic value for our clients. That is our guiding mission for Bain & Company and under the
4 5	a committee because it hasn't yet been established. MR MIN: Correct.	3 4 5	create higher economic value for our clients. That is our guiding mission for Bain & Company and under the circumstances as we said in the same release we did not in
4 5 6	a committee because it hasn't yet been established. MR MIN: Correct. COMMISSIONER: But that's also correct	3 4 5 6	create higher economic value for our clients. That is our guiding mission for Bain & Company and under the circumstances as we said in the same release we did not in fact generate sustainable results. And so we felt we did
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Inquiry

	Page 2159		Page 2161
1	voluntarily was what Bain wanted us to hear, not thing that	1	evidence is yes, I met Mr Moyane and I made a report for
2	Bain did not want us to hear. Would that be fair?	2	him. Just on that evidence Bain called all its partners,
3	MR MIN: No, Sir, we were answering very	3	came scurrying from around the world, why did you think it
4	specific questions that had been given to us by the	4	was relevant then that you should do all of that once -
5	Commission up until that point in time. All those	5	it's not – you obviously thought it was very, very
6	questions, up to and including the first day of Mr	6	relevant.
7	Massone's testimony related to the quality and nature of	7	MR MIN: Yes, Sir, at that point it came
8	our work and that was the focus of all of the voluntary	8	out and one Mr Massone had testified about the meetings so.
9	submissions that we had made as well as the testimony of Mr	9	COMMISSIONER: Once he told us it became
10	Massone.	10	very relevant to Bain, correct?
11	COMMISSIONER: Yes, but before he gave	11	MR MIN: Yes, Sir.
12	his testimony Bain and Company actually approached us and	12	COMMISSIONER: But beforehand it wasn't
13	said we would like to make submissions.	13	relevant.
14	MR MIN: Yes, Sir.	14	MR MIN: We were not aware of the extent
14	COMMISSIONER: Certain questions arose	15	of the meeting, Sir.
	from the submissions that were made but nothing was ever	16	COMMISSIONER: I'm not talking about the
16	disclosed in those submissions about the meetings with Mr	17	extent of the meeting. Bain had come – when you say we
17 18	Moyane. Correct?	18	were not, Mr Massone was aware of the meetings.
19	MR MIN: That's correct, Sir.	19	MR MIN: Ja -
20	COMMISSIONER: So when you say you made	20	COMMISSIONER: So why do we hear from we,
20	submissions voluntarily, what you made was submissions that	20	it's Mr Massone.
22	Bain wanted to make voluntarily.	22	MR MIN: I can't -
22	-	22	COMMISSIONER: And you say it was not
23	MR MIN: They – COMMISSIONER: But not the submission	23	relevant.
24	that you'd been meeting Mr Moyane. Correct?	24	MR MIN: I can't answer on behalf -
25	that you'u been meeting wir woyane. Concere	25	
	Page 2160		Page 2162
1	Page 2160 MR MIN: The submissions that we believe	1	Page 2162 COMMISSIONER: Okay.
1 2		1 2	-
	MR MIN: The submissions that we believe		COMMISSIONER: Okay.
2	MR MIN: The submissions that we believe were relevant to the questions that were posed to us by the	2	COMMISSIONER: Okay. MR MIN: - of Mr Massone, Sir.
2 3	MR MIN: The submissions that we believe were relevant to the questions that were posed to us by the Commission.	2 3	COMMISSIONER: Okay. MR MIN: - of Mr Massone, Sir. COMMISSIONER: But your answer was you
2 3 4	MR MIN: The submissions that we believe were relevant to the questions that were posed to us by the Commission. COMMISSIONER: And did you not think it	2 3 4	COMMISSIONER: Okay. MR MIN: - of Mr Massone, Sir. COMMISSIONER: But your answer was you didn't think it was relevant, Bain didn't think it was
2 3 4 5	MR MIN: The submissions that we believe were relevant to the questions that were posed to us by the Commission. COMMISSIONER: And did you not think it relevant to the initial submissions you made, forget about	2 3 4 5	COMMISSIONER: Okay. MR MIN: - of Mr Massone, Sir. COMMISSIONER: But your answer was you didn't think it was relevant, Bain didn't think it was relevant. Did Bain in Boston know about these meetings?
2 3 4 5 6	MR MIN: The submissions that we believe were relevant to the questions that were posed to us by the Commission. COMMISSIONER: And did you not think it relevant to the initial submissions you made, forget about the questions we posed, did you not think it relevant to	2 3 4 5 6	COMMISSIONER: Okay. MR MIN: - of Mr Massone, Sir. COMMISSIONER: But your answer was you didn't think it was relevant, Bain didn't think it was relevant. Did Bain in Boston know about these meetings? MR MIN: No, Sir. Not – no, Sir.
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1	Page 2163	1	Page 2165
1	got that". That's what you are saying, correct?	1	directly to questions that were asked to us by the
2	MR MIN: Yes, Sir.	2	Commission.
3	COMMISSIONER: Did you really think and	3	COMMISSIONER: Even though you had not
4	must I accept that you really think that the Commission	4	done what the Commission asked for, is that correct? And
5	which only knew of one report was actually not interested	5	you still say that's cooperation.
6	in the others although Bain had them? Is that what you are	6	MR MIN: In our opinion, Sir, we were
7	saying?	7	making a good faith effort given the volume of documents we
8	MR MIN: But we did submit them with this	8	were reviewing at the time to provide as much information
9	letter, Sir.	9	as we could with a commitment to continue to provide
10	COMMISSIONER: You must answer my	10	information to the Commission which we did.
11	questions, Mr Min. Did you really think that the	11	COMMISSIONER: On Bain's terms, not on
12	Commission was not interested in the other reports?	12	the Commission's terms. What Commission asked for we don't
13	MR MIN: I'm sure they were relevant to	13	worry about that, we do what Bain wants to do. We'll
14	the Commission.	14	respond in our way, not yours, Mr Commissioner. Is that
15	COMMISSIONER: And why didn't you then	15	correct?
16	just give them to us instead of us having to prise them out	16	MR MIN: No, Sir, we were doing our best
17	of you?	17	to organise a systematic search of a significant amount of
18	MR MIN: We were being responsive to the	18	information and doing our best to collect that and provide
19	direct question we were given.	19	it to the Commission as soon as it was available.
20	COMMISSIONER: Yes, you only answered the	20	COMMISSIONER: Yes. Now I wrote to you
21	direct question, you know that you've got other relevant	21	on the 20th in response to that. Sorry, on the 10th is it?
22	documents and you don't disclose them. Is that correct?	22	MR MIN: Yes.
23	MR MIN: We did disclose them, Sir.	23	COMMISSIONER: Page 20. And I said to
24	COMMISSIONER: No. At the outset, you	24	you, you know, Bain and Co, "I'm sure you want to protect
25	only disclosed them when I asked for them pertinently. But	25	yourselves and that's fine with me. I would expect that
	Page 2164		Page 2166
1	before then you said well Nugent only asked for one	1	Page 2166 the end point of each of our endeavours will be the same
1 2		1 2	•
	before then you said well Nugent only asked for one		the end point of each of our endeavours will be the same
2	before then you said well Nugent only asked for one document, I know there are another four that are relevant	2	the end point of each of our endeavours will be the same which is to establish the truth of what occurred. But our
2 3	before then you said well Nugent only asked for one document, I know there are another four that are relevant but I'll only give him the one document. That's what you	2 3	the end point of each of our endeavours will be the same which is to establish the truth of what occurred. But our methodology might be different. As far as the methodology
2 3 4	before then you said well Nugent only asked for one document, I know there are another four that are relevant but I'll only give him the one document. That's what you are saying here, correct?	2 3 4	the end point of each of our endeavours will be the same which is to establish the truth of what occurred. But our methodology might be different. As far as the methodology of the Commission is concerned it matters not whether it
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1	Page 2167	1	Page 2169 COMMISSIONER: And in that affidavit you
1	submitted additional affidavits from other Bain employees	2	COMMISSIONER: And in that affidavit you had now completed your document review, correct?
2	that had knowledge of the meetings. We did that in		
3	compliance with the timetable that you had given us, Sir.	3	
4	And then we submitted the balance of the documents by	4	continuing throughout the week of the 17th.
5	September 21st I believe as you had requested. So we – so	5	COMMISSIONER: Yes.
6	in that respect, Sir, we were feeding the information,	6	MR MIN: So Mr Massone submitted his
7	giving the information to you as soon as it was available	7	affidavit on the 17th as you had requested, we were
8	in accordance with your timetable after we had received	8	continuing the document review the entire week of September
9	this letter.	9	17th and then delivered them to the Commission on Friday the
10	COMMISSIONER: No, that's not correct.	10	21st.
11	We asked for the report, you said wait until you've got the	11	COMMISSIONER: Yes and then I asked you,
12	statement. We asked for the affidavit of Mr Massone, you	12	we have to go through that, can I have your assurance that
13	said hang on, we're going to collect all our documents	13	Mr Massone will be in the country and be before the
14	together first. You're saying to us you might do it	14	Commission on the 25th and you said well I've instructed him
15	piecemeal, we do it differently and you do it our way.	15	to do so. Well -
16	MR MIN: I was referring to, Sir, after	16	MR MIN: We did, Sir.
17	the period after this September 10th letter that you just	17	COMMISSIONER: - let me just tell you
18	read from.	18	that on what is heard so far I don't think that you have
19	COMMISSIONER: I said we still require	19	actually cooperated with the Commission. I'll tell you
20	the affidavit -	20	that now so you can answer it because I might well find
21	MR MIN: Which we submitted.	21	that and say that in due course. Now here's your
22	COMMISSIONER: Of course you did, I	22	opportunity to tell us why I should not find that you have
23	didn't suggest you didn't. No you did eventually submit	23	not cooperated with the Commission. Do you want to say
24	the affidavit.	24	anything before we make any decision on that?
25	MR MIN: Yes, Sir.	25	MR MIN: Yes, Sir. So the first point
	Page 2168		Page 2170
1	COMMISSIONER: And you had collected all	1	I'd like to make, Sir, is with respect to my appearance
2	COMMISSIONER: And you had collected all the information you needed and you thought well now I	2	I'd like to make, Sir, is with respect to my appearance here today. I was served with a subpoena on a Saturday
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2 3	COMMISSIONER: And you had collected all the information you needed and you thought well now I prepare the affidavit. Correct? MR MIN: We were preparing it in accordance with the timetable -	2	I'd like to make, Sir, is with respect to my appearance here today. I was served with a subpoena on a Saturday morning and it was under my understanding as a United States citizen, residing in the United States, given 72 hours' notice to appear in South Africa, I could've elected
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	Page 2171		Page 2173
1	of the scope of the specific request and narrowed that down	1	contract, before and after, in no particular order through
2	to approximately 277 documents. We did our own independent	2	which we had to search in order to find those that were
3	search within Bain and Company and recognised, Sir, that	3	relevant to our request which was the documents before the
4	we're dealing with events that took place 4, possibly 5	4	contract. Are you aware of that?
5	years ago. We are dealing with people that many of whom	5	MR MIN: I – yes, Sir.
6	are no longer employees of Bain and Company. So we had to	6	COMMISSIONER: Now – thank you. Now the
7	do a significant amount of work to reconstruct as best we	7	difficulty we're faced with now and perhaps you can help us
8	could and as accurately as we could the information that	8	with this, is who do we talk to about those documents?
9	the Commission had requested. So we had to review	9	Because you'll recall I had said our methodology is
10	calendars, we had to review expense reports, we had to	10	documents and a person to talk about documents. Now who
11	review travel logs and a lot of this was just cross-	11	are we left to talk with? For example believe it or not
12	referencing and collating the information to make sure that	12	all 23 volumes have been gone through and we have extracted
13	it was as accurate as possible. When we did our	13	some. These are not all of them but here's one of them for
14	independent review of information we initially surfaced	14	example and all I just want to say is who do I speak to
15	over 7 000 documents that were potentially relevant to the	15	about this? This is an email addressed to, from Vittorio,
16	scope of the inquiry and by narrowing the search terms we	16	Mr Massone to, addressed to Guys. "Just had a call and
17	got that down to 5 300 documents and then finally to 656	17	heard that the SARS announcement should happen tomorrow or
18	documents that together with the 277 documents that Mr	18	Monday. Meeting later in the office to discuss also a
19	Massone produced we then delivered it to the Commission	19	procurement process. Fabrice, Stephanie, how many teams
20	this past Friday.	20	did we say? Can we please think over about managers with
21	I know that the applicant, the Commission had	21	and without Galatia, Galactica? I guess we should have a
22	requested that we provide both hard copies and electronic	22	few weeks to ramp up procurement process but we'll need to
23	copies which we did. My understanding is that the hard	23	have a first contingent to start working as soon as
24	copies that we delivered to the Commission filled up 23	24	possible". From Stephanie to Vittorio "that's great news.
25	lever arch file folders and the soft copies that we	25	The last thinking was to start with one team M plus 4 plus
		-	
	Page 2172		Page 2174
1	provided to you took up 2.2 gigabytes of data on the USB	1	6 for three months to do fundamentally two things. Two,
2	flash drive. So in terms of the volume and the effort that	2	assist Tom in starting properly his new role, direct CEO
3	we have to had to undergo, Sir, I just want to make sure that the Commission understands the effort that we have	3	support work. We will then be able based on the
4		4	operational strategic assessment to build up the platform
5	been taking to cooperate and that that, what we have	5	for a broader SARS transformational programme. 6 to 12 months plan. Let's discuss team face to face later". Who
6 7	delivered to you on Friday and we made a concerted effort to comply with your timetable, Sir. That was the, what we	6	montins plan. Let's discuss team race to race later . Who
8	to comply with your timetable, sit. That was the, what we		should I speak to to understand this what was going on
0	delivered to you on Friday		should I speak to, to understand this, what was going on
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9	COMMISSIONER: Yes, thank you. Of course	8 9	when this email was written? I can't speak to Vittorio, he's in Italy. Who is Steven, Stephanie?
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	Page 2175		Page 2177
1	MR MIN: Yes, Sir.	1	what are we going to do with this affidavit. Now Ms
2	COMMISSIONER: Because I see he's only	2	Steinberg has it and I think that the contents of this
3	CCd.	3	affidavit, the factual contents, I mean know there's a lot
4	MR MIN: Yes and he submitted an	4	of commentary by you on it and how this all went about, but
5	affidavit as well to the Commission.	5	you weren't involved in this contract at all, were you?
6	COMMISSIONER: Yes, okay. Fabrice,	6	MR MIN: In the underlying contract?
7	that's Fabrice Franson.	7	COMMISSIONER: Yes -
8	MR MIN: Yes, Sir.	8	MR MIN: No, Sir.
9	COMMISSIONER: And there's Stephanie -	9	COMMISSIONER: In the contract with SARS?
10	MR MIN: Stefan Tepano.	10	MR MIN: No, Sir.
11	COMMISSIONER: - Stefan.	11	COMMISSIONER: You had no knowledge about
12	MR MIN: Yes.	12	it -
13	COMMISSIONER: So it's Mr Fabrice Franson	13	MR MIN: No personal knowledge, yes, Sir.
14	that we'd have to speak to who would be able to tell us	14	COMMISSIONER: - other than perhaps there
15	about this email.	15	was a contract.
16	MR MIN: He would have knowledge in	16	MR MIN: No, Sir.
17	addition to Mr Massone.	17	COMMISSIONER: So I'm not really
18	COMMISSIONER: Now is there anyone else	18	interested in your commentary on what all these things mean
19	we should speak to about this email? Can you think of	19	because you weren't there, you don't know what they were
20	anyone?	20	saying -
21	MR MIN: Sir, I have no – I was not	21	MR MIN: That's correct, Sir.
22	involved with that process at the time. I can't -	22	COMMISSIONER: - and so we'll just thank
23	COMMISSIONER: Okay.	23	you. Thank you very much, Mr Min, and by the way, when I
24	MR MIN: - really comment.	24	subpoenaed you I had no idea whether you were here or not
25	COMMISSIONER: Who's – and there's	25	here. I appreciate you coming all the way from America but
	Page 2176		Page 2178
1	another one here which I think that you should read this by	1	Page 2178 I'm sure it's not only in our interest, it's also in Bain's
1 2	another one here which I think that you should read this by the way before we go any further. I'm going to give it to	2	
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1	Page 2179 what to do with SARS now because any losses there are being	1	Page 2181 as the name suggests an outside-in document is a due
2	suffered every day and if your taxes go up because the	2	diligence to better understand an organisation. It is
3	losses are being suffered well, then you mustn't complain.	3	prepared using reliable publicly available information and
4	We don't want to have a Commission that your children	4	I would like to show the Commission a couple of the slides
5	attend in order to hear a history of what happened to SARS.	5	that form part of that presentation.
6	We want to try and look at what is happening to SARS now.	6	COMMISSIONER: Yes. Do you know how to
7	That's why we should take this seriously. Every citizen of	7	work that?
8	South Africa should be taking this very seriously because	8	MS STEINBERG: I am hoping so. What I'd
9	it belongs to them, this organisation.	9	like to point out here, Judge, is that as early as 13th of
10	MS STEINBERG: We have an affidavit from	10	October –
11	Mr Massone which is dated 17 September 2018 and it is in	11	COMMISSIONER: 2013?
12	answer to the four questions that you referred to earlier	12	MS STEINBERG: 2013, Bain has
13	that you sent in in your letter. The – there are really	12	recommended, if you look at the last bullet point, the
14	two main parts in this affidavit. The first part concerns	14	third bullet point that there must be a profound strategy
15	Mr Massone's meetings with Mr Moyane and the second part	14	refresh. So it seems that before Bain ever set foot into
16	concerns Mr Massone's meetings with Mi Moyare and the second part	16	SARS the plan was a profound strategy refresh, nothing on
17 18	I'll go through it in that order. Mr Massone discusses how he was introduced to Mr	<mark>17</mark> 18	the edges. COMMISSIONER: What, in order to
19	Moyane and who introduced him. I don't think that's		
		19 20	transform SARS?
20 21	particularly relevant. He speaks about a number of	20	MS STEINBERG: And that, you'll see that
	meetings in this context. He says that he was told that Moyane had the ambition to become the next commissioner of	21	theme pops up throughout the slides. Now this is a slide
22	-	22	representing the SARS organisational model as it was at
23	SARS which position had recently become vacant following	23	that time and we see that from the title of the slide is
24 25	the resignation of Oupa Magashula in July 2013 and the	24	that Bain's assessment is that the organisation is too
20	purpose of the introduction to Bain was for Bain to advise	25	concentrated and presents many duplication and
-			
	Dage 2190		Dage 2192
1	Page 2180 Movane on how to achieve his professional goals. Mr	1	Page 2182 inconsistencies and if you look on the left-hand side, the
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2	Moyane on how to achieve his professional goals. Mr Massone says, "my meetings with Moyane are to be understood in the context of how Bain and I operate regarding the	2 3	inconsistencies and if you look on the left-hand side, the two boxes in blue, there's a particular focus on the chief operating officer playing a critical role into SARS
2 3 4	Moyane on how to achieve his professional goals. Mr Massone says, "my meetings with Moyane are to be understood in the context of how Bain and I operate regarding the development of chief executive office in the private	2 3 4	inconsistencies and if you look on the left-hand side, the two boxes in blue, there's a particular focus on the chief operating officer playing a critical role into SARS organisation and below that, that the chief operating
2 3 4 5	Moyane on how to achieve his professional goals. Mr Massone says, "my meetings with Moyane are to be understood in the context of how Bain and I operate regarding the development of chief executive office in the private sector."	2 3 4 5	inconsistencies and if you look on the left-hand side, the two boxes in blue, there's a particular focus on the chief operating officer playing a critical role into SARS organisation and below that, that the chief operating officer covers a wide range of activities directly
2 3 4	Moyane on how to achieve his professional goals. Mr Massone says, "my meetings with Moyane are to be understood in the context of how Bain and I operate regarding the development of chief executive office in the private sector." It is an ordinary part of our global business to	2 3 4 5 6	inconsistencies and if you look on the left-hand side, the two boxes in blue, there's a particular focus on the chief operating officer playing a critical role into SARS organisation and below that, that the chief operating officer covers a wide range of activities directly responsible for delivery.
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1	Page 2183 MS STEINBERG: Yes.	1	Page 2185 Judge, to go back to the affidavit, Mr Massone
2	MR KAHLA: Could you please maybe just	2	then speaks a little bit more about this concept of CEO
3	help me just recall when did Commissioner Magashula step	3	coaching and again he says it's what Bain does in the
4	down. Was it prior to 2013?	4	private sector and they focus in particular on the
5	MS STEINBERG: I think it was in 2013 but	5	executive's first 100 days in office and they do this so
6	I stand to be corrected. He had already stepped down by	6	often that they actually have standardised intellectual
7	this point in time.	7	property that their consultants can access when creating
8	MR KAHLA: So when the outside-in review	8	the type of presentation that they created for Mr Moyane
9	was done it was after he had stepped down?	9	and he then attaches to his affidavit, that's VM5, the
10	MS STEINBERG: Correct. So it was after	10	slides looking at the first 100 days and I've pulled out a
11	he had stepped down and we are told that at that point Mr	11	few.
12	Moyane had ambitions to become the commissioner of SARS and	12	MR KAHLA: This is part of VM5, what we
13	this was prepared for that purpose, to coach him, to help	13	have now?
14	him realise those ambitions because the job was vacant.	14	MS STEINBERG: Yes.
15	MR KAHLA: Okay.	15	COMMISSIONER: Well –
16	COMMISSIONER: Well, I'm not sure – well,	16	MS STEINBERG: But –
17	anyway. You see the type of question I have, as I	17	COMMISSIONER: Just a minute.
18	mentioned to Mr Min is, how is a plan to transform SARS,	18	MS STEINBERG: It's also important –
19	but what's that got to do with your ambitions to become the	19	COMMISSIONER: Here he's talking about –
20	commissioner of SARS. Anyway, that's what he says.	20	he's saying look, this is what we normally do and VM5
21	MS STEINBERG: Well, Judge, it would seem	21	sounds to me as if it's looking at the template they have.
22	-	22	Can we go to what they actually produce –
23	COMMISSIONER: Anyway, yes -	23	MS STEINBERG: No, this was produced,
24	MS STEINBERG: It would seem from what we	24	Judge. It was shown to Mr Moyane and then it was part of -
25	have that what executive coaching means in this context is	25	COMMISSIONER: When was it shown to him?
1 2	Page 2184 a plan to radically refresh and transform SARS. This slide I've included because I think another important theme, the	1 2	Page 2186 Because on Sunday they gave him the SARS 2.0 document and if you look at -
3	second bullet point on the left, attract and retain top	3	MS STEINBERG: Sorry, this is VM6.
4	management team, seems to me there's an assumption there	4	COMMISSIONER: It is VM6 that was at the
5	that one, that there isn't a top management team. One is	5	meeting –
6	going to have to attract one. There's a slide missing.	6	MS STEINBERG: It is VM6 –
7	MR KAHLA: Are we going to get anyone to	7 0	COMMISSIONER: Sorry. There was first a
8 9	clear up all of the assumptions that you're pointing out on the side of Bain?	8 9	meeting on – then there was a meeting on the 24th, 5th of February.
9 10	MS STEINBERG: Well, if somebody comes to	10	MS STEINBERG: Yes.
11	testify who has the requisite knowledge, that would help.	11	COMMISSIONER: Where they met at the
12	There is a slide which I'm going to ask our technical	12	presidential residence in Cape Town.
13	support to find but it's not crucial if they don't. It's a	13	MS STEINBERG: Correct.
14	slide entitled SARS point of departure and it says in the	14	COMMISSIONER: He was there to see Zuma,
15	decades – it's talking about the modernisation program, the	15	not Moyane but Moyane was also there and –
16	decades spent building up the modernisation program. It	16	MS STEINBERG: Correct.
17	says in the decades SARS modernisation program has	17	COMMISSIONER: They were in the waiting
18	delivered results and it notes the efficacy of the	18	room together.
19	modernisation program, the relevant increase of individual	19	MS STEINBERG: Then there's a meeting on
20	and corporate taxpayers, successful adoption of e-filing to	20	the 15th of May 2014.
21	facilitate collection process. It says over 90% in South	21	COMMISSIONER: Yes.
22	Africa and it managed to run operations within the	22	MS STEINBERG: Which he describes as a
23	allocated government budget. So there is an	23	catch-up lunch with Mr Moyane. Then there's a meeting on
24	acknowledgement here of the success of that modernisation	24	the Monday the 2nd of June and that's the meeting at Bain
25	program.	25	offices where the first 100 days document that they had
		1	

1	Page 2187	1	Page 2189
1	prepared was presented and these slides – COMMISSIONER: That's VM6?	1	neutralise individuals means to identify and convert
2	MS STEINBERG: Correct.	2 3	detractors into promoters or in other words to focus on improving the satisfaction levels of currently disgruntled
4	COMMISSIONER: And are we going to see	3 4	employees.
4 5	that one?	4 5	COMMISSIONER: He doesn't describe what
6	MS STEINBERG: Yes. So this is the first	6	is meant by building a healthy sponsorship spine which I
7	slide that I've pulled out from that and again we have the	7	understand to be the blue line.
8	attract and retain the top management team and here you	8	MS STEINBERG: Yes. Judge,
9	have the framework and key actions for the first 100 days.	9	notwithstanding Mr Min's explanation we do know that what
10	The left-hand column, the third bullet point is to launch	10	happened is that within the first few weeks of Mr Moyane
11	an IT diagnostic which we now know was done through Gartner	11	arriving at SARS he suspended his executive and by the end
12	and in fact the IT program was stopped. Now the last	12	of the year there were already some resignations. Now
13	bullet point there, testing BH and assessing performance of	13	significantly, given the focus on the COO, Mr Hore and the
14	different components of COO perimeter. Now you will recall	14	fact that he was seen to be powerful within the
15	that earlier we saw a slide that said there's an over-	15	organisation, I want to draw the Commission's attention to
16	concentration with regard to the COO. One can only assume	16	one of the email chains that we found in the 23 lever arch
17	that BH stands for Barry Hore who was then the COO at the	17	files.
18	time.	18	COMMISSIONER: Just while we are on that
19	The new slide is build a healthy sponsorship	19	diagram, I can't really understand it. You've got the blue
20	spine to accelerate change and identify individuals to	20	line down the middle which is the spine.
21	neutralise. Now we have a – one of the letters from Mr Min	21	MS STEINBERG: Yes.
22	attempt to explain the term neutralise and I'd like to read	22	COMMISSIONER: Then you have got yellows,
23	what he -	23	watch out.
24	COMMISSIONER: I asked him, those	24	MS STEINBERG: Yes.
25	commentaries are his, you know, that's his view from	25	COMMISSIONER: Now who do we watch out
	Page 2188		Page 2190
1	Page 2188 Boston. He wasn't involved in this at all, so I'm not sure	1	Page 2190 for? What does the yellow person there?
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	Page 2191		Page 2193
1	problem. Mr Min, you're still here, do you understand the	1	had been no, Bain and Mr Moyane had not yet set foot into
2	problem?	2	SARS and there was already a new model and that's, those
3	MR MIN: I do Sir.	3	are the slides.
4	COMMISSIONER: And you can understand the	4	COMMISSIONER: So that's the first 100
5	problem that we might, we might draw our own inferences	5	days document, that was Monday the 2nd of June?
6	from these facts without knowing what Bain has to say.	6	MS STEINBERG: Yes.
7	MR MIN: I do, Sir.	7	COMMISSIONER: And then again on the 16th
8	MS STEINBERG: Now the email that we	8	of June. They're not sure, it's in his diary but not sure
9	found in files that Bain gave us on the 3rd of December 2014	9	whether it had occurred.
10	there's an email from Fabrice Franson to Mr Massone and it	10	MS STEINBERG: Then the potential SARS
11	forwards him the media alert of Mr Barry Hore's resignation	11	organisation chart and focus areas is what I've just shown
12	and he writes, good bye Barry Hore dot, dot, dot. Now	12	you and that was shown at a meeting at Bain's office on the
13	Massone responds saying now I'm scared by Tom, this guy was	13	26th of June 2014. That's the new organisational structure.
14	supposed to be untouchable and took Tom just a few weeks to	14	COMMISSIONER: Yes.
15	make him resign, scary and Franson says I agree. Now the	15	MS STEINBERG: Then there's, on the 6th of
16	reason I read that out is it -	16	August 2014 Bain had some sort of breakfast and Mr Moyane
17	COMMISSIONER: Sorry where does that	17	was there but that was a general meeting. Then Thursday
18	email come from?	18	the 28th of August 2014 there was a meeting at Bain's
19	MS STEINBERG: From the 23 files.	19	offices and in addition to Moyane and others Mr Makwakwa
20	COMMISSIONER: The volumes?	20	attended that meeting and Mr Massone says, "what I recall
20	MS STEINBERG: Yes. Now this email	20	is Makwakwa sharing his personal issues that he had been
22	suggests that the more innocuous reading of neutralise is		
		22	experiencing at SARS at that time." The next -
23	not in fact the correct one. There seem to have been right	23	MR KAHLA: Who is Mr Ndlovu? The Mr
24	from the word go an identification of a concentration of	24	Ndlovu there.
25	power in the COO's job and an attempt to neutralise in the	25	MS STEINBERG: I didn't think it was
			5 0404
1	Page 2192	1	Page 2194
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2	sense to get rid of him and that's precisely what happened and these emails are fairly celebratory in their tone.	2	necessary to bring third parties into this, if you don't mind, Mr Kahla, I think there's no reason to name -
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1	Page 2195 affidavit deals with the meetings with former President	1	Page 2197 piggyback on that, your way through onto the, onto this.
2	Jacob Zuma.	2	MS STEINBERG: Yes, in fact paragraph 62
3	COMMISSIONER: Do we need to go through	3	of the affidavit on page 19 speaks to that.
4	that, I don't think so myself. Zuma's meeting.	4	COMMISSIONER: Where's it? Oh. Final
5	MR KAHLA: Do these meetings have any	5	question is the question posed by Mr Kahla as to whether I
6	relevance to the SARS, were they relating to any matter	6	had met with, no.
7	concerning SARS?	7	MS STEINBERG: No.
8	MS STEINBERG: The only indirect	8	COMMISSIONER: I've also -
9	relevance that I can see is that Bain presented various	9	MS STEINBERG: The paragraph starting the
9 10	projects to then President Zuma. One of them is this	10	next question relates to whether Moyane approached me about
11	project Phoenix which then makes an appearance in the	11	the possibility of approaching Telkom. Paragraph 62,
12	slides for SARS. Project Phoenix is described as a	12	Judge.
12	national and regional IT champion. It's creating an IT	13	COMMISSIONER: Yes.
13	network involving Telkom which Bain then had seen as	14	MS STEINBERG: In respect of the
14	somehow fitting into SARS's programme. Otherwise I can see	14	transversal contract and Mr Massone says during his
16	no relevance to SARS and Mr Massone says that he never	16	testimony he answered no it's the first time I've heard of
17	discussed SARS or Moyane with Mr Zuma.	17	that but that he reviewed his records and he confirms that
17	COMMISSIONER: Well do you have the full,	17	
10	5	10	he did receive a phone call from the then acting chief
20	all the annexure to this affidavit with you? MS STEINBERG: With me today, no. I		operating officer of SARS who was Mr Makwakwa about which
	5	20 21	he had forgotten and he attaches that email. COMMISSIONER: I discovered
21	don't.	21	
22	COMMISSIONER: Are they somewhere?		correspondence confirming the score, that's what I was
23	MS STEINBERG: They are in our offices,	23	looking at and this appears to indicate that I did receive
24 25	Judge. COMMISSIONER: There's some emails there	24 25	a request as to whether SARS could use the Telkom contract
25	COMMISSIONER: There's some emails there	25	to, as it were, they called it transversal contract.
	Page 2196		Page 2198
1	Page 2196 I think that one should look at as well. Anyway, ja.	1	Page 2198 Transversal in which you piggyback on the one to go through
1 2		1 2	
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Inquiry

