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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

RACHEL CONDRY, JANCE HOY,  
CHRISTINE ENDICOTT, LAURA BISHOP,  
FELICITY BARBER, and RACHEL CARROLL  
on behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

UnitedHealth Group Inc.; UnitedHealthcare, Inc.;  
UnitedHealthcare Insurance Company;  
UnitedHealthcare Services, Inc.; and UMR, Inc.,

Defendants.

Case No.: 3:17-cv-00183-VC

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO DEFENDANTS'  
DAUBERT MOTION CONCERNING  
THE EXPERT TESTIMONY AND  
OPINIONS OF PLAINTIFFS'  
EXPERT DR. MARK LABOVITZ IN  
CONNECTION WITH PLAINTIFFS'  
MOTION FOR CLASS  
CERTIFICATION**

**Date: April 25, 2019**

**Time: 10:00 AM**

**Place: Courtroom 4**

**Honorable Vince G. Chhabria**

# TABLE OF CONTENTS

	<b>Page(s)</b>
I. INTRODUCTION	
II. BACKGROUND .....	1
III. APPLICABLE LEGAL STANDARDS .....	3
IV. ARGUMENT .....	3
A. Dr. Labovitz is Qualified to Serve as an Expert and his Opinions are Reliable.....	3
B. Dr. Labovitz Offers Proper Rebuttal Opinions To Those of Mr. dos Santos .....	5
C. Dr. Labovitz’s Opinions are Reliable .....	7
D. Dr. Labovitz’s Rebuttals to Mr. dos Santos are Sound and Grounded.....	10
E. Plaintiffs Have Not Used Dr. Labovitz to Expand The Putative Class.....	13
F. Dr. Labovitz is Not Offering New Theories .....	15
V. CONCLUSION.....	16

**TABLE OF AUTHORITIES****CASES**

	<b>Page(s)</b>
<i>U.S. ex rel. Brown v. Celgene Corp.</i> , 2016 WL 6542730 (C.D. Cal. June 29, 2016) .....	15
<i>Brown v. Hain Celestial Group, Inc.</i> , 2014 U.S. Dist. LEXIS 162038, 2014 WL 6483216 (N.D. Cal. Nov. 18, 2014) .....	14
<i>In re Cathode Ray Tube (CRT) Antitrust Litigation</i> , MDL No. 1917, 2015 WL 4451579 (N.D. Cal. July 20, 2015) .....	15
<i>Downs v. River City Grp., LLC</i> , 2014 U.S. Dist. LEXIS 26056 (D. Nev. Feb. 28, 2014) .....	5, 6, 7
<i>Ellis v. Costco Wholesale Corp.</i> , 657 F.3d 970 (9th Cir. 2011) .....	3
<i>Gold v. Lumbar Liquidators, Inc.</i> , 2017 U.S. Dist. LEXIS 96724, 2017 WL 2688077 (N.D. Cal. June 22, 2017) .....	14
<i>Kumho Tire Co. v. Carmichael</i> , 526 U.S. 137 (1999) .....	8
<i>In re Lidoderm Antitrust Litig.</i> , 2017 U.S. Dist. LEXIS 24097, 2017 WL 679367 (N.D. Cal. Feb. 21, 2017) .....	4, 10
<i>In re MyFord Touch Consumer Litig.</i> , 2016 U.S. Dist. LEXIS 179487 (N.D. Cal. Sept. 14, 2016) .....	3
<i>Parenti v. Cty. of Monterey</i> , 2017 U.S. Dist. LEXIS 67799, 2017 WL 1709349 (N.D. Cal. May 3, 2017) .....	5
<i>Perez v. State Farm Mut. Auto. Ins. Co.</i> , 2011 WL 8601203 (N.D. Cal. Dec. 7, 2011) .....	5
<i>PixArt Imaging, Inc. v. Avago Tech. Gen. IP (Singapore) Pte. Ltd.</i> , 2011 U.S. Dist. LEXIS 133502, 2011 WL 5417090 (N.D. Cal. Oct. 27, 2011) .....	4
<i>Primiano v. Cook</i> , 598 F.3d 558 (9th Cir. 2010) .....	3
<i>Sali v. Corona Reg'l Med. Ctr.</i> , 909 F.3d 996 (9th Cir. 2018) .....	3

1	<i>Sandoval v. Cnty of Sonoma,</i>	
	2015 U.S. Dist. LEXIS 55571, 2015 WL 1926269 (N.D. Cal. Apr. 27, 2015).....	14
2	<i>Thomas v. Newton Int’l Enterprises,</i>	
3	42 F.3d 1266 (9th Cir. 1994) .....	4
4	<i>United States EEOC v. Mattress Firm, Inc.,</i>	
5	2016 U.S. Dist. LEXIS 17048, 2016 WL 589667 (D. Nev. Feb. 11, 2016).....	7, 8, 12
6	<i>United States v. Hankey,</i>	
	203 F.3d 1160 (9th Cir. 2000) .....	3
7	<i>Vu v. McNeil-PPC Inc.,</i>	
8	2010 U.S. Dist. LEXIS 53639 (N.D. Cal. May 7, 2010). (UHC Memo, .).....	15
9	<b>STATUTES</b>	
10	Affordable Care Act.....	2
11	ERISA .....	13
12	<b>OTHER AUTHORITIES</b>	
13	Federal Rule of Evidence 702.....	3, 4, 8
14	Rule 23 .....	3

1 Plaintiffs, Rachel Condry, Jance Hoy, Christine Endicott, Laura Hipple (nee Bishop), Felicity  
 2 Barber, and Rachel Carroll (collectively, the “Plaintiffs”), on behalf of themselves and the members  
 3 of the proposed Classes, hereby oppose Defendants’<sup>1</sup> *Daubert* Motion, and accompanying  
 4 Memorandum, Concerning the Expert Testimony and Opinions of Plaintiffs’ Expert Dr. Mark  
 5 Labovitz (“Dr. Labovitz” in Connection With Plaintiffs’ Motion for Class Certification (“UHC  
 6 Memo” or “Motion”) (Dkt. 178). Filed concurrently herewith is the Declaration of Kimberly  
 7 Donaldson-Smith (Smith Decl.) and exhibits thereto.

## 8 **I. INTRODUCTION**

9 UHC launches personal attacks on Dr. Labovitz and uses excerpts from his deposition wholly  
 10 divorced from any context in an unpersuasive effort to have this Court give no consideration to Dr.  
 11 Labovitz’s qualified, sound and reliable rebuttal expert opinions.

12 Dr. Labovitz, one of Plaintiffs’ rebuttal experts, refutes the opinions of Defendants’ proffered  
 13 expert, Mr. Joao dos Santos, whom Defendants offer in connection with their Opposition (Dkt. 163)  
 14 to Plaintiffs’ Motion for Class Certification (Dkt. 161). As set forth in detail herein, Dr. Labovitz  
 15 appropriately responds to and addresses Mr. dos Santos’s opinions, and states why such opinions are  
 16 unreliable and fundamentally flawed. The fact that Dr. Labovitz does so by setting forth his own  
 17 critique and analyses does not, contrary to Defendants’ claims, render his report beyond the scope of  
 18 proper rebuttal testimony. And, the fact that Defendants and Mr. dos Santos do not agree with Dr.  
 19 Labovitz’s analyses and opinions, does not render them unreliable or unsound. Plaintiffs respectfully  
 20 request that the Court deny Defendants’ Motion.

## 21 **II. BACKGROUND**

22 Pursuant to the Court’s October 2, 2018 Scheduling Order (Dkt. 158), the parties exchanged  
 23 Affirmative Expert Disclosures in December 2018 and Rebuttal Expert Disclosures in January 2019.  
 24 In addition, beginning in January 2019, the parties deposed each of opposing sides’ proffered experts.  
 25 Defendants proffered the December 11, 2018 Expert Report of Joao dos Santos (“12/11/18 dos Santos  
 26 \_\_\_\_\_

27 <sup>1</sup> Defendants are comprised of UnitedHealth Group Inc., UnitedHealthcare, Inc., UnitedHealthcare  
 28 Insurance Company, UnitedHealthcare Services, Inc. and UMR, Inc. (collectively, “UHC” or  
 “Defendants”).

Report”). Notwithstanding Mr. dos Santos’ testimony, in their Motion, Defendants attempt to recast Mr. dos Santos as an expert offering an opinion regarding “the putative classes or class-wide impact” (UHC Memo, at 3:20-23). Despite, over the course of his career, having engagements “in the dozens to evaluate class certification requirements” (*see* Smith Decl., Exhibit A, Deposition Transcript of Mr. Jaos dos Santos, January 10, 2019 (“dos Santos Transcript”), at 13:12-16) with respect to this action, Mr. dos Santos specifically declined to describe his assignment or opinion as regarding “the putative classes or class-wide impact,” stating: “I cannot speak as to the how the results can be or my –my findings can be used within the legal context.” (*Id.*, at 42:7-9.) Mr. dos Santos described his engagement and his opinions as limited to “the one main question that I was asked to evaluate, which was to conduct a data analysis of [sic] population of claims ...” (*Id.* at 42:12-14.)

Plaintiffs responded with the Rebuttal Expert Report of Dr. Mark L. Labovitz Ph.D., Ph.D., MBA, M.Sci., M.Sci., M.Sci., M.Art (“Labovitz Rebuttal”). Defendants thereafter also filed a March 20, 2019 Expert Report of Mr. dos Santos (“3/20/19 dos Santos Report”) directed to Dr. Labovitz’s Rebuttal Report. Dr. Labovitz’s qualifications and opinions are discussed *infra*.<sup>2</sup>

On February 20, 2019, Plaintiffs moved for certification of three nationwide classes—the Claims Review Class, the Lactation Services Class, and the ACA Class—of individuals who had been harmed by Defendants’ failure to provide coverage and/or imposed cost-sharing for lactation services coverage as mandated under the Affordable Care Act. *See* Plaintiffs’ Class Certification Motion (Dkt. 161). In Plaintiffs’ Class Certification Motion, Plaintiffs addressed (among other things) the arguments expected to be raised by Defendants, including, as evidenced by their experts’ reports, concerning certification of the Classes. (*Id.* at 18-22.) In their Opposition, Defendants have proffered their experts’ testimony, including that of Mr. dos Santos, to oppose certification (*see, e.g.* Dkt. 163, at 5-6, 8, 16, 20).

Defendants now seek to preclude the Court’s consideration of Dr. Labovitz.

<sup>2</sup> The 12/11/18 and 3/20/19 dos Santos Reports are Exhibits A and C to the dos Santos Declaration at Dkt. 173. Dr. Labovitz’s Rebuttal is Exhibit 36 to the Donaldson-Smith Class Certification Declaration at Dkt. 161-2 (Exhibit 36 is at pages 398-425 of Dkt. 161-2). The transcript of Dr. Labovitz’s March 8, 2019 Deposition is attached at UHC Memo, Dkt. 178, Ex. 1 (“Labovitz Tr.”).

### 1 III. APPLICABLE LEGAL STANDARDS

2 Federal Rule of Evidence 702 permits an expert to testify where he or she “is qualified as an  
3 expert by knowledge, skill, experience, training, or education and his or her testimony will help the  
4 trier of fact to understand the evidence or to determine a fact in issue, is based on sufficient facts or  
5 data, is the product of reliable principles or methods; and the expert has reliably applied the principles  
6 and methods to the facts of the case.” *In re MyFord Touch Consumer Litig.*, 2016 U.S. Dist. LEXIS  
7 179487, at \*12 (N.D. Cal. Sept. 14, 2016) (citing FED. R. EVID. 702) (internal quotations omitted).  
8 “[N]ot only must the trial court be given broad discretion to decide *whether* to admit expert  
9 testimony, it must have the same kind of latitude in deciding *how* to test an expert’s reliability.”  
10 *United States v. Hankey*, 203 F.3d 1160, 1168 (9th Cir. 2000) (internal quotation omitted). The  
11 requirement that the expert testimony “assist the trier of fact goes primarily to relevance.” *Primiano*  
12 *v. Cook*, 598 F.3d 558, 564 (9th Cir. 2010) (internal quotation omitted).

13 At the class certification stage, “a district court should evaluate admissibility under the  
14 standard set forth in *Daubert*.” *Sali v. Corona Reg’l Med. Ctr.*, 909 F.3d 996, 1006 (9th Cir. 2018).  
15 Such admissibility, however, “must not be dispositive,” but rather “an inquiry into the evidence’s  
16 ultimate admissibility should go to the weight that evidence is given at the class certification stage”  
17 which accords with the Ninth Circuit’s guidance that “a district court should analyze the  
18 ‘persuasiveness of the evidence presented’ at the Rule 23 stage.” *Id.* (citing *Ellis v. Costco Wholesale*  
19 *Corp.*, 657 F.3d 970, 982 (9th Cir. 2011)). “A trial court has broad latitude not only in determining  
20 whether an expert’s testimony is reliable, but also in deciding how to determine the testimony’s  
21 reliability.” *Ellis*, 657 F.3d at 982. Indeed, at the class certification stage, district courts are  
22 “license[d] greater evidentiary freedom,” as “relying on formalistic evidentiary objections” may  
23 “unnecessarily exclude[ ] proof that tend[s] to support class certification.” *Sali*, 909 F.3d at 1006.

### 24 IV. ARGUMENT

#### 25 A. Dr. Labovitz is Qualified to Serve as an Expert and his Opinions are Reliable

26 Pursuant to Rule 702, an expert may be qualified by “knowledge, skill, experience, training,  
27 or education.” FED. R. EVID. 702. As recognized by the Ninth Circuit, “the advisory committee notes  
28 emphasize that Rule 702 is broadly phrased and intended to embrace more than a narrow definition of

1 qualified expert.” *Thomas v. Newton Int’l Enterprises*, 42 F.3d 1266, 1269 (9th Cir. 1994) (finding  
 2 expert’s qualifications of “29 years of [ ] experience” and work history in the field sufficient to lay  
 3 “the minimal foundation of knowledge, skill, and experience required in order to give ‘expert’  
 4 testimony”). “The threshold for qualification is low” for purposes of admissibility: “a minimal  
 5 foundation of knowledge, skill, and experience suffices.” *PixArt Imaging, Inc. v. Avago Tech. Gen.*  
 6 *IP (Singapore) Pte. Ltd.*, 2011 U.S. Dist. LEXIS 133502, 2011 WL 5417090, at \*7 (N.D. Cal. Oct.  
 7 27, 2011). “In certain fields, experience is the predominant, if not sole, basis for a great deal of  
 8 reliable expert testimony.” *See* Advisory Committee Notes, FED. R. EVID. 702.

9 UHC attempts to belittle Dr. Labovitz’s qualifications by referring to him as a “self-  
 10 proclaimed” Consulting Data Scientist. (UHC Memo, at 1.) But there is nothing “self-proclaimed”  
 11 about Dr. Labovitz’s experience and credentials. Dr. Labovitz has over 45 years’ experience creating  
 12 business intelligence using complex data analysis methods, and he currently serves as a Consulting  
 13 Data Scientist and the Managing Director of Quantitative Analysis with the Avancer Group.  
 14 (Labovitz Rebuttal, at ¶ 3.) He has a PhD and Master of Science degree in Applied Mathematics, a  
 15 Master of Science degree in Computer Information Technology, and a Master of Arts degree in  
 16 Statistics. (*Id.*, at ¶ 4.) Dr. Labovitz was recently appointed as Adjunct Faculty at the University of  
 17 California Berkeley to teach statistics in the master’s program (Labovitz Tr., 48:22-49:3). Dr.  
 18 Labovitz has held data analytics positions in numerous industries since 1994 (Labovitz Rebuttal, at  
 19 Exhibit A) and recently received certificates of accomplishments from multiple universities related to  
 20 data analytics, including, but not limited to, The Data Scientist’s Toolbox (John Hopkins); Mining  
 21 Massive Databases (Stanford); and Statistical Learning (Stanford). (*Id.*) His Curriculum Vitae makes  
 22 clear that he has extensive experience as a statistician, data analyst and scientist, and possesses strong  
 23 skills in data analysis, predictive modeling, natural language processing and machine-statistical  
 24 learning elements of data science. (Labovitz Rebuttal, at Ex. A.) Dr. Labovitz applied this extensive  
 25 knowledge base and experience in this case, in forming opinions challenging the validity and  
 26 reliability of Mr. dos Santos’s analytical work and the validity and reliability of his conclusions. (*Id.*,  
 27 at 3.) *See In re Lidoderm Antitrust Litig.*, 2017 U.S. Dist. LEXIS 24097, 2017 WL 679367, at \*113  
 28 (N.D. Cal. Feb. 21, 2017) (“When evaluating specialized or technical expert opinion testimony, the

relevant reliability concerns may focus upon personal knowledge or experience.”) (internal citation omitted).

**B. Dr. Labovitz Offers Proper Rebuttal Opinions to Those of Mr. dos Santos**

Rebuttal testimony that “addresses the same subject matter that the initial experts address and does not introduce new arguments” is proper. *Perez v. State Farm Mut. Auto. Ins. Co.*, 2011 WL 8601203, at \*8 (N.D. Cal. Dec. 7, 2011). Moreover, a rebuttal expert can offer evidence that contradicts or rebuts another expert’s opinion. *Parenti v. Cty. of Monterey*, 2017 U.S. Dist. LEXIS 67799, 2017 WL 1709349, at \*16 (N.D. Cal. May 3, 2017) (internal citation omitted); *Downs v. River City Grp., LLC*, 2014 U.S. Dist. LEXIS 26056, at \*6 (D. Nev. Feb. 28, 2014) (“Rebuttal expert reports are proper if they contradict or rebut the subject matter of the [original] expert report.”).

Specifically and briefly, Mr. dos Santos opined that the “information contained in the [LSS Claims Data] does not support Plaintiffs’ assertion of a systemic lack of access to or coverage for lactation support services” (12/11/18 dos Santos Report, at 6 ¶19a); that the claims data was “not sufficient to provide a reliable assessment of Plaintiffs’ allegations of a systemic lack of in-network coverage within certain individual markets where the number of claims is sparse or non-existent (*id.* at 6 ¶19b); about the presence of lactation service professionals and provision of services in addition to those recorded in the claims data (*id.* at 7 ¶19b); and that the claims data provided a lower bound for lactation support providers that were part of Defendants’ network. (*Id.*).<sup>3</sup>

In response, Plaintiffs designated Dr. Labovitz as a rebuttal expert to rebut each of Mr. dos Santos’s opinions and the bases for those opinions. For example, Dr. Labovitz provided the following opinions in direct rebuttal to the foregoing:

- Mr. dos Santos improperly draws inferential conclusions regarding a national network of providers for a company that provides health insurance to over 27 million people annually from a universe of 47,430 claims (“LSS Claims Data”) identified over a six-year time period. (Labovitz Rebuttal, at 4.)
- Mr. dos Santos fails to include an explanation of the statistical methodology used to reach his conclusions, and thus his conclusions concerning UHC’s LSS Claims data cannot be properly inferred to the Representative Population of lactation visits sought by UHC

<sup>3</sup> Separately, but concurrently, Plaintiffs are filing a *Daubert* Motion directed to Mr. dos Santos’s Reports.

members during the Analysis Period. (*Id.* at 7 and 4).

- While acknowledging that the LSS Claims Data was unsupportable and unreliable, Mr. dos Santos nevertheless utilized the LSS Data in combination with information from the provider directory to infer conclusions regarding Defendants' national network. Such conclusions are flawed and unreliable. (*Id.*, at 4-5.)
- Mr. dos Santos's opinion that the LSS Claims Data presents a "lower bound" of providers offering lactation support services is premised on data and analytical methodologies that have not been demonstrated to be statistically reliable. (*Id.*, at 5.)
- Mr. dos Santos's estimate of slack resources, or supply of providers, is premised on data and analytical methodologies that have not been demonstrated to be statistically reliable. Among the many deficiencies in the provider analysis was the lack of consideration as to whether the provider appeared in the on-line directory. (*Id.*, at 11-12.)
- Mr. dos Santos's opinion that the LSS Claims Data provides helpful information about the breadth and depth of Defendants' network of lactation support services across markets and over time is unsupported and unreliable because Mr. dos Santos did not conduct reliable, supportable evaluations of: (1) UHC's network for lactation services, (2) the markets where UHC members reside or the demand for lactation services in such markets or (3) the changes in market composition and demand over time. (Labovitz Rebuttal, at 6).
- Mr. dos Santos's opinions drawn from the LSS Claims Data are unreliable because of the failure to consider the LSS Claims Data relative to the number of UHC members who may have sought lactation services, or the number of claims that could be expected to have been submitted related to lactation support and related services, which considerations are material to the analyses as shown by the Demand Funnel. Failure to consider such comparisons and determine the extent to which the LSS Data may be, or is not, reliable invalidates any conclusions inferred or extracted from the LSS Data (*Id.*, at 4 and 16.)
- Mr. dos Santos's comparison of an average of providers as of December 2018 to an average of providers appearing in the LSS Claims Data over a 6-year period is unsupportable. (Labovitz Rebuttal, at 12).
- Mr. dos Santos acknowledges a skewed distribution of the LSS Claims Data but ignores the obvious presence of such variation when considering "broad aspects" of his in-network coverage. From a methodological and analytical perspective, it is unsupportable to discount the inherent geographic variation in the presence of a skewed distribution and then ignore the obvious presence of such variation when considering "broader aspects." (Labovitz Rebuttal, at 10.)
- Mr. dos Santos does not provide an analysis of the distribution or concentration of claims across a state. His analysis implies that the measured ratio of in-network to out-of-network claims is evenly distributed across a state. This creates a misleading indication of state-wide coverage. Failure to evaluate the state dispersion of the LSS Claims Data and the variance across a state is among several reasons the comparison of a national provider directory to the LSS Claims Data is not a reasonable basis on which to make conclusions

concerning the scope of national in-network providers. (*Id.*)

- The dos Santos Report provides no indication that he considered any co-variance factors that may affect a claim adjudicated as in-network, including but not limited to whether a claim may appear as adjudicated in-network on the LSS Claims Data, yet the provider is not a contracted network provider. (*Id.*, at 11.)
- The survey suffers from multiple failures and/or unsupported approaches. For example, the two practices indicated to have offered the service “for at least a year,” a highly subjective time measure, and provides no information that such services were available for the majority of the Analysis Period. (*Id.*, at 14.)
- Mr. dos Santos’s assertion that if a claim was denied or cost share was imposed further analyses and inquiry into the individual circumstances surrounding a claim are required. This opinion is unsupported, and the statement is misleading. Mr. dos Santos’s statement ignores: (1) the powerful data analytical structure that is the foundation of large organization’s businesses, including UHC and (2) the fact that over 90% of UHC claims are auto adjudicated meaning a computer program determined the claim treatment. Individual inquiry is not necessary for a result that is driven by rules-based, formulaic processes. (*Id.*, at 6 and 14-16.)

At bottom, contrary to UHC’s position, a proper rebuttal expert’s opinion is not required to be based on the same data as the expert opinion that it is offered to rebut. *United States EEOC v. Mattress Firm, Inc.*, 2016 U.S. Dist. LEXIS 17048, 2016 WL 589667, at \*9-11 (D. Nev. Feb. 11, 2016) (Expert rebuts each portion of the opposing expert’s report with his own analysis and interpretation of what he believes is a more representative set of data).

### C. **Dr. Labovitz’s Opinions are Reliable**

Having failed to identify any “material flaws” in Dr. Labovitz’s actual analysis, UHC makes the same strawman and misleading arguments about the Demand Funnel and Representative Population throughout its Motion. (*See, e.g.* UHC Memo, at 2-3, 6:11-7:5; 7:6-19; 10:1-15; 10:25-11:15; 12:10-14:2.) First, Dr. Labovitz’s “Representative Population” is reliable (*Cf.* UHC Memo, at 2) and directly refutes Mr. dos Santos’s misleading and unsupported opinions about the “breadth and depth” of UHC’s network of CLS providers. (*See, e.g.*, 12/11/18 dos Santos Report, at ¶150 (“provides helpful information about the breadth and depth of UnitedHealth’s network”); *id.* at ¶19 (“substantial numbers of lactation services claims were made...”)) UHC’s arguments about the “Representative Population” (*id.* at 2, 7:6-19; 10:1-15; 10:25-11:15) misstate the Representative Population’s design, import and point.

1 Second, UHC argues that Dr. Labovitz's opinions are unreliable because of (i) the purported  
 2 lack of "peer-reviewed literature validating the use of a demand funnel to estimate a demand for  
 3 health care services;" and (ii) the import that changing assumptions would have on the demand funnel  
 4 and therefore the accuracy of the funnel. (UHC Memo at 6:11-7:5; 12:16-13:6.) On both points,  
 5 UHC is wrong. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 156 (1999) ("no one denies that an  
 6 expert may draw a conclusion from a set of observations based on extensive and specialized  
 7 experience"); *see also* Fed. R. Evid. 702, advisory committee's note ("Nothing in this amendment is  
 8 intended to suggest that experience alone—or experience in conjunction with other knowledge, skill,  
 9 training or education—may not provide a sufficient foundation for expert testimony").

10 As to (ii), it is an unremarkable position (which was genuinely agreed to by Dr. Labovitz) that  
 11 changing assumptions in a model may change outputs. As to (i), to the contrary, "[a]n expert's  
 12 failure to subject his method to peer-review and to develop an opinion outside the litigation does not  
 13 necessarily render his opinion inadmissible," especially where the expert "explain[s] his  
 14 methodology precisely" and "point[s] to some objective source supporting his methodology." *United*  
 15 *States EEOC*, 2016 U.S. Dist. LEXIS 17048, at \*8-9 (internal quotations omitted). More to the point  
 16 though, UHC's argument about peer-review literature is a red herring. As Dr. Labovitz explained  
 17 through his testimony, the concept of a Representative Population is a statistical term and concept  
 18 (Labovitz Tr., at 112:16-20). The demand funnel was constructed purposely to permit changes in  
 19 assumptions and the ability to analyze the effect of changing assumptions is among the value of such  
 20 a model. Unlike Mr. dos Santos's analyses that cannot be reproduced, nor the impact of assumptions  
 21 made by Mr. dos Santos evaluated, the demand funnel is completely transparent in its assumptions  
 22 and the impact of changes in any assumption. (Labovitz Tr., at 196:17-20; 198:2-5.) Dr. Labovitz has  
 23 utilized a demand funnel in other contexts and identified its application in other industries such as  
 24 marketing. (*Id.*, at 184:1-16.) Dr. Labovitz has tested the accuracy of demand funnel methodology in  
 25 other situations. (*Id.*, at 185:13-16.) The demand funnel is a method to evaluate a circumstance that is  
 26 time-varying and determine the demand or activity at any given time (*id.*, at 182:15-19) and provides  
 27 a method to estimate the supply needed to meet the demand, as well as demand. (*Id.*, at 182:19-13.)

28 Third, whether Dr. Labovitz knew whether the Representative Population included members

1 who refrained from submitting claims, how many members actually paid for lactation services, had  
 2 in- or out-of-network visits, or why they did not submit claims, are not only red herrings proffered by  
 3 Defendants, but blatant misstatements of Dr. Labovitz’s knowledge. (*See, e.g.* UHC Memo, at 10:25-  
 4 11:15.) The argument is a red herring because it misstates the import of the demand funnel and Dr.  
 5 Labovitz’s rebuttal to Mr. dos Santos’ reliance on the LSS Claims data to infer conclusions  
 6 concerning access to network providers. The demand funnel was constructed to test the  
 7 reasonableness of the LSS Claims data as a representative sample. (Labovitz Tr., at 139:3-14 and  
 8 139:23-25.) As Mr. dos Santos even conceded that “any attempt to use the LSS Claims Data alone to  
 9 assess the full extent of in-network coverage” would be flawed and unreliable. (12/11/2018 dos  
 10 Santos Report, at ¶42)

11 Dr. Labovitz is not offering opinions regarding the scope of potential class claims; Dr.  
 12 Labovitz is rebutting the inference by Mr. dos Santos that the LSS Claims data demonstrates  
 13 information concerning the depth and breadth of UnitedHealth’s network of lactation services across  
 14 markets and over time. Mr. dos Santos assumed that the LSS Data represented the totality of  
 15 coverage or the “demand for a service that was met” for lactation services by UHC members over a  
 16 combined six-year period and assumed that a claim in the LSS Claims Data was a “proxy” for how  
 17 many people were receiving services by an in-network provider (Labovitz Rebuttal, at 4, ¶11a; dos  
 18 Santos Tr., at 89:8-23), but did not test the reasonableness of this assumption by considering the  
 19 number of members UHC covered (dos Santos Tr., at 68:16-23), number of claims Defendants  
 20 process each year (*id.*, at 91:24-92:8), the number of live birth claims Defendants process each year  
 21 (*id.*, at 91:10- 92:16), the number of women who initiate breastfeeding (*id.*, at 68:16-23), or the  
 22 percentage of women who initiate breastfeeding who seek lactation consultations. (*Id.*, at 69:14-25.)  
 23 Further, Mr. dos Santos testified that he received a “superset” of raw data and extracted the LSS  
 24 Claims data from the superset. (*Id.*, at 60:12-20.) Mr. dos Santos did not consider, nor form an  
 25 opinion with respect to, the procedure or diagnosis codes considered lactation support codes  
 26 (12/11/2018 dos Santos Report, at ¶28; dos Santos Tr., at 90:20-91:9), nor the type of provider who  
 27 provided lactation support services (dos Santos Tr., at 65:6-24). Mr. dos Santos was instructed by  
 28 counsel to limit his analysis to the LSS Claims Data, a subset of the superset provided to Mr. dos

1 Santos (12/11/2018 dos Santos Report, at ¶42). In creating the LSS Data, Mr. dos Santos identified  
 2 claims based on criteria developed by Defendants (12/11/2018 dos Santos Report, at ¶42; dos Santos  
 3 Tr., at 66:2-16). Despite failing to establish that the LSS Data was reliable data on which to draw  
 4 conclusions, Mr. dos Santos offers opinions that extrapolate the LSS Data to a purported population,  
 5 all women who seek lactation services. (dos Santos Tr., at 182:24-183:2.) Dr. Labovitz concludes that  
 6 the failure of the LSS Claims Data to serve as a statistically reliable randomized sample causes all the  
 7 subsequent conclusions reached by Mr. dos Santos presumed on the LSS Claims Data to be  
 8 improperly inferred. (Labovitz Rebuttal, at 8.)

9 Finally, there is nothing flawed in Dr. Labovitz's use of medical publications and other  
 10 sources for assumptions about the (i) number of births; (ii) infant mortality rate; (iii) number of births  
 11 for which the parents initiate breastfeeding; and (iv) number of lactation support services per birth by  
 12 women who initiate breastfeeding. (Cf. UHC Memo, at 6:26-7:5; 13:15-24.) Dr. Labovitz, as a data  
 13 scientist, has expertise in researching and analyzing data. One is not required to be an expert in every  
 14 detail of every data point in order to understand and apply the rules of data analysis. Dr. Labovitz has  
 15 a long and distinguished career as a data scientist in multiple industries including healthcare and  
 16 pharmaceuticals, mutual funds and financial services, consumer retail, consulting, cosmetics, direct  
 17 marketing, durable goods, food processing, government (civilian, defense and intelligence agencies),  
 18 higher education, insurance, utilities, telecommunications, and transportation, agriculture, forestry  
 19 and extractive industries. (See Labovitz Rebuttal, at Ex. A.)

20 Accordingly, "for purposes of a solid evidentiary basis and persuasive showing on class  
 21 certification," Dr. Labovitz's opinions are admissible and afforded due weight in refuting those of  
 22 Mr. dos Santos prominently offered by Defendants. See *In re Lidoderm*, 2017 U.S. Dist. LEXIS  
 23 24097, at \*119.

24 **D. Dr. Labovitz's Rebuttals to Mr. dos Santos are Sound and Grounded**

25 UHC asserts that Dr. Labovitz's rebuttal is conclusory and that he is just "nitpick[ing]" when  
 26 he speaks to Mr. dos Santos' failure to (among other things) not follow statistical methods, failure to  
 27 explain methods, and ignoring of variability of the data.

28 UHC is wrong. Mr. dos Santos did not explain his "statistical methodology." (UHC Memo,

1 at 5, 15.) As Dr. Labovitz explained, it is standard practice among researchers and analysts to  
 2 disclose the data considered, the assumptions made, the statistical methodologies employed and the  
 3 detailed results of such analyses. Such analytical protocols and the statistical methodologies are well  
 4 understood by professionals and provide standards of comparison to protect the researcher(s) from  
 5 their own biases, as well as provide the reader and reviewer with a means to evaluate and test the  
 6 conclusions. The basic statistical methods of induction were not applied to any of the dos Santos  
 7 analyses and thus the conclusions drawn cannot be properly inferred to the Representative  
 8 Population. (Labovitz Rebuttal, at 7.) Dr. Labovitz explains with specificity ten methodological  
 9 failings of Mr. dos Santos (*id.*, at 8-9), provides additional detail regarding the failings of the  
 10 geographic distribution and time analysis methodologies (*id.*, at 9-10), and itemizes failings with  
 11 respect to the provider directory analysis methodology (*id.*, at 11-14).

12 Further, Mr. dos Santos did render conclusory opinions to interject, with the false imprimatur  
 13 of sound based expert opinion, the concept of “individualized inquiry.” First, as noted *supra*, with  
 14 respect to this action, Mr. dos Santos specifically declined to describe his assignment or opinion as  
 15 regarding “the putative classes or class-wide impact,” (*see* dos Santos Tr., at 42:7-9), and described  
 16 his engagement and his opinions as limited to “the one main question that I was asked to evaluate,  
 17 which was to conduct a data analysis of [sic] population of claims ...” (*Id.*, at 42:12-14.) Moreover,  
 18 Dr. Labovitz’s response to that conclusory opinion about “*individualized* inquiry,” is, in contrast,  
 19 clear, concise, and not litigation driven. (*Cf.* UHC Memo at 6:1-9; 8:3-15; 14:15-15:4.)

20 Rather, Dr. Labovitz explains that he is an expert in rules-based systems (Labovitz Tr., at  
 21 221:9-10); a powerful data analytical structure is the foundation of large organization’s businesses,  
 22 including UHC; more than 90% of UHC claims are auto adjudicated, meaning a rules-based computer  
 23 program determines the claim treatment; and individual inquiry is not necessary for a result that is  
 24 driven by rules-based, formulaic processes. (Labovitz Rebuttal, at 14.) Dr. Labovitz’s opinions are  
 25 in rebuttal to the opinion of Mr. dos Santos, who states that determining why a claim was denied or a  
 26 cost-share was imposed in any particular instance would require further analysis and inquiry into the  
 27 individual circumstances surrounding that claim. (12/11/2018 dos Santos Report, at ¶ 50.) Mr. dos  
 28 Santos testified that he had not developed an opinion on why cost sharing may have been applied

1 other than perhaps further investigation was required, and that the area was not a focus of his  
 2 analysis. (dos Santos Tr., at 243:12-22.) Mr. dos Santos indicates that his analysis provides limited  
 3 insight into the circumstances driving a patient's decision to choose an out-of-network provider and  
 4 does not suggest an individualized inquiry related to the selection of an out-of-network provider.  
 5 (12/11/2018 dos Santos Report, at ¶50.). Defendants are attempting to expand the scope of Mr. dos  
 6 Santos's opinion and inappropriately distort Dr. Labovitz's auto-adjudication opinions that rebut what  
 7 is nothing more than mere speculation on the part of Mr. dos Santos.

8 Moreover, UHC's argument that Dr. Labovitz did not review Mr. dos Santos's claims data,  
 9 (UHC Memo, at 15) is irrelevant because Mr. dos Santos recognized the inherent reliability  
 10 limitations of the LSS Claims Data and concluded that "any attempt to use the LSS Claims Data  
 11 alone to assess the full extent of in-network coverage" would be flawed and unreliable. (12/11/2018  
 12 dos Santos Report, at ¶42), a conclusion with which Dr. Labovitz concurs (Labovitz Rebuttal, at 11).  
 13 Dr. Labovitz takes issue with the attempt by Mr. dos Santos to extrapolate from the LSS Claims Data  
 14 a conclusion as to a national network of providers. (*Id.*, at 4.) Dr. Labovitz explains that "[i]n a data  
 15 analysis context, the researcher analyzes a representative sample, draws conclusions and infers to the  
 16 population from which the sample was representatively drawn." (*Id.*, at 7, ¶19.) *See, e.g., United*  
 17 *States EEOC*, 2016 U.S. Dist. LEXIS 17048, at \*9-11 (Expert rebuts each portion of the opposing  
 18 expert's report with his own analysis and interpretation of, what he believes is, a more representative  
 19 set of data).

20 Also, Dr. Labovitz's criticisms of Mr. dos Santos's limited temporal and geographic analyses  
 21 does not "reinforce[ ] Mr. dos Santos's point" as UHC contends. (UHC Memo, at 15:18-24.)  
 22 Instead, on this point, Dr. Labovitz is very clear: he did not opine that analysis of time and geography  
 23 variances was impossible, as Defendants imply; he opinioned that Mr. dos Santos identified the  
 24 variability, but simply ignored the fact (Labovitz Rebuttal, at 9) when developing his network  
 25 opinions. Mr. dos Santos's methodology of aggregating all the geographic and temporal information  
 26 together and inferring opinions with respect to broad network aspects using the information as one  
 27 potential value is inappropriate (Labovitz Rebuttal, at 14; Labovitz Tr., at 281:22-282:1) and *may*  
 28 have an impact on provider network and sufficiency. (Labovitz Tr., at 282:3-8.) Dr. Labovitz

1 observed that Mr. dos Santos makes the unsupported inference that a service received at any time  
 2 over the six years for which data was produced is equally indicative of a supply of providers at a time  
 3 when no services are reflected on the LSS Claims Data. (Labovitz Rebuttal, at 9.) With respect to  
 4 geographic dispersion, Dr. Labovitz noted that, from a methodological and analytical perspective, Mr.  
 5 dos Santos’s discounting of the inherent geographic variation in the presence of a skewed  
 6 distribution, and ignoring the obvious presence of such variation when considering “broader aspects,”  
 7 is unsupportable (*id.*, at 10) and Mr. dos Santos’s illustration of in-network and out-of network claims  
 8 by state misleadingly implies state-wide coverage. (*Id.*, at 10.) Failure to consider state dispersion of  
 9 the LSS Claims Data is among several reasons that comparison of a national provider directory to the  
 10 LSS Claims Data is not a reasonable basis on which to make conclusions concerning the scope of  
 11 national in-network providers. (*Id.*, at 10.)

12 Finally, UHC twice extracts, out of context, a quote from Dr. Labovitz’s deposition, to try to  
 13 bolster its irrelevant and misguided “individualized inquiries” mantra. (*See* UHC Memo, at 8; 15)  
 14 However, Dr. Labovitz’s statement, even as mischaracterized, does not support UHC’s individualized  
 15 inquiries point. Whether members of the Class had meaningful access to network coverage for CLS  
 16 is based on *UHC’s* conduct, *not* the conduct of individual Class members. Repeatedly, and fatally,  
 17 UHC ignores the fundamental point of “network providers”—something in UHC’s sole control.

18 **E. Plaintiffs Have Not Used Dr. Labovitz to Expand The Putative Class**

19 UHC is wrong in its belief that Plaintiffs are expanding class definitions, including that they  
 20 are using Mr. dos Santos and Dr. Labovitz to do so. (UHC Memo, at 10-11.)

21 In their Second Amended Complaint, Plaintiffs’ ACA Class included “[a]ll persons who . . .  
 22 are or were participants in or beneficiaries of [ ] health plan[s]...administered by Defendants [ ], who  
 23 did not receive full coverage and/or reimbursement for Comprehensive Lactation Benefits.” (ECF  
 24 No. 78, at 60.) Similarly, Plaintiffs’ Lactation Services Class included “[a]ll participants and  
 25 beneficiaries in one or more of the ERISA employee health benefit plans administered by Defendants  
 26 [ ] for which Defendants fail and refuse to provide payment or reimbursement for Comprehensive  
 27 Lactation Benefits without cost to such participants and beneficiaries.” (*Id.*)

28 Those definitions expressly include all persons—not limited by in- or out-of-network, claims

submitted or not submitted—who were not covered for comprehensive breastfeeding support and counseling as a no-cost preventive services. The definitions of the ACA and Lactation Services Classes as set forth in Plaintiffs’ Class Certification Motion include “[a]ll participants and beneficiaries ....who received from August 1, 2012 to present Comprehensive Lactation Services, for which Defendants did not provide coverage and/or imposed cost-sharing.” (See Dkt. 161, at 1, 13-14.) Also, to be clear, claims data was produced to Plaintiffs in the litigation prior to Mr. dos Santos’s Report. The fact that UHC was applying cost-sharing to preventive benefits, and the fact that UHC received and produced a relatively paltry number of breastfeeding support and counseling claims from out-of-network providers relative to the number of expected breastfeeding dyads who breastfed and sought breastfeeding support and counseling for lactation specialists, did not materialize with Mr. dos Santos’s Report or the tabulation from the LSS Claims Data in his Report.

The adjustment in wording of the class definitions—which do not differ in any material respect from the class definitions Plaintiffs originally proposed—is regularly allowed and an “unremarkable feature of class actions.” See *Brown v. Hain Celestial Group, Inc.*, 2014 U.S. Dist. LEXIS 162038, 2014 WL 6483216, at \*17 (N.D. Cal. Nov. 18, 2014) (“Courts, including those in the Ninth Circuit regularly allow class definitions to be adjusted over the course of a lawsuit.”). Indeed, “[t]here is no rule that the definition of a certified class must exactly match the definition contained in a complaint.” *Sandoval v. Cnty of Sonoma*, 2015 U.S. Dist. LEXIS 55571, 2015 WL 1926269, at \*4 (N.D. Cal. Apr. 27, 2015) (allowing plaintiffs to seek class certification of a narrowed putative class without needing to amend the complaint). Further, the “basic responsibility for determining the extent of a class membership falls upon the trial judge,” and Plaintiffs’ own refinement of a class definition helps the “judge ensure the class feature of litigation [is] within reasonably manageable proportions and bounds.” *Gold v. Lumbar Liquidators, Inc.*, 2017 U.S. Dist. LEXIS 96724, 2017 WL 2688077, at \*13-14 (N.D. Cal. June 22, 2017) (internal quotations omitted).

Defendants are not prejudiced; there is no expansion of the definitions. The claims fall squarely within UHC’s failure to adjudicate claims as no-cost preventive claims.

#### **F. Dr. Labovitz is Not Offering New Theories**

Contrary to UHC’s assertions, Plaintiffs have not put forth Dr. Labovitz in an attempt to

1 “sandbag” UHC with new theories and affirmative opinions. (UHC Memo, at 9.) This is not a  
 2 situation where Plaintiffs belatedly disclose a trial expert to offer alternative theories beyond the  
 3 bounds of rebuttal, as in *Vu v. McNeil-PPC Inc.*, 2010 U.S. Dist. LEXIS 53639, \*8 (N.D. Cal. May 7,  
 4 2010). (UHC Memo, at 9.) Nor are Plaintiffs attempting to “correct any oversights” in their case-in-  
 5 chief. (*Id.*, at 8) (citing *U.S. ex rel. Brown v. Celgene Corp.*, 2016 WL 6542730, at \*4 (C.D. Cal.  
 6 June 29, 2016). Rather, Plaintiffs submit Dr. Labovitz’s Rebuttal Report to refute the unfounded  
 7 opinions offered by Mr. dos Santos and used by Defendants in opposing certification. As UHC  
 8 seemingly admits (*see* UHC Memo, at 9), Dr. Labovitz addresses the specific opinions given by  
 9 UHC’s expert, Mr. dos Santos. (*Cf.* UHC Memo, at 5; 6; 7-8; 15.)

10 As demonstrated, Dr. Labovitz’s opinions refute the opinions offered by Mr. dos Santos, and,  
 11 as such, there is no prejudice to Defendants. Further, Defendants had sufficient opportunity to cure or  
 12 address any supposed prejudice. *See Brown*, 2016 WL 6542730, at \*6 (“Even if some of [expert’s]  
 13 opinions, or portions of those opinions, exceed the permissible scope of rebuttal, the prejudice to  
 14 [d]efendant appears easily curable [as] [d]efendants received [the expert’s] report before the close of  
 15 expert discovery and do not deny that they had the opportunity to depose [the expert] at length about  
 16 the substance of his Report.”)<sup>4</sup>

17 Defendants had a fair opportunity to investigate Dr. Labovitz’s rebuttal opinions, having  
 18 received rebuttal expert report on January 18, 2019. Further, Defendants questioned Dr. Labovitz  
 19 about his opinions and the content of his rebuttal report during his March 8, 2019 deposition.  
 20 Moreover, Defendants just recently filed a March 20, 2019 Expert Report of Mr. dos Santos directed  
 21 to Dr. Labovitz’s Rebuttal Report. Finally, and fundamentally, none of the opinions offered by Dr.  
 22 Labovitz are outside the scope of rebuttal. There is, therefore, no prejudice to Defendants.

## 23 **V. CONCLUSION**

24 For all the foregoing reasons, Defendants’ Motion must be denied.

25  
 26 <sup>4</sup> *In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917, 2015 WL 4451579, at \*5 (N.D. Cal.  
 27 July 20, 2015) (denying motion to exclude rebuttal expert testimony, rejecting defendants’ claim of  
 28 prejudice, reasoning that defendants were represented by a “large team of able and experienced  
 counsel” who had sufficient time to investigate and prepare for the deposition and submit sur-rebuttal  
 reports, and stating that defendants cured any prejudice by taking the deposition and submitting sur-  
 rebuttal reports).

1 Dated: April 4, 2019

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3 By: /s/ Kimberly Donaldson-Smith

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22  
23  
24  
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26  
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28

**CERTIFICATE OF SERVICE**

I hereby certify that on April 4, 2019, I served the foregoing **PLAINTIFFS'**  
**MEMORANDUM IN OPPOSITION TO DEFENDANTS' DAUBERT MOTION**  
**CONCERNING THE EXPERT TESTIMONY AND OPINIONS OF DR. MARK LABOVITZ**  
**IN CONNECTION WITH PLAINTIFFS' MOTION FOR CLASS CERTIFICATION** on the  
following counsel of record via email:

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*Attorney for Plaintiffs, and Additional  
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Signature Block.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

RACHEL CONDRY, JANCE HOY, CHRISTINE  
ENDICOTT, LAURA BISHOP, FELICITY  
BARBER, and RACHEL CARROLL on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

UnitedHealth Group Inc.; UnitedHealthcare, Inc.;  
UnitedHealthcare Insurance Company;  
UnitedHealthcare Services, Inc.; and UMR, Inc.,

Defendants.

Case No.: 3:17-cv-00183-VC

**DECLARATION OF KIMBERLY  
DONALDSON-SMITH IN SUPPORT OF  
PLAINTIFFS' MEMORANDUM OF  
POINTS & AUTHORITIES IN  
OPPOSITION TO DEFENDANTS'  
DAUBERT MOTION CONCERNING  
THE EXPERT TESTIMONY AND  
OPINIONS OF PLAINTIFFS' EXPERT  
DR. MARK LABOVITZ IN  
CONNECTION WITH PLAINTIFFS'  
MOTION FOR CLASS  
CERTIFICATION**

**Date: April 25, 2019**

**Time: 10:00 am**

**Place: Courtroom 4**

**Honorable Vince Chhabria**

1 I, Kimberly Donaldson-Smith, declare that the following is true and correct:

2 1. I am a Partner of the firm of Chimicles Schwartz Kriner & Donaldson-Smith,  
3 LLP, and am one of the attorneys representing Plaintiffs, Rachel Condry, Jance Hoy, Christine  
4 Endicott, Laura Bishop, Felicity Barber, and Rachel Carroll, in the above-captioned matter. I  
5 make this declaration in support of Plaintiffs' Opposition to Defendants' *Daubert* Motion  
6 Concerning the Expert Testimony and Opinions of Plaintiffs' Expert Dr. Mark Labovitz in  
7 Connection With Plaintiffs' Motion For Class Certification.

8 2. I have personal knowledge of the facts set forth herein and, if called as a witness,  
9 could testify competently as to the matters stated in this Declaration.

10 3. Attached hereto as Exhibit "A" is a true and correct copy of the deposition  
11 transcript of Mr. Joao dos Santos, dated January 10, 2019.

12 I declare under penalty of perjury under the laws of the United States of America that the  
13 foregoing is true and correct.

14 Executed on April 4, 2019, in Haverford, PA.

15  
16 /s/ Kimberly Donaldson-Smith  
Kimberly Donaldson-Smith  
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# Exhibit A

IN THE UNITED STATES DISTRICT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

RACHEL CONDRY, JANCE HOY, ) Case No.:  
CHRISTINE ENDICOTT, LAURA ) 3:17-cv-00183-VC  
BISHOP, FELICITY BARBER, and )  
RACHEL CARROLL, on behalf of )  
themselves and all others )  
similarly situated, )  
Plaintiffs, )  
v. )  
UNITEDHEALTH GROUP INC.; )  
UNITEDHEALTHCARE, INC.; )  
UNITEDHEALTHCARE INSURANCE )  
COMPANY; UNITEDHEALTHCARE )  
INC.; AND UMR, INC., )  
Defendants. )

VIDEOTAPED DEPOSITION OF JOAO C. dos SANTOS

Taken Thursday, January 10, 2019

At 10:05 A.M.

At 355 South Grand Avenue, Suite 2800

Los Angeles, California

Reported by: DONNA J. RUDOLPH, RPR, CA. CSR NO.  
9652, NV. CCR NO. 420

1 DEPOSITION OF JOAO C. dos SANTOS, taken at  
2 355 South Grand Avenue, Suite 2800, Los Angeles,  
3 California, on Thursday, January 10, 2019, at  
4 10:05 A.M., before Donna J. Rudolph, RPR, Certified  
5 Shorthand Reporter, in and for the State of  
6 California.

7 APPEARANCES:

8 For Plaintiffs:

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18 Also Present:

19 Kathleen P. Chimicles, ASA  
20 Gary Brewer, Videographer

21 \* \* \* \* \*

22

23

24

25

I N D E X

JOAO C. dos SANTOS

Page

By Ms. Donaldson Smith

5, 128

E X H I B I T S

Number

Description

Page

Exhibit 1      Expert Report of Joao dos Santos,  
12-11-18

6

Exhibit 2      Business Requirements Document for  
ICRD - 999 - Condry National Data

79

Exhibit 3      UMR Mapping spreadsheet

79

Exhibit 4      UnitedHealthcare Employer &  
Individual Network Data Analytics  
& Reporting document

82

Information Requested:    (None)

1 LOS ANGELES, CALIFORNIA; THURSDAY, JANUARY 10, 2019

2 10:05 A.M.

3  
4 THE VIDEOGRAPHER: Good morning. We are  
5 on the record. This is the recorded video  
6 deposition of -- I already messed up. Joao --

7 THE WITNESS: That's good enough.

8 THE VIDEOGRAPHER: -- dos Santos --

9 THE WITNESS: There you go.

10 THE VIDEOGRAPHER: -- in the matter of  
11 Condry versus UnitedHealth Group, Inc., taken on  
12 behalf of the defendants?

13 MS. DONALDSON SMITH: Plaintiffs.

14 THE VIDEOGRAPHER: Plaintiffs. Taken on  
15 behalf of the plaintiffs. This deposition is taking  
16 place at 355 South Grand, Los Angeles, California,  
17 on January 10, 2019, at 10:05 A.M.

18 My name is Gary Brewer. I'm the  
19 videographer with U.S. Legal Support located at  
20 11845 West Olympic Boulevard, Los Angeles,  
21 California. Video and audio recording will be  
22 taking place unless all counsel have agreed to go  
23 off the record.

24 Would all present please identify  
25 themselves beginning with the witness.

1 THE WITNESS: My name's Joao dos Santos.

2 MS. DONALDSON SMITH: Kim Donaldson Smith  
3 with Chimicles & Tikellis on behalf of the  
4 plaintiffs.

5 MR. HAWLEY: Terence Hawley for  
6 defendants.

7 MS. CHIMICLES: Kathleen Chimicles, Glenn  
8 Devon Group and Chimicles and Tikellis.

9 THE VIDEOGRAPHER: The certified court  
10 reporter today is Donna J. Rudolph.

11 Would you please swear in the witness.  
12

13 JOAO C. dos SANTOS,  
14 called as a witness, being first duly sworn to tell  
15 the truth, the whole truth, and nothing but the  
16 truth, testified as follows:

17  
18 EXAMINATION

19 BY MS. DONALDSON SMITH:

20 Q Good morning, Mr. dos Santos.

21 A Good morning.

22 Q Could you please state your name for the  
23 record.

24 A Yes. My name is Joao dos Santos.

25 Q Have you ever been deposed before?

1 A Yes, I have.

2 Q Okay. So I'm sure you're familiar with  
3 the general ground rules of a deposition and how  
4 things proceed with the questions and answers. You  
5 understand that a court reporter is taking down the  
6 questions that I'm asking and your answers so that  
7 your answers need to be audible. She can't record a  
8 shake of the head, things like that. I tend to talk  
9 quickly, so she'll probably tell me to slow down.  
10 She might ask you about -- to repeat something  
11 because of your accent.

12 A Uh-huh.

13 Q But otherwise, the goal here is to have a  
14 complete and accurate record, not talk over each  
15 other and things like that. Do you understand that?

16 A Yes, I do.

17 Q Okay. If you need a break, just let me  
18 know. We can accommodate that, assuming we're not  
19 in the middle of a line of questioning. Do you have  
20 any questions about the procedure for today?

21 A No, I don't.

22 Q Okay. Okay. So we're going to mark as  
23 Exhibit 1 Mr. dos Santos' expert report.

24 (Exhibit 1 marked.)

25 THE WITNESS: Thank you.

1 MR. HAWLEY: Thank you.

2 MS. DONALDSON SMITH: You're welcome.

3 Q Mr. dos Santos, could you please turn to  
4 Exhibit 1 of your report, which is your curriculum  
5 vitae.

6 A Sure.

7 Q I see here on the first page of Exhibit 1  
8 your C.V. It outlines your education and it says  
9 that you have a master of science in applied  
10 economics from Rutgers University?

11 A That's correct.

12 Q Okay. And what year did you secure that?

13 A I don't recall. It was probably 1998. It  
14 was a while ago. That much I know.

15 Q Okay. And your BS in environmental and  
16 business economics from Rutgers, what year was that?

17 A I think it was 1996.

18 Q And do you have any other degrees from any  
19 other universities?

20 A No, I don't.

21 Q Okay. And do you have any certifications?

22 A No.

23 Q So you're currently employed by Ankura --  
24 is that how you pronounce it?

25 A That's correct. Ankura Consulting.

1 Q -- Ankura Consulting in the disputes  
2 forensic legal technology practice?

3 A That's correct.

4 Q And what does that practice group do at  
5 Ankura?

6 A It's a global practice that handles a  
7 number of different issues ranging from litigation  
8 support to investigative work and regulatory  
9 compliance.

10 Q So how long have you been with Ankura?

11 A I have been -- Ankura is a company that  
12 was recently formed or actually Ankura has been  
13 formed for a while, but I was with Navigant  
14 Consulting, and Navigant Consulting was acquired by  
15 Ankura recently. I think sometime last year, 1998  
16 [sic] I would say, around June 1998. I don't recall  
17 exactly the date, the closing of the transaction,  
18 but it was sometime in 2018.

19 Q 2018?

20 A Yes.

21 Q And so how long were you with Navigant?

22 A I was with Navigant for about a year or  
23 year and a half prior to that. I was with Navigant  
24 before. It was my second tour of Navigant. I  
25 worked with them in -- in the past.

1 Q Okay. So prior to joining Navigant, I  
2 guess in 2017 -- is that about around there?

3 A I think that's, yeah, about right.

4 Q -- by whom were you employed?

5 A I was employed by KPMG.

6 Q And what was your role at KPMG?

7 A I was a managing director and leader of  
8 the dispute advisory services group here in  
9 Los Angeles.

10 Q And did you have a specific concentration  
11 within the dispute advisory services group for a  
12 specific industry, for example?

13 A The types of matters that I advised vary  
14 over time. Healthcare is one that is a constant in  
15 a way. I like to say that I have a set of skills  
16 that are applicable to a variety of types of  
17 matters.

18 Q Okay. And how long were you at KPMG?

19 A I was with KPMG, I think, for about three  
20 years.

21 Q Okay. And prior to KPMG?

22 A Prior to KPMG, I was a partner with a  
23 company called Rothstein Kass. That's a  
24 professional services firm, and I was the leader of  
25 their litigation support services practice based

1 here in L.A.

2 Q I'm sorry. It was Rust?

3 A Rothstein Kass.

4 Q Rothstein?

5 A Yeah. I can provide with the -- with --  
6 the spelling maybe later but --

7 Q Okay. And how long were you with  
8 Rothstein?

9 A I don't recall exactly. Probably around  
10 four years or so.

11 Q Okay. And prior to Rothstein, what  
12 company did you work for?

13 A I was with Navigant.

14 Q Okay. And did you start with Navigant  
15 after you graduated from university?

16 A No.

17 Q So prior to that stint with -- how long  
18 were you with Navigant for that stint?

19 A I'd say probably about seven years or so.

20 Q Okay. And prior to that?

21 A Prior to that I was with Deloitte &  
22 Touche.

23 Q And what department were you in at  
24 Navigant during those seven years?

25 A It was the equivalent of the -- the

1 department I'm with. This will be the disputes  
2 investigations practice.

3 Q And then at Deloitte, which department?

4 A The -- I think the -- the term that they  
5 used at the time was financial advisory services,  
6 and a subpractice of that was the disputes  
7 investigations or business consulting.

8 Q And then prior to Deloitte, were you  
9 employed by anyone else?

10 A Yeah.

11 Q Okay.

12 A I was employed by PwC,  
13 PricewaterhouseCoopers.

14 Q In their dispute and investigation  
15 department?

16 A Same practice. Yeah. I don't recall  
17 exactly what it was called. But I think it was the  
18 equivalent of a FAS, FAS advisory services.