	Page 2199		Page 2201
1	when were invitations for the role of, if there were any,	1	questions that arise here that Mr Massone would have been
2	if there was any invitation for the role of commissioner	2	asked and I, you haven't got him now and I understand your
3	put out, I'm trying to just understand the sequencing, when	3	position. But if you know, if you've got someone else at
4	the process to fill the vacancy was triggered.	4	Bain who can explain all these things well it's up to you.
5	MS STEINBERG: Mr Kahla, I don't know as	5	You produce the person. But you know we really can't go
6	a matter of fact, what I know is that in August 2014 we see	6	running after Bain to look after its interest as it were.
7	an email from Bain, that the Judge read out, saying the	7	They must, if they want to say things they must put them
8	announcement is about to be made. So I assume it's around	8	up.
9	that time. But I don't know as a question of fact at this	9	MR MIN: Yes.
10	stage.	10	COMMISSIONER: Do you understand Mr Min?
11	COMMISSIONER: Well I think the question	11	MR MIN: I do, Sir.
12	related to when were invitations put out, I'm not sure	12	COMMISSIONER: Thank you.
13	there was any process for the appointment of the	13	MS STEINBERG: And if I may say, Mr
14	commissioner, it was just a presidential appointment, as I	14	Kahla, when we get documents without an explanation my
15	understand it but we can check on that.	15	understanding of our role as advocates for the Commission
16	MS STEINBERG: No we do know that there	16	is that we can't ignore them. We must try and understand
17	were over a hundred applicants but we can find that	17	them and interpret them and draw inferences and at this
18	information.	18	stage that is all we can do which is why I've tried to put
19	MR KAHLA: And when did he take office?	19	them in a context for you.
20	MS STEINBERG: Late September -	20	MR KAHLA: Ja, I suppose what I've been
21	MR KAHLA: 2014?	21	trying to get to is that has Bain been asked in the absence
22	MS STEINBERG: 2014.	22	of Mr Massone is there any other person who could come and
23	COMMISSIONER: 27 September 14.	23	address these, for example have had a question around, you
24	PROF KATZ: May I just ask one question.	24	know, I know you've said you don't want to get into this
25	Counsel, my recollection when Mr Massone gave evidence last	25	third party. But I wanted to understand, is this third
1	Page 2200	1	Page 2202
1	time is that he had received a call to meet with Mr Moyane	1	party a consultant to Bain or is this, was it just, were
2	time is that he had received a call to meet with Mr Moyane who was then commissioner of prisons.	2	party a consultant to Bain or is this, was it just, were these chance happenings where he seems to have been in all
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1	Page 2203	1	Page 2205
1	adjourn till? MS STEINBERG: Till 2 o'clock.	1	work that was done that in phase 1 and phase 2 which we
2		2	granted them approval to do because if it was not done then
3		3	it will have meant according to what the information have,
4	[INQUIRY ADJOURNS INQUIRY RESUMES]	4	it would've meant that phase 1, phase 2 would have been
5	[14:05] COMMISSIONER: Can I just say again	5	fruitless and wasteful expenditure if the last phase was
6	something I've said every time we've sat down? If there's	6	not done.
7	anyone who thinks any witness is not telling the truth	7	MS STEINBERG: But you had not granted
8	please come forward and tell us. If they think any witness	8	deviation for the second phase for example had you?
9	is, that there is another point of view and you wish to	9	MR TSHITANGANO: No.
10	express it, tell us. There has been not one witness	10	MS STEINBERG: So just to summarise. The
11	contrary to some assertions that have been made, not one	11	first phase was the closed tender in which Bain was
12	witness who has wanted to give evidence on a relevant	12	appointed for a contract worth approximately 3 million.
13	matter has been turned away, not one. And everyone who has	13	MR TSHITANGANO: Correct.
14	come here has been, come voluntarily. Three subpoenas have	14	MS STEINBERG: After that was the largest
15	been issued and those were for Mr Min and for Ms Moodley	15	tender for the new operating model. That, the SARS EXCO
16	who didn't need to give evidence and Mr Massone. Those are	16	approved a deviation but Treasury never approved that
17	the only subpoenas that have been issued, but not one	17	deviation.
18	person has been turned away. Good afternoon.	18	MR TSHITANGANO: Correct.
19	MS STEINBERG: Judge, we have called back	19	MS STEINBERG: You were then asked to
20	Mr Tshitangano who is the director of Supply Chain	20	approve a deviation for the final phase, the final 50
21	Management Compliance Monitoring at the National Treasury.	21	million and if I understand you correctly you're saying
22	He had testified merely about Bain's contract and we had	22	well your hands were tied because by that stage if you
23	asked him to please look into the other procurement	23	hadn't approved that third phase it would've rendered the
24	processes that took place during our terms of reference,	24	earlier work fruitless and wasteful.
25	the major ones and he has come back to tell us about those.	25	MR TSHITANGANO: That's what we -
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	Page 2204		Page 2206
1	Page 2204 COMMISSIONER: Mr Tshitangano, thank you	1	Page 2206 MS STEINBERG: Is that correct?
1 2	5	1 2	-
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2	COMMISSIONER: Mr Tshitangano, thank you very much for coming back again. We appreciate the time	2	MS STEINBERG:Is that correct?MR TSHITANGANO:Correct, yes.MS STEINBERG:Thank you. Can you tell
2 3	COMMISSIONER: Mr Tshitangano, thank you very much for coming back again. We appreciate the time and I think you put quite a lot of work into this as well, thank you very much. Do you affirm the evidence you give	2 3	MS STEINBERG: Is that correct? MR TSHITANGANO: Correct, yes. MS STEINBERG: Thank you. Can you tell us which procurement processes you're going to discuss with
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	Page 2207		Page 2209
1	that if you are procuring you must follow a system that is	1	MS STEINBERG: No.
2	fair, equitable, transparent, competitive and cost	2	MR TSHITANGANO: The transversal it's
3	effective. Then you'll have section 76 which allows	3	regulation 16(a)6.3, it's before. Those would be the ones
4	National Treasury to issue instruction notes and circulars	4	that will have been arranged by National Treasury and then
5	to instruct institutions on certain matters. Then you have	5	you participate. But in this case it's a contract arranged
6	section 79 which is the, a departure. In other words if a	6	by - let me just come to the example that we have because
7	department or any institutions want to depart from any	7	the first one, when it was entered into it was like the
8	instruction or directive from the Treasury regulations they	8	contract was arranged by SETA and then SARS wanted to
9	will need to apply to the Minister of Finance using section	9	participate in that tender.
10	79. It will be assessed, if it's approved then you can	10	MS STEINBERG: Yes.
11	procure without following a certain instruction note. Then	11	MR TSHITANGANO: 16(a)6.6 is applicable
12	you'll have sections 92 of the PFMA where if you want an	12	in that situation. Whereas 16(a)6.3 National Treasury or a
13	exemption for a certain period the Minister of finance will	13	provincial Treasury will arrange a transversal contract
14	exempt you but that exemption is public because it must be	14	where a number of departments or institutions will want to
15	gazetted so that it must be known which exemption has been	15	participate. That is the difference.
16	granted by the Minister.	16	MS STEINBERG: So in Bain's case, what
17	The procurement that I talked about previously	17	we've heard was that Bain had an existing contract with
18	and the one that I'm going to talk about today is covered	18	Telkom and SARS, the first thing they did before the closed
19	by Treasury regulations 15 March 2005 as amended. You will	19	tender process, is that they asked Telkom and Bain if they
20	see the second bullet there which is, sorry, which is	20	could participate in that contract. Now in terms of which
21	regulation 16(a)6.4. It's where accounting authorities,	21	regulation would that be?
22	accounting officers may deviate and procure without	22	MR TSHITANGANO: It would have been
23	following competitive bidding. If you look at the way this	23	16(a)6.6.
24	clause is phrased, it's not specifying you deviate on which	24	MS STEINBERG: Right.
25	conditions. It just says where it's impractical. Then	25	MR TSHITANGANO: Yes, but the paragraph
	Page 2208		Page 2210
1	you'll have regulation 16(a)6 which is the next one. This	1	that was quoted in that letter that you are referring to,
2	you'll have regulation 16(a)6 which is the next one. This one it's where a contract has been arranged by another	2	that was quoted in that letter that you are referring to, they quoted a paragraph which doesn't exist. I remember it
	you'll have regulation 16(a)6 which is the next one. This one it's where a contract has been arranged by another government institution and then you want to participate in	2 3	that was quoted in that letter that you are referring to, they quoted a paragraph which doesn't exist. I remember it here.
2 3 4	you'll have regulation 16(a)6 which is the next one. This one it's where a contract has been arranged by another government institution and then you want to participate in that contract. The first requirement is that that contract	2 3 4	that was quoted in that letter that you are referring to, they quoted a paragraph which doesn't exist. I remember it here. MS STEINBERG: Yes.
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	Page 2211		Page 2213
1	two months. You're not going to say I was, because when it	1	instruction note what it's important which I want to
2	was entered into it was 3 years or 2 years, I will	2	emphasise here is the consultants are requested to provide
3	participate for 3 years depending on when. But the abuse	3	professional, objective and impartial advice and at all
4	that, we see an institution arrange they go and arrange to	4	times hold the client's interest paramount without any
5	buy four machines, smaller ones. Another institution	5	consideration for future work and strictly avoiding
6	comes, they buy eight. The amount exceeded the original	6	conflicts with other assignments or their own corporate
7	amount, the conditions and requirements are not the same.	7	interest. When you read at your own time you will see.
8	MS STEINBERG: I understand, thanks.	8	The same as the other paragraph which I'm not going to
9	MR TSHITANGANO: Instruction note, 8	9	repeat. This slide, I've just checked Gartner's code of
10	2007, 2008 it's also indicating shall it be impractical to	10	conduct and if you check there, integrity, do the right
11	invite competitive bids for specific procurement it brings	11	thing, objectivity, no limits, mind-set, see opportunities
12	the emergency or urgent and sole supplier but what was	12	where others don't.
13	added in this one was that if the amounts are above a	13	[14:25] Never settle for the status quo and the other
14	million for such deviations they must be reported to the	14	principles that are there bolded, ignorance of the law is
15	Auditor-General and National Treasury. But when they were	15	not a defence, but everyone does it, it is not an
16	reported to National Treasury we used just note and it was	16	acceptable excuse. Those are their code but I'll talk
17	not assisting institutions because they continued to abuse.	17	, about them, I'm just highlighting them now so that when
18	It was only Auditor-General who will check some of them and	18	they implemented these contracts you'll judge for yourself
19	they will declare them irregular expenditure. But	19	whether those values were uphold or not. I'll start the
20	unfortunately even auditor-general will not audit 100% of	20	presentation from the tail end before the appointment.
21	those transactions.	21	Gartner was appointed to do phase 1. IT review and
22	Noting all this abuse of 16(a)6.4 in 2016 in	22	modernisation and after they've done that they issued a
23	April we issued an instruction note 3 of 2016/17 which was	23	report which I've made a copy available to the Commission.
24	now again limiting the deviation to emergency and sole	24	If you look at that report it's not like it's one report.
25	source procurement and it defines what is emergency and it	25	It's like there are two reports because there's a report
			··· ··· · · · · · · · · · · · · · · ·
	Page 2212		Page 2214
1	says any other division, those institutions who want to	1	which will start dated 10 April and when you continue
2	deviate must first come to Treasury, we assess and then we	2	you'll find that there are other dates that are dated but
3	can say okay we support the deviation, go ahead.		Journal and there are other dates that are dated but
	can say okay we support the deviation, go ahead.	3	all of them were issued in April 2015.
4	But it was not meaning that if you come to me and	3 4	5
4 5			all of them were issued in April 2015.
	But it was not meaning that if you come to me and	4	all of them were issued in April 2015. But what is key when that report was issued these
5	But it was not meaning that if you come to me and you say it's 50 million I'm going to assess the	4 5	all of them were issued in April 2015. But what is key when that report was issued these are the issue that Gartner highlighted which are very
5 6	But it was not meaning that if you come to me and you say it's 50 million I'm going to assess the reasonableness whether 50 million is reasonable. I will	4 5 6	all of them were issued in April 2015. But what is key when that report was issued these are the issue that Gartner highlighted which are very important in the awarding of the contracts. You see governance regarding how the decisions were arrived at to
5 6 7	But it was not meaning that if you come to me and you say it's 50 million I'm going to assess the reasonableness whether 50 million is reasonable. I will say the reasons that you are giving, yes, you can go ahead	4 5 6 7	all of them were issued in April 2015. But what is key when that report was issued these are the issue that Gartner highlighted which are very important in the awarding of the contracts. You see
5 6 7 8	But it was not meaning that if you come to me and you say it's 50 million I'm going to assess the reasonableness whether 50 million is reasonable. I will say the reasons that you are giving, yes, you can go ahead and procure but you must ensure that the fairness, the	4 5 6 7 8	all of them were issued in April 2015. But what is key when that report was issued these are the issue that Gartner highlighted which are very important in the awarding of the contracts. You see governance regarding how the decisions were arrived at to proceed with a certain vendor was not good. The governance
5 6 7 8 9	But it was not meaning that if you come to me and you say it's 50 million I'm going to assess the reasonableness whether 50 million is reasonable. I will say the reasons that you are giving, yes, you can go ahead and procure but you must ensure that the fairness, the competitive, everything is there. Then we come to	4 5 6 7 8 9	all of them were issued in April 2015. But what is key when that report was issued these are the issue that Gartner highlighted which are very important in the awarding of the contracts. You see governance regarding how the decisions were arrived at to proceed with a certain vendor was not good. The governance with ongoing management of some contracts was not good.
5 6 7 8 9 10	But it was not meaning that if you come to me and you say it's 50 million I'm going to assess the reasonableness whether 50 million is reasonable. I will say the reasons that you are giving, yes, you can go ahead and procure but you must ensure that the fairness, the competitive, everything is there. Then we come to instruction note 3 of 2003. The reason why I'm bringing	4 5 7 8 9 10	all of them were issued in April 2015. But what is key when that report was issued these are the issue that Gartner highlighted which are very important in the awarding of the contracts. You see governance regarding how the decisions were arrived at to proceed with a certain vendor was not good. The governance with ongoing management of some contracts was not good. The renewal of contracts was also not good. Then what were
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1	Page 2215	1	Page 2217
1	PROF KATZ: Sorry could I ask a question,	1 2	approval for R50 million odd, now am I understanding that
2 3	please or am I interrupting? On the issue, I'm not following one thing. You say the governance with ongoing	2	SARS wanted an approval of that amount in order to review possible irregularities in the modernisation process?
4	management of some contract was not good, the governance	4	MR TSHITANGANO: Correct, the 5 million
4 5	with contract renewals is, the fact of a renewal provision	4 5	was like phase 1 of the initial investigations and then
6	in a contract bad or is the exercise of the renewal, is the	6	they wanted to do phase 2 of that investigations and their
7	fact that there's ongoing management in a contract bad or	7	cost between 50 and 60 million and the reason why they will
		8	come to us is because of that instruction note which, 3,
8 9	is it the exercise of the ongoing management? MR TSHITANGANO: It may be both depending	0 9	which was saying in any single source or if you want to
9 10	MR TSHITANGANO: It may be both depending on how you've -	9 10	extend the contract and it exceeds 15% then you must come
10	PROF KATZ: Forgive me, what are you	11	to Treasury.
12	conveying here?	12	MS STEINBERG: Now do you think it's
12	MR TSHITANGANO: No, no remember here	13	appropriate for an institution to spend a minimum of
14	it's not me. This is, I said these are the recommendations	14	R67 million to investigate whether there's been a waste of
		14	money in the past?
15	from Gartner's report. I'm only highlighting because they	16	MR TSHITANGANO: It may be a yes and no
16	have impact on what I'm going to say. This is what, after		
17 18	they have done an IT review phase 1, they issued a report to SARS and these are the issues that they were	17 18	answer depending on depending on what issues are there which we talk about it when we talk about this one. If the
19	highlighting and these are the recommendation they were	19	people were stealing money and we know we must investigate
20	making Gartner, not me. I'm just highlighting so that when	20	them and recover government money yes we'll spend whatever
20	we talk about their procurement and how they were executed	20	we need to spend as long as we know but otherwise not just
22	you must be in mind that they were aware of these things.	22	appointing people for the sake of appointing and not
23	MS STEINBERG: Can I ask you something,	23	recover any cent because then it becomes fruitless and
24	once we stopped.	24	wasteful expenditure. If you check the other key findings
25	MR TSHITANGANO: Yes.	25	in the report, here I'll, if you check the number 4 in
20		20	
	Page 2216		Page 2218
1	Page 2216 MS STEINBERG: Do I understand that SARS	1	Page 2218 this slide procurement process only allows for two
1 2		1 2	-
	MS STEINBERG: Do I understand that SARS		this slide procurement process only allows for two
2	MS STEINBERG: Do I understand that SARS had already spent 12 million reviewing the IT procurement	2	this slide procurement process only allows for two deviation types, namely sole supplier and emergency.
2 3	MS STEINBERG: Do I understand that SARS had already spent 12 million reviewing the IT procurement of the past 10 years and then they wanted to spend another	2 3	this slide procurement process only allows for two deviation types, namely sole supplier and emergency. However modernisation often used impracticality due to time
2 3 4	MS STEINBERG: Do I understand that SARS had already spent 12 million reviewing the IT procurement of the past 10 years and then they wanted to spend another 50 million to see if there was misspending?	2 3 4	<ul><li>this slide procurement process only allows for two</li><li>deviation types, namely sole supplier and emergency.</li><li>However modernisation often used impracticality due to time</li><li>pressure as I said. It's their finding which was very</li></ul>
2 3 4 5	MS STEINBERG: Do I understand that SARS had already spent 12 million reviewing the IT procurement of the past 10 years and then they wanted to spend another 50 million to see if there was misspending? MR TSHITANGANO: Not there, after they	2 3 4 5	this slide procurement process only allows for two deviation types, namely sole supplier and emergency. However modernisation often used impracticality due to time pressure as I said. It's their finding which was very clearly they know what 16A.6.4 says. You only have to
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1	Page 2219	1	Page 2221 conclude the contract, you'll see what is standard if you
1 2	the research for IT 16.3. These contracts were awarded to Gartner by SARS on different times which we'll come to some	2	are requesting a service from any supplier you'll have
3	of them. Let's start with phase 1 of the project.	3	terms of references which will have been developed and
4	Phase 1 of the project what I can highlight to	4	approved in the institution. We requested evidence from
5	you is that Gartner was not the first choice. On the 5th	5	SARS who sent that terms of reference to Gartner and when,
6	EOH Mthombo was the first choice. On the 5th of December	6	whether there is an email, whether there is a letter that
7	2014 the same day that Commissioner Moyane wrote a letter	7	accompanied, the sending of the terms of reference because
8	to Telkom about participation in the Bain and Company. He	8	you can only prepare a proposal if you have received terms
9	wrote another letter to SETA to participate in the EOH	9	of reference. We requested both SARS and Gartner they did
10	Mthombo contract on the 5th of December. Then on the 8th of	10	not respond to those questions.
11	December the SETA CEO Nomvalo approved the participation,	11	Then you see a proposal and that proposal is
12	the letters are there in the pack that I have given you.	12	dated the 21st of January 2015. But when you read that
13	But in the slides I didn't put it.	13	proposal it's full or errors which, if you look at my last
14	MR KAHLA: Just for clarity for me. The	14	sentence there, it's like it was, because of December
15	invitation to participate was it in the EOH contract, EOH	15	holidays because if you, the last sentence on page 6 of the
16	Mthombo with SETA.	16	project will commence on 19 January 2015 but the proposal
17	MR TSHITANGANO: Yes.	17	outside is that it's the 25 and it's not handwritten, it's
18	MR KAHLA: Or was it in the Gartner with	18	typed. Then first sentence on page 34 of that proposal the
19	SETA?	19	proposal is valid for 30 days from 2 January 2015 then the
20	MR TSHITANGANO: The letter on the 5th of	20	contract that was signed was dated 6 January 2015 but if
21	December 2014 it's written to SETA, SARS requesting to	21	you check it's now amended using a pen to 6 February 2015.
22	participate in a contract between SETA and EOH Mthombo,	22	But the contract was finally signed on 5 February 2015. If
23	that was on the 5th of December. Then on the 8th of	23	you remember when I was talking about the Bain and Company,
24	December 2014 SETA CEO approved the participation. That's	24	there was a meeting of the BAC on the 21st of January 2015
25	what Treasury regulations 16A.6.6 say. In order to	25	and what is surprising is why was this procurement not
	Page 2220		Page 2222
1	Page 2220 participate SETA CEO will have approved and EOH Mthombo	1	Page 2222 referred to that committee because the committee met on the
1 2	5	1 2	
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2 3	participate SETA CEO will have approved and EOH Mthombo will also approve and then, it is then that SARS and EOH Mthombo will sign a contract with the similar conditions.	2 3	referred to that committee because the committee met on the 21st. Considering the Bain and Company tender, why didn't they consider also this one which is the question that SARS
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	Page 2223		Page 2225
1	advisory services or for any other services that were	1	May. Why didn't they do that very same thing in December
2	provided by EOH Mthombo?	2	[inaudible]. That's what I'm saying there.
3	MR TSHITANGANO: It matters because when	3	PROF KATZ: Right thank you.
4	you participate in a contract the same conditions and	4	MR TSHITANGANO: If you look at the heads
5	requirements of that bid must be applicable to what you	5	that are there you'll see you have invoices which I'm not
6	want. If like what happens in most of the municipalities	6	going go to them, there's 3.8, there's six, there's two.
7	you find that one municipality has arranged a fleet	7	But the emphasis here which is a problem, I don't know how
8	contract. And if in that fleet contract they are buying	8	SARS was managing this because if you request consultants
9	certain model of the cars then if you participate in that	9	
			and they charge you per rate and per consultant and when
10	contract you buy similar, you won't go and buy another one,	10	they submit an invoice they only submit the invoice like a
11	I don't want this one, but I'm just using the contract to	11	contractor who's building an RDP house for example.
12	go and buy. Similar conditions and requirements must be	12	Because when you are building an RDP house what I want to
13	applicable.	13	see is that the foundation has been done. I'm not
14	MR KAHLA: Is it an objective fact that	14	interested in knowing how many people were doing that
15	then on the 19th of December there was no IT advisory	15	foundation, but I will pay you because the foundation is
16	services contract with EOH and therefore there would have	16	done. And I'll pay you because I can see that you've put
17	been an error in approving it on the 8th of December.	17	clay bricks up to the roof. You can pay, but in this case
18	MR TSHITANGANO: Maybe SARS may be the	18	- in one document they will even compare the rates that
19	best one to answer that one, but –	19	Bain was charging and the rates that Gartner was charging
20	MR KAHLA: I'm asking from the review	20	and they will end up saying the rates that Gartner is
21	that was conducted.	21	charging are reasonable because of 1, 2, 3. And here are
22	MR TSHITANGANO: No the review that we	22	the people that were going to make available to SARS to do
23	have done we will not reveal anything because when that	23	this work, but if you don't give me a timesheet I don't
24	letter was received on the 19th SARS has already abandoned		even know whether the people that you talked about have
25	that project of participating, therefore I wouldn't know.	25	done that work. Or one person did everything, but you
	Dage 2024		Dago 2224
1	Page 2224 They'ye already abandoned it that's why on the 17th they	1	Page 2226 still claim money for all those people. That's why when we
1	They've already abandoned it that's why on the 17th they	1	still claim money for all those people. That's why when we
2	They've already abandoned it that's why on the 17th they moved on, that's why they invited Gartner on the 17th, why	2	still claim money for all those people. That's why when we asked them for timesheets they will tell me to say but look
2 3	They've already abandoned it that's why on the 17th they moved on, that's why they invited Gartner on the 17th, why they changed their mind I don't know.		still claim money for all those people. That's why when we asked them for timesheets they will tell me to say but look at the agreement we signed with SARS. We said first phase
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1	Page 2227	1	Page 2229
1	per rate per consultant and maybe they were keeping a	1	and forgive yourself because – if that provision is given
2	register somewhere which they will say these people were	2	to anybody then you see you depend on who is in charge of
3	working at SARS from this date we can be able to see that	3	that institution. Because if you get a leader or an
4	with which we wouldn't have a problem.	4	accounting officer or an accounting authority who's
5	Let me move, the procurement, if you were going	5	unethical all the procurement will be done through
6	to describe what a procurement happened here I don't know,	6	condonation because I have the right, I can sing, I know
7	but before I talk about these other issues let me bring you	7	I'll forgive myself. But if I know that I, if you see
8	the letter that Gartner responded to us. Because we asked	8	you'll have to go through [inaudible] you'll be careful.
9	them 16(a)6.6 if you participate in a SETA tender that	9	Then condonation is done. Again the guidelines that come
10	tender should have been arranged through competitive	10	from Treasury also are problematic because you see
11	bidding. Then we ask them a question. Was the 2005	11	sometimes if you look at the way the PFMA and the MFA they
12	contract between SETA and Gartner a product of competitive	12	are written, they writing assuming that we are going to
13	bidding. That's what we asked them. And you can read for	13	appoint saints and angels in this department. And that
14	yourselves, the responses are there. He says I do not have	14	doesn't happen, there are no angels in this department
15	personal knowledge of the events, but, however, it was	15	including National Treasury where I work. We still have
16	ultimately determined that based on the age of the document	16	people who are pro-corruption and those who are anti in all
17	it was inapplicable. As a result of new master	17	these institutions. Therefore you must have rules that
18	contractor's agreement, as a result a new agreement was	18	will ensure that you are able to deal with all these
19	entered into between SARS and Gartner at that time. On the	19	groups. But this they call it procurement through
20	basis of what? Because they know immediately they tell me	20	condonation. That is phase one of the procurement. I
21	to say there was not competitive bidding and therefore you	21	don't know whether there are questions from that.
22	can't 16(a)6.6. You can only utilise regulation if the	22	MS STEINBERG: I have a question. Did
23 24	2005 agreement was entered into using competitive bidding. Then he finds, he says if you need any additional	23 24	you say that the proper procedure if the accounting officer wants to condone an irregular expense that they must alert
24	information they will give us.	24	the Treasury? Is that correct?
25	information they will give us.	23	
	Page 2228		Page 2230
1	Page 2228 There are so many other questions where we asked	1	Page 2230 MR TSHITANGANO: Not the condonation, on
1 2	6	1 2	-
	There are so many other questions where we asked		MR TSHITANGANO: Not the condonation, on
2	There are so many other questions where we asked them, some they responded, some they didn't. Then when we	2 3	MR TSHITANGANO: Not the condonation, on discovery of any irregular expenditure the accounting
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1	Page 2231	1	Page 2233
1	done here. The report that must go to the person who must	1	there was simply a contract entered into with no
2	condone must have a report through inquiry or investigation	2	procurement process at all?
3	which will say yes there was an irregular expenditure of	3	MR TSHITANGANO: There's no evidence that
4	12.9 million. Then we need to know who caused this	4	there was any – unless if you call that meeting a
5	irregular expenditure. Was the person negligent or not, if	5	procurement process because it maybe in the meeting they
6	the person was negligent action must be taken before the	6	discussed everything, that we don't know. They would have
7	condonation is done. Did you receive value for money	7	said – you'll see with the other ones that I'm going to
8	because if you did not receive value for money for that	8	talk about. Either in the meeting they gave them the terms
9	expenditure then there will be an element of fruitless and	9	of reference on the 18th, they may have said here are the
10	wasteful expenditure. And we don't condone fruitless and	10	terms of reference. And therefore you must go and work on
11	wasteful expenditure, it must be recovered from whoever	11	them because there's no other meeting that is referred to.
12	caused that.	12	In other cases I requested email, you will see they give
13	MR KAHLA: Mr Tshitangano, just help me.	13	you an email for example.
14	If I look on page 18, slide 18 you've got Commissioner	14	[15:05] But in this one if you check this slide, you will
15	Moyane approved the condonation on the 20th of July. Where	15	see, you request notes the meeting of the, the meeting
16	else do you reflect his participation in this particular	16	dated 18th of December And there is no evidence that there
17	tender in which he then approved the condonation?	17	was additional meeting. Then we request email or letter
18	MR TSHITANGANO: Firstly the initiation	18	accompanying terms of reference because in other cases they
19	of the contracts.	19	do like that. Then we requested email or letter
20	MR KAHLA: Mm.	20	accompanying proposal because you will find that that now
21	MR TSHITANGANO: It's come through him.	21	will be responding to the terms of reference and they will
22	And when you read the proposal, that's why I said the terms	22	issue a letter and SARS will issue an award letter even
23	of reference because I don't know who approved the terms of	23	though it was then divisions, but in this case that why I'm
23	reference. When you read the proposal that is there they	24	just saying that basket is still there. It's waiting for
24	say the questions from the Commissioner, the Commissioner	24	SARS or Gartner to respond so that we can check it out. We
25	say the questions from the commissioner, the commissioner	23	SANS of Garmer to respond so that we can eleck it out. We
	D		
			Page 2234
1	Page 2232 wanted 1, 2, 3 which was that – there may have been an	1	Page 2234 can't check it out until they respond.
	wanted 1, 2, 3 which was that – there may have been an	1 2	can't check it out until they respond.
1 2 3	wanted 1, 2, 3 which was that – there may have been an engagement with the Commissioner and other stakeholders,		can't check it out until they respond. MR KAHLA: How long has that basket been
2 3	wanted 1, 2, 3 which was that – there may have been an engagement with the Commissioner and other stakeholders, that information is not there because we requested –	2 3	can't check it out until they respond. MR KAHLA: How long has that basket been waiting to be filled?
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		1	
	Page 2235		Page 2237
1	was an afterthought. SARS can better answer that. Now we	1	such time that the parties have reached consensus,
2	are done with phase 1 of the project. The report that was	2	etcetera.
3	issued I've already highlighted some of the recommendations	3	MR TSHITANGANO: Right.
4	and the findings that are procurement related because I	4	PROF KATZ: And at the end it says you
5	want to only cover procurement. Then there is a proposal	5	hereby must give acceptance of the award. So what date was
6	to do phase 2 and if you look at the information that is	6	the written contract signed?
7	there, the proposal is dated 26 May 2015 and it talks about	7	MR TSHITANGANO: Then the contract signed
8	the validity of 60 days from 28 May 2015 and when you look	8	by SARS on 31st July 2015 and Gartner in August 2015. It's
9	at the original amount that is there it is R115.2-million	9	there in the documentation that we – this is the basket
10	excluding VAT. That was in the original proposal.	10	which SARS, Gartner may need to give us information so that
11	We requested minutes of the BAC, the terms of	11	we can check out this basket. I'm going to move to the
12	reference, when they were given. Those are in the basket.	12	next one because here you'll see this email is on the 10th
13	SARS and Gartner may give us other information later but if	13	of April. You must remember the other report is dated the
14	you check now, Commissioner Moyane approved the division on	14	10th of February but it's communication within SARS where
15	20 July 2015 and the appointment letter dated 22 July 2015.	15	they are talking about grab migration program. The acting
16	The reasons that are given there, lapse of security,	16	CEO was supportive, we need a meeting so that we can
17	competition bid will delay the project. The contract now	17	discuss this matter but you see the reason why they want
18	is signed by SARS on 31 July 2015 and Gartner in August	18	Gartner in that meeting. The reason why Gartner was attend
19	2015. This is the letter that shows the proposal. The	19	is that our aim is to understand what scope exists to
20	letter that is accompanying the proposal is there, it is 26	20	engage Gartner on this matter and also to understand any
21	May 2015 and it's having those people there and there's an	21	limitations relating to procurement, budgetary requirements
22	attachment. The attachment is the proposal.	22	that need to be met.
23	And then you have this SARS letter which it's	23	This is the work if you remember I mentioned an
24	dated the 22nd of July. You'll see page 2 it was saying	24	instruction note three of 2003. This is the work that must
25	they should respond by 23 July 2015. And this phase 2 is	25	be done by the accounting officer or the accounting
		1	
	Dogo 2024		Dago 2220
1	Page 2236 the one that has got the big amount, R144. When it's	1	Page 2238 authority because you can't go – you want a supplier to
1 2	the one that has got the big amount, R144. When it's	1 2	authority because you can't go - you want a supplier to
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2	the one that has got the big amount, R144. When it's	2	authority because you can't go – you want a supplier to give you a proposal but you go to the supplier and says but how much are you going to charge me? Before you even
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1	Page 2239	1	Page 2241
1	have finalised the terms of reference we will request you	1	On the 29th of April you'll see there the email
2	to submit a proposal. If you are a supplier you are not	2	comes from Johan Jacobs. Thank you for this great
3	prevented from assisting an institution to develop the	3	opportunity and the very well-written terms of reference.
4	specifications. You can do that but immediately you do	4	And these are the terms of reference that they have written
5	that you disqualify yourself from bidding. If AG puts a	5	themselves. Read here. You see this one. "Unfortunately
6	general picks that this is what happened that expenditure	6	all the public holdings this week have thrown us a bit of a
7	must be declared irregular. You are the supplier, you	7	curve ball." They didn't say that in December. Now they
8	prepared the spec and you tender again.	8	are in. It's easier now. You can say whatever you want to
9	MS STEINBERG: Sorry, can you comment on	9	say. But we do have a plan to get the proposal to you by
10	the Rangewave?	10	next week Friday, the 8th. All our proposal go to Gartner
11	MR TSHITANGANO: The Rangewave which is	11	head office in the UK for quality assurance and review so
12	not there in the documentations because we asked them.	12	hence a bit of delay. Next week Friday.
13	They never responded to our letter. We said was there any	13	The question that you may ask Gartner if they
14	subcontracting of some sort and they only responded on one	14	come, the December proposal, did it go through this
15	matter which is the research one which is simple but on the	15	process?
16	other matter it's not. In this case if you are tendering,	16	[15:25] Because they say there's no proposal that can go
17	whether through a request for proposal like this one and	17	out without this quality process. Then we need to see what
18	you complete our standard bidding document which will be	18	quality process head office did in the phase one project.
19	your SBD4 for declaring the conflict of interest. In this	19	But it was on the 29th of February. Do you have a question?
20	case if Rangewave like what was reported in the Daily	20	MR KAHLA: Yes. Mr Tshitangano, we need
21	Maverick article today, if Patrick Monyeke for example was	21	clarity. You're saying that or you make reference to this
22	a friend of the commissioner, in the SBD4 he will have	22	letter by Mr Johan Jacobs of Gartner commending SARS for
23	declared to say there is a conflict which may not mean that	23	the well written terms of reference and you say which they
24	you're going to be disqualified, which will mean that	24	then had written themselves. If I see the letter from
25	whoever is going to assess or evaluate, adjudicate will	25	Prakash Mergay to Johan Jacobs and Andy Eksteen and they,
20		20	
	Page 2240		Page 2242
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1	Page 2243	1	Page 2245
1	saying that there had been a process prior to this in which	1	their biography are whatever are submitted to, through this
2	Rangewave and Gartner had been involved together with SARS	2	email. That's all for the grab migration. Let's move to
3	in co-determining the terms of reference? Is that what	3	the next one.
4	you're saying?	4	The star assessment. Email on penetration
5	MR TSHITANGANO: Let's start from slide	5	testing meeting. If you check at this one, the meeting,
6	29. There's a meeting arranged with Gartner and they are	6	the email first is on the 21st August. And then it's
7	saying that meeting, the aim of that meeting is to	7	proposing a meeting to discuss this penetration testing.
8	understand what scope exists to engage Gartner on this	8	Then the email of the 20th is attached which was talking
9	matter and also to understand any limitations related to	9	about how vulnerable SARS is and we need this and this.
10	procurement budgetary requirements that need to be met.	10	But look at the last sentence there. They still also need
11	It's on the –	11	Gartner. The input needed from Gartner relates to the
12	MR KAHLA: Sorry.	12	service providers in this discipline. Are you saying SARS
13	MR TSHITANGANO: The meeting is arranged.	13	does not have capacity to do a request for information or
14	Then the other documentations are not there. Then you have	14	an expression of interest to establish who can assist them?
15	slide 30. It's Prakash from SARS who is sending it to	15	They must go to Gartner and says can you tell us about your
16	Johan Jacobs. The only assumption that you will make here	16	other competitors that we can also invite them to compete
17	is that whoever in Gartner may have delegated to Andy to	17	with you. I'm saying that's what the email is saying.
18	attend a meeting because it says "attached is the	18	What I don't know is how Gartner responded, whether they
19	[inaudible] copy of the terms of reference that was	19	gave them the names but they may have said no, but you
20	discussed with Andy earlier today". You are discussing the	20	guys, what are you talking about, we are here. Why do you
21	terms of reference with a sub-contractor representative.	21	need our competitors to compete with us?
22	MR KAHLA: Okay, get you there.	22	Then on the 4th of September you see the email
23	MR TSHITANGANO: "We look forward to	23	from Gartner and it's talking about the next steps. SARS
23	receiving your quotation in this regard as soon as	23	must provide the Gartner team with architecture overview
24	possible". Please.	24 25	diagram, the security issues it's like they've been thrown
25	possible . Trease.	25	diagram, the security issues it's like they ve been thrown
	Page 2244		Page 2246
1	Page 2244 MR KAHLA: So you read in that was	1	Page 2246 away. Because you see when you check there's somewhere
1 2	MR KAHLA: So you read in that was	1 2	away. Because you see when you check there's somewhere
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1	Page 2247 another supplier who will also do the vendor contracting or	1	Page 2249 MR KAHLA: - what is that –
2	we'll engage our lawyers and this one because you can't	2	MR TSHITANGANO: 43.
3	bring another player. I'm just giving an example because	2	MR KAHLA: 43.
4	there's somewhere where confidentiality is used as for	4	MR TSHITANGANO: Yes.
5	impracticality to say you can't bring another supplier.	5	PROF KATZ: Ja.
6	Then on the 8th of September there "have the team managed to	6	MR KAHLA: The issue of security is put
7	review the scoping document? Is there any feedback?	7	aside because there's now a project to be run with SSA?
8	Please advise when it will be convenient to set up a follow	8	MR TSHITANGANO: Overtly they may not –
9	up call to finalise the scope". See who – it's coming from	9	whatever was discussed with the State Security it may not
10	Gartner this email. Again preparing their own terms of	10	be recorded here because remember whatever they –
11	reference.	11	MR KAHLA: Ja.
12	Then this one is very interesting. They say "we	12	MR TSHITANGANO: - do is classified
13	have made changes, sorry, we have made changes, we have	13	information. But they may have raised issues on the way
14	made the changes discussed in last week's meeting to cover	14	that project was done and that's why it may have been
15	the skills transfer and the retesting. Terry is here until	15	stopped. They may say other things but that's how I read
16	tomorrow afternoon should you want a quick discussion to	16	it. They will not just come and say stop a project if
17	clarify anything, thank you". This star assessment alone	17	there are no problems.
18	may not give us the money that we want and we are adding	18	MR KAHLA: But this is now in October
19	additional work to that scope and that's what that email is	19	2016 and -
20	saying. And you will see even in the letter of	20	MR TSHITANGANO: Right, because –
21	accompanying proposal. This letter dated 19 October 2015,	21	MR KAHLA: - and the deviation was
22	if you read what is in this part of this letter, it says	22	approved in about July 2015 with an emphasis of urgency,
23	"in addition to star assessment Gartner will carry out the	23	bearing in mind the recent relation to security lapses.
24	following three additional tests".	24	MR TSHITANGANO: Ja, the –
25	They are just telling SARS you have to add these	25	MR KAHLA: But a year later that's –
20		25	WIR RAILA. Dur a year later that 3 –
	Page 2248		Page 2250
1	Page 2248 three because we are not only going to do star assessment	1	Page 2250 MR TSHITANGANO: Correct.
1 2	•	1 2	-
	three because we are not only going to do star assessment alone, we need these three. And from there our offer is		MR TSHITANGANO: Correct. MR KAHLA: - that issue has not been
2	three because we are not only going to do star assessment alone, we need these three. And from there our offer is valid for 60 days and this and the letter is signed. If	2 3	MR TSHITANGANO: Correct. MR KAHLA: - that issue has not been attended to. The issue that gave rise to urgency -
2 3 4	three because we are not only going to do star assessment alone, we need these three. And from there our offer is valid for 60 days and this and the letter is signed. If this scope changed, represent your requirements, please	2 3 4	MR TSHITANGANO: Correct. MR KAHLA: - that issue has not been attended to. The issue that gave rise to urgency - MR TSHITANGANO: I think –
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	Page 2251		Page 2253
1	this report therefore you must assist me. But you still	1	COMMISSIONER: Ja.
2	part, in other words see that's why I brought in their code	2	MS STEINBERG: Well it would render
3	of conduct because it says "we" -	3	SARS's systems vulnerable basically, potentially vulnerable
4	PROF KATZ: Conflict.	4	if people aren't cleared and you're saying there's no
5	MR TSHITANGANO: - "do not settle in the	5	documents you've seen suggesting that anyone had security
6	status quo" and the question that, it says "never settle	6	clearance?
7	for the status quo". Is it what they applied here? They	7	MR TSHITANGANO: If you start from the
8	also say "see opportunities where others don't". I don't	8	December one, where those people the meeting was on the 18th
9	know whether they will say now that these opportunities	9	of December and Gartner was claiming that those people are
10	here, those are the questions that I'm asking because their	10	only available from the 19th of January and it was going to
11	code is very clear and immediately they are in we are	11	be very difficult because SARS and the state security
12	applying this code.	12	agency should have said I have these people who want to
13	[15:45] Their officials should have told SARS, hey do not	13	work in this environment, this environment, the secure
14	lead us into temptation because when this investigation is	14	environment, we don't just want anybody and therefore can
15	done which is very serious because that investigation was	15	you quickly check them, whether they are cleared or not.
16	just going to be fruitless and wasteful expenditure, the	16	You can't just bring any person in that environment. But
17	12 million, the 14 and the 50 or 60 million because it	17	according to the evidence that we have, unless they have
18	should start with Gartner, not the previous notification.	18	another mechanism, from the documents that we have there
19	It should start with them. But because the timeline was	19	was no requirement like that which says for you to submit a
20	2014 they said ah it's fine because we are not covered,	20	proposal your company should have been cleared at a
21	maybe but I don't want to go on the maybe. They will have	21	confidential level or whatever level that they want. Your
22	to respond themselves.	22	employees should have, what you see is the confidential
23	MS STEINBERG: It seems to me that the	23	document that you sign as a supplier but you already have
24	other question that does arise, clearly a very security	24	taken, because there's some areas even where you don't need
25	sensitive project.	25	a cleaner because the cleaner will sweep and take the
	Page 2252		Page 2254
1	Page 2252 MR TSHITANGANO: Yes.	1	confidential documents. But I don't know, that's what
1 2	MR TSHITANGANO: Yes. MS STEINBERG: Because it's a simulated	1 2	confidential documents. But I don't know, that's what you'll ask SARS and -
	MR TSHITANGANO: Yes.		confidential documents. But I don't know, that's what
2	MR TSHITANGANO: Yes. MS STEINBERG: Because it's a simulated target attack on and response so it's seen how robust SARS' systems are.	2 3 4	confidential documents. But I don't know, that's what you'll ask SARS and -
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1			
	Page 2255 claim a breach of contract and, but when you read 3 there,	1	Page 2257
	the impact of the change, it says the remaining phases of	1 2	MS STEINBERG: I understand. I just want
2		2	to clarify - MR TSHITANGANO: correct, correct, I am
3 4	the Star project as indicated above. COMMISSIONER: Ja.		
		4	only giving what the report says and the reason why I was
5	•	5	doing that I want to show you that you, your left-hand says this and your right hand, you can't be a pro-corruption and
6	programme support for the security strategy implementation, invoices for the balance excluding VAT will be invoiced	6	
7	5	7	your right hand is anti-corruption. But that's what you
8	monthly. From there the documents are signed.	8	see here.
9	COMMISSIONER: Ja.	9	MS STEINBERG: I understand.
10	MR TSHITANGANO: And they, life is	10	MR TSHITANGANO: There.
11	normal. They will get whatever, whether that work was	11	COMMISSIONER: Are we going to the
12	assessed and it's equivalent to what they were supposed to	12	conclusion?
13	do previously I don't know whether that was done because	13	MR TSHITANGANO: Ja, unless if there are
14	there should have been assessment first to say you were	14	questions?
15	supposed to do the phases and these phases we wanted this	15	MS MASILO: I have one question.
16	expertise. Now with this programme support they're talking	16	COMMISSIONER: Yes.
17	about, do you still need that top service for, I'm saying	17	MS MASILO: Can we just go back to slide
18	from your consultants or maybe you just need ordinarily	18	15. In respect of phase 1, it states that the value of
19	consultants. But you don't see that this work is, it may	19	phase 1 was R12.9 million.
20	have been done between the two, maybe they'll submit	20	MR TSHITANGANO: Yes.
21	documents.	21	MS MASILO: But on slide 18 it shows that
22	PROF KATZ: And you don't see what impact	22	the amount condoned was R5 million, what about the
23	it had on price?	23	7 million?
24	MR TSHITANGANO: correct.	24	MR TSHITANGANO: I think the writers of
25	PROF KATZ: They just say invoices for	25	the document there, it may have been a copy and paste.
	Dore 225/		Dorro 2250
1	Page 2256 the balance will be invoiced, it doesn't say, has it	1	Page 2258 They may have copied another letter for condonation and I'm
	changed the price because the scope's changed.	2	saying that's what I normally see because this condonation
3	MR TSHITANGANO: And the addendum is	3	should have been 12.9 but the amount that is shown there is
4	accepted, it's signed and implementation, but I'm just	4	5 million, it will, it may have been a copy and paste
	showing you how procurement was done. After, you remember	5	
			error.
	what I said when I was taiking about Bain and Company they,	6	
	what I said when I was talking about Bain and Company they, the BAC will raise red flags and immediately there are red	6 7	MS MASILO: But what's the implication of
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6 7	the BAC will raise red flags and immediately there are red flags then you need to address the red flags before you		MS MASILO: But what's the implication of that? Was Gartner paid 5 million or 12 million in respect of phase 1?
6 7 8	the BAC will raise red flags and immediately there are red flags then you need to address the red flags before you appoint but they were not addressed. It's exactly the same	7 8	MS MASILO: But what's the implication of that? Was Gartner paid 5 million or 12 million in respect of phase 1? MR TSHITANGANO: No, Gartner was paid
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	Page 2259		Page 2261
1	but what the commissioner approved was 5 million instead of	1	security issues that we are talking about, the environment
2	12.9.	2	where they were supposed to work it should have been
3	MS MASILO: Thank you.	3	disclosed to say we have this subcontractors, you must be
4	COMMISSIONER: Now do you know anything	4	assured that this and this and this, they meet all the
5	about subcontracting of this contract?	5	security requirements that you need but in the terms of
6	MR TSHITANGANO: From the documentations	6	reference it was not there.
7	it's not clear, you see when you read that, they will	7	PROF KATZ: And the on time sheets for
8	indicate to you that, that's why what we wanted, when we	8	who did what?
9	requested timesheets we wanted to see all the people who	9	MR TSHITANGANO: No in all the responses
10	worked on the projects and from those timesheets we will	10	that we have, we'll give you they says there was no need to
11	know whether the people who were working on the projects	11	keep timesheets because we were claiming according to the
12	are Gartner's employees or they are employees of companies	12	agreed percentages which will say you'll do this one it's
13	that were subcontracting. But if you don't have a	13	50% but as a purchaser and I know that there are more than
14	timesheet then it becomes a problem because you rely on the	14	one person involved I would have expected, I must know who
15	profile that they have given us here to say Andy will be	15	was involved in this project because if you read their
16	the coordinator of grab migration and when you read the	16	profiles, they will say Andy was involved in that project,
17	profile of this Andy, in my other file, they don't even say	17	that project and that project, how do they know if they
18	Andy is an employee of Rangewave.	18	don't keep timesheets because, and normally with
19	COMMISSIONER: Ja.	19	consultancy, audit firms those people may be sitting at
20	MR TSHITANGANO: They write as if Andy	20	SARS and dealing with five clients in a day then you need
21	it's an independent consultant, why are they hiding to say	21	to say two hours I was dealing with client 1, three hours I
22	this is employee of Rangewave.	22	was dealing client 2, something like that.
23	COMMISSIONER: Do we know anything more	23	MS STEINBERG: Mr Tshitangano, is there
24	about subcontracting?	24	any reference to the BEE requirements that ordinarily
25	MS STEINBERG: No. We have asked the	25	attend public tenders, public procurements, have you seen
	Page 2260		Page 2262
1	Page 2260 questions of SARS but we as yet don't have an answer.	1	Page 2262 anything?
1 2		1 2	
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1	Page 2263 subcontract. It happened before and regulation 2011 was	1	Page 2265 are there. But I'm just telling you that when you come and
2	not prescribing like what regulation 2017 prescribed the	2	speak the truth here, you threaten too many people and
3	30%.	2	those people are not happy. They're all out there looking
4	MS STEINBERG: Okay. Do you want to	4	for anything so that they can discredit anybody. So with
	conclude?	-	
5	MR TSHITANGANO: Yes, I want to. You	5	me likely some good South Africans who came across that
6		6	dossier which is still in transit, maybe some of the
7	know if you check but why because the discussion of the	7	journalists will get it there. And in that document they
8	scope it's like, you know we, because we do a number of	8	write things that you will not believe.
9	things here. It's like it's fashionable these days where a	9	COMMISSIONER: I will by the way.
10	purchaser and a supplier meet, discuss the scope and then	10	MR TSHITANGANO: They will tell you no, I
11	the tender is awarded. Last year we also had one incident	11	don't know whether they photo-shopped my bank statement
12	in National Treasury, exactly the same thing happened, we	12	because as I say this guy has got so many millions in the
13	appointed a supplier, given a letter of appointment,	13	bank account and my bank account has never tasted that, you
14	requested for a meeting to negotiate, after the negotiation	14	know. But I'm just telling you that you know to come and
15	meeting the supplier went to another meeting where the	15	give evidence here that's when I was reading before saying
16	scope was discussed.	16	some people are saying you know they need to be in camera
17	[16:05] After that meeting (inaudible) write a letter to	17	because at least nobody will know that Solly was there.
18	say you know I attended this meeting the scope that was	18	But whether you are in this Commission or on the other
19	discussed there is similar to the scope that you have	19	Commission these people they are out there just to
20	appointed me therefore I'm no longer exiting. I'm just,	20	discredit all of – I just wanted you to know because I may
21	you to say it's like, it's not only common to SARS. It's	21	still come with other matters but you must know that
22	something that we need to look at as Treasury. But the	22	immediately you give evidence like I would have done -
23	main question is when all these things were happening in	23	COMMISSIONER: Well we still hear -
24	SARS, and not only SARS, in other institution, where are	24	MR TSHITANGANO: - threaten so many
25	the whistle-blowers? Because somebody should have thing to	25	people.
1	Page 2264	1	Page 2266 COMMISSIONER: We'll still hear Gartner
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2 3 4	say Gartner gave us a report where they say the previous modernisation, most of the contracts were irregularly appointed. But they are also being appointed irregularly. Somebody should have reported these matters somewhere else.	2 3 4	COMMISSIONER: We'll still hear Gartner perhaps and they might disagree with you and say Solly's not, he's misleading us but we'll see. MR TSHITANGANO: Correct. The issue is
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	Page 2267		Page 2269
1	report says vendors were irregularly appointed by SARS and	1	COMMISSIONER: Ja.
2	a supplier should be appointed which was Grant Thornton who	2	MR TSHITANGANO: - maybe one will – they
3	was appointed for initial 12 million and later they wanted	3	should have written, they're late because I've already
4	50 million which we rejected. But we rejected because we	4	given it to them. Because they will not rub, erase what I
5	wanted first to read – you, if you have done a preliminary	5	have said here. Otherwise I will not be confident like
6	report the second report must be based on this one. They	6	today if they will say, ja, but because of [inaudible] they
7	should say we found that Solly after awarding this contract	7	just want to say Solly has got millions in my account I
8	he bought a property for cash. There must be further	8	don't even have. I don't know where they got those zeros
9	investigation. I'm saying if you have a report and it says	9	from.
10	like that then you can say ja, fine, let's go to the second	10	COMMISSIONER: Don't tell us how much
11	one. But if the report doesn't give you any meat you can't	11	you've got in your account. Thank you very much indeed, I
12	say go ahead because then it will be fruitless and wasteful	12	appreciate that and I suppose this will add to your dossier
13	expenditure. Gartner's recommendation which I'm saying	13	you say. But thank you very much and you know, you're
14	when you look at what they recommended and you look at	14	quite correct to say that one asks oneself shouldn't one
15	their conduct when really if they want to dispute they may	15	just hear all of this in camera to protect people, but at
16	dispute but if you participate in the development of a spec	16	the same time the public needs to know about these things
17	and you also submit your proposal and you are asked	17	and you know I give a report to the president who may not
18	questions about your competitors and you respond. Then you	18	even open it to the public for all I know. And so one
19	are undermining the government's efforts to fight	19	tries to have these things public and I keep saying to
20	corruption. That's my view. Some of the questions that	20	people well I don't, can't force, I don't want to force you
21	you can ask Gartner from their code of conduct are there, I	21	to take risks but you've got to look at your own conscience
22	just put them on page 47. That's all what I can say today.	22	that's all. Thank you very much.
23	COMMISSIONER: Just tell me about, you	23	MS STEINBERG: Thank you very much.
24	say there's a dossier out and it seems to be the way things	24	MR KAHLA: Where are we on Grant
25	go, so dossier's get prepared and is there such a thing	25	Thornton?
	Page 2268		Page 2270
1	Page 2268 that you know about that for yourself now?	1	Page 2270 COMMISSIONER: - coming to as far as –
1 2		1 2	5
	that you know about that for yourself now?		COMMISSIONER: - coming to as far as -
2	that you know about that for yourself now? MR TSHITANGANO: Yes. That – only after	2	COMMISSIONER: - coming to as far as – MR KAHLA: So this is, I thought we're
2 3	that you know about that for yourself now? MR TSHITANGANO: Yes. That – only after – it may have been there because I remember some time back	2 3	COMMISSIONER: - coming to as far as – MR KAHLA: So this is, I thought we're dealing with both Grant Thornton and so this is the next
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22	•		
23			
24	•		
25			
<b>—</b>			

				Pag
	2162:22 2167:1	2253:12	2229:2 2253:14	2259:1
<u> </u>	2214:24 2227:24	agenda 2182:21,22	2265:4	approving 2223:17
abandoned 2223:24	2233:17 2247:19,24	ago 2132:7 2171:5	anymore 2139:18	2248:19
2224:1	address 2201:23	agree 2191:15 2208:7	anyone's 2135:2	approximately 2171:2
able 2138:14 2174:3	2256:8	2226:21	anyway 2137:5	2205:12
2175:14 2226:20				
2227:3 2229:18	addressed 2173:15,16	agreed 2248:14	2138:23 2183:17,20	<b>April</b> 2211:23 2214:1,
2260:25 2262:18	2176:5 2256:9	2261:12	2183:23 2190:25	2224:20,21,22
<b>abroad</b> 2145:16	adjourn 2203:1	agreement 2226:3	2194:19 2196:1	2228:10 2234:22
absence 2131:21	ADJOURNED 2271:9	2227:18,18,23 2228:5	apart 2135:9 2200:19	2236:13,13 2237:13
2132:3 2150:14	ADJOURNS 2178:19	2232:16 2236:25	apologies 2142:1	2238:8,14,15 2241:1
2190:14 2201:21	2203:4	2266:9	apparently 2146:8	arch 2136:2,4 2171:25
absolute 2153:10	adjudicate 2239:25	<b>ah</b> 2251:20	2176:15	2172:20,25 2189:16
2154:1	admission 2158:2	ahead 2206:13 2212:3	appeal 2129:16	architecture 2245:24
Absolutely 2178:3	adopting 2135:11	2212:7 2267:12	<b>appear</b> 2131:1 2170:5	area 2226:14 2262:7
<b>abuse</b> 2127:4,6,7,19,20	adoption 2184:20	aim 2237:19 2243:7	2170:10	2264:12
2128:1 2210:18	advance 2180:11,15	alert 2191:11 2229:24	appearance 2170:1	areas 2193:11 2253:24
2211:3,17,22	advertise 2224:12,14	Alexis 2176:11	2195:11	2262:10
	advertisement 2198:20	align 2246:11 2248:13	appears 2144:22	aren't 2188:8
abusing 2208:10	advice 2213:3	allocated 2184:23	2146:11 2147:16	arguing 2226:17
accelerate 2187:20	advise 2147:3 2179:25	allow 2248:15	2197:23 2218:10,13	argument 2192:6
accept 2134:20 2138:15	2247:8	allows 2207:3 2218:1	2250:11	arises 2252:16
2149:20,23 2163:4	advised 2132:17 2143:5			
acceptable 2213:16		Alright 2254:18	<b>applicable</b> 2209:11	arising 2180:17
acceptance 2237:5	2146:24	alumnus 2155:14	2223:5,13	arose 2159:15
accepted 2256:4	advisor 2155:15	ambition 2179:22	applicant 2171:21	arrange 2209:13
access 2185:7	advisory 2218:23	ambitions 2183:12,14	applicants 2199:17	2211:4,4
accompanied 2221:7	2220:24 2222:14,21	2183:19	applied 2251:7	arranged 2208:2,5,6
accompanying 2233:18	2222:24 2223:1,15	amended 2207:19	applies 2129:17	2209:4,5,8 2223:7
2233:20 2235:20	2262:8	2221:21	apply 2207:9 2234:23	2227:10 2243:6,13
2236:7 2247:21	advocate 2127:9,12,12	America 2177:25	applying 2251:12	arrangements 2250:1
	2127:12,18 2137:25	2178:12	appoint 2229:13	arrive 2234:13 2242:2
accomplished 2150:20	2190:13	amount 2165:17	2246:25 2256:9	arrived 2214:7
account 2152:19	advocates 2201:15	2171:7 2211:6,7	appointed 2128:6,13	arriving 2189:11
2155:4 2170:14	afar 2138:23	2214:20 2217:2	2204:23 2205:12	article 2239:21
2265:13,13 2269:7,11				
accounting 2206:23	affect 2240:2	2228:13,19 2235:9	2213:21 2214:15	aside 2150:10 2151:5
2207:21,22 2212:13	affidavit 2135:15	2236:1,7 2257:22	2216:18 2263:13,20	2152:12 2249:7
2212:14 2229:4,4,23	2136:3 2141:4,8,17	2258:3,11	2264:3,3 2266:24	asked 2130:10,12,13,1
2230:2,3 2237:25,25	2142:10,15,21	amounts 2211:13	2267:1,2,3	2130:14,17 2139:21
accurate 2171:13	2146:15,25 2166:25	2262:21,23	appointing 2217:22,22	2141:14,18 2143:2
accurately 2171:8	2167:12,20,24 2168:3	Andy 2238:16,19,20	appointment 2199:13	2144:3,9,16 2145:9
achievable 2137:9	2168:18,21 2169:1,7	2241:25 2242:6	2199:14 2213:20	2145:20 2148:13,17
achieve 2180:1 2266:17	2174:11 2175:5	2243:17,20 2244:4	2214:19 2216:22	2148:24 2149:16
	2176:15 2177:1,3	2259:15,17,18,20	2235:15 2246:4	2162:7,12,18 2163:2
achieved 2192:18	2179:10,14 2185:1,9	2260:6,15,16,22	2260:22 2263:13	2164:1,23,24 2165:1
acknowledged 2188:2	2188:6 2195:1,19	2261:16	appreciate 2135:15	2165:4,12 2167:11,1
acknowledgement	2197:3 2198:4	Andy's 2260:11	2177:25 2204:2	
2184:24				2169:11 2172:20
acknowledging	2200:14,21	angels 2229:13,14	2269:12	2180:19 2187:24
2192:15	affidavits 2132:2	<b>annexure</b> 2136:3	approach 2129:6	2196:5 2201:2,21
Act 2127:22 2206:22,24	2135:6,13 2137:23	2195:19	2130:11 2135:12	2202:19 2203:23
acting 2127:9 2197:18	2138:4 2139:16	announcement 2173:17	2160:13	2205:19 2209:19
2202:15 2237:15	2160:10 2167:1	2199:8	approached 2159:12	2226:2 2227:8,13
action 2208:15 2231:6	affirm 2139:9 2204:4	answer 2138:8 2150:6	2160:15 2197:10	2228:1,3,14 2230:11
actions 2187:9	afraid 2149:22	2154:3,6 2156:12	approaching 2197:11	2230:12 2234:6
activities 2182:5	Africa 2132:9 2137:8	2161:25 2162:3,10	appropriate 2217:13	2239:12 2259:25
actual 2133:1	2150:15 2153:20	2163:10 2164:14	approval 2205:2	2266:9 2267:17
	2170:5,9 2179:8	2169:20 2179:12	2217:1,2 2220:5	asking 2143:4 2145:20
add 2128:17 2136:25	2184:22	2217:17 2223:19	approve 2205:20	2166:16 2210:9
2214:21 2236:3	Africans 2265:5	2235:1 2238:10	2220:2	2216:25 2223:20
2247:25 2254:13	2268:18	2260:1		
2269:12			approved 2157:10	2238:6,10 2251:10
added 2211:13	afternoon 2143:15	answered 2135:1	2204:16 2205:16,16	2252:19
addendum 2248:5	2202:18 2203:18	2163:20 2197:16	2205:23 2207:10	asks 2129:21,23
2254:7 2256:3	2206:5 2247:16	2198:21	2219:11,24 2220:1	2269:14
adding 2247:18	afterthought 2235:1	answering 2159:3	2221:4 2222:10,15	assembled 2170:22
addition 2175:17	AG 2239:5	answers 2137:22	2228:12 2231:15,17	assertions 2203:11
2193:19 2247:23	age 2227:16	<b>anti</b> 2229:16	2231:23 2232:7,14	assess 2136:21 2212:2
	agency 2246:12	anti-corruption 2257:7	2234:19 2235:14	2212:5 2224:10
additional 2150:1	2248:13 2252:24	anybody 2190:14	2248:20 2249:22	2239:25 2262:17,18
	2210.13 2232.2 <b>T</b>	ang 500 2170.17	2210.20 2277.22	2237.23 2202.17,10

assessed 2207:10         authority 2212:14         basically 2104:3 2253:3         breach 2255:1         2137:6 2152:2           assessing 1217:43         available 2136:23         2138:19:0 2162:17         2137:6 2152:2         2138:19:0 2162:17         2237:20         2238:12:29:217:0         2238:12:29:217:0         2238:12:29:217:0         2238:12:29:217:0         2238:12:29:217:0         2238:12:29:217:0         2238:12:29:12:22:217:0         2238:12:29:12:22:217:0         2238:12:29:12:22:217:0         2238:12:29:12:22:217:0         2238:12:29:12:22:217:0         2238:12:29:12:22:217:0         2238:12:29:12:22:217:0         2238:12:29:12:22:217:0         2238:12:29:12:22:217:0         2238:12:29:12:22:217:0         2238:12:29:12:22:217:0         2238:12:29:12:22:217:0         2238:12:29:12:22:217:0         2238:12:20:12:22:217:0         2238:12:20:12:0         2238:12:20:12:0         2238:12:20:12:0         2238:12:20:12:0         2238:12:20:12:0         2238:12:20:12:0         2238:12:20:12:0         2238:12:20:12:0         2238:12:20:12:0         2238:12:20:12:0         2238:12:20:12:0         2238:12:20:12:0         2238:12:20:12:0         2238:12:20:12:0:22:	Page
assessme 2187:13 assessme 2187:14 assessme 2187:14 2218:25 226:17         available 2156:23 218:12 4206:19         2158:19,20216:17         break 223:17         22251:12         22251:12         22251:12         22251:12         22251:12         22351:	2:25
assessment 2174:4         2137:7 2150:17.3         2227:0         brick 223:22         brick 223:22         Drick 2225:17         225:17	78:5
assessment 2174:4         2137:7 2150:17.3         2227:0         brick 223:22         brick 223:22         Drick 2225:17         225:17	9:5,16
2218:2226:17         2152:14 2165:19         2234:5 2235:12         bring 2104:1 2237.2         224:32:2203:16           2245:3226:19         2233:2228:14         218:13:2208:16         bearing 2249:23         226:13         226:19         226:14         226:19         226:14         226:19         226:14         226:19         226:11	.33:23
22454         2246:21         2246:73.5         2237:3.1         2234:1.1         2214:3.2         CCT V 226:4.2.2         2237:3.5         2238:1.1	2240:9
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	0:21
2250:16         225:14         2213:23         case 2129:7.82         beroming 2146:3         brings 2212:10         case 2129:7.82           2266:19         avoiding 2145:3         brings 2213:11         broad 2136:19 213:16         case 2129:7.82           2266:19         avoiding 2145:3         believe 2141:02.3         brings 2211:10         case 2230:24           2160:10 2021:1         avarded 2140:25         2149:424 2150:41,223         broad 2136:19 213:16         case 2230:24           2250:24 2251:1         22161:15,16 2218:19         2164:02.03 713:11         2244:11         CCCT 2264:23           2250:24 229:3         2214:6 2267:17         believe 214:20,23         broad 214:41         CCC 2174:24 21           2238:11 22161:16         2219:12240:12         2265:4         2244:11         celebratory 219           assistance 2180:8         2260:31         avarding 2212:16,17         believe 214:29         bild 2174:42180:13         celebratory 219           2199:229:22         2214:6 2267:7         believe 214:29         bild 2174:42180:14         celebratory 219           2246:16         2200:25 2215:22         believe 215:29         bild 218:13.14         celebratory 219           2199:20         2216:124         believe 215:29         bild 2174:42180:13         celebratory 219	.64:25
2256:19.32.32         2253:10         becoming 2146:3         brings 2211:11         2208:14         2208:14         2208:14         2208:14         2208:14         2216:15         broad 2136:10 2137:11         auxarded 2140:25         2163:12 716:12         2153:19 2170:21         broad 2136:20         broad 2136:21         2237:5         broad 2136:12 2137:12         2238:25 2245:14         2214:17:21 4:22         2157:9 216:17:10         broad 2136:21         CCd 2174:24         2231:12         CCd 2174:24         2231:12         2236:14         2219:12 22:16:17         2246:12         2167:12 20:16:22:12         broad 2136:17         2263:14         2214:17         2214:12         216:16:22:16:17         2244:11         celebratory 219         2238:12 22:12:16:17         assisting 2211:17         avarding 221:61:17         2214:10         2214:11         celebratory 219         2236:14         2214:12:16:16         believes 215:29         believes 215:29         2187:10:13         2237:16         2237:16         2237:16         2237:16         2237:16         2237:16         2237:16         2237:16         2219:11:22         2237:16         2237:16         2237:16         2237:16         2237:16         2237:16         2237:16         2237:16         2237:16         2237:16         2237:16         2237:16         2237:16         2237:16         2237:16	
2266:19         avoiding 2213:5         BEE 22404 2261:24         proad 2136:19 213:18         cash 2267:8           assignments 2213:6         award 2172:21 2233:22         behaf 216(1:25         2153:19 2170:21         cash 2207:8           21467 2174:2         2237:5         award 2140:25         2149:424 2150:4,19         broade 2174:5         223:12           2250:24 2251:1         22161:51.6 2218:19         2164:20.25 2167:1         broade 2174:5         223:12         CCT V 204:25           2250:24 2230:3         2216:15.1 62218:19         2164:20.25 2167:1         broade 2184:23         celebratory 216           2250:24 2239:3         2214:6 2267:7         believes 213:17         broade 2184:23         celebratory 216           2238:11 2239:3         2214:6 2267:7         believes 2152:9         2187:19         broade 218:10         Century 224:2           assuming 2229:12         2200:25 221:52.2         bel 2176:18         believes 218:3:10         builder 218:13.14         2219:11.24.2           224:11         assumption 2184:4         2226:6:23         belieftical 214:4:6         2189:6 225:11.12         223:12.12           224:13         223:14         213:14.212:22         213:14.212:22         213:14.212:22         213:14.212:22         213:14.212:22         219:12         223:11.2         223:12	,8,9
assigments 2213:6         avaits 2143:5 2152:16         2262:14         21464 2149:19         catch-up 218:5           assist 2128:6 2137:11         avard 217:2:1 223:2         behaft 216:12:         2139:19 2170:21         caused 2230:24           2186:7 2174:2         2237:5         believe 2141:20.23         broady 2146:14         CCd 2174:24           2238:5 2245:14         2116:15,16 2218:19         2164:20,225 167:5         budget 2174:55         cete-beg 238:16           assisting 218:07         2263:14         2219:1 224:01         2164:20,225 167:5         budget 218:423         cete/237:21           assisting 218:07         avarding 2212:16,17         2265:8         2243:10         cetnutry 224:42           2239:12         2200:25 221:52         believing 2129:21         build 2174:42 180:13         ceto-2174:22           2199:8 2256:20         2161:18 2173:4         believing 2129:21         build 2184:16         2219:11.24           assumption 2184:4         226:23         believing 2179:9         build 218:13.14         cetain 2155:11.8           assumption 2184:8         B         beneficial 214:46         218:42 218:11.31.4         cetain 2155:12           224:11         Babamia 2131:10.14         bets 2137:21 44:65         build 212:15,62 2221:10         cetain 2155:12           224:11	33:12,18
assist 128:6 2137:11avard 2172:12 2237:5behaff 2161:25 $2153:19 2170:21$ caused 2230:242180:10 220:12avarded 2140:25 $2149:4,24 2150:4,19$ broadtr 2174:5 $2231:12$ $CCT 223:12$ 2250:24 2251:1 $2161:5,16 2218:19$ $2164:20.25 2167:1$ broadtr 2184:23 $CCT 226:25$ 2250:24 2230:3 $223:11$ $2174:10 226:15$ broadtr 2214:23 $CCT 226:25$ 2250:24 2230:3 $2216:15,16 2218:19$ $2164:20.25 2167:15$ broadtr 224:11 $cct 223:16 226:72$ assistance 2180:8 $2263:11$ $2214:6 2267.71$ believed 2143:17broadtr 223:12 $cct 121:23 223:223:223:223:223:223:223:223:223:$	
2146:0         2237:5         believe 2141:0.203         proader 2174:5         2231:12           2180:10         2020:12         awarded 2140:25         2149:424 2150:15         broader 2174:5         CCT V 2264:25           2256:14         2216:15,16 2218:19         2157:9 2160:1,21,23         broader 2184:23         cc* 2238:16           assisting 211:17         awarding 221:16.17         2265:8         budget 2184:23         cc* 2238:16           2256:14         2219:1 2240:12         2165:82 20173:11         2244:11         cetebratory 219           2138:01         2239:23         2214:6 2267:7         believes 2152:9         2187:19         cettor 2237:16           238ume 2174:24         2200:25 221:5:2         beliogs 2179:9         build 174:4 2180:13         certain 2152:11           2434:16         2225:1:6 2240:23         belongs 2179:9         build 2184:16         2219:5:1:13           238ump 208:25:6:20         2131:1:0.14         berefited 2144:45         2189:6 225:1:1.12         2237:16           234:11         Babamia 2131:10.14         bet 2177:9         build 175:5:128         2214:10 224           234:14         2133:4:14:44         215:5:15:127         2237:5:11         224:10 224           234:15:13         Babamia 2131:10.14         222:5:2:10	6:23
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	24 2231:4
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	2175:3
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	25
assistance 2180:82263:112174:10 2262:8budgetary 2237:21cent 2217:23assisting 2211:172243:102243:102243:102214:222238:11 2239:32214:6 2267:7believed 2143:17build 2174:4 2180:132252:12,132199:8 2256:002161:18 2173:4believed 219:21building 218:162219:11,24 22assumption 2184:42222:16 2240:23belogs 2179:9builet 2181:13,14certain 215:112243:162266:23beneficial 214:62184:3 2187:10,132159:15 2188assurance 2169:12Bbeneficial 214:46bundles 2140:142223:22:22,2322241:11Babamia 2131:10,14best 2137:4 2165:16busy 215:6 2223:102266:252261:42133:14 2136:122233:192223:192223:102268:512244:162137:6 2138:3,6,625bertetr 2181:2 2235:1byg 2213:5 6223:102268:51238:19 2243:18BAC 2221:24 2228:11BH 2187:13,172223:192223:192238:189:162197:20back 2132:12,152232:23 223:25:17CChain 2203:20chain 2155:162197:20back 2132:12,152232:23 223:22:422198:16 2200:1chaing 224:22:2145:51 2137:212135:12 137:212173:16 2197:182266:222187:22 2191:252134:3,10,12,20biddrg 2207:23calendars 2171:10chaine 2202:22137:222134:3,10,12,20biddrg 2207:23calendars 2171:10chaine 2202:22187:22 2191:252135:12 137:212276:22:29:12224:14:14:152187:22	
$\begin{array}{llllllllllllllllllllllllllllllllllll$	2192:2
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	
assume 2137:4 2187:16         aware 2149:25 2161:14         believing 2129:21         2187:19         CEO 2174:221           2199:8 2256:0         2161:18 2173:4         believing 2129:21         building 2184:16         2219:11,24 22           assumption 2184:4         2222:16 2240:23         belongs 2179:9         building 2184:16,114         2159:15 218           assumptions 2184:8         266:23         beneficial 214:6         2189:3 2187:10,13         2237:16           2241:11         Babamia 2131:10,14         beneficit 2264:25         buulding 2140:14         22323:9 2238:           2261:4         2133:24 2134:14,24         2153:15,17 2165:16         buy 215.61         2238:10,12 2254:20         Chain 2203:20           2165:13         2137:6 2138:3,6,25         betrol 714:21         2233:10,12 2254:20         Chain 2203:20         Chains 2189:16           2245:14         2235:17,22 2235:17         bid 208:19 2223:5         C         C         chains 2187:20           2187:20         back 213:12,15         2235:12 235:17         bid 208:19 223:5         C         chains 2187:20           2187:20         back 213:12,15         2235:12 227:11,13,21         2235:12 227:11,13,21         candnas 2171:10         candnas 2187:20           2187:22         2134:14 213:12,15         2235:12 227:12         2134:52	
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	
assumption         2229:12         2200:25 2215:22         bel 2176:18         2189:6 225:11,12         2237:16           assumption         2184:4         2202:16 2240:23         beneficial 2144:6         bullet 2181:13,14         certain 2152:11           assumptions         2184:8         2207:51,113         beneficial 2144:6         bullet 2181:13,14         2207:51,113           assurpace         2169:12         Babamia 2131:10,14         best 2137:4 2146:5         business 2180:6,10         2244:10         2236:12           Athol 2155:13         2135:14 2136:12         2233:19         2233:19         2232:10,12 2254:20         Chains 2189:16           243:14         2235:17         beyond 2198:12         BH 2187:13,17         bid 2208:19 2223:5         C         C         chains 2189:16           244:12         2133:24 1215:2         2133:21,215         bid 2208:19 2223:5         C         chains 2189:16           243:19         224:21:2         223:17,11,14 2235:11         BH 2187:13,17         bid 2208:19 223:5         C         chains 2189:16           2197:20         back 213:21,21,5         2232:23 2235:17         bid 2208:19 2223:6         call 2134:5 214:41,415         change 220:22           2173:2 2191:25         2145:5,13 2157:20,23         2227:71,13,22         2135:15 1176:5 2185:11	2185:2
assumption 2184:4         2222:16 2240:23         belongs 2179:9         bullet 2181:13,14         certain 2152:11           2243:16         2266:23         beneficial 2144:6         2184:3 2187:10,13         2207:52 2028:12         2207:52 2028:12         2207:52 2028:12         2207:52 2028:12         2207:52 2028:12         2207:52 2028:12         2207:52 2028:12         2207:52 2028:12         2207:52 2028:12         2207:52 2028:12         2207:52 2028:12         2207:52 2028:12         2207:52 2028:12         2223:9 2238:2           2261:4         2133:14 2132:22         2133:14,2136:12         2233:15 17 71:16         busy 2156:1         2225:22,23 22         2268:5           2338:19 2243:18         BAC 2221:24 2228:11         beyrond 2198:12         byerond 2198:12         byerond 2198:12         bye 2191:12         Chains 2189:16           2137:52 2137:21         bidders 2268:6         calendars 2171:10         calendars 2171:10         change 2187:20           attached 2179:5 220:9         2170:9 2176:5 2185:1         2239:5,18 2240:3         2208:11 2228:7         change 2244:3         change 2244:3           2137:12 2191:25         12455:13 2157:02,32         2226:10         2208:11 2228:7         change 224:23         change 224:23           2137:21 2191:25         1338:11,13 2145:2,52         2208:5 2229:11,11,3,21         2178:6 209:11         c	· 2220:1
2243.16         2266:23         beneficial 2144:6         2184:3 2187:10,13         2159:15 2188           assurance 2169:12         B         benefit 2150:14         2207:20 2208:12         2207:5,11,13           2241:11         Babmia 2131:10,14         benefit 2150:14         bundles 2140:14         2223:223:22           2213:12         2133:124 2136:12         2223:10         2238:125         busy 2156:15         2223:10,12 2254:20           238:19 2243:18         BAC 2221:24 2228:11         berd 218:12 223:51         bey 2191:12         chair 2155:15           244tached 2144:22         2137:6 2138:3,6,25         better 2181:2 223:15         bey 2191:12         chair 2155:15           2197:20         back 2132:12,15         bey 2191:12         chair 2155:15         C           2187:20         2236:7         bidders 2268:6         cale 134:5 214:14:14         cale 213:25:15           2187:20         back 213:21:2,15         bidding 2207:23         cale 134:5 214:11:16         change 2287:20           2187:22 2191:25         2145:5.13 2157:20.23         2227:23 2232:24         2198:16 2200:1         change 224:20           2187:22 2191:25         2145:5.13 2157:20.23         2229:5,18 2240:3         2208:11 2288:27         change 224:20           2187:20 219:25         2145:5,13 2157:20.23	
assumptions 2184:8 assurance 2169:12	.11 2153:4
assurance 2169:12         B         benefited 2264:25         bundles 2140:14         2223:9 2238:2           2241:11         Babamia 2131:10,14         best 2137:4 2146:5         business 2180:6,10         2244:10 2246           assured 2136:23         2133:24 2134:14,24         2165:18 2171:7         buy 2211:5,6 2223:10         2268:5           Athol 2155:13         2135:14 2136:12         2223:10         223:10,12 223:8 2254:20         Chain 2203:20           attached 2144:22         2137:6 2138:3,6,25         better 181:2 223:5.1         by ying 223:8 2254:23         chains 189:16           2238:19 2243:18         BAC 2221:24 2228:11         beyond 2198:12         by 2191:12         chains 2189:16           244:expention         2235:7,11,14 2235:11         BH 2187:13,17         C         chaing 207:23           attached 2185:9         2235:7         bidders 208:6         calendars 2171:10         change 224:24           attach 225:3         2135:13 2137:20         bidders 208:5         2239:14 224:14         224:92           attemp 2153:2         2138:11,13 2145:2,5         2208:5 2227:11,13,21         2173:16 2197:18         change 224:24           2261:25         2109:02 176:5 2185:1         2239:5,18 2240:3         2208:12 2221         change 224:24           2187:22 149:12,5         2204:2 222:6	88:15,16
2241:11         Babamia 2131:10,14         best 2137:4 2146:5         busines 2180:6,10         2244:10 2246           assured 2136:23         2131:14 2132:22         2153:15,17 2165:16         busy 215:6         2252:22,23 22           2261:4         2133:24 2134:14,24         2165:18 2171:7         busy 215:6         2252:22,23 22           attached 2144:22         2137:6 2138:3,6,25         better 2181:2 2235:1         buying 2223:8 2254:23         chains 2189:16           2238:19 2243:18         BAC 2221:24 2228:11         beyond 2198:12         by e2191:12         chains 2189:16           2245:2         2135:1,01,12,0         bidders 2268:6         calendars 2171:10         chainge 2187:20           attached 2144:22         2135:1,01,2,0         bidding 2207:23         call 2134:5 2144:14,15         change 2187:20           attached 2179:5 2220:9         2170:9 2176:5 2185:1         2239:5,18 2240:3         2208:11 228:7         change 2247:1           attend 2179:5 2220:9         2170:9 2176:5 2185:1         2239:5,18 2240:3         2208:11 228:7         change 2256:229           attend 2193:20         2204:2 222:6         bid 2211:11         2244:14 2247:9         2266:22           2261:25         2204:2 222:6         bid 2211:11         2244:14 2247:9         2266:22           attached 2193:20         2	13 2214:8
assured 2136:23         2131:14/2132:22         2153:15,17/2165:16         busy 2156:1         2252:22,3/22           2261:4         2133:24/2134:14,24         2165:18         2211:5,6 2223:10         2268:5           attached 2144:22         2137:6 2138:3,6,25         better 2181:2 2235:1         buying 2223:8 2254:20         chain 2203:20           2238:19         2237:11,14/2235:11         BL         2237:11,14/2235:17         beyond 2198:12         by 2191:12         chains 2189:16           2245:8         2337:7,11,14/2235:11         BL         2237:13         bid 2208:19 2223:5         chains 2171:10         chains 2189:16           2197:20         back 2132:12,15         2232:23 2235:17         C         calendars 2171:10         change 2187:20           2141chempt 2153:2         2138:11,13 2145:2,5         2208:5 2227:11,13,21         2173:16 2197:18         2256:2,2           2187:22 2191:25         2145:5,13 2157:20,23         2237:23 2232:24         2198:16 2200:1         change 2244:12           2261:25         2145:7,20,23         223:5,18 2240:3         2208:11 2228:7         change 2167:20           2261:25         2145:1,3 2157:20,23         2239:5,18 2240:3         2208:11 2228:7         change 2167:20           2187:22 2191:25         2145:1,3 2157:20,23         2236:1         2198:16	8:23
2261:4         2133:24 2134:14,24         2165:18 2171:7         bury 2211:5,6 2223:10         2268:5           Athol 2155:13         2135:14 2136:12         2223:19         2233:10,12 2254:20         Chain 2203:20           attached 2144:22         2137:6 2138:3,6,25         better 181: 2235:11         bury 2211:5,6 2223:20         chain 2189:15           2238:19 2243:18         2237:7,11,14 2235:11         BH 2187:13,17         bud 208:19 2223:5         C         Chain 2203:20           attaches 2185:9         2256:7         bid 208:19 2223:5         C         C 2248:9         chance 2202:2           attachument 2235:22,22         2134:3,10,12,20         bidders 2268:6         call 2134:5 2144:14,15         change 2187:20           attempt 2153:2         2135:1 2137:21         bidding 2007:23         call 2134:5 2144:14,15         change 2187:20           2187:20 2191:25         2145:5,13 2157:20,23         2227:23 223:24         2198:16 2200:1         change 2186:82           2266:15         2204:2 222:6         bid s211:11         2244:14 2247:9         2226:22 2226:2           2203:13 2246:5         big 2236:1         called 2128:8,24 2161:2         2238:34           2266:12         2203:13 2246:5         big 2236:1         called 2128:8,24 2161:2         2238:34           22192:12         bad 221	
Athol 2155:13         2135:14 2136:12         2223:19         223:10,12 2254:20         Chain 2203:00           attached 2144:22         2137:6 2138:3,6,25         better 2181:2 2235:11         buying 2223:8 2254:23         chains 2189:16           2243:18         BAC 2221:24 2228:11         beyond 2198:12         bit 2187:13,17         bit 2208:19 2223:5         C         chains 2189:16           2197:20         back 2132:12,15         2232:23 2235:17         C         C         change 2195:2           attaches 2185:9         2135:1 2137:21         bidding 2207:23         call 2134:5 2144:14,15         change 2187:20           attach 2252:3         2135:1 2137:21         bidding 2207:23         call 2134:5 2144:14,15         change 2187:20           2187:22 2191:25         2145:5,13 2157:20,23         2227:23 2232:24         2198:16 2200:1         change 2187:20           2261:25         2204:2 222:6         bids 2211:11         2244:14 2247:9         2266:2.2         change 218:62           2261:25         2204:2 222:6         bids 2211:11         2244:14 2247:9         226:25 229         220:12 224:2         change 2127:2           attende 2193:20         2230:13 2246:5         big 2236:24,24         2180:20 2188:20         charge 2127:2           attende 2193:20         2268:3         big 2236:24,24	2266:17
attached 2144:22         2137:6 2138:3,6,25         better 2181:2 2235:1         buying 2223:8 2254:23         chains 2189:16           2238:19 2243:18         BAC 2221:24 2228:11         beyond 2198:12         bye 2191:12         chair 2155:15           2245:8         2235:7,11,14 2235:11         BH 2187:13,17         chair 2155:15         chaire 2105:2           2197:20         back 2132:12,15         2232:23 2235:17         C         change 220:2           attaches 2185:9         2135:1 2137:21         bidders 2268:6         calendars 217:10         change 2224:3           attempt 2153:2         2138:11,13 2145:2,5         2208:5 2227:11,13,21         2173:16 2197:18         2256:2,2           2187:22 2191:25         2145:5,13 2157:20,23         2226:10         2299:5,18 2240:3         2208:11 2228:7         change 2136:82           2261:25         2204:2 222:6         bids 2211:11         2244:14 2247:9         2226:25 2229         2233:34         charge 2136:82           2261:25         2204:2 222:6         big 2236:1         2208:12 228:3         charge 2136:82         2238:34           2250:3 2263:18         2245:7         big 2236:1         2208:12 228:3         charge 2136:82         2238:34           2250:3 2263:18         2254:1         2266:10         2208:12 228:5         2208:12	
2238:19 2243:18         BAC 2221:24 2228:11         beyond 2198:12         by e 2191:12         chair 2155:15           2435:8         223:7,11,14 2235:11         BH 2187:13,17         bid 2208:19 2223:5         C         chairperson 22           attaches 2185:9         2256:7         bid 2208:19 2223:5         C         chairperson 22           attachment 2235:22,22         2134:3,10,12,20         bidding 2207:23         cale and 2171:10         change 2187:20           attack 2252:3         2135:1 2137:21         bidding 2207:23 223:224         2198:16 2200:1         change 2244:3           attempt 2153:2         2138:11,13 2145:2,5         2208:5 2227:11,13,21         2198:16 2200:1         change 2247:31           attend 2179:5 2220:9         2170:9 2176:5 2185:1         2239:5,18 2240:3         2208:11 2228:7         change 2264:222           2261:25         2204:2 2222:6         big 2236:1         caled 2128:8,24 2161:2         2238:3,4           2250:3 2263:18         2254:7 2257:17         binding 2236:24,24         2180:20 218:20         charge 2127:24           attest 2144:25 2145:1,7         bid 215:6,7         bis 2244:2         2203:19 2208:23         charge 2127:24           attest 2147:12         bain*s 2181:24         2136:4 2185:2 2190:4         check 2199:15 2           2146:24         Bain*s	
2245:8         2232:7,11,14 2235:11         BH 2187:13,17         C         Chairperson 22           attaches 2185:9         2256:7         bid 2208:19 2223:5         C         champion 2195           2197:20         back 2132:12,15         2232:23 2235:17         C         change 2202:2           attachment 2235:22,22         2134:3,10,12,20         bidders 2268:6         calendars 2171:10         change 2287:20           attack 2252:3         2135:1 2137:21         bidding 2207:23         cale 134:5 2144:14,15         change 2247:11           attent 2179:5 2220:9         2145:5,13 2157:20,23         2227:23 2232:24         2198:16 2200:1         change 2247:12           attende 2193:20         2230:13 2246:5         big 2236:1         2208:11 2228:7         change 2136:8           2250:3 2263:18         2254:7 2257:17         binding 2236:24,24         2198:20 218:20         charge 2136:8           2192:12         bad 2215:6,7         biog 224:22         2203:19 228:23         charge 2136:2           2192:12         bad 2215:6,7         biog 2244:22         2203:19 2208:23         charge 216:5           2192:12         bad 2215:6,7         biog 224:22         2203:19 2208:23         charge 216:5           2192:12         bad 2215:6,7         bios 2244:22         2203:19 2208:23	
attaches 2185:9         2256:7         bid 2208:19 2223:5         C         champion 2195           2197:20         back 2132:12,15         2232:23 2235:17         C 2248:9         chance 2202:2           attachment 2235:22,22         2134:3,10,12,20         bidding 2207:23         calendars 2171:10         change 2187:20           attack 255:3         2135:1 2137:21         bidding 2207:23         calendars 2171:10         change 2224:3           attempt 2153:2         2138:11,13 2145:2,5         2208:5 2227:11,13,21         2173:16 2197:18         2256:2,2           2187:22 2191:25         2145:5,13 2157:20,23         2227:23 2232:24         2198:16 2200:1         change 2244:3           2237:18 2243:18         2196:7 2203:19,25         2266:10         2229:19 2233:4         change 2136:8           2261:25         2204:2 222:6         bid 2211:11         2244:14 2247:9         2226:25 2229           attended 2193:20         2230:13 2246:5         big 2236:1         called 2128:8,24 2161:2         2238:3,4           2192:12         bad 2215:6,7         biography 2245:1         2197:25 2200:8         charge 2136:8           2192:12         bad 2215:6,7         biography 2245:1         2197:25 2200:8         charge 226:12:22:23           2146:24         Bain''s 2181:24         2136:4 2185:2 2190:4	
Initial of 100         Dack 2132:12,15         Dack 2132:23 2235:17         C 2248:9         Chance 2202:2           attachment 2235:22,22         2134:3,10,12,20         bidding 2207:23         call 2134:5 2144:14,15         chance 2202:2           attempt 2153:2         2138:11,13 2145:2,5         2208:5 2227:11,13,21         2173:16 2197:18         2256:2,2           attempt 2153:2         2145:5,13 2157:20,23         2207:23 2232:24         2198:16 2200:1         change 2247:11           attend 2179:5 2220:9         2170:9 2176:5 2185:1         2239:5,18 2240:3         2208:11 2228:7         change 2247:11           2237:18 2243:18         2196:7 2203:19,25         2266:10         2229:19 2233:4         charge 2136:8 2           2250:3 2263:18         2254:7 2257:17         binding 2236:24,24         2180:00 2188:00         charge 2127:24           attention 2189:15         2268:3         biography 2245:1         2197:25 2200:8         charge 2127:24           2146:24         Bain's 2140:2 2164:19         2244:22         2203:19 2208:23         charge 2127:24           2146:24         Bain's 2140:2 2164:19         2244:22         2203:19 2208:23         charge 2127:24           2146:24         Bain's 2140:2 2164:19         2244:22         2203:19 2208:23         charge 2127:24           2146:24         Bain	
attachment 2235:22,22 attack 2252:32134:3,10,12,20 2135:1 2137:21bidders 2268:6 bidding 2207:23calendars 2171:10 call 2134:5 2144:14,15change 2187:20 call 2134:5 2144:14,15attempt 2153:22138:11,13 2145:2,5 2145:5,13 2157:20,232208:5 2227:11,13,212173:16 2197:182256:2,2attend 2179:5 2220:92145:5,13 2157:20,232227:23 2232:242198:16 2200:1changes 2247:122237:18 2243:182196:7 2203:19,252266:102229:19 2233:4charge 2136:8 22261:252204:2 222:6bids 2211:112244:14 2247:92226:25 2229attended 2193:202230:13 2246:5big 2236:1called 2128:8,24 2161:22238:3,42250:3 2263:182254:7 2257:17binding 2236:24,242180:20 2188:20charges 2127:24attention 2189:152268:3big graphy 2245:12197:25 2200:8charging 2225:22146:24Bain's 2181:242136:4 2185:2 2190:4check 2199:15 22208:12 2211attest 2144:25 2145:1,7bag 2254:21bit 2129:10 2130:232218:9 2240:4check 2199:15 22146:24Bain's 2181:242136:4 2185:2 2190:4calle 2138:162208:12 2211attest 2147:12Bain's 2140:2 2164:192241:6,12camera 2136:9 2265:162213:10 22172146:24Bain's 2140:2 2164:192241:6,12camera 2136:9 2265:162213:10 22172135:21,22200:12block 2182:23cancel 2248:142235:14 22372135:21,22200:12block 2182:23cancel 2248:142235:14 22372135:21,22200:12	
attack 2252:32135:1 2137:21bidding 2207:23call 2134:5 2144:14,15changed 2224:3attempt 2153:22138:11,13 2145:2,52208:5 2227:11,13,212173:16 2197:182256:2,22187:22 2191:252145:5,13 2157:20,232227:23 2232:242198:16 2200:1changes 2247:1attend 2179:5 2220:92170:9 2176:5 2185:12239:5,18 2240:32208:11 2228:7change 2243:82261:252204:2 222:6bids 2211:112244:14 2247:92226:25 2229attended 2193:202230:13 2246:5big 2236:1called 2128:8,24 2161:22238:3,42250:3 2263:182254:7 2257:17binding 2236:24,242180:20 2188:20charges 2127:24attention 2189:152268:3big graphy 2245:12197:25 2200:8charg 2254:22192:12bad 2215:6,7bix 2219:10 2130:232218:9 2240:4check 2199:15 22146:24Bain's 2181:242136:4 2185:2 2190:4check 2199:15 22146:24Bain's 2181:242136:4 2185:2 2190:4check 2199:15 22146:24Bain's 2181:242136:4 2185:2 2190:4calles 2138:162208:12 22112208:12 2209:16bick 2182:23cancera 2136:9 2265:162135:21,222204:12 2209:16block 2182:23cancer 2176:162135:21,222204:12 2209:16block 2182:23cancel 248:142135:21,222204:12 2209:16block 2182:23cancel 2248:142135:21,222204:12 2209:16block 2182:23cancel 2248:142135:21,222204:12 2209:16block 2182:23cancel 2248:142	
attempt 2153:22138:11,13 2145:2,52208:5 2227:11,13,212173:16 2197:182256:2,22187:22 2191:252145:5,13 2157:20,232227:23 2232:242198:16 2200:1changes 2247:13attend 2179:5 2220:92170:9 2176:5 2185:12239:5,18 2240:32208:11 2228:7change 2136:8 22261:252204:2 2222:6bids 2211:112244:14 2247:92226:25 2229attended 2193:202230:13 2246:5big 2236:1called 2128:8,24 2161:22238:3,42250:3 2263:182254:7 2257:17binding 2236:24,242180:20 2188:20charges 2127:24attention 2189:152268:3biography 2245:12197:25 2200:8charge 2137:12attest 2144:25 2145:1,7bag 2254:21bit 2129:10 2130:232218:9 2240:4check 2199:15 22146:24Bain's 2181:242136:4 2185:2 2190:4check 2199:15 22208:12 2211attest 2144:152143:152165:11 2178:1blind 2190:42269:152221:12 2242:122135:21,222204:12 2209:16blowers 2264:8,10cancel 2248:142235:14 22372155:1,2122204:12 2209:16blowers 2264:8,10cancel 2248:142235:14 22372202:15Baker 2170:22board 2150:10capacity 2245:132246:3 2258:122202:15Baker 2170:22board 2150:10capacity 2245:132246:3 2258:132169:2214:122256:1bolded 2213:14Cape 2186:122258:18,19,242169:2261:19Balance 2167:4bolded 2213:14Cape 2186:122268:18,19,242169:2261:19bala 2241:721	
2187:22 2191:252145:5,13 2157:20,232227:23 2232:242198:16 2200:1changes 2247:13attend 2179:5 2220:92170:9 2176:5 2185:12239:5,18 2240:32208:11 2228:7change 2136:8 22237:18 2243:182196:7 2203:19,252266:102229:19 2233:4charge 2136:8 22261:252204:2 222:6bids 2211:112244:14 2247:92226:25 2229attended 2193:202230:13 2246:5big 2236:1called 2128:8,24 2161:22238:3,42250:3 2263:182254:7 2257:17binding 2236:24,242197:25 2200:8charges 2127:24attention 2189:152268:3biography 2245:12197:25 2200:8charge 2136:8 22192:12bad 2215:6,7bios 2244:222203:19 2208:23chart 2193:11attest 2144:25 2145:1,7bag 2254:21bit 2129:10 2130:232218:9 2240:4check 2199:15 22146:24Bain's 2181:242136:4 2185:2 2190:4called 2138:162208:12 2211attest 2147:12Bain's 2140:2 2164:192241:6,12camera 2136:9 2265:162213:10 2217attorney 2131:182193:12,18 2203:22block 2182:23Camero 1276:162233:14,25 222135:21,222204:12 2209:16blowers 2264:8,10cancel 2248:142235:14 2237Attorneys 2131:16Bain5 2144:16blue 2182:2 2189:7,19capable 2140:42240:1 2245:52202:15Baker 2170:22board 2150:10capacity 2245:132246:3 2253:12169:2261:192140:242256:1bookkeeping 2130:11career 2180:12checked 2213:92169:2261:19 <td>+:5 2248:4</td>	+:5 2248:4
attend 2179:5 2220:92170:9 2176:5 2185:12239:5,18 2240:32208:11 2228:7changing 2254:2237:18 2243:182196:7 2203:19,252266:102229:19 2233:4charge 2136:8 22261:252204:2 222:6bids 2211:112244:14 2247:92226:25 2229attended 2193:202230:13 2246:5big 2236:1called 2128:8,24 2161:22238:3,42250:3 2263:182254:7 2257:17binding 2236:24,242180:20 2188:20charges 2127:24attention 2189:152268:3biography 2245:12197:25 2200:8charges 2127:242192:12bad 2215:6,7bid 2129:10 2130:232218:9 2240:4chark 2193:11attest 2144:25 2145:1,7bag 2254:21bit 2129:10 2130:232218:9 2240:4chack 2199:15 22146:24Bain's 2181:242136:4 2185:2 2190:4calls 2138:162208:12 2211attests 2147:12Bain's 2140:2 2164:192241:6,12camera 2136:9 2265:162213:10 2217attitude 2143:152165:11 2178:1blind 2190:42269:152221:21 2224attorney 2131:182193:12,18 2203:22block 2182:23Cameron 2176:162233:14,25 222135:21,222204:12 2209:16blowers 2264:8,10cancel 2248:142235:14 2237attract 2184:3,6 2187:8balance 2167:4bolded 2213:14Cape 2186:122258:18,19,242216:9 2261:19balance 2167:4bolded 2213:14Cape 2186:122258:18,19,24auditor-generalbala 2241:72130:15careful 2229:8 2246:13chacke 2213:92216:9 2261:19bala 2241:7 <td>7.12 12 14</td>	7.12 12 14
2237:18 2243:182196:7 2203:19,252266:102229:19 2233:4charge 2136:8 22261:252204:2 2222:6bids 2211:112244:14 2247:92226:25 2229attended 2193:202230:13 2246:5big 2236:1called 2128:8,24 2161:22238:3,42250:3 2263:182254:7 2257:17binding 2236:24,242180:20 2188:20charges 2127:24attention 2189:152268:3biography 2245:12197:25 2200:8charging 2225:32192:12bad 2215:6,7bios 2244:222203:19 2208:23charging 2225:3attest 2144:25 2145:1,7bag 2254:21bit 2129:10 2130:232218:9 2240:4check 2199:15 22146:24Bain's 2181:242136:4 2185:2 2190:4calls 2138:162208:12 2211attests 2147:12Bain's 2140:2 2164:192241:6,12camera 2136:9 2265:162213:10 2217attitude 2143:152165:11 2178:1blind 2190:42269:152223:14,25 222135:21,222204:12 2209:16blowers 2264:8,10cancel 2248:142235:14 2237Attorneys 2131:16Bain's 2144:16blue 2182:2 2189:7,19capable 2140:42240:1 2245:52202:15Baker 2170:22board 2150:10capacity 2245:132246:3 2253:1attributable 2178:212194:25 2255:7bonanza 2264:25care 2246:162264:10,11 222216:9 2261:19ball 2241:72130:15careful 2229:8 2246:13check 2213:9auditor-generalbank 2265:11,13,13books 2258:20careful 2209:8 2246:13check 2213:9	
2261:252204:2 222:6bids 2211:112244:14 2247:92226:25 2229attended 2193:202230:13 2246:5big 2236:1called 2128:8,24 2161:22238:3,42250:3 2263:182254:7 2257:17binding 2236:24,242180:20 2188:20charges 2127:24attention 2189:152268:3biography 2245:12197:25 2200:8charging 2225:12192:12bad 2215:6,7bios 2244:222203:19 2208:23chard 2193:11attest 2144:25 2145:1,7bag 2254:21bit 2129:10 2130:232218:9 2240:4check 2199:15 22146:24Bain's 2181:242136:4 2185:2 2190:4calls 2138:162208:12 2211attests 2147:12Bain's 2140:2 2164:192241:6,12camera 2136:9 2265:162213:10 2217attorney 2131:182193:12,18 2203:22block 2182:23Cameron 2176:162233:14,25 222135:21,222204:12 2209:16blowers 2264:8,10cancel 2248:142235:14 2237Attorneys 2131:16Bain5 2144:16blue 2182:2 2189:7,19capable 2140:42240:1 2245:52202:15Baker 2170:22board 2150:10capacity 2245:132246:3 2253:1attributable 2178:212194:25 2255:7bonanza 2264:25care 2246:162264:10,11 22audit 2211:20 2214:122256:1books 2258:20careful 2229:8 2246:13check 2213:92216:9 2261:19ball 2241:72130:15careful 2229:8 2246:13check 2213:92216:9 2261:19bank 2265:11,13,13books 2258:20careful 2229:8 2246:13check 2213:9	
attended 2193:202230:13 2246:5big 2236:1called 2128:8,24 2161:22238:3,42250:3 2263:182254:7 2257:17binding 2236:24,242180:20 2188:20charges 2127:24attention 2189:152268:3biography 2245:12197:25 2200:8charging 2225:12192:12bad 2215:6,7bios 2244:222203:19 2208:23chart 2193:11attest 2144:25 2145:1,7bag 2254:21bit 2129:10 2130:232218:9 2240:4check 2199:15 22146:24Bain's 2181:242136:4 2185:2 2190:4calls 2138:162208:12 2211attests 2147:12Bain's 2140:2 2164:192241:6,12camera 2136:9 2265:162213:10 2217attitude 2143:152165:11 2178:1blind 2190:42269:152221:21 2224attorney 2131:182193:12,18 2203:22block 2182:23Cameron 2176:162233:14,25 222135:21,222204:12 2209:16blowers 2264:8,10cancel 2248:142235:14 2237Attorneys 2131:16Bain5 2144:16blue 2182:2 2189:7,19capable 2140:42240:1 2245:52202:15Baker 2170:22board 2150:10capacity 2245:132246:3 2253:1attributable 2178:212194:25 2255:7bonanza 2264:25care 2246:162264:10,11 22audit 2211:20 2214:122256:1bookkeeping 2130:11careers 2180:12checked 2213:92216:9 2261:19ball 2241:72130:15careful 2229:8 2246:13chief 2180:4 218auditor-generalbank 2265:11,13,13books 2258:20carefully 2176:222197:18 2198	
2250:3 2263:182254:7 2257:17binding 2236:24,242180:20 2188:20charges 2127:24attention 2189:152268:3biography 2245:12197:25 2200:8charging 2225:12192:12bad 2215:6,7bios 2244:222203:19 2208:23chard 2193:11attest 2144:25 2145:1,7bag 2254:21bit 2129:10 2130:232218:9 2240:4check 2199:15 22146:24Bain's 2181:242136:4 2185:2 2190:4calls 2138:162208:12 2211attests 2147:12Bain's 2140:2 2164:192241:6,12camera 2136:9 2265:162213:10 2217attitude 2143:152165:11 2178:1blind 2190:42269:152221:21 2224attorney 2131:182193:12,18 2203:22block 2182:23Cameron 2176:162233:14,25 222135:21,222204:12 2209:16blowers 2264:8,10cancel 2248:142235:14 2237Attorneys 2131:16Bains 2144:16blue 2182:2 2189:7,19capable 2140:42240:1 2245:52202:15Baker 2170:22board 2150:10capacity 2245:132246:3 2253:1attract 2184:3,6 2187:8balance 2167:4bolded 2213:14Cape 2186:122258:18,19,24audit 2211:20 2214:122256:1bookkeeping 2130:11careers 2180:12checked 2213:92216:9 2261:19ball 2241:72130:15careful 2229:8 2246:13chief 2180:4 218auditor-generalbank 2265:11,13,13books 2258:20carefully 2176:222197:18 2198	.27.2
attention 2189:152268:3biography 2245:12197:25 2200:8charging 2225:12192:12bad 2215:6,7bios 2244:222203:19 2208:23chart 2193:11attest 2144:25 2145:1,7bag 2254:21bit 2129:10 2130:232218:9 2240:4check 2199:15 22146:24Bain's 2181:242136:4 2185:2 2190:4calls 2138:162208:12 2211attests 2147:12Bain's 2140:2 2164:192241:6,12camera 2136:9 2265:162213:10 2217attorney 2131:182193:12,18 2203:22block 2182:23Cameron 2176:162233:14,25 222135:21,222204:12 2209:16blowers 2264:8,10cancel 2248:142235:14 2237Attorneys 2131:16Bains 2144:16blue 2182:2 2189:7,19capable 2140:42240:1 2245:52202:15Baker 2170:22board 2150:10capacity 2245:132246:3 2253:14attributable 2178:212194:25 2255:7bonanza 2264:25care 2246:162264:10,11 22audit 2211:20 2214:122256:1bookkeeping 2130:11careers 2180:12checked 2213:92216:9 2261:19ball 2241:72130:15careful 2229:8 2246:13checked 2213:9auditor-generalbank 2265:11,13,13books 2258:20carefully 2176:222197:18 2198	1.74
2192:12bad 2215:6,7bios 2244:222203:19 2208:23chart 2193:11attest 2144:25 2145:1,7bag 2254:21bit 2129:10 2130:232218:9 2240:4check 2199:15 22146:24Bain's 2181:242136:4 2185:2 2190:4calls 2138:162208:12 2211attests 2147:12Bain's 2140:2 2164:192241:6,12camera 2136:9 2265:162213:10 2217attinude 2143:152165:11 2178:1blind 2190:42269:152221:21 2224attorney 2131:182193:12,18 2203:22block 2182:23Cameron 2176:162233:14,25 222135:21,222204:12 2209:16blowers 2264:8,10cancel 2248:142235:14 2237Attorneys 2131:16Bain's 2144:16blue 2182:2 2189:7,19capable 2140:42240:1 2245:52202:15Baker 2170:22board 2150:10capacity 2245:132246:3 2253:14attributable 2178:212194:25 2255:7bolded 2213:14Cape 2186:122258:18,19,24audit 2211:20 2214:122256:1bookkeeping 2130:11careers 2180:12checked 2213:92216:9 2261:19ball 2241:72130:15careful 2229:8 2246:13checked 2213:9auditor-generalbank 2265:11,13,13books 2258:20careful 22176:222197:18 2198	
attest 2144:25 2145:1,7 2146:24bag 2254:21 Bain's 2181:24bit 2129:10 2130:23 2136:4 2185:2 2190:42218:9 2240:4 calls 2138:16check 2199:15 2 2008:12 2211attests 2147:12 attitude 2143:15Bain's 2140:2 2164:19 2165:11 2178:12241:6,12 blind 2190:4calls 2138:16 2269:152208:12 2217 2205:16attorney 2131:18 2135:21,222193:12,18 2203:22 2204:12 2209:16block 2182:23 block 2182:23Cameron 2176:16 2233:14,25 222233:14,25 22 2204:12 2209:16Attorneys 2131:16 2202:15Bain5 2144:16 Bain5 2144:16blue 2182:2 2189:7,19 blue 2182:2 2189:7,19capable 2140:4 capable 2140:42240:1 2245:5 2246:3 2253:1attributable 2178:21 2216:9 2261:192194:25 2255:7 ball 2241:7bolded 2213:14 2130:15Cape 2186:12 careers 2180:12 careful 2229:8 2246:132264:10,11 22 careful 2229:8 2246:13 careful 2229:8 2246:13auditor-generalbank 2265:11,13,13books 2258:20carefully 2176:222197:18 2198	
2146:24Bain's 2181:242136:4 2185:2 2190:4calls 2138:162208:12 2211attests 2147:12Bain's 2140:2 2164:192241:6,12camera 2136:9 2265:162213:10 2217attitude 2143:152165:11 2178:1blind 2190:42269:152221:21 2224attorney 2131:182193:12,18 2203:22block 2182:23Cameron 2176:162233:14,25 222135:21,222204:12 2209:16blowers 2264:8,10cancel 2248:142235:14 2237Attorneys 2131:16Bain5 2144:16blue 2182:2 2189:7,19capable 2140:42240:1 2245:52202:15Baker 2170:22board 2150:10capacity 2245:132246:3 2253:14attract 2184:3,6 2187:8balance 2167:4bolded 2213:14Cape 2186:122258:18,19,24attributable 2178:212256:1bookkeeping 2130:11careers 2180:12checked 2213:92216:9 2261:19ball 2241:72130:15careful 2229:8 2246:13chief 2180:4 218auditor-generalbank 2265:11,13,13books 2258:20careful 2279:8 2246:13careful 2180:4218	
attests 2147:12 attitude 2143:15 attorney 2131:18Bain's 2140:2 2164:19 2165:11 2178:1 2193:12,18 2203:22 2204:12 2209:162241:6,12 blind 2190:4camera 2136:9 2265:16 2269:152213:10 2217 2209:15Attorney 2131:18 2135:21,222193:12,18 2203:22 2204:12 2209:16block 2182:23 blowers 2264:8,10Cameron 2176:16 cancel 2248:142233:14,25 22 2203:14Attorneys 2131:16 2202:15Bains 2144:16 Baker 2170:22blue 2182:2 2189:7,19 board 2150:10capable 2140:4 capable 2140:42240:1 2245:5 capacity 2245:13attributable 2178:21 2216:9 2261:192194:25 2255:7 ball 2241:7bolded 2213:14 2130:15Cape 2186:12 careers 2180:12 careful 2229:8 2246:132264:10,11 22 checked 2213:9auditor-generalbank 2265:11,13,13books 2258:20carefuly 2176:222197:18 2198	
attitude 2143:152165:11 2178:1blind 2190:42269:152221:21 2224attorney 2131:182193:12,18 2203:22block 2182:23Cameron 2176:162233:14,25 222135:21,222204:12 2209:16blowers 2264:8,10cancel 2248:142235:14 2237Attorneys 2131:16Bain5 2144:16blue 2182:2 2189:7,19capable 2140:42240:1 2245:52202:15Baker 2170:22board 2150:10capacity 2245:132246:3 2253:14attract 2184:3,6 2187:8balance 2167:4bolded 2213:14Cape 2186:122258:18,19,24attributable 2178:212194:25 2255:7boanza 2264:25care 2246:162264:10,11 22audit 2211:20 2214:122256:1bookkeeping 2130:11careers 2180:12checked 2213:92216:9 2261:19ball 2241:72130:15careful 2229:8 2246:13chief 2180:4 218auditor-generalbank 2265:11,13,13books 2258:20carefuly 2176:222197:18 2198	
attorney 2131:182193:12,18 2203:22block 2182:23Cameron 2176:162233:14,25 222135:21,222204:12 2209:16blowers 2264:8,10cancel 2248:142235:14 2237Attorneys 2131:16Bain5 2144:16blue 2182:2 2189:7,19capable 2140:42240:1 2245:52202:15Baker 2170:22board 2150:10capacity 2245:132246:3 2253:14attract 2184:3,6 2187:8balance 2167:4bolded 2213:14Cape 2186:122258:18,19,24attributable 2178:212194:25 2255:7bonanza 2264:25care 2246:162264:10,11 22audit 2211:20 2214:122256:1bookkeeping 2130:11careers 2180:12checked 2213:92216:9 2261:19ball 2241:72130:15careful 2229:8 2246:13chief 2180:4 218auditor-generalbank 2265:11,13,13books 2258:20carefuly 2176:222197:18 2198	
2135:21,222204:12 2209:16blowers 2264:8,10cancel 2248:142235:14 2237Attorneys 2131:16Bain5 2144:16blue 2182:2 2189:7,19capable 2140:42240:1 2245:52202:15Baker 2170:22board 2150:10capacity 2245:132246:3 2253:1attract 2184:3,6 2187:8balance 2167:4bolded 2213:14Cape 2186:122258:18,19,24attributable 2178:212194:25 2255:7bonanza 2264:25care 2246:162264:10,11 22audit 2211:20 2214:122256:1bookkeeping 2130:11careful 2229:8 2246:13checked 2213:9auditor-generalbank 2265:11,13,13books 2258:20carefully 2176:222197:18 2198	
Attorneys 2131:16 2202:15Bain5 2144:16 Baker 2170:22blue 2182:2 2189:7,19 board 2150:10capable 2140:4 capacity 2245:132240:1 2245:5 2246:3 2253:1attract 2184:3,6 2187:8 attributable 2178:21balance 2167:4 2194:25 2255:7bolded 2213:14Cape 2186:12 care 2246:162258:18,19,24 2256:1audit 2211:20 2214:12 2216:9 2261:192256:1 ball 2241:7bookkeeping 2130:11 2130:15careers 2180:12 careful 2229:8 2246:13checked 2213:9 careful 2229:8 2246:13auditor-generalbank 2265:11,13,13books 2258:20carefully 2176:222197:18 2198	
2202:15         Baker 2170:22         board 2150:10         capacity 2245:13         2246:3 2253:1           attract 2184:3,6 2187:8         balance 2167:4         bolded 2213:14         Cape 2186:12         2258:18,19,24           attributable 2178:21         2194:25 2255:7         bonanza 2264:25         care 2246:16         2264:10,11 22           audit 2211:20 2214:12         2256:1         bookkeeping 2130:11         careers 2180:12         checked 2213:9           2216:9 2261:19         ball 2241:7         2130:15         careful 2229:8 2246:13         chief 2180:4 218           auditor-general         bank 2265:11,13,13         books 2258:20         carefully 2176:22         2197:18 2198	
attract 2184:3,6 2187:8 attributable 2178:21balance 2167:4 2194:25 2255:7bolded 2213:14 bonanza 2264:25Cape 2186:12 care 2246:162258:18,19,24 2264:10,11 22audit 2211:20 2214:12 2216:9 2261:19 auditor-general2256:1 ball 2241:7bookkeeping 2130:11 2130:15Cape 2186:12 care 2246:162264:10,11 22 2264:25bookkeeping 2130:11 careful 2229:8 2246:13careers 2180:12 careful 2229:8 2246:13checked 2213:9 chief 2180:4 218	
attributable 2178:212194:25 2255:7bonanza 2264:25care 2246:162264:10,11 22audit 2211:20 2214:122256:1bookkeeping 2130:11careers 2180:12checked 2213:92216:9 2261:19ball 2241:72130:15careful 2229:8 2246:13chief 2180:4 218auditor-generalbank 2265:11,13,13books 2258:20carefully 2176:222197:18 2198	
audit 2211:20 2214:122256:1bookkeeping 2130:11careers 2180:12checked 2213:92216:9 2261:19ball 2241:72130:15careful 2229:8 2246:13chief 2180:4 218auditor-generalbank 2265:11,13,13books 2258:20carefully 2176:222197:18 2198	
2216:9 2261:19 auditor-generalball 2241:7 bank 2265:11,13,132130:15 books 2258:20careful 2229:8 2246:13 carefully 2176:22chief 2180:4 218 2197:18 2198	
auditor-general         bank 2265:11,13,13         books 2258:20         carefully 2176:22         2197:18 2198	
2211:15,18,20         Bar 2131:15         Boston 2140:12 2162:5         carried 2127:4,15         2204:14	
August 2193:16,18         Barry 2187:17 2191:11         2188:1         carry 2127:15 2247:23         children 2179:4	9:4
2199:6 2235:182191:12bottom 2182:24cars 2223:9choice 2219:5,6	5,6
2237:8 2245:6         based 2174:3 2218:20         bought 2267:8         Cartwright 2176:6,6,8         Chris 2176:16	
authorities 2207:21         2227:16 2267:6         boxes 2182:2         case 2129:4,7 2130:5         circulars 2207:4	)7:4

25th September 2018 Commission of Inquiry into Tax Administration & Governance by SARS

#### Inquiry

				_
				Page
circulating 2268:24	2209:6 2212:2,4,9	complain 2140:7	2223:21	contractor 2225:11
circumspect 2139:25	2217:8,10 2218:20	2179:3	confident 2269:5	2240:12,18,19 2262:8
circumstances 2158:5	2219:2 2229:9 2230:4	complete 2239:18	confidential 2246:2,14	contractor's 2227:18
citizen 2170:4 2179:7	2231:21 2240:19,24	completed 2151:16	2246:17 2253:21,22	contracts 2204:13
claim 2226:1,18 2255:1	2241:14 2244:14	2168:23 2169:2	2254:1	2206:8 2208:24
claimed 2226:5	2249:16 2250:5	2228:9	confidentiality 2132:24	2210:13 2212:12
claiming 2253:9	2254:25 2260:9	completely 2154:18	2132:25 2246:23	
2261:11			2132:23 2240:23 2247:4	2213:18 2214:6,9,10
clarification 2157:17	2265:1,14,21	<b>compliance</b> 2167:3		2214:13 2216:10,15
	comes 2127:3 2134:10	2168:24 2203:21	<b>confirm</b> 2143:5	2216:16 2218:18
clarify 2247:17 2257:2	2134:19 2138:12	2214:13 2216:10	confirmation 2228:7	2219:1 2220:8
clarity 2182:25	2145:2 2184:10	2246:22	confirmed 2248:11	2222:18,21,22
2219:14 2241:21	2210:12 2211:6	complied 2170:6	confirming 2197:22	2231:19 2246:21
classified 2188:23	2241:2	compliments 2242:19	<b>confirms</b> 2197:17	2264:2
2249:12	coming 2164:12	comply 2168:12 2172:7	<b>conflict</b> 2127:7 2239:19	contrary 2203:11
clause 2207:24 2212:25	2177:25 2190:23	2210:19	2239:23 2240:1	contravention 2212:13
clay 2225:17	2204:2 2247:9 2270:1	component 2248:9	2251:4	convenient 2247:8
<b>clean</b> 2268:10	<b>commence</b> 2221:16	components 2187:14	conflicts 2213:6	conversations 2133:6
<b>cleaner</b> 2253:25,25	commending 2241:22	2248:9 2254:10	confused 2210:9	<b>convert</b> 2189:1
clear 2145:18 2184:8	<b>comment</b> 2175:24	concentrated 2181:25	conscience 2269:21	conveying 2215:12
2204:11 2226:22	2239:9	concentration 2187:16	consensus 2237:1	conviction 2130:3
2232:23 2251:11	commentaries 2187:25	2191:24	consider 2147:1,1	COO 2187:14,16,17
2259:7 2260:20	commentary 2177:4,18	concept 2185:2	2166:6 2222:3	2189:13 2222:15
clearance 2246:8,15,19	commissions 2137:1	<b>concern</b> 2264:12	consideration 2213:5	cooperate 2134:17
2252:22,23 2253:6	Commission's 2189:15	concerned 2134:9	considered 2130:9	2148:11 2158:17
clearances 2252:17	Commission's 2127:22	2139:23 2166:4	considering 2222:2	2164:15,21 2170:12
<b>cleared</b> 2253:4,15,20	2129:11 2137:11	2172:10 2178:22,23	2232:12	2172:5 2176:12
clearly 2182:22 2218:5	2165:12 2168:13	2172:10 2170:22,25 2178:25 2252:24	<b>consistent</b> 2160:13	cooperated 2169:19,23
2251:24	commitment 2154:1	concerning 2141:12	constituents 2153:20	cooperating 2164:17
client 2127:14,15	2165:9	2195:7	constitute 2236:24	cooperation 2147:2
2261:21,22	committee 2155:13,15	concerns 2134:4	constituted 2136:4	2148:16 2165:5
clients 2158:3 2261:20	2155:18 2156:4,7,8	2140:21 2179:14,16	consult 2136:6 2146:23	2148.10 2105.5
client's 2213:4	2156:16 2222:1,1	concerted 2172:6	consultancy 2261:19	<b>coordinator</b> 2259:16
clock 2170:24	<b>common</b> 2263:21	conclude 2204:25	consultant 2202:1	COO's 2191:25
closed 2205:11 2209:18	communicate 2133:10	2221:1 2258:10	2212:16 2225:9	copied 2258:1
2224:15	communication	2263:5	2227:1 2259:21	<b>copies</b> 2171:22,23,24
coach 2183:13	2237:14	concluded 2162:15,24	2260:18	2171:25
coaching 2146:6,15	commuting 2137:7	conclusion 2140:2	consultants 2185:7	сору 2162:13 2213:23
2160:12 2183:25	companies 2224:15	2153:23 2257:12	2212:20 2213:2	2238:19 2242:17
2185:3	2252:7,21 2259:12	condition 2134:18	2225:8 2246:13	2243:19 2257:25
<b>code</b> 2206:17 2213:9,16	company 2140:22	conditional 2152:4	2255:18,19	2258:4 2268:20,20
2251:2,11,12 2256:16	2141:12 2145:14	2153:1,6,9,16,22	consultation 2153:19	2270:8,9
2267:21	2148:7 2151:6	conditionally 2152:4	consulted 2132:14	corporate 2180:7
collating 2171:12	2152:12 2153:9	conditions 2154:23,24	<b>consumer</b> 2188:21	2184:20 2213:6
colleague 2202:13	2157:11 2158:4	2155:3,7 2207:25	contact 2140:24 2141:6	corrected 2183:6
colleagues 2131:4	2159:12 2171:3,6	2210:20 2211:7	2141:9,9 2176:14	correction 2256:15
2133:22	2172:10 2174:18,21	2220:3 2223:4,12	2198:19	correctly 2205:21
collect 2165:18 2167:13	2204:21 2208:7	2260:20	contacts 2146:1	correspondence
2170:19 2178:18	2219:8 2221:23	condonation 2220:16	contains 2143:13	2131:17 2132:4
<b>collected</b> 2166:12	2222:2 2232:12	2220:16 2228:16,16	content 2206:15	2197:22 2202:20
2168:1	2240:5 2253:20	2228:18,24 2229:6,9	2254:23	correspondences
collecting 2168:8,17	2256:6 2264:14	2229:20 2230:1,4,23	contents 2177:2,3	2220:5,6
<b>collection</b> 2168:22	<b>Company's</b> 2150:10	2231:7,15,17 2234:18	2206:25 2238:18	corrupt 2264:16
2184:21	compare 2225:18	2234:23 2258:1,2,12	context 2143:14	2268:14
<b>colour</b> 2190:4,6	compared 2244:19	2258:22,25	2179:21 2180:3	corruption 2264:19
	compete 2212:21	condone 2228:17	2179.21 2180.5	2267:20 2268:4
colours 7100.5	-	2229:24 2230:19,21	2201:19 2204:17	cost 2207:20 2208:4
				2217:7
column 2187:10	2245:16,21	2220.25 2221.2 10	contingent (1177-07)	
<b>column</b> 2187:10 <b>come</b> 2130:19,21	competition 2235:17	2230:25 2231:2,10	contingent 2173:23	
<b>column</b> 2187:10 <b>come</b> 2130:19,21 2134:12 2135:1	competition 2235:17 competitive 2207:2,23	2258:20,23	<b>continue</b> 2148:11	could've 2170:5
column 2187:10 come 2130:19,21 2134:12 2135:1 2137:21 2138:11	<b>competition</b> 2235:17 <b>competitive</b> 2207:2,23 2208:5,19 2211:11	2258:20,23 condoned 2228:13	<b>continue</b> 2148:11 2165:9 2214:1	<b>could've</b> 2170:5 <b>counsel</b> 2127:8,13,13
column 2187:10 come 2130:19,21 2134:12 2135:1 2137:21 2138:11 2139:21 2140:2	<b>competition</b> 2235:17 <b>competitive</b> 2207:2,23 2208:5,19 2211:11 2212:9 2227:10,12,21	2258:20,23 condoned 2228:13 2257:22	<b>continue</b> 2148:11 2165:9 2214:1 2238:11 2240:25	<b>could've</b> 2170:5 <b>counsel</b> 2127:8,13,13 2127:20 2128:1,3,5
column 2187:10 come 2130:19,21 2134:12 2135:1 2137:21 2138:11 2139:21 2140:2 2143:21 2148:4	<b>competition</b> 2235:17 <b>competitive</b> 2207:2,23 2208:5,19 2211:11 2212:9 2227:10,12,21 2227:23 2232:24	2258:20,23 condoned 2228:13 2257:22 conduct 2138:20	<b>continue</b> 2148:11 2165:9 2214:1 2238:11 2240:25 2256:16	<b>could've</b> 2170:5 <b>counsel</b> 2127:8,13,13 2127:20 2128:1,3,5 2128:12,16,16,18
column 2187:10 come 2130:19,21 2134:12 2135:1 2137:21 2138:11 2139:21 2140:2 2143:21 2148:4 2150:3 2157:19,23	<b>competition</b> 2235:17 <b>competitive</b> 2207:2,23 2208:5,19 2211:11 2212:9 2227:10,12,21 2227:23 2232:24 2266:10	2258:20,23 <b>condoned</b> 2228:13 2257:22 <b>conduct</b> 2138:20 2206:17 2213:10	<b>continue</b> 2148:11 2165:9 2214:1 2238:11 2240:25 2256:16 <b>continued</b> 2168:21	<b>could've</b> 2170:5 <b>counsel</b> 2127:8,13,13 2127:20 2128:1,3,5 2128:12,16,16,18 2129:6,10,13 2130:20
column 2187:10 come 2130:19,21 2134:12 2135:1 2137:21 2138:11 2139:21 2140:2 2143:21 2148:4 2150:3 2157:19,23 2158:9 2161:17	competition 2235:17 competitive 2207:2,23 2208:5,19 2211:11 2212:9 2227:10,12,21 2227:23 2232:24 2266:10 competitors 2245:16	2258:20,23 <b>condoned</b> 2228:13 2257:22 <b>conduct</b> 2138:20 2206:17 2213:10 2214:12 2216:9	<b>continue</b> 2148:11 2165:9 2214:1 2238:11 2240:25 2256:16 <b>continued</b> 2168:21 2211:17	<b>could've</b> 2170:5 <b>counsel</b> 2127:8,13,13 2127:20 2128:1,3,5 2128:12,16,16,18 2129:6,10,13 2130:20 2131:11 2136:17
2137:21 2138:11 2139:21 2140:2 2143:21 2148:4 2150:3 2157:19,23 2158:9 2161:17 2176:5 2190:24	competition 2235:17 competitive 2207:2,23 2208:5,19 2211:11 2212:9 2227:10,12,21 2227:23 2232:24 2266:10 competitors 2245:16 2245:21 2267:18	2258:20,23 <b>condoned</b> 2228:13 2257:22 <b>conduct</b> 2138:20 2206:17 2213:10 2214:12 2216:9 2246:21 2251:3	continue 2148:11 2165:9 2214:1 2238:11 2240:25 2256:16 continued 2168:21 2211:17 continuing 2169:4,8	<b>could've</b> 2170:5 <b>counsel</b> 2127:8,13,13 2127:20 2128:1,3,5 2128:12,16,16,18 2129:6,10,13 2130:20 2131:11 2136:17 2139:2,19 2140:11
column 2187:10 come 2130:19,21 2134:12 2135:1 2137:21 2138:11 2139:21 2140:2 2143:21 2148:4 2150:3 2157:19,23 2158:9 2161:17	competition 2235:17 competitive 2207:2,23 2208:5,19 2211:11 2212:9 2227:10,12,21 2227:23 2232:24 2266:10 competitors 2245:16	2258:20,23 <b>condoned</b> 2228:13 2257:22 <b>conduct</b> 2138:20 2206:17 2213:10 2214:12 2216:9	<b>continue</b> 2148:11 2165:9 2214:1 2238:11 2240:25 2256:16 <b>continued</b> 2168:21 2211:17	<b>could've</b> 2170:5 <b>counsel</b> 2127:8,13,13 2127:20 2128:1,3,5 2128:12,16,16,18 2129:6,10,13 2130:20 2131:11 2136:17