19 Q I'm sorry. FAS --

20 A Financial advisory services. Sorry.

21 Q Okay. And then prior to PwC?

22 A I was with Arthur Andersen.

23 Q And which department at Arthur Andersen?

24 A It was the equivalent of the same  
25 financial advisory services or business consulting.

1 The name of my group varied over the years.

2 Q And was that also a litigation support  
3 group?

4 A It was a combination --

5 Q Okay.

6 A -- of business management and litigation  
7 support and regulatory -- regulatory compliance.

8 Q Okay. And prior to Arthur Andersen?

9 A Prior to Arthur Andersen, I was with a  
10 company called Mars & Company, not the candy  
11 company. It's a management consulting firm.

12 Q And did you do litigation support work at  
13 Mars?

14 A No. With Mars, I did strictly management  
15 consulting, economic analysis, heavy-duty data  
16 analytics and -- and modeling.

17 Q Did they focus on a specific industry?  
18 Mars.

19 A No.

20 Q And before Mars?

21 A I was at school.

22 Q Okay. So for about 20 years, you have  
23 been working in -- roughly 20 years --

24 A Roughly 20 years, yeah.

25 Q -- in the litigation support field?

1 A Yeah, I'd say that's -- that's fair.

2 Q Okay. So staying on the first page of  
3 your C.V. here, Mr. dos Santos, it states that your  
4 experience in disputes and investigations covers  
5 various issues including what you've deemed  
6 evaluation of Rule 23 class certification  
7 requirements. What do you mean by that?

8 A I mean I have been routinely retained to  
9 evaluate issues associated with the commonality,  
10 typicality ascertainability of -- of class and  
11 calculation of damages. So --

12 Q Approximately how many engagements have  
13 you been involved in that -- that involve your  
14 evaluation of class certification requirements?

15 A It would be hard to estimate, but I'd say  
16 that is in the dozens.

17 Q And are these matters that you served as  
18 a -- just a testifying expert, as a consultant, as a  
19 combination of both?

20 A Both. I've been retained as -- either as  
21 a privilege consultant or as an expert testifier and  
22 provided testimony.

23 Q And in these engagements with respect to  
24 the evaluation of class certification requirements,  
25 have you typically been representing the party that

1 would be the defendant in the class action  
2 litigation?

3 A More frequently, yes. But I have worked  
4 also on behalf of plaintiffs as well.

5 Q And how many engagements have you worked  
6 on behalf of plaintiffs for?

7 A I would not be able to answer to you as I  
8 sit here. I'd say fewer than on behalf of  
9 defendants.

10 Q So if could you do a percentage, how would  
11 you roughly break down the percentage of the number  
12 of engagements that were for plaintiffs and for  
13 defendants?

14 A I would say the majority of the percentage  
15 was associated with the defendant.

16 Q Majority is 51 percent? Or like a super  
17 majority, 80-plus percent?

18 A I -- I don't know. It'd be hard to --  
19 definitely more than 50 percent.

20 Q For any of the engagements that you  
21 worked -- that you did the evaluation of Rule 23  
22 class certification requirements, were those for any  
23 healthcare companies?

24 A Yes.

25 Q Okay. And which healthcare companies?

1           A       I'm -- I don't know if I can -- I'm at  
2   liberty to kind of disclose the specific names of my  
3   clients. I think some of them, for which I had  
4   provided testimony, you can see on my C.V. But, you  
5   know, most of my engagements are confidential.

6                   MR. HAWLEY: I'm going to belatedly object  
7   that the question was vague and calls for disclosure  
8   of confidential and private information.

9   BY MS. DONALDSON SMITH:

10           Q       So to the extent that you were a  
11   testifying expert in any of the Rule 23 class  
12   certification engagements, who are the clients, the  
13   healthcare clients in those cases?

14           A       Well, I think they are listed on my C.V.

15                   MR. HAWLEY: I'm going to object again to  
16   the extent that the question is vague.

17   BY MS. DONALDSON SMITH:

18           Q       So if we turn to the class action  
19   litigation section of your C.V. --

20           A       Uh-huh.

21           Q       -- it lists eight engagements.

22           A       Uh-huh.

23           Q       But you've had more than eight class  
24   action litigation engagements during your career; is  
25   that correct?

1 A Correct.

2 Q Are these the eight that you've had with  
3 Ankura?

4 MR. HAWLEY: Objection. Vague.

5 THE WITNESS: I don't know. I would have  
6 to -- to look specifically. These are meant to be a  
7 representative sample of the types of engagements  
8 that I worked on, and certainly they are not. I  
9 worked on more than those.

10 BY MS. DONALDSON SMITH:

11 Q So over the last five years, how many  
12 class action litigations have you been involved in  
13 that you served as a testifying expert?

14 A Can you clarify as served to me in that I  
15 provided testimony or that I was retained as an  
16 expert?

17 Q That you were retained as a testifying  
18 expert?

19 A I don't know the exact number, but that --  
20 I don't know the number. But it would be a larger  
21 number than the ones that actually went to require  
22 deposition or filing of a report.

23 Q Okay. So for how many class action  
24 litigations over the last five years did you provide  
25 an expert report?

1 A I think -- well, can I --

2 Q Oh, absolutely, yes.

3 A So I had -- the most recent one was a few  
4 weeks ago in Miami-Dade County. That's a class  
5 action, required both an expert report and testimony  
6 in a class action hearing. The one prior to that,  
7 it's not formally a class action, but it involves --  
8 it was an arbitration which involved filing of a  
9 report and -- and expert testimony.

10 Q So that Sutter Health is not a class  
11 action; correct?

12 A It's not a class action. It's a case that  
13 involves review and evaluation of healthcare claims  
14 data. Similar to -- to the data that are available  
15 in this case.

16 Q For the Crosswinds rehab, that's the case  
17 that you're referring to as a class action in which  
18 you have provided expert testimony; correct?

19 A Correct.

20 Q Okay. So for that, who are you  
21 representing in the Crosswinds case?

22 A The defendants.

23 Q That's American Elder Care?

24 A American Elder Care.

25 Q Okay. Are there any other class actions

1 that are listed on this page versus page 9 of your  
2 C.V.?

3 A Yes. Jose Moreno, et al., versus Jay  
4 Redfern. That's also a class action which I  
5 provided testimony.

6 Q So for the Crosswinds case, what's the  
7 nature of the testimony that you're giving in that  
8 case?

9 A That's an ongoing case, as I mentioned,  
10 where the ruling on -- on the hearing has not been  
11 disclosed. So I don't know if I am at liberty to  
12 discuss the -- you know, the details of what I -- of  
13 my testimony. I can say that I was retained to  
14 evaluate class action issues. That case involved  
15 large amounts of data, and I was qualified as an  
16 expert in healthcare -- understanding healthcare  
17 data and data analytics and statistical methods.

18 Q Okay. So you just said you were  
19 qualified, so the Court rendered a decision with  
20 respect to your expert testimony in the Crosswinds  
21 case?

22 MR. HAWLEY: To the extent you know or  
23 understand.

24 THE WITNESS: To the -- I don't -- to the  
25 extent that I know, there was no objection as

1 relates to my qualifications.

2 BY MS. DONALDSON SMITH:

3 Q Okay. Has that case -- have you given  
4 trial testimony in the Crosswinds case?

5 A It was a hearing. So not -- trial has not  
6 taken place.

7 Q So was there a Daubert hearing? Is that  
8 what you're referring to? Do you know?

9 A No. I didn't mention anything about  
10 Daubert.

11 Q And what type of data is involved in the  
12 Crosswinds case?

13 MR. HAWLEY: Objection. Vague.  
14 Overbroad. Foundation.

15 THE WITNESS: Well, again, my point simply  
16 is that I don't know how much information I can  
17 disclose as it relates to an ongoing case. But  
18 generally speaking, it's healthcare claims data  
19 would be the type of data.

20 MR. HAWLEY: Just for the record, object  
21 to the extent testimony would divulge work product,  
22 privileged information, and confidential  
23 information.

24 BY MS. DONALDSON SMITH:

25 Q Do you know if your expert report was

1 filed in the Crosswinds case?

2 A I don't know the details of that.

3 MR. HAWLEY: Objection. Vague.

4 BY MS. DONALDSON SMITH:

5 Q In the Moreno action, does that involve  
6 healthcare claims data?

7 A No.

8 MR. HAWLEY: Objection. Vague.

9 BY MS. DONALDSON SMITH:

10 Q What testimony have you been asked to  
11 render in the Moreno action?

12 MR. HAWLEY: Objection. Vague. It may  
13 require disclosure of confidential or work product  
14 information.

15 MS. DONALDSON SMITH: Do you not know  
16 whether or not these -- the reports were filed under  
17 seal? Are you telling me they were filed under  
18 seal?

19 MR. HAWLEY: You were asking about other  
20 cases; right?

21 MS. DONALDSON SMITH: Right.

22 MR. HAWLEY: Yeah, I -- I don't know what  
23 the details are for those cases.

24 BY MS. DONALDSON SMITH:

25 Q And Mr. dos Santos, you're not able to

1 tell me other healthcare clients or you're not --  
2 you're not going to tell me other healthcare clients  
3 that you've represented over the course of your  
4 career?

5 MR. HAWLEY: I think that mischaracterizes  
6 his testimony.

7 BY MS. DONALDSON SMITH:

8 Q So, Mr. dos Santos, then I misunderstood.  
9 I had asked you earlier the identity of other  
10 healthcare clients that you have provided services  
11 for over the course of your career. And asked  
12 specifically with respect to providing expert --  
13 serving as an expert and serving -- providing expert  
14 testimony in those matters.

15 Are you able to identify for me the names  
16 of the healthcare providers for which you have  
17 provided such testimony?

18 MR. HAWLEY: Objection. Vague. And  
19 object to the extent it requires you to divulge  
20 confidential information and work product or  
21 privileged information.

22 THE WITNESS: I think that I have  
23 elaborated in my C.V. disclosed information as it  
24 relates to the specific matters in which I provided  
25 expert testimony for healthcare companies for -- in

1 healthcare matters.

2 BY MS. DONALDSON SMITH:

3 Q Okay. So to the extent that a company  
4 name is not mentioned in your C.V., it would be  
5 your -- you did not provide, then, expert testimony  
6 for a healthcare company?

7 MR. HAWLEY: Objection. May  
8 mischaracterize his testimony. Vague.

9 THE WITNESS: Yeah, that's not -- I would  
10 not characterize in that regard. I have been  
11 retained on a number of matters as the expert. And  
12 as you know, not every matter goes all the way to  
13 trial. I'd say it requires the filing of a report  
14 or submission of testimony. So I have been  
15 retained, as I mentioned, in a number of additional  
16 matters as the expert. The ones for which I have  
17 testimony on record, I include in my C.V.

18 BY MS. DONALDSON SMITH:

19 Q Okay. Have you represented UnitedHealth  
20 in any prior engagements?

21 MR. HAWLEY: Objection. Vague. Also  
22 object to the extent it requires you to divulge work  
23 product, privileged information, or confidential or  
24 private information.

25 THE WITNESS: That's correct. I -- I

1 mean, I'd say the majority of my work is privileged  
2 consulting, and in that context, you know, the --  
3 the nature of that, disclosing any information is --  
4 you know, there's a level of confidentiality and  
5 privilege. So I -- I don't know if I can disclose  
6 specific names or engagements that I work on or  
7 details of them.

8 BY MS. DONALDSON SMITH:

9 Q Okay. So you understand that we're --  
10 you're serving as an expert, as a public expert on  
11 behalf of -- you're providing opinions. You've been  
12 retained by Reed Smith but providing opinions on  
13 behalf of UnitedHealth in connection with their  
14 defending litigation. And I'm asking you whether or  
15 not you have provided any other services for United  
16 during the course of your career. Are you going to  
17 answer that question?

18 A It is --

19 MR. HAWLEY: Objection. Vague.  
20 Unintelligible. Lacks foundation.

21 THE WITNESS: It's -- it's possible. As I  
22 mentioned, I have worked on, you know, a  
23 significantly large number of cases that involved  
24 healthcare companies. And, you know, it's possible  
25 that UnitedHealthcare may have been one of my

1 clients in the past.

2 I think that one distinction that I want  
3 to make is with regards to who is the ultimate  
4 client in a way; right? So I may be -- I'm just  
5 trying to qualify the fact that I may work for a  
6 subsidiary of a company that, you know, is -- and so  
7 forth and so on. So I -- I would not be able to  
8 tell you specifically, you know, what -- what  
9 companies I have worked on behalf.

10 BY MS. DONALDSON SMITH:

11 Q So for this matter, you've been engaged by  
12 Reed Smith; correct?

13 MR. HAWLEY: Objection. Vague. Lacks  
14 foundation.

15 MS. DONALDSON SMITH: What part lacks  
16 foundation? He doesn't -- how would he not know who  
17 he's been engaged by?

18 MR. HAWLEY: You know -- the objection  
19 stands.

20 MS. DONALDSON SMITH: Okay.

21 MR. HAWLEY: To answer your question.

22 THE WITNESS: I have to go back and take a  
23 look specifically at the engagement letter, but I  
24 believe that Reed Smith was one of the parties that  
25 engaged me. Either it was -- I assume that -- my

1 understanding or frequently I'm retained by counsel,  
2 outside counsel on behalf of a client. So based on  
3 that understanding of the nature of my standard  
4 engagement letters, I would assume that Reed Smith  
5 was a party to that agreement.

6 BY MS. DONALDSON SMITH:

7 Q I think you actually say it in your report  
8 as well.

9 A Correct.

10 Q All right. So is this the first time  
11 you've been engaged by Reed Smith for a project?

12 MR. HAWLEY: Objection. Vague. Lacks  
13 foundation. And instruct him not to answer to the  
14 extent it requires you to divulge confidential,  
15 private, or privileged information.

16 THE WITNESS: I -- I have worked for Reed  
17 Smith in the past. I've been retained by them.

18 BY MS. DONALDSON SMITH:

19 Q For what types of engagements?

20 MR. HAWLEY: Same objection.

21 THE WITNESS: I don't recall every one.  
22 There have been a number of engagements on  
23 variety -- variety of issues over the years. As you  
24 pointed out, I've been doing this for about 20  
25 years. So I have worked on -- with a variety of

1 firms and a number of them multiple times.

2 BY MS. DONALDSON SMITH:

3 Q Do you know approximately how many  
4 engagements?

5 A No. I would not be able to -- to guess  
6 what that is.

7 Q Any engagements for which -- any  
8 engagements that involved healthcare companies for  
9 which you were retained by Reed Smith?

10 MR. HAWLEY: Objection. Vague.  
11 Overbroad.

12 Instruct you not to answer to the extent  
13 it requires you to divulge private, privileged  
14 information, confidential information, or work  
15 product.

16 THE WITNESS: Yes. I believe I have.

17 BY MS. DONALDSON SMITH:

18 Q And are you able to tell me the name of  
19 those healthcare companies?

20 A Again --

21 MR. HAWLEY: Same objection.

22 THE WITNESS: -- it goes back to the terms  
23 of my standard engagement letter where oftentimes  
24 requires conflict.

25 / / / /

1 BY MS. DONALDSON SMITH:

2 Q So your standard engagement letters  
3 include a confidentiality provision?

4 MR. HAWLEY: Objection. Vague.

5 You can answer.

6 THE WITNESS: Yeah. As I sit here today,  
7 I don't have a -- an answer for you specifically.  
8 In part, due to the fact that, as I mentioned to you  
9 earlier, I have a new employer, Ankura, and some of  
10 our standard norms and procedures, particularly the  
11 standard language in our engagement letter, it may  
12 be different than it was before. But as a -- as an  
13 overall perspective, oftentimes that's the way that  
14 the structure for my engagements are.

15 BY MS. DONALDSON SMITH:

16 Q As part of your practice as serving as an  
17 expert witness, do you have the occasion to ask  
18 former clients to be able to provide information  
19 about your former engagements?

20 MR. HAWLEY: I'm sorry. Could I have that  
21 question back.

22 THE WITNESS: Sorry. If you could please  
23 repeat it.

24 MS. DONALDSON SMITH: If you could please  
25 read it back for me, please.

1 (Record read.)

2 MR. HAWLEY: Objection. Vague.

3 THE WITNESS: I still don't know if I  
4 understand. Could you --

5 BY MS. DONALDSON SMITH:

6 Q I'll re-ask.

7 A Thank you.

8 Q So in -- in your role serving as an  
9 expert, you'll be asked questions about prior  
10 engagements and the -- the testimony that you've  
11 given and the results of any challenges, say, to  
12 your expert testimony.

13 Do you, then, in light of the  
14 confidentiality provisions that may appear in your  
15 engagement letters, go to your former clients and  
16 ask them for permission to be able to share  
17 information about their engagements to discuss  
18 with -- in the context of subsequent litigation or  
19 subsequent serving as an expert?

20 MR. HAWLEY: Objection. Vague. Lacks  
21 foundation. May be an incomplete hypothetical.

22 You can answer.

23 THE WITNESS: I don't recall definitely  
24 not -- I don't recall, period, any instances where I  
25 had to reach to one of my clients to ask for

1 permission. Oftentimes that doesn't come up. I  
2 think people often retain me based on my  
3 qualifications, my experience overall, and -- and I  
4 think that serves the basis. And the general  
5 explanations that I have in my -- defined in my C.V.

6 BY MS. DONALDSON SMITH:

7 Q Okay. On page 2 of your C.V., Mr. dos  
8 Santos, there's a second bullet. There's a  
9 reference to a claims adjudication matter. Do you  
10 see that?

11 A Yes.

12 Q And what types of claims adjudication  
13 issues did you address in that arbitration  
14 proceeding referenced by that bullet 2?

15 A Okay. I think -- explain that there.  
16 Basically I was asked to conduct a forensic review  
17 of available data, right, and this would be  
18 healthcare data, claims data. I was -- I had  
19 multiple roles in that engagement. I served as a  
20 neutral expert statistician. So there is some  
21 sampling and extrapolation work that was conducted  
22 there. And I also evaluated the claims as it  
23 relates to damages for the different claims that  
24 were part of the -- the arbitration.

25 Q And what type of party did you -- did you

1 represent the payor or the provider in this matter?

2 A Yeah. It was -- well, I don't recall  
3 exactly the -- the contract, the details of the  
4 contract, but I worked on behalf of the payor, I  
5 believe, or I think most of my work was payor  
6 eccentric, but I served multiple roles, as I  
7 mentioned. I was appointed as the neutral  
8 statistical expert on behalf of both the payor and  
9 the provider.

10 Q What type of statistical analysis were you  
11 doing on the claims that were at issue in this  
12 matter?

13 A There were a multitude of analysis. There  
14 was some statistical tests, some econometric  
15 modeling. There was also statistical sampling.

16 Q Of the claims data that was at issue?

17 A Of the claims data.

18 Q And you didn't do any statistic sampling  
19 here, did you, for the Condry matter; correct?

20 MR. HAWLEY: Objection. Instruct you not  
21 to answer to the extent it requires you to divulge  
22 work product or confidential or private information.  
23 Also vague.

24 THE WITNESS: No. As it relates to my  
25 opinions that are expressed in my report, that

1 didn't require any formal statistical sampling.

2 MR. HAWLEY: Kim, are you asking him to  
3 characterize the opinions in his report?

4 MS. DONALDSON SMITH: I was asking  
5 generally about the Condry matter.

6 MR. HAWLEY: No, but were you asking him  
7 about his report in the Condry matter?

8 MS. DONALDSON SMITH: Well, he answered my  
9 question, so --

10 Q And you just said that you didn't do any  
11 formal statistical sampling. Is that accurate as  
12 what you just testified?

13 A Well, what --

14 MR. HAWLEY: Wait. Objection. Beyond the  
15 scope. If you're asking him about his report or to  
16 characterize his report, that's one thing. But if  
17 you're asking him if he's done any other work in  
18 connection with the Condry case, that's another  
19 thing, and I'm going to instruct him not to answer  
20 on the grounds that it calls or may call for him to  
21 divulge work product. If you want to ask him about  
22 his report, you can ask him about his report.

23 MS. DONALDSON SMITH: Well, I can ask  
24 him -- I can ask him what I will ask him. Thank  
25 you.

1           Q     But the question that I asked was -- and  
2     you responded, I think, saying with respect to the  
3     opinions that were rendered in your report. Was  
4     that correct?

5           MR. HAWLEY:  Objection.  Vague.  
6     Mischaracterizes testimony.

7           THE WITNESS:  So let's talk about the  
8     definition of statistical sampling; right?

9     BY MS. DONALDSON SMITH:

10          Q     Sure.

11          A     So by statistical sampling, I will mean  
12     the form- -- well, formal statistical sampling, as  
13     routinely I'm retained for as an expert, and I feel  
14     qualified to do so based on my background and  
15     experience, would involve development of a sampling  
16     plan, the development of selection of a random  
17     sample, and potential extrapolation.

18                So when I think of a statistical sampling,  
19     I'm thinking about a comprehensive study of sorts.  
20     So when I said I didn't conduct a formal statistical  
21     sampling in this matter, that's -- was the context  
22     of within which I was describing.

23          Q     Did you do an informal statistical  
24     sampling in rendering the opinions that are  
25     reflected in your report?

1 MR. HAWLEY: Objection. Instruct you not  
2 to answer to the extent it requires you to divulge  
3 work product.

4 You can answer to the extent she's asking  
5 about your report.

6 THE WITNESS: Sure.

7 MR. HAWLEY: In the report.

8 THE WITNESS: I guess, if you can clarify  
9 the definition of "informal statistical sampling," I  
10 will provide an explanation of what I, in my mind,  
11 would be one explanation for a formal statistical  
12 sampling. Informal could mean a lot of things. So  
13 I would need additional clarification as to what you  
14 mean.

15 BY MS. DONALDSON SMITH:

16 Q Okay. So by your using the word "formal  
17 statistical sampling," that was not to indicate that  
18 you did any other type of statistical sampling in  
19 connection with rendering the opinions that are in  
20 your report?

21 MR. HAWLEY: Objection. Vague. Lacks  
22 foundation. May mischaracterize his testimony.

23 THE WITNESS: Well, so again, I -- I still  
24 have not understood the -- this informal assessment  
25 for statistical sampling. I explained my

1 understanding, you know, routinely what I do from a  
2 formal perspective or a more -- let's say more  
3 rigorous or comprehensive; right?

4 In this case, I have, in connection with  
5 some of the opinions that I derived, I have sampled  
6 or contacted or conducted a case study. I don't  
7 know what the formal -- there's no formal definition  
8 for that -- of -- of providers in a particular  
9 region. So I -- I don't characterize that as a --  
10 as a survey, per se, in -- in the context that I  
11 mentioned. But informally one could say that, yeah,  
12 I sampled in a -- in a sense that I selected  
13 somebody, right, and contacted that individual and  
14 reviewed the results of that investigation.

15 So -- I don't know what that means from  
16 your perspective, but that's what I did.

17 BY MS. DONALDSON SMITH:

18 Q Have any of your other engagements during  
19 the course of your career involved the Affordable  
20 Care Act?

21 MR. HAWLEY: Objection. Vague.  
22 Overbroad. Lacks foundation.

23 THE WITNESS: I would say that probably,  
24 yes, in one way or another.

25 / / / /

1 BY MS. DONALDSON SMITH:

2 Q Okay. Have you had occasion, with respect  
3 to any of your work, to interpret the Affordable  
4 Care Act?

5 MR. HAWLEY: Same objections.

6 THE WITNESS: I -- I have not -- that's --  
7 that's -- I don't think -- that has not been in the  
8 scope of an analysis of interpretation of the act,  
9 and certainly has not been within the scope of the  
10 assignment here to make an interpretation of what  
11 the act entails or not.

12 BY MS. DONALDSON SMITH:

13 Q In your healthcare experience and related  
14 to your healthcare engagements, have you worked on  
15 claims or issues relating to the preventative  
16 services coverage mandate that's contained in the  
17 Affordable Care Act?

18 MR. HAWLEY: Objection. Vague.  
19 Overbroad. Lacks foundation. May call for a legal  
20 opinion. May also call for disclosure of work  
21 product, private, or privileged information.

22 THE WITNESS: It's possible, but I cannot  
23 think of a specific case.

24 BY MS. DONALDSON SMITH:

25 Q Do you have a general familiarity with the

1 preventative services that are set forth in the ACA?

2 MR. HAWLEY: Objection. Vague. Lacks  
3 foundation.

4 THE WITNESS: Within the context of this  
5 matter, I read some of the materials and information  
6 that discuss that, but I -- again, I'm not -- the  
7 scope of my assignment did not involve -- did not  
8 involve or require an interpretation of the  
9 preventative healthcare measures or -- as you  
10 described.

11 BY MS. DONALDSON SMITH:

12 Q Sorry. Did it require an understanding of  
13 the preventative services mandate of the ACA?

14 MR. HAWLEY: Objection. Vague. Lacks  
15 foundation. May call for a legal opinion.

16 THE WITNESS: Again, I -- I was not  
17 required or asked to provide any legal opinion or  
18 interpretation as it relates to this matter. The  
19 focus of my analysis was associated on the review of  
20 claims data, a population of claims data.

21 BY MS. DONALDSON SMITH:

22 Q So in order to render your opinions, you  
23 didn't need to have an understanding of the scope of  
24 the preventative services mandate for breastfeeding  
25 support and counseling?

1 MR. HAWLEY: Objection. Vague.  
2 Unintelligible. Lacks foundation. May call for a  
3 legal opinion.

4 THE WITNESS: In order to render my  
5 opinion, as I mentioned, my opinion was -- my  
6 assignment was to conduct an empirical analysis of a  
7 population of healthcare claims and, you know, that  
8 you carry out that ask -- the primary things that  
9 were required of me were the data and the specific  
10 instructions as it relates to the question to be  
11 evaluated, empirically evaluated.

12 BY MS. DONALDSON SMITH:

13 Q So you're not rendering any opinion with  
14 respect to the scope of the preventative services  
15 mandate under the ACA with respect to breastfeeding  
16 support and counseling; correct?

17 MR. HAWLEY: Objection. Vague. Lacks  
18 foundation. May mischaracterize his testimony.

19 THE WITNESS: I don't know if I understand  
20 what that means. But again, the scope of my  
21 assignment was focused in just -- in developing a  
22 empirical analysis of healthcare claims, lactation  
23 support claims specifically, as I understand, and to  
24 evaluate a -- a specific question in that context.

25 / / / /

1 BY MS. DONALDSON SMITH:

2 Q What's your understanding of lactation  
3 support claims?

4 MR. HAWLEY: Objection. Vague.

5 THE WITNESS: What aspect of that? I  
6 mean, that they -- they are claims that are  
7 associated with the lactation support services.

8 BY MS. DONALDSON SMITH:

9 Q And what are lactation support services,  
10 as you understand it?

11 A Okay. So again, I was not asked to opine  
12 or develop a opinion as to the specific definition  
13 of "lactation support services." But based on my  
14 review of the data and other documents and just  
15 research in general on the topic, it's my -- I  
16 developed an understanding that lactation support  
17 services are associated with the support, supply,  
18 and counsel to treat or, you know, prevent  
19 conditions such as the improper milk transfer,  
20 breast engorgement, or cracked nipples.

21 Q So what documents did you review that form  
22 the basis of that understanding?

23 A Again, that would be the documents that  
24 were available to me as part of this matter. So  
25 that'd be the complaint, declaration, conversations

1 with counsel, and some fields in the data that  
2 provide information about, you know, the specific  
3 procedures and diagnosis for the various claims that  
4 I -- that I analyzed.

5 Q And by the declaration, are you referring  
6 to the Ms. Huckaby declaration?

7 A Correct.

8 Q Any other declarations?

9 A No.

10 MS. DONALDSON SMITH: Sure. We're going  
11 to go off the record for a moment.

12 THE VIDEOGRAPHER: Going off the record.  
13 The time is 10:49 A.M.

14 (Brief recess.)

15 THE VIDEOGRAPHER: We are back on the  
16 record. The time is 10:54 A.M.

17 BY MS. DONALDSON SMITH:

18 Q Mr. dos Santos, you had testified that  
19 what you did here was an empirical evaluation; is  
20 that correct?

21 A Yeah. Meaning -- empirical meaning it was  
22 a data-driven process; right? My analysis were  
23 analysis of the data, the claims data.

24 Q And how does that empirical evaluation  
25 compare to a statistical evaluation?

1 MR. HAWLEY: Objection. Vague.

2 THE WITNESS: Empirical is a term that  
3 just means data driven. In that regard, a  
4 statistical analysis is also data driven. A  
5 statistical -- the distinction would say that it's  
6 on behalf of distinctions. All right? One could  
7 say that a calculation of a mean by an average isn't  
8 a statistic. So I mean, it's a very vague term. So  
9 it's in that context, an empirical analysis that to  
10 comprise a calculation of a -- of a mean or an  
11 average is a statistical analysis.

12 BY MS. DONALDSON SMITH:

13 Q It's not?

14 A It is. In a sense that, you know, it  
15 record- -- it is -- it's in a statistic. All right?  
16 So --

17 Q Any other differences between the two  
18 evaluations?

19 MR. HAWLEY: Objection. Vague.  
20 Incomplete hypothetical.

21 THE WITNESS: Sorry. Yeah. I don't know  
22 if I understand specifically -- you asked me  
23 differences between an empirical analysis and a  
24 statistical analysis. And I said that, by  
25 definition, empirical analysis comprises of a

1 variety of things that -- what -- the one common  
2 thread, which would be it's data driven. In that  
3 context, any statistical analysis also or is data  
4 driven. Unless if it's just a theoretical analysis;  
5 right? If somebody writes a paper, a statistical  
6 paper on some theoretical issue.

7 BY MS. DONALDSON SMITH:

8 Q Right.

9 A But the -- I think the distinction were --  
10 the -- the qualification that I'm making is that  
11 empirical just is a qualifier as to the fact that  
12 that involved actual analysis of data.

13 Q Mr. dos Santos, you're not offering an  
14 opinion in this litigation with respect to any class  
15 certification criteria; correct?

16 MR. HAWLEY: Objection. Vague. Lacks  
17 foundation. May call for a legal opinion.

18 THE WITNESS: No. Again, my -- I think my  
19 report frames well what the scope of my analysis or  
20 my -- my ask was, the specific question that I  
21 addressed and the methods that I followed. So in  
22 that context, you know, I'm just addressing --  
23 addressing strictly the assignment as it's described  
24 in my report.

25 / / / /

1 BY MS. DONALDSON SMITH:

2 Q Would you consider this an assignment  
3 related to the evaluation of Rule 23 class  
4 certification requirements?

5 MR. HAWLEY: Objection. May call for a  
6 legal opinion. Vague. Lacks foundation.

7 THE WITNESS: I -- I cannot speak as to  
8 how the results can be or my -- my findings can be  
9 used within a legal context. I think that -- that  
10 the results of my analysis are what they are or they  
11 indicate, you know, a specific conclusions with  
12 regards to the one main question that I was asked to  
13 evaluate, which was to conduct a data analysis of  
14 population of claims, to evaluate the systemic or  
15 wide- -- a delegation of a systemic or widespread  
16 lack of access to or coverage for lactation support  
17 services.

18 So strictly speaking, that's what my --  
19 the scope of my assignment was and what my  
20 conclusions speak to.

21 BY MS. DONALDSON SMITH:

22 Q So in paragraph 8 of your report, Mr. dos  
23 Santos, you state that "The work in this case is  
24 performed personally by me or by a multidisciplinary  
25 team of professionals."

1           So who, other than yourself -- yourself,  
2 performed work on this engagement?

3           A     I had -- as in most of my engagements, I  
4 work in teams. And depending on the specific tasks,  
5 I -- I assign and supervise work to different  
6 individuals. As it relates to this case  
7 specifically, given the nature of the assignment,  
8 the types of individuals that work for me would be  
9 data scientists or people that have experience and  
10 expertise in conducting an analysis of data, and  
11 specifically individuals that do have experience  
12 with healthcare data.

13           Given the nature of the data for this  
14 assignment, I also may have communicated or had  
15 discussions with other industry experts as it  
16 related to -- relates to healthcare or understanding  
17 of potential issues that may have come up, you know,  
18 specific to the evaluation of the data. So  
19 that's -- you know, that's essentially was the  
20 nature of the team.

21           Q     Okay. So who are the industry experts  
22 that you were just referring to?

23           A     I -- I don't recall the names of -- I may  
24 have a number of people that worked with me. I'd  
25 have to go back and look specifically as it relates

1 to, you know, each task, but I -- are you asking for  
2 names?

3 Q Names.

4 A Names? So I had as junior staff that  
5 assisted me, and I don't recall the names of  
6 everybody, but I would say some of the primary  
7 individuals that worked with me would be Heather  
8 Koo, Bo Martin, and -- and Megan Underwood and a few  
9 others.

10 Q Are these all employees of Ankura --  
11 Ankura?

12 A Correct.

13 Q And what specific expertise was necessary  
14 to provide the services that they were assisting you  
15 with?

16 MR. HAWLEY: Objection. Vague.

17 THE WITNESS: Well, I think, generally  
18 speaking, it's associated with understanding and  
19 review of healthcare data.

20 BY MS. DONALDSON SMITH:

21 Q So what specific about the healthcare data  
22 required a certain expertise, and what was that  
23 expertise?

24 MR. HAWLEY: Objection. Vague.

25 Go ahead.

1 THE WITNESS: I would say that -- sorry.  
2 I'd say that, you know, the expertise that was  
3 required, but that -- that was necessary but not  
4 specific to just healthcare data would be to have a  
5 understanding of different computer programs, a  
6 statistical analyses, in general, how to collect,  
7 standardize, claim, validate, and analyze data,  
8 structure data.

9 So that's the general level of knowledge  
10 that was widespread required in -- in this job.

11 BY MS. DONALDSON SMITH:

12 Q But nothing specific to healthcare data,  
13 per se?

14 MR. HAWLEY: Objection. Vague. May  
15 mischaracterize his testimony. Lacks foundation.

16 THE WITNESS: Well, I would say from my  
17 experience, right, I have worked on a number of  
18 healthcare-related matters. And in general, claims  
19 data, they tend to follow a certain pattern. You  
20 may have different systems, you may talk about  
21 different computer languages that that information  
22 is housed and so forth and so on. But generally  
23 speaking, there is a general structure that is  
24 similar.

25 So having an understanding of how

1 generally that information is structured and what  
2 kind of information is captured in those systems  
3 is -- is -- is very relevant within the context of  
4 analyzing the type of data.

5 BY MS. DONALDSON SMITH:

6 Q Okay.

7 A So that -- so that would be the  
8 specialized knowledge or experience that, you know,  
9 applied within the context of this case.

10 Q So to render the opinions in your report,  
11 you needed specialized healthcare experience?

12 MR. HAWLEY: Objection. Vague.

13 THE WITNESS: That's a very vague  
14 construction of that; right? So I don't know if I  
15 can -- I don't know if I can answer that.

16 BY MS. DONALDSON SMITH:

17 Q If you did not have any experience in the  
18 healthcare field, could you have rendered the  
19 opinions that you give in your report?

20 MR. HAWLEY: Objection. Vague.

21 THE WITNESS: I don't know. That's --  
22 that's a hypothetical. I suppose that somebody  
23 would -- you know, that's smart with significant  
24 experience in data analytics, given enough time and  
25 money, might be able to come up with it. But in my

1 case, certainly, you know, my experience was  
2 instrumental in developing the analysis that I did  
3 and conducting them.

4 BY MS. DONALDSON SMITH:

5 Q Okay. And what aspects of your healthcare  
6 experience were instrumental in developing the  
7 opinions?

8 A In particular, my understanding of claims  
9 data, the way that they are produced, stored,  
10 organized, those are some of the things that might  
11 be -- other aspects of my -- my overall experience  
12 with the healthcare projects that may be relevant.  
13 But, you know, on top of my head, specifically as it  
14 relates to the data analytics, those certainly were  
15 elements that were critical.

16 Q So what about the -- how the claims data  
17 was produced -- strike that.

18 What was it about, how the claims data  
19 that was produced, that required experience in the  
20 healthcare field?

21 MR. HAWLEY: Objection. Vague.  
22 Overbroad.

23 THE WITNESS: Again, I'm just going to  
24 qualify that you mean -- you say "healthcare field."  
25 And I'm being very specific about healthcare data.

1 So having knowledge and experience with the  
2 healthcare data, I have dealt with that in the past  
3 and asked to be -- to render opinions associated  
4 with the analysis of that kind of data, allow me  
5 to -- to have an understanding of some of the issues  
6 that are associated with the data, where  
7 understanding what is typically incorporated into  
8 that data, any potential limitations associated with  
9 them, or how to properly process or account for that  
10 information.

11 BY MS. DONALDSON SMITH:

12 Q And did you employ those skills and  
13 experience in connection with this engagement in  
14 rendering the opinions that are set forth in your  
15 report?

16 A Yes.

17 Q Okay. In what ways?

18 A Multiple ways. I would say I was involved  
19 from the collection of the data, selected -- walking  
20 through the process; right? I was provided with a  
21 universe of claims that were related to lactation  
22 support services over a period of years, right, and  
23 across a number of markets, which came from  
24 different systems within a company.

25 So one of the first steps in that process,

1 which is a customary step as part of all of my -- my  
2 projects is, as I receive the data, I go through  
3 some preliminary analysis of the data and I  
4 conducted some step or steps or follow some steps to  
5 evaluate the reliability and completeness of the  
6 data. So that would be one aspect of what I did,  
7 which having an understanding of healthcare claims  
8 data was -- was relevant in that context.

9 Q And from what measure were you evaluating  
10 the reliability of the data?

11 A I took a number of steps; right? So as I  
12 mentioned, I -- I ran some -- with the data itself,  
13 I ran a number of tests of the data to understand if  
14 there were any abnormal observation, and any  
15 duplicates and so forth and so on, just like some  
16 standard steps of just understanding and -- and  
17 categorizing the data.

18 I also just not accepted the data as  
19 given. I asked questions and conducted interviews  
20 of the company personnel to verify the processes by  
21 which -- or to verify where information was housed  
22 or stored and how it was stored, the processes by  
23 which they follow to extract information that was  
24 provided to me, and to confirm some of the  
25 observations that I -- or insight that I gained from

1 the data via my analysis of it.

2 So those are standard steps.

3 Q Did you set the parameters for the data  
4 that was being collected?

5 MR. HAWLEY: Objection.

6 THE WITNESS: Can you be more --

7 A Overbroad.

8 THE WITNESS: Sorry. Can you be more  
9 specific.

10 BY MS. DONALDSON SMITH:

11 Q So you said that you were involved with  
12 the collection of the data. In what way were you  
13 involved in the collection of the data?

14 A By collection, I mean collected the data  
15 as it was provided to me. I was not involved in an  
16 extraction of the data, or the data was provided to  
17 me, to be specific.

18 Q So the physical handover of the file to  
19 you is what you meant by collection of the data?

20 A Correct. Yes.

21 Q So other than, I think, the three  
22 individuals you've mentioned, anyone else who was on  
23 your team from Ankura?

24 A I'd say yes.

25 Q Okay.

1           A     I would not be able to provide you with an  
2 accurate description of everybody, as I sit here  
3 today, because we work in teams. I may assign and  
4 direct somebody to -- to conduct a task, and that  
5 individual may make the determination of getting  
6 somebody else to assist on that. So I don't know at  
7 any given point in time everybody that worked on the  
8 job, but certainly there were more people than the  
9 ones that I mentioned to you.

10          Q     And do you approximately know how many  
11 people in total?

12          A     No.

13          Q     And what were your specific tasks and  
14 roles with respect to rendering this report?

15          A     I was involved with every aspect of it, as  
16 I mentioned to you, from the -- from the collection  
17 or from the -- as the data was provided to me;  
18 right? I was involved with the steps of planning  
19 and directing any analysis of -- that are associated  
20 with the validation of the data, analysis of the  
21 data, and specific tasks of the data, and drafting  
22 of the report and exhibits.

23                So I was involved in every aspects of that  
24 and provided close supervision to everybody.

25          Q     And how were the members of your team

1 compensated for their work?

2 MR. HAWLEY: Objection. Vague. And  
3 object to the extent it requires you to disclose  
4 private information.

5 THE WITNESS: Yeah. I don't know if I'm  
6 at liberty of describing the terms of their  
7 employment or how they are compensated. But one  
8 thing I can say is that, just like in my own case,  
9 our compensation is no way tied to the outcome of  
10 this case. So, you know, we are independent.

11 BY MS. DONALDSON SMITH:

12 Q Sure. So as it states here in paragraph  
13 9, that your time is being compensated at a rate of  
14 \$750 per hour.

15 A Correct.

16 Q So is your hourly rate inclusive of all  
17 the other members of the -- the work done by all the  
18 other members on your team or are they compensated  
19 at different hourly rates?

20 A While they are compensating me, is Ankura  
21 being compensated or --

22 Q Correct.

23 A Okay. So yeah. Ankura is compensated. I  
24 think the structure for engagement is one in which  
25 Ankura is compensated for the hourly work that's put

1 toward the engagement, either by myself and you'll  
2 see my rate there, my hourly rate, as well as the  
3 other colleagues that assist me in this process.

4 Q So the other colleagues are billing  
5 separately for their work?

6 MR. HAWLEY: Objection. Vague.

7 THE WITNESS: Again, I'm not certain what  
8 you mean. I mean, I think the bill, this goes -- if  
9 I interpret correctly what you're saying. Please  
10 correct me if I'm misinterpreting this. As far as  
11 an invoice that's produced to a client, it's not --  
12 it's an invoice for the services inclusive of all  
13 the individuals that have worked on the case.

14 BY MS. DONALDSON SMITH:

15 Q Do you know the range of the hourly rates  
16 for the other individuals that worked on this case?

17 A Not from the top of my head. But it  
18 varies.

19 Q Do you know approximate?

20 A Not sure. I would say that from -- I  
21 think our junior professional's rate -- I would have  
22 to look at the engagement letter for this case, so I  
23 don't know, but I would say somewhere in -- but I  
24 really don't know or -- and I don't want to guess.  
25 I think that, you know, you can -- one can just look

1 at the engagement letter and see the specific rates.

2 I think that they're explicitly defined in there.

3 Q Okay. And do you know how much Ankura has  
4 been compensated to date for its engagement?

5 A I don't have that precise number, no.

6 Q Do you know approximately?

7 A No, I -- I don't know. No. I -- I  
8 don't -- would not able to to provide a accurate  
9 estimate right now.

10 Q Okay. Do you review Ankura's invoices for  
11 your engagements before they are sent to the client?

12 A I think I have some of them. I -- I have  
13 a team that works for me and I'm supported also by  
14 administrative personnel. So yeah, you know, I -- I  
15 provide some -- I review them before they go out the  
16 door, yes.

17 Q Do you know if the client here, Reed  
18 Smith, has been billed yet for Ankura's services in  
19 connection with this engagement?

20 MR. HAWLEY: Objection. Vague. Lacks  
21 foundation.

22 THE WITNESS: I'm sorry. Can you just,  
23 please, repeat the question.

24 MS. DONALDSON SMITH: Sure. Could you  
25 please read back.

1 (Record read.)

2 THE WITNESS: Okay. Got it.

3 MR. HAWLEY: Same objections.

4 You can answer.

5 THE WITNESS: Yeah. I don't know, under  
6 the terms of the contract, this specific contract,  
7 if the invoice goes to Reed Smith, outside  
8 counselor, or if it goes to the company. I -- I  
9 don't know or I don't recall specifically. But I --  
10 I have seen bills that have been produced along the  
11 way. So I don't know if we have billed for our  
12 hours or not at this point. But yeah, invoices have  
13 been produced.

14 BY MS. DONALDSON SMITH:

15 Q Mr. dos Santos, on page 12 of your report,  
16 footnote 2, you -- you referenced a Second Amended  
17 Complaint. And I think that's a document that you  
18 had referenced earlier too. Is that a document that  
19 you read in its entirety?

20 A Footnote 2, you mentioned; right?

21 Q Yes.

22 A Okay. Yeah. I -- I have reviewed the --  
23 the complaint.

24 Q Did you review any other documents that  
25 you understand to have been filed in this

1 litigation?

2 A Not that I -- that I recall. I mean,  
3 there's the declar- -- I don't know if the  
4 declaration of Dr. Huckaby was filed or not. I  
5 reviewed that.

6 Q Did you read any other transcripts from  
7 this litigation, deposition transcripts or trial  
8 transcripts from this litigation?

9 A No.

10 Q Did you ask whether or not there were any  
11 trial transcripts or deposition transcripts that  
12 were a part of this litigation?

13 A I don't recall. I -- I may have asked  
14 for -- no, I have -- I don't think I did.

15 Q Did you read any of the Court's orders  
16 rendered in this litigation?

17 A No, I have not. Not that I recall.

18 Q Are you aware that other experts have  
19 submitted reports in this litigation on behalf of  
20 United?

21 A If I --

22 MR. HAWLEY: Yeah, I'm going to instruct  
23 you not to answer to the extent it would require you  
24 to divulge work product and specifically  
25 communications with counsel that go beyond the scope

1 of what's required in the federal rules.

2 THE WITNESS: The answer is no. I'm  
3 not -- I'm not aware.

4 BY MS. DONALDSON SMITH:

5 Q So you did not communicate with any other  
6 persons who are serving as an expert on behalf of  
7 United in this litigation?

8 A As an expert witness?

9 Q Correct.

10 MR. HAWLEY: So you -- you can answer that  
11 question. But -- well, go ahead for that one.

12 THE WITNESS: No, I have not communicated  
13 with other -- you mentioned United; right?

14 MS. DONALDSON SMITH: Correct.

15 MR. HAWLEY: And vague.

16 BY MS. DONALDSON SMITH:

17 Q Have you reviewed any of the plaintiffs'  
18 expert reports that have been submitted in this  
19 litigation?

20 MR. HAWLEY: Objection. I will allow him  
21 to answer questions with respect to, you know,  
22 documents that he relied on or that he considered in  
23 rendering the opinions in his report or assumptions  
24 that were provided to him by counsel. But beyond  
25 that, I'm going to instruct him not to answer.

1 THE WITNESS: So the answer is no, not  
2 with regards to the formulation of opinions that are  
3 here. I have not looked at any other reports or  
4 reviewed any other reports.

5 BY MS. DONALDSON SMITH:

6 Q Mr. dos Santos, on Exhibit 2 to your  
7 report, it's titled "Documents Considered." Do you  
8 see that?

9 A Yes, I do.

10 Q Okay. So please take a look at the  
11 documents that are listed here. Are there any other  
12 documents, than those listed in Exhibit 2, that you  
13 considered in forming your opinions that are  
14 reflected in your report?

15 A No.

16 Q So No. 2, it's called claims data. You  
17 see that?

18 A Correct. I see it.

19 Q So is that -- that's not the LSS claims  
20 data; correct?

21 MR. HAWLEY: Objection. Vague.

22 THE WITNESS: That is the LS- -- well, the  
23 LSS claims data is what I -- it's a definition that  
24 was created by me, right, to -- to refer to the  
25 claims data that was provided --

1 BY MS. DONALDSON SMITH:

2 Q Okay.

3 A -- in connection with this case.

4 Q So the -- the documents are listed under  
5 2, and there's one, two, three, four, five -- six  
6 documents, which are text files and Excel  
7 spreadsheets, those --

8 A They comprise the basis of what -- what  
9 this -- these are -- is -- is the list or inventory  
10 of claims data that was provided to me from the two  
11 systems, the U-Net and UMR. With this data, I took  
12 it, as I mentioned to refer to earlier, I took a  
13 number of steps from the validation standardization  
14 and so forth and so on, to create the dataset which  
15 I then used in a number for my analysis, which I  
16 refer to as the LSS claims data.

17 So this is the basis. This is the  
18 underlying data, the claims data that was part of my  
19 analysis.

20 Q Okay. And the LSS claims data database is  
21 not listed as a part of No. 2; correct?

22 MR. HAWLEY: Objection.

23 THE WITNESS: They're one and the same  
24 so --

25 MR. HAWLEY: Vague.

1 THE WITNESS: -- it's not a separate  
2 database. Think of -- think in terms of like this  
3 is the raw data, right, that goes into. And that  
4 raw data, I took a number of steps along the way to  
5 claim and verify the data. And then the remaining  
6 or the data that -- or the product of that is what I  
7 then define it as LSS claims data.

8 But that's -- that's my own definition.  
9 So it's just a way of qualifying, you know, a  
10 particular point in the process.

11 BY MS. DONALDSON SMITH:

12 Q So the LSS claims data is reflected in  
13 a -- has been segregated out of the claims data,  
14 though, and reflected in a single report; correct?

15 MR. HAWLEY: Objection. Vague. Lacks  
16 foundation.

17 THE WITNESS: The -- the LSS claims data  
18 contains fewer observations than the superset of --  
19 of raw data from the different sources, which is  
20 inclusive of all these raw data files.

21 BY MS. DONALDSON SMITH:

22 Q Right. So from the raw data files, you  
23 created a new data file that contains just the LSS  
24 claims data; correct?

25 A Created what I defined, that is a term of

1 art, just to be clear; right? I mean, still it --  
2 that is claims data from U-Net and UMR.

3 MR. HAWLEY: Belated objection to form.

4 BY MS. DONALDSON SMITH:

5 Q And do you understand that we received a  
6 production of the data file that consists of the LSS  
7 claims data?

8 MR. HAWLEY: Objection. Vague.

9 THE WITNESS: I'm not certain or I'm not,  
10 you know, privy to the details of the production to  
11 you. Perhaps it's a more appropriate question to  
12 counsel.

13 MR. HAWLEY: And it's my understanding  
14 that we did send you a spreadsheet.

15 BY MS. DONALDSON SMITH:

16 Q Right. Do you have an understanding that  
17 we have the LSS claims data as a separate file?

18 A Well, now that you mention it, yes.

19 Q Okay.

20 A My understanding is that the data that was  
21 used in my analysis, right, which is listed here,  
22 was produced to you, so yeah.

23 Q Did you create the LSS claims data as a  
24 separate data file?

25 MR. HAWLEY: Objection. Vague. Lacks

1 foundation.

2 THE WITNESS: I took steps which resulted  
3 in that set, 44,000-plus records, yes. But that was  
4 work that was conducted by me.

5 BY MS. DONALDSON SMITH:

6 Q Did you segregate them out or create a  
7 separate set of data? I'm not trying to be -- so  
8 did you create a separate set of data? So I'm  
9 looking at No. 2, and there are six Excel  
10 spreadsheets. Did you work with the LSS claims data  
11 solely within those six Excel spreadsheets, or did  
12 you create a separate file of the LSS claims data  
13 from which you then prepared your analyses?

14 A Well --

15 MR. HAWLEY: Objection. Lacks foundation.

16 You can answer.

17 THE WITNESS: So to clarify the process;  
18 right? This is not a distinct -- this is not a  
19 process that is mutually exclusive in a way. I get  
20 the data. It's provided to me. I enter that into a  
21 database. I create a database; right? And then  
22 within that database, I have used a number of  
23 software tools that would allow me to make cuts of  
24 the data or, you know, have specific queries or  
25 analysis of the data.

1           So the raw data is all contained in one  
2           system. Programs are developed specific to carry  
3           out individual analysis or specific, you know,  
4           analysis. So in that context of just to clarify,  
5           then, if you look -- just to put that in  
6           perspective, the raw data, as it was presented to  
7           me, is defined by the files that are here.

8           From there, I took a number of steps,  
9           right, with that raw data that -- one of which  
10          resulted in the subset of the data, right, that was  
11          used for certain analysis of the claims data, which  
12          I described as the LSS claims data.

13          So that is -- I don't know if that answers  
14          your question, but that's kind of the totality of  
15          how it works in that environment.

16       BY MS. DONALDSON SMITH:

17           Q     Did you aggregate the data files that are  
18           listed under No. 2 on Exhibit 2?

19           MR. HAWLEY: Objection. Vague. Lacks  
20           foundation.

21           THE WITNESS: What do you mean by  
22           "aggregated" as opposed to --

23       BY MS. DONALDSON SMITH:

24           Q     Aggregated the files into one file to then  
25           perform your analysis on.

1 MR. HAWLEY: Same objections.

2 THE WITNESS: I created a relational  
3 database; right? So all these are elements of that  
4 relational database.

5 BY MS. DONALDSON SMITH:

6 Q Do you have an understanding of who the  
7 providers are that provide lactation support  
8 services?

9 MR. HAWLEY: Objection. Vague.  
10 Overbroad.

11 THE WITNESS: Sorry. I don't mean for --  
12 I don't understand what you mean specifically.

13 BY MS. DONALDSON SMITH:

14 Q So there -- there are references to  
15 providers of lactation support services throughout  
16 your report.

17 A Uh-huh.

18 Q Who was -- what's your understanding as to  
19 who provides lactation support services?

20 MR. HAWLEY: Objection. Vague.  
21 Overbroad. Lacks foundation.

22 THE WITNESS: Well, I was not asked to  
23 develop an opinion as to what our -- the providers  
24 that provide lactation support services; right?  
25 That's number one. But from my -- as I express in

1 my report, from the review of the data that was  
2 provided to me, I was able to gain an understanding  
3 of what are the types of providers that are listed  
4 there. So I -- you know, I -- that's how I gain an  
5 understanding of what providers are in the data.

6 But I have not been asked to opine as  
7 to -- that falls outside of the scope of my  
8 assignment to -- to make a determination of what  
9 lactation support services providers are.

10 BY MS. DONALDSON SMITH:

11 Q Okay. So your understanding about who  
12 lactation support services are is based on your  
13 review of the claims data and the providers listed  
14 in the claims data?

15 MR. HAWLEY: Objection. Vague. Lacks  
16 foundation. May mischaracterize his testimony.

17 THE WITNESS: Well, my understanding is  
18 the following: That there are providers that are in  
19 the data that based upon the description of the  
20 types of service that's were provided, which are  
21 characterized or indicated to me that they are  
22 characterized as lactation support services, are  
23 providing lactation support services. So that's,  
24 you know, that's what it is.

25 / / / /

1 BY MS. DONALDSON SMITH:

2 Q So you made the assumption that the claims  
3 that are reflected in the claims data are lactation  
4 support services?

5 A I don't remember.

6 MR. HAWLEY: Argumentative. Vague. Lacks  
7 foundation.

8 THE WITNESS: I was not asked, again, to  
9 make an assumption. I was not asked to make -- to  
10 develop an opinion in that regard. It's my  
11 understanding that the -- that the claims that are  
12 in the claims data that are provided to me and the  
13 database provided to me are associated with the CPT  
14 codes that at least, you know, the defendant  
15 identifies as being lactation support services or  
16 related services.

17 BY MS. DONALDSON SMITH:

18 Q Do you have any personal experience with a  
19 mother who has breastfed?

20 A Yes.

21 MR. HAWLEY: Objection. Vague. It may  
22 call for private information depending on where it  
23 goes.

24 BY MS. DONALDSON SMITH:

25 Q Does your personal experience with

1 breastfeeding, a mother who is breastfeeding form  
2 any part of the opinions that you rendered in your  
3 report?

4 MR. HAWLEY: Objection. Beyond the scope.  
5 Vague. Lacks foundation.

6 But you can answer.

7 THE WITNESS: I do have experience. I  
8 have two kids, one of -- one of whom was colic, and  
9 I understand what the lactation support services are  
10 and the context we may have needed that. I don't --  
11 you know, have that personal understanding of that.  
12 That was not required as part of, you know, the  
13 analysis that I did here. So no, that was not a  
14 requirement.

15 BY MS. DONALDSON SMITH:

16 Q And that experience did not form the basis  
17 of any of your opinions that are rendered in your  
18 report?

19 A No. My -- my -- the basis for my opinions  
20 are my professional experience and -- and -- and  
21 educational background; right? So that's not part  
22 of either.

23 Q Do you -- are you familiar with the  
24 Centers for Disease Control and Prevention, the CDC?

25 MR. HAWLEY: Objection. Vague.

1 THE WITNESS: I have heard of it before.

2 BY MS. DONALDSON SMITH:

3 Q Okay. And in connection with your  
4 engagement, did you review any reports from the CDC  
5 with respect to breastfeeding?

6 MR. HAWLEY: Objection. And I'm going to  
7 again instruct him not to answer to the extent  
8 you're trying to get him to go beyond the  
9 requirements of the federal rules and disclose work  
10 product.

11 THE WITNESS: No, I have not. That was,  
12 again, not -- review of -- of that nature was not  
13 required or within the context of my analysis for my  
14 assignment.

15 BY MS. DONALDSON SMITH:

16 Q Did you consider any information about the  
17 percentage of women who initiate breastfeeding  
18 following the birth of a child?

19 MR. HAWLEY: Same objection. And vague.

20 THE WITNESS: Again, I don't think that  
21 was within the scope of my assignment, was a  
22 requirement within the scope of my assignment.

23 BY MS. DONALDSON SMITH:

24 Q Okay. So you wouldn't need to know how  
25 many women initiate breastfeeding?

1 A No.

2 MR. HAWLEY: Objection. Vague.

3 Argumentative. Lacks foundation.

4 THE WITNESS: Not specifically within the  
5 context of the opinions that I rendered in my  
6 report.

7 BY MS. DONALDSON SMITH:

8 Q And you didn't consider the percentage of  
9 women who are breastfeeding who seek lactation  
10 consultations; correct?

11 MR. HAWLEY: Objection. Vague.  
12 Argumentative. Lacks foundation. Also object to  
13 the extent it requires disclosure of work product.

14 THE WITNESS: I don't -- that's -- can you  
15 elaborate on that. I mean, I'm not certain of what  
16 you mean specifically.

17 BY MS. DONALDSON SMITH:

18 Q I'm asking whether the basis of your  
19 opinion you considered information about the  
20 percentage of women who are breastfeeding who do  
21 seek lactation support services.

22 A No, I wasn't --

23 MR. HAWLEY: Same objections.

24 THE WITNESS: Yeah, I didn't conduct any  
25 analysis of -- of that specific topic.

1 BY MS. DONALDSON SMITH:

2 Q And you didn't conduct any analysis, then,  
3 of how many lactation consultations are sought by  
4 breastfeeding mothers; correct?

5 A I --

6 MR. HAWLEY: Assume -- same objections.

7 Go ahead.

8 THE WITNESS: As part of the scope of my  
9 work, I didn't assign to identify or calculate or  
10 quantify that statistic.

11 BY MS. DONALDSON SMITH:

12 Q Okay. Mr. dos Santos, if you could please  
13 turn to paragraph 18 of your report.

14 A (Examining.) Okay.

15 Q So paragraph 18 falls under the heading  
16 "Scope of Engagement," and it states "I was asked to  
17 examine the question of whether the claims data I  
18 reviewed and other provider information support  
19 plaintiffs' claims of a systemic practice of  
20 violations with respect to access to and coverage  
21 for lactation support services."

22 Do you see that?

23 A Uh-huh. I do.

24 Q Okay. Does that accurately reflect the  
25 scope of the engagement?

1 A It does.

2 Q And in that sentence, what does "systemic  
3 practice" mean?

4 A Well, systemic in this context relates to  
5 like a widespread or not particular. So it would be  
6 something that would be broad -- broadly observed.  
7 And, in fact, I think that I borrowed that term from  
8 the complaint. I think that's the way it's  
9 characterized as part of the allegation in the  
10 complaint if I recall. So -- I'm just mimicking,  
11 you know, the delegation as I understand it.

12 Q So whatever the complaint intended is what  
13 you intend by the use of the word "systemic  
14 practice"?

15 MR. HAWLEY: Objection. Mischaracterizes  
16 his testimony. Lacks foundation. Vague.

17 THE WITNESS: I cannot speak as to what  
18 the -- was the specific intention of whoever wrote  
19 the complaint with regard when he or she was using  
20 that word, but my interpretation of that is or --  
21 and my specific meaning here is that systemic is  
22 something that's not particular, that is widespread,  
23 that is broad, that would be observed across markets  
24 and time periods.

25 / / / /

1 BY MS. DONALDSON SMITH:

2 Q And the claims data that's referred to in  
3 this sentence, that's the claims data that's listed  
4 as No. 2 on Exhibit 2?

5 MR. HAWLEY: If you need to look at the  
6 exhibit.

7 THE WITNESS: Okay. Let me just take a  
8 look here. That's correct. In its totality would  
9 be the raw data that's listed there in Exhibit 2.

10 BY MS. DONALDSON SMITH:

11 Q Okay. And the provider information,  
12 what's that that you're referring to in this  
13 sentence?

14 A I --

15 Q What's the provider information?

16 A I received the provider information, which  
17 I describe as the provider directly or the list of  
18 providers that are eligible or a part of a network  
19 for United -- for the defendants for UnitedHealth.

20 Q In 19A, paragraph 19A of your report, you  
21 again reference "A systemic lack of in-network  
22 access to our coverage for lactation support  
23 services."

24 Do you see that? Do you have any  
25 different definition there of what a systemic lack

1 of in-network access to our coverage for lactation  
2 support services is other than what you articulated  
3 with respect to the prior paragraph?

4 MR. HAWLEY: Objection. Vague.

5 THE WITNESS: I think it's in line. I  
6 will have to read in detail --

7 BY MS. DONALDSON SMITH:

8 Q Sure.

9 A -- but I think the spirit was that it's in  
10 line with the overall assessment that I mentioned to  
11 you.

12 Q What would be an indicator of a  
13 nonsystemic lack of in-network access to or coverage  
14 for lactation support services?

15 MR. HAWLEY: Objection. Incomplete  
16 hypothetical. Vague. Lacks foundation.

17 THE WITNESS: Well, thinking of what I did  
18 here, I -- so I have claims data, which I evaluated.  
19 So within the context of my analysis, I -- it was  
20 clear or my interpretation or my conclusion that it  
21 was clear that you don't see a systemic or  
22 widespread, or what I would define as systemic or  
23 widespread, lack of access.

24 And that conclusion is derived from the  
25 20 percent that as I see their overall, which

1 indicates that out of the claims that I looked at,  
2 three out of four were in-network, and four out of  
3 the five claims were paid in full.

4 So to me, that is inconsistent; right?  
5 That finding is inconsistent with the idea that  
6 there's a widespread or broad or systematic or  
7 systemic lack of in-network access.

8 BY MS. DONALDSON SMITH:

9 Q What's your definition of "cost shares,"  
10 which is a term you use here in paragraph 19A?

11 A Cost share would be any payments that are  
12 required by members.

13 Q Does that include the differential between  
14 the allowable amount and the amount that's  
15 reimbursed by United?

16 MR. HAWLEY: Objection. Vague. Lacks  
17 foundation.

18 THE WITNESS: The allowed amount. Sorry.

19 MR. HAWLEY: Incomplete hypothetical.

20 THE WITNESS: Yeah. I -- sorry. I -- I  
21 don't know if I understand your question  
22 specifically.

23 BY MS. DONALDSON SMITH:

24 Q Are you familiar with the cost of balance  
25 bill?

1           A     Yes. Let's just say the following: What  
2 I mean by that would be any amounts or an amount  
3 that would be payable by a member as a result of a  
4 service.

5           Q     Are balance bills not payable by a member?

6           A     I'm sorry?

7                     MR. HAWLEY: Objection.

8 BY MS. DONALDSON SMITH:

9           Q     Are balance bills payable by a member?

10          A     What do you mean?

11                     MR. HAWLEY: Vague. Lacks foundation.

12 Incomplete hypothetical.

13                     Go ahead.

14                     THE WITNESS: Sorry. Can you just kind of  
15 elaborate on the balance bill. What do you mean by  
16 "balance bill"?

17 BY MS. DONALDSON SMITH:

18          Q     Sure. So --

19          A     And are you speaking specifically about  
20 the -- the fields that are in the data for this case  
21 or you talking more broadly, I guess?

22          Q     I'm trying to understand what your  
23 definition of "cost share" is. So what -- I guess,  
24 let's approach it that way. What fields in the data  
25 did you use to include in your state- -- you know,

1 that you're referring to in your statement that the  
2 claims are fully paid without cost share?

3 A Right. So there are different fields  
4 associated with different databases, right, as you  
5 know, and I don't recall the specific names. But  
6 basically this would be dollar fields that would be  
7 associated with the -- the billed amount, the  
8 allowed amount, deductions, co-pays.

9 So basically, evaluating that set of --  
10 within the combination of those fields being  
11 evaluated, you know, it would be gathering an  
12 understanding whether or not the member, right, was  
13 subject to any level of payment. That's -- so  
14 that's the broad or that's the -- what I mean by  
15 "cost share" --

16 Q Okay.

17 A -- in this context.

18 Q So if there was any dollar amount left,  
19 taking the billed amount minus the allowed amount  
20 minus the deductible minus the co-pay minus the  
21 coinsurance, would that -- any -- any amount left  
22 after the deduction of all those from the billed  
23 amount, would that have included -- been included as  
24 no cost sharing or considered non-cost sharing?

25 MR. HAWLEY: Objection. Vague. Lacks

1 foundation.

2 THE WITNESS: I'm not sure. I'd have  
3 to -- to study the details of that and go back and  
4 take a look at the structure of the database. But  
5 again, I think that essentially the idea is, you  
6 know, from the formation that's available, the  
7 different fields, as I mentioned, the billed amount,  
8 allowed amount, deductions, co-pays and I don't know  
9 if there are any other fields there, you know, or I  
10 don't recall specifically what fields are in what  
11 database as I sit here.

12 The bottom line is that any residual, all  
13 right, that would be allocated to the member, in  
14 this context, would be characterized as a cost  
15 share. So, you know, if you have to pay anything  
16 out of pocket.

17 BY MS. DONALDSON SMITH:

18 Q In 19B of your report, Mr. dos Santos --

19 A Uh-huh.

20 Q -- it starts by stating "Although the  
21 information from the claims data is sufficient to  
22 understand broad aspects of UnitedHealth's network  
23 of lactation service providers."

24 Do you see that phrase? It's 19B.

25 A Yes, I see.

1 Q Okay. What -- what do you mean by that?

2 A I mean that, as I mentioned, like  
3 within -- earlier, right, I have a working  
4 assumption that if a provider that's listed in the  
5 database and for whom you have a claim that is  
6 associated with one of the CPT codes that have been  
7 described to me as being associated with lactation  
8 support services or related to it, that those -- in  
9 that context, it will be that -- that provider, it  
10 would be a lactation services provider.

11 You know, I'm not making -- again, I'm not  
12 making a -- a determination or assertion to -- as to  
13 what specific providers are lactation support or --  
14 or providers of lactation support services. I'm  
15 just deriving that from my observations on the data.

16 Q Sure. So your reference to "broad aspects  
17 of UnitedHealth's network of lactation service  
18 providers," what are the broad aspects that you're  
19 referring to?

20 A Particularly two.

21 Q Okay.

22 A One relates to markets; right? So across  
23 regions. And that second one relates to historical  
24 temporal over years; right?

25 Q So the claims data, the raw claims data

1 that was provided to you by United, did you request  
2 that any specific claims data be included in that  
3 raw claims data?

4 MR. HAWLEY: Objection. Vague. Instruct  
5 you not to answer to the extent it requires you to  
6 divulge work product.

7 THE WITNESS: No, I didn't request any  
8 specific types of claims.

9 MS. DONALDSON SMITH: We'll mark as -- two  
10 documents as Exhibits 2 and 3.

11 (Exhibits 2 and 3 marked.)

12 MS. DONALDSON SMITH: The business  
13 requirements document, and it has the reference  
14 BRD\_ICRC, and the UMR mapping business requirements  
15 document. And they didn't print with Bates numbers,  
16 though I assume they were produced with them. But  
17 we'll deal with that.

18 MR. HAWLEY: Great. Thank you.

19 BY MS. DONALDSON SMITH:

20 Q Mr. dos Santos, are you familiar with  
21 these two documents?

22 A Yes, I am.

23 Q First, the one that we marked as Exhibit  
24 2, what is that?

25 A It's a business requirements document

1 which was provided to me by United's representative.

2 Q Is that Stephanie Schmidt?

3 A That's correct.

4 Q And what does this reflect?

5 A This reflects the overall plan and steps  
6 which were taken during the extraction of the raw  
7 data from their system.

8 MR. HAWLEY: Belatedly object. The  
9 question was vague.

10 BY MS. DONALDSON SMITH:

11 Q And then the document that we marked as  
12 Exhibit 3, what is that document?

13 A It would be the equivalent, just for a  
14 different system. So Exhibit 2 relates to the U-Net  
15 system, and I mentioned there are two storages, data  
16 storages systems in the company. And the UMR -- or  
17 Exhibit 3 relates to UMR.

18 Q Are there any other systems -- strike  
19 that.

20 The provider directory data, did you  
21 request for the provider directory data that certain  
22 providers be included in that directory?

23 A What do you mean specifically? Like if  
24 I -- if I asked for some providers not to be  
25 included or to be restricted in this way?

1 Q Did you, for example, ask that certain  
2 provider types be included in the provider directory  
3 data?

4 A Yes, I did.

5 Q Okay. Which ones did you ask to be  
6 included?

7 A I think there was the set of providers.  
8 So in my analysis of the data, one of the things  
9 that I learned through the review of the claims is  
10 that a subset of providers tended to have a higher  
11 frequency of claims associated with them, and those  
12 are the ones that I said I -- I develop a term of  
13 art for that as well, perhaps selected providers or  
14 something like that. I don't recall. It's in the  
15 report.

16 So as I discussed additional data sources  
17 and requested additional data sources, particularly  
18 the provider directory, I focused my analysis on the  
19 providers that from the claims dataset were the most  
20 -- had the largest number -- accounted for the  
21 majority of -- of claims. So that was the basis for  
22 me to limit that production of data.

23 Q Okay. And you referred to your request of  
24 other data sources. Am I mischaracterizing what you  
25 just referred to?

1           A     I think -- yeah, I used that vaguely. I  
2 think, as I recall, those are just one additional  
3 data source which is provided directly.

4           Q     And there are no other data sources that  
5 you asked for?

6           A     No, not that I recall.

7                   MS. DONALDSON SMITH: Okay. I'm going to  
8 mark for the moment Exhibit 4. It's the first page  
9 of a larger Excel spreadsheet which has been  
10 identified as the provider directory data,  
11 UHC\_154557.

12                   (Exhibit 4 marked.)

13 BY MS. DONALDSON SMITH:

14           Q     And I have -- Mr. dos Santos, I do have  
15 the LSS claims data and the provider directory  
16 electronically. So if at any point in time you do  
17 want to look at that, I'm happy to open it up and  
18 accommodate that. I'm not -- I just didn't print  
19 them out so --

20           A     Makes sense.

21           Q     -- but we have them accessible.

22                   MR. HAWLEY: We demand hard copies.

23                   MS. DONALDSON SMITH: Please, no. I'm  
24 trying. This is an attempt right here.

25                   MR. HAWLEY: All right.

1 BY MS. DONALDSON SMITH:

2 Q So this is Exhibit 4. Are you familiar  
3 with this page of the provider directory data,  
4 Mr. dos Santos?

5 A Yes, I am.

6 Q Okay. And what does this reflect?

7 A This reflects or this is associated with  
8 the provider directory -- directory data which I  
9 requested and received.

10 Q The report parameters that are listed on  
11 this Exhibit 4, you see that section in the notes?

12 A Uh-huh.

13 Q Okay. Are those report parameters that  
14 were requested by you?

15 A Those are -- well, I provided a request as  
16 to what the specialties, so I wanted to limit the  
17 scope of the analysis, right, just the -- now, how  
18 that translates into the specific parameters that  
19 were used by whoever individual within United, you  
20 know, is accurate on that request, but I don't know.

21 But, I mean, those are defined by them. I  
22 did have a conversation with Ms. Boware, Amy, too.  
23 In line with the -- all the data that I received, I,  
24 you know, I took steps to validate and understand  
25 the completeness of that data. So I did have a

1 conversation to review this.

2 But specifically, I was not one who wrote  
3 the -- the text or the program as to the parameters.  
4 I did validate those or had a discussion to  
5 understand what the -- what the process was for that  
6 extraction.

7 Q Okay. Which provider specialties did you  
8 identify as the ones that should be included in the  
9 provider directory data?

10 A As I mentioned to you, I focused, just for  
11 the purposes of this analysis, right, based on what  
12 I gathered from the data on those providers that had  
13 the -- the highest percent -- combined had the --  
14 combined an account for the majority of claims in  
15 the claims database. And those were lactation  
16 specialists, pediatricians, obstetricians, and  
17 gynecologists, if I remember.

18 Q So you did an analysis of how many claims  
19 in the LSS claims database were by network lactation  
20 specialists?

21 MR. HAWLEY: Objection. Vague. May  
22 mischaracterize his testimony.

23 You can answer.

24 THE WITNESS: I'm sorry. I did not hear.  
25 Can you repeat.

1 BY MS. DONALDSON SMITH:

2 Q Sure.

3 MS. DONALDSON SMITH: Could you please  
4 read back my question.

5 (Record read.)

6 MR. HAWLEY: Same objections.

7 THE WITNESS: No, I didn't.

8 BY MS. DONALDSON SMITH:

9 Q Okay. So the -- the primary specialties  
10 that are included, as I have accounted for them, are  
11 pediatrics, internal medicine pediatrics, pediatric  
12 specialists, obstetrics and gynecology, obstetrics  
13 as a standalone, gynecology as a standalone,  
14 lactation specialist, pediatric nutrition, and  
15 pediatric nurse practitioner.

16 A Uh-huh.

17 Q Does that sound consistent with your  
18 understanding of the -- the specialty providers that  
19 were part of the provider directory data?

20 A Yes, it is.

21 Q All right. And did you do an analysis on  
22 any provider-level-type analysis on, for example,  
23 the number of providers that appear in the provider  
24 directory?

25 A No, I did not.

1 MR. HAWLEY: Objection. Lacks foundation.

2 THE WITNESS: No, I did not.

3 BY MS. DONALDSON SMITH:

4 Q So did you at any point have an  
5 understanding that the number of lactation  
6 specialists, which are identified as 380s --  
7 actually, strike that.

8 Do you have an understanding that  
9 UnitedHealth has a specific primary specialty for  
10 lactation specialists?

11 MR. HAWLEY: Objection. Vague.

12 THE WITNESS: From your description right  
13 now, yes, you know. But yeah, there are  
14 different -- I guess descriptions in the data  
15 associated with the providers, and lactation  
16 specialists is one of -- one of those. So that's my  
17 understanding.

18 BY MS. DONALDSON SMITH:

19 Q Okay. Did you have that understanding  
20 prior to my question?

21 A I did have that understanding, yeah.

22 Q Okay. So did you have an understanding  
23 that -- or did you see with respect to the data that  
24 out of the 235,000, approximately 235,000 lines in  
25 the national database, 136 of those lines were the

1 380 lactation specialists?

2 A I didn't have that understanding, no.

3 Q Okay. And out of the 37,523 lines in the  
4 Oxford portion of the provider directory database,  
5 that 11 of those were lactation specialist 380s?

6 MR. HAWLEY: Objection. Vague. Lacks  
7 foundation.

8 THE WITNESS: Again, I didn't conduct an  
9 analysis of lactation specialist providers or  
10 providers in a specific type of provider. So no,  
11 I -- that's not something that I evaluated.

12 MS. DONALDSON SMITH: We're going to go  
13 off the record.

14 THE WITNESS: Okay.

15 THE VIDEOGRAPHER: We are going off the  
16 record. Here marks the end of media No. 1 in the  
17 deposition of Joao --

18 THE WITNESS: Perfect. Perfect.

19 THE VIDEOGRAPHER: -- dos Santos.

20 MR. HAWLEY: Wow.

21 THE VIDEOGRAPHER: The time is 12:01 P.M.

22 (Brief recess.)

23 THE VIDEOGRAPHER: We are back on the  
24 record. Time is 12:09 P.M.

25 / / / /

1 BY MS. DONALDSON SMITH:

2 Q Mr. dos Santos, why did you consider  
3 claims data as evidence of access to lactation  
4 support services?

5 MR. HAWLEY: Objection. Vague.

6 THE WITNESS: Well, claims data, right,  
7 indicates the actual provision of the service;  
8 right? You have providers data is, I'll say is --  
9 provides an assessment of the supply; right? How  
10 many providers are available in a particular region  
11 or in a particular time? You may have -- on the  
12 men's side, somebody may need a service, but it's in  
13 the claims data that you see that manifested. So  
14 that was natural place to start my investigation.

15 BY MS. DONALDSON SMITH:

16 Q And did you also consider, then, claims  
17 data as evidence of coverage of lactation support  
18 services?

19 MR. HAWLEY: Objection. Vague.

20 THE WITNESS: Well, I would say the nature  
21 of my investigation, right, this was an  
22 investigation. I just had a question which we  
23 discussed that it was I wanted to address, and the  
24 data that was available to me was the claims data.  
25 So it starts from that premise.

1           The data was available to me; it was the  
2     claims data. Here's -- so here's the data that was  
3     available to me, and here's the question they would  
4     like you to evaluate. So it was from that starting  
5     point that then I started kind of developing  
6     testable hypotheses and analysis, which I undertook  
7     and -- and described in my report.

8           So I didn't start -- you know, the purpose  
9     or the -- the objective of looking at claims data is  
10    just to understand, you know, what -- what we could  
11    tell from the intersection of the men and supply of  
12    services, right, or lactation support services as I  
13    understand those CPT codes represent with regards  
14    to, you know, the level of coverage as defined by  
15    in-network percentage; right? That was one of the  
16    metrics that I was like, okay, how can you evaluate  
17    coverage or to the extent to which individuals that  
18    are seeking the service are receiving it in the  
19    data; right? That's where I constructed this metric  
20    or adopted this metric of in-network percentage.

21          So that, to me, represents a proxy of how  
22    many people in a particular region or time period  
23    were receiving services by an in-network provider.  
24    So that's, you know, that's what that represents and  
25    that was the nature of my -- that -- that's how that

1 calculation or that particular inquiry aligns with  
2 the overall ask that was presented to me.

3 BY MS. DONALDSON SMITH:

4 Q Did you consider, in rendering your  
5 opinions, the number of members United covers each  
6 year during the class period?

7 MR. HAWLEY: Objection. Vague.

8 THE WITNESS: No, I did not consider that.  
9 Or that -- again, the scope of my work or the scope  
10 of my assignment was very specific, right, with  
11 regards to this particular data which was described  
12 to me as -- or claims data which was described to me  
13 as lactation support services related or lactation  
14 support services or related, right, what -- what can  
15 you -- what -- what observations or what patterns do  
16 you observe with regards to the level of services  
17 that -- that was provided. So I have a set of data  
18 and a question; right?

19 BY MS. DONALDSON SMITH:

20 Q Okay. What does the "or related" mean?  
21 Because I know you referred to in your report  
22 lactation support services or related services.  
23 What did the "or related services" mean?

24 A I understand that there are -- there are a  
25 number of different CPT codes and diagnosis codes

1 that are -- that are -- that are represented to me,  
2 but I made no determination or had no input as to  
3 what that set of CPT codes should be.

4 By the way, that was represented to me  
5 that collectively these are -- these are lactation  
6 services and related. But I don't -- I didn't  
7 explore the specifics of what "related" means.  
8 That's more I understand a technical term that  
9 United would be able to -- to address.

10 Q Okay. So you don't have an example of the  
11 difference between lactation support services and a  
12 related service that appears in the claims data?

13 A No.

14 MR. HAWLEY: Objection. Lacks foundation.  
15 Vague.

16 You can answer.

17 THE WITNESS: No, a specific one doesn't  
18 come to mind. My analysis -- I mean, nowhere in my  
19 analysis did I attempt to make a distinction between  
20 this is strictly lactation support services code and  
21 then here's a related. No. I examined the combined  
22 set.

23 BY MS. DONALDSON SMITH:

24 Q Understood. Did you consider, as the  
25 basis for your analysis, the number of claims United

1 processes each year on behalf of its covered  
2 members?

3 MR. HAWLEY: Objection. Vague. Lacks  
4 foundation.

5 THE WITNESS: No, I did not. Not  
6 explicitly in any of the analysis. Again, that  
7 metric was not a requirement within a context of the  
8 task that I developed and executed.

9 BY MS. DONALDSON SMITH:

10 Q Did you consider, as part of your --  
11 rendering your opinions, the approximate number of  
12 live birth claims that United processed during any  
13 given year during the class period?

14 MR. HAWLEY: Objection. Vague. Lacks  
15 foundation.

16 THE WITNESS: Again, not specifically. I  
17 have -- I created, as part of one of my analysis,  
18 I -- I created a per-capita measure, right, that was  
19 to kind of conduct a specific task. And in that --  
20 in that formulation of that per-capita calculation,  
21 I considered different alternatives, kind of, you  
22 know, and I -- I -- the one that I ended up adopting  
23 within -- for that particular context was the  
24 population for a particular region within the birth  
25 giving range.

1           So, you know, and that was -- assesses  
2   data, and that comprised women between the ages of  
3   18 and 45. So that -- you know, in considering --  
4   so my point simply is that, yeah, I -- I evaluated  
5   different number of live births, population, and  
6   other factors in the creation of that per-capita  
7   measure, but I settled for the population -- female  
8   population between 18 and 45.

9   BY MS. DONALDSON SMITH:

10       Q     If could you, please, Mr. dos Santos, turn  
11   to paragraph 36 of your report because I want to try  
12   and understand the context in which that data that  
13   you were just referring to was used in your  
14   report --

15       A     Uh-huh.

16       Q     -- and in rendering your opinions. So I  
17   see that census data referenced as footnote 12 to  
18   paragraph 36?

19       A     That's correct.

20       Q     So was the -- that census data used just  
21   with respect to the analysis that's reflected in  
22   paragraph 36, or was that used in any other aspect  
23   of your -- your report?

24       A     I believe it was just within the context  
25   of 36.

1 Q Okay. And why didn't you use the -- and  
2 why didn't you use the live birth data?

3 MR. HAWLEY: Objection. Vague. Lacks  
4 foundation. Argumentative.

5 THE WITNESS: There's no rule, right, that  
6 would say specifically I'm required to use this or  
7 that. I recognize live births could be another  
8 parameter to normalize this data by. I -- I adopted  
9 the population, female population. In fact, I  
10 mentioned that there's a pretty strong correlation  
11 between those; right? Now, I'm trying -- the nature  
12 here is to try to create some way of standardizing  
13 the number of claims or the percentage that I'm  
14 calculating in figure 2 across geographical regions  
15 that are different than each other. So just trying  
16 to find some common ground.

17 So this is all that this is doing. So  
18 just, you know, I think the number of the population  
19 of females between 18 and 45 or the number of live  
20 births in that context play kind of similar roles of  
21 just providing that standardization across markets.

22 BY MS. DONALDSON SMITH:

23 Q And did you use that number of live  
24 births -- never mind. Strike that.

25 Did you consider, as the basis for any of

1 your opinions in your report, the number of  
2 maternity claims that United processed during any  
3 given year during the class period?

4 A No, I didn't.

5 MR. HAWLEY: Objection. Vague.

6 THE WITNESS: There was no -- again, there  
7 was no requirement there. I use the -- the data  
8 that I used or the assumptions that I made were all  
9 related within the context of specific analysis;  
10 right? So like I mentioned to you, using this --  
11 making -- adopting the number of females ages  
12 between 18 and 45 in this particular analysis,  
13 because our specific goal, I wanted to kind of put  
14 them in the kind of same scale, kind of apples to  
15 apples. And there were no other analysis that I  
16 conducted that require different types of  
17 considerations other than what's in my report.

18 BY MS. DONALDSON SMITH:

19 Q So Mr. dos Santos, going back to paragraph  
20 19 of your report.

21 A Okay.

22 Q Towards the end of that -- well, towards  
23 the middle of the paragraph, the bottom of page 6 to  
24 the top of page 7, you state -- you make a reference  
25 to the number of claims as sparse or nonexistent.

1 Do you see that?

2 A Yeah, I do.

3 Q Okay. Did you ever develop a hypothesis  
4 as to why the claims data was sparse or non-existent  
5 for those markets?

6 A No, I did not.

7 Q And then continuing in paragraph 19B, you  
8 then state "The results of this analysis suggests  
9 the presence of lactation service professionals."

10 What do you mean by "suggest the  
11 presence"?

12 A Sorry. Are we in 19B again?

13 Q Sure. So it's -- towards the top of page  
14 7.

15 A Okay.

16 Q And starts "The results of this analysis  
17 suggests the presence of lactation service  
18 professionals," and goes on from there.

19 A Uh-huh.

20 Q What -- how are you using the term  
21 "suggests" there? What do you mean by that?

22 A Let me read the whole sentence for  
23 context.

24 Q Uh-huh.

25 A Okay. So again, you asked me if I had

1 developed a -- first, if I developed a hypothesis in  
2 regards to this sparse or nonexistent; right? I --  
3 I -- my analysis was a overall analysis or my  
4 investigation was a serial process; right? So like  
5 I look at some information that led me to some other  
6 questions and so forth and so on.

7 So as I looked at the data and parceled  
8 that out across different geographies, that's where  
9 I learned that someone -- within some of those  
10 geographies, the number of claims within the  
11 database would be de-minimized or nonexistent;  
12 right?

13 So to investigate that -- to further  
14 investigate, I just didn't stop there. That's when  
15 I asked are there any other sources of data that  
16 could provide some insight as to, you know, what's  
17 happening in those markets. And that's when I  
18 learned about the provider data- -- database. And  
19 then I formulated some analysis of the provided  
20 database data, and what I mean here is -- is  
21 summarizing what the result of those analysis were.  
22 Specifically, they suggest the presence of lactation  
23 service professionals and provision of those  
24 services, you know, in other areas -- in those  
25 area -- in areas in general, right, but specifically

1 for those areas where the number of claims was  
2 sparse or nonexistent -- maybe existed.

3 Q Uh-huh. So what level of certainty does  
4 "suggests" connote here?

5 MR. HAWLEY: Objection. Vague.

6 THE WITNESS: I didn't assign a specific  
7 level of confidence or aggregate or, you know, in  
8 that regard like a numerical aspect to that. I did  
9 observe, however, as a result of this analysis, that  
10 the number of claims or the number of providers that  
11 can be identified within the claims data is the  
12 likely lower bound for the overall number. So in  
13 other words, you know, the data itself suggests that  
14 there are more providers than those that are present  
15 in the claims data.

16 Q Which part of the data suggests that?

17 MR. HAWLEY: Objection.

18 THE WITNESS: What do you mean by that?

19 BY MS. DONALDSON SMITH:

20 Q You said the --

21 MR. HAWLEY: Yeah. Objection. Vague.  
22 Lacks foundation.

23 Go ahead.

24 THE WITNESS: I'm sorry.

25 MS. DONALDSON SMITH: Could you read back

1 his answer and then my question as well. The answer  
2 that preceded my question.

3 (Record read.)

4 MR. HAWLEY: Objection. Vague. Lacks  
5 foundation.

6 THE WITNESS: Okay. So thank you. I  
7 think that clarifies.

8 There are different sets of data. That's  
9 why I asked for the clarification; right? I'm  
10 looking at the claims data and now at this point  
11 here, I'm describing my review of the provider data.  
12 So it was the combined review of those two datasets  
13 that led me to this conclusion.

14 BY MS. DONALDSON SMITH:

15 Q Okay. So your conclusion in 19B that the  
16 claims data provides a lower bound for the number of  
17 lactation support providers is based on the claims  
18 data analysis that you did as well as the provider  
19 data analysis?

20 A It's based on the combined assessment of  
21 those.

22 Q Combined assessment. Okay.

23 And what was the provider data analysis  
24 that you did?

25 A The provider data analysis? I did a

1 number of those. So do you have one specific? Are  
2 you --

3 Q No. Talk through all the analysis that  
4 you did with respect to the provider data.

5 A So first of all, there was a number of  
6 analysis which were in line with the -- the -- the  
7 collection of the data or the receipt of the data,  
8 right, so the steps associated with the --  
9 understanding the data, cleaning, standardizing,  
10 verifying the quality and completeness of the data.

11 Then that analysis was used in -- in a  
12 variety of ways. One of which we already covered,  
13 which is that calculation of the per capita  
14 basically a -- I created what I call a provider  
15 density measure, right, because that's what the  
16 spirit of that per-capita calculation is. And then  
17 it was also used within the context of contrasting  
18 or getting a sense for how many additional eligible  
19 in-network providers are available in a particular  
20 region; right? And part of the analysis included  
21 the contrasting of that against the -- the number of  
22 providers that were present in the lactation support  
23 services claims databases.

24 MR. HAWLEY: I'm going to object belatedly  
25 that the question called for a narrative, but --

1 THE WITNESS: Right. I meant in like --  
2 you know, my report describes all the steps. I  
3 don't know -- I could just read through my report,  
4 but there were different areas or analysis that were  
5 specific, you know?

6 So maybe if you'll break it down and point  
7 me to some specific points, then I go, hey, it's  
8 just that --

9 BY MS. DONALDSON SMITH:

10 Q I'm just asking your recollection of  
11 the -- the analyses that you did with respect to the  
12 provider directory data so --

13 A Oh, okay. So those are some of them.

14 Q So you had indicated that you had asked to  
15 examine the -- strike that.

16 You had asked for the dataset with respect  
17 to the provider directory; correct?

18 A I -- I asked if there was any additional  
19 information that provide insight as to the number of  
20 providers in the region, particularly the regions  
21 where through my analysis I observed that there was  
22 no claims. And that's when I learned about the  
23 provider directory data.

24 Q So your analysis revealed that there were  
25 no claims in certain regions; correct?

1 A That's correct.

2 Q And is that analysis reflected in your  
3 report in any -- in any part of your report?

4 A Yeah. Right. And we just discussed that  
5 right now.

6 Q So with respect to the CBSAs, for example,  
7 there are certain CBSAs for which there are no  
8 claims; correct?

9 A Correct.

10 Q Okay. And I guess it's majority of the  
11 CBSAs did not have claims associated with them;  
12 correct?

13 MR. HAWLEY: Objection. Argumentative.

14 THE WITNESS: I don't know what --

15 MR. HAWLEY: Lacks foundation. Vague.

16 THE WITNESS: Yeah. I -- I don't know  
17 what the percentage was, but yeah, it was a large  
18 percentage of the CBSAs had no data. Or had no  
19 claims data associated with it, to be precise.

20 BY MS. DONALDSON SMITH:

21 Q So paragraph -- Mr. dos Santos, if you  
22 could please go to paragraph 1 of your report -- or  
23 paragraph 21 of your report.

24 A Okay.

25 Q And you are talking about here the claims

1 data, and that would be the raw claims data; is that  
2 correct?

3 MR. HAWLEY: Objection. Vague.

4 THE WITNESS: That's correct. Or, you  
5 know, I'm describing the data that I received and  
6 some of the steps which I took; right? So it's just  
7 as it's -- you know, the title of that section says  
8 it's an overview of the data available and analysis.  
9 BY MS. DONALDSON SMITH:

10 Q Okay. So what were the steps that you  
11 took with respect to the data after you received it?

12 MR. HAWLEY: Objection. Vague. Calls for  
13 a narrative.

14 You can answer.

15 THE WITNESS: Sure. We walked through  
16 those, I think, earlier today. But I'm glad  
17 to -- to repeat them. And some of them, generally  
18 speaking, they are the same steps, right, the  
19 general block of steps with regards to all the  
20 datasets. As I receive the data, there's a number  
21 of cleaning or standardizing or just basic  
22 understanding of the different parameters and fields  
23 that are in the data.

24 I also take steps to validate -- start to  
25 validate and verify the information; right? That's

1 what led me to the interviews which I conducted for  
2 each one of the different sources, and we discussed  
3 those.

4 From there, and based on my understanding  
5 of the claims data, you know, you may have -- and  
6 confirmation, you know, with the -- with the company  
7 personnel, you know, I attempted to remove  
8 duplicates and to kind of identify specific --  
9 information within a specific claim line; right?  
10 That's my analysis. For my analysis, I was  
11 interested in other -- from what I understand from  
12 my experience with dealing with the healthcare data,  
13 that a claim, you may have a claim, but you have  
14 multiple claim lines associated with that.

15 So we had to kind of make sure that we  
16 understood that -- that aspect of the data, right,  
17 that -- and as part of the adjudication process as  
18 well, which I comment here, if you think of the way  
19 that the data is entered into the database and  
20 processed, a claim -- I mean, a claim may have a  
21 claim line that gets bended or gets rejected -- you  
22 know, rejected or denied or modified.

23 So just from a data perspective, you know,  
24 there are a number of steps that one needs to take  
25 to identify what are the valid claim lines to be

1 analyzed. So I took all those series of steps, and  
2 I think I described some of that in general here.

3 BY MS. DONALDSON SMITH:

4 Q Okay. We're going to walk through some --  
5 specifically some of the steps that you just talked  
6 about.

7 A Uh-huh.

8 Q So with respect to what you referred to as  
9 cleaning the claims data, what did you do?

10 A So there are a number of different steps.  
11 We would find out, for instance, if there are any  
12 anomalies in any of the fields, right, which then  
13 would be subject of inquiry for the company to  
14 understand why is it that there's some data that  
15 appears not to be consistent with the -- the general  
16 information that you see in the field. Or if there  
17 are any blanks or no values or, you know, if -- if  
18 you identify and eliminate duplicates; right?

19 So that would be some of the steps that  
20 would be associated within that bucket of cleaning  
21 and standardizing the data.

22 Q Okay. And this cleaning is what you  
23 applied to the claims data, the raw claims data?

24 A I apply that to every data source. So  
25 like, you know, it -- you know, the -- the specific

1 process is unique to each data source, but the --  
2 the general category is -- is -- is present in every  
3 one that the data sources or my review of every one  
4 of the data sources.

5 Q Okay. Did you find any anomalies in the  
6 claims data?

7 A There were duplicates. There were some  
8 duplicates in the data that I saw that I recall. I  
9 think there might have been some -- and I don't  
10 know, as I sit here I don't recall the details, but  
11 I think there may have been some claims where the  
12 dollar value might just be inconsistent like one  
13 penny; right?

14 You may have claims -- well, those are not  
15 necessarily inconsistent but, you know, worth  
16 mentioning that you would see claims that would be  
17 canceling -- canceling each other like -- so like  
18 same value, different one being positive, another  
19 being negative.

20 So in examining the data in detail, would  
21 see that one was a reversal, for instance, of a --  
22 of a earlier transaction or -- or -- or processing.  
23 So things of that nature. So those are some of the  
24 things that come to mind that I remember observing  
25 and accounting for.

1 Q Pardon me. So how did you define a  
2 duplicate?

3 A A duplicate --

4 MR. HAWLEY: I was going to say it lacks  
5 foundation. Vague.

6 You can answer.

7 THE WITNESS: Okay. In general, I -- I  
8 guess the most detailed level of duplication would  
9 be a claim that for every field in the database it  
10 has the same value; right? So it's a mirror image  
11 of another claim. So that's a perfect duplicate;  
12 right? So that -- that -- that's one definition of  
13 a duplicate.

14 BY MS. DONALDSON SMITH:

15 Q Is that the only definition of duplicate  
16 that you applied to the raw data here when cleaning  
17 the data?

18 MR. HAWLEY: Again, lacks foundation.  
19 Vague.

20 You can answer.

21 THE WITNESS: There are -- well, I'll  
22 explain to you the data, the process I took to get  
23 to -- to -- to the final -- what I defined to be a  
24 claim line, right, because I think that makes more  
25 sense than defining whether or not there was other

1 definition of a duplicate. Because, you know, it  
2 depends on what context -- you have to be more  
3 specific in that way.

4 But as I mentioned here in this footnote,  
5 you know, I -- I had a convention as to what  
6 represented a claim line; right? So as you see  
7 there, it's a unique combination of a few fields  
8 that are being described here. So there's the  
9 element of a claim being evaluated as a duplicate  
10 within that context; right? It would meet claim;  
11 right? So like I'm not defining the duplicate but  
12 I'm -- the -- the converse of that -- so a unique  
13 claim is a claim that is defined with regards to  
14 these parameters listed in footnote 6.

15 BY MS. DONALDSON SMITH:

16 Q So what was the unique identifier that you  
17 used for a patient?

18 A It depends on the dataset. So like there  
19 was -- a patient would have a different name and  
20 different datasets that I received; right? As I  
21 saw, like there were six of them or more. But  
22 generally speaking, that would be some sort of a  
23 member I.D. Whatever the member I.D. representation  
24 would be for whatever given dataset it was.

25 Q And for the claim number, what was the

1 unique identifier for the claim number?

2 A There is -- they will be an equivalent  
3 claim number. You know, a specific name as it  
4 appears in the system may vary from one dataset to  
5 another, but we confirmed that that was the claim  
6 number.

7 Q And did you consider all the digits for  
8 the claim number in order to determine whether or  
9 not it was a duplicate?

10 A I believe we did, yes. We basically  
11 verified that with the company. So like as part of  
12 that process which I mentioned of validating and  
13 understanding the data, any questions that we would  
14 have along the way, we fielded those out and we had  
15 that -- those phone calls that were scheduled with  
16 the representatives from each one of the databases  
17 to just flesh out our understanding of the data.

18 Q Was the date of service considered in  
19 determining the -- in determining a unique claim  
20 line?

21 A I'm sorry. The --

22 Q Was the date of service?

23 A It was.

24 Q Okay. Was the diagnosis code considered  
25 in determining a unique claim line?

1           A     Yeah. It was a combination, but -- and I  
2     think that -- again, it's described here. You have  
3     a set of CPT codes -- and for every claim, right, if  
4     you think in terms of the database, you're going to  
5     have a field that's a CPT code or even more than  
6     one, and you have one or more diagnosis codes that  
7     are associated with that specific claim line.

8                     So there's a logic that is defined. I  
9     think in one of my exhibits it talks about any  
10    combination set -- there's a set of combinations of  
11    CPT codes and diagnosis that were used to -- as part  
12    of this unique identification of a claim.

13          Q     Are you referring to Exhibit 3 of your  
14    report?

15          A     Exhibit 3 provides I think, yeah, what  
16    the -- the combinations are. So I think there are  
17    three sets of combinations. So I think -- I don't  
18    recall, if we could just -- if you don't mind, I can  
19    take a look at it right now.

20          Q     Sure. Yeah.

21          A     So see, there's one, two -- three; right?  
22    And this is kind of the combinations of, you know,  
23    whatever logic that's being displayed here. One of  
24    which, which would be the simplistic, and perhaps I  
25    just kind of focus on that, is if the billed code

1 was S9443; right? And paired with any diagnose  
2 codes. So that -- that would be one criteria in --  
3 along with the other factors that I mentioned to you  
4 like member I.D, claim I.D., and so forth and so on.

5 Q Okay. So the -- what we see reflected on  
6 Exhibit 3 was applied to the raw claims data as part  
7 of the identification of the unique claim line?

8 A Correct.

9 Q So what was the process that you used to  
10 identify multiple records to link them to a single  
11 claim line?

12 MR. HAWLEY: Objection. Vague.

13 THE WITNESS: So I don't know if I  
14 understand your question.

15 BY MS. DONALDSON SMITH:

16 Q So you had indicated here in the footnote,  
17 "A claim line may have multiple records in the  
18 claims data reflecting resubmissions or  
19 adjudications of the claim."

20 So what was the process that you used to  
21 identify and link the multiple records to a single  
22 claim line?

23 A So -- so there may be semantics --

24 Q Okay.

25 A -- but I think what you mean is there's a

1 distinction between claim and claim line. So my  
2 analysis -- in this context here, I'm talking about  
3 claim line; right? So again, to put this in  
4 perspective, for a claim, you have an office visit.  
5 The -- the doctor may provide a number of different  
6 services which are described as part of the claim  
7 under different unique claim lines; right?

8 So -- and the way -- if you think -- then  
9 move forward as a submission of that claim in the  
10 adjudication process, let's say that there were two  
11 claim lines; right? One of those claim lines can be  
12 denied and then resubmitted, can be pended -- a  
13 number of things may happen to that particular claim  
14 line that was originally submitted. The database  
15 will account for every one of those or -- or, you  
16 know, the raw data, right, will have information  
17 about those.

18 What some of the steps that I'm describing  
19 to you here in terms of identifying a unique claim  
20 line or what we identify as a unique claim line is  
21 looking for this one particular claim line, right,  
22 that may have, as it went through the system, a  
23 number of different steps that were subjected to it,  
24 is finding out what's the last or the final -- the  
25 claim line that's associated with a particular

1 service that it represents the finalized  
2 adjudication process; right? So there -- but  
3 that's -- that's a process that we have to go  
4 through and account for this different factors,  
5 right, in defining or identifying that -- that  
6 ultimate or final claim line.

7 Q Is that a manual process?

8 A No.

9 Q Okay. How's that automated, then?

10 A I'll say that of all the steps that we're  
11 taking, right -- again, I'm a data scientist or  
12 that's what I -- that's what do -- are performed  
13 within a context of this relational database that I  
14 created. So to execute on these steps, one of which  
15 I just described to you, you would be writing code  
16 or, you know, have inquiries that would be  
17 associated with that.

18 Q And do you know if the code that you wrote  
19 to -- to identify the unique claim lines was  
20 produced to plaintiffs as part of this litigation?

21 A I'm not sure. I don't -- I don't know.

22 Q Is that code reflected in some database or  
23 some document?

24 A I'll have to go back and look. Parts of  
25 the code might be or, you know, there -- it's --

1 thinking about it, it's a -- it's a interactive  
2 process; right? So some analysis you run a code or,  
3 you know, you run analysis and you have the results.  
4 And out in -- and there are -- there would be  
5 documentation I think for -- for the different  
6 analysis, yeah. Definitely the ones that went into  
7 the report.

8 Q You had referred to standardizing the  
9 claims data. What does standardizing entail?

10 A Entail a number of steps, which I -- I  
11 think I just kind of reviewed with you the, you  
12 know, this process of receiving the raw data and  
13 creating data in the format, right, that is ready  
14 for analysis. That's what I mean the -- by the  
15 standardization. I -- I guess I'm not -- there's  
16 no -- I put them as data preparation steps, right,  
17 so there's the cleaning, the normalization,  
18 standardization, so that's -- that's what it is.

19 Q So nothing more than we've discussed at  
20 this point you would consider any standardizing work  
21 that you did to the data?

22 A Not that I can think of.

23 Q Okay.

24 A There might be specific standardizations,  
25 like, for instance, the creation of that per-capita,

1 right, measure that was unique to one analysis. But  
2 in general, as it applies to the data, I think those  
3 are the -- the main steps.

4 Q Okay. And so these steps that we've been  
5 talking about, you applied these to the raw claims  
6 data to derive the LSS claims database; is that  
7 correct?

8 MR. HAWLEY: Objection. Vague. May  
9 mischaracterize his testimony.

10 You can answer.

11 THE WITNESS: Those were the steps that  
12 I -- that are formed or conducted to derive the  
13 LS- -- what I'm defining in the report as the LSS  
14 claims data. It's not a database; it's data.

15 BY MS. DONALDSON SMITH:

16 Q Data.

17 A Yeah.

18 Q Okay. Fair.

19 So the LSS claims to the LSS claims data,  
20 you did not do any further standardization or  
21 cleaning, because the LSS claims data is the result  
22 of all the foregoing discussed standardization and  
23 cleaning?

24 MR. HAWLEY: Objection. Vague.

25 THE WITNESS: Again, within -- within the

1 context of deriving or getting to a dataset that  
2 becomes the baseline for a number of analysis, what  
3 I described to you, yeah, those are the steps. As  
4 it relates to any specific analysis, there might be  
5 some specific steps that were taken, but those are  
6 unique to those analysis. But generally speaking,  
7 in deriving that baseline set of data that was used,  
8 then yeah. My description is what it is.

9 BY MS. DONALDSON SMITH:

10 Q What -- what validation or verification,  
11 as you referred to it, did you do to the raw -- raw  
12 claims data?

13 A There are a number of them; right? So  
14 I -- first step, I look at the data to see, again,  
15 if there are any anomalies, anything that seem to be  
16 indicative of some gap in the data or some erroneous  
17 information; right? And then after that process, or  
18 in association with that process, I request that you  
19 have a conversation, an interview of the individual  
20 or individuals that had knowledge about the  
21 extraction process. And that's -- that's -- you  
22 know, and I conducted those interviews along the  
23 way.

24 Q So what metrics did you apply here to  
25 determine whether or not there was any gaps in the

1 data?

2 MR. HAWLEY: Objection. Vague. Lacks  
3 foundation.

4 THE WITNESS: As I sit here, I don't know  
5 specifically. I can tell you, you know -- broadly  
6 speak, you know, if I see that there's no  
7 information. So there's information, for instance,  
8 if they refuse it, it would be a claim number, but  
9 everything else is missing. Well, that seems like  
10 an apparent example of a gap in the data, which I  
11 would then ask specific questions as to why is it  
12 that I'm observing this because it's inconsistent  
13 with the structure of the data.

14 This is just an example. I'm not saying  
15 that it specifically happened in the data, but it  
16 would happen, you know, in a situation.

17 BY MS. DONALDSON SMITH:

18 Q Was there validation done in terms of the  
19 expected number of claims that would be included in  
20 the claims data versus the actual numbers of claims  
21 that were included in the claims data?

22 MR. HAWLEY: Objection. Vague. Lacks  
23 foundation.

24 THE WITNESS: No. I -- I mean, there  
25 was -- there was discussion as to, okay, this is

1 what I am observing. Is that consistent with you  
2 the extractor of this data I've seen; right? And so  
3 in that context, it would be understood what were  
4 the parameters that were used to make the  
5 extraction; right?

6 BY MS. DONALDSON SMITH:

7 Q So you have indicated a couple times that  
8 you had interviews, and I do want to talk in more  
9 detail about those interviews and who you  
10 interviewed and the topic that's were discussed.

11 So generally, would you have been able to  
12 prepare your analysis and your opinions without  
13 conducting the interviews that you conducted?

14 MR. HAWLEY: Objection. Vague.

15 THE WITNESS: I -- I probably would.  
16 Given my understanding of the data, I may -- may  
17 have needed to make some assumptions, right, about  
18 what I observed. But, you know, it's customary, as  
19 part of my standard procedures, to try to gain some  
20 level of comfort with the data.

21 BY MS. DONALDSON SMITH:

22 Q Okay. So your report indicates that you  
23 interviewed a Desiree Lawson?

24 A That's correct.

25 Q Okay. And did you ask to interview

1 Ms. Lawson?

2 A No. Not specifically.

3 MR. HAWLEY: Vague.

4 THE WITNESS: I didn't know Ms. Desiree  
5 Lawson before this case, so no, I -- I didn't ask  
6 her in particular. My request was more broad. I  
7 said I would like to speak with someone or someones  
8 from whatever department within a company that were  
9 involved with the extraction and have understanding  
10 of, I think in her case, that UMR system.

11 BY MS. DONALDSON SMITH:

12 Q Okay. And what was discussed with  
13 Ms.~Lawson?

14 A Again, I think those main steps, right, of  
15 gaining an understanding of, okay, what is -- what  
16 is the structure of the system where this raw data  
17 is housed; right? What steps were taken, right, as  
18 part of the extraction process, and was there any  
19 documentation associated with that process that  
20 could be reviewed by me and my team?

21 And then with regards to some of the basic  
22 understanding that we derived from reviewing the  
23 data, we just confirm some of our assumptions,  
24 general assumptions and -- and general understanding  
25 of what the data we had.

1 Q What general assumptions -- what general  
2 assumptions did you have or confirm?

3 A I don't recall specifically as I sit here,  
4 but again, it would have been associated with, you  
5 know, what -- what's the meaning for this field or  
6 the values that are included in this field represent  
7 what? And, you know, if I -- what -- what could  
8 comprise a duplicate? You know, if we see a  
9 duplicate, is there an explanation, a reasonable  
10 explanation for that observation to remain as part  
11 of the analysis or to be removed? Things of that  
12 nature.

13 Q Okay. And did you conduct this interview  
14 personally?

15 A Personally by phone, yes.

16 Q And did you take notes during the  
17 interview?

18 A No.

19 Q Okay. And you said Ms.~Lawson was  
20 partnered with respect to the UMR database?

21 A That's my understanding.

22 Q Did you provide -- as a result of your  
23 interview, did you -- were you provided any further  
24 information from Ms. Dawson [sic] in terms of  
25 documentation?

1           A     Yes. I think we covered some of that  
2 earlier today. That's what those business  
3 requirements are.

4           Q     So -- the business requirements provided  
5 after you spoke with Ms -- Ms.~Lawson?

6           A     I think that was in conjunction. I don't  
7 exactly -- exactly remember the timing of that. If  
8 we received it before or if that's something we  
9 confirmed. But it was in association with the  
10 conversation with her.

11          Q     Okay. You also -- indicates here that you  
12 also spoke with Ms. Smith Peter?

13          A     Correct.

14          Q     Okay. Do you recall why you spoke with  
15 Ms. Smith Peter?

16          A     So I think -- I don't actually remember  
17 because there were a number of different  
18 interviewees that I spoke with. So I think  
19 Ms. Desiree and -- what's Ms. Smith Peter's name?

20          Q     Erica?

21          A     Erica? Yeah, I think both of them were  
22 UMR, if I recall correctly. I think -- yeah, I  
23 think both of them are UMR.

24          Q     Did the interviews of them happen at the  
25 same time? You spoke with them both at the same

1 time?

2 A Yeah. As I recall, they were both on the  
3 phone.

4 Q One phone conversation?

5 A It was one phone conversation.

6 Q Do you know how long the phone  
7 conversation lasted?

8 A I don't recall exactly. It was brief  
9 because, you know, we had already conducted some  
10 underlying research and -- and -- and evaluation.  
11 So there were some very specific points that we were  
12 discussing in a way, but it was no more than half an  
13 hour.

14 Q It says you also spoke with Amy Bulware?

15 A Correct.

16 Q And I think -- why did you speak with  
17 Ms. Bulware?

18 A If I recall correctly, Ms. Bulware was in  
19 connection with another dataset, the provider  
20 directory dataset.

21 Q And what did you discuss with Ms. Bulware?

22 A Same general structure, right, just  
23 understanding where is this data. Where does this  
24 data come from? How was it extracted? An  
25 explanation of what the difference fields and

1 general information, the potential information  
2 that's contained in -- contained in the database.

3 Q So your discussion with Ms.~Bulware came  
4 after you received the provider directory data?

5 A That's correct.

6 Q Okay. About how long did your discussion  
7 with her last?

8 A I don't recall correctly -- I mean  
9 exactly. But it was -- it was not long. It was in  
10 line with other conversations that I had.

11 Q Probably less than a half hour?

12 A Yeah. About half an hour or so.

13 Q Do you recall the specifics of anything  
14 that you discussed with Ms.~Bulware about the  
15 provider directory?

16 A Nothing comes to mind. I mean, I think it  
17 was a lot of confirmation of what the data was, that  
18 those were eligible, in-network, current providers  
19 and --

20 Q Did you ask Ms.~Bulware in terms of any --  
21 never mind. Strike that.

22 You also spoke with Ms. Jill Deitz?

23 A Correct.

24 Q And why did you speak with Ms. Deitz?

25 A She's also in association with provider

1 directory data.

2 Q And what was her -- what was the type of  
3 information that she was providing you?

4 A It was kind of similar type of situation.  
5 Like as I mentioned to you for the UMR, we had two  
6 individuals. For the provider directory, we also  
7 had two individuals.

8 Q So she was on the phone call with  
9 Ms.~Bulware?

10 A Yeah. I don't recall correctly if she was  
11 on the phone. Either both were on the phone at the  
12 same time or there were two conversations. I have  
13 to go look back in my records. But yeah, they --  
14 they both spoke to the -- to the same issue --  
15 issues.

16 Q Okay. Did you consider -- with respect to  
17 the providers that are in the provider directory  
18 data, did you consider whether or not those  
19 providers are identified on the My UHC Provider  
20 finder tool?

21 MR. HAWLEY: Objection. Vague. Lacks  
22 foundation.

23 THE WITNESS: I'm trying to remember. I  
24 think -- I think that as part of like going through  
25 the fields, right, that are included in the

1 database, we may have touched upon that subject. I  
2 think we touched upon that subject. Because as part  
3 of my analysis, right, I -- I tried to kind of, you  
4 know, be as conservative as possible in terms of  
5 identifying or accounting for any type of providers  
6 or any of my calculations. So I filtered a list of  
7 providers to include only providers that were, I  
8 guess, directory eligible I think was the term.  
9 There's some fields in the database that relate to  
10 that.

11 MR. HAWLEY: I don't want to interrupt  
12 you, Kim, but do you have a sense of how much longer  
13 you want to go?

14 MS. DONALDSON SMITH: Sure. We can finish  
15 this line and then break for lunch.

16 MR. HAWLEY: Okay.

17 MS. DONALDSON SMITH: It won't be too  
18 long.

19 Q So by directory eligible, do you remember  
20 the indicator on -- in the claims -- in the provider  
21 directory data that was --

22 A I don't remember the exact name, but it's  
23 a -- it's a -- it's a code word, so to speak. But  
24 it was shortened for direct eligible. So a  
25 combination of something like that. And there were

1 a few of those. And that was -- "yes" or "no" field  
2 I think the data that was in it, if I recall.

3 Q And how were they directory -- how were  
4 the providers -- strike that.

5 How were the providers listed in the  
6 directory? Is it by provider specialty? Is that  
7 your understanding?

8 MR. HAWLEY: Objection. Vague. Lacks  
9 foundation.

10 THE WITNESS: They were not categorized in  
11 any particular way. I mean, this was raw data,  
12 right? So it would have information that would  
13 indicate what -- I don't know if it's specialty  
14 or -- but it'll have some kind of representation as  
15 to if it's pediatrician or, you know, obstetrician  
16 or whatever that is. So that information was there.  
17 I mean, generally speaking, you had information  
18 about the provider I.D., some sort of I.D. for the  
19 provider. You have information about what kind of  
20 practice that provider's associated with, the  
21 location, and eligibility status and a number of  
22 other fields. But those are some of the main fields  
23 that I recall being part of the -- the database. / /  
24 / / / /

25

1 MS. DONALDSON SMITH: Okay. We can go off  
2 the record, please.

3 THE VIDEOGRAPHER: We are going off the  
4 record. The time is 1:04 P.M.

5 (Lunch recess.)

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1 LOS ANGELES, CALIFORNIA; THURSDAY, JANUARY 10, 2019

2 1:58 P.M.

3  
4 THE VIDEOGRAPHER: We are back on the  
5 record. The time is 1:58 P.M.

6  
7 EXAMINATION (Continued)

8 BY MS. DONALDSON SMITH:

9 Q Mr. dos Santos, we were talking about some  
10 of the interviews that you did of United employees,  
11 and you had mentioned individuals with respect to  
12 the UMR system as well as the provider directory  
13 data, but you did not mention yet an interview with  
14 anyone concerning the U-Net or U-N-e-t database.

15 A Uh-huh.

16 Q Did you speak with anyone regarding that  
17 database?

18 A Yes, I did.

19 Q Okay. And who did you speak with?

20 A That was Stephanie -- I don't recall  
21 Stephanie's name. But it was --

22 Q Schmidt?

23 A Schmidt. Correct.

24 Q And what was the -- what were the  
25 discussions that you had?

1           A     Same general idea, right? Based on our  
2 preliminary review of the data, we walked through  
3 and asked for an understanding of what's the -- the  
4 nature of the hosting system where the data is  
5 stored and what steps were taken to extract the  
6 information that was provided to us and clarified  
7 details about the data contained in -- in -- in that  
8 extraction.

9           Q     And during the -- so I believe you did  
10 three phone interviews. Would that be correct?

11          A     It --

12          Q     Total?

13          A     It may have been. Three at the minimum.  
14 May have been four. I think with the -- I forgot  
15 the names. Amy, Ms. Amy and --

16          Q     Desiree?

17          A     No.

18          Q     Oh. Jill?

19          A     Jill. I think those -- they may have --  
20 and I don't recall. Either both of them were on the  
21 same call and there was a subsequent phone call or  
22 separate ones. So may have been four.