011 440 3647 011 440 9119

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				Page 4
counsel's 2127:11	2256:14 2268:14	descriptions 2160:11	disagree 2266:2	2133:13 2135:18,24
country 2169:13	dealing 2135:19	destroyed 2133:23	disappears 2135:7	2136:2 2138:22
2264:8	2158:13 2171:4,5	detail 2132:23 2200:10	discipline 2245:12	2140:15,15,19
couple 2132:6,8 2181:4	2261:20,21,22 2270:3	detailed 2214:12	disclose 2160:20	2142:14,14,23 2144:7
course 2128:1,7	deals 2195:1 2198:9	2216:9	2163:22,23 2168:11	2145:19 2163:22
2130:24 2149:2	2206:22,24	details 2146:1	2260:20	2165:7 2167:4,13
2162:22 2167:22	dear 2238:18	determination 2153:14	disclosed 2159:17	2168:9,10,17,18
2169:21 2172:9	decade 2256:22	determine 2153:14	2163:25 2261:3	2170:15,17,21,25
	decades 2184:15,16,17	determined 2151:3	2262:19	
2192:7 2242:18 2266:6			disclosure 2158:20	2171:2,15,17,18,18
	<b>deceit</b> 2130:4	2152:14 2227:16		2172:21,21 2173:3,8
court 2128:10 2129:16	<b>December</b> 2191:9	2244:7	2164:9,10	2173:10,10 2201:14
cover 2206:6,7,20	2198:11,14 2204:22	determines 2136:20	discovered 2197:21	2206:15 2253:5,18
2235:5 2247:14	2219:6,10,11,21,23	determining 2153:17	discovery 2228:22	2254:1 2255:8,21
covered 2207:18	2219:24 2220:4,9,11	2172:17	2230:2	2262:2,4 2266:5
2251:20 2260:10	2220:20,23,25	detractors 2188:24	discredit 2265:4,20	doesn't 2145:17
<b>covers</b> 2182:5	2221:14 2222:10,12	2189:2 2190:12	2268:15	2162:19 2189:5
co-determining 2243:3	2222:15 2223:15,17	develop 2146:7 2239:3	discuss 2147:5,11	2210:2,9 2267:11
<b>co-worked</b> 2244:2	2224:8,12,19 2225:1	developed 2221:3	2173:18 2174:6	doing 2127:20,21
cramped 2130:23	2233:16 2241:7,14	development 2180:4,8	2206:4 2220:11	2138:15 2165:16,18
create 2158:3	2244:16,19 2246:4	2218:21 2267:16	2237:17 2245:7	2168:12,14,16
created 2185:8 2192:23	2253:8,9	deviate 2207:22,24	2263:10	2172:15 2225:14
2218:14 2250:12	decide 2144:12 2150:24	2212:2 2218:6	discussed 2135:22	2238:12 2257:5
creating 2185:7	2151:8,10,20,25	deviating 2208:11	2141:10 2195:17	don't 2163:22 2164:9
2195:13	2152:25 2154:11	2266:24	2220:13 2233:6	2164:14 2165:12
credibility 2180:14	2155:7 2176:3	deviation 2204:16,18	2238:20 2243:20	2166:11,13 2169:18
criminal 2127:24	decided 2176:15	2205:8,16,17,20	2244:2,6 2247:14	2177:19 2178:10
2268:7	decides 2152:1	2211:24 2212:3	2249:9 2263:16,19	2217:10 2178:10
critical 2182:3	decision 2152:19	2218:2,15 2248:19	2264:17	2227:6 2245:18
		-	discusses 2179:18	
critically 2192:17	2169:24 2170:8	2249:21		2246:16,16 2251:8,8
cross 2171:11	decisions 2214:7	deviations 2211:14	discussing 2242:9	2266:13 2268:21
crucial 2184:13	2266:17,20	<b>Deyorke</b> 2198:14	2243:20 2244:13	2269:8,8,10,20,20
current 2198:15	decision-maker	<b>DG</b> 2264:17	discussion 2247:16	dossier 2264:15 2265:6
2214:13 2216:10	2180:14	diagnosis 2132:19,21	2263:7	2267:24 2268:12,16
currently 2189:3	declare 2211:19	2133:1	discussions 2141:11	2268:17,19,19
2210:17	declared 2239:7,23	diagnostic 2187:11	2154:9,12	2269:12
<b>curve</b> 2241:7	declaring 2239:19	diagram 2189:19	disgruntled 2189:3	dossier's 2267:25
	defence 2213:15	2245:25 2260:13,14	disorientated 2244:18	dot 2191:12,12,12
D	defines 2211:25	diary 2193:8 2194:21	disparage 2127:23	<b>double</b> 2130:11,15
Daily 2239:20	delay 2234:20 2235:17	dictated 2129:7	<b>dispute</b> 2240:19 2266:8	doubtful 2134:11
danger 2135:11	2241:12	didn't 2160:24 2162:4	2267:15,16	drafted 2242:21
dangerous 2135:9	delayed 2214:23	2162:4 2163:15	disqualified 2239:24	draw 2140:3 2189:15
data 2172:1	delegated 2243:17	2167:23,23 2178:12	disqualify 2239:5	2191:5 2192:11
database 2262:9	delivered 2169:9	2188:4 2203:16	disruptions 2188:17	2201:17
date 2182:8 2220:15	2171:19,24 2172:6,8	2241:7	distribute 2206:14	drawing 2224:6
2227:3 2236:12	2184:18	difference 2209:15	diverted 2127:24,25	drive 2172:2
2237:5	delivery 2182:6	different 2166:3	division 2212:1	<b>Dubai</b> 2132:6,7,8
dated 2179:11 2204:15	depart 2207:7	2187:14 2188:19	2235:14 2250:14	due 2149:2 2162:22
2214:1,2 2221:12,20	department 2207:7	2219:2	divisions 2233:23	2169:21 2181:1
	-			2109.21 2181.1
2233:16 2234:17	2229:13,14	differently 2167:15	doctor 2133:21	
2235:7,15,24 2237:13	departments 2209:14	difficult 2145:19	document 2140:21	2248:12
2238:15 2247:21	departure 2184:14	2170:7 2224:16	2145:4 2147:16	dumped 2135:5
dates 2214:2 2224:6	2207:6	2253:11	2164:2,3 2168:21	duplication 2181:25
date's 2228:10	depend 2229:2	difficulty 2138:2,3	2169:2,8 2180:25	dwell 2194:12
day 2132:15 2137:19	dependent 2152:23	2142:21 2173:7	2181:1 2186:1,25	
2142:4 2146:21	depending 2188:24	2190:14	2193:5 2225:18	E
2148:6 2159:6	2211:3 2215:9	diligence 2181:2	2227:16 2230:14,16	earlier 2128:2 2179:12
2168:23 2179:2	2217:17,17	direct 2135:23 2137:12	2230:16 2239:18	2187:15 2205:24
2219:7 2220:10,10	depends 2151:21	2163:19,21 2174:2	2240:3 2247:7	2238:20 2243:20
2261:20 2270:23	-	directed 2127:8	2253:23 2257:25	2244:2
days 2137:19 2185:5,10	2152:16			
		2136:14	2260:13 2262:19	early 2181:9 2240:12
2186:25 2187:9	<b>depose</b> 2141:4	2136:14 <b>direction</b> 2128:14	2260:13 2262:19 2265:7	early 2181:9 2240:12 easier 2226:24 2241:8
2186:25 2187:9 2193:5 2221:19	<b>depose</b> 2141:4 <b>deputy</b> 2252:20	direction 2128:14	2265:7	easier 2226:24 2241:8
2193:5 2221:19	<b>depose</b> 2141:4 <b>deputy</b> 2252:20 <b>describe</b> 2189:5 2227:6	<b>direction</b> 2128:14 2129:11	2265:7 documentation 2237:9	<b>easier</b> 2226:24 2241:8 <b>economic</b> 2158:3
2193:5 2221:19 2222:17 2235:8	depose 2141:4 deputy 2252:20 describe 2189:5 2227:6 described 2146:5	direction 2128:14 2129:11 directive 2207:8	2265:7 documentation 2237:9 documentations	easier 2226:24 2241:8 economic 2158:3 economy 2212:19
2193:5 2221:19 2222:17 2235:8 2248:3 2263:9	depose 2141:4 deputy 2252:20 describe 2189:5 2227:6 described 2146:5 2195:12	direction 2128:14 2129:11 directive 2207:8 directly 2154:6 2165:1	2265:7 documentation 2237:9 documentations 2239:12 2243:14	easier 2226:24 2241:8 economic 2158:3 economy 2212:19 eco-system 2182:23
2193:5 2221:19 2222:17 2235:8	depose 2141:4 deputy 2252:20 describe 2189:5 2227:6 described 2146:5	direction 2128:14 2129:11 directive 2207:8	2265:7 documentation 2237:9 documentations	easier 2226:24 2241:8 economic 2158:3 economy 2212:19

011 440 3647 011 440 9119

				Page
affinance 2194.19	2229:18	2247:3 2260:13	2146:23 2234:11	files 2136:2,5 2172:20
efficacy 2184:18	enter 2240:14			
efficiency 2212:19		exceeded 2211:6	extent 2133:10 2136:14	2172:25 2189:17
effort 2164:21 2165:7	entered 2209:7 2211:2	exceeds 2217:10	2136:17,24 2137:12	2191:9,19
2172:2,4,6	2227:19,23 2232:21	exchanged 2131:17	2138:7 2151:13	<b>fill</b> 2136:2 2199:4
efforts 2170:18	2233:1	2132:4	2161:14,17	<b>filled</b> 2171:24 2234:3,7
2267:19	entire 2168:22 2169:8	excluding 2235:10	external 2190:3	final 2153:13 2197:4
eight 2146:16,20	entirely 2188:18	2236:3 2255:7	extract 2128:25	2205:20,20
2149:19,21,25 2150:4	entities 2206:25	EXCO 2205:15	extracted 2128:20	finalise 2236:14
2194:19 2211:6	entitled 2180:25	excuse 2131:9 2134:2,7	2173:12 2218:16	2238:25 2247:9
either 2150:12 2154:15	2184:14	2134:8,10 2157:4	eyes 2136:10	<b>finalised</b> 2236:15
2188:23 2233:8	entity 2198:15 2230:7,8	2202:17 2213:16	e-filing 2184:20	2239:1 2244:4
2240:7 2268:13	entry 2130:11,15	excused 2133:4 2134:3		finally 2171:17 2198:3
<b>Eksteen</b> 2238:16	<b>environment</b> 2246:7,14	2134:5	F	2221:22
2241:25 2260:6,15	2253:13,13,14,16	executed 2215:21	Fabrice 2173:19	finance 2206:22,24
elected 2170:5	2261:1	executive 2146:6,14	2175:6,7,13 2191:10	2207:9,13
electronic 2171:22	envisage 2210:12	2160:11 2180:4	face 2135:11 2174:6,6	financial 2204:14
2238:19	EOH 2219:6,9,15,15,22	2183:25 2189:11	2242:23	2258:12
element 2231:9	2220:1,2,25 2222:8	2198:14	faced 2173:7	<b>find</b> 2144:21,25
elements 2212:18	2222:14,19 2223:2,16	executives 2160:14	facilitate 2184:21	2145:19 2149:7
eliminate 2188:15	equally 2232:15	2180:7,10	2202:6	2150:22,25 2152:1
email 2173:15 2174:8	equitable 2207:2	executive's 2185:5	facilitates 2128:13	2169:20,22 2173:2
2175:15,19 2176:21	equivalent 2255:12	exempt 2207:14	fact 2133:22 2135:15	2184:13 2192:8
2189:16 2191:8,10,18	erase 2269:4	exemption 2207:13,14	2152:5,9,25 2156:7	2199:17 2214:2
2191:21 2196:6,16	error 2223:17 2258:5	2207:15	2152.5,9,25 2150.7 2158:6 2162:9	2223:7 2226:16
2197:20 2198:13	errors 2221:13 2224:5	exercise 2215:6,8	2187:12 2188:18	2233:20 2244:12
2199:7 2204:14	especially 2188:16	exigencies 2129:7	2189:14 2191:23	2250:20
2220:4,6 2221:6	2260:25	2130:4	2192:3,3 2197:2	<b>finding</b> 2218:4
2233:12,13,17,19	establish 2146:1 2166:2	exist 2210:2,9	2199:6,9 2215:5,7	findings 2151:12
2236:6 2237:12	2230:24 2245:14	existed 2232:16	2222:23 2223:14	2153:3 2206:18
2238:15,17 2241:1	established 2155:12	existing 2209:17	2242:21 2264:5	2217:24 2218:17
2245:2,4,6,8,17,22	2156:4,7,8,16	2210:13	factors 2152:18 2155:5	2235:4
2247:10,19	establishing 2156:11	exists 2237:19 2243:8	<b>facts</b> 2140:1,4 2153:14	<b>finds</b> 2152:5 2227:24
emails 2133:11 2138:15	etcetera 2145:19	exiting 2263:20	2155:5 2191:6	<b>fine</b> 2145:6 2165:25
2149:5 2192:2	2150:15 2237:2	expand 2142:23	factual 2177:3	2251:20 2267:10
2195:25 2200:23	Europe 2144:24	expect 2144:24 2150:21	failed 2250:24	finished 2153:17
embassy 2144:25	evaluate 2239:25	2165:25	failing 2143:11	2155:21 2230:17
emerge 2134:1 2198:19		expected 2150:25		firm 2170:23
	events 2171:4 2227:15	-	<b>failure</b> 2158:17	
emerged 2140:24	eventually 2143:8	2261:14	fair 2159:2 2207:2	<b>firms</b> 2261:19
2160:25,25	2167:23	expenditure 2205:5	fairly 2170:21 2192:2	first 2129:23 2130:20
emergencies 2218:14	evidence 2128:8,11,12	2211:19 2217:24	fairness 2212:8	2131:20 2132:2
2218:14 2250:13,13	2128:15 2129:6	2228:18,19,21,22	faith 2164:20 2165:7	2133:12 2140:21
emergency 2208:14,17	2130:11 2139:10,13	2230:2,25 2231:3,5,9	fall 2156:22	2142:13 2152:24
2211:12,24,25 2218:2	2140:24 2141:3	2231:10,11 2239:6	false 2129:3	2154:6 2156:20,24
emerges 2133:25	2140.24 2141.3	2251:16,11 2259:0	familiar 2176:9	2154:0 2150:20,24
emphasis 2225:7	2160:25 2161:1,2	2258:21 2267:13	far 2130:8 2134:8	2160:19 2164:9
2249:22	2162:14 2166:8,9	expense 2171:10	2140:5 2166:3	2167:14 2168:17
emphasise 2213:2	2178:22 2199:25	2229:24	2169:18 2178:24	2169:25 2173:23
employee 2188:22	2203:12,16 2204:4,9	experience 2244:24	2182:18 2262:5	2179:14 2180:16,22
2194:5 2238:18	2221:4 2230:12,14	experiencing 2193:22	2270:1	2180:23 2182:17,18
2259:18,22 2260:17	2233:3,16 2253:17	expertise 2255:16	fashionable 2263:9	2185:5,10 2186:7,25
employees 2167:1	-	-		
	2262:11 2264:23	expired 2220:17	feasibility 2136:22	2187:6,9 2189:10
2171:6 2188:22	2265:15,22 2268:9,11	2222:17	feasible 2137:9	2193:4 2197:16
2189:4 2253:22	exact 2152:13	<b>explain</b> 2142:23	February 2186:9	2202:13,16 2204:22
2259:12,12	exactly 2138:5 2151:3	2147:15 2154:4	2221:21,22 2234:18	2204:22 2205:11
employer 2188:25	2190:21 2246:20	2187:22 2188:9	2234:21 2237:14	2208:4 2209:7,18
employment 2188:15	2256:9 2263:12	2190:19,24 2201:4	2241:19	2212:2,14 2218:10
enclosed 2204:15	2266:21	2204:18	feedback 2247:7	2219:5,6 2221:18
	examination 2128:25			2222:7 2226:3,10
	$\mathbf{c}_{\mathbf{A}}$	explained 2140:1	<b>feeding</b> 2167:6	
endeavours 2166:1			fees 2150:11	2238:22 2244:8,10,20
endeavours 2166:1 enforced 2170:7	2136:19 2192:24	explanation 2189:9		
endeavours 2166:1 enforced 2170:7		<b>explanation</b> 2189:9 2201:14	<b>fell</b> 2156:21	2245:6 2246:4
endeavours 2166:1 enforced 2170:7	2136:19 2192:24 examined 2129:5	2201:14	fell 2156:21	2245:6 2246:4 2255:14 2267:5
endeavours 2166:1 enforced 2170:7 engage 2145:15 2237:20 2243:8	2136:19 2192:24 examined 2129:5 examining 2128:22	2201:14 explicitly 2147:11	<b>fell</b> 2156:21 <b>felt</b> 2158:6 2168:9	2255:14 2267:5
endeavours 2166:1 enforced 2170:7 engage 2145:15 2237:20 2243:8 2247:2 2260:19	2136:19 2192:24 examined 2129:5 examining 2128:22 example 2158:14	2201:14 explicitly 2147:11 express 2203:10	<b>fell</b> 2156:21 <b>felt</b> 2158:6 2168:9 <b>fifth</b> 2148:10	2255:14 2267:5 2270:14
endeavours 2166:1 enforced 2170:7 engage 2145:15 2237:20 2243:8 2247:2 2260:19 engaged 2260:21	2136:19 2192:24 examined 2129:5 examining 2128:22 example 2158:14 2173:11,14 2201:23	2201:14 explicitly 2147:11 express 2203:10 expression 2245:14	fell 2156:21 felt 2158:6 2168:9 fifth 2148:10 fight 2267:19	2255:14 2267:5 2270:14 <b>firstly</b> 2214:22 2231:18
endeavours 2166:1 enforced 2170:7 engage 2145:15 2237:20 2243:8 2247:2 2260:19 engaged 2260:21 engagement 2156:21	2136:19 2192:24 examined 2129:5 examining 2128:22 example 2158:14 2173:11,14 2201:23 2205:8 2209:6	2201:14 explicitly 2147:11 express 2203:10 expression 2245:14 extend 2217:10	fell 2156:21 felt 2158:6 2168:9 fifth 2148:10 fight 2267:19 figure 2194:5 2242:22	2255:14 2267:5 2270:14 firstly 2214:22 2231:18 2246:6
endeavours 2166:1 enforced 2170:7 engage 2145:15 2237:20 2243:8 2247:2 2260:19 engaged 2260:21	2136:19 2192:24 examined 2129:5 examining 2128:22 example 2158:14 2173:11,14 2201:23	2201:14 explicitly 2147:11 express 2203:10 expression 2245:14	fell 2156:21 felt 2158:6 2168:9 fifth 2148:10 fight 2267:19	2255:14 2267:5 2270:14 <b>firstly</b> 2214:22 2231:18

011 440 3647 011 440 9119

**RealTime Transcriptions** 

·	1 3		5	Daga
				Page
fitting 2195:15	fully 2164:16 2180:15	2247:3 2256:25	2266:21 2268:18	2265:23 2266:1
five 2194:17,18	functions 2128:14	2257:4	goods 2208:15	2269:15
2261:20	fundamentally 2174:1	global 2150:10 2155:13	gotten 2244:3	heard 2128:15 2136:15
flags 2256:7,8,8,10	<b>funeral</b> 2252:20	2180:6	governance 2214:7,8	2139:15 2169:18
flash 2172:2	<b>furnish</b> 2141:2 2143:10	go 2127:16 2130:6	2215:3,4	2173:17 2176:25
fleet 2223:7,8	2162:12	2132:12,15 2138:13	governed 2218:9	2178:22 2197:16
<b>fly</b> 2170:9	furnished 2147:16	2138:21 2139:22,24	government 2184:23	2209:17
focus 2159:8 2182:2	further 2128:1 2130:1	2140:19 2142:13	2208:3 2217:20	help 2173:7 2183:3,13
2185:4 2189:2,13	2135:17 2138:24	2144:12,25 2145:18	2240:5 2266:20	2184:11 2190:18
2193:11	2176:2 2194:10,14	2145:23 2150:22,24	government's 2267:19	2198:25 2202:6,6
folders 2171:25	2214:24 2267:8	2155:10 2157:2,5,7,7	grab 2206:19 2237:15	2231:13
follow 2207:1 2247:8	<b>future</b> 2180:11 2213:5	2153:10 2157:2,5,7,7 2158:12 2166:22	2238:14 2245:2	helped 2262:14
2262:6	luture 2180.11 2213.3			helpful 2188:2
	G	2169:12 2176:2	2259:16 2266:18	-
following 2179:23		2179:2,17 2185:1,22	Grant 2206:9 2214:19	helps 2188:7
2198:12 2207:11,23	Galactica 2173:21	2190:23 2191:24	2246:22 2267:2	hey 2240:20 2251:13
2215:3 2247:24	Galatia 2173:21	2195:3 2198:1 2201:5	2269:24 2270:3,10	<b>he's</b> 2185:19,20
follows 2132:5	Gartner's 2213:9	2206:12 2211:4	granted 2205:2,7	<b>he'll</b> 2145:18
foot 2143:12 2147:15	2215:15 2256:19,22	2212:3,7,22 2222:6	2207:16	hiding 2259:21
2181:15 2193:1	2259:12 2267:13	2223:10,12 2225:6	graph 2218:24	high 2146:6,14 2212:19
force 2269:20,20	gather 2166:5	2229:8 2231:1	great 2173:24 2241:2	higher 2158:3
forensic 2150:1	gazetted 2207:15	2233:10 2236:4	group 2153:20	highlight 2219:4
forget 2160:5,17	general 2140:11	2238:1,2,7 2241:10	groups 2229:19	2260:25
forgive 2215:11 2229:1	2193:17 2239:6	2241:14,16 2244:10	grown 2127:6	highlighted 2214:5
2229:7	2260:20	2245:15 2248:19	guess 2173:21	2235:3
forgotten 2197:20	generate 2135:16	2251:21 2254:7,16,19	guided 2129:8	highlighting 2206:16
form 2131:22 2152:13	2138:6 2158:6	2257:17 2258:20	guideline 2230:19	2213:17 2215:15,19
2181:5 2240:7	generated 2135:17	2262:9 2264:10	guidelines 2229:9	2215:17 2215:15,17
former 2147:9 2194:13	0	2266:22 2267:10,12	0	highly 2164:11
	gentleman 2228:5		guiding 2128:19 2158:4	
2195:1 2244:5	getting 2190:16	2267:25	<b>guy</b> 2191:13 2265:12	high-performing
forth 2127:10,25	gigabytes 2172:1	goal 2218:11	guys 2173:16 2174:15	2180:9
2142:14 2200:24	give 2130:22 2135:2	goals 2180:1	2245:20 2246:18	history 2179:5
forward 2130:19,21	2139:10 2140:17	goes 2138:18 2145:5,15		Hobden 2127:12
2203:8 2222:5	2141:17 2142:15	2152:13 2228:11	<u> </u>	2142:5
2238:21 2243:23	2143:24 2144:10,17	2238:16 2268:13	hadn't 2164:22,23	hold 2213:4
forwarding 2242:1	2145:1,10 2148:4	going 2127:24 2132:22	2205:23	holding 2151:14,15
forwards 2191:11	2149:2 2163:16	2134:12,20 2135:1,2	half 2236:21	2200:19
found 2189:16 2191:9	2164:3 2166:12,18,22	2137:20 2140:1	hand 2257:6,7	holdings 2241:6
2202:13 2267:7	2168:18 2170:16,18	2142:4 2145:7	handle 2176:4	holds 2136:23
foundation 2225:13,15	2176:2,21 2203:12,16	2150:23 2151:20	hands 2137:11 2205:22	holiday 2224:22
2225:15 2226:9,24	2204:4 2212:20	2152:9 2155:25	handwritten 2221:17	holidays 2221:15
four 2141:8,10,13	2220:13,14 2224:24	2158:12 2162:21	hang 2167:13	2224:19,24
2147:22 2164:2,11	2224:25 2225:23	2167:13 2172:19	happen 2151:8,10	home 2178:15
2179:12 2194:17,18	2227:25 2228:6	2174:7 2176:2,21	2154:11 2173:17	honour 2141:20 2153:5
2211:5	2230:14 2233:12	2177:1 2178:21	2229:14	hop 2170:9
<b>fourth</b> 2170:10	2230.14 2233.12 2234:10,12 2235:13	2184:6,7,12 2187:4	happened 2152:2	hoping 2181:8
framework 2187:9	2237:5,10 2238:2	2190:18 2192:7	2172:17 2179:5	Hore 2187:17 2189:13
			2172:17 2179:5 2189:10 2192:1	
frankly 2138:12 Franson 2174:10	2244:16 2247:18	2194:12 2196:7,11,25		2191:12 2192:3 Hore's 2191:11
Franson 2174:19	2261:10 2264:22	2202:14,25 2206:4,21	2227:6 2239:6	
2175:7,13 2191:10,15	2265:15,22 2267:11	2207:18 2210:19,21	2250:14 2263:1,12	hour 2149:4
Friday 2141:17,21,23	2268:8,20 2269:17	2210:22 2211:1	2268:9	hours 2170:5 2261:21
2143:2,2 2149:13	given 2129:2 2134:18	2212:5,12,23 2213:8	happening 2178:23	2261:21
2168:23 2169:9	2139:16 2140:23	2215:16 2224:12	2179:6 2263:23	house 2225:11,12
2171:20 2172:6,8	2148:13,18 2149:14	2225:6,22 2226:19	happenings 2202:2	2226:8,24
2202:13,18 2234:12	2159:4 2163:19	2227:5 2229:12	happens 2223:6	hundred 2199:17
2234:12 2241:10,12	2165:7 2167:3 2168:7	2233:7 2237:11	happily 2136:5,13	
friend 2239:22	2168:15,25 2170:4	2238:3,4,23 2239:24	happy 2137:11 2265:3	I
frolic 2127:17	2189:13 2218:19	2239:25 2246:6,13,22	hard 2171:22,23	idea 2151:17 2177:24
fruitless 2205:5,24	2219:12 2220:6	2248:1,7 2251:16	2252:7	identification 2191:24
2217:23 2231:9,10	2224:21 2229:1	2253:10 2254:13,25	Hawks 2268:9	2266:21
2251:16 2267:12	2235:12,16 2242:23	2257:11 2262:17	head 2241:11,18	identified 2256:14
frustrated 2137:3	2246:22 2259:15	2264:22	heads 2225:4	identify 2141:8
		good 2131:11 2164:20	health 2134:22 2135:3	2187:20 2188:13
frustration 2137.1 2	2263:13.2266.7			
<b>frustration</b> 2137:1,2 <b>full</b> 2146:1 2147:17 18	2263:13 2266:7 2268:11 2269:4	0		
full 2146:1 2147:17,18	2268:11 2269:4	2165:7 2178:15	2137:10	2189:1
<b>full</b> 2146:1 2147:17,18 2147:23 2149:25	2268:11 2269:4 giving 2167:7 2200:9	2165:7 2178:15 2191:12 2203:18	2137:10 <b>healthy</b> 2187:19 2189:6	2189:1 identifying 2141:5
full 2146:1 2147:17,18	2268:11 2269:4	2165:7 2178:15	2137:10	2189:1

011 440 3647 011 440 9119

·			,	
	-	-		Page
ignore 2201:16	indicates 2196:6	instruction 2127:16	irregular 2211:19	2241:22,25 2243:16
ill 2202:17	indicating 2211:10	2135:21 2207:4,8,11	2228:18,19,21,22	2260:6
imagine 2190:7,10	indirect 2195:8	2208:12 2211:9,23	2229:24 2230:2,25	James 2176:6,6,7
immediate 2132:17	individual 2184:19	2212:10,11,13 2213:1	2231:3,5 2239:7	<b>January</b> 2221:12,16,19
2208:14	individuals 2180:10	2217:8 2237:24	2258:19,20,21	2221:20,24 2224:13
immediately 2127:5	2187:20 2188:14,16	instructions 2127:14	irregularities 2217:3	2234:17 2253:10
2143:11 2170:9	2188:23 2189:1	2224:10	2256:22	Jawaid 2131:14
2227:20 2236:14	inference 2224:6	insult 2127:23 2128:7	irregularly 2216:16,17	<b>job</b> 2127:21 2137:4
2239:4 2251:11	inferences 2140:3,6	2129:12,14	2264:2,3 2267:1	2183:14 2191:25
2256:7 2264:14	2191:5 2201:17	<b>integrity</b> 2213:10	issuance 2157:11	2192:18 2240:5
2265:22 2268:11	inferred 2236:25	intellectual 2185:6	issue 2131:20,21	Johan 2238:16,19
impact 2215:16 2255:2	<b>inflated</b> 2210:14	intended 2132:12	2132:2 2133:12,15	2241:2,22,25 2243:16
2255:22	influence 2190:4	2151:4 2208:14	2132:2 2133:12,13	2244:5 2260:6
impartial 2213:3	information 2129:1,24	intends 2164:15	2214:5 2215:2	
	-			Johannesburg 2131:15
implementation	2140:8 2143:13	intention 2180:17	2233:22,22 2236:8	2133:8 2174:23
2218:24 2222:22	2165:8,10,18 2166:5	interest 2150:11	2246:9 2249:6 2250:2	<b>John</b> 2174:15
2255:6 2256:4	2166:6 2167:6,7	2172:16 2178:1,2	2250:3 2266:4	journalists 2265:7
implemented 2213:18	2168:2 2170:19	2201:6 2213:4,7	issued 2148:3,7	judge 2143:5,9 2181:9
2246:11 2256:17	2171:8,12,14 2181:3	2239:19 2240:1	2157:16 2203:15,17	2182:21 2183:21
implementing 2212:15	2199:18 2205:3	2245:14	2208:12 2211:23	2185:1,24 2188:12
implication 2258:6	2227:25 2232:3	interested 2163:5,12	2213:22 2214:3,4	2189:8 2194:9
implications 2238:5	2234:6,10,12,13,14	2177:18 2225:14	2215:17 2216:6,23	2195:24 2196:2,21
import 2190:15,15	2234:15 2235:6,13	interesting 2244:21	2228:10 2235:3	2197:12 2198:3,18
<b>_</b>	2237:10 2240:17	2247:12	2236:6 2238:8	2199:7 2202:24
importance 2212:24				
important 2128:5	2245:13 2246:3,14,17	internal 2155:23	issues 2131:18 2136:19	2203:19 2213:18
2143:13 2151:4	2249:13	2157:8	2136:20 2193:21	judgement 2144:14,15
2178:24 2184:2	informs 2220:18	interpret 2200:15	2215:18 2217:17	judgment 2129:15
2185:18 2206:25	initial 2160:5,7,10	2201:17	2227:7 2245:25	July 2179:24 2228:6,8
2213:1 2214:6	2180:15 2217:5	interpretation 2164:19	2249:13 2261:1	2228:9,12,13 2231:15
2240:15	2248:7 2267:3	2244:5	2268:15	2234:19,20,23
impractical 2207:25	initially 2148:13	interpreted 2158:16	Italy 2132:8,15 2133:5	2235:15,15,18,24,25
2208:11 2211:10	2171:14 2214:20	interrogate 2128:11	2133:9 2134:3,5,6,8	2236:21 2237:8
impracticality 2218:3,9	initiated 2141:9	interrogated 2129:9	2174:9 2202:17	2249:22 2258:13
2247:5 2266:23,25	initiation 2231:18	interrupting 2215:2	ITC 2218:21	<b>June</b> 2186:24 2193:5,8
impression 2180:16	innocuous 2191:22	introduced 2146:4,13	it's 2132:5 2184:13,13	2193:13 2236:20
2242:17	input 2245:11	2149:18 2179:18,19	2184:15 2185:3,18,21	justify 2218:15 2250:13
improving 2189:3	inquire 2133:6	2260:23	2188:5,6 2213:24	
inadequate 2218:13	inquiries 2128:11	introduction 2179:25	2233:24 2235:21,23	K
2238:9 2250:12	2136:14 2137:12	introductions 2194:7	2236:1,3 2237:8,14	Kahla 2147:22,24
inapplicable 2227:17	inquiry 2128:9 2130:1	investigate 2216:18	2238:14,15,17	2148:1 2182:25
inaudible 2131:5	2130:7,7,15 2132:10	2217:14,19 2230:24	2239:16 2240:4,7,15	2183:2,8,15 2184:7
2225:2 2229:8	2133:3 2137:1	investigation 2150:2	2241:8	2185:12 2188:8
2243:19 2263:17	2138:18,20,21	2155:12,22,24 2156:1	I'd 2181:8 2187:22	2190:13 2193:23
2269:6	2148:12 2150:13	2156:21 2214:18,18	I'll 2179:17 2206:15	2194:2,3,8 2195:5
<b>incident</b> 2263:11	2151:16 2152:17,23	2218:7 2231:2	2240:20	2197:5 2198:24
included 2184:2	2171:16 2172:14	2251:14,15 2267:9	<b>I'm</b> 2183:16 2184:12	2199:5,19,21 2201:14
2244:22	2178:19,19,24 2203:4	,	2188:1 2190:12	2201:20 2202:7,11
		investigations 2214:24		
includes 2134:16	2203:4 2230:24	2217:5,6	2233:23 2236:19	2219:14,18 2222:5,12
including 2159:6	2231:2 2271:9	invitation 2199:2	2237:11 2238:10	2222:23 2223:14,20
2229:15	inquisitorial 2128:9	2219:15 2220:9	2240:8	2226:6 2231:13,20
inconsistencies 2182:1	<b>inside</b> 2200:9	invitations 2199:1,12	<b>i.e</b> 2147:9	2232:6,10,15,19
2224:5	insight 2198:11	invite 2211:11 2245:16		2234:2,5 2241:20
incorrect 2154:19	insists 2143:9	2252:21	J	2242:10,14,16
2157:1,15	instalment 2270:4	invited 2224:2	<b>ja</b> 2161:19 2194:9,17	2243:12,22 2244:1
increase 2184:19	institution 2208:3	invoice 2225:10,10	2194:20,23 2196:1	2248:18,23 2249:1,3
increased 2180:17	2211:4,5 2217:13	invoiced 2255:7 2256:1	2198:8 2200:7	2249:6,11,18,21,25
independence 2155:11	2221:4 2224:11	invoices 2225:5 2255:7	2201:20 2246:25	2250:2,5,8,15,18,20
independent 2150:5	2229:3 2239:3	2255:25	2249:5,11,24 2250:7	2269:24 2270:2,22
2155:14 2171:2,14	2263:24	involved 2174:25	2253:1 2255:4,9	220).24 2270.2,22
	institutions 2207:5,7			<b>KATZ</b> 2182:7,15
2172:16 2259:21		2175:22 2177:5	2257:13 2259:19	
	2208:10 2209:14	2188:1 2230:20	2264:24 2266:12	2192:24 2198:7
2260:18	0010.17 0011 17	2242:4 2243:2 2252:8	2267:10 2268:8	2199:24 2200:7
indicate 2197:23	2210:17 2211:17			0015 1 11 000 1 1
<b>indicate</b> 2197:23 2259:8	2212:1 2229:17	2261:14,15,16 2268:5	2269:1,6 2270:15,17	2215:1,11 2224:4
indicate 2197:23 2259:8 indicated 2134:15	2212:1 2229:17 instruct 2207:5	2261:14,15,16 2268:5 involvement 2248:12	2269:1,6 2270:15,17 2270:20,24	2225:3 2236:22
indicate 2197:23 2259:8 indicated 2134:15 2153:4 2255:3	2212:1 2229:17 instruct 2207:5 instructed 2131:16	2261:14,15,16 2268:5 involvement 2248:12 2260:11	2269:1,6 2270:15,17	2225:3 2236:22 2237:4 2248:25
indicate 2197:23 2259:8 indicated 2134:15	2212:1 2229:17 instruct 2207:5	2261:14,15,16 2268:5 involvement 2248:12	2269:1,6 2270:15,17 2270:20,24	2225:3 2236:22

# 25th September 2018 Commission of Inquiry into Tax Administration & Governance by SARS

### Inquiry

2255:22,25 2261:7 2271:5 <b>keep</b> 2254:12 2261:11 2261:18 2269:19	2233:17,19,22,22 2235:15,19,20,23 2236:6,9,23 2239:13	<b>loss</b> 2242:10 <b>losses</b> 2179:1,3 <b>lost</b> 2268:6	2201:1,22 2202:14,15 2203:16	Page meetings 2149:25 2150:5 2159:17
2271:5 <b>keep</b> 2254:12 2261:11 2261:18 2269:19	2235:15,19,20,23	losses 2179:1,3	2203:16	2150:5 2159:17
2271:5 <b>keep</b> 2254:12 2261:11 2261:18 2269:19	2235:15,19,20,23	losses 2179:1,3	2203:16	2150:5 2159:17
<b>keep</b> 2254:12 2261:11 2261:18 2269:19		·		
2261:18 2269:19	2236:6,9,23 2239:13			
			Massone's 2131:21	2160:8,10,16 2161:8
Learning 0007 1	2241:22,24 2242:11	lot 2127:8 2137:16	2132:3 2179:15,16	2161:18 2162:5
keeping 2227:1	2247:20,21,22 2248:3	2171:11 2177:3	Massone's 2137:13	2167:2 2179:15,16,21
key 2158:7 2187:9	2258:1 2263:13,17	2200:20 2204:3	2159:7 2160:9	2180:2 2194:14
2212:18 2214:4,11 le	letters 2139:18,20	2248:19 2271:5	2162:14	2195:1,5 2198:12
2217:24 2264:18	2187:21 2219:12	lots 2135:6 2158:15	master 2227:17	2202:3
kind 2137:22 2202:5	2262:6	lunch 2186:23	matter 2135:20 2137:2	Members 2131:10
	let's 2133:14 2162:23		2142:3 2195:6 2199:6	<b>memo</b> 2234:18
2147:11,15,17 2154:3	2174:6 2192:6,9	M	2203:13 2222:25	memorandum 2228:8
knew 2149:19 2162:18	2219:3 2243:5 2245:2	M 2173:25	2230:15 2227:17,20	mention 2194:4
2163:5	2219.3 2243.3 2243.2 2254:14,16 2267:10		2230:15 2237:17,20	mentioned 2183:18
		machines 2211:5		
	level 2146:6,14 2188:24	Magashula 2179:24	2264:17	2216:25 2237:23
2220:21 2225:14	2253:21,21	2183:3	matters 2166:4 2207:5	mentoring 2146:6
	levels 2189:3	main 2179:14 2240:18	2223:3 2264:4	merely 2192:11
0	lever 2136:2,4 2171:25	2246:9 2263:23	2265:21	2194:11 2203:22
2167:2 2175:16	2172:20,24 2189:16	major 2203:25 2248:9	Maverick 2239:21	Mergay 2241:25
2177:11,13 2184:11	liable 2129:4	making 2135:20,21	McKenzie 2170:23	met 2141:6 2145:11
2200:10 2227:15	life 2220:23 2255:10	2142:21 2151:5	McNally 2139:4,5,6	2146:16 2147:5,10
	light 2136:9	2152:19 2164:21	mean 2136:1,25 2147:4	2149:20 2161:1
	limitations 2237:21	2165:7 2215:20	2147:6 2150:21	2186:11 2197:6
	2243:9	2248:18	2177:3,18 2188:6	2222:1 2232:11
	limited 2208:17	Makwakwa 2193:19,21	2190:23 2200:13	2237:22 2242:6
	limiting 2208.17	2194:4 2196:17,18	2210:13 2234:16,17	2243:10
	limits 2213:11	2194.4 2190.17,18	2234:21 2238:24	methodology 2166:3,3
<b>L</b>	line 2145:24 2162:11	managed 2184:22	2239:23,24 2242:11	2173:9
lapses 2249:23	2180:13 2189:7,20	2247:6	2262:2	MFA 2229:11
largest 2205:14	2212:15	management 2184:4,5	meaning 2212:4	middle 2189:20
	lines 2145:24	2187:8 2203:21	meaningful 2134:18	migration 2206:19
	linked 2206:9	2206:22,24 2214:9	means 2128:10 2130:7	2237:15 2238:14
launch 2187:10	little 2134:4 2136:10	2215:4,7,8	2132:23 2183:25	2245:2 2259:16
law 2170:23 2213:14	2185:2	managers 2173:20	2188:9 2189:1 2208:5	2260:8,9,11 2266:18
lawyers 2247:2	loan 2264:24	2180:9	2232:22 2246:16	milestone 2226:8
	logs 2171:11	managing 2225:8	2258:10	milestones 2226:7,9
	long 2130:16 2138:17	manifest 2132:16	meant 2129:16 2132:15	million 2150:11
leader 2229:3	2146:7 2149:6	manner 2164:17,18,19	2189:6 2204:18	2204:25 2205:12,21
leaders 2128:8 2180:9	2158:11 2217:21	March 2207:19	2205:3,4 2236:13	2211:14 2212:5,6
			· · · · · · · · · · · · · · · · · · ·	,
leading 2198:10	2234:2,6	marked 2158:15	measurable 2226:13	2214:20,24 2216:2,4
	longer 2171:6 2174:17	marques 2252:21	measure 2188:21	2216:25 2217:1,4,7
leave 2166:10 2192:9	2176:12,13 2220:22	MASILO 2234:16	2226:22	2217:14 2218:20,21
leaves 2135:3 2200:13	2222:16 2238:17	2257:15,17,21 2258:6	<b>meat</b> 2267:11	2218:23 2228:13,14
led 2214:19	2248:12 2263:20	2258:14,16 2259:3	mechanism 2253:18	2231:4 2251:17,17
	look 2144:23 2150:22	Massone 2130:20,25	media 2127:5 2191:11	2257:19,22,23 2258:4
2140:1 2173:11	2154:10 2157:19	2131:1,4,16,19	medical 2132:18,18,19	2258:7,7,10,25,25
2184:3 2190:16	2160:9 2162:17	2132:6,17 2133:16	2133:8,9,19	2259:1 2262:23,24
2200:4 2210:25	2176:3 2179:6	2134:15 2135:24	meet 2180:7 2200:1	2267:3,4 2270:6,16
left-hand 2182:1	2181:13 2182:1	2136:6,13,18,23	2261:4 2262:14	2270:18
2187:10 2257:5	2185:20 2186:2	2137:7 2138:7,11	2263:10	millions 2265:12
legal 2131:19 2132:13	2192:17 2196:1	2139:18 2140:23	meeting 2145:21	2269:7
2132:16 2133:4,5	2200:15 2201:6	2141:3,4 2142:15,21	2154:10 2159:25	mind 2127:5 2129:15
2132:10 2135:4,5	2203:23 2207:23	2141.3,4 2142.13,21 2144:24 2145:7	2160:20 2161:15,17	2129:16,18,24 2130:2
2136:5,12 2137:13	2212:14 2213:24	2146:24 2147:2	2173:18 2180:14,15	2158:11 2166:13
2246:2	2218:10,12 2221:13	2148:4 2150:6	2180:22,23 2186:5,8	2194:2 2215:22
legally 2170:7	2225:4 2226:2	2158:16,18 2159:10	2186:8,19,23,24	2224:3 2246:6
legislation 2206:16,20	2229:11 2231:14	2161:8,18,21 2162:2	2193:12,17,18,20	2249:23
lenient 2244:16	2235:6,8 2238:21	2162:14 2166:25	2195:4 2200:11	mind-set 2213:11
letter 2133:15 2134:2	2240:20 2243:23	2167:12 2168:20	2220:10,11,14,18,18	minimum 2217:13
2140:22 2158:11,13	2245:10 2248:7	2169:6,13 2170:24	2221:24 2233:4,5,8	minister 2207:9,13,16
2162:8,12,16,24	2254:14,20 2263:22	2171:19 2173:16	2233:11,15,15,17	2252:20,20
2163:9 2167:9,17	2264:12,23 2266:18	2175:17 2179:11,18	2237:16,18 2238:24	MINS 2141:20,23
	2267:14,14 2269:21	2180:2 2185:1	2243:6,7,7,13,18	2142:1,6,9,11,16,19
2179:13 2188:12	,			
2179:13 2188:12 2202:14 2204:15	ooking 2185.10 21	2190:23 2191.10 13	2244:8 10 2245.5 57	2 42:25 2 43.7 1 7 2
2202:14 2204:15	looking 2185:10,21 2197·23 2214·14	2190:23 2191:10,13 2193:20 2195:16	2244:8,10 2245:5,5,7 2247:14 2253:8	2142:25 2143:7,17,22 2144·1 4 13
2202:14 2204:15 2210:1 2219:7,9,20	2197:23 2214:14	2193:20 2195:16	2247:14 2253:8	2144:1,4,13
2202:14 2204:15				