23          Q     Okay. So the discussion that you had with  
24 Desiree Lawson and Erica Smith Peter, were you the  
25 only person from your company on that call?

1           A     For my company? No. I think one of my  
2 associates or colleagues were -- was present with  
3 me.

4           Q     Okay. And --

5           A     Sorry. And, of course, you know, that  
6 phone call was -- Reed Smith was also present. I  
7 mean, they didn't participate actively, but they  
8 were present as well.

9           Q     Okay. And did your colleague take notes  
10 during that phone call?

11          A     No.

12          Q     And the conversation that you had with  
13 Ms.~Bulware, was there anyone else on the phone  
14 other than yourself, someone from Reed Smith, and  
15 Ms.~Bulware?

16          A     No. Same idea. I think for any one of  
17 those, I had at least one other.

18          Q     Oh, you did have at least one?

19          A     Yeah.

20          Q     Okay.

21          A     But -- yeah. In every one of those  
22 conversations, I had at least one other colleague in  
23 the room with me.

24          Q     And neither of you took notes during any  
25 of these interviewing phone calls?

1 A Correct.

2 Q And how did you convey the information  
3 that you received during these interviews to your  
4 team?

5 A Well, as I mentioned to you, right, the  
6 way that -- the process was one in which we did the  
7 analysis, right -- well, there are two primary  
8 things that I really wanted to evaluate. One is I  
9 want to have an explanation as to the specific steps  
10 that they were taking with regards to extracting the  
11 data and feel comfortable that, hey, I can use this  
12 data; right? Because I obviously did not extract  
13 the data myself. So, you know, we talked about  
14 that. And to that end, you know, we had the  
15 documents which we reviewed, which were like their  
16 script or, you know, the -- the --

17 Q Business requirements?

18 A -- the business requirements. We just --  
19 that was -- I didn't need to take notes in that  
20 regard because I had -- that's what the -- you know,  
21 that was the confirmation of the points where, you  
22 know, if you walk through those scripts, then we can  
23 verify the information that was provided.

24 And as it related to clarification as to  
25 the fields, to the extent that we had any, we

1 already had run the analysis or, you know, we -- we  
2 had the specific just "yes" and "no" questions with  
3 regards to specific interpretations of the data. So  
4 there was no required need for note taking in that  
5 context.

6 Q Okay. And we've talked about two systems,  
7 the U-Net and the UMR system. Were there claims  
8 pulled and provided to you from any other system at  
9 United?

10 A No. Well, there -- there is the provider.

11 Q Other than those three, the provider  
12 directory --

13 A Those are the three ones.

14 Q Okay. Are there any other systems, claims  
15 systems at United?

16 A That I don't know. I mean, that was not  
17 the -- the scope of my conversation; right? I was  
18 talking about specifically about this one set of  
19 data, so I cannot speculate. I would imagine that,  
20 you know, being a large firm or different firms they  
21 may have different systems that cover different  
22 points of times. But my understanding with the  
23 information that I gathered from that conversation  
24 or those conversations is that, as it relates to  
25 lactation support services claims, I received

1 about -- the totality of claims that were relative  
2 to the time range and geographies that -- that I  
3 described in my report.

4 Q And that's an assumption that you made in  
5 rendering your opinion that you received all of the  
6 claims in their totality related to lactation  
7 support for the relevant time frame and geographies?

8 A Well, let me -- let me qualify that;  
9 right? I didn't make an assumption. That's  
10 something that I discussed with them and asked to  
11 confirm what claims were there. And -- and again,  
12 another qualifier is that I'm not rendering an  
13 opinion as to what -- what is the definition of a  
14 lactation support services claim or related claim;  
15 right? So that is the decision that's making -- be  
16 made by somebody else. I didn't go in and say these  
17 are the lactation support services claims. I know  
18 that, as it has been defined to me and my  
19 understanding here, is that those are lactation  
20 support services claims and related claims.

21 BY MS. DONALDSON SMITH:

22 Q In the raw data that you provided?

23 A In the raw data, yeah.

24 Q So how did you confirm that you did  
25 receive the totality of the claims?

1 MR. HAWLEY: Objection. Argumentative.

2 Vague.

3 THE WITNESS: Well, in the way that I  
4 mentioned to you; right? That -- well, what I know  
5 is that I -- through my conversations with these  
6 individuals, I asked questions as to what were the  
7 CPT codes and diagnosis codes that were used in your  
8 query as part of this extraction; right?

9 So I think that the point is slightly  
10 different than the one that you're making. You  
11 know, I verified what that -- the codes, which I  
12 included in my report and described what they are,  
13 right, which were defined to me by counsel, were a  
14 part of that extraction. And as a -- an additional  
15 step, that's where they provided me the script that  
16 I should list those -- those codes.

17 So again, I don't know what are the  
18 specific codes or what would be, you know, the  
19 definition of a -- out the codes. I know that for  
20 the universe of CPT codes that was provided to me, I  
21 gained validation or confirmation of them through  
22 these conversations.

23 BY MS. DONALDSON SMITH:

24 Q So going to Exhibit 3, what does -- does  
25 Exhibit 3 represent the universe of the CPT codes

1 and diagnosis codes that you were just referring to  
2 or is it something different?

3 A Let me -- just a second.

4 MR. HAWLEY: I'm sorry. Can I have that  
5 question read back.

6 (Record read.)

7 MR. HAWLEY: Objection. Vague.

8 You can answer.

9 THE WITNESS: Can you rephrase that  
10 question maybe.

11 BY MS. DONALDSON SMITH:

12 Q Sure. So what does Exhibit 3 represent?

13 A Well, these are the per guidance that I  
14 received on this assignment, these are the lactation  
15 support services and related service claims, right,  
16 that's how they are defined. So I received guidance  
17 to identify or treat as or define lactation support  
18 and related service claims as I describe in here.  
19 So there's a little bit of logic for that.

20 Q And this was the logic that you were given  
21 by counsel; is that correct?

22 A This -- well, everything made its way to  
23 me through counsel; right?

24 Q But is Exhibit 3, as drafted, given to you  
25 by counsel?

1           A     No. I mean, I -- I drafted this document.  
2     I put this together.

3           Q     Okay. So how did -- then how did you make  
4     the determine -- determination, for example, in the  
5     first part, to code -- excuse me, to pair with the  
6     V241 and the Z391 the procedure or bill procedure  
7     codes that are listed in that section?

8           MR. HAWLEY: Objection. Argumentative.  
9     Vague.

10          THE WITNESS: Well, that was indicated to  
11     me from the company via counsel, I suppose, as what  
12     would be the combinations that would yield the list  
13     of claim lines that were -- you know, which they  
14     defined -- which, you know, are being defined as  
15     lactation support services and related services  
16     claims.

17     BY MS. DONALDSON SMITH:

18          Q     So you applied these to the raw claims  
19     data?

20          A     That's correct.

21          Q     Okay. So the raw claims data included  
22     additional procedure codes and diagnosis codes that  
23     are not listed on Exhibit 3; is that correct?

24          A     Yes, that's correct.

25          Q     And those are reflected in the business

1 requirements?

2 MR. HAWLEY: Objection. Lacks foundation.  
3 Vague.

4 THE WITNESS: Well, I don't know if  
5 they -- to what extent they're required there. But  
6 I do know from just review of the data that there  
7 are additional -- I mean, that this is a filtering,  
8 right, so there are additional combinations or  
9 additional codes that might be there. Which one  
10 specifically or how many, I don't know.

11 BY MS. DONALDSON SMITH:

12 Q Okay. And what -- why, then, did the raw  
13 claims data include more CPT codes or procedure  
14 codes and diagnosis codes than are on Exhibit 3?

15 A I don't know.

16 MR. HAWLEY: Objection. Lacks foundation.  
17 Argumentative. Vague.

18 Go ahead.

19 THE WITNESS: I -- I don't know.

20 BY MS. DONALDSON SMITH:

21 Q So the claims that were netted out that  
22 did not fall within one of these three buckets, for  
23 lack of a better word, buckets, were not lactation  
24 support and related services claims?

25 MR. HAWLEY: Objection. Argumentative.

1 Vague. Lacks foundation. Beyond the scope.

2 THE WITNESS: Yeah. That's a definition  
3 that you are assigning to it. Like I -- I didn't  
4 have to make the determination; right? I'm --  
5 again, framing the -- my assignment as here is  
6 claims that are being defined, not by me, as  
7 lactation support and related services claims.  
8 And -- and this is -- I guess the road map or, you  
9 know, the logic to extract or filter out those  
10 specific claims from the overall raw data.

11 BY MS. DONALDSON SMITH:

12 Q And what was your understanding as to why  
13 you were extracting -- using this logic to extract  
14 these claims from the raw data?

15 MR. HAWLEY: Objection. Vague.

16 THE WITNESS: Well, simply that this --  
17 these are the ones -- these are the combination of  
18 CPT codes and diagnose codes that would give me the  
19 set as defined by counsel or, you know, the client,  
20 as lactation support and related services claims.

21 BY MS. DONALDSON SMITH:

22 Q So in -- did you -- when you received the  
23 raw claims data, did you apply this logic prior to  
24 doing any of the other cleaning, standardization,  
25 validation that we discussed earlier?

1 MR. HAWLEY: Objection.

2 BY MS. DONALDSON SMITH:

3 Q I guess what order did you do it in?

4 A Yeah. I guess you can characterize --  
5 there is no -- there's no order specifically; right?  
6 This process is just doing all the steps. So it's a  
7 program that's doing that. But if -- you know,  
8 it's -- to simplify the discussion, you can say that  
9 we would first -- first we did it -- I think we did  
10 a duplication -- did duplication to the entire set.  
11 So like because it's an automated process, you just  
12 go and follow all those different steps, one of  
13 which is this one. Like, the order in this context  
14 would not really matter but, you know --

15 Q So you may have been due to the claims  
16 that were not within the Exhibit 3 subset, though?

17 A That's -- that's correct. Yeah.

18 Q Okay.

19 A We were just cleaning up all the data. So  
20 like, you know, it's just a process that's applied  
21 to one, you apply across the board. But this  
22 defines the subset which we use to focus our  
23 analysis on.

24 Q So then do you know how many claims did  
25 not appear in the LSS claims data because of a

1 reason other than their falling into these buckets?

2 A Yes.

3 MR. HAWLEY: Objection. Vague. Lacks  
4 foundation.

5 Go ahead.

6 THE WITNESS: As I sit here right now, no,  
7 I don't have a precise count. But yeah, there were  
8 claims.

9 BY MS. DONALDSON SMITH:

10 Q Does the LC- -- LCC? Is it LCC?

11 A LSS.

12 Q Oh, LSS. That's what I get for writing  
13 LCC.

14 The LSS claim data only include final  
15 adjudicated claim lines?

16 A Yes. And -- and again, that's a -- you  
17 know, that's a self-defined term; right? It was --  
18 I defined that term within the context of the steps  
19 which we took. It includes only -- it removes, not  
20 duplicates, but claims that cancel each other or  
21 claim lines that cancel each other.

22 So, you know, let's say you had the first  
23 claim that was found that was entered into the  
24 system in a date. And then subsequent to that,  
25 there was an action that deny that claim line. Then

1 there'll be another claim line in the system with  
2 the exact same value. Or let's say it's a full  
3 denial, exactly same absolute value but a different  
4 sign; right? And then subsequent to that, there  
5 might be another line that for the same or different  
6 value, right, that's the result of resubmission. So  
7 in this context, we will keep that third line only,  
8 because that represented, you know, the -- the last  
9 or the finalized adjudication.

10 Q Okay. What field represented -- in what  
11 field of the data did you find this indication of  
12 the resubmission or the indication that it was the  
13 final adjudication?

14 MR. HAWLEY: Objection. Vague.

15 THE WITNESS: There was not one field in  
16 particular. There's not, in the database, one field  
17 that says final adjudication, right, and reflect for  
18 it. It's a combination of going through this  
19 process of, as I described in this hypothetical,  
20 right, or just as an example, use it as just an  
21 example, if I had three lines, three different dates  
22 all the same characteristics with regards to member  
23 I.D., provider, and -- and other elements of -- that  
24 I described in my report, but you see that logic  
25 that, one, you have one entry. The next one cancels

1 the prior one, and then you have another one  
2 that's -- you will rebuild logics, you know, as part  
3 of the program to capture that.

4 BY MS. DONALDSON SMITH:

5 Q Okay. So there are fields within the  
6 claims data that indicate, for you, the sequencing  
7 of the claims that temporally one is coming after  
8 the other, and that the subsequent one represents,  
9 for example, a remission?

10 A Uh-huh. There's -- well, there's --  
11 there's a date stamp. There's a date field in the  
12 database.

13 Q Okay. Which date field is that? What's  
14 the name of that date field? Do you know?

15 A As I sit here, I don't know.

16 Q Is there a field that indicates something,  
17 as you said, a resubmission? Is there a specific  
18 field for resubmission?

19 A No. I think it might be -- and it varies.  
20 Because, you know, we're talking about different  
21 systems here, right, and different datasets that  
22 comprise the totality. It might be one of the  
23 processing dates or, you know, there are different  
24 variables in there, different date variables.

25 Q Okay. If there was a claim that was

1 submitted and on appeal, was that claim not included  
2 in the LSS claims data because it was not considered  
3 a final adjudication, or would that claim have been  
4 considered a final adjudication?

5 MR. HAWLEY: Objection. Vague. Lacks  
6 foundation.

7 THE WITNESS: I have to go back and take a  
8 look specifically. I think it would be included.  
9 My inclination is to say that was included because  
10 it was the last record that was available. But I  
11 don't -- the only reason I say that it's my  
12 inclination is that I have to see. I don't know if  
13 there was specific in this database. In general,  
14 there are a number of databases that might have  
15 fields or databases of this kind that would have,  
16 you know, information as to, you know, whether a  
17 claim was expanded, was denied and resubmitted.

18 I -- I don't recall specifically if, in  
19 this case, there were, you know, those kinds of  
20 explicit variables or not. But we, in that context,  
21 used order; right? So you -- you would see that.  
22 For instance, if there are two canceling claims and  
23 if there is a third one, that would represent one  
24 that we accounted for.

25 / / / /

1 BY MS. DONALDSON SMITH:

2 Q Even absent a final adjudication, in terms  
3 of a final denial or, you know, no longer  
4 appealable?

5 A I think that all these claims typically,  
6 in this type of situation, these are all finalized  
7 adjudications. So I mean, again, of course, maybe  
8 there'd be a dispute later and that some of the ones  
9 that I worked on were -- you know, providers and  
10 payors may come together to discuss claims that have  
11 been finalized. So it's not finalized until it's  
12 finalized, I guess. But I think the claims that are  
13 in this database, they all represent claims that  
14 have gone through the adjudication process.

15 Q And each row in the LSS claims data  
16 represented -- represents a single separate claim;  
17 is that correct?

18 MR. HAWLEY: Objection. Vague. Lacks  
19 foundation.

20 BY MS. DONALDSON SMITH:

21 Let me strike that and say that again.

22 So each row in the LSS claims data  
23 represents a separate unique claim?

24 MR. HAWLEY: Same objections.

25 THE WITNESS: Claim. Claim line.

1 BY MS. DONALDSON SMITH:

2 Q Claim line.

3 A Claim line.

4 Q But there's no -- there's not more than  
5 one claim line in the LSS claims data for a single  
6 visit?

7 MR. HAWLEY: Objection. Vague. Lacks  
8 foundation.

9 THE WITNESS: I'm just trying to kind of  
10 understand what you mean by "visit." So I have  
11 been --

12 BY MS. DONALDSON SMITH:

13 Q So the LSS claims data is not going to  
14 include two rows in the data for -- excuse me, for  
15 one claim?

16 A It could. Again, I'm able to go to a  
17 doctor. I just recently had surgery; right? They  
18 do the surgery. There's a lot of different  
19 procedures that they go to. Each one of those, as  
20 part of a claim, represents a claim line. Of  
21 course, that's different than the reality here.

22 But theoretically you could have that. I  
23 would say that a claim would have at least one claim  
24 line by definition.

25 Q Okay. So in footnote 6, you're referring

1 to "A claim line may have multiple records in the  
2 claims data reflecting resubmissions or  
3 adjudications of the claim."

4 Does the LSS claims data include the  
5 multiple records, or does the LSS claims data only  
6 show the final adjudication?

7 A Sorry. Let me get to that.

8 MR. HAWLEY: Objection. Vague.

9 THE WITNESS: So are you talking about 6?  
10 BY MS. DONALDSON SMITH:

11 Q Correct.

12 A All right. Okay. What I meant here is  
13 just kind of describing the nature of the raw data;  
14 right? So like this -- this footnote is in the  
15 context of saying, okay, this is what I observed as  
16 part of the data that was submitted to me.

17 Q Uh-huh.

18 A So it's not specific to any of the data  
19 steps that we took, you know, in preparing the data.

20 Q Did you consider expanding the raw claims  
21 data based on the information that you received in  
22 the provider directory data?

23 MR. HAWLEY: Objection. Vague.

24 THE WITNESS: In what regard?

25 / / / /

1 BY MS. DONALDSON SMITH:

2 Q For example, did you consider requesting  
3 all the claims data for all the providers that  
4 appeared in the provider directory data?

5 MR. HAWLEY: Objection. Vague. Lacks  
6 foundation.

7 THE WITNESS: All the claims -- I'm sorry.  
8 Can you repeat --

9 BY MS. DONALDSON SMITH:

10 Q Claims that were submitted by the  
11 providers who are listed in the provider directory.

12 MR. HAWLEY: Same objections.

13 THE WITNESS: No. Because again, given  
14 the parameters of, you know, my assignment,  
15 it's -- the types of CPT and diagnose codes that  
16 were to be evaluated are being defined for me. And  
17 to the extent that any provider that is in a  
18 provider directory had a claim associated with those  
19 CPT and diagnose codes, it would be already included  
20 in the data that was provided to me.

21 BY MS. DONALDSON SMITH:

22 Q So is an assumption of your opinion that  
23 all the providers listed in the provider directory  
24 are providers of lactation support services?

25 MR. HAWLEY: Objection. Argumentative.

1 Vague. Lacks foundation.

2 THE WITNESS: No, I make no -- I make no  
3 opinion with regards to whether or not the providers  
4 in the provider directory are providers of lactation  
5 support services. I mean, like -- what I observe is  
6 that -- and you can see there's some of that are  
7 within the -- in the directory, the two have claims  
8 that, as they were described to me, are lactation  
9 support services claims and related. And there are  
10 providers in the data -- in the provider directory  
11 that share the same profile as the providers that  
12 are providing those services and being verified in  
13 the claims data.

14 BY MS. DONALDSON SMITH:

15 Q So you -- you're assuming that a claim is  
16 indicative of a provider of lactation support  
17 services?

18 A No.

19 Q No?

20 A I don't need to make that --

21 Q Okay.

22 A -- assumption; right? I mean, I'm just --  
23 I'm just dealing with facts and just kind of -- you  
24 know, it's being presented to me and it's my  
25 understanding, based on definition, right, of the

1 form that the codes that are associated with the  
2 logic that I describe to you represent lactation  
3 support services and related.

4 So in my analysis, I'm observing, right,  
5 the percentage of time or whatever different kind of  
6 metrics that I create, relative to an existence of  
7 some of those services being provided without making  
8 a determination as to -- or -- no, without having to  
9 opine as to, okay, this is a lactation specialist  
10 or -- or not. That falls outside of my scope.

11 Q We had talked about the standardization  
12 procedures related to the claim lines data or the --  
13 the raw claims data. But I do not believe that we  
14 talked and I've asked you about the standardization  
15 procedures used related to the provider directory.

16 So what type of standardization procedures  
17 did you apply to the provider directory, if any?

18 A Well, I think we -- I think we touched  
19 upon that a little bit. In general, they are  
20 similar to the ones in other data, but I ask the  
21 same questions. You know, do I see any anomalies,  
22 any gaps in the data? And specifically, I -- one of  
23 the things that I wanted to understand about the  
24 provider data was the location; right?

25 So as far as like a standardization, I

1 wanted to make sure that the data fields that  
2 include information about address or the location of  
3 a provider were standard and could be queried  
4 accordingly. I -- yeah, I think those are some of  
5 the steps that -- that I took as part of the  
6 standardization process -- process.

7 Q And what's the as-of date for the provider  
8 directory?

9 A I believe that that relates -- so in my  
10 review of the data and conversations with the  
11 company personnel, I -- I was told that -- the  
12 instruction that was provided to me represented  
13 current providers in their directory as-of date, and  
14 I think that date is kind of sometime near the  
15 beginning of December or somewhere around there.

16 Q Okay. So on the -- what we marked as  
17 Exhibit 4 -- excuse me -- it indicates a submission  
18 date of 12/6/2018. Do you see that?

19 A Uh-huh.

20 Q Do you think that would be deemed the  
21 as of date for the information that was provided in  
22 the provider directory data?

23 A I think it -- it might be. Either that or  
24 around that. Because, in fact, that's a  
25 discussion -- a point of discussion that I had with

1     them.   So that's in line with my understanding.

2     That if not that date, sometime around there.

3           Q     So there's no indication in the provider  
4     directory data as to whether -- as to the duration  
5     of the providers listed being network providers for  
6     United; isn't that correct?

7           A     No.   No, there isn't.

8           Q     Did you do any de-duplication within the  
9     provider directory data?

10          A     I believe we followed the same procedures.  
11     Some of them are just standard.   I just tried to see  
12     if there are any duplicates, so yes.

13          Q     So by which metrics did you use to  
14     de-duplicate the providers?

15          A     Tried to see if it would be the same --  
16     the most basic one would be all the information or  
17     the information code included in all the fields as,  
18     you know, is repeated in other claim.   So it's a  
19     mirror claim.   But then beyond that, we actually  
20     look at like the names, right, and the addresses of  
21     the providers and try to understand if they were  
22     providers.

23                   One of -- one of the things that I think  
24     that I observed from the database is that there are  
25     providers that may have more than one location;

1 right? So those are some of the steps that we took  
2 to kind of verify that each record was unique.

3 Q So the provider directory data should only  
4 include unique records of providers? So a provider  
5 to have more than one office would only include one  
6 record for that provider?

7 MR. HAWLEY: Objection. Vague. Lacks  
8 foundation.

9 THE WITNESS: No. It would list -- the  
10 data, as it was provided to us and then as was  
11 evaluated by us, would include multiple locations.  
12 So it would be multiple records of one single record  
13 for each location in a case of, you know, a provider  
14 that -- that has a practice or practices in multiple  
15 locations.

16 BY MS. DONALDSON SMITH:

17 Q Okay. And when you were doing your  
18 calculations with respect to, for example, the  
19 number of selected specialty providers per CBSA,  
20 were you counting each provider as one provider, a  
21 unique provider, or were you counting each location  
22 as a unique provider?

23 MR. HAWLEY: Objection. Vague.

24 THE WITNESS: I took the most conservative  
25 approach, which was to say if a provider had

1 multiple locations, I just picked a location. So it  
2 was location centric. Which it represents a more  
3 conservative approach to that because I'm not --  
4 basically, you know, same -- it's -- the information  
5 in the system is correct that that provider is --  
6 has two records, but effectively, I'm just assigning  
7 that. I'm not double counting it. I'm just saying,  
8 okay, you're just in this location. So it's  
9 location centric, facility centric.

10 BY MS. DONALDSON SMITH:

11 Q And is that analysis that -- that deduping  
12 analysis reflected in any documentation?

13 MR. HAWLEY: Objection. Vague.

14 THE WITNESS: Meaning?

15 BY MS. DONALDSON SMITH:

16 Q Is there a database that only collects the  
17 single location, unique location for each provider  
18 that's in the broader provider directory data?

19 A Right. Well, I think that -- again, as  
20 part of just the day-to-day operation, right, in  
21 dealing with the database, we wrote a logic query  
22 that can -- and did exactly what I mentioned to you.  
23 So that there is a program that was created, right,  
24 and is a accumulative knowledge to get that.

25 Q Mr. dos Santos, in paragraph 23 of your

1 report -- please go there. The last sentence of  
2 that paragraph states "For instance, noncredentialed  
3 providers, e.g, lactation support consultants, may  
4 need to follow different billing procedures than  
5 credentialed professionals, e.g., pediatricians,  
6 obstetricians."

7 A Uh-huh.

8 Q Do you see that?

9 And if you want to read the rest of the  
10 paragraph, go ahead. So I wanted to understand how  
11 is it that you were aware of that policy that's  
12 stated there that noncredentialed providers may need  
13 to follow different billing procedures.

14 MR. HAWLEY: Objection. Lacks foundation.  
15 Vague.

16 Go ahead.

17 THE WITNESS: So to put in context, right,  
18 what I'm doing in this portion of my report, right,  
19 is just describing or providing some context, or as  
20 it said, as an overview of the billing and  
21 adjudication process. So the -- this reference, in  
22 doing so, I -- some information comes from my own  
23 experience of the processing, right, and the claim  
24 adjudication process, which I summarize here, and  
25 some of the knowledge I gained through just Internet

1 research, right, of just, okay, looking at articles  
2 or, you know, just kind of browsing the Internet in  
3 general for information as to how some of these  
4 codes are -- are used by different professionals.

5 So that has no meaning other than just  
6 trying to kind of add some color as to how some of  
7 the codes are applied within the context of  
8 adjudication -- billing and adjudication process.

9 BY MS. DONALDSON SMITH:

10 Q Okay. So do you -- is this, then, a  
11 statement with respect to United billing or just a  
12 statement generally?

13 A In generally, yeah.

14 Q Do you know if this is how United billing  
15 procedures operate?

16 A No.

17 MR. HAWLEY: Objection. Vague.

18 THE WITNESS: No, I don't know.

19 BY MS. DONALDSON SMITH:

20 Q Did you review any United policies with  
21 respect to billing procedures?

22 MR. HAWLEY: Objection. Instruct you not  
23 to answer to the extent it requires you to divulge  
24 work product. But if she's asking you if you  
25 considered those as part of your opinion or your

1 report, you can answer that.

2 THE WITNESS: Okay.

3 No, I have not reviewed that specifically  
4 with the context of the report. No.

5 BY MS. DONALDSON SMITH:

6 Q Paragraph 4 -- 24. Mr. dos Santos, it  
7 states that "There are several factors to be  
8 considered that may impact the selection of CPT  
9 codes, such as," and it goes on.

10 What is the basis for your statement  
11 that's made in 24?

12 A Again, the same idea --

13 MR. HAWLEY: Objection. Vague.

14 Go ahead.

15 THE WITNESS: -- of reviewing general  
16 information on this topic.

17 BY MS. DONALDSON SMITH:

18 Q Is this based on information provided to  
19 you by counselor or by United?

20 A No.

21 Q And so in paragraph 25, you indicate --  
22 you quote from the declaration of Ms. Huckaby.

23 A Uh-huh.

24 Q Do you see that?

25 Did you review Ms. Huckaby's declaration

1 in full?

2 A I read it in its totality, yeah.

3 Q And did you read the exhibits that were  
4 referenced in her declaration?

5 A I don't recall reading them or I may have  
6 seen them. I don't recall as I sit here right now.

7 Q Are you familiar with what United calls  
8 coverage -- coverage determination guidelines?

9 A I think I heard the term before.

10 Q The CDG it's sometimes called?

11 A Right. But I -- I don't know much about  
12 it in detail.

13 Q Did you review or consider the CDG in  
14 connection with rendering your opinions in this  
15 report?

16 A I --

17 MR. HAWLEY: Objection. Vague.  
18 Potentially argumentative.

19 You can answer.

20 THE WITNESS: Yeah, again, I don't  
21 think -- that was not a requirement within the  
22 context of the analysis that I did for this report.  
23 So no.

24 BY MS. DONALDSON SMITH:

25 Q So you're not rendering any opinions with

1 respect to United's guidelines with respect to codes  
2 or billing; correct?

3 A Correct. I'm not providing any opinion in  
4 that regard.

5 Q Okay. Paragraph 25 also states "These  
6 guidelines indicate what codes need to be billed to  
7 obtain reimbursement for preventative services,  
8 including lactation support services."

9 And there's no citation to Ms. Huckaby's  
10 declaration there. Where -- what's the basis for  
11 that statement?

12 A I think it was her report as well. So  
13 from that perspective, I think that the location of  
14 that footnote could be moved down to the end of that  
15 paragraph.

16 Q So you're not making any -- you're not  
17 rendering any opinion with respect to United's  
18 guidelines as indicating to providers what codes  
19 they need to bill in order to obtain reimbursement?

20 MR. HAWLEY: Objection. Vague.

21 You can answer.

22 THE WITNESS: No, I'm not making any --  
23 I'm not -- I'm not stating an opinion with regards  
24 to the guidelines.

25 / / / /

1 BY MS. DONALDSON SMITH:

2 Q And you're not -- you're not  
3 characterizing the guidelines either here, you're --  
4 correct?

5 MR. HAWLEY: Objection. Vague.

6 THE WITNESS: I'm just providing a broad  
7 description of my understanding of the process.  
8 I -- I'm not -- I've been not asked to and I'm not  
9 providing an opinion with regards to the guidelines.

10 BY MS. DONALDSON SMITH:

11 Q Is it your understanding, based on your  
12 experience, that an insured tells providers how to  
13 bill?

14 MR. HAWLEY: Objection. Vague.

15 Incomplete hypothetical.

16 You can answer.

17 THE WITNESS: It's my understanding, in  
18 general, that there are guidelines as they are  
19 being, you know, mentioned in here that are put  
20 forward by different companies, yes.

21 BY MS. DONALDSON SMITH:

22 Q And are those guidelines -- strike that.

23 Did you have -- did you come, as part of  
24 your engagement, to have an understanding about  
25 United's claim adjudication process?

1 MR. HAWLEY: Objection. Vague.

2 And instruct you not to answer to the  
3 extent it requires you to divulge work product.

4 THE WITNESS: Sorry. Could you reframe --  
5 reframe that, please.

6 BY MS. DONALDSON SMITH:

7 Q Sure.

8 As part of rendering your opinions, did  
9 you consider any documents with respect to or  
10 information with respect to United's claim  
11 adjudication process?

12 MR. HAWLEY: Objection. Vague.

13 THE WITNESS: No, not specifically. No  
14 documents with regards to their -- you know,  
15 their -- the specific claim adjudication system was  
16 provided to me or shared with me.

17 BY MS. DONALDSON SMITH:

18 Q So in paragraph 28, Mr. dos Santos,  
19 there's a reference there to guidelines on the third  
20 line.

21 A (Examining.) Correct.

22 Q Okay. So which guidelines are you  
23 referring to there?

24 A I think these are the -- the same type of  
25 guide- -- same guidelines that were referenced

1 above. So the general guidelines that the company  
2 provides, practitioners.

3 Q So what were the instructions given to you  
4 by counsel with -- that you're referring to in  
5 paragraph 28? What were the specific instructions?

6 MR. HAWLEY: The document speaks for  
7 itself.

8 But you can answer.

9 THE WITNESS: Yeah. Again, I think this  
10 is self-explanatory, but yeah. Basically I was  
11 instructed analyze a specific set of data, provide  
12 an -- some explanation as to what that was, and I  
13 think I discussed earlier what the specific ask as  
14 far as like the analysis.

15 BY MS. DONALDSON SMITH:

16 Q Was the instruction from counsel to  
17 analyze the data -- that you were to do an analysis  
18 based on the CBSAs? Was that part of counsel's  
19 instruction to you?

20 A I was not instructed to specifically look  
21 at that -- at that level of granularity. CBSAs was  
22 not something that was suggested or that I was told  
23 to -- to use.

24 Q So in what way did counsel instruct you to  
25 analyze the data?

1 MR. HAWLEY: Objection. Vague. Lacks  
2 foundation. Argumentative.

3 You can answer.

4 THE WITNESS: Again, I guess I -- as I  
5 expressed, that in the scope of engagement, I was  
6 presented with -- basically I was asked to conduct a  
7 data analysis of a population of what I understood  
8 to be lactation support services claims or related  
9 claims to evaluate this allegation of a systemic or  
10 widespread lack of access to or coverage for  
11 lactation services. That's -- you know, that --  
12 that was the instruction.

13 BY MS. DONALDSON SMITH:

14 Q In paragraph 29, you're referring to "The  
15 LSS claims data analyzed, including a total of  
16 47,430 claim lines for the markets and years at  
17 issue in the litigation."

18 What are the markets that you're referring  
19 to in this sentence?

20 A In this sentence, it would be all the  
21 markets that were present in the data, right, but  
22 more broadly, my general understanding is that all  
23 markets are at play. Well, specifically, as it  
24 relates to this statement, it will be the markets  
25 for which, you know, I -- I had information for in

1 the years for which I had the information on.

2 Q So if the -- if a -- is a market a  
3 geographic region?

4 A It depends.

5 Q Okay.

6 A So in my analysis, I looked at that from  
7 different optics, right? My starting point was  
8 looking at the state level. Then from there, I -- I  
9 decided it would make sense to look at the more -- a  
10 higher level of regularity. That's where I made the  
11 decision to analyze the data, organize the data as  
12 it relates to the CBSAs and this core-based  
13 statistical areas.

14 Because those are more uniform and, you  
15 know, they -- they in some way would be more  
16 representative of a -- you know, an area where  
17 somebody would be seeking lactation services.

18 Q So what is the basis for your statement  
19 that the CBSAs would be more representative of  
20 area -- or an area of someone seeking lactation  
21 services?

22 A It's just a smaller region; right? I  
23 think by definition that CBSAs, they represent --  
24 they are defined in such a way that aggregate  
25 together social economics and community ties. So,

1 you know, in determining a CBSA, you know, there's  
2 an evaluation of pattern of transportation and, you  
3 know, things that kind of bind a community together  
4 or an area together. And -- as opposed to just  
5 looking at the statewide. A state can be a pretty  
6 large geographical area, so I figured that.

7 MS. DONALDSON SMITH: Sure. We'll go off  
8 record.

9 THE VIDEOGRAPHER: We are going off the  
10 record. The time is 2:46 P.M. Here marks the end  
11 of Media No. 2 in the deposition of Joao dos Santos.

12 (Brief recess.)

13 THE VIDEOGRAPHER: We are back on the  
14 record. The time is 2:52 P.M. Here marks the  
15 beginning of Media No. 3 in the deposition of Joao  
16 dos Santos.

17 BY MS. DONALDSON SMITH:

18 Q Mr. dos Santos, in paragraph 29, you state  
19 that "The LSS claims data contains claims from all  
20 50 states."

21 How did you reach that conclusion that the  
22 LSS claims data contains claims from all 50 states?

23 A I think that was just a tabulation of --  
24 it was -- the way that it was characterized to me  
25 that the data that was provided to us was the

1 resulted extraction for all 50 states. I think  
2 that's what I mean here.

3 Q Okay.

4 A So like, you know, this data that was  
5 extracted, the intent was to not just limit in any  
6 markets. To the extent that there was a claim in  
7 any state, that it was part of it. So that's kind  
8 of what I mean.

9 Q Okay. So that's not stating that there is  
10 a claim in each 50 -- each of the 50 states?

11 A No.

12 Q Okay.

13 A Again, at this point, I'm just broadly  
14 trying to characterize, right, there's many claim  
15 lines. This is the broad period that's -- that's at  
16 play and here is kind of the markets. That's --  
17 that's all this is.

18 Q All right. So there was 47,430 claim  
19 lines for lactation support services for six years?

20 A Correct.

21 Q So paragraph 30, you're talking about the  
22 CBSAs. Have you worked with CBSA data in other  
23 projects?

24 A Yes, I have.

25 Q Okay. In what context have you used

1 CBSAs?

2 MR. HAWLEY: Instruct you not to answer to  
3 the extent it requires you to divulge work product.  
4 But other than that, you can answer.

5 THE WITNESS: Sure. I won't go into  
6 details. But I -- part of the work that I do in a  
7 number of projects involved the use of geo reference  
8 data. So that would be, you know, information  
9 that's not some sort of GIS system; right? An  
10 integration of that with database analytics. So in  
11 that context, in a number of instances, I -- I end  
12 up using CBSAs or a derivation of -- of a  
13 statistical unit as the basis for -- for the  
14 analysis in comparison of different statistics.

15 BY MS. DONALDSON SMITH:

16 Q So the CBSAs come from the census bureau,  
17 the U.S. census bureau?

18 A That's correct.

19 Q You have a foot [sic] in here reference to  
20 the 2010 census summary from the U.S. census bureau?

21 A Correct.

22 Q Is the -- are the CBSAs based on 2010  
23 census data?

24 A The census is conducted once every ten  
25 years; right? So the -- whatever -- many of the

1 different products that you can get from the U.S.  
2 census bureau are based on the actual census, which  
3 took place in 2010 in this case. But there are --  
4 they're updated with estimates to reflect the  
5 passage of time. But that is the base year from a  
6 U.S. -- from a -- from a U.S. census perspective  
7 that was -- that's used for the CBSAs that -- that I  
8 employ in this analysis.

9 Q Okay. And it would not have been -- it  
10 indicates here it was issued September 2012, so they  
11 would not have been updated since September of 2012,  
12 then?

13 A Evidently that's the case, yes.

14 Q So here you indicate that there are 935  
15 defined CBSAs in the U.S. and Puerto Rico. How many  
16 of the 935 CBSAs are for Puerto Rico? Do you know?

17 A No, I don't know.

18 Q Did you have any claims from Puerto Rico?

19 A Not that I know of. Here I'm just trying  
20 to characterize, give some flavor as to what the  
21 CBSA is; right?

22 Q So out of the 935 CBSAs, 426 of them were  
23 represented in the LSS claims data; correct?

24 A Correct.

25 Q So that's about 45 percent?

1 A Correct.

2 Q So 55 percent of them were not  
3 represented, did not have claims in the LSS claims  
4 data?

5 MR. HAWLEY: Vague. Lacks foundation.

6 You can answer.

7 THE WITNESS: Fifty-five percent of them  
8 or so or, you know, as you can say, you know, the  
9 majority of them were not mapped to a claim or  
10 didn't have a claim that -- that would be part of  
11 it. Including some, like as you see, there are also  
12 595 claim lines that didn't map to a specific CBSA.

13 BY MS. DONALDSON SMITH:

14 Q And that was what -- you have it here.  
15 1.3 percent of the total filed, does that mean the  
16 total LSS claim lines?

17 A Correct.

18 Q Okay. Did you -- are there -- sorry.  
19 Strike that.

20 Is there a summary or a report reflecting  
21 the analysis about the number of CBSAs that are  
22 represented in the LSS data other than what we see  
23 here?

24 MR. HAWLEY: Objection. Vague.

25 THE WITNESS: No, I don't think so.

1 BY MS. DONALDSON SMITH:

2 Q So which CBSAs are represented by the LSS  
3 claims data?

4 MR. HAWLEY: Objection. Vague.

5 THE WITNESS: I would not be able to tell  
6 you as I sit here. Specifically, I was more -- in  
7 this context, I was more interested in just  
8 understanding from a broad perspective or holistic  
9 perspective what is it that I see when I map the  
10 claims to these more granular regions.

11 BY MS. DONALDSON SMITH:

12 Q Your -- your analysis with respect to the  
13 CBSAs form the basis for your opinion; correct?

14 MR. HAWLEY: Objection. Argumentative.  
15 Vague.

16 THE WITNESS: Just -- yeah. This is one  
17 component of my opinion, yes.

18 BY MS. DONALDSON SMITH:

19 Q All right. Where -- where would you go to  
20 find which of the CBSAs are represented in the LSS  
21 claims data?

22 A Within the data itself. So like I -- I  
23 would have the ability, if that was my focus, to  
24 make a determination of what CBSAs there is a claim  
25 for or not.

1 Q Okay. But why was that not your focus?

2 A Oh, my focus, again, was not to make a  
3 determination on a individual basis, right?  
4 Remember, I'm taught to understand patterns as it  
5 relates to the systematic, systemic, or widespread.  
6 And so from that perspective, the -- and as it's  
7 described for this particular analysis, I'm just  
8 interested in understanding, okay, what is the  
9 coverage geographically as defined by the CBSAs as a  
10 unit from the claims data that I -- that was  
11 provided.

12 Q So that there are 426 CBSAs with LSS  
13 claims data is suggestive -- suggestive of  
14 nonsystemic issues with respect to coverage for  
15 lactation support claims?

16 MR. HAWLEY: Objection. Vague.

17 THE WITNESS: Every analysis -- the -- my  
18 opinion was a buildup of different analysis that  
19 I -- that I did; right? This specific analysis I  
20 think is aimed at the understanding, from my  
21 perspective, what is the representation from the  
22 data with regards to different geographies; right?  
23 Primarily, the main point that I get out of here is  
24 that if I -- the data from the lactation support  
25 services claims is on one hand sufficient for me to

1 make a assessment from a overall perspective, but as  
2 it relates to make individualized determinations,  
3 that data has some limitations. And this is what  
4 this analysis is indicating.

5 That there are a number of -- if one were  
6 to make an individualized determination as it  
7 relates to a particular market, defined as, in this  
8 case, by a CBSA, the LSS claims data would not allow  
9 for that. There'll be some additional inquiry that  
10 will be required.

11 So that's -- that's -- that's what I'm  
12 getting at here. I'm just trying to understand that  
13 representation of the claims data across all these  
14 markets.

15 BY MS. DONALDSON SMITH:

16 Q So what is an example of a claim that did  
17 not map to a CBSA?

18 A It will be a claim that might be in a  
19 location that is outside of the CBSAs. So the  
20 CBSAs, they are defined by -- you know, objectively  
21 defined by the U.S. census on a specific set of  
22 criteria, which I describe here. So it's possible  
23 that one claim may take place in a ZIP code that's  
24 outside, say, the combinations of ZIP codes that are  
25 part of a one given CBSA.

1 Q So is the ZIP code based on the provider  
2 ZIP code or the member ZIP code? Which ZIP code is  
3 it? Do you know?

4 A The member.

5 Q The member. So if the member's ZIP code  
6 fell outside the CBSA, then they would be outside  
7 the CBSA. If a provider's ZIP code was outside the  
8 CBSA, they could still be in the claim -- the claim  
9 could still be in the CBSA?

10 MR. HAWLEY: Objection. Incomplete  
11 hypothetical. Vague.

12 You can answer.

13 THE WITNESS: It would depend on the  
14 analysis by -- so like in a provider-centric  
15 analysis, right, from -- what I'm interested is  
16 understanding the location of a provider. It's in  
17 that context that, yeah, if it fell outside of a  
18 CBSA defined by the location for provider, then  
19 that -- that claim will not be part of it.

20 BY MS. DONALDSON SMITH:

21 Q Okay. So is this analysis a  
22 provider-centric analysis or the member-centric  
23 analysis in terms of the claim?

24 MR. HAWLEY: Objection. Vague.

25 THE WITNESS: Here is -- so here is a just

1 a characterization. I think here, based on -- in  
2 this context, is done from a member perspective.

3 BY MS. DONALDSON SMITH:

4 Q Okay. So the member's ZIP code?

5 A Right.

6 Q So paragraph 31, as part of your report,  
7 you are identifying certain type of specialty  
8 providers that you see in the LSS claims data;  
9 correct?

10 A Correct.

11 Q So why did you call out lactation  
12 specialists, pediatricians, obstetricians, and  
13 gynecologists from the claims data?

14 MR. HAWLEY: Objection. Vague. The  
15 document speaks for itself. Lacks foundation.

16 You can answer.

17 THE WITNESS: In this context here, part  
18 of -- like a large -- a significant percentage of my  
19 work was really just looking at this data and  
20 understanding patterns or, you know, kind of what --  
21 what's in this data.

22 So this paragraph is aimed particularly  
23 trying to say, hey, reporting the fact that there  
24 were 147 different types of specialty there.  
25 Furthermore, you know, I see that the majority of

1 those claims come from a particular subset of  
2 providers. So I'm just recording that finding.

3 And to me, that was relevant because, you  
4 know, you see that there is a skewed distribution;  
5 right? From 147 you have 4 of them that are  
6 responsible for the vast majority; right?

7 BY MS. DONALDSON SMITH:

8 Q That was going to be actually my next  
9 question. So you would count these, the lactation  
10 specialists, the pediatricians, obstetricians, and  
11 gynecologists, as 4 out of the 147 types of  
12 specialty providers?

13 A I'm not sure exactly how I did it. It  
14 will be a way. One could potentially do that. I  
15 didn't have a particular framework in mind. This is  
16 just really more -- it's really more for the -- for  
17 perspective of observation; right? Hey, look, there  
18 is a skewed distribution. Most of these claims seem  
19 to be focused on a small subset of providers.

20 Q And what information did you use from the  
21 LSS claims data to identify the selected specialty  
22 providers?

23 MR. HAWLEY: Objection. Vague.

24 THE WITNESS: What do you mean by that  
25 specific -- what field or --

1 BY MS. DONALDSON SMITH:

2 Q Correct. Did you look at their specialty  
3 code? Did you look at the description of -- the  
4 provider description or the taxonomy code? What --  
5 what information about the claim did you see to  
6 identify that that claim was for a certain provider  
7 or the specialty providers that you referred to?

8 A Well, it would depend on what database, so  
9 I don't know specifically what field. But it would  
10 be -- and we probably did a number of iterations of  
11 this, or like, you know, trying to kind of evaluate  
12 the different perspectives in there or task the  
13 different fields. But it would be one of the fields  
14 that describes what specialty that provider is -- is  
15 associated with.

16 Q So in your description here of the  
17 selected specialty providers, are the providers that  
18 you then requested be pulled and included in the  
19 provider directory data?

20 A Yeah. This -- so this was -- through the  
21 analysis of this data, right, that I gain insight as  
22 it relates to the types of providers for which I had  
23 claims data that seem to be responsible for the  
24 majority of claims. So in structuring my request  
25 for data from the provider database, to make it

1 manageable and conservative, I asked them to focus  
2 that extraction on providers that were similar or  
3 associated with those descriptions.

4 Q Okay. So the -- the provider directory  
5 includes, for example, the pediatric nurse  
6 practitioner. Is that what you intended the  
7 provider directory to include?

8 A Yes. So it will be pediatric -- pediatric  
9 related. I didn't -- I didn't limit that to just be  
10 pediatricians. It would be like pediatrics related;  
11 right? Again, specialty in that context because  
12 some of the specific definitions within one of the  
13 databases might not match specifically to one from  
14 the provider directory. So those are more vague  
15 descriptions in that way.

16 Q All right. And you're not opining that  
17 any one of the providers here listed in the provider  
18 directory data provides lactation support services?

19 MR. HAWLEY: Objection. Vague.

20 THE WITNESS: I'm opining or I'm making  
21 the link, right, a couple of observations that I  
22 gather from my analyze, that this, like, types of  
23 lactation or lactation specialist, pediatricians,  
24 obstetricians, right, tend to be associated with the  
25 vast majority of claims in the lactation support

1 services claims database that are being defined to  
2 me as lactation services; right? And I am observing  
3 that -- you know, they are providers in the  
4 directory that share the same profile; right? So  
5 there's that element that they -- they have the  
6 same --

7 BY MS. DONALDSON SMITH:

8 Q Provider specialty?

9 A -- characteristics.

10 Q That they have the same provider  
11 specialty?

12 A They are -- they are characterized as the  
13 same types of providers that I see in -- from the  
14 claims data are providing those services. So  
15 that's -- that's -- that's one opinion. That's one  
16 opinion that I gathered from my empirical review of  
17 the data.

18 Q Did you consider an analysis of the  
19 selected specialty providers by CBSA?

20 MR. HAWLEY: Objection. Vague.

21 THE WITNESS: No, because that -- that  
22 was -- sorry. Can you reframe that?

23 BY MS. DONALDSON SMITH:

24 Q Sure. Did you look at an analysis of the  
25 selected specialty providers, the 63 percent that

1 you've identified of claim lines by CBSA?

2 A No -- sorry. Go ahead.

3 MR. HAWLEY: Yeah. To the extent it  
4 requires you to -- and it involves work product,  
5 don't answer the question. You can go ahead with  
6 that caveat.

7 THE WITNESS: No. I didn't consider that  
8 within the context of how I was structuring my  
9 analysis.

10 BY MS. DONALDSON SMITH:

11 Q So in connection -- Mr. dos Santos, in  
12 connection with your review of the LSS claims data,  
13 you identified from that data claims that were filed  
14 with an in-network provider. So how did you  
15 determine which of the claims were related to an  
16 in-network provider?

17 A Do you mind if we go back one step? I was  
18 thinking about the previous question.

19 Q Sure.

20 A So I have conducted an analysis of  
21 understanding providers, right, as particular as  
22 they relate from the providers directory within the  
23 context of the CBSA. Meaning just to see what was  
24 the representation from the providers directory  
25 perspective of this selected providers in there. I

1 mean, that I have done. But I -- I don't know if  
2 that's the context that you asked that question.

3 Q Did you analyze the -- did you -- strike  
4 that.

5 Does your opinion consider the LSS claims  
6 data on the basis of a unique provider analysis?

7 MR. HAWLEY: Objection. Vague.

8 THE WITNESS: Not to the LSS claims data.  
9 The providers data, not as a unique, but as a group;  
10 right? Because I think that's what you see in  
11 paragraph 43 of my report, wherefore that selected  
12 group -- and the reason for using that selected  
13 group is simply that I learned -- from my empirical  
14 analysis of the data, I learned that they are  
15 responsible for the bulk of our claims. And that's  
16 why I focus on them as a group and primarily because  
17 of that, that I -- I analyzed and contrasted against  
18 the LSS claims data to just try to understand for me  
19 supply side or from an availability of providers,  
20 you know, what -- what we see within the provider  
21 directory.

22 BY MS. DONALDSON SMITH:

23 Q Okay. And your opinion isn't based on how  
24 many of the claims or concentrated with a certain  
25 number of providers; correct?

1 MR. HAWLEY: Objection. Vague.

2 THE WITNESS: Sorry. Can you -- can you  
3 frame that.

4 BY MS. DONALDSON SMITH:

5 Q Sure.

6 Did -- as part of your analysis, did you  
7 look at the number of claims in the LSS claims data  
8 in relation to a unique provider?

9 A You mean by provided mean provider --

10 MR. HAWLEY: Objection.

11 THE WITNESS: I'm sorry. Go ahead.

12 MR. HAWLEY: Vague. I don't understand  
13 the question.

14 You can answer.

15 THE WITNESS: Do you mean provider type?  
16 Is that what you mean by provider?

17 BY MS. DONALDSON SMITH:

18 Q No. Unique provider. So did you take --  
19 as part of your analysis and your opinion, did you  
20 look at each provider and the number of claims in  
21 the LSS claims data with respect to a single  
22 provider?

23 MR. HAWLEY: Objection. Vague.

24 THE WITNESS: I don't think so. I don't  
25 think I had to. I may not have completely

1 understood, you know, the context that you are  
2 describing this. But --

3 BY MS. DONALDSON SMITH:

4 Q So, you know, hypothetically speaking,  
5 would it be relevant to your analysis if -- to know  
6 how many of the providers had 10 or more claims in  
7 the LSS claims data over the period of six years?

8 MR. HAWLEY: Objection. Vague.

9 Incomplete hypothetical. Lacks foundation.

10 You can answer.

11 THE WITNESS: Not specifically, no. I  
12 mean, my analysis were not designed in that way.

13 BY MS. DONALDSON SMITH:

14 Q Okay. So it's not relevant to your  
15 opinion about United's network and the access and  
16 coverage with respect to lactation support claims in  
17 that network as to how many of the claims were  
18 concentrated with a limited number of the providers  
19 listed in the LSS claims data?

20 MR. HAWLEY: Objection. Argumentative.  
21 May mischaracterize his testimony. Vague. Lacks  
22 foundation.

23 THE WITNESS: Yeah, that -- that's a  
24 loaded -- there's a number of qualifiers there that  
25 I don't understand or I will need qualification --

1 an explanation.

2 BY MS. DONALDSON SMITH:

3 Q Okay. So you didn't see in the LSS claims  
4 data that a limited number of providers had  
5 submitted most of the LSS claims in the database?

6 MR. HAWLEY: Objection. Lacks foundation.  
7 Vague. Argumentative.

8 You can answer.

9 THE WITNESS: Again, I -- as I mentioned,  
10 right, 63 percent of the claims come from a group of  
11 providers which I describe and kind of understood  
12 what the -- their specialties were. And these are  
13 the lactation specialists, pediatricians,  
14 obstetricians, and gynecologists. So in that  
15 context, I -- that -- that is an observation that I  
16 derived from the data.

17 BY MS. DONALDSON SMITH:

18 Q And the number of such providers that  
19 comprise or account for those claims is not relevant  
20 to your opinion?

21 MR. HAWLEY: Objection. Vague.  
22 Argumentative. Lacks foundation.

23 THE WITNESS: I -- I don't know if I  
24 understand. But within the context of  
25 understanding, right, say to the extent that it was

1 a demand for a service and a supply of a service,  
2 there was met, right, and can be observed in the  
3 database, the -- the -- how many individuals or  
4 claims are handled by a particular provider is not  
5 something that I focused. I was focused in  
6 understanding from all the claims in a particular  
7 region, right, what percentage of them were handled  
8 by a provider that was in network as opposed to, you  
9 know, not in network.

10 BY MS. DONALDSON SMITH:

11 Q So it was not part of your consideration  
12 if a majority of the claims in any CBSA was handled  
13 by, say, one provider and the remainder of the  
14 claims were handled by the remaining number of  
15 providers in that CBSA?

16 MR. HAWLEY: Objection. Argumentative.  
17 Lacks foundation. Vague.

18 THE WITNESS: There was not a  
19 consideration within the context of determining a  
20 percentage of in-network claims.

21 BY MS. DONALDSON SMITH:

22 Q So how did you identify in the LSS claims  
23 that a claim was submitted by an in-network  
24 provider?

25 A There was in the -- the data, there's a

1 flag or there are flags as to whether a provider is  
2 in network or not or the network status.

3 Q So your determination of whether or not a  
4 claim was in network was based on the flag for the  
5 provider and not the treatment of the claim?

6 MR. HAWLEY: Objection. Vague.

7 THE WITNESS: Well, I don't know if I  
8 understand particularly the second part -- part of  
9 your statement.

10 BY MS. DONALDSON SMITH:

11 Q So -- okay. We'll move on to something  
12 else.

13 Did you investigate if a provider  
14 participation status changed over the course of the  
15 class period?

16 A I didn't --

17 MR. HAWLEY: Objection. Vague.

18 I instruct you not to answer to the extent  
19 that it requires you to divulge work product.

20 THE WITNESS: I inquired about that and --  
21 and evaluated the data and tried to gain insight in  
22 that regard, and it's possible that a provider may  
23 be part of the network at one point in time but not  
24 another point in time.

25 The data, the claims data is historical

1 data; right? It has a temporal to it, has both a  
2 temporal and a cross-sectional component to it. So  
3 to the extent that we're talking about the claim  
4 that was filed back in 2013, right, that provider  
5 that might have been in network then might not be in  
6 network today. Or might be in network and be -- or  
7 be not a location. So that's -- that's possible.

8 BY MS. DONALDSON SMITH:

9 Q You indicate in your report that across  
10 all claims filed during the class period,  
11 72.9 percent were filed in network.

12 MR. HAWLEY: Are you talking about  
13 paragraph 32?

14 MS. DONALDSON SMITH: Paragraph 32.

15 Q And then there's a reference there to  
16 footnote 11.

17 A Correct.

18 Q Okay. So what -- can you explain the  
19 72.9 percent in the context of, then, the footnote.

20 A Yes.

21 Q Okay.

22 A I need to make a correction to this  
23 footnote. I think it's poorly written here. So  
24 I'll describe specifically what that is. It is in  
25 line with this, but I think there is some detail

1 that has to be added.

2 So the measure of in-network percentage is  
3 the ratio of two metrics or two pieces of  
4 information. The numerator is -- includes the  
5 number of lactation support and related service  
6 claim lines, right, that they're in network. And  
7 the denominator includes the same types of claims,  
8 right, any lactation support and related claim lines  
9 that -- in total, in network and out of network.  
10 And I think that -- yeah, there's a couple words  
11 that were not -- didn't make its way to the second  
12 part of the -- the sentence there.

13 Q Like "network" might have been out of it?

14 A Yeah. Right. Right. So I apologize for  
15 that.

16 Q Okay. So how does the 72.9 percent, then,  
17 what does that represent? Is that a mean of the  
18 in-network percentage as you've defined it or  
19 redefined it in the footnote?

20 MR. HAWLEY: Objection. Vague.

21 THE WITNESS: No.

22 MR. HAWLEY: Argumentative.

23 THE WITNESS: Sorry.

24 BY MS. DONALDSON SMITH:

25 Q Okay.

1           A     No. This is -- this is not the -- it is  
2 not the mean.

3           Q     Okay. So what is -- what is the  
4 72.9 percent?

5           A     This would be -- basically it's a weighted  
6 percentage, right, across all time periods and all  
7 markets. So it's across all claims.

8           Q     And what do you mean by "weighted"?

9           A     Well, that's just a technical aspect. I  
10 would just say it's an average across all claims,  
11 which is representative of all markets and time  
12 periods.

13          Q     Okay. Was the 72.9 percent analysis  
14 derived by applying algorithms to the LSS claims  
15 data?

16               MR. HAWLEY: Objection. Vague.

17               THE WITNESS: Yeah. Can you reframe that.

18 BY MS. DONALDSON SMITH:

19          Q     What metrics did you identify and apply to  
20 the claims data in order to derive the 72.9 percent?

21          A     Sure.

22               MR. HAWLEY: Objection. Vague.

23               You can answer.

24               THE WITNESS: That's what I -- I just  
25 described, like as it relates to footnote 11. By

1 then I clarify that the numerator is the number of  
2 claims that were in network, and the denominator are  
3 the number -- total number of claims both in network  
4 and out of network, both being lactation support and  
5 related service claim lines.

6 BY MS. DONALDSON SMITH:

7 Q So in Table 1, you're providing here some  
8 information or some analysis about the LSS claims  
9 data; correct?

10 A Uh-huh. Yes.

11 Q So what -- when you say total records,  
12 what are you referring to when you're using the term  
13 "records" there?