			2	_
				Page
minutes 2220:15	2160:12,20 2161:1	2188:9,14 2189:1	2181:10 2182:10	2169:22 2212:20
2232:13 2234:14	2162:13 2179:15,19	2190:5 2191:22,25	2247:21 2248:11	2241:3 2266:8
2235:11	2179:22 2180:1,2,22	neutralising 2190:8	2249:18 2250:6	option 2151:14,16
Min's 2189:9	2183:12 2185:8,24	never 2150:16 2195:16	odd 2217:1	2152:24
misconstrued 2188:14	2185:12 2185:8,24	2205:16 2213:13	offence 2127:23	options 2151:11
misleading 2266:3	2180:15,15,25	22203.10 2213.13	offer 2138:9 2152:5	oral 2128:15 2129:6
misnomer 2128:8	2193:1,16,19 2195:17	2239:13 2251:6	2154:15 2248:2	oranges 2254:21
missed 2157:18	2197:10 2198:12	2265:13	office 2134:1 2173:18	order 2142:13 2146:7
2230:13	2200:1 2219:7	<b>Neville</b> 2242:6	2180:4 2185:5	2173:1,2 2179:5,17
missing 2184:6	2231:15 2235:14	new 2174:2 2182:21,21	2192:21 2193:12	2180:16,21 2181:18
mission 2158:4	Mthombo 2219:6,10,16	2187:19 2192:22	2199:19 2241:11,18	2217:2 2219:25
misspending 2216:4	2219:22 2220:1,3	2193:2,13 2205:15	officer 2182:3,5	ordinarily 2255:18
<b>mistake</b> 2157:8	2222:8,19 2223:2	2227:17,18 2232:22	2197:19 2198:17	2261:24
<b>Mm</b> 2231:20	municipalities 2223:6	<b>news</b> 2173:24	2204:14 2212:14	ordinary 2180:6
model 2181:22 2193:2	municipality 2223:7	Nigeria 2174:13,14	2229:4,23 2230:3	organ 2208:6
2205:15 2223:9	<b>mustn't</b> 2179:3	night 2137:19	2237:25	organisation 2179:9
modernisation 2184:15	mustn't 2138:19	nomenclature 2188:10	officers 2206:23	2181:2,24 2182:4
2184:16,17,19,24	2140:7 2256:20	Nomvalo 2219:11	2207:22	2189:15 2193:11
2192:15 2213:22		non-disclosure 2164:9	offices 2146:17 2186:25	organisational 2181:22
2214:14 2216:11,19	N	normal 2234:23	2193:19 2195:23	2193:13
2217:3 2218:3	name 2131:14 2176:9	2255:11	officially 2150:16	organise 2165:17
2256:19 2264:2	2181:1 2194:2	normally 2185:20	officials 2226:19	original 2211:6 2235:9
modification 2256:12	names 2245:19	2258:2 2261:18	2228:3 2244:12	2235:10 2236:2
Mogogodi 2198:13	narrow 2136:19	note 2182:23 2207:11	2251:13	ought 2131:23,24
moment 2130:22	narrowed 2171:1	2208:12 2211:9,16,23	<b>Oh</b> 2131:8 2142:1	<b>Oupa</b> 2179:24
2192:10	narrowing 2171:16	2212:10,11,13 2213:1	2197:4 2200:7	outcome 2151:21
momentarily 2144:5	national 2195:13	2217:8 2236:23,24	okay 2147:21 2162:1,7	2152:17,24
Monday 2149:13	2203:21 2207:4	2237:24	2172:19 2175:6,23	outlined 2133:18
2173:18 2186:24	2208:8 2209:4,12	notes 2184:18 2207:4	2172:19 2175:0,25	outset 2127:3 2163:24
2173.18 2180.24 2193:5		2220:13 2233:15	2170.20 2182.14,15 2183:15 2192:10	outside 2200:9 2221:17
	2211:15,16 2229:15			
<b>money</b> 2150:9,12,16,23	2230:8,9 2263:12	<b>notice</b> 2170:5	2194:8,24 2198:23	outside-in 2162:16,25
2151:4,19,24,25	nature 2159:7	notification 2236:23,25	2202:11 2204:20	2180:20,25 2181:1
2152:3,8,9,12,20	Ndlovu 2193:23,24	2251:18	2206:10 2212:3	2183:8 2192:25
2153:4,8,15,18	2194:5	noting 2208:9 2211:22	2230:14 2243:22	overall 2180:18
2154:1,10,11,15,18	necessary 2130:8,10	notwithstanding	2256:13 2263:4	oversight 2151:2
2217:15,19,20 2226:1	2136:21 2138:14	2170:8 2189:9	2270:15 2271:4	2155:12 2156:3,7,8
2231:7,8 2247:18	2147:1 2166:6,19	Nugent 2143:5,9	omit 2158:19	2156:16
2248:16 2268:7	2194:1 2208:15	2148:11 2150:13	<b>once</b> 2152:1 2153:17,23	e e e e e e e e e e e e e e e e e e e
Monitoring 2203:21	need 2133:10 2134:25	2152:23 2164:1	2155:5 2157:17	overview 2245:24
month 2224:9	2136:18,24 2173:22	number 2135:16	2161:4,9 2166:7	o'clock 2203:2
monthly 2255:8	2178:10 2180:7	2137:8 2162:10	2215:24	
months 2132:6,8	2195:3 2198:20	2179:20 2206:7,20	ones 2203:25 2209:3	P
2170:10 2174:1,6	2203:16 2207:9	2208:13 2209:14	2211:5 2233:7	pack 2219:12
2210:24,24 2211:1	2212:18,19,20	2217:25 2218:12	oneself 2269:14	page 2143:4,9,12
Monyeke 2239:21	2217:21 2222:4	2220:11 2263:8	one's 2133:17	2144:21,23 2145:5,23
Moodley 2135:5	2226:19 2227:24	nutshell 2137:10	ongoing 2132:1 2214:9	2148:8 2158:11
2141:18 2162:12	2231:4 2237:10,16,22		2215:3,7,8	2162:11 2164:14
2178:5,8 2203:15	2240:6 2241:17,20	0	onwards 2198:5	2165:23 2197:3
morning 2131:11,13	2243:10 2245:9,10,21	objective 2213:3	open 2129:15,16,18	2103.25 2177.5
2139:8 2158:13	2246:7 2248:2,12	2223:14	2151:14 2164:16,18	2224:5 2231:14
2170:3 2234:13	2253:24 2254:21	objectives 2180:9	2164:19 2269:18	2235:24 2242:23,24
2271:2	2255:17,18 2256:8	2218:12	opened 2268:4,7	2248:19,23 2267:22
moulded 2218:11		objectivity 2213:11	operate 2180:3	
2266:17	2258:18,18,23,24		-	paid 2152:9,10,13,15
	2261:5,10,20 2263:22	obligation 2230:3	operating 2132:7	2154:1,19,19,22
moulding 2266:20	2264:12 2265:16	obliged 2141:4	2156:22,23 2158:1,7	2258:7,9
move 2222:5 2227:5	2266:14	obviously 2153:5	2182:3,4 2197:19	panel 2252:22
2237:11 2245:2	needed 2142:12,22	2161:5 2170:16	2198:17 2205:15	paragraph 2141:11
moved 2220:22 2224:2	2168:2 2245:11	2264:12,18	operational 2174:4	2145:16,16,25
	needs 2269:16	occasion 2128:7 2141:5	operations 2184:22	2148:10 2155:11
<b>movie</b> 2246:3		0141.10	opinion 2138:10	2156:20 2158:14
<b>movie</b> 2246:3 <b>moving</b> 2268:24	<b>negligent</b> 2231:5,6	2141:10		
<b>movie</b> 2246:3 <b>moving</b> 2268:24 <b>Moyane</b> 2140:25	negotiate 2263:14	occasions 2137:8	2154:21 2165:6	2162:11 2197:2,9,11
<b>movie</b> 2246:3 <b>moving</b> 2268:24 <b>Moyane</b> 2140:25 2141:1,3,6,12	negotiate 2263:14 negotiation 2263:14	occasions 2137:8 2146:16,20	2154:21 2165:6 2246:2	2198:4,10 2209:25
<pre>movie 2246:3 moving 2268:24 Moyane 2140:25 2141:1,3,6,12 2145:11,21 2146:1,3</pre>	<b>negotiate</b> 2263:14 <b>negotiation</b> 2263:14 <b>net</b> 2188:20	occasions 2137:8 2146:16,20 occurred 2141:9	2154:21 2165:6 2246:2 <b>opportunities</b> 2180:11	2198:4,10 2209:25 2210:2,6 2212:25
<b>movie</b> 2246:3 <b>moving</b> 2268:24 <b>Moyane</b> 2140:25 2141:1,3,6,12 2145:11,21 2146:1,3 2146:16 2147:5,11,18	negotiate 2263:14 negotiation 2263:14 net 2188:20 network 2195:14	occasions 2137:8 2146:16,20	2154:21 2165:6 2246:2 opportunities 2180:11 2180:12 2213:11	2198:4,10 2209:25 2210:2,6 2212:25 2213:8
<b>movie</b> 2246:3 <b>moving</b> 2268:24 <b>Moyane</b> 2140:25 2141:1,3,6,12 2145:11,21 2146:1,3 2146:16 2147:5,11,18 2148:1,2,3 2158:22	<b>negotiate</b> 2263:14 <b>negotiation</b> 2263:14 <b>net</b> 2188:20	occasions 2137:8 2146:16,20 occurred 2141:9 2166:2 2188:17 2193:9 2194:19	2154:21 2165:6 2246:2 opportunities 2180:11 2180:12 2213:11 2251:8,9	2198:4,10 2209:25 2210:2,6 2212:25
<b>movie</b> 2246:3 <b>moving</b> 2268:24 <b>Moyane</b> 2140:25 2141:1,3,6,12 2145:11,21 2146:1,3 2146:16 2147:5,11,18	negotiate 2263:14 negotiation 2263:14 net 2188:20 network 2195:14	occasions 2137:8 2146:16,20 occurred 2141:9 2166:2 2188:17	2154:21 2165:6 2246:2 opportunities 2180:11 2180:12 2213:11	2198:4,10 2209:25 2210:2,6 2212:25 2213:8

·	1 5		5	Dana 1
· · · · · · · · · · · · · · · · · · ·	,			Page 1
paramount 2213:4	perimeter 2187:14	<b>plan</b> 2174:6 2181:16	prepare 2168:3	2226:23 2227:4
part 2128:18,22	period 2167:17	2182:22 2183:18	2180:20 2221:8	2230:19 2236:4
2129:13 2151:3,4	2170:20 2207:13	2184:1 2188:14	prepared 2141:2	2248:8 2252:25
2179:14,15 2180:6	2210:21 2234:22	2241:9 2242:7	2147:18,23 2162:13	2259:14 2264:6
2181:5 2182:17	2236:20,20	plane 2170:9	2162:17 2180:15	2266:13
2185:12,24 2198:4	periods 2132:11	planned 2236:4	2181:3 2183:13	problematic 2228:25
2210:8 2247:22	2149:21	planning 2218:13	2187:1 2200:10	2229:10
2251:2	person 2138:22 2141:6	2238:9,11 2242:8	2239:8 2267:25	problems 2249:17
participate 2134:17	2173:10 2190:1	2250:12	preparing 2168:4	2256:13,14
2208:3,8 2209:5,9,15	2192:17 2201:5,22	plans 2224:10	2212:15 2247:10	procedure 2229:23
2209:20 2210:13,19	2203:18 2225:25	platform 2174:4	prescribe 2138:19	proceed 2214:8
2210:23,25 2211:3	2231:1,5,6 2253:16	play 2128:18,21	2151:13	PROCEEDINGS
2210.23,25 2211.5	2261:14	player 2247:3	prescribed 2150:13	2127:1
2220:20 2222:9,9	personal 2177:13	playing 2182:3	2152:22 2262:23	process 2128:9 2145:25
2223:4,9 2227:9	2180:8 2193:21	please 2134:2 2144:21	2263:2	2155:19 2156:10
2232:16 2267:16	2227:15	2173:20 2183:2	prescribing 2263:2	2160:22 2168:22
participated 2230:22	personnel 2188:17	2202:17 2203:8,23	prescription 2150:14	2173:19,22 2175:22
2244:15	person's 2134:22	2206:12 2215:2	present 2130:17,21	2173.19,22 2173.22 2184:21 2196:14
participating 2223:25	2166:8		-	
		2224:5 2236:23	2131:1,4 2133:5	2198:9,12 2199:4,13
participation 2134:18	perspective 2137:10	2238:22 2243:25	2147:4,10 2180:21 2192:8	2209:19 2212:25
2219:8,11,24 2231:16 2232:22	2180:20	2247:8 2248:4		2217:3 2218:1,15
	pertaining 2131:20	plenty 2236:18	presentation 2166:9	2230:4,22 2233:2,5
particular 2130:5	2132:24	plus 2150:11 2173:25	2181:5 2182:17	2241:15,17,18 2243:1
2132:10,13 2135:24	pertains 2131:21	2173:25	2185:8 2190:14	processes 2203:24
2157:22 2173:1	pertinently 2163:25	point 2151:21 2159:5	2204:11 2213:20	2206:4 2236:9
2182:2 2185:4 2226:6	<b>PFMA</b> 2207:12 2210:6	2161:7 2166:1	2230:17	procure 2207:11,22
2231:16	2228:22 2229:11	2169:25 2180:20	presentations 2146:17	2212:8
particularly 2127:9	phase 2204:22,24,25	2181:9,13,14 2183:7	2194:10	procurement 2160:22
2179:20	2205:1,1,4,4,5,8,11	2183:11 2184:3,14	presented 2128:15	2173:19,22 2196:13
parties 2194:1 2237:1	2205:20,23 2206:17	2187:10,13 2203:9	2129:22 2180:24	2198:14 2203:23
2242:3 2256:11	2206:18,19 2213:21	2248:18 2264:13	2187:1 2195:9	2206:4 2207:17
<b>partner</b> 2174:20	2215:17 2216:23	pointing 2184:8	presents 2181:25	2211:11,25 2215:21
partners 2155:13	2217:5,6 2218:21,22	pointless 2134:9	president 2179:16	2216:2 2218:1,13,15
2161:2 2164:12	2219:3,4 2226:3,4,11	<b>poor</b> 2238:11	2195:1,10 2269:17	2218:16 2221:25
<b>parts</b> 2179:14	2228:9,14 2229:20	<b>pops</b> 2181:21	presidential 2186:12	2224:10 2227:5,6
party 2194:7 2201:25	2235:2,6,25 2236:12	posed 2160:2,6 2197:5	2199:14	2228:4,5,15,17
2202:1,7 2208:7	2236:16 2241:18	position 2132:5 2135:9	press 2133:25 2148:7	2229:5,19,20 2232:14
2210:12	2246:19,20 2248:7,8	2139:16,22,25	2150:9,19,22 2151:1	2233:2,5 2235:4,5
<b>pass</b> 2129:13	2248:8 2256:13	2179:23 2201:3	2156:25 2157:3,6,17	2236:5 2237:21
passed 2133:21	2257:18,19 2258:8	<b>positions</b> 2188:15	2158:10	2238:5,9 2243:10
<b>passive</b> 2188:24	2260:10,10 2262:24	possession 2137:25	pressure 2218:4	2244:11 2250:12,14
paste 2257:25 2258:4	2266:19 2270:14	2143:25 2148:19	Pretoria 2141:19	2250:16 2254:22
patient 2133:21	phases 2226:7,18	2149:8,11 2162:10	2268:4	2256:5,21 2266:11,17
Patrick 2239:21	2255:2,15,15	possibilities 2129:19	prevented 2239:3	procurements 2261:25
<b>Paul</b> 2139:5,6	<b>Phoenix</b> 2182:23	possibility 2140:5	previous 2214:14	procuring 2207:1
pay 2154:15 2225:15	2195:11,12	2197:11	2216:11,18 2222:6	produce 2143:11
2225:16,17 2226:25	phone 2134:5 2197:18	possible 2133:12	2251:18 2256:11	2148:20 2185:22
payment 2152:13	phoned 2196:17,18	2151:13 2171:13	2264:1	2200:24 2201:5
2153:8 2154:25	photo-shopped	2173:24 2217:3	previously 2207:17	2230:16
<b>PBS</b> 2264:24	2265:11	2238:22 2243:25	2255:13	produced 2170:17
<b>pen</b> 2221:21	phrased 2207:24	possibly 2171:4	price 2255:23 2256:2	2171:19 2185:23
penetration 2245:4,7	physically 2151:9	potential 2192:22	principle 2158:2,7	2208:16
people 2127:6 2171:5	pick 2220:17 2264:9	2193:10 2224:17	principles 2156:22,23	product 2170:17
2178:21 2190:11,24	<b>picks</b> 2239:6	potentially 2171:15	2158:1,8 2213:14	2188:20 2227:12
2217:19,22 2225:14	piecemeal 2166:5,12,18	2253:3	prior 2146:2,3 2172:21	2232:24 2266:10
2225:22,24 2226:1	2167:15	power 2191:25	2183:4 2243:1	<b>PROF</b> 2182:7,15
2227:2 2229:16	pieces 2129:22,25	powerful 2189:14	priority 2172:17	2192:24 2198:7
2235:21 2244:23	2130:2	practitioner 2133:20	<b>prise</b> 2163:16	2199:24 2200:7
2246:6 2253:4,8,9,12	piggyback 2196:10,19	practitioners 2133:8,9	prisons 2200:2	2215:1,11 2224:4
2259:9,11 2261:19	2197:1 2198:1	Prakash 2238:15	private 2180:4 2185:4	2225:3 2236:22
2264:16,18 2265:2,3	piggybacking 2222:25	2241:25 2243:15	pro 2264:18	2237:4 2248:25
2265:16,19,25	place 2129:22,25	2260:6	probably 2151:2	2249:5 2251:4
				2255:22,25 2261:7
7702:12 70	2130:3 2141.11	precisely 2142.5	I Droblem Zinnin	
2269:15,20 percentages 2261:12	2130:3 2141:11 2153:10 12 2171:4	precisely 2142:3 2192:1 2202:5	<b>problem</b> 2135:3 2178:14 2190:21	-
percentages 2261:12	2153:10,12 2171:4	2192:1 2202:5	2178:14 2190:21	2271:5
			-	-

#### 25th September 2018 Commission of Inquiry into Tax Administration & Governance by SARS

# Inquiry

				Page 1
profile 2180:18	2223:2 2242:25	2137:22 2138:7,8	2144:5	record 2139:7
2259:15,17 2260:12	providers 2245:12	2137.22 2138.7,8	real 2140:5	recorded 2220:12
profiles 2261:16	-	2159:4,6,15 2160:2,6	realise 2183:14	2249:10 2258:11
profound 2181:14,16	<b>provides</b> 2143:13 2208:16			
▲ · · ·		2163:11 2165:1	realising 2180:12 2208:9	records 2146:24 2197:17
program 2184:15,16,17	providing 2146:5	2179:12 2198:19		
2184:19,25 2187:12	2212:21	2200:20 2201:1	really 2135:4,19,20	recover 2217:20,23
2237:15 2238:14	<b>provincial</b> 2209:13	2221:10 2228:1	2163:3,4,11 2175:24	recovered 2231:11
2254:17	2230:7,8	2229:21 2231:25	2177:17 2179:13	red 2256:7,7,8,10
programme 2174:5	provision 2208:13	2238:7,23 2244:10	2189:19 2194:3	refer 2149:21
2192:16 2195:15	2215:5 2229:1	2251:10 2257:14	2198:24 2200:25	reference 2137:17
2248:11 2255:6,16	pro-corruption	2260:1,24 2267:18,20	2201:5 2222:25	2158:1 2188:13,18,25
2256:20 2270:24	2229:16 2257:6	quick 2247:16	2267:15	2203:24 2221:5,7,9
progress 2130:1,3	<b>public</b> 2129:17 2151:24	quicker 2268:13	reason 2128:16,21	2222:7 2224:21
2133:7	2152:8 2154:17	quickly 2178:25	2129:2 2180:19	2231:23,24 2232:4
progresses 2130:4	2160:13 2198:15	2253:15	2191:16 2194:2	2233:9,10,18,21
project 2195:11,12	2206:22,24,24	quite 2135:9,25	2212:10 2217:7	2235:12 2236:6,7
2204:23,25 2206:19	2207:14 2224:24	2138:12 2204:3	2218:8,8,8 2237:17	2238:20,25 2239:1
2219:3,4 2221:16	2241:6 2252:19	2269:14	2237:18 2257:4	2240:10,11 2241:3,4
2223:25 2235:2,17	2261:25,25 2269:16	<b>quo</b> 2213:13 2251:6,7	2266:23,25	2241:21,23 2242:1,2
2241:18 2246:10	2269:18,19	2256:16	reasonable 2212:6	2242:9,18,20,21,24
2249:7,14,16 2251:25	publicly 2181:3	quotation 2238:21	2225:21	2243:3,19,21 2244:3
2255:3 2260:11,15	pulled 2185:10 2187:7	2243:24	reasonableness 2212:6	2244:4,12,13 2247:11
2261:15,16,17,17	purchaser 2240:23	quoted 2210:1,2	reasons 2212:7 2235:16	2261:6,24
2266:22	2261:13 2263:10	2246:23,24	recall 2142:22 2145:21	references 2194:10
projects 2195:10	purpose 2136:16,16		2145:24 2146:3,8	2198:15 2221:3
2212:16 2259:10,11	2179:25 2183:13	R	2147:4,10 2149:17,22	referencing 2171:12
2260:10 2266:18	purposes 2132:10	radically 2184:1	2150:5 2173:9 2183:3	referred 2141:3
<b>promoter</b> 2188:21	2222:24	raise 2135:4,6 2139:17	2187:14 2193:20	2146:22 2162:13
promoters 2188:23	pursuant 2132:1	2180:18 2256:7	2196:5 2200:11	2179:12 2222:1
2189:2 2190:11	put 2134:22 2135:2	2268:16	recalled 2129:5	2230:23 2233:11
proper 2229:23	2140:7 2190:25	raised 2249:13	recalls 2146:25	referring 2162:16,25
2234:24	2192:16 2199:3,12	ramp 2173:22	receipt 2143:6	2167:16 2210:1
properly 2174:2	2201:7,18 2204:3,17	range 2182:5	receive 2132:17	2216:11 2242:13
2214:17 2216:15	2219:13 2225:16	Rangewave 2239:10,11	2197:18,23 2224:10	reflect 2147:2 2231:16
property 2185:7	2226:15 2249:6	2239:20 2240:13	2231:7,8 2238:4	reflects 2129:19 2152:3
2267:8	2266:14 2267:22	2242:4,18,22,25	2242:7 2264:5	refresh 2181:15,16
proposal 2135:20,21	puts 2135:8 2239:5	2243:2 2252:11	received 2131:25	2184:1
2204:22 2221:8,11,11	<b>putting</b> 2155:19	2259:18,22 2260:3,5	2132:2,18 2133:19	refusal 2147:15
2221:13,16,18,19	2268:12	rangewave.com	2136:1 2144:20	refused 2142:17
2224:16,20,25,25		2238:17 2262:12	2148:22 2167:8	<b>refuses</b> 2147:6
2231:22,24 2233:20	Q	Rangewave/Gartner	2170:16,20 2198:13	refusing 2146:22
2235:5,7,10,19,20,22	qualified 2212:20	2242:2	2200:1 2202:14	regard 2187:16
2236:2,15,19 2238:2	quality 2159:7 2212:19	rate 2225:9 2227:1	2221:8 2223:24	2238:22 2243:24
2238:4 2239:2,17	2241:11,17,18	rates 2225:18,19,20	2230:15 2236:8	regarding 2180:3
2241:9,10,14,16	question 2130:5,6,10	<b>RDP</b> 2225:11,12	2262:5 2264:24	2198:17 2214:7
2244:17 2247:21	2130:12,13 2144:9	2226:8,24	2268:6	regional 2195:13
2253:20 2260:22	2154:5 2155:7	reached 2153:23	<b>receives</b> 2166:5	register 2227:2
2262:20 2267:17	2156:13,19 2158:1	2237:1	receiving 2238:21	2258:25
proposals 2131:23	2160:18,18 2163:19	reaching 2180:8	2243:24	regret 2147:1 2158:15
proposed 2182:20	2163:21 2183:17	read 2128:2,4 2162:23	recognised 2171:3	regular 2127:4 2132:9
proposing 2245:7	2196:5 2197:5,5,10	2167:18 2176:1,22	recognises 2135:11	regulated 2240:16
proprietary 2188:20	2198:24 2199:9,11,24	2187:22 2188:4,6	<b>recollection</b> 2145:10,18	regulation 2207:21
prospect 2138:11	2200:7 2201:23	2191:16 2199:7	2196:21 2199:25	2208:1,21 2209:3,21
protect 2165:24	2208:20 2210:11	2212:25 2213:7	2200:8	2210:12 2227:22
2269:15	2215:1 2222:3	2221:12 2226:13	recommendation	2262:22 2263:1,2
protected 2264:7	2227:11 2229:22	2227:13 2231:22,24	2214:16,19 2215:19	regulations 2207:8,19
protection 2264:7	2236:16 2238:10	2232:13,23 2236:12	2216:9 2250:23	2219:25
protector 2129:17	2241:13,19 2251:6,24	2238:7,18 2241:5	2267:13	<b>reinforce</b> 2155:11
prove 2252:23	2252:15,19 2254:3	2242:5,16 2244:1	recommendations	reiterate 2164:15
		2247:22 2249:15	2206:18 2215:14	reiteration 2164:15
proved 2150:10	2257:15 2263:23			
proved 2150:10 provide 2165:8.9.18	2257:15 2263:23 2266:14		2218:16.17 2235:3	rejected 2214:23
<b>provide</b> 2165:8,9,18	2266:14	2250:10 2255:1	2218:16,17 2235:3 recommended 2181:13	rejected 2214:23 2267:4.4
<b>provide</b> 2165:8,9,18 2171:22 2213:2	2266:14 <b>questioning</b> 2256:16	2250:10 2255:1 2259:7,16 2260:15	recommended 2181:13	2267:4,4
provide 2165:8,9,18 2171:22 2213:2 2244:24 2245:24	2266:14 questioning 2256:16 questions 2129:23	2250:10 2255:1 2259:7,16 2260:15 2261:15 2267:5	<b>recommended</b> 2181:13 2228:11 2267:14	2267:4,4 related 2129:17 2159:7
provide 2165:8,9,18 2171:22 2213:2 2244:24 2245:24 provided 2158:17	2266:14 questioning 2256:16 questions 2129:23 2130:8,8,9,10,14,14	2250:10 2255:1 2259:7,16 2260:15 2261:15 2267:5 <b>reading</b> 2134:11	recommended 2181:13 2228:11 2267:14 recommending	2267:4,4 related 2129:17 2159:7 2160:22 2199:12
provide 2165:8,9,18 2171:22 2213:2 2244:24 2245:24	2266:14 questioning 2256:16 questions 2129:23	2250:10 2255:1 2259:7,16 2260:15 2261:15 2267:5	<b>recommended</b> 2181:13 2228:11 2267:14	2267:4,4 related 2129:17 2159:7