14 A I -- I use them in -- this will be the  
15 same as claim lines. Like every claim line or every  
16 record in the dataset corresponds to a claim line,  
17 as I describe earlier in the report.

18 Q So this, then, accounts for all 47,430  
19 claim lines in the LSS claims data?

20 A It should.

21 MR. HAWLEY: Objection. Vague.

22 THE WITNESS: Yes.

23 BY MS. DONALDSON SMITH:

24 Q Did you consider the difference between  
25 the percentage of claims that were adjudicated with

1 cost share or denied for the out-of-network  
2 providers versus the in-network providers?

3 MR. HAWLEY: Objection. Vague.

4 THE WITNESS: What do you mean by that  
5 specifically?

6 BY MS. DONALDSON SMITH:

7 Q Did you do any analysis with respect to  
8 the out-of-network claims that were in the LSS  
9 claims data?

10 A Out-of-network claims. Oh, they are part  
11 of this analysis, right, because of everything --  
12 for instance, here I -- I tabulate statistics about  
13 both in network and out of network.

14 Q So what are the statistics about the out  
15 of network?

16 A Well, there are --

17 MR. HAWLEY: Objection. Vague.

18 Go ahead.

19 THE WITNESS: There are about 13,000 of  
20 them, 2,000 of them or so have been fully -- fully  
21 paid. A number -- I have the number of cost share  
22 of those that had cost shares, the number of those  
23 that were denied. And the same way for every metric  
24 that calculated for the in network, I calculated for  
25 the out of network as well.

1 BY MS. DONALDSON SMITH:

2 Q So looking at the out-of-network  
3 percentage of claims for the cost share and then the  
4 number of denied records, so we see 22.7 percent had  
5 cost share for the out of network?

6 A Correct.

7 Q Am I reading that correctly?

8 Okay. And then the number of denied  
9 records, there were 60 percent?

10 A Correct.

11 Q So -- and then we look at the in-network  
12 claims. Cost share claims represent 2.7 percent and  
13 denied represent 14.5 percent.

14 A Correct.

15 Q So did you consider or render any opinions  
16 or conclusions about the variation between the  
17 out-of-network differential between the cost share  
18 claims and the denied for in network and for out of  
19 network?

20 A No. I did not -- I did not evaluate that.  
21 It was not, from my perspective, relevant for -- for  
22 my analysis.

23 Q Did you consider, as part of your  
24 analysis, the percentage of claims that were  
25 adjudicated as out of network that were attributed

1 to a provider with the 380 lactation specialist  
2 provider specialty designation?

3 A Not specifically.

4 MR. HAWLEY: Objection. Vague.

5 You can answer.

6 BY MS. DONALDSON SMITH:

7 Q Generally, did you do that?

8 A No. To be clear, what you mean, the 380,  
9 are you talking about one of the -- the provider  
10 codes that is specific to lactation services --  
11 lactation specialists?

12 Q Correct.

13 A Yeah. No, I didn't do any analysis that  
14 was provider centric or provider-type centric, other  
15 than the one that I just described to you that was  
16 stating that the majority of the claims comes from a  
17 subset or a smaller subset of providers.

18 Q As part of your -- as part of rendering  
19 your opinion, did you consider any information with  
20 respect to gap exceptions that are offered by  
21 United?

22 A Not explicitly, no.

23 Q And --

24 A But especially, no, I have not. Again,  
25 within here, right, as we're looking in this table

1 and contrasting that against the question that I was  
2 asked, okay, is there a widespread systemic  
3 prevalent -- a prevalent lack of in-network claims,  
4 that -- that -- you know, this analysis to me was  
5 foregoing in kind of making a determination for, you  
6 know, developing an understanding of that.

7 So the level for analysis or the specific  
8 analysis that I designed and conducted was a  
9 function of what I was learning empirically from the  
10 data.

11 Q Did you assume that if a claim was  
12 adjudicated in the LSS claims data as a par  
13 provider, that the adjudication was evidence that  
14 the provider was a contracted par provider?

15 MR. HAWLEY: Objection. Vague. Lacks  
16 foundation.

17 THE WITNESS: I -- I don't know exactly  
18 what you mean. What do you mean by contract par  
19 provider? Or, you know, if you can clarify the  
20 question.

21 BY MS. DONALDSON SMITH:

22 Q So if a claim was adjudicated as an  
23 in-network claim, did you assume that the provider  
24 was a par provider for that claim?

25 MR. HAWLEY: Objection. Vague.

1 THE WITNESS: I didn't have to make any  
2 provider-specific assumptions; right? And I speak  
3 specifically for this analysis. There's a  
4 claim-specific assumption. So like I'm not  
5 analyzing providers. I'm trying to understand for  
6 this population of claims, which I know from the  
7 data, whether they were handled or adjudicated in  
8 network or out of network, what is it that I can  
9 tell about that distribution? So that is not  
10 provider centric.

11 BY MS. DONALDSON SMITH:

12 Q And with respect to the LSS claims data,  
13 you're not opining that it indicates a member's  
14 access to any par provider?

15 MR. HAWLEY: Objection. Vague. Lacks  
16 foundation.

17 THE WITNESS: Can you explain par provider  
18 to me.

19 BY MS. DONALDSON SMITH:

20 Q Participating provider or network  
21 provider.

22 A Well --

23 MR. HAWLEY: Same objections.

24 THE WITNESS: A participating provider,  
25 right -- well, I didn't use that terminology. So I

1 think perhaps it is -- it is --

2 BY MS. DONALDSON SMITH:

3 Q I probably switched it up on you. I  
4 apologize.

5 A Right. Right. From my perspective,  
6 within my world or the way that I define things, you  
7 know, in-network provider are being captured or  
8 being defined and captured within this Table 1 under  
9 that one column of in-network provider claims.

10 Q Okay. So you're assuming, then, an  
11 in-network claim equates to an in-network provider?

12 A Not necessarily. I didn't have to make  
13 that distinction.

14 Q So it's claim centric --

15 A I think I understand what you're saying.  
16 Yeah, no. It's simply that the claim is being  
17 handled in network based on the flags or indicators  
18 from the data that allow me to make that  
19 determination. But it's -- I don't know, you know,  
20 it could be conceivable that perhaps a  
21 out-of-network provider through a gap measure may  
22 provide -- may have provided in-network services. I  
23 don't know that. That was not a requirement in  
24 terms of just understanding, from a claims-centric  
25 perspective, was this handled in the adjudication

1 process as in network or out of network. Does that  
2 clarify?

3 Q Yes. So the LSS claims data is not a  
4 sampling of data; is that correct?

5 A No.

6 MR. HAWLEY: Objection. Vague. Lacks  
7 foundation.

8 THE WITNESS: Sorry. No, my  
9 understanding, again, as I stated, that's the  
10 universe of the population of claims that, as  
11 defined by those specific CPT and diagnosis codes,  
12 you know, are lactation services and related.

13 BY MS. DONALDSON SMITH:

14 Q So did you test to determine whether the  
15 size of the LSS claims data was reasonably  
16 representative of expected lactation support claims?

17 MR. HAWLEY: Objection. Vague.  
18 Unintelligible. Argumentative.

19 THE WITNESS: No. But I didn't have a  
20 reason to test that.

21 BY MS. DONALDSON SMITH:

22 Q In forming the basis of your opinions  
23 reflected in your report, did you do any analysis  
24 with respect to the unique member I.D.s reflected in  
25 the LSS claims data?

1           A     Sorry. That's vague. If you could please  
2 elaborate on that or just reframe it.

3           Q     Did you do an analysis of how many members  
4 were represented in the LSS claims data?

5           A     Not specifically, no.

6           Q     Would you be surprised if the number of  
7 members represented in the LSS claims data pertained  
8 to approximately about 27,000 members for the six  
9 years?

10           MR. HAWLEY: Objection. Lacks foundation.  
11 Vague.

12           THE WITNESS: I don't know. That's a  
13 hypothetical, and I, you know, don't have a means of  
14 making a determination. As I said, I did not  
15 conduct an evaluation of the number of members  
16 that -- you know, that -- for which those claims  
17 represented.

18 BY MS. DONALDSON SMITH:

19           Q     So in paragraph 5, Mr. dos Santos, you  
20 changed from looking at the claims based on the CBSA  
21 to a state analysis; correct?

22           A     You said paragraph 5?

23           Q     Thirty-five. I'm sorry. Am I trailing or  
24 not? Thirty-five.

25           A     You're consistent, though.

1 Q I know. I miss that number.

2 A You always miss the first one. It's the  
3 second digit that you focus on so --

4 Q What does that mean? I'm sleep deprived.

5 A Sorry.

6 Q So why -- why do you change from looking  
7 at the claims based on the CBSA to the claims by  
8 state?

9 A Can we continue?

10 Q Yes.

11 A Okay. Why -- it's the other way around.  
12 So I started from the macro and I went to the micro.

13 Q All right.

14 A Perhaps the order here may not be  
15 reflective of that necessarily, but I start looking  
16 at the -- this overall measure, right, which is  
17 across markets and time. Then I, then, looked  
18 across markets as, you know, at a more macro level  
19 as it was provided in the raw data, which is state;  
20 right? And that's what I see and I have some  
21 observations with regards to that.

22 Then I look at that from a temporal  
23 perspective, and that's what you see there in the  
24 years. And then it was based on that information  
25 that I decide to ask additional questions that would

1 be -- or framed the issue for a more granular  
2 perspective. So I -- you know, to frame that's kind  
3 of -- it's not like I looked at CBSA and then I  
4 moved to a state. It went from a higher -- or a  
5 lower-level granularity to a higher-level  
6 granularity.

7 Q So in paragraph 35 --

8 A Uh-huh.

9 Q -- you state that "I also observed that  
10 some of these populous states, e.g., New York, had  
11 relatively lower in-network percentages when  
12 compared to the other states in the LSS claims  
13 data."

14 What does "relatively lower" mean in this  
15 context?

16 A Relative to the other states. So that's  
17 really -- it's just commenting, right, on figure 1.  
18 So if you want to look at this figure 1, what do you  
19 see? You see, you know, here are representation  
20 across states of what the proportion of in-network  
21 claims are relative to total claims; right?

22 We do know that overall three out of every  
23 four claims that were in the database were in  
24 network, but how does that translate to different  
25 markets? So when I'm saying that, in the case of

1 New York specifically, you could see that, you know,  
2 it seems like just from looking at this, and I can  
3 confirm you from the specific number, underlying  
4 number, that it has a relatively lower than average  
5 of 72, and relatively lower relative to the other  
6 states.

7 Q Is there a number that's assigned to the  
8 relativity? Is there a percentage or --

9 A No.

10 MR. HAWLEY: Objection. Vague.

11 THE WITNESS: Sorry. No. In this  
12 context, it's really just -- just observational  
13 aspect of that. And as it relates to an average,  
14 right, you have, I would expect, that there would be  
15 some level of variation across states; right?

16 BY MS. DONALDSON SMITH:

17 Q So what was the distribution of the LSS  
18 claims data across a state?

19 MR. HAWLEY: Objection. Vague.

20 THE WITNESS: Across a state?

21 BY MS. DONALDSON SMITH:

22 Q Correct.

23 A Well, it -- this analysis doesn't capture  
24 that; right? So there are two levels of  
25 geographical granularity that I looked at. One is

1 state, and then the next one will be the CBSA, which  
2 is not binded by a state. So it's either/or.

3 Q Okay. So when you're referring to the  
4 distribution of in-network claim lines by state,  
5 that doesn't imply any specific geographic  
6 disbursement across the state; correct?

7 MR. HAWLEY: Objection. Vague.

8 THE WITNESS: That's correct. Or what  
9 that means specifically is that those are -- that  
10 relates to the claims that are or were filed within  
11 that state, within the boundaries of that state.

12 BY MS. DONALDSON SMITH:

13 Q So as part of your opinion, did you  
14 consider whether the claims, the LSS claims, were  
15 disbursed throughout a state or geographically  
16 concentrated within a state?

17 A Well, again, that's why when I saw this  
18 distribution or, as part of my investigative  
19 process, when I started at the state level, and, you  
20 know, I made a quick observation, right, it didn't  
21 take much for me to trivialize it for some states  
22 that have fewer claims. So I was like, okay,  
23 there's -- I should look at this from a different  
24 perspective in a kind of smaller scale. And that's  
25 where, then, I moved toward looking at this

1 information from a CBSA-centric perspective as it  
2 relates to the geographical area.

3 So that's -- that was the -- the natural  
4 evolution of this analysis, so to speak, with  
5 regards to the geography. And that's where I  
6 learned the distribution as it relates to the CBSAs  
7 that I referred to earlier in the report that we  
8 talked about.

9 Q So your opinions with respect to the lack  
10 of a systemic network coverage issue does not take  
11 into account the geographic disbursements within a  
12 state of the LSS claims data?

13 MR. HAWLEY: Objection. Vague. Lacks  
14 foundation.

15 You can answer.

16 THE WITNESS: Well, it does; right? So  
17 the 72 percent is an overall number; right? So  
18 that's taking into account time and space; right?  
19 Then I -- I further account for the geographical  
20 distribution, and that was the -- the motivation to  
21 go to the CBSA, you know, by -- by doing that same  
22 analysis on a CBSA level. And that's where I see  
23 and I report here that -- that average is  
24 75 percent; right?

25 So then that is kind of going from -- that

1 takes into account the dispersion, right, in a more  
2 granular level than a state.

3 BY MS. DONALDSON SMITH:

4 Q As part of your analysis, did you consider  
5 what portion of each state does not have any network  
6 indication based on the claims data?

7 MR. HAWLEY: Objection. Vague.

8 THE WITNESS: Again, we went back -- I  
9 moved in the state to a CBSA, so then analysis then  
10 is -- becomes CBSA centric. It is not tied to a  
11 particular state. So I have no observations as to,  
12 you know, what part for the state -- one part of the  
13 states versus another that's being represented in  
14 the claims data.

15 BY MS. DONALDSON SMITH:

16 Q It was not part of your analysis?

17 A It was not the focus of my analysis in  
18 that way. Again, remember, I am trying to  
19 understand from a broad perspective, from a systemic  
20 perspective what is it that I see. And then I look  
21 at overall, and then I look at the different levels  
22 of geographical granularity.

23 Q Is there an average of CBSAs per state?

24 MR. HAWLEY: Objection. Vague.

25 THE WITNESS: I'm sure it can be

1     calculated. I did not calculate the average number  
2     of CBSAs. And I don't know necessarily what the  
3     value of that would be in this construction or  
4     context, I should say.

5     BY MS. DONALDSON SMITH:

6           Q     So moving on to paragraph 36, Mr. dos  
7     Santos. So why did you prepare the analysis that  
8     you discuss in paragraph 36?

9           A     Okay. So again, just -- and this was an  
10    investigative process; right? It's started big as  
11    I'm kind of moving deeper into the data. As I  
12    mentioned to you, as I look at the distribution of  
13    those in-network percentages across states, I  
14    observe that -- I mean, New York stood out, along  
15    with some other ones, where relative to the overall  
16    average that I had calculated earlier or discussed  
17    earlier, you know, had a lower percentage.

18                So to investigate to understand, you know,  
19    any like potential drivers of that, I then created  
20    or designed this additional task or this analysis.  
21    Basically here the idea is essentially I'm creating  
22    a provider density measure; right? Because I'm  
23    trying to say across all the different states  
24    controlled for the number -- or the population of  
25    females between 18 and 45, what is the density or

1 the relative density of providers that I see?

2 And specifically, what I'm trying to  
3 understand is, is there any relationship, right,  
4 clear relationship that I could see from the data or  
5 just, you know, just tasking as a case study between  
6 the provider density metric and -- and the  
7 in-network percentage by one's decision to or, you  
8 know, the outcome of one going -- having a claim in  
9 network or not.

10 So as a case study, I just look at New  
11 York, or I comment on New York here, that what that  
12 analysis indicated that although New York from a  
13 provider density perspective, right, it's above  
14 average, it has a lower-than-average in-network  
15 percentage. So that is inconsistent with the idea  
16 that there is a direct relationship between the  
17 number of providers or provider density and what --  
18 and the number of claims that would be -- that were  
19 handed -- handled in network. So it was -- it's  
20 just to kind of gain some insight to that question.

21 Q So did -- how does that analysis affect  
22 your opinion?

23 A What -- I mean, suppose it did. I mean, I  
24 think that what the results of that analysis or what  
25 transpires from that is what I explained, you know,

1 or discussed in paragraph 37, right, that basically,  
2 in that regard, it seems that, you know, there might  
3 be or suggest that there are other potential drivers  
4 or factors that should be accounted for as it  
5 relates to whether or not the claim is handled in  
6 network versus out of network, than simply the  
7 number of providers that are available within a  
8 particular area. That's -- that's -- that was the  
9 conclusion of that.

10 Q Okay. As part of this analysis, then, did  
11 you evaluate which of the specialty providers  
12 accounted for the out-of-network claims?

13 A No. So this is done within the context of  
14 the providers in that geography that provided, you  
15 know, the services, the lactation support services.

16 Q In paragraph 38, you indicate that "States  
17 from different areas across the country, such as  
18 Oregon, Nebraska, and North Carolina, for example,  
19 have relatively high number of claim -- numbers of  
20 claim lines as well as high in-network percentages."

21 Relative to what are you referencing here?

22 A Relative to each -- again, this is just  
23 commentary; right? What I'm doing here is basically  
24 I was asked to look at data, and I'm commenting  
25 and -- and characterize what I'm observing as I made

1 some of the cuts in analysis. And that's reflective  
2 of figure 1 basically, and you can see that there.

3 Q I'm back to paragraph 37, Mr. dos Santos.  
4 It says that "This example" -- I assume the example  
5 that you gave in 36 --

6 A Correct.

7 Q -- that you're referring to? Okay.

8 -- "suggests that the lower in-network  
9 percentage may be reflective of," and then the  
10 factors that you list.

11 Why is -- why is the example suggestive of  
12 those factors, such as income level, provider  
13 preference, and place of service?

14 A Well, it's -- it's suggestive of factors  
15 other than simply provider density, viability of  
16 provider. And here, I'm just offering some  
17 alternatives; right? It could be income,  
18 convenience, you know, and the -- you know,  
19 particular preferences. This -- this draws -- draw  
20 upon my -- you know, I'm not an economist by  
21 training, you know. So that's in terms of my  
22 understanding of supply and demand or, you know,  
23 basically people's decision. So I --

24 Q So could it be indicative of the  
25 availability of in-network providers?

1 MR. HAWLEY: Objection. Vague.

2 THE WITNESS: What -- what could be -- can  
3 you --

4 BY MS. DONALDSON SMITH:

5 Q The example that New York had a  
6 considerably higher number of selected specialty  
7 providers per capita be indicative of the  
8 availability of in-network providers?

9 MR. HAWLEY: Objection. Vague.

10 THE WITNESS: Well, we -- that's the  
11 statement that I'm making, right, that there's  
12 additional providers and there are in-network  
13 providers, right, relative to other states. But  
14 yet, relative to other states, it has a lower  
15 in-network percentage. So it -- it -- it too  
16 shows -- it doesn't follow the -- what the, I guess,  
17 expected relationship is that there's a direct  
18 relationship, we have more providers or -- you know,  
19 I'm testing. I didn't have a specific position on  
20 that. I was just testing. Would you have more  
21 in-network claims if you have more in-network  
22 providers? And this contradicts that in that way;  
23 right?

24 This -- it's -- it's one example; right?  
25 It's a case study. I'm just commenting trying to

1 understand the data. But in this particular  
2 example, relative -- you know, you have more  
3 providers relative to other places, but yet you have  
4 a lower in-network percentage.

5 So again, on 37, I just say that might  
6 suggest that there are other factors that go into,  
7 you know, determination of a claim. Somebody or a  
8 member or a claim -- it's mainly if a claim gets  
9 handled in network or out of network.

10 BY MS. DONALDSON SMITH:

11 Q Did you receive or consider demographic  
12 information about breastfeeding rates as part of  
13 rendering your opinion?

14 MR. HAWLEY: Objection. Vague.

15 THE WITNESS: It didn't go into any of  
16 analysis that I have explicitly.

17 BY MS. DONALDSON SMITH:

18 Q Did you receive any information or  
19 demographic data about income levels related to  
20 breastfeeding preferences?

21 MR. HAWLEY: Objection. Vague.

22 Foundation.

23 THE WITNESS: No. I didn't dive into that  
24 detail. And -- but that's a good point; right?  
25 Which is the -- the idea that -- and it speaks to

1 the -- perhaps the individualized requirement of an  
2 analysis, right, that in order to make a  
3 determination as to whether there is adequate  
4 coverage or access to another region, there are many  
5 different factors, right, that -- and -- and it's in  
6 line with my idea or with my opinion that, you know,  
7 systemic or widespread position, you know, there are  
8 a lot of individual issue -- individualized issues  
9 that kind of may have to be accounted for, and I  
10 think you're listing some of those.

11 BY MS. DONALDSON SMITH:

12 Q And as part of the -- the analysis that's  
13 reflected in paragraphs 36 and 37, did you break  
14 down the special -- selected specialty providers  
15 that you're referring to by provider type?

16 MR. HAWLEY: Objection. Vague.

17 THE WITNESS: Sorry. I need a  
18 clarification. You mean if I evaluated each type  
19 or --

20 BY MS. DONALDSON SMITH:

21 Q Correct.

22 A If I -- no. I'm looking at the providers.

23 Q You're looking at the specialty providers  
24 as in the aggregate; correct?

25 A Correct.

1 Q Okay. So the analysis that you did could  
2 not include -- may not include a single lactation  
3 specialist; correct?

4 MR. HAWLEY: Objection. Vague.

5 THE WITNESS: Theoretically --  
6 theoretically, yes. But -- but I -- I don't think  
7 so.

8 BY MS. DONALDSON SMITH:

9 Q Why don't you think so?

10 A Well, I -- I don't know. I would have to  
11 go -- the reality is that I'll have to go back  
12 and -- and -- and evaluate that and be able to  
13 provide an answer. But what it does it includes all  
14 the providers that are in the particular region and  
15 that are related to one of those types.

16 Again, the analysis, I think -- I guess  
17 it's not provider centric, right? It's claim  
18 centric. In a way it's evaluating the -- the  
19 representation of the in-network coverage as it  
20 relates to the claims that were in the database.

21 Q All right. So -- and you're not opining  
22 about the availability or the accessibility of the  
23 providers that are accounted for in the LSS claims  
24 data?

25 MR. HAWLEY: Objection. It's vague.

1 Argumentative. Lacks foundation.

2 THE WITNESS: Yeah, it's vague. I want to  
3 be specific. In this specific statement or analysis  
4 here, I'm not opining in that regard. Sorry. Can  
5 you -- do you mind, please, kind of reframing or  
6 repeating -- do you mind repeating the -- the  
7 question?

8 MS. DONALDSON SMITH: You answered my  
9 question. So you want my question read back again?

10 A Yes, please.

11 MS. DONALDSON SMITH: Could you please  
12 read my question back.

13 THE WITNESS: I don't know if I understood  
14 it. Or I'm just trying to clarify.

15 (Record read.)

16 MR. HAWLEY: Same objections.

17 THE WITNESS: Sorry. I guess what -- can  
18 you clarify opining with regards to what. Like  
19 it's -- I find it vague. And when you say you're  
20 not opining. I mean, what specific opinion are  
21 you --

22 BY MS. DONALDSON SMITH:

23 Q Sure.

24 A -- asking.

25 MS. DONALDSON SMITH: Could you please

1 read back Mr. dos Santos' answer before my question  
2 that he just had you read back.

3 (Record read.)

4 BY MS. DONALDSON SMITH:

5 Q So your analysis is not representative of  
6 the in-network coverage as it relates to United's  
7 provider network?

8 MR. HAWLEY: Objection. Vague. Lacks  
9 foundation.

10 THE WITNESS: Well, the claims are from  
11 UnitedHealthcare's network; right? So by  
12 definition --

13 BY MS. DONALDSON SMITH:

14 Q I'm sorry. Are you done answering? Oh.

15 MR. HAWLEY: No. Go ahead.

16 THE WITNESS: The claims, right, at issue,  
17 which I evaluated, they are part -- they are handled  
18 within UnitedHealthcare network provide- --  
19 UnitedHealthcare network providers.

20 BY MS. DONALDSON SMITH:

21 Q In paragraph 39, Mr. dos Santos, you  
22 indicate here that the majority of claims were,  
23 quote, handled in network. What do you mean by  
24 "handled in network"?

25 A Again, it means that the majority of them

1 were -- I'm trying to think of other words to say.  
2 They were handled in network. Like they -- you  
3 know, they had in-network status. So going back to  
4 evaluation for a particular claim, right, so going  
5 on claim-by-claim basis, I was able to make a  
6 determination the majority of them had a status of  
7 in network.

8 Q Status of in-network treatment for the  
9 claim or in-network provider?

10 A For the claim.

11 Q Paragraph 40, Mr. dos Santos, it states  
12 that "We calculated in-network percentages and  
13 counts of LSS claim lines for each CBSA represented  
14 in the LSS claims data."

15 So where is that analysis reflected? Is  
16 that reflected in your report?

17 A Yes. I mean, that's what -- that  
18 paragraphs -- that paragraph ends with the  
19 calculated average for in-network percentages across  
20 CBSAs of 75 percent. So that's reflected by  
21 their --

22 Q So is that work product reflected within  
23 the LSS claims data your calculation of the  
24 in-network percentages?

25 A Sorry. I don't -- what do you mean

1 "reflected"? I guess I don't understand the meaning  
2 of "reflected" in the data. You mean like if I used  
3 the LSS claims data to derive the calculation or  
4 I -- I just don't --

5 Q Where would I find the calculations of the  
6 in-network percentages, and then also the counts of  
7 the LSS claims data for each CBSA represented in the  
8 LSS claims data?

9 A That would be found -- I mean, for that,  
10 again, describing the way that I conducted this,  
11 right, is using, you know, software or program  
12 script that would then -- that would run the  
13 analysis and provide the -- the -- the outcome.

14 I don't know if the interim steps as part  
15 of that process would be recorded in the data that  
16 you could say, okay, let me look at each one of  
17 those. But by having the data that goes into it and  
18 the program that performs the algorithm, that's, you  
19 know, how that process kind of takes place and the  
20 outcome is being recorded here.

21 Q Sure. And what's recorded here is the  
22 calculated average for all the in-network  
23 percentages across the CBSAs; correct?

24 A Correct.

25 Q So no place in your report, let's start

1 there, depicts the in-network percentages calculated  
2 for each CBSA?

3 A No.

4 Q Do you have a schedule of that in your  
5 work papers?

6 A No, I don't think so. Again, it's the  
7 context; right? Remember, I calculate an overall  
8 number that was -- included all the time periods and  
9 all the markets. I -- and that's 73 percent or so.  
10 And now, through additional evaluation of the data,  
11 made a determination that, hey, I should take a deep  
12 dive here and look at this at a more granular level.  
13 That's where I go to the CBSA.

14 So within the CBSA, now what I'm trying to  
15 do here is if we look at -- from this perspective,  
16 right, across the -- you know, having a CBSA as to  
17 the unit, what do I get? I mean how comparable it  
18 is to that overall average that doesn't discriminate  
19 with regards to the level of granular --  
20 geographical granularity. So that's -- that's --  
21 that's what I'm trying to evaluate.

22 Q Right.

23 A So within that context, you know, there's  
24 no need or there's no -- there's no place for me --  
25 there's no requirement -- necessity for me to kind

1 of report any one of them. I'm just -- you know,  
2 I'm just trying to kind of explain the context of --  
3 behind this analysis.

4 Q So how did -- how did you calculate the  
5 average? How did you determine the calculated  
6 average?

7 A The average within the CBSA?

8 Q Yes.

9 A It would be similar to the one that I have  
10 in the other footnote that I described to you.

11 Q So that was the -- you did not do a mean,  
12 then; right? Did you -- wait. Did you calculate a  
13 median with respect to the in-network percentages  
14 across CBSA? Did you use a median?

15 A Sorry. I -- I don't follow.

16 Q Okay.

17 A I mean, I know what the mean of median is.

18 Q Right. So which method did you use here  
19 to calculate your -- what method did you use here to  
20 calculate your average? Do you take a simple  
21 average?

22 A Okay. So for -- good point. So for here,  
23 talking about paragraph 40; right?

24 Q Correct.

25 A So let me put this within the context of

1 the other number which I described to you; right?

2 So within there, I just was able to say how many  
3 claims are in the numerator. How many claims are in  
4 the denominator. It's not a mean. It's just a  
5 percentage --

6 Q Uh-huh.

7 A -- right, across every claim line.

8 Q Right.

9 A In here, I conducted the calculated  
10 calculation first. That same calculation, right, at  
11 each CBSA level and then across all CBSAs.

12 Q Okay.

13 A So that's -- that's -- that's the way.

14 Q So in footnote 4, Mr. dos Santos, you  
15 state here that you're not opining whether all types  
16 of providers or facilities that offer lactation  
17 services were included in the data you received.

18 MR. HAWLEY: Which footnote?

19 MS. DONALDSON SMITH: Fourteen.

20 MR. HAWLEY: Fourteen.

21 THE WITNESS: Oh, 14.

22 MS. DONALDSON SMITH: Did I say 4?

23 MR. HAWLEY: Yes, you did.

24 THE WITNESS: You said 4.

25 / / / /

1 BY MS. DONALDSON SMITH:

2 Q That's interesting.

3 So you're also not opining, Mr. dos  
4 Santos, that all facilities on the list did offer  
5 lactation services; correct?

6 MR. HAWLEY: Objection. Vague.

7 THE WITNESS: Sorry. Can you -- can you  
8 repeat the question.

9 BY MS. DONALDSON SMITH:

10 Q Sure.

11 So you're not opining that all the  
12 facilities listed in the provider directory database  
13 did offer lactation services?

14 MR. HAWLEY: Objection. Vague.

15 You can answer.

16 THE WITNESS: Uh-huh. I'm thinking about  
17 it. I'm not opining with respect to any particular  
18 facility; all right? Again, I mean, I'm not -- I  
19 don't have an opinion with regards to what  
20 provide- -- providers, right, provided times. And  
21 -- and I think that kind of translates to specific  
22 facilities as well.

23 BY MS. DONALDSON SMITH:

24 Q Okay. And it's not your contention that  
25 all the providers that are listed in your provider

1 directory data offer lactation services?

2 A Correct.

3 MR. HAWLEY: Objection. Vague.

4 THE WITNESS: Correct. That's not my  
5 contention.

6 (Reporter seeks clarification.)

7 BY MS. DONALDSON SMITH:

8 Q So in paragraph 44, Mr. dos Santos, you  
9 start out to test this hypothesis. So what  
10 methodology did you use to test your hypothesis that  
11 was stated in paragraph 43?

12 MR. HAWLEY: The document speaks for  
13 itself.

14 You can answer.

15 THE WITNESS: Okay. So in 43, I observe  
16 that when I look at the provider directory, right,  
17 for provider types, which from my review of the  
18 claims data were associated with the bulk of the --  
19 the claims, I -- I observe that there -- there is a  
20 significant number of them. So like I basically was  
21 trying to see, in particular in those areas for  
22 which, you know, there were no claims, are there  
23 providers there that have at least the profile  
24 similar to those that were providing services,  
25 lactation support services not defined by me, but

1 defined by the CPT codes in the data. All right?  
2 That -- that was the premise. I was trying to  
3 understand that.

4 So paragraph 43 shows that, yeah, you  
5 know, with regards to that selected set of  
6 providers, you know, there is great representation  
7 of them, significantly more than observed in the  
8 claims data, including overall and including the  
9 specific areas where you had few claims; right?

10 So that's one point in terms of trying to  
11 understand, okay, where potentially are those  
12 providers providing the service; right? I mean,  
13 they -- they certainly have the same profile, right,  
14 but I have no claims in the database, if they had  
15 claims in the database, so that would be an  
16 indication that, at least per the definition of  
17 what, you know, a claim in the database is, that  
18 those are providing lactation support services. But  
19 I didn't have that.

20 So to test that hypothesis or to  
21 understand, right, whether some of the providers  
22 that are in the provider directory but for whom we  
23 have no claims that are observable in the claims  
24 database but share the same profile who are  
25 providing those services, I then had what we call a

1 case study or, you know, an analysis of specific  
2 providers; right?

3 So -- and I describe what that framework  
4 is. So I wanted to be objective; right? I wanted  
5 to follow, you know, a rigorous process that's  
6 random. So -- and I felt that would make sense to  
7 look that from a individualized perspective; right?

8 Remember, up to this point, I'm looking at  
9 CBSAs; right? I was like, well, if I want to test  
10 this, I want to test this from the perspective of  
11 looking at the -- an individual; right? So if I'm  
12 looking at individuals, I -- I mean, my next logical  
13 step was, okay, here are the representative  
14 plaintiffs; right? So that's individuals -- the set  
15 of individuals that I focused on.

16 And, you know, to make it manageable, I --  
17 I -- I use, you know, like a -- objective logic,  
18 which is I selected the name of plaintiff that --  
19 for whom there was the lowest number of providers in  
20 the provider directory, right, that hadn't for --  
21 for whom I had no claims, right, which is a  
22 conservative point, because I could have gone and  
23 picked one higher, but I wanted to be -- make it  
24 manageable and conservative. So I selected the one  
25 with the smallest number of -- of providers in the

1 directory.

2           And then within this 30-mile radius,  
3 right -- which, again, I'm not providing an opinion  
4 as to what is, you know, the -- the radius or what  
5 it should be. This is just for the purposes of this  
6 experiment; right? Then I went -- identify those  
7 and develop a, you know, objective set of questions  
8 and a uniform procedure to contact them and just  
9 kind of verify, ask them do you provide this  
10 lactation support services. Yes or no; right? And  
11 that's what I report here.

12 BY MS. DONALDSON SMITH:

13           Q     Okay. So when you applied the 30-mile  
14 radius, how did you apply that?

15           MR. HAWLEY: Objection. Vague.

16 BY MS. DONALDSON SMITH:

17           Q     Did you apply the 30-mile radius to  
18 Ms. Carroll's ZIP or her address?

19           A     I don't recall specifically. I think it  
20 may have been centered within Fort Collins. So I'd  
21 say a 30-mile radius of Fort Collins. So -- and  
22 there -- I have the specific ZIP code there. So you  
23 can see it in the report; right? So I -- it entails  
24 that.

25           Q     Okay.

1           A       So that was -- you know, that was an  
2       experiment. That is, you know, you have providers  
3       in the directory, but yet you don't have claims for  
4       them. They have -- share the same profile of those  
5       providers that -- in the claims data. So, you know,  
6       can we make a determination or get sense as to, you  
7       know, any of them are, in fact, providing those  
8       services.

9           Q       So when you say they share the same  
10      profile, the providers share the same profile,  
11      what -- what profile do they share that you're  
12      referring to?

13          A       Remember, to simplify and make the  
14      analysis manageable, right, I focused on those  
15      provider types that in the -- that I observe on the  
16      claims data are responsible for the bulk of the  
17      claims and those are the -- what I use this term of  
18      art to say selected providers; right?

19          Q       But other than the provider type, there  
20      was no other aspect of their profile that was the  
21      same?

22                  MR. HAWLEY: Objection. Vague. Lacks  
23      foundation. Argumentative.

24                  THE WITNESS: That was the only element of  
25      their profile that was available, which is their

1 specialty or what they are doing. And I think the  
2 most relevant one, meaning, you know, if I know the  
3 pediatrician provided the service, then it seems  
4 reasonable to expect that all the pediatricians --  
5 not all pediatricians but all the pediatricians may  
6 be providing this service as well. And that's what  
7 I was trying to test specifically empirical here.

8 BY MS. DONALDSON SMITH:

9 Q So who made the phone calls that are  
10 referred to in paragraph 45?

11 A Was one of my colleagues that specializes  
12 in conducting interviews, phone interviews for  
13 healthcare providers.

14 Q And what's your colleague's name?

15 A I think it was Nichole Razzi is her name.  
16 I have to go back and check specifically. But I --  
17 I designed the study. I developed the framework for  
18 the approach. I supervised the process to ensure  
19 that there was homogeneity across the way that it  
20 was, you know, she was conducting the interview.

21 Q Okay. So how were lactation services  
22 defined during the phone calls?

23 MR. HAWLEY: Objection. Vague. Lacks  
24 foundation.

25 THE WITNESS: I would have to go back and

1 look at the specific, you know, plan that I put  
2 together for her. But it was in line with the --  
3 with the explanation that I gave to you before in  
4 terms of my understanding of lactation support  
5 services. It was derived from my review of the data  
6 and information for this case, basically  
7 breastfeeding services, or that -- that are  
8 associated with support, supply, or counseling  
9 associated with the problems or condition --  
10 treatment or -- or preventative measures, associated  
11 conditions such as insufficient milk transfer,  
12 engorgement, and cracked nipples.

13 BY MS. DONALDSON SMITH:

14 Q So were the providers that were contacted  
15 asked whether the services would be provided by  
16 these providers postpartum?

17 A I don't think there was a distinction,  
18 specific distinction. There were -- there were  
19 three or four questions that were asked, right, the  
20 first selector level of granularity that were  
21 applied to that. So the first question would be  
22 along the lines that were mentioned. Do you provide  
23 breast services such as, right, and associated with  
24 the support supply or counseling, right, associated  
25 with conditions that arise?

1           And then if so, then, you know, discuss  
2     some specific examples. Like, as I mentioned,  
3     treatment of insufficient milk production,  
4     engorgement, or whatever else. And then I asked  
5     specifically if they had experience or training  
6     professionals as part of their staff.

7           And I think another question that was  
8     asked in that context was whether they provided that  
9     service for at least one year; right? Because we  
10    are making a phone call as of one point in time just  
11    to gather some assessment as to how long might they  
12    have been doing that.

13          Q     So the third question that you were just  
14    referencing, make sure I understand. You said --  
15    could you -- could you articulate again the third  
16    question? It was related to training of  
17    professionals? I'm not sure I heard or understood.

18          A     Well, if they in staff, specifically, if  
19    they could say if there was a trained and/or  
20    experienced professional.

21          Q     Were they asked whether or not they had an  
22    IBCLC on staff?

23          A     No.

24          Q     Do you know what an IBCLC is?

25          A     I know what it is, yes.

1 Q They were not asked that specifically?

2 A Not specific.

3 Q Were they asked whether the provider  
4 observes the mother and child feeding?

5 A No. I was not asked to clarify. I was  
6 not asked details as to -- again, the goal of this  
7 exercise is I have an additional data source other  
8 than the information that's in the claims database,  
9 right, that indicates that there are providers in --  
10 for a given geography, right, beyond the ones that  
11 are being represented in the claims data and that  
12 shared the same profile vis-a-vis specialty as one  
13 that are in the claims and providing those types of  
14 services.

15 So I'm just trying to kind of go one step  
16 further in that investigation to see whether I could  
17 confirm that -- let's say in this particular case,  
18 out of these 12, any of them could indicate that, in  
19 fact, they provide some -- some service, right, some  
20 level of service. So that was the goal. Not to  
21 understand specific aspects of their -- their  
22 operation.

23 Q Okay. So it wasn't asked whether or not  
24 the person had to be an existing patient to receive  
25 lactation support services from that provider?

1 A No.

2 Q And this specific training of the provider  
3 who provided lactation support was not ascertained?

4 MR. HAWLEY: Objection. Vague.

5 THE WITNESS: Sorry. Can you repeat that.

6 BY MS. DONALDSON SMITH:

7 Q The specific training of the person who  
8 provided lactation support services was not  
9 ascertained?

10 MR. HAWLEY: Objection. Vague.

11 THE WITNESS: We did not ask a specific  
12 question. So if it's like to a particular  
13 credential, no.

14 BY MS. DONALDSON SMITH:

15 Q So of the 12 providers contacted, 3 said  
16 they had staff on-site that performed lactation  
17 support services?

18 A No. I think it was two; right?

19 Q Two?

20 A Sorry.

21 Q Oh, two. Yep. You're right.

22 A Yeah.

23 Q So two. So 10 did not?

24 A Correct.

25 MS. DONALDSON SMITH: Okay. We're going

1 off the record.

2 THE VIDEOGRAPHER: Yeah. We are going off  
3 the record. The time is 4:23 P.M. Here marks the  
4 end of Joao -- here marks the end of Media No. 3 in  
5 the deposition of Joao dos Santos.

6 (Brief recess.)

7 THE VIDEOGRAPHER: We are going on the  
8 record. The time is 4:29 P.M. Here marks the  
9 beginning of Media No. 4 in the deposition of Joao  
10 dos Santos.

11 BY MS. DONALDSON SMITH:

12 Q Before we went on break, we were talking  
13 about the phone calls that were made to providers  
14 that are discussed in your report, Mr. dos Santos.  
15 Did you prepare a script to be used by Ms. Razzi for  
16 those phone calls?

17 A I did provide a guideline, yes.

18 Q Okay. Is that a -- did you provide  
19 written guidelines to her?

20 A I believe so, yeah.

21 Q Okay. And did you provide -- provide a  
22 copy of those written guidelines to United's  
23 counsel?

24 A No, I don't think so.

25 Q Did you share those guidelines with

1 United's counsel?

2 A I -- I don't think so. I'm not sure. I  
3 would have to go back and think about it. But no,  
4 I --

5 MR. HAWLEY: I can say for the record,  
6 yeah, we -- we have that document, I believe.

7 MS. DONALDSON SMITH: Okay. It's not  
8 something that's been produced to us.

9 MR. HAWLEY: No, and I don't think it was  
10 requested.

11 BY MS. DONALDSON SMITH:

12 Q Did you direct Ms. Razzi to direct her  
13 questions to any specific person at the provider's  
14 office?

15 A Yes. There'll be, at the onset of the  
16 discussion, try to find either the office  
17 administrator or somebody that would have sufficient  
18 knowledge -- or would expect to have sufficient  
19 knowledge about the types of services that are being  
20 provided or administered at that location.

21 Q Did you consider any documents from United  
22 with respect to whether or not these two providers  
23 listed in your report in paragraphs 46 and 47  
24 provided lactation support, counseling, and  
25 services?

1 MR. HAWLEY: Objection. Vague.

2 THE WITNESS: What -- yeah. Can you  
3 elaborate on that, what kind of documents from  
4 United.

5 BY MS. DONALDSON SMITH:

6 Q Any type of document from United  
7 indicating that these two providers provided  
8 lactation support services.

9 A Well, the provider database.

10 Q Okay. So other than the provider  
11 database, did you receive any other documents  
12 indicating -- from United indicating that these two  
13 providers provided lactation support services?

14 A No. Again, I -- the database indicated --  
15 they are listed and that they were directory  
16 eligible -- that was one of the conditions -- and  
17 that they were current members of the -- the  
18 network.

19 Q And do you know whether or not these --  
20 either of these two providers that are listed in  
21 your report are identified in the online directory  
22 database for United as lactation specialists?

23 MR. HAWLEY: Objection. Vague.

24 THE WITNESS: That's not something -- no,  
25 I don't know.

1 BY MS. DONALDSON SMITH:

2 Q Mr. dos Santos, could you please review  
3 your footnote 17.

4 A (Examining.) It's a long one. Yeah, I  
5 did.

6 Q Should I ask you to read it in full?  
7 Second-to-last sentence states "Alternatively, the  
8 provider may not have billed for the services at  
9 all."

10 What's the basis for that statement?

11 A The basis for that statement, from my  
12 experience in general, right, in dealing with this  
13 type of claims or claims in general, and on personal  
14 experience in a way, it is possible that a provider,  
15 you know, may not bill for a specific service  
16 depending on, one, the circumstances; right? So  
17 here, I'm not saying that that happened. I'm saying  
18 this is considered -- something that should be  
19 considered, right, that it could happen. So I'm  
20 just listing, okay, to understand the reasons  
21 behind --

22 The question that really was behind this  
23 is, okay, we have established, right, that there are  
24 providers in the database -- in a provider's  
25 database that have similar characteristics to the

1 providers for whom we see claims in the claims data.  
2 We can contacted some of those providers and  
3 confirmed that this was just some level that they  
4 are providing those services. They have provided  
5 those services; right? So then the question still  
6 becomes why is it that we don't see some of the  
7 claims in the database; right?

8           So here, I'm just kind of trying to -- and  
9 again, that's why it's a footnote. In a footnote,  
10 I'm just trying to kind of elaborate on what could  
11 be the potential explanations, right, that might be  
12 associated with that, because I don't have an answer  
13 to that question; right?

14           It's a conflicting set of evidence that,  
15 on one hand, these individuals have capabilities or  
16 characteristics that are similar to this other set  
17 of individuals in the same area that have provided  
18 those services, but yet -- and we -- we -- we  
19 contact some of them and kind of make the --  
20 establish the link that they are providing some of  
21 these services. And -- but, you know, yet, we don't  
22 see claims in the database. So that's -- that's --  
23 this is just to comment on that.

24 BY MS. DONALDSON SMITH:

25           Q     Okay. So the conflicting -- the -- the

1 conflict that you just referred to is a function of  
2 assuming that every provider in the provider  
3 database provides lactation support services;  
4 correct?

5 A No.

6 MR. HAWLEY: Objection. Mischaracterizes  
7 his testimony. Vague. Argumentative.

8 BY MS. DONALDSON SMITH:

9 Q If every -- if every provider in the  
10 provider directory does not provide lactation  
11 support services, then that would explain why their  
12 claims are not appearing in the LSS claims  
13 data; correct?

14 MR. HAWLEY: Objection. Vague.

15 BY MS. DONALDSON SMITH:

16 Q If someone's not providing the lactation  
17 support services, their claims are not appearing in  
18 the LSS claims data, no?

19 MR. HAWLEY: Objection. Vague. Lacks  
20 foundation. Argumentative. Possibly an incomplete  
21 hypothetical.

22 You can answer if you understand.

23 THE WITNESS: Yeah. I don't think you can  
24 draw that conclusion; right? I think the point here  
25 is I have a list of providers for whom I -- you

1 know, what was indicated to me they are eligible to  
2 provide whatever services they provide, right,  
3 currently, right, and who share the same profile as  
4 providers who I was able to establish from the data  
5 who are providing, you know, whatever set of  
6 services that are being defined by those CPT and  
7 diagnosis codes.

8           So the mere fact that they are not present  
9 in the data cannot support, I would say, a  
10 hypothesis that they didn't provide those services;  
11 right? It requires further -- that's the whole  
12 point. I think it requires further investigation;  
13 right? And that's what I was trying to get at with  
14 the -- this particular case study that I did or some  
15 of the analysis just to kind of gain insight to as  
16 what really is transpiring in each one of these  
17 cases.

18           And the reality, to me, in a way, at the  
19 end of the day is that, you know, if we are to make  
20 a determination as to is there adequate level of  
21 access to or coverage for lactation support services  
22 in any area, you need to dive in. You need to  
23 perform -- ask a number of questions. You need to  
24 have individualized review of what's happening in  
25 that location. You know -- you know, that's kind of

1 what is required that -- you know, of widespread  
2 like a overall broad assessment. You know, it's  
3 hard to reach that --

4 BY MS. DONALDSON SMITH:

5 Q So 10 out of the 12 --

6 A -- based on that.

7 Q Ten out of the 12 providers that you  
8 contacted did not provide lactation counseling  
9 services; correct?

10 A Based on --

11 MR. HAWLEY: Objection.

12 THE WITNESS: Sorry. Go ahead.

13 MR. HAWLEY: Okay. Objection. Lacks  
14 foundation. Argumentative. Vague.

15 You can answer.

16 THE WITNESS: For 10 of those, and I have  
17 to go back and take a look at the specific results,  
18 either they didn't provide an answer, right, they  
19 are not able or we might not have been able to reach  
20 someone to have a definitive answer or they stated  
21 they do not -- they stated they did not provide it.  
22 But I -- I have to go back and take a look.

23 But from my perspective, right, I'm  
24 thinking about what -- the design of this. I just  
25 wanted to see if there was any, right, because

1 that's the whole point. I already -- I took the  
2 most conservative approach possible. I go and say I  
3 look at the area that there's the least number of  
4 providers. I went ahead and -- and -- and minimized  
5 the number of providers. I just -- I couldn't have  
6 looked at all 147 or all providers that are in the  
7 database. I said, no, let's look at just these four  
8 types, right, just to simplify and be conservative.

9           So my -- what really I was trying to  
10 gather here is that is there any, right, that I can  
11 say -- because if the answer was no, there are none,  
12 then -- then I think I'd be leaning more toward -- I  
13 would try to kind of have to further investigate.  
14 There will be additional questions or -- that would  
15 pop other types of lines of inquiry.

16           But here, the idea was to understand in  
17 this limited case study do I see anybody; right? Do  
18 I see any evidence that any of these providers are  
19 providing that?

20 BY MS. DONALDSON SMITH:

21           Q     Mr. dos Santos, you keep referring to your  
22 selection of these providers as conservative. I  
23 mean, the selection of the providers that was made  
24 and the poll that was done in the provider directory  
25 data elicited for the national database over 235,000

1 provider lines.

2 MR. HAWLEY: Objection.

3 BY MS. DONALDSON SMITH:

4 Q Was there any assessment as to -- and now  
5 you're contending that those 235,000 provider lines  
6 provided lactation support services.

7 A No.

8 MR. HAWLEY: Objection.

9 BY MS. DONALDSON SMITH:

10 Q Okay.

11 MR. HAWLEY: Vague. Argumentative. Lacks  
12 foundation.

13 THE WITNESS: That's -- that's -- I'm not  
14 opining as to -- to every one of those providers;  
15 right? I am -- what I have observed here, right,  
16 it's the basis of my opinions that I have seen  
17 evidence that some of the providers, in particular  
18 the ones that share, right, the profile similar to  
19 the ones that I have identified from the claims  
20 data, provide that service.

21 BY MS. DONALDSON SMITH:

22 Q Were the providers that were contacted  
23 that -- the two providers that were reached in  
24 paragraphs 46 and 47 asked why they didn't submit  
25 any claims for lactation support services?

1 A No, they were not asked that question.

2 Q Okay. All right. So in paragraph 48, you  
3 make the hypothesis that "The number of providers  
4 within the LSS claims data reflects a lower bound of  
5 the total number of providers offering lactation  
6 support services."

7 So how do you support using a sample size  
8 of 12, the 12 providers that you contacted, to  
9 support the conclusion that the LSS claims data is a  
10 lower bound?

11 MR. HAWLEY: Objection. Mischaracterizes  
12 the record. Vague. Argumentative.

13 You can answer.

14 THE WITNESS: Again, from the data, right,  
15 the data -- the claims data reflects the observable  
16 number of claims, right, and providers that are  
17 providing the service as defined by those CPT codes.  
18 The provider directory represents a potential supply  
19 of additional providers, right, that might be  
20 providing the same service.

21 In this case study that I performed, I saw  
22 at least one, right, at least one case where a  
23 provider that is in the provider directory, for whom  
24 there is no claims in the claim database, have a  
25 knowledge or was stated that he or she or they, a

1 facility, in particular, provide those services.

2 So as a result, right, it's reasonable to  
3 expect that the number of providers that I see in  
4 the claims data represents a lower bound. That  
5 there are other -- and what I mean by that is that  
6 there might be other providers out there vis-a-vis  
7 in the directory, right, that might be providing  
8 these services in -- in those areas or in any given  
9 area.

10 So that's -- that's the basis for that  
11 rationale. That, you know, by definition, the  
12 number of providers for whom we have claims in the  
13 claims data represents a lower bound.

14 BY MS. DONALDSON SMITH:

15 Q So based on your -- your research, did you  
16 reach an opinion of the upper bound of the total  
17 number of providers offering lactation support  
18 services?

19 A No.

20 MR. HAWLEY: Objection. Vague.

21 THE WITNESS: Sorry. No. This -- this  
22 experiment was not designed to -- for -- for that  
23 purposes -- for that purpose.

24 BY MS. DONALDSON SMITH:

25 Q In paragraph 50, Mr. dos Santos, it states

1 "In conclusion, the analysis of the LSS claims data  
2 provides a helpful" -- excuse me. Let me start  
3 over, actually.

4 "In conclusion, the analysis of the LSS  
5 claims data provides helpful information about the  
6 breadth and depth of United's network for lactation  
7 support services across markets and over time, and  
8 suggests that plaintiff's allegations of systemic  
9 network adequacy is unsupported."

10 Does that accurate- --

11 MR. HAWLEY: Systemic network inadequacy.

12 BY MS. DONALDSON SMITH:

13 Q Inadequacy. Inadequacy is unsupported.  
14 Is that accurate -- does that accurately reflect, as  
15 it's written in paragraph 50 of your report, your  
16 opinion that you're offering in this litigation?

17 A Yes. That's in line with my -- my  
18 observation; right? And I think the -- the analysis  
19 that precedes this paragraph and described in the  
20 report lead up to that conclusion.

21 Q Have you -- have you presumed that any  
22 deviation from 100 percent no cost share and  
23 100 percent no -- and no denial is related to  
24 nonsystemic conditions?

25 A So there's a lot of --

1 MR. HAWLEY: Objection. Vague.

2 THE WITNESS: -- negatives and negatives  
3 in there. If you can kind of break it down for me,  
4 I'd appreciate it.

5 BY MS. DONALDSON SMITH:

6 Q Have you presumed that any deviation from  
7 100 percent no cost share imposed on the member is  
8 related to nonsystemic conditions?

9 MR. HAWLEY: Objection. Vague.

10 THE WITNESS: I'm trying to work all those  
11 nos in my mind. Is there any other way that you can  
12 frame that that it will be more direct perhaps?

13 BY MS. DONALDSON SMITH:

14 Q So in paragraph 33, Mr. dos Santos, you  
15 calculated that 82.8 percent of the in-network  
16 claims were fully paid; correct?

17 A Correct.

18 Q And what do you mean by "fully paid"?

19 A There was no level cost share, as we  
20 discussed before.

21 Q Okay. So to the extent that there was any  
22 level of cost share applied, you attribute that or  
23 assume that pertains to a nonsystemic condition with  
24 respect to United's network or provider network?

25 MR. HAWLEY: Objection. Vague. Lacks

1 foundation.

2 THE WITNESS: I'm making no assumptions in  
3 that regard; right? I mean, the reality, again, it  
4 goes back to is lower than 100 percent. I think  
5 going back to your original point, I think that's  
6 where you started with that. The specific reasons,  
7 right, that lead to that being less than 100 percent  
8 may vary, and, you know, and -- and -- and cannot  
9 be -- potentially cannot be ascertained that, you  
10 know, class-wide or like as a -- as a whole even;  
11 right?

12 You may have to kind of go and find out  
13 are there specific conditions associated with each  
14 claim that resulted in some level of cost pay. So  
15 I -- I cannot really make a determination. I cannot  
16 say that -- I have not developed an opinion in that  
17 regard other than, you know, that this perhaps  
18 requires further investigation; right? An  
19 individualized investigation should make a  
20 determination which account for whatever factors  
21 that might be resulting in that. But that was not,  
22 you know, the -- the focus of my analysis.

23 BY MS. DONALDSON SMITH:

24 Q Have you -- as part of rendering your  
25 opinion, have you conducted any investigation into

1 the statements made by United during the class  
2 period concerning its lactation benefits and its  
3 providers?

4 A Any statements?

5 MR. HAWLEY: Objection. Vague.

6 THE WITNESS: It's kind of broad. Yeah, I  
7 mean, if you can kind of maybe narrow that down.  
8 Statements specific to -- to what and what time  
9 period? Why -- in general, I think the answer is I  
10 have not, but, you know, it -- it seems like it's  
11 vague for a question. So I need additional  
12 clarification there.

13 BY MS. DONALDSON SMITH:

14 Q Did you review any documents from United  
15 concerning the information that's provided to  
16 members about lactation support and lactation  
17 support services?

18 A Again, that's -- it's vague. I don't -- I  
19 don't know what documents or -- or the -- the  
20 totality or, you know, the -- the extent or range of  
21 documents that were provided to members. But in  
22 general, I -- you know, my focus was on analyzing  
23 the claims data and the documents which I described  
24 to you.

25 Q Did you consider any internal information

1 from United discussing their policies about coverage  
2 for lactation specialists?

3 MR. HAWLEY: Objection. Vague.

4 THE WITNESS: No, I don't think so.

5 BY MS. DONALDSON SMITH:

6 Q And did you consider or receive any  
7 information concerning United's evaluation of the  
8 breadth of its network for lactation specialists?

9 MR. HAWLEY: Objection. Vague. Instruct  
10 you not to answer to the extent it goes beyond the  
11 requirements of the federal rules and would require  
12 you to divulge work product.

13 THE WITNESS: Well, a -- you know, all the  
14 documents that I reviewed, right, I think are stated  
15 in my report.

16 BY MS. DONALDSON SMITH:

17 Q And your opinions and analysis -- analyses  
18 did not consider members who did not submit a claim  
19 for lactation support services to United; correct?

20 MR. HAWLEY: Objection. Vague.

21 THE WITNESS: Well, again, that's a vague  
22 question. That's a theoretical question. It's a  
23 hypothetical, right, because we live in a world of  
24 what's observable; right? What is observable? To  
25 the extent that somebody had a claim; right? That,

1 I can observe that.

2 If somebody didn't file a claim, I have no  
3 means from my empirical perspective to evaluate  
4 that. So my -- my analysis is focused on -- or the  
5 scope of my analysis resides on the information that  
6 exists. So I cannot speak to hypothetically what --  
7 you know, what may or may not have happened.

8 BY MS. DONALDSON SMITH:

9 Q Right. So you were not -- you did not  
10 take into consideration the information that may  
11 have been given to a member during the class period  
12 about whether or not their claim for lactation  
13 support services would be covered by United?

14 MR. HAWLEY: Objection. Vague. Lacks  
15 foundation.

16 THE WITNESS: I don't -- I just don't know  
17 what that information would be. Maybe you have to  
18 kind of elaborate on that and the circumstances in  
19 which that information was provided. So it -- you  
20 know, it's -- it's --

21 BY MS. DONALDSON SMITH:

22 Q Did any -- you did not take into  
23 consideration any type of information that flowed  
24 from United to its members during the class period;  
25 correct?