relates:         cp:         cp					
2245:11         2248:4         2197:14 2257:18         2257:67         2192:02           2195:02 237:21         2133:6 224:321         respected 2155:14         respected 2155:14         respecting 217:22:35         2188:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:21         respecting 2132:25         respond 2147:61         220:61:52:22:23:22:22:22:22:22:22:22:22:22:22:22					Page
2245:11         2248:4         2197:14 2257:18         2257:67         2192:02           2195:02 237:21         2133:6 224:321         respected 2155:14         respected 2155:14         respecting 217:22:35         2188:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:20         2184:10 220:21         respecting 2132:25         respond 2147:61         220:61:52:22:23:22:22:22:22:22:22:22:22:22:22:22	rolatos 2107.10	represent 2131.15	2167-6 2170-1 15	2240.20 2252.18	Save 2127.0 2147.15
relating 2172:25         representative 213:19         2288:7         respected 2155:14         respecting 226:03         2188:14:17.12         2188:12:29:15           2244:11         representatives         respecting 2172:25         risk 236:32         2188:12:29:15           2188:10:200:20         2134:16:2136:51.13         respecting 2172:18         respecting 216:28         resp					
21056.2237:21         2133.6         2234:21         respectful 2170:13         risk 2250:3         2144:14,17.2         1288.10           2138.10         2132.13,16         2133:13         2132.13         2132.23         2148.10         2138.10         2201.15         2138.10         2201.15         2201.15         2201.15         2201.15         2201.15         2201.15         2201.15         2201.15         2201.15         2201.17         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.11         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2201.18         2				<i>*</i>	
2244:11         representatives         respecting 1247:01         risk 2134:22 218:5.         2188:12 2091:5           2188:10 2200:02         2134:10 2105:5.12         respond 2147:6         robust 2252:3         2199:02 199:12           22267.10 2292-32         173:13         2105:14 2172:18         1218:222         2128:5 219:10         2128:5 219:10         2128:5 219:10         2128:5 219:10         2128:5 219:10         2128:5 219:10         2128:5 221:12         2128:5 221:12         2218:5 2224:14         22224:12         2221:10         2128:5 221:12         2216:12:22:14:18         218:5 22:24:14         2223:10         2228:6 223:01:9         2228:6 223:01:9         2228:6 223:01:9         2228:6 223:01:9         2228:6 223:01:9         2238:6 223:01:9         2238:6 223:01:9         2238:6 223:01:9         2238:6 223:01:9         2238:6 223:01:9         2238:6 223:01:12         2201:01 22:01:01:20:01:12         2238:0 22:24:25         rub 269:4         2245:15 22:46:12         2245:15 22:46:12         2245:15 22:46:12         2245:15 22:46:12         2245:15 22:46:12         2238:12:22:46:12         2238:12:22:46:12         2238:12:22:46:12         2238:12:22:46:12         2238:12:22:46:12         2238:12:22:46:12         2238:12:22:46:12         2238:12:22:46:12         2238:12:22:46:12         2238:12:22:46:12         2238:12:22:46:12         2238:12:22:22:46:12         2238:12:22:24:12:12:12:12:12:12:12:12:12:					
relation 2147:18         2132:13.16 2133:4         respond 2147:18         risks 2269:11         21290:21         21290:21         21290:21         21290:21         21290:21         21290:21         21290:21         21290:21         21290:21         21290:21         21290:21         21290:21         21290:21         21290:21         21290:21         21290:22         2139:22         2109:22         2109:22         2109:22         2109:22         2109:22         2109:22         2109:22         2200:15         2200:15         2200:15         2200:15         2200:14         2239:12         2229:12 <th< td=""><td></td><td></td><td></td><td></td><td></td></th<>					
2188.10 2002.00         2134.16 2136.5,12         representing 1133.16         2165.14 2171.118         100 str 2252.33         2169.10 2271.14         2208.5 229.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2128.5 219.10         2228.6 223.01.9           relationship 248.15         request 214.84 2135.17         2560.44 267.18         rub 2569.4         2238.6 223.01.9         2238.0 223.01.9         2238.0 223.01.9         2238.0 223.01.9         2238.0 223.01.9         2238.0 223.01.9         2238.0 223.01.9         2238.0 223.01.9         2238.0 223.01.9         2238.0 223.01.9         2238.0 223.01.		-			
2226.116         representing 2135:12         2165:14 2172:18         role 2127:11.18 2128:2         2108:10 2207:25           relationship 2240:13, 18         representing 2138:12         2121:15         2109:10 2207:15         2210:15         2210:15         2210:15         2210:15         2210:15         2210:15         2210:15         2210:15         2210:15         2210:15         2210:15         2210:15         2210:16         2220:16         220:16         2220:16         2220:16         220:11         220:10         220:11         220:12         220:12         2220:12         2220:12         2220:12         2220:12         220:12         2220:12         2220:12         220:12         220:12         220:12         220:12         220:12         220:12         220:12         220:12         220:12         220:12         220:12         220:12         220:12         220:12         220:12         220:11         220:12         220:12					
2250.16         representing 2133:16         2100:21 2221:10         2128:2 210:10         2128:2 210:10         2128:2 210:10         2216:18 2212:12           224015.15.18         reprintion 2172:11,14         2254:1 2233:25         2199:1 220:115         2238:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:115         228:6 220:120:115         228:6 220:115         228:6 220:120:120:115         228:6 220:120:120:115         228:6 12:226:120:120:115         228:6 12:226:120:120:115         228:6 12:226:120:120:115         228:6 12:226:120:120:115         228:10:120:115         228:10:120:115         226:10:120:115         226:10:120:115         226:10:120:115         226:10:120:115         226:10:120:115         226:10:120:115         226:11:120:116         226:11:120:116         226:11:120:116         226:11:120:116         226:11:120:116         226:11:120:116         226:11:120:116         226:11:120:116         226:11:120:116         226:11:120:116         226:11:120:116         226:11:120:116         226:11:120:116         226:11:120:116         226:11:120:116         226:11:120:					· · · · · · · · · · · · · · · · · · ·
relationship 2240:15.18         reputation 2172:11.14         2222:4 223:25         2140:2 2174:2 218:3         2218:5 222:14           relatively 2170:20         request 213:12.1         2251:22 2254:25         220:24:8,0 220:0:2         220:25:22:23:24:25         220:26:8,0 220:0:2         220:62:22:27:4:22           relatively 2170:20         request 213:15:17         220:62:22:24:25         220:24:8,0 220:0:2         220:64:22:23:24:25         room 218:0:18         223:82:22:27:42           relatively 2170:20         request 213:15:17         220:62:22:24:24         rob 220:96:1         223:82:22:24:24         rob 220:96:1         223:82:82:22:44:1         223:82:82:22:44:1         223:82:82:22:44:2         224:41:41:5:2         226:41:22:22:1         223:41:2:22:22:1:2:22:22:1:2         226:61:22:22:22:1:2:22:22:22:1:2:2:22:22:1:2:2:2:2:2:2:2:1:2:2:2:2:2:2:2:2:1:3:2:2:2:2					
2240:15,15,18         reputation 2172:11,4         2234:12325:2         2199:1220:115         2226:19.227:142           relationships 208:15         2172:16         2236:12.2245:25         2102:89.200:2         2286:32.237:4           relationships 208:15         2148:21.2170:21         2200:28.2224:23         rub 2209:4         2236:23.2237:4           2157:17 2158:5         2148:21.2170:21         2200:23.2224:23         rub 2209:4         2238:8.2239:13           2160:22, 61,02.2         2177:24.2198:17         2238:6.239:13,14         2200:19.2266:16,20         2235:19.2235:12           2160:22, 61,02.3         2224:16.225:8         2236:13.223:21         rub 2218:11         2225:19         2246:12.2246:21           2162:42,516:13,21         2235:17.22246:10         rushed 2168:24         2246:10.2265:8         2245:19           2164:22,164:221:42         217:12.2204:11         213:15         2233:21         runing 2201:6         2246:10.2265:9           217:33 2179:20         213:21.166:25         2242:19         rushed 2168:24         2240:10         2247:12           218:41 9 2205:12         216:41.216:52         R15.5-million 2236:27         2268:10         2269:10         2268:12         226:10         226:12           216:42         217:11         223:12.220:12         216:13 <t< td=""><td></td><td></td><td></td><td></td><td></td></t<>					
relative) 21098:15         2172:16         2251:22 2254:25         2202:8.0 2260:2         2228:6 2230:19           relative) 21070:0         request 2134:8         2146:23 2147:7         responded 2166:24         room 2186:18         2238:2.3237.4           2157:17 2158:5         2146:23 2147:7         responded 2166:24         room 2255:17         2238:2.8237.4           2196:22         2107:2.4 2198:17         2230:8 2232:14         rub 2209:4         224:14.15.22           216:24:5.16,23         224:16 2225:8         2238:6 2239:13,14         2209:10 2266:16.20         2236:13 2237:4.4           216:44:5.16,10.13,24         2233:15.17 223:46         responds 218:12         rub 220:47         7111:217:28:2         226:10 2267:1.9           216:45:216:13         213:25         responds 219:1.3         rub 220:4.2         226:10 2267:1.9         226:10 2267:1.9           218:49:208:12         216:7:211:16:25         responds 216:7.1.3         R15:201:10:22:24:22         rub 220:4.2         226:10 226:1.9         226:10 226:1.9         226:10 226:1.9         226:10 226:1.9         226:1.0         226:1.0         226:1.0         226:1.0         226:1.0         226:1.0         226:1.0         226:1.0         226:1.0         226:1.0         226:1.0         226:1.0         226:1.0         226:1.0         226:1.0         226:1.0<	relationship 2240:13				
relatively 2170:20         request 21348 2135:17         2220:22 4267:18         room 2186:18         2235:23 2237:4           2157:17 2158:5         2144:32 1270:21         responded 2166:24         rob 2269:4         2244:14.15.22           2169:22         2197:24 2198:17         2230:32 224:23         rub 2269:4         2244:14.15.22           2196:22         2197:24 2198:17         2230:18 2232:21         rule 2218:11 2229:1         2247:12 227:15           2160:25,6:10.23         2224:16 2225:8         2235:18 2262:6         ruling 216:15         226:19 226:12         226:13 2257:45           2160:24,5:10:32.21         2239:1,17 2245:13         219:25 223:32:1         runing 210:16         SBD4 2239:19 225:19         226:13 226:12         226:13 226:12         226:13 226:12         226:13 226:12         226:13 226:12         226:13 226:12         226:13 226:12         226:13 226:12         226:13 226:12         226:14         224:19         runing 220:16         SED4 223:19         226:13 226:12         226:13 226:12         226:13 226:12         226:12         226:13         226:12 226:12         226:13 226:12         226:12         226:12         226:12         226:13         226:12         226:12         226:13         226:12         226:12         226:13         226:12         226:12         226:13         226:12         2	2240:15,15,18	reputation 2172:11,14	2234:1 2235:25	2199:1,2 2201:15	2226:19 2227:14,24
release 2156:25         2146:23 2147.7         responded 2166:24         rom 2186:18         2238:28,12 2243:1           2157:17 2158:5         2144:23 2170:21         2200:32 3224:23         rub 2269.4         2244:14,15.22           2196:22         2197:24 2198:17         2220:16,17 2222-9,9         2238:6 2239:13,14         2260:19 2266:16.20         225:13 2257:4.2           216:42.6(10,13,24)         2233:13,17 224:5.1         reporting 216:4:25         rub 2269.1         226:10 2267:4.5           216:42.4(10,13,24)         2233:13,17 224:5.1         reporting 216:4:25         rub 226:10 226:1.2         226:10 226:1.2           216:42.4(210:31,321)         2239:1.17 224:5.1         rub 226:1.2         rub 184:22 2249:7         226:1.0 226:1.2           216:42.1(217):15         reported 216:5:1.1         rub 184:22 224:9         rub 184:22 220:9.7         226:1.0 226:1.2           218:19 220:12         217:12 220:4:1         224:1.9         rub 184:22 22:1.9         scary 219:1.5           218:14 220:12         221:4:9         rub 184:22 22:1.9         R115-million 223:5         scary 219:1.5           221:4:12 22:1.2         221:4:9         rub 14:22:1.4:1.2         R12:1.2         scary 219:1.5         scary 219:1.5           221:4:12 22:1.2         22:1.4:1.2         22:1.4:1.2         22:1.4:1.2         22:1.7	relationships 2198:15	2172:16	2251:22 2254:25	2202:8,9 2260:2	2228:6 2230:19
2157:17 2158:5         2148:21 2170:21         220:23 2224:23         rub 2269:4         2244:14,15.22           21962:26,56.9.16         2197:24 2198:17         223:08 2239:13,14         rub 2218:11 2259:1         2245:15 2246:21           21602:26,61.0.23         2224:16 2225:8         rub 218:20         225:13 2257:4.5         2245:13 226:2.6         rub 218:11 229:1.7         223:15 225:7.4.5           21642:45:163:13.21         223:15:17 223:4.6         rus 223:31:2.1         rus 223:31:2.7         run 218:42:2.249:7         226:68           21642:45:163:13.21         221:65:25         224:19         rus 42:17:11 2178:31         rus 42:18:220:62         scared 219:113           relocated 213:0:6         721:49:2224:12         216:41:20:249:7.19         rus 42:17:12	relatively 2170:20	request 2134:8 2135:17	2260:24 2267:18	roof 2225:17	2236:23 2237:4
2157:17 2158:5         2148:21 2170:21         2220:23 2224:23         rub 2269:4         2244:14,15.22           2169c2:56:9,16         2197:24 2198:17         2230:18 2232:21         rub 2218:11 2229:1         2245:15 2246:21           2160:2.56,10;23         2224:16 2225:8         2245:18 262:6         rub 218:20         2256:13 2257:4,5           2161:46,10,13;24         2233:11,7223:46         2293:13,21         2266:22         2136:15         2266:16:20         2266:17         2256:13 2257:4,5           2164:25:16:13;321         2233:11,7223:46         2191:13         ruming 220:6         SBD4 2239:19,22           214:41:19:20:31:2         216:5:2         224:19         rushed 2166:24         S240:2           218:41:9:20:31:2         216:6:25         224:19         rushed 2166:24         S240:2           228:32:229:14:4         221:3:220:12:4         224:78 2253:3         R12.9 227:19         scope 21:02:217:11           relocated 213:6:8         223:1:1 22:0:2         response 21:3:6:13         R12.2 22:1:15         scope 21:0:0:2:17:12           remainse 21:9:25         requeing 21:49:22         response 21:3:6:13         R14 22:3:6:1,4         22:3:7:19         scope 21:0:0:2:17:12           relocated 21:3:25:13         response 21:3:6:13         R14 22:3:6:1,4         response 21:0:0:1:78:9         s	release 2156:25	2146:23 2147:7	responded 2166:24	room 2186:18	2238:2,8,12 2243:18
relevance 2195:69,46         2171:12173:3         2227:8 228:2         rule 2218:9         2245:15 2246:21           2196:22         2290:16.17 2222:9         2238:6 2239:13,14         2260:19 2266:16 20         2253:19 2255:2           216:24,50,10,33         2239:1,17 2245:13         2292:3,17 1243:23         2292:3,17 1243:23         2238:13 227:4,5           216:24,50,10,32         2239:1,17 2245:13         2192:3 223:21         ruling 216:25         ruling 216:25         226:10 226:1,6           216:42,11,12,171:1         2239:1,7 224:13         2192:3 223:21         runing 216:25         226:1,0 226:1,2           216:41,51,200:12         216:7,5 2169:7,1211:9         response 2143:1         R115-million 223:5         scary 219:1:5           218:19 220:12         217:12 220:42.1         216:13 2165:21         R115-million 223:5         scary 219:1:5           2216:42 224:9         221:49         223:41:4 223:1.9         223:41:4 224:1,71         R12 221:62         scary 219:1:5           remains 219:25         223:41:12         223:1:1         222:1:4 22:21:1         R12 22:1:6         Score 217:2         227:19         score 217:1         score 217			-		
2196:22         2197:24 2198:17         2230:18 2232:21         rules 2218:11 2229:17         2247:22 2251:36           2160:25.6.19.23         2220:16.17 2229:9         2236:82 6239:13.12         2216:19 2266:16.20         rules 2218:11 2229:7         2258:19 2255:2           2162:4.5 216:13.21         2239:117 2245:13         2192:3 223:22         rules 2218:11 2224:7         2266:18 2256:4           2164:2.4 211:12 2171:15         requested 2131:25         response 2143:1         rules 2218:12 224:9         running 2201:6         SBD 4 2239:19:22           228:32 224:42         2171:22 2204:21         2164:13 2165:18         R115-million 2236:2         scared 2191:13           relocated 2136:68         2214:9 2224:78 2252:3         R 112 2216:25         scared 2191:13         scared 2191:13           remaining 2248:9         2236:15 2259:9         responsible 2182:6         R12 2216:25         scared 2191:13           remaining 244:9         2236:14 2219:21         responsible 2182:6         R5 2257:22         scare 2197:22           2244:12 219:2         2234:12 235:11         2227:171:42 2619         R14 2236:14         score 2197:22           remaining 2242:2         requesting 2149:5         responsible 2182:6         R5 2257:22         score 2197:22           remaining 224:2         requesting 2177         resting 216:3					
relevant 2128:20         2220:16 2225:8         2248:6 2239:13,14         2260:19 2266:10.20         2258:19 2256:2           2160:2.56.19.23         2233:15,17 2234:6         responding 2164:25         2136:15         ruling 217:11 2128:2         2256:13 2256:3           2164:2.11,2171:15         responding 2164:25         rusing 210:16         2266:19 2266:10.2267:19         2266:18 2266:2           2173:3 2179:20         2135:1 2166:25         responding 2164:25         rusing 210:16         2240:2           2184:19 220:12         2135:2 1266:25         2242:19         rusind 2168:24         2240:2           2184:19 220:12         2213:2 220:12.14         2242:78, 2253:18         R115million 2236:7         seared 2191:13           2182:20 220:12         213:2 120:12.14         2242:78, 2253:12         R125.2million 2236:3         seared 2191:13           219:225         223:11,219         217:14 224:17,17         R142 2257:14         223:19,1224:42           remain 2129:25         requesting 2149:5         responsive 2163:18         R15.2million 2236:3         sairts 229:13           remedies 215:13         220:22         223:41         223:51:1         reguesting 2149:5         responsive 2163:18         sairts 229:13         sairts 229:13           remain 2129:25         requesting 2149:5         responsive 2163:18					
2160:2,5,6:19,23         2224:16 2225:8         2245:18 2262:6         ruling 2127:11 2128:2         2256:13 2257:45           2161:4,6:10.13,24         2239:15,17 2245:13         2239:15,17 2245:13         219:23 2233:21         run runing 2201:6         226:10 2267:19           2164:2,11,12 217:112         216:15         requested 2131:25         responts 219:113         running 2201:6         SBD4 2239:91,22           217:33 2179:20         2135:21 216:623         224:19         runshed 2168:24         Stared 219:113           relocated 2132:6         2221:49 2242:01         response 2143:1         R115-million 2236:2         sceret 219:115           relocated 2132:6         2221:49 224:07         response 2143:12         R12.92257:19         scoptical 2149:22           remains 2129:25         2234:11 2235:11         2215:15         R5 2257:22         scoptical 2149:22           remains 219:25         requesting 2149:5         result 2156:217:4         scoptic 217:12         scoptic 216:12           remains 219:25         requesting 2149:5         result 2156:618:418         satist 2229:13         scurrying 216:13           2216:22         requist 217:02         result 218:6:218:22         satist 229:13         scurrying 216:13           2216:22         requist 217:02         result 218:6:218:22         satist 2229:13 <t< td=""><td></td><td></td><td></td><td></td><td></td></t<>					
2161:4,6,10,13,24         2233:15,17,2234:6         responding 2164:25         2136:15         226:15,12         226:15,229:71,72234:6         run 218:42:2299:71         run 218:72:25         regetical 213:12:19         213:11:19         run 218:72:25         regetical 219:11:3         run 218:72:25         regetical 219:21         run 218:72:25         run 218:72:22:19         run 218:72:22         run 218:12:22:22:22:22:22         run 218:22:22:23:22:2					
2162:4.5 2163:13.21         2239:1.17 2245:13         2192:3 223:2.1         run 2184:22 2249:7         2268:8           2173:3 2179:20         213:1 2166:25         responds 2191:13         run 2184:22 2249:7         2268:8           2184:19 2203:12         2167:5 2169:7 2171:9         responds 2191:13         run 2184:22 2240:7         scared 2191:13           2228:23 2244:24         2171:22 2204:21         2166:13 2166:21         R115-million 2235:9         scare 2191:15           relocated 2136:68         221:49 224:20         response 216:7.13         R12 2216:25         scare 2191:15           remain 2129:25         223:41 2235:11         2237:12 226:15         R50 2217:14         2243:8           remains 2129:25         requesting 2149:5         responsible 218:6         R5 2257:22         2263:14           remember 2149:18         2211:52 2242:49         2221:12 224:49         2224:38         scoping 2247:7           remember 2129:25         requesting 2149:5         responsible 218:6         R5 2217:14         scoping 2247:7           remember 2129:26         requesting 2149:5         responsible 218:6         R5 2217:14         scoping 2247:7           remember 2149:18         2211:52 221:52 223:4         R65 2217:14         scoping 2247:7         score 217:22           remember 2149:18         2219:1				0	-
2164:12         crquested 2131:25         responds 2191:13         running 2201:6         SBD 4239:19.22           2173:3 2179:20         2132:1 2166:25         2242:19         rushed 2168:24         2240:2           2184:19 2203:12         2167:3 2169:21         2164:13 2165:21         R115-million 2236:2         scared 2191:13           reliable 2181:3         2213:2 220:12,14         2242:7,8 2252:3         R12 2216:25         scared 2149:22           reliable 2181:3         2233:3 2233:12,19         2137:14 2224:17.17         R16-million 2236:3         sceptical 2149:22           remain 2129:25         2234:11 2235:11         responsive 2163:18         R5 2257:22         2247:9,19 2248:4,7           remedise 2151:13         2198:14 2219:21         responsive 2163:18         responsive 213:52:2         scopie 2224:7           remedise 2151:13         2204:12         2234:18         2227:17.18         sains 2229:13         score 2197:22           2214:12 222:24:22         217:17         retuin 2147:3         saitsfed 2153:22         score 2197:22           2237:13 23238:22         require 2129:17         retuin 2147:3         saitsfed 2153:22         score 2197:22           2237:14 224:19         224:9:19         staffed 2153:22         score 2197:22         score 2197:22           2211:12 222:22:22:23:23 <td></td> <td></td> <td></td> <td></td> <td></td>					
2173:3 2179:20       2132:1 2166:25       2242:19       rushef 2168:24       2240:2         2184:19 2208:12       2167:5 2167:7 2171:9       response 2143:1       R1152-million 2236:2       scared 2191:13         reliable 2181:3       2213:2 2220:12,14       2242:7,8 2252:3       R12 2216:25       scared 2191:13         relocated 213:6,8       221:4,9 2244:0       responses 2136:7,13       R12 2216:25       scope 2170:22 2171:1         remain 219:25       2234:11 2235:11       2217:14 2261:9       R14 42236:1,4       2237:19 2243:8         remains 219:25       requesting 2149:5       responsible 2182:6       R5 2257:22       2263:10,16,18,19         remember 2168:220:1:13       2198:14 4219:21       rest 2135:22 2136:23       scope 2170:24       scope 2170:22         remember 2169:22       221:2:22 224:22 224:32       require 2135:6       R5 227:12       scope 177:22       scope 177:22         221:2:22 224:22       217:18       rest 2156:13       staffaction 2188:22,25       score 2177:22					
2184:19 2203:12         2167:5 21697 21719         response 2143:1         R115-million 2236:2         scared 2191:13           2228:23 2244:24         2171:22 2204:21         2164:13 2165:21         R115-million 2236:3         scared 2191:13           reliable 2181:3         2213:2 2200:12,14         2242:7,8 2252:3         R122 216:25         scared 2170:22 2171:1           remaining 2248:9         2233:3 213:11         2217:14 2261:9         R122-million 2236:3         2171:16 2214:21           remaining 2248:9         2236:15 2259:9         responsible 2182:6         R5 2257:22         2247:91 9248:4;7           remedies 2151:13         2198:14 2219:21         responsible 2182:6         R5 2217:1         scope 326:8;10,16,18,12,10,11,18,222,23,18,22,22,22,22,22,22,22,22,22,22,22,22,22	· · ·	-	-	-	-
2228:23 2244:24         2171:22 2204:21         2164:13 2165:21         R115.2-million 2235:9         scary 2191:15           reliable 2181:3         2213:22 220:12,14         2242:7,8 2252:3         R12.9 2257:19         scopia 2170:22 2171:14           relocated 2132:68         2233:12,19         2137:14 2224:17,17         R126-million 2236:3         2171:16 2214:21           remain 219:25         2236:15 2259:9         response 2166:19         R14 2236:1,4         2237:19 2243:8           remains 219:25         requesting 2149:5         responsible 2163:18         R5 2257:22         2263:14,016,18,19           rememines 2151:13         2198:14 2219:21         rest 2135:22 2136:23         saints 2229:13         scoping 2247:7           2204:21 2210:2         2234:18         2227:17,18         saits 220:13         scorping 2247:7           2233:10 2236:11         2167:19 248:12         result 2150:178:19         saits 220:13         scorping 2247:7           2234:10 2236:11         2167:19 248:12         result 2158:6 218:18         saits 220:13         scorping 2247:7           2234:10 2236:11         2167:19 248:12         result 2158:178:19         saits 220:16:12:23:3         scipi 219:223:3           2234:10 2236:11         2167:19 248:12         result 2158:6         saits 220:16:23:223:12         scipi 219:223:12			,		
reliable 2181:3         2213:2 2220:12.14         2242:7,8 2252:3         R12 2216:25         sceptical 2149:22           relocated 2132:6.8         2221:4,9 2224:20         responses 2136:7,13         R12-216:25         scope 2170:22 2171:1           remaining 2129:25         2234:11 2235:11         2227:14 2261:9         R124 2236:14         2237:19 2243:8           remedies 2151:13         2298:14 2219:21         responsibe 2186:6         R5 2257:22         2247:19 19 2248:7           remedies 2151:13         2298:14 2219:21         responsibe 2136:23         R67 2217:14         scope 2276:2           remedies 215:13         2208:14 2219:21         results 2156:6 2184:18         R67 2217:14         scope's 2256:2           remedies 212:22         2234:18         2227:17.18         sake 2217:22         scorping 2247:7           2228:14 223:24         2172:18         RESUMES 2178:19         sake 2217:22         scorping 2247:7           2228:14 223:41         2167:19 2248:12         retain 2184:3 2187:8         satisfied 2155:22         staisfied 215:12         scorping 2247:7           2228:14 223:42         2172:18         RESUMES 2178:19         satisfied 2155:22         staisfied 215:32					
relocated 2132:6.8         2221:4.9 224:20         responses 2136:7.13         R12.9 225:19         scope 2170:22 171:1           remain 2129:25         2233:3 2233:12.19         2137:14 2224:17.17         R126-million 2236:3         2171:16 2214:21           remain 2129:25         2236:15 2259:9         responsible 2182:6         R5 2257:22         2247:91.92248:47           remains 2129:25         requesting 2149:5         responsive 2163:18         R5 2257:22         scope's 2256:2           remedise 2151:13         2198:14 2219:21         result 2150:12 178:9         sains 2229:13         scope's 2256:2           2204:21 2210:2         2234:10 2224:9 2234:9         2234:9         2234:10 2236:11         2165:15 2253:3         score 2197:22           2215:13 220:5         require 2170:22         result 2160:12 178:9         saits 2217:22         score 2197:22           2234:10 2236:11         2167:19 2248:12         retain 2184:3 2187:8         saitsfiedion 2188:22.25         scoore 2137:12 12150           2234:10 2236:11         2166:7         2206:8         saitsfied 2153:22         218:4:3 2207:12         2166:7         2106:14 224:25         2207:20           2266:2         requirement 2200:2         2171:10.11.14 2183:8         saitsfied 2153:2         218:4:220:12         218:4:220:12         218:4:220:12         2178:12:12:12:12					
rely 2259:14         2233:12,19         2137:14 2224:17,17         R126-million 2236:3         2171:16 2214:21           remaining 129:25         2234:11 2235:11         2227:14 2261:9         R144 2236:1,4         2237:19 2248:47           2255:2         2263:14 2219:21         responsible 2182:6         R5 2257:22         2263:18,19           remedies 2151:13         2198:14 2219:21         responsible 2182:6         R5 2257:22         scoping 2247:7           remedies 2151:13         2198:14 2219:21         result 2150:1 2178:9         Scoping 2247:7         scoping 2247:7           2204:21 220:2         2234:18         2227:17.18         saints 2229:13         scoping 2247:7           2215:13 2220:5         requires 129:8,8,9         2203:4         results 2158:6 2184:18         saints 229:15 2253:3         2171:16 (2173:2           2234:10 2236:11         2167:19 2248:12         retain 2184:3 2187:8         satisfaction 2188:22.55         2158:14 2179:15           2244:9 2249:10         2128:12,23 2130:17         return 2147:3         satisfaction 2188:22.5         2166:18           2262:17 2266:9         2131:19 2141:16         return 2147:3         satisfaction 2188:22.5         218:3 2207:20           2262:17 2266:9         2166:8, 2231:21         2166:18         saying 2138:13,20         2166:18					
remain 2129:25         2233:11         2227:14         2261:9         R14         2233:12         2237:19         2233:10         2233:10	relocated 2132:6,8			<b>R12.9</b> 2257:19	scope 2170:22 2171:1
remaining 2248:9         2236:15 2259:9         responsible 2182:6         R5 227:22         2247:9,19 2248:47           2255:2         2263:14         responsible 2182:6         R5 0217:1         220:3:10         220:3:10           remains 2129:25         requesting 2149:5         responsible 2182:6         R5 0217:14         scope's 2256:2           remember 2149:18         2222:2224:92234:9         2234:19         result 2150:12178:9         saints 2229:13         score 2197:22           2228:14 2232:4         requests 2170:22         results 2158:6 2184:18         sake S2 179:19         SARS's 2195:15 2253:3         2170:16 2178:9           2234:10 2236:11         2167:19 2248:12         refauire 2129:8,89         2203:4         satifaction 2188:22.25         secore 2197:22         sec	rely 2259:14	2232:3 2233:12,19	2137:14 2224:17,17	<b>R126-million</b> 2236:3	2171:16 2214:21
2255:2         2263:14         2212:15         R50 2217:1         2263:10,16,18,19           remedies 2151:13         requesting 2149:5         responsive 2135:22 2136:23         R67 2217:14         scope's 2256:2           2204:21 2210:2         2234:18         2227:17,18         saints 2229:13         score 2197:22           2215:13 220:5         requests 2170:22         requires 2179:24         result 2150:1 2178:9         saints 2229:13         score 2197:22           2228:14 2232:4         require 2129:8,89         2203:4         sat 2203:6         sat 2203:6         2190:24 2230:12           2234:10 2236:11         2167:19 2248:12         retain 2184:3 2187:8         satisfied 2153:22         2190:24 2230:12         secord 2131:21 2150:           2244:9 2249:10         2128:12,23 2130:17         return 2147:3         satisfied 2153:22         218:43 2204:23         218:43 2204:23         218:43 2204:23         218:43 2204:23         218:43 2204:23         218:43 2204:23         2206:8 a208:15         retwee 2169:2,8 2171:9         2250:24 2268:6         satisfied 2153:22         218:44 249:16         224:92 220:18         satisfied 213:12         220:18 2267:40         2214:9 223:5;1         224:92 2267:6;10         224:92 2267:6;10         224:92 2267:6;10         224:92 2267:6;10         224:92 2267:6;10         224:92 2267:6;10         224:92 2267:6;10 <t< td=""><td>remain 2129:25</td><td>2234:11 2235:11</td><td>2227:14 2261:9</td><td><b>R144</b> 2236:1,4</td><td>2237:19 2243:8</td></t<>	remain 2129:25	2234:11 2235:11	2227:14 2261:9	<b>R144</b> 2236:1,4	2237:19 2243:8
remains 2129:25         requesting 2149:5         responsive 2163:18         R67 2217:14         scope's 2256:2           2204:21 2210:2         2234:18         result 2150:1 2178:9         2227:17,18         scope's 2256:2           2215:13 2220:5         requests 2170:22         results 2158:6 2184:18         sake 2217:22         score 1295:15         score 1295:15         2217:16         score 1295:15         2217:17:18         score 1295:15         score 1295:15         2217:17:22         2171:16         2171:16         2171:16         2171:16         2171:16         2171:16         2171:16         2171:16         2171:16         2171:17         2171:16         2171:17         2171:16         2171:17         2171:16         2171:17         2171:16         2171:12         2171:16         2171:17         2171:16         2171:17         2171:16         2171:17         2171:16         2171:17         2171:16         2171:17         2171:16         2171:17         2171:16         2171:17         2171:16         2171:17         2171:12         216:17         2171:12         216:17         2171:12         2171:12         2171:12         2171:12         2171:11 </td <td>remaining 2248:9</td> <td>2236:15 2259:9</td> <td>responsible 2182:6</td> <td><b>R5</b> 2257:22</td> <td>2247:9,19 2248:4,7</td>	remaining 2248:9	2236:15 2259:9	responsible 2182:6	<b>R5</b> 2257:22	2247:9,19 2248:4,7
remains 2129:25         requesting 2149:5         responsive 2163:18         R67 2217:14         scope's 2256:2           remember 2149:18         2219:12 224:9 224:9         2234:18         result 2150:12178:9         score 2197:22         score 2197:22           2204:21 2210:2         2234:18         results 2158:6 2184:18         safts 2229:13         score 129:55         score 129:52         score 129:22         score 129:22         score 129:12         safts 2229:13         score 129:22         score 129:22         score 129:22         safts 2229:13         score 129:12:12         safts 220:16:12         safts 2229:13         score 129:12:12:12:12:12:12:12:12:12:12:12:12:12:	2255:2	2263:14	2212:15	<b>R50</b> 2217:1	2263:8,10,16,18,19
remedies 2151:13         2198:14 2219:21         rest 2135:22 2136:23         score 2197:22           score 2197:22         score 2197:22         score 2197:22           2204:21 2210:2         2223:18         score 2197:22         score 2197:22           2215:13 220:5         requests 2170:22         result 2150:1 2178:9         scints 2229:13         score 2197:22           2223:12 223:24         2172:18         RESUMES 2178:19         sake 2217:22         score 2197:22           2234:10 2236:11         2167:19 2248:12         require 2129:8,89         2003:4         satisfaction 2188:22,25         second 2131:21 2150:           2244:9 2249:10         2128:12,23 2130:17         returned 2151:6         returned 2151:6         satisfaction 2188:22,25         second 2131:21 2264:3           2266:3         requirement 2208:15         recuired 2151:6         returned 2151:6         satisfact 2153:22         210:11 22264:3           removal 2248:10         2217:12 223:5,12         22171:10,11,14 2183:8         review 2169:2,8 2171:9         satisfact 2165:17,20         section 2206:14           removal 2248:10         2217:17,223:5,21         2206:18 2213:21         2147:10 2149:17         2146:14 2149:16           returned 2253:2         224:42 224:12         224:42 2226:13         section 2206:21,23           rendere 2253:2	remains 2129:25	requesting 2149:5	responsive 2163:18	<b>R67</b> 2217:14	
remember 2149:18         2221:2 2224:9 2234:9         result 2150:1 2178:9         S         score 2197:22           2204:12 2210:2         2234:18         2227:17,18         saits 2229:13         saits 2229:13         saits 2229:17         saits 2229:13         saits 2229:17         saits 2229:13         saits 2229:13         saits 2229:17         saits 2229:13         saits 220:17:17         saits 220:17:22         saits 220:12         217:16 2173:2         saits 220:12         218:12 216:17         retesting 2247:15         saits 20:36:6         219:0:24 220:12         218:12 220:12         218:12 220:12         216:17         220:58 2207:20         226:17         226:32         226:17         226:17         226:17         226:17         226:17         226:17         220:11 222:6:10         221:17         221:17         221:17         221:17         221:17         221:17         221:17         221:17         223:17         223:17         223:17         223:17         223:17         223:17         223:17:17					
2204:21 2210:2         2234:18         2227:17,18         saints 2229:13         scurrying 2161:3           2215:13 2220:2         2172:18         requests 2170:22         sace 217:22         sace 2217:23         sace 2217:23         sace 2217:22         satisfaction 2188:22,25         2190:24 2230:12           2234:12 224:9 2249:10         2128:12,23 2130:17         return 2147:3         satisfied 2153:22         2184:3 2204:23         2207:20           2266:3         requirement 2208:4         reveal 213:20 2223:23         reveal 220:18         satisfied 2153:22         2184:3 2207:20         2216:11 2226:4           removal 2248:8         requirement 2200:20         2171:10,11,14 2183:8         sating 128:13,20         sace 2217:12         224:0:4         second 1231:21 210:12         224:149:16           renewal 2248:10         2217:12 223:5,12         224:111 2247:7         2166:7         2216:12         224:49:16         section 2206:1,23         section 2206:1,23         section 2206:2,13         section 2206:2,123         section 2206:2,123         s				S	
2215:13 2220:5         requests 2170:22         results 2158:6 2184:18         sake 2217:22         search 2165:17 2171;           2221:23 2224:22         2172:18         RESUMES 2178:19         SARS's 2195:15 2253:3         2171:16 2173:2           2234:10 2236:11         2167:19 2248:12         retain 2184:3 2187:8         satisfaction 2188:22,25         second 2131:21 2150:           2234:10 2236:11         2167:19 2248:12         returned 2151:6         2166:7         2205:8 2207:20           2256:5,24 2260:9         2131:19 2141:16         returned 2151:6         2166:7         2205:8 2207:20           2268:3         requirement 2208:4         revealed 2220:18         saw 2142:5,23 2187:15         2244:25 2267:6,10           removal 2248:10         22117: 2223:1,12         2216:17 217:         2166:8 2203:1         2216:17 217:           render 2253:2         2248:4 2261:5,24         2217:12         215:17 2217:         215:17 2217:         216:42:149:16           renewal 2214:10         22117:122:23:10         2216:17 2217:         216:42:149:16         second 213:21           renewal 2214:10         22117:22:23:10         2216:17:20         second 214:15         second 214:15           renewal 2214:10         2216:2         2216:17:20         section 2206:21,23         sector 216:14           renewal 221				saints 2229.13	
2221:23         2224:22         172:18         RESUMES         SARS's         2195:15         223:3:3         2171:16         2173:2           2238:14         2236:11         2167:19         2248:12         retain         218:3         218:3         218:12         216:19         2423:12         215:15         220:22         219:24         220:12         219:24         220:12         219:24         220:12         219:24         220:12         219:24         220:12         219:24         220:12         219:24         220:12         219:24         220:12         215:15         215:14         2171:15         215:15         215:15         216:18         220:12         220:8         220:12         220:8         220:12         220:11         220:12         220:11         220:11         220:11         220:11         220:11         220:11         220:14         220:11         220:14         220:11         220:					
2228:14 223:4require 2129:8,8,92203:4sat 2203:62190:24 2230:122237:13,23 2238:22required 2127:17retain 2184:3 2187:8satisfaction 2188:22,25second 2131:21 2150:2237:13,23 2238:22required 2127:17return 2147:3satisfaction 2188:22,25second 2131:21 2150:2244:9 2249:102128:12,23 2130:17return 2147:3satisfied 2153:222188:13 2204:232256:5,24 2260:92131:19 2141:16returned 2151:62166:72205:8 2207:202268:3requirement 2208:4revealed 2220:18saw 2142:5,23 2187:152244:25 2267:6,10remind 2198:252253:19revealed 2220:18saying 2138:13,20secondly 2129:13removed 2248:102211:7 2223:5,122206:18 2213:212147:10 2149:172146:14 2149:162254:92237:21 2243:102215:77 2217:22150:4 2162:17,20section 2206:21,23render 2253:22248:4 2261:5,242218:7 223:20,222163:1,7 2164:4section 2206:21,23render 225:322262:15,21224:11 2247:72166:9,21 2167:142207:3,6,9renewal 2214:10requires 2129:1 213:22256:112165:20 2109:113sector 2160:14 2180:5repaid 2154:18research 2218:20,23revised 2165:82216:9 2217:9 2218:6secure 2253:13repaid 2154:18research 2218:20,23revised 2236:2223:25 2233:242245:25 2246:5,8,9repaid 2154:18reguires 218:12revised 2236:2223:25 223:24224:12repaid 2154:18research 2218:20,23revised 2236:2223:25 223:24 <td></td> <td></td> <td></td> <td></td> <td></td>					
2234:10 2236:11         Ž167:19 2248:12         retain 2184:3 2187:8         satisfaction 2188:22,25         second 2131:21 2150:           2237:13,23 2238:22         required 2127:17         retesting 2247:15         2189:3         2158:14 2179:15           2246:9 2249:10         2128:12,23 2130:17         return 2147:3         satisfied 2153:22         2184:3 2204:23           2266:5,24 2260:9         2131:19 2141:16         returned 2151:6         2166:7         2205:8 2207:20           2268:3         requirement 2208:4         revealed 1233:20 2223:23         Saturday 2170:2         2210:11 2226:4           removal 2248:8         requirements 2210:20         2171:10,11,14 2183:8         saying 2138:13,20         secondly 2129:13           render 2253:2         2244:25         2237:21 2243:10         2215:7 2217:2         2156:17,20         section 2206:21,23           render 2253:2         2248:4 2261:5,24         2218:7 223:20,22         2163:1,7 2164:4         section 2206:21,23           render 2253:2         2262:15,21         2218:7 223:20,22         2163:1,7 217:20         sections 2207:12           renewal 2214:10         requires 2129:1 213:2         2256:11         2168:17 2177:20         sections 2206:21,23           renewal 2214:10         requires 2129:1 213:2         2256:11         2168:17 2177:20         section 2206:					
2237:13,23 2238:22 2244:9 2249:10required 2127:17 2128:12,23 2130:17retsting 2247:15 return 2147:32189:3 satisfied 2153:22 2166:72158:14 2179:15 2184:3 2204:232256:5,24 2260:9 2265:17 2266:92131:19 2141:16 2166:8,8 2208:15returned 2151:6 returned 2151:62166:7 2205:8 2207:202205:8 2207:20 2205:8 2207:202268:3 removal 2248:8 requirements 2210:20 2248:10revieal 2133:20 2223:23 revieal 2133:20 2220:18saving 2138:13,20 secondy 2129:13secondy 2129:13 2206:18 2213:21 2216:11 2216:42254:9 2237:21 2243:10 2254:92217:17 2217:2 2206:18 2213:21 2266:18 226:15,242218:7 2223:20,22 2216:17 2217:22163:1,7 2164:4 2166:17,72164:4section 2206:21,23 section 2206:21,23renewal 2214:10 2215:5, 6 requires 2129:1 2133:2 2240:4reviewed 2162:14,24 2256:112168:17 2177:20 2166:17 2177:20section 2206:21,23 section 2206:21,23renewal 2215:5 repace 2254:15requires 218:0,23 2219:1 2239:15reviewed 2162:14,24 2216:22185:20 2191:13 2216:2section 2206:21,23 2240:4repide 2255:5 replace 2255:5 residence 2186:12 resign 2191:15reviewed 2236:2 revise 2226:192235:22 223:24 2235:24 2236:192244:52 5246:5,8,9 2245:25 2246:5,8,9repide 211:14,16 2230:15 2239:20 2260:18resignation 2179:24 resignation 2179:24revieed 2236:2 revise 2236:22235:24 2236:19 2245:25 2246:5,16 2245:152246:12,15,19 2245:25 2246:5,8,9repide 211:14,16 2230:15 2239:20 2266:18revised 2236:2 resignation 2179:24revised 2236:2 reide 2196:7 resignation					
2244:9 2249:102128:12,23 2130:17return 2147:3satisfied 2153:222184:3 2204:232256:5,24 2260:92131:19 2141:16returned 2151:62166:72205:8 2207:202262:17 2266:92166:8,8 2208:15revealed 2220:18saw 2142:5,23 2187:152210:11 2226:4remind 2198:252253:19revealed 2220:18saw 2142:5,23 2187:152244:25 2267:6,10removal 2248:8requirements 2210:202171:10,11,14 2183:8saying 2138:13,20secondly 2129:13removed 2248:102211:7 2223:5,122206:18 2213:212147:10 2149:172146:14 2149:162254:22248:4 2261:5,242218:7 2223:20,222163:1,7 2164:4sector 2206:21,23rendered 2205:232262:15,212240:4reviewed 2162:14,242165:17 2017:2sector 2206:21,23renewal 2214:10requires 2129:1 213:22240:4reviewed 2162:14,24218:20 2191:13sector 2206:21,23renewal 2215:5requiste 2184:112170:25 2197:172199:7 2205:212185:4secure 2253:13repace 2254:152267:8,9revise 226:192235:24 2236:192246:12,15,19replace 2255:5residence 2186:12revise 226:192235:22 2233:242245:25 2246:5,8,9replace 1261:224,4resignation 2179:24reid 2196:72245:12,17,172245:25 2246:5,8,9replace 2255:5residence 2186:12revise 2236:22235:24 2236:192246:12,15,19replace 126:12:24,4resignation 2179:24reid 1296:72245:12,17,172245:25 2246:5,8,9reported 2211:14,16resignati					
2256:5,24 2260:9 2262:17 2266:92131:19 2141:16 2166:7,8 2208:15returned 2151:6 reveal 2133:20 2223:232166:7,8 Saturday 2170:22205:8 2207:20 2210:11 2226:42268:3 remind 2198:25requirement 2208:4 2253:19reveal 2133:20 2223:23 review 2169:2,8 2171:9Saturday 2170:2 saw 2142:5,23 2187:152210:11 2226:4 2244:25 2267:6,10removal 2248:8 removed 2248:10requirements 2210:20 2217:12 2243:102171:10,11,14 2183:8 2215:17 2217:2saying 2138:13,20 2150:4 2162:17,20secondly 2129:13 2246:14 2149:16render 2253:2 renderd 2205:232248:4 2261:5,24 226:15,242218:7 2223:0,22 2248:4 2261:5,242163:1,7 2164:4 2166:9,21 2167:14section 2206:21,23 2206:18 2213:21renewal 2214:10 requires 2129:1 2133:2 2215:5,6requires 2129:1 2133:2 2240:42256:11 review 2162:14,242168:17 2177:20 2166:9,21 2167:14section 2207:12 2207:3,6,9renewal 2214:10 repaid 2154:18 repaid 2154:18 repaid 2154:18 repaid 2154:18 repaid 2155:5requires 2129:1 2133:2 2262:8,9review 2162:14,24 2165:22169:2217:9 2218:6 2235:22,20 2226:18secure 2253:13 security 2235:16replace 2255:5 residence 2186:12 repaid 2162:8 2164:23 resign 2191:15revise 2236:2 revise 2236:22235:24 2236:19 2235:24 2236:192246:12,249:6, 2245:25 2246:58,9reported 2211:14,16 2230:15 2239:20 2246:12 2230:15 2239:20resignation 2179:24 resignations 2189:12 resign 2191:15relate 196:7 rid 2192:1 rid 2196:7 rid 2196:7 2245:12,17,17 2245:12,17,17 2245:12,17,17 2245:12,225:6, 2261:1,5 2256:6, 2261:1,5seek 21		-			
2262:17 2266:92166:8,8 2208:15reval 2133:20 2223:23Saturday 2170:22210:11 2226:42268:3requirement 2208:42253:19revaled 2220:18say 2142:5,23 2187:152244:25 2267:6,10removal 2248:102211:7 2223:5,122206:18 2213:212147:10 2149:172146:14 2149:162254:92237:21 2243:102215:17 2217:22150:4 2163:17, 20secretary 2140:15render 2205:232262:15,212218:7 2223:20,222163:1,7 2164:4section 2206:21,23renewal 2214:10requires 2129:1 2133:22256:112168:17 2177:20section 2206:21,232215:5,6requires 218:20,23review 2162:14,242185:20 2191:13sector 2160:14 2180:5renewal 2214:10requires 2129:1 2133:22256:112169:217:90sector 2160:14 2180:52215:5,6requires 218:0,23reviewed 2162:14,242185:20 2191:13sector 2160:14 2180:5repaid 2154:18research 2218:20,23reviewing 2165:82216:9 2217:9 2218:6secure 2253:13replace 2255:5residing 2170:4revise 226:19223:22 223:242245:25 2246:5,8,9replace 2255:5residing 2170:4revise 2236:22238:12 2241:212248:13,21 2249:6,5reply 2143:12resignation 2179:24ride 2196:72245:12,17,172252:16,24 2253:5,reported 2211:14,16resignation 2179:24ride 2196:72245:12,17,172252:16,24 2253:5,reported 2211:14,16resignation 2189:122140:12 2150:82250:11,15 2253:4seein 2155:17 225:16,22 226:11,5reported 2211:14,16		-			
2268:3 remind 2198:25requirement 2208:4 2253:19revealed 2220:18 review 2169:2,8 2171:9saw 2142:5,23 2187:15 2250:24 2268:62244:25 2267:6,10 2270:14removal 2248:8 removed 2248:102211:7 2223:5,12 2237:21 2243:102171:10,111,4 2183:8 2206:18 2213:21saying 2138:13,20 2147:10 2149:17secondly 2129:13 2162:17,20render 2253:2 rendered 2205:232248:4 2261:5,24 2262:15,212218:7 2223:20,22 2248:4 2261:5,242163:1,7 2164:4 215:7 2217:2section 2206:21,23 2206:18 7 2127:20renewal 2214:10 2215:5,6requires 2129:1 2133:2 2240:42256:11 reviewed 2162:14,242168:17 2177:20 2166:9,21 2167:14section 2206:21,23 2207:3,6,9repaid 2154:18 repaid 2154:18 repaid 2154:18 replace 2255:5research 2218:20,23 2219:1 2239:15reviewed 2162:14,24 2216:22169:2217:9 2218:6 2232:22 223:24 2232:22 223:24 2245:25 2233:24secure 2253:13 2246:24 128:26 2246:24,12replace 2255:5 replace 2255:5 replace 2256:15 replace 216:12 resign 2191:15revise 2226:19 revise 2226:192233:22 223:24 2235:24 2236:21 2235:24 2236:21 2235:24 2236:21 2246:24,12,12secure 2253:13 2246:25,15,19 2244:13,21 2249:6, 2246:25,15,19reply 2143:12 reported 2211:14,16 2263:15 2239:20resignation 2179:24 2191:15rid 2192:1 right 2136:10 2139:3 2247:20 2243:1,4,72249:32 2251:24 2245:12,17,17 2252:16,24 2253:5, 2255:61 2256:12 2255:61 2256:12 2255:62 226:11,5reported 2211:14,16 2263:15 2239:20 2219:11resignations 2189:12 2192:11rid 2196:7 right 2136:10 2139:3 2247:20 2248:10 2245:12,17,1					
remind 2198:252253:19review 2169:2,8 2171:92250:24 2268:62270:14removal 2248:8requirements 2210:202171:10,11,14 2183:8saying 2138:13,202146:14 2149:162254:92237:21 2243:102215:17 2217:22150:4 2162:17,202146:14 2149:162254:92248:4 2261:5,242215:17 2217:22166:9,21 2167:142207:3,6,9renderd 2205:232262:15,212246:4 226:112247:72166:9,21 2167:142207:3,6,9renewal 2214:10requires 2129:1 2133:22256:112168:17 2177:20section 2206:21,232215:5,62240:4reviewed 2162:14,242185:20 2191:13section 2207:122215:5,62240:4reviewed 2165:82216:9 2217:9 2218:6sectior 2160:14 2180:5repared 215:5requisite 2184:112170:25 2197:172199:7 2205:212185:4repared 217:10 2213:92219:1 2239:152216:22225:2,20 2226:18security 2235:16replace 2255:5residence 2186:12revise 2236:22235:24 2236:192246:12,15,19replace 2255:5residing 2170:4RFP 2198:9,12,202238:12 2241:212248:13,21 2249:6,reported 2211:14,162191:11right 2136:10 2139:32247:20 2248:102255:2425:246:5,8,92264:4resignation 2179:242140:12 2150:82250:11,15 2253:4seeing 2156:22264:4resignation 2179:242140:12 2150:82250:11,15 2253:4seeing 2158:222264:4resignation 2189:12right 2136:10 2139:32247:20 2248:102255:6 2261:1,52264:4<					
removal 2248:8requirements 2210:202171:10,11,14 2183:8saying 2138:13,20secondly 2129:13removed 2248:102211:7 2223:5,122206:18 2213:212147:10 2149:172146:14 2149:162254:92237:21 2243:102215:17 2217:22150:4 2162:17,20secretary 2140:15render 2253:22248:4 2261:5,242218:7 2223:20,222163:1,7 2164:4section 2206:21,23renderd 2205:232262:15,212241:11 2247:72166:9,21 2167:142207:3,6,9renewal 2214:10requires 2129:1 2133:22256:112165:17 217:20section 2206:21,232215:5,6requiste 2184:112170:25 2197:172199:7 2205:212185:4repaid 2154:18research 2218:20,23reviewing 2165:82216:9 2217:9 2218:6secure 2253:13repaid 2154:18research 2218:20,23revise 2226:192232:25 223:242245:25 2246:58,9replaced 2255:5residnce 2186:12revised 2236:22235:24 2236:192246:12,15,19replied 2162:8 2164:23resign 2170:4RFP 2198:9,12,202238:12 2241:212248:13,21 2249:6,2230:15 2239:202191:15rid 2192:12242:20 2243:1,4,72249:23 2251:242240:4resignation 2179:24right 2136:10 2139:32247:20 2248:102255:6 2261:1,52264:4resignations 2189:122140:12 2150:82255:17 2256:12seck 2128:112162:10,22 2163:12resigned 2192:42154:4 2191:232255:17 2256:12seck 2128:112162:10,22 2163:12resigned 2192:42140:12 2150:82255:17 2256:12seck 2128:1		-			-
removed 2248:10 2254:92211:7 2223:5,12 2237:21 2243:102206:18 2213:21 2215:17 2217:22147:10 2149:17 2150:4 2162:17,202146:14 2149:16 secretary 2140:15render 2253:2 renderd 2205:232248:4 2261:5,24 2262:15,212218:7 2223:20,22 2218:7 2223:20,222163:1,7 2164:4 2166:9,21 2167:14section 2206:21,23 2207:3,6,9renewal 2214:10 2215:56requires 2129:1 2133:2 2240:42256:11 reviewed 2162:14,242168:17 217:20 218:520 2191:13section 2206:21,23 2207:3,6,9renewals 2215:5 repaid 2154:18 repaid 2154:18 repaid 2154:18 repaid 2154:15reguires 2129:1 2133:2 2219:1 2239:152216:2 2216:22218:20 2191:13 2216:2sector 2160:14 2180:5 2169:217:9 2218:6repaid 2154:18 repaid 2162:8 2164:23 replaced 2255:5 replaced 2255:5 replaced 2255:5 replaced 2255:5 replaced 2255:5 replaced 2255:5 resignation 2179:24 2191:15revised 2236:2 revised 2236:2 revised 2236:22235:24 2236:19 2235:24 2236:19 2235:24 2236:19 2245:12,17,17 2245:12,17,17 2255:16,24 2233:242245:25 2246:5,8,9 2245:25 2246:5,8,9reported 2211:14,16 2230:15 2239:20 2206:15 2239:20 22191:11resignation 2179:24 righ 2136:10 2139:3 2247:20 2248:10 2245:12,17,17 2255:16,24 2253:24 2245:25 225:242245:22 226:14,7 2245:22,12,12,17,17 2255:16,24 2253:4 2245:22,12,14,122264:4 resignation 2189:12 2162:10,22 2163:12 2164:4resignation 2189:12 2191:11 resignation 2189:12 2191:122140:12 2150:8 2255:17 2256:12 2255:17 2256:12 2255:17 2256:12 2256:12,6 2255:22342162:10,22 2163:12 2171:10 2213:25resignation 2240:					
2254:92237:21 2243:102215:17 2217:22150:4 2162:17,20secretary 2140:15render 2253:22248:4 2261:5,242218:7 2223:20,222163:1,7 2164:4section 2206:21,23rendered 2205:232262:15,212241:11 2247:72166:9,21 2167:142207:3,6,9renewal 2214:10requires 2129:1 2133:22256:112168:17 2177:20section 2206:21,232215:5,62240:4reviewed 2162:14,242185:20 2191:13sector 2160:14 2180:3renewals 2215:5requisite 2184:112170:25 2197:172199:7 2205:212185:4repaid 2154:18research 2218:20,23reviewing 2165:82216:9 2217:9 2218:6secure 2253:13replace 2254:152262:8,9revise 2226:192232:25 2233:242245:25 2246:5,8,9replace 2255:5residence 2186:12revise 2236:22235:24 2236:192246:12,15,19replace 1262:8 2164:23resign 2170:4RFP 2198:9,12,202238:12 2241:212248:13,21 2249:6,reply 2143:12resign 2191:15rid 2192:12245:12,17,172252:16,24 2253:5,reported 2211:14,16resignation 2179:24rid 2196:72245:12,17,172255:6 2261:1,52264:4resignations 2189:122140:12 2150:82250:11,15 2253:4seeing 2158:22reports 2147:18resigned 2192:42154:4 2191:232255:17 2256:12seek 2128:112162:10,22 2163:12resign 2192:42194:23 2209:242258:2 2260:18seek 2129:232171:10 2213:25resign 2192:42194:23 2209:242258:2 2260:18seek 2129:23se					
render 2253:22248:4 2261:5,242218:7 2223:20,222163:1,7 2164:4section 2206:21,23rendered 2205:232262:15,212241:11 2247:72166:9,21 2167:142207:3,6,9renewal 2214:10requires 2129:1 2133:22256:112168:17 2177:20section 2206:21,232215:5,62240:4requires 2129:1 2133:22256:112168:17 2177:20section 2207:12renewals 2215:5requisite 2184:112170:25 2197:172199:7 2205:212185:4repaid 2154:18research 2218:20,232216:22225:2,20 2226:18secure 2253:13replace 2254:152262:8,9revise 226:192232:25 2233:242245:25 2246:5,8,9replace 2255:5residence 2186:12revise 2236:22235:24 2236:192246:12,15,19replace 2254:15resign 2170:4RFP 2198:9,12,202238:12 2241:212248:13,21 2249:6,replace 2254:15resignation 2179:24rid 2192:12245:12,17,172255:6 2261:1,5reported 2211:14,16resignations 2189:12rid 2196:72245:12,17,172255:6 2261:1,52264:4resignations 2189:12resigned 2192:42140:12 2150:82250:11,15 2253:4secing 2158:22reports 2147:18resigned 2192:42194:23 2209:242258:2 2260:18seck 2128:112162:10,22 2163:12resolution 2240:192194:23 2209:242258:2 2260:18seck 2129:232171:10 2213:25resolution 2240:192194:23 2209:242258:2 2260:18seck 2129:23					
rendered 2205:232262:15,212241:11 2247:72166:9,21 2167:142207:3,6,9renewal 2214:10requires 2129:1 2133:22256:112168:17 2177:20sections 2207:122215:5,62240:4reviewed 2162:14,242185:20 2191:13sector 2160:14 2180:5renewals 2215:5requisite 2184:112170:25 2197:172199:7 2205:212185:4repaid 2154:18research 2218:20,23reviewing 2165:82216:22225:2,20 2226:18secure 2253:13repaid 2154:152262:8,9revise 2226:192232:25 2233:242245:25 2246:5,8,9replace 2255:5residence 2186:12revised 2236:22235:24 2236:192246:12,15,19replied 2162:8 2164:23resign 2170:4RFP 2198:9,12,202238:12 2241:212248:13,21 2249:6,7reported 2211:14,16resignation 2179:24rid 2196:72245:12,17,172252:16,24 2253:5,2264:4resignations 2189:122140:12 2150:82250:11,15 2253:4seeing 2158:22reports 2147:18resigned 2192:42154:4 2191:232255:17 2256:12seek 2128:112162:10,22 2163:12resigned 2192:42194:23 2209:242258:2 2260:18seeks 2129:232171:10 2213:25respect 2133:122131:10 2222:112265:15,16 2266:18seen 2137:17 2140:5	2254:9	2237:21 2243:10	2215:17 2217:2	2150:4 2162:17,20	
rendered 2205:232262:15,212241:11 2247:72166:9,21 2167:142207:3,6,9renewal 2214:10requires 2129:1 2133:22256:112168:17 2177:20sections 2207:122215:5,62240:4reviewed 2162:14,242185:20 2191:13sector 2160:14 2180:5renewals 2215:5requisite 2184:112170:25 2197:172199:7 2205:212185:4repaid 2154:18research 2218:20,23reviewing 2165:82216:9 2217:9 2218:6secure 2253:13repaid 2154:152262:8,9revise 2226:192232:25 2233:242245:25 2246:5,8,9replace 2255:5residence 2186:12revised 2236:22235:24 2236:192246:12,15,19replied 2162:8 2164:23resign 2170:4RFP 2198:9,12,202238:12 2241:212248:13,21 2249:6,reported 2211:14,16resignation 2179:24rid 2196:72245:12,17,172252:16,24 2253:5,2264:4resignations 2189:122140:12 2150:82250:11,15 2253:4seeing 2158:22reports 2147:18resigned 2192:42154:4 2191:232255:17 2256:12seeing 2158:222162:10,22 2163:12resigned 2192:42194:23 2209:242258:2 2260:18seeing 2137:17 2140:52171:10 2213:25respect 2133:122131:0 2222:112265:15,16 2266:18seeing 2137:17 2140:5	render 2253:2	2248:4 2261:5,24	2218:7 2223:20,22	2163:1,7 2164:4	section 2206:21,23
renewal 2214:10 2215:5,6requires 2129:1 2133:2 2240:42256:11 reviewed 2162:14,242168:17 2177:20 2185:20 2191:13sections 2207:12 sector 2160:14 2180:5renewals 2215:5 repaid 2154:18 repaid 2154:18 repaid 2154:18 repaid 2154:18 repaid 2154:19 replace 2254:15 replace 2254:15 replace 2255:5 residence 2186:12 resign 2197:14reviewed 2162:14,24 2170:25 2197:172168:17 2177:20 2185:20 2191:13 2199:7 2205:21 2199:7 2205:21 2185:4sector 2160:14 2180:5 2185:4repaid 2154:18 repaid 2154:18 replace 2254:15 replace 2255:5 residence 2186:12 resign 2191:15reviewing 2165:8 2216:22216:9 2217:9 2218:6 2232:25 2233:24secure 2253:13 2245:25 2246:5,8,9replace 2255:5 replace 2255:5 replace 216:22 replace 2251:5residing 2170:4 resign 2191:15 rid 2192:1revised 2236:2 revise 2226:192235:24 2236:19 2245:12 2241:212248:13,21 2249:6,7 2249:23 2251:24reported 2211:14,16 2264:4 2230:15 2239:20 2264:4resignation 2179:24 2191:11rid 2196:7 right 2136:10 2139:3 2140:12 2150:8 2165:10 2139:32247:20 2248:10 2255:17 2256:12 2255:17 2256:122255:6 2261:1,5 seeing 2158:22 seek 2128:11 seeks 2129:23 seek 2128:11 seeks 2129:23 seen 2137:17 2140:5	rendered 2205:23	2262:15,21	2241:11 2247:7		2207:3,6,9
2215:5,62240:4reviewed 2162:14,242185:20 2191:13sector 2160:14 2180:5renewals 2215:5requisite 2184:112170:25 2197:172199:7 2205:212185:4repaid 2154:18research 2218:20,232219:1 2239:152216:22225:2,20 2226:18secure 2253:13repat 2127:10 2213:92219:1 2239:152262:8,9revise 2226:192232:25 2233:242245:25 2246:5,8,9replace 2254:152262:8,9revise 2226:192235:24 2236:192246:12,15,19replace 1262:8 2164:23resign 2170:4RFP 2198:9,12,202238:12 2241:212248:13,21 2249:6,7reply 2143:12resign 2191:15rid 2192:12245:10,2139:32247:20 2248:102255:6 2261:1,52230:15 2239:202191:11right 2136:10 2139:32247:20 2248:102255:6 2261:1,52264:4resignations 2189:122140:12 2150:82250:11,15 2253:4seeing 2158:22reports 2147:18resigned 2192:42154:4 2191:232255:17 2256:12seek 2128:112162:10,22 2163:12resigned 2192:42194:23 2209:242258:2 2260:18seek 2129:232171:10 2213:25respect 2133:12213:10 2222:112265:15,16 2266:18seen 2137:17 2140:5	renewal 2214:10		2256:11		
renewals 2215:5requisite 2184:112170:25 2197:172199:7 2205:212185:4repaid 2154:18research 2218:20,232219:1 2239:152216:22216:9 2217:9 2218:6secure 2253:13replace 2254:152262:8,9revise 2226:192232:25 2233:242245:25 2246:5,8,9replace 2255:5residence 2186:12revised 2236:22235:24 2236:192246:12,15,19reply 2143:12resign 2191:15rid 2192:12242:20 2243:1,4,72249:23 2251:24reported 2211:14,16resignation 2179:24rid 2196:72245:12,17,172252:16,24 2253:5,2264:4resignations 2189:12right 2136:10 2139:32247:20 2248:102255:6 2261:1,5reports 2147:18resigned 2192:42140:12 2150:82250:11,15 2253:4seeing 2158:222162:10,22 2163:12resigned 2192:42194:23 2209:242255:17 2256:12seeks 2129:132171:10 2213:25respect 2133:12213:10 2222:112265:15,16 2266:18seen 2137:17 2140:5					sector 2160:14 2180:5
repaid 2154:18 repeat 2127:10 2213:9research 2218:20,23 2219:1 2239:15reviewing 2165:8 2216:22216:9 2217:9 2218:6secure 2253:13 secure 2253:16replace 2254:15 replaced 2255:5 replaced 2255:5 replaced 2255:5 replaced 225122262:8,9revise 2226:19 revised 2236:22235:24 2236:19 2235:24 2236:192246:12,15,19 2246:12,15,19replaced 2255:5 replaced 225:5 replaced 225:2 replaced 225:2 replaced 2211:14,16 2266:15 2239:20resign 2170:4 resignation 2179:24RFP 2198:9,12,20 rid 2192:12235:24 2236:19 2238:12 2241:212248:13,21 2249:6,9 2248:13,21 2249:6,92264:4 reports 2147:18 2162:10,22 2163:12 2171:10 2213:25resign 2192:4 resigned 2192:42140:12 2150:8 2194:23 2209:242250:11,15 2253:4 2255:17 2256:12seeing 2158:22 seek 2128:11 seeks 2129:232162:10,22 2163:12 2171:10 2213:25respect 2133:122194:23 2209:24 2213:10 2222:112258:2 2260:18 2265:15,16 2266:18seen 2137:17 2140:5					
repeat 2127:10 2213:92219:1 2239:152216:22225:2,20 2226:18security 2235:16replace 2254:152262:8,9revise 2226:192232:25 2233:242245:25 2246:5,8,9replaced 2255:5residence 2186:12revised 2236:22235:24 2236:192246:12,15,19replaced 2251:5residing 2170:4RFP 2198:9,12,202238:12 2241:212248:13,21 2249:6,9reported 2211:14,16resignation 2179:24rid 2192:12245:12,17,172252:16,24 2253:5,2264:4resignations 2189:12right 2136:10 2139:32247:20 2248:102255:6 2261:1,5reports 2147:18resigned 2192:42154:4 2191:232255:17 2256:12seek 2128:112162:10,22 2163:12resolution 2240:192194:23 2209:242258:2 2260:18seeks 2129:232171:10 2213:25respect 2133:122213:10 2222:112265:15,16 2266:18seen 2137:17 2140:5					
replace 2254:152262:8,9revise 2226:192232:25 2233:242245:25 2246:5,8,9replaced 2255:5residence 2186:12revised 2236:22235:24 2236:192246:12,15,19replied 2162:8 2164:23residing 2170:4RFP 2198:9,12,202238:12 2241:212248:13,21 2249:6,9reported 2211:14,16resign 2191:15rid 2192:12245:12,17,172252:16,24 2253:5,2230:15 2239:202191:11right 2136:10 2139:32247:20 2248:102255:6 2261:1,52264:4resignations 2189:122140:12 2150:82250:11,15 2253:4seeing 2158:22reports 2147:18resigned 2192:42154:4 2191:232255:17 2256:12seeks 2128:112162:10,22 2163:12resolution 2240:192194:23 2209:242258:2 2260:18seeks 2129:232171:10 2213:25respect 2133:122213:10 2222:112265:15,16 2266:18seen 2137:17 2140:5			0		
replaced 2255:5 replied 2162:8 2164:23 reply 2143:12residence 2186:12 resign 2191:15revised 2236:2 RFP 2198:9,12,20 rid 2192:12235:24 2236:19 2238:12 2241:21 2242:20 2243:1,4,7 2249:23 2251:242246:12,15,19 2248:13,21 2249:6,9 2249:23 2251:24reported 2211:14,16 2230:15 2239:20 2264:4resignation 2179:24 2191:11rid 2192:1 rid 2196:72245:12,17,17 2245:12,17,172252:16,24 2253:5, 2255:6 2261:1,5reports 2147:18 2162:10,22 2163:12 2171:10 2213:25resigned 2192:4 respect 2133:122140:12 2150:8 2194:23 2209:242255:17 2256:12 2255:17 2256:12seeks 2128:11 seeks 2129:23 seen 2137:17 2140:5					
replied 2162:8 2164:23 reply 2143:12residing 2170:4 resign 2191:15RFP 2198:9,12,20 rid 2192:12238:12 2241:21 2242:20 2243:1,4,7 2249:23 2251:24reported 2211:14,16 2230:15 2239:20resignation 2179:24 2191:11rid 2192:1 ride 2196:72245:12,17,17 2245:12,17,172249:23 2251:24 2245:20 2243:1,4,72264:4 reports 2147:18 2162:10,22 2163:12 2171:10 2213:25resignations 2189:12 resigned 2192:42140:12 2150:8 2194:23 2209:242250:11,15 2253:4 2255:17 2256:12seeing 2158:22 seek 2128:11 seeks 2129:232162:10,22 2163:12 2171:10 2213:25respect 2133:12213:10 2222:112265:15,16 2266:18seen 2137:17 2140:5					
reply 2143:12resign 2191:15rid 2192:12242:20 2243:1,4,72249:23 2251:24reported 2211:14,162230:15 2239:202191:11ride 2196:72245:12,17,172252:16,24 2253:5,2264:4resignations 2189:12right 2136:10 2139:32247:20 2248:102255:6 2261:1,5reports 2147:18resigned 2192:42154:4 2191:232255:17 2256:12seeing 2158:222162:10,22 2163:12resolution 2240:192194:23 2209:242258:2 2260:18seeks 2129:232171:10 2213:25respect 2133:122213:10 2222:112265:15,16 2266:18seen 2137:17 2140:5					
reported 2211:14,16 2230:15 2239:20resignation 2179:24 2191:11ride 2196:7 right 2136:10 2139:32245:12,17,17 2247:20 2248:102252:16,24 2253:5, 2257:6 2261:1,52264:4 reports 2147:18 2162:10,22 2163:12 2171:10 2213:25resignations 2189:12 resigned 2192:4ride 2196:7 right 2136:10 2139:3 2140:12 2150:82245:12,17,17 2247:20 2248:102255:6 2261:1,5 2255:17 2256:122162:10,22 2163:12 2171:10 2213:25resigned 2192:4 respect 2133:122194:23 2209:24 2213:10 2222:112258:2 2260:18 2265:15,16 2266:18seeks 2129:23 seen 2137:17 2140:5	-				
2230:15 2239:20 2264:42191:11right 2136:10 2139:3 2140:12 2150:82247:20 2248:10 2250:11,15 2253:42255:6 2261:1,5 seeing 2158:22reports 2147:18 2162:10,22 2163:12 2171:10 2213:25resigned 2192:4 respect 2133:122140:12 2150:8 2154:4 2191:232250:11,15 2253:4 2255:17 2256:12seeing 2158:22 seeing 2158:222171:10 2213:25respect 2133:122194:23 2209:24 2213:10 2222:112258:2 2260:18 2265:15,16 2266:18seen 2137:17 2140:5	1 0				
2264:4 reports 2147:18 2162:10,22 2163:12 2171:10 2213:25resignations 2189:12 resigned 2192:42140:12 2150:8 2154:4 2191:232250:11,15 2253:4 2255:17 2256:12seeing 2158:22 seek 2128:112162:10,22 2163:12 2171:10 2213:25resolution 2240:19 respect 2133:122194:23 2209:24 2213:10 2222:112258:2 2260:18 2265:15,16 2266:18seeks 2129:23 seen 2137:17 2140:5		8			
reports 2147:18 2162:10,22 2163:12 2171:10 2213:25resigned 2192:4 resolution 2240:19 respect 2133:122154:4 2191:23 2194:23 2209:24 2213:10 2222:112255:17 2256:12 2258:2 2260:18 2265:15,16 2266:18seek 2128:11 seeks 2129:23 seen 2137:17 2140:5			0		
2162:10,22 2163:12 2171:10 2213:25resolution 2240:19 respect 2133:122194:23 2209:24 2213:10 2222:112258:2 2260:18 2265:15,16 2266:18seeks 2129:23 seen 2137:17 2140:5					0
2171:10 2213:25         respect 2133:12         2213:10 2222:11         2265:15,16 2266:18         seen 2137:17 2140:5		6			
2214:23 2228:10 2135:24 2157:25 2225:3 2229:6 2237:3 2267:9.13 2269:19 2158:10 2189:14				-	
	2214:23 2228:10	2135:24 2157:25	2225:3 2229:6 2237:3	2267:9,13 2269:19	2158:10 2189:14

011 440 3647 011 440 9119

2194:11 2195:14         short 2129:5 2146:8         2219:13         2205:22         strong 2138:13 2140:6           2232:5 2252:3 2253:5         2156:21,22 2170:20         smaller 2211:5         stakeholders 2232:2         strong 2138:13 2140:6           2261:25 2262:12         short 2236:18,19         soft 2171:25         standard 2221:1         2193:13           select 2212:22         shortly 2143:18         2211:12,24 2218:2         2239:18 2240:3         sub 2240:11,18 2262:7           selecting 2212:16         2148:21,21         solely 2128:25         standardised 2185:6         sub contract 2262:25           selection 2212:24         shouldn't 2269:14         Solly 2264:15 2265:17         stands 2187:17         2263:1           2266:21         show 2137:21,22         Solly's 2266:2         2245:4 2247:17,23         subcontract 2262:25           self 2250:20         show 2137:21,22         Solly's 2266:2         2245:4 2247:17,23         subcontracting           SEM 2260:19         2140:20 2181:4         somebody 2184:10         2248:1 2255:3         2239:14 2240:6,7,8					
2223:223:223:223:22         2156:212:2170:20         stakeholders 223:22         2180:10           select 2121:22         shortfall 2190:23         soft 271:22         standard 2221:11         sub 271:11         sub 2					Page 13
2223:223:223:223:22         2156:212:2170:20         stakeholders 223:22         2180:10           select 2121:22         shortfall 2190:23         soft 271:22         standard 2221:11         sub 271:11         sub 2	2104 11 2105 14		2210.12	2205.22	
12261.25         shorter 2236:18.19         sub: 2015.16.17         stand 2183.6         structure 1292.22           select 212:21         shortly 2143.18         2211:12.24 2218.2         2307.18.230.17.18         sub: 2015.17.17         sub: 2016.17.18         2226.21         sub: 2016.17.18         2226.21         sub: 2016.17.18         2226.21         sub: 2017.12.26         sub: 2017.12.26 <td></td> <td></td> <td></td> <td></td> <td></td>					
select 212:22         shortfall 219:23         sobe 2208:16,17         standard 2221:1         sub 240:11.18 2262.7           selecting 2212:16         2145:82         2111:224.2218:2         2239:18 2240.3         sub 240:11.18 2262.7           selecting 2212:16         stould've 2246:25         2267.7 2268:5 2269.7         standardiesel 2185.6         2233:12           2266:10         stould've 2246:25         2267.7 2268:5 2269.7         start 2206:19 2226.17         subcontracting           SEM 2260:19         2140:20.181:4         some160:19 216.77         2173:22 204.17         subcontracting           2260:6         2218:18 2256.5         2295.13.24 2206.17         subcontracting         subcontracting           2260:6         2218:18 2256.5         2243:24         2210:15 2213:19         subcontracting         subcontracting           2180:14         2109:11.12 2258.2         2143:21 2424.2         subcontracting         subcontracting         subcontracting           2180:14         2109:11.12 2258.2         2119:21 242.4         2109.12 221.12         subcontracting         subcontracting         subcontracting           2180:12         129:11.12 224.2         2119:21 242.4         2109.12 224.2         subcontracting         subcontracting           2180:12         129:11.12 225.2         129:12 224.2	2232:5 2252:3 2253:5			stakeholders 2232:2	
selecter         shorthy         214:12.42 218.2         223:18 2240:3         subcontract 220:22           selecting         212:02         shouldn'1 2260:14         Solly 2264:15 2265:17         2266:11         226:22         subcontract 220:22	2261:25 2262:12	shorter 2236:18,19	soft 2171:25	stand 2183:6	<b>structure</b> 2192:22
selecting 2212:16         2148:21.21         solut(1)         solut(1)         solut(2)         solut(2) </td <td>select 2212:22</td> <td>shortfall 2139:23</td> <td>sole 2208:16,17</td> <td>standard 2221:1</td> <td>2193:13</td>	select 2212:22	shortfall 2139:23	sole 2208:16,17	standard 2221:1	2193:13
selecting 2212:16         2148:21.21         solut(1)         solut(1)         solut(2)         solut(2) </td <td>selected 2192:12</td> <td>shortly 2143:18</td> <td>2211:12.24 2218:2</td> <td>2239:18 2240:3</td> <td><b>sub</b> 2240:11.18 2262:7</td>	selected 2192:12	shortly 2143:18	2211:12.24 2218:2	2239:18 2240:3	<b>sub</b> 2240:11.18 2262:7
selection 2212-24         shouldn't 2260:14         Study 2264:15 2265:17         stands 2187:17         2263:1           S2266:21         show 2137:21.22         Study 2266:25         2267:3266:52         2245:1225:51         2220:17         2255:12         220:17         2255:12         226:12         226:12		e e			
2260:1         shoul''ve 2246:25         2207:7 2268:5 2209:7         star 2206:19 2226:17         subcontracted 220:25           SEM 2206:19         2140:20 218:4         subcontracted 220:25         subcontracted 220:25           send 214:318 214:4:2         2205:10.21 220:4         subcontractors 226:13         subcontractors 226:13           sending 214:314         260:13         subcontractors 226:13         subcontractors 226:13           220:06         2218:18 225:6         subcontractors 226:13         subcontractors 226:13           220:06         218:18 225:6         subcontractors 226:13         subcontractors 226:13           220:06         218:18 225:6         subcontractors 226:13         subcontractors 226:13           2180:14         2199:10 219:27:2         224:14 229:2328:6         submissions 2128:7           2180:14         2199:10 2178:9         2235:12:20:6         submissions 2128:7           2190:16 217:168         sig:27:20:32:48:2         214:32:14:54:24         220:55:12:20:6         219:17:12:12           2190:16 219:168         subcontractors 226:19         subcontractors 226:19         219:17:12:12           2191:17 2168         sig:27:06:22:17:12         subcontractors 20:19         219:10:12:11           2190:16 219:16:22:161:12         subcontractors 20:16:12         219:17:12:10:12         <		-			
self 220:00         show 2137:1.22         Solf v 220:6:2         2245:4 2247:1.723         Subcontracting somed 2143:18 2144:2         220:1.1220:1         220:1.4         220:1.4         220:1.7         223:5.1         220:1.1					
SEM 2206/19         2140/20 2181/4         somehody 2184/10         2248:1 2255.3         2239:1 4 2240:6,7,8           22352 5270:7,7         2257:5 5288/1,22         2266:19         2259:5 1232.3         2259:1 3232.4 226:11           2260:6         22188:1 2256:5         soon 2165:19 2167:7         2173:32 2228:6         subcontractors 226:13           2260:6         22188:12.55         soon 2165:19 2167:7         2173:32 228:6         subcontractors 226:13           2280:14         showng 2185:42.5         soon 2155:13 2160:1         subcontractors 226:13         subcontractors 226:13           2180:14         shown 2185:24.25         subcontractors 226:12         2248:52 228:18.19         subcontractors 226:12         submissions 2128:7           2180:14         started 220:06 223:42         216:02.234:224:24         2268:12.12         submissions 2128:7           2199:16 279:17 2168:         sign 2200:2248:52         218:02.248:24         2249:2222:224:27         218:01.71:12           2199:16 279:17         sign 2200:224:85:10         submissions 2128:7         216:02.248:210:84         submissions 2128:7           2199:12 221:5         sign 220:32:23:12         214:12:23:04:2128:140:240:6         submissions 2128:7         216:01:224:12:248:14         216:01:224:12:248:14           2199:12 221:5         sign 220:32:32:32:32:32         21					
send 2143/18/2144:2         2192-5/10/21206:16         2202-4/2263:25         2266:19         2269-5/13/24 2262:11           sending 2143:14         2260:13         soon 2165:19/21677         2173:25 2204:11         subcontractors 2261:3           2221:7/2243:15         stowing 2208:13         2173:32 228:22         2206:15/213:19         subject 213:32:213:61           2200:16         218:18/2256:5         sorry 2100:20:11         2245:525:11.81.9         223:32:213:19           2180:14         stowing 2108:13         2173:32 228:62         2214:32         2214:18.18         223:37           2180:16         stowing 236:19         214:32 214:52         224:52 251:18.19         223:51         223:51         223:51         223:51         223:51         226:51 <t< td=""><td></td><td>,</td><td>e e</td><td>-</td><td>8</td></t<>		,	e e	-	8
2225:2270.7.7         2257:5 2258:21,22         226:4         startiz 14:021 2173:23         220:41         subject 2133:2 213:19           2260:6         2218:18 22:65         213:32 223:22         214:12:09:22:86         subject 2133:2 213:19           2280:6         2218:18 22:65         2243:32         2214:12:19:21:82         2214:12:19:92:32:86           2180:14         sibow 2185:24:25         sibow 2235:19:257:21         214:12:22:51:42:10         2235:37:227:12         subject 2133:21:25:99:13           2190:16:10:21         sido 220:52:248:5         214:32:24:524         2289:12:27:21         216:01:15:01:12:16:9           2190:16:10:21         sido 220:52:248:5         214:72:52:16:22:1         starting 2174:2 20:70:22         229:04:12           2179:13:221:5         signed 221:00:22         2191:17:12:94:17         2246:12         2248:13         2137:13:216:22           2245:10         226:64         223:78:12:22:42         2248:32         216:32:22:22:22:22:22:22:22:22:22:22:22:22:	<b>SEM</b> 2260:19	2140:20 2181:4			2239:14 2240:6,7,8
sending 2143:14         2260:13         som 2165:19 2167.7         217.325 2204:11         subcontractors 2261:3           22217: 2244:15         solving 2208:18 2256.5         2243:32 238:22         2206:15 221:18,19         subcontractors 226:13           2180:16         218:12 2258:3         2213:19 213:68         223:37 2271:2         submission 2159:24           2180:16 2192:1         226:45         2143:32 213:612         223:37 2271:2         ubmission 2159:13           sense 2170:16,18         shows 2235:19 2257:21         2147:25 2165:21         started 2208 9250:23         2159:16,17,21:2           sentiary 221:5         side 2182:12184:9         2147:25 2165:21         started 2208 9248:13         2159:16,17,21:2           219:16 219:11         2226:3 224:21         2198:6,23 207:20         224:17 224:62         224:17:2           213:21:11/4 214:023         224:45:356 2256:4         224:71         214:31:16,12         220:32 22:16           213:21:11/4 214:023         224:64:35         223:41         216:32:14:42:14:21         220:42:12:22:22:22:16           214:31:82:11/4 20:23         224:61         submit 213:61:14         216:32:14:12:14:21:14:21         220:42:12:22:22:22:23:16           213:21:14:14:14:02:3         224:63:5         223:61         216:32:14:12:14:31:14:14:31:16:32:16:12:110:14:14:14:14:31:16:12:14:14:14:14:14:14:14:14:14	send 2143:18 2144:2	2192:5,10,21 2206:16	2202:4 2263:25	2266:19	2259:5,13,24 2262:11
sending 2143:14         2260:13         som 2165:19 2167.7         217.325 2204:11         subcontractors 2261:3           22217: 2244:15         solving 2208:18 2256.5         2243:32 238:22         2206:15 221:18,19         subcontractors 226:13           2180:16         218:12 2258:3         2213:19 213:68         223:37 2271:2         submission 2159:24           2180:16 2192:1         226:45         2143:32 213:612         223:37 2271:2         ubmission 2159:13           sense 2170:16,18         shows 2235:19 2257:21         2147:25 2165:21         started 2208 9250:23         2159:16,17,21:2           sentiary 221:5         side 2182:12184:9         2147:25 2165:21         started 2208 9248:13         2159:16,17,21:2           219:16 219:11         2226:3 224:21         2198:6,23 207:20         224:17 224:62         224:17:2           213:21:11/4 214:023         224:45:356 2256:4         224:71         214:31:16,12         220:32 22:16           213:21:11/4 214:023         224:64:35         223:41         216:32:14:42:14:21         220:42:12:22:22:22:16           214:31:82:11/4 20:23         224:61         submit 213:61:14         216:32:14:12:14:21:14:21         220:42:12:22:22:22:23:16           213:21:14:14:14:02:3         224:63:5         223:61         216:32:14:12:14:31:14:14:31:16:32:16:12:110:14:14:14:14:31:16:12:14:14:14:14:14:14:14:14:14	2232:5 2270:7,7	2257:5 2258:21,22	2264:4	start 2140:21 2173:23	2262:14
2221; 7         2243:15         showing 2208:13         2173:23 2238:22         220:15         2213:19         subject 2133:2 213:19           2260:6         2118:18 226:5         2243:32         2214:129:19 225:32         subject 2133:2 213:19         subject 2133:2 213:19           2180:14         2193:14         2238:32         2214:12:19:19:225:32         2213:19:225:23         subject 2133:2 213:19           sense 2170:16.18         shows 2235:19 2257:21         2141:22.25 214:21         started 2208:9 2250:23         2158:18,21 2159:91.13           senstive 2231:52         side 218:21 2144:9         2147:23 2186:3;         started 2208:19 2257:23         2158:18,21 2159:91.13           senstive 2231:14         signed 221:00.22         2191:17 2194:17         2246:12 2248:13         2137:13 2166:22           september 2127:1         2235:18 2236:17         2215:12 2244:203:05         2233:11         216:22 224:33:10         216:23 216:12           2141:82.12,424:23         225:64         2239:9243:12         2144:31:11,70,202         2225:22:22:23:10         2236:16         2225:64         2239:92:12         214:31:11,70,202         2225:22:22:22:23:10           2157:12 2167:517         simifar 220:03 22:24:12         213:14         2146:22:14:24:24:24         215:14:14:14:13:24           2169:2175:17         simifar 220:03 22:24:15			soon 2165:19 2167:7		subcontractors 2261:3
2260.6         2218.18 2256.5         2243.24         2214.1 2219.3 2228.6         storms 2150.20.21           2180.14         2193.11.1 2238.3         2131.9 2136.6         2243.5 2251.18,19         2223.13           2190.16 2192.1         2264.5         2143.3 2145.24         2268.12,12         2181.81,21 2159.9.13           2190.16 2192.1         2264.5         2143.3 2145.24         2068.12,12         2181.81,21 149.9.13           sentitive 2251.25         side 2182.1 2144.9         2147.52 165.21         started 2089.9250.23         2195.16 1.7.1.13           sentitive 2251.25         side 2182.1 2144.9         2147.52 165.21         started 208.99 225.23         2163.3 216.61.3           sentitive 2251.15         2253.31         2234.17 2246.12 2244.23.0         2248.13         213.53.11 22.23.23.23           2132.11,14 21023         2248.35.6 2258.28         2239.9 2243.12         2143.310.13         2204.52 220.26.21           2143.31 2147.21.25         235.61         234.56.2 226.52         223.91         2246.15         2144.51.11,7.20.22         2229.22.25.19           2143.31 2147.21.25         235.61         234.52 226.52         223.11         2145.51.16.4         225.20 226.71           2143.21 2147.21.25         2256.4         2247.13         2144.21.21.49.20         2223.22.225.19 <t< td=""><td>0</td><td></td><td></td><td></td><td></td></t<>	0				
senior 2155:13 2160:14         2093:11,12 2285         2180:14         2180:14         2235:13         2232:13           2180:16         shows 225:19 2257:21         2143:19 2166         22557 271:2         2158:18,21 2159:16           2190:16 2192:1         2264:5         2143:3 2145:24         2268:12.12         2159:16,17.21,21           sensitive 221:12         sige 2203:2248:5         217:10 2178:9         210:22,24 2270:25         2204:12           2179:13 221:5         2237:6,7 2240:22         2248:17 2236:22         2248:17         226:12 2248:13         2157:13 216:22           2245:10         2226:3 2234:12         2196:6,23 207:02         2249:17 2236:22         2248:17         226:22         2231:17         216:15,27,19           2141:83.2147.257:17         226:64         2247:13         2145:11,17,20,22         2237:14         2145:11,17,20,22         2237:19         2137:13 210:22         2237:19           2141:83.2147:217:1         significantly 2189:13         sort 219:31 (2239:14         2145:11,17,20,22         2237:10         2246:12         2245:10         226:42         2237:19         2137:22 216:22         225:19           2141:82.1244:25         2237:16         2246:15         2145:11,17,20,22         225:19         2167:12 317:62         2276:12         2167:12 317:62 <t< td=""><td></td><td></td><td></td><td></td><td></td></t<>					
2180:14         2193:11,12 2258:3         213:19 2136:8         22337.2271:2         submissions 2128.7           2190:16 2192:1         2244:5         2143:2145:24         starter 2026:92250:23         2158:18.21 2159:9.13           2190:16 2192:1         side 2182:1 2184:9         2147:25 2165:21         starting 2174:2 2197.9         2160:1.5,7.1.9           2177:13 2221:5         2233:23         218:7:2186:3.7         starting 2174:2 2197.9         2204:12           2445:10         2226:3 2234:21         2198:6.32 2207.20         2249:9 2252:23         2163:8 2166:25           2133:11.14 2140:23         2248:3.56 2258:8         2239:9 2243:12         2144:5.11.72.1.24         2204:12           2143:3 214:7 2167:9         significant 2165:17         2214:12.244:13         2137:14 2167:2.227:10         2239:2 223:10         2204:12         224:13         214:5.11.6.14         2239:2 223:10         2239:2					
sense 2170:16.18         shows 2257:19         2141:2252142:1         started 2208:9250:20         2158:18,21 2159:16           sensitive 2251:25         side 2182:1 2184:9         2147:25 2165:21         started 2208:9250:20         2159:16,77.21,21           sensitive 2251:25         side 2182:1 2184:9         2147:25 2165:21         started 2208:12.02         2109:17.194:17         2246:12 2248:13         2137:13 216:22           2245:10         2226:3 2234:21         2198:63,2207:02         2249:10         2246:12 2248:13         2137:13 216:22           separate 2151:6         2235:18 2236:17         2215:1 22244:120:05         2235:11         2167:32 2176:14           September 2171:1         237:67 2240:02         2234:17 2236:23         2144:51,1,17.20,22         2235:01         2024:12 2248:10           2143:3 2148:7 2157:9         237:67 2240:02         2247:13         2144:51,1,17.20,22         2235:02 267:17           2145:1 2147:51,1         2177:7         2177.7         2177:7         2177:4         2146:15         2144:51,14,21 249:3         2037:24 2138:23           2148:3 2148:2 2199:20.23         similar 220:3 223:10         sound 2135:2         2149:17 2150:1,9,19         2144:62 1258:16         2157:24 2138:23           2169:2 2145:2         2251:15         sinilar 220:3 223:10         sound 2135:2         2149:17 2					
2190:16 2192:1         2264:5         2143:3 2145:24         2268:12,12         2159:16,17,21,21           sentitive 225:12:5         sign 220:3 224:85         2176:10 2178:9         2210:22.24 2210:2         2191:17 2194:17         2204:12           2179:13 221:5         2253:23         218:7.2178:9         2210:22.24 2210:2         2191:17 2194:17         2246:12 2248:13         2204:12           2244:10         2263:323:617         2215:11 2224:423:0         2249:9 225:23         2167:23 2176:14           September 217:1         2237:67 2240:22         2234:17 2236:22         statement 2143:10.13         2204:12 224:20           2132:11,14 2140:23         2248:35,6 2259:9 2243:12         2144:5,11,72,124         2204:21 224:20         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2204:21         2244:01         2244:62         2247:13         2144:5,11,72,02         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         2239:2 225:00         239:02:01:10         215:02:02:01					
sensitive 2251:25         side 2182:1 2184:9         2147:25 2165:21         starting 2174:2197:90         2160:1.57.19           sentence 2221:14.14.51.8         signed 2221:20.22         2191:17 2194:17         2246:12         2248:10         226:3223:421         2188:63.2207:20         2249:9225:23         2163:82 166:25           september 2127:1         2237:67 2240:22         2244:12         2189:63.2207:20         2249:9225:23         2163:82 166:25           september 2127:1         2237:67 2240:22         2244:12         2144:18.21.41.24         2224:20           2133:11.14 2140:23         2248:02         2244:12         2144:18.21.17.20.24         2225:10.10         2226:22           2141:18.21.42.42.42         2256:4         2247:13         2144:51.11.7.12.04         2250:2267:17           2147:13         simifacrat2165:17         souths 2185:12         2149:12.01.91.91         2146:62.22147:12         2237:52.223:19           2143:82.1299:20.23         simifacrat220:3 223:13         souths 2185:21         2149:17.10.91.91         2146:12.242.22         2147:24.2149:3         2137:24.218:23           2204:15         2151:14 2190:16         souths 218:22         2149:12.2149:21.21         2167:12.216:22         2167:12.216:22         2167:12.216:22         2167:12.216:22         2167:12.216:12         2167:12.216:12	sense 2170:16,18	shows 2235:19 2257:21	2141:22,25 2142:1	started 2208:9 2250:23	2158:18,21 2159:9,13
sensitive 2251:25         side 2182:1 2184:9         2147:25 2165:21         starting 2174:2197:90         2160:15,7,19           2179:13 2221:5         signed 2221:20,22         2191:17 2186:37         state 2129:18,24 2206:6         submit 2136:6.13           sentence 2221:14,15,18         signed 2221:20,22         2191:17 2194:17         2246:12         248:10         226:323:421         2198:6.32 207:20         2249:9225:23         216:38 2166:25           separate 2151:6         2235:18 2236:17         2215:1 224:4 2230:5         2235:11         216:38 2166:25           separate 2151:6         2235:18 2236:17         2216:224:4230:5         2143:16,17,21,24         2226:10,10 2236:15           2141:18,21,424,242         2256:4         2247:13         2144:5:1,11.7,20,24         2225:02 2267:17           21451:22167:517         significant 2165:17         sough 213:3:4         2146:8:1,42:14:03         2137:24:218:23           2148:12 2199:20:23         similar 220:3 223:13         sough 213:3:4         2149:8:1,61.16         225:16:18           2204:15         223:12 226:19         sough 213:3:4         2146:8:1,21:49:19,91         2146:6:25           2244:6         similar 220:3:223:19         sough 213:3:4         2149:17,10:0;19         2146:12:12:22           224:17:2         similar 220:3:22:23:19         sough 213:3:	2190:16 2192:1	2264:5	2143:3 2145:24	2268:12,12	2159:16,17,21,21
sent 2157:9,17 2168:9         sign 2203:2248:5         2176:10 2178:9         2210 <sup>5</sup> 2.24 220:52         2204:12           2247:13 2221:6         2253:23         2183:7 1286.37.         state 2129:18,24 2208.6         submit 2136.6.13           2248:10         2226:3 2234:21         2198:6,23 2207:20         2249:9 2252:23         2163:8 2166:25           2249:10         2226:3 2234:21         2198:6,23 2207:20         2249:9 2252:23         2167:32 2176:14           September 2127:1         2237:67 7240:22         2234:17 2236:22         statement 2143:10.13         2204:21 2224:20           2133:11,14 2140:23         2248:3,5 6 22238:1         2144:51,17.70.22         2292:92 2253:19         2247:13         2144:51,17.70.22         2292:92 2253:19           2143:3 2146:7,2157:9         significant 2165:17         sort 2193:16 2239:14         2144:51,11,70.22         2255:20 2267:17           2148:12 2167:5,17         2171:7         stonifar 2203:223:10         soure 240:19         2137:12 419:3         214:72 4128:23           2148:12 2167:5,17         2151:14 2190:16         soure 2211:12 5217:9         2158:20.10.61 617:417         2169:62 2174:11           2169:62 2147:1         significant 2165:17         soure 2211:12 5217:9         2158:20.10.61 617:417         214:62 2265:1         214:62 2265:1         214:62 2265:1         214:612 214:12.221:	sensitive 2251:25	side 2182:1 2184:9		starting 2174:2 2197:9	
2179:13         2221:5         2253:3         2182:7         2186:3.7         state 2129:18,242086         submit 2136:6.13           sentence 2221:14,15,18         signed 221:20.22         2191:17.2194/17         2246:12         2248:13         2137:13 210:22         2137:13 210:22         2213:12         2249:9 2252:23         2163:8 2166:25           september 2127:1         2237:6,7 2240:22         2234:17 2236:27         state ment 2143:10,13         2204:21 224:20           2133:11,14 2140:23         2248:3,5,6 2255:8         2239:9 2243:12         2143:16,17,2,124         2250:10,10 2236:15           2141:82,12,42,425         2256:4         2247:13         2144:5,11,17,2,024         2250:2267:17           2157:12 2167:5,17         3171:7         south 2133:4         2145:22147:2,419:3         2147:24 2138:23           2169:8 2179:11         significantly 2180:13         souths 2185:21         2149:17 2150:19,19         2146:2128:16         2247:5           2204:15 2245:22         2233:11         souths 2185:21         2149:17 2150:19,19         2146:22 2147:24         2149:24 2138:23           2204:15 2245:2         simple 2323:15         south 2132.9 2137:7         state 2170:44         2146:2128:25         2146:52           2204:15 2245:2         simple 2329:15         south 2132.9 2137:7         state 2170:44					
sentence 2221:14,15,18         signed 2221:20,22         2191:17 2194:17         2246:12 2248:13         2137:13 216:22           2245:10         2226:3 223:42         2198:6,23 2207:20         2246:12 2248:13         2157:13 216:22           Septante 2151:6         2235:18 2236:17         2215:1 22244 2230:5         2239:9 2248:12         2143:16,17,21,24         2206:12 224:20           2132:11,14 2140:23         2248:3,5 62558         2239:9 2248:12         2144:31(1,17,20,22         2239:9 2245:19           2143:2148:7 2157.9         2177.7         2246:15         2144:52,11,17,20,22         2239:9 2245:19           2143:2148:7 2157.9         2171.7         2246:15         2144:62,21,47:24,412         237:24 2138:23           2188:12 2199:20,23         similar 220:3 222:31         sought 2133:4         2148:8,14,21,142,149,19         2150:22,11:1         2167:14,21 2168:16           2247:6         simple 239:15         source 2211:25 2217.9         2150:22,023         2150:14 2153:20         static 2129:26         2169:61 217:24         2169:61 217:24         2169:61 217:24         2169:61 217:24         2268:18         2266:15         2169:62 177:24         2264:4         2269:12         217:4         2266:15         2170:2         2178:42 2256:15         2170:2         2179:24         2269:14         2144:51         2169:14					
2245:10 <sup>2</sup> 2263 2234:21          2198:62 23207:20          2249:92 222:23          2163:8 2166:25            separate 2151:6         2235:18 2236:17          2215:1 224:4 2230:5          225:11          2167:23 2176:14            2133:11,14 2140:23          2238:6 2236:4          2239:9 2243:12          2143:16,17,12,4          2205:10         2235:11          2205:10         2235:11          2205:10         2235:11          2205:10         2235:12         2249:13          2143:16,17,17,12,4          2205:10         2235:12         2245:12         235:1					
separate 2151:6         2255:18 2236:17         2215:1 2224:4 2230:5         2233:17 2236:27         2215:11         2167:23 2176:14           September 2127:1         2237:67 2240:22         2234:17 2236:27         2143:16,17,21,24         2225:10,10 2236:15           2143:11,14 2140:23         2256:4         2247:13         2144:51,11,61,14         2235:22 225:19           2143:2148:7,2157.9         significant 2165:17         south 2193:16 2239:14         2144:51,11,61,14         2235:22 0267:17           2169:82179:11         significant 2165:17         south 2185:21         2146:22 2147:24,112         submitted 2155:18           2204:15         2245:2         2223:10         source 2211:25 2217:9         2158:21,01,01 2246:12         2167:14,21 2168:16           2204:15         simple 2239:15         source 2211:25 2217:9         2158:21,01,01 2245:12         2169:2175:14         2169:2175:14           2204:15         simple 2239:15         source 2211:25 2217:9         2158:21,02,02         2169:14         2169:2174:11         2169:2174:11         2169:2174:11         2169:2174:11         2169:224:12         2169:12         2169:12         2169:12         2169:12         2169:12         2169:12         2169:12         2169:12         2169:12         2169:12         2169:12         2169:12         2169:12         2169:12		0			
September 2127:1         2237:67 2240:22         2234:17 2236:22         2143:16,17,21,24         2204:21 2224:20           2132:11,14 2140:23         2248:35,6 2255:8         2239:9 2243:12         2143:16,17,21,24         2225:10,10 2236:15           2143:3 2148:7 2157:9         significant 2165:17         sort 2193:16 2239:14         2145:1,1,6,14         2235:2 2267:17           2165:12 2167:5,17         significant 2165:17         sort 2193:16 2239:14         2146:22 2147:2,4,12         submitel 2135:18           2188:12 2199:20,23         similar 220:3 2223:1         sounds 2185:21         2149:17 2150:1,91         2146:2 2187:2,4,12         submitel 2135:18           2247:15         simply 2132:5 2140:3         soure 2240:19         2150:2,01,16 2167:12         2167:4 2128:23         2167:74 2132:8 224:21           2247:6         simply 2132:5 2140:3         soure 2211:25 2217:9         2158:12 026:11         2175:74 2328:28 2245:1         2175:74 2328:28 224:21           2170:7,8         simulated 2152:2         2150:14 2152:00         state 2129:25         submiting 2242:17         states 213:3 2251:6,7         2170:2           2170:7,8         simulated 2250:21         sing 229:6         2268:18         states 2213:3 2251:5,7         states 213:3 2251:5,7         subpoena 2148:3           2217:12 220:4         sing 229:6         2266:18 <t< td=""><td></td><td></td><td></td><td></td><td></td></t<>					
213:11,14 2140:23         2248:3,5,6 2255:8         2239:9 2243:12         2143:1,11,7,20,22         225:10,10 2236:15           214:18,21,24,24,25         2256:4         2247:13         2144:5,11,17,20,22         2239:225:19           214:32,214:7,2157:9         significant 2165:17         2147:13         2144:5,11,17,20,22         2239:225:19           216:7:12 2167:5,17         217:7         2247:6         simple 2239:14         2148:14,12149:3         2137:24 2138:23           218:12 2199:20,23         simple 2239:15         soure 2211:25 2217:9         2148:21,4219:3         2137:24 2138:23           2247:6         simple 2239:15         soure 2211:25 2217:9         2158:21,01,62167:12         2169:62174:11           2247:6         simple 2239:15         soure 2211:25 2217:9         2158:21,205:11         2158:21,206:11         2158:22,00,162167:12         2169:62174:11           serious 2150:24         2233:1         2150:14 2153:0         static 2129:25         submitting 2242:17           2179:7,8         single 2217:9 2246:24         2266:15         static 2129:25         submitting 2242:17           21219:218:24         single 2217:9 2246:24         speaking 2133:9         stating 2217:19         2178:4           2212:12 220:24         single 2217:9 2246:21         stating 2216:19         2178:4         2174:					
2141:8.21,24,24.25       2256:4       2247:13       21445:11,17,20,22       2239:2 2253:19         2143:3 2148:7 2157:9       significant 2165:17       2246:15       2145:11,17,20,22       225:20 2267:17         2169:8 2179:11       significanty 2189:13       sourd 2133:4       2146:22 2147:2,4,12       submitted 2135:18         2169:8 2179:11       significanty 2189:13       sourd 213:4       2149:17 2150:1,919       2146:62 2147:2,4,12       submitted 2135:18         2204:15 2245:22       simple 239:15       sourd 220:19       2150:2,2 2151:1       2167:1,4,21 2168:20         2477:6       simple 239:5 2140:3       soure 220:19       2158:21 206:11       2167:4 2332:8 2245:11         2179:7,8       simulate 225:2       2170:5,9 2179:8       static 2129:25       submitting 2242:17         2179:7,8       simide 227:9 2246:24       simide 2249:6       static 2129:25       subpoena 2144:3         2212:19 2218:24       sitiang 220:02       sitiang 220:02       2246:25       2224:14       subpoena 2148:3         2212:19 2218:24       sitiang 220:02       sitiang 220:02       statiang 2213:12 251:6,7       2146:2       2244:4         2212:19 2218:14       sing 2219:22:24:25       subpoena 2148:3       2169:22:21:3       subpoena 2148:3       2177:2         2212:19 2218:24	September 2127:1	2237:6,7 2240:22	2234:17 2236:22	statement 2143:10,13	2204:21 2224:20
2143:3 2148:7 2157:9         significant 2165:17         sort 2193:16 2239:14         2145:1,1,6,14         2255:20 2267:17           2157:12 2167:5,17         2171:7         significant 2189:13         2148:8,14,21 2149:3         2137:24 2138:23           2188:12 2199:20.23         similar 2200:3 223:10         sought 2133:4         2148:8,14,21 2149:3         2147:24 2138:23           2247:6         simple 2239:15         soure 2201:125 2217:9         2156:12 0167:14,21 2168:20         2167:14,21 2262:1         2167:14,21 226:22           serious 2215:15         2151:14 2190:16         South 2132:9 2137:7         states 2170:4,42 2257:18         submitting 2242:17           2179:7,8         simulated 2252:2         2170:5,9 2179:8         stating 220:24         submitting 2242:17           2117:02         sing 2221:6         sigle 2217:9 2246:24         226:12         subpoena 2148:3           2212:10 2218:24         single 2217:9 2246:24         2175:14,19 2190:18         stating 2217:19         subsequently 2133:19           2212:12 2245:12         single 2217:9 2246:24         speaking 2133:9         step 223:8 2267:16         stating 2217:19         subsequently 2133:19           2212:12 220:24         six 199:418,24 2225:6         speaking 2133:9         step 223:13 3251:6,7         2178:4           2212:12 220:24         six 199:418,24 2225:6 <td>2132:11,14 2140:23</td> <td>2248:3,5,6 2255:8</td> <td>2239:9 2243:12</td> <td>2143:16,17,21,24</td> <td>2225:10,10 2236:15</td>	2132:11,14 2140:23	2248:3,5,6 2255:8	2239:9 2243:12	2143:16,17,21,24	2225:10,10 2236:15
2143:3 2148:7 2157:9         significant 2165:17         sort 2193:16 2239:14         2145:1,1,6,14         2255:20 2267:17           2157:12 2167:5,17         2171:7         significant 2189:13         2148:8,14,21 2149:3         2137:24 2138:23           2188:12 2199:20.23         similar 2200:3 223:10         sought 2133:4         2148:8,14,21 2149:3         2147:24 2138:23           2247:6         simple 2239:15         soure 2201:125 2217:9         2156:12 0167:14,21 2168:20         2167:14,21 2262:1         2167:14,21 226:22           serious 2215:15         2151:14 2190:16         South 2132:9 2137:7         states 2170:4,42 2257:18         submitting 2242:17           2179:7,8         simulated 2252:2         2170:5,9 2179:8         stating 220:24         submitting 2242:17           2117:02         sing 2221:6         sigle 2217:9 2246:24         226:12         subpoena 2148:3           2212:10 2218:24         single 2217:9 2246:24         2175:14,19 2190:18         stating 2217:19         subsequently 2133:19           2212:12 2245:12         single 2217:9 2246:24         speaking 2133:9         step 223:8 2267:16         stating 2217:19         subsequently 2133:19           2212:12 220:24         six 199:418,24 2225:6         speaking 2133:9         step 223:13 3251:6,7         2178:4           2212:12 220:24         six 199:418,24 2225:6 <td>2141:18.21.24.24.25</td> <td>2256:4</td> <td>2247:13</td> <td>2144:5.11.17.20.22</td> <td>2239:2 2253:19</td>	2141:18.21.24.24.25	2256:4	2247:13	2144:5.11.17.20.22	2239:2 2253:19
2157:12 2167:5,17         2171:7         2246:15         2146:22 2147:2,4,12         submitted 2135:18           2169:8 2179:11         significantly 2189:13         sought 2133:4         2148:8,1,4,21 2149:3         2137:24 2138:23           22047:6         simple 220:3 2223:10         source 221:125 2217:9         2149:17 2150:1,9,19         2144:6 2158:16           2247:6         simple 2239:15         source 221:125 2217:9         2158:12 0.16 167:12         2169:6 2174:11           serious 2251:15         2151:14 2190:16         South 2132:9 2137:7         state 2170:4,4 2257:18         2260:22           2179:7,8         simulated 2252:2         2170:5,9 2179:8         static 2129:25         submitting 2242:17           2119:219:219:2218:24         sing 2229:6         2268:18         stating 220:24         subpoena 2148:3           2212:12:2245:12         situation 2209:12         2275:14 9 2190:18         steal 2177:19         2178:4           2212:21:2220:24         situation 2209:12         speak 2173:24 2174:7.8         subpoena 2103:14,17           2212:21:2220:24         situation 2209:12         speak 2179:20 2185:2         steal 2177:24         subpoena 2103:14,17           2212:21:220:24         situation 2209:12         speak 2179:20 2185:2         statis 213 2251:67         subpoena 2103:14,17           2212:21:2					
2169:8 2179:11         significantly 2189:13         sought 2133:4         2148:8,14,21 2149:3         2147:24 2138:23           2188:12 2199:20,23         similar 220:3 2223:10         sounds 2185:21         2149:17 2150:1,9,19         2147:24 2138:23           2204:15 2245:22         2223:10         sounds 2185:21         2149:17 2150:1,9,19         2147:24 2138:24           sequencing 2199:3         simply 2132:5 2140:3         source 2211:25 2217:9         2158:21,10,16 2167:12         2169:6 2174:11           serious 2251:15         simulated 2252:2         2170:5,9 2179:8         static 2129:25         submitting 2242:17           2179:7,8         simulated 2252:2         2170:5,9 2179:8         static 2129:25         subpoena 2148:3           served 2170:2         sing 2229:6         2268:18         status 2213:13 2251:6,7         2170:2           2212:12 2248:24         situag 226:19         2190:22 2265:2         Stealing 217:19         subpoena 2148:3           2222:14,22,24 223:1         siyo 2127:12         2190:22 2265:2         Stealing 217:19         subpoena 2203:14,17           services 2208:15         six 2194:18,24 2225:6         speaks 2179:20 2185:2         2175:11 2180:19         subsoeneuty 2133:19           2222:14,22,24 2223:1         siyo 2127:12         2197:3         stepe 2143:6,9,11         subsece 217:19     <					
2188:12 2199:20.23         similar 2220;3 2223:10         sounds 2185:21         2149:17 2150:19,19         2144:6 2158:16           2204:15 2245:22         2223:12 2263:19         sour 220:19         2150:22 2151:1         2167:1,4,21 2168:20           2247:6         simple 239:15         sour 220:19         2150:22 2151:1         2167:1,4,21 2168:20           serious 2251:15         2151:14 2190:16         Sour 230:17:7         states 2170:4,4 2257:18         2260:22           serious 2170:2         simulated 2252:2         2170:5,9 2179:8         states 2170:4,4 2257:18         subpoena 2148:3           service 208:16         sing 229:6         2268:18         status 2213:13 2251:6,7         subpoena 2148:3           2212:19 2218:22 245:12         situation 2209:12         2190:22 2265:2         status 2217:19         2178:11 211:17:9           2222:14 2220:24         siz 244:18,24 2225:6         speaking 2133:9         Stercorm 2248:11         subpoenas 2203:14,17           2222:14,22,24 2223:1         Siyo 2127:12         2197:3         step 2183:3         sub-contractor           2215:12 2181:15         skilb 2247:15         specific 2157:25 2157:4         2174:9 2175:19         2246:25           2219:11 2212:17         states 214:01:5 215:0         states 214:01:5 215:0         state 218:13 226:15         subpoenas 2203:14,17 <td></td> <td></td> <td></td> <td></td> <td></td>					
2204:15 2245:22         2223:12 2263:19         sour 2240:19         2150:22 2151:1         2167:1,4,21 2168:20           2247:6         simple 2239:15         simple 2239:15         2246:25         2258:12 2265:11         2169:6 2174:11           serious 2251:15         2151:14 2190:16         Source 2211:25 2217:9         2258:12 2265:11         2175:232:8 2245:12           serious 2251:15         2151:14 2190:16         South 2132:9 2137:7         states 2170:4,4 2257:18         subpoena 2148:3           served 2170:2         sing 2228:25         2184:21 2265:5         2222:13         subpoena 2148:3           2212:19 2218:24         sing 2217:9 2246:24         stating 220:4         subpoena 2148:3           2212:19 2218:24         situation 2209:12         speaks 2173:14 2174:78         2256:15         subpoena 2108:13           2212:12 220:24         six 2194:18,24 2225:6         speaks 2179:20 2185:2         2175:11 2180:19         subpoena 2203:14,17           2212:12 222:14,22,24 2223:1         siy 0127:12         speaks 2179:20 2185:2         2175:11 2180:19         subpoena 2203:14,17           2223:1,16         skeleton 2264:20         specific 2157:25 2159:4         2174:9 2175:10         2248:21 2244:25           2219:12 2218:11         side 2181:1,23 2184:1         specifying 2207:24         Sterpanie 2173:19,24         2243:12 224					
2247:6         simple 2239:15         source 2211:25 2217:9         2158:2,10,16 2167:12         2169:6 2174:11           sequencing 2199:3         2151:14 2190:16         South 2152:9 2137:7         states 2170:4,4 2257:18         2260:22           serious 221:02         2233:1         2150:14 2153:20         states 2170:4,4 2257:18         2244:4           servel 2170:2         simulated 2252:2         2184:21 2265:5         2222:13         subpoenae 2148:3           service 208:16         sing 2229:6         2268:18         statig 222:16,7         2170:2         subpoenae 2148:3           2221:12 2245:12         sittig 226:19         2175:14 2133:9         statig 2217:19         2174:4           2221:2 2245:12         sittig 226:19         2175:14 2174:78         2256:15         subpoenae 2147:2           2212:1 220:24         siztig 220:16         220:16 2250:1         speaka 2179:20 2185:2         Ster 217:19         2178:14           2212:1 220:24         siztig 224:12         2179:3         stelig 217:12         2179:3         stelig 217:12         2179:12           2223:1,16         skelon 2264:20         specific 2157:25 2159:4         2174:9 2175:9         2260:17,19 2242:10           2152:12 218:15         skilig 2247:15         specific 2157:25 2159:4         2174:9 2179:9         2260:17,19 2242:1					
sequencing 2199:3         simply 2132:5 2140:3         2246:25         2258:12 2265:11         2175:4 2232:8 2245:13           serious 2251:15         2151:14 2190:16         South 2132:9 2137:7         statics 2170:4,42257:18         subnitting 2242:17           2179:7,8         simulated 2252:2         2170:5,9 2179:8         statics 2170:4,42257:18         subnitting 2242:17           2179:7,8         simulated 2252:2         2170:5,9 2179:8         statics 2170:4,42257:18         subpoena 2148:3           service 2208:16         sing 2229:6         2268:18         status 2213:13 2251:6,7         2170:2           2212:12 9218:24         sing 220:61         2175:14,19 2190:18         stealing 2217:19         217:4           2225:17         sittation 2209:12         2190:22 2265:2         Steercon 2248:11         subpoenas 2203:14,17           services 2208:15         2210:16 2250:21         speaks 2179:20 2185:2         2175:11 2180:19         subscentractor           2222:12 2224:22         six 2194:18,24 2225:6         spectific 2157:25 2159:4         2175:11 2180:19         sub-contractor           2223:11.6         sketon 2264:20         specific 2157:25 2159:4         2174:9 2175:9         2260:17,19 2262:10           2152:12 2181:15         sklip 2247:15         specific 2157:25 2159:4         2174:9 2135:6,91         succcessful 2184:20	2204:15 2245:22				2167:1,4,21 2168:20
serious 2251:15         2151:14 2190:16         South 2132:9 2137:7         states 2170:4, 4 2257:18         2260:22           seriously 2150:24         2233:1         2150:14 2153:20         static 2129:25         submitting 224:17           2179:7.8         sinulated 2252:2         2170:75.9 2179:28         static 2129:25         subpoena 2148:3           service 208:16         sing 229:6         2268:18         2222:13         subpoena 2148:3           2212:19 2218:24         situation 2209:12         2175:14,19 2190:18         status 2213:13 2251:67         subpoena 2177:24           2225:17         situation 2209:12         2190:22 2265:2         Stear 2174:10 2175:10         2178:4           2222:14 220:24         sizuton 2209:12         2190:22 2265:2         Stear 2174:10 2175:10         subpoenas 2203:14,17           services 208:15         2210:16 2250:21         speaks 2179:20 2185:2         2175:11 2180:19         2188:17 2212:17           2222:14,22,24 2223:1         Siyo 2127:12         2197:3         step 2183:3         sub-contractor           2223:1,16         skeleton 2264:20         spect 2179:22 2159:4         2174:9 2175:9         2260:17,19 2206:10           2215:12 2181:15         skipping 2248:6         2171:1 2211:11         step 2183:6,9,11         successstu 2184:20           2151:2 212:19 <td>2247:6</td> <td>simple 2239:15</td> <td>source 2211:25 2217:9</td> <td>2158:2,10,16 2167:12</td> <td>2169:6 2174:11</td>	2247:6	simple 2239:15	source 2211:25 2217:9	2158:2,10,16 2167:12	2169:6 2174:11
serious 2251:15         2151:14 2190:16         South 2132:9 2137:7         states 2170:4, 4 2257:18         2260:22           seriously 2150:24         2233:1         2150:14 2153:20         static 2129:25         submitting 224:17           2179:7.8         sinulated 2252:2         2170:75.9 2179:28         static 2129:25         subpoena 2148:3           service 208:16         sing 229:6         2268:18         2222:13         subpoena 2148:3           2212:19 2218:24         situation 2209:12         2175:14,19 2190:18         status 2213:13 2251:67         subpoena 2177:24           2225:17         situation 2209:12         2190:22 2265:2         Stear 2174:10 2175:10         2178:4           2222:14 220:24         sizuton 2209:12         2190:22 2265:2         Stear 2174:10 2175:10         subpoenas 2203:14,17           services 208:15         2210:16 2250:21         speaks 2179:20 2185:2         2175:11 2180:19         2188:17 2212:17           2222:14,22,24 2223:1         Siyo 2127:12         2197:3         step 2183:3         sub-contractor           2223:1,16         skeleton 2264:20         spect 2179:22 2159:4         2174:9 2175:9         2260:17,19 2206:10           2215:12 2181:15         skipping 2248:6         2171:1 2211:11         step 2183:6,9,11         successstu 2184:20           2151:2 212:19 <td>sequencing 2199:3</td> <td>simply 2132:5 2140:3</td> <td>2246:25</td> <td>2258:12 2265:11</td> <td>2175:4 2232:8 2245:1</td>	sequencing 2199:3	simply 2132:5 2140:3	2246:25	2258:12 2265:11	2175:4 2232:8 2245:1
seriously 2150:24         2233:1         2150:14 2153:20         static 2129:25         submitting 224:17           2179:7,8         simulated 2252:2         2170:5,9 2179:8         stating 220:24         2244:4           service 2208:16         sing 229:6         2268:18         stating 221:13 2251:6,7         2170:2           2212:19 2218:24         sing 2217:9 2246:24         speak 2173:14 2174:7,8         stating 2217:19         2178:4           2255:17         situating 220:12         2210:16 2250:21         speaking 2133:9         stealing 2217:19         2178:4           2212:21 220:24         siz 219:18:24         sigo 217:12         2190:22 2265:2         Steercom 2248:11         subpoenase 2203:14,17           services 2208:15         2210:16 2250:21         speaking 2133:9         Stefan 2174:10 2175:10         subsequently 2133:19           2212:21 220:24         siz 2194:18,24 222:66         specific 2157:25 2159:4         2174:9 2175:9         2260:17,19 2262:10           2221:12 2218:15         skipping 2248:6         2171:1 2211:11         step 2183:6,9,11         success 2180:18           2193:1 2196:19         slide 2181:21,23 2184:1         specifications 2239:4         step 2245:23         2184:24 2192:15           SETA 2200:5,6 2209:8         slide 214:14 2187:7         specifying 200:12         stop 248:16			South 2132:9 2137:7		
2179:7,8         simulated 2252:2         2170:5,9 2179:8         stating 220:24         2244:4           service 2208:16         sing 2229:6         2184:21 2265:5         2222:13         subpoena 2148:3           2212:19 2218:24         single 2217:9 2246:24         speak 2173:14 2174:7,8         2256:15         subpoenaed 2177:24           2221:2 2245:12         situation 2209:12         speak 2173:14 2174:7,8         2256:15         subpoenaed 2177:24           2255:17         situation 2209:12         speaks 2179:20 2185:2         2175:11 2180:19         subsequently 2133:19           2212:21 2220:24         six 2194:18,24 2225:6         speaks 2179:20 2185:2         2175:11 2180:19         subsequently 2133:19           2222:14,22,24 220:24         skills 2247:15         specific 2157:25 2159:4         2174:9 2175:9         2243:21 2244:25           set 2140:15 2150:10         skills 2247:15         specifications 229:4         step 2183:6,9,11         success 2180:18           2193:1 2196:19         slide 2181:21,23 218:11         specifications 229:4         step 2143:2         2184:24 2192:15           2247:8         2187:15.19 2192:4,10         specifications 229:4         step 2145:23         suggest 2167:23           2199:11,16,19,21         219:21,214,16         suggest 2167:23         suggest 2167:23         suggest 2167:23					
served 2170:2         sin 2228:25         2184:21 2265:5         2222:13         subpoena 2148:3           service 2208:16         sing 2229:6         2268:18         status 2213:13 2251:6,7         2170:2           2212:12 2245:12         sitting 2261:19         sitting 2261:19         2175:14,19 2190:18         status 2213:13 2251:6,7         subpoenae 2177:24           2255:17         situation 2209:12         2190:22 2265:2         Steercom 2248:11         subpoenas 2203:14,17           services 208:15         jiyo 2127:12         siyo 2127:12         jipo:133:19         stefan 2174:10 2175:10         subpoenas 2203:14,17           2222:14,22,24 2223:1         siyo 2127:12         sipo 2179:20 2185:2         2175:11 2180:19         subpoenas 2203:14,17           2222:14,22,24 2223:1         siyo 2127:12         2197:3         step 2183:3         sub-contractor           2222:14,22,24 2223:1         skills 2247:15         specifications 2239:4         stepped 2188:6,9,11         success 2180:18           2193:1 2196:19         slide 2181:21,23 2184:1         specifications 2239:4         step 2418:3         stepped 2188:6,9,11         successful 2184:20           2247:8         2187:51,9 2192:4,16         speculation 2190:17         stop 2249:16         suggest 2167:23           2219:22,24 220:1,6         2194:10 2213:9         2171;	-				-
service 2208:16         sing 2229:6         2268:18         status 2213:13 2251:6,7         2170:2           2212:12 2245:12         single 2217:9 2246:24         single 2217:9 2246:24         speak 2173:14 2174:7,8         2256:15         subpoenaed 2177:24           2212:12 2245:12         sittug 2201:19         2175:14,19 2190:18         Steercom 2248:11         subpoenas 2203:14,17           services 2208:15         2210:16 2250:21         speaks 2179:20 2185:2         2175:11 2180:19         subsequently 2133:19           2212:21 2220:24         six 2194:18,24 2225:6         speaks 2179:20 2185:2         2174:9 2175:10         subcontractor           2223:1,16         skeleton 2264:20         speeific 2157:25 2159:4         step 2183:3         sub-contractor           2247:8         skilb 2247:15         specific 2157:25 2159:4         steps 2143:6,9,11         success 2180:18           2193:1 2196:19         slide 2181:1,23 2184:1         specifying 207:24         steps 2245:23         2184:24 2192:15           2219:21,24,24         2192:21,14,16         specifying 207:24         steps 2245:23         2184:24 2192:15           2219:21,24,2220:1,6         2194:10 2213:9         2215:24 2246:10         suggest 2167:23           2219:22,24 2220:1,6         2194:10 2213:9         2215:24 2246:16         suggest 2167:23           <	·		'		
2212:19 2218:24 2221:2 2245:12 2255:17single 2217:9 2246:24 sitting 2261:19speak 2173:14 2174:7,8 					-
2221:2 2245:12 2255:17sitting 2261:19 situation 2209:122175:14,19 2190:18 2190:22 2265:2stealing 2217:19 Steercom 2248:112178:4 subpoenas 2203:14,17services 2208:15 2212:21 2220:242210:16 2250:21 situation 2204:20speaking 213:9 speaks 2179:20 2185:2Steercom 2248:11 2175:10 2175:10subsequently 2133:19 2188:17 2212:172212:12 220:24 2223:1,16six 2194:18,24 2225:6speaking 213:9 speaks 2179:20 2185:2Stefan 2174:10 2175:102188:17 2212:17 subsequently 2133:19 2175:19subsequently 2133:19 2188:17 2212:172223:1,16 2152:12 2181:15skeleton 2264:20 skills 2247:15spec 239:8 2267:16 specific 2157:25 2159:4Step 2183:3 step 2183:3sub-contractor 2243:21 2244:252247:8 2247:82184:6,12,14 2187:7 2192:12,14,16specifig 2207:24 speculation 2190:17 2219:21,24,220step 2183:6,9,11 step 2183:6,9,11successful 2184:20 success180:182219:9,11,16,19,21 2219:21,22,42220:1,62197:12,9 2192:12,14,162217:13,20,21 spend 2158:13 2216:3stop 2249:16 suggest 2167:23suggest 2167:23 stop 2249:162227:9,12,223:17 2222:8,13,15,192231:14 2233:14 2238:13,23 2242:5,12spine 2187:20 2189:6 2184:16 2216:22270:142188:8 2253:5settle 213:13 2251:5,6 suggest 2181:12244:12 2243:15 2244:12 2243:15 2244:12spine 2187:20 2189:6 2189:20 2190:10strategic 2174:4 strategic 2174:4suggest 2181:1 2188:8 2253:5settle 2213:13 2251:5,6 suggest 2181:1218:12 218:12218:13 218:12suitable 2155:8 2260:13sharing 2193:21 					
2255:17situation 2209:122190:22 2265:2Steerom 2248:11subpoenas 2203:14,17services 2208:152210:16 2250:21speaking 2133:9Stefan 2174:10 2175:10subsequently 2133:19212:21 2220:24six 2194:18,24 2225:6speaks 2179:20 2185:22175:11 2180:19subsequently 2133:192222:14,22,24 2223:1Siyo 2127:122197:3step 2183:3sub-contractor2233:1,16skeleton 2264:20spec 2239:8 2267:16Stephanie 2173:19,242243:21 2244:252152:12 2181:15skilp 2248:62171:1 2211:11stepped 2183:6,9,11success 2180:182193:1 2196:19slide 2181:21,23 2184:1specifications 2239:4steps 2245:232184:24 2192:152247:82184:61,2,14 2187:7specifing 2207:24steps 2249:16suggest 2167:232219:21,2,24 2220:1,62194:10 2213:92217:13,20,21stop 249:16suggest 2167:232219:22,24 2220:1,62194:10 2213:92217:13,20,21stop 249:16suggest 2167:232220:7,19,21,222218:1,18 222:6spent 2153:4,232215:24 2246:10suggest 2167:232220:7,19,21,222218:1,18 222:6spin 2187:20 2189:62270:14suggest 2167:232227:9,12 223:172238:13,23 2242:5,12spin 2187:20 2189:62270:14suggests 2181:1215:522242:14,15,16 2243:5spin 2187:20 2189:62270:142188:8 2253:5setting 215:522243:15 2244:12spoke 2190:22start geg 2180:13suit 2218:11setting 213:122243:15 2244:12spoke 2190:22start geg 2180:13 <td>2212:19 2218:24</td> <td>single 2217:9 2246:24</td> <td>speak 2173:14 2174:7,8</td> <td>2256:15</td> <td>subpoenaed 2177:24</td>	2212:19 2218:24	single 2217:9 2246:24	speak 2173:14 2174:7,8	2256:15	subpoenaed 2177:24
2255:17situation 2209:122190:22 2265:2Steerom 2248:11subpoenas 2203:14,17services 2208:152210:16 2250:21speaking 2133:9Stefan 2174:10 2175:10subsequently 2133:19212:21 2220:24six 2194:18,24 2225:6speaks 2179:20 2185:22175:11 2180:19subsequently 2133:192222:14,22,24 2223:1Siyo 2127:122197:3step 2183:3sub-contractor2233:1,16skeleton 2264:20spec 2239:8 2267:16Stephanie 2173:19,242243:21 2244:252152:12 2181:15skilp 2248:62171:1 2211:11stepped 2183:6,9,11success 2180:182193:1 2196:19slide 2181:21,23 2184:1specifications 2239:4steps 2245:232184:24 2192:152247:82184:61,2,14 2187:7specifing 2207:24steps 2249:16suggest 2167:232219:21,2,24 2220:1,62194:10 2213:92217:13,20,21stop 249:16suggest 2167:232219:22,24 2220:1,62194:10 2213:92217:13,20,21stop 249:16suggest 2167:232220:7,19,21,222218:1,18 222:6spent 2153:4,232215:24 2246:10suggest 2167:232220:7,19,21,222218:1,18 222:6spin 2187:20 2189:62270:14suggest 2167:232227:9,12 223:172238:13,23 2242:5,12spin 2187:20 2189:62270:14suggests 2181:1215:522242:14,15,16 2243:5spin 2187:20 2189:62270:142188:8 2253:5setting 215:522243:15 2244:12spoke 2190:22start geg 2180:13suit 2218:11setting 213:122243:15 2244:12spoke 2190:22start geg 2180:13 <td>2221:2 2245:12</td> <td>sitting 2261:19</td> <td>2175:14,19 2190:18</td> <td>stealing 2217:19</td> <td>2178:4</td>	2221:2 2245:12	sitting 2261:19	2175:14,19 2190:18	stealing 2217:19	2178:4
services 2208:152210:16 2250:21speaking 2133:9Stefan 2174:10 2175:10subsequently 2133:192212:21 2220:24six 2194:18,24 2225:6speaks 2179:20 2185:22175:11 2180:192188:17 2212:172222:14,22,24 2223:1siyo 2127:122197:3step 2183:3sub-contractor2223:1,16skilb 2247:15specific 2157:25 2159:42174:9 2175:92260:17,19 2262:102152:12 2181:15skipping 2248:62171:1 2211:11stepped 2183:6,9,11success 2180:182193:1 2196:19slide 2181:21,23 2184:1specifications 2239:4steps 2245:232184:24 2192:152247:82184:6,12,14 2187:7specifying 2207:24stop 2249:16suggest 2179:2,32219:22,24 2220:1,62192:12,14,16specifications 2239:4stop 2249:16suggest 2167:232219:22,24 2220:1,62194:10 2213:92217:13,20,21stop 2249:16suggest 2167:232220:7,19,21,222218:1,18 222:6spent 2153:4,232215:24 2246:10suggested 2192:172222:8,13,15,192226:16 228:252184:16 2216:22248:14 2249:15suggesting 2152:22227:9,12 223:172231:14 2233:14spine 2187:20 2189:62270:142188:8 2253:5setting 2151:5 2154:242243:15 2244:12spoke 2190:22story 2180:18 2264:212262:13sides 2181:42,12 1285:10sSA 2249:7stat gy 2180:13suit 2218:11sheets 2261:72185:12 228:12spinsorship 2187:19strategic 2174:4suggests 2181:1sette 2213:13 2251:5,62243:15 2244:12spoke 2190:22sit 2218:21					subpoenas 2203:14.17
2212:21 2220:24 2222:14,22,24 2223:1six 2194:18,24 2225:6speaks 2179:20 2185:2 2197:32175:11 2180:19 step 2183:32188:17 2212:17 sub-contractor2223:1,16 set 2140:15 2150:10skeleton 2264:20 skills 2247:15spec 2239:8 2267:16 specific 2157:25 2159:4step 2183:3 2171:1 2211:11sub-contractor 2243:21 2244:252152:12 2181:15 2247:8skipping 2248:6 slide 2181:21,23 2184:1specific 2157:25 2159:4 2171:1 2211:11step 2183:6,9,11 specifying 2207:24steps 2245:23 steps 2245:23success 2180:18 2184:24 2192:152247:8 2219:9,11,16,19,21 2219:9,11,16,19,21 2219:2,24 2220:1,62187:15,19 2192:4,10 2192:12,14,16specifying 2207:24 specifying 2207:24Steven 2174:9 stop 2249:16successful 2184:20 suggest 2167:232219:22,24 2220:1,6 2220:7,19,21,22 2220:7,19,21,22219:10 2213:9 2226:16 2228:25 2218:11,18 2222:6 2226:16 2228:252171:13,20,21 2184:16 2216:2stop 2249:16 suggest 2187:12suggest 2167:23 2182:122219:22,24 220:1,6 2220:7,19,21,22 22218:11,18 2222:6 22218:11,233:142215:13,221.2 218:16 2216:2stop 2249:16 2248:14 2249:15suggest 2167:23 2218:21219:22,24 220:1,6 22218:13,23,2242:5,12 215:2218:120.2 218:12.2story 2180:18 2264:21 2218:12suggest 2162:2 226:13settle 2213:13 2251:5,6 sharing 2193:21 sharing 2193:21slides 2181:4,21 2182:8 218:14,21 2182:82189:6 SXA 2249:7stat geg 2180:13 218:14,16 2218:22suitable 2155:8 suitable 2155:8shibubotsi '2220:7,21 Shibubotsi '2222:202190:18,19 2192:6stage 2146:2 2150:18 </td <td></td> <td></td> <td></td> <td></td> <td></td>					
2222:14,22,24 2223:1Siyo 2127:122197:3step 2183:3sub-contractor2223:1,16skeleton 2264:20spec 2239:8 2267:16Stephanie 2173:19,242243:21 2244:252152:12 2181:15skills 2247:15specific 2157:25 2159:42174:9 2175:92260:17,19 2262:102152:12 2181:15skipping 2248:62171:1 2211:11stepped 2183:6,9,11success 2180:182193:1 2196:192184:6,12,14 2187:72184:6,12,14 2187:7specifying 2207:24steps 2245:232184:24 2192:152219:9,11,16,19,212192:12,14,16specifying 2207:24steven 2174:9successful 2184:202220:7,19,21,222218:1,18 2222:6spent 2158:13 2216:3stop 2249:16suggest 2167:232219:2,2,4 2220:1,62194:10 2213:92217:13,20,21stopped 2187:122176:212220:7,19,21,222218:1,18 2222:6spent 2153:4,232215:24 2246:10suggesting 2152:22227:9,12 2232:172231:14 2233:14spine 2187:20 2189:62270:142188:8 2253:5setting 2151:5 2154:242238:13,23 2242:5,122189:20 2190:10story 2180:18 2264:212262:132155:22242:14,15,16 2243:5spirit 2160:14,16strategic 2174:4suggests 2181:12193:21slides 2181:4,21 2182:8spok 2190:222218:212191:22shets 2261:72182:11 2185:10SSA 2249:72181:14,218:22suitable 2155:8shibubotsi 2220:7,212187:12 188:13stag 2146:2 2150:18strategy 2180:13suitable 2155:8shibubotsi's 2222:202190:18,19 2192:6stag 2146:2 21					
2223:1,16skeleton 2264:20spec 2239:8 2267:16Stephanie 2173:19,242243:21 2244:25set 2140:15 2150:10skills 2247:15skipping 2248:62171:1 2211:112174:9 2175:92260:17,19 2262:102152:12 2181:15skipping 2248:62171:1 2211:11stepped 2183:6,9,11success 2180:182193:1 2196:19slide 2181:21,23 2184:1specifications 2239:4steps 2245:232184:24 2192:152247:82187:15,19 2192:4,10specifications 2239:4steps 2245:23successful 2184:202219:9,11,16,19,212192:12,14,16specifications 2190:17stop 2249:16suggest 2167:232219:22,24 2220:1,62194:10 2213:92217:13,20,21stop 2249:16suggest 2167:232220:7,19,21,222218:1,18 222:6spent 2153:4,232215:24 2246:10suggesting 2152:22222:8,13,15,192226:16 2228:252184:16 2216:22248:14 2249:15suggesting 2152:22227:9,12 2232:172231:14 2233:14spine 2187:20 2189:62270:142188:8 2253:5setting 2151:5 2154:242238:13,23 2242:5,122189:20 2190:10story 2180:18 2264:212262:13strategic 2174:4suggests 2181:1219:22spine 2187:20218:21218:212155:22243:15 2244:12sponsorship 2187:19strategic 2174:4suggests 2181:1settle 2213:13 2251:5,62243:15 2244:12spine 2182:20218:0218:0seven 2137:19 2194:18slides 2181:4,21 2182:8spine 2187:20strategic 2174:4suggests 2181:1sharing 2193:21slides 2181:4,21 21		,	-		
set 2140:15 2150:10 2152:12 2181:15 2193:1 2196:19skills 2247:15 skipping 2248:6 2181:21,23 2184:1 2193:1 2196:19skills 2247:15 skipping 2248:6 2171:1 2211:112174:9 2175:9 stepped 2183:6,9,11 steps 2245:232260:17,19 2262:10 stuccess 2180:18 2184:24 2192:15SETA 2200:5,6 2209:8 2219:2,14,16,19,21 2219:2,24 2220:1,6 2219:2,24 2220:1,62187:15,19 2192:4,10 2192:12,14,16specifications 2239:4 specifications 2239:4 specification 2190:17 stoning 2264:16Steven 2174:9 stopped 2183:6,9,11 stopped 2164:16success 2180:18 2184:24 2192:152219:2,24 220:1,6 2220:7,19,2,12 2220:7,19,2,122 2222:8,13,15,19 2226:16 2228:252187:13,20,21 2184:16 2216:2stopped 2187:12 2184:16 2216:2suggest 2167:23 215:24 2246:10 2248:14 2249:15suggest 2192:17 suggest 2192:17 suggest 2192:17setting 2151:5 2154:24 215:22238:13,23 2242:5,12 2242:14,15,16 2243:5spine 2187:20 2189:6 spinit 2160:14,16 spoke 2190:222270:142188:8 2253:5 2262:13 suggests 2181:1setting 2151:5 215:4,24 2137:19 2194:18 sharing 2193:21 sharing 2193:21slides 2181:4,21 2182:8 2185:10strategic 2174:4 spine 2187:19218:11 suitable 2155:8 suitable 2155:8sheets 2261:7 Shibubotsi 2220:7,21 Shibubotsi 2220:7,212187:1 2188:13 2187:1 2188:13strategic 2174:9 strategic 2174:4 spine 2187:29suitable 2155:8 suitable 2155:8 suitable 2155:8shibubotsi 2220:7,21 Shibubotsi 2220:7,212187:1 2188:13 2187:1 2188:13state 218:25 staff 2218:25 staff 2218:25 2255:62205:10shibubotsi 2220:7,21 Shibubotsi 2220:7,212190:		e			
2152:12 2181:15 2193:1 2196:19skipping 2248:6 slide 2181:21,23 2184:12171:1 2211:11 specifications 2239:4 specifying 2207:24 specifying 2207:24 spec					
2193:1 2196:19 2247:8slide 2181:21,23 2184:1 2184:61,21,4 2187:7 2187:15,19 2192:4,10specifications 2239:4 specifying 2207:24 specifying 2207:24steps 2245:23 Steven 2174:92184:24 2192:15 successful 2184:20SETA 2200:5,6 2209:8 2219:9,11,16,19,21 2219:22,24 2220:1,62187:15,19 2192:4,10 2192:12,14,16specifying 2207:24 speculation 2190:17 specifying 2207:24Steven 2174:9 stoning 2264:16successful 2184:20 successful 2184:202219:22,24 2220:1,6 2220:7,19,21,22 2220:7,19,21,222194:10 2213:9 2218:1,18 222:62217:13,20,21 spent 2153:4,23stop 2249:16 2215:24 2246:10suggested 2192:17 suggesting 2152:22222:8,13,15,19 2226:16 2228:25226:16 2228:25 2184:16 2216:22184:16 2216:2 2184:16 2216:22248:14 2249:15 2248:14 2249:15suggesting 2152:2 226:132215:2 2227:9,12 2232:17 2231:14 2233:14spine 2187:20 2189:6 2189:20 2190:102270:142188:8 2253:5 2188:8 2253:5settle 213:13 2251:5,6 seven 2137:19 2194:18 sharing 2193:21slides 2181:4,21 2182:8 2182:15 2244:12 2267:17,21 2266:15spoke 2190:22 sponsorship 2187:19218:12 strategis 2250:24suitable 2155:8 suitable 2155:8sheets 2261:7 Shibubotsi 2220:7,21 Shibubotsi 2220:7,212187:1 2188:13 2187:1 2188:13 2199:26SSA 2249:7 staf 2218:25 staf 2218:25218:11,4,16 2218:22 2255:6 2205:10summary 2266:16					-
2193:1 2196:19 2247:8slide 2181:21,23 2184:1 2184:61,21,4 2187:7 2187:15,19 2192:4,10specifications 2239:4 specifying 2207:24 specifying 2207:24steps 2245:23 Steven 2174:92184:24 2192:15 successful 2184:20SETA 2200:5,6 2209:8 2219:9,11,16,19,21 2219:22,24 2220:1,62187:15,19 2192:4,10 2192:12,14,16specifying 2207:24 speculation 2190:17 specifying 2207:24Steven 2174:9 stoning 2264:16successful 2184:20 suggest 2167:232219:22,24 2220:1,6 2220:7,19,21,222194:10 2213:9 2218:1,18 222:62217:13,20,21 spent 2153:4,23stop 2249:16 2215:24 2246:10suggested 2192:17 suggesting 2152:22222:8,13,15,19 2226:16 2228:25226:16 2228:25 2184:16 2216:22184:16 2216:2 2184:16 2216:22248:14 2249:15 2248:14 2249:15suggesting 2152:2 226:132215:24 22215:242238:13,23 2242:5,12 2242:14,15,16 2243:52189:20 2190:10 spini 2187:20 2189:6story 2180:18 2264:21 2218:212188:8 2253:5settle 2213:13 2251:5,6 seven 2137:19 2194:18 sharing 2193:21slides 2181:4,21 2182:8 2182:11 2185:10spoke 2190:22 2189:62218:21 2181:14,16 2218:222191:22 2181:14,16 2218:22sheets 2261:7 Shibubotsi 2220:7,21 Shibubotsi 2220:7,212187:1 2188:13 2187:1 2188:13 2199:26Staf 2218:25 staf 2218:252255:6 2205:102205:10Shibubotsi's 2222:202190:18,19 2192:6stag 2146:2 2150:18stress 2178:9summary 2266:16	2152:12 2181:15	skipping 2248:6	2171:1 2211:11	stepped 2183:6,9,11	success 2180:18
2247:82184:6,12,14 2187:7specifying 2207:24Steven 2174:9successful 2184:20SETA 2200:5,6 2209:82187:15,19 2192:4,10speculation 2190:17stoning 2264:16suffered 2179:2,32219:9,11,16,19,212192:12,14,16spend 2158:13 2216:3stop 2249:16suggest 2167:232219:22,24 2220:1,62194:10 2213:92217:13,20,21stopped 2187:122176:212220:7,19,21,222218:1,18 222:6spent 2153:4,232215:24 2246:10suggested 2192:172222:8,13,15,192226:16 2228:252184:16 2216:22248:14 2249:15suggesting 2152:22227:9,12 2232:172231:14 2233:14spine 2187:20 2189:62270:142188:8 2253:5setting 2151:5 2154:242238:13,23 2242:5,122189:20 2190:10story 2180:18 2264:212262:132155:22242:14,15,16 2243:5spirt 2160:14,16strategic 2174:4suggests 2181:1settle 2213:13 2251:5,62243:15 2244:12spoke 2190:222218:212191:22spoke 2190:22spirt 2160:14,16strategic 2250:24suit 2218:11sharing 2193:21slides 2181:4,21 2182:82189:6strategies 2250:24suit 2218:11sheets 2261:72182:11 2185:10SSA 2249:72181:14,16 2218:22summarise 2132:5Shibubotsi's 2222:202190:18,19 2192:6stage 2146:2 2150:18stress 2178:9summary 2266:16	2193:1 2196:19		specifications 2239:4		2184:24 2192:15
SETA 2200:5,6 2209:82187:15,19 2192:4,10speculation 2190:17stoning 2264:16suffered 2179:2,32219:9,11,16,19,212192:12,14,16spend 2158:13 2216:3stop 2249:16suggest 2167:232219:22,24 2220:1,62194:10 2213:92217:13,20,21stopped 2187:122176:212220:7,19,21,222218:1,18 222:6spent 2153:4,232215:24 2246:10suggested 2192:172222:8,13,15,192226:16 2228:252184:16 2216:22248:14 2249:15suggesting 2152:22227:9,12 2232:172231:14 2233:14spine 2187:20 2189:62270:142188:8 2253:5setting 2151:5 2154:242238:13,23 2242:5,122189:20 2190:10story 2180:18 2264:212262:132155:22242:14,15,16 2243:5spirit 2160:14,16strategic 2174:4suggests 2181:1settle 2213:13 2251:5,62243:15 2244:12spoke 2190:222218:212191:22sharing 2193:21slides 2181:4,21 2182:82189:6strategic 2250:24suit 2218:11sheets 2261:72182:11 2185:10SSA 2249:72181:14,16 2218:22summarise 2132:5Shibubotsi 2220:7,212187:1 2188:13staff 2218:252255:62205:10Shibubotsi's 2222:202190:18,19 2192:6stage 2146:2 2150:18stress 2178:9summary 2266:16			-	-	
2219:9,11,16,19,21 2219:22,24 2220:1,6 2220:7,19,21,22 2222:8,13,15,19 2222:8,13,15,19 2226:16 2228:25 2227:9,12 2232:172192:12,14,16 218:1,18 222:6 2228:25 2226:16 2228:25 2231:14 2233:14spend 2158:13 2216:3 2184:16 2216:2 2184:16 2216:2 2189:20 2190:10stop 2249:16 stopped 2187:12 2248:14 2249:15suggest 2167:23 2175:2 2270:14setting 2151:5 2154:24 2155:2 2155:22238:13,23 2242:5,12 2242:14,15,16 2243:5 2242:14,15,16 2243:52189:20 2190:10 spint 2160:14,16 spoke 2190:22 2218:21story 2180:18 2264:21 2218:21 2218:212262:13 2262:13settle 2213:13 2251:5,6 seven 2137:19 2194:18 sharing 2193:212181:4,21 2182:8 2182:11 2185:10spoke 2190:22 2189:62218:21 2189:62181:14,16 2218:22 2255:62181:14,16 2218:22 2255:62181:14,16 2218:22 2205:10Shibubotsi 2220:7,21 Shibubotsi 2220:7,212187:1 2188:13 2190:18,19 2192:6staff 2218:25 staff 2218:252255:6 stage 2146:2 2150:182255:6 story 2180:192205:10 summary 2266:16					
2219:22,24 2220:1,62194:10 2213:92217:13,20,21stopped 2187:122176:212220:7,19,21,222218:1,18 222:6spent 2153:4,232215:24 2246:10suggested 2192:172222:8,13,15,192226:16 2228:252184:16 2216:22248:14 2249:15suggesting 2152:22227:9,12 2232:172231:14 2233:14spine 2187:20 2189:62270:142188:8 2253:5setting 2151:5 2154:242238:13,23 2242:5,122189:20 2190:10story 2180:18 2264:212262:132155:22242:14,15,16 2243:5spint 2160:14,16strategic 2174:4suggests 2181:1settle 2213:13 2251:5,62243:15 2244:12spoke 2190:222218:212191:22seven 2137:19 2194:182257:17,21 2266:15spoke 2190:22218:212191:22sharing 2193:21slides 2181:4,21 2182:82189:6strategie 2250:24suit 2218:11sheets 2261:72182:11 2185:10SSA 2249:72181:14,16 2218:22summarise 2132:5Shibubotsi's 2220:7,212187:1 2188:13staff 2218:252255:62205:10Shibubotsi's 2222:202190:18,19 2192:6stage 2146:2 2150:18stress 2178:9summary 2266:16	-		-	0	
2220:7,19,21,222218:1,18 222:6spent 2153:4,232215:24 2246:10suggested 2192:172222:8,13,15,192226:16 2228:252184:16 2216:22248:14 2249:15suggesting 2152:22227:9,12 2232:172231:14 2233:14233:142187:20 2189:62270:142188:8 2253:5setting 2151:5 2154:242238:13,23 2242:5,122189:20 2190:10story 2180:18 2264:212262:132155:22242:14,15,16 2243:5spirt 2160:14,16strategic 2174:4suggests 2181:1settle 2213:13 2251:5,62243:15 2244:12spoke 2190:222218:212191:22seven 2137:19 2194:182257:17,21 2266:15sponsorship 2187:19strategies 2250:24suit 2218:11sharing 2193:21slides 2181:4,21 2182:82189:6strategy 2180:13suitable 2155:8sheets 2261:72182:11 2185:10SSA 2249:72181:14,16 2218:22summarise 2132:5Shibubotsi's 2220:7,212187:1 2188:13staff 2218:252255:62205:10Shibubotsi's 2222:202190:18,19 2192:6stage 2146:2 2150:18stress 2178:9summary 2266:16			-		
2222:8,13,15,192226:16 2228:252184:16 2216:22248:14 2249:15suggesting 2152:22227:9,12 2232:172231:14 2233:14spine 2187:20 2189:62270:142188:8 2253:5setting 2151:5 2154:242238:13,23 2242:5,122189:20 2190:10story 2180:18 2264:212262:132155:22242:14,15,16 2243:5spinit 2160:14,16strategic 2174:4suggests 2181:1settle 2213:13 2251:5,62243:15 2244:12spoke 2190:222218:212191:22seven 2137:19 2194:182257:17,21 2266:15sponsorship 2187:19strategies 2250:24suit 2218:11sharing 2193:21slides 2181:4,21 2182:82189:6strategy 2180:13suitable 2155:8sheets 2261:72182:11 2185:10SSA 2249:72181:14,16 2218:22summarise 2132:5Shibubotsi 2220:7,212187:1 2188:13staff 2218:252255:62205:10Shibubotsi's 2222:202190:18,19 2192:6stage 2146:2 2150:18stress 2178:9summary 2266:16					
2227:9,12 2232:172231:14 2233:14spine 2187:20 2189:62270:142188:8 2253:5setting 2151:5 2154:242238:13,23 2242:5,122189:20 2190:10story 2180:18 2264:212262:132155:22242:14,15,16 2243:5spirit 2160:14,16strategic 2174:4suggests 2181:1settle 2213:13 2251:5,62243:15 2244:12spoke 2190:222218:212191:22seven 2137:19 2194:182257:17,21 2266:15sponsorship 2187:19strategies 2250:24suit 2218:11sharing 2193:21slides 2181:4,21 2182:82189:6strategy 2180:13suitable 2155:8sheets 2261:72182:11 2185:10SSA 2249:72181:14,16 2218:22summarise 2132:5Shibubotsi 2220:7,212187:1 2188:13staff 2218:252255:62205:10Shibubotsi's 2222:202190:18,19 2192:6stage 2146:2 2150:18stress 2178:9summary 2266:16					
setting 2151:5 2154:24 2155:22238:13,23 2242:5,12 2242:14,15,16 2243:52189:20 2190:10 spirt 2160:14,16 spirt 2160:14,16story 2180:18 2264:21 strategic 2174:42262:13 suggests 2181:1 2191:22settle 2213:13 2251:5,6 settle 2213:13 2251:5,62243:15 2244:12 2243:15 2244:12spirt 2160:14,16 spoke 2190:22strategic 2174:4 2218:21suggests 2181:1 2191:22seven 2137:19 2194:18 sharing 2193:21 sheets 2261:7slides 2181:4,21 2182:8 2182:11 2185:10strategic 2250:24 2189:6suit 2218:11 suitable 2155:8 2181:14,16 2218:22Shibubotsi 2220:7,21 Shibubotsi's 2222:202187:1 2188:13 2190:18,19 2192:6staff 2218:25 stage 2146:2 2150:182255:6 stress 2178:92205:10 summary 2266:16		2226:16 2228:25			suggesting 2152:2
setting 2151:5 2154:24 2155:22238:13,23 2242:5,12 2242:14,15,16 2243:52189:20 2190:10 spirt 2160:14,16 spirt 2160:14,16story 2180:18 2264:21 strategic 2174:42262:13 suggests 2181:1 2191:22settle 2213:13 2251:5,6 settle 2213:13 2251:5,62243:15 2244:12 2243:15 2244:12spirt 2160:14,16 spoke 2190:22strategic 2174:4 2218:21suggests 2181:1 2191:22seven 2137:19 2194:18 sharing 2193:21 sheets 2261:7slides 2181:4,21 2182:8 2182:11 2185:10strategic 2250:24 2189:6suit 2218:11 suitable 2155:8 2181:14,16 2218:22Shibubotsi 2220:7,21 Shibubotsi's 2222:202187:1 2188:13 2190:18,19 2192:6staff 2218:25 stage 2146:2 2150:182255:6 stress 2178:92205:10 summary 2266:16	2227:9,12 2232:17	2231:14 2233:14	spine 2187:20 2189:6		2188:8 2253:5
2155:22242:14,15,16 2243:5spirit 2160:14,16strategic 2174:4suggests 2181:1settle 2213:13 2251:5,62243:15 2244:12spoke 2190:222218:212191:22seven 2137:19 2194:182257:17,21 2266:15sponsorship 2187:19strategies 2250:24suit 2218:11sharing 2193:21slides 2181:4,21 2182:82189:6strategy 2180:13suitable 2155:8sheets 2261:72182:11 2185:10SSA 2249:72181:14,16 2218:22summarise 2132:5Shibubotsi 2220:7,212187:1 2188:13staff 2218:252255:62205:10Shibubotsi's 2222:202190:18,19 2192:6stage 2146:2 2150:18stress 2178:9summary 2266:16			-	story 2180:18 2264:21	
settle 2213:13 2251:5,62243:15 2244:12spoke 2190:222218:212191:22seven 2137:19 2194:182257:17,21 2266:15spoke 2190:22strategies 2250:24suit 2218:11sharing 2193:21slides 2181:4,21 2182:82189:6strategy 2180:13suitable 2155:8sheets 2261:72182:11 2185:10SSA 2249:72181:14,16 2218:22summarise 2132:5Shibubotsi 2220:7,212187:1 2188:13staff 2218:252255:62205:10Shibubotsi's 2222:202190:18,19 2192:6stage 2146:2 2150:18stress 2178:9summary 2266:16	0				
seven 2137:19 2194:182257:17,21 2266:15sponsorship 2187:19strategies 2250:24suit 2218:11sharing 2193:21slides 2181:4,21 2182:82189:6strategy 2180:13suitable 2155:8sheets 2261:72182:11 2185:10SSA 2249:72181:14,16 2218:22summarise 2132:5Shibubotsi 2220:7,212187:1 2188:13staff 2218:252255:62205:10Shibubotsi's 2222:202190:18,19 2192:6stage 2146:2 2150:18stress 2178:9summary 2266:16				0	00
sharing 2193:21slides 2181:4,21 2182:82189:6strategy 2180:13suitable 2155:8sheets 2261:72182:11 2185:10SSA 2249:72181:14,16 2218:22suitable 2155:8Shibubotsi 2220:7,212187:1 2188:13staff 2218:252255:62205:10Shibubotsi's 2222:202190:18,19 2192:6stage 2146:2 2150:18stress 2178:9summary 2266:16					
sheets 2261:72182:11 2185:10SSA 2249:72181:14,16 2218:22summarise 2132:5Shibubotsi 2220:7,212187:1 2188:13staff 2218:252255:62205:10Shibubotsi's 2222:202190:18,19 2192:6stage 2146:2 2150:18stress 2178:9summary 2266:16				-	
Shibubotsi 2220:7,212187:1 2188:13staff 2218:252255:62205:10Shibubotsi's 2222:202190:18,19 2192:6stage 2146:2 2150:18stress 2178:9summary 2266:16	0				
Shibubotsi's 2222:20         2190:18,19 2192:6         stage 2146:2 2150:18         stress 2178:9         summary 2266:16					
		2187:1 2188:13			
	Shibubotsi's 2222:20	2190:18,19 2192:6	stage 2146:2 2150:18	stress 2178:9	summary 2266:16
					÷
				• - · -	