1 MR. HAWLEY: Objection. Vague.

2 BY MS. DONALDSON SMITH:

3 Q You didn't receive call center scripts or  
4 infor- -- you didn't review United's website with  
5 respect to its online provider finder tool to do  
6 searches for lactation specialists. Did you?

7 A No.

8 Q Okay.

9 A My -- my analysis was focused on -- on the  
10 data, right, and the claims data and the provider  
11 directory data.

12 Q Are there any other bases for your  
13 opinions that we didn't discuss today?

14 A All the basis for my opinion are contained  
15 in my report. So to the extent that we reviewed my  
16 report, I think that I exhausted all of them.

17 MS. DONALDSON SMITH: Okay. We're going  
18 to go off the record.

19 THE VIDEOGRAPHER: Off the record. The  
20 time is 4:55 P.M.

21 (Brief recess.)

22 THE VIDEOGRAPHER: We are back on the  
23 record. The time is 5:03 P.M.

24 BY MS. DONALDSON SMITH:

25 Q Mr. dos Santos, I had a question regarding

1 the denied records. How did you identify or define  
2 a denied record?

3 A As it relates to this table 1? I suppose  
4 that as a consumer, I can speak within the context  
5 of this.

6 Q Okay.

7 A Okay. So we did a -- it was an evaluation  
8 of a different fields in the data, right, to the  
9 extent that they're available, and they were  
10 different between the two. But there was also an  
11 overall -- and there was also an assumption that if  
12 a claim was not paid at all, right, it was a denied  
13 claim.

14 So in other words, you know, you have an  
15 amount billed or -- of \$100, right, and -- and it's  
16 not -- and it's processed and has a value of zero,  
17 amount paid was zero, you know, it was one working  
18 assumption, which is in line with what I have seen  
19 in other data, similar type of data has been denied.

20 MS. DONALDSON SMITH: Okay. That's all I  
21 have. Thank you very much for your time today,  
22 Mr. dos Santos.

23 THE WITNESS: You're welcome.

24 MR. HAWLEY: Okay. And we'd like to  
25 review and we'll -- we'd like for Mr. dos Santos to

1 review and sign the transcript.

2 MS. DONALDSON SMITH: Okay. No questions?

3 MR. HAWLEY: No questions.

4 MS. DONALDSON SMITH: Thank you.

5 THE VIDEOGRAPHER: Okay. This concludes  
6 today's deposition of Joao dos Santos. The number  
7 of media used is four. We are going off the record.  
8 The time is 5:05 P.M.

9 THE REPORTER: Did you want a copy?

10 MR. HAWLEY: Yeah, and if we could get a  
11 rough, that would be great.

12 (The deposition concluded at 5:05 P.M.)

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DECLARATION UNDER PENALTY OF PERJURY

I, JOAO C. dos SANTOS, do hereby certify  
under penalty of perjury that I have read the  
foregoing transcript of my deposition taken on  
January 10, 2019; that I have made such corrections  
as appear noted on the Deposition Errata Page,  
attached hereto, signed by me; that my testimony  
contained herein, as corrected, is true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
2019, at \_\_\_\_\_, California.

\_\_\_\_\_  
JOAO C. dos SANTOS  
Deponent

1 DEPOSITION ERRATA SHEET

2 Page No.\_\_\_\_\_ Line No.\_\_\_\_\_

3 Change:\_\_\_\_\_

4 Reason for change:\_\_\_\_\_

5 Page No.\_\_\_\_\_ Line No.\_\_\_\_\_

6 Change:\_\_\_\_\_

7 Reason for change:\_\_\_\_\_

8 Page No.\_\_\_\_\_ Line No.\_\_\_\_\_

9 Change:\_\_\_\_\_

10 Reason for change:\_\_\_\_\_

11 Page No.\_\_\_\_\_ Line No.\_\_\_\_\_

12 Change:\_\_\_\_\_

13 Reason for change:\_\_\_\_\_

14 Page No.\_\_\_\_\_ Line No.\_\_\_\_\_

15 Change:\_\_\_\_\_

16 Reason for change:\_\_\_\_\_

17 Page No.\_\_\_\_\_ Line No.\_\_\_\_\_

18 Change:\_\_\_\_\_

19 Reason for change:\_\_\_\_\_

20 Page No.\_\_\_\_\_ Line No.\_\_\_\_\_

21 Change:\_\_\_\_\_

22 Reason for change:\_\_\_\_\_

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25 JOAO C. dos SANTOS Dated

1 UNITED STATES DISTRICT COURT )  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA ) ss

3 I, DONNA J. RUDOLPH, RPR, CSR No. 9652,  
4 Certified Shorthand Reporter, certify:

5 That the foregoing proceedings were taken  
6 before me at the time and place therein set forth,  
7 at which time the witness was put under oath by me;

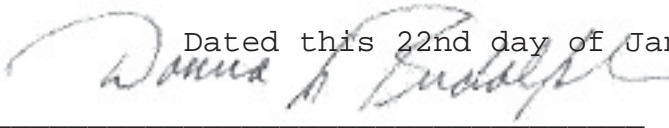
8 That the testimony of the witness, the  
9 questions propounded, and all objections and  
10 statement made at the time of the examination were  
11 recorded stenographically by me and were thereafter  
12 transcribed;

13 That a review of the transcript by the  
14 deponent was requested;

15 That the foregoing is a true and correct  
16 transcript of my shorthand notes so taken.

17 I further certify that I am not a relative  
18 or employee of any attorney of the parties, nor  
19 financially interested in the action.

20 I declare under penalty of perjury under  
21 the laws of California that the foregoing is true  
22 and correct.

23  Dated this 22nd day of January, 2019.

24 \_\_\_\_\_  
25 DONNA J. RUDOLPH, RPR  
CA CSR NO. 9652, NV CCR NO. 420

<div> <div>Exhibits</div> <div> EX 0001 Joao Dos Santos 011019 3:9 6:23,24 7:4,7  EX 0002 Joao Dos Santos 011019 3:10 58:6,12 63:18 72:4,9 79:23,24 80:14  EX 0003 Joao Dos Santos 011019 3:12 80:12,17 110:13,15 111:6 134:24,25 135:12,24 136:23 137:14 139:16  EX 0004 Joao Dos Santos 011019 3:13 82:8,12 83:2,11 150:17 </div> <div>\$</div> <div> \$100 248:15  \$750 52:14 </div> <div>1</div> <div> 1 6:23,24 7:4,7 87:16 102:22 188:7 194:8 198:17,18 206:2 248:3  1.3 168:15  10 4:1,17 128:1 181:6 228:23 236:5,16  100 241:22,23 242:7 243:4,7  10:05 4:2,17  10:49 39:13  10:54 39:16  11 87:5 185:16 187:25  11845 4:20  12 55:15 93:17 227:18 228:15 236:5,7 239:8  12/6/2018 150:18  12:01 87:21  12:09 87:24  13,000 189:19  136 86:25  14 217:21  14.5 190:13 </div> </div>	<div> 147 173:24 174:5,11 237:6  17 232:3  18 70:13,15 93:3,8 94:19 95:12 203:25  19 95:20  1996 7:17  1998 7:13 8:15,16  19A 72:20 74:10  19B 77:18,24 96:7,12 99:15  1:04 127:4  1:58 128:2,5 </div> <div>2</div> <div> 2 29:7,14 55:16,20 58:6,12,16 59:5,21 62:9 63:18 72:4,9 79:10,11,24 80:14 94:14 164:11  2,000 189:20  2.7 190:12  20 12:22,23,24 25:24 73:25  2010 166:20,22 167:3  2012 167:10,11  2013 185:4  2017 9:2  2018 8:18,19  2019 4:1,17 128:1  21 102:23  22.7 190:4  23 13:6 14:21 15:11 42:3 153:25  235,000 86:24 237:25 238:5  24 156:6,11  25 156:21 158:5  27,000 196:8  28 160:18 161:5  29 162:14 164:18  2:46 164:10  2:52 164:14 </div> <div>3</div> <div> 3 79:10,11 80:12,17 110:13,15 111:6 134:24,25 135:12,24 </div>	<div> 136:23 137:14 139:16 164:15 228:15 229:4  30 165:21  30-mile 222:2,13,17,21  31 173:6  32 185:13,14  33 242:14  35 198:7  355 4:16  36 93:11,18,22,25 203:6,8 206:5 209:13  37 205:1 206:3 208:5 209:13  37,523 87:3  38 205:16  380 87:1 191:1,8  380s 86:6 87:5  39 212:21 </div> <div>4</div> <div> 4 82:8,12 83:2,11 150:17 156:6 174:5,11 217:14,22,24 229:9  40 213:11 216:23  426 167:22 170:12  43 179:11 219:11,15 220:4  44 219:8  44,000-plus 62:3  45 93:3,8 94:19 95:12 167:25 203:25 224:10  46 230:23 238:24  47 230:23 238:24  47,430 162:16 165:18 188:18  48 239:2  4:23 229:3  4:29 229:8  4:55 247:20 </div> <div>5</div> <div> 5 196:19,22  50 14:19 164:20,22 165:1,10 240:25 241:15 </div>
---	---	---

51 14:16	accessibility 210:22	adjudication 29:9,12
55 168:2	accessible 82:21	104:17 112:10 113:2
595 168:12	accommodate 6:18	141:9,13,17 143:3,4
5:03 247:23	82:18	144:2,14 146:6
5:05 249:8,12	account 48:9 84:14	154:21,24 155:8
	112:15 113:4 182:19	159:25 160:11,15
	201:11,18,19 202:1	192:13 194:25
	243:20	adjudications 111:19
6	accounted 81:20 85:10	144:7 146:3
	143:24 205:4,12	administered 230:20
6 95:23 108:14 145:25	209:9 210:23	administrative 54:14
146:9	accounting 106:25	administrator 230:17
60 190:9	125:5	adopted 89:20 94:8
63 177:25 182:10	accounts 188:18	adopting 92:22 95:11
	accumulative 153:24	advised 9:13
7	accurate 6:14 31:11	advisory 9:8,11 11:5,
	51:2 54:8 83:20	18,20,25
7 95:24 96:14	241:14	affect 204:21
72 199:5 201:17	accurate- 241:10	Affordable 34:19
72.9 185:11,19 186:16	accurately 70:24	35:3,17
187:4,13,20	241:14	ages 93:2 95:11
73 215:9	acquired 8:14	aggregate 63:17 98:7
75 201:24 213:20	act 34:20 35:4,8,11,	163:24 209:24
	17	aggregated 63:22,24
8	action 14:1 15:18,24	agreed 4:22
	16:12,23 17:5,6,7,	agreement 25:5
8 42:22	11,12,17 18:4,14	ahead 44:25 57:11
80-plus 14:17	20:5,11 140:25	70:7 75:13 98:23
82.8 242:15	actions 17:25	137:18 140:5 154:10,
	actively 130:7	16 156:14 178:2,5
9	actual 41:12 88:7	180:11 189:18 212:15
	117:20 167:2	236:12 237:4
9 18:1 52:13	add 155:6	aimed 170:20 173:22
935 167:14,16,22	added 186:1	algorithm 214:18
	additional 22:15	algorithms 187:14
A	33:13 81:16,17 82:2	aligns 90:1
	100:18 101:18 134:14	allegation 71:9 162:9
A.M. 4:2,17 39:13,16	136:22 137:7,8,9	allegations 241:8
ability 169:23	171:9 197:25 203:20	allocated 77:13
abnormal 49:14	207:12 215:10 227:7	allowable 74:14
absent 144:2	237:14 239:19 244:11	allowed 74:18 76:8,19
absolute 141:3	address 29:13 88:23	77:8
absolutely 17:2	91:9 150:2 222:18	Alternatively 232:7
ACA 36:1,13 37:15	addressed 41:21	alternatives 92:21
accent 6:11	addresses 151:20	206:17
accepted 49:18	addressing 41:22,23	Amended 55:16
access 42:16 70:20	adequacy 241:9	American 17:23,24
72:22 73:1,13,23	adequate 209:3 235:20	amount 74:14,18 75:2
74:7 88:3 162:10	adjudicated 140:15	76:7,8,18,19,21,23
181:15 193:14 209:4	188:25 190:25	77:7,8 248:15,17
235:21	192:12,22 193:7	

<p><b>amounts</b> 18:15 75:2</p> <p><b>Amy</b> 83:22 122:14 129:15</p> <p><b>analyses</b> 45:6 62:13 101:11 245:17</p> <p><b>analysis</b> 12:15 30:10, 13 35:8 36:19 37:6, 22 39:22,23 40:4,9, 11,23,24,25 41:3,4, 12,19 42:10,13 43:10 47:2 48:4 49:3 50:1 51:19,20 59:15,19 61:21 62:25 63:3,4, 11,25 67:13 68:13 69:25 70:2 73:19 81:8,18 83:17 84:11, 18 85:21,22 87:9 89:6 91:18,19,25 92:6,17 93:21 95:9, 12,15 96:8,16 97:3, 19,21 98:9 99:18,19, 23,25 100:3,6,11,20 101:4,21,24 102:2 103:8 104:10 112:2 114:2,3,6,14 115:1 116:2,4,6 118:12 120:11 125:3 131:7 132:1 139:23 149:4 153:11,12 157:22 161:14,17 162:7 163:6 166:14 167:8 168:21 169:12 170:7, 17,18,19 171:4 172:14,15,21,22,23 175:21 177:18,24 178:9,20 179:6,14 180:6,19 181:5,12 187:13 188:8 189:7, 11 190:22,24 191:13 192:4,7,8 193:3 195:23 196:3,21 199:23 201:4,22 202:4,9,16,17 203:7, 20 204:12,21,24 205:10 206:1 208:16 209:2,12 210:1,16 211:3 212:5 213:15 214:13 216:3 221:1 223:14 235:15 241:1, 4,18 243:22 245:17 246:4,5 247:9</p> <p><b>analytics</b> 12:16 18:17 46:24 47:14 166:10</p>	<p><b>analyze</b> 45:7 161:11, 17,25 163:11 176:22 179:3</p> <p><b>analyzed</b> 39:4 105:1 162:15 179:17</p> <p><b>analyzing</b> 46:4 193:5 244:22</p> <p><b>and/or</b> 226:19</p> <p><b>Andersen</b> 11:22,23 12:8,9</p> <p><b>Angeles</b> 4:1,16,20 9:9 128:1</p> <p><b>Ankura</b> 7:23,25 8:1,5, 10,11,12,15 16:3 27:9 44:10,11 50:23 52:20,23,25 54:3</p> <p><b>Ankura's</b> 54:10,18</p> <p><b>anomalies</b> 105:12 106:5 116:15 149:21</p> <p><b>answering</b> 212:14</p> <p><b>answers</b> 6:4,6,7 63:13</p> <p><b>apologize</b> 186:14 194:4</p> <p><b>apparent</b> 117:10</p> <p><b>appeal</b> 143:1</p> <p><b>appealable</b> 144:4</p> <p><b>appeared</b> 147:4</p> <p><b>appearing</b> 234:12,17</p> <p><b>appears</b> 91:12 105:15 109:4</p> <p><b>apples</b> 95:14,15</p> <p><b>applicable</b> 9:16</p> <p><b>applied</b> 7:9 46:9 105:23 107:16 111:6 115:5 136:18 139:20 155:7 222:13 225:21 242:22</p> <p><b>applies</b> 115:2</p> <p><b>apply</b> 105:24 116:24 138:23 139:21 149:17 187:19 222:14,17</p> <p><b>applying</b> 187:14</p> <p><b>appointed</b> 30:7</p> <p><b>approach</b> 75:24 152:25 153:3 224:18 237:2</p> <p><b>approximate</b> 53:19 92:11</p> <p><b>approximately</b> 13:12 26:3 51:10 54:6 86:24 196:8</p>	<p><b>arbitration</b> 17:8 29:13,24</p> <p><b>area</b> 97:25 163:16,20 164:4,6 201:2 205:8 233:17 235:22 237:3 240:9</p> <p><b>areas</b> 97:24,25 98:1 101:4 163:13 205:17 219:21 220:9 240:8</p> <p><b>argumentative</b> 66:6 69:3,12 94:4 102:13 134:1 136:8 137:17, 25 147:25 157:18 162:2 169:14 181:20 182:7,22 183:16 186:22 195:18 211:1 223:23 234:7,20 236:14 238:11 239:12</p> <p><b>arise</b> 225:25</p> <p><b>art</b> 61:1 81:13 223:18</p> <p><b>Arthur</b> 11:22,23 12:8, 9</p> <p><b>articles</b> 155:1</p> <p><b>articulate</b> 226:15</p> <p><b>articulated</b> 73:2</p> <p><b>as-of</b> 150:7,13</p> <p><b>ascertainability</b> 13:10</p> <p><b>ascertained</b> 228:3,9 243:9</p> <p><b>aspect</b> 38:5 49:6 51:15 93:22 98:8 104:16 187:9 199:13 223:20</p> <p><b>aspects</b> 47:5,11 51:23 77:22 78:16,18 227:21</p> <p><b>assertion</b> 78:12</p> <p><b>assesses</b> 93:1</p> <p><b>assessment</b> 33:24 73:10 88:9 99:20,22 171:1 226:11 236:2 238:4</p> <p><b>assign</b> 43:5 51:3 70:9 98:6</p> <p><b>assigned</b> 199:7</p> <p><b>assigning</b> 138:3 153:6</p> <p><b>assignment</b> 35:10 36:7 37:6,21 41:23 42:2, 19 43:7,14 65:8 68:14,21,22 90:10</p>
---	--	--

<p>135:14 138:5 147:14  <b>assist</b> 51:6 53:3  <b>assisted</b> 44:5  <b>assisting</b> 44:14  <b>associates</b> 130:2  <b>association</b> 116:18  121:9 123:25  <b>assume</b> 24:25 25:4  70:6 79:16 192:11,23  206:4 242:23  <b>assuming</b> 6:18 148:15  194:10 234:2  <b>assumption</b> 66:2,9  78:4 133:4,9 147:22  148:22 193:4 248:11,  18  <b>assumptions</b> 57:23  95:8 118:17 119:23,  24 120:1,2 193:2  243:2  <b>attempt</b> 82:24 91:19  <b>attempted</b> 104:7  <b>attribute</b> 242:22  <b>attributed</b> 190:25  <b>audible</b> 6:7  <b>audio</b> 4:21  <b>automated</b> 113:9  139:11  <b>availability</b> 179:19  206:25 207:8 210:22  <b>average</b> 40:7,11  187:10 199:4,13  201:23 202:23 203:1,  16 204:14 213:19  214:22 215:18 216:5,  6,7,20,21  <b>aware</b> 56:18 57:3  154:11</p> <hr/> <p style="text-align: center;"><b>B</b></p> <hr/> <p><b>back</b> 24:22 26:22  27:21,25 39:15 43:25  54:25 77:3 85:4  87:23 95:19 98:25  113:24 124:13 128:4  135:5 143:7 164:13  178:17 185:4 202:8  206:3 210:11 211:9,  12 212:1,2 213:3  224:16,25 230:3</p>	<p>236:17,22 243:4,5  247:22  <b>background</b> 32:14  67:21  <b>balance</b> 74:24 75:5,9,  15,16  <b>base</b> 167:5  <b>based</b> 9:25 25:2 29:2  32:14 38:13 65:12,19  84:11 99:17,20 104:4  129:1 146:21 148:25  156:18 159:11 161:18  166:22 167:2 172:1  173:1 179:23 184:4  194:17 196:20 197:7,  24 202:6 236:6,10  240:15  <b>baseline</b> 116:2,7  <b>bases</b> 247:12  <b>basic</b> 103:21 119:21  151:16  <b>basically</b> 29:16 76:6,  9 100:14 109:10  153:4 161:10 162:6  187:5 203:21 205:1,  23 206:2,23 219:20  225:6  <b>basis</b> 29:4 38:22  59:8,17 67:16,19  69:18 81:21 91:25  94:25 156:10 158:10  163:18 166:13 169:13  170:3 179:6 195:22  213:5 232:10,11  238:16 240:10 247:14  <b>Bates</b> 79:15  <b>beginning</b> 4:25 150:15  164:15 229:9  <b>behalf</b> 4:12,15 5:3  14:4,6,8 23:11,13  24:9 25:2 30:4,8  40:6 56:19 57:6 92:1  <b>Belated</b> 61:3  <b>belatedly</b> 15:6 80:8  100:24  <b>bended</b> 104:21  <b>benefits</b> 244:2  <b>big</b> 203:10  <b>bill</b> 53:8 74:25  75:15,16 136:6  158:19 159:13 232:15</p>	<p><b>billed</b> 54:18 55:11  76:7,19,22 77:7  110:25 158:6 232:8  248:15  <b>billing</b> 53:4 154:4,  13,20 155:8,11,14,21  158:2  <b>bills</b> 55:10 75:5,9  <b>bind</b> 164:3  <b>binded</b> 200:2  <b>birth</b> 68:18 92:12,24  94:2  <b>births</b> 93:5 94:7,20,  24  <b>bit</b> 135:19 149:19  <b>blanks</b> 105:17  <b>block</b> 103:19  <b>Bo</b> 44:8  <b>board</b> 139:21  <b>borrowed</b> 71:7  <b>bottom</b> 77:12 95:23  <b>Boulevard</b> 4:20  <b>bound</b> 98:12 99:16  239:4,10 240:4,13,16  <b>boundaries</b> 200:11  <b>Boware</b> 83:22  <b>BRD_ICRC</b> 79:14  <b>breadth</b> 241:6 245:8  <b>break</b> 6:17 14:11  101:6 125:15 209:13  229:12 242:3  <b>breast</b> 38:20 225:23  <b>breastfed</b> 66:19  <b>breastfeeding</b> 36:24  37:15 67:1 68:5,17,  25 69:9,20 70:4  208:12,20 225:7  <b>Brewer</b> 4:18  <b>broad</b> 71:6,23 74:6  76:14 77:22 78:16,18  119:6 159:6 165:15  169:8 202:19 236:2  244:6  <b>broader</b> 153:18  <b>broadly</b> 71:6 75:21  117:5 162:22 165:13  <b>browsing</b> 155:2  <b>BS</b> 7:15  <b>bucket</b> 105:20</p>
---	---	--

<p><b>buckets</b> 137:22,23 140:1</p> <p><b>buildup</b> 170:18</p> <p><b>bulk</b> 179:15 219:18 223:16</p> <p><b>bullet</b> 29:8,14</p> <p><b>Bulware</b> 122:14,17,18, 21</p> <p><b>bureau</b> 166:16,17,20 167:2</p> <p><b>business</b> 7:16 11:7,25 12:6 79:12,14,25 121:2,4 131:17,18 136:25</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>C.V.</b> 7:8 13:3 15:4, 14,19 18:2 21:23 22:4,17 29:5,7</p> <p><b>calculate</b> 70:9 203:1 215:7 216:4,12,19,20</p> <p><b>calculated</b> 189:24 203:1,16 213:12,19 214:22 215:1 216:5 217:9 242:15</p> <p><b>calculating</b> 94:14</p> <p><b>calculation</b> 13:11 40:7,10 90:1 92:20 100:13,16 213:23 214:3 217:10</p> <p><b>calculations</b> 125:6 152:18 214:5</p> <p><b>California</b> 4:1,16,21 128:1</p> <p><b>call</b> 31:20 35:19,20 36:15 37:2 41:17 42:5 66:22 100:14 124:8 129:21,25 130:6,10 173:11 220:25 226:10 247:3</p> <p><b>called</b> 5:14 9:23 11:17 12:10 58:16 100:25 157:10</p> <p><b>calls</b> 15:7 31:20 103:12 109:15 130:25 157:7 224:9,22 229:13,16</p> <p><b>cancel</b> 140:20,21</p> <p><b>canceled</b> 106:17 143:22</p>	<p><b>cancel</b> 141:25</p> <p><b>candy</b> 12:10</p> <p><b>capabilities</b> 233:15</p> <p><b>capita</b> 100:13 207:7</p> <p><b>capture</b> 142:3 199:23</p> <p><b>captured</b> 46:2 194:7,8</p> <p><b>Care</b> 17:23,24 34:20 35:4,17</p> <p><b>career</b> 15:24 21:4,11 23:16 34:19</p> <p><b>Carolina</b> 205:18</p> <p><b>Carroll's</b> 222:18</p> <p><b>carry</b> 37:8 63:2</p> <p><b>case</b> 17:12,15,16,21 18:6,8,9,14,21 19:3, 4,12,17 20:1 31:18 34:4,6 35:23 42:23 43:6 46:9 47:1 52:8, 10 53:13,16,22 59:3 75:20 119:5,10 143:19 152:13 167:3, 13 171:8 198:25 204:5,10 207:25 221:1 225:6 227:17 235:14 237:17 239:21,22</p> <p><b>cases</b> 15:13 20:20,23 23:23 235:17</p> <p><b>categorized</b> 126:10</p> <p><b>categorizing</b> 49:17</p> <p><b>category</b> 106:2</p> <p><b>caveat</b> 178:6</p> <p><b>CBSA</b> 152:19 164:1 165:22 167:21 168:12 171:8,17,25 172:6,7, 8,9,18 177:19 178:1, 23 183:12,15 196:20 197:7 198:3 200:1 201:21,22 202:9,10 213:13 214:7 215:2, 13,14,16 216:7,14 217:11</p> <p><b>CBSA-CENTRIC</b> 201:1</p> <p><b>CBSAS</b> 102:6,7,11,18 161:18,21 163:12,19, 23 165:22 166:1,12, 16,22 167:7,15,16,22 168:21 169:2,13,20, 24 170:9,12 171:19, 20 201:6 202:23 203:2 213:20 214:23 217:11 221:9</p>	<p><b>CDC</b> 67:24 68:4</p> <p><b>CDG</b> 157:10,13</p> <p><b>census</b> 93:17,20 166:16,17,20,23,24 167:2,6 171:21</p> <p><b>center</b> 247:3</p> <p><b>centered</b> 222:20</p> <p><b>Centers</b> 67:24</p> <p><b>centric</b> 153:2,9 191:14 193:10 194:14 202:10 210:17,18</p> <p><b>certainty</b> 98:3</p> <p><b>certification</b> 13:6, 14,24 14:22 15:12 41:15 42:4</p> <p><b>certifications</b> 7:21</p> <p><b>certified</b> 5:9</p> <p><b>challenges</b> 28:11</p> <p><b>change</b> 197:6</p> <p><b>changed</b> 184:14 196:20</p> <p><b>characteristics</b> 141:22 177:9 232:25 233:16</p> <p><b>characterization</b> 173:1</p> <p><b>characterize</b> 22:10 31:3,16 34:9 139:4 165:14 167:20 205:25</p> <p><b>characterized</b> 65:21, 22 71:9 77:14 164:24 177:12</p> <p><b>characterizing</b> 159:3</p> <p><b>check</b> 224:16</p> <p><b>child</b> 68:18 227:4</p> <p><b>Chimicles</b> 5:3,7,8</p> <p><b>circumstances</b> 232:16 246:18</p> <p><b>citation</b> 158:9</p> <p><b>claim</b> 45:7 60:5 78:5 104:9,13,14,20,21,25 107:9,11,24 108:6,9, 10,13,25 109:1,3,5, 8,19,25 110:3,7,12 111:4,7,11,17,19,22 112:1,3,4,6,7,9,11, 13,19,20,21,25 113:6,19 117:8 133:14 136:13 140:14,15,21,23,25 141:1 142:25 143:1, 3,17 144:16,23,25</p>
--	--	---

145:2,3,5,15,20,23 146:1,3 147:18 148:15 149:12 151:18,19 154:23 159:25 160:10,15 162:16 165:6,10,14, 18 168:9,10,12,16 169:24 171:16,18,23 172:8,19,23 175:5,6 178:1 183:23 184:4,5 185:3 186:6,8 188:5, 15,16,19 192:11,22, 23,24 194:11,14,16 200:4 204:8 205:5, 19,20 208:7,8 210:17 213:4,9,10,13 217:7 220:17 239:24 243:14 245:18,25 246:2,12 248:12,13 <b>claim-by-claim</b> 213:5 <b>claim-specific</b> 193:4 <b>claims</b> 17:13 19:18 20:6 29:9,12,18,22, 23 30:11,16,17 35:15 36:20 37:7,22,23 38:3,6 39:3,23 42:14 45:18 47:8,16,18 48:21 49:7 58:16,19, 23,25 59:10,16,18,20 60:7,12,13,17,24 61:2,7,17,23 62:10, 12 63:11,12 65:13,14 66:2,3,11,12 70:17, 19 72:2,3 73:18 74:1,3 76:2 77:21 78:25 79:2,3,8 81:9, 11,19,21 82:15 84:14,15,18,19 88:3, 6,13,16,24 89:2,9 90:12 91:12,25 92:12 94:13 95:2,25 96:4 97:10 98:1,10,11,15 99:10,16,17 100:23 101:22,25 102:8,11, 19,25 103:1 104:5 105:9,23 106:6,11, 14,16 111:6,18 114:9 115:5,6,14,19,21 116:12 117:19,20,21 125:20 132:7,14,25 133:1,6,11,17,20,25 135:15,18 136:16,18, 21 137:13,21,24 138:6,7,10,14,20,23	139:15,24,25 140:8, 20 142:6,7 143:2,22 144:5,10,12,13,15,22 145:5,13 146:2,4,5, 20 147:3,7,10 148:7, 9,13 149:13 162:8,9, 15 164:19,22 167:18, 23 168:3 169:3,10,21 170:10,13,15,25 171:8,13 173:8,13 174:1,18,21 175:23, 24 176:25 177:1,14 178:12,13,15 179:5, 8,15,18,24 180:7,20, 21 181:6,7,16,17,19 182:3,5,10,19 183:4, 6,12,14,20,22 184:25 185:10 186:7 187:7, 10,14,20 188:2,3,8, 19,25 189:8,9,10 190:3,12,18,24 191:16 192:3,12 193:6,12 194:9 195:3,10,15,16,25 196:4,7,16,20 197:7 198:12,21,23 199:18 200:10,14,22 201:12 202:6,14 204:18 205:12 207:21 210:20,23 212:10,16, 22 213:14,23 214:3, 7,8 217:3 219:18,19, 22 220:8,9,14,15,23 221:21 223:3,5,16,17 227:8,11,13 232:13 233:1,7,22 234:12, 17,18 238:19,25 239:4,9,15,16,24 240:4,12,13 241:1,5 242:16 244:23 247:10 <b>claims-centric</b> 194:24 <b>clarification</b> 33:13 99:9 131:24 209:18 219:6 244:12 <b>clarified</b> 129:6 <b>clarifies</b> 99:7 <b>clarify</b> 16:14 33:8 62:17 63:4 188:1 192:19 195:2 211:14, 18 227:5 <b>class</b> 13:6,10,14,24 14:1,22 15:11,18,23 16:12,23 17:4,6,7,	10,12,17,25 18:4,14 41:14 42:3 90:6 92:13 95:3 184:15 185:10 244:1 246:11, 24 <b>class-wide</b> 243:10 <b>cleaning</b> 100:9 103:21 105:9,20,22 107:16 114:17 115:21,23 138:24 139:19 <b>clear</b> 61:1 73:20,21 191:8 204:4 <b>client</b> 24:4 25:2 53:11 54:11,17 138:19 <b>clients</b> 15:3,12,13 21:1,2,10 24:1 27:18 28:15,25 <b>close</b> 51:24 <b>closing</b> 8:17 <b>co-pay</b> 76:20 <b>co-pays</b> 76:8 77:8 <b>code</b> 91:20 109:24 110:5,25 113:15,18, 22,25 114:2 125:23 136:5 151:17 171:23 172:1,2,5,7 173:4 175:3,4 222:22 <b>codes</b> 66:14 78:6 89:13 90:25 91:3 110:3,6,11 111:2 134:7,11,16,18,19, 20,25 135:1 136:7,22 137:9,13,14 138:18 147:15,19 149:1 155:4,7 156:9 158:1, 6,18 171:24 191:10 195:11 220:1 235:7 239:17 <b>coinsurance</b> 76:21 <b>colic</b> 67:8 <b>colleague</b> 130:9,22 <b>colleague's</b> 224:14 <b>colleagues</b> 53:3,4 130:2 224:11 <b>collect</b> 45:6 <b>collected</b> 50:4,14 <b>collection</b> 48:19 50:12,13,14,19 51:16 100:7 <b>collectively</b> 91:5
--	--	--

<p><b>collects</b> 153:16</p> <p><b>Collins</b> 222:20,21</p> <p><b>color</b> 155:6</p> <p><b>column</b> 194:9</p> <p><b>combination</b> 12:4 13:19 76:10 108:7 110:1,10 125:25 138:17 141:18</p> <p><b>combinations</b> 110:10, 16,17,22 136:12 137:8 171:24</p> <p><b>combined</b> 84:13,14 91:21 99:12,20,22</p> <p><b>comfort</b> 118:20</p> <p><b>comfortable</b> 131:11</p> <p><b>comment</b> 104:18 204:11 233:23</p> <p><b>commentary</b> 205:23</p> <p><b>commenting</b> 198:17 205:24 207:25</p> <p><b>common</b> 41:1 94:16</p> <p><b>commonality</b> 13:9</p> <p><b>communicate</b> 57:5</p> <p><b>communicated</b> 43:14 57:12</p> <p><b>communications</b> 56:25</p> <p><b>community</b> 163:25 164:3</p> <p><b>companies</b> 14:23,25 21:25 23:24 24:9 26:8,19 159:20</p> <p><b>company</b> 8:11 9:23 10:12 12:10,11 22:3, 6 24:6 48:24 49:20 55:8 80:16 104:6 105:13 109:11 119:8 129:25 130:1 136:11 150:11 161:1</p> <p><b>comparable</b> 215:17</p> <p><b>compare</b> 39:25</p> <p><b>compared</b> 198:12</p> <p><b>comparison</b> 166:14</p> <p><b>compensated</b> 52:1,7, 13,18,21,23,25 54:4</p> <p><b>compensating</b> 52:20</p> <p><b>compensation</b> 52:9</p> <p><b>complaint</b> 38:25 55:17,23 71:8,10,12, 19</p> <p><b>complete</b> 6:14</p>	<p><b>completely</b> 180:25</p> <p><b>completeness</b> 49:5 83:25 100:10</p> <p><b>compliance</b> 8:9 12:7</p> <p><b>component</b> 169:17 185:2</p> <p><b>comprehensive</b> 32:19 34:3</p> <p><b>comprise</b> 40:10 59:8 120:8 142:22 182:19</p> <p><b>comprised</b> 93:2</p> <p><b>comprises</b> 40:25</p> <p><b>computer</b> 45:5,21</p> <p><b>conceivable</b> 194:20</p> <p><b>concentrated</b> 179:24 181:18 200:16</p> <p><b>concentration</b> 9:10</p> <p><b>concluded</b> 249:12</p> <p><b>concludes</b> 249:5</p> <p><b>conclusion</b> 73:20,24 99:13,15 164:21 205:9 234:24 239:9 241:1,4,20</p> <p><b>conclusions</b> 42:11,20 190:16</p> <p><b>condition</b> 225:9 242:23</p> <p><b>conditions</b> 38:19 225:11,25 231:16 241:24 242:8 243:13</p> <p><b>Condry</b> 4:11 30:19 31:5,7,18</p> <p><b>conduct</b> 29:16 32:20 37:6 42:13 51:4 69:24 70:2 87:8 92:19 120:13 162:6 196:15</p> <p><b>conducted</b> 29:21 34:6 49:4,19 62:4 95:16 104:1 115:12 116:22 118:13 122:9 166:24 178:20 192:8 214:10 217:9 243:25</p> <p><b>conducting</b> 43:10 47:3 118:13 224:12,20</p> <p><b>confidence</b> 98:7</p> <p><b>confidential</b> 15:5,8 19:22 20:13 21:20 22:23 25:14 26:14 30:22</p>	<p><b>confidentiality</b> 23:4 27:3 28:14</p> <p><b>confirm</b> 49:24 119:23 120:2 133:11,24 199:3 227:17</p> <p><b>confirmation</b> 104:6 123:17 131:21 134:21</p> <p><b>confirmed</b> 109:5 121:9 233:3</p> <p><b>conflict</b> 26:24 234:1</p> <p><b>conflicting</b> 233:14,25</p> <p><b>conjunction</b> 121:6</p> <p><b>connection</b> 23:13 31:18 33:19 34:4 48:13 54:19 59:3 68:3 122:19 157:14 178:11,12</p> <p><b>connotate</b> 98:4</p> <p><b>conservative</b> 125:4 152:24 153:3 176:1 221:22,24 237:2,8,22</p> <p><b>considerably</b> 207:6</p> <p><b>consideration</b> 183:11, 19 246:10,23</p> <p><b>considerations</b> 95:17</p> <p><b>considered</b> 57:22 58:7,13 69:19 76:24 92:21 109:18,24 143:2,4 155:25 156:8 232:18,19</p> <p><b>consistent</b> 85:17 105:15 118:1 196:25</p> <p><b>consists</b> 61:6</p> <p><b>constant</b> 9:14</p> <p><b>constructed</b> 89:19</p> <p><b>construction</b> 46:14 203:3</p> <p><b>consultant</b> 13:18,21</p> <p><b>consultants</b> 154:3</p> <p><b>consultations</b> 69:10 70:3</p> <p><b>consulting</b> 7:25 8:1, 14 11:7,25 12:11,15 23:2</p> <p><b>consumer</b> 248:4</p> <p><b>contact</b> 222:8 233:19</p> <p><b>contacted</b> 34:6,13 225:14 228:15 233:2 236:8 238:22 239:8</p> <p><b>contained</b> 35:16 63:1 123:2 129:7 247:14</p>
---	--	---

<b>contending</b> 238:5	<b>copy</b> 229:22 249:9	230:24 236:8
<b>contention</b> 218:24 219:5	<b>core-based</b> 163:12	<b>counselor</b> 55:8 156:19
<b>context</b> 23:2 28:18 32:21 34:10 36:4 37:24 40:9 41:3,22 42:9 46:3,9 49:8 63:4 67:10 68:13 69:5 71:4 73:19 76:17 77:14 78:9 92:7,23 93:12,24 94:20 95:9 96:23 100:17 108:2,10 112:2 113:13 116:1 118:3 132:5 139:13 140:18 141:7 143:20 146:15 154:17,19 155:7 156:4 157:22 165:25 166:11 169:7 172:17 173:2,17 176:11 178:8,23 179:2 181:1 182:15, 24 183:19 185:19 198:15 199:12 203:4 205:13 215:7,23 216:2,25 226:8 248:4	<b>correct</b> 7:11,25 8:3 15:25 16:1 17:11,18, 19 22:25 24:12 25:9 30:19 32:4 37:16 39:7,20 41:15 44:12 50:20 52:15,22 53:10 57:9,14 58:18,20 59:21 60:14,24 69:10 70:4 72:8 80:3 93:19 101:17,25 102:1,8,9, 12 103:2,4 111:8 115:7 118:24 121:13 122:15 123:5,23 128:23 129:10 131:1 135:21 136:20,23,24 139:17 144:17 146:11 151:6 153:5 158:2,3 159:4 160:21 165:20 166:18,21 167:23,24 168:1,17 169:13 173:9,10 175:2 179:25 185:17 188:9 190:6,10,14 191:12 195:4 196:21 199:22 200:6,8 206:6 209:21,24,25 210:3 214:23,24 216:24 218:5 219:2,4 228:24 234:4,13 236:9 242:16,17 245:19 246:25	<b>counting</b> 152:20,21 153:7
<b>continue</b> 197:9	<b>correction</b> 185:22	<b>country</b> 205:17
<b>Continued</b> 128:7	<b>correctly</b> 53:9 121:22 122:18 123:8 124:10 190:7	<b>counts</b> 213:13 214:6
<b>continuing</b> 96:7	<b>correlation</b> 94:10	<b>County</b> 17:4
<b>contract</b> 30:3,4 55:6 192:18	<b>corresponds</b> 188:16	<b>couple</b> 118:7 176:21 186:10
<b>contracted</b> 192:14	<b>cost</b> 74:9,11,24 75:23 76:2,15,24 77:14 189:1,21,22 190:3,5, 12,17 241:22 242:7, 19,22 243:14	<b>court</b> 5:9 6:5 18:19
<b>contradicts</b> 207:22	<b>counsel</b> 4:22 25:1,2 38:18 39:1 56:25 57:24 61:12 134:13 135:21,23,25 136:11 138:19 161:4,16,24 229:23 230:1	<b>Court's</b> 56:15
<b>contrasted</b> 179:17	<b>counsel's</b> 161:18	<b>cover</b> 132:21
<b>contrasting</b> 100:17,21 192:1	<b>counseling</b> 36:25 37:16 225:8,24	<b>coverage</b> 35:16 42:16 70:20 72:22 73:1,13 88:17 89:14,17 157:8 162:10 170:9,14 181:16 201:10 209:4 210:19 212:6 235:21 245:1
<b>Control</b> 67:24		<b>covered</b> 92:1 100:12 121:1 246:13
<b>controlled</b> 203:24		<b>covers</b> 13:4 90:5
<b>convenience</b> 206:18		<b>CPT</b> 66:13 78:6 89:13 90:25 91:3 110:3,5, 11 134:7,20,25 137:13 138:18 147:15,19 156:8 195:11 220:1 235:6 239:17
<b>convention</b> 108:5		<b>cracked</b> 38:20 225:12
<b>conversation</b> 83:22 84:1 116:19 121:10 122:4,5,7 130:12 132:17,23		<b>create</b> 59:14 61:23 62:6,8,12,21 94:12 149:6
<b>conversations</b> 38:25 123:10 124:12 130:22 132:24 134:5,22 150:10		<b>created</b> 58:24 60:23, 25 64:2 92:17,18 100:14 113:14 153:23 203:19
<b>converse</b> 108:12		<b>creating</b> 114:13 203:21
<b>convey</b> 131:2		<b>creation</b> 93:6 114:25
<b>copies</b> 82:22		<b>credential</b> 228:13
		<b>credentialed</b> 154:5
		<b>criteria</b> 41:15 111:2 171:22
		<b>critical</b> 47:15
		<b>cross-sectional</b> 185:2
		<b>Crosswinds</b> 17:16,21 18:6,20 19:4,12 20:1
		<b>current</b> 123:18 150:13 231:17

<p><b>curriculum</b> 7:4</p> <p><b>customary</b> 49:1 118:18</p> <p><b>cuts</b> 62:23 206:1</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>damages</b> 13:11 29:23</p> <p><b>data</b> 12:15 17:14</p> <p>18:15,17 19:11,18,19</p> <p>20:6 29:17,18 30:16,</p> <p>17 36:20 37:9 38:14</p> <p>39:1,23 40:3,4 41:2,</p> <p>3,12 42:13 43:9,10,</p> <p>12,13,18 44:19,21</p> <p>45:4,7,8,12,19 46:4,</p> <p>24 47:9,14,16,18,25</p> <p>48:2,4,6,8,19 49:2,</p> <p>3,6,8,10,12,13,17,18</p> <p>50:1,3,12,13,14,16,</p> <p>19 51:17,20,21</p> <p>58:16,20,23,25</p> <p>59:10,11,16,18,20</p> <p>60:3,4,5,6,7,12,13,</p> <p>17,19,20,22,23,24</p> <p>61:2,6,7,17,20,23,24</p> <p>62:7,8,10,12,20,24,</p> <p>25 63:1,6,9,10,11,</p> <p>12,17 65:1,5,13,14,</p> <p>19 66:3,12 70:17</p> <p>72:2,3,9 73:18</p> <p>75:20,24 77:21</p> <p>78:15,25 79:2,3</p> <p>80:7,15,20,21 81:3,</p> <p>8,16,17,22,24 82:3,</p> <p>4,10,15 83:3,8,23,25</p> <p>84:9,12 85:19 86:14,</p> <p>23 88:3,6,8,13,17,24</p> <p>89:1,2,9,19 90:11,</p> <p>12,17 91:12 93:2,12,</p> <p>17,20 94:2,8 95:7</p> <p>96:4 97:7,15,20</p> <p>98:11,13,15,16 99:8,</p> <p>10,11,16,18,19,23,25</p> <p>100:4,7,9,10 101:12,</p> <p>23 102:18,19 103:1,</p> <p>5,8,11,20,23 104:5,</p> <p>12,16,19,23 105:9,</p> <p>14,21,23,24 106:1,3,</p> <p>4,6,8,20 107:16,17,</p> <p>22 109:13,17 111:6,</p> <p>18 112:16 113:11</p> <p>114:9,12,13,16,21</p> <p>115:2,6,14,16,19,21</p>	<p>116:7,12,14,16</p> <p>117:1,10,13,15,20,21</p> <p>118:2,16,20 119:16,</p> <p>23,25 122:23,24</p> <p>123:4,17 124:1,18</p> <p>125:21 126:2,11</p> <p>128:13 129:2,4,7</p> <p>131:11,12,13 132:3,</p> <p>19 133:22,23 136:19,</p> <p>21 137:6,13 138:10,</p> <p>14,23 139:19,25</p> <p>140:14 141:11 142:6</p> <p>143:2 144:15,22</p> <p>145:5,13,14 146:2,4,</p> <p>5,13,16,18,19,21,22</p> <p>147:3,4,20 148:10,13</p> <p>149:12,13,20,22,24</p> <p>150:1,10,22 151:4,9</p> <p>152:3,10 153:18</p> <p>161:11,17,25 162:7,</p> <p>15,21 163:11 164:19,</p> <p>22,25 165:4,22</p> <p>166:8,23 167:23</p> <p>168:4,22 169:3,21,22</p> <p>170:10,13,22,24</p> <p>171:3,8,13 173:8,13,</p> <p>19,21 174:21 175:19,</p> <p>21,23,25 176:18</p> <p>177:14,17 178:12,13</p> <p>179:6,8,9,14,18</p> <p>180:7,21 181:7,19</p> <p>182:4,16 183:25</p> <p>184:21,25 185:1</p> <p>187:15,20 188:9,19</p> <p>189:9 192:10,12</p> <p>193:7,12 194:18</p> <p>195:3,4,15,25 196:4,</p> <p>7 197:19 198:13</p> <p>199:18 201:12 202:6,</p> <p>14 203:11 204:4</p> <p>205:24 208:1,19</p> <p>210:24 213:14,23</p> <p>214:2,3,7,8,15,17</p> <p>215:10 217:17 219:1,</p> <p>18 220:1,8 223:5,16</p> <p>225:5 227:7,11 233:1</p> <p>234:13,18 235:4,9</p> <p>237:25 238:20 239:4,</p> <p>9,14,15 240:4,13</p> <p>241:1,5 244:23</p> <p>247:10,11 248:8,19</p> <p><b>data-</b> 97:18</p> <p><b>data-driven</b> 39:22</p>	<p><b>database</b> 59:20 60:2</p> <p>62:21,22 64:3,4</p> <p>66:13 77:4,11 78:5</p> <p>84:15,19 86:25 87:4</p> <p>97:11,18,20 104:19</p> <p>107:9 110:4 112:14</p> <p>113:13,22 115:6,14</p> <p>120:20 123:2 125:1,9</p> <p>126:23 128:14,17</p> <p>141:16 142:12 143:13</p> <p>144:13 151:24</p> <p>153:16,21 166:10</p> <p>175:8,25 177:1 182:5</p> <p>183:3 198:23 210:20</p> <p>218:12 220:14,15,17,</p> <p>24 227:8 231:9,11,</p> <p>14,22 232:24,25</p> <p>233:7,22 234:3</p> <p>237:7,25 239:24</p> <p><b>databases</b> 76:4 100:23</p> <p>109:16 143:14,15</p> <p>176:13</p> <p><b>dataset</b> 59:14 81:19</p> <p>101:16 108:18,24</p> <p>109:4 116:1 122:19,</p> <p>20 188:16</p> <p><b>datasets</b> 99:12 103:20</p> <p>108:20 142:21</p> <p><b>date</b> 8:17 54:4</p> <p>109:18,22 140:24</p> <p>142:11,13,14,24</p> <p>150:7,13,14,18,21</p> <p>151:2</p> <p><b>dates</b> 141:21 142:23</p> <p><b>Daubert</b> 19:7,10</p> <p><b>Dawson</b> 120:24</p> <p><b>day</b> 235:19</p> <p><b>day-to-day</b> 153:20</p> <p><b>de-duplicate</b> 151:14</p> <p><b>de-duplication</b> 151:8</p> <p><b>de-minimized</b> 97:11</p> <p><b>deal</b> 79:17</p> <p><b>dealing</b> 104:12 148:23</p> <p>153:21 232:12</p> <p><b>dealt</b> 48:2</p> <p><b>December</b> 150:15</p> <p><b>decide</b> 197:25</p> <p><b>decided</b> 163:9</p> <p><b>decision</b> 18:19 133:15</p> <p>163:11 204:7 206:23</p> <p><b>declar-</b> 56:3</p>
--	--	--

<p><b>declaration</b> 38:25                      39:5,6 56:4 156:22,                      25 157:4 158:10</p> <p><b>declarations</b> 39:8</p> <p><b>deductible</b> 76:20</p> <p><b>deduction</b> 76:22</p> <p><b>deductions</b> 76:8 77:8</p> <p><b>deduping</b> 153:11</p> <p><b>deemed</b> 13:5 150:20</p> <p><b>deep</b> 215:11</p> <p><b>deeper</b> 203:11</p> <p><b>defendant</b> 14:1,15                      66:14</p> <p><b>defendants</b> 4:12 5:6                      14:9,13 17:22 72:19</p> <p><b>defending</b> 23:14</p> <p><b>define</b> 60:7 73:22                      107:1 135:17 194:6                      248:1</p> <p><b>defined</b> 29:5 54:2                      60:25 63:7 83:21                      89:14 107:23 108:13                      110:8 133:18 134:13                      135:16 136:14 138:6,                      19 140:18 147:16                      163:24 167:15 170:9                      171:7,20,21 172:18                      177:1 186:18 194:8                      195:11 219:25 220:1                      224:22 235:6 239:17</p> <p><b>defines</b> 139:22</p> <p><b>defining</b> 107:25                      108:11 113:5 115:13</p> <p><b>definition</b> 32:8 33:9                      34:7 38:12 40:25                      58:23 60:8 72:25                      74:9 75:23 107:12,15                      108:1 133:13 134:19                      138:2 145:24 148:25                      163:23 212:12 220:16                      240:11</p> <p><b>definitions</b> 176:12</p> <p><b>definitive</b> 236:20</p> <p><b>degrees</b> 7:18</p> <p><b>Deitz</b> 123:22,24</p> <p><b>delegation</b> 42:15                      71:11</p> <p><b>Deloitte</b> 10:21 11:3,8</p> <p><b>demand</b> 82:22 183:1                      206:22</p>	<p><b>demographic</b> 208:11,19</p> <p><b>denial</b> 141:3 144:3                      241:23</p> <p><b>denied</b> 104:22 112:12                      143:17 189:1,23                      190:4,8,13,18 248:1,                      2,12,19</p> <p><b>denominator</b> 186:7                      188:2 217:4</p> <p><b>density</b> 100:15                      203:22,25 204:1,6,                      13,17 206:15</p> <p><b>deny</b> 140:25</p> <p><b>department</b> 10:23                      11:1,3,15,23 119:8</p> <p><b>depend</b> 172:13 175:8</p> <p><b>depending</b> 43:4 66:22                      232:16</p> <p><b>depends</b> 108:2,18                      163:4</p> <p><b>depicts</b> 215:1</p> <p><b>deposed</b> 5:25</p> <p><b>deposition</b> 4:6,15 6:3                      16:22 56:7,11 87:17                      164:11,15 229:5,9                      249:6,12</p> <p><b>deprived</b> 197:4</p> <p><b>depth</b> 241:6</p> <p><b>derivation</b> 166:12</p> <p><b>derive</b> 115:6,12                      187:20 214:3</p> <p><b>derived</b> 34:5 73:24                      119:22 182:16 187:14                      225:5</p> <p><b>deriving</b> 78:15 116:1,                      7</p> <p><b>describe</b> 72:17 135:18                      149:2 171:22 182:11                      185:24 188:17 221:3</p> <p><b>describes</b> 101:2                      175:14</p> <p><b>describing</b> 32:22 52:6                      99:11 103:5 112:18                      146:13 154:19 181:2                      214:10</p> <p><b>description</b> 51:2                      65:19 86:12 116:8                      159:7 175:3,4,16</p> <p><b>descriptions</b> 86:14                      176:3,15</p>	<p><b>design</b> 236:24</p> <p><b>designation</b> 191:2</p> <p><b>designed</b> 181:12 192:8                      203:20 224:17 240:22</p> <p><b>Desiree</b> 118:23 119:4                      121:19 129:16,24</p> <p><b>detail</b> 73:6 106:20                      118:9 157:12 185:25                      208:24</p> <p><b>detailed</b> 107:8</p> <p><b>details</b> 18:12 20:2,23                      23:7 30:3 61:10 77:3                      106:10 129:7 166:6                      227:6</p> <p><b>determination</b> 51:5                      65:8 78:12 91:2                      136:4 138:4 149:8                      157:8 169:24 170:3                      171:6 184:3 192:5                      194:19 196:14 208:7                      209:3 213:6 215:11                      223:6 235:20 243:15,                      20</p> <p><b>determinations</b> 171:2</p> <p><b>determine</b> 109:8                      116:25 136:4 178:15                      195:14 216:5</p> <p><b>determining</b> 109:19,25                      164:1 183:19</p> <p><b>develop</b> 38:12 64:23                      66:10 81:12 96:3                      222:7</p> <p><b>developed</b> 38:16 63:2                      92:8 97:1 224:17                      243:16</p> <p><b>developing</b> 37:21                      47:2,6 89:5 192:6</p> <p><b>development</b> 32:15,16</p> <p><b>deviation</b> 241:22                      242:6</p> <p><b>Devon</b> 5:8</p> <p><b>diagnose</b> 111:1 138:18                      147:15,19</p> <p><b>diagnosis</b> 39:3 90:25                      109:24 110:6,11                      134:7 135:1 136:22                      137:14 195:11 235:7</p> <p><b>difference</b> 91:11                      122:25 188:24</p> <p><b>differences</b> 40:17,23</p> <p><b>differential</b> 74:13</p>
--	--	--

190:17	129:23 139:8 150:25	36:11,21 37:12 38:1,
<b>digit</b> 197:3	230:16	8 39:10,17 40:12
<b>digits</b> 109:7	<b>discussions</b> 43:15	41:7 42:1,21 44:20
<b>direct</b> 51:4 125:24	128:25	45:11 46:5,16 47:4
204:16 207:17 230:12	<b>Disease</b> 67:24	48:11 50:10 52:11
242:12	<b>dispersion</b> 202:1	53:14 54:24 55:14
<b>directing</b> 51:19	<b>displayed</b> 110:23	57:4,14,16 58:5 59:1
<b>directly</b> 72:17 82:3	<b>dispute</b> 9:8,11 11:14	60:11,21 61:4,15
<b>director</b> 9:7	144:8	62:5 63:16,23 64:5,
<b>directory</b> 80:20,21,22	<b>disputes</b> 8:1 11:1,6	13 65:10 66:1,17,24
81:2,18 82:10,15	13:4	67:15 68:2,15,23
83:3,8 84:9 85:19,24	<b>distinct</b> 62:18	69:7,17 70:1,11
87:4 101:12,17,23	<b>distinction</b> 24:2 40:5	72:1,10 73:7 74:8,23
122:20 123:4,15	41:9 91:19 112:1	75:8,17 77:17 79:9,
124:1,6,17 125:8,19,	194:13 225:17,18	12,19 80:10 82:7,13,
21 126:3,6 128:12	<b>distinctions</b> 40:6	23 83:1 85:1,3,8
132:12 146:22 147:4,	<b>distribution</b> 174:4,18	86:3,18 87:12 88:1,
11,18,23 148:4,7,10	193:9 199:17 200:4,	15 90:3,19 91:23
149:15,17 150:8,13,	18 201:6,20 203:12	92:9 93:9 94:22
22 151:4,9 152:3	<b>dive</b> 208:23 215:12	95:18 98:19,25 99:14
153:18 175:19 176:4,	235:22	101:9 102:20 103:9
7,14,18 177:4	<b>divulge</b> 19:21 21:19	105:3 107:14 108:15
178:22,24 179:21	22:22 25:14 26:13	111:15 115:15 116:9
218:12 219:1,16	30:21 31:21 33:2	117:17 118:6,21
220:22 221:20 222:1	56:24 79:6 155:23	119:11 125:14,17
223:3 231:15,21	160:3 166:3 184:19	127:1 128:8 133:21
234:10 237:24	245:12	134:23 135:11 136:17
239:18,23 240:7	<b>doctor</b> 112:5 145:17	137:11,20 138:11,21
247:11	<b>document</b> 55:17,18	139:2 140:9 142:4
<b>disbursed</b> 200:15	79:13,15,25 80:11,12	144:1,20 145:1,12
<b>disbursement</b> 200:6	113:23 136:1 161:6	146:10 147:1,9,21
<b>disbursements</b> 201:11	173:15 219:12 230:6	148:14 152:16
<b>disclose</b> 15:2 19:17	231:6	153:10,15 155:9,19
23:5 52:3 68:9	<b>documentation</b> 114:5	156:5,17 157:24
<b>disclosed</b> 18:11 21:23	119:19 120:25 153:12	159:1,10,21 160:6,17
<b>disclosing</b> 23:3	<b>documents</b> 38:14,21,23	161:15 162:13 164:7,
<b>disclosure</b> 15:7 20:13	55:24 57:22 58:7,11,	17 166:15 168:13
35:20 69:13	12 59:4,6 79:10,21	169:1,11,18 171:15
<b>discriminate</b> 215:18	131:15 160:9,14	172:20 173:3 174:7
<b>discuss</b> 18:12 28:17	230:21 231:3,11	175:1 177:7,23
36:6 122:21 144:10	244:14,19,21,23	178:10 179:22 180:4,
203:8 226:1 247:13	245:14	17 181:3,13 182:2,17
<b>discussed</b> 81:16 88:23	<b>dollar</b> 76:6,18 106:12	183:10,21 184:10
102:4 104:2 114:19	<b>Donaldson</b> 4:13 5:2,19	185:8,14 186:24
115:22 118:10 119:12	7:2 15:9,17 16:10	187:18 188:6,23
123:14 133:10 138:25	19:2,24 20:4,9,15,	189:6 190:1 191:6
161:13 203:16 205:1	21,24 21:7 22:2,18	192:21 193:11,19
229:14 242:20	23:8 24:10,15,20	194:2 195:13,21
<b>discussing</b> 122:12	25:6,18 26:2,17	196:18 199:16,21
245:1	27:1,15,24 28:5 29:6	200:12 202:3,15
<b>discussion</b> 84:4	31:4,8,23 32:9 33:15	203:5 207:4 208:10,
117:25 123:3,6	34:17 35:1,12,24	17 209:11,20 210:8
		211:8,11,22,25
		212:4,13,20 217:19,