				Page 1
Sunday 2180:24 2186:1	2202:21 2207:18	tendering 2239:16	2247:19 2249:14,15	2204:13 2226:18
Sunnyside 2268:8	2212:12 2213:16	2240:5	2249:25 2250:6,22	2237:24 2242:3
supplement 2146:25	2212:12 2215:10	tenders 2261:25	2251:2 2264:8	2247:24 2248:1,2
supplementary	2217:18,18 2227:7	<b>Tepano</b> 2174:10	2265:15 2267:20,22	2252:7,16 2261:21
2142:24	2228:24 2233:8	2175:10 2180:19	2269:22 2270:13,24	throw 2200:14
supplier 2208:18,18	2260:16	term 2187:22	theme 2181:21 2184:2	thrown 2241:6 2245:25
2211:12 2212:23,23	talked 2149:18 2207:17	terminate 2188:15	they've 2245:25	<b>Thursday</b> 2132:14
2216:17 2218:2	2225:24	terms 2137:17 2146:4	2246:19 2270:6,8	2193:17 2234:11
22210:17 22218:2 2221:2 2224:17	talking 2161:16	2149:19 2165:11,12	thing 2134:4 2150:8	tied 2205:22
2238:1,2 2239:2,7	2184:15 2185:19	2149.19 2105.11,12 2170:11,21,25	2159:1 2196:19	till 2166:11 2203:1,2
2240:8 2244:13	2210:6 2220:8,22	2170.11,21,25	2209:18 2213:11	time 2137:20 2138:21
2240.8 2244.13	2221:23 2237:15	2190:16 2203:24	2215:3 2225:1	2139:19 2141:13
2263:10,13,15 2267:2	2240:10 2245:8,20,23	2209:20 2221:3,5,7,8	2246:20,23 2256:10	2142:8,13 2143:25
2268:7	2240:10 2245.8,20,25	2224:21 2228:22	-	2142.8,13 2143.23
			2263:12,25 2266:22	
suppliers 2214:14	2256:6 2261:1 2266:5 talks 2235:7	2231:22,23 2232:4	2267:25	2147:17 2148:12 2149:14,25 2159:5
2224:9 2246:7 2266:21	target 2252:3	2233:8,10,18,21	things 2138:22 2141:8 2141:13 2152:22	2149:14,25 2139:5
	task 2135:25	2235:11 2236:6,7		
Supply 2203:20		2238:20,25 2239:1	2156:24 2174:1	2170:20 2175:22
support 2146:6 2174:3	tasted 2265:13	2240:10,10 2241:3,4	2177:18 2178:6	2176:23 2180:16
2180:7 2184:13	taxes 2179:2	2241:23 2242:1,2,8	2201:4,7 2214:17	2181:23 2182:17
2212:3 2254:17	taxpayers 2184:20	2242:17,20,21,24	2215:22 2220:12	2183:7 2187:18
2255:6,16	team 2135:23 2170:22	2243:3,19,21 2244:2	2226:20 2248:16	2193:22 2196:18
supportive 2237:16	2173:25 2174:6	2244:3,11,13 2247:10	2249:15 2263:9,23	2197:16 2199:9
suppose 2174:15	2184:4,5 2187:8	2260:19 2261:5	2264:8 2265:8 2266:8	2200:1 2202:13,16
2201:20 2269:12	2230:11 2245:24	<b>Terry</b> 2247:15	2266:19 2267:24	2203:6 2204:2,13,19
supposed 2191:14	2247:6	test 2128:23	2269:16,19	2206:21 2213:7
2255:12,15 2261:2	teams 2173:19	testified 2158:18	think 2128:4 2130:22	2218:3 2220:25
sure 2133:15 2138:15	technical 2184:12	2161:8 2203:22	2135:8,10 2136:9,18	2224:16 2227:19
2138:23 2151:5	teleconference 2133:11	2264:14	2142:3,4 2144:11,13	2228:8 2230:12,13
2163:13 2165:24	telephone 2198:16	testify 2184:11	2160:4,6,18 2161:3	2236:18 2237:1
2171:12 2172:3	<b>Telkom</b> 2180:18	testifying 2190:15	2162:4,4 2163:3,4,11	2240:17 2261:7
2178:1 2183:16	2195:14 2196:7,19,23	testimony 2128:17,19	2164:17 2169:18	2264:9 2268:3
2188:1 2193:8,8	2196:23 2197:11,24	2128:20,21 2129:2	2173:20 2175:19	2269:16 2270:25
2194:19,22 2199:12	2198:18 2209:18,19	2159:7,9,12 2160:10	2176:1,4 2177:2	<b>timeline</b> 2251:19
surfaced 2171:14	2219:8	2162:15,24 2178:10	2179:19 2183:5	times 2149:19 2213:4
surmising 2190:12	tell 2127:6 2131:4	2197:16	2184:2 2192:5	2219:2
surprising 2221:25	2132:20 2134:21	testing 2187:13 2245:5	2193:25 2194:2	timesheet 2225:23
suspect 2128:17,21	2135:1,12 2137:15	2245:7	2195:4 2196:1,17,20	2259:14
2129:3	2139:19 2140:20	tests 2247:24	2199:11 2202:18	timesheets 2226:2
suspended 2189:11	2145:20 2151:24	thank 2131:6,7 2132:24	2203:8 2204:3	2259:9,10 2261:11,18
suspicious 2129:20	2154:4 2158:22	2133:24 2138:23,25	2217:12 2226:16	timetable 2167:3,8
2130:2	2169:17,19,22	2139:1,7,14 2148:3	2234:8 2250:4,9	2168:5,13,25 2172:7
sustainable 2158:6	2175:14 2176:5	2172:9 2173:6	2252:15 2257:24	title 2181:23 2188:13
sweep 2253:25	2178:6 2182:18	2176:24 2177:22,23	2268:12	today 2133:5 2138:1
system 2188:21 2207:1	2188:7 2190:22	2178:10,16,18	thinking 2173:25	2148:4 2156:17
2264:6	2203:8,10,25 2206:3	2201:12 2203:3	thinks 2154:17 2203:7	2170:2 2195:20
systematic 2165:17	2226:2 2227:20	2204:1,4,8 2206:3,12	third 2156:19 2162:11	2207:18 2238:21
systems 2244:23	2228:3 2230:18	2225:3 2241:2	2181:14 2182:23	2239:21 2243:20
2252:4 2253:3	2240:7 2245:15	2247:17 2259:3	2187:10 2194:1,6	2244:2 2264:22
	2252:7 2265:10	2269:11,13,22,23	2201:25,25 2202:7	2267:22 2269:6
T	2267:23 2269:10	2270:20,22 2271:6,7	2204:16 2205:23	told 2129:20 2133:17
Tabacks 2131:16	telling 2138:17 2142:21	2271:8	2208:7 2210:12	2134:6 2142:14
2133:15 2202:15	2145:18 2150:24	thanks 2136:11	2218:7 2266:23	2150:16,18 2160:15
table 2206:15	2203:7 2247:25	2204:20 2211:8	Thornton 2206:9	2161:9 2179:21
tail 2213:20	2265:1,14	2271:4,5	2214:19 2246:23	2183:11 2202:16
take 2127:14 2129:6	tells 2133:17 2145:14	that's 2159:19 2162:25	2267:2 2269:25	2251:13 2264:10
2136:21 2138:24	template 2185:21	2163:1 2164:3 2165:5	2270:3,11	tolerate 2127:19
2149:6 2152:19	temptation 2251:14	2165:25 2167:10	thoroughly 2129:5	<b>Tom</b> 2174:2 2191:13,14
2153:10,11 2155:4	ten 2234:22	2168:10 2173:24	thought 2144:4,6,8	tomorrow 2173:17
2170:14 2179:7	tender 2141:12 2146:2	2175:7 2176:9,18	2150:17 2161:5	2228:6 2234:10
2199:19 2236:24	2205:11,15 2209:9,19	2177:21 2179:7,19	2162:19 2168:2	2247:16 2271:1,2
2253:25 2269:21	2210:20 2222:2	2182:17 2183:20	2188:2 2194:17,18	tone 2192:2
taken 2160:13 2192:21	2224:9,12,13,14	2185:9 2186:24	2234:13 2270:2	top 2184:3,5 2187:8
2231:6 2253:24	2227:9,10 2231:17	2187:2,25 2205:25	threaten 2265:2,24	2255:17
talk 2138:16,18 2173:8	2232:6,12 2239:8	2210:8 2240:23	three 2141:10 2174:1	topics 2198:13
2173:10,11 2176:23	2240:2,12 2263:11	2242:5 2245:2,17	2194:17,18 2203:14	<b>Town</b> 2186:12
,				

	2185:8 <b>typed</b> 2221:18	V	2200:25 2201:7,24	
transactions 2211:21 transfer 2247:15 transform 2181:19		V	2200.25 2201.7 24	0241.2
transactions 2211:21 transfer 2247:15 transform 2181:19				well-written 2241:3
<b>transfer</b> 2247:15 <b>transform</b> 2181:19		·	2206:14 2207:7,12	went 2134:3,5 2145:16
transform 2181:19	types 2218:2	vacancy 2199:4	2208:3 2209:14	2146:14 2157:13
	·; F ·: == 101=	vacant 2179:23	2210:23 2212:1	2177:4 2178:9
2100.10 210	U	2183:14	2213:1 2217:9 2222:6	2263:15
	UK 2241:11	valid 2218:8 2221:19	2223:6,11 2225:12	weren't 2177:5,19
	ultimate 2154:25	2248:3	2230:18,19 2235:5	2178:5
	ultimately 2155:9	validity 2235:8	2236:5,19 2237:17	we'll 2182:24
2174:5	2227:16	value 2158:3 2231:7,8	2238:1,9 2241:8	We're 2178:22
	unable 2224:24	2257:18	2244:17 2246:24	we'll 2138:17 2139:24
	unconditional 2154:15	values 2213:19	2244.17 2240.24	2149:1 2150:3
L V	undergo 2137:1 2172:3	various 2195:9	2253:12,14,21	2149.1 2150.5
	underlying 2177:6	<b>vary</b> 2130:4	2254:21 2257:1,5	2165:13 2173:22
		VAT 2150:11 2235:10		2105.15 2175.22 2177:22 2217:20
	undermining 2267:19	2236:3,3 2255:7	2263:4,6 2264:13	
	understand 2131:17,22	vendor 2214:8,13	2267:15 2268:21,22	2218:20 2219:2
transversal 2197:15,25	2132:23 2133:8	2216:10 2246:21	2269:7,20	2226:4,4 2247:2
2198:1 2208:24	2135:17 2136:1,3,15	2247:1	wanted 2143:18	2261:10 2262:5
2209:2,13	2136:16,25 2137:2	<b>vendors</b> 2267:1	2152:19 2159:1,22	2266:1,3
travel 2171:11	2138:9 2140:8	veracity 2128:12,17,23	2170:15,18 2201:25	we're 2130:23 2137:10
travelling 2132:9	2144:24 2145:10	version 2156:25 2157:1	2202:8 2203:12	2137:11 2138:15
<b>Treasury</b> 2203:21	2147:4,6 2154:8	2157:9,10	2209:8 2214:21,22,25	2139:15,23 2166:9
2205:16 2207:4,8,19	2155:6,17 2174:7	versions 2194:11	2216:3 2217:2,6	2167:13 2171:4
2208:8 2209:4,12,13	2178:7 2181:2 2189:7	video 2138:15	2222:21 2232:1	2173:7 2194:19,22
2211:15,16 2212:2	2189:19 2191:1,4	view 2134:13,14	2236:18 2246:8	2226:19 2270:2
2217:11 2219:25	2192:13,19 2198:25	2143:21 2180:21	2248:17 2255:15	we've 2139:16 2140:5
2228:23 2229:10,15	2199:3,15 2200:16,18	2187:25 2203:9	2259:8,9 2265:20	2145:4 2146:15
2229:25 2230:6,8,9	2201:2,10,16,25	2244:6 2267:20	2267:3,5	2148:23 2166:15
2240:20 2263:12,22	2202:22 2205:21	vigorous 2128:25	wants 2136:24 2137:12	2194:11 2203:6
<b>Treasury's</b> 2256:23	2211:8 2216:1,20,24	vigorously 2128:22	2165:13 2190:25	2209:17 2244:3
treatment 2132:18,18	2222:7 2237:19,20	visibility 2180:17	2229:24	2270:10
2132:19 2133:2	2243:8,9 2254:6	vision 2182:21	warts 2134:20	whistle 2264:7,9
tried 2201:18 2264:20	2257:1,9	<b>visit</b> 2170:10	wasn't 2161:12 2188:1	whistle-blowers
tries 2269:19	understanding 2170:3	<b>Vittorio</b> 2131:15	wasn't 2133:15 2200:3	2263:25 2264:6
triggered 2199:4	2171:23 2201:15	2173:15,24 2174:8,14	2232:6	wide 2182:5
trip 2178:15	2217:1	<b>VM4</b> 2182:11	waste 2137:20 2206:21	Williams 2155:14,18
truck 2254:20,21	understands 2172:4	<b>VM5</b> 2185:9,12,20	2217:14	willing 2134:16 2137:9
true 2128:21 2266:12	understood 2180:2	<b>VM6</b> 2186:3,4,6 2187:2	wasteful 2205:5,24	2138:12 2176:12,14
<b>trust</b> 2180:14	unduly 2129:20,21	<b>volume</b> 2165:7 2172:2	2217:24 2231:10,11	willingness 2170:12
truth 2129:19 2139:10	unethical 2229:5	volumes 2173:12	2251:16 2267:12	wish 2127:7,19 2135:25
2139:10,11 2166:2	<b>unfit</b> 2133:2	2191:20	watch 2189:23,25	2200:15 2203:9
2203:7 2204:5,5,6	unfortunate 2139:16	voluntarily 2148:11	2190:11	wishes 2129:12
2265:2	unfortunately 2211:20	2159:1,21,22 2170:11	watching 2139:2	2138:19
try 2137:19 2179:6	2241:5 2264:20	2203:14	way 2133:18 2135:9	witness 2128:19,22,24
	unhelpful 2135:10	voluntary 2158:19,20	2138:21 2153:4	2129:1,4,8,9 2130:12
	United 2170:3,4	2159:8	2156:22 2158:13	2130:12,13,14 2203:7
	unprofessionally	vulnerable 2245:9	2165:14 2166:10,11	2203:8,10,12
2201:21 2222:6	2127:10	2253:3,3	2166:11 2167:15	word 2191:24
	<b>unsigned</b> 2145:6	4433.3,3	2176:2 2177:23,25	words 2127:2 2189:2
	untouchable 2191:14	W	2196:10 2197:1	2207:6 2212:22
	<b>unwell</b> 2132:17	wait 2144:10 2148:14	2207:23 2229:11	2230:7 2251:2
	update 2242:7	2166:11 2167:11	2246:3 2249:13	work 2137:16 2144:12
	uphold 2213:19		2265:9 2267:24	2150:12 2159:8
	upshot 2133:1	waiting 2149:2 2186:17	ways 2135:19	2166:10,10 2171:7
	urgency 2249:22	2233:24 2234:3	web 2218:20	2174:3 2181:7 2202:5
2145:24 2156:24	2250:3	walk 2200:14	Wednesday 2141:19	2204:3 2205:1,24
	urgent 2211:12	want 2127:10 2128:1,3	2142:3,4 2143:3	2213:5 2225:23,25
	urgently 2143:5	2129:15 2130:21	week 2132:11 2137:19	2228:6 2229:15
	<b>USB</b> 2172:1	2131:3 2134:22	2149:11 2156:20	2233:10 2234:21
· · · · · · · · · · · · · · · · · · ·	use 2153:15,17 2180:17	2137:23 2138:16,21	2168:22 2169:4,8	2237:23,24 2246:7
2210:23,24,24 2211:1	2182:18 2197:24	2138:21,22 2139:20	2234:22 2241:6,10,12	2247:19 2248:9
2210.23,24,24 2211.1 2213:25 2218:1	2192.18 2197.24 2198:18 2208:11	2140:19,20,21 2154:5	weekends 2132:13	2250:5 2253:13
2225:6 2234:9	2198.18 2208.11	2159:2 2162:19	weeks 2173:22 2189:10	2254:10 2255:11,19
22244:19,23 2246:4	2246:17	2165:24 2169:23	2191:14 2234:9	2261:2
-	usual 2180:13	2172:3 2173:14	week's 2247:14	worked 2146:5 2259:10
	utilise 2227:22	2176:3 2179:4,6	week \$ 2247:14 welcome 2129:12	working 2137:18
type 2137:21 2183:17	uniist 2221.22	2189:15 2190:20	welcomes 2129:12 welcomes 2145:14	2170:23 2173:23
cype 2137.21 2103.17			weicomes 2143:14	21/0.25 21/5:25

	1 3		5	Dogo 14
				Page 16
2227:3 2259:11	2236:12 2246:19	2233:16 2253:8	<b>23</b> 2171:24 2172:20,24	<b>50%</b> 2226:4 2261:13
2260:23	2248:7 2257:18,19	<b>19</b> 2158:11 2164:14	2173:12 2189:16	<b>51</b> 2206:23
Works 2252:20	2258:8 2260:10	2197:3 2221:16	2191:19 2235:25	
world 2161:3 2164:13	2261:21 2262:21	2247:21 2248:11	<b>23rd</b> 2244:23 2252:12	6
worry 2165:13	2264:11	<b>19th</b> 2220:23,25	2252:13	<b>6</b> 2144:21 2174:1,5
worth 2188:6 2205:12	1st 2224:23 2244:18	2222:12 2223:15,24	<b>24</b> 2136:2 2238:15	2221:15,20,21 2248:8
wouldn't 2223:25	<b>10</b> 2157:10 2214:1	2253:10	24th 2186:8 2224:21	6th 2155:11 2193:15
2227:4	2216:3 2228:8,10		<b>25</b> 2127:1 2221:17	2234:17,17
would've 2170:6	10th 2132:11 2157:19	2	2244:19	<b>6.1</b> 2240:4
2205:4,23 2264:10	2165:21 2167:17	<b>2</b> 2155:10 2198:14	<b>25th</b> 2169:14	<b>60</b> 2214:24 2217:7
write 2139:20 2224:13	2234:19 2236:12	2203:2 2205:1,4	<b>26</b> 2235:7,20 2244:20	2235:8 2248:3
2259:20 2263:17	2237:12,14 2238:13	2206:19 2211:2	<b>26th</b> 2193:13 2236:9,17	2251:17 2270:16
2264:21 2265:8	<b>10%</b> 2226:4,15,20,21	2217:6 2218:22	<b>27</b> 2199:23	<b>600</b> 2170:25
writers 2257:24	2240:8,21	2221:19 2225:21	<b>27th</b> 2141:24 2224:22	<b>62</b> 2197:2,11
writes 2191:12	<b>10:09</b> 2178:12	2232:1 2235:6,24,25	2244:18	<b>656</b> 2171:17
writing 2208:7 2229:12	<b>10:39</b> 2178:20	2236:16 2246:20	<b>277</b> 2171:2,18	<b>69</b> 2198:4
2264:21	<b>10:59</b> 2190:13	2256:13 2260:10	<b>28</b> 2235:8	0, 21,0.1
written 2136:7,13	<b>100</b> 2185:5,10 2186:25	2261:22 2262:21,24	<b>28th</b> 2193:18	7
2137:12,14,20	2187:9 2193:4	2266:19	<b>29</b> 2243:6	7 2141:25 2144:23
2150:15 2158:17	<b>100%</b> 2211:20	<b>2</b> 200.19 <b>2nd</b> 2186:24 2193:5	<b>29</b> 2243.0 <b>29th</b> 2241:1,19	2145:5,5 2171:15
2174:8 2219:21	<b>11</b> 2145:23 2198:11	<b>2.0</b> 2180:25 2186:1	<b>2711</b> 2271.1,17	2145:5,5 2171:15 2248:8 2257:23
2229:12 2237:6	2222:17	<b>2.0</b> 2180.25 2180.1 <b>2.2</b> 2172:1 2210:6	3	<b>7th</b> 2141:17,21,23
2229:12 2237:6	12 2145:5 2174:5	<b>2.2</b> 2172:1 2210:6 <b>20</b> 2130:13,14 2165:23	<b>3</b> 2155:11 2205:12	2143:3 2164:7
2244:15 2269:3	2214:20 2216:2	20 2130:15,14 2105:25	2208:13 2211:2,3,23	
				<b>70</b> 2198:10
wrong 2196:17	2218:21 2251:17	<b>20th</b> 2132:14 2165:21	2212:10 2217:8	<b>72</b> 2170:4
wrote 2140:22 2146:21	2258:7,10,25 2267:3	2228:13 2231:15	2218:12 2225:21	<b>76</b> 2207:3
2158:10 2165:20	2270:6,18	2234:20 2245:8	2232:1 2248:25	<b>79</b> 2207:6,10
2219:7,9 2268:8	<b>12.9</b> 2218:22 2228:14	<b>20%</b> 2240:8	2255:1 2262:21	8
Y	2231:4 2258:3 2259:2	<b>2003</b> 2212:10 2237:24	2264:11	
	<b>13th</b> 2180:24 2181:9	<b>2005</b> 2207:19 2208:8	<b>3rd</b> 2140:22 2191:9	<b>8</b> 2211:9
year 2189:12 2210:23	<b>14</b> 2199:23 2251:17	2220:19 2227:11,23	<b>3.8</b> 2225:6	8th 2204:15 2219:10,23
2248:5 2249:25	<b>14:05</b> 2203:5	2232:23	<b>3.9</b> 2218:20	2222:10,14 2223:17
2250:8 2263:11	<b>14:25</b> 2213:13	<b>2007</b> 2208:8 2211:10	<b>30</b> 2221:19 2242:14,15	2224:25 2241:10
years 2127:7 2171:5	<b>14:45</b> 2222:20	<b>2008</b> 2211:10	2242:16,23,24	2247:6
2210:21,22 2211:2,2	<b>144</b> 2218:23 2262:24	<b>2011</b> 2263:1	2243:15 2262:23	<b>8.7</b> 2218:25
2211:3 2216:3	<b>15</b> 2148:8 2207:19	<b>2013</b> 2179:24 2180:24	<b>30%</b> 2240:21 2262:25	
yellow 2190:1	2224:12,12 2257:18	2181:11,12 2182:9,10	2263:3	9
yellows 2189:22	<b>15th</b> 2186:20	2183:4,5	<b>300</b> 2171:17	<b>9</b> 2188:12 2271:3
yesterday 2133:7	<b>15%</b> 2217:10 2240:8	<b>2014</b> 2186:20 2191:9	<b>31</b> 2235:18 2242:6,19	<b>9th</b> 2148:7 2157:12
2242:6	<b>15:05</b> 2233:14	2193:13,16,18	<b>31st</b> 2237:8	2220:4
<b>you've</b> 2163:21	<b>15:25</b> 2241:16	2198:11 2199:6,21,22	<b>34</b> 2221:18	<b>9.7</b> 2218:25
2164:11,12 2166:11	<b>15:45</b> 2251:13	2204:22 2219:7,21,24	<b>38</b> 2206:21	<b>90%</b> 2184:21
2167:11 2170:16	<b>16</b> 2145:25 2158:11	2220:9,11,21,23		<b>92</b> 2207:12
2176:25 2189:19	<b>16A.6.4</b> 2218:5	2251:20	4	
2269:11,21	16A.6.6 2219:25	<b>2014/15</b> 2258:18	<b>4</b> 2143:4 2155:11	
	<b>16th</b> 2193:7	<b>2015</b> 2214:3 2221:12,16	2171:4 2173:25	
Z	16(a)6 2208:1 2228:4	2221:19,20,21,22,24	2217:25 2248:8	
zero 2258:22	<b>16(a)6.3</b> 2209:3,12	2228:8,9,13 2234:18	<b>4th</b> 2245:22	
zeros 2269:8	16(a)6.4 2207:21	2234:19,20,22 2235:7	<b>40</b> 2127:7 2248:24	
Zuma 2179:16 2186:14	2208:10,17 2211:22	2235:8,15,15,18,19	<b>43</b> 2249:2,3 2254:7	
2195:2,10,17	16(a)6.6 2208:21	2235:21,25 2237:8,8	<b>46</b> 2266:15	
<b>Zuma's</b> 2195:4	2209:11,23 2210:7,18	2238:15 2247:21	<b>47</b> 2267:22	
	2227:9,22	2249:22 2258:14,15		
0	<b>16(2)6</b> 2266:9	<b>2016</b> 2204:15 2211:22	5	
000 2171:15	<b>16.3</b> 2219:1	2214:20 2248:11	<b>5</b> 2143:9,12 2155:11	
<b>09:09</b> 2127:2	<b>16:05</b> 2263:17	2249:19 2250:6	2171:4,17 2212:25	
<b>09:29</b> 2140:19	<b>164</b> 2150:11	<b>2016/17</b> 2211:23	2217:4 2221:22	
<b>09:49</b> 2158:25	<b>17</b> 2158:11 2162:11	<b>2017</b> 2262:22,24 2263:2	2228:13 2248:8	
	2179:11 2224:5	<b>2018</b> 2127:1 2179:11	2258:4,7,25 2259:1	
1	<b>17th</b> 2132:11 2166:25	2188:12	<b>5th</b> 2186:8 2219:5,6,10	
1 1			2219:20,23	
	2168:21 2169.4 7 9	21 21 98:4 7 8 7778.10		-
<b>1</b> 2155:10 2205:1,4	2168:21 2169:4,7,9 2220:8 2224:1 2	<b>21</b> 2198:4,7,8 2228:10 <b>21st</b> 2167:5 2169:10	2	
<b>1</b> 2155:10 2205:1,4 2206:18,18 2213:21	2220:8 2224:1,2	<b>21st</b> 2167:5 2169:10	<b>5.6</b> 2218:24	
<b>1</b> 2155:10 2205:1,4 2206:18,18 2213:21 2215:17 2216:23	2220:8 2224:1,2 2228:12	<b>21st</b> 2167:5 2169:10 2221:12,24 2222:2	<b>5.6</b> 2218:24 <b>50</b> 2204:25 2205:20	
<b>1</b> 2155:10 2205:1,4 2206:18,18 2213:21 2215:17 2216:23 2217:5 2218:21	2220:8 2224:1,2 2228:12 <b>18</b> 2158:11 2231:14,14	<b>21st</b> 2167:5 2169:10 2221:12,24 2222:2 2232:12 2245:6	<b>5.6</b> 2218:24 <b>50</b> 2204:25 2205:20 2212:5,6 2214:24	
<b>1</b> 2155:10 2205:1,4 2206:18,18 2213:21 2215:17 2216:23	2220:8 2224:1,2 2228:12	<b>21st</b> 2167:5 2169:10 2221:12,24 2222:2	<b>5.6</b> 2218:24 <b>50</b> 2204:25 2205:20	