<p>22 218:1,9,23 219:7                  222:12,16 224:8                  225:13 228:6,14,25                  229:11 230:7,11                  231:5 232:1 233:24                  234:8,15 236:4                  237:20 238:3,9,21                  240:14,24 241:12                  242:5,13 243:23                  244:13 245:5,16                  246:8,21 247:2,17,24                  248:20 249:2,4  <b>Donna</b> 5:10  <b>door</b> 54:16  <b>dos</b> 4:8 5:1,13,20,24                  6:23 7:3 13:3 20:25                  21:8 29:7 39:18                  41:13 42:22 55:15                  58:6 70:12 77:18                  79:20 82:14 83:4                  87:19 88:2 93:10                  95:19 102:21 128:9                  153:25 156:6 160:18                  164:11,16,18 178:11                  196:19 203:6 206:3                  212:1,21 213:11                  217:14 218:3 219:8                  229:5,10,14 232:2                  237:21 240:25 242:14                  247:25 248:22,25                  249:6  <b>double</b> 153:7  <b>dozens</b> 13:16  <b>drafted</b> 135:24 136:1  <b>drafting</b> 51:21  <b>draw</b> 206:19 234:24  <b>draws</b> 206:19  <b>driven</b> 40:3,4 41:2,4  <b>drivers</b> 203:19 205:3  <b>due</b> 27:8 139:15  <b>duly</b> 5:14  <b>duplicate</b> 107:2,3,11,                  13,15 108:1,9,11                  109:9 120:8,9  <b>duplicates</b> 49:15                  104:8 105:18 106:7,8                  140:20 151:12  <b>duplication</b> 107:8                  139:10  <b>duration</b> 151:4</p>	<p style="text-align: center;"><b>E</b></p> <p><b>e.g</b> 154:3  <b>e.g.</b> 154:5 198:10  <b>earlier</b> 21:9 27:9                  55:18 59:12 78:3                  103:16 106:22 121:2                  138:25 161:13 188:17                  201:7 203:16,17  <b>eccentric</b> 30:6  <b>econometric</b> 30:14  <b>economic</b> 12:15  <b>economics</b> 7:10,16                  163:25  <b>economist</b> 206:20  <b>education</b> 7:8  <b>educational</b> 67:21  <b>effectively</b> 153:6  <b>either/or</b> 200:2  <b>elaborate</b> 69:15 75:15                  196:2 231:3 233:10                  246:18  <b>elaborated</b> 21:23  <b>Elder</b> 17:23,24  <b>electronically</b> 82:16  <b>element</b> 108:9 177:5                  223:24  <b>elements</b> 47:15 64:3                  141:23  <b>elicited</b> 237:25  <b>eligibility</b> 126:21  <b>eligible</b> 72:18 100:18                  123:18 125:8,19,24                  231:16 235:1  <b>eliminate</b> 105:18  <b>empirical</b> 37:6,22                  39:19,21,24 40:2,9,                  23,25 41:11 177:16                  179:13 224:7 246:3  <b>empirically</b> 37:11                  192:9  <b>employ</b> 48:12 167:8  <b>employed</b> 7:23 9:4,5                  11:9,12  <b>employees</b> 44:10                  128:10  <b>employer</b> 27:9  <b>employment</b> 52:7</p>	<p><b>end</b> 87:16 95:22                  131:14 158:14 164:10                  166:11 229:4 235:19  <b>ended</b> 92:22  <b>ends</b> 213:18  <b>engaged</b> 24:11,17,25                  25:11  <b>engagement</b> 24:23 25:4                  26:23 27:2,11 28:15                  29:19 43:2 48:13                  52:24 53:1,22 54:1,                  4,19 68:4 70:16,25                  159:24 162:5  <b>engagements</b> 13:12,23                  14:5,12,20 15:5,12,                  21,24 16:7 22:20                  23:6 25:19,22 26:4,                  7,8 27:14,19 28:10,                  17 34:18 35:14 43:3                  54:11  <b>engorgement</b> 38:20                  225:12 226:4  <b>ensure</b> 224:18  <b>entail</b> 114:9,10  <b>entails</b> 35:11 222:23  <b>enter</b> 62:20  <b>entered</b> 104:19 140:23  <b>entire</b> 139:10  <b>entirety</b> 55:19  <b>entry</b> 141:25  <b>environment</b> 63:15  <b>environmental</b> 7:15  <b>equates</b> 194:11  <b>equivalent</b> 10:25                  11:18,24 80:13 109:2  <b>Erica</b> 121:20,21                  129:24  <b>erroneous</b> 116:16  <b>essentially</b> 43:19                  77:5 203:21  <b>establish</b> 233:20                  235:4  <b>established</b> 232:23  <b>estimate</b> 13:15 54:9  <b>estimates</b> 167:4  <b>et al</b> 18:3  <b>evaluate</b> 13:9 18:14                  37:24 42:13,14 49:5                  89:4,16 131:8 162:9                  175:11 190:20 205:11                  210:12 215:21 246:3</p>
--	---	--

<p><b>evaluated</b> 29:22 37:11                      73:18 76:11 87:11                      93:4 108:9 147:16                      152:11 184:21 209:18                      212:17  <b>evaluating</b> 49:9 76:9                      210:18  <b>evaluation</b> 13:6,14,24                      14:21 17:13 39:19,                      24,25 42:3 43:18                      122:10 164:2 196:15                      213:4 215:10 245:7                      248:7  <b>evaluations</b> 40:18  <b>evidence</b> 88:3,17                      192:13 233:14 237:18                      238:17  <b>Evidently</b> 167:13  <b>evolution</b> 201:4  <b>exact</b> 16:19 125:22                      141:2  <b>EXAMINATION</b> 5:18                      128:7  <b>examine</b> 70:17 101:15  <b>examined</b> 91:21  <b>examining</b> 70:14                      106:20 160:21 232:4  <b>examples</b> 226:2  <b>Excel</b> 59:6 62:9,11                      82:9  <b>exceptions</b> 191:20  <b>exclusive</b> 62:19  <b>excuse</b> 136:5 145:14                      150:17 241:2  <b>execute</b> 113:14  <b>executed</b> 92:8  <b>exercise</b> 227:7  <b>exhausted</b> 247:16  <b>exhibit</b> 6:23,24 7:4,7                      58:6,12 63:18 72:4,                      6,9 79:23 80:12,14,                      17 82:8,12 83:2,11                      110:13,15 111:6                      134:24,25 135:12,24                      136:23 137:14 139:16                      150:17  <b>exhibits</b> 51:22 79:10,                      11 110:9 157:3  <b>existed</b> 98:2  <b>existence</b> 149:6</p>	<p><b>existing</b> 227:24  <b>exists</b> 246:6  <b>expanded</b> 143:17  <b>expanding</b> 146:20  <b>expect</b> 199:14 224:4                      230:18 240:3  <b>expected</b> 117:19                      195:16 207:17  <b>experience</b> 13:4 29:3                      32:15 35:13 43:9,11                      45:17 46:8,11,17,24                      47:1,6,11,19 48:1,13                      66:18,25 67:7,16,20                      104:12 154:23 159:12                      226:5 232:12,14  <b>experienced</b> 226:20  <b>experiment</b> 222:6                      223:2 240:22  <b>expert</b> 6:23 13:18,21                      15:11 16:13,16,18,25                      17:5,9,18 18:16,20                      19:25 21:12,13,25                      22:5,11,16 23:10                      27:17 28:9,12,19                      29:20 30:8 32:13                      57:6,8,18  <b>expertise</b> 43:10                      44:13,22,23 45:2  <b>experts</b> 43:15,21                      56:18  <b>explain</b> 29:15 107:22                      185:18 193:17 216:2                      234:11  <b>explained</b> 33:25                      204:25  <b>explanation</b> 33:10,11                      120:9,10 122:25                      131:9 161:12 182:1                      225:3  <b>explanations</b> 29:5                      233:11  <b>explicit</b> 143:20  <b>explicitly</b> 54:2 92:6                      191:22 208:16  <b>explore</b> 91:7  <b>express</b> 64:25  <b>expressed</b> 30:25 162:5  <b>extent</b> 15:10,16                      18:22,25 19:21 21:19                      22:3,22 25:14 26:12                      30:21 33:2,4 52:3</p>	<p>56:23 68:7 69:13                      79:5 89:17 131:25                      137:5 147:17 155:23                      160:3 165:6 166:3                      178:3 182:25 184:18                      185:3 242:21 244:20                      245:10,25 247:15                      248:9  <b>extract</b> 49:23 129:5                      131:12 138:9,13  <b>extracted</b> 122:24                      165:5  <b>extracting</b> 131:10                      138:13  <b>extraction</b> 50:16 80:6                      84:6 116:21 118:5                      119:9,18 129:8                      134:8,14 165:1 176:2  <b>extractor</b> 118:2  <b>extrapolation</b> 29:21                      32:17</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>facilities</b> 217:16                      218:4,12,22  <b>facility</b> 153:9 218:18                      240:1  <b>fact</b> 24:5 27:8 41:11                      71:7 94:9 150:24                      173:23 223:7 227:19                      235:8  <b>factors</b> 93:6 111:3                      113:4 156:7 205:4                      206:10,12,14 208:6                      209:5 243:20  <b>facts</b> 148:23  <b>fair</b> 13:1 115:18  <b>fall</b> 137:22  <b>falling</b> 140:1  <b>falls</b> 65:7 70:15                      149:10  <b>familiar</b> 6:2 67:23                      74:24 79:20 83:2                      157:7  <b>familiarity</b> 35:25  <b>FAS</b> 11:18,19  <b>federal</b> 57:1 68:9                      245:11  <b>feeding</b> 227:4</p>
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<p><b>feel</b> 32:13 131:11  <b>fell</b> 172:6,17  <b>felt</b> 221:6  <b>female</b> 93:7 94:9  <b>females</b> 94:19 95:11 203:25  <b>fewer</b> 14:8 60:18 200:22  <b>field</b> 12:25 46:18 47:20,24 105:16 107:9 110:5 120:5,6 126:1 141:10,11,15,16 142:11,13,14,16,18 174:25 175:9  <b>fielded</b> 109:14  <b>fields</b> 39:1 75:20,24 76:3,6,10 77:7,9,10 103:22 105:12 108:7 122:25 124:25 125:9 126:22 131:25 142:5 143:15 150:1 151:17 175:13 248:8  <b>Fifty-five</b> 168:7  <b>figure</b> 94:14 198:17,18 206:2  <b>figured</b> 164:6  <b>file</b> 50:18 60:23 61:6,17,24 62:12 63:24 246:2  <b>filed</b> 20:1,16,17 55:25 56:4 168:15 178:13 185:4,10,11 200:10  <b>files</b> 59:6 60:20,22 63:7,17,24  <b>filing</b> 16:22 17:8 22:13  <b>filter</b> 138:9  <b>filtered</b> 125:6  <b>filtering</b> 137:7  <b>final</b> 107:23 112:24 113:6 140:14 141:13,17 143:3,4 144:2,3 146:6  <b>finalized</b> 113:1 141:9 144:6,11,12  <b>financial</b> 11:5,20,25  <b>find</b> 94:16 105:11 106:5 141:11 169:20 211:19 214:5 230:16 243:12</p>	<p><b>finder</b> 124:20 247:5  <b>finding</b> 74:5 112:24 174:2  <b>findings</b> 42:8  <b>finish</b> 125:14  <b>firm</b> 9:24 12:11 132:20  <b>firms</b> 26:1 132:20  <b>flag</b> 184:1,4  <b>flags</b> 184:1 194:17  <b>flavor</b> 167:20  <b>flesh</b> 109:17  <b>flowed</b> 246:23  <b>focus</b> 12:17 36:19 110:25 139:22 169:23 170:1,2 176:1 179:16 197:3 202:17 243:22 244:22  <b>focused</b> 37:21 81:18 84:10 174:19 183:5 221:15 223:14 246:4 247:9  <b>follow</b> 45:19 49:4,23 139:12 154:4,13 207:16 216:15 221:5  <b>foot</b> 166:19  <b>footnote</b> 55:16,20 93:17 108:4,14 111:16 145:25 146:14 158:14 185:16,19,23 186:19 187:25 216:10 217:14,18 232:3 233:9  <b>foregoing</b> 115:22 192:5  <b>forensic</b> 8:2 29:16  <b>forgot</b> 129:14  <b>form</b> 38:21 61:3 67:1,16 149:1 169:13  <b>form-</b> 32:12  <b>formal</b> 31:1,11 32:12,20 33:11,16 34:2,7  <b>formally</b> 17:7  <b>format</b> 114:13  <b>formation</b> 77:6  <b>formed</b> 8:12,13 115:12  <b>forming</b> 58:13 195:22  <b>formulated</b> 97:19  <b>formulation</b> 58:2 92:20</p>	<p><b>Fort</b> 222:20,21  <b>forward</b> 112:9 159:20  <b>found</b> 140:23 214:9  <b>foundation</b> 19:14 23:20 24:14,16 25:13 28:21 33:22 34:22 35:19 36:3,15 37:2,18 41:17 42:6 45:15 54:21 60:16 62:1,15 63:20 64:21 65:16 66:7 67:5 69:3,12 71:16 73:16 74:17 75:11 77:1 86:1 87:7 91:14 92:4,15 94:4 98:22 99:5 102:15 107:5,18 117:3,23 124:22 126:9 137:2,16 138:1 140:4 143:6 144:19 145:8 147:6 148:1 152:8 154:14 162:2 168:5 173:15 181:9,22 182:6,22 183:17 192:16 193:16 195:7 196:10 201:14 208:22 211:1 212:9 223:23 224:24 234:20 236:14 238:12 243:1 246:15  <b>Fourteen</b> 217:19,20  <b>frame</b> 133:7 180:3 198:2 242:12  <b>framed</b> 198:1  <b>frames</b> 41:19  <b>framework</b> 174:15 221:3 224:17  <b>framing</b> 138:5  <b>frequency</b> 81:11  <b>frequently</b> 14:3 25:1  <b>full</b> 74:3 141:2 157:1 232:6  <b>fully</b> 76:2 189:20 242:16,18  <b>function</b> 192:9 234:1</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>gain</b> 65:2,4 118:19 175:21 184:21 204:20 235:15  <b>gained</b> 49:25 134:21 154:25</p>
--	--	--

**gaining** 119:15  
**gap** 116:16 117:10  
 191:20 194:21  
**gaps** 116:25 149:22  
**Gary** 4:18  
**gather** 176:22 226:11  
 237:10  
**gathered** 84:12 132:23  
 177:16  
**gathering** 76:11  
**gave** 206:5 225:3  
**general** 6:3 29:4  
 35:25 38:15 45:6,9,  
 18,23 97:25 103:19  
 105:2,15 106:2 107:7  
 115:2 119:24 120:1  
 122:22 123:1 129:1  
 143:13 149:19 155:3  
 156:15 159:18 161:1  
 162:22 232:12,13  
 244:9,22  
**generally** 19:18 31:5  
 44:17 45:22 46:1  
 103:17 108:22 116:6  
 118:11 126:17  
 155:12,13 191:7  
**geo** 166:7  
**geographic** 163:3  
 200:5 201:11  
**geographical** 94:14  
 164:6 199:25 201:2,  
 19 202:22 215:20  
**geographically** 170:9  
 200:15  
**geographies** 97:8,10  
 133:2,7 170:22  
**geography** 201:5  
 205:14 227:10  
**GIS** 166:9  
**give** 46:19 138:18  
 167:20  
**giving** 18:7 92:25  
**glad** 103:16  
**Glenn** 5:7  
**global** 8:6  
**goal** 6:13 95:13  
 227:6,20  
**good** 4:4,7 5:20,21  
 208:24 216:22  
**graduated** 10:15

**Grand** 4:16  
**granular** 169:10 198:1  
 202:2 215:12,19  
**granularity** 161:21  
 198:5,6 199:25  
 202:22 215:20 225:20  
**great** 79:18 220:6  
 249:11  
**ground** 6:3 94:16  
**grounds** 31:20  
**group** 4:11 5:8 8:4  
 9:8,11 12:1,3 179:9,  
 12,13,16 182:10  
**guess** 9:2 26:5 33:8  
 53:24 75:21,23 86:14  
 102:10 107:8 114:15  
 125:8 138:8 139:3,4  
 144:12 162:4 207:16  
 210:16 211:17 214:1  
**guidance** 135:13,16  
**guide-** 160:25  
**guideline** 229:17  
**guidelines** 157:8  
 158:1,6,18,24 159:3,  
 9,18,22 160:19,22,25  
 161:1 229:19,22,25  
**gynecologists** 84:17  
 173:13 174:11 182:14  
**gynecology** 85:12,13

---

**H**


---

**half** 8:23 122:12  
 123:11,12  
**hand** 170:25 233:15  
**handed** 204:19  
**handled** 183:4,7,12,14  
 193:7 194:17,25  
 204:19 205:5 208:9  
 212:17,23,24 213:2  
**handles** 8:6  
**handover** 50:18  
**happen** 112:13 117:16  
 121:24 232:19  
**happened** 117:15  
 232:17 246:7  
**happening** 97:17  
 235:24  
**happy** 82:17  
**hard** 13:15 14:18  
 82:22 236:3

**Hawley** 5:5 7:1 15:6,  
 15 16:4 18:22 19:13,  
 20 20:3,8,12,19,22  
 21:5,18 22:7,21  
 23:19 24:13,18,21  
 25:12,20 26:10,21  
 27:4,20 28:2,20  
 30:20 31:2,6,14 32:5  
 33:1,7,21 34:21  
 35:5,18 36:2,14  
 37:1,17 38:4 40:1,19  
 41:16 42:5 44:16,24  
 45:14 46:12,20 47:21  
 50:5 52:2 53:6 54:20  
 55:3 56:22 57:10,15,  
 20 58:21 59:22,25  
 60:15 61:3,8,13,25  
 62:15 63:19 64:1,9,  
 20 65:15 66:6,21  
 67:4,25 68:6,19  
 69:2,11,23 70:6  
 71:15 72:5 73:4,15  
 74:16,19 75:7,11  
 76:25 79:4,18 80:8  
 82:22,25 84:21 85:6  
 86:1,11 87:6,20  
 88:5,19 90:7 91:14  
 92:3,14 94:3 95:5  
 98:5,17,21 99:4  
 100:24 102:13,15  
 103:3,12 107:4,18  
 111:12 115:8,24  
 117:2,22 118:14  
 119:3 124:21 125:11,  
 16 126:8 134:1  
 135:4,7 136:8 137:2,  
 16,25 138:15 139:1  
 140:3 141:14 143:5  
 144:18,24 145:7  
 146:8,23 147:5,12,25  
 152:7,23 153:13  
 154:14 155:17,22  
 156:13 157:17 158:20  
 159:5,14 160:1,12  
 161:6 162:1 166:2  
 168:5,24 169:4,14  
 170:16 172:10,24  
 173:14 174:23 176:19  
 177:20 178:3 179:7  
 180:1,10,12,23  
 181:8,20 182:6,21  
 183:16 184:6,17  
 185:12 186:20,22  
 187:16,22 188:21

189:3,17 191:4 192:15,25 193:15,23 195:6,17 196:10 199:10,19 200:7 201:13 202:7,24 207:1,9 208:14,21 209:16 210:4,25 211:16 212:8,15 217:18,20,23 218:6, 14 219:3,12 222:15 223:22 224:23 228:4, 10 230:5,9 231:1,23 234:6,14,19 236:11, 13 238:2,8,11 239:11 240:20 241:11 242:1, 9,25 244:5 245:3,9, 20 246:14 247:1 248:24 249:3,10 <b>head</b> 6:8 47:13 53:17 <b>heading</b> 70:15 <b>Health</b> 17:10 <b>healthcare</b> 9:14 14:23,25 15:13 17:13 18:16 19:18 20:6 21:1,2,10,16,25 22:1,6 23:24 26:8,19 29:18 35:13,14 36:9 37:7,22 43:12,16 44:19,21 45:4,12 46:11,18 47:5,12,20, 24,25 48:2 49:7 104:12 224:13 <b>healthcare-related</b> 45:18 <b>hear</b> 84:24 <b>heard</b> 68:1 157:9 226:17 <b>hearing</b> 17:6 18:10 19:5,7 <b>Heather</b> 44:7 <b>heavy-duty</b> 12:15 <b>helpful</b> 241:2,5 <b>hey</b> 101:7 131:11 173:23 174:17 215:11 <b>high</b> 205:19,20 <b>higher</b> 81:10 163:10 198:4 207:6 221:23 <b>higher-level</b> 198:5 <b>highest</b> 84:13 <b>historical</b> 78:23 184:25	<b>holistic</b> 169:8 <b>homogeneity</b> 224:19 <b>hosting</b> 129:4 <b>hour</b> 52:14 122:13 123:11,12 <b>hourly</b> 52:16,19,25 53:2,15 <b>hours</b> 55:12 <b>housed</b> 45:22 49:21 119:17 <b>How's</b> 113:9 <b>Huckaby</b> 39:6 56:4 156:22 <b>Huckaby's</b> 156:25 158:9 <b>hypotheses</b> 89:6 <b>hypothesis</b> 96:3 97:1 219:9,10 220:20 235:10 239:3 <b>hypothetical</b> 28:21 40:20 46:22 73:16 74:19 75:12 141:19 159:15 172:11 181:9 196:13 234:21 245:23 <b>hypothetically</b> 181:4 246:6 <hr/> <b>I</b> <hr/> <b>I.d</b> 111:4 <b>I.D.</b> 108:23 111:4 126:18 141:23 <b>I.d.s</b> 195:24 <b>IBCLC</b> 226:22,24 <b>idea</b> 74:5 77:5 129:1 130:16 156:12 203:21 204:15 208:25 209:6 237:16 <b>identification</b> 110:12 111:7 <b>identified</b> 82:10 86:6 98:11 124:19 178:1, 13 231:21 238:19 <b>identifier</b> 108:16 109:1 <b>identifies</b> 66:15 <b>identify</b> 4:24 21:15 70:9 84:8 104:8,25 105:18 111:10,21 112:20 113:19 135:17 174:21 175:6 183:22	187:19 222:6 248:1 <b>identifying</b> 112:19 113:5 125:5 173:7 <b>identity</b> 21:9 <b>image</b> 107:10 <b>imagine</b> 132:19 <b>impact</b> 156:8 <b>imply</b> 200:5 <b>imposed</b> 242:7 <b>improper</b> 38:19 <b>in-network</b> 72:21 73:1,13 74:2,7 89:15,20,23 100:19 123:18 178:14,16 183:20,23 186:2,18 189:2 190:11 192:3, 23 194:7,9,11,22 198:11,20 200:4 203:13 204:7,14 205:20 206:8,25 207:8,12,15,21 208:4 210:19 212:6 213:3, 8,9,12,19,24 214:6, 22 215:1 216:13 242:15 <b>inadequacy</b> 241:11,13 <b>inclination</b> 143:9,12 <b>include</b> 22:17 27:3 74:13 75:25 125:7 137:13 140:14 145:14 146:4 150:2 152:4,5, 11 176:7 210:2 <b>included</b> 76:23 79:2 80:22,25 81:2,6 84:8 85:10 100:20 117:19, 21 120:6 124:25 134:12 136:21 143:1, 8,9 147:19 151:17 175:18 215:8 217:17 <b>includes</b> 140:19 176:5 186:4,7 210:13 <b>including</b> 13:5 158:8 162:15 168:11 220:8 <b>inclusive</b> 52:16 53:12 60:20 <b>income</b> 206:12,17 208:19 <b>incomplete</b> 28:21 40:20 73:15 74:19 75:12 159:15 172:10 181:9 234:20
--	---	--

<p><b>inconsistent</b> 74:4,5                      106:12,15 117:12                      204:15</p> <p><b>incorporated</b> 48:7</p> <p><b>independent</b> 52:10</p> <p><b>indicating</b> 158:18                      171:4 231:7,12</p> <p><b>indication</b> 141:11,12                      151:3 202:6 220:16</p> <p><b>indicative</b> 116:16                      148:16 206:24 207:7</p> <p><b>indicator</b> 73:12                      125:20</p> <p><b>indicators</b> 194:17</p> <p><b>individual</b> 34:13 51:5                      63:3 83:19 116:19                      170:3 209:8 221:11</p> <p><b>individualized</b> 171:2,                      6 209:1,8 221:7                      235:24 243:19</p> <p><b>individuals</b> 43:6,8,11                      44:7 50:22 53:13,16                      89:17 116:20 124:6,7                      128:11 134:6 183:3                      221:12,14,15 233:15,                      17</p> <p><b>industry</b> 9:12 12:17                      43:15,21</p> <p><b>infor-</b> 247:4</p> <p><b>informal</b> 32:23 33:9,                      12,24</p> <p><b>informally</b> 34:11</p> <p><b>information</b> 15:8                      19:16,22,23 20:14                      21:20,21,23 22:23,24                      23:3 25:15 26:14                      27:18 28:17 30:22                      35:21 36:5 39:2                      45:21 46:1,2 48:10                      49:21,23 52:4 66:22                      68:16 69:19 70:18                      72:11,15,16 77:21                      97:5 101:19 103:25                      104:9 105:16 112:16                      116:17 117:7 120:24                      123:1 124:3 126:12,                      16,17,19 129:6                      131:2,23 132:23                      143:16 146:21 150:2,                      21 151:16,17 153:4                      154:22 155:3 156:16,                      18 160:10 162:25</p>	<p>163:1 166:8 174:20                      175:5 186:4 188:8                      191:19 197:24 201:1                      208:12,18 225:6                      227:8 241:5 244:15,                      25 245:7 246:5,10,                      17,19,23</p> <p><b>initiate</b> 68:17,25</p> <p><b>input</b> 91:2</p> <p><b>inquired</b> 184:20</p> <p><b>inquiries</b> 113:16</p> <p><b>inquiry</b> 90:1 105:13                      171:9 237:15</p> <p><b>insight</b> 49:25 97:16                      101:19 175:21 184:21                      204:20 235:15</p> <p><b>instance</b> 105:11                      106:21 114:25 117:7                      143:22 154:2 189:12</p> <p><b>instances</b> 28:24                      166:11</p> <p><b>instruct</b> 25:13 26:12                      30:20 31:19 33:1                      56:22 57:25 68:7                      79:4 155:22 160:2                      161:24 166:2 184:18                      245:9</p> <p><b>instructed</b> 161:11,20</p> <p><b>instruction</b> 150:12                      161:16,19 162:12</p> <p><b>instructions</b> 37:10                      161:3,5</p> <p><b>instrumental</b> 47:2,6</p> <p><b>insufficient</b> 225:11                      226:3</p> <p><b>insured</b> 159:12</p> <p><b>integration</b> 166:10</p> <p><b>intend</b> 71:13</p> <p><b>intended</b> 71:12 176:6</p> <p><b>intent</b> 165:5</p> <p><b>intention</b> 71:18</p> <p><b>interactive</b> 114:1</p> <p><b>interested</b> 104:11                      169:7 170:8 172:15</p> <p><b>interesting</b> 218:2</p> <p><b>interim</b> 214:14</p> <p><b>internal</b> 85:11 244:25</p> <p><b>Internet</b> 154:25 155:2</p> <p><b>interpret</b> 35:3 53:9</p> <p><b>interpretation</b> 35:8,                      10 36:8,18 71:20</p>	<p>73:20</p> <p><b>interpretations</b> 132:3</p> <p><b>interrupt</b> 125:11</p> <p><b>intersection</b> 89:11</p> <p><b>interview</b> 116:19                      118:25 120:13,17,23                      128:13 224:20</p> <p><b>interviewed</b> 118:10,23</p> <p><b>interviewees</b> 121:18</p> <p><b>interviewing</b> 130:25</p> <p><b>interviews</b> 49:19                      104:1 116:22 118:8,                      9,13 121:24 128:10                      129:10 131:3 224:12</p> <p><b>inventory</b> 59:9</p> <p><b>investigate</b> 97:13,14                      184:13 203:18 237:13</p> <p><b>investigation</b> 11:14                      34:14 88:14,21,22                      97:4 227:16 235:12                      243:18,19,25</p> <p><b>investigations</b> 11:2,7                      13:4</p> <p><b>investigative</b> 8:8                      200:18 203:10</p> <p><b>invoice</b> 53:11,12 55:7</p> <p><b>invoices</b> 54:10 55:12</p> <p><b>involve</b> 13:13 20:5                      32:15 36:7,8</p> <p><b>involved</b> 13:13 16:12                      17:8 18:14 19:11                      23:23 26:8 34:19                      41:12 48:18 50:11,                      13,15 51:15,18,23                      119:9 166:7</p> <p><b>involves</b> 17:7,13                      178:4</p> <p><b>issue</b> 30:11,16 41:6                      124:14 162:17 198:1                      201:10 209:8 212:16</p> <p><b>issued</b> 167:10</p> <p><b>issues</b> 8:7 13:5,9                      18:14 25:23 29:13                      35:15 43:17 48:5                      124:15 170:14 209:8</p> <p><b>iterations</b> 175:10</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>January</b> 4:1,17 128:1</p>
--	--	--

<b>Jay</b> 18:3	162:10 192:3 201:9	234:3,10,16 235:21
<b>Jill</b> 123:22 129:18,19	<b>lacks</b> 23:20 24:13,15	236:8 238:6,25 239:5
<b>Joao</b> 4:6 5:1,13,24	25:12 28:20 33:21	240:17 241:6 244:2,
87:17 164:11,15	34:22 35:19 36:2,14	16 245:2,8,19 246:12
229:4,5,9 249:6	37:2,17 41:16 42:6	247:6
<b>job</b> 45:10 51:8	45:15 54:20 60:15	<b>language</b> 27:11
<b>joining</b> 9:1	61:25 62:15 63:19	<b>languages</b> 45:21
<b>Jose</b> 18:3	64:21 65:15 66:6	<b>large</b> 18:15 23:23
<b>June</b> 8:16	67:5 69:3,12 71:16	102:17 132:20 164:6
<b>junior</b> 44:4 53:21	73:16 74:16 75:11	173:18
	76:25 86:1 87:6	<b>larger</b> 16:20 82:9
	91:14 92:3,14 94:3	<b>largest</b> 81:20
<hr/> <b>K</b> <hr/>	98:22 99:4 102:15	<b>lasted</b> 122:7
<b>Kass</b> 9:23 10:3	107:4,18 117:2,22	<b>Lawson</b> 118:23 119:1,5
<b>Kathleen</b> 5:7	124:21 126:8 137:2,	129:24
<b>kids</b> 67:8	16 138:1 140:3 143:5	<b>LC-</b> 140:10
<b>Kim</b> 5:2 31:2 125:12	144:18 145:7 147:5	<b>LCC</b> 140:10,13
<b>kind</b> 15:2 46:2 48:4	148:1 152:7 154:14	<b>lead</b> 241:20 243:7
63:14 75:14 89:5	162:1 168:5 173:15	<b>leader</b> 9:7,24
92:19,21 94:20	181:9,21 182:6,22	<b>leaning</b> 237:12
95:13,14 104:8,15	183:17 192:15 193:15	<b>learned</b> 81:9 97:9,18
110:22,25 114:11	195:6 196:10 201:13	101:22 179:13,14
124:4 125:3 126:14,	211:1 212:8 223:22	201:6
19 143:15 145:9	224:23 234:19 236:13	<b>learning</b> 192:9
146:13 148:23 149:5	238:11 242:25 246:14	<b>led</b> 97:5 99:13 104:1
150:14 152:2 155:2,6	<b>lactation</b> 37:22 38:2,	<b>left</b> 76:18,21
164:3 165:7,16	7,9,13,16 42:16	<b>legal</b> 4:19 8:2 35:19
173:20 175:11 182:11	48:21 64:7,15,19,24	36:15,17 37:3 41:17
192:5 198:2 200:24	65:9,12,22,23 66:3,	42:6,9
201:25 203:11 204:20	15 67:9 69:9,21	<b>letter</b> 24:23 26:23
209:9 211:5 214:19	70:3,21 72:22 73:1,	27:11 53:22 54:1
215:25 216:2 218:21	14 77:23 78:7,10,13,	<b>letters</b> 25:4 27:2
222:9 227:15 231:3	14,17 84:15,19 85:14	28:15
233:8,10,19 235:15,	86:5,10,15 87:1,5,9	<b>level</b> 23:4 45:9 76:13
25 237:13 242:3	88:3,17 89:12 90:13,	89:14 90:16 98:3,7
243:12 244:6,7	22 91:5,11,20 96:9,	107:8 118:20 161:21
246:18	17 97:22 99:17	163:8,10 192:7
<b>kinds</b> 143:19	100:22 132:25 133:6,	197:18 199:15 200:19
<b>knowledge</b> 45:9 46:8	14,17,19 135:14,17	201:22 202:2 206:12
48:1 116:20 153:24	136:15 137:23 138:7,	215:12,19 217:11
154:25 230:18,19	20 147:24 148:4,8,16	225:20 227:20 233:3
239:25	149:2,9 154:3 158:8	235:20 242:19,22
<b>Koo</b> 44:8	162:8,11 163:17,20	243:14
<b>KPMG</b> 9:5,6,18,19,21,	165:19 170:15,24	<b>levels</b> 199:24 202:21
22	173:11 174:9 176:18,	208:19
	23,25 177:2 181:16	<b>liberty</b> 15:2 18:11
<hr/> <b>L</b> <hr/>	182:13 186:5,8 188:4	52:6
<b>L.A.</b> 10:1	191:1,10,11 195:12,	<b>light</b> 28:13
<b>lack</b> 42:16 72:21,25	16 205:15 210:2	<b>limit</b> 81:22 83:16
73:13,23 74:7 137:23	217:16 218:5,13	165:5 176:9
	219:1,25 220:18	
	222:10 224:21 225:4	
	227:25 228:3,8,16	
	230:24 231:8,13,22	

<b>limitations</b> 48:8 171:3 <b>limited</b> 181:18 182:4 237:17 <b>lines</b> 86:24,25 87:3 104:14,25 112:7,11 113:19 136:13 140:15,21 141:21 149:12 162:16 165:15,19 168:12,16 178:1 186:6,8 188:5, 15,19 200:4 205:20 213:13 225:22 237:15 238:1,5 <b>link</b> 111:10,21 176:21 233:20 <b>list</b> 59:9 72:17 125:6 134:16 136:12 152:9 206:10 218:4 234:25 <b>listed</b> 15:14 18:1 58:11,12 59:4,21 61:21 63:18 65:3,13 72:3,9 78:4 83:10 108:14 126:5 136:7, 23 147:11,23 151:5 176:17 181:19 218:12,25 230:23 231:15,20 <b>listing</b> 209:10 232:20 <b>lists</b> 15:21 <b>litigation</b> 8:7 9:25 12:2,6,12,25 14:2 15:19,24 23:14 28:18 41:14 56:1,7,8,12, 16,19 57:7,19 113:20 162:17 241:16 <b>litigations</b> 16:12,24 <b>live</b> 92:12 93:5 94:2, 7,19,23 245:23 <b>loaded</b> 181:24 <b>located</b> 4:19 <b>location</b> 126:21 149:24 150:2 151:25 152:13,21 153:1,2,8, 9,17 158:13 171:19 172:16,18 185:7 230:20 235:25 <b>locations</b> 152:11,15 153:1 <b>logic</b> 110:8,23 135:19,20 138:9,13, 23 141:24 149:2	153:21 221:17 <b>logical</b> 221:12 <b>logics</b> 142:2 <b>long</b> 8:10,21 9:18 10:7,17 122:6 123:6, 9 125:18 226:11 232:4 <b>longer</b> 125:12 144:3 <b>looked</b> 58:3 74:1 97:7 163:6 197:17 198:3 199:25 237:6 <b>Los</b> 4:1,16,20 9:9 128:1 <b>lot</b> 33:12 123:17 145:18 209:8 241:25 <b>lower</b> 98:12 99:16 198:11,14 199:4,5 203:17 206:8 207:14 208:4 239:4,10 240:4,13 243:4 <b>lower-level</b> 198:5 <b>lower-than-average</b> 204:14 <b>lowest</b> 221:19 <b>LS-</b> 58:22 115:13 <b>LSS</b> 58:19,23 59:16,20 60:7,12,17,23 61:6, 17,23 62:10,12 63:12 82:15 84:19 115:6, 13,19,21 139:25 140:11,12,14 143:2 144:15,22 145:5,13 146:4,5 162:15 164:19,22 167:23 168:3,16,22 169:2,20 170:12 171:8 173:8 174:21 178:12 179:5, 8,18 180:7,21 181:7, 19 182:3,5 183:22 187:14 188:8,19 189:8 192:12 193:12 195:3,15,25 196:4,7 198:12 199:17 200:14 201:12 210:23 213:13,14,23 214:3, 7,8 234:12,18 239:4, 9 241:1,4 <b>lunch</b> 125:15 127:5	<hr/> <b>M</b> <hr/> <b>macro</b> 197:12,18 <b>made</b> 66:2 91:2 95:8 133:4,16 135:22 156:11 163:10 200:20 205:25 215:11 224:9 229:13 237:23 244:1 <b>main</b> 42:12 115:3 119:14 126:22 170:23 <b>majority</b> 14:14,16,17 23:1 81:21 84:14 102:10 168:9 173:25 174:6 175:24 176:25 183:12 191:16 212:22,25 213:6 <b>make</b> 24:3 35:10 51:5 62:23 65:8 66:9 91:19 95:24 104:15 118:4,17 133:9 136:3 138:4 148:2,20 150:1 163:9 169:24 170:2 171:1,2,6 175:25 185:22 186:11 193:1 194:12,18 209:2 213:5 221:6,16,23 223:6,13 226:14 233:19 235:19 239:3 243:15,19 <b>makes</b> 82:20 107:24 <b>making</b> 41:10 78:11,12 95:11 133:15 134:10 149:7 158:16,22 176:20 192:5 196:14 207:11 226:10 243:2 <b>manageable</b> 176:1 221:16,24 223:14 <b>management</b> 12:6,11,14 <b>managing</b> 9:7 <b>mandate</b> 35:16 36:13, 24 37:15 <b>manifested</b> 88:13 <b>manual</b> 113:7 <b>map</b> 138:8 168:12 169:9 171:17 <b>mapped</b> 168:9 <b>mapping</b> 79:14 <b>mark</b> 6:22 79:9 82:8 <b>marked</b> 6:24 79:11,23 80:11 82:12 150:16
---	--	---

<b>market</b> 163:2 171:7 <b>markets</b> 48:23 71:23 78:22 94:21 96:5 97:17 162:16,18,21, 23,24 165:6,16 171:14 187:7,11 197:17,18 198:25 215:9 241:7 <b>marks</b> 87:16 164:10,14 229:3,4,8 <b>Mars</b> 12:10,13,14,18, 20 <b>Martin</b> 44:8 <b>master</b> 7:9 <b>match</b> 176:13 <b>materials</b> 36:5 <b>maternity</b> 95:2 <b>matter</b> 4:10 22:12 24:11 29:9 30:1,12, 19 31:5,7 32:21 36:5,18 38:24 139:14 <b>matters</b> 9:13,17 13:17 21:14,24 22:1,11,16 45:18 <b>meaning</b> 39:21 71:21 120:5 153:14 155:5 178:23 214:1 224:2 <b>means</b> 34:15 37:20 40:3 91:7 196:13 200:9 212:25 246:3 <b>meant</b> 16:6 50:19 101:1 146:12 <b>measure</b> 49:9 92:18 93:7 100:15 115:1 186:2 194:21 197:16 203:22 <b>measures</b> 36:9 225:10 <b>media</b> 87:16 164:11,15 229:4,9 249:7 <b>median</b> 216:13,14,17 <b>medicine</b> 85:11 <b>meet</b> 108:10 <b>Megan</b> 44:8 <b>member</b> 75:3,5,9 76:12 77:13 108:23 111:4 141:22 172:2,4,5 173:2 195:24 208:8 242:7 246:11 <b>member's</b> 172:5 173:4 193:13	<b>member-centric</b> 172:22 <b>members</b> 51:25 52:17, 18 74:12 90:5 92:2 196:3,7,8,15 231:17 244:16,21 245:18 246:24 <b>men</b> 89:11 <b>men's</b> 88:12 <b>mention</b> 19:9 61:18 128:13 <b>mentioned</b> 18:9 22:4, 15 23:22 27:8 30:7 34:11 37:5 49:12 50:22 51:9,16 55:20 57:13 59:12 73:10 77:7 78:2 80:15 84:10 94:10 95:10 108:4 109:12 111:3 124:5 128:11 131:5 134:4 153:22 159:19 182:9 203:12 225:22 226:2 <b>mentioning</b> 106:16 <b>mere</b> 235:8 <b>messed</b> 4:6 <b>met</b> 183:2 <b>method</b> 216:18,19 <b>methodology</b> 219:10 <b>methods</b> 18:17 41:21 <b>metric</b> 89:19,20 92:7 189:23 204:6 <b>metrics</b> 89:16 116:24 149:6 151:13 186:3 187:19 <b>Miami-dade</b> 17:4 <b>micro</b> 197:12 <b>middle</b> 6:19 95:23 <b>milk</b> 38:19 225:11 226:3 <b>mimicking</b> 71:10 <b>mind</b> 33:10 91:18 94:24 106:24 110:18 123:16,21 174:15 178:17 211:5,6 242:11 <b>minimized</b> 237:4 <b>minimum</b> 129:13 <b>minus</b> 76:19,20 <b>mirror</b> 107:10 151:19 <b>mischaracterize</b> 22:8 33:22 37:18 45:15	65:16 84:22 115:9 181:21 <b>mischaracterizes</b> 21:5 32:6 71:15 234:6 239:11 <b>mischaracterizing</b> 81:24 <b>misinterpreting</b> 53:10 <b>missing</b> 117:9 <b>misunderstood</b> 21:8 <b>modeling</b> 12:16 30:15 <b>modified</b> 104:22 <b>moment</b> 39:11 82:8 <b>money</b> 46:25 <b>Moreno</b> 18:3 20:5,11 <b>morning</b> 4:4 5:20,21 <b>mother</b> 66:19 67:1 227:4 <b>mothers</b> 70:4 <b>motivation</b> 201:20 <b>move</b> 112:9 184:11 <b>moved</b> 158:14 198:4 200:25 202:9 <b>moving</b> 203:6,11 <b>Ms.~bulware</b> 123:3,14, 20 124:9 130:13,15 <b>Ms.~lawson</b> 119:13 120:19 121:5 <b>multidisciplinary</b> 42:24 <b>multiple</b> 26:1 29:19 30:6 48:18 104:14 111:10,17,21 146:1,5 152:11,12,14 153:1 <b>multitude</b> 30:13 <b>mutually</b> 62:19 <hr/> <p style="text-align: center;">N</p> <hr/> <b>name's</b> 5:1 <b>names</b> 15:2 21:15 23:6 43:23 44:2,3,4,5 76:5 129:15 151:20 <b>narrative</b> 100:25 103:13 <b>narrow</b> 244:7 <b>national</b> 86:25 237:25 <b>natural</b> 88:14 201:3 <b>nature</b> 18:7 23:3 25:3 43:7,13,20 68:12
---	--	--

88:20 89:25 94:11 106:23 120:12 129:4 146:13 <b>Navigant</b> 8:13,14,21, 22,23,24 9:1 10:13, 14,18,24 <b>Nebraska</b> 205:18 <b>necessarily</b> 106:15 194:12 197:15 203:2 <b>necessity</b> 215:25 <b>needed</b> 46:11 67:10 118:17 <b>negative</b> 106:19 <b>negatives</b> 242:2 <b>netted</b> 137:21 <b>network</b> 72:18 77:22 78:17 84:19 151:5 181:15,17 183:8,9 184:2,4,23 185:5,6, 11 186:6,9,13 188:2, 3,4 189:13,15,24,25 190:5,18,19,25 193:8,20 194:17 195:1 198:24 201:10 202:5 204:9,19 205:6 208:9 212:7,11,18, 19,23,24 213:2,7 231:18 241:6,9,11 242:24 245:8 <b>neutral</b> 29:20 30:7 <b>Nichole</b> 224:15 <b>nipples</b> 38:20 225:12 <b>non-cost</b> 76:24 <b>non-existent</b> 96:4 <b>noncredentialed</b> 154:2,12 <b>nonexistent</b> 95:25 97:2,11 98:2 <b>nonsystemic</b> 73:13 170:14 241:24 242:8, 23 <b>normalization</b> 114:17 <b>normalize</b> 94:8 <b>norms</b> 27:10 <b>North</b> 205:18 <b>nos</b> 242:11 <b>note</b> 132:4 <b>notes</b> 83:11 120:16 130:9,24 131:19 <b>number</b> 8:7 14:11 16:19,20,21 22:11,15	23:23 25:22 26:1 43:24 45:17 48:23 49:11,13 54:5 59:13, 15 60:4 62:22 63:8 64:25 81:20 85:23 86:5 90:5,25 91:25 92:11 93:5 94:13,18, 19,23 95:1,11,25 97:10 98:1,10,12 99:16 100:1,5,21 101:19 103:20 104:24 105:10 108:25 109:1, 3,6,8 112:5,13,23 114:10 116:2,13 117:8,19 121:17 126:21 143:14 152:19 166:7,11 168:21 171:5 175:10 179:25 180:7,20 181:18,24 182:4,18 183:14 186:5 188:1,3 189:21,22 190:4,8 196:6,15 197:1 199:3,4,7 201:17 203:1,24 204:17,18 205:7,19 207:6 215:8 217:1 219:20 221:19, 25 235:23 237:3,5 239:3,5,16 240:3,12, 17 249:6 <b>numbers</b> 79:15 117:20 205:19 <b>numerator</b> 186:4 188:1 217:3 <b>numerical</b> 98:8 <b>nurse</b> 85:15 176:5 <b>nutrition</b> 85:14  <hr/> <div style="text-align: center;"><b>O</b></div> <hr/> <b>object</b> 15:6,15 19:20 21:19 22:22 52:3 69:12 80:8 100:24 <b>objection</b> 16:4 18:25 19:13 20:3,8,12 21:18 22:7,21 23:19 24:13,18 25:12,20 26:10,21 27:4 28:2, 20 30:20 31:14 32:5 33:1,21 34:21 35:18 36:2,14 37:1,17 38:4 40:1,19 41:16 42:5 44:16,24 45:14	46:12,20 47:21 50:5 52:2 53:6 54:20 57:20 58:21 59:22 60:15 61:3,8,25 62:15 63:19 64:9,20 65:15 66:21 67:4,25 68:6,19 69:2,11 71:15 73:4,15 74:16 75:7 76:25 79:4 84:21 86:1,11 87:6 88:5,19 90:7 91:14 92:3,14 94:3 95:5 98:5,17,21 99:4 102:13 103:3,12 111:12 115:8,24 117:2,22 118:14 124:21 126:8 134:1 135:7 136:8 137:2, 16,25 138:15 139:1 140:3 141:14 143:5 144:18 145:7 146:8, 23 147:5,25 152:7,23 153:13 154:14 155:17,22 156:13 157:17 158:20 159:5, 14 160:1,12 162:1 168:24 169:4,14 170:16 172:10,24 173:14 174:23 176:19 177:20 179:7 180:1, 10,23 181:8,20 182:6,21 183:16 184:6,17 186:20 187:16,22 188:21 189:3,17 191:4 192:15,25 193:15 195:6,17 196:10 199:10,19 200:7 201:13 202:7,24 207:1,9 208:14,21 209:16 210:4,25 212:8 218:6,14 219:3 222:15 223:22 224:23 228:4,10 231:1,23 234:6,14,19 236:11, 13 238:2,8 239:11 240:20 242:1,9,25 244:5 245:3,9,20 246:14 247:1 <b>objections</b> 35:5 55:3 64:1 69:23 70:6 85:6 144:24 147:12 193:23 211:16
---	---	---

<b>objective</b> 89:9 221:4, 17 222:7 <b>objectively</b> 171:20 <b>observable</b> 220:23 239:15 245:24 <b>observation</b> 49:14 120:10 174:17 182:15 200:20 241:18 <b>observational</b> 199:12 <b>observations</b> 49:25 60:18 78:15 90:15 176:21 197:21 202:11 <b>observe</b> 90:16 98:9 148:5 203:14 219:15, 19 223:15 246:1 <b>observed</b> 71:6,23 101:21 118:18 146:15 151:24 183:2 198:9 220:7 238:15 <b>observes</b> 227:4 <b>observing</b> 106:24 117:12 118:1 149:4 177:2 205:25 <b>obstetrician</b> 126:15 <b>obstetricians</b> 84:16 154:6 173:12 174:10 176:24 182:14 <b>obstetrics</b> 85:12 <b>obtain</b> 158:7,19 <b>occasion</b> 27:17 35:2 <b>offer</b> 217:16 218:4,13 219:1 <b>offered</b> 191:20 <b>offering</b> 41:13 206:16 239:5 240:17 241:16 <b>office</b> 112:4 152:5 230:14,16 <b>oftentimes</b> 26:23 27:13 29:1 <b>Olympic</b> 4:20 <b>on-site</b> 228:16 <b>one's</b> 204:7 <b>ongoing</b> 18:9 19:17 <b>online</b> 231:21 247:5 <b>onset</b> 230:15 <b>open</b> 82:17 <b>operate</b> 155:15 <b>operation</b> 153:20 227:22 <b>opine</b> 38:11 65:6 149:9	<b>opining</b> 176:16,20 193:13 210:21 211:4, 18,20 217:15 218:3, 11,17 238:14 <b>opinion</b> 35:20 36:15, 17 37:3,5,13 38:12 41:14,17 42:6 64:23 66:10 69:19 133:5,13 147:22 148:3 155:25 158:3,17,23 159:9 169:13,17 170:18 177:15,16 179:5,23 180:19 181:15 182:20 191:19 200:13 204:22 208:13 209:6 211:20 218:19 222:3 240:16 241:16 243:16,25 247:14 <b>opinions</b> 23:11,12 30:25 31:3 32:3,24 33:19 34:5 36:22 46:10,19 47:7 48:3, 14 57:23 58:2,13 67:2,17,19 69:5 90:5 92:11 93:16 95:1 118:12 157:14,25 160:8 190:15 195:22 201:9 238:16 245:17 247:13 <b>opposed</b> 63:22 164:4 183:8 <b>optics</b> 163:7 <b>order</b> 36:22 37:4 109:8 139:3,5,13 143:21 158:19 187:20 197:14 209:2 <b>orders</b> 56:15 <b>Oregon</b> 205:18 <b>organize</b> 163:11 <b>organized</b> 47:10 <b>original</b> 243:5 <b>originally</b> 112:14 <b>out-of-network</b> 189:1, 8,10 190:2,17 194:21 205:12 <b>outcome</b> 52:9 204:8 214:13,20 <b>outlines</b> 7:8 <b>Overbroad</b> 19:14 26:11 34:22 35:19 47:22 50:7 64:10,21	<b>overview</b> 103:8 154:20 <b>Oxford</b> 87:4 <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <b>P.M.</b> 87:21,24 127:4 128:2,5 164:10,14 229:3,8 247:20,23 249:8,12 <b>paid</b> 74:3 76:2 189:21 242:16,18 248:12,17 <b>pair</b> 136:5 <b>paired</b> 111:1 <b>paper</b> 41:5,6 <b>papers</b> 215:5 <b>par</b> 192:12,14,18,24 193:14,17 <b>paragraph</b> 42:22 52:12 70:13,15 72:20 73:3 74:10 93:11,18,22 95:19,23 96:7 102:21,22,23 153:25 154:2,10 156:6,21 158:5,15 160:18 161:5 162:14 164:18 165:21 173:6,22 179:11 185:13,14 196:19,22 198:7 203:6,8 205:1,16 206:3 212:21 213:11, 18 216:23 219:8,11 220:4 224:10 239:2 240:25 241:15,19 242:14 <b>paragraphs</b> 209:13 213:18 230:23 238:24 <b>parameter</b> 94:8 <b>parameters</b> 50:3 83:10,13,18 84:3 103:22 108:14 118:4 147:14 <b>parceled</b> 97:7 <b>Pardon</b> 107:1 <b>part</b> 24:15 27:8,16 29:24 38:24 49:1 56:12 59:18,21 67:2, 12,21 70:8 71:9 72:18 85:19 92:10,17 98:16 100:20 102:3 104:17 109:11 110:11 111:6 112:6 113:20 118:19 119:18 120:10
---	--	--

124:24 125:2 126:23 134:8,14 136:5 142:2 145:20 146:16 150:5 153:20 155:25 159:23 160:8 161:18 165:7 166:6 168:10 171:25 172:19 173:6,17 180:6,19 183:11 184:8,23 186:12 189:10 190:23 191:18 200:13,18 202:4,12, 16 205:10 208:12 209:12 212:17 214:14 226:6 243:24 <b>participate</b> 130:7 <b>participating</b> 193:20, 24 <b>participation</b> 184:14 <b>parties</b> 24:24 <b>partner</b> 9:22 <b>partnered</b> 120:20 <b>Parts</b> 113:24 <b>party</b> 13:25 25:5 29:25 <b>passage</b> 167:5 <b>past</b> 8:25 24:1 25:17 48:2 <b>patient</b> 108:17,19 227:24 <b>pattern</b> 45:19 164:2 <b>patterns</b> 90:15 170:4 173:20 <b>pay</b> 77:15 243:14 <b>payable</b> 75:3,5,9 <b>payment</b> 76:13 <b>payments</b> 74:11 <b>payor</b> 30:1,4,5,8 <b>payors</b> 144:10 <b>pediatric</b> 85:11,14,15 176:5,8 <b>pediatrician</b> 126:15 224:3 <b>pediatricians</b> 84:16 154:5 173:12 174:10 176:10,23 182:13 224:4,5 <b>pediatrics</b> 85:11 176:10 <b>pending</b> 112:12 <b>penny</b> 106:13	<b>people</b> 29:2 43:9,24 51:8,11 89:22 <b>people's</b> 206:23 <b>per-capita</b> 92:18,20 93:6 100:16 114:25 <b>percent</b> 14:16,17,19 73:25 84:13 167:25 168:2,7,15 177:25 182:10 185:11,19 186:16 187:4,13,20 190:4,9,12,13 201:17,24 213:20 215:9 241:22,23 242:7,15 243:4,7 <b>percentage</b> 14:10,11, 14 68:17 69:8,20 89:15,20 94:13 102:17,18 149:5 173:18 183:7,20 186:2,18 187:6 188:25 190:3,24 199:8 203:17 204:7, 15 206:9 207:15 208:4 217:5 <b>percentages</b> 198:11 203:13 205:20 213:12,19,24 214:6, 23 215:1 216:13 <b>perfect</b> 87:18 107:11 <b>perform</b> 63:25 235:23 <b>performed</b> 42:24 43:2 113:12 228:16 239:21 <b>performs</b> 214:18 <b>period</b> 28:24 48:22 89:22 90:6 92:13 95:3 165:15 181:7 184:15 185:10 244:2, 9 246:11,24 <b>periods</b> 71:24 187:6, 12 215:8 <b>permission</b> 28:16 29:1 <b>person</b> 129:25 227:24 228:7 230:13 <b>personal</b> 66:18,25 67:11 232:13 <b>personally</b> 42:24 120:14,15 <b>personnel</b> 49:20 54:14 104:7 150:11 <b>persons</b> 57:6 <b>perspective</b> 27:13 34:2,16 63:6 104:23	112:4 158:13 167:6 169:8,9 170:6,21 171:1 173:2 174:17 178:25 190:21 194:5, 25 197:23 198:2 200:24 201:1 202:19, 20 204:13 215:15 221:7,10 236:23 246:3 <b>perspectives</b> 175:12 <b>pertained</b> 196:7 <b>pertains</b> 242:23 <b>Peter</b> 121:12,15 129:24 <b>Peter's</b> 121:19 <b>phone</b> 109:15 120:15 122:3,4,5,6 124:8,11 129:10,21 130:6,10, 13,25 224:9,12,22 226:10 229:13,16 <b>phrase</b> 77:24 <b>physical</b> 50:18 <b>picked</b> 153:1 221:23 <b>pieces</b> 186:3 <b>place</b> 4:16,22 19:6 88:14 167:3 171:23 206:13 214:19,25 215:24 <b>places</b> 208:3 <b>plaintiff</b> 221:18 <b>plaintiff's</b> 241:8 <b>plaintiffs</b> 4:13,14,15 5:4 14:4,6,12 113:20 221:14 <b>plaintiffs'</b> 57:17 70:19 <b>plan</b> 32:16 80:5 225:1 <b>planning</b> 51:18 <b>play</b> 94:20 162:23 165:16 <b>pocket</b> 77:16 <b>point</b> 19:15 51:7 55:12 60:10 82:16 86:4 89:5 93:4 99:10 101:6 114:20 134:9 150:25 163:7 165:13 170:23 184:23,24 208:24 216:22 220:10 221:8,22 226:10 234:24 235:12 237:1 243:5
--	---	---

<p><b>pointed</b> 25:24</p> <p><b>points</b> 101:7 122:11 131:21 132:22</p> <p><b>policies</b> 155:20 245:1</p> <p><b>policy</b> 154:11</p> <p><b>poll</b> 237:24</p> <p><b>poorly</b> 185:23</p> <p><b>pop</b> 237:15</p> <p><b>population</b> 36:20 37:7 42:14 92:24 93:5,7,8 94:9,18 162:7 193:6 195:10 203:24</p> <p><b>populous</b> 198:10</p> <p><b>portion</b> 87:4 154:18 202:5</p> <p><b>position</b> 207:19 209:7</p> <p><b>positive</b> 106:18</p> <p><b>Possibly</b> 234:20</p> <p><b>postpartum</b> 225:16</p> <p><b>potential</b> 32:17 43:17 48:8 123:1 203:19 205:3 233:11 239:18</p> <p><b>potentially</b> 157:18 174:14 220:11 243:9</p> <p><b>practice</b> 8:2,4,6 9:25 11:2,16 27:16 70:19 71:3,14 126:20 152:14</p> <p><b>practices</b> 152:14</p> <p><b>practitioner</b> 85:15 176:6</p> <p><b>practitioners</b> 161:2</p> <p><b>preceded</b> 99:2</p> <p><b>precedes</b> 241:19</p> <p><b>precise</b> 54:5 102:19 140:7</p> <p><b>preference</b> 206:13</p> <p><b>preferences</b> 206:19 208:20</p> <p><b>preliminary</b> 49:3 129:2</p> <p><b>premise</b> 88:25 220:2</p> <p><b>preparation</b> 114:16</p> <p><b>prepare</b> 118:12 203:7 229:15</p> <p><b>prepared</b> 62:13</p> <p><b>preparing</b> 146:19</p> <p><b>presence</b> 96:9,11,17 97:22</p>	<p><b>present</b> 4:24 98:14 100:22 106:2 130:2, 6,8 162:21 235:8</p> <p><b>presented</b> 63:6 90:2 148:24 162:6</p> <p><b>presumed</b> 241:21 242:6</p> <p><b>pretty</b> 94:10 164:5</p> <p><b>prevalent</b> 192:3</p> <p><b>prevent</b> 38:18</p> <p><b>preventative</b> 35:15 36:1,9,13,24 37:14 158:7 225:10</p> <p><b>Prevention</b> 67:24</p> <p><b>previous</b> 178:18</p> <p><b>Pricewaterhousecoopers</b> 11:13</p> <p><b>primarily</b> 170:23 179:16</p> <p><b>primary</b> 37:8 44:6 85:9 86:9 131:7</p> <p><b>print</b> 79:15 82:18</p> <p><b>prior</b> 8:23 9:1,21,22 10:11,17,20,21 11:8, 21 12:8,9 17:6 22:20 28:9 73:3 86:20 138:23 142:1</p> <p><b>private</b> 15:8 22:24 25:15 26:13 30:22 35:21 52:4 66:22</p> <p><b>privilege</b> 13:21 23:5</p> <p><b>privileged</b> 19:22 21:21 22:23 23:1 25:15 26:13 35:21</p> <p><b>privy</b> 61:10</p> <p><b>problems</b> 225:9</p> <p><b>procedure</b> 6:20 136:6, 22 137:13 222:8</p> <p><b>procedures</b> 27:10 39:3 118:19 145:19 149:12,15,16 151:10 154:4,13 155:15,21</p> <p><b>proceed</b> 6:4</p> <p><b>proceeding</b> 29:14</p> <p><b>process</b> 39:22 48:9, 20,25 53:3 60:10 62:17,19 84:5 97:4 104:17 106:1 107:22 109:12 111:9,20 112:10 113:2,3,7 114:2,12 116:17,18, 21 119:18,19 131:6</p>	<p>139:6,11,20 141:19 144:14 150:6 154:21, 24 155:8 159:7,25 160:11 195:1 200:19 203:10 214:15,19 221:5 224:18</p> <p><b>processed</b> 92:12 95:2 104:20 248:16</p> <p><b>processes</b> 49:20,22 92:1</p> <p><b>processing</b> 106:22 142:23 154:23</p> <p><b>produced</b> 47:9,17,19 53:11 55:10,13 61:22 79:16 113:20 230:8</p> <p><b>product</b> 19:21 20:13 21:20 22:23 26:15 30:22 31:21 33:3 35:21 56:24 60:6 68:10 69:13 79:6 155:24 160:3 166:3 178:4 184:19 213:22 245:12</p> <p><b>production</b> 61:6,10 81:22 226:3</p> <p><b>products</b> 167:1</p> <p><b>professional</b> 9:24 67:20 226:20</p> <p><b>professional's</b> 53:21</p> <p><b>professionals</b> 42:25 96:9,18 97:23 154:5 155:4 226:6,17</p> <p><b>profile</b> 148:11 177:4 219:23 220:13,24 223:4,10,11,20,25 227:12 235:3 238:18</p> <p><b>program</b> 84:3 139:7 142:3 153:23 214:11, 18</p> <p><b>programs</b> 45:5 63:2</p> <p><b>project</b> 25:11</p> <p><b>projects</b> 47:12 49:2 165:23 166:7</p> <p><b>pronounce</b> 7:24</p> <p><b>properly</b> 48:9</p> <p><b>proportion</b> 198:20</p> <p><b>provide</b> 10:5 16:24 22:5 27:18 33:10 36:17 39:2 44:14 51:1 54:8,15 64:7,24 97:16 101:19 112:5 120:22 161:11 194:22</p>
--	--	---

<p>210:13 214:13 222:9          225:22 227:19          229:17,18,21 234:10          235:2,10 236:8,18,21          238:20 240:1  <b>provide-</b> 212:18          218:20  <b>provided</b> 13:22 15:4          16:15 17:18 18:5          21:10,17,24 23:15          48:20 49:24 50:15,16          51:17,24 57:24 58:25          59:10 62:20 65:2,20          66:12,13 79:1 80:1          82:3 83:15 90:17          97:19 120:23 121:4          129:6 131:23 132:8          133:22 134:15,20          147:20 149:7 150:12,          21 152:10 156:18          160:16 164:25 170:11          180:9 194:22 197:19          205:14 218:20 224:3          225:15 226:8 228:3,8          230:20,24 231:7,13          233:4,17 238:6          244:15,21 246:19  <b>provider</b> 30:1,9 70:18          72:11,15,16,17 78:4,          9,10 80:20,21 81:2,          18 82:10,15 83:3,8          84:7,9 85:19,23          87:4,10 89:23 97:18          99:11,18,23,25          100:4,14 101:12,17,          23 122:19 123:4,15,          25 124:6,17,19          125:20 126:6,18,19          128:12 132:10,11          141:23 146:22 147:4,          11,17,18,23 148:4,          10,16 149:15,17,24          150:3,7,22 151:3,9          152:3,4,6,13,20,21,          22,25 153:5,17,18          172:1,16,18 175:4,6,          14,19,25 176:4,7,14,          17 177:8,10 178:14,          16 179:6,20 180:8,9,          15,16,18,20,22          183:4,8,13,24 184:1,          5,13,22 185:4 191:1,          2,9,14 192:13,14,19,          23,24 193:10,14,17,</p>	<p>20,21,24 194:7,9,11,          21 203:22 204:6,13,          17 206:12,15,16          209:15 210:17 212:7          213:9 218:12,25          219:16,17 220:22          221:20 223:15,19          227:3,25 228:2          231:9,10 232:8,14          234:2,9,10 237:24          238:1,5 239:18,23          242:24 247:5,10  <b>provider's</b> 126:20          172:7 230:13 232:24  <b>provider-centric</b>          172:14,22  <b>provider-level-type</b>          85:22  <b>provider-specific</b>          193:2  <b>provider-type</b> 191:14  <b>providers</b> 21:16 34:8          64:7,15,23 65:3,5,9,          13,18 72:18 77:23          78:13,14,18 80:22,24          81:7,10,13,19 84:12          85:18,23 86:15 87:9,          10 88:8,10 98:10,14          99:17 100:19,22          101:20 123:18          124:17,19 125:5,7          126:4,5 144:9 147:3,          11,23,24 148:3,4,10,          11 150:13 151:5,14,          21,22,25 152:4,19          154:3,12 158:18          159:12 173:8 174:2,          12,19,22 175:7,17,22          176:2,17 177:3,13,          19,25 178:21,22,24,          25 179:9,19,25          181:6,18 182:4,11,18          183:15 189:2 191:17          193:5 204:1,17          205:7,11,14 206:25          207:7,8,12,13,18,22          208:3 209:14,22,23          210:14,23 212:19          217:16 218:20,25          219:23 220:6,12,21          221:2,19,25 223:2,5,          10,18 224:13 225:14,          16 227:9 228:15</p>	<p>229:13 230:22 231:7,          13,20 232:24 233:1,2          234:25 235:4 236:7          237:4,5,6,18,22,23          238:14,17,22,23          239:3,5,8,16,19          240:3,6,12,17 244:3  <b>providing</b> 21:12,13          23:11,12 65:23 94:21          124:3 148:12 154:19          158:3 159:6,9 177:14          188:7 219:24 220:12,          18,25 222:3 223:7          224:6 227:13 233:4,          20 234:16 235:5          237:19 239:17,20          240:7  <b>provision</b> 27:3 88:7          97:23  <b>provisions</b> 28:14  <b>proxy</b> 89:21  <b>public</b> 23:10  <b>Puerto</b> 167:15,16,18  <b>pulled</b> 132:8 175:18  <b>purpose</b> 89:8 240:23  <b>purposes</b> 84:11 222:5          240:23  <b>put</b> 52:25 63:5 95:13          112:3 114:16 136:2          154:17 159:19 216:25          225:1  <b>Pwc</b> 11:12,21</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>qualification</b> 41:10          181:25  <b>qualifications</b> 19:1          29:3  <b>qualified</b> 18:15,19          32:14  <b>qualifier</b> 41:11          133:12  <b>qualifiers</b> 181:24  <b>qualify</b> 24:5 47:24          133:8  <b>qualifying</b> 60:9  <b>quality</b> 100:10  <b>quantify</b> 70:10  <b>queried</b> 150:3</p>
---	--	---

<p><b>queries</b> 62:24</p> <p><b>query</b> 134:8 153:21</p> <p><b>question</b> 15:7,16                  23:17 24:21 27:21                  31:9 32:1 37:10,24                  41:20 42:12 54:23                  57:11 61:11 63:14                  70:17 74:21 80:9                  85:4 86:20 88:22                  89:3 90:18 99:1,2                  100:25 111:14 135:5,                  10 174:9 178:5,18                  179:2 180:13 192:1,                  20 204:20 211:7,9,12                  212:1 218:8 225:21                  226:7,13,16 228:12                  232:22 233:5,13                  239:1 244:11 245:22                  247:25</p> <p><b>questioning</b> 6:19</p> <p><b>questions</b> 6:4,6,20                  28:9 49:19 57:21                  97:6 109:13 117:11                  132:2 134:6 149:21                  197:25 222:7 225:19                  230:13 235:23 237:14                  249:2,3</p> <p><b>quick</b> 200:20</p> <p><b>quickly</b> 6:9</p> <p><b>quote</b> 156:22 212:23</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>radius</b> 222:2,4,14,17,                  21</p> <p><b>ran</b> 49:12,13</p> <p><b>random</b> 32:16 221:6</p> <p><b>range</b> 53:15 92:25                  133:2 244:20</p> <p><b>ranging</b> 8:7</p> <p><b>rate</b> 52:13,16 53:2,21</p> <p><b>rates</b> 52:19 53:15                  54:1 208:12</p> <p><b>ratio</b> 186:3</p> <p><b>rational</b> 240:11</p> <p><b>raw</b> 60:3,4,19,20,22                  63:1,6,9 72:9 78:25                  79:3 80:6 103:1                  105:23 107:16 111:6                  112:16 114:12 115:5                  116:11 119:16 126:11                  133:22,23 136:18,21</p>	<p>137:12 138:10,14,23                  146:13,20 149:13                  197:19</p> <p><b>Razzi</b> 224:15 229:15                  230:12</p> <p><b>re-ask</b> 28:6</p> <p><b>reach</b> 28:25 164:21                  236:3,19 240:16</p> <p><b>reached</b> 238:23</p> <p><b>read</b> 27:25 28:1 36:5                  54:25 55:1,19 56:6,                  15 73:6 85:4,5 96:22                  98:25 99:3 101:3                  135:5,6 154:9 157:2,                  3 211:9,12,15 212:1,                  2,3 232:6</p> <p><b>reading</b> 157:5 190:7</p> <p><b>ready</b> 114:13</p> <p><b>reality</b> 145:21 210:11                  235:18 243:3</p> <p><b>reason</b> 140:1 143:11                  179:12 195:20</p> <p><b>reasonable</b> 120:9                  224:4 240:2</p> <p><b>reasons</b> 232:20 243:6</p> <p><b>rebuild</b> 142:2</p> <p><b>recall</b> 7:13 8:16 10:9                  11:16 25:21 28:23,24                  30:2 43:23 44:5 55:9                  56:2,13,17 71:10                  76:5 77:10 81:14                  82:2,6 106:8,10                  110:18 120:3 121:14,                  22 122:2,8,18 123:8,                  13 124:10 126:2,23                  128:20 129:20 143:18                  157:5,6 222:19</p> <p><b>receipt</b> 100:7</p> <p><b>receive</b> 49:2 103:20                  133:25 208:11,18                  227:24 231:11 245:6                  247:3</p> <p><b>received</b> 61:5 72:16                  83:9,23 103:5,11                  108:20 121:8 123:4                  131:3 132:25 133:5                  135:14,16 138:22                  146:21 217:17</p> <p><b>receiving</b> 89:18,23                  114:12</p> <p><b>recent</b> 17:3</p>	<p><b>recently</b> 8:12,15                  145:17</p> <p><b>recess</b> 39:14 87:22                  127:5 164:12 229:6                  247:21</p> <p><b>recognize</b> 94:7</p> <p><b>recollection</b> 101:10</p> <p><b>record</b> 4:5,23 5:23                  6:7,14 19:20 22:17                  28:1 39:11,12,16                  55:1 85:5 87:13,16,                  24 99:3 127:2,4                  128:5 135:6 143:10                  152:2,6,12 164:8,10,                  14 188:16 211:15                  212:3 229:1,3,8                  230:5 239:12 247:18,                  19,23 248:2 249:7</p> <p><b>record-</b> 40:15</p> <p><b>recorded</b> 4:5 214:15,                  20,21</p> <p><b>recording</b> 4:21 174:2</p> <p><b>records</b> 62:3 111:10,                  17,21 124:13 146:1,5                  152:4,12 153:6                  188:11,13 190:4,9                  248:1</p> <p><b>redefined</b> 186:19</p> <p><b>Redfern</b> 18:4</p> <p><b>Reed</b> 23:12 24:12,24                  25:4,11,16 26:9                  54:17 55:7 130:6,14</p> <p><b>refer</b> 58:24 59:12,16</p> <p><b>reference</b> 29:9 72:21                  78:16 79:13 95:24                  154:21 160:19 166:7,                  19 185:15</p> <p><b>referenced</b> 29:14                  55:16,18 93:17 157:4                  160:25</p> <p><b>references</b> 64:14</p> <p><b>referencing</b> 205:21                  226:14</p> <p><b>referred</b> 72:2 81:23,                  25 90:21 105:8 114:8                  116:11 175:7 201:7                  224:10 234:1</p> <p><b>referring</b> 17:17 19:8                  39:5 43:22 72:12                  76:1 78:19 93:13                  110:13 135:1 145:25                  160:23 161:4 162:14,</p>
--	--	---

<p>18 188:12 200:3          206:7 209:15 223:12          237:21  <b>reflect</b> 70:24 80:4          83:6 141:17 167:4          241:14  <b>reflected</b> 32:25 58:14          60:12,14 66:3 93:21          102:2 111:5 113:22          136:25 153:12          195:23,24 209:13          213:15,16,20,22          214:1,2  <b>reflecting</b> 111:18          146:2 168:20  <b>reflective</b> 197:15          206:1,9  <b>reflects</b> 80:5 83:7          239:4,15  <b>reframe</b> 160:4,5          177:22 187:17 196:2  <b>reframing</b> 211:5  <b>refuse</b> 117:8  <b>regard</b> 22:10 40:3          66:10 71:19 98:8          131:20 146:24 158:4          184:22 205:2 211:4          243:3,17  <b>region</b> 34:9 88:10          89:22 92:24 100:20          101:20 163:3,22          183:7 209:4 210:14  <b>regions</b> 78:23 94:14          101:20,25 169:10  <b>regularity</b> 163:10  <b>regulatory</b> 8:8 12:7  <b>rehab</b> 17:16  <b>reimbursed</b> 74:15  <b>reimbursement</b> 158:7,          19  <b>rejected</b> 104:21,22  <b>relate</b> 125:9 178:22  <b>related</b> 35:13 42:3          43:16 48:21 66:16          78:8 90:13,14,20,22,          23 91:6,7,12,21 95:9          131:24 133:6,14,20          135:15,18 136:15          137:24 138:7,20          148:9 149:3,12,15          162:8 176:9,10          178:15 186:5,8 188:5</p>	<p>195:12 208:19 210:15          226:16 241:23 242:8  <b>relates</b> 19:1,17 21:24          29:23 30:24 36:18          37:10 43:6,16,25          47:14 71:4 78:22,23          80:14,17 116:4          132:24 150:9 162:24          163:12 170:5 171:2,7          175:22 187:25 199:13          200:10 201:2,6 205:5          210:20 212:6 248:3  <b>relating</b> 35:15  <b>relation</b> 180:8  <b>relational</b> 64:2,4          113:13  <b>relationship</b> 204:3,4,          16 207:17,18  <b>relative</b> 133:1 149:6          198:16,21 199:5          203:15 204:1 205:21,          22 207:13,14 208:2,3  <b>relativity</b> 199:8  <b>relevant</b> 46:3 47:12          49:8 133:7 174:3          181:5,14 182:19          190:21 224:2  <b>reliability</b> 49:5,10  <b>relied</b> 57:22  <b>remain</b> 120:10  <b>remainder</b> 183:13  <b>remaining</b> 60:5 183:14  <b>remember</b> 66:5 84:17          106:24 121:7,16          124:23 125:19,22          170:4 202:18 215:7          221:8 223:13  <b>remission</b> 142:9  <b>remove</b> 104:7  <b>removed</b> 120:11  <b>removes</b> 140:19  <b>render</b> 20:11 36:22          37:4 46:10 48:3          190:15  <b>rendered</b> 18:19 32:3          46:18 56:16 67:2,17          69:5  <b>rendering</b> 32:24 33:19          37:13 48:14 51:14          57:23 90:4 92:11          93:16 133:5,12</p>	<p>157:14,25 158:17          160:8 191:18 208:13          243:24  <b>repeat</b> 6:10 27:23          54:23 84:25 103:17          147:8 218:8 228:5  <b>repeated</b> 151:18  <b>repeating</b> 211:6  <b>rephrase</b> 135:9  <b>report</b> 6:23 7:4          16:22,25 17:5,9          19:25 22:13 25:7          30:25 31:3,7,15,16,          22 32:3,25 33:5,7,20          41:19,24 42:22          46:10,19 48:15          51:14,22 55:15 57:23          58:7,14 60:14 64:16          65:1 67:3,18 69:6          70:13 72:20 77:18          81:15 83:10,13 89:7          90:21 93:11,14,23          95:1,17,20 101:2,3          102:3,22,23 110:14          114:7 115:13 118:22          133:3 134:12 141:24          154:1,18 156:1,4          157:15,22 158:12          168:20 173:6 179:11          185:9 188:17 195:23          201:7,23 213:16          214:25 216:1 222:11,          23 229:14 230:23          231:21 241:15,20          245:15 247:15,16  <b>reporter</b> 5:10 6:5          219:6 249:9  <b>reporting</b> 173:23  <b>reports</b> 20:16 56:19          57:18 58:3,4 68:4  <b>represent</b> 30:1 89:13          120:6 134:25 135:12          143:23 144:13 149:2          163:23 186:17          190:12,13  <b>representation</b> 108:23          126:14 170:21 171:13          178:24 198:19 210:19          220:6  <b>representative</b> 16:7          80:1 163:16,19          187:11 195:16 212:5          221:13</p>
--	---	--

<b>representatives</b> 109:16	37:14,15 41:14 51:14 57:21 68:5 70:20 73:3 86:23 93:21 100:4 101:11,16 102:6 103:11 105:8 120:20 124:16 128:11 152:18 155:11,21 158:1,17 160:9,10 169:12 170:14 180:21 181:16 189:7 191:20 193:12 195:24 201:9 216:13 218:17 230:22 242:24 247:5	<b>reviewed</b> 34:14 55:22 56:5 57:17 58:4 70:18 114:11 119:20 131:15 156:3 245:14 247:15 <b>reviewing</b> 119:22 156:15 <b>Rico</b> 167:15,16,18 <b>rigorous</b> 34:3 221:5 <b>road</b> 138:8 <b>role</b> 9:6 28:8 <b>roles</b> 29:19 30:6 51:14 94:20 <b>room</b> 130:23 <b>Rothstein</b> 9:23 10:3, 4,8,11 <b>rough</b> 249:11 <b>roughly</b> 12:23,24 14:11 <b>routinely</b> 13:8 32:13 34:1 <b>row</b> 144:15,22 <b>rows</b> 145:14 <b>Rudolph</b> 5:10 <b>rule</b> 13:6 14:21 15:11 42:3 94:5 <b>rules</b> 6:3 57:1 68:9 245:11 <b>ruling</b> 18:10 <b>run</b> 114:2,3 132:1 214:12 <b>Rust</b> 10:2 <b>Rutgers</b> 7:10,16
<b>represented</b> 21:3 22:19 91:1,4 108:6 141:8,10 144:16 150:12 167:23 168:3, 22 169:2,20 196:4,7, 17 202:13 213:13 214:7 227:11 <b>representing</b> 13:25 17:21 <b>represents</b> 89:21,24 113:1 142:8 144:16, 23 145:20 153:2 239:18 240:4,13 <b>request</b> 79:1,7 80:21 81:23 83:15,20 116:18 119:6 175:24 <b>requested</b> 81:17 83:9, 14 175:18 230:10 <b>requesting</b> 147:2 <b>require</b> 16:21 20:13 31:1 36:8,12 56:23 95:16 245:11 <b>required</b> 17:5 36:17 37:9 44:22 45:3,10 47:19 57:1 67:12 68:13 74:12 94:6 132:4 137:5 171:10 236:1 <b>requirement</b> 67:14 68:22 92:7 95:7 157:21 194:23 209:1 215:25 <b>requirements</b> 13:7,14, 24 14:22 42:4 68:9 79:13,14,25 121:3,4 131:17,18 137:1 245:11 <b>requires</b> 21:19 22:13, 22 25:14 26:13,24 30:21 33:2 52:3 69:13 79:5 155:23 160:3 166:3 178:4 184:19 235:11,12 243:18 <b>research</b> 38:15 122:10 155:1 240:15 <b>resides</b> 246:5 <b>residual</b> 77:12 <b>respect</b> 13:23 18:20 21:12 32:2 35:2	<b>responded</b> 32:2 <b>responsible</b> 174:6 175:23 179:15 223:16 <b>rest</b> 154:9 <b>restricted</b> 80:25 <b>resubmission</b> 141:6,12 142:17,18 <b>resubmissions</b> 111:18 146:2 <b>resubmitted</b> 112:12 143:17 <b>result</b> 75:3 97:21 98:9 115:21 120:22 141:6 240:2 <b>resulted</b> 62:2 63:10 165:1 243:14 <b>resulting</b> 243:21 <b>results</b> 28:11 34:14 42:8,10 96:8,16 114:3 204:24 236:17 <b>retain</b> 29:2 <b>retained</b> 13:8 16:15, 17 18:13 22:11,15 23:12 25:1,17 26:9 32:13 <b>retrained</b> 13:20 <b>revealed</b> 101:24 <b>reversal</b> 106:21 <b>review</b> 17:13 29:16 36:19 38:14,21 44:19 54:10,15 55:24 65:1, 13 68:4,12 81:9 84:1 99:11,12 106:3 129:2 137:6 150:10 155:20 156:25 157:13 177:16 178:12 219:17 225:5 232:2 235:24 244:14 247:4 248:25 249:1	<b>s</b>  <b>S9443</b> 111:1 <b>sample</b> 16:7 32:17 239:7 <b>sampled</b> 34:5,12 <b>sampling</b> 29:21 30:15, 18 31:1,11 32:8,11, 12,15,18,21,24 33:9, 12,17,18,25 195:4 <b>Santos</b> 4:8 5:1,13,20, 24 7:3 13:3 20:25 21:8 29:8 39:18 41:13 42:23 55:15 58:6 70:12 77:18 79:20 82:14 83:4 87:19 88:2 93:10

95:19 102:21 128:9 153:25 156:6 160:18 164:11,16,18 178:11 196:19 203:7 206:3 212:21 213:11 217:14 218:4 219:8 229:5, 10,14 232:2 237:21 240:25 242:14 247:25 248:22,25 249:6 <b>Santos'</b> 6:23 212:1 <b>scale</b> 95:14 200:24 <b>schedule</b> 215:4 <b>scheduled</b> 109:15 <b>Schmidt</b> 80:2 128:22, 23 <b>school</b> 12:21 <b>science</b> 7:9 <b>scientist</b> 113:11 <b>scientists</b> 43:9 <b>scope</b> 31:15 35:8,9 36:7,23 37:14,20 41:19 42:19 56:25 65:7 67:4 68:21,22 70:8,16,25 83:17 90:9 132:17 138:1 149:10 162:5 246:5 <b>script</b> 131:16 134:15 214:12 229:15 <b>scripts</b> 131:22 247:3 <b>seal</b> 20:17,18 <b>searches</b> 247:6 <b>Second-to-last</b> 232:7 <b>section</b> 15:19 83:11 103:7 136:7 <b>secure</b> 7:12 <b>seek</b> 69:9,21 <b>seeking</b> 89:18 163:17, 20 <b>seeks</b> 219:6 <b>segregate</b> 62:6 <b>segregated</b> 60:13 <b>selected</b> 34:12 48:19 81:13 152:19 174:21 175:17 177:19,25 178:25 179:11,12 207:6 209:14 220:5 221:18,24 223:18 <b>selection</b> 32:16 156:8 237:22,23 <b>selector</b> 225:20	<b>self-defined</b> 140:17 <b>self-explanatory</b> 161:10 <b>semantics</b> 111:23 <b>send</b> 61:14 <b>sense</b> 34:12 40:14 82:20 100:18 107:25 125:12 163:9 221:6 223:6 <b>sentence</b> 71:2 72:3,13 96:22 154:1 162:19, 20 186:12 232:7 <b>separate</b> 60:1 61:17, 24 62:7,8,12 129:22 144:16,23 <b>separately</b> 53:5 <b>September</b> 167:10,11 <b>sequencing</b> 142:6 <b>serial</b> 97:4 <b>series</b> 105:1 <b>served</b> 13:17 16:13,14 29:19 30:6 <b>serves</b> 29:4 <b>service</b> 65:20 75:4 77:23 78:17 88:7,12 89:18 91:12 96:9,17 97:23 109:18,22 113:1 135:15,18 183:1 186:5 188:5 206:13 220:12 224:3, 6 226:9 227:19,20 232:15 238:20 239:17,20 <b>services</b> 9:8,11,24,25 11:5,18,20,25 21:10 23:15 35:16 36:1,13, 24 37:14 38:7,9,13, 17 42:17 44:14 48:22 53:12 54:18 64:8,15, 19,24 65:9,12,22,23 66:4,15,16 67:9 69:21 70:21 72:23 73:2,14 78:8,10,14 88:4,18 89:12,23 90:13,14,16,22,23 91:6,11,20 97:24 100:23 112:6 132:25 133:14,17,20 135:15 136:15 137:24 138:7, 20 147:24 148:5,9, 12,17 149:3,7 158:7, 8 162:8,11 163:17,21	165:19 170:25 176:18 177:1,2,14 191:10 194:22 195:12 205:15 217:17 218:5,13 219:1,24,25 220:18, 25 222:10 223:8 224:21 225:5,7,15,23 227:14,25 228:8,17 230:19,25 231:8,13 232:8 233:4,5,18,21 234:3,11,17 235:2,6, 10,21 236:9 238:6,25 239:6 240:1,8,18 241:7 244:17 245:19 246:13 <b>serving</b> 21:13 23:10 27:16 28:8,19 57:6 <b>set</b> 9:15 36:1 48:14 50:3 62:3,7,8 76:9 81:7 90:17 91:3,22 110:3,10 116:7 132:18 138:19 139:10 161:11 171:21 220:5 221:14 222:7 233:14, 16 235:5 <b>sets</b> 99:8 110:17 <b>settled</b> 93:7 <b>shake</b> 6:8 <b>share</b> 28:16 74:11 75:23 76:2,15 77:15 148:11 177:4 189:1, 21 190:3,5,12,17 220:24 223:4,9,10,11 229:25 235:3 238:18 241:22 242:7,19,22 <b>shared</b> 160:16 227:12 <b>shares</b> 74:9 189:22 <b>sharing</b> 76:24 <b>she'll</b> 6:9 <b>shortened</b> 125:24 <b>show</b> 146:6 <b>shows</b> 207:16 220:4 <b>sic</b> 8:16 120:24 166:19 <b>side</b> 88:12 179:19 <b>sign</b> 141:4 249:1 <b>significant</b> 46:23 173:18 219:20 <b>significantly</b> 23:23 220:7 <b>similar</b> 17:14 45:24 94:20 124:4 149:20
---	---	---

176:2 216:9 219:24 232:25 233:16 238:18 248:19 <b>simple</b> 216:20 <b>simplify</b> 139:8 223:13 237:8 <b>simplistic</b> 110:24 <b>simply</b> 19:15 93:4 138:16 179:13 194:16 205:6 206:15 <b>single</b> 60:14 111:10, 21 144:16 145:5 152:12 153:17 180:21 210:2 <b>sit</b> 14:8 27:6 51:2 77:11 106:10 117:4 120:3 140:6 142:15 157:6 169:6 <b>situation</b> 117:16 124:4 144:6 <b>size</b> 195:15 239:7 <b>skewed</b> 174:4,18 <b>skills</b> 9:15 48:12 <b>sleep</b> 197:4 <b>slightly</b> 134:9 <b>slow</b> 6:9 <b>small</b> 174:19 <b>smaller</b> 163:22 191:17 200:24 <b>smallest</b> 221:25 <b>smart</b> 46:23 <b>Smith</b> 4:13 5:2,19 7:2 15:9,17 16:10 19:2, 24 20:4,9,15,21,24 21:7 22:2,18 23:8,12 24:10,12,15,20,24 25:4,6,11,17,18 26:2,9,17 27:1,15,24 28:5 29:6 31:4,8,23 32:9 33:15 34:17 35:1,12,24 36:11,21 37:12 38:1,8 39:10, 17 40:12 41:7 42:1, 21 44:20 45:11 46:5, 16 47:4 48:11 50:10 52:11 53:14 54:18,24 55:7,14 57:4,14,16 58:5 59:1 60:11,21 61:4,15 62:5 63:16, 23 64:5,13 65:10 66:1,17,24 67:15 68:2,15,23 69:7,17	70:1,11 72:1,10 73:7 74:8,23 75:8,17 77:17 79:9,12,19 80:10 82:7,13,23 83:1 85:1,3,8 86:3, 18 87:12 88:1,15 90:3,19 91:23 92:9 93:9 94:22 95:18 98:19,25 99:14 101:9 102:20 103:9 105:3 107:14 108:15 111:15 115:15 116:9 117:17 118:6,21 119:11 121:12,15,19 125:14, 17 127:1 128:8 129:24 130:6,14 133:21 134:23 135:11 136:17 137:11,20 138:11,21 139:2 140:9 142:4 144:1,20 145:1,12 146:10 147:1,9,21 148:14 152:16 153:10,15 155:9,19 156:5,17 157:24 159:1,10,21 160:6,17 161:15 162:13 164:7,17 166:15 168:13 169:1, 11,18 171:15 172:20 173:3 174:7 175:1 177:7,23 178:10 179:22 180:4,17 181:3,13 182:2,17 183:10,21 184:10 185:8,14 186:24 187:18 188:6,23 189:6 190:1 191:6 192:21 193:11,19 194:2 195:13,21 196:18 199:16,21 200:12 202:3,15 203:5 207:4 208:10, 17 209:11,20 210:8 211:8,11,22,25 212:4,13,20 217:19, 22 218:1,9,23 219:7 222:12,16 224:8 225:13 228:6,14,25 229:11 230:7,11 231:5 232:1 233:24 234:8,15 236:4 237:20 238:3,9,21 240:14,24 241:12 242:5,13 243:23	244:13 245:5,16 246:8,21 247:2,17,24 248:20 249:2,4 <b>social</b> 163:25 <b>software</b> 62:23 214:11 <b>solely</b> 62:11 <b>someone's</b> 234:16 <b>someones</b> 119:7 <b>sort</b> 108:22 126:18 166:9 <b>sorts</b> 32:19 <b>sought</b> 70:3 <b>sound</b> 85:17 <b>source</b> 82:3 105:24 106:1 227:7 <b>sources</b> 60:19 81:16, 17,24 82:4 97:15 104:2 106:3,4 <b>South</b> 4:16 <b>space</b> 201:18 <b>sparse</b> 95:25 96:4 97:2 98:2 <b>speak</b> 42:7,20 71:17 117:6 119:7 122:16 123:24 125:23 128:16,19 193:2 201:4 246:6 248:4 <b>speaking</b> 19:18 42:18 44:18 45:23 75:19 103:18 108:22 116:6 126:17 181:4 <b>speaks</b> 161:6 173:15 208:25 219:12 <b>special</b> 209:14 <b>specialist</b> 85:14 87:5,9 149:9 176:23 191:1 210:3 <b>specialists</b> 84:16,20 85:12 86:6,10,16 87:1 173:12 174:10 182:13 191:11 231:22 245:2,8 247:6 <b>specialized</b> 46:8,11 <b>specializes</b> 224:11 <b>specialties</b> 83:16 84:7 85:9 182:12 <b>specialty</b> 85:18 86:9 126:6,13 152:19 173:7,24 174:12,21 175:2,7,14,17 176:11 177:8,11,19,25 191:2
--	--	---

<p>205:11 207:6 209:14,                  23 224:1 227:12  <b>specific</b> 9:10,12                  12:17 15:2 21:24                  23:6 35:23 37:9,24                  38:12 39:2 41:20                  42:11 43:4,18 44:13,                  21 45:4,12 47:25                  50:9,17 51:13,21                  54:1 55:6 62:24                  63:2,3 69:25 71:18,                  21 76:5 78:13 79:2,8                  83:18 86:9 87:10                  90:10 91:17 92:19                  95:9,13 98:6 100:1                  101:5,7 104:8,9                  105:25 108:3 109:3                  110:7 114:24 116:4,5                  117:11 122:11 131:9                  132:2,3 134:18                  138:10 142:17 143:13                  146:18 160:15 161:5,                  11,13 168:12 170:19                  171:21 174:25 176:12                  191:10 192:7 195:11                  199:3 200:5 207:19                  211:3,20 218:21                  220:9 221:1 222:22                  225:1,18 226:2                  227:2,21 228:2,7,11                  230:13 232:15 236:17                  243:6,13 244:8  <b>specifically</b> 16:6                  21:12 24:8,23 27:7                  37:23 40:22 43:7,11,                  25 47:13 55:9 56:24                  64:12 69:4,16 74:22                  75:19 77:10 80:23                  84:2 92:16 94:6                  97:22,25 105:5                  117:5,15 119:2 120:3                  132:18 137:10 139:5                  143:8,18 149:22                  156:3 160:13 161:20                  162:23 169:6 175:9                  176:13 181:11 185:24                  189:5 191:3 193:3                  196:5 199:1 200:9                  204:2 222:19 224:7,                  16 226:5,18 227:1  <b>specifics</b> 91:7 123:13  <b>speculate</b> 132:19</p>	<p><b>spelling</b> 10:6  <b>spirit</b> 73:9 100:16  <b>spoke</b> 121:5,12,14,18,                  25 122:14 123:22                  124:14  <b>spreadsheet</b> 61:14                  82:9  <b>spreadsheets</b> 59:7                  62:10,11  <b>staff</b> 44:4 226:6,18,                  22 228:16  <b>stamp</b> 142:11  <b>standalone</b> 85:13  <b>standard</b> 25:3 26:23                  27:2,10,11 49:16                  50:2 118:19 150:3                  151:11  <b>standardization</b> 59:13                  94:21 114:15,18                  115:20,22 138:24                  149:11,14,16,25                  150:6  <b>standardizations</b>                  114:24  <b>standardize</b> 45:7  <b>standardizing</b> 94:12                  100:9 103:21 105:21                  114:8,9,20  <b>stands</b> 24:19  <b>start</b> 10:14 88:14                  89:8 103:24 197:15                  214:25 219:9 241:2  <b>started</b> 89:5 197:12                  200:19 203:10 243:6  <b>starting</b> 89:4 163:7  <b>starts</b> 77:20 88:25                  96:16  <b>state</b> 5:22 42:23                  95:24 96:8 163:8                  164:5,18 165:7                  196:21 197:8,19                  198:4,9 199:18,20                  200:1,2,4,6,11,15,                  16,19 201:12 202:2,                  5,9,11,12,23 217:15  <b>state-</b> 75:25  <b>stated</b> 154:12 195:9                  219:11 236:20,21                  239:25 245:14  <b>statement</b> 76:1                  155:11,12 156:10</p>	<p>158:11 162:24 163:18                  184:9 207:11 211:3                  232:10,11  <b>statements</b> 244:1,4,8  <b>states</b> 13:3 52:12                  70:16 154:2 156:7                  158:5 164:20,22                  165:1,10 198:10,12,                  16,20 199:6,15                  200:21 202:13                  203:13,23 205:16                  207:13,14 213:11                  232:7 240:25  <b>statewise</b> 164:5  <b>stating</b> 77:20 158:23                  165:9 191:16  <b>statistic</b> 30:18 40:8,                  15 70:10  <b>statistical</b> 18:17                  30:8,10,14,15 31:1,                  11 32:8,11,12,18,20,                  23 33:9,11,17,18,25                  39:25 40:4,5,11,24                  41:3,5 45:6 163:13                  166:13  <b>statistician</b> 29:20  <b>statistics</b> 166:14                  189:12,14  <b>status</b> 126:21 184:2,                  14 213:3,6,8  <b>staying</b> 13:2  <b>step</b> 49:1,4 116:14                  134:15 178:17 221:13                  227:15  <b>Stephanie</b> 80:2 128:20  <b>Stephanie's</b> 128:21  <b>steps</b> 48:25 49:4,11,                  16 50:2 51:18 59:13                  60:4 62:2 63:8 80:5                  83:24 100:8 101:2                  103:6,10,18,19,24                  104:24 105:1,5,10,19                  112:18,23 113:10,14                  114:10,16 115:3,4,11                  116:3,5 119:14,17                  129:5 131:9 139:6,12                  140:18 146:19 150:5                  152:1 214:14  <b>stint</b> 10:17,18  <b>stood</b> 203:14  <b>stop</b> 97:14</p>
--	---	---

<b>storages</b> 80:15,16 <b>stored</b> 47:9 49:22 129:5 <b>strictly</b> 12:14 41:23 42:18 91:20 <b>strike</b> 47:17 80:18 86:7 94:24 101:15 123:21 126:4 144:21 159:22 168:19 179:3 <b>strong</b> 94:10 <b>structure</b> 27:14 45:8, 23 52:24 77:4 117:13 119:16 122:22 <b>structured</b> 46:1 <b>structuring</b> 175:24 178:8 <b>study</b> 32:19 34:6 77:3 204:5,10 207:25 221:1 224:17 235:14 237:17 239:21 <b>subject</b> 76:13 105:13 125:1,2 <b>subjected</b> 112:23 <b>submission</b> 22:14 112:9 150:17 <b>submit</b> 238:24 245:18 <b>submitted</b> 56:19 57:18 112:14 143:1 146:16 147:10 182:5 183:23 <b>subpractice</b> 11:6 <b>subsequent</b> 28:18,19 129:21 140:24 141:4 142:8 <b>subset</b> 63:10 81:10 139:16,22 174:1,19 191:17 <b>subsidiary</b> 24:6 <b>sufficient</b> 77:21 170:25 230:17,18 <b>suggest</b> 96:10 97:22 205:3 208:6 <b>suggested</b> 161:22 <b>suggestive</b> 170:13 206:11,14 <b>suggests</b> 96:8,17,21 98:4,13,16 206:8 241:8 <b>summarize</b> 154:24 <b>summarizing</b> 97:21 <b>summary</b> 166:20 168:20	<b>super</b> 14:16 <b>superset</b> 60:18 <b>supervise</b> 43:5 <b>supervised</b> 224:18 <b>supervision</b> 51:24 <b>supply</b> 38:17 88:9 89:11 179:19 183:1 206:22 225:8,24 239:18 <b>support</b> 4:19 8:8 9:25 12:2,7,12,25 36:25 37:16,23 38:3,7,9, 13,16,17 42:16 48:22 64:7,15,19,24 65:9, 12,22,23 66:4,15 67:9 69:21 70:18,21 72:22 73:2,14 78:8, 13,14 88:4,17 89:12 90:13,14,22 91:11,20 99:17 100:22 132:25 133:7,14,17,20 135:15,17 136:15 137:24 138:7,20 147:24 148:5,9,16 149:3 154:3 158:8 162:8 165:19 170:15, 24 176:18,25 181:16 186:5,8 188:4 195:16 205:15 219:25 220:18 222:10 225:4,8,24 227:25 228:3,8,17 230:24 231:8,13 234:3,11,17 235:9,21 238:6,25 239:6,7,9 240:17 241:7 244:16, 17 245:19 246:13 <b>supported</b> 54:13 <b>suppose</b> 46:22 136:11 204:23 248:3 <b>surgery</b> 145:17,18 <b>surprised</b> 196:6 <b>survey</b> 34:10 <b>Sutter</b> 17:10 <b>swear</b> 5:11 <b>switched</b> 194:3 <b>sworn</b> 5:14 <b>system</b> 63:2 80:7,14, 15 109:4 112:22 119:10,16 128:12 129:4 132:7,8 140:24 141:1 153:5 160:15 166:9	<b>systematic</b> 74:6 170:5 <b>systemic</b> 42:14,15 70:19 71:2,4,13,21 72:21,25 73:21,22 74:7 162:9 170:5 192:2 201:10 202:19 209:7 241:8,11 <b>systems</b> 45:20 46:2 48:24 59:11 80:16,18 132:6,14,15,21 142:21 <hr/> <b>T</b> <hr/> <b>table</b> 188:7 191:25 194:8 248:3 <b>tabulate</b> 189:12 <b>tabulation</b> 164:23 <b>takes</b> 202:1 214:19 <b>taking</b> 4:15,22 6:5 76:19 113:11 131:10 132:4 201:18 <b>talk</b> 6:8,14 32:7 45:20 100:3 118:8 <b>talked</b> 105:5 131:13 132:6 149:11,14 201:8 <b>talking</b> 75:21 102:25 112:2 115:5 128:9 132:18 142:20 146:9 165:21 185:3,12 191:9 216:23 229:12 <b>talks</b> 110:9 <b>task</b> 44:1 51:4 92:8, 19 175:12 203:20 <b>tasking</b> 204:5 <b>tasks</b> 43:4 51:13,21 <b>taught</b> 170:4 <b>taxonomy</b> 175:4 <b>team</b> 42:25 43:20 50:23 51:25 52:18 54:13 119:20 131:4 <b>teams</b> 43:4 51:3 <b>technical</b> 91:8 187:9 <b>technology</b> 8:2 <b>telling</b> 20:17 <b>tells</b> 159:12 <b>temporal</b> 78:24 185:1, 2 197:22 <b>temporally</b> 142:7
---	--	--

<p><b>ten</b> 166:24 236:7</p> <p><b>tend</b> 6:8 45:19 176:24</p> <p><b>tended</b> 81:10</p> <p><b>Terence</b> 5:5</p> <p><b>term</b> 11:4 40:2,8 60:25 71:7 74:10 81:12 91:8 96:20 125:8 140:17,18 157:9 188:12 223:17</p> <p><b>terminology</b> 193:25</p> <p><b>terms</b> 26:22 52:6 55:6 60:2 110:4 112:19 117:18 120:24 123:20 125:4 144:2 172:23 194:24 206:21 220:10 225:4</p> <p><b>test</b> 195:14,20 219:9, 10 220:20 221:9,10 224:7</p> <p><b>testable</b> 89:6</p> <p><b>testified</b> 5:16 31:12 39:18</p> <p><b>testifier</b> 13:21</p> <p><b>testifying</b> 13:18 15:11 16:13,17</p> <p><b>testimony</b> 13:22 15:4 16:15 17:5,9,18 18:5,7,13,20 19:4,21 20:10 21:6,14,17,25 22:5,8,14,17 28:10, 12 32:6 33:22 37:18 45:15 65:16 71:16 84:22 115:9 181:21 234:7</p> <p><b>testing</b> 207:19,20</p> <p><b>tests</b> 30:14 49:13</p> <p><b>text</b> 59:6 84:3</p> <p><b>that'd</b> 38:25</p> <p><b>theoretical</b> 41:4,6 245:22</p> <p><b>theoretically</b> 145:22 210:5,6</p> <p><b>there'd</b> 144:8</p> <p><b>there'll</b> 141:1 171:9 230:15</p> <p><b>thing</b> 31:16,19 52:8</p> <p><b>things</b> 6:4,8,15 33:12 37:8 41:1 47:10 81:8 106:23,24 112:13 120:11 131:8 149:23 151:23 164:3 194:6</p>	<p><b>thinking</b> 32:19 73:17 114:1 178:18 218:16 236:24</p> <p><b>Thirty-five</b> 196:23,24</p> <p><b>thread</b> 41:2</p> <p><b>THURSDAY</b> 4:1 128:1</p> <p><b>tied</b> 52:9 202:10</p> <p><b>ties</b> 163:25</p> <p><b>Tikellis</b> 5:3,8</p> <p><b>time</b> 9:14 11:5 25:10 39:13,16 46:24 51:7 52:13 71:24 82:16 87:21,24 88:11 89:22 121:25 122:1 124:12 127:4 128:5 133:2,7 149:5 164:10,14 167:5 184:23,24 187:6,11 197:17 201:18 215:8 226:10 229:3,8 241:7 244:8 247:20,23 248:21 249:8</p> <p><b>times</b> 26:1 118:7 132:22 218:20</p> <p><b>timing</b> 121:7</p> <p><b>title</b> 103:7</p> <p><b>titled</b> 58:7</p> <p><b>today</b> 5:10 6:20 27:6 51:3 103:16 121:2 185:6 247:13 248:21</p> <p><b>today's</b> 249:6</p> <p><b>told</b> 150:11 161:22</p> <p><b>tool</b> 124:20 247:5</p> <p><b>tools</b> 62:23</p> <p><b>top</b> 47:13 53:17 95:24 96:13</p> <p><b>topic</b> 38:15 69:25 118:10 156:16</p> <p><b>total</b> 51:11 129:12 162:15 168:15,16 186:9 188:3,11 198:21 239:5 240:16</p> <p><b>totality</b> 63:14 72:8 133:1,6,25 142:22 157:2 244:20</p> <p><b>Touche</b> 10:22</p> <p><b>touched</b> 125:1,2 149:18</p> <p><b>tour</b> 8:24</p> <p><b>trailing</b> 196:23</p>	<p><b>trained</b> 226:19</p> <p><b>training</b> 206:21 226:5,16 228:2,7</p> <p><b>transaction</b> 8:17 106:22</p> <p><b>transcript</b> 249:1</p> <p><b>transcripts</b> 56:6,7,8, 11</p> <p><b>transfer</b> 38:19 225:11</p> <p><b>translate</b> 198:24</p> <p><b>translates</b> 83:18 218:21</p> <p><b>transpires</b> 204:25</p> <p><b>transpiring</b> 235:16</p> <p><b>transportation</b> 164:2</p> <p><b>treat</b> 38:18 135:17</p> <p><b>treatment</b> 184:5 213:8 225:10 226:3</p> <p><b>trial</b> 19:4,5 22:13 56:7,11</p> <p><b>trivialize</b> 200:21</p> <p><b>truth</b> 5:15,16</p> <p><b>turn</b> 7:3 15:18 70:13 93:10</p> <p><b>type</b> 19:11,19 29:25 30:10 33:18 46:4 87:10 124:2,4 125:5 144:6 149:16 160:24 173:7 180:15 209:15, 18 223:19 231:6 232:13 246:23 248:19</p> <p><b>types</b> 9:13,16 16:7 25:19 29:12 43:8 65:3,20 79:8 81:2 95:16 147:15 173:24 174:11 175:22 176:22 177:13 186:7 210:15 217:15 219:17 223:15 227:13 230:19 237:8, 15</p> <p><b>typicality</b> 13:10</p> <p><b>typically</b> 13:25 48:7 144:5</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>U-N-E-T</b> 128:14</p> <p><b>U-NET</b> 59:11 61:2 80:14 128:14 132:7</p> <p><b>U.S.</b> 4:19 166:17,20 167:1,6,15 171:21</p>
---	---	--

<p><b>Uh-huh</b> 6:12 15:20,22          64:17 70:23 77:19          83:12 85:16 93:15          96:19,24 98:3 105:7          128:15 142:10 146:17          150:19 154:7 156:23          188:10 198:8 217:6          218:16</p> <p><b>UHC</b> 124:19</p> <p><b>UHC_154557</b> 82:11</p> <p><b>ultimate</b> 24:3 113:6</p> <p><b>UMR</b> 59:11 61:2 79:14          80:16,17 119:10          120:20 121:22,23          124:5 128:12 132:7</p> <p><b>underlying</b> 59:18          122:10 199:3</p> <p><b>understand</b> 6:5,15          18:23 23:9 28:4          37:19,23 38:10 40:22          49:13 55:25 61:5          64:12 67:9 71:11          74:21 75:22 77:22          83:24 84:5 89:10,13          90:24 91:8 93:12          104:11 105:14 111:14          145:10 149:23 151:21          154:10 170:4 171:12          179:18 180:12 181:25          182:24 184:8 193:5          194:15 202:19 203:18          204:3 208:1 214:1          220:3,11,21 226:14          227:21 232:20 234:22          237:16</p> <p><b>understanding</b> 18:16          25:1,3 34:1 36:12,23          38:2,16,22 43:16          44:18 45:5,25 47:8          48:5,7 49:7,16          61:13,16,20 64:6,18          65:2,5,11,17 66:11          67:11 76:12 85:18          86:5,8,17,19,21,22          87:2 100:9 103:22          104:4 109:13,17          118:16 119:9,15,22,          24 120:21 122:23          126:7 129:3 132:22          133:19 138:12 148:25          151:1 159:7,11,17,24          162:22 169:8 170:8,          20 172:16 173:20</p>	<p>178:21 182:25 183:6          192:6 194:24 195:9          206:22 225:4</p> <p><b>understood</b> 33:24          91:24 104:16 118:3          162:7 181:1 182:11          211:13 226:17</p> <p><b>undertook</b> 89:6</p> <p><b>Underwood</b> 44:8</p> <p><b>uniform</b> 163:14 222:8</p> <p><b>Unintelligible</b> 23:20          37:2 195:18</p> <p><b>unique</b> 106:1 108:7,          12,16 109:1,19,25          110:12 111:7 112:7,          19,20 113:19 115:1          116:6 144:23 152:2,          4,21,22 153:17          179:6,9 180:8,18          195:24</p> <p><b>unit</b> 166:13 170:10          215:17</p> <p><b>United</b> 23:15 56:20          57:7,13 72:19 74:15          79:1 83:19 90:5          91:9,25 92:12 95:2          128:10 132:9,15          151:6 155:11,14,20          156:19 157:7 191:21          230:21 231:4,6,12,22          244:1,14 245:1,19          246:13,24</p> <p><b>United's</b> 80:1 158:1,          17 159:25 160:10          181:15 212:6 229:22          230:1 241:6 242:24          245:7 247:4</p> <p><b>Unitedhealth</b> 4:11          22:19 23:13 72:19          86:9</p> <p><b>Unitedhealth's</b> 77:22          78:17</p> <p><b>Unitedhealthcare</b>          23:25 212:18,19</p> <p><b>Unitedhealthcare's</b>          212:11</p> <p><b>universe</b> 48:21          134:20,25 195:10</p> <p><b>universities</b> 7:19</p> <p><b>university</b> 7:10 10:15</p> <p><b>unsupported</b> 241:9,13</p>	<p><b>updated</b> 167:4,11</p> <p><b>upper</b> 240:16</p> <hr/> <p><b>v</b></p> <hr/> <p><b>v241</b> 136:6</p> <p><b>vague</b> 15:7,16 16:4          19:13 20:3,8,12          21:18 22:8,21 23:19          24:13 25:12 26:10          27:4 28:2,20 30:23          32:5 33:21 34:21          35:18 36:2,14 37:1,          17 38:4 40:1,8,19          41:16 42:6 44:16,24          45:14 46:12,13,20          47:21 52:2 53:6          54:20 57:15 58:21          59:25 60:15 61:8,25          63:19 64:9,20 65:15          66:6,21 67:5,25          68:19 69:2,11 71:16          73:4,16 74:16 75:11          76:25 79:4 80:9          84:21 86:11 87:6          88:5,19 90:7 91:15          92:3,14 94:3 95:5          98:5,21 99:4 102:15          103:3,12 107:5,19          111:12 115:8,24          117:2,22 118:14          119:3 124:21 126:8          134:2 135:7 136:9          137:3,17 138:1,15          140:3 141:14 143:5          144:18 145:7 146:8,          23 147:5 148:1          152:7,23 153:13          154:15 155:17 156:13          157:17 158:20 159:5,          14 160:1,12 162:1          168:5,24 169:4,15          170:16 172:11,24          173:14 174:23          176:14,19 177:20          179:7 180:1,12,23          181:8,21 182:7,21          183:17 184:6,17          186:20 187:16,22          188:21 189:3,17          191:4 192:15,25          193:15 195:6,17          196:1,11 199:10,19</p>
--	---	--

<p>200:7 201:13 202:7,                  24 207:1,9 208:14,21                  209:16 210:4,25                  211:2,19 212:8                  218:6,14 219:3                  222:15 223:22 224:23                  228:4,10 231:1,23                  234:7,14,19 236:14                  238:11 239:12 240:20                  242:1,9,25 244:5,11,                  18 245:3,9,20,21                  246:14 247:1  <b>vaguely</b> 82:1  <b>valid</b> 104:25  <b>validate</b> 45:7 83:24                  84:4 103:24,25  <b>validating</b> 109:12  <b>validation</b> 51:20                  59:13 116:10 117:18                  134:21 138:25  <b>values</b> 105:17 120:6  <b>variables</b> 142:24                  143:20  <b>variation</b> 190:16                  199:15  <b>varied</b> 12:1  <b>varies</b> 53:18 142:19  <b>variety</b> 9:16 25:23,25                  41:1 100:12  <b>vary</b> 9:13 109:4 243:8  <b>vast</b> 174:6 176:25  <b>verification</b> 116:10  <b>verified</b> 109:11                  134:11 148:12  <b>verify</b> 49:20,21 60:5                  103:25 131:23 152:2                  222:9  <b>verifying</b> 100:10  <b>versus</b> 4:11 18:1,3                  117:20 189:2 202:13                  205:6  <b>viability</b> 206:15  <b>video</b> 4:5,21  <b>violations</b> 70:20  <b>vis-a-vis</b> 227:12                  240:6  <b>visit</b> 112:4 145:6,10  <b>vitae</b> 7:5</p>	<hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>wait</b> 31:14 216:12  <b>walk</b> 105:4 131:22  <b>walked</b> 103:15 129:2  <b>walking</b> 48:19  <b>wanted</b> 83:16 88:23                  95:13 131:8 149:23                  150:1 154:10 221:4,                  23 236:25  <b>ways</b> 48:17,18 100:12  <b>website</b> 247:4  <b>weeks</b> 17:4  <b>weighted</b> 187:5,8  <b>West</b> 4:20  <b>wherefore</b> 179:11  <b>wide-</b> 42:15  <b>widespread</b> 42:15                  45:10 71:5,22 73:22,                  23 74:6 162:10 170:5                  192:2 209:7 236:1  <b>women</b> 68:17,25 69:9,                  20 93:2  <b>word</b> 33:16 71:13,20                  125:23 137:23  <b>words</b> 98:13 186:10                  213:1 248:14  <b>work</b> 8:8 10:12 12:12                  19:21 20:13 21:20                  22:22 23:1,6 24:5                  26:14 29:21 30:5,22                  31:17,21 33:3 35:3,                  20 42:23 43:2,4,5,8                  51:3 52:1,17,25 53:5                  56:24 62:4,10 68:9                  69:13 70:9 79:6 90:9                  114:20 155:24 160:3                  166:3,6 173:19 178:4                  184:19 213:22 215:5                  242:10 245:12  <b>worked</b> 8:25 14:3,5,21                  16:8,9 23:22 24:9                  25:16,25 30:4 35:14                  43:24 44:7 45:17                  51:7 53:13,16 144:9                  165:22  <b>working</b> 12:23 78:3                  248:17  <b>works</b> 54:13 63:15</p>	<p><b>world</b> 194:6 245:23  <b>worth</b> 106:15  <b>Wow</b> 87:20  <b>writes</b> 41:5  <b>writing</b> 113:15 140:12  <b>written</b> 185:23                  229:19,22 241:15  <b>wrote</b> 71:18 84:2                  113:18 153:21</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>year</b> 7:12,16 8:15,22,                  23 90:6 92:1,13 95:3                  167:5 226:9  <b>years</b> 9:20 10:10,19,                  24 12:1,22,23,24                  16:11,24 25:23,25                  48:22 78:24 162:16                  163:1 165:19 166:25                  181:7 196:9 197:24  <b>yield</b> 136:12  <b>York</b> 198:10 199:1                  203:14 204:11,12                  207:5</p> <hr/> <p style="text-align: center;"><b>Z</b></p> <hr/> <p><b>Z391</b> 136:6  <b>ZIP</b> 171:23,24 172:1,                  2,5,7 173:4 222:18,                  22</p>
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